

## General Terms and Conditions for the Sale of Goods

These terms and conditions of sale (this “**Agreement**”) are the only terms which govern the sale of the goods by Daley Acquisitions, LLC d/b/a Crenshaw Lighting, a Virginia limited liability company, with offices located at 115 Lighting Way, Floyd, VA 24091 (“**Crenshaw**”) to a buyer (“**Customer**”).

The accompanying Statement of Work (defined below) and this Agreement comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. Even without such written acknowledgment, Customer’s full or partial performance under this Agreement or a Statement of Work will constitute acceptance of the terms and conditions of this Agreement. This Agreement will prevail over any of Customer’s general terms and conditions of purchase regardless whether or when Customer has submitted its purchase order or such terms. Fulfillment of Customer’s order does not constitute acceptance of any of Customer’s terms and conditions and does not serve to modify or amend this Agreement.

### ARTICLE I DEFINITIONS

“**Agreement**” has the meaning set forth in the preamble.

“**Confidential Information**” means any information that is treated as confidential by a party, including, without limitation, trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing. Confidential Information shall not include information that: (a) is already known to the Receiving Party without restriction on use or disclosure prior to receipt of such information from the Disclosing Party; (b) is or becomes generally known by the public other than by breach of this Agreement by, or other wrongful act of, the Receiving Party; (c) is developed by the Receiving Party independently of, and without reference to, any Confidential Information of the Disclosing Party; or (d) is received by the Receiving Party from a third party who is not under any obligation to the Disclosing Party to maintain the confidentiality of such information.

“**Crenshaw**” has the meaning set forth in the preamble.

“**Crenshaw Intellectual Property**” has the meaning set forth in **Section 9.01(a)**.

“**Customer**” has the meaning set forth in the preamble.

“**Customer Materials**” means any data, know-how, photos, illustrations and other materials provided to Crenshaw by Customer.

“**Deliverables**” means the work product and other materials that are delivered to Customer hereunder by Crenshaw in the course of performing Crenshaw’s obligations under this Agreement as more fully described in the Statement of Work.

“**Disclosing Party**” means a party that discloses Confidential Information under this Agreement.

“**Force Majeure Event**” has the meaning set forth in **Article XV**.

“**Inspection Period**” has the meaning set forth in **Section 3.03**.

“**Intellectual Property Rights**” means all (a) patents, patent disclosures and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, (c) copyrights and copyrightable works (including computer programs), mask works, and rights in data and databases, (d) trade secrets, know-how and other confidential information, and (e) all other intellectual property rights, in each case whether registered or

unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

“**Losses**” mean all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“**Non-Conforming Deliverables**” means Deliverables which have not be manufactured or assembled by Crenshaw in accordance with their Specifications.

“**Payment Failure**” has the meaning set forth in **Section 14.01(a)**.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.

“**Project**” means with respect to each Statement of Work, the performance of the applicable Services or manufacture and/or delivery of the applicable Deliverables described in any Statement of Work.

“**Project Milestone**” means an event or task described in the Statement of Work.

“**Receiving Party**” means a party that receives or acquires Confidential Information directly or indirectly under this Agreement.

“**Reimbursement Payment**” has the meaning set forth in **Section 14.02(b)**.

“**Services**” mean any professional or other services to be provided by Crenshaw under this Agreement as described in the Statement of Work.

“**Specifications**” the description of Deliverables contained in the Statement of Work for such Deliverables.

“**Statement of Work**” means the statement of work entered into by the parties.

“**Term**” has the meaning set forth in **Article VII**.

## **ARTICLE II DELIVERABLES AND SERVICES**

**Section 2.01 Deliverables.** Crenshaw shall manufacture and sell the Deliverables to the Customer as described in one or more Statements of Work agreed upon by the parties and entered into in accordance with the terms and conditions of this Agreement.

**Section 2.02 Services.** Crenshaw shall provide the Services to the Customer as described in one or more Statements of Work agreed upon by the parties entered into in accordance with the terms and conditions of this Agreement.

**Section 2.03 Controlling Document.** Each Statement of Work, together with the terms contained in this Agreement, shall be a separate agreement with respect to the Deliverables and Services described in the applicable Statement of Work. This Agreement is expressly limited to the terms of this Agreement and the terms contained in the applicable Statement of Work. The terms of this Agreement prevail over any terms or conditions

contained in any other documentation and expressly exclude any of Customer's general terms and conditions contained in any purchase order or other document issued by Customer. In the event of any conflict between the terms of this Agreement and the terms of any Statement of Work or any other document issued by Customer, the terms of this Agreement prevail.

### **ARTICLE III SHIPMENT; DELIVERY; ACCEPTANCE AND INSPECTION OF DELIVERABLES**

**Section 3.01 Delivery.** Crenshaw shall select the method of shipment of and carrier for the Deliverables. Crenshaw shall deliver the Deliverables to the delivery location as set forth in the Statement of Work using Crenshaw's standard methods for packaging and shipping such Deliverables.

**Section 3.02 Title and Risk of Loss.** Title to the Deliverables and risk of loss to the Deliverables passes to Customer upon Crenshaw's tender of the Deliverables to the carrier.

**Section 3.03 Inspection.** All sales are final. Customer shall inspect the Deliverables upon receipt ("Inspection Period") and either accept or, only if a Deliverable is a Non-Conforming Deliverable, reject the Non-Conforming Deliverables. Customer will be deemed to have accepted the Deliverables unless it provides Crenshaw with written notice of the Non-Conforming Deliverables within two days following the Inspection Period, stating with specificity all such nonconformities.

**Section 3.04 Non-Conforming Deliverables.** For Non-Conforming Deliverables, Crenshaw shall (a) replace such Non-Conforming Deliverables with conforming Deliverables, or (b) refund the price for such Non-Conforming Deliverables. Customer shall ship, at its expense and risk of loss, the Non-Conforming Deliverables to Crenshaw's facility located at 115 Lighting Way, Floyd, VA 24091. If Crenshaw exercises its option to replace the Non-Conforming Deliverables, Crenshaw shall, after receiving Customer's shipment of Non-Conforming Deliverables, ship to Customer at Customer's expense and risk of loss, the replaced Deliverables to Customer's location as described in the applicable Statement of Work. EXCEPT AS PROVIDED UNDER SECTION 3.04, CUSTOMER HAS NO RIGHT TO RETURN THE DELIVERABLES. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE REMEDIES SET FORTH IN THIS SECTION 3.04 ARE CUSTOMER'S EXCLUSIVE REMEDIES FOR THE DELIVERY OF NON-CONFORMING DELIVERABLES, SUBJECT TO CUSTOMER'S RIGHTS UNDER ARTICLE XIII WITH RESPECT TO ANY NON-CONFORMING DELIVERABLES FOR WHICH CUSTOMER HAS ACCEPTED DELIVERY UNDER THIS SECTION 3.04.

### **ARTICLE IV CRENSHAW'S OBLIGATIONS**

**Section 4.01 Licenses.** Crenshaw shall maintain all necessary licenses and comply with all Laws applicable to Crenshaw in relation to Services and Deliverables.

**Section 4.02 Timely Performance.** Any time quoted by Crenshaw for delivery of Deliverables or completion of Services is an estimate only. Crenshaw agrees to use commercially reasonable efforts to timely perform of all its obligations, including the timetables, Project Milestones and other requirements in this Agreement and in the applicable Statement of Work.

**Section 4.03 Insurance.** During the Term, Crenshaw shall, at its own expense, maintain and carry in full force, commercial general liability insurance in a sum no less than \$1,000,000 per occurrence with financially sound and reputable insurers, and upon Customer's reasonable request, shall provide Customer with a certificate of insurance evidencing the insurance coverage specified in this Section. The certificate of insurance shall name Customer as an additional insured. Crenshaw shall provide Customer 30 days' advance written notice in the event of a cancellation or other material change in such insurance policy.

**ARTICLE V  
CUSTOMER'S OBLIGATIONS**

**Section 5.01 Customer's Obligations.** Customer shall:

- (a) cooperate with Crenshaw in all matters relating to the Services and Deliverables and appoint a Customer employee to serve as the primary contact with respect to this Agreement and who will have the authority to act on behalf of Customer with respect to matters pertaining to this Agreement;
- (b) respond promptly to any Crenshaw request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for Crenshaw to carry out the Services and/or deliver the Deliverables in accordance with the requirements of this Agreement and the applicable Statement of Work;
- (c) provide such information as Crenshaw may request in a timely manner, and ensure that it is complete and accurate in all material respects; and
- (d) obtain and maintain all necessary licenses and comply with all laws applicable to Customer in relation to the Services and Deliverables.

**Section 5.02 Delayed Performance.** If Crenshaw's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants or employees, Crenshaw shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

**ARTICLE VI  
CHANGE ORDERS**

**Section 6.01 Change in Scope of Services or Specifications.** If either party desires to change the scope or performance of the Services or specifications of the Deliverables, it shall submit details of the requested change to the other in writing. Crenshaw shall, within a reasonable time after such request, provide a written estimate to Customer of:

- (a) the likely time required to implement the change;
- (b) any necessary variations to the fees and other charges for the Services or Deliverables arising from the change;
- (c) the likely effect of the change; and
- (d) any other impact the change might have on the Services or Deliverables.

**Section 6.02 Change Order.** Promptly after receipt of the written estimate, the parties shall enter into a change. Neither party shall be bound by the change order unless mutually agreed upon in writing in accordance with this Article.

**ARTICLE VII  
TERM**

This Agreement shall commence as of the Effective Date and shall continue thereafter until the completion of all Services and Deliverables under all Statements of Work, unless sooner terminated pursuant to pursuant to **Article XIV** or the applicable Statement of Work.

**ARTICLE VIII  
FEES; PAYMENT TERMS**

**Section 8.01 Fees and Prices.** Customer shall pay the applicable prices and fees set forth in the Statement of Work, including any applicable changes made pursuant to a Change Order.

**Section 8.02 Payment.** The total fees shall be paid to Crenshaw in accordance with any payment or installment schedule as set out in the Statement of Work, with each installment or payment being conditional on Crenshaw achieving the corresponding Project Milestone. On achieving a Project Milestone, Crenshaw shall issue invoices to Customer for the fees that are then payable. Customer shall pay all invoiced amounts due to Crenshaw upon Customer's receipt of such invoice. All payments hereunder shall be in US dollars and made by check or wire transfer.

**Section 8.03 Taxes.** Customer shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Customer hereunder; *provided, that*, in no event shall Customer pay or be responsible for any taxes imposed on, or with respect to, Crenshaw's income, revenues, gross receipts, personnel or real or personal property or other assets.

## **ARTICLE IX INTELLECTUAL PROPERTY RIGHTS; OWNERSHIP**

**Section 9.01 Ownership.** Customer acknowledges and agrees that:

(a) except as provided in **Section 9.03**, Crenshaw will retain all Intellectual Property Rights used to create, embodied in, used in and otherwise relating to all designs, materials, documents, writings and all other work created or used under this Agreement, including without limitation, the Deliverables and any of their component parts (the "**Crenshaw Intellectual Property**");

(b) the Crenshaw Intellectual Property is the sole and exclusive property of Crenshaw;

(c) Customer shall not acquire any ownership interest in any of the Crenshaw Intellectual Property;

(d) the rights to any improvements in the Crenshaw Intellectual Property, including any patent, trademark, trade secret or copyright rights (whether or not patentable or registerable), shall belong to Crenshaw. Customer agrees to assign, transfer and set over unto Crenshaw all its right, title and interest in and to any improvements to the Crenshaw Intellectual Property;

(e) any goodwill derived from the use by Customer of the Crenshaw Intellectual Property inures to the benefit of Crenshaw or its licensors, as the case may be;

(f) if Customer acquires any Intellectual Property Rights, rights in or relating to any Deliverables or any other Crenshaw Intellectual Property (including any rights in any trademarks, derivative works or patent improvements relating thereto) by operation of Law or otherwise, such rights are deemed and are hereby irrevocably assigned to Crenshaw or its licensors, as the case may be, without further action by either of the parties; and

(g) Customer and its customers shall use the Crenshaw Intellectual Property Rights only in accordance with this Agreement and any instructions of Crenshaw.

**Section 9.02 Interference.** Customer shall not (a) take any action that may interfere with any of Crenshaw's rights in or to the Crenshaw Intellectual Property, including Crenshaw's ownership and exercise thereof, (b) challenge any right, title or interest of Crenshaw in or to the Crenshaw Intellectual Property or (c) make and claim or take any action adverse to Crenshaw's ownership of the Crenshaw Intellectual Property.

**Section 9.03 Customer Materials.** Customer shall remain the sole and exclusive owner of all right, title and interest in and to the Customer Materials, including all Intellectual Property Rights therein. To the extent that any Customer Materials are incorporated into any Deliverable or any other Crenshaw Intellectual Property, Customer hereby grants to Crenshaw a non-exclusive, perpetual, non-revocable royalty-free license to use any Customer Materials. All other rights in and to the Customer Materials are expressly reserved by Customer.

**ARTICLE X**  
**CONFIDENTIAL INFORMATION**

**Section 10.01 Non-Disclosure and Non-Use.** The Receiving Party agrees:

- (a) not to disclose or otherwise make available Confidential Information of the Disclosing Party to any third party without the prior written consent of the Disclosing Party; *provided, however*, that the Receiving Party may disclose the Confidential Information of the Disclosing Party to its officers, employees, consultants and legal advisors who have a “need to know”, who have been apprised of this restriction and who are themselves bound by nondisclosure obligations at least as restrictive as those set forth in this **Article X**;
- (b) to use the Confidential Information of the Disclosing Party only for the purposes of performing its obligations under the Agreement or, in the case of Customer, to make use of the Services and Deliverables; and
- (c) to promptly notify the Disclosing Party in the event it becomes aware of any loss or disclosure of any of the Confidential Information of Disclosing Party.

**Section 10.02 Compelled Disclosure.** If the Receiving Party becomes legally compelled to disclose any Confidential Information, the Receiving Party shall provide:

- (a) prompt written notice of such requirement so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy; and
- (b) reasonable assistance, at the Disclosing Party’s sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure.

If, after providing such notice and assistance as required herein, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose no more than that portion of the Confidential Information which, on the advice of the Receiving Party’s legal counsel, the Receiving Party is legally required to disclose and, upon the Disclosing Party’s request, shall use commercially reasonable efforts to obtain assurances from the applicable court or agency that such Confidential Information will be afforded confidential treatment.

**Section 10.03 Advertisement.** Notwithstanding anything to the contrary in **Section 10.01**, Crenshaw may refer to work performed for Customer in any sales promotion, advertisement or other publication unless Customer provides express written instruction to the contrary.

**ARTICLE XI**  
**REPRESENTATIONS AND WARRANTIES**

**Section 11.01 Representations and Warranties of Crenshaw and Customer.** Each party represents and warrants to the other party that:

- (a) it is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization or chartering;
- (b) it has the full right, power and authority to enter into this Agreement, to grant the rights and licenses granted hereunder and to perform its obligations hereunder;
- (c) it has obtained all licenses, authorizations, approvals, consents or permits required by applicable Law to perform its obligations under this Agreement;
- (d) it is in compliance with all applicable Laws;
- (e) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of the party; and
- (f) when executed and delivered by such party, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

**Section 11.02 Representations and Warranties of Crenshaw.** Crenshaw represents and warrants to Customer that (a) it shall perform the Services described in each Statement of Work in a professional and workmanlike manner in accordance with commercially reasonable industry standards for similar Services, and (b) as of the date of completion of the Services or delivery of the applicable Deliverables under a Statement of Work, none of such Services or Deliverables infringe any Intellectual Property Rights of any third party.

**Section 11.03 Representations and Warranties of Customer.** Customer represents and warrants to Crenshaw that, as of the date the Customer Materials are delivered to Crenshaw, such Customer Materials do not infringe any Intellectual Property Rights of any third party.

## **ARTICLE XII INDEMNIFICATION; LIMITATION OF LIABILITY**

**Section 12.01 Indemnification by Crenshaw.** Crenshaw shall defend, indemnify and hold harmless Customer and its officers, directors, employees, agents, successors and permitted assigns from and against all Losses awarded to a third party against Customer arising out of or resulting from (a) bodily injury, death of any person or damage to real or tangible, personal property resulting from the willful, fraudulent or grossly negligent acts or omissions of Crenshaw or Crenshaw personnel; and/or (b) Crenshaw's material breach of any representation, warranty or obligation of Crenshaw set forth in this Agreement.

**Section 12.02 Indemnification by Customer.** Customer shall defend, indemnify and hold harmless Crenshaw and its officers, directors, employees, agents, successors and permitted assigns from and against all Losses awarded to a third party against Crenshaw arising out of or resulting from (a) bodily injury, death of any person or damage to real or tangible, personal property resulting from the grossly negligent or willful acts or omissions of Customer; and/or (b) Customer's material breach of any representation, warranty or obligation of Customer in this Agreement.

**Section 12.03 LIMITATION OF LIABILITY.** IN NO EVENT WILL EITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO A PARTICULAR STATEMENT OF WORK, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID TO CRENSHAW UNDER THAT STATEMENT OF WORK.

**Section 12.04 LIMITATION ON DAMAGES.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **ARTICLE XIII LIMITED DELIVERABLES WARRANTY**

### **Section 13.01 Limited Warranty.**

If Deliverable will be used for personal, family, or household purposes: Crenshaw warrants to Customer that, for a period of one year from the date that Deliverables are accepted by Customer pursuant to **Section 3.03**, the Deliverables will materially conform to the Specifications. This warranty does not apply if the Deliverables (a) have been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to any instruction issued by Crenshaw; (b) have been reconstructed, repaired or altered by Persons other than Crenshaw or its authorized representatives; or (c) have been used with any third-party products, hardware or product that has not been previously approved in writing by Crenshaw. Customer shall submit a written claim to Crenshaw under

this **Section 13.01** within 14 days of the discovery of the facts giving rise to such claim, stating with specificity all nonconformities. Crenshaw shall use commercially reasonable efforts to correct the nonconformities within 60 days of received such notice. Customer may have other rights which vary from state to state.

If Deliverable will be used for commercial purposes: Crenshaw warrants to Customer that, for a period of one year from the date that Deliverables are accepted by Customer pursuant to Section 3.03, the Deliverables will materially conform to the Specifications. This warranty does not apply if the Deliverables (a) have been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to any instruction issued by Crenshaw; (b) have been reconstructed, repaired or altered by Persons other than Crenshaw or its authorized representatives; or (c) have been used with any third-party products, hardware or product that has not been previously approved in writing by Crenshaw.

**Section 13.02 Manufacturer Warranty.** Crenshaw agrees that Customer shall be entitled to the benefit of any manufacturer warranty granted to Crenshaw (to the extent such warranty extends to Customer by its terms) for materials incorporated into or attached to the Deliverables and Crenshaw agrees to coordinate at Customer's expense any warranty claims with respect to such materials with the manufacturer on Customer's behalf.

### **Section 13.03 LIMITATION.**

If Deliverable will be used for personal, family, or household purposes: EXCEPT FOR THE EXPRESS WARRANTIES IN ARTICLE XI AND THIS ARTICLE XIII, CRENSHAW HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE UNDER THIS AGREEMENT, TO THE FULLEST EXTENT ALLOWED BY LAW, INCLUDING ANY (a) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; or (b) WARRANTIES OF INFRINGEMENT, IN EACH CASE WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. CUSTOMER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY CRENSHAW, OR ANY OTHER PERSON ON CRENSHAW'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN ARTICLE XI AND THIS ARTICLE XIII.

If Deliverable will be used for commercial purposes: EXCEPT FOR THE EXPRESS WARRANTIES IN ARTICLE XI AND THIS ARTICLE XIII, CRENSHAW HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE UNDER THIS AGREEMENT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; or (c) WARRANTIES OF INFRINGEMENT, IN EACH CASE WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. CUSTOMER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY CRENSHAW, OR ANY OTHER PERSON ON CRENSHAW'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN ARTICLE XI AND THIS ARTICLE XIII.

## **ARTICLE XIV**

### **TERMINATION; EFFECT OF TERMINATION**

**Section 14.01 Termination by Crenshaw.** In addition to any rights set forth in a Statement of Work, Crenshaw may terminate this Agreement or any Statement of Work, by providing written notice to Customer:

(a) if Customer fails to pay any amount when due under this Agreement or any Statement of Work ("**Payment Failure**"); or

(b) if Customer is in material breach of any representation, warranty or covenant of Customer under this Agreement or any Statement of Work (other than committing a Payment Failure), and either the breach cannot be cured or, if the breach can be cured, it is not cured by Customer within thirty (30) days after Customer's receipt of written notice of such breach.

**Section 14.02 Termination by Customer.** In addition to any rights set forth in a Statement of Work, Customer may terminate this Agreement and any Statement of Work, by providing written notice to Crenshaw:

(a) if Crenshaw is in material breach of any representation, warranty or covenant of Crenshaw under this Agreement, and either the breach cannot be cured or, if the breach can be cured, it is not cured by Crenshaw within 30 days after Crenshaw's receipt of written notice of such breach; or

(b) at least 30 days in advance if Customer desires to terminate a Statement of Work for convenience; provided, that as a condition precedent to Customer's right to terminate a Statement of work for convenience, within ten days following the date of Customer's termination notice, Customer shall pay to Crenshaw all amounts due to Crenshaw all of Crenshaw's out-of-pocket costs and expenses (including raw materials, machinery and equipment purchases and cost of labor) incurred by Crenshaw prior to receipt of Customer's termination notice that arise from or relate to the applicable Statement of Work plus the cancelation fee set forth in the Statement of Work (the "**Reimbursement Payment**").

## **ARTICLE XV FORCE MAJEURE**

No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: acts of God; flood, fire or explosion; war, invasion, riot or other civil unrest; actions, embargoes or blockades in effect on or after the date of this Agreement; national or regional emergency; strikes, labor stoppages or slowdowns or other industrial disturbances; or compliance with any law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including but not limited to imposing an embargo, export or import restriction, quota or other restriction or prohibition, or failing to grant a necessary license or consent; (each of the foregoing, a "**Force Majeure Event**"). A party whose performance is affected by a Force Majeure Event shall give notice to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

## **ARTICLE XVI MISCELLANEOUS**

**Section 16.01 Relationship.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

**Section 16.02 Notice.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses beneath its signature on the signature page of this Agreement (or at such other address for a party as shall be specified in a notice given in accordance with this **Section 16.02**).

**Section 16.03 Entire Agreement.** This Agreement, together with the applicable Statement of Work for a Project and any Change Order and any other document expressly incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the applicable Project described in such Statement of Work, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

**Section 16.04 Assignment.** Neither party may assign, transfer or delegate any or all of its rights or obligations under this Agreement, without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder. Any attempted assignment, transfer or other conveyance in violation of the foregoing shall be null and void. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**Section 16.05 Third Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

**Section 16.06 Amendment and Modification; Waiver.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**Section 16.07 Governing Law.** This Agreement, including all exhibits, schedules, attachments and appendices attached hereto and thereto, are governed by, and construed in accordance with, the Laws of the State of Virginia without regard to the conflict of laws provisions thereof.

**Section 16.08 WAIVER OF JURY TRIAL.** EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**Section 16.09 Specific Performance.** Each party acknowledges that a breach by a party of **Article IX** (Intellectual Property Rights; Ownership) or **Article X** (Confidential Information) may cause the non-breaching party irreparable damages, for which an award of damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the non-breaching party will be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which the non-breaching party may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this Agreement to the contrary.