

**WHITEWATER MIDSTREAM, LLC TERMS AND CONDITIONS OF PURCHASE  
OF GOODS AND SERVICES NOT SUBJECT TO MSA**

**Except as set forth below, these Terms and Conditions of Purchase (the “Terms”) are applicable to all Purchase Orders/Work Orders (as further defined below, “POs”) issued by Buyer shall be deemed to have been irrevocably accepted by Vendor upon the earliest of Vendor’s (a) acceptance of the PO as set forth below, (b) shipment or delivery of a Good or performance of a Service, or (c) acceptance of any payment made by Buyer for Goods or Services; provided, however, that Buyer shall not be obligated to pay the Prices for Goods and Services until Vendor has indicated its acceptance of the PO as set forth below.**

**Vendor shall accept or reject all POs within 24 hours after receipt thereof by delivering a notice of acceptance to Buyer, which notice shall include Vendor’s promise ship date for Goods.**

- A. Definitions; No Conflicting Terms; Interpretation.** “PO” means the Terms together with the details (the “Specific Details”) contained on the PO Face. “Buyer,” “Due Date,” “Goods,” “Prices,” “Schedule,” “Services,” “Vendor,” and all other words or phrases included in the Specific Details have the meanings set forth on the PO Face, and “Goods” includes all materials, equipment, systems, and goods (i) described in the PO, (ii) used by Vendor in connection with Vendor’s performance of Services, or (iii) otherwise delivered to Buyer in connection with the PO; “Applicable Law” means all applicable federal, state, and local laws, codes, rules, regulations, and orders of any governmental authority; “Buyer’s Policies” means all policies, procedures, and regulations of Buyer, including Buyer’s Freight Guide and those (a) related to safety and security, (b) set forth in Buyer’s Contractor Safety Handbook, and (c) specific to a Buyer’s Site, all of which are incorporated herein; “Buyer’s Site” means the location specified by Buyer for the delivery of Goods or performance of Services; “Lien” means a mortgage, deed of trust, lien, pledge, charge, security interest or encumbrance of any kind, whether or not filed, recorded, or otherwise perfected, and any interest of a supplier or lessor under any conditional sales agreement, capital lease, or other title retention agreement; “Manufacturer” means a manufacturer or fabricator of Goods not manufactured or fabricated by Vendor; “Permits” means all federal, state, and local permits, licenses, and approvals; “Person” means an individual or entity; “Personnel” of a party means such party’s employees, contractors, subcontractors, vendors, agents, and invitees, and their respective employees, contractors, subcontractors, vendors, agents, and invitees, as applicable, excluding (in the case of Buyer’s Personnel) Vendor and Vendor’s Personnel; “Third Party” means any Person other than Buyer, Vendor, or their Affiliates; and “Warranty Period” means the period commencing on the date of delivery of the Good and ending on the date set forth in the Specific Details, or if no date is set forth therein, the earlier of (1) 12 months after the Good is placed in service or (2) 18 months after delivery of the Good to Buyer.

If a conflict exists among the terms and conditions contained in the Terms, the Specific Details, and Buyer’s Policies, the terms and conditions shall control in the following order of priority: (i) the Specific Details, (ii) the Terms, and (iii) Buyer’s Policies. If any additional or different terms or conditions are contained in any documentation provided by Vendor, such as a Vendor prepared proposal, bid, quotation, acknowledgement, bill of lading, or receipt (“Vendor’s Proposed Terms”), the PO shall control regardless of when Vendor’s Proposed Terms are received by Buyer unless Buyer agrees in writing to any of Vendor’s Proposed Terms; otherwise, Buyer rejects Vendor’s Proposed Terms.

## **B. Goods**

### **1. Warranties.**

**1.1 Warranty on Goods.** In addition to any warranties contained in the Specific Details, Vendor warrants to Buyer that, (a) until the expiration of the Warranty Period, (i) Goods shall (A) conform to Buyer's specifications and metrics, or if none are given, to samples thereof, (B) be free of defects in material and workmanship and without variation and of even kind, quality, and quantity within each unit and among all units, (C) be fit for the purpose for which such Goods are ordinarily used, and (D) contain zero percent asbestos; (ii) none of the software included in the Goods shall (A) introduce or include any Trojan horse, virus, worm, trap, spyware, back door, disabling or destructive code, time, clock, counter, or other limiting design or routine that causes the software or any other part of the Goods to be erased, inoperable, or otherwise incapable of being used in the full manner for which it was intended, or (B) contain code or materials subject to non-negotiable licenses, including "open source" or "freeware" software, or other materials requiring that software combined or distributed with such materials be (1) disclosed or distributed in source code form, (2) licensed for the purpose of making derivative works, or (3) re-distributable at no charge or subject to material limitations or conditions; and (iii) Material Safety Data Sheets provided by Vendor hereunder shall be complete and accurate; (b) Goods do not infringe upon or violate the intellectual property rights of a Third Party; (c) Vendor owns rights in all Goods prior to delivery thereof, and good and merchantable title to each Good shall be transferred to Buyer upon acceptance of Goods; and (d) Goods shall be free and clear of Liens. The foregoing warranties shall survive any inspection, delivery, acceptance, or payment by Buyer, but shall not apply to consumable items attached to or used in conjunction with Goods.

**1.2. Corrective Work.** Vendor shall promptly repair, modify, or replace, at Vendor's election, Goods that do not comply fully with the warranties set forth in the foregoing Subsection ("Defective Goods") at no cost to Buyer, except that if Vendor cannot repair, modify, or replace the Defective Goods such that the Defective Goods comply with the warranties within a reasonable time after Buyer's or Vendor's discovery of noncompliance, Vendor (a) shall refund all payments made by Buyer for the Defective Goods, and (b) arrange and pay for the removal of the Defective Goods or pay Buyer the reasonable costs incurred by Buyer to remove the Defective Goods, including shipping costs.

**1.3. Manufacturer Warranties.** If Vendor is not the Manufacturer of a Good, Vendor (a) shall secure the warranties and remedies set forth in Subsections 1.1 and 1.2 from the Manufacturer, assigns the warranties and remedies to Buyer effective upon delivery of the Good, and upon Buyer's request, shall serve as Buyer's agent for purposes of administering the warranties and remedies provided by the Manufacturer and otherwise assist Buyer in obtaining warranty service from the Manufacturer.

### **2. Delivery; Risk of Loss.**

**2.1. Shipment; Title and Risk of Loss.** Unless otherwise specified in the Specific Details, Vendor shall (a) pack, mark, label, document, and ship Goods to the location specified in the Specific Details in accordance with Applicable Law and Buyer's specifications in effect as of the date of shipment, or if Buyer's specifications are not available, in such a manner as may be required for the protection of Goods from damage or destruction of hazards during shipping and delivery and using labels and tags containing adequate and accurate information with respect to use, safety, and treatment of Goods, and (b) if Vendor is responsible for shipment, ship Goods using ground transportation. If Goods are

delivered F.O.B. Vendor's facility, title and risk of loss and damage to Goods shall transfer to Buyer upon the earlier of delivery of Goods to Buyer's designated carrier or Buyer taking possession of the Goods, in each case, at Vendor's facility. If Goods are delivered F.O.B. Buyer's Site, title and risk of loss and damage to Goods shall transfer to Buyer upon Vendor's or its carrier's delivery of the Goods to Buyer's designated location.

**2.2. Due Dates.** Vendor shall ship and deliver Goods in accordance with the Due Dates. If the Due Dates do not include the required date of shipment of Goods, Vendor shall indicate its scheduled shipment date (if Goods are delivered F.O.B. Buyer's Site) or the scheduled date that Vendor will make the Goods available for shipment at Vendor's facility (if Goods are delivered F.O.B. Vendor's facility) in its written or electronic acceptance of the Purchase Order. Vendor shall cause the shipment to occur or the Goods to be available for shipment, as applicable, on or before the applicable Due Date or date set forth in Vendor's acceptance.

**2.3. For Small Package/Parcel and Less than Truckload Orders.** For small packages and parcels and less than truckload orders, unless otherwise stated in the Specific Details, Vendor shall (a) deliver Goods F.O.B. Buyer's Site, Freight Prepay and, (b) not charge Buyer for any insurance costs relating to the transportation, shipment, and delivery of the Goods, (c) prepay the transportation charges and add such charges to the invoice to Buyer, (d) use the means and routes of transportation selected by Vendor, and (e) within 24 hours after shipment of the Goods from Vendor's facility, notify Buyer by electronic mail of the date the Goods were shipped, the name and type of the carrier, the tracking number and the estimated date of arrival of the Goods at Buyer's Site. For purposes of this Subsection, "small packages and parcels" means packages and parcels that weigh less than 150 pounds and that are less than 165 inches in length plus width plus height, and "less than truckload orders" means orders that weigh more than 151 pounds or that are greater than 165 inches length plus width plus height, but that do not fill an entire truck.

**2.4. Truckload Orders (Legal and Permit).** For truckload orders, unless otherwise stated in the Specific Details, Vendor shall (a) deliver Goods F.O.B. Vendor's facility, (b) contact Buyer's logistics department at 512-953-2106 or [lisa@wwm-llc.com](mailto:lisa@wwm-llc.com) for shipment and delivery coordination at least two weeks prior to the Goods being ready for shipment and provide Buyer with the following information: (i) the PO number and line numbers, the estimated number of Goods, (iii) the weight and dimensions of the Goods, (iv) the loading address, (v) the contact information of an authorized representative of Vendor who will be at the loading address on the date of loading and shipment, and (vi) the estimated shipping date, load Goods at Vendor's facility, and (d) arrange for crane or other applicable equipment necessary to load Goods at Vendor's facility on to the vehicle, rail, car, or other carrier designated by Buyer. Vendor shall not invoice Buyer for transportation or shipping of truckload orders.

**2.5. Rejection.** Buyer shall reject, or revoke acceptance of, Goods (as applicable, "Rejection") within a reasonable period of time after discovery of a nonconformance. If Rejection occurs and Vendor does not deliver conforming Goods within a reasonable period of time requested by Buyer following the original Due Date, then at Buyer's election, Buyer may terminate all or a portion of the PO and obtain a prompt refund from Vendor of all payments Buyer has made with respect to the terminated portion of the PO. Vendor shall pay all costs and other losses Buyer incurs with respect to a Rejection.

**2.6. Updates.** Vendor shall make available to Buyer all updates to Goods made by Vendor or a Manufacturer, including software and design updates.

## C. Services

- 1. Performance Standards.** Vendor shall perform Services (a) in compliance with all Permits held by Vendor or Buyer in connection with Vendor's performance of the Services, (b) in a professional manner with the standard of care, skill, and diligence normally provided by a professional Person in the performance of services similar to the Services, (c) in full compliance with all final written descriptions, specifications, drawings, metrics, and representations agreed upon by Buyer or otherwise provided by Buyer, including those specified on the PO Face, (d) using qualified, competent, experienced, and if applicable, licensed Personnel, and (e) in a manner that does not infringe upon or violate the intellectual property rights of a Third Party.
- 2. Inspection –** Buyer reserves the right to inspect the Work performed, and any related materials furnished. Buyer's inspection shall, however, under no circumstances extend to supervision or direction of Vendor's employees or subcontractors. To facilitate such inspection and testing, but only if requested by Buyer in writing, Vendor shall advise Buyer in writing of the anticipated places and times of critical material inspection, fabrication and delivery. Failing to inspect and test supplies, materials, products and equipment shall neither relieve Vendor from responsibility nor impose liability on Buyer. Buyer's inspection and testing shall not relieve Vendor from any responsibility regarding defects or other failures, or exclude, waive or invalidate any warranty in this Agreement.
- 3. Permits.** Vendor shall (a) obtain all Permits necessary or desirable for the performance of Services prior to the commencement of the applicable Services, and (b) maintain the Permits in full force and effect until completion of the applicable Services.
- 4. Safety and Security.** Vendor shall be solely responsible for the work safety and industrial hygiene of its Personnel. While on Buyer's Site, Vendor shall, and shall cause its Personnel to, comply fully with Buyer's Policies and Buyer's Site-specific rules and requirements. Vendor voluntarily accepts all hazards and risks that may be presented in the performance of the Services at Buyer's Site, and Buyer assumes no affirmative duties with respect to the safety of Vendor's Personnel.
- 5. Hazardous Substances.** At least 20 business days before Services are performed on Buyer's Site requiring the use of hazardous chemicals or substances, Vendor shall deliver to Buyer a proposal setting forth (a) a copy of Vendor's hazard communication program, (b) a list of all hazardous chemicals and other substances Vendor proposes to bring onto Buyer's Site and the quantities of each, and (c) material safety data sheets for each chemical and substance on the list. Buyer shall notify Vendor of any objections to the proposal within 15 business days after receipt thereof. If Buyer fails to timely object, the proposal shall be deemed approved, and Vendor may bring the listed hazardous chemicals and substances onto Buyer's Site in accordance with the proposal. As soon as practicable after Vendor's completion of Services on Buyer's Site, Vendor shall dispose of all hazardous chemicals and substances used during the performance of Services in accordance with all Applicable Laws and Buyer's Policies.
- 6. Liens.** Except to the extent caused by Buyer's failure to make undisputed payments hereunder when due, Vendor shall not assume or create, and shall not permit any Vendor Personnel to assume or create, any Lien on Buyer's Site, any of Buyer's property, or any of the Goods in connection with the performance of Services.
- 7. Independent Contractor.** Vendor and Vendor's Personnel shall be deemed independent

contractors for all purposes, and not employees, agents, or representatives of Buyer, Buyer being interested only in the results of the Services performed. Vendor shall report as income for federal and state income tax purposes all amounts received by Vendor under the PO, and shall not be entitled to any employment benefits of any kind provided by Buyer to its employees.

#### **D. Terms and Conditions Applicable to Goods and Services**

##### **1. No Additional Charges; Audit.**

**1.1. Not to Exceed.** The PO is issued as a not to exceed amount and the invoiced costs for the Services and Goods associated with the PO shall not exceed in the aggregate the stated Prices included in the PO under any circumstance or legal theory without prior authorization and acceptance from Buyer's supply chain Personnel. Except to the extent of Buyer's failure to make payments hereunder when due, Vendor shall not assume or create, and shall not permit any Vendor Personnel or any subcontractor to create, a Lien on any of Buyer's property, the Goods, or Buyer's Site.

**1.2. Prices/Change Orders.** The Prices specified on the PO Face are the total Prices of the Goods and Services to Buyer without adjustment for any prompt payment or other discount offered by Vendor (unless otherwise stated on the PO Face), and Buyer shall not be responsible to Vendor for any other charges, fees, or expenses. Vendor shall not include sales and use taxes in the Prices or on the invoices unless otherwise directed in advance by Buyer, in writing. Vendor shall be responsible for determination, collection, and payment of sales and use taxes, if applicable, and Vendor shall cooperate with Buyer in obtaining exemption certificates for the tax jurisdictions of Goods or Services, as applicable. Buyer may modify the PO by the issuance of a change order if the change order is made in advance of shipment of Goods or completion of Services. If modifications contained in a change order can reasonably be expected to necessitate an adjustment to the Prices or Schedule, the parties shall endeavor to reach an equitable adjustment as soon as practicable so as not to adversely affect the Prices or Schedule.

**1.3. Records.** Vendor shall, and shall require its subcontractors to, maintain true, correct, and complete books and records relating to the Goods and Services and the amounts billed to Buyer, whether maintained in electronic or printed media, including any data collected by Vendor and its subcontractors pertaining to the Goods and Services under the PO and invoices and records sufficient to verify any sales, use, excise, value added, or other transactional taxes associated with the Goods or Services (collectively, "Records") in accordance with generally accepted accounting principles and Buyer's Policies for at least four years after Vendor receives the final payment under the PO. Any representative or representatives authorized by Buyer may audit any and all Records of Vendor and its subcontractors at any time or times during the term of the PO and during the four-year period after Vendor receives the final payment under the PO.

**2. Invoice Submission, Disputes, and Discounts.** Vendor's invoices shall (a) be delivered to Buyer electronically to [ap@wvm-llc.com](mailto:ap@wvm-llc.com), within 5 business days of shipment or completion of service, and (b) contain the PO number, (c) reference the PO line number, (d) have invoice line items that match the PO line items, and (e) be due 30 days after delivery thereof. If Buyer disputes amounts set forth in an invoice, Buyer may withhold and offset payment of the disputed amount, and the parties shall promptly use commercially reasonable efforts to resolve the dispute. Buyer shall not be obligated to pay any amount set forth in an invoice delivered more than 90 days after the date on which the Services or Goods referenced in the invoice were performed or delivered, as applicable. If Buyer pays an invoice within 15 days after delivery thereof, Vendor shall provide a discount equal to two percent of the amount of the invoice. If a dispute occurs concerning an invoice, the deadline for payment of an invoice and receipt of an

early payment discount set forth in this Subsection shall be determined using the date of delivery of the correct invoice and not the date of delivery of the incorrect invoice. Buyer's payment of an invoice does not constitute acceptance of Goods or Services.

- 3. Purchase Money Security Interest.** To the extent Buyer pays all or a portion of the Price for Goods prior to Vendor's delivery of the Goods to Buyer, Vendor grants to Buyer a purchase money security interest in the Goods, and Vendor authorizes Buyer to file, and shall provide Buyer reasonable assistance in the filing of, Uniform Commercial Code financing statements, continuation statements and such other documents as Buyer deems desirable or necessary to perfect, maintain, and protect the security interest granted herein.
- 4. Buyer's Cancellation.** Buyer may cancel or delay all or a portion of Goods or Services by giving Vendor notice prior to the delivery of the Goods or performance of the Services, as applicable.

  - 4.1. Cancellation.** If Buyer cancels all or a portion of Goods or Services (a "Cancellation"), unless the Cancellation is due to the breach of Vendor's obligations to Buyer (including a failure to timely deliver Goods), Buyer shall pay Vendor reasonable Cancellation charges consisting of the direct costs for labor and Goods expended by Vendor **before** the Cancellation, minus b)the reasonable value of the cancelled Goods or the materials comprising the cancelled Goods that Vendor can realize by selling or using the Goods, which charges shall not exceed five percent of the total Price of the cancelled Goods and Services.
  - 4.2. Cancellation Charges.** Cancellation charges shall not include any consequential, incidental, or indirect charges or expenses. If the sum of Buyer's prior payments and deposits under the PO exceed the Cancellation charges and other amounts due under the PO, Vendor shall promptly pay the difference to Buyer. Vendor shall minimize Cancellation charges and shall provide an accurate accounting thereof, less any offsets, to Buyer at the time Vendor makes a request for payment of Cancellation charges.
- 5. Default.** Vendor shall be in default under the PO if Vendor breaches any Specific Detail or Term and, if such breach is capable of being cured, does not cure such breach (a) within 15 days after Buyer gives Vendor notice of such breach, or (b) within 30 days if such breach is not capable of being cured within such 15-day period and Vendor is diligently working to effect a cure as of the expiration of such 15-day period, except that no cure period or notice from Buyer shall be required if (i) the default involves a (A) breach of an Applicable Section (defined below) or Section C.2, (B) a violation of Applicable Law, or (C) failure to comply with the Due Dates or Schedule, or (ii) Vendor commits the same or similar breach more than one time during any six- month period. Subject to the following Subsection, upon a default under the PO, Buyer shall be entitled to (w) suspend some or all of its performance under the PO, (x) cancel the affected Goods or Services without paying Cancellation charges, (y) terminate the PO and have no further obligation under the PO to Vendor, and (z) declare all or part of Vendor's obligations to Buyer under the PO immediately due. Buyer may set off against all amounts Buyer owes Vendor all amounts Vendor owes Buyer.
- 6. Liquidated Damages.** Damages to Buyer caused by Vendor's failure to comply with the Due Dates or Schedule are difficult to ascertain. Accordingly, liquidated damages may be set forth in the PO, and such liquidated damages (a) represent a fair, reasonable, and proportionate approximation of Buyer's damages caused thereby and do not constitute a penalty, and (b) shall be the sole damages available to Buyer for Vendor's failure to comply with the Due Dates or Schedule, but the liquidated damages shall not preclude Buyer's exercise of (i) other non-monetary remedies that may be available for such default, including termination of the PO or equitable relief, or (ii) any remedies (monetary or otherwise) available for other defaults that occur

currently with, before, or after such default.

## **7. Indemnification.**

**7.1. Clarifications.** The obligations of this Section shall apply regardless of the amount of insurance coverage held by Vendor, including coverage under a workers' compensation act, disability act, or other employee benefit act, or any other Applicable Law that would limit the amount or type of damages, compensation, or benefits payable by or for Vendor, and shall be both independent of and not limited by or to any insurance carried or provided by Vendor.

**7.2. Indemnification Obligations and Procedure.** Each party (the "Indemnifying Party") shall indemnify and hold harmless the other party, its Affiliates, its and their respective officers, directors, shareholders, members, partners, and employees, and the successors and assigns of all of the foregoing (as applicable, such party's "Group") from and against losses, costs, expenses, liabilities, damages, fines, and penalties, including court costs, reasonable attorneys' and professionals' fees and expenses and other litigation or settlement expenses ("Losses") sustained or incurred by a member of such Group, including as a result of a claim, demand, or action made by a Third Party or an employee of the Indemnifying Party (a "Third Party Claim"), to the extent the Losses arise out of (a) bodily injury or property damages directly or indirectly caused by the Indemnifying Party's Group or Personnel, (b) a grossly negligent or wrongful act or omission of, or a breach of the representations, warranties, or covenants of the PO by, the Indemnifying Party's Group or Personnel, or (c) in the case of Vendor as Indemnifying Party, infringement of the intellectual property rights of a Third Party by a Service or Good or otherwise directly or indirectly cause by Vendor' Group or Personnel. If a Third Party Claim is made against a member of a Group (as applicable, the "Indemnified Party") that could reasonably be expected to result in a Loss that is subject to the indemnification obligations of this Section, or if the Indemnified Party discovers any inquiry or investigation that it believes may involve or expect to lead to a Third Party Claim that could reasonably be expected to result in such a Loss, the Indemnified Party shall promptly notify the Indemnifying Party, and the Indemnifying Party and Indemnified Party shall cooperate to defend or settle such Third Party Claim.

**7.3. Additional Procedure for Infringement.** If a Third Party Claim has been made that a Service or Good has infringed any trademarks, patents, copyrights, trade secrets, trade names, or other Third Party rights, or if, in either party's judgment, any Good or Service is likely to be infringing (in each case, an "Infringing Item"), the Vendor may, at its option (a) procure for Buyer the right to continue using the Infringing Item, or (b) replace or modify the Infringing Item to make its use non-infringing while yielding substantially equivalent results. If neither of the above options are or would be available on a basis that the Vendor finds commercially reasonable, then Vendor shall terminate the PO, Buyer shall return the Infringing Item to Vendor (if the Infringing Item is a Good), and Vendor shall refund to Buyer the Prices paid for the Infringing Item. Vendor shall not be required to indemnify Buyer to the extent a Third-Party Claim of infringement arises from (i) the combination of an Infringing Item by Buyer with products or services not provided by Vendor, (ii) modification of an Infringing Item by any Buyer Personnel or member of the Buyer, or (iii) use of an Infringing Item by any Buyer Personnel or member of the Buyer Group in a manner not permitted or contemplated under the PO. Vendor's obligations under this Subsection are in addition to, and not in lieu of, its obligations under the previous Subsection with respect to Losses resulting from a Third-Party Claim of infringement.

**7.4. Manufacturers' Indemnities.** Vendor assigns to Buyer all of Vendor's right, title, and interest in each applicable indemnification commitment owed to Vendor by any Manufacturer of Goods for the applicable term, including any Manufacturer's indemnification obligations in the event of patent, copyright, trade secret, or other intellectual property right infringements or violations.

Vendor shall cooperate with Buyer to obtain the consent of each Manufacturer to the assignment of the Manufacturer's indemnification obligations to Buyer. Vendor shall execute and deliver such further instruments and take such further acts as may be reasonably requested to enable Buyer to exercise and enforce in Vendor's name all such rights.

**7.5. Interpretation of Indemnity Provisions.** If the indemnities provided in this Section are contrary to the Applicable Law governing the PO, then the indemnity obligations hereunder shall be construed to apply to the fullest extent allowed by Applicable Law.

**8. Intellectual Property.** Buyer shall own all information, including data in any form that is captured, stored, processed, or transmitted by Vendor on Buyer's behalf. Buyer grants to Vendor a nonexclusive nontransferable license to such information to the extent necessary for performance of the Services. All materials or Goods created, written, or developed for Buyer in the performance of the Services (collectively, "Deliverables") shall be deemed "works-made-for-hire" within the meaning of the copyright laws of the United States. Vendor assigns, and upon creation of each Deliverable automatically assigns, to Buyer, all right, title, and interest in such Deliverable and in all applicable United States and international copyrights, including all renewals, extensions, and continuations thereto, and all other intellectual property rights therein. Vendor shall own its (a) working papers, (b) preexisting materials, software and associated source code, and intellectual property, (c) general skills, (d) know-how, and (e) processes (collectively, "Vendor Materials"). Vendor shall deliver to Buyer copies of, and grants to Buyer a perpetual, irrevocable, nonexclusive, worldwide, royalty free right and license to use, all Vendor Materials necessary for the use of the Deliverables. To the extent Vendor incorporates into any Deliverables Third-Party software or other works licensed by Vendor from third parties, Vendor shall cause Buyer to have a perpetual, irrevocable, nonexclusive, worldwide, royalty free right and license to use such Third-Party software or other works.

**9. Confidentiality.** Vendor shall keep confidential and not disclose to any Person any (a) non-public documents and information designated by Buyer as "proprietary" or "confidential" or that Vendor knows or has reason to know Buyer treats as confidential, (b) business and investment opportunities disclosed by Buyer, (c) proprietary information of Buyer disclosed in oral or other media form that is identified in writing as confidential within 30 days following the disclosure, (d) business plans and methods, customer information, engineering, operating, and technical data of Buyer, (e) the dates of Buyer's outage schedule, and (f) all data, in any form, that was recaptured, stored, processed, or transmitted by Vendor on Buyer's behalf.

**10. Compliance with Applicable Law and Buyer Policies.**

Vendor shall, and shall cause its Personnel to, perform Services and provide Goods in accordance with all Applicable Laws and Buyer's Policies.

**11. Buyer Right of Inspections and Tests.** Buyer and its Personnel may inspect and test (a) the Goods and any quality assurance or other records related to the Goods during their design, manufacture, processing, construction, preparation, delivery, and completion, at reasonable times upon reasonable advance notice and in a manner that does not unreasonably interfere with Vendor's operations, and (b) all Services at any reasonable time and place, including the plant or yard of Vendor or any of its Personnel, and Vendor shall assist Buyer and its Personnel in carrying out such inspections and tests of the Goods and Services. While on the premises of Vendor, its Personnel, or a Manufacturer, Buyer shall, and shall cause its Personnel to, comply

with all site-specific rules and regulations. Vendor shall give Buyer reasonable notice of readiness for inspection of each Good before such Good is boxed or crated for shipment. If Vendor is not the Manufacturer of a Good, upon Buyer's advance request, Vendor shall obtain for Buyer the right to place an inspector in the Manufacturer's facilities to inspect the Good and the manufacturing and assembly process for the Good prior to shipping. At Buyer's request, Vendor shall supply test reports and material certificates. Unless otherwise stated in writing by Buyer, Buyer's performance of (or failure to perform) any inspection or test shall not be deemed (a) an assumption of risk, liability, or control over Vendor or its Personnel, (b) an acceptance or approval of the Services, or (c) a waiver of (1) Vendor's obligation to perform the Services or (2) Buyer's right to make a claim for Losses hereunder.

- 12. Limitation of Liability.** Neither party shall be liable to the other for special, indirect, consequential, nor punitive damages, except to the extent that any such damages arise from a party's (a) indemnification obligations hereunder, in connection with Third Party Claims, (b) breach of its confidentiality obligations hereunder, (c) gross negligence or willful misconduct, or (d) in the case of Vendor as liable party, intellectual property infringement by the Goods or Services.
- 13. Insurance.** Vendor shall obtain and maintain the Required Insurance (as defined below) at its sole expense for at least the Warranty Period and indemnity period of the PO. If at any time Buyer shall request proof of insurance, Vendor shall provide to Buyer certificates of insurance evidencing, the following insurance coverages underwritten by carriers with an AM Best's insurance rating of at least A-VIII, or equivalent, or otherwise acceptable to Buyer: (a) workers' compensation insurance with statutory limits and employer's liability insurance with limits of at least \$1,000,000.00, (b) commercial general liability insurance, including products liability coverage, with limits of \$1,000,000.00 per occurrence, (c) comprehensive automobile liability insurance for any automobile, including coverage for owned, hired, non-owned and borrowed vehicles and contractual liability, having a combined single limit of at least \$1,000,000.00 per occurrence, and (d) umbrella or excess liability insurance with limits of at least \$2,000,000 (collectively, the "Required Insurance"). The Required Insurance shall be (i) endorsed to name Buyer, its affiliates, and their respective officers, directors, shareholders, members, partners, and employees, and the successors and assigns of all of the foregoing (the "Additional Insured Persons") as additional insureds or provide blanket additional insured status that covers the Additional Insured Persons as additional insureds, except in the case of workers' compensation, (ii) the primary coverage without any right of contribution from any other insurance held by any Additional Insured Person, in each case, to the extent of the indemnification obligations assumed by Vendor hereunder, and (iii) so written or endorsed to include waivers of all subrogation rights of the insurers against the Additional Insured Persons to the extent of the indemnification obligations assumed by Vendor hereunder. The workers' compensation insurance shall include an Alternate Employer endorsement. If any Required Insurance is subject to a deductible, self-insured retention, or similar self-insurance or non-insurance mechanism that limits or otherwise reduces coverage, Vendor shall be solely responsible and liable for such deductible or mechanism in the event of any Loss, and Additional Insured Persons shall be entitled to recover from Vendor as if such limitation did not exist. Vendor shall make best efforts to notify Buyer at least 30 days prior to any cancellation, or expiration of or to any insurance policy provided hereunder.
- 14. No Assignment.** Vendor shall not assign, delegate, or subcontract all or any portion of the PO, including assignments of any interests in revenues or fees paid by Buyer under the PO, without the prior consent of Buyer. Any attempted assignment delegation, or subcontracting without Buyer's prior consent shall be void. If an assignment is consented to by Buyer, Vendor shall ensure that such assignee shall comply with the PO, and Vendor shall be liable for any Losses arising out of such assignee's non-compliance.

- 15. Injunctive Relief.** If Vendor violates, or threatens to violate the Subsections entitled “Independent Contractor,” “Confidentiality,” and “No Publication” (each, an “Applicable Section”), Buyer shall be entitled to immediate and permanent injunctive relief in addition to all other rights and remedies it may have at law or in equity, it being agreed that the damages that Buyer would sustain upon such violation are difficult or impossible to ascertain in advance. If Buyer is required to take legal action to enforce the covenants contained in an Applicable Section, or to enjoin Vendor from violating an Applicable Section: (a) Buyer shall be entitled to recover, as part of its damages, its reasonable legal costs and expenses for bringing and maintaining any such action; and (b) posting of a bond or cash shall not be required as a pre-condition to the issuance of the relief sought.
- 16. Governing Law; Venue.** The PO shall be governed by the Applicable Laws of the State of Texas, excluding its conflict of law principles. Any litigation under the PO shall be brought and maintained solely in the appropriate courts located in Travis County, Texas, and the parties consent to personal jurisdiction in the State of Texas. THE PARTIES HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT.
- 17. Attorneys’ Fees.** Except as otherwise provided herein, if a party shall commence any action or proceeding against the other party in order to enforce any provision of the PO or to recover damages as a result of the alleged breach thereof, the substantially prevailing party shall be entitled to recover all reasonable costs in connection therewith, including reasonable attorneys’ fees.
- 18. Cumulative Remedies; No Waiver.** Except as set forth herein with respect to Defective Goods and failure to comply with the Due Dates or Schedule, the remedies of the parties hereunder are cumulative and in addition to all rights and remedies at law and in equity. No delay in exercising or failure to exercise a right or remedy shall impair that or any other right or remedy or be construed as a waiver of any such right or remedy. Acceptance of late delivery of Goods shall not be deemed a waiver of Buyer’s right to hold Vendor liable for loss or damage resulting therefrom, nor shall it act as a modification of any of Vendor’s performance obligations hereunder.
- 19. Force Majeure.** To the extent, a party is rendered wholly or partly unable to perform, or is delayed in the performance of, its obligations under the PO due to an event that (a) is beyond its reasonable control, (b) is not the result of negligence, willful misconduct, breach of contract, or intentional act or omission of the affected party, and (c) could not reasonably be anticipated as of the date of the PO, including acts of God (including fire, flood, earthquake, storm, lightning strike, tornado, volcanic eruption, hurricane, or other natural disaster), nationwide strikes, lockouts, war, riots, acts of public enemy or terrorist, or failure to obtain Permits (a “Force Majeure”), such failure to perform or delay in performance shall not constitute a breach of the PO, so long as the affected party (i) notifies the other party as soon as practicable following the commencement of the Force Majeure, (ii) takes reasonable steps to avoid or remove the Force Majeure, and (iii) resumes performance when and to the extent the Force Majeure is removed. Unless a Force Majeure substantially frustrates the performance of a party’s obligations under the PO, the Force Majeure shall not operate to excuse, but only delay performance, and the obligations of such party shall be extended in an amount of time equal to the time of such delay. If a Force Majeure occurs on the part of Vendor causing a delay in Vendor’s delivery of Goods or performance of Services of more than 15 days beyond the Due Date for such Goods or the date for performance of such Services set forth in the Schedule, or if such delay significantly impairs Buyer’s or Vendor’s ability to meet its obligations under the PO or Buyer’s obligations to a Third Party or otherwise interferes with Buyer’s business activities, Buyer may invoke a Cancellation as to Goods or Services so affected, in which case Buyer shall not owe Cancellation charges.

- 20. Notices.** Except for notices required to be delivered by electronic mail pursuant Section B.2, all change orders, consents, notices, or other communications that are required or permitted to be given to the parties under the PO shall be (a) sufficient in all respects if given in writing and delivered (i) in person or by electronic mail, overnight courier, or certified mail, postage prepaid, return receipt requested, to the receiving party at address or email address shown on the PO Face, or to such other address or email address as such party may have given to the other by notice pursuant to this Section, or (ii) via Buyer's portal or electronic data exchange; and (b) deemed delivered, given, and received (i) on the date of delivery, in the case of personal delivery, electronic mail, or Buyer's portal or electronic data exchange, (ii) on the delivery or refusal date, as specified on the return receipt in the case of certified mail, or (iii) on the tracking report, in the case of overnight courier.
- 21. No Publication.** Vendor shall not use Buyer's name or the fact that Vendor is selling Goods to or performing Services for Buyer in any press releases, media statements, or public communications or otherwise publicize the PO without prior consent of Buyer. Vendor shall not use Buyer's name, logos, copyrights, trademarks, service marks, trade names, or trade secrets in any way without Buyer's prior consent, and Buyer shall not be deemed to have granted Vendor a license of, or granted Vendor any rights in, any of the foregoing by entering into the PO.
- 22. Entire Agreement; Amendment; Severability.** The PO contains the entire agreement of the parties relating to the subject matter of the PO and supersedes all prior and contemporaneous agreements, understandings, usages of trade and courses of dealing, whether written or oral, except for any terms and conditions contained in a Master Agreement. The PO may be altered, amended, or revoked only by issuance of a new PO or written change order issued by Buyer. If any provision of the PO shall for be held void or unenforceable, the remaining provisions shall remain in full force and effect.
- 23. Counterparts.** If signatures are required on the PO Face, (a) the PO Face may be executed in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one document, and (b) a signature in "PDF" format or an electronic signature on the PO Face shall be deemed an original and be binding upon the party against whom enforcement is sought.