

OPERATIONS AND MAINTENANCE SERVICES TERMS AND CONDITIONS (“OMS TC”) (Version 02.2025)

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1 Scope of Application

- 1.1 These OMS TC for services and spare parts’ supply shall apply as the basis for any OMS Proposal of, and for part of any contract concluded by CellCube Energy Storage Inc., a Colorado corporation, with its office located at 4949 S Syracuse St, Ste 550, Denver, CO 80237, USA (“**CellCube**”) relating to the provision of operation and maintenance services and/or the supply of spare and wear parts – be it in the frame of a Service Package or otherwise - for an Energy Storage System supplied and installed by CellCube or any third party authorized by CellCube (“**Operation and Maintenance Services Contract**” or “**OMS Contract**”) as well as any extensions or prolongations of such contract.
- 1.2 The documents referred to below form integral parts of the OMS Contract, are to be taken as mutually explanatory, and shall – in case of any discrepancy or inconsistency – be interpreted in the following decreasing order of priority:
 - (1) List of applicable permits by public authorities and private consents, norms of technical nature and technical standards (“List of Permits, Consents, Norms and Standards”)
 - (2) OMS Proposal;
 - (3) these OMS TC;
 - (4) Manuals
 - (5) Standard Service Packages and Rate Sheet;
- 1.3 For the avoidance of doubt, it is expressly agreed that the List of Permits, Consents, Norms and Standards has been drafted and provided by Customer because of its prevailing knowledge in this respect. CellCube does not assume any liability or review and warning obligation for the completeness or correctness of the List.

- 1.4 These OMS TC shall also apply to future services of CellCube to Customer without a separate agreement. These OMS TC however do not apply to any contracts for the current and future production, sale or supply of products distributed by CellCube and/or the provision of works or services for the installation of such products to Customer.
- 1.5 These OMS TC apply exclusively. Thus additional, deviating, conflicting or supplementary general terms and conditions or other standardised contract forms ("**Customer GTC**") shall only be effective, if expressly agreed in writing between CellCube and Customer. An implied agreement of, or inclusion of Customer GTC into an OMS Contract is excluded. The manner of fulfilment of any contract by CellCube and the Customer and commercial customs do not constitute a change of these OMS TC.
- 1.6 CellCube may amend these OMS TC from time to time. The OMS TCs as amended at the time of the conclusion of the OMS Contract and provided or updated on CellCube' website, available at <https://www.cellcube.com/legal-information/>, become part of the respective OMS Contract.

2 Definitions and Interpretation

- 2.1. In these OMS TC, except where explicitly set forth otherwise, or where the context unambiguously requires otherwise, terms and abbreviations shall have the meaning given to them below:

"Battery Management System" or "BMS" means battery control hardware and software including fluid temperature and pressure control, pump control and charge level measurement. The BMS is managed and controlled by the FBC.¹

"OMS Proposal" means the Cellcube proposal to Customer forming the basis of one or more OMS Contracts and/or one or more additional agreement(s) for Unexpected Services and/or Unexpected Supplies relating to one or more FBS of a Customer.

"Cellcube" is CellCube Energy Storage Inc. as defined in clause 1.1 or its legal successor in an O&M Contract of which these OMS TC are a part.

"CellCube Flow Battery System" or "FBS" means a containerized DC battery system consisting of stacks, fluid system and tanks; as well as one or more Flow Battery Controllers (FBCs).

"Change" means any adjustment of the Scope of Services within the frame of the OMS Contract as set forth in detail in clause 8.

"Change Order" means the instruction issued by Customer in writing by which it accepts a proposal for a Change as set forth in detail in clause 8.2.

"Customer GTC" has the meaning as defined in clause 1.5.

"Customer" is the Party defined in the OMS Proposal as customer, or its legal successor, that must be the owner or operator of one or more FBS which are the object of services and/or supplies under an OMS Contract.

"Electrolyte" or "Vanadium Electrolyte" means the energy carrier in the form of an electrically conductive water-based liquid with dissolved vanadium ions as active species that is inserted into an FBS for its operation.

"Extended O&M" means the service package with the same name offered for a fixed term as defined in more detail in clause 5 and Annex "Standard Service Packages and Rate Sheet".

"Flow Battery Controller" or "FBC" is the communication interface for the Customer. It controls and monitors multiple DC units, the PCS, and receives commands from the SCS.

"IBC" or "Intermediate Bulk Container" is an industrial-grade container used for the transport and storage of electrolytes.

Installation and Commissioning: Installation of equipment, its commissioning and testing (ensuring that the installed equipment or system is operational and meets the specified requirements) with Customer's support.

¹ For stand-alone systems realized with one FB 333 or one FB 667, the FBC is implemented in the BMS hardware; meaning for such solutions, no additional FBC hardware is needed for system implementation.

“Liquidated Damages” or “LDs” means the compensation for a failure of the other Party to perform fully and correctly any of its obligations in connection with this OMS Contract as set forth in detail in Clause 14.3.

“OMS Contract” has the meaning as defined in clause 1.1.

“OMS Proposal” means the proposal by Cellcube for an OMS Contract that has been accepted by Customer.

“OMS TC” are these general terms and conditions.

“Operation and Maintenance Services” or “OMS Services” mean operating and maintenance activities, as set forth in the OMS Contract.

“Party” or “Parties” means CellCube or Customer or both.

“Power Conversion System” or “PCS” means a bi-directional, 4-quadrant inverter. The PCS system is housed in an enclosure as specified by the supplier and can be connected to (medium voltage) step-up transformers for grid voltage interconnection.

“Remote Monitoring (only)” means the service package with the same name as defined in more detail in the Scope of Services.

“SAT” means Site Acceptance by CellCube.

“Scope of Services” has the meaning as defined in the OMS proposal or any specific contract between the Parties.

“Services” means all services and supplies set forth in detail in clause 5.1.

“Service Price” shall be the total pursuant to clause 9.1.

“Site” means Customer’s premises where the FBS is being operated.

“Site Preparation Guide” or “SPG” includes site requirements, information about foundation, electrical connections, data communication, installation, and necessary preparation by Customer.

“Strategic Spare Parts Package” means the service package with the same name as defined in more detail in Annex “Standard Service Packages and Rate Sheet”.

“Supply And Installation Agreement” or “SIA” is the agreement between CellCube and Customer for the design, procurement, supply, installation and software control, testing and commissioning of the FBS.

Switchgear: Electric power system composed of electrical disconnect switches, fuses or circuit breakers used to control, protect, and isolate electrical equipment.

Transformer: A transformer is a passive component that transfers electrical energy from one electrical circuit to another circuit. Transformers are used to change AC voltage levels; such transformers being termed step-up (or step-down) type to increase (or decrease) the voltage level.

“Unexpected Services” are other services than those of the Service Packages as further defined in clause 5.2.

“Unexpected Supplies” are other supplies than those of the Service Packages as further defined in clause 5.2.

2.2. In these OMS TC and any OMS Contract, except where the context requires otherwise:

- words indicating one gender include all genders and words indicating the singular also include the plural and words indicating the plural also include the singular;
- “written” or “in writing” means handwritten, printed, or electronically made, and resulting in a permanent record;
- references to Clauses, Sub-Clauses or Annexes are to the clauses and sub-clauses of and Annexures to the OMS Contract;
- any reference to the OMS Contract shall be interpreted as to the latest agreed version as amended by all Changes; any reference to any law or statutory provision, government or regulatory ordinance, or EU regulation or directive, shall be to the version applicable when the subject matter in question takes place, whereas references to technical norms and standards mean the version applicable as of concluding the OMS Contract.

- Annexes to the OMS Contract are also Annexes to these OMS TC in the order of prevalence as under the OMS Contract.

3 Conclusion of Contract

- 3.1 An OMS Contract is concluded when Customer either (i) accepts the OMS Proposal by counter signing it, or (ii) issues a purchase order referencing the OMS Proposal. The OMS Contract enters into effect on the day following the last signature by Customer or the date of the purchase order, depending on which form of acceptance occurs. The Services commence on the date given in the OMS Proposal.
- 3.2 Unless expressly designated as binding, proposals and other offers by CellCube for the conclusion or amendments of contracts are subject to change without notice and are non-binding: non-binding Proposals constitute an invitation to a potential customer or existing Customer to submit a request for a Binding Proposal.
- 3.3 Binding Proposals by CellCube are valid for a period of one (1) month from the date of the Proposal, unless stated otherwise in the Proposal.
- 3.4 All catalogues, specifications, price lists or similar documents prepared by CellCube are for information purposes only and are not deemed to be a Proposal. CellCube believes that these documents are complete and correct at the time of printing; however, CellCube does not guarantee that these documents are free of errors. CellCube accepts no responsibility for any damage resulting from such documents or similar.
- 3.5 Deviations from a binding or non-binding Proposal of CellCube or other requests by a potential customer, such as delivery requests, deadlines, and discounts, shall be treated as non-binding suggestions of the (potential) customer. They shall only become part of the OMS Contract if they are expressly and in writing included by CellCube into a binding proposal.
- 3.6 If Customer includes certain specifications, configurations and other requirements for Services as well as their functionality and compatibility with other Services (not authorised by CellCube) and their suitability for a certain use in a request of a proposal or if these become part of the OMS Contract, Customer is solely responsible for the correctness, accuracy and completeness of these and the information on which these specifications are based. Customer warrants that all information provided to CellCube for preparing a proposal or an agreement or within the frame of performing an agreement is complete, accurate and truthful and acknowledges that CellCube may not be able to fully perform obligations or exercise rights under an agreement if it fails to provide CellCube with complete, accurate and truthful information or instructions. Any duty of CellCube to warn the customer in the event of incorrect instructions or unsuitable materials provided by Customer is expressly excluded. CellCube does not assume any liability for these specifications.

4 Compliance with Laws and Regulations

- 4.1 Subject to the OMS Contract, CellCube shall perform its services and supplies under the OMS Contract in compliance with all applicable laws, regulations, and ordinances, binding technical norms and good industry practise applicable to maintenance and repair of redox flow batteries as in force at conclusion of the OMS Contract. Spare parts will be in conformity with the rules as above for the original parts.
- 4.2 CellCube is responsible for obtaining at its costs all licenses for itself and its sub-contractors that are required to perform services as under the OMS Contract.
- 4.3 Customer is responsible for obtaining and maintaining in force at its costs all licenses or permits from public authorities and private consents required for the operation of the FBS, and/or relating to the site and its facilities. Cellcube is not responsible for obtaining any such licenses or permits for Customer.

- 4.4 If Services are provided on the site of an FBS or at Customer's other premises, Customer must comply with all applicable laws and other rules for the protection of the health and safety of persons and the premises, as well as respect CellCube's internal regulations, common practices and other internal company regulations given to Customer. Customer confirms that it is aware of these regulations and ensures that they are obeyed by its personnel.
- 4.5 Customer undertakes to bear all adverse financial and other consequences resulting from non-compliance with clause 4 and to indemnify and hold CellCube harmless from any damages CellCube, its personnel and/or its sub-contractors may (have) suffer(ed) and any claims of third persons against CellCube or its staff/subcontractors based on any failure of Customer to do so.
- 4.6 Customer assumes the risk of any changes in laws including tax laws, and technical norms and standards applicable at the Site and in the jurisdiction in which the Site is located and of any changes in any permit or consent in the List of Permits, Consents, Norms and Standards, whereas CellCube assumes such risk relating to its home jurisdiction and the jurisdictions of its suppliers and sub-contractors.

5 Scope of Services

5.1 General Provisions

- 5.1.1 The services and supplies under the CellCube Scope of Services as listed in the OMS Proposal constitute the Services owed by CellCube to Customer.
- 5.1.2 Customer may amend the Scope of Services and/or the Unexpected Services and/or Unexpected Supplies by issuing Change Orders pursuant to clause 8.
- 5.1.3 The response time of the CellCube service desk or of a subcontractor authorized by CellCube in cases of Unexpected Services, Unexpected Supplies, and Change requests shall be no longer than three working days in Austria upon receipt of the respective notification or request by CellCube.
- 5.1.4 Expenses and increased service costs of CellCube that arise from the relocation of an FBS or some of its components, from maintenance works carried out by the Customer, extensions or upgrades of the FBS, repairs or exchange of external security devices or switch- and control gear, extensions of the range of functions as well as any third party services on behalf of CellCube are not included in the Service Packages as defined in the Scope of Services.
- 5.1.5 CellCube is entitled at its own discretion to either perform the Services, Unexpected Services, and/or Unexpected Supplies by itself or to use sub-contractors of all levels and its suppliers for one or more parts thereof.
- 5.1.6 CellCube shall not be obliged to continue Services, Unexpected Services, and/or supplies if and as soon as Customer instructs another entity with maintenance and repair services for the FBS being the object of the OMS Contract.
- 5.1.7 Inverters, cables outside the battery and the electrolyte used by the FBS shall not be the object of Services.

5.2 Unexpected Services and Unexpected Supplies

- 5.2.1 In addition to the Scope of Services, Customer may need repair and/or maintenance services (including works and supplies) on the site of an FBS being the object of an OMS Contract that are not foreseen in the OMS Contract ("**Unexpected Services**" and "**Unexpected Supplies**"). Unexpected Services and/or Supplies comprise in particular:
- (a) Servicing, maintenance and inspections of components and parts not delivered by CellCube, or which are part of the AC-supply / connection incl. inverters, or which are not part of the OMS Contract.
 - (b) Travel time, expenses for travel and accommodation shall be borne by the Customer.

- (c) The rectification of faults and damages due to faulty operation by the Customer or third parties or by misuse, or causes outside the sphere of responsibility of Cellcube, the rectification of faults and damage following improper external incidents, damage due to Force Majeure in accordance with clause 13.1. This shall in particular apply to non-approved electrical consumers that overload the FBS.

5.2.2 Customer may at any time ask for a proposal by CellCube for such Unexpected Services by indicating its needs and any time constraints. Such request shall be considered a request for a Change in the meaning of clause 8 and the Parties shall proceed in accordance with clause 8. As to Unexpected Supplies, also clause 5.3.2 applies.

5.3 Supply of Spare Parts

- 5.3.1 The Parties agree that the quantities of spare parts defined in the “Strategic Spare Parts Package” – if booked – or otherwise agreed in the Scope of Services or in a specific agreement between the Parties, are based on the FBS design and normal operating conditions and are sufficient for the operation and repair of the FBS.
- 5.3.2 If Customers requires additional or other spare parts, CellCube shall within 7 days after receipt of Customer’s respective request inform Customer of the expected delivery time and price of such parts and Customer shall within 4 days confirm or cancel the purchase of such spare parts.
- 5.3.3 If Cellcube supplies any spare parts, Incoterms 2020 shall apply exclusively. In the absence of an explicit agreement to the contrary, the Incoterms 2020 FCA Wiener Neudorf, Austria shall be the default applicable term.

6 Suspension of Services

- 6.1 Customer shall not suspend the Services of Cellcube under an OMS Contract unless Customer provides sufficient security for the payment of any additional costs caused by such a suspension. Any suspension shall be instructed in the form of a Change pursuant to clause 8 below and shall entitle CellCube to an appropriate extension of time for achieving its key milestones as agreed in the Scope of Services and for compensation of additional costs.
- 6.2 During such suspension, Customer shall protect, store, and secure all affected parts of the FBS, supplies and works of CellCube, e.g. spare parts and/or machines or tools, against any deterioration, loss, or damage.

7 Responsibilities of Customer

7.1 General

The following relates to all services and supplies by CellCube under an OMS Contract:

- 7.1.1 For any service including works on its premises, Customer shall make available to CellCube free of charge any assistance including auxiliary personnel (in the required number and for the required time), lifting gear, scaffolding and sundry supplies and incidentals as well as all materials that CellCube may require for the smooth performance of the Services. Customer is responsible for ensuring that his auxiliary personnel follow CellCube’s instructions.
- 7.1.2 Customer shall do everything necessary to ensure that the Services can be started on time and carried out without interruption.
- 7.1.3 Customer carries out any necessary preparatory work in a professional manner at its own expense and responsibility and makes all existing documents available to CellCube in good time (e.g. plant documentation, operating and control books). These documents remain the property of Customer and may only be used by CellCube or its subcontractors for the purposes of the OMS Contract.

- 7.1.4 Customer takes all necessary accident prevention measures at his own expense. Customer will inform CellCube if it has to take special measures for the protection of its staff or for the protection of third parties.
- 7.1.5 Customer secures the parts of the plant on which work is to be carried out and disconnects upstream or downstream parts from electricity supply before CellCube commences Services. CellCube is entitled to refuse or interrupt Services at Customer's expense if safety is not guaranteed.
- 7.1.6 Customer comprehensively insures all personnel provided by him and assumes any liability for such personnel. CellCube shall not be liable for any damage caused by the Customer's personnel.
- 7.1.7 Customer safely stores and provides access to CellCube to the spare parts as defined in clause 5.3.1 and to other special tools as agreed and checks these together with CellCube for completeness and damage before each commencement date of Services (for example, to provide climbing aids including any safety devices in proper condition).
- 7.1.8 Customer provides free of charge dry, heatable, or air-conditioned lockable premises - at the site of the FBS or within not more than 15 minutes driving time from such site - suitable for the safe storage of delivery parts, tools as well as clothing and other property and sanitary facilities for CellCube's personnel.
- 7.1.9 Customer informs CellCube about any temporary or final shutdown of equipment and about the occurrence of malfunctions.
- 7.1.10 Customer will provide country-specific and safety-relevant new and unused PPE (Personal Protective Equipment) for the entire time of CellCube' services at the site of the FBS.
- 7.1.11 Customer bears the costs for energy for the charging and discharging test as well as for performing the Services.

7.2 Specific Obligations

- 7.2.1 The Customer shall be responsible for the availability of a 24/7 internet connection throughout the term of the OMS Contract with at least 10 GBit up- and 10 GBit download speed to allow CellCube data transfer between the CellCube operations centre and the cloud-server for the installed FBS. Customer agrees that CellCube stores and processes data generated by the operation of the FBS with a security level of an international market standard to the extent needed by CellCube to perform its obligations in connection with the OMS Contract via cloud services as well as for research and development.
- 7.2.2 During the dates for Services, Customer shall provide either of the following means of data transmission to enable the daily data transfer for the remote diagnostic function and the online alerting of the service centre:
 - (a) SIM card with data transfer capability; or
 - (b) integration into a Customer's LAN or private mobile network both with permanent 24/7 internet access with required open ports without any data limitation
- 7.2.3 Customer shall be responsible for the storage of, and keeping available for the Services, spare parts provided by CellCube (compliant with the specifications by CellCube and/or the respective supplier). This also applies to spare parts which Customer shall at its cost and risk maintain at any time as and if agreed but which are no component under the Strategic Spare Parts Package.
- 7.2.4 The operation of the FBS over a lengthy period of time without any discharge cycles below a state of charge (SOC) of 40% can have a negative effect on electrolyte stability. Customer shall discharge the battery below a SOC of 40% once in every 30 days. If Customer fails to do so, the warranty on the electrolyte under the OMS Contract (and the supply contract) expires so that all costs to restore the initial state will be costs for Unexpected Services and Supplies.

- 7.2.5 Customer will provide employees and sub-contractors of CellCube and their equipment with unhindered and free access to the FBS to be serviced and the required service space around such FBS and maintain such access during any Services and Supplies. CellCube staff must at all times be able to access the Site by car. Customer shall take all necessary steps to protect CellCube's and sub-contractors' personnel against safety and health hazards so that any Services do not have to be provided under dangerous or health-endangering conditions.
- 7.2.6 Customer shall notify CellCube immediately and in writing on any modification of the serviced FBS and/or its devices, its operation or any other measures that might have adverse impact on CellCube's contractual obligations.
- 7.2.7 In due time before the agreed Service dates, Customer shall make available the devices to be serviced to CellCube's personnel. Customer shall notify CellCube without unreasonable delay if Customer is not capable of receiving Services by CellCube at the agreed time.
- 7.2.8 Customer shall compensate CellCube for all expenses arising from breach of its obligations under this clause 7, in particular costs for waiting time or repeated visits.
- 7.2.9 Customer is obliged to dispose of replaced spare parts, dismantled parts, equipment not used and other waste (e.g. such as stacks, hoses, chemical waste) resulting from providing Services in a professional and proper manner in accordance with the applicable country-specific regulations. If CellCube replaces or dismantles components/parts of the FBS or spare parts, and (i) such parts become the property of CellCube as a result of the contract, or (ii) mandatory law at the site of the FBS that is the object of the OMS Contract requires CellCube to take over and dispose of, or recycle, or treat such parts, CellCube ensures that they are disposed of in compliance with the applicable laws and regulations in the country where the site of such FBS is located or – at its own discretion – abroad. If no such mandatory rules apply, CellCube may take over those spare parts or components and demand within 20 days after the replacement, that those components and/or parts become the property of CellCube. Documentation of the disposal shall be provided in the form of a confirmation from the waste disposal company upon request by both parties/sides.

7.3 Responsibility for and Storage of Electrolyte

- 7.3.1 Customer assumes the overall responsibility for the Vanadium Electrolyte solution stored in the warehouse. Customer is responsible for the safe handling of the Vanadium Electrolyte. Customer must inform itself independently about the rules for proper storage of hazardous substances, including Vanadium Electrolyte if applicable, in the country where the Site is located and must strictly comply with them. Customer undertakes the responsibility to inform CellCube of any incidents.
- 7.3.2 Proper compliance with clause 7.3.2 by the warehouse operator must be independently tested and evaluated by Customer, in particular of the safety equipment, the assessment of hazards and the establishment of protective measures, occupational hygiene, occupational safety, environmental protection measures, the selection of qualified employees, the training and instruction of employees, the coordination of activities and work processes, the rules of conduct for operating equipment at the electrolyte storage site and finally the planning of measures for emergencies. Information on the accumulation and incompatibilities with other chemicals can usually be found in the material safety data sheets (MSDS) of electrolytes.
- 7.3.3 Customer accepts responsibility for any conditions for storage, transport, and handling (such as: those contained in instructions provided by CellCube) or the official approval conditions.
- 7.3.4 Additional requirements for such storage by Customer at the place of storage and warehouse operation are:
 - Work will be carried out conscientiously according to operating instructions and orders.
 - Personal protective equipment is mandatory to use when handling the material and must be properly maintained.

- Customer is entitled to immediate information of operational incidents at the warehouse, such as damages, leaks, fires, and accidents in connection with the IBCs.
- Keeping CellCube free from any liability for compliance with all local rules on occupational health and safety in connection with to such storage.
- Access to the warehouse must be regulated depending on the chemicals stored within.
- Special dangers as can be seen on the IBC must be trained for.
- Ignition sources that can lead to fires or explosions must be avoided near the IBCs.
- Ignition sources can also be auxiliary or waste materials (for example, oil-soaked cleaning rags) act.
- When storing and outsourcing, care must be taken to ensure that IBCs are not damaged, or their function is restricted.
- The IBCs must be protected in any case from direct sunlight.
- Outdoor storage is not permitted.
- Rules of conduct and measures that must be observed by the employees must be laid out in a company instruction.

8 Changes to Services

8.1 Initiative to Change

- 8.1.1 Changes may be initiated either by Customer or CellCube and at any time during the term of the OMS Contract, either by a proposal of CellCube or by a request of Customer for CellCube to submit an offer for a Change. A Change may comprise any adjustment, improvement, or extension of the Services under an OMS Contract; it may also comprise additional services reasonably acceptable for CellCube. A Change may not comprise the omission of any Services including supplies and/or work which Customer later has or undertakes to have carried out by others. CellCube shall not proceed with any Change unless and until Customer issues a written confirmation of the Change, i.e. a Change Order.
- 8.1.2 CellCube shall execute and be bound by each Change Order and Customer shall pay the agreed price for the Change, unless CellCube gives prior notice to Customer stating that:
- (a) CellCube cannot readily obtain by using reasonable endeavours any goods, materials or other resources and prerequisites required for the Change;
 - (b) the Change, if implemented, will or will with prevailing probability reduce the safety or suitability of the FBS or parts of it or the Services; or
 - (c) the Change, if implemented, will or will with prevailing probability have an adverse impact on the achievement of the performance of the FBS.
 - (d) CellCube can for any other reason not be reasonably expected to execute the Change.

8.2 Change Procedure

- 8.2.1 If a Party proposes a Change, then CellCube shall prepare and provide Customer within an appropriate period or any other timescale as mutually agreed between the Parties, a written offer setting out details of any such Change, including:
- (a) the reasons thereof (if proposed by CellCube);
 - (b) the detailed description of the Change and any effects it may have for the Services;
 - (c) an estimate of the adjustments to the Service Price for executing the Change as well as its payment;
 - (d) any modifications to agreed dates or deadlines that would be required in connection with the Change;
 - (e) the deadline until CellCube can at the latest commence the execution of such Change.

- 8.2.2 Customer shall, as soon as practicable after receiving such offer, respond with approval of this offer ("**Change Order**"), disapproval or comments. Such Change shall thereupon form part of this OMS Contract.
- 8.2.3 Before approving a Change, the Parties shall agree adjustments to the Service Price. The price adjustments shall include costs plus reasonable risk premium and profit.
- 8.2.4 If Customer and CellCube cannot reach an approval for a Change within 14 days of the date of the offer or another necessary time limit as given in the Change offer, CellCube shall not be obliged to implement the Change.
- 8.2.5 No instruction or comment by Customer (whether on its own initiative or in response to a proposal from CellCube) shall be regarded as a Change unless and until a Change Order is issued in this respect.

9 Contract Prices and Terms of Payment

9.1 Service Price

- 9.1.1 Definition of Service Price. The prices due for the Services (based on the OMS Proposal), as instructed in any Change Orders, and as agreed for Unexpected Services and Supplies shall be the Service Price net of VAT.
- 9.1.2 Expenses. Costs for all services, travel, and accommodation costs of CellCube staff and sub-contractors as well as costs for entry and visa regulations will be charged to Customer at cost plus a 15% handling fee.
- 9.1.3 Unexpected Services and Supplies – irrespective whether caused by unexpected circumstances or ordered by Customer – will be charged on an hourly basis by using the rates as in the Annex "Standard Service Packages and Rate Sheet" to the OMS Proposal and all additional costs and expenses put through to Customer. In case of Unexpected Services or Supplies, CellCube is entitled to request a reasonable advance payment by Customer before commencing such service or supply.

9.2 Invoicing and Payment

- 9.2.1 CellCube will charge the Service Price in advance before commencement of its Services by providing Customer with an invoice. The respective parts of the Service Price for Changes, Unexpected Services and/or Unexpected Supplies that are no lump sum prices, will be invoiced by CellCube monthly, whereas any such lump sums will also be charged in advance.
- 9.2.2 CellCube shall invoice the price for the extended maintenance package in equal annual instalments before the respective year commences.
- 9.2.3 Invoices shall be sent electronically and become due and payable 14 days after CellCube issues the invoice.
- 9.2.4 Any complaint on the part of Customer against an invoice must be made in writing and not later than one week after receipt of the invoice.
- 9.2.5 Customer is not entitled to withhold payments or set due amounts under the OMS Contract off against any counterclaims that have been disputed by Cellcube and any such offsetting shall be void. Customer shall also not be entitled to withhold or set off payments based on claims in relation to any other agreement with CellCube. In particular, Customer is not entitled to withhold or set off payments due to warranty claims.
- 9.2.6 All payments shall be due and payable within fourteen (14) days after the date of issuance of the electronic invoice to Customer. For any delay with paying any amount due to CellCube, Customer shall pay statutory delay interest.
- 9.2.7 A payment shall be deemed to have been made on the day on which it is credited to and CellCube can dispose of it on its bank account.

- 9.2.8 Customer shall be entitled to withhold payments or set them off against counterclaims only insofar as his counterclaims are undisputed or have been established by a final and binding court ruling or arbitral award and all available legal remedies being exhausted.
- 9.2.9 Payments are to be made without any deduction to CellCube in the agreed currency. All interest and expenses in connection therewith (such as collection and discount charges) shall be borne by Customer. If the agreed payment dates are exceeded, the statutory delay interest will be charged, without prejudice to any other rights of CellCube.
- 9.2.10 If Customer is in delay with any due payment or other performance in connection with the OMS Contract, CellCube may, without prejudice to its other rights:
- (a) suspend the performance of its own obligations until such payment or other performance has been made,
 - (b) claim a reasonable extension of the deadlines for its own performance,
 - (c) claim compensation of its costs for reminder fees and attorney's fees and other pre-litigation costs.

9.3 Price Adjustment

- 9.3.1 The Service Prices shall be adjusted with effect from the first day in January of the respective calendar year by using the average annual figure of the Consumer Price Index "VPI-2020" published by Statistics Austria² for the preceding year. The Service Prices shall be increased by the number of percent points by which such annual VPI-2020 figure for the preceding calendar year was higher than the CPI-2020 figure for the calendar year before that year ("reference value"). For the first potential price adjustment taking place on 01 January of the calendar year following the conclusion of the OMS Contract, the reference value shall be the monthly figure published for the last full calendar month before the OMS Contract was concluded.
- 9.3.2 If the VPI-2020 is not published anymore, the index replacing it shall be used instead. If Statistics Austria does not publish the VPI 2020 (or its replacement index/indices) anymore, the index published by the entity or person having the most comparable task of publishing end user price indices shall be used instead.
- 9.3.3 This rule for price adjustment applies to the price of every Service Package with a term exceeding one year, for every prolongation of the ordered service package.

10 Time of Performance

10.1 Time of Performance

- 10.1.1 CellCube shall perform the Services annually around the same time period each year unless CellCube announces another date to Customer. For unscheduled services such as repair works, the dates as announced by Cellcube shall apply.
- 10.1.2 Agreed or announced dates shall be binding provided that Customer has complied with clauses 7.1, 7.2.1, 7.2.3 - 7.2.7 and 7.3.1 and has in particular granted CellCube free access to the Customer's site and the Customer has given written clearance for the Services to start. To this end a clearance protocol shall be drafted by CellCube that states the commencement date of such Services and shall be signed by the Parties.
- 10.1.3 Services under this OMS Contract shall be carried out on workdays between 8 a.m. and 5 p.m. local time.
- 10.1.4 If Customer requires an extension of the Services or additional Services become necessary, the period shall be extended accordingly.

² <https://www.statistik.at/en/statistics/national-economy-and-public-finance/prices-and-price-indices/consumer-price-index-cpi/-hicp>

- 10.1.5 If Services are ready for acceptance by Customer within the period, the period shall be deemed met.

10.2 Service Gap

- 10.2.1 If the OMS Contract is concluded after the taking-over of the FBS under a (installation and) supply agreement with CellCube, CellCube shall schedule the date of the first Service for a day no later than 1 month after the conclusion of the OMS Contract. CellCube shall not be liable for any damage, defect, unusual wear, or tear that occurs or is caused between the taking-over and the first service under the OMS Contract. This means that (without prejudice to any rights and obligations under the supply agreement) Cellcube assumes liability only for the Services commencing with the first maintenance under the OMS Contract.
- 10.2.2 In case the OMS Contract is concluded after the taking-over of the FBS as set forth above, Customer shall as soon as possible, but at the latest upon conclusion of such OMS Contract, securely save all remote monitoring data and make such data available to CellCube in a customary format that is to be agreed between the parties. If Customer fails to provide CellCube with access to all remote monitoring data, CellCube shall not be liable for defects of the FBS and the Services if such defects or damage may have been caused by faults in the operation of the FBS. If such defects or damage nevertheless occur, Customer shall bear the costs of repair and replacement.

11 Taking-Over

11.1 Taking-Over Process

- 11.1.1 Unless CellCube notifies Customer of another date, Services shall be considered as completed at the end of the last day for which those respective Services had been scheduled. Customer shall immediately after their conclusion inspect the Services and supplies and subsequently take them over, if there is no material deviation from the OMS Contract that makes the agreed use of such Services and spare parts impossible. Taking-Over may not be refused by reason of defects that are minor or not attributable to CellCube.
- 11.1.2 In case of a material deviation, Customer shall notify CellCube immediately and, subsequently, CellCube shall remedy it and notify Customer once it has done so.
- 11.1.3 Services shall be deemed taken over, if Customer, for reasons not attributable to CellCube, does not take over such Services on the day set forth above or puts the serviced FBS or other devices into operation.

11.2 Retention of Title

- 11.2.1 CellCube retains the ownership in all components installed in the FBS or other parts of Customer's premises and in other things being part of Services and supplies of CellCube and all spare parts delivered under the OMS Contract, until the corresponding Service Price has been fully paid to CellCube. Customer shall take all steps and make all statements required for maintaining such retention of title valid until full payment to CellCube.

11.3 Consequences of Taking-Over

- 11.3.1 At taking-over or deemed taking-over all advantages and risks including the risk of accidental loss and – subject to clause 11.2 ownership and other rights, and finally all costs and profits related to the respective services and/or supply are transferred to Customer. Upon acceptance of the Services, CellCube's liability for obvious defects shall be excluded.

12 Warranty

12.1 General

- 12.1.1 CellCube warrants that all services provided and all spare parts supplied under the OMS Contract as of the date of the respective supply or service provision fully comply with all specifications and performance related provisions in the OMS Contract. No further warranty is granted.
- 12.1.2 Customer is not entitled to raise warranty claims based on particulars only appearing in catalogues, folders, promotional material as well as written or oral statements which have not been included in the OMS Contract. The burden of proof for the existence of defects is solely with the Customer. An incident is no defect if it is
- (a) attributable to Customer, in particular if it arises from any material provided by the Customer.
 - (b) due to wilful or grossly negligible damage,
 - (c) incorrect connections or operation,
 - (d) Force Majeure
 - (e) tear and wear due to normal use or overuse of mechanical and/or electronic items or extraordinary mechanical, chemical, or atmospheric circumstances.
- 12.1.3 However, CellCube does not warrant and shall not be liable otherwise for the completeness or correctness of any information, permit, consent, or instruction which has been or should have been provided by Customer, or any measures relating to the FBS which are not performed by CellCube or its subcontractors. CellCube will in particular not review the List of Permits, Consents, Norms and Standards for correctness and/or completeness.
- 12.1.4 No warranty claims can be derived, or liability established from information in catalogues, brochures, advertising literature and written or oral statements which have not been included in the contract.
- 12.1.5 CellCube does not assume any warranty or other liability for any amendment to the FBS or any repair, maintenance or other activity not performed by CellCube or its subcontractors or approved by CellCube in advance. This does however not apply to emergency repair work by Customer in due workmanship manner, if and to the extent a danger to operational safety or an imminent threat of extensive damage exists.
- 12.1.6 If during the warranty period a defect arises, Customer shall inform CellCube of the defect without delay and CellCube shall reply within 5 working days by giving notice whether it is a defect and if so, when CellCube will intend to remedy the defect. CellCube decides in its discretion whether it remedies a defect by repair works or replacement.
- 12.1.7 Notwithstanding any liquidated damages agreed in the OMS Contract, CellCube shall, to the exclusion of any further claims of the Customer, remedy any defect in the meaning of clause 12.1.1 within an appropriate period of time and free of charge for Customer.
- 12.1.8 Customer shall not be entitled to repair and/or replacement but only to an appropriate price reduction if the defect is minor or if repair/replacement would be commercially inappropriate for CellCube.
- 12.1.9 If CellCube replaces parts of the devices specified in the list of devices, those parts shall become property of CellCube.
- 12.1.10 The warranty period for Services and software shall be 6 months, for replacement parts 12 months and for spare parts 36 months.

12.2 Warranty for Services

- 12.2.1 Repair and/or replacement works shall only be performed by personnel of CellCube, or its subcontractors trained and certified by CellCube. CellCube shall not be liable for any defect that arise from alterations, repairs or maintenance works of the FBS serviced under the OMS Contract by

Customer or third parties without CellCube's prior approval. Customer, however, shall be entitled to remedy the defect himself or by third parties and demand reimbursement of the necessary expenses from CellCube if there is a danger to operational safety or an imminent threat of extensive damage (Customer shall notify CellCube immediately on the occurrence of this danger or threat) or if a reasonable period for cure specified by Customer has been expired without result.

- 12.2.2 Any expenses incurred by CellCube in connection with rectifying defects due to the site of the FBS concerned not being connected to the public road network or the assembly team otherwise having to travel to the site in an unusually time-consuming manner shall be borne by Customer. For warranty work on Customer's premises, Customer shall make available free of charge electricity, water and internet access, assistance, hoisting gear, scaffolding and sundry supplies and incidentals that may be required.
- 12.2.3 If CellCube does not remedy the defect, Customer may reduce the price appropriately, i.e. to the value of the service/supply as if it would have been agreed with the defect. The Customer may only rescind the contract if the defect is not minor. Any further liability shall be subject to section 14.
- 12.2.4 CellCube reserves the right to replace defective spare parts with a refurbished replacement unit. FBS that are equipped with reconditioned spare parts continue to receive the legally prescribed warranty on the spare part. The use of reconditioned spare parts, which are available from stock at short notice, reduces downtimes.

12.3 Warranty for Replacement Parts

- 12.3.1 The foregoing provisions of clause 12.2 shall also apply to the warranty of replaced parts, unless not stated otherwise in this section 12.3.
- 12.3.2 If any component, upon passing of risk, is defective according to the OMS Contract, CellCube shall - at its discretion - repair the defect or install a new component free of defects.
- 12.3.3 Customer shall give written notice of any defect without undue delay. If it fails to do so, CellCube shall not be liable for any consequences of such failure. CellCube does not assume any liability for used parts.

13 Force Majeure and Exemptions from Performance

13.1 Force Majeure and Hardship Events

- 13.1.1 For the Purposes of the OMS Contract only the following are Force Majeure or hardship Events (a "Force Majeure Event"):
 - (a) war, insurrection, riot, civil commotion, act of terrorism; sanctions, embargo, severance of diplomatic relations and comparable legal or political restrictions for a Party to perform its obligations or interference on the supply chain by public or military authorities (whether legal or de-facto);
 - (b) nationwide strikes, lockouts of workers and other industrial action throughout the state of the affected Party's commercial seat and as far as CellCube is concerned: including the commercial seat its sub-contractors, the place of manufacturing and/or the place and route of shipment of its suppliers or transit of staff;
 - (c) lightning, earthquake stronger than class 4 at the Richter magnitude, flood, storm stronger than 100km/h, drought, and similar natural disasters and weather conditions; occurrence of ionising radiation or radioactive contamination at the Site;
 - (d) collapse of production or manufacturing buildings or facilities; interruption or failure of required utilities; cyber-attack;
 - (e) mandatory legislation or other binding legislative or administrative measures to control the spread of an epidemic such as COVID-19 ("Epidemic Measures") introduced or amended after the date of signature of the OMS Contract by both Parties, if their occurrence results in the following:

- (i) Restrictions on entry of staff into the country of the Site, ban or restrictions on work at the Site; and
- (ii) if such Epidemic Measures enacted after the signing of the OMS Contract have a more detrimental effect on the services and/or deliveries than was the case with Epidemic Measures already in force by the time of signing the OMS Contract, in particular stricter hygiene requirements on the site of the FBS.
- (f) a supplier of CellCube (including sub-suppliers at any level) or an obstacle in the supply chains of such suppliers causes a delay in the provision of services or supplies under the OMS contract of more than 30 days and CellCube is unable to replace the respective components or building materials with components or materials from other suppliers with reasonable efforts (i.e. additional costs exceeding 10% of the annual fee for the affected service) and within the contractual time (to be evidenced by at least four written refusals from reputable suppliers).

13.1.2 Any of the above events shall only be considered a Force Majeure Event if it

- (a) was unforeseeable by the affected Party at the time of the conclusion of the (original or prolonged) OMS Contract; or
- (b) is beyond the affected Party's control; or
- (c) could after its occurrence not be prevented or averted by reasonable efforts of the affected Party; and
- (d) makes it impossible for, or significantly impedes the affected Party to perform its obligations under the OMS Contract.

13.2 Consequences when a Force Majeure Event Occurs

13.2.1 If and as long as Customer is unable to fulfil its obligations under the OMS Contract due to such a Force Majeure Event, it shall be released from the fulfilment of these obligations. However, relating to Customer's payment obligations only sanctions and comparable legal or political restrictions for Customer to perform the respective payment obligations are a Force Majeure Event. As far as the fulfilment of a contractual obligation by Customer is a prerequisite for the fulfilment of a contractual obligation by CellCube, CellCube shall also be released in this respect.

13.2.2 If and as long as CellCube is unable to fulfil its obligations under the OMS Contract due to such a Force Majeure Event, plus a reasonable time for taking up the services again, Cellcube shall be released from the fulfilment of these obligations. CellCube shall notify Customer in writing of the occurrence and nature of the Force Majeure Event, its expected effects on the fulfilment of CellCube' obligations, and the expected duration of such effect. CellCube shall send this notification without undue delay but no later than fourteen days after it knows about the event. CellCube being unable to perform, includes becoming commercially unaffordable for CellCube. Commercially unaffordable means that CellCube's additional costs for performing its obligations compared to the situation at signing of the OMS Contract exceed 15% of the Service Price for that year or the efforts or costs required for performance in compliance with the OMS Contract otherwise become commercially meaningless.

13.2.3 A Force Majeure Event shall also release CellCube from any consequences of defective, incomplete, or late performance for as long as, and to the extent that CellCube' performance is rendered impossible or commercially unaffordable by the Force Majeure Event. After the effects of a Force Majeure Event end, CellCube is entitled to a reasonable period for the resumption of its performance.

13.2.4 Each Party shall make all reasonable endeavours to mitigate the effects of any Force Majeure Event and keep the other Party informed of the measures it has taken. As soon as it is no longer impossible for the affected Party to perform the OMS Contract because of the Force Majeure Event, it shall notify the other Party immediately and demonstrably. Each Party shall duly fulfil those contractual obligations that are not impaired by the Force Majeure Event. CellCube is entitled to compensation of the costs of resumption of its performance after discontinuation of the Force

Majeure Event. The Parties shall bear their other costs incurred in connection with the Force Majeure Event.

- 13.2.5 If performance of contractual obligations due to a Force Majeure Event is impossible for the affected Party during more than six months, each Party shall be entitled to early termination of the OMS Contract pursuant to clause 15.2.2 and 15.3.3. respectively.

13.3 Exemptions from Delay

- 13.3.1 In the event of other events beyond CellCube's control but Force Majeure Events, the time periods for performance by CellCube shall be extended until the impeding effect of such events plus a reasonable time for taking up the services again. In case of specific travel restrictions, agreed deadlines / time-limits to be extended accordingly to follow any national, international, or bi-lateral restrictions as the case may be. Such time extensions shall include time-periods needed to obtain visas or other travel documents needed.
- 13.3.2 Due to pandemics, or other crises that do not constitute a Force Majeure Event for CellCube, aggravations may occur on the procurement side. Consequences of this can be delivery failures or delivery delays and factory-related restriction of workforce. Therefore, all delivery periods and dates stated by CellCube are non-binding. No legal obligation on our part can be derived from such delivery periods, in particular no obligation to pay damages due to non-performance or delay. Rescission of the contract by Customer in the event of non-compliance with such delivery periods and dates is only permissible in the event of delays caused by pandemics, violent crises or future crises such as a shortage of raw materials on the market, if at least one further grace period confirmed in writing by CellCube has elapsed without delivery.
- 13.3.3 The work for submitting a cost estimate as well as the further expenses incurred and to be substantiated (fault finding time equal to working time) by CellCube will be charged to Customer if a repair/maintenance cannot be carried out for reasons for which CellCube is not responsible, in particular because
- (a) the defect complained of did not occur during the inspection;
 - (b) spare parts cannot be obtained;
 - (c) Customer has culpably missed the agreed deadline; and/or
 - (d) the OMS Contract is terminated during the performance of the work.
- 13.3.4 In the event that the repair/maintenance cannot be carried out, CellCube shall not be liable for damage to the object of repair/maintenance, for breach of secondary contractual obligations and for damage which has not occurred to the object of repair/maintenance itself, irrespective of the legal grounds on which Customer relies. This exclusion of liability shall not apply in the case of intent or gross negligence on the part of CellCube. In case of culpable breach of essential contractual obligations CellCube shall be liable, except in cases of intent and gross negligence, only for the reasonably foreseeable damage typical for the contract.

14 Liability

- 14.1 To the extent permitted by law, CellCube shall only be liable for the compensation of damages caused by gross negligence or wilful misconduct.
- 14.2 CellCube shall not be liable for consequential or indirect damages or damages for pure economic loss, lost profits or turnover, loss of savings or interest or damage resulting from third-party claims against the Customer, as well as damage from loss of data or unlawful use of data.

14.3 Liquidated Damages

- 14.3.1 A Party to an OMS Contract shall only be entitled to the payment of liquidated damages / LDS if and to the extent that the respective other Party fails to fully, timely and correctly perform any of

its obligations in connection with an OMS Contract and that OMS Contract explicitly entitles the other Party to Liquidated Damages. If so, the payment of such LDs shall not excuse the failing Party from performing its obligations under the respective OMS Contract and such Party shall use and continue to use its best endeavours to avoid or mitigate further defective performance.

- 14.3.2 Liquidated Damages under an OMS Contract shall become payable irrespective of any fault of the failing Party. Liquidated Damages if agreed under an OMS Contract, are the sole and exclusive compensation and remedy for the other Party for the consequences of the other Party's failure and/or any disadvantage suffered because of any failure in connection with the respective OMS Contract, other than in the event of early termination where clause 15.4 applies. Liquidated Damages shall be paid as a genuine pre-estimate of, and complete compensation for loss and any other disadvantage suffered by the Party.

14.4 Limitation of Liability

- 14.4.1 Any liability of CellCube in connection with the OMS Contract based on which legal basis ever shall be limited to ten percent 10% of the annual Service Price, except for claims for damages caused by CellCube intentionally or by blatantly gross negligence.
- 14.4.2 The total liability of CellCube for whatever reason shall in no case exceed 50% of the Service Price. If the contract term exceeds 10 years, the total liability of CellCube for whatever reason shall in no case exceed 50% of the Service Price for 10 years.
- 14.4.3 In no case shall any of the directors, employees, subcontractors, suppliers, shareholders, or affiliated companies of CellCube be liable for any act or omission of CellCube.
- 14.4.4 The limitations and exclusions of liability set forth in this clause 14.4 shall take precedence over any other provision of the OMS Contract and shall apply irrespective of the legal basis of the claim. Customer's claims for warranty and /or liquidated damages provided for in the OMS Contract are Customer's exclusive claims and remedies.
- 14.4.5 If CellCube furnishes Customer with advice or assistance concerning any product or system that is not required pursuant to the OMS Contract, such advice or assistance shall not subject CellCube to any liability for whatever reason.

15 Term and Termination

15.1 Contract Term

- 15.1.1 The Contract term shall commence pursuant to clause 3.
- 15.1.2 Subject to clauses 15.1.3 - 15.1.7, OMS contracts concluded for a limited time period, a limited number of Services or a certain Service not to be repeated, end after such defined time or repetitions, or performance of such Service, without the necessity of any further statement or action by any of the Parties.
- 15.1.3 OMS Contracts concluded for an unlimited period of time, can be terminated by each Party at the end of each contract year with 3 months' prior notice by sending a written termination notice to the other Party.
- 15.1.4 Contracts for Service Packages with a term of up to 5 years shall be automatically prolonged by one year unless any of the Parties notifies the other Party in writing at least 3 months prior to the end of such contract term that it does not prolong the contract.
- 15.1.5 Contracts for Extended Service Packages with a fixed term shall be automatically transformed into a Basic O&M Package unless the Parties agree on an adjustment of the Service Price not later than 3 months prior to the expiration of the current term.
- 15.1.6 Customer shall be entitled to request from CellCube not later than twelve (12) months before the expiry of the fixed term of the OMS Contract, a prolongation for an additional fixed term. In order to be binding for CellCube, such a request must be in the form of a binding offer by Customer. Upon

timely receipt of such a bidding request for extension the Parties shall agree on an adjustment of the Service Price and if so, CellCube shall perform a confirmatory inspection and a one-time preventive maintenance and repair work at the expense of Customer prior to the commencement of the extension period. CellCube shall then within 3 weeks confirm the extension.

- 15.1.7 The right of any Party for termination with immediate effect for a material ground shall remain unaffected.

15.2 Termination by Customer

- 15.2.1 Customer may terminate the OMS Contract for convenience at the last day of each calendar month even during a fixed term but only if Customer pays to Cellcube on or before the effective date of the termination all remaining Service Price and costs to which CellCube would have been entitled until the end of the fixed term, had the Customer not terminated. Customer may reduce such payment by any costs Cellcube did not incur, whereas determination of such costs is the exclusive responsibility of CellCube within 4 weeks from a respective request from Customer. To become effective, such termination for convenience must be made in writing to CellCube with three months prior notice.
- 15.2.2 In case any of the following events occurs, this constitutes an important ground and entitles Customer to terminate the OMS Contract within 20 days after it learns about such ground and with immediate effect:
- (a) Rejection of an application to open insolvency proceedings relating to the assets of CellCube due a lack of sufficient assets to cover the costs of the insolvency proceeding; or winding up of CellCube or any other form of liquidation procedure or ceasing to exist of CellCube; or
 - (b) CellCube stops its business activities in relation to the Scope of Services.

15.3 Termination by CellCube

- 15.3.1 CellCube is entitled to terminate the OMS Contract or an additional contract to the OMS Contract with 2 months prior notice in the event that the Customer or a third party assigned by the Customer modifies the FBS or components of it including the BMS and the FBC without CellCube's prior written approval.
- 15.3.2 Cellcube is entitled to terminate any contract that has been concluded for a fixed or otherwise limited term by giving Customer at least 3 months' notice. If on the day the termination becomes effective ("effective date"), any advance payments made by Customer for the Scope of Services or other services and validly agreed supplies, exceed the service price Customer would have had to pay up to that day, CellCube shall return the unused part within 3 months after the effective date.
- 15.3.3 CellCube is entitled to terminate the Contract with immediate effect if
- (a) If and to the extent permitted by law, Customer becomes insolvent, or subject to a comparable procedure, initiates a process of dissolution or otherwise ends its commercial activities; or
 - (b) Customer is in delay with any due payments to CellCube for more than 2 months despite a written reminder by CellCube with a remedy period of not less than 20 days;
 - (c) Customer or a third party on behalf of Customer modifies any part of the FBS without CellCube's prior written approval;
 - (d) Customer amends the FBS or the conditions of its use in contradiction to the Supply (and Installation) Agreement, or performs a relocation of the FBS;
 - (e) Customer terminates CellCube's access to operational data generated by the FBS in violation of clause 7.2.1;
 - (f) Customer fails to provide CellCube with information needed for CellCube's CSRD reporting or to comply with other reporting obligations, both as timely announced to Customer.

15.4 Consequences of Termination

- 15.4.1 The Party validly terminating the OMS Contract for an important ground shall – subject to any limitation in the OMS Contract and the OMS TC – be entitled to compensation of damages and other disadvantages caused by the other Party responsible for that ground and under the statutory rules of the applicable law.

16 Confidentiality and Intellectual Property Rights

- 16.1 Notwithstanding any applicable non-disclosure agreement providing for stricter confidentiality obligations of the Parties, the Parties undertake to treat as strictly confidential and do not disclose to any third party the terms of the OMS Contract and the fact of its existence, except as far as disclosure is mandatory pursuant to applicable law, in reporting obligations or for obtaining permits and licenses required under the OMS Contract.
- 16.2 Each Party shall be liable vis-à-vis the other Party for all losses which are incurred in connection with a breach of this confidentiality obligation.
- 16.3 The intellectual property rights, copyrights and other rights connected therewith, in respect of drawings, specifications, documents, data and software made available by the CellCube to Customer shall be owned solely by the CellCube and shall remain its property. Customer is not allowed to permit any third party to any parts supplied or any parts thereof.
- 16.4 Customer is obliged to inform Cellcube of any intellectual property rights that may exist with respect to the equipment serviced by CellCube but not supplied by CellCube. In case of third-party claims that may be asserted on the grounds of the existence of such intellectual property rights, Customer shall indemnify and hold harmless CellCube against any such claims.
- 16.5 With regard to software CellCube grants to Customer in connection with services and/or supplies under the OMS Contract, a non-exclusive and non-transferable right to use only a single copy of such software, in machine-readable, object code form, on one system limited to the operation of the FBS that is subject to the Services at the Site. This software license shall be limited to the duration of the respective OMS Contract and free of charge. Neither Customer nor any third party shall modify, reproduce, translate, reverse engineer, transfer from object code to the source code or decompile CellCube's software. The license does not entitle Customer to use the software for any equipment other than the FBS, to grant sub-licenses or to copy the software documents without CellCube's prior written consent. Customer is only entitled to make a single copy for backup purposes to be able to reload the system limited to the one agreed Equipment. If Customer exchanges the FBS, new software/licenses have to be purchased and installed. In case of termination of the OMS Contract, the license terminates, and all copies of the software and the documentation shall be returned to CellCube promptly after termination.

17 Miscellaneous

17.1 Side Agreements

- 17.1.1 There are no oral side agreements between the Parties. Any oral agreement requires the written form of parties and shall be attached to the contract. Email or Fax shall suffice if receipt is acknowledged in any appropriate form.

17.2 Severability Clause

- 17.2.1 Should individual provisions of the OMS Contract be or become invalid, void, or unenforceable ("invalid"), this shall not affect the validity of the other provisions of the Contract. The invalid provision shall be deemed replaced by a valid provision with a commercial effect that comes as close as possible to the invalid provision.

17.3 Communication

- 17.3.1 Each Party shall nominate a contract person for the implementation and performance of the Contract. The contact person must have the required qualification and a sufficient command of the English language for her/his tasks and must be empowered to validly receive statements or any other communication of the other Party and to take over documents.
- 17.3.2 All notices and other communications in connection with the OMS Contract shall be made in writing and shall be transmitted personally, by registered mail, courier, telefax or by means of e-mail to the nominated person or to such other recipients or addresses that have been notified from time to time by the relevant Party to the other Party in writing.

17.4 Jurisdiction and Applicable Law

- 17.4.1 Place of performance shall be the location of the energy storage as set forth in the list of devices.
- 17.4.2 These OMS TC and any contract of which they form part shall be governed by and any disputes arising under or in connection with these OMS TC and any contract of which they form part shall be resolved in accordance with the laws of the State of New York, United States of America, excluding its conflicts of laws rules and excluding the UN Convention on Contracts for the International Sale of Goods.

17.5 Arbitration

- 17.5.1 Any and all disputes or disagreements arising out of or in connection with these OMS TC and any contract of which they form part, including disputes or disagreements concerning the existence, validity, interpretation, performance, breach or termination thereof, shall exclusively and finally be settled by arbitration administered by the New York International Arbitration Center (NYIAC) in accordance with its rules.
- 17.5.2 The seat and venue of the arbitration shall be New York City, New York, United States of America. The arbitration shall be conducted before a panel of three (3) arbitrators, unless the Parties agree in writing to a single arbitrator. The language of the arbitration shall be English. The arbitration proceedings and all related information shall be kept confidential by the Parties and the arbitrators.
- 17.5.3 The costs of the arbitration, including the arbitrators' fees and NYIAC administrative fees, shall be borne equally by the Parties. Each Party shall bear its own legal fees and expenses incurred in connection with the arbitration. The arbitral tribunal shall, in its final award, allocate the costs of arbitration as well as legal fees and expenses between the Parties as it deems just and equitable, taking into account the circumstances of the case, including the outcome and the conduct of the Parties during the proceedings.