

## TERMS AND CONDITIONS OF O&M CONTRACT

This document contains the Terms & Conditions governing the contractual relationship between ATLAS CRANE SERVICE LLC, (“Lessor”), and \_\_\_\_\_, (“Lessee”), for services and/or equipment (“Equipment”) for a project in common. Lessor includes the Lessor, its parent, subsidiaries, affiliates, partners, joint interest owners, members, shareholders, co-owners, and joint ventures, if any, and the agents, officers, directors, employees and representatives of these other persons. Lessee includes the Lessee, its parent, subsidiaries, affiliates, and joint ventures, if any, as well as its subcontractors, and the agents, officers, directors, employees and representatives of these other persons.

**1. DEFENSE, INDEMNIFICATION AND HOLD HARMLESS – TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, LESSEE SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS LESSOR AND ITS OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, MEMBERS, MANAGERS, EMPLOYEES, AFFILIATES, REPRESENTATIVES AND AGENTS (THE “INDEMNITEES”) FROM ANY AND ALL ACTIONS, CAUSES OF ACTION, CLAIMS, SUITS, DEMAND INVESTIGATIONS, OBLIGATIONS, JUDGMENTS, LOSSES, COSTS, LIABILITIES, DAMAGES, FINES, PENALTIES AND EXPENSES, INCLUDING ATTORNEY’S FEES, WHICH ARE INCURRED BY, ACCRUED, ASSERTED, MADE OR BROUGHT AGAINST, OR RECOVERABLE FROM ANY OF THE INDEMNITEES ARISING FROM OR OUT OF OR RELATING TO, DIRECTLY OR INDIRECTLY, THE LESSEE’S ACCEPTANCE, POSSESSION, TRANSPORT, USE, OPERATION, CONTROL OF THE EQUIPMENT, OR RETURN OF THE EQUIPMENT WHETHER OR NOT THE SAME ARISES FROM DAMAGE TO PROPERTY (REAL OR PERSONAL), INJURY OR DEATH TO PERSONS (INCLUDING BUT NOT LIMITED TO LESSEE’S EMPLOYEES, AGENTS AND REPRESENTATIVES), FAILURE TO COMPLY WITH APPLICABLE LAWS, REGULATIONS OR ORDINANCES, THE EQUIPMENT CONDITION, THE LOSS OF USE OR SEIZURE OF THE EQUIPMENT, OR OTHERWISE OR ANY OTHER ACTION OR FAILURE TO ACT BY THE LESSEE, THEIR AGENTS, CONTRACTORS, AFFILIATES, OR EMPLOYEES; AND/OR) ANY CLAIMS OF THIRD PARTIES AGAINST LESSEE, THEIR AGENTS, CONTRACTORS, AFFILIATES. LESSEE EXPRESSLY AGREES TO WAIVE ANY WORKERS’ COMPENSATION IMMUNITY IT MAY OTHERWISE HAVE. LESSEE’S OBLIGATION TO INDEMNIFY THE INDEMNITEES SHALL SURVIVE THIS LEASE’S TERMINATION. IN JURISDICTIONS WHERE THE INDEMNIFICATION PROVIDED IN THIS SECTION IS BROADER THAN THAT ALLOWED BY APPLICABLE LAW, THIS SECTION SHOULD BE INTERPRETED AS PROVIDING THE BROADEST INDEMNIFICATION PERMITTED AND SHOULD BE LIMITED ONLY TO THE EXTENT NECESSARY TO COMPLY WITH LAW. THIS INDEMNIFICATION PROVISION DOES NOT NEGATE, ABRIDGE OR REDUCE ANY OTHER RIGHTS.**

**2. INSURANCE** –Lessee, at its expense, agrees to carry, maintain and provide the following insurance coverages prior to the Equipment’s arrival on the job site; a) worker’s compensation and employer’s liability insurance applicable to Lessee’s employees, with limits of at least the statutory minimum or \$1,000,000, whichever is greater; b) primary non-contributory commercial general liability insurance on an occurrence basis, including bodily injury and property damage coverages with minimum limits of \$1,000,000 per occurrence and \$2,000,000, in the aggregate; c) follow form excess/umbrella non-contributory insurance in the amount of at least \$5,000,000; said primary and excess/umbrella policies must be endorsed so that they are primary and non-contributory to all of Lessor policies; d) inland marine/all-risk physical damage insurance, on a primary non-contributory basis, to cover the full replacement cost of the Equipment, including any boom or jib, for its loss or damage from any and all causes of loss; said insurance policy shall include loss of use coverage for the Equipment, leased, rented, borrowed, including continued rental expenses coverage for at least \$500,000; e) riggers liability insurance with minimum limits of \$1,000,000 per occurrence and \$2,000,000, in the aggregate; f) the Lessor and all affiliated partnerships, joint ventures, corporations and anyone else who Lessor is required to name as an additional insured, are to be included as additional insureds on all liability insurance policies, including excess/umbrella policies on ISO endorsement forms CG 20 10 10 01, CG 20 37 10 01, CG 20 28 07 04, and CG 20 34 03 97. Lessee shall name Lessor as a loss payee and additional insured on all insurance policies, and Lessee shall provide all insurance certificates and/or insurance policies to Lessor when requested; g) all Lessee’s policies must remove any exclusion for explosion, collapse and underground operations (XCU); h) all Lessee’s policies must remove the “employer’s liability exclusion” for all additional insureds; i) all of Lessor’s policies and the policies of anyone Lessor is required to insure, are excess over all of Lessee’s policies. To the extent that the Lessee may perform under an agreement without obtaining the above coverages, such an occurrence shall not operate, in any way, as a waiver of the Lessor’s right to maintain any breach of contract action against Lessee. Lessee hereby agrees to waive any and all rights of subrogation and any and all lien rights which may accrue to it or its insurers. Lessee understands that a waiver shall bind its insurers of all levels and agree to put these insurers on notice of a waiver and to have any necessary endorsements added to the insurance policies applicable to an agreement. To the extent that the Lessor may perform under an agreement without obtaining the above coverage, such an occurrence shall not operate, in any way, as a waiver of Lessor’s right to maintain any breach of contract action against the Lessee. Lessee’s damages shall include Lessor’s missed revenue and / or equipment replacement in the event of Lessee harming Lessor’s equipment to the extent it cannot be utilized by Lessor.

**3. OPERATION OF EQUIPMENT** – It is expressly agreed by and between the parties hereto that the Equipment and all persons operating the Equipment are under the supervision and control of Lessee under a lease. In the absence of Lessee’s presence at the jobsite, the parties expressly agree that all persons operating the Equipment are under the direct supervision and control of subcontractor hired by Lessee. In the event that Lessee assigns the task of supervision to subcontractor then all persons operating the Equipment are under the supervision and control of subcontractor. In any case it shall be the duty of Lessee to give specific instructions and directions to all persons operating the leased Equipment. Lessee agrees to provide or otherwise select competent and experienced personnel to direct the operation of the equipment, in accordance with OSHA 29 CFR 1926.1428 signal person qualifications and both Lessee and subcontractor further agree that the standard of care and responsibilities will be in accordance with all American National Standards Institute (ANSI) and that ASME B30.5-2018 (and as amended) shall be used when operating the equipment, specifically Chapter 5-3 Operation, as well as the OSHA 29 CFR Subpart CC Cranes and Derricks in Construction sections 1926.1400 – 1926.1442.

The Lessee acknowledges and agrees that it is the responsibility of the Lessee to independently determine the weight of every load to be lifted to prevent compromising all or any portion of the Equipment. Any load measuring device used by the crane operator shall be used as an operator-aide only. If any Equipment has been fitted with a load measuring device, the Lessee hereby acknowledges and agrees that the Lessor has made no warranties or representations whatsoever with respect to the ability of the said load measuring device to accurately or consistently measure the weight of loads being lifted by such Equipment.

**4. CONDITIONS – GROUND/POWERLINES/RIGGING** – Lessee hereby agrees that Lessee will assume all responsibility for the ground or soil conditions in the area where the Equipment is to be stored, parked or operated. All power lines in the work area shall be identified prior to the work's beginning. All power lines are to be de-energized prior to the Equipment's being operated in or around such power lines. Lessee shall contact the local electric utility or other such authorized entity to arrange to have the power lines de-energized prior to beginning work. Even if power lines are de-energized, Lessee shall ensure the Equipment is kept clear of such power lines at the distances required by OSHA, ANSI and any other safety regulations or standards. If it is not possible to de-energize power lines, then the Lessee shall be responsible for the insulating of any power lines, the grounding of all equipment, and they will use rigging or other equipment designed to prevent electrocution. Lessee is required to provide any and all rigging to be used with the Equipment. If chokers, slings, straps, chains, hooks, spreaders, fittings, rope or wire, etcetera; are loaned to the Lessee by the Lessor for the Lessee's convenience, such property is solely the Lessee's responsibility. Lessee assumes responsibility to inspect the rigging before use and Lessee assumes responsibility for any defects in any rigging, whether the property of Lessee or otherwise. Lessee assumes all liability for the adequacy of, design of, or the strength of, any lifting lug or device embedded in or attached to any object to be lifted. Lessee assumes the responsibility for damage to any load on hook due to a failure of the rigging. Lessee assumes the responsibility for the method of rigging and agrees that all persons involved in the rigging process are qualified according to OSHA's definition 1926.1401 and are under Lessee's direct supervision and control.

**5. TERMS OF PAYMENT** – Invoices are due upon billing and based on a 28-day monthly billing cycle. An additional finance charge of 1 ½% per month (18% per annum) may be added on balances unpaid after 30 days from invoice date. If a matter is referred to collections, an additional 20% will be due, which Lessee agrees is reasonable. Credit card payments will incur a 4% service fee

**6. FORCE MAJEURE; LIMITATION OF LIABILITY** – Lessor shall not be responsible or liable for any delays or its failure to perform the terms and conditions of an agreement if such delay or failure is caused by circumstances beyond the control of Lessor, including without limitation, acts of God, pandemic, fire, catastrophe, weather conditions, strikes, lockouts, labor shortages, unavailability of parts, war, riots, civil commotion, confiscation, or governmental action or restriction, including frost law restrictions. If any liability is found to be attributable to the Lessor, it shall not be more than the related purchase order or task.

**7. AUTHORIZED SIGNATURE** – In the event an agreement has been executed by an individual on behalf of a corporation or other business entity, the person whose signature is affixed and the party for which those individual has signed an agreement represent to Lessor that the individual signing has full authority to execute an agreement on behalf of said corporation or other entity.

**8. NO CONFLICT** – If any provisions hereof conflict with any statute or rule of law where enforcement is sought, then such provisions shall be deemed null and void to the extent that they may conflict therewith, but without invalidating the remaining agreements between the Lessee and Lessor.

**9. STREET CLOSURE DISCLAIMER** – Lessor is not responsible for obtaining any required permits including, but not limited to, sidewalk, bicycle, curb/parking or driving lane permits. The Lessee is liable for any related permit costs or fees associated with the work performed while Lessor is on site.

**10. ADDITIONAL –**

- Lessor will provide operators, maintenance, and fuel for Equipment.
- All labor minimums, Monday through Friday, begin at 7 am. All hours are portal to portal, unless otherwise specified.
- Straight Time working hours are Monday thru Friday 7:00 am - 3:30 pm. Lunch is 12:00-12:30 pm.
- Crew Overtime rates shall apply before 7:00 am and after 3:30 pm Monday through Friday and all day on Saturdays/Sundays/Holidays. All referenced hours are based upon local time zones.
- Cranes 200 tons or larger can only travel from sunrise to sunset.
- All Equipment is subject to availability. An updated proposal will be required if older than 30 days.
- Crew Per Diem is charged seven days per week, unless otherwise mutually agreed upon by the parties.
- Should stamped engineered lift plans be required, they will be billed at a cost plus 15% basis.
- Labor rates are based upon local union labor rates, and local union labor rules shall apply.
- Lessee will ensure that confirmed and accurate weights and dimensions for all components that are to be lifted are provided to Lessor before the commencement of hoisting operations.
- Required specialized rigging will be provided by Lessee. Additional costs will be incurred if Lessor must supply rigging.
- The proposed use of the Equipment is subject to change in the event information is received that renders the current proposed format ineffective. Any such change may result in modifications to fees and rates.
- If a project is delayed or cancelled due to Lessee's acts, following the execution of an agreement or Atlas' material preparation for a project, Atlas shall have the right to collect damages from Lessee no more than 10% of the total contract value.
- Lessee will ensure that Lessor has full and unimpeded access to the site location during transport of equipment onto site and during assembly of the equipment. Any delays caused by site conditions may result in additional charges.
- Lessee will ensure that the Equipment's assembly area is of sufficient size for the proposed configuration, open, and free of obstacles that may inhibit operations. Adverse conditions that delay the Equipment may result in additional charges.

**ADDITIONAL TERMS OR PAYMENT PROCEDURES MAY BE ADDED AS EXTRA LANGUAGE OR EXHIBITS**

- In the event second / night shift crews are required for the job, Lessor requests 72 hours advance notice in order to prepare and to avoid delays to the project. Second / Night Shift crews will be charged at the crane and crew overtime rate or at a rate agreed upon by Lessee and Lessor.