**STANDARD TERMS AND CONDITIONS OF PURCHASE**

**(50 FREMONT STREET, SAN FRANCISCO, CALIFORNIA)**

|  |  |
| --- | --- |
| **Section 1: Agreement Title** |  |
|  |  |
| *Both of us will refer to this Agreement as the:* | SPA Garratt Callahan Water Treatment YR2020 - Sample |

|  |  |
| --- | --- |
| **Section 2: Supplier Entity and Contact Information** | |
|  | |
| *Your corporate entity name is:* | Garratt Callahan |
| *Your corporate address is:* | 50 Ingold Road  Burlingame, CA 94010 |
| *If we have to send you a notice, we should send it to:* | (same as above) |
| *Your business representative and their contact information is:* | Chris Burkland  CBurkland@g-c.com |

The corporate entity listed above in this Section 2 will be referred to in this Agreement as either “you” or “**Supplier**”.

|  |  |
| --- | --- |
| **Section 3: SFDC and Contact Information** | |
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|  | SFDC 50 Fremont LLC. The notice information for this entity is in the Affiliate Guidelines (as defined below). |
| *Our business representative and their contact information is:* | Tom Miller. Property Manager  Cushman & Wakefield  [tmiller@salesforcewest.com](mailto:tmiller@salesforcewest.com)  (415) 555-5555 |

The entity listed above in this Section 3 will be referred to in this Agreement as either “us”, “we”, or “**SFDC**”.

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| --- | --- | --- | --- |
| **Section 4: Services, Deliverables; Payment** | | | |
| |  |  | | --- | --- | | *A general description of the services and/or goods you will be providing is:* | Cooling tower water treatment program. | | | | |
| **Item Description** | **Dates** | **Item Cost or**  **Fee Type** | **Total Cost or**  **Not To Exceed Amount** |
| (1) Cooling tower water treatment program (full scope in Exhibit A) | 3/1/20 – 2/28/23 | $569.63/month | $6,835.5/year |
| (2) |  |  |  |
| (3) |  |  |  |
| (4) |  |  |  |
| (5) |  |  |  |
| (6) |  |  |  |
| **TOTAL** | | | $20,506.50 for 3 years |

|  |  |  |
| --- | --- | --- |
| **Expenses** |  | |
| *Please describe all of your anticipated expenses.* | **Expense Description**  **Standard Rate** | **Not To Exceed Amount** |
|  |  |  |
|  |  |  |
|  | TOTAL |  |

|  |  |
| --- | --- |
| **The total amount due to you under this Agreement (including all fees and expenses set forth above) will not exceed:** | $20,506.50 |

|  |  |
| --- | --- |
| **Section 5: Term** |  |
|  |  |
| *The start date for this Agreement will be no earlier than:* | 3/1/20 |
| *The end date for this Agreement is:* | 2/28/23 |
| SFDC will neither pay Supplier for services rendered before this start date nor after this end date. | |

This agreement (this “**Agreement**”) governs the rights, remedies, and obligations of SFDC and Supplier in regards to the items and materials, including products, hardware, software, furniture, equipment, and merchandise (“**Goods**”) and services (“**Services**”) described in Section 4 above and Exhibit A attached.

1. **Online Documents.** SFDC is a wholly owned subsidiary of salesforce.com, inc. (“**Parent**”). The following documents, promulgated by Parent and available at www.salesforce.com/company/legal/supplier.jsp, are incorporated into this Agreement and can be updated upon written notice (including email) to Supplier (collectively, the “**Online Terms**”): (i) the SALESFORCE.COM AFFILIATE PURCHASING GUIDELINES (“**Affiliate Guidelines**”), (ii) the SALESFORCE.COM SUPPLIER CODE OF CONDUCT (“**Code** **of Conduct**”), (iii) the SALESFORCE.COM NON-EMPLOYEE TRAVEL AND EXPENSE GUIDELINES (“**Travel and Expense Guidelines**”), and (iv) the SALESFORCE.COM SUPPLEMENTAL TERMS FOR FOREIGN JURISDICTIONS (“**Supplemental Terms**”). To the extent of any conflict or inconsistency between the Online Terms and the terms and conditions set forth in this document, the terms and conditions set forth in this document shall govern and control.

2. **Quality and Security.** Supplier shall perform all of its obligations to SFDC (i) with due care, skill and diligence, (ii) in a professional and workmanlike manner, (iii) in accordance with high industry standards and practices, (iv) in conformity with the specifications set forth in this Agreement, and (v) without a conflict of interest with respect to a third party. All results of the Services developed by Supplier, either alone or jointly with others, whether completed or in-progress (the “**Deliverables**”) shall conform to the relevant specifications in this Agreement and, to the extent there are no directly relevant specifications, to high industry standards. All Goods shall be merchantable, free from defects in design, workmanship and materials, and conform to the specifications in this Agreement. All Goods and Deliverables (including any item or process used by Supplier to provide the Services) shall be free of hidden features and security defects. No component of any of the Goods or Deliverables shall include any viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs (“**Malicious Code**”). Supplier shall not transmit to SFDC, or cause any SFDC system to be exposed to Malicious Code. Supplier shall notify SFDC in writing and in reasonable detail immediately upon becoming aware of the existence of any Malicious Code contained in a Good or Deliverable. If any Good or Deliverable contains Malicious Code, or if Supplier transmits any Malicious Code to an SFDC system, Supplier shall cooperate with SFDC, at Supplier’s expense, to promptly remove the Malicious Code and repair any corrupted files or data.

3. **Supplier Personnel.** Supplier shall determine the methods, details, and means of performing the Services. SFDC will not control, direct, or supervise Supplier’s employees, independent contractors, vendors, agents, permitted subcontractors, and invitees (“**Supplier Personnel**”) in the performance of the Services. Supplier shall use adequate numbers of qualified individuals with suitable training, education, experience and skills to perform the Services. Supplier agrees to take all reasonable measures to ensure that Supplier Personnel will not engage in inappropriate conduct while performing Services for SFDC and agrees that Supplier Personnel who engage in inappropriate conduct shall be removed and replaced immediately upon SFDC’s reasonable request. Supplier shall require Supplier Personnel performing any of the Services to observe at all times the security, confidentiality, and safety policies of SFDC. All Supplier Personnel shall meet the licensing, security, labor and site requirements for the locale where the Services are being performed. Supplier shall withhold and pay all amounts required for any employer or employee tax or contribution, including local, state and federal income tax, unemployment insurance and disability insurance. All Supplier Personnel performing Services are, and shall for the period of assignment remain, employees or, where permitted by this Agreement, subcontractors of Supplier and such Supplier Personnel will not be entitled to any of SFDC’s employee benefits. It shall be Supplier’s sole responsibility to compensate and/or pay Supplier Personnel.

4. **Subcontracting.** Supplier shall not subcontract any Services without the prior written consent of SFDC, which SFDC may grant or withhold in its sole discretion. If SFDC provides such written consent, then Supplier shall have the primary obligation to perform the Services, and shall be fully responsible for the performance of any subcontractor and the compliance with all of its obligations by any subcontractor. Supplier shall, in its contracts with all permitted subcontractors and agents in the provision of Services, flow down all of its obligations.

5. **Code of Conduct.** Supplier acknowledges receipt of the SFDC Supplier Code of Conduct and agrees to provide a copy of it to all Supplier Personnel assigned to perform Services. See: <http://www.salesforce.com/company/legal/compliance.jsp>

6. **Compliance with Laws.** Supplier shall comply with all applicable international, federal, state, local laws and ordinances now or hereafter enacted, including: (a) data protection and privacy laws; (b) employment, tax, immigration, benefits, and workers compensation laws; and (c) international anti-corruption laws, such as the Foreign Corrupt Practices Act 15 U.S.C.

§ 78dd-1, et seq. and the United Kingdom Bribery Act. Supplier shall make no payments or transfers of anything of value which have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business or any improper advantage. In addition, Supplier acknowledges that SFDC is a federal contractor. As a result, but only if applicable, Supplier shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60- 741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status. In addition, the employee notice found at 29

C.F.R. Part 471, Appendix A to Subpart A, is incorporated into this Agreement.

7. **Acceptance.** Payment shall not constitute acceptance of Goods or Deliverables. Acceptance of Goods or Deliverables (“**Acceptance**”) shall be deemed to occur if each Good or Deliverable conforms to the relevant specifications and standards and, in the case of Deliverables, is also approved in writing by an authorized representative of SFDC. SFDC shall have the right to reject all or part, or require the correction, of any Good or Deliverable found not to meet the relevant specifications and standards, which item shall be promptly replaced or corrected by Supplier. SFDC shall have no payment obligation and/or shall be entitled to a refund for defective or non-conforming Deliverables or Goods.

8. **Warranty.** Supplier warrants that for a period of three (3) months following Acceptance, Goods and Deliverables will conform to the specifications in this Agreement and, to the extent there are no directly relevant specifications, to high industry standards. During the applicable warranty period, Supplier will test, remedy and/or replace, without charge to SFDC, any and all portions of any Deliverables or Goods which SFDC finds to be defective or non-conforming. If Supplier is unable to remedy any defective or non-conforming Deliverable or Good within a reasonable period of time, SFDC may (a) terminate this Agreement, (b) return all or part of the defective or non- conforming Deliverables or Goods to Supplier and/or (c) keep the defective or non-conforming Deliverables and Goods. SFDC shall have no payment obligation and/or shall be entitled to a refund for defective or non-conforming Deliverables or Goods.

9. **Intellectual Property.** For purposes of this Agreement, “**Intellectual Property**” means all intellectual property and proprietary rights, including without limitation all rights of inventorship and authorship, inventions, patents, patent applications, and know-how, for any product, process, method, machine, manufacture, design, composition of matter, or any new or useful improvement thereof, as well as copyrights, trademark, trade dress and service mark rights and all rights in trade secrets, computer software, proprietary information and data and databases.

9.1 **SFDC Property.** “**SFDC Property**” means the following: (1) SFDC’s Intellectual Property that SFDC or any of its affiliates owns prior to the Effective Date of this Agreement or acquires separately or develops; (2) Intellectual Property conceived, produced or developed by Supplier, whether directly or indirectly or alone or jointly with others, in connection with or pursuant to Supplier’s performance of this Agreement; and (3) other Deliverables, Goods, or Services that are made by Supplier through the use of SFDC’s or its affiliates equipment, funds, supplies, facilities, materials and/or SFDC or its affiliates proprietary information. “**SFDC Contracted Property**” means Intellectual Property that falls within the scope of any of subsection 2 and 3 of the previous sentence. Supplier agrees to assign and hereby assigns to SFDC all of its respective rights, title, and interest in the SFDC Contracted Property and SFDC owns all right, title and interest in and to such Deliverables, Goods, and Services, the rights, title, and interest including all rights of inventorship and authorship, all patents and patent applications, all copyrights, all trademark and service mark rights, all rights in trade secret and proprietary information, all rights of attribution and integrity and other moral rights and all other Intellectual Property rights. SFDC grants Supplier no rights to SFDC Property beyond the scope of this Agreement.

9.2 **Supplier Property.** “**Supplier Property**” means Intellectual Property (1) created or acquired by Supplier before the Effective Date and not assigned pursuant to this Agreement or (2) independently developed by or for Supplier as part of Supplier’s normal business and not developed for or paid for by SFDC under this Agreement. Supplier Intellectual Property may be included as part of the Goods, Deliverables, or Services, but the title to such Supplier Intellectual Property shall remain with Supplier. However, except as provided in this section 9.2, for any Supplier Property incorporated into the Deliverables, Goods, or Services, Supplier grants SFDC a fully-paid up, perpetual and irrevocable, world-wide, non-exclusive license to: (a) prepare derivative works; and (c) make, use, have made, import, have imported, export, have exported, distribute, have distributed, publicly and privately perform, display and transmit derivative works and reproductions thereof, and to sublicense all of these rights for SFDC’s benefit and to sublicense such rights for SFDC’s benefit. Notwithstanding the foregoing, to the extent that the Goods, Deliverables, or Services to SFDC consist solely of training materials developed by Supplier without use of SFDC Intellectual Property or SFDC Confidential Information, such license and sublicense right shall be solely for SFDC’s use in its internal business operations. Further, where the Good, Deliverables, or Services include providing entertainment, speaking, and/or participating as a host, lecturer, performer or guest in a meeting/conference, the rights granted in this paragraph shall further include a grant to use Supplier’s likeness and performance in SFDC’s internal and external business operations and to record, and to broadcast, web cast or otherwise disseminate Supplier’s performance and likeness, in whole or in part, live or recorded, with or without audio or video, or with different audio or video throughout the world on all media, channels and manner of distribution now or hereafter known.

9.3 Supplier shall prominently declare in the description of Services, Deliverables and Goods set forth above in this Agreement any third party Intellectual Property or open source software (1) incorporated into any Services, Deliverables, or Goods or (2) that is required for use of any Deliverable or Good (each a “**Dependency**”). Each Dependency declaration shall include all necessary documentation, including license terms and copyright notices, for SFDC to be able to adequately determine its rights to use and reproduce the Dependency. SFDC hereby rejects any Deliverables containing any Dependency that is not declared in this Agreement or that is incompatible with the assignments or licenses granted in this Agreement.

10. **Delivery, Packing, and Shipment.** Delivery of Goods and Deliverables shall be strictly in accordance with the schedule set forth in this Agreement. Any delays in shipment shall be reported immediately by Supplier to SFDC. No partial deliveries or deliveries of additional items shall be made without SFDC’s express prior written consent. SFDC reserves the right to cancel this Agreement in whole or in part if Supplier fails to make deliveries in accordance with its terms. All Goods and Deliverables to be shipped shall be prepared for shipment according to SFDC’s instructions, if any, and otherwise in a manner that follows good commercial practice, is acceptable to common carriers, and is adequate to ensure safe arrival. Supplier shall mark all containers with necessary lifting, handling and shipping information, purchase order number, date of shipment and the names of SFDC and Supplier. Unless otherwise specified herein, all shipments shall be DDP (Incoterms 2000). Notwithstanding any prior inspections, Supplier bears all risk of loss, damage, or destruction until acceptance of Goods or Deliverables by SFDC.

11. **Changes.** SFDC may at any time make reasonable changes in the delivery schedules, designs, quantities, and specifications for Goods; provided that SFDC shall pay only the reasonable costs associated with such changes.

12. **Price. Prices for Services, Deliverables, and Goods.** SFDC shall have no payment obligation for (a) additional or different Services, Deliverables, or Goods rendered other than those described in this Agreement (unless the parties execute an approved change order), (b) Services performed or Goods delivered prior to the Effective Date, or (c) amounts exceeding what is expressly authorized in this Agreement. All applicable direct and indirect taxes, duties and similar levies, excluding value added tax (VAT), shall be included in the estimated project costs contained in this Agreement and shall be clearly identified on applicable invoices. For purposes of this Agreement, “indirect taxes” mean sales tax, use tax, value added tax (VAT), goods and services tax and/or consumption tax which Supplier may have an obligation to charge and collect from SFDC. Supplier is not responsible for a change in the indirect taxes resulting from a change in any code or regulation implemented after the submission of the estimated project cost.

13. **Payment Terms.** Notwithstanding anything to the contrary set forth in the Online Terms, (i) Supplier shall invoice SFDC monthly; (ii) invoiced amounts for which no due date is otherwise established will be due and payable within forty-five (45) days from receipt of an undisputed invoice. An acceptable invoice shall be in the form and submitted in the manner designated in the Affiliate Guidelines for SFDC, and shall include reference to: (i) SFDC, (ii) the valid purchase order number, (iii) a description of the items, quantities, and unit prices for all Services, Deliverables and Goods invoiced; and (iv) the name of the individual from SFDC who ordered the Services, Deliverables and Goods, (v) the contact information for an authorized representative of the Supplier. Each invoice must reference only one (1) purchase order number. For invoices submitted via email or fax in compliance with the Affiliate Guidelines, Supplier shall submit only one (1) invoice per email or fax.

14. **Expenses.** Unless expressly authorized in this Agreement, Supplier will not be entitled to be reimbursed for travel, living or other expenses. All authorized expense reimbursements shall be made in accordance with the Travel and Expense Guidelines.

15. **Confidentiality.** As used in this Agreement, “**Confidential Information**” means all information disclosed by a party (the “**Disclosing Party**”) to the other party (the “**Receiving Party**”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of each party shall include the terms and conditions of (i) this Agreement and (ii) business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving party. During the term of this Agreement and for five (5) years thereafter, the Receiving Party shall: (i) use at least the same degree of care to protect the Disclosing Party’s Confidential Information that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care), (ii) not disclose any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (iii) limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Additionally, Supplier shall provide prompt notification to SFDC of any unauthorized access to or disclosure of SFDC Confidential Information. If the Receiving Party is compelled by law or any listing or trading agreement concerning its publicly-traded securities to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure. Upon termination or expiration of this Agreement, or at the request of SFDC at any time during or after the termination of expiration of this Agreement, Supplier will deliver to SFDC or destroy and certify destruction (at SFDC’s election and in the manner designated by SFDC) of all SFDC Confidential Information. Deliverables shall be SFDC Confidential Information, but shall not be Supplier Confidential Information. Nothing in this Agreement shall be construed so as to preclude SFDC from developing, acquiring, marketing or providing products or services that may perform the same or similar functions as the Goods, Deliverables and Services.

16. **No Publicity.** Supplier shall not issue any press release or make any public statement relating to the subject matter of this Agreement (including naming SFDC as a customer of Supplier) without SFDC’s prior written approval. Any references to SFDC or use of any SFDC logo (including the SFDC-certified logo), brand or trademark (whether publicly, in connection with the Services, or otherwise) are prohibited without SFDC’s prior written approval.

17. **SFDC Facilities.** To the extent that the performance of Services by Supplier requires access to SFDC facilities, Supplier will perform all Services during SFDC’s normal working hours (Monday through Friday, 8:00 a.m. to 6:00 p.m.), unless it would interfere with SFDC’s daily business and computer operations, or SFDC otherwise specifically requests the Services to be done outside of SFDC’s normal working hours. Supplier Personnel performing Services at SFDC facilities shall be designated as a “visitor” of SFDC, and may be required to execute a standard confidentiality agreement upon each visit to SFDC facilities.

18. **Indemnification.** Subject to applicable law, each party’s sole indemnification obligation shall be as follows: (a) Supplier shall indemnify, defend (at SFDC’s option), and hold harmless SFDC and its affiliates, and each of their officers, directors, employees and agents from and against all third-party claims, demands, suits, causes of action, awards, judgments and liabilities, including reasonable attorneys’ fees and costs, (collectively “**Claims**”) arising out of or alleged to have arisen out of: (i) Supplier or Supplier Personnel’s negligence or intentional misconduct, (ii) any actual or alleged infringement, misappropriation, or violation of any intellectual property rights of a third party by any Deliverable or Good or in performance of the Services, (iii) Supplier’s failure to compensate or otherwise perform any obligation imposed on Supplier by law or contract with respect to Supplier’s employment or engagement of Supplier Personnel, in which case, Claims shall include any payments assessed under U.S. Internal Revenue Code Section 4980H and any interest, penalties and additions to tax relating to such payments, or (iv) breach of a provision of this Agreement; and (b) SFDC shall only indemnify, defend, and hold harmless Supplier from and against third-party Claims to the extent the Claims are due solely to SFDC’s gross negligence or intentional misconduct. Supplier shall have no liability for SFDC’s use of Goods or Deliverables outside the scope set forth in this Agreement.

19. **Insurance.** Notwithstanding anything to the contrary set forth in the Online Terms, Supplier shall, at its own cost and expense, maintain the following insurance during the term of this Agreement, and shall cause each of its agents, independent contractors and subcontractors performing any Services to maintain the same insurance:

(a) Workers’ Compensation (or locally applicable social scheme) as required by law where work is performed. Employer’s Liability insurance of not less than US$1,000,000 per employee and per accident. Coverage to include waiver of subrogation in favor of SFDC for any services performed on a SFDC location; (b) Commercial General Liability insurance including Products, Completed Operations Liability, Personal Injury, Contractual Liability and Broad Form Property Damage Liability coverage for bodily injury (including death) or damages to any property of not less than US$1,000,000 per occurrence and US$2,000,000 aggregate. “SFDC 50 Fremont LLC, salesforce.com, inc., SFDC’s property manager and SFDC’s lender shall be endorsed to the policy as additional insureds. (c) Commercial Automobile Liability. If an automobile is used by Supplier in connection with the performance of its obligations under this Agreement, then Comprehensive Automobile Liability Insurance for any owned, non-owned, hired, or borrowed automobile is required in the minimum amount of US$1,000,000 each accident combined for bodily injury and property damage; (d) Umbrella Liability insurance with limits totaling $5,000,000 each occurrence and $5,000,000 in the aggregate in excess of the limits specified above for Employer’s Liability, Commercial General Liability and Commercial Automobile Liability insurance. (e) Employee Dishonesty/Crime insurance covering the fraudulent or dishonest acts of Supplier’s employees and agents, acting alone or in collusion with others, and including third party property coverage and computer crime coverage, with limits of not less than $1,000,000 per occurrence if Supplier has unescorted access to SFDC’s facilities and/or access to SFDC’s assets and internal systems; (f) Property Insurance. If Supplier is using its own property or the property of SFDC in connection with the performance of its obligations under this Agreement, then Property Insurance on an All Risk basis with replacement cost coverage for property and equipment of others in the care, custody, and control of Supplier is required. The foregoing insurance limits may be achieved by a combination of primary and follow form excess policies. All insurance coverages required hereunder shall be procured from insurers with a current A.M Best rating of not less than A- VII (or local equivalent). Where permitted by law, such policies shall contain a waiver of subrogation in favor of SFDC. General Liability and Automobile Liability above shall contain provisions stating they are primary and non-contributory with any insurance SFDC maintains. Any deductible (excess) or self insured retention in case of an insured event shall be solely borne by the Supplier. The insurance coverage described in this section shall not limit the extent of Supplier’s responsibilities and liabilities specified within this Agreement or by law. If requested by SFDC, certificates of insurance evidencing the required coverage shall be furnished and shall evidence that the insurance carriers will provide notice of cancellation or reduction in such coverage in accordance with policy provisions. SFDC’s failure to request certificates of insurance shall not relieve Supplier from the responsibility to maintain the specified insurance coverage.

20. **Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXCEPT FOR LIABILITY ARISING UNDER SECTION 18 (INDEMNIFICATION), OR LIABILITY ARISING AS A RESULT OF A SUPPLIER’S BREACH OF ITS OBLIGATION PURSUANT TO SECTION 15 (CONFIDENTIALITY) HERETO, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR DAMAGES FOR ANY CAUSE WHATSOEVER IN AN AMOUNT IN EXCESS OF THE AMOUNTS PAID OR DUE TO SUPPLIER UNDER THE PURCHASING DOCUMENT. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXCEPT FOR LIABILITY ARISING OUR OF SUPPLIER’S BREACH OF SECTION 15 (CONFIDENTIALITY) HERETO, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES ARISING FROM ANY CLAIM OR ACTION HEREUNDER, WHETHER BASED ON CONTRACT, TORT OR OTHER LEGAL THEORY.

21. **Records and Audit.** Supplier shall maintain complete and accurate records to substantiate Supplier’s charges under this Agreement (including fees, costs, and expenses) for a period of six (6) years from the date of completion of the Services to which the records apply, and Supplier shall promptly comply with SFDC’s reasonable request for copies of such records. Upon reasonable prior notice, SFDC (or an independent third party designated by SFDC) shall have the right to visit, inspect, and audit Supplier’s facilities, records, and data to ensure Supplier’s compliance with its obligations, including those with respect to financial records and SFDC Confidential Information. All audits described in this Section will be conducted reasonably, during normal business hours, and taking reasonable precautions to minimize disruption to Supplier’s normal business. Such audit will be at SFDC’s expense unless such audit reveals an overcharge of five percent (5%) or greater or a material breach in Supplier’s obligations, in which case such audit will be at Supplier’s expense. All Supplier reviews or audits conducted by SFDC shall be governed by the confidentiality terms described in Section 15 (Confidentiality) above. All review or audits conducted by SFDC’s third party designee shall be governed by a confidentiality agreement between Supplier and SFDC’s third party designee, which shall be the standard confidentiality agreement of such third party designee.

22. **Term.** This Agreement shall continue in force until the later of

(a) completion of the Services or

(b) expiration of all warranties for Goods or Deliverables.

If this Agreement covers Goods, then this Agreement may be terminated or cancelled by SFDC, in part or in whole, for any reason immediately upon notice.

If this Agreement covers Services and/or Deliverables, then this Agreement may be terminated or cancelled by SFDC, in whole or in part, for convenience with thirty (30) days prior notice.

If this Agreement covers Services and/or Deliverables, then this Agreement may be terminated by SFDC, in whole or in part, effective as of the occurrence of Supplier’s curable breach if Supplier fails to cure the breach within thirty (30) days of notice of such breach from SFDC. If this Agreement covers Services and/or Deliverables, then this Agreement may be terminated by SFDC, in whole or in part, immediately upon Supplier’s incurable breach.

Upon the effective date of termination by SFDC, Supplier shall: (i) immediately cease all work under this Agreement and SFDC shall be liable only for authorized work completed as of the date of termination; and (ii) provide SFDC with any and all work in progress or completed work under this Agreement. If SFDC elects to have Supplier continue performance under this Agreement, it shall remain in effect until both parties have fulfilled all of their obligations. Within thirty (30) days from the date of termination of this Agreement, Supplier shall submit to SFDC an itemized invoice for any previously approved fees or expenses accrued but unpaid until the time this Agreement was terminated. There shall be no charges for canceling the purchase of standard Goods. Any claim for cancellation charges for nonstandard Goods must be submitted to SFDC in writing within thirty (30) days after receipt of SFDC’s cancellation notice. Supplier’s claim may include: (i) the cost of unique Goods in process, and (ii) the cost of paying claims to Supplier’s vendors for work directly allocable to Goods cancelled and which cannot be diverted to other customers of Supplier’s vendors. Supplier shall, whenever possible, place such Goods in process in inventory and sell them to other customers. In no event shall any such claim for nonstandard Goods exceed the total price for Goods cancelled. Upon payment of Supplier’s claim, SFDC shall be entitled to all work and Goods paid for. SFDC reserves the right to inspect Supplier’s work and Goods in process and to audit all relevant documents prior to paying Supplier’s claim.

23. **Relationship of the Parties.** At all times Supplier shall be acting as an independent contractor, and shall not be construed or deemed to be an employee, agent, partner, associate or joint venturer of SFDC within the application of any federal, state, city or local laws or regulations. Neither party has authority to assume or create any obligation or representation, express or implied, on behalf of or in the name of the other party, except as specifically provided herein.

24. **Vendor Manager.** SFDC reserves the right to appoint a third party to act as its vendor manager, payment and billing agent to coordinate and manage its relationship with Supplier. Such vendor manager shall be considered a third party beneficiary under this Agreement.

25. **No Lien.** Neither Supplier nor any of its subcontractors or other third parties used by Supplier for the performance of any of the Services will have any lien, claim or encumbrance upon any SFDC property, and Supplier hereby waives, and will cause each of its subcontractors and any other third party used by Supplier for the performance of any of the Services to waive, any lien, claim or encumbrance upon any SFDC property.

26. **Survival.** Any term or condition which by its nature is clearly intended to survive the expiration or termination of this Agreement, shall survive any expiration or termination of this Agreement, including Confidentiality, Indemnification, Limitation of Liability, Records and Audit, Term, and Entire Agreement Sections.

27. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to its subject matter, supersedes all prior agreements, whether written or oral, and supersedes and merges all prior discussions between SFDC and Supplier. The Supplemental Terms may apply, and to the extent the Supplemental Terms apply, the Supplemental Terms shall prevail over any conflicting terms in this Agreement. Any terms, conditions or provisions of any Supplier quotation, confirmation, order acknowledgement, invoice, or other commercial document sent to SFDC are hereby rejected, and shall not constitute additional or modified terms. This Agreement shall be construed according to its fair meaning and as if prepared by both parties. This Agreement may only be amended by a written document executed by both parties. A purchase order issued by SFDC may also be amended through the issuance by SFDC of a revised purchase order. The headings contained in this Agreement have been inserted for convenience of reference only and are not intended to define, limit or affect scope or intent. If a provision of this Agreement is held to be invalid, illegal or otherwise unenforceable, the remaining provisions shall be unimpaired, and it shall be replaced with a provision which comes closest to the intention of the parties. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver. Any waiver must be in writing executed by SFDC and Supplier and shall not be deemed a waiver of any future breach. The remedies provided in this Agreement are in addition to any other remedies of a party at law or in equity.

28. **Force Majeure.** Neither party shall be liable for any default or delay in the performance of its responsibilities under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by fire, flood, earthquake, elements of nature or acts of God, riots, strikes, civil disorders, quarantine restrictions, epidemics, pandemics, or any other cause beyond the reasonable control of such party (“**Force Majeure**”). The time for performance for the non-defaulting party under this Agreement will be extended as necessary, without penalty or liability to such party, for the same period of time as the delay. However, if it appears that the Force Majeure will result in a delay in Supplier’s performance of more than thirty (30) days, SFDC may, at its option, terminate this Agreement immediately by written notice to Supplier.

29. **Notices.** All notices, permissions and approvals under this Agreement shall be in writing and shall be effective upon: (a) personal delivery, (b) the third business day after mailing, (c) the second business day after sending by recognized overnight courier, or (d) the first business day after sending by email. (Notices of breach, termination or an indemnifiable claim may not be made by email. Notices to SFDC shall be addressed as set forth in the Affiliate Guidelines for SFDC.

30. **Assignment.** Supplier may not assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of SFDC, except that Supplier may assign this Agreement, in its entirety, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of SFDC.

31. **Governing Law and Venue; Disputes.** This Agreement shall be governed by the laws of the State of California. If a dispute should arise relating to this Agreement, the parties shall follow the dispute resolution procedures set forth in the Affiliate Guidelines SFDC.

**[SIGNATURES ON NEXT PAGE]**

**SFDC:**

SFDC 50 FREMONT LLC,

a California limited liability company

By: salesforce.com, inc.

a Delaware corporation

its sole member

By:

Name: John Smith

Its:

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_ (the “**Effective Date**”)

**SUPPLIER:**

Garratt Callahan,

a [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

By:

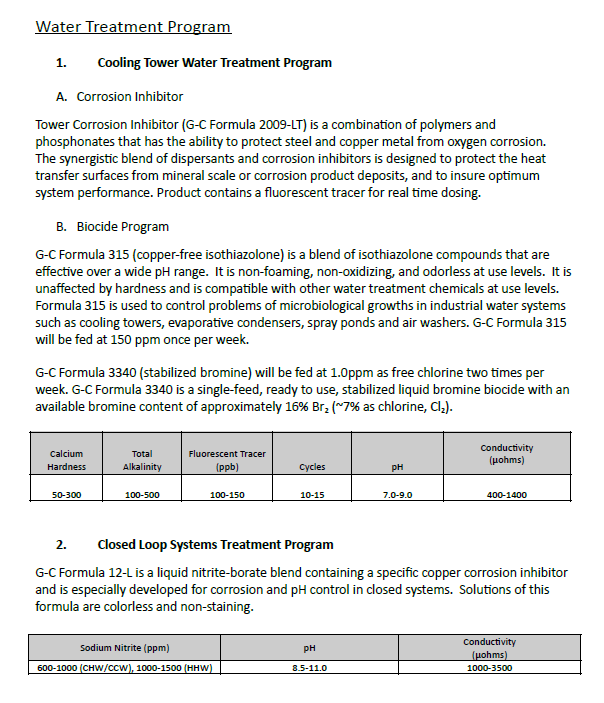
Name: Ann Brown

Its:

**EXHIBIT A**

**Scope of Work:**

Provide all chemicals for cooling towers and closed loop, test kits, reagents, and repair kits. Will also include monthly testing, training and EPA Certified Laboratory services (water analyses, microbiological studies, etc.).

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