

# TERMS AND CONDITIONS FOR CONTRACT FOR SERVICES TO NASHTEC, LLC

**1. DEFINITIONS.** As to this Contract for Services: (a) "Contract" shall include those documents setting forth the Scope of Work, these Terms and Conditions, and all other documents that may be attached by the Owner thereto or referenced in the attached Scope of Work; (b) "Contractor" shall mean the general contractor entering into this agreement with Nashtec, LLC, and its directors, officers, employees, agents, and representatives; (c) "Job Site" means Owner's facility or facilities where the Work is performed; (d) "Owner" shall be Nashtec, its parent, and any affiliates as designated by Owner, their directors, officers, employees, agents, and representatives; (e) "Subcontractor" shall be any subcontractor retained by Contractor and its directors, officers, employees, agents, and representatives, and includes Subcontractors of all tiers; (f) "Work" shall be as defined in the Scope of Work attached hereto and includes, but is not limited to, any services, labor, construction, installation, start-up or repair work performed at the Job Site.

**2. ACCEPTANCE.** Acceptance occurs upon (a) Contractor's written acknowledgement and acceptance of the Contract and the Scope of Work; or (b) the commencement of any of the Work by Contractor in accord with the terms of the Contract. No proposal by Contractor to add, modify or vary these terms and conditions or any other term of this Contract shall be deemed accepted by Owner, and such are hereby objected to and rejected. No reference herein to Contractor's quotation, bid proposal or any other document prepared by Contractor shall constitute Owner's acceptance of any different or additional term or condition contained in such Contractor's document.

**3. CONTRACTOR AND ITS EMPLOYEES.** (a) Contractor shall be an independent contractor in the performance of the Work and shall not hold itself out as an agent of Owner. Contractor shall be solely responsible for the hiring and firing of its employees.

(b) Contractor is solely responsible for the training, supervision and safety of its employees and for providing all necessary tools and equipment, including safety equipment, to do the Work.

(c) Contractor shall ensure that it and all its Subcontractors comply with all applicable environmentally compliant practices required by law. Contractor shall comply with all safety regulations as governed by the Occupational Safety and Health Administration ("OSHA").

**4. RESPONSIBILITY FOR SAFETY.** (a) The presence at the Job Site of Contractor or Contractor's Subcontractors is at Contractor's risk. Contractor shall maintain strict discipline and order among its employees and employees of its Subcontractors. Contractor shall be in control of the Work

site and shall be solely responsible for ensuring that the Work is performed in a safe manner. Contractor is solely responsible for the training, supervision, and safety of all Contractor employees and employees of its Subcontractors. In this regard, Contractor is responsible for ensuring that its employees and those of any Subcontractor understand and will execute Nashtec's written and verbal safety instructions. Because these safety instructions will be in English, particularly in the event of an emergency, Contractor must ensure that all such employees are sufficiently competent in the English language that they can comprehend written and verbal safety instructions given in English. In those situations where knowledge of an applicable Safety Data Sheet ("SDS") is required, Contractor is also responsible for ensuring distribution and awareness of the SDS. Contractor is responsible for ensuring that its employees and the employees of any Subcontractor comply with all applicable safety rules and regulations, including all regulations of the Occupational Safety and Health Administration. Contractor is solely responsible for daily inspecting the Work site to ensure that the Work is being performed in a safe manner and in compliance with all safety rules and regulations.

(b) Contractor will ensure that neither its employees nor employees of its Subcontractors work more than sixteen (16) hours in any one twenty-four (24) hour period, or more than sixty-four (64) hours in any one work week, unless otherwise agreed by Owner's management.

(c) Owner retains the right to start or stop the Work and inspect the progress of the Work. Owner also reserves the right to require that any of the employees of Contractor or its Subcontractors be removed from the Work site when, in Owner's opinion, such action is warranted. Owner further retains the right to conduct drug tests on employees of Contractor and/or Subcontractor for cause.

(d) During performance of the Work and until Owner's final payment to Contractor under this Contract, Contractor retains responsibility for and shall take all reasonable precautions (i) for the safety of the public, all employees, and other persons at the Job Site and (ii) necessary to prevent damage to property in connection with the performance of the Work. In an emergency threatening the safety of persons or property, Contractor may act in its discretion, without waiting for special instructions or authorization from Owner, to prevent any injury or damage to persons (including, but not limited to, employees of Owner, Contractor, Subcontractors, or members of the public), or property (including property of Owner or adjoining property)..

**5. SUBCONTRACTORS.** (a) Contractor shall be as fully responsible to Owner for the acts and omissions of

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Contractor's Subcontractors and of persons either directly or indirectly employed by them as it is for its own acts and omissions.

(b) Each of Contractor's Subcontractors shall be bound by the terms of this Contract, and each shall assume toward Contractor all obligations and responsibilities which Contractor assumes towards Owner under this Contract. Contractor shall provide all its Subcontractors with a copy of this Contract.

(c) Owner shall have the right to require Contractor to terminate any of Contractor's Subcontractors and to require that any of Contractor's Subcontractors promptly vacate the Job Site.

**6. CHANGES.** Contractor shall strictly comply with all terms of this Contract unless a change is agreed upon in writing by an authorized representative of Owner. No course of prior dealings or usage of trade shall apply unless expressly referred to in this Contract. Owner may at any time, by written notice to Contractor, make changes within the general scope of this Contract. Contractor shall promptly make such changes, and any difference in price or time for performance resulting from such changes shall be equitably adjusted by Owner. Contractor shall promptly provide to Owner documentation relating to such changes in such form and detail as Owner may direct.

**7. SEPARATE CONTRACTS.** (a) In the event this Contract is terminated for any reason, Owner reserves the right to issue other contracts in connection with the Work or other related work, including, but not limited to, the right to perform the Work or any portion thereof with its own employees or through other Contractors.

(b) Contractor shall afford other Contractors reasonable opportunity for introduction and storage of their materials and equipment and the performance of their work, and Contractor shall properly connect and coordinate the Work with theirs.

(c) If the proper performance or results of any of the Work depends upon the work of any other Contractor, Contractor shall inspect and properly report to Owner any apparent discrepancies or defects in such work that render it unsuitable for proper performance and results as called for under this Contract. Contractor's failure to so inspect and report shall constitute an acceptance of the other Contractor's work as fit and proper to receive the Work.

(d) Should Contractor or any of its Subcontractors cause damage to the work or property of any other Contractor or to any of its Subcontractors, Contractor shall, upon notice from Owner, settle with such other Contractor or Subcontractor by agreement or arbitration if possible. If such other contractor or subcontractor sues Owner or initiates an arbitration proceeding on account of any such

damage, Owner shall notify Contractor, in which case (i) Contractor shall defend Owner in such proceeding at Contractor's expense, or, if Owner elects to handle its own defense, Contractor shall promptly reimburse Owner for all of Owner's attorneys' fees and costs and expenses of defense, and (ii) Contractor shall pay or satisfy any judgment or award against Owner.

**8. (a) Overtime Work.** Owner shall not be obligated to pay Contractor any additional compensation for any overtime work by Contractor or its Subcontractors unless Owner (i) so agrees in writing prior to the performance of such overtime work or (ii) issues a request for the performance of such overtime work. Contractor shall perform any extra work directed in writing by Owner. If this is a lump sum contract or if Contractor is to be compensated for the portion of the Work to which such overtime work relates on a lump sum basis, Owner shall reimburse Contractor for (i) the premium portion of the hourly wages paid in connection with such overtime work and (ii) all such premium portion. If this is not a lump sum contract and if Contractor is not to be compensated for the portion of the Work to which such overtime work relates on a lump sum basis, Owner shall pay Contractor 150% of the straight time hourly wages paid in connection with such overtime work. Notwithstanding the foregoing, Owner shall not be obligated to reimburse Contractor for overtime work that, in Owner's opinion, is required for the timely performance of the Work.

(b) **Travel Time.** Owner shall not be obligated to pay Contractor any additional compensation for travel time to or from the Job Site, whether for individuals or pieces of equipment, absent separate special written provisions therefore included in the Scope of Work, which specifically note that they are to control over this clause of the general Terms and Conditions, and which are signed by Owner as provided in paragraph 31 below.

(c) **Timesheets.** timesheets, field documents or other related contractor/vendor documents shall serve only to acknowledge performance of Work and shall neither modify or alter any term of this Contract or its terms nor serve as a course of dealing to modify this Contract. All such documents must be provided to Owner for review and audit on a daily basis or within one (1) business day, and Owner is entitled to make adjustments as may be appropriate based upon such audits. To the extent any conflict exists between any such document and this Contract, the terms of this Contract shall prevail, except as provided in paragraph 31.

**9. CLEANUP.** Contractor shall at all times keep the Job Site free from the accumulation of waste materials or debris resulting from performance of the Work. Upon

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completion of the Work, Contractor shall (i) remove from the Job Site and adjoining property all waste materials, debris, tools, equipment, temporary structures and surplus materials belonging to it or its Subcontractors, and (ii) leave the Job Site broom clean, unless Owner gives written instructions to the contrary. If Contractor fails to perform such cleanup, Owner may, at its option, do so and charge the cost of such Cleanup to Contractor.

**10. INSURANCE.** (a) Contractor shall not commence performance of the Work until it has furnished Owner with certificates of insurance satisfactory to Owner certifying that valid insurance policies are in effect and will remain in effect until the Work has been fully performed. Such policies shall provide for (i) Workers' Compensation insurance in statutory limits and including a provision for waiver of subrogation, unless Contractor provides evidence satisfactory to Owner of being a qualified self-insurer, (ii) Employer's Liability insurance with a combined single limit of liability of not less than \$250,000 for each person/each accident, (iii) Comprehensive General Liability Insurance (including, but not limited to, coverage for Broad Form Property Damage, Contractual Liability and Personal Injury) with a combined single limit of liability of not less than \$10,000,000 per occurrence for bodily injury and property damage, and (iv) Comprehensive Automobile Liability insurance with a combined single limit of liability of not less than \$1,000,000 per occurrence for bodily injury and property damage, if any automotive or mobile equipment is to be used in connection with the Work. Owner shall also be named as an additional insured under any Excess Liability or Umbrella Liability policies, which may also be utilized to achieve the minimum amounts of insurance under any of the foregoing insurance requirements.

(b) Contractor agrees that, except for the Worker's Compensation insurance, **OWNER SHALL BE NAMED AS ADDITIONAL INSURED IN ALL OF THE FOREGOING INSURANCE POLICIES** with a statement to that effect set forth in the certificates of insurance furnished to Owner. Contractor further agrees that, except for the Worker's Compensation insurance, prior to the commencement of any Work by a Subcontractor, that Subcontractor shall also be required to provide evidence (i) of insurance as set out in the foregoing paragraph, and (ii) that Owner is named as an additional insured under those policies. Such certificates of insurance shall provide for 30 days' written notice to Owner of any cancellation, termination or material change in coverage. **THIS OBLIGATION IS INDEPENDENT AND SEPARATE FROM ANY DUTY TO INDEMNIFY.**

(c) The foresaid insurance coverage is intended to protect Owner against any and all claims or losses which directly or

indirectly are in any way connected with or arise out of the performance of the Work,. If Contractor utilizes Subcontractors in performance of the Work, Contractor shall ensure that all such Subcontractors have obtained the insurance coverage and endorsements required to be obtained by Contractor and that certificates of insurance evidencing such coverage and endorsements have been furnished to Owner before any such Subcontractor enters the Job Site.

**11. CONTRACTOR'S INDEMNITY OF OWNER.** (a) **SEPARATE AND INDEPENDENT OF ANY OBLIGATION BY CONTRACTOR TO PROVIDE INSURANCE COVERAGE WITH OWNER AS A NAMED INSURED UNDER THE RELEVANT INSURANCE POLICIES, AND TO THE FULLEST EXTENT PERMITTED UNDER THE LAW, CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS OWNER** from and against any and all claims, losses, demands, causes of action, lawsuits, damages, consequential damages, punitive damages, costs, actions, judgments, expenses and liabilities of every kind and nature whatsoever (including, but not limited to, Owner's attorneys' fees and costs and expenses of defense), which, either directly or indirectly, are in any way connected with or arise out of performance of the Work, including but not limited to actual or alleged bodily injury (including illness or death) or damage to property, to the extent Contractor's, its officer's, agent's, representative's, employee's and/or Subcontractor's acts or omissions give rise to such losses or liability. This indemnity, as defined above, shall include, but is not limited to, claims or damages brought by agents or employees of Contractor or any of its Subcontractors, damage to or destruction of any property, real personal or otherwise (including loss of use thereof), or any other matters in any way connected with the Work, or any action on or condition of the Owner's premises associated with performance of the Work.

(b) **THE FOREGOING OBLIGATION OF CONTRACTOR TO INDEMNIFY, DEFEND, AND HOLD HARMLESS OWNER SHALL ARISE WHETHER OR NOT SUCH DAMAGE, INJURY, LOSS OR CLAIM WAS OR IS ALLEGED TO HAVE BEEN CAUSED OR CONTRIBUTED TO BY THE ACTIVE, PASSIVE, AFFIRMATIVE, OR CONCURRENT NEGLIGENCE OF OWNER. -PROVIDED, HOWEVER, THAT THIS INDEMNITY PROVISION SHALL NOT APPLY TO A CLAIM BROUGHT BY OR ON BEHALF OF ANY PERSON OTHER THAN AN AGENT OR EMPLOYEE OF CONTRACTOR OR ANY OF ITS SUBCONTRACTORS, OR ANY AGENT OR EMPLOYEE OF ANY SUCH SUBCONTRACTOR, SO AS TO REQUIRE CONTRACTOR TO INDEMNIFY OWNER AGAINST A CLAIM CAUSED BY THE NEGLIGENCE, FAULT, BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR THE BREACH OF**

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**CONTRACT BY OWNER, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER OWNER'S DIRECT CONTROL OR SUPERVISION AT THE TIME OF THE INCIDENT.** It is further acknowledged that a portion of the price to be paid to Contractor by Owner for the work serves as consideration for Contractor's assumption of liability and Contractor's indemnity obligations under this Contract. Contractor shall defend Owner in such proceeding at Contractor's expense, or, if Owner elects to handle its own defense, Contractor shall promptly reimburse Owner for all of Owner's attorneys' fees and costs and expenses of raising a defense against any such claims as referenced herein, including expenses, costs of suit and attorneys' fees.

(c) **SEPARATE AND INDEPENDENT OF ANY OBLIGATION BY CONTRACTOR TO PROVIDE INSURANCE COVERAGE WITH OWNER AS A NAMED INSURED UNDER THE RELEVANT INSURANCE POLICIES, AND TO THE FULLEST EXTENT PERMITTED UNDER THE LAW, CONTRACTOR SHALL ALSO BE SOLELY RESPONSIBLE FOR AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS OWNER** from any and all liability for any citations or any orders issued against Contractor or any of its Subcontractors by OSHA or under the Occupational Safety and Health Safety Act of 1970 and related law, relating to Contractor and work performed by Contractor or any of its Subcontractors under this Contract. Contractor shall be solely responsible for the abatement of any such alleged violation and shall be solely liable for any civil or criminal penalties asserted to and as a result of said citation or order, whether issued against Contractor or any of its Subcontractors, or issued against any of them as well as against Owner.

(d) The provisions of this Section 11 are intended to conform to and comply with Chapter 151 of the Texas Insurance Code, while providing indemnity to Owner to the full extent permissible by law. If any of the provisions of this Section 11 are deemed unenforceable under applicable law, the parties agree that any unenforceable portion is separable and severable from the remaining portion of this Section 11, and from all other provisions of this Contract, (ii) that such unenforceable portion, if any, does not constitute the main or essential feature of this Contract, and (iii) that the obligations of indemnification assumed by Contractor under Section 11 shall be interpreted and applied to conform in all respects with applicable law.

**12. TITLE AND RISK OF LOSS.** (a) As between Owner and Contractor, Owner shall have title to and bear the risk of loss for any Work which has been completed or which is in the course of construction. Owner shall have title to all equipment, tools, materials and supplies as to which (i) title has passed from the vendors thereof to Contractor and (ii) which are to be consumed or incorporated in the Work.

Contractor shall bear the risk of loss for such equipment, tools, materials and supplies until they have either been consumed or incorporated in the Work. Contractor shall obtain and deliver to Owner all documents Owner deems necessary to confirm title in Owner's name.

(b) Contractor warrants good title to all equipment, tools, materials and supplies consumed or incorporated in the Work, except for equipment tools, materials or supplies furnished by Owner or by a third party pursuant to a purchase order contract issued by Owner to such third party.

**13. LIENS.** (a) Contractor shall keep Owner's real and personal property free and clear of liens, claims and encumbrances arising out of or resulting from the performance of the Work by Contractor or its Subcontractors, including, but not limited to, all materialmen's and mechanics' liens in connection with labor or material furnished by Contractor or its Subcontractors. If any such lien, claim or encumbrance is filed, Contractor shall promptly cause it to be removed without cost to Owner. **CONTRACTOR SHALL PROTECT, DEFEND AND INDEMNIFY OWNER AND OWNER'S AFFILIATES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, COSTS, ACTIONS, JUDGMENTS, EXPENSES AND LIABILITIES OF EVERY KIND AND NATURE WHATSOEVER (INCLUDING BUT NOT LIMITED TO, ATTORNEYS' FEES AND COSTS AND EXPENSES OF THE PROCEEDING) WHICH ARISE OUT OR RESULT FROM, EITHER DIRECTLY OR INDIRECTLY, SUCH LIENS, CLAIMS OR ENCUMBRANCES.** Contractor shall defend Owner in such proceeding at Contractor's expense, or, if Owner elects to handle its own defense, Contractor shall promptly reimburse Owner for all of Owner's attorneys' fees and costs and expenses of raising a defense against any such claims as referenced herein, including expenses, costs of suit and attorneys' fees.

(b) Owner shall not be obligated to make final payment or pay any part of any retained percentage to Contractor until Contractor, if requested by Owner, has delivered to Owner (i) a duly executed affidavit, release and waiver of liens prepared by Owner for this purpose and (ii) evidence establishing to Owner's satisfaction that all labor, services, equipment and materials have been fully paid for and that all Subcontractors have been paid in full. Additionally, if this Contract provides for progress payments to Contractor, Owner may, at its option, require Contractor to furnish a duly executed interim affidavit, release and waiver of liens and evidence of payment by Contractor for the labor, services, equipment and materials covered by any such progress payment.

(c) If a preliminary lien notice of any other form of communication (whether formal or informal, written or

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oral) is received from any of Contractor's Subcontractors or from any employee or supplier of Contractor or Contractor's Subcontractors concerning the failure of Contractor or of any of its Subcontractors to pay for any labor, services, equipment or materials furnished in connection with the Work, Owner may, at its option, pay such Subcontractor, employee or supplier directly for such labor, services, equipment or materials and deduct the amount of such payment from any amounts then or thereafter due Contractor. If the amounts then or thereafter due Contractor are not sufficient to cover such payment, Contractor shall promptly pay the difference to Owner.

(d) If any lien affecting Owner's property remains unsatisfied after all payments have been made to Contractor in connection with this Contract, Owner may, at its option, obtain a discharge of such lien. Contractor shall promptly reimburse Owner for all costs and expenses incurred by Owner in obtaining such discharge, including, but not limited to, all payments by Owner to the party which filed the lien and all of Owner's court costs and attorneys' fees.

**14. LICENSES, PERMITS AND NOTICES.** Except as otherwise provided in this Contract, Contractor shall obtain and pay for all required consents, approvals, licenses and permits and shall give all required notices.

**15. INTELLECTUAL PROPERTY RIGHTS.** Contractor warrants that the purchase, use of services or Work covered by this Contract do not and will not infringe any patent, trademark, copyright, trade secret or other intellectual property right. Owner shall own all intellectual property rights resulting from any design or development work by Contractor in connection with this Contract.

**16. WARRANTIES AS TO MATERIALS AND WORKMANSHIP.** Contractor warrants that it knows of Owner's intended use for services covered by this Contract. Strict performance of the Work in accordance with this Contract is of the essence. Unless otherwise specified in this Contract, Contractor warrants that all materials furnished under this Contract shall (i) be new, (ii) be free from defects in design, workmanship and materials, and (iii) conform to generally recognized commercial standards of quality and fitness for purpose. Contractor warrants that the Work shall be of good quality, free from faults and defects, and conform to the requirements of this Contract. Contractor further warrants that all Work performed in accord with this Contract shall be in strict conformance with the specifications, samples, drawings, designs or other descriptions upon which this Contract may be based. If, in Owner's opinion, any material or Work does not conform

to these standards, Owner may consider it to be defective. If requested by Owner, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and workmanship. Without cost to Owner, Contractor shall replace any defective material and correct any inferior or defective workmanship discovered during the one year period commencing upon Owner's final payment to Contractor under this Contract. No inspection, test, acceptance, use or payment in connection with this Contract shall affect Contractor's obligations under this Contract, and such obligations shall survive inspection, test, acceptance, use or payment.

**17. PRICE WARRANTY.** Contractor warrants that the charges for the services covered by this Contract are not less favorable than those extended to others for similar services. If Contractor charges lower prices to others for such services before it has performed all of the services covered by this Contract, Contractor shall offer to reduce the prices under this Contract proportionately. Contractor warrants that the prices shown on the front of this Contract are complete and that no additional charges of any type shall be added without Buyer's prior written consent.

**18. INVOICES.** Payment is due within thirty (30) days of the receipt of any invoice for Work performed. Unless otherwise provided in the Scope of Work, Contractor shall mail a separate invoice for each phase of Work completed within twenty-four (24) hours after the completion of such Work, and such invoice shall be dated no earlier than the date of completion of the Work. Any and all invoices must be submitted within sixty (60) days of completion of the Work. If Owner fails to receive any invoice promptly, Owner may extend the payment date without penalty or loss of discount. Owner reserves the right (i) to compute payment due date of each invoice from the date on which Contractor correctly completes Contractor's portion of the transaction involved, including, but not limited, to the issuance and forwarding of a correct invoice and (ii) to add to the payment period any additional time required by Owner as a result of Contractor's failure to perform this Contract properly.

**19. SET-OFF.** Owner shall be entitled to set-off any amount owed by Owner in connection with this Contract against any amount owed to Owner or any of Owner's affiliates by Contractor or any of Contractor's affiliates. As to any party, the term "affiliates" means any corporation, partnership, trust or other entity controlling, controlled by or under common control with such party.

**20. PERFORMANCE OF THE WORK.** (a) Time is of the essence in the performance of the Work. Contractor shall

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be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work. Contractor shall use only skilled craftsmen who are experienced in their respective trades and the types of work involved.

(b) If, in Owner's opinion, Contractor fails to perform the Work in strict accordance with this Contract or fails to comply with any provision of this Contract, Owner may, after seven days' written notice to Contractor, make good any deficiencies resulting from such failure if Contractor has not done so, and Owner may deduct from the payments then or thereafter due Contractor the cost of correcting such deficiencies. If the payments then or thereafter due Contractor are not sufficient to cover such amount, Contractor shall promptly pay the difference to Owner.

**21. DEFAULT.** If Contractor fails to properly perform any of its obligations or warranties under this Contract, Owner may terminate this Contract in whole or in part, upon notice to Contractor, without incurring liability to Contractor.

**22. TERMINATION.** Owner may terminate this Contract in whole or in part at any time without cause upon notice to Contractor. Owner's only obligation to Contractor shall be to pay (i) the documented direct costs incurred by Contractor until the effective date of termination, (ii) the documented direct costs incurred by Contractor in complying with Owner's instruction in the termination notice, (iii) not more than 10 percent of the foregoing for profit and (iv) such other costs as Owner may approve; provided, however, that the total payments made to Contractor under this Contract, shall not exceed the total amount to which Contractor would have been entitled had there been no termination.

**23. DISPUTES.** Contractor shall not cause a delay in the performance of the Work pending settlement of any dispute with Owner unless such delay has been approved in writing by Owner. Should a dispute arise relating to either the terms, interpretation, performance or enforcement of the terms of this Contract, the parties agree to first attempt to work out any differences in an amicable fashion. Should such efforts fail, it is agreed that the proper venue for any unresolved dispute shall be in San Patricio County, Texas.

**24. FORCE MAJEURE.** Neither party shall be liable for failure or delay in performance under this Contract due in whole or in part to an act of God, labor dispute, civil commotion, sabotage, terrorism, fire, flood, explosion, acts of any government, unforeseen shortages or unavailability

of fuel, power, transportation, raw materials or supplies, inability to obtain or delay in obtaining governmental approvals, permits, licenses or allocations, or any other causes not within such party's reasonable control, whether or not of the kind specifically enumerated above. During any period of Contractor's inability to perform, Owner may acquire from others, without incurring liability to Contractor, such services which Owner may deem necessary, and, at Owner's option, the quantity of such services contracted from Contractor may be proportionately reduced.

**25. DESIGN RESPONSIBILITY.** If this Contract involves the design of any equipment, machinery, materials or products, it is agreed that (i) Contractor is engaged to provide such design, and (ii) Owner's specifications shall set forth Owner's minimum requirements, but Contractor retains sole responsibility for design.

**26. CONFIDENTIALITY.** Contractor shall hold in confidence and use only for Owner's benefit any information furnished by Owner or originated or developed by Contractor in connection with this Contract. Owner shall have no obligation of nondisclosure or nonuse with respect to any information furnished by Contractor, except as may be expressly set forth in an agreement signed by an officer of Owner. Contractor shall not in any manner advertise, publish or release for publication any statement mentioning Owner or the fact that Contractor has furnished or contracted to furnish Owner the goods or services covered by this Contract without first obtaining Owner's written consent. Contractor's obligations under this paragraph shall terminate five years after the completion, cancellation or termination of this Contract.

**27. COMPLIANCE WITH APPLICABLE LAWS.** Contractor shall comply with all applicable statutes, laws, ordinances, codes, contracts, rules, regulations, proclamations and other governmental requirements, and all provisions required thereby to be included in this Contract are incorporated by reference.

**28. RIGHTS, REMEDIES AND WARRANTIES.** Each of Owner's rights and remedies under this Contract and each warranty made by Contractor to Owner shall be cumulative and in addition to any other or further rights, remedies or warranties under this Contract or provided by law or in equity.

**29. WAIVER.** No failure to exercise, delay or partial exercise of any right, power, privilege or remedy of Owner shall operate as a waiver thereof, and no waiver shall occur unless expressly set forth in writing and signed by Owner.

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**30. GOVERNING LAW.** The law of the State of Texas shall govern the validity, interpretation, construction and effect of this Contract. In the event of any dispute, the proper venue shall be in San Patricio County, Texas.

**31. GENERAL.** This Contract contains the **entire agreement** of the parties with respect to the services covered by this Contract, and all previous contracts, proposals, discussions and communications relating to the services covered by this Contract are superseded except to the extent they have been incorporated by direct reference. This Contract may not be amended absent Owner's written consent. In the event of any conflict between this Contract and any other document, the terms of this Contract shall prevail unless otherwise expressly noted in writing, signed by Owner.

**32. SEVERABILITY CLAUSE.** If any provision of this Contract is found to be null and void or unenforceable, such provision shall be deemed severed, and all remaining provisions of this Contract shall remain in full force and effect.

Reference Attachments:

**CONTRACTOR'S ACKNOWLEDGEMENT:**

\_\_\_\_\_

\_\_\_\_\_  
Company

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date