

PURCHASE ORDER TERMS AND CONDITIONS (EFFECTIVE 03.31.2021)

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SECTION 1 DEFINITIONS

1.1 In addition to other defined terms used throughout these Purchase Order Terms and Conditions (the "Contract"), the following capitalized terms have the meanings specified in this Section 1.

"Affiliate(s)" shall mean, in relation to any person, an entity controlled, directly or indirectly, by the person, any person that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of fifty-one percent (51%) or more of the voting power of the entity or person, directly or indirectly, and "person" means any person, juridical or natural, including any corporation, partnership, limited liability company, or proprietorship, as applicable in context.

"Applicable Law(s)" means as amended from time to time: (a) statutes and regulations; (b) national, regional, state, municipal, or local laws; (c) judgments and orders of courts of competent jurisdiction; (d) rules, regulations, codes and orders issued by government agencies, authorities, and other regulatory bodies; and (e) regulatory approvals, permits, licenses, approvals, and authorizations.

"Business Day" means every day other than a Saturday or Sunday or a day that is an official holiday for employees of the federal government of the United States

"Change Order" means a written change in the quality, quantity, priority, specifications and drawings for the Equipment or Services, or any other obligation or requirement of Supplier, signed by Owner.

"Claims" means without limitation, any claim, demand, cause of action, suit, judgement, loss, cost, expense, damage, proceeding, fine, penalty, award of damages, or liability (including court costs, litigation expenses and attorneys' fees) including direct claims and causes of action between Owner and Supplier pertaining to indemnity or the enforcement of any right under this Contract or an applicable Purchase Order.

"Confidential Information" means all proprietary business and technical information or material disclosed to or received by Supplier from Owner Group that is not publicly known and that (i) gives the Owner some competitive business advantage or the opportunity of obtaining such advantage or the disclosure of which could be detrimental to the interests of the Owner; (ii) is owned by the Owner; and (iii) is either (A) marked "Confidential Information", "Proprietary Information", or some other similar marking; (B) is reasonably known by the Supplier to be considered confidential and proprietary by the Owner; or, (C) from all the relevant circumstances should reasonably be assumed by the Supplier to be confidential and proprietary to the Owner. Confidential Information includes, but is not limited to, the following types of information and other types of information of similar nature (whether or not reduced to writing): trade secrets, inventions, drawings, file data, documentation, diagrams, specifications, Know-How, processes, formulas and formulations, models, flow charts, research and development procedures, research or development and test results, marketing techniques and materials, marketing and development plans, price lists, pricing policies, business plans, information relating to

customers and/or suppliers' identities, characteristics and agreements, financial information and projections, and employee files. Confidential Information also includes any information described above that the Owner obtains from another party and that the Owner treats as proprietary or designates as Confidential Information, whether or not owned or developed by the Owner.

"Contract" means these Purchase Order Terms and Conditions.

"Contractor" has the meaning set forth in this Contract, the Purchase Order, or as stated by the Owner in writing.

"Contract Documents" has the meaning set forth in Section 2.2.

"Construction Contract" means contracts defined as set forth in Section 151 of the Texas Insurance Code (as amended), commonly known as the Texas Anti-Indemnity Act.

"Corrective Work" has the meaning set forth in Section 9.3.

"C-TPAT" means the Customs – Trade Partnership Against Terrorism.

"Dispute(s)" has the meaning set forth in Section 2.

"Equipment" means all equipment, materials, supplies, goods, apparatus, structures, special maintenance tools, components, appliances, start up and permanent spare parts, consumables and other goods and appurtenances thereto to be provided by Supplier or its Subvendors, and the lease of such Equipment, provided, however, that Equipment shall not include any materials, apparatus or tools owned by Supplier or a Subvendor that are used to complete the Work.

"Facilities" means Owner's facilities located at the Site.

"Force Majeure Event" has the meaning set forth in Section 20.

"Good Engineering and Manufacturing Practices" or "GEMP" means the generally accepted practices, methods, skill, care, techniques and standards employed by established suppliers of similar goods and services to those provided by Supplier with respect to (i) the design, engineering, manufacturing, inspection, testing, and installation of equipment similar to the Equipment and its components, which includes applicable codes and standards, Applicable Law, and the standards recommended by the suppliers and manufacturers of the Equipment; (ii) personnel and facility safety and environmental protection; and (iii) optimizing the reliability and availability of the Equipment and its components under the operating conditions reasonably expected at the Site. The Parties agree that GEMP expressly includes the obligation to advise Owner when any portion of the Work is defective. GEMP is not intended to be limited to the optimum practices, methods, techniques or standards to the exclusion of all others, but rather to be a spectrum of reasonable and prudent practices, methods, techniques and standards employed by the international design, engineering, fabrication and procurement service industries. In the event of an inconsistency or conflict between any

GEMP and standards, the most stringent GEMP practice or standards shall govern Supplier's performance under this Contract and the applicable Purchase Order.

"Governmental Instrumentality" means any federal, state or local department, office, instrumentality, agency, board or commission having jurisdiction over the Site, the Facilities, a Party or any portion of the Work.

"Government Official" means (a) any official or employee of any government, or any agency, ministry, or department of a government (at any level); (b) anyone acting in an official capacity for a government regardless of rank or position; (c) any official or employee of a company wholly or partially controlled by a government (e.g. a state-owned oil company), political party, or any official of a political party; (d) any candidate for political office, or any officer or employee of a public international organization (e.g. the United Nations or the World Bank); and (e) any immediate family member (meaning a spouse, dependent child, or household member) of any of the foregoing.

"Gross Negligence" means an act or omission (a) which when viewed objectively from the standpoint of the actor at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and (b) of which the actor has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.

"Guaranteed Date(s)" means the guaranteed delivery date(s) set forth in the applicable Purchase Order.

"Intellectual Property" means all rights, title and interest, throughout the world, in: (i) any idea, algorithm, design, concept, technique, methodology, process, invention, discovery or improvement, whether or not patentable, including all United States and foreign patents, patent applications, patent license rights, industrial design registrations, patentable inventions and certificates of invention, and all continuations, continuations in part, re-issues and reexaminations relating thereto and all inventions and discoveries in such patents and patent applications, (ii) any works of authorship or expression which includes but is not limited to design or technical drawings, computer programs, materials, tapes, source and object codes, and all prior and proposed versions, releases, modifications, updates, upgrades and enhancements thereto, as well as all documentation and listings, databases in all forms, versions and media, together with prior and proposed updates, modifications and enhancements thereto, as well as all documentation and listings therefor and business plans, whether or not copyrightable, including moral rights and copyrights recognized by law, together with any renewal or extension thereof, (iii) any logos, trademarks, domain names, service marks, trade names and trade dress, and all goodwill relating thereto, (iv) any trade secrets, technology licenses, confidential information, shop rights, Know-How and other intellectual property rights owned or claimed and embodied therein, or associated therewith, or similar rights protectable under any laws or international conventions throughout the world, and (v) in each case of the foregoing items (i) through (iv), the right to apply for registrations, certificates or renewals with respect thereto and the right to prosecute, enforce, obtain damages relating to, settle or release any past, present, or future infringement thereof.

“Know-How” means all technical proprietary knowledge, information, discoveries, inventions and expertise possessed by either party or to which either party has rights, whether or not covered by any patent, patent application, future patent application, copyright, trademark, trade secret or other industrial or intellectual property rights.

“Latent Defect” means any defect or deficiency in the performance of the Work or other non-compliance with the requirements in this Contract or applicable Purchase Order related to the performance of the Work which could not reasonably be expected to be discovered by observation or inspection made with ordinary care.

“OCIP Administrator” has the meaning in Section 24.2.

“Owner” means the Motiva entity identified on the face of the Purchase Order (and its successors and assigns).

“Owner Group” means individually and collectively, (i) Owner, subsidiaries, partners, and their respective Affiliates; (ii) OCIP Administrator, and (iii) the respective directors, officers, employees, agents, representatives, invitees of each Person specified in clause (i) or any other individual working under the direct control and supervision of any Person specified in clause (i).

“Party” or “Parties” means Owner or Supplier, as the context requires. Owner and Supplier are collectively referred to as the “Parties”.

“Permit” means any valid waiver, certificate, approval, consent, license, exemption, variance, franchise, permit authorization or similar order or authorization from any Governmental Instrumentality required to be obtained or maintained in connection with the Site, the Facilities, or the Work.

“Person” means any individual, company, corporation, partnership, joint venture association, joint stock company, limited liability company, trust, estate, unincorporated organization, Governmental Instrumentality or other entity having legal capacity.

“Purchase Order” means a purchase order issued in accordance with Section 2 which refers to and incorporates this Contract together with any exhibits or attachments thereto authorizing Supplier to perform certain Work.

“Purchase Order Price” has the meaning set forth in Section 3.5.

“Progress Report” has the meaning set forth in Section 7.11.

“Records” means books, accounts, records, documentation, contracts and information, in electronic format or otherwise, relating to performance of the Work, this Contract and any Purchase Order and all transactions related thereto.

“Relevant Requirements” means all Applicable Laws that prohibit the bribery of, or the providing of unlawful gratuities, facilitation payments, or other benefits to, any Government Official or any other Person, including: (a) the United States Foreign Corrupt Practices Act of 1977; and (b) the United Kingdom Bribery Act 2010.

“Safety Orientation Program” means Owner’s safety rules and regulations and training available at each Owner site (including the Site).

“Services” means the Services to be performed by Supplier for Owner pursuant to a Purchase Order, including procurement, engineering, design, fabrication, manufacture, delivery, transportation, storage, construction, workmanship, labor, technical services, inspection, training, testing and any other services. The term “Services” also includes the product or physical results of the performance of such Services.

“Site” means the real property owned or controlled by Owner and/or its Affiliates.

“Specifications” means the requirements and parameters requested for a piece(s) of Equipment or part.

“Submittals” means all drawings (including shop drawings), technical and design documents and records, plans, specification, other related submittals, in both hard copy and electronic format, prepared as part of or during, or that may impact, performance of the Work.

“Subvendor” means any sub-supplier, subcontractor, vendor, firm, representative or agent (of any tier) whom the Supplier has directly or indirectly engaged to perform or supply any portion of the Work.

“Supplier” means the firm, company, person or other entity contracted under the applicable Purchase Order.

“Supplier Group” means individually and/or collectively, Supplier, Affiliates, Subvendors, invitee of Supplier, and any director, officer, agent or employee of any of them.

“Supplier Intellectual Property” has the meaning set forth in Section 23.2.

“Third Party Proprietary Work Product” has the meaning set forth in Section 23.2.

“Warranty Period” means the period commencing upon completion of the Work and ending eighteen (18) months thereafter (as may be extended pursuant to Section 9).

“Willful Misconduct” means malice as defined as a specific intent by the party to cause substantial injury or harm to another.

“Work” means all obligations, duties and responsibilities required of Supplier pursuant to this Contract and the Purchase Order, including the performance of Services, or provision of items of Equipment under a Purchase Order.

“Work Product” has the meaning set forth in Section 23.1.

1.2 The terms “include,” “includes,” “including,” or any variants thereof, mean “including, without limitation.” References to “days” or a “day” shall mean a calendar day, unless otherwise stated. Whenever the singular or masculine or neuter is used in this Contract, it will be interpreted as meaning the plural or feminine or body politic or

corporate, and vice versa, as the context requires. Where a term is defined herein, a derivative of such term will have a corresponding meaning unless the context otherwise requires. Use of the verb "will" creates a present and ongoing obligation, unless the context otherwise requires. The rights and remedies of Owner herein shall be cumulative and additional to any other or further rights and remedies provided in law or equity. Unless expressly stated otherwise, reference in this Contract to an "Article" or a "Section" shall be a reference to an article or a section contained in this Contract (and not in any other exhibit, appendix or document forming this Contract) and reference in this Contract to an "Exhibit" shall be a reference to an attachment or exhibit attached to the applicable Purchase Order.

SECTION 2 PURCHASE ORDERS

2.1 Owner and Contractor may issue, and Supplier shall comply with, Purchase Orders. Supplier shall not perform any Work unless and until it is authorized to do so by a Purchase Order which references this Contract.

2.2 That Purchase Order, including any attachments to that Purchase Order, this Contract, and any Change Orders (collectively, the "Contract Documents") comprise the full and final agreement between Owner and Supplier on the subject matter hereof. In the event of any ambiguity or conflict among the Contract Documents, such ambiguity or conflict shall be resolved in the following order, with the highest priority listed first: Change Orders or written amendments agreed upon in writing between Owner and Supplier, any provision on the face of the Purchase Order, this Contract, and other documents listed herein or attached to the Purchase Order.

2.3 Each Purchase Order shall set out a description of the quantity of Work ordered, the Purchase Order Price, confirmation of the Guaranteed Dates, and any other information required by Owner.

2.4 Supplier acknowledges that Contractor may act for or on behalf of Owner, as Owner's limited agent, with respect to Owner's rights, remedies and obligations under this Contract, including executing Purchase Orders on Owner's behalf, instructing or directing Supplier; approving or settling (upon Owner's written approval) the invoices with Supplier, and enforcing Owner's rights under this Contract and applicable Purchase Orders. Notwithstanding the foregoing, Contractor has no authority to, without Owner's express prior written approval: (i) issue notices of default, termination, or suspension; (ii) enter into any Change Order on behalf of Owner; (iii) agree or accept a financial Claim by Supplier; (iv) terminate a Purchase Order; or (v) suspend all or any portion of the Work under a Purchase Order.

2.5 The Purchase Order Price, including any lump sum, unit prices and rates and sums shown in the pricing section of the applicable Purchase Order, shall be fixed and firm for the duration of such Purchase Order, or shall only be subject to escalation terms established in such Purchase Order. No escalation other than the escalation terms established in the applicable Purchase Order, or other adjustment shall be granted for any variation in any of Supplier's costs.

2.6 Unless otherwise expressly stated in this Contract or the applicable Purchase Order, the Purchase Order Price includes all taxes, duties and fees charged to Supplier in the country where the Facilities are located or in any other country involving any part of the Work such as but not limited to licenses, royalties, operation permits, fees, personal property taxes, income taxes, company corporate taxes customs duties for imported materials and equipment, stamp duties, fines, etc. The Purchase Order Price also includes all taxes and social security, or similar contributions required by Applicable Laws or collective union or union regulations, such as but not limited to compensation, salaries, wages, severance, social burden and benefits, pensions, annuities, etc. SUPPLIER SHALL INDEMNIFY AND HOLD OWNER GROUP HARMLESS FROM ANY LIABILITIES ON ACCOUNT OF NON-PAYMENT OR LATE PAYMENT OF ANY TAXES, DUTIES, FEES, ETC. AS ABOVE MENTIONED.

2.7 To the extent the Purchase Order Price contains a lump sum component, such lump sum component incorporates all provisions for future development and all consequences to such Purchase Order. Only in case of a Change Order will there be any adjustment of the lump sum portion of any Purchase Order Price.

2.8 To the extent the Purchase Order Price is based on unit prices and approximate quantities, it is expressly understood that such unit prices are deemed to include and fully compensate Supplier for all its obligations to Owner for the Work.

2.9 Supplier acknowledges and agrees that no modification to the compensation for any Work shall be effective against Owner unless the Parties mutually agree in writing to such modification in accordance with Section 5.

2.10 Supplier will maintain a Change Order record list showing both negative cost and positive cost changes for trending purposes.

2.11 Supplier shall take and pass through to Owner the full benefit of all available allowances, discounts, refunds and rebates applicable to the Equipment and/or Services provided by Supplier under any Purchase Order.

SECTION 3 PAYMENT

3.1 To obtain payment for Work, unless otherwise expressly provided in the applicable Purchase Order, Supplier shall, upon delivery of the Equipment or completion of the Services, as applicable, invoice Owner. Said invoice shall be accompanied by appropriate backup information for the Work, including, approved time sheets and/or such other reasonable documentation for Work, as requested by Owner or as otherwise required herein. Unless specifically stated otherwise in the applicable Purchase Order, all invoices shall be submitted as follows:

3.1.1 Submission Methods

- (a) **Ariba Network:** send electronically via Ariba
- (b) **Email:** (PREFERRED METHOD for non-ARIBA Network Suppliers)
Email to: APIInvoicing@Motiva.com

(c) **Paper Invoice:**
Motiva Enterprises LLC or Motiva Trading LLC
P.O. Box 470328
Tulsa, OK 74147

3.2 All Supplier invoices shall contain the following information:

Purchase Order Number
Supplier Invoice Number and Date
Owner Order Line Item Number (if applicable)
Purchase Order Price
Extended and Total Pricing
Unit of Measure
Supplier Name and Remit to Address
SAP Material Numbers (if applicable)

3.3 Supplier agrees Owner shall not be responsible or liable for, and Supplier hereby waives any and all Claims with respect to, any compensation amounts for which Supplier fails to provide an invoice in compliance with the terms of this Contract within one hundred eighty (180) days of the completion of the relevant Work performed under an applicable Purchase Order.

3.4 Unless otherwise expressly provided in the applicable Purchase Order, Owner shall pay, or cause Contractor to pay, undisputed amounts within sixty (60) days after Owner's receipt of Supplier's valid invoice and supporting documentation (including lien and claim waivers as required herein). Payment shall be made via check or electronic payment at Owner's option. Supplier acknowledges that all electronic payments shall be governed by the most current version of the National Automated Clearinghouse Association Operating Rules and Guidelines. If Owner disputes any invoice, in whole or in part, Owner may, in its sole discretion, either (a) pay only the undisputed portion or (b) hold payment until receipt of a corrected invoice and supporting documentation from Supplier, and Owner and Supplier shall endeavor to promptly settle and adjust any disputed amount.

3.5 Complete or partial payment for Work ordered under any Purchase Order shall not be deemed an acceptance of Work thereof by Owner or a waiver of any defects. The price specified in each Purchase Order shall be the entire compensation payable to Supplier for the full and complete performance of the Work specified in such Purchase Order and all of Supplier's other obligations under this Contract and such Purchase Order (the "Purchase Order Price"). The Purchase Order Price is subject to adjustment only by Change Order as provided in Section 5.

3.6 In addition to disputed amounts set forth in an invoice, Owner may, in addition to any other rights under this Contract, at law or in equity, withhold payment on an invoice or a portion thereof, offset payments due to Supplier, or collect on any letter of credit/bank guarantee, in an amount and to such extent as may be reasonably necessary to protect Owner from loss.

3.7 All payments are subject to final audit by Owner and its representatives. Any payment made by Owner to Supplier shall not prevent Owner from filing Claims for nor prejudice its right to recover the amount of such Claims, however they may have arisen. Without limiting the type or nature of such Claims, Owner may recover any sums paid to Supplier by mistake of law or fact. Owner, without waiver or limitation of any rights or remedies, shall be entitled from time to time to deduct from any amounts due or owed by Owner to Supplier in connection with any agreement between the Parties, including any Purchase Order, and to offset payments due to Supplier with such amounts.

3.8 If provided for in the Purchase Order, Owner reserves the right to retain ten percent (10%) of any invoiced amount.

SECTION 4 THE WORK

4.1 Supplier shall perform the Work in accordance with GEMP, Applicable Law and all other terms and conditions of this Contract and the applicable Purchase Order. It is understood and agreed that the Work shall include any incidental work that can reasonably be inferred as required and necessary to complete the Work in accordance with this Contract and the applicable Purchase Order, excluding only those items which Owner has expressly agreed to provide as set forth in an applicable Purchase Order. Supplier shall obtain and pay for all Permits, licenses, fees, and certificates of inspection necessary for the prosecution and completion of the Work and provide any bond required by Applicable Law in connection therewith.

4.2 Upon delivery or completion of the Work under, or termination of, a Purchase Order, Supplier shall deliver to Owner one (1) electronic and one (1) hardcopy set of record 'as-built' drawings and specifications, test reports and all documentation, manuals and instruction books necessary for safe and proper operation of the Equipment including Submittals and documents specified in the Purchase Order, if applicable.

4.3 To the extent Supplier will be performing Work on Site or some other location as directed by Owner, Supplier acknowledges that it has satisfied itself as to the nature of the Site or location for the performance of such Work, the conditions and other difficulties it may encounter in performing the Work in accordance with the schedule of performance (including the Guaranteed Dates) and for the Purchase Order Price.

4.4 Supplier shall not make substitutions or deviations for the materials, Equipment, manufacturers and processes set forth in the applicable Purchase Order without Owner's prior written consent. All Supplier requests for substitutions must be submitted in writing to Owner. Such requests must include full details and supporting data and samples, if required to permit a fair evaluation of the quality, serviceability, warranty, and other pertinent aspects of the proposed substitute. Requests for substitutions also must state the effect of the substitute on the cost and schedule of the Work. Substitutions will be considered only if Owner receives the advantage of lesser cost with no decrease in quality, or earlier completion date or both. Owner's decision as to the use of any substitution or deviation shall be final; however, the approval of Owner shall not relieve Supplier from its responsibility and obligation to fully comply with all requirements in the

applicable Purchase Order and shall not affect the warranty or any guarantees covering all or any part of the Work.

SECTION 5 CHANGE ORDER

5.1 No changes or substitutions shall be made without the prior written consent of Owner. Owner shall have the right to make changes in the quality, quantity, priority, specifications and drawings for the Equipment or Services, or any other obligation or requirement of Supplier. To the extent any change materially impacts the Work, as determined solely by Owner, then such change must be accompanied by a Change Order. If Supplier believes that such a change affects the Purchase Order Price or a Guaranteed Date, Supplier shall so notify Owner in writing within five (5) Business Days after receipt of said written direction from Owner and include a written statement setting forth the effects, if any, such proposed change would have on the Purchase Order Price, Guaranteed Date(s), or other obligations of Supplier hereunder. Owner and Supplier shall endeavor to mutually agree in writing upon an adjustment to a Purchase Order (including the Purchase Order Price and/or Guaranteed Date(s), if any) to reflect the actual effect of such change. Supplier's request for any adjustments shall be deemed forever waived unless submitted in writing within such five (5) Business Days after Supplier receives direction from Owner to make such changes. No agreement or understanding modifying the conditions or terms of this Contract or any Purchase Order shall be binding upon Owner nor will extra compensation be paid by Owner unless the agreement or understanding is made in writing and signed by Owner.

5.2 If Owner agrees with Supplier's written statement of the impacts resulting from the proposed Change Order (or the Parties modify such proposed Change Order so that the Parties agree on such impacts), Owner shall issue to Supplier, and the Parties shall execute, such Change Order and such Change Order shall become binding on the Parties, as part of the Purchase Order.

5.3 Supplier shall not suspend performance of the unaffected portion of any Purchase Order while Owner and Supplier are in the process of making such changes and any related adjustments or at any time thereafter unless so instructed in writing by Owner. If instructed in writing by Owner, Supplier shall comply with and perform such change as directed by Owner during the time Supplier and Owner require to mutually agree upon an adjustment.

5.4 In the event Owner and Supplier are unable, within ten (10) days of Owner's issuance of a proposed change pursuant to Section 5.1, to agree upon the terms of a mutually acceptable Change Order, including adjustments to any Guaranteed Date(s) and/or a Purchase Order Price, if any, then Supplier shall nonetheless diligently proceed with the change as directed by Owner if Supplier receives a written direction to do so from Owner, provided however, each of the Parties hereto reserve their rights to dispute any and all Claims for modifications to the Purchase Order. Owner's written direction may include an adjustment in the Guaranteed Date(s) and/or the Purchase Order Price, if Owner deems it prudent and applicable. Pending final determination of Supplier's entitlement to such costs, Owner shall pay such invoices in accordance with the provisions of this Contract and the applicable Purchase Order.

5.3 Change Orders agreed pursuant to this Section 5 by the Parties shall constitute a full and final settlement and accord and satisfaction of all effects of the change as described in the Change Order upon the schedule (including Guaranteed Date(s)), Purchase Order Price, or any other obligation or potential liability of Supplier hereunder and shall be deemed to compensate Supplier fully for all direct and indirect impacts of such change. Accordingly, Supplier expressly waives and releases any and all right to make a Claim or demand or to take any action or proceeding against Owner or Contractor for any other consequences arising out of, relating to, or resulting from such change reflected in such Change Order, whether the consequences result directly or indirectly from such change reflected in such Change Order, including any Claim or demand for damages due to delay, disruption, hindrance, impact, interference, inefficiencies or extra work arising out of, resulting from, or related to, the change reflected in that Change Order (including any Claims or demands that any Change Order or number of Change Orders, individually or in the aggregate, have impacted the unchanged Work).

SECTION 6 TAXES

6.1 Owner shall pay all federal, state, and local Tax or other Taxes that are directly imposed on transactions governed by this Contract. "Tax or Taxes" include the following U.S. taxes: federal, state, and local excise taxes, sales, use and transaction taxes, gross receipts taxes, utility taxes, environmental taxes and fees or any other taxes that Supplier may be required to collect or pay on the transactions governed by this Contract except any taxes imposed on Supplier that by law cannot be passed on to the Owner.

6.2 Owner holds a Texas Direct Payment Permit and shall be responsible for all Texas state and local sales and use taxes, if any, arising out of the sale of the Equipment to Owner pursuant to the applicable Purchase Order and this Contract and services provided. Owner shall provide a properly completed Form 01-919 Texas Direct Payment Exemption Certification Limited Sales, Excise and Use Tax upon request in lieu of Texas state and local sales and use taxes. Supplier and its Subvendors shall purchase all Equipment tax-free for resale to Owner as the ultimate consumer of the Equipment. Supplier and Owner agree to provide each other information and data that they may from time to time reasonably request and otherwise fully cooperate with each other in connection with (i) the reporting of any Texas state and local sales or use taxes payable; (ii) any Texas state and local sales or use tax audit; and (iii) any assessment, refund claim or proceeding relating to Texas state and local sales and use taxes payable.

6.3 Notwithstanding the above, if Supplier is required to collect Tax on a transaction governed by this Contract, Supplier shall invoice such Tax as a separate line item on the invoice. Supplier shall not collect any such Tax for which Owner furnishes to Supplier, in a timely manner, a valid and properly completed exemption certificate or valid license for which Owner may claim an available exemption from Tax. Owner shall be responsible for any Tax, interest and penalty if such exemption certificate or license or other form of proof of exemption is disallowed by the proper taxing authority. In the event that a refund opportunity arises with respect to any Tax paid by one party as a result of the transactions governed by this Contract, both parties shall reasonably work together

to pursue such refund and the refund shall be paid to the party that incurred the tax burden.

6.4 If the Purchase Order involves goods imported into the Customs Territory of the United States, the party acting as the Importer of Record for US Customs purposes is responsible for filing the clearance declaration and shall be liable for paying any applicable import related fees and/or tax, such as customs duties, harbor maintenance fees, merchandise processing fees, and oil spill fees. Supplier shall provide Importer of Record with all documentation necessary to support the Customs declaration. If the Purchase Order involves goods for which US import duty drawback can be claimed, the Parties hereto may separately negotiate the sharing of such drawback refund.

6.5 Owner shall not be liable for any of Supplier's income taxes; any withholding taxes imposed on gross amounts; any franchise tax measured by capital, capital stock, net worth, gross margin, gross receipt or gross profit; any minimum or alternative minimum tax; or any taxes imposed by law on Supplier that are prohibited by law from being passed on to Owner. Further, Owner shall not be liable to Supplier for any employment related tax, fee, or charge. Owner shall not be liable for any of Supplier's inventory based taxes, ad valorem taxes or property taxes. Owner shall be responsible for filing returns and paying inventory based taxes, ad valorem taxes and property taxes on property and/or inventory that they own on the assessment date.

6.6 Supplier will furnish to Owner a properly completed I.R.S. Form W-8 or I.R.S. Form W-9, as appropriate, to enable Owner to determine if U.S. income tax withholding is required. If U.S. withholding applies, Owner will withhold amounts on its payments to Supplier as required under U.S. law, unless Supplier provides Owner with the appropriate documentation to mitigate such tax.

SECTION 7 DELIVERY, SUPPLIER QUALITY SURVEILLANCE (SQS) INSPECTION AND EXPEDITING.

7.1 Shipment and delivery of the Equipment shall be in strict accordance with the Incoterm and other instructions contained in this Contract and the applicable Purchase Order. Unless otherwise stated in a Purchase Order, the Incoterm applicable to shipment and delivery of the Equipment will be DDP, and any freight shall be paid by Supplier and is included in the Purchase Order Price.

7.2 Partial shipments are not allowed unless expressly stated in the Purchase Order. Partial shipments must be accompanied by identifying documents, but such shipments shall not be interpreted to make the obligations of Supplier severable. Itemized packing slips, identifying the Purchase Order, shall accompany each shipment hereunder.

7.3 Supplier shall, at its own costs and expense, properly pack, store, and maintain all Equipment prior to the delivery of any Equipment. Any damage, loss, delay or extra work due to Supplier's packaging shall be for the account of Supplier.

7.4 Supplier warrants that the Equipment, when delivered in accordance with the applicable Purchase Order , will (i) conform to the Specifications defined in such Purchase Order, and (ii) have been carefully manufactured, packaged, labeled, sold and delivered in full compliance with all Applicable Laws and regulations.

7.5 Supplier shall submit to Owner a Certificate of Origin for each individual shipment to Owner. Supplier shall advise Owner, prior to inquiring/tendering, of any equipment, materials or fabrications which are not originating from the following countries or regions:

7.5.1 Japan

7.5.2 United States and Canada

7.5.3 UK, France, Germany, Austria, Spain, Switzerland, Sweden, Finland and Italy

7.5.4 Argentina, Mexico, Romania

7.5.5 South Korea

7.5.6 Brazil

7.5.7 South Africa (for plate only)

7.5.8 Luxembourg (for beams only)

7.6 Notwithstanding Section 7.5 above, Supplier shall notify Owner, prior to inquiring/tendering, of any equipment, materials or fabrications which would be subject to quotas, CVD and or tariffs.

7.7 Supplier shall be responsible for the performance of all activities affecting quality and schedule of the Work, including those of its Subvendors. Supplier shall establish, implement and maintain, and require its Subvendors to establish, implement and maintain with respect to their portion of the work, appropriate and Owner approved quality assurance and quality control procedures as well as witness and hold point testing and inspection plans and any other documentation and information in accordance with the requirements set forth in this Contract and applicable Purchase Orders and shall be in all other respects satisfactory to Owner. Notwithstanding any such quality control programs established by Subvendors, Supplier shall be responsible for assuring that the Work and the performance thereof is in strict compliance with the requirements of this Contract and the applicable Purchase Order. Owner reserves the right to review, comment upon and require changes to Supplier's quality assurance and quality control procedures. The Equipment is subject to inspection, expediting, and auditing by Owner and its representatives and/or any of their respective designees, as Owner may request or require, to verify the implementation of Supplier's quality assurance and quality control procedures and progress of the Work. At all times during performance of the Work, Supplier shall provide, at its own cost, Owner, Owner's representative and/or any of their respective designees with access to the Equipment wherever and whenever it is in

preparation and progress as well as access to: (i) Supplier and its Subvendors personnel; (ii) all Submittals; and (iii) the opportunity to observe all tests of Equipment, including all Supplier's and Subvendor's witness and hold point tests established in accordance with Supplier's fabrication procedures and any inspection test plan established pursuant to Supplier's quality assurance and quality control procedures. Supplier shall, at its sole cost and expense, carry out any test and inspections required by under the Purchase Order or necessary to verify that the Equipment complies with the requirements in this Contract and the Purchase Order. Supplier shall provide notice to Owner's representative of the schedule for all testing of Equipment not less than thirty (30) days prior to any such testing. Supplier shall arrange for such inspection and observance of such tests at the mills or shops of Supplier or, if appropriate, of any Subvendors where any part of the Equipment is being fabricated or manufactured. Supplier shall supply all necessary labor, material, equipment, accommodations, apparatus, instruments, and competent test personnel who shall be able to take complete charge of the inspection or test, and shall be authorized to represent and make decisions for the proper carrying out of the inspection or tests to the reasonable satisfaction of Owner. Owner shall have the right to identify to Supplier any portion of the Work, including, without limitation, any design, engineering or Equipment, which in Owner's judgment does not conform to the requirements of this Contract or the applicable Purchase Order, including the Submittals. Upon such identification, Supplier shall at its own cost promptly remedy any non-conformity as has been so identified by Owner, including the performance of any additional testing to verify compliance with the requirements herein. Costs for additional expediting or inspection by Owner, or its representatives caused by reasons for which Supplier is responsible shall be for the Supplier's account.

7.8 Supplier shall prepare the Submittals in sufficient detail to satisfy applicable codes and standards, Applicable Law (including all regulatory approvals) and the requirements of this Contract and the applicable Purchase Order. The Owner's representative shall have the right to review and inspect the preparation of Submittals, wherever they are being prepared, including the right to perform 'over-the-shoulder' reviews of Supplier's progress. Each of the Submittals shall, when considered ready, be submitted to the Owner's representative for the review period. In this Section 7.8, "review period" means the period required by the Owner's representative, which shall not exceed twenty-one (21) days, calculated from the date on which the Owner representative receives a proposed submittal and the Supplier's notice that it is considered ready for review; provided that, if Owner requires more than twenty-one (21) days, Owner shall, as soon as practicable and within such twenty-one (21) day period, so inform Supplier. If the Owner representative, within such review period, notifies the Supplier that a proposed Submittal fails (to the extent stated) to comply with the requirements of this Contract or the applicable Purchase Order, it shall be rectified, resubmitted and reviewed in accordance with this Section 7.8 at the Supplier's cost. For each part of the Work, and except to the extent that the prior consent of the Owner's representative shall have been obtained: (i) fabrication shall not commence prior to the expiry of the review periods for the Submittals which are relevant to the fabrication; (ii) fabrication shall be in accordance with such Submittals; and (iii) if the Supplier wishes to modify any design or document which has previously been submitted for such review, the Supplier shall immediately notify the Owner representative, and shall subsequently submit revised documents to the Owner representative for review. If the Owner representative instructs

that further Submittals are necessary for carrying out the Work, Supplier shall, upon receiving the Owner representative's instructions, prepare such Submittals. Errors, omissions, ambiguities, inconsistencies, inadequacies and other defects shall be rectified by Supplier at its cost.

7.9 No inspection or review by Owner representative shall constitute an approval, acceptance, endorsement or confirmation of any drawing, plan, manual, specification, test, Equipment, Services, program, method of procedure or other work done or an acknowledgment of a drawing, plan, specification, test, Equipment, Services, program, method of procedure, or that any of the foregoing or other work done satisfies the requirements of this Contract or the applicable Purchase Order. No inspection or review shall relieve Supplier of any of its obligations to perform the Services or furnish the Equipment so that the Work, when complete, satisfies all the requirements of this Contract and applicable Purchase Order, or relieve Supplier from any liability. If Owner shall waive or fail to exercise its right to inspect and witness any test as herein provided, it shall in no way relieve Supplier of full liability for the quality, character, proper operation and performance of the completed Work, and every part of it, nor shall it prejudice or affect the rights of Owner set forth in this Contract or applicable Purchase Order.

7.10 SUPPLIER SHALL NOT SHIP THE EQUIPMENT WITHOUT OWNER'S FINAL INSPECTION OR A WRITTEN WAIVER OF INSPECTION FROM OWNER. VIOLATION OF THIS REQUIREMENT SHALL CONSTITUTE A REJECTION OF THE EQUIPMENT, WITH SUBSEQUENT RETURN OR OTHER ACTION AT SUPPLIER'S COST.

7.11 Complete and accurate information is required to maintain the overall schedule. Unless otherwise stated in a Purchase Order, Supplier shall at a minimum furnish every seven (7) days, a progress report, reflecting, among other things, the status of engineering, material procurement, production and shipping information ("Progress Report"). Weekly Progress Reports shall be prepared by the Supplier and submitted electronically to Owner in such numbers of copies as Owner may reasonably request. Each Progress Report shall include the required documents established in this Contract and subsequent Purchase Orders.

7.12 Supplier shall participate in regularly scheduled joint management meetings as Owner's representative may request. At Owner's sole discretion, participation may be by phone or video conferencing.

7.13 In the case of Equipment delivered during the preceding month, Supplier shall supply with each Progress Report for all Equipment delivered originals of: (i) all bills of lading marked freight prepaid issued or endorsed to the order of Owner; (ii) one commercial invoice relating to the Equipment delivered; (iii) a detailed packing list for each shipment of Equipment; (iv) a certificate signed by an authorized representative of Supplier, certifying that all items of Equipment included within an Equipment or category of Equipment have been delivered in compliance with the provisions of this Contract and the applicable Purchase Order, and that all such Equipment has passed any applicable factory quality tests.

7.14 Upon request of Owner, Supplier and each Subvendor shall deliver or cause to be delivered from time to time, such additional documents, information, projections,

technical analyses, shipping information, fabrication information, certifications of its officers, accountants, engineers or agents as may be reasonably requested and as relates to the Supplier's obligations under this Contract and applicable Purchase Order.

7.15 If, at any time, for reasons attributable to Supplier or its Subvendors: (i) it is reasonably ascertained by Owner that actual progress is too slow for Supplier to achieve the Guaranteed Date(s); or (ii) Supplier's progress has fallen (or is reasonably ascertained by Owner that it will likely fall) behind schedule, then Owner may, without limiting and in addition to any other right Owner may have, instruct Supplier to correct such Work by the submission of a revised program and supporting report describing the revised methods and corrective action which Supplier proposes to adopt in order to expedite the progress of the Work and bring it back into compliance with the schedule. Subject to the approval of Owner, Supplier shall adopt these revised methods, which may include, among other things, the installation of a representative or representatives of Owner at the facilities of Supplier or any of its Subvendors at Supplier's sole risk and cost. The risk and costs of adopting all such revised methods shall be borne by Supplier, including any and all costs and expenses incurred by Owner in connection therewith (which shall be deemed to constitute Corrective Work to remedy a defect or deficiency). If Supplier fails to perform or diligently prosecute the revised methods as approved by Owner, Owner may, in addition to any other right under this Contract, at law or in equity, remove the Equipment from Supplier's or its Subvendors facility and have it completed by any means all at Supplier's costs.

SECTION 8 TITLE AND RISK OF LOSS

8.1 Title. Title to all or any portion of the Equipment shall become (or shall be deemed to become) Owner's (or its designee's) property upon the earliest of (i) any payment by Owner (or its designee) therefor; (ii) delivery of the Equipment to the Site; or (iii) incorporation of such Equipment into the Facilities. Transfer of title to Equipment shall be without prejudice to Owner's (or its designees) right to reject defective Equipment, or any other right in this Contract or any Purchase Order. Supplier warrants and guarantees that legal title to and ownership of the Equipment shall be free and clear of any and all liens, security interests or other encumbrances when title thereto passes to Owner (or its designee).

8.2 Risk of Loss. Regardless of when title to any Equipment passes to Owner as provided in Section 8.1, Supplier shall bear the risk of loss on the Equipment (and all material incorporated or to be incorporated into the Equipment) until the Equipment is delivered to, and accepted by, Owner in accordance with this Contract and the applicable Purchase Order.

SECTION 9 WARRANTIES

9.1 Supplier warrants and represents to Owner that each and every aspect or component of the Work, including the Equipment, Services and any and all deliverables (such as Submittals) shall:

9.1.1 be performed expeditiously, in a good and workmanlike manner, in accordance with Owner instructions, protocols and/or guidelines and the latest recognized industry standards;

9.1.2 be in conformance to and in accordance with the requirements and specifications of this Contract and the applicable Purchase Order, including in accordance with Applicable Law, applicable codes and standards and GEMP;

9.1.3 be free from encumbrances to title;

9.1.4 with respect to materials and equipment furnished in performance of the Work, be of good quality and new unless otherwise specified in the applicable Purchase Order;

9.1.5 be performed only by competent, skilled and properly trained workers;

9.1.6 with respect to Work being performed which requires certifications or licenses, performed by workers who are so certified and/or licensed, and Supplier shall submit all valid certificates or licenses to Owner prior to starting Work;

9.1.7 be free from defects in design, material, and workmanship;

9.1.8 with respect to any design, that Supplier has the right to develop the Work Product for the applicable Facility and Equipment and has the authority to grant Owner the licenses set forth in Section 23, with respect to the Work Product and any proprietary intellectual property included therein, without any restrictions, including any restrictions that might be imposed by owners of other projects on the use of Supplier's or its Subvendors intellectual property; and

9.1.9 Be composed of only proven technology in commercial operation at the effective date of the Purchase Order.

9.2 Neither Owner's nor its representatives' inspection nor failure to inspect shall relieve Supplier of any obligation under this Contract or an applicable Purchase Order.

9.3 Except as provided below with regard to Latent Defects, at any time during the performance of the Work and during the Warranty Period, Owner will notify or make a reasonable attempt to notify Supplier of the failure of the Work or any product thereof to meet the warranties in Section 9 and Supplier shall immediately and on an expedited basis, at its sole cost and expense, repair, replace, reperform, remove and replace, adjust, or otherwise correct any such defect ("Corrective Work"). Notwithstanding the preceding sentence, in the event any Latent Defect(s) in Supplier's performance of the Work are discovered after the eighteen (18) month period following completion of the Work through the end of the thirty-sixth (36) month following completion of the Work, Supplier shall correct such Latent Defect at its sole cost and expense. Notwithstanding the foregoing, if any defective Work materially affects the operation, construction or use of the Facilities, other facilities or projects, Owner's operations or an portions thereof, or presents an imminent threat to the safety or health of any Person constituting an

emergency, and Owner knows of such defect, Owner may (in addition to its other remedies herein, at law or in equity) correct such defective Work without making a reasonable attempt to give prior notice, and in that event, Supplier shall be liable to Owner for all Claims arising out of or relating to the defective Work and shall pay Owner (directly or by set off or by collection on any letter of credit/bank guarantee) an amount equal to such Claims upon receipt of an invoice from Owner.

9.4 If Supplier fails to immediately commence and diligently complete Corrective Work within a reasonable time (not to exceed five (5) days) after notification by Owner or if Supplier agrees, Owner may take such steps as may be necessary to correct such nonconformities. In such event, Supplier shall be liable to Owner for all such costs and expenses, including costs set forth in Section 10.2, and Owner may require Supplier provide corresponding credit invoices and Owner may deduct such costs from any sums due or to become due to Supplier.

9.5 If Corrective Work is performed under Section 9.4, then Supplier warrants that such Corrective Work shall conform with the warranties set forth in this Section 9 until the end of the original Warranty Period or until twelve (12) months from the date that such Corrective Work is completed by Supplier and accepted by Owner (in the case of Equipment, when such corrected Equipment is returned to service), whichever last occurs.

9.6 Supplier's warranties also apply to Work performed by Supplier's Subvendors. Supplier shall obtain from all of its Subvendors similar warranties (including scope and duration) with respect to Work performed by such Subvendors; however, such Subvendor warranties will not relieve Supplier from its warranty obligations hereunder.

9.7 Supplier will make best efforts to assign to Owner all warranties and guarantees issued by manufacturers, fabricators and vendors with regard to Equipment or material procured by Supplier for incorporation into the Work or the product of the Work. Supplier shall, for the protection of Owner, obtain warranties from all Subvendors as required by Section 9.6, and thereafter enforce, all such warranties with respect to Services and Equipment. Supplier agrees during the Warranty Period to cause each Subvendor to inspect and to repair, replace or otherwise correct any such nonconforming Work or Equipment consistent with such applicable Subvendor warranty. Any Subvendor warranty in excess of the warranties or longer than the Warranty Period set forth above shall be assigned to Owner at the end of the Warranty Period. Notwithstanding the foregoing, Supplier in all cases shall be responsible for the Work and no failure on the part of a Subvendor to honor a warranty shall operate to limit or otherwise excuse Supplier's obligations with respect thereto.

9.8 EXCEPT FOR THE WARRANTIES CONTAINED HEREIN, SUPPLIER MAKES NO OTHER WARRANTIES FOR SERVICES, EQUIPMENT OR GOODS, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ADVICE, MERCHANTABILITY OR RESULT, OR ANY IMPLIED WARRANTIES ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE, AND ALL SUCH OTHER WARRANTIES ARE DISCLAIMED.

9.9 If chronic failure of Equipment occurs during the Warranty Period (either original or as may be extended as a result of failures during the original Warranty Period), Supplier shall investigate the root cause of such chronic failure and complete such corrected Equipment in order to correct the root cause of the chronic failure.

SECTION 10 BACKCHARGES

10.1 In the event that prior to the commencement of the Warranty Period any of the Work (including the Equipment, Services and any activities associated with the conduct of the Work) is found to have defects or deficiencies, Owner shall have the right to: (1) require Supplier correct by repair, replacement, re perform, of the non-conforming Work; (2) reject any or all defective or non-conforming Work, or (3) accept and correct such Work, at Supplier's expense. Supplier shall be responsible for and pay all such costs and expenses associated with Supplier's failure to comply with the requirements herein, including such repair, replacement, reperformance rejection or correction and all handling and transportation costs to and from destination, and Owner's costs and expenses for any required expediting, re-inspections, analyses or additional testing. it is the responsibility of Supplier to promptly repair, replace, reperform, or refinish the same when so directed.

10.2 If upon receiving written notice from Owner of Work which has defects or deficiencies, and having been directed to correct such Work by a certain date, Supplier states or by its actions indicates its inability or unwillingness to comply, then Owner shall proceed to instruct or accomplish the corrective work by the most expeditious means available to it and charge Supplier for the cost of repairing, replacing or refinishing Equipment or reperforming Services. The cost of back-charge may include costs associated with labor, material, construction equipment and taxes. Owner shall have the right to a mark-up of fifteen percent (15%) applied to all such back-charge costs.

10.3 Upon completion of the corrective Work, Owner will invoice the Supplier for all costs incurred, or withhold such sum, from any funds due the Supplier. The performance of back charge work by or on behalf of Owner shall not relieve the Supplier of its responsibilities and obligations in this Contract and the applicable Purchase Order.

SECTION 11 LIENS

11.1 Supplier shall save and keep Owner and Owner's premises free and clear from all construction claims, liens or encumbrances of the nature of mechanic's, labor or materialmen's liens or otherwise, whether legal or equitable, arising out of the Work. In the event any such claim, lien or encumbrance is made by anyone claiming by, through or under Supplier, Supplier shall at its own cost and expense remove and discharge same within ten (10) Business Days. If Supplier fails to do so, then Owner may, in its sole discretion and in addition to any other rights that it has under this Contract, at law or in equity, take any one or more of the following actions:

11.1.1 remove and discharge all claims, liens or encumbrances using whatever means that Owner deems appropriate, including by bond or direct payment to claimant, in amounts that Owner determines in its sole discretion as being necessary

to discharge such lien or encumbrance. In such circumstances, Supplier shall be liable to Owner for all damages, costs and expenses (including, but not limited to, reasonable attorneys' fees) incurred by Owner, and Owner shall have the right to require Supplier pay Owner for all such Claims incurred by Owner in removing and discharging that lien within five (5) days of a demand therefore, or deduct such damages, costs and expenses from the amount due or may become due to Supplier, or collect on any letter of credit/bank guarantee. If Owner does not elect to exercise its right to remove and discharge, then Supplier shall defend, indemnify and hold harmless Owner Group from and against all Claims directly or indirectly arising out of or relating to such claims, liens or encumbrances.

11.1.2 Seek and obtain an order granting specific performance from a court of competent jurisdiction, requiring that Supplier immediately discharge and remove, by bond, payment or otherwise, such lien or encumbrance. The Parties expressly agree that Owner shall be entitled to such specific performance and that Supplier shall be liable to Owner for all damages, costs, losses and expenses (including all attorneys' fees, consultant fees and litigation or arbitration expenses) incurred by Owner arising out of or relating to such specific performance action. Supplier agrees that the failure to discharge and remove any such lien or encumbrance will give rise to irreparable injury to Owner and Owner's Affiliates, and further, that Owner and such Owner Affiliates will not be adequately compensated by damages;

11.1.3 Conduct the defense of any action in respect of (and any counterclaims related to) such liens or encumbrances as set forth in Section 12.7, without regard to Supplier's rights under such section; or

11.1.4 Exercise Owner's rights pursuant to Section 11.2 below; or

11.1.5 Withhold any amounts otherwise due and owing to Supplier under this Contract equal to the amount of the lien, stop notice or encumbrance plus all damages, costs, losses and expenses arising out of such lien or other encumbrance, including reasonable attorneys' fees, consultant fees and expenses.

11.2 Owner reserves the right to retain up to fifteen percent (15%) of any invoiced amount until the Work is completed to Owner's reasonable satisfaction and until all lienable Claims, nonlienable Claims or probable Claims as may be brought against Supplier Group or Owner Group arising out of or attributable to the Work, have been discharged to Owner's satisfaction.

11.3 Supplier shall submit conditional and final lien and claim waivers as reasonably required by the Owner in the form provided by and reasonably acceptable to Owner. All Subvendors of Supplier with contracts in excess of Two Hundred Fifty Thousand Dollars (US \$250,000.00) shall be required to submit lien and claim waivers in the form provided by and reasonably acceptable to Owner.

SECTION 12 INDEMNIFICATION

12.1 GENERAL INDEMNITIES BY SUPPLIER. EXCEPT AS TO MATTERS WITHIN THE SCOPE OF SECTION 12.2, SUPPLIER SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD OWNER GROUP HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS (INCLUDING DIRECT CLAIMS BETWEEN OWNER AND SUPPLIER) DIRECTLY OR INDIRECTLY ARISING OUT OF OR RESULTING FROM OR RELATED TO (A) ILLNESS, DISEASE, DISABILITY OR INJURY TO OR DEATH OF ANY PERSON, INCLUDING, WITHOUT LIMITATION, EMPLOYEES OF OWNER GROUP (BUT EXPRESSLY EXCLUDING EMPLOYEES OF SUPPLIER, ITS AGENTS OR INVITEES, OR SUBVENDORS OF ANY TIER, WHICH ARE SPECIFICALLY ADDRESSED IN SECTION 12.3) OR (B) DAMAGE TO PROPERTY OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, PROPERTY OF ANY OWNER GROUP), ARISING FROM OR INCIDENTAL TO SUPPLIER GROUP'S PERFORMANCE OR NON-PERFORMANCE OF THE WORK UNDER THIS CONTRACT OR ANY PURCHASE ORDER; *PROVIDED HOWEVER* THAT SUCH OBLIGATIONS SHALL BE PROPORTIONATELY REDUCED IF, WHEN AND ONLY TO THE EXTENT THE ABOVE-DESCRIBED CLAIMS ARE DETERMINED BY A FINAL ADJUDICATION TO BE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF OWNER GROUP. FOR THE AVOIDANCE OF DOUBT, SUPPLIER GROUP SHALL NOT BE DEEMED TO BE UNDER THE CONTROL OR SUPERVISION OF OWNER GROUP.

12.2 OTHER INDEMNITIES. SUPPLIER SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD OWNER GROUP HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS DIRECTLY OR INDIRECTLY ARISING OUT OF OR RESULTING FROM OR RELATED TO: (A) THE FILING OF ANY CLAIMS, LIENS OR OTHER SUCH ENCUMBRANCES BY ANY FIRM, ENTITY OR PERSON WHOMSOEVER ARISING OUT OF THE PERFORMANCE OF THE WORK; (B) FAILURE OF SUPPLIER TO MAKE PAYMENTS TO ANY SUBVENDOR IN CONNECTION WITH THE RESPECTIVE SUBCONTRACT; (C) SUPPLIER GROUP'S FAILURE OR ALLEGED FAILURE TO PROVIDE OR PERFORM ANYTHING REQUIRED UNDER SECTION 12; (D) ANY ACTUAL OR ALLEGED FAILURE OR NEGLECT BY SUPPLIER GROUP TO COMPLY WITH GEMP, ANY APPLICABLE LAW OR APPLICABLE CODES AND STANDARDS; (E) ANY ACTUAL OR ALLEGED FAILURE OR NEGLECT BY SUPPLIER GROUP TO COMPLY WITH THE STRICT ENFORCEMENT OF ANY RULE, REGULATION, REQUIREMENT OR CONDITION OWNER GROUP, OR ARISING FROM THE ACTUAL OR ALLEGED FAILURE OF SUPPLIER GROUP TO COMPLY WITH ANY PROVISION OF THIS CONTRACT OR APPLICABLE PURCHASE ORDER RELATING TO SAFETY OR HEALTH; (F) SUPPLIER GROUP'S ACTUAL OR ALLEGED USE OF ANY INFORMATION OR SUGGESTIONS ON ANY MATERIAL SAFETY DATA SHEETS OR OTHER DOCUMENTS CONTAINING HAZARD INFORMATION FURNISHED TO SUPPLIER BY ANY OWNER GROUP; (G) ACTUAL OR ALLEGED CONTAMINATION, SPILL, RELEASE, DISCHARGE, POLLUTION, PUBLIC OR PRIVATE NUISANCE, PROPERTY DAMAGE, OR ANY ENVIRONMENTAL DAMAGE OF ANY NATURE ARISING OUT OF OR IN CONNECTION WITH SUPPLIER GROUP'S PERFORMANCE OF WORK; AND (H) SUPPLIER'S ACTUAL OR ALLEGED FAILURE TO PROVIDE OR PERFORM ANYTHING REQUIRED UNDER SECTION 6; *PROVIDED HOWEVER*, THAT SUCH OBLIGATIONS SHALL BE PROPORTIONATELY REDUCED IF, WHEN AND ONLY TO THE EXTENT THE ABOVE-DESCRIBED CLAIMS ARE DETERMINED BY A FINAL ADJUDICATION TO BE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF OWNER GROUP. FOR AVOIDANCE OF DOUBT, SUPPLIER GROUP SHALL NOT BE DEEMED TO BE UNDER THE CONTROL OR SUPERVISION OF OWNER GROUP.

12.3 PERSONAL INJURY TO SUPPLIER GROUP PERSONNEL. NOTWITHSTANDING ANYTHING CONTAINED IN THIS CONTRACT OR PURCHASE ORDER TO THE CONTRARY, SUPPLIER SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD OWNER GROUP HARMLESS FROM AND AGAINST ALL CLAIMS ARISING FROM OR RELATED TO ILLNESS, DISEASE, DISABILITY, INJURY TO OR DEATH OF ANY EMPLOYEES OF SUPPLIER GROUP ARISING FROM OR INCIDENTAL TO (A) THE SUPPLIER GROUP'S PERFORMANCE OR NON-PERFORMANCE OF THE WORK; OR (B) DIAGNOSIS, TREATMENT, MEDICAL EVACUATION, PROVISION OF PHARMACEUTICAL PRODUCTS OR MEDICAL SUPPLIES FURNISHED OR RENDERED BY OWNER GROUP TO SUCH PERSON(S); SUCH OBLIGATIONS SHALL BE PROPORTIONATELY REDUCED IF, WHEN AND ONLY TO THE EXTENT

THE FOREGOING-DESCRIBED CLAIMS OF INJURY OR DEATH ARE DETERMINED BY A FINAL ADJUDICATION TO BE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF OWNER GROUP.

12.4 **FAIR NOTICE.** Owner and Supplier agree that this section complies with the requirement known as the Fair Notice Doctrine, to expressly state in a conspicuous manner to afford fair and adequate notice that this Contract has provisions requiring one party to be responsible for the negligence, strict liability or other fault of another party. However, if the work to be performed by Supplier under a Purchase Order falls within the definition of "Construction Contract" as set forth in Section 151 of the Texas Insurance Code (as amended), commonly known as the Texas Anti-Indemnity Act, then the indemnities and releases in Sections 12.1 and 12.2 of this Contract shall be proportionately reduced if, when, and only to the extent that any claim, liability or cause of action is determined by a final adjudication to be the result of the negligence or fault, the breach or violation of statute, ordinance, governmental regulations, standard or rule, or breach of contract of Owner. If the work to be performed by Supplier under a Purchase Order falls within the definition of a "Construction Contract" set forth in Section 130.001 of the Texas Civil Practice & Remedies Code (as amended), commonly known as the Texas Engineer and Architect Anti-Indemnity Act, then the indemnities and releases in Sections 12.1, 12.2, and 12.3 shall be proportionately reduced if, when and only to the extent that any claim, liability or cause of action is determined by a final adjudication to be the result of the negligence of Owner.

12.5 In the event that a final judgment is rendered against Owner which holds Owner at fault in a third-party action, and Supplier is not a party to such lawsuit, then it is agreed that any such finding shall not be binding upon Owner in a later action to determine responsibility under this Section 12. It is stipulated that any determination of issues in such third-party action shall not be admissible in evidence or considered in any manner in any proceeding involving a Claim between the Parties for determination of responsibility under this Section 12, including the judgment, jury verdict, findings of fact, conclusions of law, special issues or interrogatories and their answers.

12.6 The indemnities and releases provided for in this Section 12 shall apply whether a Claim is based on common law, civil law, maritime law, statute or contractual obligation between any Owner Group and a third party, and shall be in addition to and not in derogation or substitution of any other indemnities and releases contained in this Contract.

12.7 Supplier agrees to first submit any claim or dispute arising under, related to or in connection with the Work, this Contract, or a Purchase Order to Owner in writing, prior to initiating any dispute resolution proceedings. Supplier shall submit specific information to Owner regarding any such claim or dispute, along with supporting material to document the amount of the alleged claim (including, without limitation, labor hours, material costs and all other expenses to the extent not waived, limited, barred or released by other provisions of this Contract or by operation of law). The foregoing shall be submitted to Owner within ten (10) business Days from the date on which the Supplier knew of the existence of such claim or dispute. Upon Owner's receipt of such a request and within that time frame, then Owner shall grant an extension period for an additional thirty (30) days.

12.8 No other extensions shall be permitted, and any claim not submitted within the extension period, if applicable, shall be deemed waived.

12.9 Supplier agrees to continue performance of the Work and shall proceed in accordance with the directives of Owner in the event of a dispute or controversy. Failure to proceed shall constitute a material breach of this Contract, regardless of the ultimate outcome of the dispute, it being understood and agreed that any controversy between the Parties shall not be deemed a basis to delay or suspend the Work, unless directed otherwise by Owner. This section shall survive completion or termination of any Purchase Order.

12.10 Completion of the internal dispute resolution procedure shall be a condition precedent to the right of Supplier to commence or continue any legal action against Owner.

12.11 NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONTRACT OR ANY PURCHASE ORDER TO THE CONTRARY, IN NO EVENT SHALL THE OWNER GROUP OR SUPPLIER BE DEEMED LIABLE UNDER THIS CONTRACT OR A PURCHASE ORDER, OR UNDER ANY CLAIM RELATED TO THE SUBJECT MATTER OF THIS CONTRACT OR A PURCHASE ORDER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCTS LIABILITY, INDEMNITY, CONTRIBUTION, OR ANY OTHER CLAIM FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES, INCLUDING LOSS OF PROFITS, USE, OPPORTUNITY, REVENUES, FINANCING, BONDING CAPACITY, OR BUSINESS INTERRUPTION. NOTWITHSTANDING THE FOREGOING, THE LIMITATION OF LIABILITY SET FORTH IN THIS SECTION 12.11 SHALL NOT APPLY TO: (I) SUPPLIER'S INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS UNDER THIS CONTRACT; (II) FRAUD OR BREACH OF SECTION 19 BY ANY MEMBER OF SUPPLIER GROUP; (III) ANY LIQUIDATED DAMAGES SPECIFICALLY SET FORTH IN THIS CONTRACT OR PURCHASE ORDER; (IV) WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF SUPPLIER OR ITS SUBVENDORS OR THEIR RESPECTIVE PERSONNEL; AND (V) SUPPLIER'S OBLIGATIONS PURSUANT TO, AND LIABILITIES INCURRED UNDER, SECTIONS 13, 23 AND 28.

SECTION 13 INTELLECTUAL PROPERTY

13.1 Supplier warrants that the Work shall be delivered free of any third-party Claims for misappropriation or misuse of any trade secrets or other confidential information or for infringement or alleged infringement of any domestic or foreign patent, copyrights or trademarks or other Intellectual Property right covering the Work or the process for making the Equipment.

13.2 Suppliers operation, design, and use of the Work (including all equipment, products, Work, Know-How and manufacturing processes used thereby) does not infringe, violate, dilute, misuse, misappropriate or otherwise conflict with any Intellectual Property right of any third party. Supplier warrants that no written Claims, notices or threats relating to any such activities have been made by any third party. All of the Intellectual Property owned or used in association with the Work is valid and enforceable, except in the case of any patents, to the extent that the term thereof has expired. No written Claims, notices or threats relating to the validity or enforceability of Supplier's Intellectual Property have been made by any third party against the Supplier. To the knowledge of the Supplier, no third party is infringing, violating, diluting, misusing or

misappropriating any Intellectual Property, and the Supplier has not made any written Claim against any third party alleging otherwise.

13.3 SUPPLIER WILL INDEMNIFY, HOLD HARMLESS AND DEFEND OWNER GROUP FROM AND AGAINST ANY AND ALL CLAIMS ON ACCOUNT OF, RELATING TO, OR ARISING OUT OF ANY CLAIM COVERED BY THE ABOVE WARRANTY OF SUPPLIER, OR FOR ACTUAL OR ALLEGED VIOLATION, MISAPPROPRIATION OR INFRINGEMENT OF ANY DOMESTIC OR FOREIGN PATENTS, COPYRIGHTS OR TRADEMARKS OR OTHER INTELLECTUAL PROPERTY, OR ANY IMPROPER USE OF CONFIDENTIAL INFORMATION OR OTHER PROPRIETARY RIGHTS THAT MAY OCCUR IN CONNECTION WITH SUPPLIER'S AND ITS SUBVENDORS PERFORMANCE OF THE WORK OR USE OF THE WORK PRODUCT OR ANY SUPPLIER INTELLECTUAL PROPERTY OR THIRD PARTY PROPRIETARY WORK PRODUCT.

13.4 If a temporary restraining order or preliminary injunction is granted, Supplier shall make all commercially reasonable efforts to secure the suspension of the injunction or restraining order with as little impact as possible on the schedule (including the Guaranteed Dates). If performance of Supplier's Work or use of the Work Product, Supplier's Intellectual Property, Third Party Proprietary Work Product or any part, combination or process thereof are held to constitute an infringement and its use is permanently enjoined, Supplier shall remove such infringement by any reasonable means, including replacement or modification of the infringing Work Product, Supplier's Intellectual Property, Third Party Proprietary Work Product or by obtaining a license permitting Owner and its representatives and designees (including Contractor) to use such Work Product, Supplier's Intellectual Property and Third Party Proprietary Work Product. Any replacement, modification or licensing shall be at Supplier's expense, shall comply with all requirements contained in this Contract and applicable Purchase Order and shall not modify or relieve Supplier of its obligations under this Contract and applicable Purchase Order.

SECTION 14 SUPPLIER'S OBLIGATIONS

14.1 Without relieving Supplier of its obligations and without assuming any responsibility, Owner or its representatives may inspect the equipment, procedures and facilities used or proposed for use by Supplier in the manufacture of Equipment hereunder. Supplier is required to reply to all inquiries resulting from the review(s), basing all responses on continuous quality improvement and corrective action. If the Owner or such representative should determine that the equipment, procedures or facilities are unsafe or otherwise inappropriate and said condition is not promptly remedied by Supplier, Owner may terminate the applicable Purchase Order upon notice thereof to Supplier for Supplier default pursuant to Section 21.2.

14.2 Without relieving Supplier of its obligations in Section 28.2.2, Supplier will immediately notify Owner if (i) Supplier is served with notice of significant violation of any law, regulation or Permit which relates to Supplier's manufacture of Equipment hereunder, (ii) proceedings are commenced which could lead to revocation of Permits which relate to Supplier's manufacture of Equipment hereunder, (iii) Permits or other government authorizations relating to Supplier's manufacture of Equipment hereunder are revoked, or (iv) Supplier becomes aware that its equipment or any facilities which are

used or proposed to be used in the manufacture of Equipment hereunder are not in compliance, or may fail to comply in the future with Applicable Laws.

14.3 Supplier acknowledges and agrees that Supplier shall be solely responsible for communicating to its employees, Subvendors and agents that adherence to Owner rules, regulations, requirements and conditions (particularly those pertaining to safety), is a condition to such employee, Subvendor, or agent providing work to Owner and being present on Owner premises.

14.4 Supplier shall conduct background checks for any of its employees, and require that its Subvendors conduct background checks for each of their employees who perform Work on Owner premises under a Purchase Order or who otherwise enter Owner's premises. The required background checks shall include, at a minimum, (a) criminal background check, (b) verification of eligibility to work in the United States, and (c) verification of driver's licenses, employment and educational history, and mailing addresses. Supplier shall ensure that all such background checks are conducted in accordance with all Applicable Laws. Neither Supplier nor any of its Subvendors shall allow any employee (w) with a felony conviction, (x) without proof of eligibility to work in the United States, (y) whose background information cannot be verified, and/or (z) with false identification to enter Owner's premises or to perform any Work without prior written approval from Owner.

14.5 If Owner shall request Supplier to remove any Subvendor, or any employee or agent of Supplier or its Subvendors, from Owner's premises for any reason, Supplier shall immediately cause such Subvendor, employee or agent to be removed and replaced at no cost to Owner. If said Subvendor, employee or agent is removed from any one Owner site for cause, then the individual shall not be placed at any other Owner site, provided, however, Supplier retains the sole right to hire and fire its employees, Subvendors and agents, and shall be solely responsible for any decision to fire its employees, Subvendors and agents. SUPPLIER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS OWNER GROUP FROM ANY CLAIMS THAT MAY ARISE IF SUPPLIER OR ANY SUBVENDOR CHOOSES TO TERMINATE THE EMPLOYMENT OF ANY SUCH PERSON, REGARDLESS OF WHETHER SUCH TERMINATION FOLLOWS A REQUEST BY OWNER, SUPPLIER OR SUBVENDOR TO HAVE SUCH PERSON REMOVED FROM THE WORK.

14.6 Except as otherwise specifically agreed in writing by the Parties, Supplier shall provide all labor, skills, expertise, and equipment necessary for the performance of the Work. Supplier shall thoroughly inspect all such equipment brought onto the Owner's premises by or on behalf of Supplier or its Subvendors to ensure the equipment is of acceptable quality, is in good operating condition, complies with the requirements herein, and is safe and suitable for use. Supplier shall ensure that Supplier's and its Subvendor's employees, agents, and invitees have adequate skill, training, licenses, and expertise to operate the equipment in the performance of the Work. Further, and notwithstanding anything contained in this Contract or Purchase Order, to the contrary, Supplier, as an independent contractor, assumes full responsibility for loss of or damage, from any cause whatsoever, to its equipment or other property, whether owned, rented, leased or used by Supplier, while performing hereunder.

14.7 No subcontract for all or any part of the Work shall be let by Supplier in the performance of the Work without the specific written approval of Owner, regardless of any implied use of Subvendors in any Supplier cost estimate, quotation, bid or proposal. In the event that Owner approves Supplier's utilization of Subvendors, Supplier shall include in every subcontract a requirement prohibiting any further subcontracting of any portion of the Work by the Subvendor, as well as provisions requiring the Subvendor to be subject to the same terms and conditions and performance requirements as those set forth herein, including without limitation, those relating to Records, infringement and ownership of intellectual property rights, liens, compliance with Applicable Laws, rights of Owner to audit, nondisclosure of Confidential Information. Supplier shall also provide a statement that the Subvendor meets and/or exceeds Owner's safety requirements. Supplier shall be fully responsible for and shall provide direct supervision for any of Supplier's Subvendors, and their personnel or invitees performing Work at the Owner's premises.

14.8 Notwithstanding anything contained in this Contract or Purchase Order to the contrary, use of Subvendors by Supplier (whether or not properly approved by Owner) in the performance of the Work shall not relieve Supplier from any liability or obligation, including under this Contract or the applicable Purchase Order.

14.9 To ensure the safety of all personnel working on Owner's premises, Supplier shall ensure (by appropriate testing, if necessary) and, certify in writing, except as provided below, that the employees, agents and invitees of Supplier and its Subvendors who come onto Owner's premises can quickly and efficiently interpret, react to, and understand oral and written instructions and safety-related signs and information (including, without limitation, Owner's voice alarm system and any safety lights, horns, sirens and whistles related thereto), which are presented or written in English. From time to time Owner may test the ability of the employees, agents and invitees of Supplier and its Subvendors and/or request Supplier to certify its obligations under this Section. If for any reason any of the employees, agents or invitees of Supplier, or its Subvendors are unable to demonstrate that they can quickly and efficiently interpret, react to, and understand oral and written instructions and safety-related signs and information (including, without limitation, Owner's voice alarm system and any safety lights, horns, sirens and whistles related thereto) that are presented or written in English, Supplier shall so notify Owner prior to any such individual coming onto Owner's premises and shall establish to Owner's satisfaction a safety plan including at a minimum bi-lingual supervision. The bi-lingual supervisor to non-English speaking Supplier employee ratio should be no greater than 1:5. In addition, the bi-lingual supervisor must maintain direct line-of-site communication with no more than five (5) employees at all times while any of these employees are performing work in the Facility. All Supplier bi-lingual supervisors must use an identification method that is readily visible to Owner employees. Owner prohibits any Supplier non-English speaking method that is not readily visible to Owner employees. Owner prohibits any Supplier non-English speaking lead, foreman or supervisor to perform the function required pursuant to this Section at Owner's premises.

14.10 Unless otherwise specifically provided to the contrary herein, Supplier shall assume the entire responsibility for the examination of the Site for the performance of the Work and for acquaintance with the conditions that may exist or develop during the term



of the Purchase Order. It is the Supplier's responsibility to advise the Owner representative of any conditions or activities that may be considered a safety hazard or problem.

14.11 Supplier shall keep all employment records with regard to its employees as required by law. Supplier shall be responsible for and shall timely pay all payrolls and payroll taxes (including without limitation Social Security, Unemployment Compensation Taxes and other withholding taxes).

14.12 In the event that any Person claims, or a court, tribunal or government body finds, for any purpose, that any Supplier Group personnel are an employee of any member of Owner Group, THE SUPPLIER SHALL INDEMNIFY THE OWNER GROUP AGAINST ALL CLAIMS INCURRED BY OWNER GROUP AS A DIRECT OR INDIRECT CLAIM OR FINDING.

14.13 Prior to any Supplier employee, Subvendor, agent or invitee acquiring access to the Owner computer, internet or intranet, written approval must be obtained by the Owner sponsor responsible for that individual while they are on Owner's property. At that time, the Supplier's employee, Subvendor, agent or invitee shall be given a copy of the Owner Information Security Policies, Sections IT-20 and IT-40, governing use of the Owner's computer, internet and intranet. Supplier acknowledges that it has actual knowledge of and shall comply with, and shall ensure its Subvendors comply with, the Motiva's Data Privacy and Security Requirements, located on the Supplier Resources page at <https://motiva.com/suppliers/supplier-resources>.

14.14 Supplier's Financial Condition. Supplier represents and warrants that it has previously disclosed to Owner its most recent audited financial statements, prepared in accordance with generally accepted accounting principles in the relevant jurisdiction and which present a true and fair view of the Supplier's financial condition. Supplier agrees to provide Owner with notice on a prompt and contemporaneous basis of the occurrence of any event or series of events that, taken as whole, reasonably could have a material and adverse effect on the financial condition of Supplier and the ability of Supplier to fully perform the obligations under this Contract or any Purchase Order.

14.15 Supplier's Continuing Information Obligation; Provision of Adequate Assurances. Upon request, Supplier will deliver to Owner quarterly unaudited financial statements of the Supplier within forty-five (45) days after the end of the quarter to which those statements relate, and Supplier's annual audited financial statements promptly upon the issuance thereof. Whenever Owner reasonably deems itself insecure as to Supplier's continued capacity to fully perform the obligations under a Purchase Order, Owner may demand that Supplier promptly (but in all cases within fourteen (14) days) provide adequate assurances of Supplier's capability to fully perform.

SECTION 15 CONFLICTS OF INTEREST

No director, employee or agent of Supplier will give or receive any commission, fee, rebate, gift or entertainment of significant cost or value in connection with this Contract or any Purchase Order, or enter into any business arrangement with any director, employee or agent of Owner other than as an authorized purchasing representative of Owner without prior written notification thereof to Owner. Supplier may inquire about

and report any actual or suspected violation of this Section by reviewing Owner's Ethics and Compliance Hotline at <https://secure.ethicspoint.com/domain/media/en/gui/48985/index.html> and taking appropriate action.

SECTION 16 MATERIAL SAFETY DATA SHEETS

Supplier is required to furnish Owner a complete MATERIAL SAFETY DATA SHEET (SDS) prior to the first delivery for each piece of Equipment under a Purchase Order, as well as updates as they are issued. All SDS's should be forwarded to the use location, attention Health, Safety and Environmental. Supplier will also provide Owner any other readily available information or advice relating to the description, receipt, storage, handling, and/or discharge of the Equipment supplied hereunder and any information developed or obtained by Supplier regarding the safety of the Equipment in connection with the developing, manufacturing, post-processing, transporting, distributing, selling, recycling and disposing of the Equipment.

SECTION 17 CHEMICAL HAZARD INFORMATION

Supplier warrants and represents to Owner that:

17.1 Supplier is aware that there are hazardous chemicals produced, used or stored by Owner on the Site to which Supplier, its Subvendors, and their respective employees, agents and invitees, may be exposed.

17.2 Supplier is aware that Owner maintains Material Safety Data Sheets for any hazardous chemicals produced, used or stored on Owner's premises, and acknowledges that these Material Safety Data Sheets are available from Owner upon Supplier's request.

17.3 Upon receipt of information from Owner pertaining to hazardous chemicals produced, used or stored on the Site, Supplier shall take all measures prudent and necessary to determine the extent to which such chemical hazards may impact Supplier's performance of the work and the safety of Supplier, its Subvendors, and their respective employees, agents and invitees. Supplier further covenants and agrees that Supplier is solely responsible for informing, and shall inform, the employees, agents and invitees of Supplier and its Subvendors of the hazards of such chemicals prior to their performing any Work.

17.4 Supplier acknowledges and agrees that the employees, agents and invitees of Supplier and its Subvendors shall attend and satisfactorily complete Owner's Safety Orientation Program prior to being granted access to the Site. Supplier further covenants and agrees that upon such employees, agents and invitees being informed of the hazardous chemicals produced, used or stored by Owner at the Site, to which they may be exposed, such employees, agents and invitees shall acknowledge in writing, on behalf of the Supplier and themselves, the receipt of such chemical hazard information by signing a form provided by Owner.

17.5 Supplier, its Subvendors, and their respective employees, agents and invitees, shall take any and all precautions prudent and necessary to protect themselves

from the hazards of the chemicals to which they may be exposed and from the hazards associated with the Work to be performed under a Purchase Order.

17.6 Supplier, in accordance with the requirements of the OSHA Hazard Communication Standard, at a minimum, has an obligation and liability to furnish, and shall furnish, Owner, and the other employers at the Site whose employees may be exposed to hazardous chemicals produced, used or stored on the Site by Supplier, its Subvendors or agents, the Material Safety Data Sheets and any other applicable information pertaining to the precautionary or protective measures to be taken to prevent exposure to such hazardous chemicals. Supplier further covenants and agrees that Supplier has developed and shall maintain a hazard communication program covering all such hazardous chemicals, and that such hazard communication program meets, at a minimum, all requirements of the OSHA Hazard Communication Standard. SUPPLIER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS OWNER GROUP FROM AND AGAINST ANY AND ALL CLAIMS FOR PERSONAL INJURY (INCLUDING DISABILITY, DISEASE, INJURY, ILLNESS AND DEATH) OR PROPERTY DAMAGE THAT ARISE OUT OF OR IN CONNECTION WITH SUPPLIER OR ITS SUBVENDORS (I) USE, HANDLING, STORAGE OR DISPOSAL OF SUBSTANCES AND MATERIALS OR THE RELEASE OF ANY SUBSTANCES AND MATERIALS BROUGHT ON THE SITE BY SUPPLIER OR ITS SUBVENDORS, OR (II) DISTURBANCE OR EXACERBATION OF PRE-EXISTING SUBSTANCES OR MATERIALS OR ANY SUBSTANCES OR MATERIALS BROUGHT TO SITE BY SUPPLIER OR ITS SUBVENDORS.

Supplier expressly understands, acknowledges and agrees that:

17.6.1 OWNER MAKES NO GUARANTEE OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE COMPLETENESS OR ACCURACY OF ANY INFORMATION OR SUGGESTIONS CONTAINED IN ANY MATERIAL SAFETY DATA SHEETS OR RELATED INFORMATION PRESENTED TO OR MADE AVAILABLE TO SUPPLIER, NOR AS TO THE FITNESS OR SUITABILITY OF THE SAME FOR ANY PARTICULAR PURPOSE OR ACTIVITY.

17.6.2 WITHOUT BEING RESTRICTED BY THE FOREGOING, ANY AND ALL WARRANTIES RESPECTING SUCH INFORMATION OR SUGGESTIONS, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED AND DISCLAIMED.

17.6.3 OWNER NEITHER UNDERTAKES NOR ASSUMES ANY LIABILITY (INCLUDING WITHOUT LIMITATION ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES) IN CONNECTION WITH THE USE OF OR ANY RELIANCE UPON ANY SUCH INFORMATION OR SUGGESTIONS.

SECTION 18 RECORDS AND AUDIT

18.1 Supplier will keep true and correct Records and will maintain such Records in accordance with generally accepted accounting principles in the United States (GAAP) for a period of at least five (5) years after termination or expiration of the Purchase Order as applicable, or such longer period as may be required by Applicable Law. Owner or Owner's third-party auditor may audit, inspect and copy any and all such Records of the Supplier at any time or from time to time for the purpose of confirming the accuracy of such Records and the manner in which such Records have been used in the administration of this Contract and any Purchase Order.

18.2 Any representatives authorized by Owner may audit any and all such Records of Supplier, records of Supplier's Subvendors or agents, relative to the Work performed hereunder, all transactions and charges related thereto, and to determine whether there has been compliance with this Contract and applicable Purchase Orders (including for compliance with HSSE Requirements and compliance with Applicable Law), at any time or times. In the event that Owner performs such audit and an overcharge to Owner is discovered, Supplier shall immediately reimburse Owner for the amount of such overcharge, including without limitation, any reasonable accounting fees associated with the audit, reasonable and verifiable travel expenses associated with the audit, and interest on the amount of the overcharge at the maximum rate permitted by Applicable Law.

18.3 Nothing in this Section 18 limits Owner's rights under Section 28.2.4.

SECTION 19 CONFIDENTIALITY

19.1 In order to fulfill this Contract and Purchase Orders issued thereunder it will be necessary for Owner to make Confidential information available to Supplier directly or indirectly. Supplier agrees to hold all such Confidential Information in confidence at all times (notwithstanding that this Contract or applicable Purchase Orders shall have terminated, been cancelled or expired), and neither disclose the same to others nor use the same for any purpose other than as provided herein without the express written permission of Owner. Supplier agrees to take all reasonable steps to keep secret and confidential all Confidential Information as required or permitted under this Contract, and will not use, nor divulge to any Person or any other third party, any of the Confidential Information, except as expressly provided for herein. Supplier agrees not to disclose the existence or contents of the applicable Purchase Order and this Contract and related discussions, which are considered Owner's Confidential Information only. Supplier agrees that it and its Subvendors shall not use the name, trademark(s), or logo(s) of Owner in any way, or otherwise mention or refer to the Contract, Purchase Order, or the Facility, including but not limited to, in any promotional materials, websites, publicity releases, advertising, marketing materials, or any other similar publications or communications, whether oral or written, without the prior express written consent of Owner. Notwithstanding anything to the contrary herein, the foregoing confidentiality and non-use obligations shall survive the expiration or termination of any Purchase Order and remain in effect for a period of five (5) years from the expiration or termination date of the applicable Purchase Order; provided, however, that the foregoing obligations with respect to confidential technical information shall survive the termination or expiration, as applicable, of the applicable Purchase Order for an indefinite period of time.

19.2 All Confidential Information whether given to Supplier by Owner or its agents, created by Supplier, or otherwise, shall not be disclosed by Supplier to any third party without the prior written consent of Owner. Supplier may, with Owner's express written consent, disclose Confidential Information to any Subvendor to the extent such disclosure is necessary to perform the Work, provided that prior to making such disclosure, Supplier shall first require that each Subvendor enter into a written agreement safeguarding the Confidential Information with terms no less stringent than those contained in this Section 19. Supplier will notify Owner if such disclosure occurs. The

provisions of this Section 19 shall not apply to information that is or become part of the public knowledge from sources other than Supplier.

19.3 The provisions of this Section shall be superseded by the terms and conditions of any previously executed non-disclosure agreement still effective between the Parties with respect to the matters within this Contract.

SECTION 20 FORCE MAJEURE EVENTS

20.1 Neither Party will be in breach of its obligations hereunder to the extent that performance is prevented or delayed by a Force Majeure Event provided that such Force Majeure Event (i) is beyond the reasonable control of the Party concerned; (ii) (ii) was not reasonably foreseeable at the effective date of the applicable Purchase Order; (iii) is not the result of the affected Party's misconduct, or sole or partial fault or negligence; (iv) could not have been prevented or mitigated or overcome by the affected Party through the exercise of due diligence or reasonable efforts, including the expenditure of any reasonable sum, GEMP or the pursuit of alternative means of performance; and (v) adversely impacts the ability of the affected Party to perform its obligations herein. A "Force Majeure Event" means and is limited to (i) an Act of God; (ii) acts of civil or military authority; (iii) sabotage (other than by a person or Party for which Supplier is responsible); (iv) epidemics; (v) war; (vi) riot; (vii) fires (other than at a facility of Supplier or a subvendor); (viii) explosions (other than at a facility of Supplier or a subvendor); (ix) national strikes or strikes which are regional in scope and are not otherwise attributable to the workers of Supplier or its subvendor's workers; (x) changes in law which would make the performance of a Purchase Order illegal or impossible; or (xi) named storms which could not have been reasonably anticipated and planned for and which could not have reasonably foreseen or provided against.

20.2 A Force Majeure Event does not include, and the affected Party shall not be entitled to relief for, any of the following: (i) economic hardship; (ii) changes in market factors or conditions; (iii) as it relates to Supplier, the inability to finance its obligations under this Contract and applicable Purchase Order; (iv) a Party's inability to obtain credit or the unavailability of funds; (v) late delivery or failure of supplies and tools and construction equipment; (vi) shortage of labor or equipment; (vii) nonperformance or delay by Subvendors or other third parties; (viii) defects in Work, Equipment or information supplied by Subvendors for the Work; (ix) any action or omission by a Governmental Instrumentality under any Permit; (x) the failure of Supplier to obtain a Permit; (xi) events or circumstances involving a previous or existing condition affecting the Work on or before the effective date of the applicable Purchase Order; (xii) climatic conditions, events, or circumstances, or consequences thereof (including rain, snow, wind, temperature and other weather conditions, but excluding named storms, hurricanes and tornadoes) tides and seasons, regardless of the magnitude, severity, duration or frequency of such climatic conditions, tides or seasons; and (xiii) a breach of any provision of this Contract or the applicable Purchase Order.

20.3 Owner shall have the right, in its sole discretion, to either: (i) terminate by written notice to Supplier all or part of any Purchase Order if Supplier's performance under a Purchase Order is delayed by over sixty (60) days for any reason including a

Force Majeure Event; or (ii) extend any date of delivery or performance for a period equal to the duration of the delay taking into account any concurrent delays on the part of the Supplier or a Subvendor, but Supplier shall not be entitled to any extra compensation for such delay. The Parties agree that Supplier's sole and exclusive remedy for Force Majeure Event shall be an adjustment to the applicable schedule. Whenever any actual or potential event, including labor disputes, occurs that delays or threatens to delay the timely performance of any Purchase Order, Supplier will report such event immediately to Owner and will confirm by written notice within twenty-four (24) hours.

20.4 In no event shall Supplier be entitled to an adjustment to schedule for that portion of delay or damage to the extent Supplier could have taken, but failed to take, reasonable actions to mitigate such delay or damage.

SECTION 21 TERMINATION AND SUSPENSION

21.1 **Termination for Convenience.** Owner shall have the right to terminate all or any portion of the Work for its convenience at any time by written notice to Supplier. On the date of such termination stated in the notice, Supplier shall (i) discontinue all Work pertaining to the applicable Purchase Order as instructed by Owner (except as may be necessary for preserving and protecting the Work), (ii) place no additional orders (except as may be necessary for completion of such portion of the Work which is not discontinued), (iii) delivery to Owner all Work in progress (including all documentation) executed by Supplier and its Subvendors (other than items which Owner may request disposal of in accordance with (v) below); (iv) cooperate with Owner for the efficient transition of the terminated Work; and (v) preserve and protect materials on hand purchased for or committed under a Purchase Order and all Work in progress, and completed Work both in Supplier's and in its Subvendor's plants pending Owner's instructions and shall dispose of same in accordance with Owner's instructions. The termination payment to Supplier or refund to Owner, if any, shall be (i) based on the cancellation schedule in the Purchase Order, or (ii) if no cancellation schedule is included in the Purchase Order, promptly and mutually agreed to by Owner and Supplier, based on that portion of the Work completed and delivered to Owner in full compliance with the requirements in this Contract and the applicable Purchase Order prior to the date of termination, including reimbursement for reasonable and necessary expenses resulting from the termination, as substantiated by documentation satisfactory to and verified by Owner, disposition of work and material on hand and amounts previously paid by Owner and applicable manufacturer termination charges. Supplier shall not be entitled to any loss of prospective profits, contribution to overhead, expectation damages, or incidental consequential or other damages because of such termination. Supplier shall deliver or assign to Owner all Work (including Work in progress, and completed Work), with all applicable warranties or dispose of same as directed by Owner prior to final payment. This Section 21.1 sets for Supplier's sole and exclusive remedy for any termination by Owner for convenience pursuant to this Section 21.1. For the avoidance of doubt, Supplier cannot under any circumstances terminate any Purchase Order.

21.2 **Termination for Default.** In the event Supplier (i) shall be adjudged bankrupt, make a general assignment for the benefit of its creditors, or if a receiver shall be appointed on account of Supplier's insolvency, (ii) fails in any material respect to

prosecute the Work (including Work contained in a change issued by Owner pursuant to Section 5), (iii) performs the Work in an unsafe manner or in violation of Applicable Law relating to safety, health and environmental, (iv) assigns or transfers the Purchase Order or any right or interest herein in breach of Section 31.8, (v) is in breach of Sections 26 or 28 (vi) makes any representation hereunder which was materially false when made, or (vii) is in material default of any other provision or requirement of a Purchase Order and such default is within Supplier's control and Supplier has failed to cure or begin curative measures for such default within ten (10) days after a written notice served by Owner, Owner may, or cause Contractor to (i) terminate for default Supplier's performance of all or any part of a Purchase Order or (ii) suspend all of any part of the Work under a Purchase Order, by written notice to Supplier, without prejudice to any other rights or remedies which Owner may have and provided that, for items (i), (iv) and (v) there is no cure period and Owner shall be entitled to terminate immediately upon notice to Supplier. In the event of such termination, Owner may complete the performance of the Work by such means as Owner elects, and Supplier shall be commercially responsible for any and all additional costs incurred by Owner in so doing, including but not limited to expediting fees and additional costs incurred for ordering Services or Equipment from a similarly situated service providing the same, or substantially similar, piece of Equipment ordered from Supplier. Supplier shall immediately or upon such other date specified in the notice (i) discontinue all Work (except as may be necessary to preserve and protect Work), (ii) deliver or assign to Owner any Work in progress as Owner may request, (iii) assign or novate to Owner contracts with Subvendors as Owner requests; (iv) terminate all contracts with Subvendors related to the terminated Work which are not assigned or novated to Owner pursuant to (iii). Any amounts due Supplier for Equipment completed by Supplier in full compliance with the terms of this Contract and applicable Purchase Order prior to such termination shall be subject to set-off of Owner's additional costs of completing the Work and all Claims arising out of or relating to such default. If Owner terminates a Purchase Order or the Work, in whole or in part, Supplier shall be liable to Owner for all Claims arising out of relating to such Supplier termination. Waiver by Owner of any default of Supplier shall not be considered to be a waiver by Owner of any provision of this Contract, a Purchase Order, or of any subsequent default by Supplier. For the avoidance of doubt, Supplier cannot under any circumstances terminate any Purchase Order. If it's determined that a termination for default pursuant to this Section 21.2 was unjustified or unenforceable for any reason, then such termination for default shall be deemed a termination for convenience as provided in Section 21.1.

21.3 Suspension of Performance. Owner may at any time, and from time to time, by written notice to Supplier, suspend further performance of all or any portion of a Purchase Order. Supplier shall continue to perform any unsuspended portions of the Work. Such suspensions shall not exceed more than one hundred eighty (180) consecutive days each nor aggregate to more than one hundred eighty (180) days. Upon receiving any such notice of suspension, Supplier shall promptly suspend further performance of a Purchase Order to the extent specified, and during the period of such suspension shall properly care for and protect all Work in progress and materials, supplies, and equipment Supplier has on hand for performance of the Purchase Order at Owner's cost. Supplier shall use its best efforts to utilize its material, labor and equipment in such a manner as to mitigate costs associated with suspension. Owner may at any time withdraw the suspension as to all or part of the suspended performance by written notice

to Supplier specifying the effective date and scope of withdrawal and Supplier shall, on the specified date of withdrawal, immediately resume diligent performance of the Work for which the suspension is withdrawn. If Supplier believes that any such suspension justifies modification of a Purchase Order Price or time for performance, Supplier shall comply with the provisions set forth in Section 5 of this Contract. In no event shall Supplier be entitled to any loss of prospective profits, contributions to overhead or any incidental, consequential or other damages because of such suspensions or withdrawals of suspension. In no event shall Supplier receive any adjustment to the Purchase Order Price or schedule (including the Guaranteed Date(s)) to the extent any suspension of the Work or a part thereof is due to the fault of Supplier or its Subvendors.

SECTION 22 DELAYS, LIQUIDATED DAMAGES, PERFORMANCE SECURITY

22.1 Supplier shall promptly notify Owner of any actual or anticipated delay in performance of Work (including delays or possible delays in delivery of Equipment or performance of Services) and take all necessary steps to avoid, overcome or end delays without additional cost to Owner, except as agreed by Owner in a Change Order. Without limiting Section 7.15, Supplier shall take all reasonable steps to mitigate the effect of delays or possible delays on performance of Work, delivery of the Equipment or the performance of the Services. Such steps shall include advanced planning and contingency planning. Without limiting and in addition to any other right Owner may have, including Owner's rights under Sections 7.15, 21.2 and 22.2, Owner shall have the right, in its' reasonable discretion and after consultation with Supplier, to either: (i) terminate by written notice to Supplier all or part of a Purchase Order pursuant to Section 21.2; or (ii) extend any date of delivery or performance for a period equal to the duration of the delay taking into account any concurrent delays on the part of the Supplier or a Subvendor, but Supplier shall not be entitled to any extra compensation for such delay. Further, Supplier will pay all commercially reasonable costs required to maintain the schedule set forth in the applicable Purchase Order, including but not limited to, additional manpower and logistics costs. Supplier shall not be excused from performance hereunder where alternate sources of supply of materials, goods or Work (including, without limitation, transportation services) are available.

22.2 Without limiting Section 22.1, if the Purchase Order includes liquidated damages for delay, then such liquidated damages shall be levied to compensate Owner in the event of Supplier's failure to meet the applicable Guaranteed Dates that are subject to the delay liquidated damages.

22.2.1 It is expressly agreed that any liquidated damages payable under the Purchase Order do not constitute a penalty and that the Parties, having negotiated in good faith for such specific liquidated damages and having agreed that the amount of such liquidated damages is reasonable in light of the anticipated harm caused by the breach related thereto and the difficulties of proof of loss and inconvenience or nonfeasibility of obtaining any adequate remedy, are estopped from contesting the validity or enforceability of such liquidated damages. If Supplier, Supplier's guarantor (if applicable) or anyone on their behalf successfully challenges the enforceability of the liquidated damages, Supplier specifically agrees to pay Owner all actual damages incurred by Owner in connection with such breach, including any and all consequential

damages (such as loss of profits and revenues, business interruption, loss of opportunity and use) and all costs incurred by Owner in proving the same (including all attorneys' fees, consultant fees and litigation expenses) without regard to any limitations whatsoever set forth in this Contract or Purchase Order.

22.2.2 With respect to any liquidated damages that are due and owing, Owner, at its sole discretion and without limitation of Owner's other rights and remedies, may either (i) invoice Supplier for such owed liquidated damages, and within fifteen (15) days after Supplier's receipt of such invoice, Supplier shall pay Owner liquidated damages, (ii) withhold from Supplier amounts that are otherwise due and payable to Supplier, or (iii) collect on any letter of credit, bank guarantee, or other performance security.

22.2.3 Payment of any liquidated damages with respect to any Work shall be in addition to, and not in lieu of, Supplier's other obligations under the Purchase Order and shall in no way affect Owner's right to terminate the Purchase Order under Section 21 or Owner's other remedies contemplated in this Purchase Order for any other aspect of Supplier's obligations hereunder.

22.3 Any letter of credit/bank guarantee required to be provided by Supplier under the Purchase Order shall be provided within the time required by, and in accordance with the requirements set forth in, this Contract and the Purchase Order. Any letter of credit shall, unless otherwise agreed by Owner in writing, be issued and confirmed by a U.S. commercial bank or issued by a foreign commercial bank and confirmed by the U.S. branch office of the foreign commercial bank, in either case, being reasonably acceptable to Owner with a long-term rating of at least Minimum Credit Rating. "Minimum Credit Rating" means a rating of at least A- by Standard and Poor's or Fitch or A3 by Moody's Investor Services, as approved by Owner. Without limiting and in addition to any other right Owner may have, Owner shall have the right to draw down on or collect against such letter of credit/bank guarantee upon Owner's demand in the event of a default by Supplier that is uncured if a cure period exists in Section 21.2 or the owing of any liquidated damages or any other liabilities, damages, costs, losses or expenses arising out of or relating to a breach of any obligation under this Purchase Order by Supplier, such default or otherwise. Supplier shall have no right to seek an injunction against Owner drawing on the letter of credit/bank guarantee, and if Supplier does so shall be considered a material default of this Purchase Order with no cure period. All costs associated with the issuance of letter of credit/bank guarantee shall be borne by Supplier.

22.5 If Supplier is a subsidiary of, Affiliate of, or is owned or controlled in part or in whole by another company, Supplier shall, within ten (10) days following a request from Owner, furnish a parent guarantee in the form and format acceptable to Owner, guaranteeing Supplier's full and complete performance of the Work and compliance under the Purchase Order and all obligations of Supplier hereunder.

SECTION 23 WORK MADE FOR HIRE

23.1 Owner and Supplier acknowledge that during the course of, and as a result of, the performance of the Work, Supplier or its Affiliates or Subvendors shall create, or have created, certain written materials, plans, Submittals, specifications, calculations, Records, computer files, or other tangible manifestations of Supplier's efforts related to the Facility (hereinafter individually or collectively referred to as "Work Product"). Work Product developed by Supplier, its Affiliates, Subvendors and/or any of their respective personnel shall be deemed a work made for hire made in the course of performing work hereunder, and all right, title, and interest in and to the Work Product, including without limitation any and all copyrights in the Work Product, patent, trade secret, trademark and other proprietary rights throughout the world shall be owned by Owner irrespective of any copyright notices or confidentiality legends to the contrary which may have been placed in or on such Work Product by Supplier, its Affiliates or Subvendors or any other Person. Supplier and its Subvendors waive in whole all moral rights which may be associated with such Work Product. If, for any reason, any part of or all of the Work Product is not considered a work made for hire for Owner or if ownership of all right, title and interest in the Work Product shall not otherwise vest in Owner, then Supplier agrees that such ownership and copyrights in the Work Product, whether or not such Work Product is fully or partially complete, shall be automatically assigned from Supplier to Owner without further consideration, and Owner shall thereafter own all right, title and interest in the Work Product, including all copyright interests. Owner shall have the right to use, disclose, modify, copy or transfer the Work Product in any manner it finds appropriate, including for any Facility related purpose, an expansion thereto, or Owner's operations. All contracts with Subvendors shall contain provisions consistent with this Section 23. As a work made for hire, each drawing or similar work product developed by Supplier for Owner shall contain a legend similar to the following:

XXXX ("SUPPLIER") HEREBY TRANSFERS FULL TITLE TO THIS DRAWING TO Motiva Enterprises LLC ("OWNER"), IN ACCORDANCE WITH THE GOVERNING AGREEMENT BETWEEN SUPPLIER AND OWNER. OWNER HAS THE FREE AND UNRESTRICTED RIGHT TO USE THIS DRAWING WITHOUT REGARD TO ANY PATENTS OR COPYRIGHTS OWNED OR CONTROLLED BY SUPPLIER. THIS DRAWING IS NOT INTENDED OR REPRESENTED TO BE SUITABLE FOR ANY PURPOSE OTHER THAN AS SET FORTH IN THE GOVERNING AGREEMENT OR APPLICABLE PURCHASE ORDER. SUPPLIER SHALL NOT DISCLOSE THIS DRAWING TO OTHERS NOR USE THIS DRAWING FOR ANY PURPOSE OTHER THAN AS PROVIDED IN THE GOVERNING AGREEMENT WITHOUT OWNER'S PRIOR WRITTEN PERMISSION.

23.2 Notwithstanding Section 23.1, nothing in this Section 23 shall result in a transfer of ownership of any intellectual property owned by Supplier and developed by Supplier prior to Owner's issuance of the Purchase Order ("Supplier Intellectual Property"), regardless of whether such Supplier Intellectual Property is included in the Work Product, and nothing in this Section 23 shall result in the transfer of ownership of intellectual property owned and developed by Subvendors for any project other than the Work hereunder ("Third Party Proprietary Work Product"). With respect to such Supplier Intellectual Property and Third Party Proprietary Work Product, Supplier hereby grants Owner an irrevocable, perpetual, worldwide and royalty free license (including with right to assign its rights without consent to Owner's parent, Affiliate, subsidiary or any purchaser

of an interest in all or part of the Facility and with right to sublicense to any of Owner's contractors and subcontractors) to use, disclose, modify and copy such Supplier Intellectual Property and Third Party Proprietary Work Product for any purpose relating to the Facility or any expansions thereto or Owner's operations thereof. All contracts with Subvendors shall contain provisions consistent with this Section 23.

23.3 All Work Product, and all copies thereof, shall be returned or delivered to Owner upon the earlier of termination of the applicable Purchase Order or completion of the Work, except that Supplier may, subject to its confidentiality obligations set forth in Section 19, retain one (1) record set of the Work Product generated by them.

23.4 The Work Product, including all copies thereof, shall not be used by Supplier or its Subvendors or any other Persons on any other project or for any other reason, except for Owner and Persons expressly authorized by Owner in writing, without the prior written consent of Owner.

23.5 All written materials, plan, drafts, Specifications, computer files or other documents (if any) prepared or furnished by Owner, Owner Group or any of Owner's other consultants, contractors or agents shall, as between Owner and Supplier, at all times remain the property of Owner. Supplier shall not make use of any such documents or other media for any project or for any other purpose than as set forth herein. All such documents and other media, including all copies thereof, shall be returned to Owner upon earlier of termination of the applicable Purchase Order or completion of the Work, except that Supplier may, subject to its confidentiality obligations in Section 19, retain one (1) record set of such documents or other media.

SECTION 24 INSURANCE

24.1 When Supplier is performing work hereunder, Supplier shall maintain and shall require its Subvendors to maintain at no cost to Owner, the following insurance coverage with financially sound insurers:

(a) Commercial General Liability Insurance covering all operations to be conducted under a Purchase Order and including coverage for products and completed operations liability as well as contractual liability covering the indemnities assumed by Supplier under this Contract with a combined single limit bodily injury and property damage of \$1,000,000 per occurrence and \$1,000,000 in the annual aggregate with respect to products and completed operations liability, and an annual aggregate of \$2,000,000;

(b) Business Automobile Liability Insurance, whether scheduled or not, covering any owned, non-owned, and hired vehicles with a combined single limit bodily injury and property damage of \$1,000,000 per occurrence and \$5,000,000 per occurrence, to include pollution liability coverage endorsement CA 99 48 if Supplier is subject to Department of Transportation regulations as a carrier of Hazardous Materials. All vehicles used to perform the duties subject to this Contract shall have this level of Business Automobile Liability Insurance;

(c) Workers' Compensation Insurance covering all employees of Supplier in compliance with the authority having jurisdiction over each employee; if the purchase of the insurance is optional under the applicable laws or regulations of the authority having such jurisdiction, Supplier shall nevertheless purchase the insurance;

(d) Employer's Liability Insurance covering all employees of Supplier with limits of liability of \$1,000,000 bodily injury by accident – each accident, \$1,000,000 bodily injury by disease – each employee and \$1,000,000 bodily injury by disease – policy limit, and

(e) Umbrella/Excess Liability Insurance in excess of the insurance described above (except Worker's Compensation) including coverage for products and completed operations liability and contractual liability covering the indemnities assumed by Supplier under this Contract, subject to a combined single limit bodily injury and property damage of \$4,000,000 per occurrence and in the annual general aggregate for all operations.

Solely to the extent of Supplier's indemnity obligations hereunder, all such insurance policies shall name Owner Group as an additional insured (except for the Workers' Compensation Insurance), shall provide a waiver of subrogation in favor of Owner Group, and Supplier shall give Owner thirty (30) days written notice prior to any cancellation or material change of the insurance policies required herein. Upon request, Supplier shall provide a certificate of insurance to Owner, and Owner may require that Supplier provide such certificate prior to commencing any work specified by a Purchase Order.

24.2 Owner has the right to arrange with a third-party insurance carrier (the "**OCIP Administrator**") for the work at Site to be insured under its owner-controlled insurance program ("OCIP"). Owner reserves the right to exclude any party, including Supplier or its Subvendors, from coverage under the OCIP.

SECTION 25 INDEPENDENT CONTRACTOR

It is expressly understood that the relationship created by this Contract and any Purchase Order is that of principal and independent contractor and not that of principal and agent, master and servant, or employer and employee. Supplier shall be fully responsible for and have the sole and exclusive direction and control of its employees, Subvendors agents and invitees, and shall control the means, manner and methods required to accomplish the work. Any provisions of this Contract or a Purchase Order whereby Owner would otherwise have or appear to have the right to direct Supplier in the manner of performing the work, or the right to exercise a measure of control over the work, shall be interpreted as meaning that Supplier shall follow the desires of Owner only in the results to be achieved and not in the means, manner or methods whereby the work is performed. Nothing in this Contract or any Purchase Order shall be construed to constitute Supplier or any of its employees, Subvendors or agents as an employee, agent, servant, partner or co-venturer of Owner. This Contract and any Purchase Orders are not

considered exclusive contracts, and Owner shall have the right to contract with others to perform same or similar type Work as those to be performed by Supplier hereunder.

SECTION 26 LAWS AND ORDINANCES

26.1 This Contract and any Purchase Orders issued are made specifically subject to, and Supplier expressly agrees that Supplier, its Subvendors and agents, shall comply with and abide by, all the laws, rules, regulations, orders and ordinances (now existing or that may be hereafter enacted or promulgated) of the United States and of the state and any political subdivision wherein the work is to be performed including, but not limited to, (a) the Occupational Safety and Health Act of 1970, as amended, and all regulations and standards adopted or promulgated thereunder or in connection therewith, (b) all state and/or local laws, ordinances, rules and regulations pertaining to occupational safety and/or health, and (c) laws relating to the protection of the environment including those related to the transportation or disposal of waste and the transportation, use or disposal of hazardous or toxic substances. Supplier may seek advice or report any actual or suspected violation of this section by reviewing Ethics and Compliance Hotline at <https://secure.ethicspoint.com/domain/media/en/gui/48985/index.html>, and taking appropriate action.

26.2 U.S. export control and economic sanctions laws can prohibit or significantly restrict the export, re-export, or other transfer of U.S.-origin technology to certain countries subject to U.S. economic sanctions. Supplier is committed to full compliance with these laws in connection with this Contract and each Purchase Order issued thereunder. Supplier will comply and shall ensure its Subvendors comply with U.S. export control and economic sanctions laws, and will take appropriate steps to ensure that Supplier's and its Subvendors personnel do not violate these laws in their performance of this Contract and each Purchase Order issued thereunder. Supplier also agrees that it will not supply Equipment or work that originates from, is sourced from, or will be transshipped through, Cuba, Iran, Sudan, North Korea or Syria, without the prior written consent of Owner. EPA Rule 40CFR82 (Protection of Stratospheric Ozone) requires Owner to label Equipment that is manufactured with or contains listed ozone-depleting substances, including chlorofluorocarbons. Prior to shipment of any material under a Purchase Order, Supplier will advise Owner whether such materials contain or are manufactured with such listed ozone-depleting substances, and in such event Owner will have the right to cancel such shipment or any additional shipments of such material with no cost to Owner.

SECTION 27 SAFETY AND LOSS PREVENTION

27.1 Supplier shall be solely responsible for the safety, health, medical surveillance, industrial hygiene and training of its employees, Subvendors and agents. During performance of the Work, Supplier shall continually monitor the work and safety habits of each of its employees, Subvendors and agents to ensure proper job safety, shall conduct safety meetings as required by the Owner premises at which the Work is being performed and shall perform routine safety inspections of operations, facilities,

equipment (including without limitation any personal protective equipment), machinery, tools, materials and supplies used in the performance of the Work.

27.2 Supplier shall inform its employees, Subvendors and agents of, and shall comply with, all applicable health and safety standards, codes and regulations, including Owner's health, safety, security and environmental policies and procedures. If such standards, codes or regulations do not adequately protect against the hazards arising from any work to be performed hereunder, Supplier, its Subvendors and agents, shall adopt appropriate practices that protect them and their respective employees against such hazards.

27.3 Supplier shall be responsible for an ongoing safety and loss prevention program during the performance of any work, and shall ensure that prior to performing any work that each of its employees, Subvendors and agents has been properly trained and indoctrinated into such program. Failure on the part of Supplier to maintain an ongoing safety and loss prevention program shall be a material breach of the provisions of this Contract entitling Owner to immediately terminate any and all Purchase Orders for Supplier default pursuant to Section 21.2.

27.4 When Work is being performed on Site or other Owner premises, Supplier, its employees, Subvendors and agents, shall adhere to, comply with and enforce all rules, regulations, requirements and conditions of Owner pertaining to drugs and safety (including without limitation any site-specific rules, regulations, requirements, and conditions) and any revisions pertaining thereto for which Supplier has been provided notice prior to or during any phase of the work. Noncompliance with Owner rules, regulations, requirements or conditions set forth herein shall be a material breach of this Contract entitling Owner to immediately terminate any and all Purchase Orders for Supplier default pursuant to Section 21.2.

27.5 Supplier shall promptly furnish to Owner reports of any accident or near miss involving persons or property associated with the Work in accordance with the requirements set forth in the Purchase Order. A "near miss" is any incident that could have caused harm to people, environment, equipment and/or property.

SECTION 28 BUSINESS PRINCIPLES AND ANTI-BRIBERY / CORRUPTION

28.1 Business Principles

28.1.1 Supplier acknowledges that it has actual knowledge of: (i) the Motiva General Business Principles, at <https://motiva.com>, Motiva's Supplier Principles, at <https://motiva.com/Suppliers/Supplier-Resources>; (ii) and Motiva's Helpline, at <https://secure.ethicspoint.com/domain/media/en/gui/48985/index.html>.

28.1.2 Supplier agrees that it and its Subvendors will adhere to and immediately notify Owner of violations of the principles contained in the Motiva General Business Principles and Motiva Supplier Guiding Principles and Expectations in all its dealings with or on behalf of Owner, in connection with this Contract, Purchase Orders, and related matters.

28.2 Anti-Bribery and Corruption

28.2.1 Supplier represents that, in connection with this Contract and related matters: (i) it is knowledgeable about Relevant Requirements applicable to the performance of this Contract and Purchase Orders issued thereunder and will comply with those laws; (ii) Supplier has not made, offered, authorized, or accepted, and will not make, offer, authorize, or accept, any payment, gift, promise, or other advantage, whether directly or through any other Person, to or for the use or benefit of any Government Official or any other Person where that payment, gift, promise, or other advantage would: (A) comprise a facilitation payment; or (B) violate the Relevant Requirements.

28.2.2 Supplier shall immediately notify Owner if Supplier receives or becomes aware of any request from a Government Official or any other Person that is prohibited by the preceding paragraph.

28.2.3 Supplier shall maintain adequate internal controls and procedures to ensure compliance with Relevant Requirements, including the ability to demonstrate compliance through adequate and accurate recording of transactions in its Records.

28.2.4 Owner shall have the right to confirm compliance with Relevant Requirements and record keeping by audit. Supplier shall keep Records available for seven (7) years, or such longer period as may be required by Applicable Law, following termination of the applicable Purchase Order.

28.2.5 SUPPLIER WILL INDEMNIFY OWNER GROUP FOR ANY LIABILITIES ARISING OUT OF SUPPLIER'S BREACH OF RELEVANT REQUIREMENTS OR ANY RELATED UNDERTAKINGS UNDER THIS CONTRACT OR APPLICABLE PURCHASE ORDER.

SECTION 29 CLAIMS

29.1 Subject to the provisions of Section 5 for Owner proposed changes, should Supplier consider itself entitled to any claim for an increase in the Purchase Order Price or in the schedule time for performance (including the Guaranteed Dates), Supplier shall, as a condition precedent to Supplier's right to make a claim for such additional compensation or adjustment to schedule, do the following:

29.1.1 Provide Owner written notice within ten (10) days after the first occurrence of any event which Supplier believes may give rise to a claim by Supplier for an increase in the Purchase Order Price or in the scheduled time for performance (including Guaranteed Dates); and

29.1.2 Within ten (10) days after such notification, Supplier shall provide Owner with a written statement supporting Supplier's claim, which statement shall include Supplier's detailed estimate of the proposed change in Purchase Order Price and scheduled time occasioned thereby (including adjustments to the Guaranteed Dates, if any), and must include supporting documentation.

29.2 Owner shall not be liable for, and Supplier hereby waives any claim or potential claim of Supplier, which Supplier knew or should have known and which was not reported by Supplier in accordance with the provisions of, and within the times required by, this Section 29. If and to the extent Owner agrees that the Supplier's claim is valid, Owner will notify Supplier in writing and issue a Change Order in accordance with Section 5.1. Supplier agrees to continue performance of the Work during the time any claim of Supplier hereunder is pending.

29.3 Any adjustments in the Purchase Order Price, or scheduled time for Supplier's claim, shall not be binding on Owner, unless expressly agreed to in writing by Owner. Any such adjustments in the Purchase Order Price so agreed to in writing shall be paid to Supplier by Owner in accordance with Section 3. No claim hereunder by Supplier shall be allowed if asserted after final payment under a Purchase Order.

SECTION 30 DISPUTE RESOLUTION

30.1 The Parties shall attempt to promptly resolve any claims, disputes, issues, and other controversies arising out of or relating to this Contract or a Purchase Order by good faith negotiations, first, during the normal course of business. To that end, the Parties agree to stay all proceedings, including enforcement of lien actions, pending the outcome of the dispute resolution process set out in this Section 30. All negotiations pursuant to this Section 30 are deemed to be confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

30.2 Subject to Section 30.1, either Party may give the other Party notice of any claims, disputes, issues, and other controversies which have not been resolved during the normal course of business (collectively, "Dispute(s)").

30.3 If a Dispute cannot be resolved informally within ten (10) days after receipt of a Notice of Dispute, or such longer period as the Parties might mutually agree in writing, the Parties shall meet in good faith to negotiate a resolution of the Dispute. The meeting shall be attended by a representative of Owner's senior management or Contractor's senior management (or both of them) and a representative of Supplier's senior management (together the "Project Senior Management Committee"). The Project Senior Management Committee shall have full authority to resolve the Dispute. Such notice shall include: (a) a statement of that Party's position and a summary of arguments supporting such position; and (b) the name and title of the executive who will be representing that Party and of any other person who will accompany the executive.

30.4 If any Dispute cannot be resolved through negotiation in accordance with Section 30.3 within ten (10) days of a Party's receipt of the written notice required by Section 30.3, or after such longer time as the Parties might mutually agree in writing in accordance with Section 30.3, the Parties agree that such Dispute shall be decided by litigation in any United States federal court or state court located in Harris County, Texas. The Parties irrevocably submit to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. In any such suit, action, or proceeding, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs. BOTH PARTIES WAIVE THE RIGHT TO A JURY TRIAL.

30.5 Supplier shall not suspend performance of the Work or underlying Purchase Order as required herein pending resolution of the dispute.

SECTION 31 LEGAL AND MISCELLANEOUS

31.1 Supplier acknowledges that the timely performance of delivery of Equipment as specified in the applicable Purchase Order and provision of warranty Work is essential to Owner, and therefore **TIME IS OF THE ESSENCE** with respect to the performance of the Work.

31.2 Any questions concerning the interpretation and enforcement of this Contract or a Purchase Order will be governed by the domestic law of the State of Texas, without regard to the principles of the conflicts of laws.

31.3 The headings in this Contract are for convenience only and are not to be construed so as to affect the interpretation or enforcement of this Contract, a Purchase Order, or the intent of the Parties. The Contract and each Purchase Order will be construed without regard to which Party wrote it.

31.4 Supplier hereby provides Supplier's approval that Owner may novate this Contract or any Purchase Order to any Person jointly controlled by Owner and any co-venturers, to any Person who acquires an ownership interest in Owner or the Facilities, to any of Owner's other contractors, or to an Affiliate of Owner. Supplier shall expeditiously execute any document required to facilitate such novation of this Contract or a Purchase Order.

31.5 Where applicable, Supplier represents that: (1) it is a participant in good standing of the C-TPAT as regulated by the Department of Homeland Security, U.S. Customs and Border Protection, or (2) it complies fully with the minimum standards and requirements to be a participant of C-TPAT, including, without limitation, those standards relating to supply chain and container security (and in particular, those standards related to container inspection, seals, and storage).

31.6 The terms and conditions of this Contract regarding audit rights, confidentiality, warranties, indemnity, liability incurred upon or prior to termination, and title and possession of work product, along with all other terms and conditions that, by their sense and context, are intended to survive the execution, delivery, performance, termination or expiration of this Contract, shall survive and continue in effect.

31.7 Any failure by Owner at any time, or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of this Contract or to exercise a right hereunder, shall not operate or be construed as a waiver of such terms, conditions or rights, and shall not affect or impair Owner's right at any time to enforce same.

31.8 Supplier shall not assign this Contract or any Purchase Order, in whole or in part, without the prior written consent of Owner. Supplier shall not assign any monies due, or to become due to Supplier hereunder, without the prior written consent of Owner. Any such assignment without the prior written consent of Owner shall be void and of no force

and effect. This Contract shall inure to and be binding upon the respective successors and permitted assigns of the Parties hereto. Supplier hereby provides Supplier's approval that Owner may, without prior written notice to Supplier, assign this Contract and any Purchase Order to any Person jointly controlled by Owner and any co-venturers, to any Person who acquires an ownership interest in Owner or the Facility, to any of Owner's other contractors, or to an Affiliate of Owner.

31.9 Effective January 1, 2012, Supplier also certifies that it is in compliance with the California Transparency in Supply Chains Act of 2010, the UK Modern Slavery Act, and any other laws relating to the prevention and eradication of slavery and human trafficking in its supply chain.

31.10 This Contract may not be amended or modified in any manner except by a written agreement signed by both Parties that expressly amends this Contract. No employee, representative, or agent of Owner has any authority to bind Owner to any affirmative representation or modification concerning the Equipment or Services to be provided hereunder unless specifically included as a written amendment hereto and signed by an authorized purchasing representative of Owner.

31.11 Each Party agrees that a Purchase Order may be, but is not required to be, submitted electronically.

31.12 Unless otherwise specifically provided to the contrary herein, all notices and other communications provided for in this Contract or under a Purchase Order shall be in writing. Such notices and communications shall be deemed duly served and given when received after being delivered by hand or overnight delivery service, electronic mail to the address of the Supplier or Owner representative (as applicable) specified on the Purchase Order (return receipt requested), or on the third day after such notice or communication is sent by registered or certified mail (postage prepaid) to the address of the Supplier or Owner (as applicable) specified on the Purchase Order. Notwithstanding, to be effective pursuant to this Section 31.2 all Supplier notices to Owner shall include a copy to Motiva Legal at Motiva-Legal@Motiva.com.

Each Party may change its address or email any time by giving written notice of such change to the other Party in the manner provided herein.

Additional terms proposed by either Party in acceptance or acknowledgment of a Purchase Order, or on invoices or other documents delivered to either Party, will not be binding unless accepted in writing by both Parties. All terms and conditions in or attached to Supplier's quotation are null and void unless specified in, and specifically identified as being included in, the Purchase Order and Owner expressly acknowledges and agrees to such. Either Party's lack of objection to any additional terms, or the acceptance of Equipment shipped pursuant hereto, will not constitute nor be deemed an agreement by either Party to any proposed additional terms.