



**TERMS AND CONDITIONS FOR PROCUREMENT OF
PRODUCTS AND ANCILLARY SERVICES
AEC02 - VERSION 2017-03**

The following terms and conditions apply to the procurement of goods, materials, products and ancillary services (collectively, the "Products") by Atmos Energy Corporation ("COMPANY") or its designated integrated supplier. The party fulfilling a procurement request ("Order") is hereafter referred to as the "CONTRACTOR". Orders may include without limitation, a purchase order ("PO"), a written request under a preferred supplier agreement or other written or verbal communication.

- 1) **ACCEPTANCE.** CONTRACTOR accepts and agrees to be bound by the terms and conditions set forth herein. Any of the following acts by CONTRACTOR shall constitute acceptance of the Order: delivery of any of the Products ordered; commencement of performance or informing COMPANY in any manner of commencement of performance; or returning CONTRACTOR's own form on the face hereof. Acceptance of the Products covered by this order shall not constitute acceptance by COMPANY of CONTRACTOR's terms and conditions.
- 2) **ASSIGNMENT.** The Order shall not be assigned, in whole or in part by CONTRACTOR without the prior written consent of COMPANY, which consent, in the event of an assignment to an affiliated entity of CONTRACTOR, shall not be unreasonably withheld.
- 3) **SUBCONTRACTING.** CONTRACTOR will not subcontract any portion of the work called for by the Order without COMPANY's prior written consent. CONTRACTOR will not be relieved of any duty or liability by reason of subcontracting. There will be no contractual relationship between COMPANY and any subcontractor by virtue of the Order.
- 4) **LICENSE, CERTIFICATIONS AND PERMITS.** CONTRACTOR warrants that it has all permits, certifications and licenses necessary to provide the Products under the Order, or it will obtain at its costs all such permits, certifications and licenses.
- 5) **PRICING, INVOICE AND PAYMENT.** Prices reflected in an Order are exclusive of all taxes, charges and costs of whatsoever kind, unless otherwise documented. In no case will an invoice be paid prior to receipt of Product unless previously agreed to in writing by COMPANY. No charges for packaging, boxing, trucking or freight will be paid by COMPANY without its prior written consent. Shipments are to be made FOB Destination by the most economical transportation unless otherwise specified. Delay in receiving invoices or errors or omissions on invoices will be considered just cause for withholding payment without loss of cash discount privilege. If applicable, CONTRACTOR's invoice must bear the Order number set forth on the face hereof. Invoices accompanied by original bill of lading or express receipt must be emailed to accountspayable@atmosenergy.com. CONTRACTOR agrees to accept all forms of payment from COMPANY, including, but not limited to check, credit card

(Visa/MasterCard/American Express), wire, ACH or bank deposit for purchase of Products at agreed terms and price. CONTRACTOR is prohibited from assessing an additional surcharge or transaction fee based on COMPANY's form of payment. COMPANY's standard payment terms are Net 30.

- 6) **FORCE MAJEURE.** If either party becomes unable, either wholly or in part, by an event of Force Majeure, to fulfill its obligations under this Agreement, the obligations affected by the event of Force Majeure will be suspended only during the continuance of that inability. The party so affected will give notice of the existence, extent and nature of the Force Majeure to the other party within forty-eight (48) hours after the occurrence of the event. The party so affected will remedy its inability as soon as possible. Failure to give notice will result in the continuance of the affected party's obligation regardless of the extent of any existing Force Majeure. The term "Force Majeure" as used in this Agreement means acts of God (except as excluded herein), strikes, lockouts, or other industrial disturbances, acts of public enemies, wars, blockades, insurrections, riots, epidemics, earthquakes, fires, priority allocations of materials or orders, restraints or prohibitions by any court, board, department, commission or agency of the United States or of any States, any restraints, civil disturbances, explosions, or other occurrence beyond the control and without the fault or negligence of the party affected and which the party is unable to prevent or provide against by the exercise of reasonable diligence. During the existence of any Force Majeure condition, no payment will be due from Company to the party unable to fulfill its obligations under this Agreement.
- 7) **TIME OF PERFORMANCE, CANCELLATION AND SET-OFF.** Time is of the essence. COMPANY reserves the right to cancel and reject delivery of all or part of any Order placed under this Agreement if (1) delivery is not undertaken and completed when specified, (2) such delivery is not in accordance with specifications, or (3) CONTRACTOR fails to comply with any of the terms hereof. COMPANY's right to cancel is in addition to any and all other rights and remedies that COMPANY may have at law or in equity. COMPANY shall also have the right to cancel any Order for convenience. Any indebtedness of CONTRACTOR to COMPANY may, at COMPANY's option, be set-off and deducted from amounts owed to COMPANY.
- 8) **TITLE AND RISK OF LOSS.** Title to Products and risk of loss, damage and destruction of the Product will remain with CONTRACTOR until, and only pass to COMPANY or its designated integrated supplier, upon delivery of the Product to COMPANY's designated delivery site, unless otherwise agreed to by the parties and so stated on the written order.

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9) **CHANGE NOTICE, DELIVERY AND TRANSPORTATION.** No changes in quality, quantity or nature of Products, delivery point or shipping instructions will be made except by a written agreement. If no delivery due date is specified then delivery will be within a reasonable time after the Order is placed. Any Products CONTRACTOR delivers in error or in excess quantity will, at COMPANY's option, be returned to CONTRACTOR at the CONTRACTOR's expense.

10) **EXPEDITING, INSPECTION AND RIGHT TO WITNESS.** At the discretion of COMPANY, any Order may be subject to physical expediting, inspection and the right to witness all tests by COMPANY or COMPANY's designated representative prior to the shipment. CONTRACTOR will make all necessary arrangements and provide all reasonable facilities and provide proper and safe access for such review and observation of tests. Both CONTRACTOR and COMPANY have the right to be represented at any test, inspection or witness point required under this Agreement and have copies of any results. CONTRACTOR shall give COMPANY sufficient notice and shall afford COMPANY the opportunity to observe any inspection or tests of any part of the Work which CONTRACTOR elects to or is required to conduct. COMPANY or its designated representative may inspect and accept or reject any Product found not to be in accordance with the Order, or specifications, regardless of the stage of its completion or the time or place of discovery of such errors, and regardless of whether COMPANY's representative has previously accepted it through oversight or otherwise. A review 1) will in no way relieve CONTRACTOR from its obligation to furnish Products in accordance with any Order or 2) impose liability upon COMPANY.

11) **QUALITY, PERFORMANCE WARRANTY.** CONTRACTOR will provide all labor, tools, materials and supplies necessary for providing Products in a professional and workmanlike manner in accordance with practices acceptable and in accordance with COMPANY's safety policies, product specifications, model numbers and drawings set forth in the Order. CONTRACTOR warrants that it will provide qualified and experienced personnel to perform services or provide Products. Whenever COMPANY or the Order specify personnel, equipment and supplies, same will not be substituted without COMPANY's prior written consent. All Products are subject to inspection by COMPANY within a reasonable time after actual delivery and acceptance of Products by COMPANY. Products rejected for failure to meet specifications or quality standards will be returned at CONTRACTOR's expense, for repair, replacement or refund, at CONTRACTOR's option, or, by mutual agreement, COMPANY may perform such remedial work as COMPANY deems necessary to make the Products acceptable and CONTRACTOR will reimburse COMPANY for such remediation costs. CONTRACTOR warrants that it has good and complete title to the Products

delivered hereunder. CONTRACTOR also warrants the merchantability, fitness for use, design, workmanship and freedom from defects, and all Products are new and unused originals.

CONTRACTOR warrants freedom from defects of the Products for a period of not less than twelve (12) months from the date of commercial operation of the Products or eighteen (18) months from the date of receipt of the Products by COMPANY, whichever occurs first or a warranty term as otherwise specified in the Order.

CONTRACTOR warrants the Products for all reasonable costs incurred by COMPANY to remove, replace and/or repair or remedy any defect(s) or damages in the Products as well as shipping and handling charges for replacement and/or return of defective Products. Any costs incurred by COMPANY as a result of this provision will be promptly reimbursed by CONTRACTOR to COMPANY. CONTRACTOR will transfer and assign to COMPANY all manufacturers or other warranties received by CONTRACTOR, if any, regarding the Products and will provide commercially reasonable assistance to COMPANY in the enforcement of any such manufacturer's or other warranties so transferred and assigned.

12) **DRUGS, DEADLY WEAPONS, SEARCHES AND WORKSITE SAFETY.** CONTRACTOR will abide by and enforce its personnel the following COMPANY policy regarding drugs, deadly weapon, alcohol and worksite safety:

- a) Using, possessing or being under the influence of alcoholic beverages, illegal drugs, narcotics, other controlled substances and unauthorized drugs for which a person does not have a current prescription, while on COMPANY Premises, is prohibited. Possession of deadly weapons or explosives while on COMPANY Premises is prohibited.
- b) The term "COMPANY Premises" is used in its broadest sense to include all locations, buildings, structures and all facilities owned or controlled by COMPANY or its affiliated companies or otherwise being utilized by COMPANY's business where the Services are being performed.
- c) To ensure compliance with this policy, COMPANY may conduct unannounced periodic inspections of individuals and their personal effects while on COMPANY Premises. Violation of the COMPANY policy or refusal to submit to an inspection will be cause for immediate removal from COMPANY Premises.
- d) If applicable, CONTRACTOR will obtain from COMPANY any specific Work Site Safety, Security and other related rules and procedures. Those specific rules and procedures are incorporated fully into this Agreement by this reference. CONTRACTOR also agrees to comply with all relevant provisions of the Natural Gas Pipeline Safety Act and Comprehensive Environmental Response, Compensation and

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Liability Act. In addition to complying with those specific rules and procedures, CONTRACTOR agrees to comply with the rules and procedures contained in the attachment, if applicable, entitled "Work Site Safety, Security, Alcohol, Drugs and Weapons".

13) **BUSINESS ETHICS.** CONTRACTOR represents and warrants that neither it nor any person or entity associated in any manner with CONTRACTOR will:

- 1) Provide or offer any compensation or benefit of any type, including any gift or gratuity, other than advertising mementos of nominal value or reasonable business meals and business entertainment, to any COMPANY employee;
- 2) Maintain or establish any undisclosed business affiliation that could constitute or give the appearance of a conflict with the interests of COMPANY; or
- 3) Except to the extent expressly provided for in this Agreement, attempt to act on behalf of or, in any manner, seek to represent COMPANY.

If, during the term of this Agreement, CONTRACTOR knows or becomes aware of any facts or circumstances contrary to the representations and the warranties above, CONTRACTOR will immediately notify COMPANY and provide sufficient information for COMPANY to take appropriate protective or corrective actions. CONTRACTOR further agrees to cooperate fully in any investigation undertaken by COMPANY.

CONTRACTOR, if requested by COMPANY, agrees to require its employees to execute an ethics/nondisclosure agreement at any time.

14) **PROTECTION AGAINST LIENS AND INCUMBERANCES.** To the full extent permissible by applicable local or state law, CONTRACTOR hereby waives for itself, its successors in interest and assigns, and for all sub-vendors, their successors in interest and assigns, any and all claim or right of lien upon COMPANY's property or any part thereof as a result of the furnishing of labor and/or material under the terms of this Agreement, or any amendment or supplement thereto. CONTRACTOR will execute and deliver such documents, if any, as may be required under any local or state law to make the foregoing agreement effective and will give all required notices to sub-vendors with respect to the foregoing waiver.

If any lien, encumbrance or claim is filed against COMPANY or its premises, CONTRACTOR will indemnify, defend and hold COMPANY harmless with respect, thereto, and will take immediate and necessary steps to remove such lien, encumbrance or claim. COMPANY may withhold from CONTRACTOR any payments due it to offset such lien, encumbrance or claim, together with all related expenses, including attorney's fee, incurred by COMPANY until such time as it is removed.

15) **TAXES.** CONTRACTOR will be responsible for, and will hold COMPANY harmless from, the reporting, filing and payment of any taxes (and any related fines, penalties or interest) imposed directly or indirectly on CONTRACTOR

Group as a result of CONTRACTOR performance of the Order. Such taxes include, but are not limited to, the payment of all corporation or franchise taxes, VAT, sales or use taxes, excise or severance taxes, gross receipt taxes, contributions or taxes for unemployment insurance, old age retirement, other benefits, pensions or annuities and wage and income taxes with respect to persons directly or indirectly performing under the Order.

All sales, use, excise or similar taxes to be reimbursed by COMPANY must be itemized separately on invoices. COMPANY will reimburse CONTRACTOR who will make the appropriate payments to the appropriate tax authorities. Any such tax paid by CONTRACTOR on invoices or payments to third parties are exclusively for CONTRACTOR's account. Where required by law or regulation, COMPANY will withhold taxes from any amounts due CONTRACTOR and account for such withholdings.

If applicable in the state within which the Products supplied, COMPANY may choose to provide CONTRACTOR with a direct payment exemption certificate which will eliminate the necessity of CONTRACTOR's collection of State sales and use tax from COMPANY.

16) **INDEMNIFICATION.** CONTRACTOR agrees to and will defend, protect, indemnify and hold harmless COMPANY, its subsidiaries, affiliates and all officers, directors, shareholders, employees and agents (the "COMPANY Group") from and against all claims, losses, expenses, attorney's fees, damages, demands, judgments, causes of action, suits and liability in tort, contract or any other basis and of every kind and character whatsoever (hereinafter in this and the following paragraphs collectively referred to as "Claims" for personal injury, death or property damage of any member employed by the CONTRACTOR, all subcontractors of any tier employed by the CONTRACTOR and all affiliated or related firms and entities, officers, directors, partners, shareholders, associates, employees servants and agents of each (collectively, "CONTRACTOR Group") arising out of or incident to or related in any way to, directly or indirectly to Products Ordered, or to any activities of any member of CONTRACTOR Group while on any premises actually or allegedly owned, controlled or operated by COMPANY including, but not limited to, Claims arising out of or resulting from (1) any condition of the premises, (2) separate operations being conducted on the premises, or (3) the imperfection or defective condition, whether latent or patent, of any material or equipment sold, supplied or furnished by COMPANY; **further, IT IS THE EXPRESS INTENT OF THE PARTIES THAT, FOR THE PURPOSES OF THIS PARAGRAPH, CLAIMS, AND THE CONTRACTOR'S OBLIGATIONS TO DEFEND, PROTECT, INDEMNIFY AND HOLD HARMLESS, WILL INCLUDE, BUT NOT BE LIMITED TO, CLAIMS ARISING OUT OF OR RESULTING FROM COMPANY GROUP'S SOLE**

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OR CONCURRENT (1) NEGLIGENCE, (2) STRICT LIABILITY, OR (3) OTHER FAULT OF ANY NATURE.

For all Claims except those for personal injury, death or property damage of any member of CONTRACTOR Group within the scope of the preceding paragraph, CONTRACTOR agrees to and will defend, protect, indemnify and hold harmless COMPANY Group from and against any and all Claims arising out of or incident to or related in any way to, directly or indirectly, the Products Ordered, or to any activities of the member of CONTRACTOR Group while on any premises actually or allegedly owned, controlled or operated by COMPANY, including, but not limited to, Claims arising out of or resulting from (1) any condition of the premises, or (2) separate operations being conducted on the premises, or (3) the imperfection or defective condition, whether latent or patent, of any material or equipment sold, supplied or furnished by COMPANY; and **further, IT IS THE EXPRESS INTENT OF THE PARTIES THAT FOR THE PURPOSES OF THIS PARAGRAPH, CLAIMS, AND THE CONTRACTOR'S OBLIGATIONS TO DEFEND, PROTECT, INDEMNIFY AND HOLD HARMLESS, WILL INCLUDE, BUT NOT BE LIMITED TO, CLAIMS ARISING OUT OF OR RESULTING FROM COMPANY GROUPS' CONCURRENT (1) NEGLIGENCE, (2) STRICT LIABILITY, OR (3) OTHER FAULT OF ANY NATURE.**

To the extent necessary to permit COMPANY to enforce any term, clause or condition contained herein, CONTRACTOR agrees that with respect to any Claims brought against COMPANY Group, CONTRACTOR will and does hereby waive as to COMPANY Group any defense it may have by virtue of the workers' compensation laws of any state.

- 17) **INSURANCE.** CONTRACTOR will at its sole expense, purchase and maintain, and require its subcontractors to purchase and maintain insurance policies with substantial and sound insurers, having coverage of the types and in the minimum amounts as specified by COMPANY: (a) Worker's Compensation Insurance including Employer's Liability coverage with limits of not less than \$1,000,000 each incident; (b) Commercial General Liability Insurance, including contractual liability, insuring the indemnity agreement set forth herein and product-completed operations coverage with a combined single limit of not less than \$1,000,000 applicable to bodily injury (including personal injury), sickness or death and loss of or damage to property in any one occurrence; (c) Automobile Liability Insurance, including contractual liability, insuring owned, non-owned and hired vehicles with a combined single limit of not less than \$1,000,000 applicable to bodily injury, sickness or death and loss of damage to property in any one occurrence; (d) an additional Excess/Umbrella Liability policy of \$4,000,000, which must follow form of the underlying liability policies and covers complete

operations; Excess/Umbrella Liability Insurance may be used to achieve the minimum occurrence limit. Increases to minimum insurance requirements may be made by COMPANY from time to time. In such even, CONTRACTOR will be notified of any such adjustments and will be given 120 days to increase its corresponding insurance coverage's. The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess/Umbrella Liability Insurance policies will name COMPANY as additional insured under the policies. All policies will contain provisions whereby the insurers waive all rights of subrogation against COMPANY and provide thirty (30) days advance written notice to COMPANY prior to anniversary date of cancellation or any material change in coverage or condition. The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess/Umbrella Liability Insurance policies will contain provisions that specify that the policies are primary and will apply without consideration for other policies separately carried and will state each insured is provided coverage as though a separate policy had been issued to each, except the insurer's liability will not be increased beyond the amount for which the insurer would have been liable had only one insured been covered. Only one deductible will apply per occurrence regardless of the number of insured's involved in the occurrence. CONTRACTOR will be responsible for any deductibles or retention.

Upon request by COMPANY, CONTRACTOR agrees to provide a certified copy of each of the above referenced policies to COMPANY. COMPANY's review of such policies shall not be constructed as accepting any deficiencies in CONTRACTOR's insurance or relieve CONTRACTOR of any obligations set forth herein. In addition, CONTRACTOR will require each of its subcontractors to provide adequate insurance. Any deficiencies in the insurance to be provided by subcontractors will be the responsibility of the CONTRACTOR.

- 18) **COMPLIANCE WITH LAW, ORDINANCES, REGULATIONS AND CODES; SAFETY.** CONTRACTOR will at all times be solely responsible for complying with all applicable laws, ordinances, regulations and codes pertaining to the Product. CONTRACTOR will defend, indemnify and hold harmless COMPANY Group against any fines and penalties that are assessed against any of them for CONTRACTOR failure to so comply. The Order is predicated upon CONTRACTOR's compliance with applicable laws, ordinances, regulations and codes in effect as of the date of this order and thereafter. If any changes will be made to such applicable laws, ordinances, regulations and codes subsequent to date of the Order, such changes will be considered to be changes ordered by COMPANY, but only to the extent COMPANY is legally required to order such changes. CONTRACTOR will be subject to and cause CONTRACTOR's personnel, agents and others under

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CONTRACTOR's control during the performance of any services related to an Order or Product, to be subject to all applicable safety, health and environmental rules of COMPANY.

19) CONFIDENTIALITY AND PROPRIETARY INFORMATION.

Without the written consent of COMPANY, CONTRACTOR will not divulge to any third party, any information obtained from or through COMPANY that relates to the technical or business activities of COMPANY (including, without limitation, information pertaining to any customer of COMPANY), or is otherwise developed by CONTRACTOR in connection with its performance of this agreement, unless: (1) the information is known to CONTRACTOR prior to obtaining it from COMPANY; (2) the information is, at the time of disclosure by CONTRACTOR, then in the public domain; or (3) the information is obtained by CONTRACTOR from a third party who did not receive it directly or indirectly from COMPANY and who has no obligation of secrecy with respect to that information. THIS PROVISION WILL NOT RESTRICT IN ANY MANNER WHATSOEVER THE REPORTING OF ENVIRONMENTAL OR SAFETY-RELATED CONCERNS to the appropriate governmental authorities in accordance with applicable law.

CONTRACTOR will not disclose any details of the agreement, including without limitation, confidential or proprietary business or technical information of COMPANY, to any person(s) except those engaged in its performance of this agreement.

If so requested by COMPANY, CONTRACTOR further agrees to require its employees to execute a nondisclosure agreement prior to performing any services under this Agreement.

20) PUBLICITY. No information relating to this Agreement will be released for publication, advertising or any other purpose without the prior written approval of COMPANY. CONTRACTOR is expressly prohibited from using COMPANY's name in any publication, advertising, or promotion without prior written consent of COMPANY.

21) GOVERNING LAW. The Order and any supplements issued hereto, will be governed by, and construed in accordance with, the laws of the State of Texas. The parties agree that venue and jurisdiction will be in Dallas County, Texas.

22) UNIFORM COMMERCIAL CODE. This order will be governed by the Uniform Commercial Code-Sales (Chapter 2 of the Texas Business and Commerce Code).

23) NON-WAIVER OF RIGHTS. A waiver by either party of any breach of this Agreement or the failure of either party to enforce any of the articles or other provisions of this Agreement will not in any way affect, limit or waive that party's right to enforce and compel strict compliance with the same or other articles or provisions.

24) SURVIVAL. Neither the completion of any Work nor any termination or cancellation of this Agreement will relieve CONTRACTOR of any obligations under this Agreement

that by their nature survive the completion of the Work, including, but not limited to, all warranties and obligations of indemnity.

25) SEVERABILITY. In the event that any provision herein is determined to be invalid or contrary to existing applicable law, the enforceability of the remaining provisions will not be affected and will be given full force and effect unless COMPANY determines that such invalidity materially affects the basic consideration of the Order.

26) SMALL BUSINESS CONCERNS. As a provider of natural gas and/or other services to the Federal Government, COMPANY adheres to and requires all of its contractors to adhere to the following, where applicable:

a) Federal Regulation: UTILIZATION OF SMALL BUSINESS CONCERNS 48 C.F.R. 52.219-8.

i) It is the policy of the United States that small business concerns and small diverse suppliers shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors and subcontractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns and diverse suppliers. Small diverse suppliers are defined as veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

ii) CONTRACTOR hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. CONTRACTOR further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the CONTRACTOR's compliance with this regulation.

b) If the total contract amount is expected to exceed \$700,000 (\$1.5 million for construction), and CONTRACTOR exceeds the size standard for the NAICS code that COMPANY determines best describes the product or service being acquired by the contract, CONTRACTOR must submit an annual Small Business Subcontracting Plan to COMPANY as outlined in Title 48 of the Code of Federal Regulations (CFR) Section 52.219-9 (refer to <http://gpoaccess.gov.cfr>) within 30 days after Order is executed.

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c) CONTRACTOR may be considered a small business if it does not exceed the size standard for the NAICS code that COMPANY determines best describes the product or service being acquired by the contract. By execution of the contract, CONTRACTOR represents that its small business size and status as a small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a woman-owned small business, if any applicable, are current, accurate and complete as of the date of execution of the contract:

i) In the federal government's System for Award Management (SAM) (or any successor system).

OR

ii) In a written and authorized format provided to COMPANY.

27) **IMMIGRATION.** CONTRACTOR will fully comply with all applicable requirements of the Immigration Reform and Control Act of 1986 ("IRCA"), as well as all regulations issued pursuant to IRCA or otherwise enforced by the U.S. Citizenship and Immigration Service, for or with respect to any of CONTRACTOR's employees, or other persons, performing any portion of the Work. In particular but without limitation, CONTRACTOR acknowledges and represents that: (a) to the fullest extent required by IRCA or such regulations, it has properly completed (or, prior to their performance of any portion of the Work, will properly complete) the Employment Eligibility Verification Form, I-9, for each such employee or person; and (b) all such employees or persons are, and will remain while performing any portion of the Work, otherwise legally authorized to work in the United States.

28) **EQUAL EMPLOYMENT OPPORTUNITY.** COMPANY is an equal opportunity employer and federal contractor or subcontractor. Consequently, the parties agree that, as applicable, they will abide by the requirements of 41C.F.R. 60-1.4(a), 41 C.F.R. 60-300.5(a) and 41 C.F.R. 60-741.5(a) and that these laws are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, national origin, disability or protected veteran status. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment qualified individuals without regard to race, color, religion, sex, nation origin protected veteran status or disability. The parties also agree that, as applicable, they will abide by the requirements of Executive Order 13496 (29 C.F.R. Part 471, Appendix A to Subpart A) relating to the notice of employee rights under federal labor laws.

29) **TERMINATION.** COMPANY may terminate this Agreement, in whole or in part, at any time, at its sole discretion, by providing written notice of termination to CONTRACTOR. The notice of termination will specify

the effective date of any termination, and the Work or any part of the Work to be terminated, or alternatively, that this Agreement is terminated in its entirety.

CONTRACTOR will discontinue Work in accordance with COMPANY's termination instructions. Upon receiving notice of termination, CONTRACTOR will place no further orders, or enter into further subcontracts for services, materials or equipment related to the terminated Work. In addition, CONTRACTOR will delay or terminate all existing orders and subcontracts, insofar as those orders and subcontracts relate to the performance of the Work terminated.

In the event this Agreement or the Work is terminated, COMPANY's only liability will be to pay CONTRACTOR the unpaid balance due CONTRACTOR for Work actually performed.

There will be deducted from any unpaid balance due CONTRACTOR the amounts of all claims of COMPANY against CONTRACTOR, including, but not limited to, claims on account of defect in materials and workmanship.

30) **TERMINATION FOR DEFAULT.** If a petition in bankruptcy should be filed by CONTRACTOR, or if CONTRACTOR should make a general assignment for the benefit of creditors, or if a receiver should be appointed due to the insolvency of CONTRACTOR, or if CONTRACTOR should refuse or fail to supply enough properly skilled workmen or proper equipment, materials or services or should fail to make prompt payment to subcontractors, or to pay promptly for materials or labor, or disregard laws, ordinances or the instruction of COMPANY's Contract Coordinator, or if CONTRACTOR should refuse or fail to abide by the Agreement Construction Schedule or otherwise violate any provisions of the Agreement, then COMPANY, upon a determination by COMPANY's Contract Coordinator that sufficient cause exists to justify such action, may, without prejudice to any other right or remedy available to it after giving CONTRACTOR seven (7) days' written notice, terminate the Agreement and take possession of the Work Site. In the event of such a termination, COMPANY may use all or part of CONTRACTOR's equipment and materials and may finish the Work by whatever method COMPANY may deem expedient. In such event, CONTRACTOR will not be entitled to receive any further payment hereunder until the Work is finished. If the unpaid balance of the Agreement Price will exceed the expense of finishing the Work, including compensation of COMPANY's Contract Coordinator, other COMPANY personnel, third party engineering companies, or other contractors for additional services, such excess will be paid to CONTRACTOR. If the expense of finishing the Work will exceed such unpaid balance, CONTRACTOR will pay the difference to COMPANY within fifteen (15) days of receiving an invoice for same. The expenses incurred by COMPANY herein, and the damage incurred through CONTRACTOR's default, will be determined by COMPANY's Contract Coordinator, in its sole discretion,

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and such determination will be binding as between the parties.

In the event of a termination under the provisions of this Article, CONTRACTOR will transfer and assign to COMPANY, in accordance with COMPANY's instructions, all Work, all construction records, reports, permits, data and information, other materials (including all COMPANY-supplied materials), supplies, Work in progress and other goods for which CONTRACTOR is entitled to receive reimbursement hereunder, and any and all plans, drawings, sketches, specifications, and information in connection with the Work, and will take such action as may be necessary to secure COMPANY, at COMPANY's sole election, the rights of CONTRACTOR under any or all orders and subcontracts made in connection with the Work.

In the event that COMPANY so directs or authorizes, CONTRACTOR will sell at a price approved by COMPANY, or retain at a mutually agreeable price, any such materials, supplies, Work in progress, or other goods as referred to in the preceding paragraph. In any event, COMPANY will receive any and all records, plans, drawings, data, permits, specifications, sketches, reports, or other information relating to the Work. The proceeds of any such sale or the agreed price will be paid or credited to COMPANY in such manner as COMPANY may direct so as to reduce the amount payable by COMPANY under this Article.

- 31) EFFECT OF TERMINATION.** Upon termination or expiry of this Agreement,
- (a) CONTRACTOR will deliver to COMPANY all Deliverables (complete or incomplete) then in its possession or control;
 - (b) If this Agreement expires, COMPANY terminates the Agreement and/or a Statement of Work pursuant to Section 13, or CONTRACTOR terminates the Agreement and/or Statement of Work pursuant to Section 14, then COMPANY shall pay for all completed Services and Deliverables provided in accordance with this Agreement;
 - (c) CONTRACTOR shall promptly destroy or return to COMPANY all Confidential Information, including copies thereof, and CONTRACTOR shall certify in writing to COMPANY that all such materials have been destroyed or returned; and
 - (d) Termination of this Agreement will not relieve CONTRACTOR of any obligations of indemnity that by their nature survive, including, but not limited to obligations of indemnity, intellectual property, computer and related access, confidentiality, record keeping, audit, warranty, insurance and limits of liability.