

**1. SERVICES AND SCOPE OF WORK.** Seller shall perform the services (herein referred to as the "Work"), described on the reverse side of this Agreement for Buyer. Buyer shall pay Seller any undisputed amounts for performing the Work as specifically described in this Agreement at the rates and according to the schedule set forth on the reverse side of this Agreement. Seller will provide all supervision, professional services, labor, materials, tools, equipment, transportation, subcontracted items, taxes, insurance and all other things reasonably necessary for the performance and completion of the Work, unless otherwise specified herein or agreed to in writing between the parties. Seller shall perform the Work as an independent contractor and none of Seller's employees, subcontractors, agents, or representatives shall be considered in any manner to be an employee of Buyer. Neither Seller nor any employee, subcontractor or other agent of Seller shall be, represent itself as, act as, purport to act as, or be deemed to be, the agent, representative, employee or servant of Buyer, and no such party shall have any right or authority to make any representations, or to assume or create any obligations of any kind, express or implied, on behalf of Buyer or to bind Buyer in any respect whatsoever. The qualifications and suitability of all of Seller's employees, agents, representatives, and permitted assigns having access to any Buyer facility shall be subject to the review by Buyer, and Buyer shall have the right, in its sole, subjective discretion to deny access to any of Seller's employees, agents, representatives, and permitted assigns.

**2. SELLER'S RESPONSIBILITIES AND WARRANTIES.** Seller represents, warrants and covenants that: (a) It and its employees are free of any commitments or obligations that would limit or prevent full performance of the Work. (b) It and its personnel are experienced, are qualified, and possess the skills to perform the Work in accordance with the terms and conditions of this Agreement. (c) The Work will be performed in accordance with the highest professional engineering standards, where applicable. (d) It has obtained and maintains USEPA accreditation for its laboratories, where applicable. (e) It has independent knowledge of and understands the harmful nature and characteristics (whether actual or alleged, present or potential, or toxic, flammable, corrosive, reactive, explosive or otherwise), and the currently known hazards which are presented to persons, property, and the environment from each of the materials, if any, described in this Agreement which may arise out of the Work. (f) It will warn and advise all employees, subcontractors, and other agents of such harmful nature and characteristics of each of the waste materials subject to this Agreement and of any other hazards associated with performance of the Work. (g) All equipment furnished by Seller shall be in suitable condition for and appropriate to the services to be rendered hereunder. (h) It complies with the requirements of all federal and equivalent state laws, regulations, ordinances, orders, and rules, including without limitation, the Civil Rights Act of 1964, Title VII, as amended, the National Labor Relations Act, as amended, the Occupational Safety and Health Act, as amended, the Americans with Disabilities Act, as amended, the Equal Pay Act, as amended, the Age Discrimination in Employment Act, as amended, the Family and Medical Leave Act, as amended and the Fair Labor Standards Act of 1938, as amended, including the requirements as to records. When applicable, this contractor and subcontractor shall comply with the EO Clause in Section 202 of Executive Order 11246, as amended, which is incorporated herein by specific reference and Executive Order 13496. **When applicable, this contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans. When applicable, this contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.** All of the above referenced laws are incorporated herein, unless this transaction is exempt. Seller agrees to submit reports, certificates and other documents required of it and its subcontractors and agents by such Executive Order or Acts, and the rules, regulations and relevant orders issued under the authority of any of the foregoing. (i) Seller's transportation subcontractor, if any, possesses all necessary permits and licenses to transport any waste materials from Buyer's premises in full compliance with all governmental laws, rules, regulations, orders, and manifests. (j) Seller and its subcontractors and agents have all necessary permits and licenses to perform the Work and the Work shall be performed in full compliance with all local, state and federal laws and regulations. (k) Seller shall ensure that the handling, storage, transportation or other disposition of any waste generated by Seller will be performed in compliance with all local, state and federal laws and regulations. (l) Seller shall promptly furnish to Buyer copies of additional permits and licenses as are required or when existing permits and licenses are renewed. (m) Seller shall act to prevent threatened damage, injury or loss, in an emergency situation affecting the safety of persons or property. Seller shall notify Buyer immediately upon the revocation, termination or expiration of any said permits or licenses. Buyer shall have the right at any reasonable time to inspect and obtain copies of all licenses, permits, and approvals issued by any governmental agency to Seller or its subcontractors or agents which are applicable to performance of this Agreement and to inspect and test, at its own expense, the transportation vehicles or vessels, and containers provided or designed by Seller, its subcontractors and agents, in the performance of this Agreement. **TIME IS OF THE ESSENCE** in the completion of all Work. Seller shall complete all Work within the time limits required by Buyer, and as specified on the reverse side of this Agreement.

Seller shall be responsible for the payment of all taxes covering the Work, including the payment of all applicable taxes covering its employees. Seller agrees not to file or otherwise assert, prosecute or permit mechanics' or material suppliers' liens to be filed or continued in connection with the Work against any property of Buyer, or property for which Buyer is responsible. Matters in connection with the Work include, without limitation, services performed, or materials, machinery, and equipment furnished. In the event that any such lien shall be filed, Seller agrees to take all steps necessary for the release and discharge of such lien on receipt of demand from Buyer, and in default of performing such obligation, agrees to reimburse Buyer, for all moneys paid in the releasing, satisfying, and discharging of such liens, including reasonable attorneys' fees and disbursements.

**3. CHANGES IN THE WORK.** Buyer and Seller, without invalidating this Agreement, may request changes in the Work within the general scope of this Agreement. All such changes requested by Seller are subject to Buyer's prior written approval, which shall constitute an Amendment to this Agreement. In the event that the United States, the appropriate state, county, or other governmental agency, department, or body having jurisdiction over Seller shall hereafter enact any statute, ordinance, rule or regulation pertaining to the Work, and in the event that compliance with such statute, ordinance, rule or regulation shall cause an increase in the cost to Seller of performing its obligations hereunder, then Seller shall supply Buyer with proof of the cause of increased costs, and Buyer reserves the right to review the method of calculating the increase of cost in order to determine that the increase in fees is fairly apportioned to Buyer. Seller shall not proceed with any Work for which there will be an additional charge not covered by the Agreement, until so authorized in writing by Buyer.

**4. INDEMNIFICATION.** (a) Seller agrees to indemnify and hold harmless, Buyer from and against any and all claims, loss, damages, injuries, liabilities, penalties, forfeitures, suits, and the costs and expenses incident thereto (including cost of defense, settlement and reasonable attorneys', consultant or other professional fees) which Buyer may hereafter incur as a result of death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effect on the environment, or any violation of governmental laws, rules, regulations or orders caused by (i) Seller's breach of any term or provision of this Agreement or (ii) any negligent or willful act or omission of Seller, its employees, agents, representatives or subcontractors in the performance of this Agreement or related to the Work. (b) As a separate and additional obligation, except as expressly prohibited by applicable law, Seller agrees to indemnify and hold harmless, Buyer from and against any and all claims, loss, damages, injuries, liabilities, penalties, forfeitures, suits, and the costs and expenses incident thereto (including cost of defense, settlement and reasonable attorneys', consultant or other professional fees) which Buyer may hereafter incur as a result of death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effect on the environment, or any violation of governmental laws, rules, regulations or orders regardless of the cause or alleged cause and regardless of whether such matters are groundless, fraudulent, or false arising from or related to the Work or the performance of this Agreement, including without limitation (i) matters asserted against Buyer by employees of Seller or any other persons or entities, and (ii) matters in which it is claimed Buyer was negligent, or otherwise committed one or more acts or of misfeasance, malfeasance or nonfeasance. The word "Buyer" as used in this section includes without limitation Buyer itself, its officers, directors, agents, employees, representatives and assigns, or any person or entity for whom or for which it is claimed Buyer is responsible.

**5. CONFIDENTIALITY.** Seller (including its employees, officers, agents, and directors) shall treat as confidential and proprietary and not disclose to others any information received from Buyer, including but not limited to Buyer's plans, programs, business, facilities, products, costs, equipment, operations, or property or the condition thereof, which may come within Seller's knowledge in the performance of this Agreement, without in each instance securing the prior written consent of Buyer. Seller shall also treat as confidential and proprietary and shall not disclose to others, any information relating to the chemical composition or quantity of materials received by it from Buyer, and the fact that Buyer was the source of such materials. If Seller is required by subpoena or judicial or administrative order (hereinafter referred to as "Order"), or law, to disclose any information required by this Agreement to be treated as confidential and proprietary, Seller shall promptly notify Buyer of such law, or the receipt of such Order and permit Buyer to challenge the Order or law prior to Seller's disclosure of the information. Seller's obligations of confidentiality set forth herein shall be in effect during the life of this Agreement and for ten (10) years thereafter.

**6. TERMINATION.** Buyer shall have the right to terminate this Agreement at any time for Buyer's convenience and without cause. After receiving notice of termination, Seller will (a) stop the Work on the date and to the extent specified in the notice and (b) deliver to Buyer in their then current state of condition, all drawings, reports and other documents relating to the Work and remaining samples. No cost incurred after the effective date of termination shall be treated as a reimbursable cost unless incurred with the express written consent of Buyer. If this Agreement is terminated before completion of the Work, Buyer shall have the right, but shall not be obligated, to complete the Work itself or cause the Work to be completed by others.

**7. INSURANCE.** (a) Seller shall procure and maintain, at its sole expense, the following types of insurance, in amounts at least equal to those specified below, issued by companies acceptable to Buyer, authorized to conduct business in the states in which the work is to be performed and with a Best's rating of at least of A-X:

(i) Worker's Compensation Insurance shall be provided covering obligations imposed by Federal (including Longshoremen's and Harbor Worker's Compensation Act Insurance, if applicable) and state law in each state where persons employed by the Seller will be performing work under this Agreement, including without limitation, coverage for occupational diseases. (ii) Employers' Liability Insurance shall be provided with minimum limits of \$1,000,000. (iii) Commercial General Liability Insurance shall be provided with coverage, on an occurrence basis, not less than \$3,000,000 combined single limit per occurrence for bodily injury, property damage, and personal and advertising injury, such coverage to include contractual liability (including without limitation coverage for claims arising pursuant to the indemnities contained in this Agreement), products liability (including completed operations), the contingent liability of Seller for the liability of subcontractors, cross liability, sudden and accidental pollution and coverage for explosion, collapse and underground damage (XCU). If such insurance is subject to an aggregate limit, the aggregate limit shall apply on a per location or per project basis, or be in excess of \$6,000,000. (iv) Commercial Automobile Liability Insurance shall be provided with coverage for all owned and non-owned vehicles used regarding the Work with a combined single limit of at least \$3,000,000, including contractual liability coverage for the indemnities contained in this Agreement and such additional coverage and limits as required by law. If hazardous materials or waste are to be transported, Commercial Automobile Liability Insurance shall be endorsed with the MCS-90 endorsement in accordance with the applicable legal requirements. (v) All Risk Property Insurance shall be provided which is written on a replacement cost basis protecting Buyer and Seller for the full replacement cost of all property or equipment owned, leased or otherwise used by Seller in connection with the Work. Such insurance shall also cover Buyer owned property in the care, custody or control of Seller away from Buyer's premises. (vi) All other coverage required by applicable laws and regulations, including in addition to insurance, any other form of financial protection required by applicable laws and regulations shall also be procured and maintained by Seller at Seller's sole expense. (b) All policies of insurance shall contain a waiver of subrogation against Buyer. All policies except Worker's Compensation shall include Buyer and other parties Buyer may designate as additional insureds for claims arising from Work performed under this Agreement. All insurance required above shall be primary and non-contributory to insurance purchased by Buyer. All insurance required shall include the costs of defending Buyer and such defense costs shall not apply against the coverage limits of the required insurance. (c) Seller shall require each subcontractor to provide and maintain insurance comparable to the insurance required in this Agreement. (d) All policies shall not be subject to a deductible or self-insured retention in excess of \$50,000 without the prior approval of Buyer. Seller shall be responsible for and pay all losses within any deductibles or self-insured retentions. (e) All limits for liability insurance and required coverage may be provided through any combination of primary and excess liability or umbrella insurance. (f) Buyer reserves the right to require Seller to increase such limits or to carry other types of coverage with deductibles and limits acceptable to Buyer provided that Buyer shall reimburse Seller for any additional premiums attributable to such increased coverage. The insurance described herein sets forth minimum amounts and types of coverage, and is not to be construed in any way as a limitation of Seller's liability to Buyer or to others under this Agreement. (g) Seller shall continue to provide the required products and completed operations insurance coverage for a period of five years after contract expiration or project completion, whichever occurs later. (h) Seller shall furnish Buyer with certificates issued by the insurance company or companies issuing the insurance policies required by this provision (other than subcontractor's policies) prior to commencement of work as well as copies of endorsement showing that Buyer is an additional insured, that all policies are primary and non-contributing to Buyer's policies, that defense costs do not apply against coverage limits, and that all policies contain a waiver of subrogation against Buyer. Such certificates shall provide that written notices shall be given to Buyer's Risk Management Department at its office at 427 North Shamrock Street, East Alton, IL 62024-1197, or its office location that issued this Agreement, if different, at least forty-five (45) days prior to any cancellation or change in any such policy.

**8. RECORDS.** Seller shall: (a) maintain complete and accurate books and records in accordance with applicable laws, generally accepted accounting principles and practices, and in sufficient detail to reflect the actual cost of performing the Work under this Agreement; (b) furnish Buyer with statements of Seller's actual cost at such times and in such form and detail as Buyer may request; (c) permit Buyer or its representatives to inspect and audit any and all of Seller's books, records and accounts relating to the Work and this Agreement at all reasonable times during performance thereof and for a period of three (3) years after payment of the final invoice; and (d) if required by Buyer, Seller's invoices shall be certified by an authorized representative of Seller in a manner prescribed by Buyer.

#### **9. GENERAL PROVISIONS.**

**A. Waiver.** Any waiver by either party of any provision or condition of this Agreement must be in writing signed by the waiving party and shall not be construed or deemed to be a waiver of any other provision or condition of this Agreement, nor a waiver of a subsequent breach of the same provision or condition, unless such advance waiver be so expressed in writing and signed by the party to be bound.

**B. Severability.** If any provision of this Agreement shall be adjudged illegal, invalid or unenforceable, the validity and enforceability of the remaining provisions hereof shall not be impaired.

**C. Notice.** Any notice, communication or statement required or permitted to be given hereunder shall be in writing and deemed to have been sufficiently given when

delivered in person, sent via facsimile, with receipt of confirmation, or by other means of delivery for which a delivery confirmation is provided to the address or facsimile number of the respective party on the reverse side of this Agreement. The date of delivery shall be the date which appears upon a valid, written or electronic verified receipt confirming delivery such as a facsimile confirmation of delivery, or the type of return receipt one obtains from the United States Postal Service® or a common carrier such as Federal Express Corporation (FedEx®), United Parcel Service® or DHL Worldwide Express®. Either party may, by notice to the other, change the addresses, facsimile numbers, and names given above.

**D. Entire Agreement.** This Agreement represents the entire understanding and agreement between the parties concerning the Work, and supersedes any and all prior agreements, whether written or oral, that may exist between the parties regarding the Work. No terms, conditions, prior courses of dealing, courses of performance, usages of trade, understandings or agreements purporting to modify, vary, supplement or explain any provision of this Agreement shall be effective and none shall be binding unless in writing, signed by duly authorized representatives of both parties.

**E. Provisions of This Agreement Prevail.** Except as otherwise provided herein, this Agreement shall prevail in the event of any inconsistencies between it and the terms and conditions of any quotation, acknowledgment, order, invoice, agreement or other document or understanding of the Seller.

**F. Performance; Governing Law.** Performance of any of the Work hereunder constitutes acceptance of all terms and conditions of this Order regardless of whether or not Seller has acknowledged it. This Agreement and any question or controversy arising out of the Work to be performed hereunder shall be governed by the law of the State of Buyer's facility where the work is to be performed, without regard to its conflict of law provisions.

**G. Assignment and Subcontract.** Neither party shall assign or subcontract this Agreement, its performance, or any monies due or to become due hereunder, and any attempt to do so shall be void unless with the prior written consent of the other party, except that this Agreement may be assigned without consent in connection with the acquisition or merger of Buyer, the acquisition or transfer of all or substantially all of the assets of the Buyer group or division operating the Buyer facility, or Buyer's sale or other transfer of the Buyer facility.

**H. Survival.** The confidentiality, indemnification, and insurance obligations set forth herein shall survive the termination of this Agreement.

**I. Attorneys' Fees and Costs.** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement or if any party shall become engaged in the defense of any counterclaim or cross claim arising out of or in connection with the transactions contemplated under and in accordance with the provisions of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which such party may be entitled. The "successful or prevailing party" under this Agreement is one that is either awarded monetary or equitable relief on one or more of its claims, or is one that successfully defends against the other party's claims such that the claiming party is not awarded relief on any of its claims. In the event that both of the parties obtain relief on one or more claims, the "successful or prevailing party" is the party obtaining the greater benefit from the litigation.

**J. Definitions and Particular Descriptions or Identification.** Terms in this Agreement which have special definitions or require a more particular description or identification such as "Seller", "Work" and "Buyer" are defined or otherwise specifically described or identified on the reverse side of this Agreement and are hereby made a part of these terms and conditions to make up the Entire Agreement.