

# MIDWEST ENERGY RESOURCES COMPANY

## Terms and Conditions for Services

### 1. DEFINITIONS

The following terms shall have the following meanings:

- A. *Agreement* means these terms and conditions, the document called the Purchase Order and/or Contract as executed by the parties, and all of the documents listed in the Purchase Order and/or Contract which are specifically incorporated into this Agreement.
- B. *Buyer* is Company's purchasing representative whose name appears on the face of the Purchase Order and/or Contract and who is the only Company representative authorized to issue Change Orders.
- C. *Change Order* is the document issued by Buyer that alters, amends or modifies the Agreement.
- D. *Company* means the DTE Energy entity stated on the first page of the Purchase Order and/or Contract.
- E. *Contract Administrator* is Company's principal representative who has the responsibility to coordinate and administer the Agreement.
- F. *Contractor* means the person or legal entity with whom Company has entered into the Agreement.
- G. *Project* means the Company property or other specified location(s) where the Work shall be performed and may include construction by other contractors under a separate agreement with Company.
- H. *Schedule* means the time(s) established for the performance of the Work.
- I. *Subcontractor* is any person or other entity doing any portion of the Work on behalf of Contractor. Nothing in the Agreement shall create any contractual relationship between Company and any subcontractor.
- J. *Supplier* is any person or other entity supplying material, equipment or goods in connection with the Work on behalf of Contractor.

K. *Work* is the entire responsibility of Contractor for services and labor to be performed and equipment and materials to be furnished by Contractor as defined by the Agreement and includes all other labor, materials, equipment, licenses, permits, repairs or replacements under any warranty, insurance and services provided or to be provided by Contractor to fulfill Contractor's obligations.

### 2. ENTIRE AGREEMENT

A. The Purchase Order and/or Contract, together with these Terms and Conditions and all documents referenced and specifically incorporated into the Purchase Order and/or Contract are the entire agreement between the Parties respecting the Work and no modification of the Agreement shall be effective unless by a Change Order issued by Buyer. Any agreements, negotiations or understandings of the Parties prior or

contemporaneous to the date of the Agreement, whether written or oral, are superseded hereby.

B. Any document submitted by Contractor (including any Contractor document referenced in the Agreement), is used solely for the purpose of describing the Scope of Work and to the extent containing any terms in addition to or inconsistent with the terms of the Agreement, or a rejection of any terms of the Agreement, shall be deemed to be a counter offer to Company and shall not be binding upon Company unless specifically accepted in writing by Buyer. In the absence of written acceptance of such counter offer by Company, commencement of performance by Contractor shall be deemed to be an agreement by Contractor to perform in accordance with the terms of the Agreement and an acceptance hereof, notwithstanding any prior dealings or usage of trade.

### 3. SCOPE OF WORK

Contractor agrees to furnish labor, supervision, materials, equipment and tools and technical and professional services necessary to carry out the Work specified in the Agreement. Contractor may not perform extra work except by an executed Change Order issued by Buyer.

### 4. TERM OF AGREEMENT

This Agreement shall be effective and terminate on the dates specified in the Purchase Order and/or Contract.

### 5. INDEPENDENT CONTRACTOR

A. Contractor and all its employees, Subcontractors and Suppliers are, with respect to Company, independent contractors. Except as otherwise expressly provided herein, Contractor shall perform all services, furnish all labor and supervision, do all work, and provide all equipment, materials, tools and supplies as are necessary or incidental to the complete performance of its obligations as required and described in the Agreement. Contractor shall be solely responsible for the performance, general direction, supervision and efficient administration of the Work of its employees, Subcontractors, Suppliers and those under its control. Any rights to inspect, reject, approve or otherwise oversee the Work, or other similar provisions regarding the conduct of the Work, including safety rules and practices, are for Company's benefit only (and not for any other person or entity) and do not relieve Contractor of its responsibilities.

B. Contractor shall be responsible for any and all wages, taxes, or benefits that are due and owing to its employees, including personnel or compensation records, computation of compensation, unemployment compensation, overtime and fringe benefits or performance of such other duties and obligations as are required to comply with any and all applicable federal, state and local laws, ordinances, rules and regulations. Contractor shall require the same of its Subcontractors and Suppliers.

### 6. LAWS, REGULATIONS AND PERMITS

A. Contractor shall keep itself fully informed of and shall observe and comply with all federal, state and local laws,

ordinances, codes and regulations including, but not limited to, environmental and pollution control laws; orders and decrees of bodies or tribunals having any jurisdiction or authority over the Work; and any rules or regulations of Company relating to health, safety or performance of the Work which in any manner affect those engaged or employed for any Work, the materials and equipment used in any Work, or the performance of any Work. If any discrepancy or inconsistency should be discovered between the Agreement and any such law, ordinance, code, regulation, order or decree, Contractor shall immediately report the same in writing to Buyer. Contractor shall be responsible for the compliance by its employees, Subcontractors and Suppliers of all tiers with the above provisions and shall be liable for all fines levied in violation of any laws, ordinances, codes and regulations.

B. Unless otherwise directed by Company, Contractor shall procure and pay for all other permits and inspections and furnish any bonds, security or deposits required for the Work.

## **7. FEDERAL CONTRACTING REQUIREMENTS**

A. The following Federal Acquisition Regulation ("FAR") clauses, as amended, are incorporated by reference in these terms and conditions unless Contractor is exempt thereunder: Equal Opportunity, FAR 52.222-26 (applies to all orders); Prohibition on Segregated Facilities, FAR 52.222-21 (applies to all orders); Affirmative Action for Workers with Disabilities-FAR 52.222-36 (applies to orders of \$10,000 or more); Anti-Kickback Procedures, FAR 52.203-7 (applies to all orders over \$100,000); Affirmative Action for Special Disabled and Vietnam Era Veterans-FAR 52.222-35 (applies to orders of \$25,000 or more); and Employment Reports on Disabled Veterans and Veterans of the Vietnam Era-FAR 52.222-37 (applies to orders of \$25,000 or more). The terms "Contractor," "Government," and "Contracting Officer" as used in the FAR clauses shall be deemed to refer to "Contractor," "Company" and "Contract Administrator."

B. Except to the extent that this Agreement is exempt from any of the requirements set out below, Contractor agrees to be bound by and comply with the clauses set forth at 48 CFR 52.219-8 (Utilization of Small Business Concerns) (only if this Agreement exceeds \$100,000) and 48 CFR 52.219-9 (Small Business Subcontracting Plan) (only if this Agreement exceeds \$500,000 and if Company requests submission of a Small Business Subcontracting Plan).

## **8. STANDARDS AND CODES**

Contractor shall comply with all industry standards and codes applicable to the Work.

## **9. DISCOVERY OF ERRORS, OMISSIONS OR DISCREPANCIES IN THE AGREEMENT**

If at any time Contractor discovers any errors, omissions, discrepancies, or conflicts in the Agreement, it shall immediately so inform Buyer in writing. Company shall clarify such matters and so inform Contractor in writing, and where necessary, Buyer shall issue a Change Order to amend the Agreement accordingly.

## **10. SAFETY**

A. Contractor shall take all necessary precautions for the protection of the health and safety of its employees, its Subcontractors and Suppliers, Company, the public and other third parties and shall at all times comply with Company's safety rules and procedures applicable to the Work. Contractor agrees

that it shall be solely responsible and liable for the safety of its employees, Subcontractors and Suppliers, the public and other third parties. Contractor agrees to cooperate with Company in efforts to prevent injuries to workers employed by either party or other contractors in performing the Work.

B. If stated in the Purchase Order and/or Contract, Contractor shall not commence the Work prior to participating in a preconstruction safety meeting with a Company safety representative. Company's safety representative may periodically review the performance of Contractor's Safety Program.

C. Contractor shall also ascertain and comply with all federal, state and local laws, ordinances, standard rules, regulations and executive orders, including all OSHA and State of Wisconsin requirements, relating to safety and health, accident or injury of its employees and subcontractors on, about, or adjacent to the premises where the Work is being performed. Contractor shall require the same of its Subcontractors.

## **11. SECURITY AND PROHIBITED ITEMS**

A. Company may furnish security personnel at the Project to control access, patrol yards and buildings, maintain order, and enforce regulations. The presence or absence of such security services shall not be construed to modify the responsibility of Contractor for loss and/or damages to persons or property within its custody or control.

B. Certain items are prohibited from the Project under all conditions. These items include alcoholic beverages, controlled substances, drugs, firearms and hunting devices. The security personnel may conduct periodic, random inspections of vehicles, lunch boxes, coolers, cartons or other containers brought on to the Project.

## **12. CONFIDENTIALITY**

A. Contractor acknowledges and agrees that all information that Company discloses to Contractor or to which Contractor may have access during Contractor's performance of the Work is considered proprietary and confidential by Company, unless designated otherwise. The information is and shall, at all times, remain the property of Company. Contractor shall limit the disclosure of the information or any portion thereof to those of its employees, Subcontractors and Suppliers (and its employees) who are required to perform the Work and who have a strict need to know such information. Contractor shall advise such persons of the existence of this Agreement, of the confidential nature of the information and of Contractor's obligations regarding same under this Agreement. Contractor, its employees, Subcontractors and Suppliers and their employees shall not, without permission of Company, disclose such proprietary or confidential information to any third party for any reason or purpose whatsoever. In the event of a breach or threatened breach of this Section by Contractor or those under its control, Company shall be entitled to an injunction restraining such conduct. Nothing herein shall be construed as prohibiting Company from pursuing any other remedies available to Company for such breach or threatened breach.

B. Contractor and its employees shall not be required to protect or hold in confidence any such information which (1) becomes known to the public through no act or omission of Contractor or its employees; (2) is ordered to be disclosed by a court or administrative agency; or (3) is thereafter developed independently by Contractor. In the event that Contractor is

requested or required under compulsion of legal process to disclose such information, Contractor shall not, unless required by law, disclose the information until Company has first (i) received prompt written notice of such request or requirements to disclose and (ii) had an adequate opportunity to obtain a protective order or other reliable assurance that confidential treatment shall be accorded to the information. Contractor shall not oppose actions by Company to assure such confidential treatment.

C. No publications or advisements concerning the subject matter of the Agreement, Company's name and/or logo, or photographs of the Work or Project or any portions thereof shall at any time be made by or on behalf of Contractor, its Subcontractors, or Suppliers, unless prior written authorization therefore is obtained from Company.

### 13. TAXES

A. Contractor accepts exclusive liability for all payroll taxes now or hereafter imposed by the United States or any state or local government, and any penalties and interest on such payroll taxes, resulting from amounts paid to any persons used by Contractor in performing the Work under this Agreement. Such persons shall in no event be the employees of Company. Contractor agrees to indemnify Company for any such payroll taxes, penalties and interest levied against Company or which Company may be required to pay.

B. Contractor agrees to indemnify Company from any and all taxes under Section 4980B of the Internal Revenue Code of 1986, as amended, and any penalties and interest thereon, resulting from the failure of Contractor to satisfy the continuation coverage requirements provided in such section with respect to persons used by Contractor in performing under this Agreement. Contractor shall pay all income, single business, property, sales and use, excise and any other taxes now or hereafter imposed by the United States or any state or local government, and any penalties and interest on such taxes, arising out of Contractor's performance of the Work, and shall indemnify Company for all such taxes, penalties and interest levied against Company or which Company may be required to pay.

C. Unless otherwise provided in the Agreement, Contractor shall pay all Wisconsin sales and use taxes on all taxable materials and services consumed or performed in the execution of all Work under this Agreement.

### 14. INSURANCE

a. To protect Contractor and Company against liability for damage, loss, or expense arising out of, or in connection with, or resulting from the performance of the Services, Contractor shall at all times during the progress of the Services carry, at its own expense, and on such forms and terms as will protect Contractor and Company, with reliable insurance companies acceptable to Company and authorized to do business in the State of Wisconsin, insurance coverage, the type and amounts of which are customary in Contractor's business, including without limitation, the following:

**(1) Worker's Compensation Insurance (Coverage A)** for statutory requirements including Occupational Disease Insurance and protection for liability under the Jones Act, Federal Longshoreman's and Harborworkers Compensation Act, as amended, as required by law. **Employer's Liability Insurance (Coverage B)** with limits of One Million Dollars (\$1,000,000)

covering location of all work places.

**(2) Comprehensive Automobile Liability Insurance** covering owned, non-owned and hired vehicles with limits of not less than Two Million Dollars (\$2,000,000) Combined Single Limit per occurrence for injuries to or death of more than one person and Property Damage Liability.

**(3) Commercial General Liability Insurance** including Products/Completed Operations Coverage and Blanket Contractual Coverage with Full Defense Coverage for Company, and Contingent Liability with respect to subcontractors, with a limit of not less than Two Million Dollars (\$2,000,000) Combined Single Limit Coverage covering injuries to or death of one or more persons and property damage liability.

**(4) Professional Liability (Errors & Omissions) Insurance** with a limit of not less than Three Million Dollars (\$3,000,000) per claim (if applicable to the Work and/or Services being performed as determined by Company).

b. All the above described insurance policies (except Workers' Compensation and Professional Liability) shall name Company, and its officers, agents and employees as an Additional Insured without limitation and all such policies (including Workers' Compensation) shall contain provisions that the insurance companies will have no right of recovery or subrogation against Company, or its officers, agents or employees, it being the intention of the parties hereto that the insurance so effected shall protect all parties and be primarily liable for any and all losses covered by the above described insurance.

c. All policies providing coverage hereunder shall contain provisions that no cancellation or material changes in the policies shall become effective except on 30 days advance written notice thereof to the Company.

d. Prior to the start of the Services, Contractor shall provide Company with Certificate(s) of Insurance evidencing that insurance coverage of the types, amounts, and conditions specified are in effect. Contractor affirms to Company that such insurance coverage shall remain in effect during the life of the Agreement.

### 15. INDEMNIFICATION

A. Contractor covenants and agrees that it shall defend, indemnify and hold Company, and all of its officers, agents and employees harmless for any claim, loss, damage, cost, charge, expense, lien, settlement or judgment, including interest thereon, whether to any person, including employees of Contractor, its Subcontractors and Suppliers, or property or both, arising directly or indirectly out of or in connection with Contractor's or any of its Subcontractor's or Supplier's performance of the Agreement or in connection with the performance of the Work, to which Company or any of its officers, agents or employees may be subject or put by reason of any act, action, neglect or omission on the part of Contractor, any of its Subcontractors or Suppliers or Company, or any of their respective officers, agents and employees. Without limiting the foregoing, said obligation includes claims involving Contractor's, Supplier's or Subcontractor's employees injured while going to and from the Project.

B. In the event any suit or other proceedings for any claim, loss, damage, cost, charge or expense covered by Contractor's foregoing indemnity should be brought against Company or any of its officers, agents or employees, Contractor hereby covenants and agrees to assume the defense thereof and defend the same

at Contractor's own expense and to pay any and all costs, charges, attorney's fees, and other expenses, and any and all judgments that may be incurred by or obtained against Company or any of its officers, agents, or employees in such suits or other proceedings. In the event of any judgment or other lien being placed upon the property of Company in such suits or other proceedings, Contractor shall at once cause the same to be dissolved and discharged by giving bond or otherwise.

## 16. ENVIRONMENTAL COMPLIANCE

A. Waste. Contractor may not place material in any Company waste storage containers, including but not limited to: rubbish dumpsters, used oil drums and tanks, hazardous waste drums, satellite waste collection drums and recycling containers without prior written consent from Contract Administrator. No waste of any sort may be disposed to any Company drains or ditches without prior written agreement from Contract Administrator (including but not limited to solvents, oily waste, and janitorial supplies). Contractor is responsible for all clean up and disposal of wastes generated or resulting from work activities unless otherwise specified in the contract. Contractor must use Company approved (or obtain approval for) transportation and disposal facilities for the disposition of all waste. Hazardous or liquid industrial waste shall be packaged, labeled, manifested and disposed of with the prior approval of Contract Administrator. Manifested waste generated at Company's facilities shall be signed by the Company Environmental Professional at the facility. Any cost incurred by the Company to dispose of Contractor generated waste left behind at the work location will be the responsibility of Contractor unless otherwise specified in the Agreement.

B. Chemicals. Contractor shall provide Contract Administrator a list of all chemicals and their material safety data sheets (MSDS's) used by Contractor and their Subcontractors on Company property or systems, at least one week prior to delivery of chemicals to the Project. Contract Administrator may prohibit the use or request substitution of any chemical substance deemed to be unacceptable (e.g., non-halogenated solvents versus halogenated solvents). Contractor is responsible for removal of all unused products and materials (including chemicals) brought onto the Company's property. Contractor shall label and store all chemical products used on Company site in accordance with United States Occupational Safety and Health Administration standards. Contractor shall not use Company chemical supplies, without prior written consent from Contract Administrator. Some Company facilities report under the U.S. EPA's Toxic Chemical Release Inventory (TRI). If Contractor uses or supplies a TRI listed chemical or product at a TRI reporting facility, Contractor shall provide Company with an estimated quantity used and estimated releases to air, water, land or disposal for each listed TRI product. All TRI estimates shall be submitted to the CA/CAD in pounds/year, within two (2) months of Project completion.

C. Tanks. Contractor shall locate temporary tanks on Company property only with the authorization of Contract Administrator. Contractor's temporary fuel tanks shall include, at minimum, containment for the volume capacity of the tank and overflow protection. Overflow protection can constitute a gauge clearly visible from the fill point. Contractor, when fueling from a temporary tank (including mobile fuelers) must use drip pans or other means to ensure the capture of drips from connections, nozzle residual, etc. Contractor shall ensure immediate access to appropriate clean-up materials such as absorbent pads, absorbent clay, etc. Contractor tanks on Company property shall materially and operationally meet all federal, state and local

requirements. Any parts cleaners brought onto Company premises by Contractor shall contain only non-ignitable fluids, with a flash point higher than 140 degrees Fahrenheit; use a pumped filter to remove particles and grease during use and be used in a manner consistent with federal regulations (e.g. lid must remain closed when not in use, must have drip shelf, etc).

D. Spills. All costs associated with response and remediation of a spill caused by Contractor (including but not limited to: labor, materials, disposal, reports, sampling and analysis) shall be incurred by Contractor. Contractor shall notify Contract Administrator immediately in the event of a spill or release of polluting material to the environment. Company shall be responsible for notifications to the applicable federal, state, and local authorities, unless otherwise designated in the Agreement. Contractor shall immediately initiate containment of any spill while remaining outside the spill area of impact. Company shall determine whether the spill constitutes an emergency or an incidental release per OSHA 29 CFR 1910.120(a)(3). If a spill is determined to be an incidental release, Contractor may complete spill response and remediation in accordance with all applicable federal, state and local requirements. If a spill constitutes an emergency, Contractor shall not attempt response and remediation beyond containment unless training certification under 29 CFR 1910.120 can be documented. In all cases, the response and remediation plan shall be approved by Contract Administrator.

E. Compliance. Contractor and Subcontractors shall conduct activities on Company property in compliance with all environmental federal, state, and local regulations. Contractor and its Subcontractors or Suppliers shall not conduct activities that result in the Company exceeding any environmental permit limitation or condition. In the event Contractor's or its subcontractors' work causes a permit exceedance or non-compliance, Contractor shall be responsible for any fines or costs associated with such exceedance or non-compliance. Contractor shall inform Contract Administrator prior to any planned activity expected to result in a discharge to the environment, including but not limited to, surface water, air, and ground.

F. Environmental Management System. Company is committed to continually improving environmental performance. As part of this commitment, Company has certified some facilities' environmental management systems (EMS) to the ISO 14001 standard. Contractor shall ensure that its employees, Subcontractors and/or Suppliers performing work at a facility with a certified EMS read the "ISO 14001 Environmental Management System Handbook". An acknowledgement page from each handbook shall be signed and submitted to Contract Administrator. Contractors shall ensure that its Subcontractor(s), Suppliers and employees' actions comply with the requirements of a facility's EMS. Any damage or delays caused by the work release shall be at the Contractor's expense.

## 17. CONTRACTOR'S EMPLOYEES AND MANAGEMENT

A. Contractor shall be solely responsible for and have control over the means, methods, techniques, sequences, procedures and coordination of all portions of the Work under the Agreement.

B. Contractor shall be responsible to Company for the acts and omissions of Contractor's employees, Subcontractors, Suppliers, their agents and employees, and other persons performing the Work for Contractor.

C. Contractor's agents, employees, Subcontractors and Suppliers who are working on Company premises shall comply

with all federal, state and local laws, ordinances, codes and regulations, and Company policies prohibiting unlawful discrimination and harassment. Contractor shall be responsible to Company for compliance by its employees, agents, Subcontractors and Suppliers with the above provisions.

D. Contractor shall perform the Work diligently and maintain at all times a sufficient number of competent and highly skilled employees and supervisors to complete the Work timely, properly, and in a workmanlike manner in accordance with the highest industry standards. Unless specifically waived by Company, a competent Contractor's designated representative with authority to act for and bind Contractor shall be at the site at all times during working hours to supervise the Work. Such Work shall be conducted in cooperation with Company's supervisors, engineers, or other Company employees and contractors in such manner that Company's operations shall not be interrupted unnecessarily.

E. At Company's request, Contractor shall remove any employee, Subcontractor or Supplier that Company deems incompetent, disorderly, insubordinate, careless or otherwise objectionable, without cause, at any time.

F. Contractor shall at all times maintain discipline, under established work rules and procedures, among its own and its Subcontractor's and Supplier's employees. Labor to be employed shall be such as to cause no conflict or interference with or between the various trades. Contractor shall be responsible for all agreements with labor and for the resolution of all labor problems or disputes. Contractor shall keep the Contract Administrator and Buyer fully informed of all developments in labor relations that affect or could affect the Project.

G. The Work is to be conducted in conformance with the standard work week of particular trade(s) involved or conditions of the labor agreements applicable to the Work on the basis of straight time, regular shift work, unless otherwise authorized by Contract Administrator, if such Work is included as part of the Agreement, or Buyer, if such Work changes the Agreement. Contractor shall not pay wages, overtime rates, shift rates or any allowances including travel, subsistence and other fringe benefits, if any, in excess of those stated in the applicable labor agreements, or engage in practices which are not a part of terms and conditions of labor agreements, including a shortened work week, unless authorized by Buyer.

H. Company may direct Contractor, whenever Company deems it necessary, to supply and furnish to Contractor's and its Subcontractor's and Supplier's employees and agents Company approved identification badges, passes or both. Contractor shall not, in any event, admit to the Project any person who does not have proper credentials sufficient to establish that such person has a legitimate purpose for being on or about the Project.

I. Contractor's organization shall include professional management personnel to support the Work and to interface with Company's management regarding labor relations, planning, scheduling, material quantity take-offs, estimating, quality control and technical matters. Professional management personnel skills must include engineering expertise and other disciplines associated with the Work.

J. Contractor shall take all reasonable and appropriate steps, including but not limited to, prompt initiation of legal proceedings to end any illegal work stoppages, slowdowns or other labor disturbances, and if it fails to do so, it shall be liable for all

damages incurred by Company as a result of such illegal labor disruptions.

## **18. HIRING AND SUBCONTRACTING**

A. Contractor shall not hire aliens who are unauthorized or ineligible for U.S. employment at Contractor, pursuant to the Immigration and Nationality Act as amended (INA). Contractor shall comply with the INA verification and retention requirements for its employees hired after November 6, 1986, and with such other applicable requirements of employers as have been or will be issued, pursuant to the INA, or pursuant to the authority of the Department of Homeland Security and U. S. Citizenship and Immigration Services (USCIS) or their successors.

B. Contractor shall not commence any Work prior to notifying Company of any Subcontractors and/or Supplier, ensuring that its Subcontractors and/or Suppliers meet Company safety requirements and receiving Company's concurrence of such Subcontractor and/or Supplier for performance of the Work. Any assignment, delegation or subcontract shall not relieve Contractor of its responsibility to complete the Work in accordance with the terms of this Agreement or its liability for any Work performed by its subcontractors, employees or agents.

C. Contractor shall incorporate the obligations of this Agreement into its respective Subcontracts, agreements and purchase orders (a copy of which is to be submitted to Company upon request). Company is the intended third party beneficiary of all contracts for design, engineering or consulting services, all trade contracts, subcontracts, purchase orders and other agreements between Contractor and third parties. Contractor shall fully defend, indemnify and hold Company harmless from all acts or omissions of all Subcontractors.

D. Contractor shall require its Subcontractors to carry insurance in the amount, type and form of insurance required by the Agreement. If its Subcontractors do not obtain such coverage, Contractor shall insure the activities of its Subcontractors.

## **19. COOPERATION AND OTHER CONTRACTS**

A. Company may undertake or award other contracts for work on the Project. Throughout the term of the Agreement, close cooperation between Company, Contractor and any other contractors and subcontractors performing any work is to be maintained in order to (1) avoid interference with the work of Company, other contractors, or with the operation or maintenance of Company's existing facilities, and (2) ensure that adequate safety precautions and protections are provided and utilized whenever appropriate. Contractor shall cooperate with Company to schedule its Work so as to avoid interference with the performance of work by other contractors, subcontractors or Company.

B. Contractor must anticipate that its Work may be interfered with or temporarily delayed from time to time on account of the concurrent performance of work by others. Company may require that certain facilities be used concurrently by Contractor and other persons or entities.

## **20. MATERIALS AND EQUIPMENT**

A. Contractor shall receive, unload, store, warehouse, protect, handle and maintain all materials, tools and equipment whether supplied by it, Company or others for Contractor's use. Title to any and all materials and equipment to be incorporated into the

Work shall pass to Company upon delivery to the Project and risk of loss to all equipment, materials and the Work shall remain with Contractor until accepted by Company. Contractor warrants that title shall pass to Company free and clear of all liens, claims, security interests or encumbrances.

B. Contractor agrees that the location and size of lay down areas are within Company's sole discretion and that Company's or another contractor's activities on the Project may limit the lay down area or areas available to Contractor.

## **21. PROTECTION OF PROPERTY AND EQUIPMENT**

A. Contractor shall at times take adequate precautions to Company's satisfaction, to protect Company's property and adjoining property from damage.

B. Unless otherwise specified in the Agreement, all Work is to be performed without interruption of Company's operations, consistent with Company's safety rules and practices. If, in Contractor's opinion, it shall be necessary to interrupt service, Contractor shall advise the Contract Administrator as soon as possible in advance of the anticipated interruption. If Company determines, in its sole discretion, that interruption is necessary, it shall make all arrangements and shall advise Contractor of such arrangements. If Company determines it is not necessary, Contractor shall proceed with the Work without such interruption.

C. Public utility facilities, such as plant generating equipment, communications and power lines, gas and water mains, telephone and other cables and structures and the like, are not to be moved or otherwise tampered with until suitable arrangements with the company owning or operating such facilities are completed. Contractor shall, if appropriate, contact state or local government agencies regarding such facilities. Contractor shall notify Company reasonably in advance of commencing any Work in the vicinity of such facilities and shall make all necessary arrangements without loss of time or interference with Company's schedules.

## **22. SITE SERVICES AND FACILITIES**

Contractor shall, unless otherwise specified in the Agreement, provide all ancillary facilities necessary for proper execution and completion of the Work. The term "ancillary facilities" means temporary construction facilities such as portable water, sanitary and storage facilities, heat and ventilation, telephone service, offices, warehouses and other ancillary supplies, materials and equipment necessary or appropriate for the conduct of the Work. Before erecting or otherwise installing such ancillary facilities, Contractor shall furnish Company, at its request, drawings and other information concerning such ancillary facilities.

## **23. INSPECTION**

A. Contractor is responsible for inspection of all materials and workmanship. However, all equipment, materials and work shall at all times be subject to inspection and testing by Company. Company shall have the right to reject equipment, materials and work not complying with the requirements of this Agreement. Company shall notify Contractor in writing that such materials, equipment or work are rejected. Thereupon, rejected work shall be satisfactorily corrected, and rejected equipment and material shall be satisfactorily repaired or replaced with satisfactory material and equipment, all in accordance with the Agreement and at the expense of Contractor. Contractor shall promptly segregate and remove rejected materials and equipment from the premises.

B. Company shall perform inspections in such manner as not to delay the Work unreasonably, and Contractor shall perform its work in such manner as not to delay inspection unreasonably. Contractor shall give Company reasonable advance notice of operations requiring special inspections or tests, and may request inspection of a portion of any work at any time by reasonable advance notice to Company.

C. Inspection of materials and finished articles to be incorporated into any Work may be made by Company at the place of manufacture or shipment. Contractor shall make provisions for such inspections with its Suppliers and Subcontractors. When such inspections are required by the Agreement, no such materials or finished articles shall be shipped from such place of inspection or incorporated in any Work prior to inspection or without a written waiver of such inspection by Company.

D. No acceptance of equipment, materials or work shall be construed to result from inspection of the Work in progress by Company. Any inspections or tests or waivers thereof shall not relieve Contractor of its responsibility for meeting the requirements of the Agreement.

E. Nothing herein set forth shall be construed as requiring Company to inspect or otherwise examine the method, manner and means by which Contractor performs the Work or Contractor's safety practices or adherence to applicable laws, regulations, codes, ordinances and common trade or industry practices and standards, all of which shall be Contractor's sole responsibility.

## **24. CLEANUP OF SITE**

A. Contractor shall, at all times, keep its work areas and premises and access to such areas and premises in a neat, clean and safe condition. Unless otherwise specified, clean means "broom clean." If Contractor fails to comply with any of the obligations of this Section, the same may be accomplished by Company at Contractor's sole expense.

B. Upon completion of any portion of any Work, Contractor shall promptly remove all of its equipment, temporary structures, waste and surplus construction and other materials and ancillary facilities not to be used at or near the same location during later stages of Work. Upon completion of any Work and before final payment is made, Contractor shall, at its expense, satisfactorily dispose of all ancillary facilities, rubbish waste, unused materials and other equipment and materials belonging to it or used in the performance of the Work, and Contractor shall leave the work areas and premises in a neat, clean and safe condition.

## **25. WORK AREAS AND ACCESS**

A. All areas on the Project shall be allocated and scheduled by Company. Contractor shall confine its office, shops, storage and equipment parking to the area assigned by Company.

B. Company's representatives and all duly authorized representatives of governmental agencies having jurisdiction over work areas or any part thereof shall at all reasonable times, for the purpose of determining compliance with Agreement or other requirements, have access to such areas and the premises used by Contractor.

## **26. USE OF COMPLETED PORTIONS OF THE WORK**

A. Whenever Company determines that any portion of the Work performed by Contractor is in a condition suitable for use, and the best interest of Company requires such use, Company may take possession of or use such portion.

B. Such use by Company shall in no event be construed as constituting acceptance, and shall neither relieve Contractor of any of its responsibilities under the Agreement, nor act as a waiver by Company of any of the terms and conditions, provided that Contractor shall not be liable for the cost of repairs, rework, or renewals which may be required due to ordinary wear and tear resulting from such use.

C. If, as a result of Contractor's failure to comply with the provisions of the Agreement, such use is unsatisfactory to Company, Company shall have the right to continue such use until such portion of the Work can, without adversely affecting Company, be taken out of service for correction of defects, errors, omissions, or replacement of unsatisfactory materials or equipment by Contractor, as necessary for such Work to comply with the Agreement, provided that the period of such operation or use pending completion of appropriate remedial action shall not exceed twelve (12) months, unless otherwise mutually agreed upon in writing between the parties.

## **27. WARRANTY - MATERIALS AND WORKMANSHIP**

A. Contractor warrants that all materials and equipment furnished by it, and its Subcontractors or Suppliers shall be free from defects in design, material, workmanship and title; fit for the purpose intended; new and conform to the specifications, drawings, samples and other descriptions as set forth in the Agreement; and, where not specified, of the highest quality and best grade of its respective kind for its intended use. Contractor warrants that all workmanship shall be in accordance with acceptable industry practices applicable to the Work. In addition to Contractor's warranty, Contractor shall obtain and extend to Company any manufacturer's warranty for products or processes utilized during the Work and procured by Contractor.

B. If at any time prior to eighteen (18) months from the day that the Work is first used for the purposes intended by Company or four (4) years from acceptance by Company, whichever comes first, it appears that the Work, or any portion thereof, does not conform to the warranties, Company shall notify Contractor of such breach of warranty within a reasonable time after discovery.

C. Upon receipt of written notice from Company of any breach of warranty during the applicable period set forth in paragraph B above, the affected part or parts of the Work shall be redesigned, repaired or replaced by Contractor, and Contractor shall perform such tests as Company may require to verify that such redesign, repairs and replacement complies with the requirements of the Agreement. Any warranty work shall be performed subject to the terms of this Agreement. The warranty for redesigned, repaired or replaced Work shall be of equal duration and scope as the original warranty.

D. Contractor shall be responsible for all costs incidental to such redesign, repair, replacement and testing, including the removal, replacement and reinstallation of equipment and materials necessary to gain access, transportation and all other costs incurred as the result of a breach of warranty.

E. If Contractor fails to promptly make the necessary redesign, repairs, replacements and tests, Company may perform, or cause to be performed, the necessary work at Contractor's

expense. Contractor shall promptly reimburse Company for such expenses or Company may deduct same from any amounts owing to Contractor under this Agreement or otherwise.

F. Contractor shall promptly provide Buyer and the Contract Administrator (a) notice of any defects (latent or otherwise) in the materials and/or equipment; (b) any warnings concerning defects (latent or otherwise) in the materials and/or equipment; (c) any recall notices or safety bulletins related to the materials and/or equipment; and (d) details including corrective action requirements. The provisions of this Section shall survive termination, cancellation or expiration of the Purchase Order and/or Contract.

## **28. WARRANTY – ENGINEERING**

All engineering, drafting or other services provided as part of the Work shall be performed by qualified and competent personnel in accordance with industry practice and the high standards of care, skill, diligence and practice appropriate to the nature of the services rendered and shall conform in all respects to any specifications.

## **29. LICENSE TO USE PATENTS AND COPYRIGHTS**

Contractor represents and warrants that it has authority and grants Company a permanent, assignable, nonexclusive, royalty-free license to use any patents and/or copyrights required while performing or obtaining Services.

## **30. OWNERSHIP OF INFORMATION**

A. All Work prepared or developed by Contractor in the performance of the Services shall become the sole and exclusive property of Company, whether delivered to Company or not, and shall, together with any materials furnished to Contractor by Company, be delivered to Company upon request and, in any event, upon termination or completion of this Agreement. Except as specifically authorized in writing by Company, information and any other data developed or acquired by or furnished to Contractor in the performance of this Agreement shall be used only in connection with Services provided to Company and shall be the exclusive property of Company.

B. During and after this Agreement, Contractor agrees to assist Company in every reasonable way to secure, maintain and defend for Company's benefit all intellectual property rights it may have in any whole or part of the Work.

## **31. WARRANTIES AND INDEMNITY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS**

A. Contractor warrants that all materials, equipment and processes used or supplied and the Work performed are free from any infringement of any patent, trademark, copyright or other intellectual property right. Contractor shall pay all royalties and license fees necessary for the proper performance of the Work.

B. Contractor shall indemnify and defend any action brought against Company based on a claim or allegation that any process or method used, equipment or material supplied or service performed pursuant to the Agreement constitutes an infringement or violation of any patent, trademark or other proprietary right. Company shall at Contractor's expense give such information and assistance as it may deem appropriate for the defense of same, and Contractor shall pay all of Company's actual costs and expenses of such action, including any damages awarded. If an infringement or violation is determined or held to exist and the

use of such process, method, equipment, material or service is enjoined, Contractor shall at its own expense and at Company's option either (1) procure for Company the right to continue using said process, equipment, material or service; (2) replace it with non-infringing process, equipment, materials or service acceptable to Company; or (3) modify it in a manner acceptable to Company so that it becomes non-infringing.

#### **34. COMPANY'S RIGHT TO PERFORM THE WORK**

If Contractor should neglect to perform the Work properly or fail to perform any provision of the Agreement, Company, after five (5) days prior written notice to Contractor or immediately if an emergency or catastrophic event takes place, may, without prejudice to any other remedy it may have, including but not limited to cancellation of this Agreement, make good such deficiencies and charge the cost thereof against monies retained. If the said retained monies are insufficient to pay such costs or if no money is available, Contractor and its sureties shall pay Company the costs.

#### **35. COMPANY'S RIGHT TO STOP THE WORK**

If Contractor neglects to perform the Work, fails (1) to correct defective Work, (2) to supply materials or equipment in accordance with the Agreement, or (3) to provide Company with timely notification of certain events affecting performance of the Work which may include, but are not limited to, damage to right of way or property and environmental concerns, and to correct same, Company may, without prejudice to any other rights or remedies available to it, order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. Such work stoppages as well as elimination of the cause therefore shall not result in any additional costs to Company nor in any extension of the completion date set forth in the Agreement unless otherwise agreed in writing by Company.

#### **36. SCHEDULE AND PROGRESS**

A. All time periods or limits stated in this Agreement, including, but not limited to, the Date of Commencement of the Work and the Date of Completion set forth in the Agreement, are of the essence.

B. Contractor shall, unless otherwise specified, within ten (10) days after the date of this Agreement, submit to the Contract Administrator for approval, a Schedule that provides for the orderly, practicable and expeditious completion of the Work in a format appropriate for the Work which takes into account Contractor's Subcontractors and Suppliers, material and equipment delivery schedules, and the relationship of the Work to other activities on the Project and at the site.

C. Within ten (10) days of Company's receipt of the Schedule, unless otherwise specified, Company shall either approve the Schedule or return it to Contractor for revision. If returned, Contractor shall submit a revised Schedule to Company for approval.

D. Contractor shall furnish to Company every thirty (30) days an updated Schedule that reflects the status of the Work and incorporates all changes to the Schedule.

E. Company intends to rely upon the approved Schedule for the scheduling of the work for itself and others, and Contractor shall be liable, in addition to any of the remedies of Company set forth in this Agreement, for any impacts upon itself or others resulting from Contractor's or its Subcontractor's and/or Supplier's failure

to abide by the Schedule and/or failure to update the Schedule as required by this Section.

F. If at any time during the progress of the Work, Contractor's actual progress appears to Company to be inadequate to meet the requirements of the Agreement, Company may notify Contractor of such imminent or actual non-compliance with the Agreement. Contractor shall thereupon submit a recovery plan to Company for approval and take steps such as overtime or multiple shifts, at Contractor's expense, as may be necessary to improve its progress. Neither such notice by Company or Company's failure to issue such notice shall relieve Contractor from its obligation to achieve the quality of work and rate of progress required by the Agreement or liability for delay.

G. Contractor shall provide notice to the Contract Administrator at least ten (10) days prior to starting the Work or taking measurements preparatory for such commencement. On the day before commencement of the Work, Contractor shall also report to the Contract Administrator.

#### **37. PAYMENT**

A. Invoices for Work performed shall be submitted on a timely basis, in the manner, frequency and form, and with such supporting documentation, including acknowledgment of receipt of work by Company, as required by the Agreement. Company shall pay approved invoices, less any retainage specified in the Agreement, in accordance with the payment terms specified in the Agreement or shall notify Contractor of its reasons for disapproval of such invoices.

B. Contractor shall promptly pay its Subcontractors, Suppliers, laborers, fringe benefits and other costs upon receipt of each payment the respective amounts allowed Contractor on account of the Work performed and to the extent of each interest therein.

C. Company may at any time require that invoices covering materials and equipment furnished or labor and services performed, be accompanied by sworn statements, waivers of lien and other documents as provided for by the Wisconsin Construction Lien Law, Wisc. Stat. § 779.01, *et seq.* If such documents are requested, the invoice shall not be paid until such documentation is supplied. Notwithstanding anything herein to the contrary, Company may, prior to paying any invoice, demand a waiver of lien on any item stated in the sworn statement or invoice, and withhold from any payment to Contractor an amount sufficient to cover all items for which a waiver of lien is not produced by Contractor. Company may, at its option, pay such amounts directly to Subcontractors, Suppliers or other lien claimants with notice of such payment to Contractor, and deduct such amounts from any payment to Contractor or withhold, without interest, any payments otherwise due by Company to Contractor because of any claim arising out of this or any other transaction with Company.

D. Contractor shall defend, indemnify and hold harmless Company from any and all claims, demands, causes of action and/or costs, including reasonable attorney fees, attributable to Contractor's failure to make any payments required by the Agreement. Nothing in this Section or Agreement shall imply or infer an obligation of Company to make payment to any party other than Contractor.

#### **38. COMPLETION AND FINAL PAYMENT**

A. Upon receipt of written notice from Contractor that the Work is ready for final inspection or review and acceptance, Company

shall have its designated representative make such inspection. If Company's designated representative finds that the Work is acceptable, the lien waivers and evidence required under Section B below have been submitted, and all obligations of Contractor have been paid, a final certificate shall be issued and signed stating that the Work under this Agreement has been completed and is accepted, and the entire balance as set forth in such final certificate is due Contractor. Issuance of such final certificate shall not waive any rights of Company under the Agreement or release any liability of Contractor.

B. Before issuance of the final certificate, Contractor shall submit evidence satisfactory to Company that all payrolls, materials, bills, sales and payroll taxes and other amounts connected with the Work have been paid, and no payment for the balance due shall be made by Company until such evidence has been submitted and waivers of lien have been furnished Company.

C. When the Work has been completely performed, Contractor shall submit a final invoice to Company showing the total price of the Work and the total of all amounts previously paid to Contractor under this Agreement. The difference between the total price and all amounts previously paid to Contractor shall be paid to Contractor as a final payment, subject to Contractor providing appropriate lien waivers. The final invoice shall be accompanied by a release and certificate of final payment on Company's form.

D. Company may, at its discretion, accept in writing portions of the Work without the release or waiver of any of its rights under the terms and conditions of this Agreement. Contractor's obligations shall remain the same as if no partial acceptance of the Work had been made by Company.

### **39. LIENS**

A. Contractor, as directed by Company, shall, at its own expense, obtain a prompt discharge of any lien or liens arising out of the Work, which may be filed against Company's property. Waivers of all liens arising out of this Agreement, or discharges in full thereof shall be submitted with Contractor's request for final payment.

B. If any lien is filed, payment for the Work or any other payments due under this Agreement or any other agreement between Contractor and Company shall not be made until Contractor offers proof that said lien has been removed. Contractor shall be responsible for all costs, including legal fees, associated with the removal of said lien.

### **40. SET OFF**

Company shall be entitled at any time to set off any sums owing by Contractor or any of Contractor's affiliated companies, to Company or to any of Company's affiliated companies, against sums payable by Company.

### **41. CHANGES**

A. During performance of the Work, changes to the Work may be made requiring a substitution for, an addition to, or deletion of any Work or a change in the method or manner of the Work, schedule or other requirement. Company may make changes at any time by written order, designated to be a Change Order, without invalidating the Agreement and without notice to Contractor's sureties, if any.

B. Contractor shall submit a written proposal for accomplishing the Change within ten (10) days of notice of such change by Company, unless otherwise specified. The proposal shall reflect the basis for a change in compensation, if any, and the Schedule. Sufficient detail shall be given in the proposal to permit thorough analysis by Company. No amendment, alteration or modification of the Agreement shall be binding unless made pursuant to a written Change Order issued by Buyer and, when required by Company, accepted in writing by Contractor. All Change Orders shall be supplementary to and incorporated as a part of the Agreement.

C. Any such changes made without written authority from Company shall be the responsibility of Contractor. No action, conduct, omission, prior failure or course of dealing by Company shall act to waive, modify, change or alter the requirement that a Change Order must be in writing issued by Buyer.

D. In the event that emergency or immediate action is required to avoid stopping or disruption of the Work in progress, the Contract Administrator may give Contractor an oral order, direction or instruction to proceed with a change. Such oral order, direction or instruction shall be confirmed by the Contract Administrator in writing to Contractor within one (1) working day. Contractor shall, within ten (10) days after commencement of the change, unless specified otherwise in the Agreement, provide Company with a written proposal on the effect of the change. The proposal shall be administered as provided in Paragraph B of this Section. If no such Change Order is received by Contractor within thirty (30) days of the event, Contractor shall have the right to cease the work associated with the change or proceed at Contractor's own risk.

### **42. DELAYS**

A. If Contractor is delayed in the performance of the Work by any act or omission of Company, its representatives, other contractors, Subcontractors or Suppliers (other than Contractor's Subcontractors and Suppliers) or any other event affecting Contractor, Company, any other contractors, or subcontractors on the Project which could not be reasonably foreseen and guarded against and Contractor is without fault or negligence, then Contractor shall receive an extension of time only equivalent to the time that the performance of the Work as a whole was delayed, without any increase in compensation.

B. Immediately upon the onset of the delay, Contractor shall provide written notice to the Contract Administrator. As soon as possible, but not more than ten (10) days after the delay or at the next scheduled update of the Schedule, whichever is earlier, Contractor shall provide the Contract Administrator with a detailed description and probable duration of the delay, the specific portion of the Work affected, and the requested extension of time. Failure to provide such notices shall be a waiver of any claims of Contractor arising from such delay.

C. If Contractor is responsible for a delay in the progress of the Work, Contractor shall, without additional cost to Company, immediately work such overtime, acquire necessary additional equipment or perform such other acts as may be necessary to avoid delay in the completion of the Work.

D. Company may, if it deems necessary, assist Contractor with expediting drawings, equipment and material to be furnished under the Agreement. Company shall be allowed reasonable access to Contractor's plants, and those of its subcontractors and suppliers, for expediting purposes.

#### 43. SUSPENSION

A. Company may at any time for any reason order Contractor, upon one (1) day's written notice, to suspend, or interrupt all or any part of the Work for such period of time as appropriate for the convenience of Company. Upon receipt of such Notice, Contractor shall suspend the Work on the date and to the extent specified in the Notice.

B. If the performance of all or any part of the Work is suspended by Company, an adjustment shall be made for any increase in the cost and time of performance of this Agreement necessarily caused by such suspension. However, no adjustment shall be made under this Section for any suspension to the extent that performance would have been so suspended, delayed, or interrupted by any other Section of this Agreement, including due to the fault or negligence of Contractor.

C. Upon such suspension, Contractor waives all claims for damages, including, but not limited to, loss of profits, idle equipment, labor and facilities, and any claims of its Subcontractors and Suppliers. Contractor's sole compensation for any suspension under this Section shall be either reasonable demobilization or standby costs as agreed to by Company.

D. Upon receipt of notice to resume the suspended Work, Contractor shall resume performance to the extent required in the notice and, within ten (10) days, submit to Company a revised Schedule for review that reflects the effect of the suspension on the Schedule. Contractor shall be reimbursed for its reasonable mobilization costs. These adjustments shall be limited to such matters as cost increases required under labor, subcontractor or supplier agreements in effect on the date of suspension.

#### 44. TERMINATION FOR CONVENIENCE

A. Company may at any time, for any reason, terminate this Agreement, in whole or in part, upon ten (10) days written notice to Contractor. Upon receipt of such notice, Contractor shall discontinue work on the date and to the extent specified in the notice and shall thereafter do only such work as may be necessary to preserve and protect the Work already in progress and to protect materials, plant and equipment at the Project or in transit to the Project.

B. Upon such termination, Contractor waives all claims for damages as a result of such termination including, but not limited to, loss of profits, idle equipment, labor and facilities, and any claims of Subcontractors or Suppliers as a result of such termination, and shall accept the value of all Work completed through the date of termination as sole and complete compensation. No termination fee(s) shall be payable by Company.

C. The value of all Work shall be calculated using the value for all Work satisfactorily completed at the Project and all specially manufactured goods completed at other locations, but not including any goods that are Contractor's (or any of its Subcontractor's or Supplier's) inventory or not acquired at the direction of Company. Unit prices shall be used to determine value. If there are no unit prices, value shall be determined on a percent-complete basis in relation to the Agreement price.

#### 45. CANCELLATION FOR DEFAULT

A. Contractor shall be in default if at any time: (1) Contractor refuses, neglects or fails in any respect to prosecute the Work hereunder or any portion thereof with promptness, diligence or in

accordance with any of the provisions set forth herein; (2) Contractor refuses, neglects or fails to perform any other obligations under this Agreement or provide adequate assurance of performance; (3) Contractor makes an assignment for the benefit of creditors or bankruptcy or insolvency proceedings are instituted by or against Contractor; or (4) in Company's sole judgment, Contractor's financial or other condition or progress on the Agreement shall be such as to endanger timely performance. Upon receipt of any such written notice of default, Contractor shall, at its expense, preserve all construction materials, equipment and plant, and undertake immediate steps to remedy such default.

B. If Contractor fails to remedy such default within five (5) days after receipt by it of such written notice, Company may, in writing, and without notice to Contractor's sureties, if any, cancel this Agreement and/or pursue any other remedies available under this Agreement, by law or both.

C. Upon receipt of any such written notice of cancellation, Contractor shall at its expense:

1. Provide a written, detailed inventory of all materials and equipment in storage at the Project, en route to the Project, in storage or manufacture away from the Project, and on order from its suppliers.
2. Assign to Company at Company's election all or some of its Subcontractor, Supplier and equipment rental agreements. Contractor shall incorporate the right to make such assignments into all of its Subcontractor, Supplier, equipment rental and/or other agreements applicable to the Work.
3. Remove from the Project only such construction materials and equipment listed in the inventory which are designated in writing by Company not to be used by Company in completing the Work.
4. Return all Company property.
5. Obtain any intellectual property rights in any Work performed and provide same to Company.

In the event of such cancellation, Company may enter upon the premises and into places of manufacture of Contractor, Subcontractors and Suppliers to complete the Work or enforce these provisions, take possession of all materials, equipment, tools and appliances thereon belonging to or under the control of Contractor, its Subcontractors and/or Suppliers and use them to finish the Work by whatever method it may deem expedient, including the hiring of other contractor(s) or subcontractor(s) under such form of contract as Company deems appropriate; or Company may itself provide any labor or materials and perform any part of the Work. In such case Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of Contractor's compensation hereunder exceeds the sum of the costs and expenses to complete the Work plus compensation to Company for its additional managerial and administrative services and such other costs and damages as Company may suffer, such excess shall be paid to Contractor. If such expense, compensation, costs and damages exceed such unpaid balance, Contractor and its sureties, if any, shall be liable for and shall pay the excess to Company, including any attorneys' fees and costs, plus interest. Cancellation is not Company's exclusive remedy and is in addition to any other rights and remedies it may have under this Agreement, by law or in equity. Failure of Company to exercise

any of its rights under this Section shall not excuse Contractor from compliance with the provisions of this Agreement nor prejudice rights of Company to recover damages for such default.

#### **46. FORCE MAJEURE**

A. Except as otherwise provided herein, Contractor shall not be liable for a reasonable delay or default in performing the Work hereunder and Company shall not be liable for failure to perform any of its obligations hereunder, to the extent due to fire, flood, storm, other natural disaster, national emergency or war, and not due to labor problems, inability to obtain financing, negligence or other similar condition of such party, provided that either party has given the other prompt notice of such occurrence.

B. Within seven (7) days of the commencement of any excusable delay, Contractor must notify Buyer in writing of the nature, cause, date of commencement and expected impact of the event. Contractor must exercise due diligence in proceeding to meet its performance, obligations hereunder notwithstanding the delay. Upon Contractor satisfying these conditions, Company may extend the schedule for the period of time equal to the time actually lost by reason of the delay.

#### **47. DISPUTE RESOLUTION**

A. Contractor has the duty to seek clarification and resolution of any issue, discrepancy, misunderstanding, or dispute arising from questions concerning contract interpretations or acceptable fulfillment of this Agreement on the part of Contractor and Company. Any request by Contractor for additional compensation, schedule adjustment, or other dispute resolution must be filed by Contractor and submitted to Buyer no later than ten (10) days after the occurrence of the event causing the dispute. Contractor's failure to provide such notice shall constitute a waiver by Contractor of any claim arising out of events occurring more than ten (10) days prior to the date notice is provided to Buyer.

B. Once Company receives notice of Contractor's formal request for dispute resolution, Company shall make every reasonable effort to arrive at a timely determination. This determination shall be provided to Contractor's authorized representative in writing. All determinations, instructions and clarifications of Company shall be final. Contractor shall proceed with the Work in accordance with the determinations, instructions and clarifications of Company. Contractor's failure to protest Company determinations, instructions or clarifications within ten (10) days after receipt thereof shall be considered a failure of a condition precedent to any other course of action and shall be a deemed an express waiver by Contractor of all its rights to further protest, whether through arbitration, litigation or otherwise.

#### **48. LOSS OR DAMAGE**

A. Until final acceptance of the Work by Company, Contractor shall be responsible for the Work and any loss or damage to such Work shall be at Contractor's risk. If any loss of or damage to the Work occurs prior to acceptance, except to the extent due to Company's negligence, Contractor shall promptly repair or replace the damaged Work and be responsible for all costs incurred in performing such repair or replacement of the Work.

B. Contractor shall protect Company's property from and shall be responsible for any loss or damage arising out of the execution of the Work. All loss or damage to Contractor's property shall be borne by Contractor

#### **49. REMEDIES AND LIMITATIONS**

A. Upon discovering any breach of this Agreement by Contractor, Company may pursue any and all remedies available under law, including, but not limited to, requiring Contractor, at its expense, to replace defective materials and equipment, to re-perform defective work, and to replace or repair (at Company's option) any materials, equipment, or other Company property damaged as a result of Contractor's breach. In the event of an emergency when, in the judgment of Company, delay could cause serious loss or damage, repairs or adjustments may be made by Company or a third party chosen by Company, and the cost of the work shall be paid by Contractor and may be deducted from any amounts owing to Contractor under this Agreement or otherwise.

B. Except as may be expressly stated elsewhere in this Agreement, neither party shall be liable to the other party for incidental, indirect, or consequential damages, including, but not limited to, loss of profits or revenue.

#### **50. LIQUIDATED DAMAGES**

This Section applies only if Liquidated Damages are specified in the Agreement. If Contractor fails to complete the Work, or any severable portion thereof, within the time specified in this Agreement, the damages to Company as a result of such delay shall be substantial. However, the amount of such damages is difficult and impractical to determine and, as such the parties agree that the amount set forth as Liquidated Damages in the Agreement is a reasonable estimate of Company's damages for such delay. The amount of any Liquidated Damages may be withheld from any payments due Contractor or shall be paid by Contractor, or its sureties, if any, to Company. If Liquidated Damages are withheld during performance and Contractor subsequently remedies its delay, such liquidated damages shall be refunded.

#### **51. REPORTING OF ACCIDENTS**

Contractor shall notify Company's representative on the Project and shall comply with the following telephone reporting procedure in the event that its employee(s) or its subcontractor's or supplier's employee(s) sustain a serious personal injury (any injury which requires admittance to a hospital) or a fatality occurs arising out of the Work performed under the Agreement.

1. Between the hours of 8:00 a.m. and 5:00 p.m. eastern time, Monday through Friday, the Legal Investigations Division of Company's Legal Department (313-235-7705) shall be notified immediately.
2. Between the hours of 5:00 p.m. and 8:00 a.m. eastern time, Monday through Friday, weekends and holidays, the Company switchboard (313-235-8000) shall be notified. It shall in turn relay the report to the Legal Department representatives on call.

In addition to this telephone reporting procedure, Contractor shall also submit to the Legal Investigations Division of Company's Legal Department a written follow-up accident report form (available from the Contract Administrator) within 24 hours after the occurrence, as well as a written accident report in all other cases requiring more than first aid treatment. Contractor shall also furnish Company with a copy of all claims submitted to its insurance companies.

## 52. CONTRACTOR SUBMITTALS

A. Unless otherwise specified in the applicable scope of work, Contractor shall submit documents to Company for information, review, and approval in accordance with the requirements of the Agreement.

B. Unless otherwise specified in an applicable scope of work, Contractor shall submit record documents that represent the final - "As Built" – configuration. These As Built documents shall have all changes incorporated into them or marked on them and shall fall into the following two groupings:

1. Unchanged / built per design
2. Updated /As Built documents that were revised based on:
  - a. Requested by Company
  - b. Necessary as a result of Company comments
  - c. Required due to field changes

C. The deliverable form of the drawings shall be as follows:

1. If Contractor has not produced the new two dimensional or isometric drawings or has not revised Company's drawings, then Contractor shall submit the following:
  - a. Two (2) sets of record/As Built drawings in the form of "Marked UP" drawings (specifically color coded as red in, green out, blue for comments) per the scope of work.
  - b. An Excel database listing all As Built drawings that were submitted.
2. If Contractor has produced the new two dimensional or isometric drawings or has revised Company's drawings, then Contractor shall submit the following via Compact Disk (CD) or other agreed to media per the scope of work:
  - a. One (1) set of As Built drawings, P&IDs, S/D & W/Ds and equipment arrangement drawings in the form of "Marked UP" drawings (specifically color coded as red in, green out, blue for comments) per the scope of work. This set shall support the business unit until the final drawings are issued by Contractor.
  - b. One (1) set or record/As Built drawings in the form of CAD drawings (specifically Microstation or AutoCAD) per the scope of work.
  - c. One (1) set of PDF formatted copies of the signed final drawing.
  - d. An Excel database listing all As Built drawings. The database shall be formatted to merge with Company's database.
3. If Contractor has purchased equipment and has processed equipment Supplier documents e.g. drawings and equipment manuals, then the Supplier Documents also must be submitted.
  - a. The scope of work shall identify what types of Contractor drawings will be assigned Company drawing numbers. Company shall assign drawing numbers as a part of its review pursuant to Paragraph D. After such assignment, all reference to such drawings (including, but not limited to, Supplier manuals) shall use Company's drawing number. Submittal of Supplier drawing shall be as discussed above.
  - b. Supplier drawings not assigned a Company drawing number shall have Company file numbers assigned (e.g. C1- xxxx) similar to Company drawings. These Supplier drawings shall be submitted not later than the equipment arrival at the Project.
  - c. Equipment Supplier manuals shall be submitted as follows:

1. The number of sets of hard copies as per the Work Scope (typically 10) shall be delivered to the individual named in the Work Scope.

2. Two (2) sets of a PDF formatted copies via a CD to the individual named in the Work Scope.

D. Unless otherwise specified in the applicable scope of work, Company has no obligation to make final payment until the documents required by A and B above are received.

E. As used herein, "documents" mean any drawings, specifications, technical descriptions, calculations, samples and other similar items, as identified as deliverables under an applicable scope of work prepared by Contractor or by Subcontractors or Suppliers.

F. Unless otherwise specified in the applicable scope of work, Contractor shall submit five (5) copies of the documents unless otherwise requested by Company (up to a maximum of ten (10) copies).

G. The requirement that Contractor submit " Documents for Review" means that before implementing the information contained in the documents, Contractor shall (1) submit copies of the documents required, (2) resolve any questions raised by Company's comments, (3) follow Company's instructions indicated on the documents, and (4) obtain Company's Authorization to Proceed. Documents shall be submitted on or before the dates required in the applicable scope of work. Unless otherwise provided in the applicable scope of work, Company shall complete its review of the documents within ten (10) days of their receipt. Company's review does not mean that a complete design and specification analysis has been or shall be performed. Authorization to Proceed shall not constitute acceptance or approval by Company of design(s), detail(s), calculation(s), analysis(es), test method(s), or material developed or selected. Notwithstanding review by Company and Company's Authorization to Proceed, Contractor remains fully and completely responsible for complying with its obligations hereunder except to the extent Contractor follows Company's instructions pursuant to (3) above.

H. If Company's review is required on an expedited basis to support an applicable Work Scope, then the parties can agree to a review cycle less than ten (10) days.

I. Unless otherwise specified in the applicable scope of work, Company shall return each document submitted by Contractor with appropriate instructions. These instructions and their meanings are as follows:

1. *Proceed*. Contractor is authorized to implement the information contained in this document.

2. *Proceed-Review Not Required*. Contractor is authorized to Proceed. Contractor was not required to submit this document and no review was requested or performed.

3. *Proceed as Noted*. Contractor is authorized to implement the information contained in this document, subject to the incorporation therein of all Company comments.

4. *Revise and Resubmit*. Contractor is not authorized to Proceed. Contractor shall incorporate all Company comments and resubmit the revised document for Company review as though the document had not previously been submitted to Company.

J. To the extent Company comments are necessitated by Contractor's failure to meet the requirements of the Agreement and/or scope of work, such costs associated with the delays and/or changes in the manufacturing and/or schedule resulting from compliance with Company's instructions shall be considered reimbursable costs.

K. All drawings, specifications and other documents furnished by Contractor in connection with this Agreement shall be furnished to Company, are the property of Company, and there shall be no restrictions upon Company's use thereof.

### **53. LINES, GRADES AND MONUMENTS**

A. Unless otherwise specified, all Work shall be done to the lines and grades set forth in the Agreement. Contractor shall complete the layout of all Work and shall be responsible for all measurements that may be necessary or required for the execution of any Work to the locations, lines, and grades specified in the Agreement, except that layout in easements and public rights of way of underground conduit, cable pipe lines and steam lines, and location of overhead poles shall be completed by Company.

B. It may be necessary at times to temporarily interrupt a portion of Contractor's activities in order that Company or its designate may make measurements or surveys without interruptions or other interferences that may impair the accuracy of the results of such measurements or surveys. At any time, upon request by Company, Contractor shall interrupt its activities to such extent as may be necessary for this purpose.

### **54. SITE CONDITIONS**

Contractor shall take field measurements, verify field conditions and carefully compare such field measurements and conditions and other information known to Contractor with the Agreement before commencing any activities. Contractor has sole responsibility of satisfying itself concerning the nature and location of the Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, disposal, handling and storage of materials, including lay down areas; availability and quality of labor, water and electric power; availability and conditions of roads; climatic conditions and seasons; river hydrology and river stages; physical conditions at the Project; topography and ground surface conditions; subsurface geology, and nature and quantity of surface and subsurface materials to be encountered; equipment and facilities needed prior to and during performance of the Work; and all other matters which can in any way affect performance of the Work or the cost associated with such performance. The failure of Contractor to acquaint itself with any applicable condition shall not relieve it from the responsibility for properly estimating the difficulty, and cost for successfully performing the Work. If Company furnishes any data or other information concerning surface or subsurface conditions, Contractor shall be responsible for its interpretation of such data or information.

### **55. DIFFERING SITE CONDITIONS**

Contractor shall promptly, before proceeding with the Work or disturbing such conditions, notify Company in writing of (1) subsurface conditions at the site differing materially from those indicated in the Agreement or (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work. Company shall, as promptly as practicable, investigate

the conditions and make a determination. If it is determined that such conditions do materially so differ and cause an increase or decrease in Contractor's cost of, or the time required for, performance of any part of any Work, whether or not changed as a result of such conditions, an adjustment shall be made in accordance with this Agreement. If Contractor proceeds with any Work without written notice of such conditions to Company, Contractor shall assume responsibility for such performance and bear all costs attributable for any corrections. No claim of Contractor under this Section shall be allowed unless Contractor has given Company the required notice before proceeding with any Work.

### **56. USE OF COMPANY'S EQUIPMENT, PERSONNEL AND FACILITIES**

A. Circumstances may arise where Contractor shall request that Company make available to Contractor certain equipment and/or facilities and operators for the performance of the Work. If Company agrees to such request (which it is under no circumstances obligated to do), the equipment and/or facilities fees shall be charged to Contractor at rates specified by Company and subject to such terms and conditions (which may be in addition to those set forth in this Agreement) as Company may require.

B. Contractor shall assure itself of the condition of such equipment and/or facilities before use and shall assume all risks and responsibilities in its use of the equipment and/or facilities. Contractor shall defend, indemnify and hold Company harmless against any damages or claims that may arise from such use. Before returning such equipment and/or facilities to Company, Contractor shall confirm that no part of the equipment and/or facilities loaned to Contractor has been over-stressed or damaged in any way as a result of its use.

C. In the event such equipment is furnished with an operator, it is understood that such operator shall perform the Work under the complete direction and control of Contractor and shall be considered Contractor's employee for all purposes other than the payment of wages, Worker's Compensation or other benefits provided directly by Company.

### **57. NETWORK SECURITY/VIRUS PROTECTION**

A. If Company's access to Contractor's system or Contractor's access to Company's system requires a network connection between Company's wide area network (WAN) and Contractor's WAN, Contractor and Company shall take reasonable and customary precautions to prevent unauthorized access to or use of the Network Connection through their respective networks. The parties agree, however, that each party is responsible for the security of its own network. Neither party shall be liable to the other for unauthorized access to the network connection, so long as such party shall have taken reasonable and customary precautions to prevent such unauthorized access.

B. Neither Company or Contractor shall knowingly engage in creating or transmitting computer virus software or other programs which could contaminate or otherwise cause the malfunction of any system (i.e., viruses, trojan horses, trap doors, worms, etc.). When providing electronic materials (any electronic media method, including but not limited to diskettes or CD-ROMs) to Company or Contractor under this Agreement, both parties agree to exercise the same standard of care that it uses to safeguard against the transfer of known computer viruses or other system errors which could contaminate or otherwise cause the malfunction of its own computer system.

## **58. ELECTRONIC MEDIA TOOL VIRUS PROTECTION**

A. Any electronic media tool, including, but not limited to, diskettes, CD-Roms, laptops, or any other form of software or hardware provided or used by Contractor, shall be free from any virus, or any other system error that may contaminate or otherwise cause harm to Company's computer environment. Contractor warrants that any software, and related documentation in electronic form, shall not contain, or result in the creation or insertion of, any disabling device (i.e., any virus, timer, clock, counter, time lock, time bomb, or other limiting design, instruction, or routine) that would erase data or programming, cause any resource to become inoperable or otherwise incapable of being used in the full manner for which such resource was intended to be used, or cause any software or documentation, any portion thereof, or any other programs, hardware, equipment, or data to become inoperable or otherwise become incapable of being used in the full manner for which it was designed, intended, and created.

B. Contractor further warrants that any software and related documentation in electronic form, shall not contain any computer code that would: (i) disable the software or impair its use or operation in any way based on the elapsing of a period of time, the exceeding of an authorized number of copies, users, or other relevant metric, or the advancement to a particular date or other numeral (referred to as "time bombs", "time locks", or "drop dead" devices); (ii) permit Contractor or any third party to remotely, and without Company's knowledge or approval, access the software through a device such as those referred to as a "trap," "access code," or "trap door"; or (iii) permit Contractor or any third party to track, monitor, or otherwise report on the use or operation of such software.

C. If such virus or other contaminant is brought into Company's computer environment, by or through Contractor, Contractor shall reimburse Company for all labor and materials costs incurred by Company to identify, contain and correct the effects of such virus. The hourly rate paid by Contractor for the identification, containment and correction of the effects of such virus shall be at the prevailing hourly rate incurred by Company.

## **59. RECORDS AND AUDITS**

Company or its authorized representative shall have access to Contractor's records at Company's premises or at Contractor's regular place of business during normal business hours to review, audit, and verify any information connected with this Agreement for a period of three (3) years after completion of the Work. Copies of any material shall be made for Company at its request and any reasonable cost of reproduction shall be borne by Company.

## **60. NON-WAIVER**

None of the provisions of the Agreement shall be considered waived by either party unless such waiver is given in writing by the other party. No such waiver shall be a waiver of any past or future default, breach or modification of any of the terms, provisions, conditions or covenants of the Agreement unless expressly set forth in such waiver.

## **61. NOTICES**

Notices and other written communications shall be sent to Buyer and Contractor's representative identified in the Agreement. Such notices and other written communications must reference

the Purchase Order and/or Contract Number appearing in the Agreement.

## **62. SAVING CLAUSE- INDEPENDENT TERMS**

Each term and condition of this Agreement is deemed to have an independent effect and the invalidity of any partial or whole paragraph or section shall not invalidate the remaining paragraphs or sections. The obligation to perform all of the terms and conditions shall remain in effect regardless of the performance of any invalid term by the other party.

## **63. ASSIGNMENT**

No assignment of this Agreement or any of its rights or obligations hereunder shall be made by Contractor without first obtaining the written consent of Company. This Agreement shall be binding upon and shall inure to the benefit of the respective successors and permitted assigns of the parties hereto.

## **64. GOVERNING LAW AND JURISDICTION**

The Agreement, and the rights, obligations and liabilities of the parties hereto shall be construed in accordance with the law of the State of Michigan, without regard to its conflict of law principals. The parties agree that any action with respect to this Agreement shall be brought in a court of competent subject matter jurisdiction located in the State of Michigan and the parties hereby submit themselves to the exclusive jurisdiction and venue of such court for the purpose of such action.

## **65. SURVIVAL**

All of the terms of this Agreement which by their nature extend beyond (a) the termination or cancellation of this Agreement or (b) the completion of the Work shall survive and remain in full force and effect and apply to respective successors and assigns.

## **67. CONSTRUCTION OF TERMS**

The terms of this Agreement have been arrived at after mutual negotiation and the parties agree that its terms shall not be construed against any party by reason of the fact that this Agreement was prepared by one of the parties.