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AUSTIN • DALLAS • HOUSTON  
PORT WORTH

## Master Consulting Services Agreement

Contract No. \_\_\_\_\_

This Master Services Agreement ("Agreement"), effective \_\_\_\_\_ between (Insert BP Entity) ("BP"), and \_\_\_\_\_ ("SUPPLIER"), with each being sometimes hereinafter referred to as "party" or collectively s "parties" states the terms and conditions on which SUPPLIER agrees to provide Insert general work type\*\*\* services to BP and BP Affiliates and BP and its Affiliates agree to use and pay for such services from SUPPLIER.

### ARTICLE 1: EXHIBITS AND DEFINITIONS

- 1.0 The following Exhibits are attached hereto and made a part hereof for all purposes. SUPPLIER agrees to comply with the processes, terms and requirements of the Exhibits whether or not they are otherwise referenced in the body of this Agreement.
- |             |  |
|-------------|--|
| Exhibit "A" | Compensation   |
| Exhibit "B" | General Scope of Work                                  |
| Exhibit "C" | Health, Safety, and Environmental Minimum Requirements |
- 1.1 The term "Affiliate" of a party, means any legal entity directly or indirectly controlled by, controlling, or under common control with that party. Owning 50% or more of the stock, equity or property of such legal entity, or having the right to appoint 50% or more of the members or owner representatives of such legal entity, are examples of forms of control, but effective control by any means is the test.
- 1.2 A "Fixed Price Engagement" means that SUPPLIER assumes full responsibility for the completion of the project for the fixed amount and by the date specified. As part of this responsibility, SUPPLIER shall take any steps necessary to ensure that it meets the project objectives by the date specified. Should SUPPLIER anticipate that the resources currently assigned to the project are not sufficient to ensure its timely completion, SUPPLIER will supplement them as necessary at no additional cost to BP.
- 1.3 An "Hourly Services Engagement" means that BP retains project management responsibilities, and SUPPLIER will assist BP with specific tasks which are identified in an Exhibit B. SUPPLIER will be paid an hourly rate, consistent with SUPPLIER's current discounted BP rate for hourly work.
- 1.4 "Hours Worked" means hours spent at BP's offices or elsewhere at BP's direction, engaged in providing the services described on the relevant Exhibit B. Commuting and travel time is not included in "Hours Worked."
- 1.5 The term "Technical Coordinator" means the individual assigned by each party to be the focal point for communications with the other party with respect to the Work.
- 1.6 A "Time and Materials Engagement" means that SUPPLIER assumes responsibility for project management and will estimate the number of hours required to complete the SUPPLIER's tasks identified in the relevant Exhibit B. SUPPLIER will bill BP for hours actually worked. If fewer than the estimated hours of effort are required, then BP's cost will be less than the estimated charges. If more than the estimated hours are required, SUPPLIER will notify BP as soon as SUPPLIER becomes aware of the need. At that time, BP may terminate the Exhibit B paying for the hours expended to date, allow the Work to continue up to the estimated hours of Work contracted, or exercise the formal change control process to amend the Exhibit B to authorize additional Work.
- 1.7 The term "Services and /or Work" shall mean the goods and services to be provided by Supplier hereunder as more fully described in an Exhibit B.

## ARTICLE 2 - SCOPE OF WORK

**2.1 Scope of Work.** The scope of Work to be performed under this Agreement will be set forth in individual numbered Exhibits B in the form of Exhibit B-0 attached hereto. Until an Exhibit B is agreed between SUPPLIER and BP or between SUPPLIER and an Affiliate of BP, there is no commitment made under this Master Agreement. When an Exhibit B is agreed and signed by the parties thereto, the terms of this Master Agreement shall apply to it unless the Exhibit specifically provides that one or more different terms shall apply. Each Exhibit B, together with its attachments, if any, will define the scope of Work to be performed under it and constitutes a separate agreement. Exhibit B will specify the Technical Coordinators, SUPPLIER staff assigned, type of work, skill levels provided, location and approximate length of engagement, applicable hourly rates, deliverables and their due dates, and completion criteria for successful completion of the engagement.

Additional written and detailed technical specifications for the Work may be attached to an Exhibit B as numbered exhibits. Each exhibit, when so attached, is incorporated by reference and shall become a part of that Exhibit B. Specifications may also be subsequently developed or amended by written agreement of the Technical Coordinators. The relevant Exhibit B, attached exhibits, and any specifications agreed to by the Technical Coordinators shall collectively constitute the complete "Specifications" for the work to be performed by SUPPLIER under that engagement.

**2.2 Work Space and Materials.** If applicable, BP agrees to provide reasonable work space, general office supplies, and appropriate computer time for SUPPLIER's personnel while working at BP's facilities. If SUPPLIER or its employees are granted access to BP's computer system, SUPPLIER and each of SUPPLIER's employees assigned to work on a BP project with access to the computer system will sign BP's Computer Access and Confidentiality Agreement. Any additional or unusual materials needed by SUPPLIER's personnel in connection with the Work hereunder shall be provided by SUPPLIER or as otherwise specified in Exhibit B.

**2.3 Highest Professional Standards.** SUPPLIER's personnel will perform the Work in accordance with the specifications using the highest professional standards and maintaining full compliance with BP's standards and procedures.

**2.4 Change Control.** During the course of this Agreement BP may desire a change in the scope of the Work. Requests for changes will be made in writing and delivered to SUPPLIER's Technical Coordinator. Technical Coordinators from both parties will review the proposed change and agree on whether implementation of the change will affect price, schedule, and other terms and conditions of the Agreement. Any changes in price, schedule or other terms will be documented in writing. An authorized agent for each party will sign the changes to indicate agreement to the modification.

**2.5 Acceptance/Warranty.** Acceptance will occur when the deliverables under the Exhibit B meet the agreed upon tests or the acceptance criteria defined in the Exhibit B. If the deliverables do not meet the acceptance criteria defined in the Exhibit B when offered by SUPPLIER for BP's acceptance, BP will give SUPPLIER detailed written notification of the deficiency or non-conformance. Within 30 days of such notice, SUPPLIER shall either correct the deficiency or non-conformance or provide BP with a plan acceptable to BP for its correction. If the deficiency or non-conformance is not corrected or if an acceptable correction plan is not established during such period, then, upon BP's request, SUPPLIER shall refund to BP all fees paid to date by BP for the Work and that Exhibit B will terminate. SUPPLIER represents, warrants and covenants that for a period of one year after acceptance by BP, the Products will conform to the specifications.

**2.6 Permits.** Unless otherwise specified on the applicable Exhibit B, SUPPLIER shall obtain all permits and licenses and pay all fees and charges therefor.

**2.7 Term.** This Agreement shall be effective beginning on \_\_\_\_\_, 20\_\_\_\_ and terminating on \_\_\_\_\_, 20\_\_\_\_ subject to the provisions of Article 7.1 (Default-Right of Termination). The term of this Agreement may be extended by the mutual written consent of the parties.

**2.8 Work.** BP has the right to let other contracts in connection with SUPPLIER'S Work and SUPPLIER shall properly cooperate with any such other contractors.

## ARTICLE 3 - PERSONNEL

- 3.1 Supplier's Personnel; Subcontracting.** Personnel used or supplied by SUPPLIER to perform the work hereunder are employees, agents or subcontractors of SUPPLIER and under no circumstances are such personnel to be considered employees or agents of BP. SUPPLIER shall have the sole responsibility for the conduct of its employees and agents, for controlling, supervising and directing their work, for payment of their entire compensation, for withholding of all income and social security taxes, and for workers' compensation. SUPPLIER shall be responsible for all employer obligations towards all of its employees and agents under all applicable laws. SUPPLIER may subcontract specific engagements hereunder only with BP's prior written permission.
- 3.2 Qualifications and Replacement.** SUPPLIER is responsible for providing duly qualified persons to perform the Work. BP may request that SUPPLIER remove and replace any SUPPLIER personnel for any lawful reason, and SUPPLIER will remove any such personnel and provide appropriate replacements. In addition, Supplier may replace personnel when necessary and appropriate in SUPPLIER's judgment. SUPPLIER agrees to maintain a consistently high skill level among all replacement personnel.
- 3.3 Technical Coordinators.** Each Exhibit B will designate in writing the name, business address, and telephone number of a Technical Coordinator for each party who will be responsible for representing that party in all matters with respect to the Work. All transfer of deliverables and communications regarding the scope of Work, personnel issues, and timing of the Work will be accomplished through the Technical Coordinators. In addition, the Technical Coordinators will arrange and chair progress review meetings as appropriate and control all changes to the Specifications. Unless otherwise provided in the relevant Exhibit B, SUPPLIER will submit all of its invoices through BP's Technical Coordinator. Either party may change the person designated to be its Technical Coordinator at any time upon written notice to the other party.
- 3.4 Independent Contractor.** In rendering services hereunder, SUPPLIER shall be an independent contractor and third party service provider and shall not be an employee, agent or co-venturer of BP or any of its Affiliates. Neither SUPPLIER nor SUPPLIER's employees are entitled to participate in any employee benefit program of BP or any of BP's Affiliates. SUPPLIER agrees that BP is not an employer, co-employer or joint employer of SUPPLIER's employees. Neither party shall have any right, power, or authority to assume, create, or incur any expense, liability, or obligation on behalf of the other party, except as expressly provided herein. This Agreement does not create a joint venture, association, partnership, or other form of a business organization or an agency relationship.

## ARTICLE 4 - FEES, INVOICES, PAYMENT

- 4.1 Fees/Compensation.** If the Exhibit A or Exhibit B specifies that SUPPLIER is to be compensated for the Work on an hourly basis (Time and Materials and Hourly Services Engagements), the applicable hourly billing rates for each person working on each BP project shall be specified in the Exhibit B. All hours for any given person will be billed at the same rate, regardless of when those hours are worked. For a fixed Price Engagement, the fixed price amount will be specified in the Exhibit B. Changes in the fixed price may be agreed in accordance with Section 2.4.
- 4.2 Travel Expenses.** For Services performed on a Hourly Services Engagement or a Time and Material Engagement BP shall reimburse SUPPLIER for reasonable out-of-town travel expenses incurred by SUPPLIER's personnel for travel which both parties agree is required to perform the Work. No travel expenses will be approved without prior written BP authorization.
- 4.3 Invoices/Payment.** (a) For all Fixed Price Engagements, SUPPLIER shall invoice BP for all work performed according to the "Fixed Price Invoicing Arrangements" specified in the Exhibit B. For Time and Materials Engagements and Hourly Services Engagements, SUPPLIER shall submit detailed monthly invoices for all work performed. Travel or other approved expenses shall be invoiced in the same manner as services, and SUPPLIER shall include receipts and supporting data.
- (b) All invoices submitted by SUPPLIER must set forth the following information: (i) the contract number of this Agreement and its numbered Exhibit B; (ii) an identification of the Work; (iii) the location(s) specified for the Work; (iv) a record of expenses and receipts therefor by individual, if applicable; (v) BP's purchase order number, if applicable; (vi) the BP paykey number if applicable; and (vii) number of hours worked and description of work performed by day by individual (if hourly fees apply). BP shall be entitled to return incomplete invoices and to return or correct invoices containing errors. Payment shall be due 30 days after BP's receipt of SUPPLIER's complete and accurate invoice in the net amount of the invoice less any retentions or deductions made by BP.
- (c) BP may credit any indebtedness of SUPPLIER to BP against any amounts owed by BP hereunder.
- 4.4 No Liens.** SUPPLIER shall pay promptly all indebtedness for labor, materials, tools, and equipment used in the performance

of this Agreement. At BP's request SUPPLIER shall furnish evidence satisfactory to BP of the full payment of any such indebtedness prior to payment by BP. BP may withhold payment for Work for which Supplier has not provided satisfactory evidence of payment until expiration of the statutory lien period for such work. If any lien shall attach to a BP premises as a result of the Work, SUPPLIER shall promptly procure its release and hold BP harmless from all loss, cost, damage, or expense incidental thereto. SUPPLIER hereby authorizes BP to pay any such liens from any payments due SUPPLIER. To the extent permitted by law, SUPPLIER waives and hereby releases BP and the BP premises from any and all liens accrued or accruing to Supplier.

- 4.5 Taxes.** Except as provided in Section 4.6 SUPPLIER shall be liable for and pay all taxes, assessments, excises, impositions, licenses and fees (including interest or penalties, if any) levied or imposed under any federal, state or local law upon or on account of the execution of the Work or SUPPLIER's receipts therefrom or on the materials therefor or on the manufacture, storage, sale, receipts from sale, use, transportation, inspection, or delivery of the materials. When required to do so by law, BP shall have the right to withhold state taxes, and pay such taxes to the state, or to delay payment, up to the amount of the tax. SUPPLIER shall be solely liable for withholding requirements, payroll taxes, Federal Insurance Contributions Act taxes, all state taxes relating to unemployment compensation and any similar taxes with respect to the wages and salaries paid to SUPPLIER's employees for services rendered in connection with this Agreement.
- 4.6 Sales and Use Taxes.** Prices quoted do not include any applicable state or local sales or use taxes. Any applicable state or local sales or use tax that SUPPLIER collects must be added to the appropriate invoice as a separate charge to be paid by BP, unless BP furnishes SUPPLIER with an exemption certificate. All other taxes, Governmental fees, and charges of any kind are included in the quoted price.
- 4.7 Billing Disputes.** Billing disputes shall not be cause for non-performance under this Agreement.

## ARTICLE 5 - PROPRIETARY RIGHTS

**5.1 Ownership of Work Product.** (a) SUPPLIER and its employees and subcontractors hereby assign, and grant to BP all rights to possession of, and all right, title, and interest, including all copyright rights and the right to prepare and exploit derivative works, in the work products created under any Exhibit B to this Agreement in whatever form or medium captured, and in and to all physical and electronic materials, including, but not limited to, software, drawings, videos, manuals, charts, photographs, designs, papers, documents, and copies, abstracts, and summaries thereof (collectively referred to herein as "Products") which may come into its possession and the possession of its employees in any manner by reason of the Work. SUPPLIER shall promptly disclose to BP any Products known to it or its employees, and all such Products which are not mere modifications or enhancements to SUPPLIER-owned software shall be deemed to the fullest extent possible to be works made for hire exclusively for BP, with BP having sole ownership of such Products and the sole right to obtain and to hold in its own name patents, copyrights, or such other protection as BP determines appropriate to the subject matter. BP is under no obligation to file any patent application, secure or maintain any patent or register any copyright. SUPPLIER agrees at BP's expense, to provide BP or any person designated by BP all assistance reasonably required to perfect such rights including the procurement of written assignments and title commitments in a form acceptable to BP from all SUPPLIER's employees and agents performing work.

(b) The provisions of this Article do not apply to any material previously belonging to the SUPPLIER or lawfully acquired by the SUPPLIER in a manner independent of this Agreement, which are used by the SUPPLIER in the course of the Work. SUPPLIER does not receive any proprietary rights or licenses from BP as a result of its services hereunder.

**5.2 Confidentiality Obligations of SUPPLIER.** (a) The term "Confidential Information" means all information in the broadest sense, in whatever form or medium, that relates to past, present, or future research, development, and business activities of BP and BP's Affiliates; their systems, procedures, algorithms, and data (including, without limitation, those contained in databases) that are related to these activities; information related to the operations, planning, control, and marketing of the business interests and products of BP and its Affiliates; any information which affects publicly held securities; and any other information about its business affairs and the business affairs of its Affiliates which BP deems to be confidential or proprietary, and which SUPPLIER and its employees and agents may acquire possession of or access to by reason of the Work. Confidential Information shall also include all information and software belonging to third parties, which was provided to BP or its Affiliates in confidence to which SUPPLIER may have access by reason of the Work.

(b) SUPPLIER acknowledges the confidential nature of the Confidential Information and BP's valuable proprietary interest in it. SUPPLIER and its personnel shall treat all Confidential Information as confidential and proprietary to BP and its Affiliates. SUPPLIER shall limit access to the Confidential Information to SUPPLIER's personnel engaged in the Work with a legitimate

need to know it and who have a contractual obligation not to disclose it, and shall not, without the prior written consent of BP, use, copy, or remove any Confidential Information from BP's premises except to the extent necessary to carry out the purposes of the Work. Upon termination of this Agreement or an Exhibit B, SUPPLIER and its employees or agents shall return to BP's Technical Coordinator all documents or other materials in whatever form that contain BP Confidential Information, or destroy all copies thereof, and certify to BP in writing that all copies of such materials have been destroyed.

**5.3 Confidentiality Exceptions.** Confidential Information shall not include, and these confidentiality obligations shall not operate as a restriction on SUPPLIER's right to use, disclose, or otherwise deal with information which:

- (a) Is or becomes generally available to the public through no wrongful act of SUPPLIER or its employees or agents;
- (b) Was in SUPPLIER's possession prior to the time it was acquired from BP and which was not directly or indirectly acquired from BP or its Affiliates;
- (c) Is required to be disclosed by court order or operation of law, provided BP is notified immediately in order to have the opportunity to contest such disclosure and SUPPLIER takes reasonable steps to assist in contesting such request;
- (d) Is independently made available as a matter of right to SUPPLIER by a third party without access to the Confidential Information; or
- (e) Is independently developed by or for SUPPLIER by persons not having access or exposure to BP's Confidential Information.

**5.4 Conflict of Interest.** SUPPLIER represents and warrants that it has not undertaken and will not undertake any work with third parties that will conflict with the Work SUPPLIER has performed or is performing for BP. In case of doubt, before commencing such activities, SUPPLIER will review areas of possible conflict with BP. In addition to restrictions contained herein concerning SUPPLIER's use of Confidential Information, SUPPLIER agrees not to disclose to BP any confidential information of any third party. SUPPLIER shall not, without BP's prior written consent, make known or cause to be made known to any third party any correlation or identity which may exist between Confidential Information and technical information or know-how made available to SUPPLIER from any other source.

**5.5 BP's Use of Information.** This Agreement does not restrict the right of BP or any of its Affiliates to use, disclose, or otherwise deal with information, data, or services provided by SUPPLIER in performing the Work. If confidential information of SUPPLIER will be disclosed in the course of an engagement, it will be identified in the relevant Exhibit B and BP's confidentiality obligations with respect to it will be the same as those of SUPPLIER set forth herein.

## ARTICLE 6 – REPRESENTATIONS AND WARRANTIES

**6.1 Originality.** (a) SUPPLIER represents, and warrants the originality of any Work performed or Products delivered under this Agreement and that no portion of the Products completed on behalf of BP under this Agreement violates any patent, copyright, trademark, trade secret, or other intellectual property right or other rights of any third party. SUPPLIER hereby grants BP and its Affiliates a royalty-free, irrevocable right and license under any intellectual property rights of SUPPLIER to make, use and sell all Products. For purposes of this Section, "Products" shall not include materials supplied by BP.

(b) In addition to the indemnity described in Section 6.9 below, if an infringement claim threatens BP's or its Affiliate's continued use of any Products developed by SUPPLIER on behalf of BP under this Agreement, SUPPLIER shall, in the following order and at no cost to BP (i) obtain the right for BP to continue use of such Products, (ii) repair or modify the Products so they are both non-infringing and functionally and operationally equivalent to the infringing Products initially delivered, or (iii) provide replacement Products which are functionally and operationally equivalent to the Products. If none of the foregoing is possible, then BP may immediately terminate the Exhibit B, and SUPPLIER will refund all fees paid by BP which relate to such Products.

**6.2 Releases.** SUPPLIER warrants that neither it nor its permitted subcontractors, nor any of their respective employees, agents, or representatives, by entering into this Agreement, using information or materials, or performing the services hereunder has or will violate any consulting, employment, non-competition, proprietary information, confidentiality or other agreement, arrangement, understanding, or restriction between such party and a present or former employer, principal, client or other individual or entity. When requested by BP, SUPPLIER shall assist BP in all reasonable respects to obtain releases or other necessary or desirable information or documentation regarding any of the foregoing.

**6.3 Ethics.** SUPPLIER represents that it has given no commissions, payments, gifts, kickbacks, lavish or extensive entertainment, or other things of value to any employee or agent of BP in connection with this Agreement and acknowledges that the giving of any such payments, gifts, entertainment, or other things of value will entitle BP to cancel this Agreement. SUPPLIER must notify BP's Security Department of any solicitation by any of BP's employees or agents for such benefits.

**6.4 Compliance With Laws.** SUPPLIER represents and warrants that the Work shall be performed in full and complete compliance with all applicable federal, state, and local laws and regulations including without limitation the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Fair Labor Standards Act and all requirements of applicable immigration laws, including Section 1324 of the Immigration and Control Act of 1986. SUPPLIER agrees that the clauses identified below are herein incorporated by reference to the extent they are required by law to be so incorporated: 41 CFR Section 60-1.4(a) and 41 CFR Section 60-1.40(a), issued pursuant to Executive Order 11246 (Equal Employment Opportunity); 41 CFR Section 60-250.4, requiring affirmative action for Disabled Veterans and Veterans of the Vietnam Era; 41 CFR Section 741.4, requiring Affirmative Action for Handicapped Workers; Section 1-1310-2 of the Federal Procurement Regulations relating to Minority Business Enterprises; Executive Order 13201 (Beck Notice) related to the posting of "Notification of Employment Rights Concerning Payment of Union Dues and Fees, 40 CFR Section 15.4(c), requiring compliance with the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); and any other federal regulation adopted pursuant to any of the above-stated statutes, orders or regulations. SUPPLIER shall not comply with any foreign boycott laws or requirements, which are in violation of applicable federal and state laws and regulations.

**6.5 Necessary Contracts From Employees.** SUPPLIER represents that it has or will obtain appropriate agreements with its employees and others, including any permitted subcontractors, whose services it may require, sufficient to enable full compliance with all the provisions of this Agreement, including particularly Article 5.

**6.6 Insurance Coverage.** (a) At all times while performing work hereunder, SUPPLIER shall maintain insurance in amounts not less than:

1. Workers' Compensation: Statutory Amount;
2. Employer's Liability: \$500,000 per accident; \$500,000 per illness per employee and \$500,000 per illness, aggregate;
3. General Liability Insurance, including contractual liability, products and completed operations: \$ 1million per occurrence and \$2 million aggregate;
4. Automobile Liability Insurance: combined single limit of \$1 million per accident;
5. Excess Liability Insurance above Employer's Liability, General Liability, and Automobile Liability: combined single limit for Bodily Injury and Property Damage of not less than \$2,000,000 per occurrence.

SUPPLIER shall be solely responsible for any and all deductibles in the policies described above.

(b) All insurance policies required herein shall:

1. Name BP, its directors, officers, employees and agents as additional insureds except items 1 and 2 above;
2. Contain an endorsement stipulating that SUPPLIER's policies are primary to and not contributory with any other policies affording coverage to BP and all other additional insureds, including any self-insurance retention maintained by BP;
3. Provide that no policy shall be materially changed, amended or canceled except after 30 days prior written notice to BP;
4. To the maximum extent permitted by law, all insurance policies of SUPPLIER in any way related to, or providing any coverage in connection with the Work, whether or not required by this Agreement, shall be endorsed to waive all rights of subrogation against BP, and (except worker's compensation coverage and professional liability coverage) shall, to the extent of the risks and liabilities assumed by SUPPLIER, name BP as an additional insured on a broad form endorsement with coverage no less broad than ISO form CG 20 10 07 04.
5. Upon request of BP, SUPPLIER shall furnish BP with certificates of insurance, in a format satisfactory to BP or provided by BP, executed by a duly authorized representative of each insurer, evidencing compliance with the insurance requirement of this clause 6.6. Acceptance by BP of an incomplete or improper certificate, or failure of BP to identify a deficiency in coverage from the certificate submitted, shall not be construed as a waiver of SUPPLIER's obligation to maintain in effect the coverages required by this clause

(c) The insurance coverages required by this Agreement are minimums required for protection of BP and are not intended to cover all risks to which SUPPLIER may be exposed. SUPPLIER acknowledges the need to consult SUPPLIER's own insurance advisors to determine what kind and how much insurance to purchase to cover SUPPLIER's risk exposures.

**6.7 Disclaimer.** EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT INCLUDING THE RELEVANT EXHIBIT B, NEITHER PARTY PROVIDES ANY WARRANTIES TO THE OTHER, EITHER EXPRESS OR IMPLIED. IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE SPECIFICALLY DISCLAIMED.

**6.8 Waiver of Consequential Damages.** Except for damages arising in connection with breach of obligations contained in Article 5 or third party claims subject to the indemnities contained in Section 6.9, neither party shall have liability to the other with respect to their obligations under this Agreement for consequential, exemplary, incidental, or punitive damages even if they had been advised of the possibility of such damages.

**6.9 Indemnity** SUPPLIER agrees to fully indemnify, and save harmless and defend COMPANY and COMPANY Affiliates, and their directors, officers, agents and employees ("BP parties"), from and against any and all loss, cost, damage, injury, liability, claims, demands, penalties, taxes, liens or causes of action of every nature whatsoever resulting from damage or destruction to the property (whether the same be that of third persons or that of any BP parties or SUPPLIER or death or injury to persons (whether they be third persons, or directors, officers, agents or employees of any of the BP parties or SUPPLIER, sub-contractors or materialmen) in any manner arising out of or incident to or in connection with the performance of Work by SUPPLIER, or the conditions existing on any property of any of the BP parties or the presence on or about the premises of any of the BP parties of SUPPLIER or any of SUPPLIER'S sub-contractors, or materialmen or their respective employees or property, unless such loss, damage, injury, liability, claim, demand, penalty, tax, lien or cause of action is attributable only to the sole negligence or willful misconduct of any of the BP parties. SUPPLIER shall assume on behalf of any of the BP parties and conduct with due diligence and in good faith and at SUPPLIER'S expense, the defense of any suit against any of the BP parties, whether or not SUPPLIER be joined therein, seeking recovery for any loss, damage, injury, liability, claim, demand, penalty, tax, lien or cause of action within the import of this paragraph, even if such suit be groundless, false or fraudulent; provided, however, that without relieving SUPPLIER of its obligations hereunder, any of the BP parties may elect to defend or participate in the defense of any such suit but in no event without prior written notification to SUPPLIER. In no event shall SUPPLIER'S indemnification obligation under this paragraph extend to special or indirect damages meaning to include therein loss of profits or downtime.

Limitation of Liability. The total cumulative liability of SUPPLIER, its officers, employees and affiliates to BP with respect to Work performed or to be performed pursuant to this Agreement whether in contract, indemnity, contribution, tort (including negligence, whether active, passive or any other kind) or otherwise, but not including any liabilities to third parties included within an indemnity obligation, shall not exceed the higher of Y times the total charges paid by BP to SUPPLIER within the 12 calendar months immediately preceding the loss or 5 Million United States Dollars (\$5,000,000.00).

**6.10 BP Business Policies.** BP has adopted a Code of Conduct titled "Our commitment to integrity". A copy of the Code of Conduct is available at [www.bp.com](http://www.bp.com). Supplier agrees to review the Code carefully. Furthermore, in connection with Supplier's performance of this Agreement, Supplier undertakes and agrees to act consistently with the BP Code of Conduct and to adhere to the principles in the Code of Conduct in connection with its performance of this Agreement including the principles of non-retaliation against "whistle blowers". SUPPLIER agrees that neither this provision nor any other provision of the Agreement creates any obligations to or third party beneficiary rights in any third parties. Any failure to comply with this Section 6.10 shall be deemed a material breach of this Agreement.

**6.11 Provisions Regarding Child Labor Laws.** a) In the provision of the goods or services under this Contract or otherwise in its general operations, the SUPPLIER shall not use nor permit the use of any child labor under any circumstances, regardless of the legality of the use of child labor in any relevant country. Further, SUPPLIER shall procure that no affiliate, sub-SUPPLIER or other person acting for SUPPLIER in whatever capacity in the provision of the goods or services under this Contract or otherwise in its general operations, shall use nor permit the use of any child labor under any circumstances, regardless of the legality of the use of child labor in any relevant country. b) SUPPLIER hereby confirm to BP its intention to comply with sub-clause a) above and will provide additional confirmation and evidence of compliance at such other times during the term of this Agreement as BP may reasonably require. c) Any failure by SUPPLIER to comply with sub-clauses a) or b) above shall be deemed to constitute a material breach of this Contract, entitling BP to terminate this Contract forthwith upon written notice to SUPPLIER without liability to SUPPLIER, but without prejudice to BP's other rights and remedies under this Contract or at law. d) The audit provisions under this Contract shall be exercisable by BP so that BP may endeavor to ensure that the SUPPLIER'S obligations under this Clause are being performed in full.

**6.12 Supplier Diversity.** It is BP's policy that minority owned business enterprises should have the maximum opportunity to participate in the performance of its Agreements. SUPPLIER shall use its best efforts to further this policy by awarding subcontracts to minority owned business enterprises or by using such enterprises to provide goods and services incidental to this Agreement. Upon request, BP can assist SUPPLIER in developing a minority supplier/subcontractor program and in identifying

qualified minority owned businesses. SUPPLIER shall furnish appropriate information about its minority supplier/subcontractor program upon request of BP, including the identities of such enterprises and amounts involved.

## ARTICLE 7 - GENERAL PROVISIONS

7.1 **Termination.** This Agreement will continue in force unless terminated by either party on 30 days written notice to the other party. Individual Exhibit B engagements may also be terminated by BP or the BP Affiliate party to it at any time upon 30 days written notice. SUPPLIER may terminate an individual Exhibit B engagement on 30 days notice only for BP's failure to make payment in accordance with clause 4.3. If payment is made during the notice period, the termination notice shall be void. In the event that BP or a BP Affiliate terminates a Fixed Price Engagement according to this Section, SUPPLIER shall be entitled to fair compensation for time and materials at a price to be negotiated in good faith by the parties, but in no event to exceed either the fixed price specified in the relevant Exhibit B or a price determined by SUPPLIER's then-current rates for time and materials, whichever is lower. Further, in the event that SUPPLIER or any of its personnel breach a material term of this Agreement or an Exhibit B, BP may terminate this Agreement or that Exhibit B immediately in addition to any other remedies BP may have under this Agreement or at law or equity. Termination of this Agreement will not terminate any uncompleted Exhibit B entered into hereunder, and the terms of this Agreement will continue to apply to such Exhibit B so long as it remains in effect. In the event of any termination of a Exhibit B, BP shall be entitled to the ownership, possession, and use of any and all work in process and shall pay SUPPLIER therefore in accordance with Article 4 and this Section 7.1.

7.2 **Assignment.** SUPPLIER may not assign this Agreement or an Exhibit B engagement without BP's prior written consent. BP may assign its rights or obligations hereunder or under an Exhibit B only to an Affiliate or successor to the business for which the work is being performed which agrees to be bound by all terms and conditions of this Agreement.

7.3 **Entire Agreement; Partial Invalidity.** No representations, statements, promises or warranties have induced the making, execution, and delivery of this Agreement by SUPPLIER and BP other than those herein expressed. This Agreement including the relevant Exhibit B embodies the entire understanding of the parties hereto relating to the Work and supersedes any previous agreements or understandings, written or oral, in effect between the parties relating thereto. Any additional or inconsistent terms not agreed by BP in writing shall be null and void. Acceptance of any purchase order, confirmation order, work order, invoice or other form shall not modify the terms of this Agreement. If any part, term, or provision of this Agreement shall be held illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Agreement, the validity of the remaining portion or portions shall not be affected thereby.

7.4 **Changes In Writing; Notices.** This Agreement, including any Exhibit B and any exhibits thereto, may be amended or modified only by an instrument of equal formality signed by duly authorized representatives of the respective parties. BP may amend Exhibits by delivering written copies thereof to SUPPLIER. All notices, requests, demands, or other communications hereunder other than day-to-day communications within the duties of the Technical Coordinators shall be in writing and shall be deemed given when personally delivered or five (5) days after proper mailing by certified mail to the address set forth below:

BP:

(Enter BP entity)

Attn:

SUPPLIER:

SUPPLIER

Attn:

7.5 **Waiver of Breach.** The waiver of a breach of this Agreement or the failure of a party to exercise any right under this Agreement shall in no event constitute a waiver as to any other breach, whether similar or dissimilar in nature, or prevent the exercise of any right under this Agreement.

7.6 **Use Of BP Trademark/Name.** SUPPLIER may not make any oral or written statement or perform any act indicating that BP endorses or approves or has endorsed or approved SUPPLIER or its work products. SUPPLIER may not associate or in any way connect any name or trademark of BP with SUPPLIER's work products hereunder without BP's prior written approval. The provisions of this clause do not restrict SUPPLIER or its employees from referencing and describing work done hereunder in summary form, without revealing BP Confidential Information, in resumes and experience or qualifications summaries.

7.7 **Choice of Law.** THIS AGREEMENT SHALL BE CONSTRUED AND THE LEGAL RELATIONS BETWEEN THE

PARTIES DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF (INSERT FACILITY OR WORK LOCATION), USA, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW RULES WHICH MAY DIRECT THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION.

- 7.8 Force Majeure.** Neither party shall be responsible for any failure to perform or delay in performing any of its obligations under this Agreement where and to the extent that such failure or delay results from causes outside the reasonable control of the party. Strikes and labor disputes preventing performance shall constitute an excusable delay for either party under this Agreement and settlement of such disputes shall be at the sole discretion of the party experiencing them. Upon occurrence of a force majeure event the party experiencing it shall give prompt written notice to the other party including its best estimate of the likely duration thereof and shall use its best efforts to resume performance.
- 7.9 Audit.** BP may, with reasonable advance notice, audit any and all work or expense records of SUPPLIER relating to the Work. SUPPLIER shall have the right to exclude from such inspection any of its confidential or proprietary information, which was not otherwise provided to BP in connection with the Work. SUPPLIER further agrees to maintain its books and records relating to materials and services provided for a period of 2 years from the date such work was completed, and to make such books and records available to BP during normal business hours at any reasonable time or times within the 2-year period. ~~The SUPPLIER agrees that BP may audit SUPPLIER'S performance and internal control system on a basis to be agreed to the extent necessary for BP to comply with its assessment obligations under the Sarbanes Oxley Act 2002.~~
- 7.10 Headings Not Controlling.** Headings used in this Agreement are for reference purposes only and shall not be used to modify the meaning of the terms and conditions of this Agreement.
- 7.11 Arbitration.** Any dispute or claim concerning the Services or the provisions of this Contract that is not resolved through good faith negotiations of the parties shall be submitted to binding arbitration conducted in accordance with the terms of this Article and, where not in conflict with this Article, the Rules for Non-Administered Arbitration of the International Institute For Conflict Prevention And Resolution. The arbitration need not be administered by the Institute unless the parties so agree. The arbitration shall be initiated by one party serving the other party with a written demand that includes a statement of the claim or dispute together with its designation of an arbitrator. The respondent party shall designate another arbitrator within 20 days of receipt of the demand. The two designated arbitrators shall jointly designate a third arbitrator who shall serve as chairman of the arbitration panel. If the respondent fails to designate an arbitrator, or the two arbitrators fail to designate a third, the three member panel will be designated in accordance with the rules of the Institute. Once the panel is constituted, all three arbitrators shall act as neutrals and shall not engage in ex parte contact with either party. The panel will establish a schedule for the arbitration and make rules concerning discovery, conduct of the hearing, presentation of evidence and the like. The panel shall make written findings of fact which shall be final and shall issue written conclusions of law which shall accurately apply the law of the state in which the Facility is located to the facts. The remedies awarded shall be limited to compensatory damages or injunctive relief. Either party may appeal the decision of the panel to the appropriate state or federal court only on the grounds that the law has been improperly applied or that there has been fraud in the conduct of the proceedings. Unless otherwise agreed by the parties, the place of the arbitration shall be [designate Facility located]. Each party shall bear its own costs for conducting the arbitration, but the panel shall have the discretion to award costs to the prevailing party. If the parties so agree, a single arbitrator may be mutually selected instead of a panel of three arbitrators
- 7.12 Survival Period.** The provisions of Articles 3, 5, and 6 and Sections 7.6, 7.7, 7.9, 7.11 and this 7.12 of this Agreement shall survive the termination of any Exhibit B and of this Agreement.
- 7.13 Inspection and Use of Premises/Location.** SUPPLIER acknowledges that it has examined and is familiar with the premises or location where the Work is to be performed and knows the areas that will be assigned to it for its use, the configuration of the ground, the difficulties and potential hazards attending the execution of the Work, the general and local labor conditions and all other matters which can in any way affect the execution or safety of the Work. SUPPLIER shall perform all Work hereunder in such a manner as to cause a minimum of interference with BP's existing operations and the operations of other contractors on BP's premises. Upon completion of the Work, SUPPLIER shall restore the premises to its original condition and leave it clean and free of all tools, equipment, waste materials and rubbish. It is agreed that SUPPLIER shall not be entitled to damages for delays regardless of cause including site conditions, weather, or acts or omissions of BP or other contractors or vendors. Any equipment provided by BP to SUPPLIER for the benefit of SUPPLIER's employees or those of its subcontractors shall be provided "as is" with no warranty of performance or that such equipment is fit for the use intended or in proper working order.
- 7.14 Instructions to Supplier.** SUPPLIER agrees to perform the Work under the terms and conditions set forth in this Agreement. SUPPLIER shall sign the original and copies of this Agreement in the space provided below and return all copies to BP. IN

THE EVENT SUPPLIER COMMENCES ANY WORK PRIOR TO SIGNING THIS AGREEMENT OR THE EXHIBIT B, SUPPLIER SHALL BE DEEMED TO HAVE AGREED TO ALL OF THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT WITH RESPECT TO THE WORK PERFORMED.

The parties are signing this Agreement through their respective authorized representatives on the dates written below.

**(Enter BP Entity)**

**“SUPPLIER”**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**“Exhibit A”**

**Compensation**

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**“Exhibit B”**

**Scope of Work**

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**EXHIBIT "C"**

**Health, Safety, and Environmental Minimum Requirements**

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HEALTH, SAFETY, AND ENVIRONMENTAL MINIMUM REQUIREMENTS

The following minimum Health, Safety, and Environmental ("HSE") requirements shall apply with respect to work performed by Supplier under this Contract. Supplier shall take any additional precautions necessary to prevent injury or death to persons or damage to property and/or the environment.

1. Supplier shall comply with applicable health, safety, and environmental regulations of agencies having jurisdiction at locations where work is performed for Company. Supplier shall ensure that its subcontractors comply with said regulations.
2. Unless prior express contractual arrangements are made with Company, Supplier shall provide all personnel furnished by or on behalf of Supplier ("Supplier's Personnel") with appropriate functional safety equipment and ensure that such equipment is used.
3. Unless prior express contractual arrangements are made with Company or statutory requirements dictate otherwise, Supplier's Personnel shall be trained in the appropriate health, safety, and environmental codes and regulations as required by all governmental or regulatory agencies having jurisdiction at the work site.
4. Supplier shall notify the appropriate Company representative or designee of accident(s) resulting in reportable injuries, damage to Company or third party's property, or incident(s) with probable infractions of environmental protection laws, rules, or regulations. Supplier shall furnish copies of regulatory, administrative, or statutory reports concerning environmental infractions, or an accident, incident, or occupational illness to the Company representative.
5. Supplier shall inform Company of inspection(s) conducted or to be conducted by regulatory agencies and the results of said inspection(s) when working on a Company location.
6. Supplier will be evaluated on its health, safety, and environmental performance. The assessment of a Supplier's performance may include an evaluation of its health, safety, and environmental record-keeping and, if applicable, prior work experience with Company. This evaluation will be used as criteria in the selection of Suppliers for future Company projects.
7. As directed by Company representative, Supplier shall hold regular safety meetings with its staff regarding Company's minimum HSE requirements. After each meeting, Supplier shall document the subject of the meeting including a list of attendees and forward this information to Company representative.
8. Supplier shall coordinate with Company's representative and attend building orientation meetings as appropriate when working at Company's facilities.

**Nothing contained herein shall be interpreted to enlarge the legal duty of Company to Supplier, its agents, employees, or subcontractors. HSE policy will be administered by each operating location through its line management.**