

SALES AND INSTALLATION AGREEMENT – TERMS AND CONDITIONS

This sales and installation agreement is entered into by and between Konex Wake Parks Inc. (“**Konex**”), a supplier and installer of linear cable systems and the Customer, as identified on the Order Form to which these terms and conditions (the “**Terms and Conditions**”) are attached. The Customer desires to purchase and have installed the Cable System (as hereinafter defined) as specified in the Order Form, from and by Konex, and Konex desires to sell, deliver and install the Cable System to and for the Customer at the Site. In consideration of the mutual covenants and undertakings contained herein and other good and valuable consideration, the sufficiency of which is acknowledged by both Parties, the Parties agree as follows:

ARTICLE 1 – SALE AND INSTALLATION OF CABLE SYSTEM

1.1 Excepting the Concrete Foundation (as hereinafter defined), if needed, and all utilities necessarily incidental to the installation and the operation of the Cable System, Konex shall supply all labour, materials, equipment and supervision necessary to install and shall install or cause to be installed the Cable System at the Customer’s property located at the Site.

ARTICLE 2 – INTERPRETATION

2.1 The following terms are defined for the purposes of this Agreement:

- (a) “**Agreement**” means the undertaking by the Parties to perform their respective duties, responsibilities and obligations as prescribed in this sales and installation agreement, including the Order Form and these Terms and Conditions, which collectively represent the entire agreement between the Parties hereto;
- (b) “**Applicable Laws**” means (a) any domestic or foreign statute, law (including common and civil law), treaty, code, ordinance, rule, regulation, restriction or by-law (zoning or otherwise); (b) any judgement, order, writ, injunction, decision, ruling, decree or award; (c) any regulatory policy, practice, guideline or directive; or (d) any franchise, licence, qualification, authorization, consent, exemption, waiver, right, permit or other approval or any Governmental Authority, binding on or affecting the Person referred to in the context in which the term is used or binding on or affecting the property of such Person, in each case whether or not having the force of law;
- (c) “**Business Day**” or “**Business Days**” shall mean a day or days other than Saturday, Sunday or a statutory holiday according to the laws of the Province of Manitoba;
- (d) “**Cable System**” means the linear cable system, including any products and materials comprising the Cable System, sold, delivered and installed by Konex to and for the Customer at the Site, and as more specifically detailed in the Order Form;
- (e) “**Cable System Price**” has the meaning ascribed to it in the Order Form;
- (f) “**Certificate of Payment**” means the certificate executed by Konex and provided to the Customer confirming that the Cable System has been supplied, delivered and installed materially in accordance with this Agreement and that the Purchase Price has been paid in full and there are no liens, charges or other encumbrances against the Cable System;
- (g) “**Certificate of Satisfaction**” means the certificate executed by the Customer and provided to Konex in accordance with Article 7 hereof;
- (h) “**Change Order**” means a written amendment to the Agreement signed by the Customer and Konex stating their agreement upon (i) Changed Work (ii) the method of adjustment or the amount of adjustment in the Purchase Price, if any; and (iii) the extent of the adjustment in the timeline for the Work, including the Completion Date;
- (i) “**Changed Work**” has the meaning ascribed to it in Section 10.1 hereof;
- (j) “**Completion Date**” has the meaning ascribed to it in the Order Form;
- (k) “**Concrete Foundation**” has the meaning ascribed to it in Section 8.5 hereof;
- (l) “**Concrete Foundation Drawing**” means the graphic and pictorial description of the Concrete Foundation, wherever located and whenever issued, supplied by Konex and altered by an Engineer engaged by the Customer (if need be) showing the design, location, load and force specifications, and dimensions of the Concrete Foundation, generally including plans, elevations, sections, details, schedules, and diagrams;
- (m) “**Concrete Foundation Specifications**” means the technical specifications relating to the Concrete Foundation, wherever located and whenever issued, supplied by Konex to the Customer, detailing the load, force, torque, and other such technical requirements of the Concrete Foundation necessarily incidental to the installation of the Cable System thereon;
- (n) “**Confidential Information**” has the meaning ascribed to it in Section 20.2 hereof;
- (o) “**Customer**” means the Person identified and defined as such in the Order Form;
- (p) “**Delivery Date**” has the meaning ascribed to it in the Order Form;
- (q) “**Engineer**” means a qualified professional engineer who is certified, registered or licensed to practice as a professional engineer under the Applicable Laws of the jurisdiction of the Site;
- (r) “**Governmental Authority**” means (a) any international, multinational, national, federal, provincial, state, municipal, local or other government or public department, central bank, court, minister, governor-in-counsel, cabinet, commission, board, bureau, agency, commissioner, tribunal or instrumentality, domestic or foreign; (b) any subdivision or authority of any of the above; (c) any stock exchange; or (d) any quasi-governmental or private body exercising any regulatory expropriation or taxing authority under or for the account of any of the above;
- (s) “**Incoterms**” means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when this Agreement is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in this Agreement, but if there is any conflict between the provisions of Incoterms and this Agreement, the latter shall prevail;
- (t) “**Intellectual Property**” has the meaning ascribed to it in Section 20.3 hereof;
- (u) “**Konex**” means Konex Wake Parks Inc.;
- (v) “**Order**” means an order for the supply, delivery and installation of the Cable System placed with Konex by the Customer pursuant to the completion of the Order Form by Konex and as accepted by the Customer;
- (w) “**Order Form**” means the order form completed by Konex and the Customer pursuant to any Order, to which these Terms and Conditions are attached;

- (x) “**Parties**” means both Konex and the Customer and “**Party**” shall refer to either Konex or the Customer in this Agreement;
- (y) “**Permits**” has the meaning ascribed to it in Section 8.1 hereof;
- (z) “**Person**” means any individual, sole proprietorship, firm, entity, unincorporated association, unincorporated syndicate, unincorporated organization, trust, unlimited liability company, joint stock company, body corporate, corporation, government or Governmental Authority;
- (aa) “**Purchase Price**” has the meaning ascribed to it in the Order Form;
- (bb) “**Screw Piles**” means the devices used to anchor the Cable System at the Site, should the conditions of the Site suitable for the use of such devices;
- (cc) “**Screw Pile Drawing**” means the graphic and pictorial description of the Screw Piles, wherever located and whenever issued, supplied by Konex and altered by an Engineer engaged by the Customer (if required) showing the design, location, load and force specifications, and dimensions of the Screw Piles, generally including plans, elevations, sections, details, schedules, and diagrams;
- (dd) “**Services Price**” has the meaning ascribed to it in the Order Form;
- (ee) “**Shipping Date**” has the meaning ascribed to it in the Order Form;
- (ff) “**Site**” has the meaning ascribed to it in the Order Form;
- (gg) “**Special Requests Price**” has the meaning ascribed to it in the Order Form;
- (hh) “**Specifications**” has the meaning ascribed to it in Section 3.3 hereof;
- (ii) “**Subcontractor**” is a person or entity having direct contact with Konex to perform parts or part of the Work, or to supply products or materials necessarily incidental to the completion of the Work;
- (jj) “**Substantial Performance**” shall mean when the Work is complete and the Cable System is ready for its intended use by the Customer and is so certified by the Customer signing a Certificate of Satisfaction;
- (kk) “**Taxes**” has the meaning ascribed to it in Section 5.1 hereof;
- (ll) “**Terms and Conditions**” means these terms and conditions, forming part of the Agreement, attached to the Order Form;
- (mm) “**User Guidelines**” means the guidelines established by Konex for the use, maintenance and operation of the Cable System and published on Konex’s website: <http://www.konexwakeparks.com/>, as the same may be updated, amended or replaced from time to time;
- (nn) “**Valid Claim**” has the meaning ascribed to it in Section 17.4 hereof; and
- (oo) “**Work**” means the installation of the Cable System and related services to be performed by Konex under this Agreement at the Site.

2.2 Nothing contained in this Agreement shall create any contractual relationship between Konex and a Subcontractor, a supplier, or their agent, employee, or other person performing any of the Work.

2.3 Words and abbreviations which have well known technical or trade meanings are used in this Agreement in accordance with such recognized meanings.

2.4 The division of the Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

ARTICLE 3 – ORDERS AND SPECIFICATIONS

3.1. This Agreement only covers products and materials related to the Cable System detailed in the completed Order Form. In the event that there is a conflict or a discrepancy regarding the provision of the Cable System, only those materials and products listed in the completed Order Form will be provided.

3.2 No Order submitted by the Customer shall be deemed to be accepted by Konex unless an Order Form has been completed by Konex and accepted by the Customer.

3.3 The specifications for the Cable System shall be those set out in Order Form to which these Terms and Conditions are attached (the “**Specifications**”). The Cable System will only be supplied, delivered and installed in accordance with the Order Form. Illustrations, photographs or descriptions whether in catalogues, brochures, price lists, websites or other documents issued by Konex are intended as a guide only and the contents thereof shall not be binding on Konex.

3.4 Konex reserves the right to make any changes in the Specifications of the Cable System which are required to conform to any applicable safety or other statutory or regulatory requirements or, where the Cable System is to be supplied, delivered and installed to pursuant to the Specifications, which do not materially affect its quality or performance.

3.5 No Order, which has been set out in an Order Form completed by Konex and subsequently accepted by the Customer, may be cancelled by the Customer except with the agreement in writing of Konex and on the condition that the Customer shall indemnify Konex in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Konex as a result of the cancellation of any Order.

ARTICLE 4 – PRICE AND TRANSFER OF TITLE

4.1 The Customer shall pay to Konex the Purchase Price for the supply, delivery and installation of the Cable System plus any goods and services taxes and any other eligible taxes, duties, tariffs, fees, charges, the payment or collection of which is by virtue of any Applicable Law imposing such tax, duty, tariff, fee or charge is an obligation of Konex (“**Taxes**”) for the supply, delivery and installation of the Cable System and/or the performance of the Work, subject to such additions or deductions as may be agreed to in writing by the Parties.

4.2 Upon full payment of the Purchase Price, the Cable System shall become the absolute property of the Customer and Konex shall deliver to the Customer such bills of sale, assurances, deeds and transfers as the Customer shall reasonably request as evidence of the Customer’s right, title and interest in and to the Cable System. In addition, Konex shall provide the Customer with the Certificate of Payment signed by a senior officer of Konex confirming that the Cable System has been supplied and installed materially in accordance with this Agreement and that the Purchase Price has been paid in full and there are no liens, charges or other encumbrances against the Cable System.

ARTICLE 5 – PAYMENT TERMS

5.1 The Customer agrees to pay the Purchase Price to Konex in accordance with the terms set out in the Order Form.

5.2 Should the Customer fail to make any payment under this Agreement as such payment becomes due under the terms of the Agreement or in an award by arbitration or court, interest shall be chargeable at the rate of 1.5% per month (19.6% per annum) on past due invoices, or if provincial/state law prohibits this rate, interest shall be chargeable at the maximum rate allowed by such provincial/state law. There shall be no deduction, defalcation, set off or holdback allowed by the Customer. If the Customer defaults in any payment when due or refuses to accept delivery, then Konex, at its option, without prejudice to other lawful remedies, may defer further deliveries or cancel the remainder of the Order. The Cable System, or any part thereof, held for Customer shall be at the risk of the Customer and payment shall become due from the date on which Konex is prepared to make shipment.

ARTICLE 6 – DELIVERY

6.1 Delivery of the Cable System shall take place, and risk in the Cable System will pass, in accordance with Incoterms, where applicable, otherwise delivery of the Cable System shall be made by Konex tendering bills or other appropriate documents of lading or by delivering the Cable System to the Site, or to the place specified by the Customer in writing and accepted in writing by Konex as the location to which the Cable System is to be delivered by Konex, or if no place of delivery is so specified by the Customer, by collecting the Cable System at Konex's premises at any time after Konex has notified the Customer that the Cable System is ready for collection.

6.2 Unless otherwise agreed to in writing by the Customer and Konex, the shipment and insurance of the Cable System will be F.O.B., as arranged by Konex on behalf of the Customer and all charges for the shipment and delivery (including, but not limited to, all charges for insurance) of the Cable System shall be paid by the Customer.

6.3 Konex shall endeavor to comply with the shipping instructions provided by the Customer with its Order for the Cable System. However, Konex reserves the right to make part shipments and to ship by methods or carrier of Konex's choice.

6.4 The Delivery Date is approximate only and time for delivery shall not be of the essence unless previously agreed to by Konex in writing. The Cable System may be delivered by Konex in advance of the Delivery Date upon giving reasonable notice to the Customer. If Konex delivers the Cable System at any time after the Delivery Date Konex shall have no liability in respect of such late delivery.

6.5 Where the Cable System is to be delivered in installments, each delivery shall constitute a separate contract and failure by Konex to deliver any one or more of the installments in accordance with this Agreement or any claim by the Customer in respect of any one or more installments shall not entitle the Customer to treat this Agreement as a whole as repudiated.

6.6 If the Customer fails to ensure the Site is suitably ready in all respects such that the delivery of the Cable System to the Site cannot be made, and/or fails to take delivery of the Cable System or any part of it on the Delivery Date, and/or fails to provide any instructions, documents, licenses, consents or authorizations required to enable the Cable System to be delivered on the Delivery Date, Konex shall be entitled, upon giving written notice to the Customer, to store or arrange for the storage of the Cable System and then, notwithstanding the provisions of this Article 6, risk in the Cable System shall pass to the Customer, delivery shall be deemed to have taken place and the Customer shall pay to Konex all costs and expenses, including storage and insurance charges arising from such failure. For further clarity, Konex shall not be liable for any costs or expenses incurred for whatever reason relating to the delivery of the Cable System

ARTICLE 7 – WORK

7.1 Konex shall perform the Work at the Site in accordance with the Specifications.

7.2 On or before the Completion Date, Konex shall, relying upon the Specifications, examine and test the Cable System to ensure that it is in compliance with the Specifications.

7.3 Once Konex has determined the Cable System is in accordance with the Specifications, it shall permit the Customer to inspect the Cable System. Upon the Customer's inspection, the Customer shall, on the same day as the inspection, notify Konex of any material defects in or damages to the Cable System. Unless otherwise agreed to in writing by the Parties, Konex shall then have thirty (30) Business Days to remedy any material defect in or damage to the Cable System to the satisfaction of the Customer, acting reasonably.

7.4 The Cable System shall have deemed to have been installed in accordance with the Specifications and accepted by the Customer upon the delivery of the executed Certificate of Satisfaction to Konex or upon the commencement of the use of the Cable System by the Customer, whichever comes first.

7.5 The intent of this Agreement is to include the labour, materials and services necessary for the performance of the Work by Konex in accordance with this Agreement in addition to the supply of the Cable System to the Customer by Konex. It is not intended, however, that Konex shall perform any services or work, or provide any products or materials, not consistent with, not covered by or not properly inferable from this Agreement.

7.6 Neither the organization of the Specifications into divisions, sections, and parts, nor the arrangement of the Concrete Foundation Drawing or the Screw Piles Drawing, shall restrict Konex from dividing the Work among Subcontractors and suppliers or in establishing the extent of any work to be performed by a Subcontractor.

7.7 Upon the completion of the Work, in accordance with this Article 7, Konex shall instruct the Customer and the Customer's staff on the use, maintenance and operation of the Cable System. Any instruction provided by Konex under this Section 7.7 shall be limited to five (5) hours and shall take place over the period of one (1) day, which shall be the day immediately following the completion of the Work.

ARTICLE 8 – CUSTOMER'S OBLIGATIONS

8.1 The Customer shall be responsible any obligations arising from any and all permits, certificates, licences, authorizations, consents, instructions, registrations, directions or approvals issued or required by any applicable Governmental Authority pursuant to all Applicable Laws, including, but not limited to, any applicable environmental laws, with respect to access to the Site and operation of the Cable System (the "Permits"). Konex shall have no responsibility therefore and will incur no liability arising from the Customer's possession, or lack of possession, of such requisite Permits.

8.2 The Customer shall, at all times, maintain the Site in a safe and clean condition.

8.2 The Customer shall at all times proceed in good faith when verifying the value of Work completed for purposes of approving progress and final billings for payment of Konex.

8.3 The Customer shall at all times cooperate and provide Konex with any assistance reasonably required in order to facilitate the delivery and the installation of the Cable System to and at the Site.

8.4 The Customer shall supply all electrical power, fuel and water as is required for the Work, at the Customer's cost and expense.

8.5 The Customer shall be responsible for determining whether the Site is suitable for the use of Screw Piles or if the Site will require the installation of a concrete foundation to which the Cable System will be installed upon (the “**Concrete Foundation**”).

8.6 Should the Customer determine a Concrete Foundation is necessary, it shall, at least five (5) Business Days prior to the Shipping Date, supply and install the Concrete Foundation in accordance with the Concrete Foundation Drawing and to the satisfaction of Konex and its Subcontractors. It shall be the responsibility of the Customer to ensure that the Concrete Foundation meets or exceeds all of the loading and size requirements detailed in the Concrete Foundation Specifications as provided to the Customer by Konex. The Customer shall be responsible for all costs associated with approval of the Concrete Foundation Drawings (in accordance with Section 8.7 below), as well as all Permits, surveying material required, installation, and compaction related to the construction of the Concrete Foundation.

8.7 It will be the responsibility and cost of the Customer to have the Concrete Foundation Drawings or the Screw Piles Drawing, as the case may be, reviewed, altered (if required) and stamped by an Engineer.

8.8 At least five (5) Business Days prior to the Shipping Date, the Customer shall provide to Konex photographic evidence of the completion of the Concrete Foundation and copies of the Concrete Foundation Drawing or the Screw Piles Drawing, as the case may be, stamped by an Engineer.

8.9 For greater certainty, if the Customer determines that the Site is suitable for the use of Screw Piles and if, upon commencement of the Work, Konex discovers that the Site is not suitable for the use of Screw Piles, the Customer shall be responsible for any Changed Work, in accordance with Article 10 hereof, and any delays in the Work in accordance with Article 12 hereof.

8.10 The Customer shall allow Konex to attend and inspect the Site during regular business hours any time between the date of the execution of this Agreement until the Delivery Date.

8.11 The Customer shall be responsible for the hook up and cost of any and all site services and utilities relating to the Site, including, but not limited to water and electrical services. For greater certainty, the Customer shall be responsible for the installation and connection of the electrical cable, as supplied by Konex, from electrical panel at the Site to the Cable System. The Customer shall ensure that all services and utilities to the Site are installed and connected by qualified Persons with all necessary licenses and permits.

8.12 The Customer shall ensure that all delivery vehicles and construction equipment related to the Work have authorization and an unobstructed path onto the Site and a clear area to unload materials.

8.13 The Customer shall notify Konex in writing of any material change in the Customer’s financial arrangements during the performance of the Agreement.

ARTICLE 9 – KONEX’S OBLIGATIONS

9.1 Konex shall maintain public liability and property damage insurance of types and with limits satisfactory to Konex, acting reasonably, on the Work during the construction period to the earlier of Substantial Performance or occupancy of the Site by the Customer. On request details of coverage shall be provided to the Customer.

9.2 Konex shall have total control of the Work and shall direct and supervise the Work so as to ensure conformity with the Specifications and this Agreement as a whole.

9.3 Konex shall be responsible for determining construction means, methods, techniques, sequences and procedures and for coordinating the various parts of the Work under the Agreement.

9.4 If the Site is suitable, Konex shall be responsible for the installation of the Screw Piles.

ARTICLE 10 – CHANGES IN THE WORK

10.1 The Customer may without invalidating this Agreement, require changes to the scope of the Work (“**Changed Work**”) by Change Order.

10.2 Konex shall determine the price of Changed Work, or the method for pricing the change, such determination or method shall be recorded in writing as an amendment hereto.

10.3 Where the Customer does not agree with the price or method of pricing Changed Work, the Customer may issue a written directive to proceed with same, and if pricing cannot thereafter be agreed within a reasonable period of the Changed Work being completed the Customer shall pay Konex the total aggregate cost of performing the Changed Work.

ARTICLE 11 – CONCEALED OR UNKNOWN CONDITIONS

11.1 If the Customer or Konex discovers at the place of the Work conditions which are:

- (a) subsurface or otherwise concealed physical conditions which existed before the commencement of the Work which differ materially from those indicated in this Agreement; or
- (b) physical conditions of a nature which differ materially from those ordinarily found to exist and generally recognized as inherent in installation activities of the character provided for in this Agreement;

then the observing Party shall notify the other Party in writing and in no event later than five (5) Business Days after first observance of the conditions.

11.2 The Customer will promptly investigate any conditions of the type described in Section 11.1, above, and make a finding. If the finding is that the conditions differ materially and this would cause an increase or decrease in Konex’s cost or time to perform the Work, the Customer and Konex shall agree on the scope of such Changed Work in accordance with the terms and conditions in this Agreement.

ARTICLE 12 – DELAYS

12.1 If Konex is delayed in the performance of the Work by an action or omission of the Customer, including but not limited to any failure by the Customer to fulfill any of the Customer’s obligations as set out in Article 8 hereof (including but not limited to the Customer’s failure to (a) ensure the Site is suitable for the use of Screw Piles; or (b) ensure the completion of the Concrete Foundation) or anyone employed or engaged by the Customer directly or indirectly, contrary to the provisions of this Agreement, then the Completion Date shall be extended for a period of time equal to the delay caused by Customer, or anyone employed or engaged by the Customer or by any third party. Konex shall be reimbursed by the Customer for all reasonable costs and expenses incurred by Konex as the result of such delay.

12.2 If Konex is delayed in the performance of the Work by a stop work order issued by a court or other public authority and provided that such order was not issued as the result of an act or fault of Konex or any person employed or engaged by Konex directly or indirectly, then the Completion Date shall be extended for period of time equal to the delay caused by such a stop work order. Konex shall be reimbursed by the

Customer for reasonable costs incurred by Konex as the result of such delay.

12.3 If Konex is delayed in the performance of the Work by labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractors' association, of which Konex is a member or to which Konex is otherwise bound), fire, unusual delay by common carriers or unavoidable casualties, or without limit to any of the foregoing, by a cause beyond Konex's control, then the Completion Date shall be extended for such reasonable time as is necessary. Konex shall not be entitled to payment for costs incurred by such delays unless such delays result from actions or omissions by the Customer.

ARTICLE 13 – TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS

13.1 For the purposes of applicable environmental legislation, the Customer shall be deemed to have control and management of the Site with respect to existing conditions.

13.2 Prior to Konex commencing the Work at the Site, the Customer shall:

- (a) take all reasonable steps to determine whether any toxic or hazardous substances or materials are present at the Site; and
- (b) provide Konex with a written list of any such substances and materials.

13.3 The Customer shall take all reasonable steps to ensure that no person suffers injury, sickness, or death and that no property is injured or destroyed as a result of exposure to, or the presence of, toxic or hazardous substances or materials which were at the Site prior to Konex commencing the Work.

13.4 Unless this Agreement expressly provides otherwise, the Customer shall be responsible for taking all necessary steps, in accordance with legal requirements, to dispose of, store or otherwise render harmless toxic or hazardous substances or materials which were present at the Site prior to Konex commencing the Work.

13.5 If Konex:

- (a) encounters toxic or hazardous substances or materials at the Site; or
- (b) has reasonable grounds to believe that toxic or hazardous substances or materials are present at the Site, which were not disclosed by the Customer, as required by this Agreement, or which were disclosed but have not been dealt with as required by this Agreement, Konex shall:
 - (i) take all reasonable steps, including the stopping the Work, to ensure that no person suffers injury, sickness, or death and that no property is injured or destroyed as a result of exposure to or the presence of the substances or materials, and
 - (ii) immediately report the circumstances to the Customer.

13.6 If Konex is delayed in performing the Work or incurs additional costs as a result of any its obligations required by this Agreement, the Completion Date shall be extended for the period of time equal to the delay in the performance of the Work and Konex shall be reimbursed for reasonable costs incurred as a result of the delay and for any such additional costs.

13.7 The Customer shall indemnify and hold harmless Konex, its agents and employees, from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of or resulting from exposure to, or the presence of, toxic or hazardous substances or materials which were at the Site prior to Konex commencing the Work.

ARTICLE 14 – KONEX'S RIGHT TO SUSPEND WORK OR TERMINATE THIS AGREEMENT

14.1 If the Customer should be adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the Customer's insolvency, or if a receiver is appointed because of the Customer's insolvency, Konex may, without prejudice to any other right or remedy Konex may have, by giving the Customer or receiver or trustee in bankruptcy notice in writing, terminate this Agreement.

14.2 If the Work should be suspended or otherwise delayed for a period of thirty (30) days or more under an order of a court or other public authority and providing that such order was not issued as the result of an act or fault of Konex, Konex may, without prejudice to any other right or remedy Konex may have, by giving the Customer notice in writing, terminate this Agreement.

14.3 Konex may notify the Customer in writing that the Customer is in default of the Customer's obligations under this Agreement if:

- (a) the Customer fails to furnish, when so requested by Konex, reasonable evidence that financial arrangements have been made to fulfill the Customer's obligations under this Agreement; or
- (b) the Customer fails to pay Konex when due the amounts owed under this Agreement or awarded by arbitration or a court; or
- (c) the Customer violates any provision of this Agreement.

14.4 Konex's notice in writing to the Customer provided under Section 14.3 above shall advise that if the default is not corrected within five (5) Business Days following the receipt of the notice in writing, Konex may, without prejudice to any other right or remedy Konex may have, suspend the Work or terminate this Agreement

14.5 If Konex terminates this Agreement under this Article 14, Konex shall be entitled to retain all sums paid by the Customer to Konex and remove any products, materials or equipment incidental to the Cable System (including, but not limited to, the Cable System itself) or incidental to the Work, at the Customer's expense.

ARTICLE 15 – LIMITATION OF LIABILITY

15.1 KONEX SHALL NOT BE LIABLE TO THE CUSTOMER UNDER, OR IN CONNECTION WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT IN CONTRACT, TORT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY OR OTHER LEGAL THEORY (OTHER THAN FOR FRAUDULENT OR GROSSLY NEGLIGENT REPRESENTATIONS) OR OTHERWISE FOR ANY LOSS OF BUSINESS, CONTRACTS, COSTS, EXPENSES, PROFITS OR ANTICIPATED SAVINGS OR FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, CONTINGENT OR EXEMPLARY DAMAGES OR LOSS WHATSOEVER.

15.2 It will be the Customer's responsibility to operate and maintain the Cable System in a safe and responsible manner in accordance with all Applicable Laws within the jurisdiction of the Site.

15.3 The Customer agrees that Konex cannot be held responsible for adverse effects to the Cable System whereby such adverse effects are the result of conditions outside of Konex's control including, without limitation, the construction and maintenance of the Concrete Foundation and any other third party equipment utilized by the Customer in connection with the maintenance, operation or use of the Cable System.

15.4 If Konex is found liable to the Customer for any reason whatsoever, Konex's aggregate liability in contract, tort, warranty,

negligence, strict liability, product liability or other legal theory or otherwise arising out of or in connection with this Agreement for the performance or observance of Konex's obligations under this Agreement will not exceed the aggregate amount of the Purchase Price which the Customer has paid to Konex for the supply, delivery and installation of the Cable System.

15.5 Konex will use all reasonable commercial efforts to ensure that the Customer has received proper instructional material on the methods of use, maintenance and operation of the Cable System, including but not limited to the provision of the User Guidelines and the instructions provided to the Customer under Section 7.7 hereof, but shall not be liable for the poor, unsafe, improper or negligent use, maintenance or operation of the Cable System by the Customer or any other Person.

15.6 The Customer shall at all times keep and maintain insurance against all insurable liability relating to the Customer's business howsoever related to the Cable System.

15.7 The Customer shall require any Person (including, but not limited to, any customer of the Customer's business) to execute a valid and legally enforceable release of liability, waiver of claims and assumption of risk prior to using or participating in any activity howsoever related to the Cable System.

15.8 Without limiting the foregoing, none of Konex, its parent companies, subsidiaries or their respective officers, directors, employees, shareholders, agents or representatives shall be liable for any incidental, indirect, special, exemplary or consequential damages, including, but not limited to, damages or costs incurred as a result of loss of time, loss of savings, loss of revenues and/or profits, or loss of goodwill, whether foreseeable or unforeseeable, that may arise out of or in connection with this Agreement and the Work to be performed hereunder, or the use, maintenance or operation of the Cable System by the Customer, even if Konex has been notified of the possibility or likelihood of such damages occurring, regardless if such damages are based in contract, tort, warranty, negligence, strict liability, products liability or other legal theory. In no event will the total aggregate cumulative liability of Konex for any liability to, or damages incurred by the Customer ever exceed the Cable System Price actually paid by the Customer to Konex under this Agreement, regardless of the form of action, whether based in contract, tort, warranty, negligence, strict liability, product liability or other legal theory.

15.9 Each provision of this waiver of liability under this Article 15 excluding or limiting liability shall be construed separately, applying and surviving even if for any reason one or other of these provisions is held inapplicable or unenforceable in any circumstances and shall remain in force indefinitely notwithstanding the expiry or termination of this Agreement.

ARTICLE 16 – INDEMNITY

16.1 The Customer shall indemnify, defend and hold harmless Konex and its directors, officers, employees and agents from and against any and all costs, expenses, damages, judgments and liabilities, including attorneys' fees, incurred by or rendered against Konex arising from any claim made or suit brought by a third party arising out of a breach by the Customer of its representations, warranties or obligations under this Agreement, or the Customer's use, maintenance or operation of the Cable System, or the Customer's negligence or misconduct. Konex shall give the Customer prompt written notice of any such claim or suit, and shall permit the Customer to undertake the defense thereof, at the Customer's expense. Konex shall cooperate in such defense to the extent reasonably requested by the Customer, at the Customer's expense. In any claim made or suit brought for which Konex seeks

indemnification under this Section 16.1, Konex shall not settle, offer to settle or admit liability or damages without the prior written consent of the Customer, which consent will not be unreasonably withheld.

16.2 Without prejudice to Section 16.1, the Customer shall defend, indemnify and hold Konex and its directors, officers, employees and agents harmless from and against any third party claim or suit on account of loss or damage suffered by any such third party in relation to the death or personal injury to any Person resulting from the use or application of the Cable System. The Customer shall immediately notify Konex of any product liability claims and/or litigation that arises and Konex shall have the right, at its sole discretion, to participate or control the claims and/or litigation to the extent any Applicable Laws and procedure allow.

16.3 Each provision of this indemnity under this Article 16 shall be construed separately, applying and surviving even if for any reason one or other of these provisions is held inapplicable or unenforceable in any circumstances and shall remain in force indefinitely notwithstanding the expiry or termination of this Agreement.

ARTICLE 17 – LIMITED WARRANTY

17.1 Subject to Section 17.3, below, Konex warrants that the Cable System provided to the Customer will conform to the Specifications and is free from any material defects for a period of two (2) years from the Completion Date (the "Warranty").

17.2 Under the Warranty, Konex shall only be responsible for the cost of replacing damaged parts of, or refunding the Cable System Price, as the case may be. For further clarity, the Warranty does not include labour, travel, accommodation, or any other expense associated with any repairs or replacements of the Cable System. The Customer shall be responsible for any costs and expenses associated with any repair or replacement in relation to the Cable System performed by Konex under this Article 17.

17.3 The Warranty does not include, and Konex accepts no liability, for:

- (a) any defects resulting from normal wear and tear; accidental or willful damage; negligence;
- (b) wearable items, including, but not limited to bearings, bushings and pulley inserts;
- (c) any batteries or winches. Any warranty available from any manufacturer of any battery or winch purchased by the Customer from Konex pursuant to an Order shall be transferred to the Customer from Konex, if allowed by any such manufacturer. Konex shall have no liability whatsoever from any manufacturer's failure or refusal to transfer any warranty, if any, from Konex to the Customer with respect to any winch or battery;
- (d) abnormal operating conditions;
- (e) failure to follow Konex's instructions, including by not limited to the User Guidelines and any instructions provided to the Customer by Konex in accordance with Section 7.7 hereof, with respect to the use, maintenance or operation of the Cable System;
- (f) misuse or alteration or repair of the Cable System without Konex's approval;
- (g) any damage caused to the Cable System by the Customer, any employee or agent of the Customer, or any third party during the installation of the Cable System; and
- (h) any damage caused to the Cable System by the activities of civil or governmental authorities, industrial disputes, acts of God, war, riots, strikes or severe weather conditions.

17.4 For greater certainty, the Warranty shall cover any material defect in quality or condition of the Cable System or a failure of the Cable System to materially conform to Specifications (a “**Valid Claim**”). If the Customer notifies Konex of a Valid Claim in accordance with this Agreement, Konex shall be entitled to:

- (a) repair the Cable System so that it is no longer defective; or
- (b) replace the Cable System on a like-for-like basis free of charge (other than the expenses enumerated in Section 17.2); or
- (c) at Konex’s discretion, refund the Customer the Cable System Price.

Konex shall have no further liability, including but not limited to the Service Price and/or the Special Requests Price, to the Customer under this Article 17.

17.5 Konex makes no express or implied warranties of any nature whatsoever except for the Warranty as expressly set out herein. The Warranty provided herein is in lieu of and excludes all other warranties, guarantees or conditions pertaining to the Cable System, written or oral, statutory, express or implied, (except the warranty as to title) including any warranty as to the merchantability or fitness for any particular purpose. Konex expressly disclaims all other representations, conditions or warranties, express or implied, statutory or otherwise and any representations, warranties or conditions that may arise from a course of dealing or usage of trade. The Warranty provided herein shall constitute Konex’s sole obligation and liability and the Customer’s sole remedy for breach of warranty. No other warranty has been made by any employee, agent, or representative of Konex and any statements contained in any other printed or published material of Konex is expressly excluded herefrom. Konex shall not be responsible for any warranty offered by the Customer to any of its customers with respect to the Cable System and the Customer shall indemnify Konex with respect to same if any of those customers make a claim against Konex relating to any such warranty.

17.6 For greater certainty but without restricting the generality of the foregoing, any defects or damage caused to the Cable System by the Concrete Foundation shifting, degrading or disintegrating or the preparation of the Site itself are not the responsibility of Konex.

17.7 There shall be no liability under the Warranty or any other guarantee if the Purchase Price has not been paid by the due date for such payment.

17.8 The Warranty under this Article 17 shall be non-transferrable and non-assignable, and shall only be applicable to the Cable System provided under this Agreement for the sole benefit of the Customer and no other Person.

ARTICLE 18 – WHERE PURCHASE PRICE NOT PAID IN FULL

18.1 In all jurisdictions except the Province of Quebec: Konex shall retain a purchase money security interest in the Cable System sold to the Customer until the full Purchase Price shall have been paid. The Customer agrees that Konex will have the right to file financing statements pursuant to the Applicable Law to evidence Konex’s security interest. The Customer will join Konex in executing such financing statements or other instruments as Konex may reasonably request to perfect such interest and hereby authorizes Konex to execute and file or record such financing statements and instruments on the Customer’s behalf and in the Customer’s name.

18.2 Province of Quebec only: Konex shall have a movable hypothec in the amount of the Purchase Price together with interest at the rate stipulated in the deed of sale to the Customer until the full Purchase Price shall have been paid. The Customer agrees that Konex

will have the right to register a movable hypothec to evidence its security interest. The Customer will join Konex in executing any other instruments as Konex may reasonably request to perfect such hypothec and hereby authorizes Konex to execute and file or record such hypothecs and instruments on the Customer’s behalf and in the Customer’s name.

18.3 If the Customer is a corporation, the Customer agrees that *The Limitation of Civil Rights Act* (Saskatchewan) shall have no application to Konex’s rights, powers or remedies under this Agreement or any other agreement related or collateral hereto.

18.4 The Customer acknowledges receipt of an executed copy of this Agreement, and where permitted by law, the Customer waives its rights to receive a copy of any financing statement, financing change statement, verification statement or other similar instruments filed or issued at any time in respect of this Agreement or any amendment hereto.

18.5 Without limiting any other provision under this Article 18, Konex shall have and reserves the right to electronically disable the Cable System if Konex has not received the full payment of all amounts owed under the Agreement within 30 calendar days of the completion of the Work.

ARTICLE 19 – DISPUTE RESOLUTION

19.1 If any dispute or question shall arise between or among the Parties hereto concerning the interpretation of this Agreement or any part hereof or any other matter, the Parties shall attempt in good faith to resolve such dispute. If the disputing Parties have not agreed to a settlement of such dispute within thirty (30) days from the date on which the dispute first became known to the Parties then the matter may be referred to arbitration in accordance with the provisions of *The Arbitration Act* (Manitoba) by any disputing Party. If the dispute is referred to arbitration, it shall not be made the subject matter of an action in any court by any Party, except in accordance with this Section 19.1. The disputing Parties agree to appoint a mutually acceptable arbitrator or arbitrators within seven (7) days of the dispute being referred to arbitration. If the disputing Parties cannot mutually agree upon an arbitrator or arbitrators, then the President of the Law Society of Manitoba shall forthwith be requested to appoint an arbitrator or arbitrators. The arbitrator(s) shall determine the manner in which the costs of such arbitration shall be borne. Once the dispute has been finally determined by the arbitrator(s), a Party may only commence action in a Manitoba court located in Winnipeg, Manitoba, for the purpose of enforcing the decision of the arbitrator(s) and the costs incidental to the action. In any such action the decision of the arbitrator(s) shall be conclusively deemed to determine the rights and liabilities as between the Parties to the arbitration in respect of the matter in dispute. Each Party shall be responsible for their own costs and expenses relating to any arbitration proceeding under this Section 19.1. Any arbitration proceeding commenced under this Section 19.1 shall take place in Winnipeg, Manitoba and shall be governed by Manitoba laws as per Section 21.1 hereof.

ARTICLE 20 - CONFIDENTIALITY

20.1 The Customer shall not at any time use or disclose to any other Person any Confidential Information and it is agreed that the Confidential Information is the exclusive property of Konex. The Customer will also comply with all reasonable directions given by Konex with respect to the safeguarding of confidential, privileged or competitively sensitive information. The Customer agrees to notify Konex immediately upon discovery of any unauthorized use or disclosure of any confidential, privileged or competitively sensitive information, to co-operate with Konex to help the Konex regain possession of such confidential, privileged or competitively sensitive

information, and to prevent its further unauthorized use or disclosure. The Customer further agrees to immediately return all originals, copies, reproductions and summaries of confidential, privileged or competitively sensitive information upon Konex's request, or, at Konex's option, certify destruction of same.

20.2 For the purposes of this Article 20, "**Confidential Information**" means any information relating to Konex, the business of Konex, the customers of Konex or the products of Konex (including, but not limited to the Cable System) that the Customer learns about during under this Agreement that is not generally available to the public or through proper means. Confidential Information can, by way of non-exhaustive examples, include an invention, formula, pattern compilation, program, device, method, technique, process as well as trade secrets, inventions, research, development, experiments, engineering, product specifications, computer programs, computer software, hardware configurations, manufacturing processes, compositions, algorithms, know-how, methods, machines, management systems, strategic plans, business methods, non-public financial information, proprietary information pertaining to vendors and customers, employee and personnel data, sales volumes, pricing strategies, sales and marketing plans and strategies, contracts and bids. However, Confidential Information does not include information such as commercially available software or other information that is generally available to the public.

20.3 No license under Konex's trade secret, patent, patent application, industrial design, trademark, copyright, confidential process, formula, design, plan, computer program, software, data or other Confidential Information, or know how ("**Intellectual Property**") is granted to the Customer under this Agreement or by any other means, implicitly or explicitly, to the Customer. All such Intellectual Property owned by Konex (or licensed to Konex), whether associated or not with the Cable System or this Agreement, belongs to Konex or Konex's licensors and that the Customer shall have no rights to such Intellectual Property.

ARTICLE 21 - GENERAL

21.1 The law governing this Agreement shall be the law of the Province of Manitoba and the laws of Canada applicable therein and any suits brought to enforce this Agreement or to resolve any matter related to this Agreement, shall be brought in the Province of Manitoba.

21.2 The Order Form and these Terms and Conditions constitute the entire agreement between the Parties with respect to the subject matter hereof.

21.3 No modification of or amendment of the Order Form or these Terms and Conditions, is valid or binding unless set forth in writing and fully executed by both Parties hereto.

21.4 All references to currency herein are in U.S. dollars.

21.5 Any notice or other communication to be given in connection with this Agreement must be given in writing and must be given by personal delivery, by registered mail, courier, e-mail or by facsimile transmission addressed to the recipient as set out in the Order Form to which these Terms and Conditions are attached or to such other address, e-mail address, or facsimile number as may be designated by written notice given by either Party to the other.

21.6 This Agreement and all documents contemplated in this Agreement may be executed by the Parties in separate counterparts and by facsimile, or by scanning and email, or by electronic counterparts, each of which when so executed and delivered shall be deemed an original, and all such counterparts shall together constitute one and the same instrument. Counterparts, or scanned counterparts, or electronic counterparts, may be delivered by facsimile or email in order to effect delivery for the purposes of any limits expressed in this Agreement.

21.7 Konex is an independent contractor supplying goods and services to the Customer. Nothing in this Agreement or in the relationship between the Parties is to be construed as in any sense creating a partnership between any of the Parties to this Agreement or as giving to any party any of the rights, or subjecting any party to any of the liabilities, of a partner.

21.8 This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective heirs, executors, successors and assigns.

21.9 Neither Party to this Agreement shall assign any portion or all hereof without the written consent of the other, which such consent shall not be unreasonably withheld. Notwithstanding the foregoing, any assignment of this Agreement under this Article 21, no Party shall assign or transfer the Warranty in accordance with Section 17.8.

21.10 If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.