



USNE, Inc., Terms and Conditions

High Voltage Distribution
Underground, Overhead, URD
Copper, Fiber, Wireless Support
Apparatus Repair Center
Transformer Repairs/Installation
Retrofills, Filtering
Complete Utility Service
Cable Terminations and Splicing
Fault Locating, Testing

- 1. Price and Payment Terms.** Labor for this Agreement is based upon favorable weather conditions. If inclement weather hinders progress, work will be postponed until conditions improve. However, work may continue by USNE only if the Customer issues written authorization for additional time to complete the job. Additional work performed will be charged on a time and materials basis in accordance with USNE's current rates as set forth in *Exhibit C* attached hereto. Any lost time resulting from interference or obstruction by the Customer or his agent will be billed by USNE to the Customer as an additional charge. Additional work that is directly related to unseen conditions (e.g. ledge) is specifically not included in this Agreement. Remobilization and additional work will be billed at USNE's current rate as set forth under *Exhibit C* attached hereto. Any metals' pricing is subject to fluctuation and will be adjusted at the time of the execution of this Agreement. All salvage to be undertaken by USNE or its agents.

These terms and conditions will be applicable to the Customer's purchase from USNE. USNE's offer to the Customer is expressly conditioned upon the Customer's acceptance of these terms and conditions and the terms and conditions of this document shall supersede and control over any additional or different terms in the Customer's documents. The Agreement, Credit Application, including Unconditional individual personal guaranty, and Exhibit A shall collectively constitute the entire agreement between USNE and the Customer and may not be modified except by a written amendment to the Agreement agreed upon by both USNE and the Customer and executed by both USNE and the Customer.

- 2. Payment:** The Customer agrees to pay for Services in U.S. dollars. Payment in full must be made on all invoices no later than the 30 calendar days after date of invoice and failure of the Customer to make timely payment shall constitute an event of default of this Agreement. Any invoices remaining unpaid after 30 calendar days of date of invoice shall be subject to a service charge at 1 ½% per month (18% per annum) or the maximum allowed by law if less. The Customer's obligation to pay USNE remains independent from the Customer's ability to be remunerated by any third- party. Upon the occurrence of an event of default (i) all invoices outstanding together with accrued interest thereon and any other sums due under this Agreement, including all reasonable attorney's fees, collection agency fees, costs and expenses incurred on behalf of USNE to collect amounts owed shall, at the option of USNE, become immediately due and payable and (ii) USNE may cancel or reject any purchase order or scheduled delivery of materials of the customer, at the sole discretion of USNE, at any time prior to delivery without any liability to USNE. The customer expressly waives presentment or demand for payment, notice of non-payment, protest, or any other notice or demand of any

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kind concerning the customer's account. Failure of USNE to exercise any of the options set forth in this paragraph shall not constitute a waiver of the right to exercise the same rights in the event of any subsequent default. Remittances are received by USNE's bank that serves as a clearing agent and the bank has no authority to determine whether the amount remitted constitutes payment in full. Remittances indicating payment in full will be deposited by the bank notwithstanding any such restrictive endorsements and any deposit of such payment(s) will not waive or relinquish any rights that USNE may have to be paid in full of all sums owed by the customer. To defer account administration costs, any credit balance or other sum owed to the customer that remains unclaimed by the customer for a period of twelve months will become the property of USNE. Customer grants to USNE and USNE will retain a purchase money security interest under the Uniform Commercial Code in all materials purchased from USNE until the materials are paid in full. If customer fails to pay for the materials delivered and in an event of default, USNE may repossess any materials in which it retains a security interest and USNE shall have all the rights and remedies of a secured creditor under the Uniform Commercial Code. Customer hereby authorizes USNE to file financing statements covering the materials.

3. Permits. USNE shall be responsible for obtaining and paying for all necessary permits and licenses that are otherwise required to perform the Services. The Customer will fully cooperate with USNE in the obtaining of any permits and licenses, as necessary.

4. Indemnity and Insurance.

- a. USNE does not agree to indemnify and hold harmless the Customer and its respective agents and assigns from all claims, losses, damages, expenses, fees including attorney's fees, costs, settlements and judgments arising out of the performance of the Agreement or resulting in whole or in part from the actual or alleged acts, omissions, or breaches of this Agreement by the Customer, or the violation of any relevant laws by the Customer or its employees, agents or others under its control while performing the Services under this Agreement.
- b. USNE shall maintain insurance policies, of each and every type, and with provisions and coverage amounts substantially identical to, corresponding requirements of the Agreement and as described by the terms of the Agreement. USNE shall provide the Customer with written proof of compliance with this paragraph prior to the commencement of the Services.

5. Due Diligence. USNE retains the right, at all times, to request of the Customer to provide pertinent bonding information, letters of credit, two party checks, payment in advance and/or C.O.D. arrangements as USNE deems fit. USNE shall also have the right in its sole discretion to cancel the Services and to refuse to extend any credit to the Customer at any time with prior notice to the Customer if, in USNE's judgment, the Customer's financial condition does not justify USNE to continue to provide the Services. USNE may cancel any pending work order of any kind unless and until the Customer immediately pays for all Services which have been

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delivered or provided. Should the Customer request USNE to provide the Services on an emergency basis to the Customer, USNE reserves the right to require a retainer for the Services if and when it deems necessary under the circumstances. USNE also reserves the right in its sole discretion to refuse to accept any payment by credit card and/or charge a 3% processing fee for payments made via credit card.

6. **Change Orders.** If USNE requests or requires any change order either expanding or limiting the Services to be performed under the Agreement, the Customer shall accept such change orders. USNE agrees to provide the Customer with written notice of any such change orders as soon as practical after USNE receives such notice. Any resulting increase or decrease in the contract amount provided for in Paragraph 2 must be in writing, mutually agreed to and signed by both USNE and the Customer.

The Customer agrees to pay the contract price stated in the quotation or, if none stated, USNE's current material, expense, services price and labor rates in effect at the time of delivery. Where applicable, the Customer agrees to pay for any and all additional items (i.e. change orders) unless specifically included in the contract price. Payment terms as to change order will follow the terms and conditions of the payment terms provision above.

The Customer agrees to pay USNE's charges for additional equipment, services and/or charges necessary to complete the project made necessary by incomplete or inaccurate information supplied by the Customer or due to Customer's changes or delays. USNE will advise Customer in advance of any such additional charges and will receive permission from Customer before any additional equipment, services and/or charges are undertaken by USNE.

7. **Unforeseen Conditions and Acts of God.**
 - a. Reasonable additional, unexpected costs directly related to an existing, concealed condition or other situation that may be revealed during construction shall be the sole responsibility of the Customer. Further, USNE shall not be held responsible for reasonable delays caused by such conditions.
 - b. This Agreement is subject to *force majeure*, including without limitation, accidents, acts of God, fire, explosion, vandalism, storm, weather conditions, labor strikes, orders or acts of military or civil authority, national emergencies, insurrections, riots, wars, or other delays beyond the reasonable control of the parties. USNE shall not be held responsible for reasonable delays caused by such events, but shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance.

- c. Nothing in this Agreement shall preclude USNE's claims for recovery of delay damages caused by the Customer, owner, design professionals or parties other than USNE, its employees, agents or others under subcontractor's control.
8. **Default.** The occurrence of any of the following shall constitute a material default under this Agreement:
 - a. The failure of the Customer to make a required payment when due.
 - b. The insolvency or bankruptcy of the Customer and
 - c. The subjection of any of either party's property to any levy, seizure, general assignment for the benefit of creditors, application or sale for or by any creditor or government agency.
9. **Remedies on Default.** In addition to any and all other rights available according to Massachusetts law, if the Customer defaults by failing to substantially perform any material provision, term or condition of this Agreement (including without limitation the failure to make a monetary payment when due USNE may elect to terminate this Agreement if the default is not cured within 10 days after providing written notice to the Customer. The notice shall describe with sufficient detail the nature of the default. In the event USNE has to seek enforcement of any unpaid amounts upon or after default, the Customer will be responsible for all costs of collection, including reasonable attorney's fees, expenses and costs associated with any such collection.
10. **Relationship of the Parties.** The provisions of this Agreement are not intended to create, nor shall be deemed or construed to create, any joint venture, partnership or other relationship between USNE and the Customer other than that of independent entities contracting with each other solely for the purpose of carrying out the provisions of this Agreement. Neither USNE or the Customer nor any of their respective employees, agents, or other representatives, shall be construed to be the agent, employee or representative of the other party. Neither USNE nor the Customer shall have the authority to bind the other party nor shall a party be responsible for the acts or omissions of the other party, unless otherwise stated in this Agreement. Specifically, USNE expressly acknowledges that USNE is not an agent, employee or representative of and the Customer.
11. **Access, Signage Rights and Design Plans.**
 - a. During the term of this Agreement, USNE shall have at all times reasonable access to either work sites and/or any projects and both USNE and the Customer will take all reasonable steps necessary to coordinate the progress of construction with other subcontractors so that the project can be completed in a timely manner.
 - b. During the term of this Agreement, USNE may erect one temporary sign showing its name, service mark, trade name or other commercial name, identifying USNE as

performing services on the construction project. The sign must be appropriate in appearance, style and size, and must conform to all applicable federal, state and local laws.

- c. The Customer will make available to USNE all plans, specifications, drawings, blueprints, and similar construction documents necessary for USNE to provide the Services to the Customer. Upon completion of the Services, USNE will promptly return all materials to the Customer or as requested by the Customer.
12. **Notices.** Any notice or communication required or permitted under this Agreement shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the addresses listed above or to such other address as one party may have furnished to the other in writing. The notice shall be deemed received when delivered or signed for, or on the third day after mailing if not signed for.
13. **Entire Agreement.** This Agreement contains the entire Agreement of the parties regarding the subject matter of this Agreement, and there are no other promises or conditions in any other agreement whether oral or written.
14. **Waiver.** No waiver by either party of any breach of this Agreement shall be deemed to waive any other breach. No acceptance of payment or performance after any breach shall be deemed a waiver of any breach. No failure or delay to exercise any right by a party upon another's default shall prevent that party from later exercising that right, nor shall such failure or delay operate as a waiver of any default.
15. **Severability.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
16. **Amendment.** This Agreement may be modified or amended only if made in writing and signed by both parties.
17. **Applicable Law.** This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.
18. **Assignment.** Neither party may assign or transfer this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.
19. **Choice of Forum.** USNE reserves the right to enforce all of its legal interests in a Massachusetts court of competent jurisdiction. The parties agree to waive all rights to a jury claim for any issues, controversies or disputes arising out of this Agreement.

20. **Binding Effect.** This Agreement shall be binding upon, and inure to the benefit of, the parties and their respective heirs, representatives, successors and assigns.
21. **Signatories.** This Agreement shall be signed only authorized representatives of both USNE and the Customer and shall be effective as of the date first written above.
22. **Seller's Proprietary Rights:** USNE and its suppliers and principals, retain ownership of designs, specifications and technical information. Any proprietary data of USNE, its suppliers and principals, disclosed to the Customer will retained in confidence and used only in connection with this Agreement, unless such data or information can be shown to have been known to the Customer from other third-party sources who have lawfully obtained such information and conveyed it to the Customer.
23. **Warranties/Limitations of Liability.** As to equipment manufactured and/or supplied by USNE's vendors, USNE assigns to the Customer the licenses and applicable manufacturer's warranty if and when available. Any extended warranty and/or service agreements available from any manufacturer shall be offered to the Customer upon request.
- a. USNE's services are warranted to be free from material defects in workmanship.
 - b. USNE shall, at its expense, investigate, remedy and or perform warranty services upon written notice via certified mail by the Customer to USNE.
 - c. Any claims for warranty service must be made by or within one year of installation of any equipment by USNE for the Customer.
 - d. Any claims for warranty service by the Customer must be accompanied by documentation of any and all alleged defects and the Customer must allow USNE complete access to all such equipment to investigate the nature of any and all warranty claims.
 - e. All service warranties provided by USNE are contingent upon the Customer maintaining all routine service per the manufacturer's requirements.
 - f. USNE provides no express warranties and/or implied warranties, whether for merchantability for fitness for a particular purpose other than those set forth above.
 - g. USNE shall not be liable for any indirect, special, incidental and/or consequential damages as it relates to the installation of any equipment by USNE to the Customer.
 - h. In the event that USNE fails to repair or replace any equipment installed by USNE for the Customer, USNE's liability shall not exceed ten percent of the Customer's cost for purchase and installation of the defective equipment.
24. **Bill of Material, Releases and Submittals:** Any bill of material whether generated by customer or USNE is not intended to be a definitive list of the required materials and USNE is not responsible for confirming that it represents the required counts per any plans, specifications or other documents. Written purchase order is required before the release of any material from USNE to the customer. Any documents with the wording "Hold for Release Order" are not orders and will not be released to the customer or third party until a bona fide order is received.

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All releases on orders need to be made in writing with approval from the customer. All release or shipping dates are approximate and are subject to availability of material, manufacturers production schedules, carrier schedules, and other unforeseen factors. Under no circumstances shall USNE be liable for any loss or consequential damages on account of any hindrance or delay, avoidable or unavoidable, for late delivery of any material. A submittal package will be produced by USNE upon request by customer, if customer has submitted and USNE has accepted a purchase order. USNE will release materials for shipment only upon receipt of an approved submittal package.

25. **Substitution of like items:** USNE may furnish suitable substitutes, with consent of customer, for materials unobtainable because of regulations established by governmental authority or non-availability of materials from manufacturers, and USNE assumes no liability for any deviation from published dimensions.
26. **Cancellation:** Cancellation and/or alteration of a non-special order must be made and accepted in writing by USNE. Cancellation and/or alteration will be accepted only with the understanding that USNE will be reimbursed for expenses incurred as a result. There are no cancellations and/or alterations for special orders.
27. **Unreleased material:** If delivery is delayed or deferred by the Customer beyond the scheduled ship date, payment will be due in full in accordance with these terms and conditions and the materials will be stored at the risk and expense of the Customer.
28. **Freight:** All deliveries shall be F.O.B. (Freight On Board) point of shipment. All insurance, risk of loss shall be for the account of the Customer to the carrier, unless otherwise agreed. Selection of carrier and routing of all shipments shall be at the manufacturers' or USNE's discretion, unless otherwise agreed. Freight charges are allowed on those orders as provided by the manufacturer and unless otherwise noted. Any requests for expedited shipments must be received either by writing, telefax, or email and must be made prior to the order being released.
29. **Inspection and Acceptance:** The Customer must report claims for damages, shortages or other discrepancies in writing within (10) ten days of delivery and prior to installation or the materials shall be deemed irrevocably accepted and such claims shall be deemed waived. The Customer is responsible for identifying an authorized representative and/or employee for delivery and receipt of all materials and services provided. Any shortages or overages, and/or any damages to any materials must be noted on the signed bill of lading. If the Customer accepts delivery without noting any damage on the delivery record, any and all damage claims are waived. The Customer shall make claims for loss or damage to materials while in transit solely against the carrier and USNE will take reasonable actions to assist customer in such transit claims.
30. **Returns:** Stocked items which are defective may be returned without prior authorization for credit or replacement. Credit for properly returned stock items will be given when material is

received. Non-stock items cannot be returned without prior written authorization. Restocking charges imposed by the manufacturer will be charged to the Customer. Credit for properly returned non-stock items shall be given when USNE receives credit from the manufacturer. The Customer agrees that the sole remedy for any default arising out of the sale and/or purchase of any and all materials purchased from or provided by USNE shall be the return of said materials for credit or replacement. To the maximum extent permitted under applicable law, USNE will not be liable for any loss of use, interruption of business, or any indirect, special, incidental or consequential damages of any kind, including lost profits, even if USNE has been advised of the possibility of such damages, and customer expressly waives any right it may have to recover such damages.

31. **Taxes:** Any taxes imposed on any materials purchased from USNE by any government agency under existing or future laws shall be the responsibility of the Customer. To the extent that such taxes do not appear on the invoice, the Customer certifies that the sale of the materials is exempt from such tax and the Customer assumes the liability for any such tax that may be due as a result of purchase and hereby agrees to indemnify and hold USNE harmless with respect to any claims by any taxing agencies for such claims.