

BRIDGESTONE AMERICAS STANDARD TERMS AND CONDITIONS

READ CAREFULLY -- EACH TERM AND CONDITION IS AN INTEGRAL PART OF THIS CONTRACT.

This contract ("Contract") consists of the applicable purchase order or service order ("Order"), these Terms and Conditions, any purchase contract or other agreement executed by Buyer and Vendor and attached to or referring to these Terms and Conditions, or incorporated herein and/or in the Order ("Agreement") and the other Contract Documents, and applies to all services (together with any Projects, the "Services"), goods, items, software, drawings and deliverables, including all supplies used in or provided in connection with the performance of any Services, ("Products"), and that the vendor, supplier, independent contractor or other party named in the Order ("Vendor") sells, supplies, delivers or provides to or for Buyer, whether separately or in connection with any installation, construction, reconstruction or other project described in the Order ("Project") and together with the Products and Services, as applicable, the "Deliverables".

1. BUYER. The term "Buyer" is used herein to refer to the applicable Bridgestone entity or entities that issued this Order or is purchasing or receiving the Deliverables. The term "Bridgestone" is used herein to refer to Buyer and Bridgestone Americas, Inc. and their subsidiaries and affiliates.

2. CONTRACT. The terms of this Contract, including these Terms and Conditions, shall apply to all purchases of Deliverables by Buyer from Vendor and Buyer's purchase of Deliverables is expressly made conditional on Vendor's assent to these Terms and Conditions. Vendor will be deemed to have accepted this Contract (and all terms hereof) and this Contract will become a binding contract upon the earliest of (a) Vendor's written acceptance of the Order, (b) Vendor beginning performance of this Contract, (c) Vendor's shipment or delivery of any permitted unit or partial unit of the Products or commencement of any Services, or (d) other conduct by Vendor recognizing the existence of a contract. The Order (including these Terms and Conditions) is an offer, limited to the terms expressly set forth in this Contract, and Vendor's acceptance is solely limited to the acceptance of all the terms expressly set forth in this Contract. This Contract supersedes any other terms or conditions in any correspondence, proposal or other document provided by Vendor and no different or additional terms in Vendor's acceptance, invoice or other document or verbal communication will become part of the Contract without Buyer's written consent and Buyer expressly rejects all such different or additional terms or conditions. Transactions between Buyer and Vendor may be conducted electronically.

3. CONTRACT DOCUMENTS. The "Contract Documents" consist of the Order; any Agreement; any schedule, budget, pricing, fees, workletter, improvements, space plans, rendering, drawings and specifications provided by Buyer to Vendor or provided by Vendor and attached to these Terms and Conditions or approved in writing by Buyer ("Specifications"); these Terms and Conditions; any written change orders, amendments and supplements to any of the foregoing ("Change Orders"); and any non-disclosure agreement executed by Vendor ("NDA") in favor of Buyer or its parent, subsidiaries and affiliates at any time now or hereafter. The Contract Documents are intended to be interpreted harmoniously if reasonably possible, but in the event of conflict, the order of precedence is as follows: the Agreement, Change Orders, the Specifications, the Order, any NDA and these Terms and Conditions.

4. MODIFICATIONS AND CHANGES. This Contract (including the Deliverables and prices) cannot be changed, amended or modified except in a Change Order or other writing signed by an authorized representative of the party against whom enforcement is sought.

5. WARRANTIES. Vendor represents and warrants to Buyer as follows:

(a) Title. Upon delivery or completion, Buyer shall have good and marketable title to the Deliverables, free and clear of all liens, taxes, charges and other encumbrances.

(b) Products. The Products and their components (i) are merchantable and of good quality and workmanship and free from defects in design, workmanship, and materials; (ii) are fit for their ordinary intended purposes and any purposes specified herein or otherwise communicated to Vendor; (iii) conform to the Specifications and other Contract Documents and comply with all Applicable Laws (defined below); (iv) conform to the descriptions on their labeling and packaging; and (v) are new and not previously used (unless specifically designated on the face of the Order as refurbished, rebuilt, or used) and in good working order.

(c) Services/Projects. The Services and any Project will be of good quality and free from defects in design, workmanship and material and will be performed, completed and delivered in a timely, safe, professional, thorough and workmanlike manner by qualified personnel using qualified Products, in strict compliance with the Contract Documents and all Applicable Laws, and in accordance with industry standards. Vendor represents and warrants that (i) Buyer has provided all information that Vendor deems necessary to perform the Services and complete the Project; (ii) it is fully aware of the purpose of the Services and the Project; and (iii) the Services and the Project will accomplish the intended purpose.

(d) Assigned Warranties. Buyer shall have the benefit of, and to the maximum extent possible Vendor hereby assigns to Buyer, all warranties and guarantees, express or implied, made by or on behalf of any manufacturer, licensor, subcontractor or supplier with respect to any Deliverables (including software) or other goods, software, and materials used in or installed as part of any Deliverables. Vendor shall cooperate with Buyer in enforcing any such warranties and guarantees. Vendor shall manufacture, deliver and perform, as applicable, all Deliverables in such manner as to preserve all such manufacturer's warranties.

6. NON WAIVER; REMEDIES. No waiver of any rights or obligations shall be (i) implied, whether by course of dealing, any failure or delay in exercising any right, power or privilege hereunder, or otherwise, or (ii) effective unless in writing and signed by the party holding such rights or to whom such obligations are owed. Any waiver shall be effective only in the specific instance and for the specific purpose stated in such writing and shall not obligate the waiving party to grant any further, similar, or other waivers. Except as expressly provided in this Contract, all Buyer's and Vendor's rights and remedies are cumulative, not alternative or exhaustive, and are in addition to all other rights and remedies available at law or in equity, and the exercise of any remedy shall not preclude the exercise of any other remedy.

7. TIMELY DELIVERY; SUPPLY. Time is of the essence of this Contract. If any delivery of Products or performance of Services is not made when promised, Buyer may, without waiving or prejudicing any of its other remedies, refuse any Deliverables and cancel all or any part of the Order without liability. If Vendor anticipates at any time that it will be unable to deliver the quantity of Products ordered because of a supply shortage, Vendor will allocate its supply so as to deliver Products to Buyer in the same proportion as delivered to substantially similar customers for substantially similar products ordered in substantially similar quantities.

8. SHIPMENT TERMS; FREIGHT CHARGES; RISK OF LOSS; TITLE. Vendor shall deliver the Products in accordance with the delivery terms set forth in the Agreement or Order and if no delivery terms are stated in the Agreement or Order, Vendor shall deliver the Products on FCA terms (INCOTERMS 2010). Vendor is responsible for Product packaging, including all handling, bagging, blocking, barreling, boxing, crating, drayage, storage, and other packing charges. Vendor shall identify the Order on all packing lists, bills of lading and other shipping documents tendered to a carrier. Vendor shall be responsible for any additional charges if shipment other than as indicated above becomes necessary to fulfill Vendor's obligations for timely delivery, and for excess transportation charges in connection with Vendor's failure to comply with Buyer's or any carrier's packing requirements. Title and risk of loss with respect to the Products shall pass to Buyer (subject to its inspection and return rights) upon completion of Vendor's delivery obligations in accordance with the applicable delivery terms.

9. PRODUCT INSPECTION AND REJECTION. Products shall not be deemed accepted by Buyer until they have been physically received and inspected at Buyer's site and tested and accepted by Buyer. Buyer will inspect and test Products within a reasonable time after such receipt, irrespective of payment dates and other payment terms. If any Products are found to be non-conforming upon Buyer's inspection, or are shipped contrary to instruction or on a shipping date not specified by Buyer, Buyer shall have the right, without waiving or prejudicing any of its other remedies, to reject such Products and return them or hold them at Vendor's expense as rejected goods. Buyer may charge Vendor with storage and freight costs (inbound and outbound) and any other expenses incurred by Buyer with respect to nonconforming Products, including disposal costs.

10. ACCEPTANCE OF SERVICES. Services (in connection with a Project or otherwise) shall not be deemed complete until accepted by Buyer. If Buyer determines that any of the Services are defective or do not conform to the Contract Documents, Buyer may, without waiving any other rights or remedies, notify Vendor of such defects or non-compliance and Vendor shall re-perform the Services or take such other action as necessary to remedy the defect or non-conformity and pay Buyer's costs, expenses and other damages arising therefrom. Alternatively, if Buyer reasonably determines that it is not technically or economically feasible to correct the defect or non-conformity in any Services or Project, Vendor shall deduct from the price (or refund to Buyer) an equitable amount acceptable to Buyer. If Vendor fails to correct the defect within (i) five (5) days after Buyer's notice, or (ii) if the defect is not capable of being corrected within five (5) days, Vendor fails to commence and continue to use all reasonable efforts to correct the defect promptly, Buyer may perform or re-perform the Services and Vendor shall deduct from the price (or refund to Buyer) Buyer's reasonable costs. Vendor's correction of a defect or non-conformity shall also be subject to the provisions of the Contract Documents to the same extent as the Services originally performed.

11. PRICE. The price for the Deliverables is set forth in the Order (the "Price"), and Vendor cannot add charges for taxes (other than sales or use taxes on the Deliverables based on Buyer's purchase or use of such Deliverables), shipping, packaging or other matters without Buyer's express prior written agreement, unless otherwise indicated on the Order. Vendor shall be responsible and pay for all taxes, duties, fees, and other charges other than sales tax. Vendor specifically and expressly assumes the risk of any foreseen or unforeseen event or cause occurring after the date of the Order and affecting costs or pricing.

12. INVOICES; PAYMENT. Vendor shall invoice Buyer for the Deliverables promptly after delivery. Invoices for Products must not be dated before the shipping date (unless specified in the Order). Invoices must be in acceptable form, contain the applicable PO number, and include such supporting documentation as Buyer may reasonably require, including adequate evidence of shipment and/or delivery of Products or progress and/or completion of Services. If an invoice is defective, the payment date (including dates for net invoices or cash discount) will be computed from Buyer's receipt of an acceptable corrected invoice. Drafts will not be honored. Buyer will not make payments for modifications to the original Order unless an appropriate Change Order is signed by both parties. Payment terms are as forth in the Order and if no payment terms are stated in the Order, payment shall be due 90 days after Buyer's receipt of a correct and complete invoice. To the extent allowed by Applicable Law, any amounts owed at any time by Buyer to Vendor with respect to Deliverables may be set off or recouped against any amounts owed by Vendor to Buyer.

13. INTELLECTUAL PROPERTY.

(a) With respect to those Deliverables created by Vendor specifically for Buyer ("Works"), Vendor acknowledges that all intellectual property rights, including without limitation, copyrights, patents, trademarks, trade secrets and other proprietary rights in the Works shall be owned by Buyer. Any and all right, title and interest in the Works, if eligible, shall be treated as "works made for hire" as defined in the Copyright Act of 1976, as amended, 17 U.S.C. §101, et seq, and shall be owned by Buyer. To the extent that any of the Works are not eligible for treatment as "works made for hire," Vendor hereby expressly and irrevocably assigns to Buyer all right, title and interest in and to all Works and any and all intellectual property rights therein and thereto free and clear of any liens or other encumbrances thereon, it being the intention of Buyer and Vendor that all Works are and shall be the sole and exclusive property of Buyer. Vendor will execute and deliver to Buyer all documents necessary to secure Buyer's ownership in the Works at no cost or expense to Buyer. Any Technology (as defined below) or other intellectual property that is pre-existing and owned by Vendor, or developed by Vendor incidental to the Deliverables shall remain the property of Vendor and shall not be transferred or assigned to Buyer under this Contract. However, with respect to those Deliverables, or any intellectual property (including any software, computer programs, or other technology) included in or provided with any Deliverables ("Technology"), not considered Works, Vendor hereby grants to Buyer an unlimited, irrevocable, perpetual, nonexclusive, paid-up, royalty free, worldwide license to use, reproduce, create derivative works from, modify, and dispose of Deliverables and such Technology, as well as any other rights in the Deliverables necessary for Buyer to have full use and enjoyment of the Deliverables.

(b) Vendor represents and warrants to Buyer that (i) the Products, and the sale, delivery and intended use of the Products under this Contract, will not infringe on any intellectual property or other rights of any third party, (ii) Vendor has all rights in the Deliverables and Technology necessary to create, sell and deliver the Deliverables to Buyer and grant to Buyer the rights granted

herein, (iii) Buyer shall have the right to use such Technology free of the rightful claim of any third person by way of infringement, misappropriation, or the like, and (iv) all such Technology shall comply with and perform in accordance with the manufacturer's or supplier's specifications and documentation as delivered to Buyer.

14. CONFIDENTIALITY AND NON-DISCLOSURE. All confidential, non-public, trade secret, proprietary, commercially or personally sensitive, technical, business or financial information or know-how that is received, learned or observed by Vendor in connection with this Contract and relates to Bridgestone or is directly or indirectly disclosed or furnished by or on behalf of Bridgestone, regardless of source or form and whether or not such information is marked as confidential or proprietary (collectively, "**Confidential Information**"), shall be deemed Bridgestone's confidential and proprietary information. Recipient will keep confidential and not, directly or indirectly, in any way, (i) use the Confidential Information for any purpose other than to provide the Deliverables; or (ii) reveal, report, publish, divulge, disclose or transfer any of the Confidential Information. At Buyer's request, Vendor shall immediately return all Confidential Information to Buyer or provide proof of its destruction. Vendor agrees to inform its employees and independent contractors of the requirements of this Section, and to ensure their compliance with it. This Section does not apply to Confidential Information to the extent Vendor can show that (a) it is generally available to the public through no fault of Vendor, (b) was received by Vendor prior to this Contract from a third party without any obligations of confidentiality to Buyer or another party, or (c) was independently developed by Vendor without use of or access or reference to Confidential Information. This Section is in addition to and does not replace, any NDA.

15. SERVICES SUPERVISION AND PERSONNEL. This Section applies only if Vendor is providing Services under the Contract. Vendor shall employ a competent, qualified superintendent to supervise the Services, and shall provide only competent and experienced personnel, all of whom must be satisfactory to Buyer, to fulfill Vendor's obligations under this Contract. Before commencing the Services, if Buyer requests, Vendor will provide Buyer with the names of all Vendor personnel who will be performing the Services, and their then-current hourly rates, if applicable. Vendor shall at all times enforce strict discipline and good order among its employees, and shall not employ for the Services any unfit persons or any persons not skilled in their assigned jobs. Buyer may, in its discretion, require Vendor to remove from providing the Services to Buyer any personnel of Vendor or any of its subcontractors for any reason, effective upon written notice from Buyer of such removal. Buyer will not be (i) liable for any decisions made or actions taken by Vendor with respect to the removed personnel and (ii) required to pay any costs associated with removed personnel effective upon Vendor's receipt of Buyer's notice to dismiss. Any personnel removed or reassigned will be replaced with personnel with substantially equivalent or better qualifications than the removed personnel. There will be no charge to Buyer while replacement personnel acquire the necessary training and familiarity with the Services. Vendor personnel are not employees of Buyer, and therefore shall not be eligible to participate in or accrue benefits under any Buyer employee benefit plan or program. Vendor shall at all times be solely responsible for the payment of all employee salaries and benefits and all payroll taxes for and relating to Vendor's provision of Services under this Contract. Without limiting any provision in this Contract but for greater clarity, Vendor and Buyer acknowledge and agree that this Section 15 is not intended to require Vendor to take any action prohibited under Applicable Laws and that Vendor agrees that it will comply with all Applicable Laws in performance of its obligations under this Contract, including this Section 15. The requirements of this Section 15 apply to the extent not prohibited by Applicable Laws.

16. BUYER'S PREMISES. If any of Vendor, its employees, subcontractors and agents, should enter Buyer's premises in connection with the Deliverables or Services, they shall comply with Buyer's safety rules and regulations and security requirements, including participating in Buyer's required training and instructional activities and complying with all environmental management systems and requirements, that are provided to Vendor. Vendor will cooperate with Buyer in the administration of such rules, regulations and requirements, and, at Buyer's request, deliver to Buyer periodic certifications as to Vendor's compliance. If applicable, Vendor and its personnel shall also establish and follow a Project-specific safety plan and hold regular meetings with its employees regarding safety. Before entering any facility of Buyer, Vendor shall sign such additional NDAs as Buyer may require at such facility.

17. LEGAL COMPLIANCE.

(a) Vendor will identify and at all times comply with, and give all notices required under, all applicable foreign, federal, state, and local laws, executive orders, ordinances, treaties, conventions, rules, and regulations as in effect from time to time ("**Applicable Laws**"). Applicable Laws include, without limitation, those related to labor and employment, wage and hour, workplace safety, and immigration. Vendor will not undertake, cause, assist in or permit any activity that is illegal under, or that would have the effect of causing Buyer or Vendor to be in violation of, any Applicable Laws. Vendor agrees to comply with the BSA Supplier Code of Conduct, which Vendor acknowledges receiving. Any listing herein of specific Applicable Laws shall not limit Vendor's obligation to identify and comply with all applicable foreign, federal, state, and local laws, executive orders, ordinances, treaties, conventions, rules, and regulations, whether or not specifically referenced in the Contract.

(b) Vendor shall, at its expense, obtain, maintain and comply with all permits, authorizations and licenses necessary for the Deliverables and its performance of this Contract, including environmental permits, licenses and authorizations, and shall provide Buyer with copies on its request. Unless otherwise specified, Buyer shall obtain at its expense all permits, licenses and easements necessary for permanent structures or permanent changes in existing facilities in connection with any Project.

(c) Without limiting Vendor's other obligations, Vendor agrees that it will not bring onto or permit to exist on Buyer's property any hazardous substance or solid waste without the prior written consent of Buyer and will not generate, handle, use, store, treat or dispose of any hazardous substance or solid waste on Buyer's property, except in compliance with all Applicable Laws, including all environmental laws. Vendor will not permit any lien relating to hazardous substances or solid waste to attach to Buyer's property. Unless Buyer elects, in its sole discretion, in writing to oversee disposal of any waste, Vendor shall be solely responsible for removing, and shall properly and lawfully dispose of, any waste generated by Vendor during the course of manufacturing, performing or delivering the Deliverables.

(d) Vendor represents and warrants to Buyer that it does not and conveys that it will not use any form of compulsory prison or slave labor or illegal child labor and does not physically abuse its workers.

(e) Vendor agrees that Buyer may, at any reasonable time or times and at Buyer's expense, audit, or cause a third party to audit, Vendor's facilities and operations for compliance with the terms of this Section 17 and the terms of Section 18 below. Vendor shall permit the auditor selected by Buyer to enter Vendor's premises to conduct such audits and shall provide full access to its facilities, including an opportunity for confidential and private interviews with facility workers selected by the auditor, and shall make all documents and records related to such compliance available for the auditor's inspection and audit. The auditor may make copies of documents and records related to such compliance at Buyer's expense. No retaliation of any sort shall be taken by or through Vendor against any workers who participate in such private interviews or against the auditors.

18. COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY LAWS:

(a) As applicable, the provisions of the Equal Opportunity Clauses pursuant to Section 202 of Executive Order 11246, as amended and 41 CFR Section 60-1.40; as well as 29 CFR Part 471, Appendix A to Subpart A, are herein incorporated by reference.

(b) **This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.**

19. DEFAULT. Any of the following events shall be a "**Default**" under this Contract: (a) any voluntary or involuntary bankruptcy case, assignment for the benefit of creditors, receivership or other state, federal or foreign insolvency proceeding is commenced with respect to a party or its properties; or (b) a party becomes insolvent, is generally not paying or becomes unable to pay its debts as they become due (and in the case of Vendor, if Vendor fails to pay any subcontractor or other contractor when payment is due to such party by Vendor), discontinues its usual business, dies, or commences to dissolve, wind-up or liquidate itself; or (c) more than 20 percent of the property of or ownership interests in Vendor is transferred; or (d) a party fails to comply with any material term of this Contract or fails to perform any material obligations under this Contract and does not cure such failure within fifteen (15) days after written notice from the non-defaulting party; or (e) any material default by Vendor occurs under any other existing or future agreement between Vendor and Buyer or its affiliates and is not cured or waived within the grace period (if any) provided therein. Upon any Default, the non-defaulting party may exercise any or all rights and remedies provided herein or available at law or in equity.

20. TERMINATION. Upon any Default, the non-defaulting party shall have the right, in addition to and without waiving any other right or remedy, to immediately terminate the Order or this Contract. Buyer shall also have the right to terminate the Order or this Contract for Buyer's convenience upon 30 day's notice.

21. INDEMNITY.

(a) Vendor shall protect, indemnify, reimburse, hold harmless and defend Bridgestone and its officers, directors, employees, workers, agents, servants, and invitees ("**indemnified parties**"), from and against all losses, costs, expenses (including reasonable attorneys' fees and other expenses of litigation, arbitration and investigation), damages, penalties, fines, demands, claims, suits and other liabilities, (collectively, "**Liabilities**") arising from or in connection with (i) the Deliverables; (ii) the presence of Vendor's employees, contractors, subcontractors or agents on Buyer's premises; (iii) Vendor's performance or nonperformance of its obligations under this Contract; or (iv) Vendor's or its employees', agents' or subcontractor's negligence or intentional misconduct, except to the extent caused by the negligence or intentional misconduct of Bridgestone or its employees. Vendor will reimburse each indemnified party for all Liabilities as they are incurred in investigating, preparing, pursuing or defending any claim, legal action, proceeding or investigation, whether or not in connection with pending or threatened litigation and whether or not any indemnified party is a party thereto.

(b) Vendor shall also protect, indemnify, reimburse, hold harmless and defend the indemnified parties from and against all Liabilities arising from or in connection with any actual or alleged infringement of any patent, copyright, trademark or trade secret, or other legal rights of any person resulting from or arising in connection with the Deliverables or Buyer's use, sale, or disposition thereof except to the extent such infringement is based on any Specifications furnished by Buyer. In addition to the foregoing obligation, upon notice of any claim or assertion of such infringement, Vendor shall, at no cost to Buyer, either: (i) obtain on behalf of Buyer the rights to continued use of the Deliverables; (ii) substitute with other suitable, functionally-equivalent, non-infringing Deliverables; and/or (iii) refund to Buyer all fees already paid for the allegedly infringing Deliverables, in which case Buyer may terminate this Contract. Buyer reserves the right to participate in the defense of any such claim without relieving Vendor of any obligation hereunder. Each party shall promptly notify the other of any claim of infringement.

22. INSURANCE. Unless otherwise indicated on the Order or other Contract Documents, during the term of this Contract and for at least 24 months after Vendor's performance of its final obligations hereunder, Vendor shall, at its sole expense, maintain with a reputable insurance company with a current A.M. Best's rating of not less than A-, the following insurance coverage, as applicable: (i) commercial general liability insurance including products liability, completed operations liability, blanket contractual liability, broad form property damage coverage and personal injury liability insurance with limits of \$2,000,000 per occurrence and \$3,000,000 aggregate limit; (ii) if Vendor's employees, agents or representatives will be entering onto Buyer's premises, (a) statutory workers' compensation and employers' liability coverage in each state where Services are to be performed, with a limit of liability for employers' liability (Coverage B) of not less than \$1,000,000 per accident; and (b) vehicle liability insurance on any owned, non-owned or hired vehicle to be used in providing the Services, or otherwise used by Vendor on Buyer premises, with limits of at least \$1,000,000 per occurrence combined single limit bodily injury and property damage; (iii) if the Services include professional services, professional liability (errors and omissions) insurance, with a limit of liability of not less than \$2,000,000 per claim; and (v) if the Deliverables involve construction, builders' risk insurance on all material delivered to Buyer's premises or to adjacent property and intended for use in the Deliverables or on Buyer's premises and all materials in place for the Deliverables. Vendor shall provide Buyer with satisfactory certificates of such

insurance before beginning performance of this Contract and otherwise on request. All insurance required by this Contract other than worker's compensation insurance shall name Buyer as an additional insured or loss payee, as applicable. All insurance required by this Contract shall be primary and not entitled to contribution from any insurance maintained by Bridgestone and each workers' compensation policy shall contain a waiver of subrogation in favor of Buyer. Vendor shall give Buyer at least thirty (30) days' written notice prior to any material modification, cancellation or expiration without renewal of any of the required insurance coverage. Neither the foregoing insurance requirements nor the terms of any insurance policy will limit Vendor's liability or obligations under this Contract.

23. BUYER'S PROPERTY. If Buyer should at any time loan or deliver to Vendor any tools, equipment, raw materials, supplies, inventory or other property of any type for use in manufacturing, processing, testing, packaging, delivering or supplying the Deliverables, Buyer will retain all of its rights, title and interest in and to such property, all of which shall remain the sole property of Buyer. Vendor shall have no title to or interest in such property, and authorizes Buyer to file UCC financing statements to protect Buyer's interests therein.

24. PROJECTS. To the extent, if any, the Order describes, or the Deliverables involve, a Project to be completed by Vendor, the Project Provisions attached hereto as Exhibit A shall apply. With respect to any such Project, the provisions of Exhibit A shall supplement these Terms and Conditions and in the event of a conflict between Exhibit A and these Terms and Conditions, Exhibit A shall control with respect to such Project.

25. RIGHT TO AUDIT. Buyer shall have the right, from time to time and at Buyer's expense, to access and audit Vendor's books and records or cause a third party to perform the audit (including timesheets and other relevant employee records) with respect to the Deliverables to verify compliance with this Contract. Vendor shall permit Buyer and/or the auditor selected by Buyer to enter Vendor's premises to conduct such audits, shall make all documents and records related to the audit available for the inspection and audit, and shall reasonably assist Buyer and/or the auditor with such audit. Buyer and/or the auditor may make copies of documents and records related to such compliance at Buyer's expense.

26. INDEPENDENT CONTRACTORS. Vendor is an independent contractor, and nothing in the Contract shall be deemed to create any partnership, agency, joint venture or other fiduciary relationship between Buyer and Vendor for any purpose. Vendor will not under any circumstances be, or be deemed to be, Buyer's agent.

27. ASSIGNMENTS AND SUBCONTRACTS. Vendor shall not assign, by operation of law or otherwise, delegate or subcontract this Contract or the Order or any of its rights or duties under this Contract or the Order without Buyer's express prior written consent and any assignment or delegation without such consent shall be void. Vendor may not engage any person or entity as a subcontractor for all or any part of any Services or Project without Buyer's prior written consent. If Buyer provides such written consent, Vendor shall nevertheless remain responsible for the performance of all its obligations hereunder, and shall ensure that each subcontractor complies with all the terms and conditions of this Contract (including obligations to maintain insurance and confidentiality). Vendor is and will remain liable for any and all Services performed by, and any and all acts and omissions of, its subcontractors to the same degree that Vendor is liable for its own performance, acts and omissions.

28. NO EXCLUSIVITY. This Contract is not an exclusive agreement or a requirements contract and Buyer is free to purchase products or services similar or identical to the Deliverables from other vendors.

29. GOVERNING LAW; VENUE; JURY WAIVER. The Contract shall be governed by and construed in accordance with the laws of the United States of America and the State of Tennessee, without regard to its conflict of laws provisions. The Convention on the International Sale of Goods does not apply. The sole and exclusive venue for all actions arising out of or relating to the Contract, or the breach, termination, cancellation, expiration or validity thereof, or the Deliverables shall be the state and federal courts located in Davidson County, Tennessee. Vendor consents to the jurisdiction of such courts and agrees not to object to venue therein. **BOTH PARTIES WAIVE ANY AND ALL RIGHT TO ANY TRIAL BY JURY IN ANY ACTION OR PROCEEDING BETWEEN THE PARTIES ARISING DIRECTLY OR INDIRECTLY IN CONNECTION WITH THIS CONTRACT.**

30. ENTIRE AGREEMENT; SEVERABILITY; SURVIVAL. Except as modified by the Order or Agreement, this Contract (along with any NDA) is the final and entire agreement between Vendor and Buyer with respect to the Deliverables, and supersedes all previous communications, promises, representations or agreements, whether verbal or written. Buyer objects to any terms contained in any Vendor documents that are additional or different or otherwise inconsistent with the terms hereof. If any provision of this Contract is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Contract unless it materially impairs the ability of the parties to consummate the transactions contemplated by this Contract. All indemnities and warranties and all provisions related to confidentiality, intellectual property, audit rights and insurance shall survive the termination, cancellation or expiration of this Contract.

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EXHIBIT A PROJECT PROVISIONS

If the Order describes, or the Products or Services involve, a Project to be completed by Vendor, the following additional terms and conditions apply:

(a) **Lump Sum (Fixed Price) Contracts.** For fixed price Projects, prior to providing its Services, Vendor shall submit to Buyer for its approval, a schedule of values, showing the amount for each item, with the total of all items equaling the total Price for the Project. Once Vendor and Buyer have agreed on the schedule of values, such schedule shall be part of the Contract Documents.

(b) **Other Pricing.** For any Services for Projects to be performed on other than a fixed price basis, prior to providing such Services, Vendor shall submit to Buyer for its approval, a rate schedule listing all hourly rates, overhead rates, and all other cost factors pertinent to the total cost. Vendor shall not begin work on any such Services until Buyer approves such rate schedule.

(c) **Specifications.** All Specifications are the sole property of Buyer and all originals and copies must be returned to Buyer upon completion of the Project. Buyer's approval of or consent to Vendor's Specifications will not constitute a waiver, discharge or reduction of Vendor's responsibilities under the Contract Documents. Vendor agrees not to use the Specifications on any other project without the prior written consent of an authorized representative of Buyer. No changes shall be made in any of the Specifications without Buyer's prior written approval and all changes must be specified in a written Change Order signed by Buyer's authorized representative.

(d) **Schedule; Progress Reports; Delay.** Before beginning work on the Project, Vendor shall submit to Buyer a schedule or statement of work, in detail acceptable to Buyer, describing the Project and the phases of the Project, establishing acceptable milestones and setting forth acceptable starting and completion dates of such phases. Such schedule, when signed by both Vendor and Buyer, will be incorporated herein by reference and will be one of the Contract Documents. Vendor shall cooperate in arranging a schedule that will minimize interference with Buyer's operations and shall utilize laborers who can work in harmony with Buyer's personnel and all other laborers present at the location of the Project. In the event of bona fide labor disputes (as opposed to protests) in connection with the Project, Vendor will promptly adjust and settle such disputes to avoid unfavorable publicity and unnecessary delay, in a manner reasonably satisfactory to Buyer. If Buyer requests, Vendor will also prepare and submit detailed monthly progress reports (in a format approved by Buyer), containing such information as Buyer may reasonably request. If Buyer determines that the work is not proceeding at a rate that will permit any phase of the Project to be completed by the scheduled completion date, then, without waiving any other rights and remedies, and without additional cost, Buyer shall have the right to direct Vendor to increase the number of workers or facilities as Buyer may deem necessary.

(e) **Authorized Representative.** Buyer will designate a specific individual to act as its authorized representative under this Contract. In each instance where the consent, approval, acceptance or acknowledgement of Buyer is required, only the consent, approval, acceptance or acknowledgement of Buyer's designated authorized representative shall be binding.

(f) **Progress Payments/Liens.** Vendor shall pay when due all obligations incurred by Vendor in connection with the Project, including, without limitation, payments to subcontractors and payments for labor and materials obtained or used by Vendor or any subcontractor. Buyer shall not be obligated to make any partial or final payment to Vendor unless and until Buyer is satisfied that no liens or adverse claims will be asserted against any of Buyer's property in connection with the Project or any materials or labor provided by Vendor or any subcontractor. Buyer will make progress payments to Vendor throughout the course of the Project, no more than once monthly, as long as (i) no Default has occurred, (ii) progress on the Project is reasonably satisfactory to Buyer, and (iii) lien waivers have been provided from Vendor and all subcontractors, materialmen and suppliers, for all the work on the Project to date, or Buyer is otherwise satisfied that no liens or adverse claims can be asserted. Buyer may withhold and retain five percent (5%) of each payment ("retainage") pending completion of the Project and delivery of final lien waivers. Buyer may at its discretion waive the retainage requirement. Vendor shall provide correct and complete invoices, with the lien waivers required under (iii) above and such other supporting documents as Buyer may request. Unless otherwise stated on the Order or Contract, payment shall be due within 90 days after Buyer's receipt of a correct and complete invoice and only upon Buyer's authorized representative's approval of the invoice. In no event shall work on the Project stop as a result of Buyer's failure to timely process any invoice submitted by Vendor. Unless otherwise stated on the Order or Contract, final payment shall be due and payable within 90 days after the latest of the following events: (i) completion of the Project and Buyer's acceptance of the Project, (ii) the issuance of any manufacturer's guarantee or surety bond required by the Contract Documents, and (iii) Buyer's receipt of all required lien waivers and protections. If Buyer has not received all required lien waivers and protections, final payment shall be due and payable on the fifth (5th) day after the later of expiration of the legal period for filing liens or the reflection in the public records of the removal of any liens that may have been filed. If any party from whom a lien waiver is required hereunder refuses to furnish such a lien waiver or receipt, Vendor may instead furnish a bond satisfactory to Buyer, to indemnify Buyer against any lien. If the Project or any of Buyer's property becomes subject to any lien or adverse claim as a result of Vendor's non-payment, Buyer may take any appropriate action to procure a release of the lien or adverse claim, and Vendor shall reimburse Buyer on demand for all amounts that Buyer pays to release such lien and all reasonable costs (including investigation costs, legal fees, and disbursements) incurred or paid by Buyer in taking such action. Buyer may deduct such amounts from the price payable under the Contract Documents.

(g) **Vendor's Responsibilities.** Vendor will be responsible for the satisfactory completion of the Project in accordance with the true intent of the Specifications. Vendor shall provide, without extra charge, all incidental items required to complete the Project even though not particularly specified or indicated. Before beginning work, Vendor shall make site observations to determine any conditions at the site affecting the performance of the Project and verify all measurements, and shall immediately report to Buyer any apparent errors, discrepancies or inconsistencies in the Specifications. If any such discrepancies are reported or subsequently discovered, Vendor shall await instructions from Buyer before proceeding with the Project. Vendor's commencement of or proceeding with the Project without written Change Orders shall be construed as an acceptance and approval of the Specifications and the premises (including any underground conditions), conditions and limitations applicable to the Project. In addition, if applicable, while on Buyer's premises Vendor shall comply with the requirements of any lease or other agreement under which Buyer occupies the property.

(h) **Protection of Project.** Vendor will take all precautions necessary for the prevention of accidents, fire, theft, vandalism, injury or other damage on or to Buyer property. Vendor shall continuously maintain adequate protection of the Project from damage and shall protect Buyer's property from injury or loss arising in connection with the Contract Documents. Vendor shall adequately protect adjacent property as required by law. In an emergency affecting the safety of life or of the Project or of adjoining property, Vendor, without special instruction or authorization

from Buyer, is hereby permitted to act, at its discretion, to prevent such threatened loss or injury, and shall so act, without appeal, if so instructed or authorized by Buyer. Compensation for emergency work shall be determined by mutual agreement.

(i) Defective Work. If any part of the Project fails to conform to the Contract Documents, Vendor shall promptly correct the work within a reasonable time to be set by Buyer's written notice to Vendor. If Vendor fails to correct the work within the stated time, Buyer may correct the work at Vendor's expense.

(j) Inspections. Buyer shall at all times have access to the Project wherever it is in preparation or progress. Vendor shall provide proper facilities for access and shall make all Products visible and available for inspection at Buyer's request. Vendor shall give Buyer notice before any tests of readiness of Products, in sufficient time to permit Buyer to make inspection at source, if desired. Buyer's making or declining to make any inspection of, payment for, or acceptance of, the Project or any part thereof shall not impair Buyer's right to reject any nonconforming Services or Project parts or to avail itself of any other rights or remedies, notwithstanding Buyer's knowledge of the nonconformity, its substantiality or the ease of its discovery.

(k) Occupancy. If the Project involves construction of or improvements to all or any portion of any building or building premises, Buyer may take possession of all or any part of the premises that Buyer determines to be sufficiently completed for its occupancy, and use it for installing Buyer's equipment and merchandise, and for operating Buyer's business, without waiving any of its rights and remedies under the Contract Documents. Any such taking possession or related actions shall not constitute acceptance of any or all of the Project, or acknowledgement that the building or any part of it, has been completed, or that the Project, or any part of it, is satisfactory. Vendor shall complete all parts of the Project in full accordance with the Contract Documents, and shall work around Buyer's equipment, merchandise and business operation as may be necessary.

(l) Other Contracts. Buyer reserves the right to enter into other contracts in connection with the Project or similar or related matters. Vendor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and execution of their work, and shall properly connect and coordinate its work with theirs. If any part of Vendor's work depends on proper execution of or results of the work of any other contractor, Vendor shall inspect and promptly report to Buyer any defects in such work that render it unsuitable for such proper execution and results. Vendor's failure so to inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of Vendor's work, except as to defects that may develop in the other contractor's work after the execution of this work.

(m) Termination. If Buyer terminates Vendor's Contract for default, Buyer may exclude Vendor from the premises, take immediate possession of all materials, tools, equipment and appliances on the premises and finish the Project or hire others to finish it, by whatever method Buyer may deem expedient. In such case, Vendor shall not be entitled to receive any further payments until the Project is finished. If, after completion of the Project, the unpaid balance of the contract price exceeds the total of all expenses of finishing the Project and all other damages suffered by Buyer as a result of such Default, Buyer shall pay the excess part of the price to Vendor. Buyer shall have the right to suspend work on the Project by giving written notice thereof to Vendor at any time and Buyer shall incur no liability to Vendor or any other person by reason of such suspension; provided, however, Vendor shall be equitably compensated for all services performed through the suspension date together with reimbursable costs then due and reasonable termination expenses actually incurred by the Vendor (including reimbursement for costs committed by Vendor that will no longer be utilized by Buyer).

(n) Taxes. Vendor shall pay when due all contributions, premiums and taxes (whether income, sales, use, occupational, gross receipt, excise, transaction, privilege or other taxes) payable at any time in connection with the Contract Documents, the Project, the persons hired to complete the Project, the goods and services furnished by or to any party under the Contract Documents, or any payments by Buyer to Vendor under the Contract Documents.

(o) Hazardous Materials. Unless the removal of same is the purpose of this Contract, Vendor shall have no responsibility for the discovery, presence, handling, removal, disposal or exposure of persons to hazardous materials of any form including asbestos containing materials and mold which exist at Buyer's property prior to the commencement of the Project. Vendor shall have no responsibility for an existing or constructed building that may, as a result of post-construction, use, maintenance, operation or occupation, contain or be caused to contain asbestos containing materials and mold substances which can present health hazards and result in bodily injury, property damage and/or necessary remedial measures and costs. Vendor shall immediately cease work and notify Buyer if Vendor encounters hazardous materials while performing the Project.

(p) Dispute Resolution. Except as otherwise set forth in this Contract or NDA, the parties will attempt to settle any claim or controversy arising out of the Contract Documents through consultation and negotiation in good faith in a spirit of mutual cooperation. If those attempts fail, then the dispute will be mediated by a mutually accepted mediator to be chosen by the parties within fifteen (15) days after written notice by either party to the other demanding mediation. No party may unreasonably withhold consent to the selection of a mediator. The parties will share the cost of the mediation equally. By mutual agreement, the parties may postpone mediation until some specified but limited discovery about the dispute has been completed. The parties may also agree to replace mediation with some other form of alternative dispute resolution. Any dispute which cannot be resolved by the parties through negotiation, mediation or other form of agreed alternative dispute resolution within forty-five (45) days of the date of the initial demand for it by one of the parties may then be submitted to the courts for resolution. Nothing in this section will prevent a party from resorting to judicial proceedings if (a) good faith efforts to resolve the dispute under these procedures have been unsuccessful; (b) interim, injunctive relief or other equitable release from a court is necessary to prevent serious and irreparable injury to one party or to others; or (c) litigation is required to be filed prior to the running of the applicable statute of limitations. In no event shall work on the Project stop during the resolution of any dispute between Buyer and Vendor.