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**1. DEFINITIONS**

- A. "Acceptance or Accept" means the verification by Buyer and/or Buyer's Customer that the delivered Products and/or Services meet required specifications, standards and/or criteria as set forth in the Order.
- B. "Affiliate(s)" shall mean, with respect to a Party, any other company, partnership, or other entity which directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such Party. For purposes of such definition, the term "control" of an entity shall mean the power to direct or cause the direction of the management and policies of such entity whether through the ownership of voting securities, by contract, or otherwise.
- C. "Agreement" or "Construction Agreement" mean the instrument of contracting used in lieu of a Purchase Order, which has been duly executed by both Northrop Grumman Systems Corporation and Contractor, and includes all drawings, specifications, documents and all special and general conditions or provisions referenced therein or made subject thereto.
- D. "AI System" means any Artificial Intelligence (including without limitation any generative Artificial Intelligence), large language model, or machine learning system or algorithm.
- E. "Artificial Intelligence" or "AI" means technology that can make decisions, create predictions, generate new content, or recognize patterns without being explicitly programmed to do so.
- F. "Authorized Purchasing Representative" means the person authorized by Buyer's cognizant purchasing organization to administer and/or execute this Order and who has sole authority to make contractual commitments on behalf of Buyer, to provide contractual direction, and to change contractual requirements of this Order.
- G. "Buyer" means Northrop Grumman Systems Corporation, unless a different legal entity is identified on the face of this Order, in which case "Buyer" shall mean such other entity. The words "Northrop Grumman", "Northrop Grumman Corporation" or "Buyer" or "Owner" means Northrop Grumman Systems Corporation subsidiary, Sector, or business unit identified on the face of the Order.
- H. "Data" means all financial information, business information, designs, dimensions, specifications, drawings, patterns, computer files or software, know how, reports, or other information, including but not limited to Technical Data used in the design and manufacture of Products or the provision of Services. Data may be recorded in a written or printed document, computer or electronically stored, software, or any other tangible form of expression.
- I. "Defense Article" shall have the meaning defined in ITAR 22 C.F.R. § 120.6.
- J. "Defense Service" shall have the meaning defined in ITAR 22 C.F.R. § 120.9.
- K. "Contractor" as referenced throughout this Contract means the party with whom Buyer is contracting and whose name and address appears on the face of the Contract. The words "Contractor" or "Seller" means the party with whom Northrop Grumman Systems Corporation is contracting and whose name and address appears on the face of the Order (if a Purchase Order is being used as the instrument of contracting) or the Agreement.
- L. "Construction Representative" means a person(s) assigned to administer this Order for such party, and as such Representatives may authorize in writing to act for the party.
- M. "Order" means the instrument of contracting entitled "Purchase order" which has been accepted as provided in Clause 2GENERAL/ ORDER ACCEPTANCE including these terms and conditions, all drawings, specifications, documents, all special and general conditions, or provisions referenced therein or made subject thereto, and all other referenced documents, and any subsequent changes or modifications.
- N. "Party/Parties" means Buyer and Seller individually/collectively.
- O. "Product(s)" means those goods, supplies, software licenses, Data, materials, articles, items, parts, components or assemblies, and any incidental Services described in this Order.
- P. "Project" means the subject of the Order for which Contractor is performing the Services.

- Q. "Proprietary Information" means all Data or other information that is identified in writing at the time of disclosure as proprietary and marked with an appropriate legend, marking or stamp identifying the Data as Proprietary to the Party disclosing the information, and includes any information marked with a restrictive legend.
- R. "Punch List" means the list the items to be completed or corrected and fix the time for their completion or correction on the Certificate of Substantial Completion. Failure to include an item on the Punch List does not alter or waive the responsibility of the Contractor to complete all Services in accordance with the Contract Documents.
- S. "Seller" means the Party with whom Buyer is contracting under this Order.
- T. "Sensitive Information" means any Information that is collected, processed, maintained, used, shared, or disseminated in connection with this Order that requires protection to ensure its confidentiality, integrity and availability including, but not limited to, any Northrop Grumman Proprietary Information and third party Proprietary Information (identified as such), Personal Information, export-controlled information, Covered Defense Information as defined in DFARS 252.204-7012, and Controlled Unclassified Information (CUI) defined in the National Archives and Records Administration (NARA) Registry, available at <https://www.archives.gov/cui/registry/category-list>.
- U. "Service(s)" means Seller's time and effort, including any items (including but not limited to, materials, supplies, appliances, equipment, transportation), construction work, articles, Data, or similar materials required to be furnished or performed by Contractor/Subcontractor in order to properly perform and fulfill the obligations and requirements of this Contract.
- V. "Subcontractor" shall mean any person, supplier, distributor, retailer, vendor, or firm which furnished supplies or services to or for Contractor or another subcontractor and, therefore, means subcontractor at any tier.
- W. "Technical Data" means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation).
- X. "U.S.G." means the federal government of the United States of America and its Executive Departments, Military Departments, Government Corporations, Independent Establishments, and Executive Agencies as defined in 5 U.S.C. Chapter 1.
- Y. "Worksite" shall mean any premises or site where any Services are performed for and/or in connection with the Services together with all areas surrounding such premises or site and/or all areas in between such premises or site that Seller shall use in connection with such work.

## **2. GENERAL/ ORDER ACCEPTANCE**

This Order (which term shall be deemed to include plans, specifications, regulations, and other documents to the extent that any of the same are incorporated by reference) becomes the exclusive agreement between the parties for the Services subject to the terms and conditions herein. Any of the following shall constitute Contractor's unqualified acceptance of this Order: (a) acknowledgment of this Order; (b) furnishing of any part of the Services under this Order; (c) acceptance of any payment for the Services or (d) commencement of performance under this Order. Unless otherwise stated in Buyer's specifications, the latest revision of applicable standards, specifications, or similar documents as of the date of this Order shall apply. Any additional or different terms proposed are objected to and are hereby rejected unless the same shall be accepted in writing by Buyer.

## **3. SCOPE OF SERVICES**

Contractor shall, in conformance with the terms and conditions more particularly set forth in the Order, provide all labor, material, transportation, tools, equipment, services, permits, utilities, and any other item necessary and/or incidental to completion of the Services or furnishing of services described in the Statement of Work (SOW) schedule, the Drawings and Specifications, schedule, and other Schedules attached to the Order Form and incorporated herein by this reference as though set forth in full (collectively, the "Order Documents").

**4. ORDER OF PRECEDENCE**

All Order Documents are intended to be complementary. If not, the descending order of precedence shall be:

- A. Order (with the latest Order taking precedence)
- B. Order Terms and Conditions (including any referenced Addenda)
- C. General Provisions
- D. Statement of Work (SOW)
- E. Specifications
- F. Project Drawings
- G. Other referenced documents

**5. BUYER**

- A. Buyer's contract administrator (the "Authorized Purchasing Representative") shall identify an individual to act as Buyer's construction representative (the "Construction Representative") under this Order. Such representative shall be identified in the Order Documents or in a letter from the Contract Administrator to Contractor. The Construction Representative shall represent the Contract Administrator in the construction and/or technical phase of the Services; however, such representative shall not be authorized to change any of the terms and conditions or price of this Order (the "Order Price"). Such changes, if any, shall be made only by the Contract Administrator pursuant to Clause 14, Changes. The Services will be conducted under the general direction of the Construction Representative. The presence or absence of the Construction Representative shall not relieve Contractor from any requirements of the Order.
- B. For all purposes in the administration of this Order, Buyer and Contractor shall be represented only by that person respectively designated by each party elsewhere in this Order or otherwise designated in writing by each party as the "Buyer's Authorized Purchasing Representative" and "Contractor Representative" assigned to administer this Order for such party, and by such person(s) as such Representatives may authorize in writing to act for him. The term "Construction Representative" and "Engineer" and "Field Engineer" and "Inspector" as used in this Order shall mean such designated person or any person(s) so authorized in writing by such representative to act for Buyer with such limitations in authority as may be set forth.

**6. INDEPENDENT CONTRACTOR**

Contractor shall perform the Services provided for as an independent contractor and at its sole risk and responsibility. Employees and subcontractors engaged in Contractor's Services hereunder shall not be in any sense employees or subcontractors of Buyer but shall be employees and subcontractors of Contractor during the period of this Order and shall be subject to the rules and regulations and management of Contractor. Contractor shall not act in any sense as agent or representative of Buyer. Contractor shall establish and enforce rules and regulations for its employees and subcontractors while on the Worksite, including all security and safety regulations as herein provided.

**7. COMPOSITION OF CONTRACTOR**

If Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable under this Order.

**8. CONTRACTOR'S EMPLOYEES**

Buyer may, by a written order signed by the Buyer's Authorized Purchasing Representative, require Contractor to remove from the Worksite any employee, agent, or representative of Contractor or any of its subcontractors, Buyer deems incompetent, careless, or otherwise objectionable.

**9. COOPERATION OF CONTRACTOR**

Buyer may undertake or award other contracts for additional work to be performed in connection with or in or about the Worksite under this Order. Contractor shall cooperate with Buyer and its other contractors and coordinate Contractor's Services with theirs so that all Services may be

promptly and properly performed without undue interference or delay. Contractor shall afford Buyer's and its other contractor's reasonable opportunity for the introduction and storage of their materials and the execution of their Services, including storage space, access, use of hoisting equipment and Contractor's construction utilities.

## **10. CONTRACTOR RESPONSIBILITY**

- A. Nothing in the Order shall be interpreted as granting to Contractor exclusive occupancy of the Worksite. Contractor must ascertain to his own satisfaction the scope of the Services and the nature of any other orders that have been or may be awarded by Buyer in the performance of the Services, and Contractor must perform this Order with due consideration of such other contracts, if any.
- B. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Worksite. If the performance of any Order on the Worksite is likely to be interfered with by the simultaneous performance of some other Order or Orders, the Construction Representative shall decide which contractor shall cease Services temporarily and which contractor shall continue or whether the Services under the Order can be coordinated so that the contractors may proceed simultaneously. On all questions concerning conflicting interest of contractors performing related Services, the decision of the Construction Representative shall be binding upon all contractors concerned, and Buyer, the Construction Representative, and Buyer's consultants, shall not be responsible for any damages suffered or extra costs incurred by Contractor resulting directly or indirectly from the award or performance or attempted performance of any other Order or Orders on the project or caused by a decision or omission of the Construction Representative respecting the order of precedence in the performance of the Orders.
- C. If through acts of negligence on the part of Contractor, any other contractor or any subcontractor shall suffer loss or damage on the Worksite, Contractor agrees to settle with such other contractor or subcontractor by written agreement. If such other contractor or subcontractor shall assert any claim against Buyer, the Construction Representative, Buyer's consultants or any of their directors, officers, employees, or agents on account of any damage alleged to have been so sustained, Buyer shall notify Contractor who shall take appropriate action in conformity with his duty under Clause 70, Indemnity.
- D. Contractor shall schedule all Services under this Order to avoid interruption of normal Buyer operations.

## **11. SUPERINTENDENCE BY BUYER**

- A. The duties of the Buyer's Authorized Purchasing Representative or his designee as authorized in Clause 05 above shall be as follows:
  - 1. Make decisions at the site or in the field on behalf of Buyer including the resolution of discrepancies in accordance with the clause herein entitled "Specifications and Drawings."
  - 2. Inspect details of the Services as it progresses,
  - 3. Suspend or cause to be suspended Contractor's operations for unsafe practices or any other act or omission detrimental to sound construction practices and Services resumption, or cause to be resumed operations when such unsafe practices are corrected, and
  - 4. Assist in making other determinations and findings for Buyer provided for in this Order.
- B. A field decision shall be binding on Contractor and Buyer when such decision is in writing and signed by Buyer's Purchasing Representative and the Contractor Representative provided that such decision relates only to changes in (1) the Services, and (2) schedules. The mutually agreed to field decision shall permit the Contractor to immediately proceed with the Services as changed. The final agreed to pricing change(s) shall be processed in accordance with the clause herein entitled "Changes."

## **12. ORDER PERFORMANCE**

Contractor shall perform all Services required by and in strict accordance with the drawings,



specifications and other provisions and requirements of the Order and all within the period of time specified and at the price or prices set forth in the Order.

**13. SCHEDULE PROGRESS AND OVERTIME**

- A. Contractor shall, within five (5) days after receipt of Buyer's award and start notice (the "Award and Start Notice"), prepare, and submit to the Construction Representative for approval a milestone schedule (the "Milestone Schedule"), showing the order in which Contractor proposes to accomplish the Services, the date on which it will start the activities (including procurement of materials, plant, and equipment), and the scheduled dates for completing same. Such schedule shall be in the form of a complete critical path scheduling network. Contractor shall update the scheduling network as required and promptly submit each revision thereof to Buyer for its approval.
- B. The Milestone Schedule shall be presented on a chart of suitable scale to indicate approximately the percentage of Services, and the cost therefore, scheduled for completion at any point in time. Contractor shall enter on the chart the actual progress at such intervals as directed by Buyer and shall immediately deliver three (3) copies thereof to the Construction Representative. If Contractor fails to submit the Milestone Schedule as herein prescribed, Buyer may withhold payments until such time as Contractor submits the required Milestone Schedule.
- C. Contractor shall undertake the Services in accordance with the approved Milestone Schedule. Contractor shall proceed expeditiously with adequate force and shall complete the Services within the Project Schedule and Milestone Schedule. Failure to do so shall be evidence that Contractor is failing to undertake the Services with such diligence as will ensure its completion within the time specified in this Order and may result in cancellation in accordance with the provisions of the Termination for Default, Clause 23 herein. If, in the opinion of the Construction Representative, Contractor falls behind schedule, Contractor shall take such steps to increase the number of shifts, or overtime operations, days of work, or the amount of construction facilities, or all of them, and to submit for approval such supplementary schedule or schedules in chart form as may be deemed necessary to demonstrate the manner in which the agreed rate of progress will be regained, all without additional cost to Buyer.
- D. Failure of Contractor to perform any covenant or condition contained in the Order Documents within the time period specified shall constitute a material breach of this Order entitling Buyer to terminate the Order for Default unless Contractor applies for and receives an extension of time in accordance with Clause 25, Force Majeure or Clause 14, Changes.
- E. If requested by Buyer, Contractor shall furnish evidence satisfactory to Buyer that all necessary mechanical equipment, electrical equipment, and other materials have been ordered and scheduled for delivery so as to ensure their arrival at the site in time for construction schedule requirements.
- F. Buyer's agreement to waive a specific work item or to extend the time for performance of any particular work item shall not constitute a waiver of any other time provisions contained in the Order Documents. Failure of Contractor to complete performance promptly within any additional time authorized in a waiver or extension of time agreement shall constitute a material breach of this Order entitling Buyer to Terminate for Default.
- G. Time is of the essence in the performance of this Order. Performance by Contractor according to the project schedule (the "Project Schedule") is a material condition of this Order. By entering into this Order, Contractor confirms that the Project Schedule is a reasonable period for performing the Services. If at any time it appears to Contractor that it will not meet any of the critical path schedules or the scheduled completion date of the Services for any reasons including Labor Disputes, Clause 94, as hereinafter provided, Contractor shall promptly notify Buyer in writing of the reasons for the delay and the estimated time or duration of such delay. The herein notification requirements shall not in any way be considered as relieving Contractor of any liability for breach of contract by reason of any delay in performance.

**14. CHANGES**

- A. The Contract Administrator may at any time or from time to time, without notice to the sureties, order additions, deletions, or revisions in the Services, these will be authorized by a Request for Change (the "RFC"). Upon receipt of the RFC, Contractor will (a) promptly proceed with the changes requested and the RFC shall become a part of the Order Documents and (b) sign the RFC to acknowledge receipt thereof and return it to the Contract Administrator within three (3) working days; provided, however, that Contractor shall not proceed with any change involving an increase or decrease in the Order Price or an extension or shortening of the Project Schedule without prior written authorization from the Contract Administrator in accordance with the following procedure: Upon receipt of a RFC, Contractor shall complete the proposal section of the RFC, showing the cost of such change or savings attributable thereto, and the impact thereof on the Project Schedule. Contractor shall submit the proposal to the Contract Administrator for consideration and approval within three (3) working days after receipt of the RFC. The proposal shall not be deemed approved until Contractor has received approval in writing from the Contract Administrator. Upon receipt of such approval, such change order shall become part of the Order Documents, and Contractor shall promptly cause the performance of the Services as so changed to proceed. If the Contract Administrator indicates that the proposal is subject to negotiation, the parties will execute a Contract Change Notice ("CCN") upon their agreement to a change in the Order Price and/or the Project Schedule. Execution by the parties of any CCN shall constitute a final settlement of all items covered therein, subject to performance thereof and payment therefore pursuant to the terms of this Order.
- B. If Contractor wishes to make a claim for an increase in the Order Price or an extension to the Project Schedule, Contractor shall give to the Contract Administrator written notice thereof within ten (10) calendar days after the occurrence of the event, giving rise to such claim. Contractor must receive written approval from the Contract Administrator before proceeding to execute the Services at the increased Order Price or extended Project Schedule, except in the case of an emergency endangering life or property in which case Contractor shall act at his discretion to prevent threatened damage, injury, or loss. Except as so herein noted, any work performed by Contractor without prior approval of the Contract Administrator, will not entitle Contractor to an increase in Order Price or an extension of the Project Schedule. No oral statement of any person whomsoever shall in any manner or degree modify or otherwise affect the terms of this Order, and, except as otherwise expressly provided herein, no change may be made for any extra work or material unless the same has been ordered or approved in writing by the Contract Administrator.

**15. PROGRESS PAYMENTS**

- A. Contractor shall deliver to Buyer an itemized application for payment indicating the value of the Services performed during the previous calendar month, including the value of all material and equipment suitably stored at the Worksite or other approved location (the "Application for Payment"). The Application for Payment will set forth the Order number, and the individual percentages of completion of each part of the Services in accordance with the appropriate WBS identifier. The Application for Payment shall also reflect allocation of cost to appropriate Facility Service Authorizations ("FSA") as applicable. Such Application for Payment may not include requests for payment of amounts Contractor does not intend to pay to a subcontractor or supplier because of a dispute or other reason.
- B. The Application for Payment must be accompanied by supporting data in such form and substance as Buyer may require to confirm that all subcontractors and suppliers either have been paid or will be paid contemporaneously with receipt of the payment contemplated by the Application for Payment. Buyer reserves the right to demand, as part of this supporting data, partial lien waivers, to the extent of the payment sought, from all such subcontractors and suppliers. Contractor shall make this lien waiver requirement a part of Contractor's agreements

with its subcontractors and suppliers. Notwithstanding the above, Buyer reserves the right to issue payment by joint check directly to Contractor and to any subcontractor or supplier who claims to remain unpaid for labor or materials provided for and incorporated into the Services.

- C. The amount due to Contractor will be the total value of Services performed less a retention of no less than ten percent (10%) of such amount as part security for the fulfillment of this Order by Contractor (the "Retention"). Buyer will not withhold the Retention on amounts paid by Contractor to its subcontractors and invoiced to Buyer. Buyer shall have the right to withhold payments from Contractor if any lien, stop notice or claim is served on and/or filed against Buyer in connection with the Order until such liens have been released and recorded and a copy of the Lien Release with recording information stamped thereon has been provided to Buyer in accordance with Clause 64, Liens. Buyer shall have the right to use such amounts withheld to satisfy any lien or past due amount in accordance with Clause 64, Liens. Before receipt of payment, Contractor shall sign and deliver to Buyer a Waiver and Release of Lien upon Progress Payment in form and content satisfactory to Buyer.
- D. Buyer shall be entitled at all times to set off any amount owing at any time to Contractor from Buyer or any of its Affiliates, subsidiaries, successors or assigns, against any amount owing at any time to Buyer or any of its or any of its Affiliates, subsidiaries, successors or assigns from Contractor, whether under this Order, or any other agreement between Contractor and Buyer or any of its Affiliates, subsidiaries, successors or assigns.
- E. Buyer will pay the amount due within a reasonable period of time after receipt of a properly prepared Application for Payment from Contractor, provided the Services are in accordance with the Order Documents, and has progressed to the point indicated on the Application for Payment. Payment by Buyer against any Application for Payment shall not be deemed to constitute an admission by Buyer that it has made on-site inspections of the Worksite or that Buyer accepts any Services not in accordance with the Order Documents.
- F. Final payment of all outstanding amounts due Contractor together with any amounts held by Buyer as Retention (the "Final Payment"), shall be due after
  1. the completion of Punch List items; and/or
  2. the recording of a notice of completion and payable in accordance with the payment terms of the Order.

Buyer's setoff rights as set forth in this Clause 15 shall survive Buyer's payment of the Final Payment to Contractor. Notwithstanding the foregoing, Buyer hereby reserves the right to withhold funds necessary to cover claims made against Buyer, which are determined to be the result of acts or failure to act on the part of Contractor.

- G. Buyer may retain a sum equal to 150% of the estimated cost of completing any Punch List items. Thereafter Buyer shall pay to Contractor the amount due for completed items.
- H. Before issuance of Final Payment, Contractor shall submit:
  1. Satisfactory evidence that all payrolls, materials, bills for materials and equipment, and other indebtedness connected with the Services have been paid or otherwise satisfied;
  2. Consent of surety, if any, to final payment;
  3. As-built drawings, and any warranty, instruction, maintenance manuals, or other documents specified in Clauses 18, 19, and 68.
  4. Mechanics' lien releases, stop notice releases and bond rights releases arising out of the Order from all subcontractors, material suppliers, and Contractor. Such releases shall be signed, notarized, and recorded and shall be unconditional for all previous payments, all in form and content as may be designated by Buyer; and
  5. If required by Buyer, other data establishing payment or satisfaction of all such obligations, to the extent and in such form and content as may be designated by Buyer.

If any subcontractor or supplier refuses to furnish a release required by Buyer under Paragraph 4 above, Contractor must furnish within five (5) working days after receipt of a written demand therefore, a Release of Lien bond satisfactory to Buyer to indemnify Buyer against any such



obligations, as set forth in Clause 64. If Contractor fails to provide aforementioned bond, Buyer may (but shall not be obligated to) purchase such bond on Contractor's behalf and deduct any premiums paid therefore by Buyer from any amounts owed but unpaid to Contractor. If such obligation remains unsettled after all payments are made to Contractor by Buyer, Contractor shall refund to Buyer all funds Buyer may be compelled to pay in discharging such obligation, including all cost and reasonable attorneys' fees.

- I. The making of Final Payment shall constitute a waiver of all claims by Buyer except those arising from:
  1. Unsettled liens;
  2. Faulty or defective Services appearing after acceptance; or
  3. The terms of any special warranties required by the Order Documents.

The acceptance of Final Payment shall constitute a waiver of all claims by Contractor except those previously made in writing and unsettled.

## **16. PRICE BREAKDOWN AND INVOICES**

- A. Within ten days after commencing Services, Contractor shall submit to Buyer for approval a breakdown of the total Order price. Such breakdown shall consist of an allocation of costs for all items of labor, materials, equipment, supplies, services, and all other expenditures of whatever nature which may be chargeable to the Services by Contractor and each of its subcontractors.
- B. The construction and equipment cost breakdown requirements shall be provided to Buyer in such a manner as to provide reasonable cost allocations and description for depreciation and insurance purposes.
- C. Contractor shall submit to Buyer an invoice for each payment provided for in this Order. Each invoice shall be in the form prescribed by Buyer and shall be accompanied by such evidence in support thereof as may reasonably be required by Buyer.
- D. The invoice shall be serially numbered, and Buyer Order number must appear on the invoice.
- E. Payments to Contractor shall be made to the designated financial account at an office or branch of a regulated bank located in the United States. To prevent and detect fraudulent and unauthorized payment instructions, Contractor shall implement and maintain multifactor authentication and other reasonable security measures on Contractor's network systems accounts, including any Contractor Ariba Network account, and any Contractor email accounts, including cloud based email accounts such as Microsoft 365, through which payment instructions could be transmitted to Buyer. Buyer shall not be responsible to pay Contractor for any misdirected payments or other damages or losses attributable to Contractor's failure to use multifactor authentication and other reasonable security measures.
- F. Contractor, in connection with any proposal it makes for an Order modification pursuant to the "Changes" clause or any other clause of this Order shall furnish a price breakdown, itemized as required by Buyer. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract, and overhead costs, as well as profit and shall cover all Services involved in the modification, whether such Services were deleted, added, or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, a justification therefore shall be furnished.
- G. Contractor shall furnish for that portion of the Services covered under each invoice submittal:
  1. A list of every subcontractor, material man, laborer and other person furnishing services, labor, or materials in connection with the Services, and
  2. A receipt in full together with an affidavit that the receipt covers all the services, labor, equipment, and materials for which a lien might be filed, or
  3. Except as covered by the release or receipt in full, Contractor may furnish a bond satisfactory to Buyer against any claim or lien or otherwise.
- H. Within five (5) days after award of this Order, provided the Order Price exceeds Seventy-Five Thousand Dollars (\$75,000), and prior to proceeding with the performance of the Services,

except for mobilization, material procurement, and demolition, Contractor shall submit to the Construction Representative for approval a schedule of values (the "Schedule of Values"), showing a Project Schedule for each category of Services consisting of, as a minimum, the sixteen divisions set forth in the latest edition of the CSI MASTERFORMAT as applicable. The Schedule of Values shall also include the total dollar value for labor and materials shown separately for each category, and the percentage of the Order Price allocated to each category value. Overhead and profit shall be spread evenly throughout this Schedule of Values. The value of the labor and material to be incurred each month for each Services category shall also be included as part of the Schedule of Values.

- I. Upon receipt of the Schedule of Values, Buyer will, at its sole discretion, develop and provide to Contractor a work breakdown structure (the "WBS") based upon the Schedule of Values. If necessary, Contractor will revise the Schedule of Values to comply with the Services categories set forth in the WBS. Buyer will use the WBS (or, if none exists, the Schedule of Values) for verification of Services completed and payment of Contractor's invoices which invoices shall reflect the amount of Services completed and the value of such Services completed by labor and material for each WBS (or, if none exists, Schedule of Values) category.
- J. On a monthly basis, Contractor shall submit to the Construction Representative an updated Schedule of Values reflecting any changes required pursuant to Clause 14, Changes.

## **17. INSPECTION AND ACCEPTANCE**

- A. Contractor shall:
  1. develop and submit to the Construction Representative a quality control plan in accordance with Buyer's requirements;
  2. maintain an adequate inspection system and perform such inspections as will ensure that the Services will be free from defects and otherwise conform to the Order Documents; and
  3. maintain and make available to Buyer adequate records of such inspections.
- B. Contractor shall:
  1. be responsible for notifying the appropriate city, county, or other inspection agency whenever the Services have advanced to the point at which an inspection is required under this Order or any applicable law or ordinance;
  2. have the Worksite ready for inspection upon the arrival of such inspectors; and
  3. notify Buyer in advance, when possible, of their arrival.
- C. All materials and workmanship, including that of any subcontractors or suppliers, shall be subject to inspection and test by Buyer at all reasonable times and places, including the period of manufacture or performance. If an inspection reveals that any part of the Services must be changed or modified in any way to either meet the Order requirements or to meet the requirements of the applicable inspection agency, Contractor shall immediately notify the Construction Representative and Buyer and Contractor shall mutually agree upon the action to be taken to bring the Services in compliance with the Order requirements or the requirements of the applicable inspection agency.
- D. Neither the presence nor absence of an inspector, nor any inspection or test performed, nor any failure to discover defective or nonconforming Services shall relieve Contractor of any Order requirement.
- E. Contractor shall, at no cost to Buyer, promptly and satisfactorily replace any material and correct any workmanship rejected by Buyer or otherwise not in conformity with the Order requirements, whether observed before or after the Services are substantially complete and whether or not fabricated or installed, unless Buyer consents in writing to accept such material or workmanship with an appropriate adjustment in the Order Price, in which event the Order shall be modified in writing accordingly. Contractor shall promptly segregate and remove rejected material from the Worksite. Contractor shall bear the costs of correcting such rejected or nonconforming Services, including additional testing and inspections and compensation for the Buyer's services and expenses made necessary thereby, including, without limitation,

- correcting destroyed or damaged construction, whether completed or partially completed, of the Buyer or separate contractors caused by Contractor's correction or removal of such work.
- F. If Contractor does not promptly and satisfactorily replace rejected material or correct rejected workmanship, Buyer may:
1. by Contractor or otherwise, replace such material or correct such workmanship and charge the cost thereof to Contractor; or
  2. terminate for Default Contractor's right to proceed in accordance with Clause 23, Termination for Default.
- G. Contractor shall furnish all facilities reasonably needed for any inspection and test as may be performed by Buyer. All inspections and tests by Buyer shall be performed by Buyer. All inspections and tests by Buyer shall be performed in such manner as to not unnecessarily delay the Services. Contractor shall be charged with any additional cost of inspection if the Services are not ready/acceptable for inspection at the time specified by Contractor. If a portion of the Services are covered contrary to the Buyer's request or to requirements specifically expressed in the Order Documents, it must, if required by Buyer, be uncovered for Buyer's inspection, and be replaced at Contractor's sole expense without change in the Project Schedule.
- H. If it is considered necessary by the Construction Representative at any time before acceptance of the entire Services to make an examination of Services already completed, by removing or tearing out same, Contractor shall, upon request, promptly furnish all necessary facilities, labor, and material. If such Services are found to be defective or nonconforming in any material respect due to the fault of Contractor or its subcontractors, Contractor shall be responsible for all expenses of such examination and of satisfactory reconstruction. If, however, such Services are found to meet the requirements of the Order, an equitable adjustment shall be made in the Order Price to compensate Contractor for the additional Services involved in such examination and reconstruction; and, if completion of the Services has been delayed thereby, Contractor shall, in addition, be granted a suitable extension of the Project Schedule and the Order shall be modified in writing accordingly. If the Construction Representative prefers to accept defective or nonconforming Services, it may do so instead of requiring its removal and correction, in which case, a CCN ("Contract Change Notice") will be issued to reflect an appropriate reduction in the Order Price.
- I. Contractor's obligations hereunder shall be in addition to and not in limitation of any obligations imposed upon it by any guarantees or warranties required by the Order Documents or otherwise prescribed by law.

## **18. SUBSTANTIAL COMPLETION**

- A. The date of substantial completion of the Services or a designated portion thereof is the date when:
1. construction is sufficiently complete in accordance with the Drawings and Specifications so Buyer may occupy or utilize the Worksite (where the Services were performed) or designated portion thereof for the full use and benefit for which it is intended; and
  2. Contractor has delivered to Buyer a Certificate of Beneficial Occupancy (collectively, the "Substantial Completion Date").

Notwithstanding the foregoing, if Contractor is unable to obtain a Certificate of Beneficial Occupancy due to Buyer's action or failure to act, the Substantial Completion Date shall not be affected thereby.

The Substantial Completion Date shall be established by a Certificate of Substantial Completion signed by Buyer and Contractor which shall state their respective responsibilities for security, maintenance, heat, utilities, damage to the Worksite, and insurance. This Certificate of Substantial Completion shall also list the items to be completed or corrected and fix the time for their completion or correction (the "Punch List"). Failure to include an item on the Punch List does not alter or waive the responsibility of the Contractor to complete all Services in accordance with the Order Documents.

- B. Except as provided in the Punch List, Contractor shall thereafter have no further responsibility for the care or maintenance of the portion or portions of the Worksite so used and occupied or for loss of or damage to such portion or portions of the Service due to ordinary wear and tear, except for loss or damage thereto due to negligent acts or omissions of Contractor, its employees, agents, consultants, subcontractors or suppliers, for which Contractor shall remain responsible after the Substantial Completion Date and that part of the Services shall be deemed accepted by the Construction Representative except with respect to items or Services indicated on the Punch List.
- C. If Contractor is delayed at any time in the progress of the Services by any act of neglect of Buyer or by any separate contractor employed by Buyer, or by changes ordered in the Services, or by conditions of Force Majeure as defined in Clause 25, or any causes beyond Contractor's control, then the Substantial Completion Date shall be extended by CCN for the period of time caused by such delay. Any such delay shall be identified in writing at the time the delay is noted with an anticipated schedule impact statement

## **19. FINAL ACCEPTANCE OF SERVICES**

Unless otherwise provided in the Order the Final Acceptance by Buyer (as executed in a signed writing) shall be made as promptly as practicable after completion and inspection of all Services performed under this Order (the, "Final Acceptance"). The Final Acceptance shall be conclusive except as regards latent defects, fraud or such gross mistakes as may amount to fraud, and except as regards Buyer's rights under Clause 69, Warranty or under any other warranty or guarantee made or given in connection with this Order. Upon Final Acceptance of the Services, Contractor shall deliver to the Construction Representative a notebook containing all warranties and guarantees pertaining to all equipment incorporated into the Worksite. The warranty period set forth in Clause 69, Warranty, shall terminate twelve (12) months after the date of Final Acceptance. Until the Final Acceptance of the Services, Contractor shall have the responsible charge and care of the Services and of the materials to be used therein (including materials for which Contractor has received partial payment or materials which have been furnished by Buyer) and shall bear the risk of injury, loss or damage to any part thereof not otherwise covered by insurance.

## **20. FINAL PAYMENT**

Upon:

- A. the Final Acceptance by Buyer of all of the Services called for by this Order;
- B. the submission by Contractor, if requested, of an affidavit, with receipts, releases, or other satisfactory evidence in support thereof, stating that all payments and claims for which Contractor is responsible hereunder have been made or settled, except as specifically listed therein; and
- C. the submission by Contractor as required by Clause 64, Payment for Labor, Material, and Waiver of Liens and Release of Liens, and Clause 16, Price Breakdown and Invoices, a release and waiver by Contractor of all liens and rights of lien and all claims against the Worksite or property Buyer under or arising out of this Order or its performance other than such claims, if any, as may be specifically excepted by Contractor from the operation of the release in stated amounts set forth therein or in estimated amounts where the amounts are not susceptible of exact statement.

Buyer shall pay Contractor the amount due Contractor under this Order, provided, however, that Buyer may retain from any payment, until the claim involved is settled, such amount as may reasonably be necessary to protect Buyer from loss on account of any lien, claim, suit, or action for which Contractor is responsible under this Order or any claim Buyer may have against Contractor in connection with this Order.

## **21. SUSPENSION**

- A. Buyer may at any time, with or without cause, suspend performance of all or any part of the Services by giving ten (10) days prior written notice to Contractor. Such suspension may be

continued by Buyer for a period up to ninety (90) days during which period Buyer may at any time, by ten (10) days prior written notice, require Contractor to resume performance of the Services or terminate that portion of the Services which have been suspended. Such termination shall be pursuant to the provisions of Clause 24, Termination for Convenience.

- B. Buyer shall not be liable for any damages or anticipated profits or for any charges against the costs incurred with respect to suspended portions of the Services during such period of suspension, except for such costs which
1. are incurred for the purpose of safeguarding the Worksite and materials and equipment in transit or at the Worksite;
  2. are incurred for such personnel, lower tier subcontractor's or rented equipment which are maintained at the Worksite; or
  3. are other reasonable and unavoidable costs of shutting down the Worksite or reassembling personnel and equipment resulting directly from such suspension.

All costs resulting from 1., 2. or 3. above shall be included in the cost of Services and may constitute an increase in the Order Price.

## **22. TERMINATION REQUIRMENTS**

Upon Buyer issuing a written notice of Buyer's intent to termination this Order either partially or fully ("Notice of Termination"), except as otherwise directed by Buyer, Contractor shall:

1. Stop work under the Order on the date and to the extent specified in the Notice of Termination;
2. Place no further orders or subcontracts for materials services or facilities except as may be necessary for completion of such portion of the Services under the Order as is not terminated;
3. Terminate all orders and subcontracts to the extent that they relate to the performance of Services terminated by the Notice of Termination;
4. Assign to Buyer in the manner, at the times and to the extent directed by Buyer, all of the right, title, and interest of Contractor under the orders and subcontracts so terminated, in which case Buyer shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
5. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts with the approval or ratification of Buyer to the extent it may require, which approval or ratification shall be final for all the purposes of this clause;
6. Transfer title and deliver to Buyer, in the manner, at the times and to the extent, if any, directed by Buyer, (a) the fabricated or unfabricated parts, work in process, completed work, supplies and other material produced as a part of, or acquired in connection with the performance of, the Services terminated by the Notice of Termination, and (b) the completed or partially completed plans, drawings, information and other property which, if the Order had been completed, would have been required to be furnished to Buyer;
7. Use Contractor's best efforts to sell, in the manner at the times, to the extent and at the price or prices directed or authorized by Buyer, any property of the types referred to in (6) above; provided, however, that Contractor (a) shall not be required to extend credit to any purchaser, and (b) may acquire any such property under the conditions prescribed and at a price or prices approved by Buyer, and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by Buyer to Contractor under this Order or shall otherwise be credited to the price or cost of the Services covered by this Order or paid in such other manner as Buyer may direct;
8. Complete performance of such part of the Services as shall not have been terminated by the Notice of Termination, and
9. Take such action as may be necessary, or as Buyer may direct, for the protection and preservation of the property related to this Order which is in the possession of Contractor and in which Buyer has or may acquire an interest.



**23. TERMINATION FOR DEFAULT**

- A. Buyer may Termination for Default by issuing a Notice of Termination, if:
1. a petition under the bankruptcy laws is filed against Contractor and is not discharged within sixty (60) days from the date of filing;
  2. Contractor makes a general assignment for the benefit of its creditors;
  3. a receiver is appointed on account of the insolvency of Contractor;
  4. in the reasonable opinion of Buyer, Contractor repeatedly refuses to supply or fails to cause to be supplied properly skilled workmen or proper materials in sufficient number or amounts to render services or perform the Services hereunder;
  5. in the reasonable opinion of Buyer, Contractor fails to comply with, or fails to cause to be complied with the Project Schedule, and Buyer notifies Contractor of such noncompliance and Contractor does not, within then (10) days of its receipt of such notice, cure, or cause to be cured such noncompliance with the Project Schedule;
  6. in the reasonable opinion of Buyer, Contractor fails to make, or fails to cause to be made, prompt payment to subcontractors or suppliers;
  7. in the reasonable opinion of Buyer, Contractor disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction over the Worksite or the performance thereof; or
  8. in the reasonable opinion of Buyer, Contractor otherwise is guilty of one or more violations of a material provision of this Order or of persistent violations of other provisions hereof, then Buyer may, without prejudice to any other right or remedy under this Order, at law or in equity, and after giving Contractor ten (10) days prior written notice, terminate this Order and take possession of the Worksite (the "Notice of Termination")
- B. In the event of such termination, Buyer may take possession of all materials and equipment on the Worksite intended for the permanent construction of the Project and may complete the Project by whatever method Buyer may deem expedient. In such case, Contractor shall not be entitled to receive any further payment until Final Acceptance of the Services, and then only to the extent that Contractor shall be entitled to receive previously invoiced but unpaid direct and indirect cost (collectively, "Contractor's Unpaid Costs"); provided, however, Contractor's Unpaid Costs plus the cost of the Services as completed by Buyer, including compensation for additional professional services (collectively, "Buyer's Completion Costs") shall not exceed the total Order Price. If Contractor's Unpaid Costs plus Buyer's Completion Costs exceed the unpaid balance of the Order Price, Contractor will pay the difference to Buyer
- C. If, after the Notice of Termination issued pursuant to this clause, it is determined for any reason that Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of cancellation had been issued pursuant to the Termination for Convenience clause.
- D. The rights and remedies of Buyer provided in this clause are in addition to any other rights and remedies provided by law or under this Order. The terms subcontractors or suppliers means subcontractors or suppliers at any tier.

**24. TERMINATION FOR CONVENIENCE**

- A. Termination by Buyer for Buyer's Convenience:
1. Buyer may at any time terminate this Order or any portion of the Services under this Order for its convenience upon thirty (30) days prior written notice to Contractor (the "Notice of Termination" for convenience). In the event of termination of this Order pursuant to this section, subject to deduction for previous payments, Buyer shall compensate Contractor and Contractor shall accept as full compensation for all Services performed (a) Pro Rata compensation for the portion of the Services already performed; and (b) reimbursement for expenditures made with Buyer's prior written approval.
  2. The amount of any settlement may include a reasonable allowance for profit on Services

completed on the terminated portion, but no anticipatory profit of the Services terminated shall be allowed. No settlement agreed upon may exceed the total Order Price as reduced by

- a. the amount previously paid; and
- b. the Order price of Services not terminated.

The Order shall be amended, and Contractor paid the agreed amount.

3. If Contractor and Buyer fail to agree on the entire amount to be paid because of the termination of Services, Buyer may pay to Contractor the amounts determined by Buyer to be due Contractor.
  4. If Contractor fails to submit a termination settlement proposal within ninety (90) days following receipt from Buyer of the Notice of Termination for convenience and fails to request a time extension, before expiration of the ninety (90) day period, Buyer shall pay to Contractor the amount determined by Buyer to be due Contractor. A dispute on the equitable adjustment of the terminated portion of this Order shall not excuse continued performance on the non-terminated portion of this Order.
  5. Where Contractor's Services have been so terminated by Buyer pursuant to the conditions set forth above termination shall not affect any rights of Buyer against Contractor then existing or which may thereafter accrue. Any retention or payment of funds due Contractor will not release Contractor from liability.
- B. After receipt of a Notice of Termination and except as otherwise directed by Buyer, Contractor shall proceed with the requirements of clause 22 "TERMINATION REQUIREMENTS".
- C. After receipt of a Notice of Termination, Contractor shall submit to Buyer its termination settlement proposal, as in the form and with the certification prescribed by Buyer incorporating all claims of Seller in the form. Such claim shall be submitted promptly but in no event later than ninety (90) days after the effective date of termination. If Contractor fails to submit its termination claim within the time allowed, Buyer may determine based on information available to it the amount, if any, due Contractor by reason of the termination, and such determination shall be final. After Buyer has made a determination under this paragraph, Buyer shall pay Contractor the amount so determined, which payment shall be deemed to satisfy all claims of Contractor against Buyer by reason of the termination.
- D. Subject to the provisions of this clause in subsection C, Contractor and Buyer may agree upon the whole or any part of the amount or amounts to be paid to Contractor by reason of the total or partial termination of Services pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on Services performed; provided that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Order price as reduced by the amount of payments otherwise made and as further reduced by the Order price of Services not terminated. The Order shall be amended accordingly, and Contractor shall be paid the agreed amount. Nothing in this clause subsection E, prescribing the amount to be paid to Contractor in the event of failure of Contractor and Buyer to agree upon the whole amount to be paid to Contractor by reason of the termination of Services pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to Contractor pursuant to this clause subsection D.
- E. In the event of the failure of Contractor and Buyer to agree as provided in this clause subsection D, upon the whole amount to be paid to Contractor by reason of the termination of Services pursuant to this clause, Buyer shall pay Contractor the following amounts (but without duplication of any amounts agreed upon in accordance with this clause subsection D.), which payment shall be deemed to satisfy all claims of Contractor against Buyer by reason of the termination:
1. With respect to all Services performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of:
    - a. The cost of such Services actually performed;

- b. The cost of settling and paying claims arising out of the termination of Services under subcontracts or orders as provided in clause 22 "TERMINATION REQUIREMENTS" subsection 6, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of Services under this Order, which amounts shall be included in the cost on account of which payment is made under a. above; and
  - c. A sum, as profit on a. above, to be fair and reasonable, provided, however, that if it appears that Contractor would have sustained a loss on the entire Order had it been completed, no profit shall be included or allowed under this subdivision c. and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and
2. The reasonable cost of the preservation and protection of property incurred pursuant to Clause 22 "TERMINATION REQUIREMENTS" subsection 9, and other reasonable cost incidental to termination of Services under this Order, including expense incidental to the determination of the amount due to Contractor as the result of the termination of Services under this Order.
- The total sum to be paid to Contractor under 1. above shall not exceed the total Order price as reduced by the amount of payments otherwise made and as further reduced by the Order price of Services not terminated. Except for the normal spoilage and except to the extent that Buyer shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to Contractor under 1. above, the fair value of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to Buyer, or to a buyer pursuant to Clause 22 "TERMINATION REQUIREMENTS" subsection 7.
- F. Contractor and Buyer agree that any determination of costs under this clause subsection C or E shall be governed by the principles and procedures set forth or referred to in Section 49.602-1, Termination Settlement Proposal Forms of the Federal Acquisition Regulation (FAR) as in effect on the date of this Order even though this is not a subcontract under a Government contract.
  - G. In arriving at the amount due Contractor under this clause there shall be deducted
    - 1. all unliquidated advance or other payments on account theretofore made to Contractor, applicable to the terminated portion of this Order;
    - 2. any claim which Buyer may have against Contractor in connection with this Order; and
    - 3. the agreed price for, or the proceeds of sale of, any materials, supplies or other things kept by Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to Buyer.
  - H. If the termination hereunder be partial, prior to the settlement of the terminated portion of this Order, Contractor may file with Buyer request in writing for an equitable adjustment of the price or prices specified in the Order relating to the continued portion of the Order (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices.
  - I. Buyer may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by Contractor in connection with the terminated portion of this Order whenever in the opinion of Buyer the aggregate of such payments shall be within the amount to which Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by Contractor to Buyer upon demand, together with interest computed at the rate of ten (10) percent per annum, for the period from the date such excess payment is received by Contractor to the date on which such excess is repaid Buyer, provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in Contractor's claim by reason of retention or other disposition of termination inventory until ten (10) days after the date of such retention or disposition, or such later date as determined Buyer by reason of the circumstances.

- J. Unless otherwise provided for in this Order by applicable statute, Contractor, from the effective date of termination and for a period of three (3) years after final settlement under this Order, shall preserve and make available to Buyer at all reasonable times at the office of Contractor, and without charge, all Contractor's books, records, documents and other evidence bearing on the costs and expenses of Contractor under this Order and relating to the Services terminated hereunder.
- K. Contractor shall include in each of its subcontracts a clause similar to this clause "TERMINATION FOR CONVENIENCE".

**25. FORCE MAJEURE**

Except for a default of Contractor's subcontractor at any tier, neither Buyer nor Contractor shall be liable for any failure to perform due to any cause beyond its reasonable control and without its fault or negligence. Such causes include but are not limited to: (1) acts of God or of the public enemy; (2) acts or failure of any government in either its sovereign or contractual capacity; (3) fires, floods, epidemics, terrorism, quarantine restrictions, strikes, freight embargoes, nuclear incident, or any other act or event beyond reasonable control and without the fault of either Party or its subcontractors. In the event that performance of this Order is hindered, delayed, threatened to be delayed, or adversely affected by causes of the type described above, then the Party whose performance is so affected shall immediately notify the other Party's Authorized Representative in writing, including all relevant information with respect thereof, and shall likewise notify promptly of any subsequent change in the circumstances, and at Buyer's sole option, this Order shall be completed with such adjustments to delivery schedule as are reasonably required by the existence of such cause or this Order may be terminated for convenience. If unusually severe and abnormal weather conditions are the basis for a request for an extension of time, such request shall be documented by data substantiating that weather conditions were unusually severe and abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the Project Schedule.

**26. POSSESSION OR USE PRIOR TO COMPLETION**

Buyer may, pursuant to a written field order signed by the Buyer's Authorized Representative which expressly refers to this clause, take possession of or use of any completed or partially completed part of the Services at any time prior to final completion. Unless otherwise agreed in writing, such possession or use shall not be deemed an acceptance of any part of the Services nor relieve Contractor of the risk of loss. If such possession or use delays the progress of the Services or causes additional expense to Contractor, an equitable adjustment shall be made in the Order price and time for completion and the Order shall be modified in writing accordingly; provided, however, if Contractor fails to complete the Services within the time specified in this Order, as the same may be modified in writing from time to time, Buyer may take possession of or use all or any part of the Services without payment of additional compensation to Contractor or extension of time for completion of such possession or use.

**27. USE OF COMPLETED PORTIONS**

- A. When the Services or any part thereof is sufficiently complete so that Buyer can utilize or place it into service, Buyer has the right to utilize such portions of the Worksite and to place the operable portions into service and to operate same upon giving written notification to Contractor.
- B. Upon receipt of such notice and commencement of utilization or operation by Buyer, Contractor shall be relieved of its duty to maintain the affected portions of the Worksite; provided, however, that nothing in this Clause 27 shall be construed as relieving Contractor from his complete responsibility to complete the Services in its entirety, correct defective Services and materials, protect the Worksite and materials from damage, and otherwise discharge all duties undertaken by him pursuant to the Order Documents. Action by Buyer pursuant to this Clause 27 shall not be deemed to constitute completion and acceptance, and such action shall not

relieve Contractor, his sureties, or insurers from the provisions of Clause 49, Insurance Requirements, Clause 70, Indemnity, and Clause 69, Warranty.

## **28.SPECIFICATIONS AND DRAWINGS**

- A. Contractor shall keep at the Worksite a copy of the drawings and specifications required by this Order and shall at all times provide Buyer access thereto. Anything mentioned in the specifications and not shown on the drawings or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In any case of discrepancy in the figures, drawings or specifications, the matter shall be immediately submitted, in writing, to the designated Buyer Purchasing Representative or its appointed designee without whose decision said discrepancy shall not be resolved by Contractor, save only at its own risk and expense. Buyer's Purchasing Representative shall resolve such discrepancy in writing or by initiating and dating the approval on a clarifying revision on the figure, drawing or specification. Buyer may furnish from time to time such other detail drawings, specifications, and information as it may consider necessary. All drawings, plans, specifications, data, and other information furnished by Buyer to Contractor or developed by Contractor in the performance of this Order shall remain or become the property of Buyer, and Contractor shall deliver the original and all copies of all such documents to Buyer upon completion and acceptance or termination of the Services.
- B. Figured dimensions on drawings shall govern but Services not dimensioned shall be as directed. Services not particularly shown or specified shall be the same as similar parts that are shown or specified. Large-scale details shall take precedence over smaller scale drawings as to shape and details of construction. In the event of any discrepancy between any drawings and the figures thereon, the figures shall be taken as correct. Specifications shall govern as to materials and workmanship. Drawings and specifications are intended to be fully complementary and to agree. The specifications calling for the higher quality material or workmanship shall prevail. Materials or Services described in words, which so applied, have a well-known technical or trade meaning shall be deemed to refer to such recognized standards. Request for substitution of any specified materials or equipment shall be in accordance with Clause 38, Labor, Materials, and Equipment.
- C. All lists, rules, regulations, and standards referred to in this Order are recognized as requirements of this Order. When ASTM Specifications are referred to, it is understood to mean that these specifications shall comply with the latest American Society of Testing Materials specifications of that serial designation.
- D. Buyer will furnish to Contractor, free of charge, one (1) reproducible and two (2) copies of specifications, plans, and drawings necessary for the execution of the Services. Contractor shall maintain on the site(s) where the Services are to be performed, one set of drawings marked up neatly with red pen or pencil showing all changes that have occurred on the Project as a result of changes ordered pursuant to Clause 14, Changes, field changes, field conditions, substitutions, etc. This set of drawings shall be made available to the Construction Representative for review and inspection at his request.

## **29.SHOP DRAWINGS**

- A. "Shop Drawings" are drawings, diagrams, illustrations, schedules, performance charts, brochures, and other data which are prepared by Contractor or any subcontractor, manufacturer, supplier, or distributor and which illustrate some portion of the Services.
- B. Contractor shall submit Shop Drawings to the Construction Representative for review
  - 1. when Shop Drawings are called for by the Order Documents;
  - 2. when Contractor desires to perform the Services in a manner significantly different from the details shown in the Order Documents;
  - 3. when substitutions require rearrangement of portions of the Services; or
  - 4. when Shop Drawings are requested by Buyer.



- C. All Shop Drawings shall be accurately dimensioned and show all details necessary to define the Services completely.
- D. Submittal shall be made with ample lead-time to avoid delay. Six (6) copies of each drawing shall be submitted initially, and one (1) of these will be returned with reasonable promptness showing the changes desired by Buyer. Contractor shall return to Buyer six (6) corrected copies. After review by Buyer, two (2) copies will be returned to Contractor. Contractor shall furnish any additional copies needed by its subcontractors or suppliers.
- E. Review of Shop Drawings by Buyer is limited to general configuration and shall not relieve Contractor of responsibility for defects in design or other errors or omissions in such drawings nor from compliance with all the Order requirements.

### **30. LAYOUT OF THE SERVICES**

- A. Unless otherwise specified elsewhere in this Order, Contractor shall set, cut, and lay out the Services as necessary and shall furnish all stakes, templates, platforms, equipment, and labor that may be required in performing such part of the Services. All stakes or other marks shall be preserved by Contractor until removal is authorized by Buyer's Purchasing Representative. Buyer shall furnish, on request from Contractor, all location and limit marks reasonably necessary per the Specifications for the conduct of the Services.
- B. Basic elevations and controlling location reference points as may be designated in the drawings or Specifications shall be established by the Contractor. Contractor shall provide such survey work as required for the execution of the Services. Contractor shall be responsible for the accuracy of such intermediate lines and grades which shall be subject to check from time to time by Buyer. Failure to check shall not relieve Contractor of responsibility for the accuracy of all lines and grades. Dimensions shown on the drawings or Specifications are to be verified in the field by the Contractor.

### **31. UTILITIES**

Unless otherwise provided in this Order, Contractor shall furnish all the water and electric current and other utilities as may be required for the performance of this Order. At no additional expense to Buyer, Contractor shall install and maintain any necessary temporary electrical and water supply connections, facilities, and piping, but only at such locations and in such workmanlike manner as may be authorized in writing by Buyer. Before final acceptance all temporary connections, facilities and piping installed by Contractor shall be removed in a workmanlike manner, to the satisfaction of Buyer.

### **32. UTILITY SHUT-OFF**

If Contractor requires the temporary shut-off of any utility (which term as used in this clause and the following clause shall include all supply, disposal, distribution and communication systems, and all similar facilities) Contractor shall notify Buyer twenty-four hours in advance of the time Contractor requires the shut-off. Contractor shall then perform the Services requiring the shut-off on such days and at such hours as Buyer may direct. Regardless of the days or hours fixed by Buyer, no extra compensation will be paid for such work.

### **33. EXISTING UNDERGROUND UTILITIES**

Underground utilities which are known by Buyer to exist are shown in their approximate locations only because exact locations are unknown to Buyer. Contractor shall excavate with utmost care so as not to cause damage or interruption of service. If any utility shown on the drawings is damaged as a result of any failure of Contractor or any of its subcontractors of any tier or any of their respective agents, representatives, or employees to exercise utmost care, the Contractor shall be solely liable and shall indemnify and hold Buyer harmless from any claims, suits, damages, or losses including any costs associated with repairing such utility. If an existing utility requires relocation and such relocation is not specified in the Order, Buyer shall issue a written field order pursuant to Clause 14, Changes to provide for the relocation.

**34. PERSONNEL SUPERINTENDENCE**

- A. Contractor shall supervise and direct the Services competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Services in accordance with the Order Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, and for assuring that the completed Services comply with the Order Documents.
- B. Contractor shall designate a competent superintendent satisfactory to Buyer who shall be in attendance at the Worksite at all times during performance of the Services (the "Superintendent"). Contractor shall not replace the Superintendent without prior written notice to and approval from the Construction Representative, except under extraordinary circumstances, and then Contractor shall give written notice to the Construction Representative within 24 hours of any such replacement. The Superintendent will be Contractor's representative at the Worksite and shall have authority to act on behalf of Contractor. All written or oral communications given to the Superintendent shall be as binding as if given to Contractor. During periods when the Services are suspended, Contractor shall make appropriate arrangements for any emergency Services that may be required.
- C. Contractor shall designate an individual(s) who will be available during off-hours in the event of an emergency and shall post a sign(s) in a prominent location at the Worksite in large size print containing the name(s) and telephone numbers by which such designated individual(s) may be contacted.

**35. CONTRACTOR'S WORK AREA**

Contractor shall confine all its operations, including storage, vehicle parking and the movement of materials, equipment and workmen to the areas specified herein, or approved by Buyer; provided, however, that at Buyer's option, premises adjacent to the construction site may be made available for use by Contractor without cost whenever such use will not interfere with other use or purposes of Buyer and Buyer gives its written consent.

**36. PERMITS AND LICENSES**

Contractor shall:

1. procure and pay for all permits, licenses, and inspections required by any governmental authority for any part of the Services;
2. furnish any bonds, security or deposits required to permit performance of the Services; and
3. give all notices necessary and incidental to the due and lawful performance of the Services.

**37. MATERIAL AND WORKMANSHIP**

- A. Unless otherwise specifically provided in this Order, all material (which term as used in this Order shall include all materials, equipment and other items incorporated or to be incorporated in the Worksite covered by this Order) shall be new and of the most suitable grade for the purpose intended.
- B. Unless otherwise specifically provided in this Order, reference to any material or patented process by trade name, make or catalog number, whether or not coupled with the words "or equal," shall be regarded as establishing a standard of quality and shall not be construed as limiting competition, and Contractor may, at his option, substitute any material or process which, in the judgment of Buyer, is equal to that so referred to. All substitutions, including "or equal" items, must have the prior written approval of Buyer. In the event Contractor or its subcontractors at any tier uses materials, supplies, goods, or processes not so permitted or authorized by Buyer's Purchasing Representative, Contractor, at the request of Buyer, shall be obligated to remove and replace such materials at no cost to Buyer. This is in addition to Buyer other remedies.
- C. When required by this Order or when requested by Buyer, Contractor shall promptly furnish to Buyer for its approval full information concerning, and samples of, the material to be incorporated in the Services. Material installed or used without required approval shall be at the

risk of subsequent rejection.

- D. Approval by Buyer of material shall not relieve Contractor of any warranty with respect thereto or any obligation or liability in connection with this Order.
- E. All Services under this Order shall be performed in a skillful and workmanlike manner.

### **38. LABOR, MATERIALS, AND EQUIPMENT**

- A. Contractor will provide or cause to be provided competent, suitably qualified personnel to survey and lay out the Services and perform construction as required by the Order Documents. Contractor will at all times maintain good discipline and order at the Worksite. All persons assigned by Contractor to perform services hereunder shall be skilled in the type of work to which they are assigned. No person objected to by Buyer shall be assigned by Contractor to perform services hereunder, and upon receipt of a verbal request from Buyer for the replacement of any such person, Contractor shall forthwith remove such person from work, and as soon thereafter as reasonably possible, shall furnish a satisfactory replacement. Contractor will furnish satisfactory evidence as to the kind and quality of materials and equipment to be incorporated in the Services.
- B. All materials, equipment, and supplies shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, or processors, except as otherwise provided in the Order Documents. Contractor shall assemble and transmit to the Construction Representative three (3) complete copies in loose-leaf binders of all operating and maintenance data from all manufacturers whose equipment is installed in the Worksite. Contractor shall also prepare a checklist or schedule showing routine maintenance required to keep warranties valid, for each item of equipment, i.e., type of lubricants to be used, intervals between lubrication, part change out, etc.
- C. When required by the Order Documents or when requested by Buyer, Contractor shall promptly furnish to Buyer for its approval full information concerning, and samples of, the material to be incorporated in the Services. Material installed or used without required approval shall be at the risk of subsequent rejection.
- D. Approval by Buyer of material shall not relieve Contractor of any warranty with respect thereto or any obligation or liability in connection with this Order.
- E. Buyer reserves the sole right to determine the acceptability or equivalence of any requested substitution.
- F. If a specific means, method, technique, sequence, or procedure of construction is indicated in or required by the Order Documents, Contractor may furnish or utilize a substitute means, method, sequence, technique, or procedure of construction acceptable to Buyer, if Contractor submits sufficient information to allow Buyer to determine that the substitute proposed is equivalent to that indicated or required by the Order Documents.
- G. Buyer will be allowed a reasonable time within which to evaluate each proposed substitute. Buyer will be the sole judge of acceptability, and no substitute will be ordered, installed, or utilized without Buyer's prior written acceptance, which will be evidenced by either a CCN pursuant to Clause 14, Changes, or an approved shop drawing. Buyer may require Contractor to furnish at Contractor's sole expense a special performance.
- H. Nothing in the Order shall be construed as vesting in Contractor any right of property in materials after they have been attached or affixed to the Worksite or the soil or for materials delivered to the Worksite or stored subject to or under the control of Buyer. All such materials shall become the property of Buyer upon being so attached or affixed or upon payment for materials delivered to the Worksite or stored subject to or under the control of Buyer. Soil, stone, gravel, and other materials found at the Worksite may be used in the Services if they conform to the plans and specifications. No other use shall be made of such materials except as required by the Order Documents.

### **39. MAINTENANCE INFORMATION AND TOOLS**

For each piece of equipment installed in the Worksite, Contractor shall, as a condition precedent to final payment, provide Buyer with the following: three (3) each of working drawings, operating instructions, performance curves and data, and maintenance and parts manuals, and one (1) each of nonstandard tools required in the normal maintenance, adjustment, use and operation of the equipment. For small commercial standard equipment, the information, and tools to be provided shall be limited to that normally available from the manufacturer. The provisions of this clause do not apply to Buyer furnished equipment.

#### **40. NOTICE OF LABOR DISPUTES**

Whenever Contractor has knowledge that any actual or potential labor dispute may delay this Order, Contractor shall immediately notify and submit all relevant information to Buyer. Contractor shall insert the substance of this entire clause in any subcontract hereunder as to which a labor dispute may delay this Order. However, any subcontractor need give notice and information only to its next higher tier subcontractor. Labor disputes or delays are Contractor's responsibility. Contractor is obligated and responsible to continue performance on this Order to meet schedules at no additional cost to Buyer.

#### **41. PRODUCT VULNERABILITIES**

Within 24 hours of confirming vulnerability in their product line, seller shall notify buyer and provide a corrective action plan to address the issue. This plan should include, but not be limited to: identification of the specific vulnerability; steps to isolate and prevent further occurrences; replacement of the defective product(s); and enhanced quality control procedures.

#### **42. SAFETY & RISK OF LOSS**

- A. Contractor shall establish and maintain a safety program and shall require each of its subcontractors to establish and maintain appropriate safety programs which shall comply with all applicable provisions of federal, state, and local safety laws to prevent accidents, injury, damage or loss to persons or property on, about or adjacent to the Worksite and shall comply with appropriate federal, state, and local record-keeping and training requirements. Contractor shall erect and properly maintain, at all times as required by the conditions and progress of the Services, necessary safeguards for the protection of workers and the public. All aspects of said program are auditable and enforceable by Buyer.
- B. Contractor shall bear the risk of any loss or destruction of or damage to the Worksite and Services performed under this Order or any materials, equipment or other items incorporated or to be incorporated therein until the completion of the Services and its final acceptance by Buyer.

#### **43. ASBESTOS NOTIFICATION**

Contractor agrees to comply with all federal, state, and local environmental, health and safety ("EHS") laws and regulations applicable to Services for Buyer. Contractor must 1) show accurate and current documentation of completion of all applicable federal and/or state EHS training required for the job, i.e., hazardous material training, respirator training, confined space training, etc., prior to Services being performed on Buyer's property; and 2) Complete site-specific EHS orientation training for the Services to be performed on Buyer's property prior to the commencement of any Services. Failure to comply with this clause constitute a material breach of this Order subject to Termination for Default.

#### **44. ERRORS OR DISCREPANCIES NOTED BY CONTRACTOR**

- A. It is Contractor's duty to promptly notify the Construction Representative in writing of any design, material or specified method that may prove defective or insufficient.
- B. Similarly, if before commencing Services or during the course of the Services, Contractor finds any discrepancy between the specifications and the plans or between either of them and the physical conditions at the Worksite or finds any error or omission in any of the plans or in any survey, Contractor shall notify promptly the Construction Representative of such discrepancy,

error, or omission orally and in writing. If Contractor finds that any plans or specifications are at variance with any applicable law, ordinance, regulation, order or decree, Contractor shall promptly notify the Construction Representative in writing of such variance. The Construction Representative, on receipt of any such notice, will promptly investigate the circumstances and give appropriate instructions to Contractor. Until such instructions are given, any Services performed by Contractor after Contractor discovers or should have discovered such error, discrepancy, defect, insufficiency, or conflict will be at Contractor's sole cost, expense, and risk of liability.

- C. If Contractor fails to promptly notify the Construction Representative as required by this Clause 44, Contractor shall be deemed to have waived any right to assert at any later date in any legal or equitable proceeding against Buyer, or in any subsequent arbitration or settlement conference between Buyer and Contractor,
1. any defect or insufficiency in design, materials, or specified method;
  2. any discrepancy between specifications, plans, and physical conditions at the Worksite;
  3. any error or omission in any plans or any survey; or
  4. any variance between plans or specifications and applicable law. If Contractor believes there are or may be any errors, omissions or inconsistencies in the specifications, plans, and physical conditions at the Worksite;
  5. any error or omission in any plans or any survey; or
  6. any variance between plans or specifications and applicable law.

#### **45. SITE INVESTIGATION AND CONDITIONS AFFECTING THE SERVICES**

- A. Contractor acknowledges that it has investigated and satisfied itself as to the conditions affecting the Worksite. These conditions include but are not restricted to
1. those bearing upon the presence of toxic materials other than asbestos;
  2. transportation, disposal, handling, and storage of materials;
  3. availability of labor, water, electric power, roads, and uncertainties of weather, river stages, tides, or similar conditions at the Worksite; and
  4. the character of equipment and facilities needed prior to and during performance of the Services.
- B. Contractor further acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as the information is ascertainable from an inspection of the Worksite, including evaluating all exploratory work done by Buyer as well as any drawings and specifications made a part of this Order. Any failure by Contractor to acquaint itself with the available information will not relieve it of responsibility for estimating properly the difficulty or cost of successfully performing the Services. Buyer assumes no responsibility for any conclusions or interpretations made by Contractor based on the information made available by Buyer.
- C. Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and locations of the Services, and the general and local conditions, which can affect the Services or the cost thereof. Any failure by Contractor to do so will not relieve Contractor of responsibility for successfully performing the Services without additional expense to Buyer. Buyer assumes no responsibility for any understandings or representations concerning conditions made by any of its officers or agents prior to the execution of this Order unless such understandings or representations by Buyer are expressly stated in the Order Documents.
- D. Contractor shall promptly notify the Construction Representative in writing of any asbestos or other toxic materials discovered by Contractor to be present at the Worksite. Buyer shall at its discretion take whatever action is required by law then in effect to remedy the situation at no cost to Contractor.

#### **46. CHANGED CONDITIONS**

- A. Contractor shall promptly, and before such conditions are disturbed, notify the Construction



Representative in writing of:

1. subsurface or latent physical conditions at the Worksite differing materially from those indicated in this Order;
  2. unknown physical conditions at the Worksite, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the nature and character of Services provided for in this Order; or
  3. the presence at the Worksite of asbestos or other toxic materials not previously identified by Buyer or by Contractor during the Site Investigation required pursuant to the provisions of Clause 45, Site Investigation and Conditions Affecting the Services.
- B. Buyer shall promptly investigate the conditions, and if it finds that such conditions do so materially differ and cause an increase or decrease in Contractor's cost of, or the time required for, performance of this Order, an equitable adjustment shall be made, and the Order modified in writing accordingly. Any adjustment in Order Price shall be negotiated following submittal of Contractor's proposal presented in the form required by Clause 14, Changes. Any claim of Contractor for adjustment hereunder shall not be allowed unless Contractor has given notice as required above.

#### **47. OBSTRUCTIONS**

Contractor shall remove and dispose of all structures, debris or other obstructions or any character necessary to accommodate the Services. Where such obstructions consist of improvements not required by law to be removed by the Buyer thereof, all such improvements shall, with the prior written consent of the Construction Representative, be removed, maintained, and permanently replaced by Contractor at Buyer's expense, except as otherwise specifically provided in the Order Documents.

#### **48. RIGHT TO DO WORK**

If Contractor refuses or fails to prosecute any part of the Services with such diligence as will ensure its completion within the time specified in this Order, as the same may be modified in writing from time to time, or otherwise fails to perform any of its obligations under this Order, Buyer may, at any time after three (3) days' written notice to Contractor, or in an emergency endangering life or property, after such notice, if any, as may be reasonable under the circumstances, without prejudice to any other rights or remedies Buyer may have, make good such deficiencies by such means as Buyer may deem expedient and charge the cost thereof to Contractor.

#### **49. INSURANCE REQUIREMENTS**

A General (Professional Liability, as applicable) - Contractor shall not commence or continue to perform any Services unless, at its own expense, Contractor has in full force and effect all insurance required by this Section. Contractor shall not permit any subcontractor to perform Services unless these insurance requirements have been complied with by each subcontractor.

#### **50. CONTRACTOR'S LIABILITY INSURANCE**

- A. Contractor shall purchase and maintain from a company or companies authorized to do business in the state in which the work is located and acceptable to Buyer, the following insurances which shall protect Contractor, Buyer, and such other parties as Buyer may from time to time designate, from claims which may arise out of or result from Contractor's operations under the Order, by a subcontractor or lower-tier subcontractor of the Contractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable:
1. Commercial General Liability Insurance, covering claims for personal injury, bodily injury and property damage arising out of the work and in a form providing coverage no less broad than that of the current ISO Commercial General Liability Insurance policy (Occurrence Form, number CG 00 01). Such insurance shall provide coverage for all operations including the products-completed operations hazard and shall be maintained for seven years after

acceptance of the final payment for the work, or to the applicable Statute of Repose, whichever is less. The limits of such insurance shall not be less than:

- a. \$1,000,000 each Occurrence
- b. \$2,000,000 aggregate for products and completed operations
- c. \$2,000,000 general aggregate limit, which shall apply separately and be reinstated annually

The policy shall not contain any exclusions directed toward any types of projects, materials or processes involved in the work. Coverage shall conform with the following additional requirements:

- a. Contractual Liability to cover liability assumed under the agreement;
- b. Coverage for explosion, collapse, and underground hazards if such exposure exists;
2. Professional Liability Insurance, insuring against professional errors and omissions arising from the work (including Services) on the Project by any party providing construction management, architectural, engineering (including landscape engineering), and/or surveying services, and/or any party whose work or Services involves the preparation of plans or drawings, with limits not less than \$3,000,000 per claim and \$3,000,000 annual aggregate. Such policy shall not contain any exclusions directed toward any types of projects, materials, services, or processes involved in the work. The retroactive date for coverage will be no later than the commencement date of design and will state that in the event of cancellation or non-renewal the discovery period for insurance claims will be at least 3 years or otherwise as by agreement with Buyer.
3. Workers' or Workmen's Compensation Insurance with Statutory Limits and in accordance with the law of the relevant state, including All States and Voluntary Compensation endorsement.
4. Employer's Liability Insurance with limits of at least \$1,000,000 bodily injury for each accident; \$1,000,000 bodily injury by disease for each employee; and \$1,000,000 bodily injury disease aggregate.
5. Business Auto Insurance covering all owned, non-owned, and hired vehicles on and off-site. Such insurance shall provide coverage not less than the standard ISO Comprehensive Automobile Liability policy (CA 00 01, CA 00 05, CA 00 12, CA 00 20), with limits not less than \$1,000,000 each accident and \$1,000,000 each occurrence. Any statutorily required "No-Fault" benefits and uninsured/underinsured motorists' coverage shall be included.
6. Umbrella/Excess Liability Insurance written on an occurrence basis in excess of the underlying insurance identified in subparagraphs A.1, A.4 and A.5, above, and which is at least as broad as each and every one of the underlying policies. The umbrella/excess liability policies shall be written on a "drop-down" and "following form" basis, with only such exceptions as Buyer shall expressly approve in writing. The amounts of insurance required in subparagraphs A.1, A.4, A.5 and this A.6 may be satisfied by Contractor purchasing coverage for the limits specified or by any combination of underlying and umbrella limits, so long as the total amount of insurance is not less than the limits specified below for these types when added to the limit for this Section.  
The umbrella/excess liability insurance shall have limits not less than the following:
  - a. \$5,000,000 Any one occurrence and annually reinstating General Aggregate; and
  - b. \$5,000,000 Any one occurrence and Aggregate Products/Completed Operations, which shall be maintained for three (3) years following completion of the work.
7. Contractor's Equipment Insurance provided on an "all risk" form, covering all risk of physical damage to equipment provided for use at the Project site by Contractor, whether owned, leased, rented, borrowed, or used at the Project site. Contractor waives its rights of recovery against Buyer and each of its officers, employees, consultants, and agents including, but not limited to, the Board and each Buyer Representative, as to any damage or loss which may occur to its equipment to the extent covered by insurance. Contractor will

ensure that the insurance company providing such coverage specifically agrees to this waiver. If uninsured, Contractor will hold harmless the aforementioned parties for loss or damage to its tools and equipment.

8. Aircraft Liability Insurance, if any aircraft is to be used in the performance of the work, (including owned and non-owned aircraft, and including drones) with the following minimum limits:
    - a. Bodily Injury: \$3,000,000 each occurrence; \$3,000,000 each person
    - b. Property Damage: \$3,000,000 each occurrence
  9. Pollution Liability Insurance, if the work being performed involves abatement, removal, replacement, repair, enclosure, encapsulation, and/or disposal of any hazardous material or substance. Coverage shall be provided on an occurrence basis with limits of \$3,000,000 and shall include coverage for liability to third parties for bodily injury, property damage, remediation, and clean-up costs arising from pollution events or conditions on, at, under, or migrating from the Project site and from transportation and disposal of pollutants and/or anything contaminated by pollution. This insurance must be maintained for at least 3 years after Substantial Completion and acceptance of the Project.
- B. General Requirements. The following requirements are applicable to all of the insurance coverages required under this Clause, except to the extent otherwise indicated.
1. Insurer Requirements. All policies of insurance shall be placed with insurers acceptable to Buyer. The insurance underwriter(s) must be duly licensed to do business in the state where the work is to be performed and (other than for Workers' Compensation) must have a rating of A- VIII or better in the most recent edition of Best's Insurance Reports or otherwise satisfactory to Buyer. Required minimum amounts of insurance may be increased should conditions of work, in opinion of Buyer, warrant such increase. Contractor shall increase required insurance amounts upon direction by Buyer.
  2. Additional Insureds. Except with regard to Professional Liability, and Workers' Compensation and Employer's Liability insurance, all insurance required by this Clause shall name the following parties as additional insureds: Buyer and its subsidiary and Affiliates, and their Boards of Directors, officers, employees, representatives, consultants, and agents (hereinafter, collectively the "Additional Insureds"). For the Commercial General Liability insurance, additional insured status must be provided on ISO forms CG 20 10 and CG 20 37.
  3. Primary and Non-Contributory. Each policy required above in B. (2), including primary, excess, and/or umbrella, shall provide that the insurance provided to the Additional Insureds is primary and non-contributory, such that no other insurance or self-insured retention carried or held by Buyer shall be called upon to contribute to a loss covered by insurance for the named insured.
  4. Joint Ventures. If the Contractor is a joint venture involving two or more entities, each independent entity will satisfy the limits and coverages specified in this Clause or the joint venture will be named insured under each policy specified.
  5. Waiver of Right to Recovery including Subrogation. Contractor hereby waives all its rights of recovery, under subrogation or otherwise, against Buyer, its officers, agents and employees, and all tiers of contractors, vendors and suppliers engaged directly by Buyer with respect to the Project, to the extent covered by insurance required to be provided by Contractor and its Subcontractors of whatever tier, and further waives all rights of recovery which are not covered by insurance because of deductible or self-insurance obligations relating to such insurance. These waivers do not apply to Contractor's rights of recovery against its own Subcontractors, vendors, and suppliers of whatever tier, nor against Buyer's architects, engineers, or other design professionals. Contractor will require all tiers of its Subcontractors, vendors, and suppliers, by appropriate written agreements, to provide similar waivers each in favor of all parties enumerated in this paragraph. To the fullest extent permitted by law, Contractor will require all insurance policies required by this Clause

to include clauses stating each insurer will waive all rights of recovery consistent with this paragraph. All waivers provided herein shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in any property damaged.

6. Self-Insured Retentions. None of the insurance required of this Clause shall be subject to any self-insured retention greater than \$100,000 without Buyer's written approval.
  7. No Limitation. Nothing in this Clause shall be construed as limiting in any way the extent to which Contractor or any Subcontractor may be held responsible for payment of damages resulting from their operations. Contractor's obligations to procure insurance are separate and independent of and shall not limit Contractor's contractual indemnity and defense obligations. Buyer does not represent that coverages and limits required in this Contract will necessarily be adequate to protect Contractor.
  8. Subcontract Agreements. Contractor shall by appropriate written agreements flow down the requirements for i) the waiver of subrogation for all required insurance, and ii) additional insured coverage for all required insurance and iii) other requirements of this Clause to all tiers of Subcontractors for all insurance required of such Subcontractors by Contractor for the work.
  9. Buyer's Right to Procure Insurance. Contractor shall pay all insurance premiums, including any charges for required waivers of subrogation or the endorsement of additional insureds. If Contractor fails to maintain insurance, Buyer may take out comparable insurance, and deduct and retain amount of premium from any sums due Contractor. If the aggregate limits on any Contractor's insurance policy are no longer available, Contractor must notify Buyer and immediately, at Contractor's expense, purchase replacement coverage to meet insurance requirements as specified in this Clause. Alternatively, the Contractor's failure to maintain the required insurance may result in termination for default.
  10. Conformance to Law. If applicable law limits the enforceability of any of the foregoing requirements, then Contractor shall be required to fully comply with the foregoing requirements of coverage and limits allowed by applicable law and this Clause shall be limited only to the extent required to conform to applicable law.
- C. Certificates of Insurance.
1. Contractor shall furnish Buyer with certificates of insurance ("COI") completed by a duly authorized representative evidencing coverage required under this Clause. Such COIs shall be delivered to Buyer before any work hereunder is commenced by Contractor and annually thereafter on or before the policy effective dates of Contractor's policies.
  2. Failure of the Buyer to demand such COIs or other evidence of full compliance with these insurance requirements, or failure of the Buyer to identify a deficiency from evidence provided, will not be construed as a waiver of the Contractor's obligation to maintain such insurance. Buyer's acceptance of any COI evidencing the required coverages and limits does not constitute approval or agreement by the Buyer that the insurance requirements have been met or that the insurance policies shown in the COI are in compliance with the requirements.
  3. Buyer has the right, but not the obligation, of prohibiting Contractor or any Subcontractor from entering the Project Site until Buyer receives all COIs or other evidence that insurance has been placed in complete compliance with these requirements.
  4. If any of the coverages are required to remain in force after Substantial Completion, Contractor shall submit an additional COI evidencing continuation of such coverage with its final billing and at each subsequent renewal of Contractor's insurance.
- D. If Contractor fails to purchase or maintain, or fails to require to be purchased or maintained, the liability insurance specified by this Clause, this Order may be terminated for default, at Buyer's sole discretion, in accordance with Clause 23, Termination for default. Alternatively,

Buyer may (but shall not be obligated to) purchase such insurance on Contractor's behalf and Contractor shall repay Buyer for any premiums paid.

**51. PROPERTY INSURANCE**

- A. Buyer shall maintain builders risk property insurance for the Project. Such insurance shall include Contractor and Subcontractors of all tiers as additional insureds as their interests may appear, and shall be maintained, unless otherwise provided or otherwise agreed to in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the Buyer has an insurable interest in the Project, whichever is later. Buyer shall furnish Contractor an insurance certificate evidencing same. Waivers of subrogation will be granted among all parties.
- B. Buyer and Contractor waive all rights against each other and the contractor, subcontractors, agents, and employees, each of the other, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to the insurance requirements herein or other property insurance applicable to the work, except such rights as they may have to proceeds of such insurance held by Buyer. Buyer or Contractor, as appropriate, shall require from contractors and subcontractors by appropriate written agreements, similar waivers each in favor of the other parties enumerated in insurance provisions herein.
- C. In the event of a loss which requires Buyer to satisfy all or any portion of the deductible or self-insured retention set forth in the builder's risk policy, the Buyer may, in its sole discretion, seek contribution towards such deductible or self-insured retention from any responsible Contractor or Subcontractor in an amount not to exceed \$100,000. If Buyer assesses a deductible or self-insured retention contribution against Contractor or Subcontractor, then that deductible or self-insured retention contribution shall be due and payable to Buyer within ten (10) days after Buyer's written demand thereof. Buyer may back charge the party, may withhold from monies otherwise owing to the party, or may collect by any other lawful means, the amount(s) owed by the party as its allocated portion of the deductible or self-insured retention. The contribution shall remain uninsured by the party against whom it is assessed and will not be covered by any insurance policy, nor shall it be included in the contract price.
- D. If Buyer does not intend to purchase such builder's risk insurance required by this Clause and with all of the coverages described above, or if Buyer does not intend to renew such insurance at any time prior to final payment, Buyer shall inform Contractor in writing. Contractor shall then provide the insurance, which will protect the interests of Contractor, Subcontractors, and sub-Subcontractors in the work, at Buyer's cost by appropriate contract modification.
- E. Any loss insured under this paragraph is to be adjusted with a claims adjuster selected by and as agent for Buyer and all other insureds named in the policy, and payable to the attention of Buyer. Contractor shall pay each Subcontractor a just share of any insurance monies received by Contractor, and by appropriate agreement, written where legally required for validity, shall require each Subcontractor to make payments to its subcontractors in a similar manner. Buyer as trustee shall have power to adjust and settle any loss with the insurers so long as it acts in good faith.

**52. CONSTRUCTION**

Each party hereto agrees and represents that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in any interpretation of this Order or any amendments, exhibits or Schedules hereto.

**53. BUYER'S FURNISHED PROPERTY**

If in connection with the performance of this Order any property is furnished to Contractor by Buyer, Contractor shall assume the risk of, and be responsible for, any loss destruction of or damage to the property while in Contractor's possession or control, except to the extent that this Order, with the prior approval of Buyer, provides for relief of Contractor from such liability. In the absence of such approval, Contractor shall return all such property in as good a condition as when



received, except for reasonable wear and tear caused by the utilization of such property in accordance with the provisions of this Order. Title to all Buyer furnished property is and shall remain in Buyer. Buyer furnished property is provided to Contractor in an "as is" condition. Buyer shall not be liable to suit for breach of contract by reason of any delay in delivery of Buyer furnished property or delivery of such property in a condition not suitable for the intended use. Buyer shall have the right to enter Contractor's premises during normal working hours or the location of the Worksite at any time to inspect its property. Contractor shall maintain all Buyer furnished property at Contractor's expense. Contractor shall institute or have in place a property control system approved by Buyer.

**54. PRESERVATION OF PROPERTY**

Contractor shall exercise due care to avoid injury to existing property, improvements or facilities, utility facilities, adjacent property, trees, and shrubbery that are not to be removed, of Buyer and any third parties.

**55. ARCHEOLOGICAL ARTIFACTS**

If Contractor unearths or otherwise discovers items identified as being archeological artifacts, Contractor shall immediately stop all Services in the area and promptly advise Buyer. Contractor further agrees that no Services in the area will be resumed until written notification is received from Buyer to do so. Buyer agrees that if Contractor incurs an increase in time or costs as a result of such Services stoppage, an equitable adjustment will be made to the Order.

**56. FIRE PROTECTION**

- A. Contractor shall provide adequate fire extinguishing equipment including, as a minimum, portable extinguishers suitable for the types of hazards involved and any other extinguishers specified herein or required by Buyer.
- B. Welding, cutting and other open flame operations shall be performed only after obtaining a permit, if required by Buyer Corporation (daily permits may be required), and only under conditions approved by Buyer.
- C. Smoking shall be confined to areas free from fire hazards and any smoking regulations in effect in any area where Services are being performed shall be strictly observed.

**57. COMPLIANCE WITH SITE REGULATIONS**

- A. Contractor agrees to submit to the Construction Representative for review and approval a Material Safety Data Sheet in connection with its use of hazardous materials.
- B. Neither the requirements of this clause nor any act or failure to act by Buyer shall relieve Contractor of any responsibility or liability for the safety of the public or Buyer, or Contractor or subcontractor personnel or property.
- C. Contractor shall comply with all federal, state, and local safety, health, and environmental regulations, in connection with its Services hereunder.
- D. Any emissions, discharges or waste generated by Contractor in the performance of this Order shall be the responsibility of Contractor. All environmental damage or other damage caused by non-compliance with this Clause, applicable Buyer policies and procedures, federal, state, or local laws, codes, ordinances, or regulations, shall be remedied at Contractor's sole expense.
- E. Contractor shall insert this Clause 57, including this paragraph E, with appropriate changes in the designation of the parties, in subcontracts involving hazardous material at any tier (including purchase designations or Orders) under this Order.

**58. PROTECTION OF MONUMENTS AND MARKS**

Contractor shall carefully protect all land monuments and property marks from disturbance and damage and shall not move the same without the prior written consent of Buyer.

**59. PROTECTION OF SERVICES AND MATERIAL**

At all times Contractor shall adequately protect from damage or deterioration all Services performed and all materials, equipment and other items incorporated or to be incorporated therein. All

reasonable requests of Buyer to enclose or otherwise protect such property shall be complied with promptly at no cost to Buyer.

**60. CODES AND STANDARDS**

- A. Material and workmanship specified by reference to codes, standards, specifications, or tests shall, unless otherwise specified, comply with the latest revision of such codes, standards, specifications, or tests in effect on the effective date of this Order.
- B. Tests shall be made in accordance with commonly recognized procedures of technical organizations and such special procedures as may be prescribed elsewhere in the plans and specifications. Contractor shall furnish without charge such samples for testing as may be required by the Construction Representative.

**61. SALVAGE MATERIALS**

Except as otherwise specified by Buyer, all materials demolished and/or removed from the Project and not required to be delivered to Buyer shall become the property of Contractor. Contractor shall recycle to the fullest extent practical all demolished unused material and/or equipment and provide documentation to the Buyer of types and quantities of material and/or equipment recycled. Contractor shall remove any non-recyclable material from the Worksite and dispose of it in a lawful manner. All materials required to be delivered to Buyer shall be done so in the manner specified by Buyer.

**62. SALVAGE AND CLEAN UP**

- A. All times during the progress of the Services, Contractor shall keep the Worksite, including exit ways, rights-of-way, streets, and all other grounds and areas occupied by Contractor, clear of all refuse caused by Contractor's operations.
- B. Upon completion of the Services and before requesting Final Acceptance of the Services, Contractor shall:
  - 1. perform a final cleaning of all rights-of-way, streets, borrow pits, and all other grounds occupied in connection with the Services;
  - 2. remove all refuse, excess materials, temporary structures, tools, and equipment; and
  - 3. clean all parts of the Worksite, including, but not limited to windows, walls, ceilings, floors, fixtures, cabinet work, and equipment, in a manner so that the finished Worksite is clean and in new condition free of all marks, stains, fingerprints, and other soil or dirt.All surfaces shall be cleaned to the satisfaction of the Construction Representative. Contractor shall provide its own refuse containers and be responsible for disposing of all refuse, recyclable materials, hazardous materials, and waste in compliance with applicable federal, state, and local laws and ordinances.
- C. In addition, Contractor shall, at its sole expense, replace any damaged or broken glass and shall clean and polish all glass installed in the Worksite.
- D. If Contractor fails to clean the Worksite in accordance with this paragraph at the completion of the Services, Buyer may do so, and the cost thereof shall be charged to Contractor.

**63. RESTORATION OF EXISTING IMPROVEMENTS**

Unless otherwise specified, all existing structures and other improvements altered or removed by Contractor in the execution of the Services shall be appropriately repaired, replaced, or otherwise restored by Contractor at no cost to Buyer. Quality of the restoration shall be as good as existing and meet the approval of Buyer.

**64. PAYMENT FOR LABOR, MATERIAL, AND WAIVER OF LIENS AND RELEASE OF LIENS.**

- A. Contractor shall be responsible for the prompt payment of all persons who perform labor upon or furnish services, materials, equipment, supplies or other items (including but not limited to water, gas, power, light, heat, oil, gasoline, telephone service and rental of equipment) used or to be used in the performance of the Services called for by this Order.
- B. Contractor shall:

1. indemnify and save harmless Buyer from all claims, demands, causes of action or suits of whatever nature arising out of the services, labor and materials furnished by Contractor or its subcontractors and from all laborer's, material men's and mechanic's liens upon the real property upon which the Worksite is located, arising out of the services, labor and materials furnished by Contractor or any of its subcontractors under this Order, and
  2. keep property free and clear of all liens, claims, and encumbrances arising from the performance of this Order by Contractor or its subcontractors.
- C. Contractor for its subcontractors, material men, laborers and for all other persons performing any labor or furnishing any services, labor, or materials for any of the Services, hereby waives, to the full extent permitted by law, all right to file or maintain any mechanical or other liens or claims for and on account of the services, labor, or materials to be furnished hereunder.
- D. It is the intention of the parties hereto, and Contractor agrees, that if Contractor or any of its subcontractors of any tier fail to pay all such persons, Buyer may, at any time after five (5) days' written notice to Contractor, pay such persons directly and deduct such payments from any amounts due Contractor hereunder.

**65. BADGES AND PLANT SECURITY**

- A. If this Order requires Contractor's personnel to enter Buyer's or Buyer's customer's premises, Contractor agrees to have its personnel, engaged in the performance of Services hereunder, report to Buyer's plant, at times to be specified by Buyer, so that Buyer may provide said personnel with identification badges, which will permit such personnel to enter and leave the Worksite. Contractor further agrees that said badges shall be worn by said personnel, in a conspicuous place upon the person of each of its personnel, when such personnel are in, on, or about the premises. Contractor further agrees to abide by and comply with and require its Employees to abide by and comply with, such rules and regulations pertaining to plant security as may be prescribed by Buyer and/or the Buyer's Customer.
- B. Contractor shall comply with Buyer's security policies and procedures. Contractor will submit to the Construction Representative the names of each employee and any additional information that may be necessary twenty-four (24) hours prior to the date the Services are to commence.
- C. All personnel furnished by Seller hereunder shall be cleared to the security level required by Buyer prior to reporting to work.

**66. SAFETY**

- A. At all times Contractor shall use suitable safety precautions including as a minimum those safety precautions specified elsewhere in this Order or as may be required by Buyer's Safety Rules and Standards in order to prevent injury to workmen and all other persons who may be on or about the site. Such safety precautions shall include but not be limited to the use of proper materials, tools, mechanical and automotive equipment and the erection and maintenance of barricades, signs, flags, lights, and other safeguards. The barricades used shall be equipped with an electric flasher type light approved by Buyer.
- B. If, because of the site area, safety permits are required by Buyer's Safety Rules and Standards, Contractor shall obtain proper permits or clearance in writing from Buyer's Safety Office and any previous approvals granted under any other contracts with Buyer shall not be valid for the purpose hereof.
- C. Contractor shall also comply with all applicable rules, regulations and orders of the Occupational Safety and Health Act of 1970 (P.L. 91-596, 29 USC 651-678) as amended and all applicable safety laws, rules, regulations and orders of the United States and the State wherein the Services are being performed. Contractor hereby indemnifies and holds Buyer harmless from and against any noncompliance by Contractor with any of the above laws, rules, regulations, and orders as may be applicable.

**67. EMERGENCIES**

In any emergency affecting the safety of persons or property, Contractor shall act, at his discretion,

to prevent threatened damage, injury, or loss. Any increase in the Order Price or extension of time claimed by Contractor on account of emergency Services shall be determined as provided in Clause 14, Changes.

**68.AS-BUILT DATA**

- A. Promptly upon completion of all Services, and as a condition precedent to Buyer making final payment to Contractor, Contractor shall deliver to the Construction Representative one complete set of as-built drawings marked up neatly in red pen or pencil accurately showing all changes in the Services.
- B. In addition, Contractor shall deliver to the Construction Representative survey data indicating the location and elevation, to an accuracy of  $\pm 0.1$  foot horizontally and vertically, of all underground utilities installed under this Order or encountered by Contractor in performing the Services.

**69.WARRANTY**

- A. In addition to any other warranties required by the Order Documents, Contractor shall and hereby does warrant the Services against defects in workmanship and/or materials for a period of one (1) year after the date of Final Acceptance of the Services by Buyer except for any portion of the Project that are utilized or placed into service by Buyer in accordance with the provisions of Clause 48, Use of Completed Portions. The warranty period for portions of the Services so utilized or placed into service shall be one (1) year commencing on the date of the written notification to Contractor described in Clause 27, Use of Completed Portions.
- B. Contractor shall repair or remove and replace, at Contractor's sole expense, any and all Services and materials, together with any other services which may be displaced in so doing that is found to be defective in workmanship and/or materials within the warranty period, ordinary wear and tear and unusual abuse or neglect excepted. If Contractor fails to repair or remove and replace warranted work and/or materials within seven (7) days after written notification of any defect in Services, Buyer is authorized hereunder to have all defects remedied and repaired at the cost and expense of Contractor, who hereby agrees to pay the cost and charges therefore immediately on demand. Such action by Buyer will not relieve Contractor of its obligations required by this Clause 46, or any other provision in the Order Documents.
- C. If, in the opinion of the Construction Representative, defective Services creates a dangerous condition or requires immediate correction or attention to prevent further loss to Buyer, or to prevent interruption of operation to Buyer's operations, the Construction Representative may give Contractor verbal notice to remedy such defect within forty-eight (48) hours. All verbal notices shall be confirmed by written notice. If Contractor fails to take appropriate action in a timely manner in response to the notice, or if Contractor cannot be contacted directly, Buyer is authorized hereunder to proceed on Contractor's account to correct or provide necessary attention to the defective condition. The costs of any action taken by Buyer pursuant to such constructive authority shall be payable by Contractor immediately upon demand. No action taken by Buyer on behalf of Contractor pursuant to this provision shall be deemed to relieve Contractor of its obligations required by this Clause 46 or any other provision in the Order Documents.
- D. This Clause does not in any way limit the Warranty on any items for which a longer warranty is specified or on any items which a manufacturer or supplier gives a warranty for a longer period. Contractor shall act as a co-warrantor with such manufacturer or supplier and shall furnish Buyer all appropriate warranty certificates upon completion of the Services. No warranty period, whether provided for in this Clause 46 or elsewhere in the Order Documents, shall in any way limit Contractor's liability or his sureties or insurers under the indemnity or insurance provisions of the Order Documents. Buyer and Contractor shall mutually agree on Contractor's responsibility with regard to warranty on Buyer-furnished or used equipment used in the Services.

- E. Contractor expressly warrants that all items delivered hereunder shall be free from defects and of good materials and workmanship, and shall conform to applicable specifications, drawings, samples, and performance specifications whether set forth in this Order or in Contractor's sales literature.

**70. INDEMNITY**

Contractor shall indemnify, defend, protect, and hold harmless Buyer, and its consultants, and each of its directors, officers, agents, and employees (collectively, the "Indemnified Parties" each, an "Indemnified Party") from and against all claims, damages, liens, losses, expenses, liabilities, and any other costs, including costs of defense and attorneys' fees. This covenant shall extend to all liabilities arising out of, or resulting from or in connection with the failure, neglect, or refusal of Contractor to faithfully perform the Services, and all of Contractor's obligations under the Order, both on and off the Worksite, to the extent that the liability

- A. is attributable to personal injury, bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Services itself), including the loss of use resulting therefrom, or
- B. is caused in whole or in part by any act or omission of Contractor or any of its subcontractors, or suppliers, or anyone directly or indirectly employed by any of them or anyone for whose acts or omissions any of them may be liable, regardless of whether or not such claims, damages, losses, expenses, liabilities or costs are caused in part by any act or omission (active, passive, or comparative negligence included), of an Indemnified Party.

Buyer shall have the right at its own expense to join in the defense of any action in which it is made a defendant. In any and all claims against the Indemnified Parties by any employee of Contractor, or any of its subcontractors, or suppliers, or anyone directly or indirectly employed by any of them to perform or furnish any of the Services, or anyone for whose acts any of them may be liable, the indemnification obligation under the first paragraph of this Clause 70 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor, or any subcontractor, or any supplier or other persons under Workers' Compensation acts, disability benefit acts or other employee benefit acts.

**71. INTELLECTUAL PROPERTY INFRINGEMENT WARRANTY AND INDEMNITY**

- A. Contractor shall defend, indemnify, and hold harmless Buyer, its directors, officers, employees, consultants, agents, Affiliates, successors, permitted assigns, and customers ("IP Indemnitees") from and against all claims, suits, actions, awards (including, but not limited to, awards based on intentional infringement of patents known at the time of such infringement, exceeding actual damages and/or including attorney's fees and/or costs), liabilities, damages, costs and attorney's fees related to the actual or alleged infringement of any U.S. or foreign intellectual property right (including, but not limited to, any right in a patent, trademark, copyright, industrial design or semiconductor mask work, or based on misappropriation or wrongful use of information or documents) and arising out of the performance of Contractor under this Order or the manufacture, sale or use of Products delivered by Contractor under this Order, or the provision of Services by Contractor under this Order, by either Buyer or Buyer's customer ("Infringement Claim"). Buyer and/or its customer will duly notify Contractor of any such Infringement Claim and Contractor will, at its own expense, fully defend such Infringement Claim on behalf of the Indemnitees. Contractor will have no obligation under this clause with regard to any infringement arising from (a) the compliance of Contractor's new Product design with formal specifications issued in writing by Buyer where infringement could not be avoided in complying with such specifications or (b) use or sale of Products for other than their intended application in combination with other items, when such infringement would not have occurred from the use or sale of those Products solely for the purpose for which they were designed or sold by Contractor.
- B. If the manufacture, use or sale of a Product delivered by Seller under this Order is likely to be



or is enjoined as a result of an Infringement Claim, Seller, at no expense to Buyer, shall obtain for Buyer and its customers the right to use and sell the Product or shall substitute an equivalent Product acceptable to Buyer, at its sole discretion, and extend this indemnification thereto.

- C. Notwithstanding the foregoing, when this Order is performed under the authorization and consent of the U.S.G. to infringe U.S. Patents, Seller's liability for U.S. patent infringement under this Order shall be coextensive with Buyer's liability.

## **72. SUBCONTRACTING**

- A. Contractor will not employ any subcontractor (whether initially or as a substitute) against whom Buyer has objection and/or who appears on the "Excluded Parties Listing System (EPLS)". It is the contractors' responsibility to check the list of his subcontractors/suppliers against the EPLS. Access to the current EPLS may be found at the following website: [www.sam.gov](http://www.sam.gov). Contractor will submit to the Contract Administrator for review a list of the names of all proposed subcontractors. Buyer will notify Contractor in writing of any objection to any subcontractor on such list.
- B. If Buyer refuses to accept any subcontractor on such list, Contractor will submit an acceptable substitute. Contractor shall not contract with a subcontractor to whom Buyer has objected.
- C. Contractor will not make any substitution for any subcontractor unless Buyer determines that there is good cause for doing so and consents to such substitution in writing.
- D. Nothing in the Order Documents shall create any contractual relationship between any subcontractor and Buyer or any obligation on the part of Buyer to pay or to see to the payment of any moneys due any subcontractor, except as may otherwise be required by law.
- E. The divisions and sections of the specifications and the identifications of any drawing shall not control Contractor in dividing the Services among subcontractors or delineating the Services to be performed by any specific trade.
- F. Contractor agrees to bind specifically every subcontractor to the applicable terms and conditions of the Order Documents for the benefit of Buyer and shall require each subcontractor to enter into similar written agreements with its subcontractors. Contractor shall provide each of its subcontractors with copies of the Order Documents, which relate to the Services to be performed by the subcontractor. Each such subcontract agreement shall preserve and protect the rights of Buyer under the Order Documents with respect to Services to be performed by the subcontractor so that subcontracting thereof will not prejudice Buyer's rights.
- G. Contractor shall be responsible for the management of its own employees or subcontractors in the performance of the Services.
- H. Buyer shall have the right of review and refusal of all bid packages, subcontract documents, and subcontractor awards.
- I. Each subcontract agreement for a portion of the Services is assigned by Contractor to Buyer, provided that such assignment is effective only after termination of the Order by Buyer for Default pursuant to Clause 23, Termination for Default and only for those subcontract agreements which Buyer accepts by notifying Contractor and subcontractor in writing.

## **73. PAYMENT OR TERMINATION OF SUBCONTRACTORS**

- A. If Contractor fails to pay any of its subcontractors and such failure jeopardizes the completion of the Services within the time specified in this Order, then Buyer, upon notice to Contractor, may make payment directly to any such subcontractor in accordance with the actual subcontract price for work performed under this Order. To the extent of any such direct payments to a subcontractor, payments made to Contractor or to be made, or both shall be

adjusted and any refund due Buyer as a result of such adjustment shall be promptly paid.

- B. In addition, Buyer may terminate the Services under the Order being performed by any subcontractor in accordance with the clause herein entitled "Termination for Convenience" and
1. contract directly with such subcontractor, or
  2. upon request by Buyer the Contractor shall assign the subcontract involved to Buyer.
- The terms and conditions of Contractor's subcontracts shall make Buyer a third-party beneficiary to the Termination for Convenience Clause by giving Contractor or Buyer the right to terminate the subcontract.

#### **74. TITLE TO WORK**

Title to all of the work completed and all material, equipment and fixtures installed in the work, shall vest in Buyer upon installation thereof at the construction site, and Contractor shall deliver to Buyer all necessary indicia of ownership relating thereto. Contractor agrees that Buyer owns all right title and interest in the intellectual property created under this Order and the physical manifestations of intellectual property created under this Order ("IP"), and such IP is furnished or disclosed as a part of the consideration for this Order. Contractor hereby assigns, and further agrees to assign, all right title and interest in all IP created under this Order.

#### **75. WARRANTY OF TITLE**

No materials, supplies or equipment for the Services under this Order shall be purchased subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest therein or any part thereof is retained by the seller or supplier. Contractor warrants clear and good title to all materials, supplies, and equipment installed and incorporated in the Project. All such property or acquired items shall become the property of Buyer immediately upon its arrival at the Worksite and acceptance by the Construction Representative unless Buyer directs otherwise at the time of purchase authorization. Contractor agrees upon completion of all Services to deliver the premises, together with all improvements and appurtenances constructed or placed thereon by Contractor, to Buyer free from any claims, liens, encumbrances, charges, or security interests in favor of Contractor, any subcontractors or suppliers, or other persons or entities making a claim, whether by reason of having provided labor, materials, and equipment relating to the Services or by any reason unrelated to the Services. The covenant provided by this Clause 75 shall not preclude Contractor from installing metering devices or other equipment of utility companies or of municipalities, the title to which is commonly retained by the utility company or the municipality.

#### **76. ASSIGNMENT**

- A. The performance of this Order may not be assigned by Contractor except upon the prior written consent of Buyer. Consent will not be given to any assignment requested by Contractor, which would relieve the original Contractor or his surety of their responsibilities under this Order, nor will Buyer consent to any assignment of a part of the Services hereunder. Any purported assignment in contravention of this clause shall be deemed null and void.
- B. Upon obtaining Buyer's prior written consent, Contractor may, to the extent permitted by law, assign funds due or to become due him under the Order, but any such assignment of funds shall be subject to rights of setoff in favor of Buyer or third parties and to all deductions provided for in the Order. All funds withheld, whether assigned or not, shall be subject to Buyer's use of such moneys for the completion of the Services.
- C. No assignment of this Order will be approved by Buyer unless the assignment contains a provision certifying that the funds to be paid to the assignee under the assignment are subject to a prior lien for services rendered or materials supplied by third parties for performance of the Services hereunder in favor of such individual or entity rendering such services or supplying such materials and that Buyer may withhold from Contractor's assignee all funds due until all Services required by the Order Documents is completed in accordance with the Order Documents.

**77. LANDS AND RIGHTS-OF-WAY**

Access to the lands and rights-of-way to the Worksite will be provided by Buyer. Services in public rights-of-way shall be done in accordance with the requirements of the permit issued by the public agency in whose right-of-way the Services are located in addition to conforming to the plans and specifications. If a permit is not required, the Services shall conform to the standards of the public agency involved in addition to conforming to the plans and specifications.

**78. AUDIT RIGHTS**

During the Term of this Order and for a period of four (4) years thereafter, Buyer shall have the right to audit such records of Supplier to ensure compliance with the terms and conditions of this Order. Supplier shall retain all documents, notes, records, and all other documentation with regard to the Services, including records of hours worked by each Supplier employee, for a period of four (4) years after completion of such Services provided by Supplier. Such books and records shall be made available at Buyer's facility in the United States for verification, copying, audit and inspection by Buyer or its representatives, including authorized third-party auditors. Any such audit shall be conducted during normal business hours upon reasonable prior written notice to Supplier provided, however, that Supplier shall provide reasonable assistance necessary to enable Buyer to conduct such audit and shall not be entitled to charge Buyer for any such assistance. In the event such audit reveals that Supplier has billed Buyer in excess of the correct amount to be billed, Supplier shall promptly pay to Buyer the amounts over paid.

**79. RESPONSE TO AUDIT**

Buyer shall not be prohibited from providing copies of this Order, including any other document incorporated into this Order, to federal, state, or other regulatory agencies or auditors as requested by either Buyer's or government auditors to comply with auditing procedures.

**80. MERGERS AND ACQUISITIONS - COMMODITY PRODUCTS/SERVICES**

If Buyer merges with or acquires an entity or entities that have a need for Seller's products and services, Buyer and the acquired entity will be permitted to make purchases using this purchase order and price discounts in support of the acquired entity. If under any existing purchase order with an acquired entity or entities Seller currently provides or agrees to provide services, Buyer and Seller will negotiate a combined agreement sufficient to cover the combined companies so as to avoid any disruption in service.

**81. EXPORT AND IMPORT COMPLIANCE**

A. Export and Sanctions Compliance. General. Performance of this Order may involve the use of or access to articles, Technical Data or software that is subject to export controls under 22 United States Code 2751 – 2799aa-2 (Arms Export Control Act) and 22 C.F.R. 120-130 (International Traffic in Arms Regulations or "ITAR") or 50 United States Code 4801 – 4826 (Export Control Reform Act of 2018), 15 C.F.R. 730-774 (Export Administration Regulations), 50 United States Code 1701-1708, (International Emergency Economic Powers Act, as amended), and their successor and supplemental laws and regulations, or may implicate U.S. sanctions laws and regulations, including those administered by the U.S. Department of Treasury Office of Foreign Assets Control in 31 C.F.R. 500-599, and their successor and supplemental laws and regulations (collectively hereinafter referred to as the "Export and Sanctions Laws and Regulations"). Seller shall comply with any and all Export and Sanctions Laws and Regulations, and any authorization(s) issued thereunder.

1. Registration. If Seller is a U.S. entity and is engaged in the business of either exporting or manufacturing (whether exporting or not) Defense Articles or furnishing Defense Services, Seller represents that it shall maintain an active registration with the U.S. Department of State's Directorate of Defense Trade Controls, as required by the ITAR, throughout the performance of this Order, and that it maintains an effective export and import compliance program in accordance with the ITAR.

2. Seller shall not re-transfer any export-controlled articles or information (e.g., Technical Data or software) to any other non-U.S. person or entity (including Seller's dual and/or third-country national employees) without first complying with all the requirements of the applicable Export and Sanctions Laws and Regulations. Prior to any proposed re-transfer, Seller shall first obtain the written consent of Buyer. No consent granted by Buyer in response to Seller's request shall relieve Seller of its obligations to comply with the provisions of paragraph A. of this clause or the Export and Sanctions Laws and Regulations, nor shall any such consent constitute a waiver of the requirements of paragraph A. herein above, nor constitute consent for Seller to violate any provision of the Export and Sanctions Laws and Regulations.
- B. Political Contributions, Fees, and Commissions. If this Order is valued in an amount of \$500,000 or more, then in performance of this Order, Seller shall not directly or indirectly pay, offer, or agree to pay any political contributions or any fees or commissions, in each case as defined below.
1. For purposes of this clause and pursuant to 22 C.F.R. 130.6, "political contribution" means any loan, gift, donation, or other payment of \$1,000 or more made, or offered or agreed to be made, directly or indirectly, whether in cash or in kind, which is:
    - a. To or for the benefit of, or at the direction of, any non-U.S. candidate, committee, political party, political faction, or government or governmental subdivision, or any individual elected, appointed, or otherwise designated as an employee or officer thereof; and
    - b. For the solicitation or promotion or otherwise to secure the conclusion of a sale of Defense Articles or Defense Services to or for the use of the armed forces of a non-U.S. country or international organization. Taxes, customs duties, license fees, and other charges required to be paid by applicable law or regulation are not regarded as political contributions.
  2. For purposes of this clause and pursuant to 22 C.F.R. 130.5, "fee or commission" means any loan, gift, donation, or other payment of \$1,000 or more made, or offered or agreed to be made directly or indirectly, whether in cash or in kind, and whether or not pursuant to a written contract, which is:
    - a. To or at the direction of any person, irrespective of nationality, whether or not employed by or affiliated with Seller; and
    - b. For the solicitation or promotion or otherwise to secure the conclusion of a sale of Defense Articles or Defense Services to or for the use of the armed forces of a non-U.S. country or international organization. Seller agrees to provide prompt notification to Buyer's Authorized Representative should any offer, agreement or payment of political contributions, fees, or commissions (as defined herein and pursuant to this Order) be made in contravention of the prohibition in this Section B.
- C. Export Jurisdiction/Classification. Seller shall provide the applicable Export Control Classification Number ("ECCN") or ITAR categorization for all Products furnished by Seller to Buyer, except when Seller is manufacturing to Buyer's design. Any product (to include data) developed via an Artificial Intelligence (AI) tool and subject to export controls must be properly marked by Disclosing Party. If Seller is not the original equipment manufacturer, Seller shall obtain the ECCN or ITAR classification information from its source of supply. Seller will include the ECCN or ITAR designation on its packing slips and shipping documentation and provide to Buyer on Buyer's request.
- D. Import Compliance. Seller shall comply with all U.S. Customs and Border Protection laws and regulations (e.g., 19 C.F.R.) and all other applicable U.S.G. regulations pertaining to importations of Products and materials into the United States under this Order. Seller shall assume all U.S. import responsibilities, to include designation as U.S. Importer of Record, Customs clearance, duty, permits, licenses, taxes, and fees for Products entering the United

States under this Order. Unless otherwise agreed in writing, Buyer will not assume any import liabilities for Products and materials procured through this Order. Seller shall obtain the written consent of Buyer prior to causing Products to be shipped directly (i.e., "drop shipped") from the premises of any non-U.S. supplier to Buyer's facility

- E. Indemnification. Contractor shall indemnify and save harmless Buyer from and against any and all damages, liabilities, penalties, fines, costs, and expenses, including attorney's fees, arising out of claims, suit, allegations, or charges of Contractor's failure to comply with the provisions of this Clause and breach of the warranty set forth in paragraph A or B. Any failure of Contractor to comply with the requirements or any breach of the warranty contained in this Clause shall be a material breach of this Order.

## **82. BONDS**

- A. If required by Buyer as indicated in the Notice of Bonding Requirements, schedule, Contractor shall secure bonds in the full amount of this Order written by a surety company satisfactory to Buyer guaranteeing and conditioned for the full, complete, and faithful performance of this Order by Contractor and for the payment of claims for labor performed, and for materials furnished in connection herewith, all in accordance with the terms of the bonds. The premium therefore shall be part of the Contract Price. Such bonds shall be quoted separately to Buyer. Contractor agrees to sign the required application and to furnish a financial statement and such financial guarantees as are necessary to secure such bonds.
- B. If a bond is required, it shall be delivered to Buyer in recordable form upon Buyer's request. Buyer shall also have the right to require that Contractor furnish bonds at any time after execution of the Order, and after Services have commenced on the project, on five (5) days written notice to Contractor. If Buyer demands such bonds after execution of the Order, Buyer shall pay the bond premiums; however, Buyer shall not be required to reimburse Contractor for bond premiums in excess of the prevailing rate for premiums on bonds of the type given, without regard to Contractor's financial ability, or one and one half (1 1/2) percent of the penal amount of the bond in question, whichever is less.
- C. If Contractor is unable to furnish satisfactory bonds, this Order may be terminated for default, at Buyer's sole discretion, in accordance with Clause 23, Termination for Default.

## **83. FEDERAL, STATE, AND LOCAL TAXES**

Except as may be otherwise provided in this Order, the price includes all applicable federal, state, and local taxes and duties.

## **84. CONFIDENTIALITY**

- A. Contractor shall hold all information provided to Contractor by Buyer and all information relating to the work ("Buyer's Proprietary Information") in confidence and restrict disclosure thereof to only its employees, contract labor and agents who have a need to know so that the Contractor may perform its obligations under this Order and are under obligations to hold such information in confidence under terms and conditions at least as restrictive as the terms and conditions of this Clause. Contractor agrees to use Buyer's Proprietary Information only for purposes necessary for performing Contractor's obligations under this Order and shall not use Buyer's Proprietary Information for any other purpose without the prior written consent of Buyer. Upon Buyer's request, Contractor shall destroy or transfer to Buyer all existing copies of Buyer's Proprietary Information. If the Proprietary Information is copied or reproduced in whole or in part, the copy or reproduction shall carry the same marking as that which appears on the original. Contractor shall not permit its release to other parties or make any public announcements, public releases, or photographs without Buyer's prior written consent. Contractor shall also cause its subcontractors and suppliers to comply with this requirement.
- B. Without limiting Contractor's other obligations under this Order, Contractor hereby represents, warrants and covenants that: (i) Contractor shall not disclose or provide to any AI System accessible to any person other than Buyer and Contractor, or use with any AI System



accessible to any person other than Buyer and Contractor, any Buyer Proprietary Information or Buyer Sensitive Information or any portion or derivative thereof; and (ii) Contractor shall not use, or permit to be used, any Buyer Proprietary Information or Buyer Sensitive Information, or any portion or derivatives thereof, in any training or development of any AI System or any portion thereof or of any other datasets, systems, algorithms or methodologies, except as Buyer may agree in writing on a case-by-case basis. Contractor shall not disclose or provide to any AI System (including any AI System accessible only by Buyer and/or Contractor) any Buyer Proprietary Information or Buyer Sensitive Information, or any portion or derivative thereof, if the AI System will train or develop itself based on such information or maintain any persistent copy of such information, or any portion or derivative thereof.

## **85. BACKGROUND INVESTIGATIONS**

- A. Contractor must complete Background Investigations (BI) on all new or rehired Contractor personnel who will perform Services hereunder on premises under the ownership or control of Buyer. The BI's are required prior to issuance by Buyer of long-term visitor badges or unescorted access badges to Buyer's site(s) for more than sixty (60) days or a cumulative of sixty (60) days in a twelve (12) month period. This requirement does not apply to Contractor's employees who are currently in possession of a long-term badge.
- B. Contractors are responsible for completing background investigations and will certify that the BI has been completed and a thorough review of the investigative report disclosed only favorable information. At a minimum, BI's will include:
  - 1. A criminal convictions check
  - 2. A check of Contractor's employees Department of Motor Vehicles records for violations of any kind;
  - 3. Verification of asserted college degrees and professional licenses or other professional or educational certifications
- C. The Contractor must notify and obtain approval in writing from Buyer's Authorized Purchasing Representative prior to assignment of Contractor's personnel to a site owned or under the control of Buyer when a particular BI has been completed and the investigation report disclosed unfavorable/adverse information in the following area(s):
  - 1. Education and/or professional background
  - 2. License(s) or certification(s)
  - 3. Criminal and/or driving record.
- D. "Unfavorable/adverse information" includes but is not limited to any criminal conviction, misdemeanor or felony, any driving violation that appears on the information provided by the Department of Motor Vehicles, failure of an educational or professional institution to acknowledge completion of a degree, license or certification, and the like. Buyer shall have the ultimate and sole determination as to whether the investigation report contains "unfavorable/adverse information."

## **86. CITIZENSHIP ELIGIBILITY REQUIREMENTS**

- A. Employees of Seller who perform Services under this Order shall be citizens of the United States of America (U.S.), its possessions or territories, or lawful permanent residents as defined by 8 United States Code (U.S.C.) 1101(a)(20), or protected individuals as defined by 8 U.S.C. 1324b(a)(3). Seller shall provide Form P0-F162, ITAR Certification/Visitor Badge Request, not later than 10 days after notice of award of a purchase order. Certification of compliance upon buyer request. Seller shall promptly notify Buyer of any changes to the Certification. Failure to provide the Certification, or notice of changes, may result in termination of the purchase order for default.
- B. Upon the request of Buyer, Seller shall submit verification of citizenship, lawful permanent resident status, protected individual status, or employment eligibility status to Buyer for each

employee who will perform Services under this Order. Examples of documents that may be considered satisfactory are state birth certificates, U.S. passports, U.S. naturalization papers, and "green" cards (I-551) issued by the U.S. Department of Immigration and Naturalization. Consistent with IRCA, the order of presentment of such documents shall be the sole prerogative of Seller's employees. If these documents are not available, a compilation of other evidence may suffice.

- C. Employees of Seller not listed on the Certification of Employees or providing individual proof of U.S. citizenship, or other status as described in subparagraph B. above, may be denied access to Buyer's premises.

### **87. ANTI-CORRUPTION COMPLIANCE**

Seller represents, warrants, and covenants that:

- A. It has not and will not, directly, or indirectly, pay, promise, offer, or authorize the payment of any money or anything of value to:
  - 1. An officer, employee, agent, or representative of any government, including any department, agency, or instrumentality thereof or any person acting in an official capacity thereof;
  - 2. A candidate for political office, any political party or any official of a political party; or
  - 3. Any other person or entity while knowing or having reason to know that all or any portion of such payment or thing of value will be offered, given, or promised, directly or indirectly, to any person or entity for the purpose of assisting Buyer in obtaining or retaining business, or an improper business advantage.

Without limiting the generality of the foregoing, Seller shall not directly or indirectly, pay, promise, offer, or authorize the payment of any facilitating payment intended to expedite or secure performance of a routine governmental action, such as, customs clearance on behalf of Buyer.

- B. No gift, travel expenses, business courtesies, hospitalities or entertainment of any nature has been or will be accepted or made in connection with this Order where the intent of was, or is, to unlawfully influence the recipient of the gift, travel expense, business courtesy, hospitality, or entertainment. Seller also represents that any gifts, travel expenses, business courtesies, hospitalities or entertainment offered or provided shall meet the following conditions:
  - 1. Be permitted under the U.S. FCPA and the laws and regulations of the country in which this Order will be performed;
  - 2. Be consistent with applicable social and ethical standards and accepted business practices;
  - 3. Be of such limited value as not to be deemed a bribe, payoff or any other form of improper inducement or payment; and
  - 4. Be of such nature that its disclosure will not cause embarrassment for the Buyer.
- C. Breach of any of the foregoing provisions of parts A and B of this clause by Seller shall be considered an irreparable material breach of this agreement and shall entitle the Buyer to terminate this Order immediately without compensation to Seller.

### **88. SUSTAINABILITY**

- A. Buyer is committed to providing a sustainable environment for its employees, customers, investors, suppliers, and communities. Our goal is to promote resource conservation and environmental responsibility through the use of recycled contents and recovered materials to achieve waste reduction and energy efficiency. Buyer is dedicated to obtaining products and services from suppliers that exceed or comply with all applicable Federal, state, and local laws, regulations, and ordinances relating to preservation and protection of the environment, in addition to employing techniques and materials that support sustainability. To assist Buyer in maintaining its commitment, suppliers of products and services must also demonstrate the same degree of integrity from a social and environmental perspective. The following are the

minimum requirements all Buyer's suppliers are expected to satisfy.

- B. Ensure necessary programs are in place for continuous improvement in the following key areas of sustainability: water, energy, recycling, waste, and air,
- C. Ensure that the products and services provided meet the following key sustainability criteria to assist Buyer to become a more sustainable organization:
  - 1. Water and Energy: Products and services are developed in a manner that minimizes energy and water use;
  - 2. Recycling and Waste: Products and services are developed to employ recycled materials, to enable recycling during disposal and utilizing innovative packaging that maximizes the use of recycled materials while diminishing overall waste; and
  - 3. Water, Air and Waste: Products and services are developed in a manner that minimizes emissions, effluents, and waste released at all of your facilities and operations.

### **89. INCONSISTENCY OF PROVISIONS**

In the event of any conflict or inconsistency between the provisions of the Order, the provisions of any drawings and specifications, and the provisions of these General Conditions, the provisions of these General Conditions shall control unless specifically amended by a particular provision of the Order.

### **90. MODIFICATION AND WAIVER**

No cancellation, modification, amendment, deletion, addition or other change in this Order or any provision hereof, or waiver of any right or remedy herein provided, shall be effective for any purpose unless specifically set forth in a writing signed by both parties hereto. No right or remedy in this Order shall be deemed waived and no breach excused, unless such waiver of consent shall be in writing and signed by the party claimed to have waived or consented. No waiver of any right or remedy in respect of any occurrence or event on one occasion shall be deemed a waiver of such right or remedy in respect of such occurrence or event on any other occasion. Inspection by, payment by, or tentative approval or acceptance by Buyer, or the failure of Buyer to perform any inspection hereunder, shall not release Contractor from any of its obligations hereunder.

### **91. SUCCESSORS OR PARTIES**

This Order is binding on the parties and their respective legal representatives, trustees, successors, and assigns.

### **92. DISPUTES**

In the event of a dispute between Buyer and Contractor arising under this Order, Contractor shall notify the Contract Administrator promptly in writing of its contentions and the parties will negotiate in good faith to resolve such matters. Contractor agrees to proceed diligently with the performance of the Services hereunder as directed by Buyer pending resolution of any such dispute. Should the dispute not be resolved to the mutual satisfaction of the parties, either party may further pursue resolution of the dispute through normal legal remedies permitted by law.

### **93. THIRD PARTY CLAIMS**

Nothing contained herein shall be deemed to give any third party any claim or right of action against Buyer or Contractor, which does not otherwise exist with regard to this Order.

### **94. WAIVER OF RIGHT TO JURY TRIAL**

Buyer and Contractor hereby waive their respective right to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding or hearing brought by either party against the other on any matter whatsoever arising under, relating to, or in any way connected with this Order, the relationship of Contractor and Buyer, any claim of injury or damage, or the enforcement of any remedy under any law, statute or regulation now or hereafter in effect.

### **95. NOTICE AND SERVICE THEREOF**

- A. Any notice required or given under the Order shall be in writing on company letterhead, be

dated, and signed by the party giving such notice or his duly authorized representative, and be served as follows:

1. If to Buyer, by personal delivery or electronically scanned and/or by deposit in the United States mail.
  2. If to Contractor, by personal delivery to Contractor, its authorized representative, or the Superintendent at the Worksite, electronically scanned and/or by deposit in the United States mail.
  3. If to the surety or any other person, by personal delivery to said surety or other person or electronically scanned and/or by deposit in the United States mail.
- B. All mailed notices shall be in sealed envelopes, shall be sent by certified mail, return receipt requested, with postage prepaid, and shall be addressed to the addresses stated in the Order Documents or such substitute addresses as a party may have designated in writing and served on the other party as set forth herein.

#### **96. ATTORNEY'S FEES**

If either party to this Order brings an action to enforce any provision of the Order, the prevailing party shall be entitled to recover his reasonable attorneys' fees and costs in connection therewith.

#### **97. CONTROLLING LAW**

All questions concerning the validity and operation of this Order and the performance of the obligations imposed upon the parties hereunder shall be governed by the laws of the state in which the Worksite is located.

#### **98. COMPLIANCE WITH LAWS, REGULATIONS, AND ORDINANCES**

- A. In addition to those requirements set forth in Section 57. hereof, Contractor also shall provide continuous adequate protection of the Worksite, Buyer's property, and adjacent property, and shall take all necessary precautions to keep and maintain the Worksite free from recognized safety hazards that may cause death, illness or injury to persons or damage to property.
- B. Contractor shall keep himself fully informed of all existing and future laws, ordinances, rules, and regulations of any federal, state, county or local agencies or other authorities having any jurisdiction or authority over the Worksite which in any manner affect those engaged or employed in the Services, or the materials used in the Services, or which in any way affect the conduct of the Services. Such laws, ordinances, rules, and regulations include, but are not limited to, those relating to wages, hours, working conditions, safety and health, environment, social security, income taxes, withholding laws, workmen's and unemployment compensation laws, fire protection standards, building codes, and worksite laws.
- C. Contractor shall at all times observe and comply with, and shall cause all its agents, employees, subcontractors, and suppliers to observe and comply with, all such existing and future laws, ordinances, rules, and regulations.
- D. The exercise of Buyer's right to conduct any construction review or to observe Contractor's performance shall not subject Buyer to any responsibility for Worksite safety and shall not be used as evidence of the adequacy of Contractor's safety measures in, on or near the Worksite.

#### **99. HEADINGS**

The heading and titles to the clauses of this Order are inserted for convenience only and in no way define, limit, construe or describe the scope or intent of such clauses or provisions nor in any way affect this Order.

#### **100. REMEDIES**

The rights and remedies provided for herein are in addition to, and not in limitation of, any other rights and remedies under this Order, at law or in equity, and exercise of one right or remedy will not be deemed a waiver of any other right or remedy.

#### **101. SEVERABILITY**

If any provision of this Order is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

**102. ENTIRE ORDER**

This Order, which includes these General Provisions, all schedules, exhibits, and other attachments as set forth on the Order Form hereof, constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements, commitments, representations, or understandings relative thereto between the parties, whether written or oral.