

## MIW TERMS and CONDITIONS of LEASE AGREEMENT / WORK ORDER

**WHEN THESE GENERAL TERMS AND CONDITIONS ARE INCORPORATED INTO AN AGREEMENT, IF THERE IS ANY CONFLICT, OR INCONSISTENCY BETWEEN THESE GENERAL TERMS AND CONDITIONS AND SAID AGREEMENT, THESE GENERAL TERMS AND CONDITIONS SHALL CONTROL.**

**1. These terms and conditions shall prevail over all inconsistent provisions in any other contract documents, including any purchase order relating to any proposal.** Customer shall be conclusively deemed to have accepted the terms and conditions herein, and to have entered into this agreement with MIW. This proposal and any agreements arising from acceptance hereof shall be governed by and interpreted in accordance with the laws of the State where work is being performed, and the Federal laws of the United States of America applicable therein, including, but not limited to, federal transportation law while the cargo is in transit. For any work performed outside the state of New Mexico, paragraph 4a & 5 are deleted and incorporated by reference into this agreement is the indemnification and insurance provision at **URL(S): <http://bes-usa.com/incbyref/StatesAgreement.pdf>**

**2. Change in Conditions.** Any changes to the condition of the site from the time of the proposal to the time when MIW starts the work shall be the responsibility of the Customer. Customer shall immediately notify MIW of any changes not previously disclosed regarding the setup or site conditions. In the event of an increase in the work, the contract price shall be increased by a fair and reasonable valuation based upon the original contract rates. In either an increase or decrease in work, Customer shall provide an extra work notification to MIW. Signing a time sheet is an automatic or extra work notification & serves as authorization of overtime pay.

**3. CONDITIONS – GROUND/POWERLINES** The Customer hereby agrees that it assumes all responsibility and will perform all necessary inspections or testing of the ground or soil conditions including underground voids or vaults in the area where the work is to be performed so that all work including all lifts can be safely supported and performed; if the ground or soil condition cannot safely support the lift, work or Equipment, the Customer shall take all necessary measures to ensure that these conditions are remedied prior to the Equipment being placed on that ground or soil including but not limited to proper shoring, cribbing or other measures. Customer assumes all responsibility to protect the equipment and persons in or around the equipment from the danger of power lines. Customer shall not expose the equipment or any persons in or around such equipment to the danger of energized power lines. All power lines in the work area shall be identified prior to the work beginning. All power lines are to be de-energized prior to the equipment being operated in or around such power lines. Customer 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, Customer shall keep the equipment 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 Customer shall be responsible for the insulating of any power lines, the grounding of all equipment and will be required to use rigging or other equipment designed to prevent electrocution. If the work site is inadequate to provide clear passage or to support the operation of heavy equipment, or subsurface conditions necessitate reinforcement and/or relocation of facilities and/or services, all such work and the co-ordination of same required to permit the work to proceed in a timely manner shall be the responsibility of Customer and at Customer's expense. Customer shall perform or have performed all necessary inspections or testing to determine the nature of the ground or soil and its ability to support the equipment while in operation or otherwise. Suitable ground conditions referenced to herein means ground conditions meeting or exceeding the requirements of AASHTO H20. If additional towing or pushing of MIW's equipment is required because of inadequate site conditions, additional costs incurred (including costs of repairing damage to our equipment) will be billed extra at cost plus fifteen (15%) percent.

**4a. NEW MEXICO INDEMNIFICATION – – IT IS THE PARTIES INTENT THAT THIS PROVISION IS SPECIFICALLY IN COMPLIANCE WITH ALL NEW MEXICO LAWS, AND TO THE FULLEST EXTENT PERMITTED BY NEW MEXICO LAW, LESSEE AGREES TO INDEMNIFY, RELEASE, AND SAVE LESSOR, ITS EMPLOYEES AND AGENTS HARMLESS FROM ALL CLAIMS OR LOSS FOR DEATH OR INJURY TO PERSONS INCLUDING LESSOR'S AND LESSEE'S EMPLOYEES, OF ALL LOSS, DAMAGE OR INJURY TO PROPERTY, INCLUDING THE EQUIPMENT, ARISING IN ANY MANNER OUT OF LESSEE'S OPERATION OR USE OF THE EQUIPMENT. IT IS THE PARTIES' INTENT THAT THIS DUTY TO INDEMNIFY IS AS BROAD AS PERMITTED BY NEW MEXICO LAW. – –** Lessee's duty to indemnify hereunder shall include costs or expenses arising out of claims specified herein, including all court and/or arbitration costs, filing fees, attorneys' fees and costs of settlement. Pursuant to NM ST § 56-7-1, Lessee shall not be required to indemnify, hold harmless, insure, or defend against liability, claims, damages, losses or expenses, including attorneys' fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligence, act or omission of the Lessor, its employees or agents. However, the indemnification obligation under the above paragraph shall not be limited in any way by any limitation on the amount or type of damage, compensation, or benefits payable by or for the Lessee under worker's compensation acts, disability benefit acts, or other employee benefit acts. The Lessee's obligations hereunder shall further not be limited by the amount of its liability insurance, and the purchase of such insurance for Lessor shall not operate to waive any of the above obligations. This provision is separate and distinct from any other provision or paragraph in this contract, including any provision or paragraph concerning indemnification and procurement of insurance. If any word, phrase, or sentence of this

paragraph or any other paragraph is declared invalid, then all other words, phrases, or sentences of all paragraphs of this contract shall stand.

**4(b). NEW MEXICO ASSUMPTION AND RELEASE.** The Lessee assumes all of the risks associated with the performance of any and all work occurring under or arising out of this Agreement. This includes, but is not limited to, any risks, claims, suits, or causes of action that may arise from negligence or carelessness on the part of the Lessee or the Lessee's agents, servants or employees, independent contractors or anyone else. Further, the Lessee waives, releases and discharges the Lessor and its agents, servants or employees, from any and all liability, including but not limited to, liability arising from any and all negligence or fault, for any death, disability, personal injury, property damage, or actions of any kind which may hereafter occur or arise out of the performance of any and all work under, or arising out of this Agreement.

**4(c).** This proposal and any agreements arising from acceptance hereof shall be governed by and interpreted in accordance with the laws of the State where work is being performed, and the Federal laws of the United States of America applicable therein, including, but not limited to, federal transportation law while the cargo is in transit. For any work performed outside the state of New Mexico, paragraph 4(a) and 5 are deleted from this agreement. **FOR ANY WORK PERFORMED OUTSIDE THE STATE OF NEW MEXICO, INCORPORATED BY REFERENCE INTO THIS AGREEMENT IS THE INDEMNIFICATION AND INSURANCE PROVISIONS AT URL(S): <http://bes-usa.com/incbyref/statesagreement.pdf>**

**5. NEW MEXICO INSURANCE** To the fullest extent permitted by New Mexico, the Lessee agrees to purchase, maintain and carry the following insurance coverages prior to the Equipment's arrival on the job site. Pursuant to NM ST § 56-7-1, Lessee shall not be required to indemnify, hold harmless, insure, or defend against liability, claims, damages, losses or expenses, including attorneys' fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligence, act or omission of the Lessor, its employees or agents. Notwithstanding the above, the Lessee shall procure the following coverages for Lessor: a) worker's compensation and employer's liability insurance, with limits of at least the statutory minimum or \$1,000,000, whichever is greater; b) primary non-contributory commercial general liability ("CGL") 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) excess/umbrella following form non-contributory insurance in the amount of at least \$5,000,000 and Lessee's primary and excess/umbrella policies must be endorsed so that they are primary and non-contributory to all of Lessor's insurance policies; d) inland marine/all-risk and or builder's risk which includes an all-risk physical damage insurance, on a primary non-contributory basis, to cover the full insurable value of the Equipment, including any boom or jib, for its loss or damage from any and all causes, including, but not limited to, overloading, misuse, fire, theft, flood, explosion, overturn, accident, and acts of God occurring during the rental term; e) all policies are to be written by insurance companies acceptable to the Lessor; f) for all liability insurance policies (including any excess/umbrella policies) Lessee shall name as an additional insured, Lessor and Lessor's officers, directors, shareholders, members, managers, partners and employees, all affiliated partnerships, joint ventures and corporations of Lessor and anyone whom Lessor is required to name as an additional insured; g) Lessee shall use all of the following ISO endorsements to provide additional insured status and coverage to Lessor: CG 2001 04 13, CG 20 10 10 01, CG 20 37 10 01, CG 20 28 07 04, CG 20 34 03 97, CG 2033 10 01, CG 20 26 04 13, CG 2038 04 13, CG 25 03 03 97, or CG 24 04 05 09 all must be used and modified but only to the extent required by NM ST § 56-7-1; h) Lessee shall provide punitive damage coverage for Lessor's benefit on all liability policies, unless prohibited by state law; i) Lessee shall name Lessor as a Primary Loss Payee on all insurance policies, j) Lessee shall provide all insurance certificates to Lessor when requested; k) all of Lessor's policies, and the policies of anyone Lessor is required to insure shall be excess over all of Lessee's policies; l) all Lessee's policies shall be endorsed to require the insurer to give at least thirty (30) days advance notice to all insured's, including additional insured's, prior to cancellation or non-renewal; m) all Lessee's policies must remove any exclusion for explosion, collapse and underground operations (XCU); n) all Lessee's policies must remove the "employer's liability exclusion" for all additional insureds; and o) all Lessee's policies must include coverage for blanket contractual liability for the obligations assumed here-under and also for the liabilities assumed in the Indemnity section above. In the event of loss, proceeds of the Builders Risk policy on the Equipment shall be made payable to Lessor. Lessee's agreements to indemnify and hold Lessor harmless from any liability, damage and loss are in addition to, and not an alternative to, these insurance provisions and the purchase of any of the above coverages shall not operate to waive any of the above indemnity provisions. To the extent that the Lessee may perform under this lease 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 the Lessee. Lessee hereby agrees to waive any and all rights of subrogation and any and all lien rights (including those arising from worker's compensation/employer's liability policies or other employee benefit programs, commercial general liability policies, or similar policies) which may accrue to it or its insurers. This shall include, but not be limited to, rights of subrogation and lien rights. The Lessee understands that this waiver shall bind its insurers of all levels, and agrees to put these insurers on notice of this waiver and to have any necessary endorsements added to the insurance policies applicable to this lease. **Please email insurance certificates to: [Insurance@BES-USA.com](mailto:Insurance@BES-USA.com)**

**CERTIFICATE HOLDERS & ADDITIONAL INSURED:** H.K.B., Inc. dba Southwest Industrial Rigging and BES, LLC., dba Modern Iron Works  
2802 W. Palm Lane, Phoenix, AZ 85009 3101 Bloomfield Hwy, Farmington, NM 87401

**6. OPERATION AND USE OF EQUIPMENT.** Lessee shall, at all times, transport, store and/or operate the Equipment (also referred to as load handling equipment or "LHE") in a safe and competent fashion and shall be responsible for the actions of all those person involved in the transportation, storage and/or operation of the Equipment. Lessee shall, at all times, comply will all applicable local, state, federal and provincial statutes, rules and regulations relating to the operation of the LHE. During transportation, delivery, set-up, use and operation of the Lessee, directly and through its agents, servants and employees, shall at all times, assume the roles and fulfill all the responsibilities of the; a) A/D director (Assembly/Disassembly director), b) controlling entity, c) Lift Director, d) Lift Planner, e) Site Supervisor, f) Site Safety Officer, g) Crane User and/or LHE User, i) Crane Operator and or LHE Operator, j) Signalperson, k) Rigger, l) Spotter; and m) Transport Operator, as those terms are defined in 29CFR1926.1400 OSHA), ASME P30.1 Lift Planning and ASME B30.5 Mobile and Locomotive Cranes. Lessee hereby guaranties that those agents, servants and employees assigned the roles and functions set forth above shall be, at all times, through education, training, experience, skill and physical fitness, as necessary, be

competent and capable to perform the functions they are assigned. Customer specifically agrees that MIW has absolutely no control over any person operating or assisting in operating, repairing, or maintaining the leased Equipment. MIW may provide an operator with the Equipment. Customer may reject this operator; however, if operator is not rejected, the operator is under the Customer's exclusive direction and control and is Customer's agent, servant, and employee.

**7. LOCATON OF EQUIPMENT.** The Lessee shall not remove the equipment from the location shown herein as the place of use of the equipment, without prior written approval of the Lessor. The Lessee shall inform the Lessor upon demand of the exact location of the equipment while it is in the Lessee's possession.

**8. MAINTENANCE; DAMAGE TO OR DESTRUCTION OF EQUIPMENT.** The Lessee shall keep and maintain the equipment during the term of the rental at Lessee's sole cost and expense. Lessee shall keep the equipment in a good state of repair and in good operating condition. The Lessee shall pay the Lessor full replacement value (RV) for any equipment which is not returned, because it is lost or stolen or destroyed or damaged beyond repair. Further Lessee will pay the full cost of repair for any equipment which is damaged and in need of repair to put it into the same condition it was in at the time of rental, normal wear and tear excepted. The amount of Lessor's invoice for replacement or repair is conclusive as to the amount Lessee shall pay under this paragraph for repair or replacement.

**9. INSPECTION.** Lessee shall allow Lessor entry upon or access to any premises where the equipment is stored or used, at all reasonable times, to locate and inspect the state and condition of the equipment. Lessee shall inspect the equipment within twenty four (24) hours after receipt. Unless Lessee gives written notice to Lessor, within the inspection time period, specifying any defect in or other proper objection to the equipment, Lessee agrees that Lessee shall be deemed to have fully inspected and acknowledged that the equipment is in full compliance with the terms of this agreement and in good condition and repair.

**10. LIMITATION OF LIABILITY.** In no event shall Lessor be liable for any indirect, incidental, special, consequential, punitive or exemplary damages, including, without limitation, damages for loss of profits or use, incurred by any person, whether in an action in contract or tort. Lessee further agrees that Lessor's liability to Lessee arising out of or in any way related to this Agreement shall be limited to the total amount of payment received by Lessor hereunder.

**11. ASSUMPTION AND RELEASE.** The Lessee assumes all of the risks associated with the performance of any and all work occurring under or arising out of this Agreement. This includes, but is not limited to, any risks, claims, suits, or causes of action that may arise from negligence or carelessness on the part of the Lessee or the Lessee's agents, servants or employees, independent contractors or anyone else. Further, the Lessee waives, releases and discharges the Lessor and its agents, servants or employees, from any and all liability, including but not limited to, liability arising from any and all negligence or fault, for any death, disability, personal injury, property damage, or actions of any kind which may hereafter occur or arise out of the performance of any and all work under, or arising out of this Agreement.

**12. ACCIDENT INVESTIGATION.** In the event of any accident, loss or casualty event involving the equipment, whether resulting in property damage or bodily injury or other loss or damage, Lessee shall, under Lessor and/or Lessor's insurer's direction, provide, at its sole cost and expense, for the full and complete investigation of any such accident, loss or casualty event. Costs and expenses of any investigation may include, but shall not be limited to, fees and costs for, lawyers, experts, forensic investigations, adjusters, and inspection, disassembly, transportation and/or storage of the equipment.

**13. NO WARRANTIES; AS IS.** LESSOR, MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY, ITS DESIGN, ITS CAPACITY, ITS PERFORMANCE, ITS CONSTRUCTION OR WORKMANSHIP, OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. LESSOR FURTHER DISCLAIMS ANY LIABILITY WHATSOEVER FOR LOSS, DAMAGE, OR INJURY TO LESSEE OR THIRD PARTIES AS A RESULT OF ANY DEFECTS, LATENT OR OTHERWISE, IN THE EQUIPMENT. AS TO LESSOR, LESSEE LEASES THE EQUIPMENT "AS IS". LESSOR SHALL NOT BE LIABLE TO LESSEE FOR ANY LOSS, DELAY, OR DAMAGE RESULTING FROM DEFECTS IN THE EQUIPMENT OR ANY ACCIDENTAL BREAKAGE. NOTWITHSTANDING THE FOREGOING, LESSOR SHALL REPLACE THE EQUIPMENT WITH SIMILAR EQUIPMENT IF THE EQUIPMENT FAILS TO OPERATE IN ACCORDANCE WITH THE MANUFACTURERS SPECIFICATIONS AND/OR OPERATING INSTRUCTIONS. SUCH REPLACEMENT SHALL BE MADE AS SOON AS REASONABLY POSSIBLE AFTER LESSEE RETURNS THE NON-CONFORMING EQUIPMENT.

**14. SUIT LIMITATION.** Any action, demand, lawsuit, arbitration or any other claim by Lessee against Lessor arising out of, or related to this Agreement must be commenced within one (1) year from the date on which any such right, claim, or cause of action shall have first accrued.

**15. LIFT DIRECTOR.** It shall be the duty of the Lessee's agent, hereinafter known as the "Lift Director" to give specific instructions and directions to all persons operating, maintaining, and assembling/disassembling the leased equipment. Lessee specifically agrees that the Lessor has absolutely no control over the Lift Director. The Lift Director has the exclusive right to supervise and control the use of the equipment and the operator. The Lessor and Lessee agree that the prevention of accidents is the goal of all parties working on the job. Actions taken by the operator to ensure safe working conditions, shall not change or alter the Lift Director's exclusive right to supervise and control the use of the equipment and the operator. The Lessee further agrees that all equipment used and all work performed and all persons operating the equipment, shall be solely within and in furtherance of, Lessee's contractual scope of work on

any given project. The Lessor has no right to replace or substitute personnel and any such replacement or substitution shall only be at the direction of and with the approval of the Lift Director and the Lift Director shall have the right to control, including the right of termination, and the Lift Director shall be deemed to have exercised that right as to all details or operation of the equipment and the personnel operating the equipment. If Lessor supplies an operator with the equipment, any such operator may not use the equipment without Lessee's acceptance and approval of that operator, as a borrowed servant of Lessee, under Lessee's sole direction, supervision and control.

**16. RIGGING.** Lessee is required to provide any and all rigging to be used with the equipment including, but not limited to, chokers, slings, straps, chains, hooks, spreaders, fittings, rope or wire. Lessee and the Lift Director assume the responsibility for the method of rigging, the condition of the rigging, the condition and use of any lifting lugs and hereby guaranties that those agents, servants and employees involved in the rigging of any load shall be, at all times, through education, training, experience, skill and physical fitness, as necessary, be competent and capable to perform the functions they are assigned.

**17. LOAD CALCULATIONS AND DEVICES.** 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 the equipment and Lessee will not rely upon said device. Lessee shall independently determine the weight of every load to be lifted by the equipment and Lessee shall independently calculate the lifting capacity of the equipment for each and every lift and shall make the decision to proceed with any lift, based only on the expertise and judgment of the Lessee and the Lift Director.

**18. OPERATOR.** If an operator is provided with the equipment, the Lessee shall be responsible for payment of the operator's wages and benefits, which shall be included as part of the rental charges, even though such wages and benefits may be administered by the Lessor

**19. DAMAGE TO PROPERTY.** If Lessee's use of the equipment requires or results in the equipment being transported, setup, stored or operated outside of the curb line of the public roadway, the Lessee shall obtain the permission of any and all property owners whose property may be entered upon. Further Lessee will restore, repair and/or replace any property that may be damaged as a result of such transportation, setup, storage or operation. Finally, Lessee shall be solely responsible for any equipment, damage, towing or removal charges and any additional rental charges arising from such transportation, setup, storage or operation.

**20. DEFAULT; TERMINATION; REMEDIES.** If; 1) Lessee shall fail to make any payment hereunder when due, or 2) Lessee shall fails to perform any other term of this Agreement and such failure shall continue for five (5) days after written notice hereof to Lessee by Lessor, or 3) Lessee becomes insolvent, makes an assignment for the benefit of creditors, or dissolves or liquidates a substantial part or all of its business or becomes subject to a bankruptcy, receivership, or other similar proceeding filed by or against it, or 4) Lessee is acquired by or merges with any other entity, unless this Agreement is assumed in writing by the new entity and such assumption is agreed to by Lessor; then Lessee shall be in default of this Agreement and Lessor shall have the right to exercise one or more of the following remedies: a) to declare the entire amount of rent hereunder immediately due and payable, without notice or demand to Lessee; b) to sue for and recover all rents, and other payments, then accrued or thereafter accruing; c) to take possession of any or all items of the equipment without demand, notice, or legal process, wherever they may be located. Lessee hereby waives any and all damages occasioned by such taking of possession. Any taking of possession shall not constitute a termination of this Agreement as to any or all items of equipment, unless Lessor expressly so notifies Lessee in writing; d) to terminate this Agreement as to any or all items of equipment; and e) to pursue any other remedy at law or in equality. Notwithstanding any said repossession, or any other action which Lessor may take, Lessee shall be and remain liable for the full performance of all obligations on the part of Lessee to be performed under this Agreement. All such remedies are cumulative, and may be exercised concurrently or separately.

**21. TITLE TO EQUIPMENT.** The equipment shall at all time remain the property of Lessor and Lessee shall do nothing to encumber or interfere with those rights and shall take all actions necessary to protect those rights. Lessee shall not acquire any interest in or rights to the equipment, other than the rights of use set forth in this Agreement.

**22. DEMMURAGE.** If as a result of the Lessee's actions and unless permission is granted by the Lessor, if the equipment is not returned during or at the end of the term, then for every hour, or portion thereof, from the end of the term to the time when the equipment is returned to the Lessor, as required herein, the Lessee shall pay a rental rate equal to three (3) times (x) the standard hourly rental rate for such equipment.

**23. RENTAL PAYMENTS.** All invoices submitted by Lessor shall be due and payable by Lessee within thirty (30) days of receipt. Lessee shall pay to Lessor an interest penalty of the highest rate allowed under applicable law, or 1.5% per month, whichever is greater, on the total balance of any and all invoices, or any portion of any and all invoices, that remain unpaid thirty (30) days after receipt by Lessee.

**24. SECURITY DEPOSIT.** Any security deposit paid by Lessee to Lessor, is paid to guarantee Lessee's full and faithful performance of all terms, conditions and provisions of this Agreement, including rental payments. When Lessee performs all such terms, conditions and provisions, an equal sum shall be repaid without interest to Lessee.

**25. TERMINATION.** The Lessor may terminate this agreement immediately and take possession of the equipment upon the failure of Lessee to; 1) make rental payments, or any other payments required, when due, or 2) if Lessee is acquired by or merges with any

other entity unless this Agreement is assumed in writing by the new entity and such assumption is agreed to by Lessor; or 3) dissolves, liquidates a substantial part or all of its business or becomes subject to a bankruptcy, receivership, or other similar proceeding filed by or against it.

**26. TAXES.** Lessee shall be responsible for any sales, use, excise, value added, utility, personal property or other taxes and any license fees and/or assessments relating to Lessee's use or possession of the equipment. Lessee shall pay such taxes and other charges to Lessor in accordance with invoices submitted by Lessor.

**27. COMPLIANCE WITH LAW; SPECIFIC FEDERAL LAWS.** Lessee shall, at all times, (i) comply with all federal, state, provincial and local laws and regulations in all material respects relating to this Agreement; and (ii) maintain any and all licenses, permits, and other authorizations required by federal, state, provincial and local laws. Further, Lessee certifies that: (i) it is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and (ii) it is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity, or nation. Finally, Lessee shall, at all times, perform its obligation under this Agreement in compliance with all applicable financial sanction laws, rules and regulations, including, but not limited to, all applicable laws, rules and regulations regarding bribery or money laundering. Lessee further agrees that any and all transactions or funds transfers occurring under this Agreement shall be subject to scrutiny for compliance with all such laws, rules and regulations and that any and all transactions or funds transfers may be embargoed or otherwise restricted until compliance with these laws, rules and regulations can be verified.

**28. INTELLECTUAL PROPERTY.** Documents, materials, processes and systems owned or developed by or licensed or leased to Lessor, which may be used by or come into the possession of Lessee as a result of this Agreement, shall be deemed proprietary to and shall belong to, and remain the sole property of Lessor.

**29. INTERPRETATION.** This Agreement shall be interpreted as an understanding of parties on equal footing and without resort to any rule of construction resolving ambiguity against the drafter.

**30. INDEPENDENT CONTRACTOR.** This Agreement does not create or evidence a partnership or joint venture and Lessee and its agents servants and employees, shall at all times, be an independent contractor, and employees of Lessee shall in no event be considered employees of Lessor, nor shall they be eligible for any employee benefits or other benefits from Lessor.

**31. SURVIVAL.** All of the representations, warranties confidentiality provisions and indemnities contained in this Agreement shall survive the expiration, suspension or termination of this Agreement.

**32. ATTORNEY'S FEES.** Lessee shall pay or reimburse to Lessor all costs and expenses, including attorneys' fees, incurred by Lessor in exercising any of its rights or remedies or enforcing any of the terms or conditions found in this Agreement.

**33. NO ASSIGNMENT.** This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns, except that Lessee shall not be permitted to assign this Agreement without the express written consent of the Lessor.

**34. WAIVER.** Lessor's failure or delay in enforcing Lessee's performance of its obligations under this Agreement shall not be a waiver of any obligation found in this Agreement.

**35. CONFIDENTIALITY.** The parties shall keep this Agreement and its terms confidential, and each party shall keep the Confidential Information (as defined below) of the other party confidential and shall not use any of that Confidential Information for any purpose other than in connection with this Agreement. The "Confidential Information" of a party is any trade secret, financial information or other confidential or proprietary information in any way relating to that party's services, business, or customers; except that information that is generally known to the public or in the industry (other than by a breach of this paragraph), is in the possession of the receiving party before disclosure by the other party, or is or becomes available to the receiving party from a source that (to the receiving party's knowledge) is not bound by any nondisclosure obligation to the other party is not "Confidential Information" of the other party under this Agreement. A party may, without violating this paragraph, make such disclosures (i) to its directors, officers, employees, attorneys, and other agents as may be necessary to permit that party to perform its obligations and to exercise its rights hereunder, and (ii) as it reasonably deems are required by law, though a party will use its reasonable best efforts to notify the other party in advance of any such disclosure required by law. The parties' respective obligations under this paragraph shall survive the termination of this Agreement. The parties hereto acknowledge that disclosure of the Confidential Information will cause irreparable harm; consequently, each explicitly agrees that the other party shall be entitled to seek injunctive relief, without needing to post a bond or to prove the inadequacy of damages, to prevent any violation or imminent violation of, or to compel specific performance with this paragraph.

**36. FORCE MAJEURE.** Except as otherwise expressly set forth herein, in the event a party shall be delayed or hindered in, or prevented from, the performance of any act required of it hereunder by reason of strike, inability to procure materials, failure of power, telecommunications or connectivity failure, restrictive governmental laws or regulations, riot, insurrection, war, act of God, or other event outside the reasonable control of that party (each such cause or event being hereinafter referred to as a "Force Majeure"), then performance of such acts will be excused for the period of the delay and the period for performance of any such act shall be extended

for a period equivalent to the period of such delay. Any time a party is experiencing a Force Majeure that is expected to result in a significant failure or delay, that party will endeavor to give notice to the other party describing the Force Majeure and the nature of the failure or delay and giving an estimate as to how long the delay will last. A party claiming an excusable delay or failure under this paragraph shall use reasonable efforts to alleviate or overcome the Force Majeure as soon as practicable.

**37. THIRD PARTY BENEFICIARY.** Nothing in this Agreement, expressed or implied, is intended to confer upon any person or entity, other than the parties and their legal successors and permitted assigns, any rights, benefits, or obligations.

**38. CHOICE OF LAW; VENUE.** This Agreement will be construed and governed by the laws of the State of New Mexico, without regard to the choice of law principles thereof. The venue for all disputes among and between the parties concerning the validity, construction, or effect of this Agreement, or the rights and obligations created hereunder, shall be San Juan County, New Mexico.

**39. NOTICE.** All notices to be given pursuant to this Agreement shall be provided to the respective party at the addresses contained in this Agreement shall be deemed to have been properly given when either (i) personally delivered, or (ii) mailed by registered or certified mail, postage prepaid with return receipt requested, or (iii) delivered by private courier, or (iv) email, electronic receipt requested. A copy of any such notice, although not constituting official notice, shall be provided to the respective party by electronic mail. Notice by electronic mail shall become official notice under this Agreement, upon acknowledgment of receipt sent by the receiving party.

**40. HEADINGS.** The section or section headings in this Agreement are inserted only as a matter of convenience and for reference and in no way, define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement or its interpretation.

**41. VALIDITY OF PROVISIONS.** If any provision of this Agreement is ever held to be invalid or unenforceable, that provision will be severed from the rest of this Agreement, and all of the other provisions of this Agreement will remain in effect.

**42. EXECUTION/COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same, document.

**43. AUTHORIZED SIGNATURE.** In the event this Agreement has been executed by an individual on behalf of a business entity, the person whose signature is affixed hereto and the entity for which the individual has signed this Agreement, represent to Lessor that the individual signing has full authority to execute this Agreement on behalf of the business entity.

**44. Disputes. Disputes Resolution including Jury Waiver, Arbitration Clause, etc.**

**The parties have entered into this Agreement and wish to add additional terms, conditions and requirements. The following documents, which include additional terms, conditions, and requirements, are attached to this agreement, and are incorporated by reference and made a part of this agreement as if fully set forth herein. The parties further agree that the parties will comply with and follow all the terms, conditions and requirements of all the documents. In the event of any conflict, inconsistency or ambiguity between the terms and provisions of the attached documents and those of the above referenced Agreement between the parties, these attached documents shall govern. Documents are located at the following URL Site: URL: <http://bes-usa.com/incbyref/BESCustomerDisputes.pdf>**