

## **PURCHASE ORDER TERMS AND CONDITIONS**

All shipments, shipping papers, invoices, and correspondence shall identify the applicable NERP Purchase Order Number.

Acceptance by Contractor of this Purchase Order shall be accomplished by delivery to NERP of a signed Purchase Order or by commencement of any Services provided for in this Purchase Order, whichever occurs first. This Purchase Order requires Contractor to provide the Services, including Materials, on a non-exclusive basis solely under the written terms contained in this Purchase Order which shall determine the rights of the Parties regardless of contrary or additional terms in any rate schedules, work orders, invoices, receipts or other documents which may flow from this Purchase Order's performance. NERP rejects any additional or contrary terms and conditions contained in any such document, and NERP's signature on any invoice, rate sheet or other document shall not constitute NERP's consent to any terms and conditions contained therein. This Purchase Order may be amended, modified or changed only by a Change Order, and continuation of the Services shall be deemed acceptance by Contractor of the Change Order. NERP expressly disclaims any unsigned amendments, alterations or modifications.

If Contractor has entered into a Master Services Agreement with NERP or any of NERP's Affiliates, then this Purchase Order shall be governed by such Master Services Agreement. If Contractor has not entered into a Master Services Agreement with NERP or any of NERP's Affiliates, by placing this Purchase Order for the Services specified herein, Contractor hereby accepts the NERP Standard Purchase Order Terms and Conditions, attached below and has fully read, understood and accepted the NERP Standard Purchase Order Terms and Conditions in their entirety and without modification.

All modifications to the NERP Standard Purchase Order Terms and Conditions agreed to between NERP and Contractor are contained in this Purchase Order, if any. Contractor acknowledges that it had the opportunity to review and discuss the NERP Standard Purchase Order Terms and Conditions with NERP prior to entering into this Purchase Order. Should Contractor desire to discuss the NERP Standard Terms and Conditions with NERP, please contact the NERP representative listed as the "Buyer" above to assist. NERP reserves the right to modify the NERP Standard Purchase Order Terms and Conditions from time-to-time at its sole discretion; thus, Contractor shall be obligated to review such updated NERP Standard Purchase Order Terms and Conditions upon receipt of each Purchase Order from NERP or any of its Affiliates.

For purposes of this Purchase Order and the underlying agreement to which this Purchase Order relates, the terms "Contractor", "Consultant" and "Vendor" are used interchangeably to mean the party providing the Services to NERP. All terms capitalized in this Purchase Order and not defined herein are as defined in the Master Services Agreement or NERP Standard Purchase Order Terms and Conditions, as applicable.

**NE RENEWABLE POWER, LLC  
NE RENEWABLE POWER BETHLEHEM, LLC  
NE RENEWABLE POWER FITCHBURG, LLC  
NE RENEWABLE POWER JONESBORO, LLC  
NE RENEWABLE POWER SPRINGFIELD, LLC  
NE RENEWABLE POWER TAMWORTH, LLC  
NE RENEWABLE POWER WEST ENFIELD, LLC  
NE RENEWABLE POWER WHITEFIELD, LLC**

**PURCHASE ORDER TERMS AND CONDITIONS**

THE TERMS AND CONDITIONS CONTAINED HEREIN SHALL APPLY ONLY IN THE EVENT THAT CONTRACTOR AND NE RENEWABLE POWER, LLC OR ANY AFFILIATE THEREOF, INCLUDING THOSE NAMED ABOVE (COLLECTIVELY REFERRED TO HEREIN AS “NERP”), ARE NOT PARTIES TO ANY OTHER AGREEMENT IN EFFECT BY WHICH CONTRACTOR SUPPLIES NERP WITH THE MATERIALS AND/OR SERVICES DESCRIBED IN A PURCHASE ORDER BETWEEN THE PARTIES, INCLUDING, BUT NOT LIMITED TO, ANY MASTER SERVICES AGREEMENT OR ALLIANCE AGREEMENT BETWEEN CONTRACTOR AND NERP (HEREINAFTER, EACH A “SUPPLY AGREEMENT”). IN THE EVENT ANY SUCH SUPPLY AGREEMENT EXISTS, SUCH SUPPLY AGREEMENT SHALL GOVERN CONTRACTOR’S SUPPLY OF SERVICES AND/OR MATERIALS TO NERP. CAPITALIZED TERMS NOT OTHERWISE DEFINED SHALL HAVE THE MEANING SET FORTH IN EXHIBIT “A”.

**1. PARTIES AND TERMS**

- A. A “Purchase Order” is a written request for Services from the NERP entity named on page one of the Purchase Order, to an entity named as Contractor on page one of the Purchase Order (the “Contractor”). Each Purchase Order together with (i) these Purchase Order Terms and Conditions and the Exhibits referenced herein, (ii) any documents attached to the Purchase Order at the time of the issuance of the Purchase Order and expressly referenced therein, and (iii) any Change Orders to the Purchase Order, shall constitute the entire agreement for the purchase of Services, including Materials, specified in the Purchase Order (the “Agreement”). The Agreement requires Contractor to provide Services, including Materials, on a non-exclusive basis solely under the written terms contained in the Agreement which shall determine the rights of the Parties regardless of contrary or additional terms in any rate schedules, work orders, invoices, receipts or other documents which may flow from performance under the Agreement.
- B. Special Provisions. Special provisions applicable to Services are set forth in Exhibit “C”.

**2. COMPENSATION, PAYMENTS AND INVOICING**

- A. Compensation. As compensation for the satisfactory performance of the Services, NERP shall pay Contractor in accordance with the method of payment set forth in the Purchase Order, which shall be either a lump sum method (“Lump Sum”), a time and materials method (“Time and Materials”) or an alternative mutually agreed upon method of payment.
- B. Lump-Sum: If the compensation to Contractor is based on a Lump Sum payment method, then such Lump Sum amount shall be set forth in the Purchase Order and shall be the maximum compensation payable to Contractor for the performance of Services requested under such Purchase Order. Payment of the Lump Sum shall be by either (i) the payment of one Lump Sum amount at the final completion of the Services requested under the Purchase Order, or (ii) progress payments determined on a monthly basis. The amount of any such progress payments shall be based upon the percentage of the value of the Services completed during the applicable month.
- C. Time and Materials:
- i. If the compensation to Contractor is based on a Time and Materials payment method, then NERP shall reimburse Contractor for the following fees and expenses (collectively, “Fees and Expenses”):
- a. the number of hours worked by Contractor, its employees and/or Subcontractors performing the Services multiplied by the applicable hourly rates;
  - b. if expressly agreed by NERP in the Purchase Order, Contractor’s reasonable overhead expenses which are solely and directly attributable to the Services;
  - c. unless expressly agreed otherwise by NERP in the Purchase Order, reasonable allowable expenses without markup, including charges for travel and living expenses, supplies, reproduction and equipment rental if necessary for performance of the Services, provided that mileage shall be reimbursed at the then-current per mile rate allowed by the Internal Revenue Services and living expenses (hotel accommodations and meals) may not exceed US\$150.00/day without prior written approval from NERP;
  - d. the cost of Materials; and
  - e. any other charges agreed to in the Purchase Order.
- In the event the Parties have agreed to specific rates which apply to a Time and Materials payment method, such rates shall be set forth in Purchase Order. Rates set forth in the Purchase Order, if any, shall only be modified by the written acceptance of NERP.
- ii. If the Parties agree in a Purchase Order that the total Fees and Expenses for the Services shall not exceed a Not-To- Exceed Value, then such Not-To-Exceed Value shall be the maximum compensation payable to Contractor for the performance of the Services under such Purchase Order. In such case, all fees and expenses in excess of the Not-To- Exceed Value shall be paid or incurred by Contractor without reimbursement by NERP.

### 3. INVOICING AND PAYMENT

- A. **Invoicing.** Contractor shall submit invoices to NERP for Services performed on a Time and Materials basis and for progress payments under a Lump Sum payment method on a monthly basis on or before the fifteenth (15<sup>th</sup>) day of each month for all Services performed by Contractor during the prior month. Contractor shall submit invoices to NERP for all other Services performed under a Lump Sum payment method upon final completion of the Services under the Purchase Order. Each invoice (i) shall identify the Purchase Order number and shall include sufficient line item detail for NERP to reasonably verify the basis of the charges, including the Services performed and applicable quantities and pricing, (ii) shall be accompanied by any supporting information or documentation reasonably requested by NERP, and (iii) shall be reviewed and approved by an authorized NERP representative prior to submittal. Invoices submitted for Fees and Expenses charged on an hourly basis shall be supported by documents, time sheets or work tickets showing description; date and location of Services performed; and the names of employees and hours each worked. Invoices submitted for Fees and Expenses charged as allowable expenses shall be supported by copies of the actual receipts forming the basis of reimbursement.
- B. **Payment.** Payment terms are net thirty (30) days from NERP's receipt of an invoice unless otherwise specified in the Purchase Order. In the event of a dispute regarding any invoice submitted by Contractor, (i) all amounts not disputed shall be paid by NERP as required by this Section 3, (ii) NERP shall promptly notify Contractor of such dispute, and (iii) payment of any withheld and disputed amount shall be made within ten (10) days following resolution of the dispute.
- C. **Withholding.** In addition to any other right to withhold payments under the Agreement, NERP shall have the right to withhold from payments due Contractor such sums as necessary to protect NERP against any loss or damage which may result by reason of: (i) any willful misconduct or wanton or negligent act, error or omission by Contractor or Contractor's Representatives which gives rise to a claim by NERP or by any Person against NERP; (ii) Contractor's breach of any of its obligations under the Agreement; or (iii) liens filed or threatened in writing against the Site or the Services which are brought by any Subcontractor or any other Person claiming entitlement to money through Contractor.

### 4. PACKAGING, SHIPMENT AND DELIVERY OF MATERIALS

- A. Packaging, shipment and delivery of all Materials shall be in strict accordance with Applicable Law and the Agreement.
- B. Contractor shall: (i) efficiently and timely prepare Materials for pick up by the transportation carrier; (ii) be responsible for proper packaging, labeling and preparation for shipment in full compliance with Applicable Law; (iii) include with each shipment or delivery a Material Safety Data Sheet for each item if required by Applicable Law; and (iv) include with each shipment itemized packing slips or other identifying documents. Contractor shall not charge NERP for packaging (including crating, lumber and other packaging materials) unless otherwise specified in the Purchase Order.
- C. All shipments of Materials shall be made either "F.O.B. Destination" or "F.O.B. Shipping Point" as designated in the Purchase Order. Partial shipments are not allowed unless expressly stated otherwise in the Purchase Order or otherwise authorized by NERP. Freight shall be paid by Contractor, at its sole expense, unless expressly stated otherwise in the Purchase Order.
- D. NERP reserves the right (payment notwithstanding) to reject and return, at Contractor's risk and expense, that portion of any shipment of Materials that may be defective or otherwise fail to comply with the Agreement. Contractor shall not substitute any Materials specified by NERP in the Purchase Order without NERP's prior written approval.

### 5. TERM OF AGREEMENT

The Agreement shall commence upon delivery to NERP of the Purchase Order signed by Contractor or upon commencement of any Services specified in the Purchase Order, whichever occurs first, and continue in effect until completion of the Services or termination by NERP in accordance with the applicable termination provisions of the Agreement (the "Term").

### 6. INSURANCE

During the Term of the Agreement (or for such longer period required in Exhibit "B"), Contractor, at its sole cost and expense, shall procure and maintain, and shall require its Subcontractors to procure and maintain, insurance coverage with the minimum coverages, levels, limits and conditions set forth in Exhibit "B". Contractor's liability under the Agreement, or otherwise at law, shall not be limited by the amount or type of insurance required under the Agreement.

### 7. NOTICES

Notices to Contractor shall be addressed to the address set forth in the Purchase Order. Invoices and Notices to NERP shall be addressed to the addresses set forth below. Statements and reports to NERP that are required of Contractor hereunder shall be addressed to the individual designated on the Purchase Order.

**Address for Notices to NERP:**

1185 Avenue of the Americas  
New York, NY 10036  
Attention: Procurement & Supply Chain Mgmt.

**Address for Invoices to NERP:**

c/o NERP Hartree LP  
1185 Avenue of the Americas 9<sup>th</sup> Floor  
New York, NY 10036  
Attention: Accounts Payable  
Email:

### 8. ENTIRE AGREEMENT

The Agreement constitutes the entire agreement between the Parties in relation to the Services and supersedes all prior agreements, understandings and commitments, whether oral or in writing, between the Parties. The Agreement may not be amended or modified in any manner except by a written document signed by both Parties that expressly amends the Purchase Order. All additional and/or conflicting terms and conditions that may appear on Contractor written documents including delivery tickets, service order tickets, daily time sheets, invoices or any other document shall be null and void, and NERP's signature on any Contractor written document shall not constitute NERP's consent to any terms or conditions set forth in such document.

**EXHIBIT A –PURCHASE ORDER TERMS AND  
CONDITIONS**

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**GENERAL TERMS AND CONDITIONS**

**A.I. DEFINITIONS**

As used in the Agreement, except in those certain instances where the context expressly states another meaning, the following terms and expressions shall have the following meanings:

- A. “Affiliate” means any Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the specified Person. For purposes of this definition, “control” shall mean (i) ownership, directly or indirectly, of either the outstanding voting stock of the controlled Person or any other ownership interest in the controlled Person if such interest has, directly or indirectly, the power to direct or cause the direction of the management and policies of such relevant Person or (ii) operational control of the controlled Person pursuant to an operating agreement, management agreement or other contractual rights.
- B. “Applicable Law” means all applicable laws, regulations, ordinances, statutes, codes, regulations and other rules, as amended, of any international, federal, state, municipality, territory, parish, county, local government or political subdivision thereof or any other duly constituted public authority having jurisdiction over Contractor, the Facilities or the performance of the Services and all codes, standards or requirements necessary to perform the Services in accordance with accepted industry practices prevailing at the time and place where the Services are being rendered.
- C. “Change Order” means a writing by NERP authorizing a deletion or modification to a Purchase Order.
- D. “Claims” means all liabilities, judgments, costs (including court costs, reasonable attorneys’ fees and costs of investigation), losses, fines, penalties, expenses, damages, claims, suits and demands.
- E. “Contractor Indemnified Parties” means Contractor, its Subcontractors, and its and their respective directors, officers, employees and agents.
- F. “Contractor’s Representatives” shall mean (i) Contractor’s directors, officers, employees and agents, and (ii) each Subcontractor and its directors, officers, employees and agents.
- G. “Event of Default” shall have the meaning set forth in Section A.11.A.
- H. “Facilities” and “Site” are used interchangeably to mean the facilities and/or location where the Services are performed.
- I. “Fees and Expenses” shall have the meaning set forth in Section 2.C.i of these Purchase Order Terms and Conditions.
- J. “Force Majeure” means catastrophic storms or floods, lightning, tornadoes, hurricanes, earthquakes and other acts of God, wars, civil disturbances, terrorist attacks, revolts, insurrections, sabotage, commercial embargoes, epidemics, fires, explosions, and actions of a federal state or local governmental agency with jurisdiction over the Services that were not requested, promoted, or caused by the affected Party; provided that such act or event (i) delays or renders impossible the affected Party’s performance of its obligations under the Agreement, (ii) is beyond the reasonable control of the affected Party and not due to its fault or negligence, and (iii) could not have been prevented or avoided by the affected Party through the exercise of due diligence, including the expenditure of any reasonable sum.
- K. “NERP Indemnified Parties” means NE Renewable Power, LLC, its direct subsidiaries, its parent company, Hartree Partners, LP, Affiliates, contractors and subcontractors of any tier (excluding Contractor Indemnified Parties), and all of their respective co-owners, partners, joint venturers, members, officers, directors, employees and agents.
- L. “NERP’s Policies and Procedures” means NERP’s applicable safety, security and similar work-related policies, procedures, controls and rules, which shall be available on Hartree Partners, LP’s website or otherwise provided to Contractor from time to time and as may be updated or modified by NERP, including: (i) NERP’s minimum contractor safety requirements, (ii) the contractor orientation checklist, (iii) minimum drug and alcohol and random security search policies, and (iv) contractor’s pre-selection questionnaire.
- M. “Insolvency Event” means the Party (i) makes a general assignment for the benefit of its creditors; (ii) commences a proceeding under applicable bankruptcy law or other Applicable Law for the relief of debtors; (iii) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or readjustment of debts; (iv) a trustee, custodian, conservator, receiver or similar official is appointed for it, or for a substantial part of its property; (v) becomes insolvent or is unable to pay its debts as they become due; or (vi) any involuntary bankruptcy, reorganization, debt arrangement, or other proceeding under any applicable bankruptcy, insolvency or other similar law for the relief of debtors or any dissolution or liquidation proceeding is instituted against such Party.
- N. “Lump Sum” shall have the meaning set forth in Section 2.A of these Purchase Order Terms and Conditions.
- O. “Materials” means all materials, parts and/or goods provided to NERP or incorporated into the Site as part of the Services.
- P. “Notice” means all notices, consents, approvals, certifications, requests, demands and authorizations.
- Q. “Not-To-Exceed Value” means the dollar amount, if any, specified in the Purchase Order as the maximum compensation to Contractor for the Services to be performed under such Purchase Order.
- R. “Person” means an individual, corporation, limited liability company, partnership, joint venture, unincorporated organization or any other legal entity.
- S. “Purchase Order” shall have the meaning set forth in Section 1.A of these Purchase Order Terms and Conditions.
- T. “Services” means those obligations to be performed by Contractor for NERP pursuant to the Purchase Order.
- U. “Subcontractors” means a Person of any tier (including vendors, suppliers and renters) who performs any part of the Services and who is not a direct, full-time employee of Contractor.
- V. “Term” shall have the meaning set forth in Section 5 of these Purchase Order Terms and Conditions.

- W. "Time and Materials" shall have the meaning set forth in Section 2.A of these Purchase Order Terms and Conditions.
- X. "Work Product" shall have the meaning set forth in Section A.16.A.

## A.2. CONTRACTOR'S GENERAL OBLIGATIONS

- A. General. Contractor shall furnish all Materials, labor, supervision, tools, equipment, facilities, services and transportation necessary to perform the Services. All personnel furnished by Contractor shall be duly trained, qualified and experienced in their respective capacities. All tools and equipment provided by Contractor shall be repaired and maintained by Contractor in a good, safe working order at Contractor's cost. Unless otherwise specified in the Purchase Order, Contractor shall obtain all permits and licenses required by Applicable Law and necessary for the performance of the Services.
- B. Scheduling. TIME IS OF THE ESSENCE in the performance of the Services. Contractor shall perform the Services in accordance with the completion date(s) and/or period(s) set forth in the Purchase Order. Contractor shall immediately notify NERP, in writing, of any event or circumstance that may, immediately or in the future, impede the proper and timely execution of any Services so that remedial action, as is appropriate under the circumstances, may be taken.
- C. Monitoring of Services. Contractor shall provide and shall cause its Subcontractors to provide NERP and its representatives the right to inspect and monitor, at any time, Contractor's and its Subcontractors operations and facilities including tools, equipment, Materials, Services and inventory thereof. Inspections or failure to report any deficiency noted therein shall not relieve Contractor of its obligations hereunder or constitute a waiver by NERP of any rights hereunder.

## A.3. CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS

- A. Subcontractors. Contractor may retain any Subcontractor necessary to assist Contractor in the performance of the Services that is qualified and capable of performing its portion of the Services in accordance with the Agreement and its subcontract. The creation of any Subcontractor relationship shall not relieve Contractor of any of its obligations under the Agreement and Contractor shall be responsible for the acts or omissions of any Subcontractor as if they were the acts or omissions of Contractor.
- B. Approval and Removal of Employees and Subcontractors. Ten (10) business days prior to the execution of any subcontract, or such other period of time as agreed to by NERP, Contractor shall notify NERP of any proposed Subcontractor to be used in the performance of the Services and furnish to NERP all information reasonably requested by NERP with respect to such proposed Subcontractor. NERP shall notify Contractor within such period of time if NERP rejects such Subcontractor. If NERP fails to respond to Contractor within such time period, said Subcontractor will be deemed approved by NERP. Upon request by NERP, in its sole discretion, Contractor shall immediately remove any Subcontractor or any employee of Contractor or any Subcontractor performing the Services or present at the Site. **CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE NERP INDEMNIFIED PARTIES FROM ANY AND ALL CLAIMS ARISING OUT OF OR RESULTING FROM SUCH REMOVAL.**

## A.4. USE AND CONDITION OF THE FACILITIES AND EQUIPMENT

NERP makes no representation or warranty as to the condition of the Facilities or any equipment, machinery, tools or other items furnished by NERP that are employed in the performance of the Services. Contractor shall rely solely on Contractor's own examination and investigation to determine the condition of the Facilities and any such equipment. If apparent defects are found therein sufficient to make the use of such Facilities or items unsuitable or unsafe, Contractor shall immediately notify NERP. Contractor shall confine its tools, equipment and operations to the areas indicated by NERP, and shall not interfere with the use or operation of the Facilities. Contractor shall keep stored Material in good order. Contractor shall promptly remove and properly dispose of, in accordance with Applicable Law and NERP's Policies and Procedures, all rubbish and non-hazardous waste material, including all non-hazardous samples and by-products, resulting from the performance of the Services.

## A.5. SAFETY AND WORKPLACE POLICIES

Contractor shall be responsible for providing a healthy and safe work place and working environment for Contractor's Representatives during performance of Services. Contractor shall comply with all safety requirements imposed by Applicable Law for the safety of Persons or property, including the U.S. Department of Transportation requirements under 49 C.F.R. Parts 191, 192, 195 and 199, and shall conduct all Services in a safe and responsible manner. Contractor shall provide all properly functioning personal protective equipment and other safety equipment as appropriate and necessary for the performance of the Services. In addition, Contractor shall fully comply with NERP's Policies and Procedures and shall coordinate the performance of the Services with NERP's on-Site environmental, health and safety ("EH&S") coordinator. Contractor shall also provide to NERP its OSHA statistics and any annual updates thereto. If required by NERP, Contractor shall participate in NERP's safety orientation program prior to commencing the performance of any Services requested under a Purchase Order. Contractor shall immediately notify NERP of any loss of or damage to property or injury to persons, including the employees of Contractor and its Subcontractors. Contractor's failure to comply with the obligations set forth in this Section A.5 shall constitute a material breach of the Agreement.

## A.6. WARRANTIES

- A. General Warranties. Contractor represents and warrants that (i) it has the power, authority and right to enter into the Agreement and to carry out and perform the terms hereof; (ii) the Services shall be performed in a good and workmanlike manner, in accordance with all specifications for the Services set forth in the Agreement and in accordance with accepted industry practices prevailing at the time and place where the Services are being rendered; and (iii) any Materials furnished under the Agreement are (a) free from liens and encumbrances, (b) free from defects in material, design (to the extent such design is performed by Contractor or its Subcontractors as part of the Services) and workmanship, (c) in compliance with all specifications for Materials set forth in the Agreement and (d) new and have not been previously used, unless otherwise specified in the Purchase Order.
- B. Correction of Services. If prior to final completion of the Services under the Purchase Order or within one (1) year thereafter, NERP shall reasonably determine that: (i) Contractor has not performed the Services, including provision of Materials, in accordance with the warranties set forth in this Section A.6, or (ii) Contractor has made an error or omission in the performance of the Services, then Contractor, at its own expense, shall promptly undertake and complete such corrective action as is necessary to remedy the error, omission or non-conformance. If Contractor does not complete such required corrective action within five (5) days following receipt of written notice from NERP that such corrective action is required, then NERP may (in addition to any other rights under the Agreement, at law or in equity) correct such error, omission or non-conformance, and Contractor shall be liable to NERP for all costs and expenses incurred by NERP in connection with such corrective action. Notwithstanding the foregoing, if any error, omission or non-conformance materially affects the use of the Facilities or presents an imminent threat to the safety or health of any person, NERP may take corrective action immediately without giving such written notice to Contractor, and Contractor shall be liable to NERP for all costs and expenses incurred by NERP in connection with such corrective

action and arising out of or relating to the error, omission or non-conformance. Contractor shall pay NERP on demand all costs and expenses for which Contractor is liable under this Section A.6. No acceptance or payment by NERP shall constitute a waiver of any of the foregoing warranties or Contractor's obligations hereunder.

- C. Assignment of Warranties. All manufacturer's warranties and remedies applicable to Materials shall be assigned and transferred to NERP upon final completion of the Services under the Purchase Order, and Contractor agrees to fully assist and cooperate with NERP in the enforcement of such warranties, provided, however, no such warranty shall in any way relieve Contractor from its obligations to NERP with regard to any warranty under this Section A.6.

#### A.7. MECHANICS' LIENS

To the extent that NERP has paid all undisputed amounts due and owing to Contractor for the Services, Contractor shall keep the Site and the Services free of all mechanic's and materialmen's liens and encumbrances in favor of its Subcontractors and other Persons claiming through Contractor with respect to Services provided under the Agreement. If such a lien or encumbrance is filed on the Site or the Services by a Subcontractor or other Persons claiming through Contractor, Contractor shall notify NERP in writing and shall, at its own cost and expense, take whatever steps are necessary to have the lien or encumbrance satisfied, removed or otherwise discharged, by bond or otherwise, within thirty (30) days of the date the lien or encumbrance was filed. If Contractor fails to satisfy or remove the lien or encumbrance within such time, NERP may, without any obligation to do so, satisfy, remove or discharge, by bond or otherwise, the lien or encumbrance, and Contractor shall be liable to NERP for all costs and expenses (including reasonable attorneys' fees) in connection with such satisfaction, removal or discharge. **CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE NERP INDEMNIFIED PARTIES FROM AND AGAINST ALL CLAIMS FOR SUCH LIENS OR ENCUMBRANCES ARISING OUT OF THE PERFORMANCE OF THE SERVICES.**

#### A.8. HAZARDOUS SUBSTANCE DISPOSITION

Contractor's Representatives shall not bring any substance on Site that under Applicable Law is considered to be hazardous or toxic or is or may be required to be remediated, including hazardous wastes, radioactive wastes or hazardous substances ("Hazardous Substances"), provided, however, that Contractor may bring Hazardous Substances on Site to the extent necessary to perform the Services so long as the same is done in compliance with Applicable Law and the Agreement, and Contractor shall be fully responsible and strictly liable for all such Hazardous Substances. Prior to bringing any chemical on Site (whether a Hazardous Substance or otherwise), Contractor shall provide NERP with a Material Safety Data Sheet for such chemicals, notify NERP of the nature of the use of such chemicals and otherwise assist NERP in registering the chemicals at the Site. Contractor shall be responsible for packaging and disposing of, in accordance with Applicable Law, any and all Hazardous Substances that Contractor uses or generates in performing the Services or brings onto the Site or creates at the Site. In addition, Contractor shall advise NERP's on-Site EH&S coordinator of any material, including Hazardous Substances, discovered by Contractor's Representatives on Site that cannot be introduced back into the environment under Applicable Law without additional treatment. At NERP's request, Contractor shall assist NERP in identifying appropriate alternatives for off-Site treatment, storage, or disposal of any such material. Contractor shall make no independent determination relating to the selection of treatment, storage, or disposal of any such material, nor shall Contractor subcontract for the treatment, storage, or disposal of any such material through transporters or others.

#### A.9. INDEMNIFICATION

- A. **INJURIES TO CONTRACTOR INDEMNIFIED PARTIES.** CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE NERP INDEMNIFIED PARTIES FROM AND AGAINST ALL CLAIMS ARISING OUT OF OR RESULTING FROM OR RELATED TO INJURY TO, ILLNESS OR DEATH OF ANY NERP INDEMNIFIED PARTY TO THE EXTENT CAUSED BY THE NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR OTHER FAULT UNDER THIS AGREEMENT OR APPLICABLE LAW OF ANY CONTRACTOR INDEMNIFIED PARTY (EXCLUDING ONLY THE GROSS NEGLIGENCE AND WILLFUL MISCONDUCT OF ANY NERP INDEMNIFIED PARTY).
- B. **CONTRACTOR RESPONSIBILITY FOR DAMAGE TO PROPERTY.** CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE NERP INDEMNIFIED PARTIES FROM AND AGAINST ALL CLAIMS ARISING OUT OF OR RESULTING FROM OR RELATED TO LOSS OF OR DAMAGE TO ANY PROPERTY OF ANY NERP INDEMNIFIED PARTY TO THE EXTENT CAUSED BY THE NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR OTHER FAULT UNDER THIS AGREEMENT OR APPLICABLE LAW OF ANY CONTRACTOR INDEMNIFIED PARTY (EXCLUDING ONLY THE GROSS NEGLIGENCE AND WILLFUL MISCONDUCT OF ANY NERP INDEMNIFIED PARTY).
- C. **INJURIES TO NERP INDEMNIFIED PARTIES.** NERP SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE CONTRACTOR INDEMNIFIED PARTIES FROM AND AGAINST ALL CLAIMS ARISING OUT OF OR RESULTING FROM OR RELATED TO INJURY TO, ILLNESS OR DEATH OF ANY CONTRACTOR INDEMNIFIED PARTY TO THE EXTENT CAUSED BY THE NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR OTHER FAULT UNDER THIS AGREEMENT OR APPLICABLE LAW OF ANY NERP INDEMNIFIED PARTY (EXCLUDING ONLY THE GROSS NEGLIGENCE AND WILLFUL MISCONDUCT OF ANY CONTRACTOR INDEMNIFIED PARTY).
- D. **NERP RESPONSIBILITY FOR DAMAGE TO PROPERTY.** NERP SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE CONTRACTOR INDEMNIFIED PARTIES FROM AND AGAINST ALL CLAIMS ARISING OUT OF OR RESULTING FROM OR RELATED TO LOSS OF OR DAMAGE TO ANY PROPERTY OF ANY CONTRACTOR INDEMNIFIED PARTY TO THE EXTENT CAUSED BY THE NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR OTHER FAULT UNDER THIS AGREEMENT OR APPLICABLE LAW OF ANY NERP INDEMNIFIED PARTY (EXCLUDING ONLY THE GROSS NEGLIGENCE AND WILLFUL MISCONDUCT OF ANY CONTRACTOR INDEMNIFIED PARTY).
- E. **ENFORCEABILITY.** THE INDEMNITY, DEFENSE AND HOLD HARMLESS OBLIGATIONS IN THIS SECTION A.9 ARE LIMITED TO THE EXTENT NECESSARY TO COMPLY WITH APPLICABLE LAW AND THIS SECTION A.9 SHALL BE DEEMED TO BE AMENDED TO THE MINIMUM EXTENT NECESSARY SO AS TO COMPLY WITH APPLICABLE LAW TO THE EXTENT SUCH REQUIREMENTS ARE AT VARIANCE WITH THESE TERMS AND CONDITIONS.
- F. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED ELSEWHERE IN THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY INDEMNITEE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, REMOTE, OR SPECULATIVE DAMAGES, OR LOSS OF PROFITS OR OPPORTUNITY WHETHER SUCH DAMAGES ARISE IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE; PROVIDED HOWEVER, THAT IF ANY INDEMNITEE IS HELD LIABLE TO A THIRD PARTY FOR ANY DAMAGES WHICH ARE WITHIN THE SCOPE OF ANY INDEMNITY GIVEN BY A PARTY UNDER THIS

**AGREEMENT, THE PARTY OBLIGATED UNDER THE APPLICABLE INDEMNITY WILL BE LIABLE FOR SUCH DAMAGES.**

**A.10. TITLE AND RISK OF LOSS**

Title to all or any portion of the Services (other than Work Product) shall pass to NERP upon the earlier of (i) payment by NERP therefor, or (ii) incorporation of such Services into the Facility. Transfer of title to Services shall be without prejudice to NERP's right to reject any defects, errors or omissions in the Materials or any other right in the Agreement. Notwithstanding passage of title as provided in this Section A.10 and unless otherwise set forth in the Purchase Order with respect to Materials, Contractor shall bear the risk of loss and damage with respect to the Services until final completion of such Services under the Purchase Order.

**A.11. TERMINATION FOR DEFAULT**

- A. Event of Default. Each of the following shall constitute an event of default under the Agreement ("Event of Default"):
- i. Contractor shall fail in any material respect to comply with, observe, or perform, or shall default in any material respect, in the performance of the Services or any of the terms and conditions of the Agreement;
  - ii. Any certification or representation made by Contractor hereunder shall be false or incorrect in any material respect when made; or the occurrence of an Insolvency Event with respect to Contractor.
- B. Notice and Cure for Default. If an Event of Default as defined in Section A.11.A.i or A.ii occurs, NERP shall provide Contractor with notice of the Event of Default. Contractor shall have ten (10) days following receipt of such notice to cure the Event of Default, provided that if such Event of Default is not capable of being cured within such ten (10) day period with the exercise of reasonable diligence, then such cure period shall be extended for an additional reasonable period of time, not to exceed thirty (30) days, so long as Contractor is exercising reasonable diligence to cure the default.
- C. Termination for Default. If the notice was given by NERP as provided for in Section A.11.B and the Event of Default is not cured by the expiration of the corresponding period for cure or if an Event of Default as defined in Section A.11.A.iii occurs, NERP, by notice in writing to Contractor, may, in addition to any other rights and remedies available to it under the Agreement or at law or in equity, terminate the Agreement and/or any part of the Purchase Order. In such event, NERP shall have no further obligation to Contractor with respect to the Agreement or terminated part thereof, except with respect to Services already performed by Contractor in accordance with the Agreement. Contractor shall remain liable to NERP for any and all Claims that NERP may have against Contractor under the Agreement and/or any part of the Purchase Order, including the difference between the cost of completing the Services required under a terminated Purchase Order or part thereof by a substitute contractor and the unpaid balance remaining under the Lump Sum or Not-to-Exceed amount (if applicable), which Claims shall be promptly paid by Contractor upon demand. This obligation of payment shall survive termination of the Agreement or any terminated part thereof.

**A.12. TERMINATION FOR CONVENIENCE**

Termination for Convenience by NERP. NERP may terminate the Agreement and/or any part of the Purchase Order at any time for its sole convenience by giving Contractor at least thirty (30) days prior written notice to such effect. In the event of any such termination, Contractor shall immediately stop all terminated Services and, unless notified by NERP to the contrary, shall immediately cause all Subcontractors to cease performance of all Services related to the Agreement and/or terminated part of the Purchase Order. In the event of such termination for convenience, NERP shall pay Contractor that portion of the total consideration specified in the Purchase Order equal to the portion of the Services completed in accordance with the Agreement prior to such termination, less any payments made prior to such termination. In no event shall NERP be liable for Services performed after the effective date of termination or anticipated fees or lost profits on account of a termination under this Section.

**A.13. RIGHT TO AUDIT**

Contractor shall, and shall ensure that its Subcontractors, maintain complete and accurate records pertaining to all transactions and activities relating to the performance of the Services in a manner which is commercially reasonable and in accordance with industry best practices. Contractor further agrees, and shall ensure that its Subcontractors agree, to retain all such records for a period of not less than three (3) years after the completion of Services under the Purchase Order or for such longer period as may be required by Applicable Law. Contractor agrees that such records shall be subject to audit by NERP or its representatives; provided, however, with respect to any Lump Sum amounts, NERP shall not have the right to audit or have audited Contractor's records in connection with the internal composition of such Lump Sum amount, such as the composition of any markups, fixed percentages or multipliers. NERP and its representatives shall have access to Contractor's facilities and shall be provided adequate and appropriate workspace in order to conduct audits. NERP shall have the right to interview current and former Contractor employees as part of any such audit.

**A.14. FORCE MAJEURE**

In the event Contractor's performance under the Agreement is delayed as a result of a Force Majeure and Contractor provides notice and full particulars of such Force Majeure in writing to NERP as soon as possible but in no event later than three (3) days after the occurrence of the cause relied on, then Contractor shall be entitled to an extension to any completion date(s), period(s) or schedule set forth in the Purchase Order, provided Contractor takes all reasonable actions to mitigate the effect of such Force Majeure. The Parties agree that such extension shall be Contractor's sole remedy for such delay and that such extension shall be set forth in a Change Order. NERP's obligations under the Agreement shall be suspended to the extent that NERP's performance of such obligations is delayed by Force Majeure

**A.15. CONFIDENTIALITY**

- A. Confidential Information. During the term of the Purchase Order and for a period of three (3) years after the completion or termination of Services under such Purchase Order, Contractor shall maintain in strictest confidence all proprietary business or technical information concerning NERP, including Work Product, notes, analyses, studies and other documents prepared by Contractor or its Subcontractors that contain or otherwise reflect such information (collectively, the "Confidential Information") and shall not disclose Confidential Information to Contractor's Representatives or any third party, except as otherwise permitted under the terms of this Section A.15. Contractor shall not use Confidential Information for any purpose other than the performance of the Services and shall disclose the Confidential Information only to Contractor's Representatives as necessary to provide the Services, each of whom shall be informed of the confidential nature of the Confidential Information and shall be bound to comply with the terms of this Section A.15. Contractor shall be responsible for any breach of this Section A.15 by Contractor's Representatives.
- B. Exceptions. The provisions of this Section A.15 shall not apply to any portion of the Confidential Information that (i) was developed by Contractor and in Contractor's possession prior to Contractor's first receipt thereof directly or indirectly from NERP; (ii) is now or hereafter

becomes generally available on a non-confidential basis to the public through no act or failure to act on Contractor's or any of Contractor's Representative's part; (iii) was heretofore or hereafter furnished to Contractor on a non-confidential basis by a source other than NERP (directly or indirectly), provided that, to Contractor's knowledge, after due inquiry, such source is not subject to any obligation prohibiting the source from disclosing such information to Contractor; or (iv) is required by Applicable Law to be publicly disclosed by Contractor; provided, however, that Contractor timely notifies NERP of any such requirement in order to provide NERP a reasonable opportunity to seek an appropriate protective order, and, in the event such protective order or other remedy is not obtained, Contractor agrees to furnish only that portion of the Confidential Information that Contractor is legally required to furnish.

- C. Return of Confidential Information. Contractor shall, upon NERP's request, return all Confidential Information to NERP within thirty (30) days following receipt of NERP's request or certify in writing by an officer or authorized agent of Contractor that the Confidential Information has been destroyed.
- D. Equitable Relief. Contractor acknowledges that disclosure of any Confidential Information by it or Contractor's Representatives will give rise to irreparable injury to NERP, and such persons or entities will not be adequately compensated by damages. Accordingly, NERP may seek and obtain injunctive relief against the breach or threatened breach of the undertakings in this Article, in addition to any other legal remedies which may be available, without the requirement of posting bond.

#### **A.16. INTELLECTUAL PROPERTY; CLAIMS FOR INFRINGEMENT**

- A. Work Product. NERP and Contractor acknowledge that during the course of, and as a result of, the performance of the Services, Contractor or its Subcontractors will create written materials, plans, drawings, specifications, reports, studies, computer files, or other tangible manifestations of Contractor's efforts under the Agreement, including architectural work, as that term is defined in the Architectural Works Copyright Protection Act of 1990 ("Work Product"). Work Product prepared by Contractor or its Subcontractors pursuant to the Agreement shall be "works for hire," and all rights, title and interest to the Work Product, including any and all copyrights in the Work Product, shall be owned by NERP irrespective of any copyright notices or confidentiality legends to the contrary which may have been placed in or on such Work Product by Contractor or others. If, for any reason, any part of or all of the Work Product is not considered work for hire for NERP or if ownership of all right, title and interest in the Work Product shall not otherwise vest in NERP, then Contractor 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 Contractor to NERP (including all moral rights), without further consideration, and NERP shall thereafter own all right, title and interest in the Work Product, including all copyright interests.
- B. Contractor's Use and Return of Work Product. All Work Product, including all copies thereof, shall be returned to NERP upon the termination or expiration of the Agreement. The Work Product and copies thereof are not to be used by Contractor or its Subcontractors for any purpose other than the performance of the Services.
- C. Infringement Claims. Contractor warrants that the Services and Work Product will not infringe on any copyright, patent, trade secret or other proprietary interest of any third party. **CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE NERP INDEMNIFIED PARTIES AGAINST ALL CLAIMS FOR ANY COPYRIGHT, PATENT OR OTHER PROPRIETARY RIGHT INFRINGEMENT OR MISAPPROPRIATION OF A TRADE SECRET, ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OF THE SERVICES OR WORK PRODUCT DELIVERED BY CONTRACTOR UNDER THE AGREEMENT, AND CONTRACTOR SHALL REIMBURSE THE NERP INDEMNIFIED PARTIES FULLY FOR ANY ROYALTIES, DAMAGES OR OTHER PAYMENTS THAT A NERP INDEMNIFIED PARTY SHALL BE OBLIGATED TO PAY.** In the event NERP's use of any Services is interrupted as a result of such a claim, then Contractor shall, at its sole cost and expense and NERP's option, either (i) procure for NERP the right to continue using the infringing Services as though it were non-infringing, or (ii) replace or modify the infringing portion of the Services to make such Services non-infringing without materially impairing their usefulness or performance.

#### **A.17. TAXES**

- A. General. Unless otherwise expressly set forth in the Purchase Order, Contractor shall be fully responsible for all state and federal income taxes, pension benefits, social security taxes, employment, disability and other customary insurance and for any other taxes (except sales, use, excise and gross receipts taxes addressed below) or payments which may be due and owing by Contractor or which are the result of fees or amounts paid by NERP to Contractor under the Agreement. **CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE NERP INDEMNIFIED PARTIES FROM ANY CLAIMS RESULTING FROM CONTRACTOR'S FAILURE TO PAY ANY TAXES THAT ARE CONTRACTOR'S RESPONSIBILITY UNDER THIS SECTION.**
- B. Local sales, use, excise and gross receipts taxes. **WITH RESPECT TO STATE AND LOCAL SALES, USE, EXCISE AND GROSS RECEIPTS TAXES, CONTRACTOR IS RESPONSIBLE FOR ALL TAXES STATUTORILY IMPOSED ON CONTRACTOR AND SHALL INCLUDE SUCH TAXES IN ITS PRICES AND RATES. NERP IS RESPONSIBLE FOR STATE AND LOCAL SALES, USE, EXCISE AND GROSS RECEIPTS TAXES STATUTORILY IMPOSED ON THE CONSUMER, AND AS SUCH, CONTRACTOR'S PRICES AND RATES SHALL NOT INCLUDE THESE TAXES, BUT RATHER CONTRACTOR SHALL INVOICE THESE TAXES AS A SEPARATE ITEM UNLESS NERP PRESENTS EVIDENCE OF EXEMPTION FROM THE APPLICABLE TAX. BOTH CONTRACTOR AND NERP AGREE TO PROVIDE THE OTHER WITH THE NECESSARY INFORMATION TO DETERMINE THE TAXABILITY OF THE CHARGES INCURRED PURSUANT TO THE AGREEMENT, WHICH MAY INCLUDE, BUT IS NOT LIMITED TO, PROVIDING SUPPORT FOR THE BREAKOUT OF MATERIALS FROM LABOR WHEN REQUESTED.**

#### **A.18. CHANGES**

NERP may, from time to time, order changes in the Services consisting of deletions or modifications, with the Lump Sum, Not-To-Exceed Value or completion date(s), as applicable, being adjusted accordingly. Such changes in the Services shall be authorized in writing using a Change Order. The value of Services to be deleted or modified shall be determined by agreement between the Parties and set forth in the Change Order. A Change Order executed pursuant to this Section or accepted upon commencement of the Services therein, whichever occurs first, shall constitute a full and final settlement and accord and satisfaction of all effects of the change as described in the Change Order and shall be deemed to compensate Contractor fully for the change. All Change Orders shall become a valid and binding part of the Purchase Order. All Change Orders shall be subject to and be in accordance with the terms and conditions of the Agreement.

#### **A.19. GOVERNING LAW, JURISDICTION AND VENUE**

The Agreement shall be governed and construed in accordance with the laws of the State of New York, without regard to its conflicts of law principles. Application of the United Nations Convention on Contracts for the International Sale of Goods is hereby excluded. The Parties hereto agree that any claim, dispute or controversy (whether contractual or non-contractual) arising out of or relating to this Agreement, including any question regarding its

existence, breach or termination, shall be brought in the courts of the State of New York located in New York County and any of the United States District Court for the Southern District of New York, and any appellate court from any thereof and each Party irrevocably consents to submit to the exclusive jurisdiction of such courts and waives any objection to the propriety or convenience of venue in such courts. **EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY AND ALL CLAIMS OR RIGHTS THAT SUCH PARTY MAY HAVE TO ANY TRIAL BY JURY ON ANY ISSUE ARISING OUT OF ANY LITIGATION OR DISPUTES OR CLAIMS UNDER THE AGREEMENT OR ANY PURCHASE ORDER, SUCH PARTY INTENDING TO WAIVE AND FOREVER RELINQUISH ANY RIGHT UNDER APPLICABLE LAW PROVIDING FOR A RIGHT OF TRIAL BY JURY.**

#### **A.20. COMPLIANCE WITH APPLICABLE LAW**

- A. General. Contractor represents and warrants that it shall fully comply and shall cause its Subcontractors to fully comply with all Applicable Laws, including:
- i. Laws pertaining to the employment of Contractor's employees including payment of all federal, state and local taxes or contributions and making all required withholdings;
  - ii. Laws relating to the training, health and safety of Contractor's employees including all regulations and standards promulgated under the Occupational Safety and Health Act of 1970, as amended;
  - iii. Laws relating to the protection of the environment including those related to the transportation, use or disposal of Hazardous Substances or waste;
  - iv. Laws relating to compliance with U.S. Department of Labor requirements relative to required treatment of and notices to employees of Contractor and its Subcontractors;
  - v. Laws relating to the collection and remittance of sales, use, excise and gross receipts taxes; and
  - vi. Laws relating to the packaging, marking, handling and transportation of Materials.
- B. Immigration Reform and Control Act. Contractor certifies, represents and warrants that none of its employees, or employees of its Subcontractors who perform Services under the Agreement are unauthorized aliens as defined in the Immigration Reform and Control Act of 1986 ("IRCA"). Contractor further agrees to obtain a similar certification from its Subcontractors performing Services.
- C. Incorporation of Applicable Law. Contractor certifies, represents and warrants that it is an equal opportunity employer and to the extent required by Applicable Law, shall comply with, and require its Subcontractors to comply with, the following: 42 U.S.C. § 7414 (Clean Air Act); 33 U.S.C. § 1318 (Clean Water Act); 15 U.S.C § 637(d)(2) and (3) (Utilization of Small and Disadvantaged Business Concerns); 41 C.F.R. § 60 - 1.8 (Certification of Non-Segregated Facilities); 48 C.F.R. § 52.203-6 (Subcontractor Sales to Government); 48 C.F.R. §§ 22.804-1 and 52.222-26 and 41 C.F.R. § 60-1.4 (Equal Opportunity) (E.O. 11246); 48 C.F.R. §§ 52.222-35 and 52.222-37 and 41 C.F.R. § 60-250.4 (Disabled and Vietnam Era Veterans); 48 C.F.R. § 52.222-36 and 41 C.F.R. § 60-741.4 (Handicapped Workers); and all other sections contained in 41 C.F.R. Chapter 60, and 29 CFR Part 470. To the extent required by Applicable Law, the foregoing executive orders, statutes, rules and regulations are incorporated herein by reference as if set forth in full. Contractor also agrees (i) that no portion of the Services required by the Agreement will be performed in a facility listed on the U.S. Environmental Protection Agency ("EPA") List of Violating Facilities as of the effective date of the Purchase Order unless and until the EPA eliminates the name of such facility or facilities from such listing and (ii) to insert the substance of this Section A.20.C into any nonexempt subcontract or purchase order as required by Applicable Law.
- D. **INDEMNIFICATION. IN ADDITION TO ANY OTHER OBLIGATIONS UNDER THE AGREEMENT, CONTRACTOR SHALL, INDEMNIFY, DEFEND, AND HOLD HARMLESS THE NERP INDEMNIFIED PARTIES FROM AND AGAINST ANY AND ALL CLAIMS ARISING OUT OF OR RELATING TO CONTRACTOR'S BREACH OF ANY REPRESENTATION, WARRANTY, CERTIFICATION OR OBLIGATION PROVIDED FOR IN SECTIONS A.20 OR A.21.**

#### **A.21. CONFLICTS OF INTEREST AND PROHIBITED PAYMENTS**

Contractor represents that no unrecited consideration, kickbacks, fees, payments or things of value above what is ordinarily encountered in usual and customary business practices and what is permitted by any Applicable Law, including applicable anti-kickback law, were given to or requested by any NERP employee, Contractor employee, Subcontractor or government official as an inducement to enter into or continue the Agreement or any subcontract. If Contractor has actual knowledge of any such request, demand or occurrence or has reasonable grounds to believe any such request, demand or occurrence has occurred, Contractor further agrees to immediately report any such incident to: (i) Legal Department, c/o Hartree Partners, LP, 1185 Avenue of the Americas, 9<sup>th</sup> Floor, New York, NY 10036; EMAIL: [LegalNY@hartreepartners.com](mailto:LegalNY@hartreepartners.com), and (ii) if required by Applicable Law, the appropriate government agency.

#### **A.22. RELATIONSHIP OF THE PARTIES**

Nothing contained in the Agreement shall be construed to constitute Contractor as a partner, employee or agent of NERP, nor shall either Party have the authority to bind the other in any respect, it being intended that each shall remain responsible for its own actions. Contractor is retained only for the purposes and to the extent set forth in the Agreement and Contractor's relationship to NERP shall be that of an independent contractor. Contractor's and Subcontractor's employees, agents and representatives shall not be considered under the provisions of the Agreement, or otherwise, as having a status as an employee of NERP nor shall they be entitled to participate in any plans, arrangements, or distributions by NERP relating to any pension, deferred compensation, bonus, hospitalization, insurance or other benefits extended by NERP to its employees. **TO THE EXTENT PERMITTED BY LAW, CONTRACTOR SHALL FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS THE NERP INDEMNIFIED PARTIES FROM AND AGAINST ANY AND ALL CLAIMS ARISING OUT OF, RESULTING FROM, BASED ON, OR RELATED TO THE EMPLOYMENT RELATIONSHIPS OF ANY PERSON WITH ANY OF THE CONTRACTOR INDEMNIFIED PARTIES OR ANY SUBCONTRACTOR, OR THE JOINT EMPLOYMENT OR CO-EMPLOYMENT RELATIONSHIPS THAT ARE ALLEGED OR FOUND TO EXIST BETWEEN ANY EMPLOYEES OF THE CONTRACTOR INDEMNIFIED PARTIES OR ANY SUBCONTRACTOR, AND ANY OF THE NERP INDEMNIFIED PARTIES BY VIRTUE OF THE SERVICE PERFORMED BY SUCH EMPLOYEE PURSUANT TO THIS AGREEMENT.**

**A.23. MISCELLANEOUS**

- A. Assignment. Contractor shall not assign the Agreement or any of Contractor's rights or obligations under the Agreement without the prior written approval of NERP and any attempt to make such an assignment shall be void. Subject to the foregoing, the Agreement shall be binding on and inure to the benefit of the Parties and their respective successors and assigns.
- B. Survival. Sections 6, A.3.B, A.4, A.6, A.7, A.8, A.9, A.10, A.11, A.12, A.13, A.15, A.16, A.17, A.19, A.20, A.21, A.22 and this Section A.23 of these Purchase Order Terms and Conditions, shall survive termination or expiration of the Agreement and any part thereof, in addition to any provisions which by their nature should, or by their express terms do, survive or extend beyond termination or expiration of the Agreement.
- C. No Waiver. No waiver by either Party of the performance of any provision, condition or requirement of the Agreement shall be deemed to be a waiver of, or in any manner release the other Party from, performance of any other provision, condition or requirement of the Agreement; nor shall it be deemed to be a waiver of, or in any manner release the other Party from future performance of the same provision, condition, or requirement; nor shall any delay or omission of a Party in exercising any right hereunder in any manner impair the exercise of any such right or any like right accruing to it thereafter. No waiver shall be effective unless made in writing and signed by the Party to be charged with such waiver.
- D. Severability. If any provision of the Agreement is held to be illegal, invalid, or unenforceable and such invalidity or unenforceability does not have a material and substantial negative impact on the rights, duties and obligations of either Party hereto (i) such provision will be fully severable, (ii) the Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of the Agreement, and (iii) the remaining provisions of the Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from the Agreement.
- E. No Publicity. Contractor shall not reveal any information concerning details of the Agreement to the press or a news-disseminating agency or use the details of the Agreement within any advertising, promotional material, publicity or other printed material without NERP's prior written approval in each instance. In addition, Contractor may not take photographs of the Services or the Site without NERP's prior written approval.
- F. Construction. Article and Section headings and numbers are provided for convenience only, and shall not affect the construction or interpretation of the Agreement. References to "days" or a "day" shall mean a calendar day, unless otherwise stated. The term "include," "includes" and "including" means "including, without limitation," or variant thereof.
- G. Notices. Any Notice provided for in the Agreement shall be duly given if delivered by (i) hand, (ii) registered or certified mail, return receipt requested, postage pre-paid, or (iii) facsimile. The Parties may change their respective addresses for receipt of notices upon reasonable advance notice to the other. Any Notice given by hand delivery or registered mail shall be deemed given at the time of delivery and facsimile transmission shall be deemed to be given at the time transmission has been confirmed; provided, however, that when the time of transmission falls outside the normal business hours of the recipient, delivery shall be deemed to be given at 0900 hours (recipient's local time) on the next business day at the location of receipt.

**EXHIBIT B - PURCHASE ORDER TERMS AND  
CONDITIONS**

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**INSURANCE REQUIREMENTS**

- A. All insurance policies procured and maintained by Contractor must be written with insurance companies licensed to do business in the state where the Services will be performed, and carry a rating of A- VII or better as shown in the most current issue of A.M. Best's Key Rating Guide, under forms of policies satisfactory to NERP, in the type and amounts as set forth below:
- i. Worker's Compensation Insurance, including Alternate Employer endorsement occupational disease coverage, in accordance with the benefits afforded by the statutory worker's compensation acts applicable to the state, territory or district of hire, supervision or place of accident and including, when applicable, full coverage for maritime obligations, the United States Longshoremen's and Harbor Worker's Compensation Act, Outer Continental Shelf Lands Act, the Jones Act, Death on the High Seas Act and In Rem Coverage shall Apply. (Sole proprietorships with no employees falling within the jurisdiction of any statutory worker's compensation act must so certify to NERP in writing.)
  - ii. Employer's Liability Insurance with minimum limits of: bodily injury by accident, \$1,000,000 each accident; bodily injury by disease, \$1,000,000 policy limit; bodily injury by disease, \$1,000,000 each employee. With respect to offshore work or other work pertaining to maritime exposures, the Jones Act, or Death on the High Seas Act, a maritime coverage employer's liability endorsement with minimum limits of: bodily injury by accident, \$1,000,000 each accident; bodily injury by disease, \$1,000,000 aggregate.
  - iii. Commercial General Liability Insurance with a combined single limit of liability for bodily injury or property damage of \$1,000,000 each occurrence, \$1,000,000 personal and advertising injury, \$2,000,000 general aggregate, and \$2,000,000 products and completed operations aggregate, on ISO Coverage Form CG 00 01 (or equivalent), such coverage to include products/completed operations liability, premises/operations, independent contractors, broad form bodily injury and property damage, personal injury, in rem (if applicable), explosion, collapse and underground damage liability (xcu), and sudden and accidental pollution liability with respect to Contractor and its Subcontractors. Such coverage shall include a Gulf of Mexico extension, when applicable. The Employer's Liability exclusion shall not apply to NERP as an Additional Insured.
  - iv. Business Automobile Liability Insurance covering all owned, non-owned (including NERP vehicles), leased, rented, and hired motor vehicles, including coverage for loading and unloading, used in the performance of the Agreement, with limits of not less than \$1,000,000 per accident.
  - v. Unless otherwise specified in the Purchase Order, Excess Liability Insurance with limits of not less than \$2,000,000 per occurrence and in the aggregate providing additional limits of insurance to the coverage described in subsections ii, iii, and iv above. Excess Liability policy(ies) must be written on a Follow Form of underlying basis and include any requisite endorsements to extend coverages contained in the primary policies described in subsections ii, iii, and iv above into the excess liability policy(ies).
  - vi. If the Services require the use of aircraft by Contractor, Aircraft Liability Insurance covering all owned, non-owned, or hired aircraft used in connection with the performance of the Agreement, as well as Guest Voluntary Settlement, and passengers and crew, shall be procured, with policy limits of not less than:
    - \$50,000,000 per occurrence for services providing fixed wing transportation of NERP executives;
    - \$20,000,000 per occurrence for offshore rotorcraft operations;
    - \$5,000,000 per occurrence for activities by fixed wing aircraft providing services such as: pipeline inspections, coal pile inventory inspections and aerial photography; and
    - \$5,000,000 per occurrence for all other services not listed above.
  - vii. If Contractor uses marine craft in performing Services hereunder:
    - **Hull & Machinery Insurance:** Hull and Machinery insurance to the full market value of each vessel and its equipment.
    - **Collision and Tower's Liability Insurance (if applicable):** Collision and Tower's Liability insurance on each vessel with a limit of not less than the full market value of such vessel, if operation towing operations are being performed. Such insurance may be placed through Hull and Machinery Insurance, P&I insurance, or other commercial insurance, or any combination of the foregoing.
    - **Protection & Indemnity (P&I) Insurance:** P&I Insurance with a limit of not less than five million dollars (\$5,000,000) per occurrence. Such insurance shall include coverage for: injury to or death of master, mates and crew; tower's liability; excess collision liability; cargo legal liability; pollution liability, and contractual liability. Said P&I Insurance shall not include any "As Owner" clauses or any other language that purports to limit coverage to the liability of an insured "as Owner of the Vessel" or that limits coverage based on any statute providing for limitation of liability. Contractor may cover its obligation for loss of life or bodily injury to the crew of the vessel by extension of the Workers' Compensation Insurance under A.i above. If there is cargo on the marine vessel, Cargo Marine Insurance coverage covering the value of the cargo.
    - **Cargo Insurance:** If there is cargo on the marine vessel(s), All Risks Cargo Marine Insurance coverage covering the full value of the cargo.
    - **Hull and Machinery (H&M) and Protection & Indemnity (P&I) War Risk Insurance:** H&M and P&I War Risk Insurance on each vessel provided for the use in the performance of this Agreement with a limit of not less than the full market value of each such vessel.

- **Ship Repairer's Legal Liability** Insurance (if applicable): Ship Repairer's Liability Insurance under the American Institute Ship Repairer's Liability Clauses (November 3,1977) with a combined bodily injury and property damage limit of not less than \$1,000,000 each occurrence and shall include: P&I and Collision/Tower's Liability during sea trials or otherwise, while vessel is in the water; strikes, riots and civil commotion; Pollution Liability; and removal of wreck coverage.
- viii. If Contractor will be providing any kind of professional, engineering or design services, Professional Liability Insurance with limits of not less than \$2,000,000 per act, error or omission.
- ix. NERP also reserves the right, in its discretion, to require higher limits with respect to Services having a greater risk exposure. If so, such higher limits shall be set forth in the Purchase Order.

**B. THE INSURANCE REQUIREMENTS SET FORTH IN THIS EXHIBIT "B" SHALL IN NO WAY LIMIT CONTRACTOR'S LIABILITY OR RESPONSIBILITY UNDER THE AGREEMENT NOR SHALL THEY BE CONSTRUED TO BE THE ULTIMATE TYPES AND AMOUNTS OF INSURANCE CONTRACTOR SHOULD MAINTAIN TO ADEQUATELY INSURE ITSELF.**

- C. It is further expressly agreed by Contractor that any and all premiums and deductibles and/or any other charges due with respect to such policies of insurance shall be assumed by and for the account of Contractor. Contractor shall carry deductibles acceptable to NERP. In the event Contractor has a self-insured retention or is a self-insurer for any one or more of the risks to which coverage is herein required, Contractor shall provide NERP with written evidence of such self-insurance for NERP's review and acceptance which shall be given by written consent by an authorized representative of NERP. Furthermore, if the Contractor, or any of its Subcontractors, self-insures a risk as set forth in this Section, the Contractor or Subcontractor waives any claim for damage or loss as to that risk in favor of the indemnitees.

Documents evidencing self-insurance, including and not limited to company financial information, must be provided prior to consent being given by NERP to accept self-insurance in lieu of insurance, and Contractor expressly understands and acknowledges that any such self-insurance does not contemplate the revocation of any State Workers' Compensation Act and does not relieve the Contractor or any Subcontractor of their statutory obligations under such Act. Similarly, acceptance of self-insurance by NERP, as referenced above, does not invalidate any other obligations or responsibilities under this Agreement, it being expressly understood by both Parties that any such accepted self-insurance shall serve only as a substitution for the specifically identified insurance requirement in this Agreement. Any self-insured retention attached to the required Commercial General Liability policy required herein shall be specifically amended to expressly allow payments by the Additional Insured to satisfy the named Insured's self-insured retention amount.

- D. All such policies of insurance (with the exception of Workers' Compensation, Employer's Liability, and if required to be provided, Professional Liability Insurance) shall name the NERP Indemnified Parties as an Additional Insured on such policies with Additional Insured Endorsement (CG 2010 0704 and CG 2037 0704 or equivalent) such that the Additional Insured protection provides coverage for both Ongoing Operations and Products/Completed Operations, and shall provide for contractual liability covering the obligations assumed by Contractor herein. Further, all of the above insurance policies shall contain provisions that no cancellation or material change shall become effective except on thirty (30) days prior written notice to NERP (ten (10) days for non-payment of premiums). The certificate of insurance issued by Contractor shall include a copy of the following specific endorsements in favor of NERP: Additional Insured, Waiver of Rights of Subrogation, and Notice of Cancellation. Renewal certificates shall be delivered to NERP within ten (10) days of policy expiration. Contractor's insurance policies shall not contain exclusions for claims arising out of the negligence of the NERP Indemnified Parties as an Additional Insured. Receipt of any certificate of insurance by NERP that does not meet the requirements set forth herein does not constitute a waiver of such requirements or acceptance of non-conforming certificates.
- E. All policies of insurance referred to herein must be written on an "Occurrence" Basis and (except for Workers' Compensation and Employer's Liability) maintain an endorsement to be Primary and Non-Contributory to any other insurance policies carried by NERP with respect to Contractor's operations. In the event a 'Claims-Made' coverage form is used, Contractor shall ensure that a minimum three-year extended reporting period is obtained from the end of the services performed and that the policy contains a retro-active date prior to the beginning of this agreement. Contractor shall provide to NERP a certified copy of any and all applicable insurance policies within ten (10) business days upon request by NERP. NERP must be notified immediately upon knowledge of possible damage claims that might cause a reduction below seventy-five percent (75%) of any aggregate limit of any policy.
- F. Except where prohibited by Applicable Law, all policies of insurance pertaining to the Agreement which are procured, held or maintained by Contractor and each of its Subcontractors, whether required by the Agreement or not, shall be endorsed to provide that the underwriters or insurers waive any and all rights of subrogation against the NERP Indemnified Parties.
- G. Prior to Services commencing under the Purchase Order, Contractor shall provide to NERP certificates of insurance for itself and each of its Subcontractors on standard ACORD form signed by an authorized representative evidencing the coverages, limits, deductibles, self-insured retentions (as approved by NERP), endorsements and extensions required herein for NERP and each entity required to be named as an Additional Insured. Notwithstanding Contractor's obligation to provide, and NERP's right to receive, proof of insurance in compliance with this Exhibit "B", any failure of NERP to require, or to insist that Contractor comply with its obligations to provide, proof of insurance prior to the commencement of any Services, or at any other time, shall not operate as a waiver of Contractor's obligations to provide insurance.
- H. NERP may also require that Contractor provide a payment and/or performance bond with respect to certain Services based on NERP's review of Contractor's financial strength. If so, such requirements shall be set forth in the Purchase Order.

**EXHIBIT C –PURCHASE ORDER TERMS AND CONDITIONS SPECIAL PROVISIONS**