**Contract Clause – Indemnification (Unilateral; Pro-Indemnifying Party)**

1.  Indemnification. Subject to the terms and conditions set forth in [Section 2](#co_anchor_a605003_1) [and [Section 3](#co_anchor_a248102_1)], [Seller/Supplier/Service Provider/[PARTY NAME]] (as “**Indemnifying Party**”) shall indemnify [,hold harmless,] and defend [Buyer/Customer/[OTHER PARTY NAME]] [and its officers, directors, and employees] ([collectively,] “**Indemnified Party**”) against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys’ fees, that are awarded against Indemnified Party [in a final [non-appealable] judgment] (collectively, “**Losses**”), arising out of any third-party claim alleging:

(a)  [[material] breach or non-fulfillment of any [material] [representation, warranty, or covenant under/representation or warranty set forth in Section[s] [NUMBER] of/covenant set forth in Section[s] [NUMBER] of/representation or warranty set forth in Section[s] [NUMBER] or covenant set forth in Section[s] [NUMBER] of] this Agreement by Indemnifying Party;]

(b)  any [grossly] negligent or more culpable act or omission of Indemnifying Party (including any reckless or willful misconduct) in connection with the performance of its obligations under this Agreement; or

(c)  any bodily injury, death of any person, or damage to real or tangible personal property caused by the [grossly] negligent or more culpable acts or omissions of Indemnifying Party (including any reckless or willful misconduct).

Notwithstanding anything to the contrary in this Agreement, this [Section 1](#co_anchor_a466122_1) does not apply to any claim (whether direct or indirect) for which a sole and exclusive remedy is provided under another section of this Agreement, including Section[s] [NUMBER(S)].

2.  Exceptions and Limitations on Indemnification.

    2.1  Exceptions. Notwithstanding anything to the contrary in this Agreement, Indemnifying Party is not obligated to indemnify, hold harmless, or defend Indemnified Party against any claim (whether direct or indirect) if such claim or corresponding Losses arise out of or result from, in whole or in part, Indemnified Party’s:

(a)  negligence or more culpable act or omission (including recklessness or willful misconduct);

(b)  bad faith failure to [materially] comply with any of its [material] obligations set forth in this Agreement; or

(c)  use of the [Products/Deliverables] in any manner [not otherwise authorized under this Agreement/that does not materially conform with the [then-current] usage [instructions/guidelines/specifications]].

    2.2  [Liability Basket Threshold. Indemnifying Party shall not be obligated to pay for any Losses under [Section 1](#co_anchor_a466122_1) until the amount of all such Losses exceeds, in the aggregate, $[AMOUNT] or the total amount paid [or payable] by [Buyer/Customer/[OTHER PARTY NAME]] to [Seller/Supplier/Services Provider/[PARTY NAME]] under this Agreement [in the [NUMBER] [year/month] period preceding the event giving rise to the indemnification claim], whichever is greater, in which event Indemnifying Party shall pay or be liable for all such Losses from the first dollar.

    **OR**

    Liability Basket Deductible. Indemnifying Party shall not be obligated to pay for any Losses under [Section 1](#co_anchor_a466122_1) until the amount of all such Losses exceeds, in the aggregate, $[AMOUNT] or the total amount paid by the Buyer to the Seller under this Agreement [in the [NUMBER] [year/month] period preceding the event giving rise to the indemnification claim], whichever is greater (the “**Deductible**”), in which event Indemnifying Party shall only pay or be liable for Losses in excess of the Deductible.]

    2.3  Maximum Third-Party Claim Liability. Indemnifying Party shall in no event be obligated to Indemnified Party under [Section 1](#co_anchor_a466122_1) for any Losses that exceed:

(a)  $[AMOUNT] per claim; and

(b)  notwithstanding the foregoing, an aggregate of $[AMOUNT] or the total amount paid by [Buyer/Customer/[OTHER PARTY NAME]] to [Seller/Supplier/Service Provider/[PARTY NAME]] under this Agreement in the [NUMBER] [year/month] period preceding the event giving rise to the indemnification claim, whichever is less.

    2.4  [Payment Adjustments for Insurance Proceeds. Payments by Indemnifying Party under [Section 1](#co_anchor_a466122_1) in respect of any Losses are limited to the amount of any liability or damage that remains after deducting therefrom any insurance proceeds and any indemnity, contribution, or other similar payment actually received by Indemnified Party in respect of any such indemnity claim, less any related costs and expenses, including the aggregate cost of pursuing any related insurance claims and any related increases in insurance premiums or other charge-backs. Indemnified Party shall use its [best/reasonable/commercially reasonable] efforts to seek to recover any insurance proceeds in connection with making a claim under this [Section 2.4](#co_anchor_a586674_1). Promptly after the realization of any insurance proceeds, indemnity, contribution, or other similar payment, Indemnified Party shall reimburse Indemnifying Party for such reduction in Losses for which Indemnified Party was paid under [Section 1](#co_anchor_a466122_1) before the realization of reduction of such Losses.]

    2.5  [Payment Adjustments for Taxes. Regarding any payment made under [Section 1](#co_anchor_a466122_1) in respect of Losses, Indemnifying Party may reduce it by an amount equal to any Tax benefit actually realized as a result of such Losses by Indemnified Party.]

    2.6  Sole Remedy. SECTION 1 SETS FORTH THE ENTIRE LIABILITY AND OBLIGATION OF THE INDEMNIFYING PARTY AND THE SOLE AND EXCLUSIVE REMEDY FOR THE INDEMNIFIED PARTY FOR ANY DAMAGES COVERED UNDER SECTION 1.

3.  [Indemnification Procedures. Indemnified Party shall give Indemnifying Party prompt written notice (a “**Claim Notice**”) [but in no event more than [NUMBER] days of becoming aware of a claim] of any Losses or discovery of facts on which Indemnified Party intends to base a request for indemnification under Section [NUMBER] ([Seller/Supplier/Service Provider/[PARTY NAME]] Indemnification). Each Claim Notice must contain a description of the third-party claim and the nature and amount of the related Losses (to the extent that the nature and amount of the Losses are known at the time). Indemnified Party shall furnish promptly to Indemnifying Party copies of all papers and official documents received in respect of any Losses. All indemnification obligations in this Agreement are conditioned upon the Indemnified Party:

(a)  promptly delivering the Claim Notice and related documents under this [Section 3](#co_anchor_a248102_1);

(b)  allowing Indemnifying Party, if Indemnifying Party so requests, to undertake, conduct, and control, through reputable independent counsel of its own choosing, the defense, appeal or settlement of any third-party claim that is reasonably likely to give rise to an indemnification claim under [Section 1](#co_anchor_a466122_1);

(c)  cooperating with Indemnifying Party in the defense of any such claim or liability and any related settlement negotiations; and

(d)  not compromising or settling any claim or liability without prior written consent of Indemnifying Party.]