

3. **Postponement:** If CUSTOMER elects to postpone/reschedule the Display and requests a Postponement Date within this Agreement, PYROTECNICO shall be paid the Display Amount plus a rescheduling service fee equal to one of the sub-provisions below. If there is no Postponement Date stated within this Agreement, CUSTOMER and PYROTECNICO shall mutually agree upon a suitable reschedule date taking into consideration availability of permits, materials, equipment, transportation, labor and further provided CUSTOMER accepts ONE of the additional terms of 3.2 (A – C). However, in no event shall the DISPLAY be rescheduled for a date more than 90 Days from the date first set forth within this Agreement.
- 3.1 If CUSTOMER postpones up to 36 hours prior to Display Date there shall be no additional fee, provided the stated Postponement Date herein is within ten (10) days of the Display Date.
- 3.2 IF CUSTOMER postpones with less than 36 hours notice, one of the following provisions shall apply:
- A. If CUSTOMER elects postponement and PYROTECNICO is notified by either contacting PYROTECNICO staff by telephone at **603-532-8324**, prior to 7:00 a.m. on the Display Date, CUSTOMER agrees to pay an additional Postponement Fee of ten percent (10%) of the Display Amount.
- B. If CUSTOMER elects postponement after 7:00 a.m. on the Display Date, there shall be an additional Postponement Fee of twenty percent (20%) of the Display Amount; and CUSTOMER agrees to forfeit their Postponement Date stated herein, if applicable. If stated postponement date is no longer available CUSTOMER and PYROTECNICO shall mutually agree upon a suitable reschedule date taking into consideration availability of permits, materials, equipment, transportation, labor and CUSTOMER agrees that the Display shall be rescheduled for a date not more than 90 days from the date first set forth within this Agreement. If CUSTOMER and PYROTECNICO cannot agree on a reschedule date with the best efforts of both parties, all provisions of Paragraph 4 shall apply.
- C. If PYROTECNICO technicians have arrived on site and adverse weather conditions cause the **Authority Having Jurisdiction (“AHJ”)** to exercise its sole and absolute discretion to determine the performance of any Display to be impossible, impractical or would unnecessarily increase the risk of damage or danger to person(s) and/or property, all parties agree to immediately hold a Postponement Date meeting by contacting PYROTECNICO corporate staff by telephone or in person in order to attempt to reschedule the Display for a mutually satisfactory Postponement Date and time. In the event the mutually satisfactory Postponement Date and time is beyond the day following the scheduled Display Date and it is impracticable for the personnel and equipment of PYROTECNICO to remain at the SITE until the rescheduled Display Date, then CUSTOMER agrees to pay the actual expenses incurred by PYROTECNICO, not to exceed thirty percent (30%) of the Display Amount. Actual expenses include, but are not limited to, expenses for travel, lodging, labor, meals, rentals, permit fees, set-up and/or dismantling of Display, additional taxes or surcharges, or any other additional expenses that incurred to and/or as a result of the Postponement or Cancellation.
4. **Cancellation:** If CUSTOMER cancels this Agreement for any reason liquidated damages for such Cancellation shall be paid by CUSTOMER to PYROTECNICO as follows:
- 4.1 In the event the Display is cancelled more than thirty (30) days before the Display Date, CUSTOMER agrees to pay to PYROTECNICO 10 percent (10%) of the Contract Amount.
- 4.2 In the event the Display is cancelled less than thirty (30) days but more than 48 hours before the Display Date, CUSTOMER agrees to pay to PYROTECNICO twenty-five percent (25%) of the Contract Amount.
- 4.3 In the event the Display is cancelled less than 48 hours prior to the scheduled Display Date, CUSTOMER agrees to pay to PYROTECNICO fifty percent (50%) of the Contract Amount.
5. **Safety:** CUSTOMER shall provide and pay all fees associated with the Fire Department Detail as may be required by the AHJ and/or by state statute and/or regulation. PYROTECNICO and CUSTOMER shall each comply with the applicable federal, state and local laws and regulations and employ safety programs and measures consistent with recognized applicable industry standards and practices. At all times before and during the Display, it shall be within PYROTECNICO's sole discretion to determine whether or not the DISPLAY may be safely discharged or continued, apart from when the AHJ makes a determination to cancel or postpone due to reasonable safety concerns. It shall not constitute a breach of this Agreement by PYROTECNICO when fireworks fail or malfunction, or when PYROTECNICO and/or the AHJ determines that the Display cannot be discharged or continued safely due to conditions or circumstances affecting safety beyond the reasonable control of PYROTECNICO.
6. **Security:** CUSTOMER shall provide and pay for adequate security personnel, barricades, snow-fencing (if required by statute, regulation or AHJ), Police Department services as may be necessary to preclude individuals other than those authorized by PYROTECNICO from entering an area to be designated by PYROTECNICO as the area for the set-up of the Display, including a fallout area satisfactory to PYROTECNICO where the pyrotechnics may safely be discharged and any debris may safely fall. PYROTECNICO shall have no responsibility for monitoring or controlling CUSTOMER'S other contractors, vendors or volunteers; the public; areas to which the public, contractors, vendors or volunteers have access including vehicular traffic, roadways and parking areas.

7. **Cleanup:** PYROTECNICO shall be responsible for the removal of all equipment provided by PYROTECNICO and clean up of any "Live" or "Unexploded" pyrotechnic material (shall mean any device that contains unexploded mixtures or components) associated with the Display. CUSTOMER shall be responsible for the SITE after 9:00 a.m. the day following the Display for any other cleanup of "non-pyrotechnic" debris (non-pyrotechnic debris shall mean paper, paper disks, plastic, foil, rubber bands, etc.) that may be associated with the Display. CUSTOMER shall provide PYROTECNICO with a trash receptacle or other suitable means for the disposal of all non-pyrotechnic material; cardboard boxes and incidental lumber from the Display. PYROTECNICO is not responsible for replacing sod, dirt, or gravel to its original condition, or the cleaning up of sand or non-pyrotechnic debris.
8. **Insurance:** PYROTECNICO agrees to provide; 1) General Liability insurance coverage for damages to persons or property arising from or related exclusively to the Display provided by PYROTECNICO; 2) Automobile Liability Insurance; 3) Workers' Compensation Insurance (by State Statute.) The description, certificate holder and additional insured, if any, will be provided upon request.
9. **Indemnification:** PYROTECNICO represents and warrants that it is capable of furnishing the necessary experience, personnel, equipment, materials, providers, and expertise to produce the Display in a safe and professional manner. Notwithstanding anything in the Agreement to the contrary, PYROTECNICO shall indemnify, hold harmless, and defend CUSTOMER and the additional insured's from and against any and all claims, actions, damages, liabilities and expenses, including but not limited to, attorney and other professional fees and court costs, in connection with the loss of life, personal injury, and/or damage to property, arising from or out of the Display and the presentation thereof to the extent such are occasioned by any act or omission of PYROTECNICO, their officers, agents, contractors, providers, or employees. CUSTOMER shall indemnify, hold harmless, and defend PYROTECNICO from and against any and all claims, actions, damages, liability and expenses, including but not limited to, attorney and other professional fees and court costs in connection with the loss of life, personal injury, and/or damage to property, arising from or out of the Display and the presentation thereof to the extent such are occasioned by any act or omission of CUSTOMER, its officers, agents, contractors, vendors, providers, or employees. In no event shall either party be liable for the consequential damages of the other party.
10. **Limitation of Damages for Ordinary Breach:** Except in the case of bodily injury and property damage as provided in the insurance and indemnification provisions of Paragraphs 8 and 9 above, in the event CUSTOMER claims that PYROTECNICO has breached this Agreement or was otherwise negligent in performing the Display provided for herein, CUSTOMER shall not be entitled to claim or recover monetary damages from PYROTECNICO beyond the amount CUSTOMER has paid to PYROTECNICO under this Agreement, and shall not be entitled to claim or recover any consequential damages from PYROTECNICO including, without limitation, damages for loss of income, business or profits.
11. **Warranty and Disclaimer:** PYROTECNICO acknowledges and CUSTOMER agrees that it is an acceptable industry occurrence to experience up to three percent (3%) of pyrotechnic failure-to-ignite during Display. Any amount over the acceptable industry standard may be inventoried and an equitable refund may be provided to CUSTOMER within 30 days of Display. PYROTECNICO may make pyrotechnic substitutions to the bid, RFP, quote or proposal of equal or greater value if, in its sole opinion, such substitutions are reasonable and necessary. PYROTECNICO shall notify CUSTOMERS of such changes prior to Display. In the event that the Display is reduced or modified by the AHJ or by PYROTECNICO for safety concerns, the full dollar amounts outlined in this Agreement remain enforceable.
12. **Force Majeure:** CUSTOMER agrees to assume the risks of weather, strike, civil unrest, terrorism, military action, governmental action, and any other causes beyond the control of PYROTECNICO which may prevent the Display from being safely discharged on any scheduled date, which may cause the cancellation of any event for which CUSTOMER has purchased the Display, or which may affect or damage such portion of the equipment as may be placed and exposed prior to the Display. If PYROTECNICO is not reasonably able to safely discharge the Display on the scheduled date, or at the scheduled time, or should any event for which CUSTOMER has purchased the Display be canceled as a result of such causes, CUSTOMER may; 1) Reschedule the Display and pay PYROTECNICO such sums as provided in Paragraph 3; or 2) Cancel the Display and pay PYROTECNICO such sums as provided in Paragraph 4, based upon when the Display is canceled.
13. **Assignment** – CUSTOMER'S consent is not required for an assignment of this Agreement in connection with a sale, disposition, or transfer of the assets of PYROTECNICO or its affiliate. The assigned party shall guarantee the performance of the Display and any other obligations of PYROTECNICO in connection with the terms and conditions provided in this Agreement.
14. **Taxes:** CUSTOMER agrees to pay all applicable sales, use, and entertainment taxes that may be required within the state the display is located and furnish PYROTECNICO with a certificate of exemption prior to the Date of Display.

15. **Joint and Several Responsibility:** If there is more than one CUSTOMER, they agree to be jointly and severally responsible for performance of CUSTOMER'S obligations under this Agreement. This Agreement shall become effective after it is executed and accepted by CUSTOMER and after it is executed and accepted by PYROTECNICO at its' corporate offices in Jaffrey, New Hampshire. This Agreement may be executed in several counterparts, including faxed and emailed copies, each one of which shall be deemed an original against the Party executing same. This Agreement shall be binding upon the Parties hereto and upon their heirs, successors, executors, administrators and assigns.

16. **Price Firm:** If any changes or alternations are made by CUSTOMER to this Agreement, or if this Agreement is not executed by CUSTOMER and delivered to PYROTECNICO on or before the "PRICE FIRM DATE" shown below, then the price and date of the Display are subject to review and acceptance by PYROTECNICO for a period of 15 days following delivery to PYROTECNICO of any executed Agreement. In the event it is not accepted by PYROTECNICO, PYROTECNICO shall give CUSTOMER written notice, and this Agreement shall be null and void.

16.1 **Price Firm Date: 7/24/2023 EXECUTED AGREEMENT MUST BE DELIVERED TO PYROTECNICO BY THIS DATE.**

17. **Legal Construction:** This Agreement constitutes the entire Agreement of the parties and may not be altered except in writing signed by both parties. This Agreement and the rights and obligations of the Parties hereunder shall be construed in accordance with the laws of the State of New Hampshire. Should any provision of this Agreement be determined by a court of competent jurisdiction to be invalid, such provision shall be stricken and the remaining provisions shall be interpreted in a manner to fulfill the intent of the parties. By signing this Agreement, CUSTOMER agrees that they have read, understand, and agree with all of the terms, conditions and obligations of the Agreement.

Pyrotecnico Fireworks, Inc.

Customer, duly authorized

By: _____
Lynn Ann Hamed, Corporate Secretary

By: _____
Name: _____
Title: _____
Date: _____

