

Miner, Ltd.
Master Service Agreement



Company Name:	
Contact Name:	
Street Address:	
City, State, Zip	

THIS MASTER SERVICE AGREEMENT (this "Agreement") is made and entered into as of the ____ day of _____, 20__ ("Effective Date") by and between Miner, Ltd. ("MINER") and _____ ("Affiliate"). In consideration of the mutual premises, covenants and agreements herein contained, the parties agree as follows:

Section 1. Engagement. MINER hereby engages Affiliate, and Affiliate hereby accepts such engagement, to perform certain services as MINER may request from time to time pursuant to a purchase order request (each, a "Purchase Order") for the performance of certain services, installation and/or maintenance work that shall be specified by a Purchase Order, issued by MINER (the "Services"). Each Purchase Order is hereby incorporated into and made part of this Agreement.

Section 2. Term and Termination.

(a) Term. The initial term of this Agreement shall commence on the Effective Date and shall continue in effect for one (1) year ("Initial Term"), unless terminated pursuant to Section 2(b) hereof. Upon the expiration of the Initial Term, this Agreement shall automatically renew for additional one-year terms, unless terminated pursuant to Section 2(b) hereof.

(b) Termination. This Agreement may be terminated (i) at any time by the mutual written agreement of MINER and Affiliate; or (ii) by MINER by giving at least ten (10) days' prior written notice of termination to Affiliate; or (iii) by either MINER or Affiliate if the other party (the "Defaulting Party") breaches this Agreement and such breach continues uncured for a period of five (5) days following written notice delivered to the Defaulting Party, specifying the nature of the breach and the date on which this Agreement is to be terminated if such breach is not cured. Termination of this Agreement will also terminate any outstanding Purchase Order, unless the parties mutually agree otherwise.

Section 3. Duties and Independent Contractor Status.

(a) Duties. Affiliate shall provide the Services during the term of this Agreement upon receipt of a Purchase Order issued by MINER. Affiliate shall have control over the means and manner of the performance of the Services, however, in providing the Services, Affiliate agrees that it will maintain adequate facilities, staffing, and communication technologies to meet normal, emergency and after hours service demands within their service area and shall expend such time and energy as Affiliate determines to be necessary in order to provide the Services (i) to the best of Affiliate's ability; (ii) in a diligent, careful, thorough and professional manner; (iii) consistent with good business practices; (iv) in compliance with all laws, rules and regulations, federal, state and municipal, which are now or may become applicable to the Services, including without limitation, OSHA regulations; and Affiliate shall be responsible for all costs and penalties and shall defend, indemnify and hold harmless MINER, its subsidiaries, affiliates, and their divisions and successors, agents, servants and employees against claims resulting from Affiliate's failure to so comply; (v) in strict compliance with this Agreement and the specifications contained in the applicable Purchase Order; and (vi) to the reasonable satisfaction of MINER. Affiliate certifies that it possesses the required knowledge, skill, resources, and financial wherewithal to perform the Services in accordance with this Agreement and the applicable Purchase Order. Affiliate shall have no authority to incur or alter any obligation of MINER or bind MINER to any contract, obligation, or commitment. If MINER provides Affiliate with certain parts or products ("Parts") Affiliate must use the Parts provided by MINER. Upon Affiliate's receipt of the Parts, Affiliate shall inspect all Parts. If the parts are damaged, Affiliate shall reject the shipment and note the damage on the bill of lading. A copy of the bill of lading shall be immediately sent to MINER. After acceptance of the Parts, Affiliate is liable for any damage, theft, or loss of the Parts. Affiliate will not have, or at

any time acquire any right, title, or interest in the Parts, except the right to possession and use as provided for in this Agreement or any applicable Purchase Order. As between MINER and Affiliate, MINER will be the sole owner of the Parts. If Affiliate cannot use the Parts provided by MINER, Affiliate must contact MINER with a detailed explanation and must receive approval from MINER before proceeding with the Services using alternate parts or products. If the Parts are delivered to Affiliate damaged, or Affiliate otherwise does not utilize the Parts for a Purchase Order, Affiliate must contact MINER for returned goods authorization.

(b) Independent Contractor Status. No provision in this Agreement shall be construed as giving any degree of control or direction on the part of MINER that would create an employment relationship between MINER and Affiliate. Affiliate shall at all times be an independent contractor and nothing in this Agreement shall be construed to create the relationship of employer and employee, principal and agent, partnership or joint venture as between Affiliate and MINER. In addition, all names, marks, logos and other designations of MINER are and remain the sole property of MINER and Affiliate shall not use MINER names, marks, logos or other designations for any reason, without the express written consent of MINER.

Section 4. Certification. Affiliate certifies that it and its employees have not been convicted within the past seven (7) years of any misdemeanor or felony, including but not limited to, assault, battery, robbery, embezzlement, fraud, and distribution of narcotics or possession of same and conducts any drug testing and performs background checks of its employees. Affiliate further certifies that it shall inform MINER of any such conviction that may occur after the date hereof prior to performing any further Services. Affiliate also certifies compliance with all federal, state, and local employment laws and regulations, including, but not limited to, the Immigration Reform and Control Act ("IRCA"). Affiliate specifically certifies that each of its employees have completed an I-9 form as required by IRCA and that the completed forms will be maintained by Affiliate in accordance with the provisions of IRCA. Affiliate further certifies that neither it nor its employees are a person or entity with whom U.S. entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order or other governmental action and shall not allow any such person or entity to perform any Services. MINER may from time to time require additional credentials or security screenings.

Section 5. Compensation. In consideration of the Affiliate's full and faithful performance of this Agreement and completion of the Services, MINER shall pay to Affiliate the amount properly invoiced by the Affiliate (up to the agreed-upon not-to-exceed amount set forth in a Purchase Order), within thirty (30) days of the date of receipt of the invoice. In the event Affiliate fails to submit an acceptable invoice and supporting documentation to MINER within thirty (30) days of performing the Services, MINER shall not have any duty to pay any amounts owed for such Services. Affiliate shall not receive or request any payment directly from Customers. Affiliate shall be responsible for the payment of any and all federal, state and local taxes. Affiliate shall, as often as requested, furnish such information, evidence and substantiation as MINER may require with respect to the performance and completion of the Purchase Order. MINER reserves the right to withhold and retain from any and all amounts payable to Affiliate hereunder, without limiting its other rights and remedies, an amount sufficient: (a) to defend, satisfy and discharge any asserted claim that Affiliate has failed to make payment for labor, work, materials, equipment, taxes or other items, (b) that Affiliate has caused damage to the property of any Customer; (c) to reimburse MINER for any costs incurred as a result of any act or omission by Affiliate; and/or (d) to protect MINER from the possible consequences of any other breach or default by Affiliate hereunder. Further, Affiliate may be subject to other withholding, retentions and financial penalties related to Affiliate's poor performance or non-performance, which poor or non-performance shall be communicated by MINER to Affiliate from time to time as necessary. Affiliate shall neither attach nor permit the attachment of any liens upon the property of any Customer as a result of Affiliate's performance of the Services. If payment is not made, Affiliate's sole remedy shall be limited to filing suit or taking any other appropriate legal action.

Section 6. Confidential Information. All information, materials or documents in any way regarding or relating to MINER or its respective businesses including, without limitation, information of a technical, design, business, financial or commercial nature, whether oral, written, electronic or in any other form (collectively, the "Confidential Information") shall: (a) be and at all times remain the sole and exclusive property of MINER; (b) not be used by Affiliate for any reason or purpose except in direct connection with Affiliate's performance of its duties and obligations under this Agreement; and (c) not, without the express prior written consent and approval of MINER in each instance, be disclosed by Affiliate in whole or in part to any person or entity. Affiliate acknowledges that money damages would be an inadequate remedy for the injuries and damage that would be suffered by MINER in the case of Affiliate's breach of this Section 6. Therefore, MINER, in addition to any other remedies it may have at law or in equity, shall be entitled to injunctive relief to enforce the provisions of this Section 6, without the necessity of proving damages or posting bond. Any Confidential Information in the possession of or under the control of Affiliate, including any copies or summaries thereof, shall be promptly returned to MINER upon request. AFFILIATE SHALL INDEMNIFY AND HOLD HARMLESS MINER AS WELL AS ITS OWNERS, MEMBERS, SHAREHOLDERS, MANAGERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND INDEPENDENT CONTRACTORS FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, DAMAGES, LOSSES, COSTS, AND EXPENSES WHATSOEVER (INCLUDING LITIGATION EXPENSES AND REASONABLE ATTORNEYS' FEES IN CONNECTION WITH THE DEFENSE, COMPROMISE, AND/OR PAYMENT OF ANY OF THE FOREGOING) ARISING OUT OF OR RESULTING FROM ANY BREACH OF THIS SECTION 6 BY AFFILIATE OR ITS OWNERS, MEMBERS, MANAGERS, SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR INDEPENDENT CONTRACTORS. Affiliate's duties and

obligations under this Section 6 shall survive the expiration or termination of this Agreement. Affiliate's liability for any breach of this Section 6 shall not be subject to any limitation of liability provision contained elsewhere in this Agreement.

Section 7. Representations and Warranties. Affiliate warrants and guarantees to MINER that the workmanship, all materials and equipment furnished, and all other aspects of the Services shall be provided in conformance with this Agreement, be of the finest quality and be free from faults and defects. Without limiting the foregoing or any other liability or obligation with respect to the Services, Affiliate shall, at its expense and by reason of its express warranty, make good any faulty, defective or improper parts of the Services. Without limiting the foregoing, if MINER determines, or a Customer makes a claim, that there is a fault or defect in Affiliate's work, Affiliate shall use its best efforts to remedy such fault or defect promptly at Affiliate's sole cost and expense. If Affiliate fails to do so, MINER shall have the right to either (a) receive a refund from Affiliate for the full amount paid to Affiliate for such Services (b) withhold from any future payments due to Affiliate, or (c) have the Services performed by another provider and charge Affiliate the costs to do so. The foregoing remedies shall be in addition to any and all other remedies available to MINER at law or in equity.

Section 8. Notices. All notices and other communications shall be in writing and will be deemed sufficient: (a) upon receipt, if delivered personally or if mailed by registered or certified mail return receipt requested and postage prepaid; (b) at noon on the date after dispatch, if sent by a nationally recognized overnight courier; or (c) upon the completion of a facsimile transmission (which is confirmed by telephone or by a statement generated by the transmitting machine). In any case, such notice shall be delivered to the parties at the addresses or facsimile numbers as specified below (or at such other address or facsimile number for a party as will be specified by like notice):

If to MINER:
Miner, Ltd.
Attn: General Counsel
3235 Levis Commons Blvd.
Perrysburg, OH 43551
Fax No. (567) 336-9763

If to Affiliate:

Section 9. Non-Solicitation of Customers and Employees.

(a) Non-Solicitation of Customers. While Affiliate is an independent contractor of MINER and for two (2) years thereafter, Affiliate shall not, directly or indirectly, solicit, be hired or retained by, consult with, or otherwise contract with any Customers (as hereinafter defined) of MINER, either for Affiliate itself or on behalf of any other entity which shares common ownership with Affiliate. For the purposes of this Section 9(a), the term "Customers" means any and all clients or customers of MINER as of the date Affiliate ceases to be an independent contractor of MINER and during the two (2) year period immediately preceding the date Affiliate ceases to be an independent contractor of MINER.

(b) Non-Solicitation of Employees. While Affiliate is an independent contractor of MINER and for two (2) years thereafter, Affiliate shall not, without MINER's prior written approval in each instance, solicit or engage as an independent contractor, or solicit or offer employment to, any of MINER's present or future employees either for Affiliate itself or on behalf of any other person or entity.

(c) Injunction/Damages. The existence of any claim or cause of action by MINER against Affiliate, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by MINER of the covenants contained in this Section 9. The Parties agree that the covenants contained herein may be enforced in law or in equity, including, but not limited to, injunctive relief. Accordingly, Affiliate agrees that in the event of the breach of any of the covenants contained herein, MINER will not have an adequate remedy at law other than an injunction and that damages may be difficult to ascertain as the result of such breach. Affiliate agrees that if an injunction is sought by MINER, MINER need not show proof of actual damage and Affiliate waives any requirement that MINER post bond pursuant to such legal action. Nothing contained herein shall prevent MINER from bringing an action at law and recovering actual damages, as all remedies are cumulative.

(d) Reasonableness and Necessity of Covenants. Affiliate specifically acknowledges and agrees that (i) the foregoing restrictions are reasonable and necessary to protect the legitimate interests of MINER; and (ii) any violation of such restrictions will result in irreparable injury to MINER. In the event any of the restrictions contained in this Section 9 should ever be deemed to exceed any limitations permitted by applicable laws, rules, or regulations because of its duration or scope, the parties agree that the court making such determination shall reduce the duration and/or limit the scope of such restriction to the longest duration or greatest scope which is legally permitted, and, in said reduced or limited form, such restriction shall then be enforced.

Section 10. Indemnification & Hold Harmless. Affiliate agrees to defend, protect and indemnify MINER, its subsidiaries, affiliates, and all their divisions and successors, officers, directors, agents, servants and/or employees, and their customers, and their affiliates, officers, directors, agents, employees, owners, lessors, and lessees and save them harmless from and against any and all claims, actions, proceedings, damages, liens, encumbrances, liabilities and expenses (including attorney's fees and costs of litigation) in connection with loss of life, bodily injury, personal injury and/or damages to property (1) arising from or out of any accident or occurrence in, upon or at the premises that are the subject of the Purchase Orders; (2) resulting from the Affiliate's actions, omissions, activities, in performing any Services; or (3) the use or occupancy of said premises, including any acts or omissions of Affiliate's, agents, contractors, servants, licensees, employees or concessionaires. This indemnification shall be total and complete and shall include any and all reasonable costs and expenses incurred by MINER, its subsidiaries, affiliates, any of their divisions, successors, officers, directors, agents, servants and/or employees, and/or their customers, and their affiliates, agents, employees, owners, lessors, and lessees, as their interest may appear, in relations to any such claims, actions, proceedings, damages or liabilities. In claims against any person or entity indemnified under this Section 10 by an employee of the Service Provider or anyone for whose acts they may be liable, the indemnification obligation under this Section 10 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Service Provider under workers' compensation acts, disability benefit acts, or other employee benefit acts.

Section 11. Insurance. Affiliate shall, at its expense, carry and maintain at all times during the performance of the Services, Commercial General Liability, Automobile, Workers Compensation, and Umbrella insurance coverages and limits as outlined in the sample certificate attached hereto as Exhibit A and incorporated herein. The Commercial General Liability policy shall provide that: (1) Miner, Ltd., its subsidiaries, affiliates, and all their divisions and successors, and their customers, shall be included as additional insured (with endorsements provided), (2) not less than thirty (30) days prior, written notice shall be given to MINER in the event of any alteration to the terms of such policy or of the cancellation or non-renewal of such policy, (3) such insurance coverage will be primary and non-contributory, (4) subrogation is waived against MINER, its subsidiaries, affiliates, and all their divisions and successors, and their customers, and (5) contractual liability coverage covering this Agreement is included. Affiliate shall furnish MINER with a certificate of insurance evidencing coverage, and a certificate of insurance as evidence of renewal at least 30 days prior to expiration of each policy. Affiliate shall also furnish MINER with copies of the applicable endorsements. The amount of such required insurance coverage under this Section shall not limit Affiliate's obligations under this Agreement. Affiliate represents that this Agreement is covered by the contractual liability coverage provision of the Affiliate's liability policy. Affiliate shall be responsible for obtaining legally required workers' compensation insurance for itself and for any and all employees, agents and/or independent contractors that Affiliate may employ or engage in performing Services under this Agreement. Proof of such workers' compensation coverage will be provided to MINER upon demand. Failure to provide an acceptable and current certificate of insurance and an additional insured endorsement in compliance with directions as might be provided by MINER, will be cause for MINER to retain any and all amounts owed to Affiliate until acceptable and current certificates of insurance and applicable additional insured endorsements are received by MINER. For work performed in New York, Affiliate shall include the ACORD 855 NY Construction Certificate of Liability. This is a supplement to the standard ACORD 25- Certificate of Liability insurance and must be included before work is performed.

MINER reserves the right to modify these requirements, including, but not limited to, limits, types, and endorsements, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

Section 12. Miscellaneous.

(a) Governing Law. This Agreement and the respective rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of Texas, without regard to such conflict of law provisions.

(b) No Assignment or Delegation. Affiliate is not authorized to assign, delegate or subcontract Services requested by MINER to other parties.

(c) Severability. If any provision of this Agreement is held to be invalid or unenforceable for any reason, such provision shall be reformed to comply with the law and enforced accordingly, and all remaining provisions of this Agreement shall remain in full force and effect and will be binding upon the parties hereto.

(d) Arbitration and Mediation. Any controversy, claim or dispute during the course and scope of this Agreement, or arising out of, or relating to, this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate ("Dispute"), shall be determined by arbitration in San Antonio, Texas, before a sole arbitrator, in accordance with the laws of the State of Texas. "Disputes" shall include, without limitation, those involving claims, damages, liabilities, fees, costs, billings, claims of professional negligence, negligence and claims for indemnity. The arbitration shall be administered by JAMS/ENDISPUTE ("JAMS") or an arbitrator mutually agreed upon by the parties ("the Arbitrator"). The Arbitrator shall, in the award, allocate all of the costs of the arbitration (and the mediation, if applicable), including the fees of the arbitrator and the reasonable attorneys' fees of the

prevailing party, against the party who did not prevail. Judgment on the award may be entered in any court having jurisdiction. Prior to Arbitration under this provision, mediation shall be conducted prior to the arbitration pursuant to the Mediation Rules of JAMS. Said request for Mediation shall be made in writing and delivered to the other party. If Mediation does not occur within forty-five (45) days of delivery of such written request, all parties are relieved of their obligation to conduct mediation before arbitration. Failure of a party to engage in Mediation prior to Arbitration shall result in the loss of that party's right to collect attorneys' fees and costs, even if that party is deemed to be the prevailing party.

(e) Entire Agreement and Amendments. Together, this Agreement, with each Purchase Order embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, oral or written, relating to said subject matter. This Agreement may only be modified by written agreement of the parties.

(f) Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed an original.

(g) Waiver. Neither party will be deemed to have waived any right, power or privilege under this Agreement unless such waiver is in writing and signed by the waiving party. The failure of either party hereto to enforce any provision of this will not be construed as a waiver of any other provision.

(h) Safety Requirements. Affiliate shall comply with all applicable state and federal safety laws, rules regulations and standards, including, without limitation, those issued by the Occupational Safety and Health Administration (OSHA). Affiliate will participate in pre-job meetings and safety orientation as required before work can begin. Affiliate will participate in all tailgate safety meetings subject to job safety inspections. Upon completion of work, the Affiliate will be subject to a post-job safety performance review.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the Effective Date.

Affiliate		Miner, Ltd.	
By (Print Name):		By (Print Name):	
Signature:		Signature:	
Title:		Title:	
Date:		Date:	