



Battelle Ecology, Inc. General Provisions for Commercial Firm Fixed Price Supply or Services, Engineering Services & Small Construction Services - April 2017

Battelle Ecology, Inc. is a tax exempt 501 (c) (3) organization.

APPLICABLE TO COMMERCIAL FIRM FIXED PRICE SUPPLIES OR SERVICES

The following terms and conditions when referenced in purchases orders issued will be effective and take precedence over any other terms and conditions listed in quotes or offers.

1. **DEFINITIONS.** As used in this contractual agreement, the below terms shall have the following meanings: (a) "Contractor," "Buyer" or "Battelle Ecology, Inc" means the legal entity purchasing the supplies/services; (b) "Subcontractor," "Seller," "Supplier," or "Vendor" means the legal entity that has entered into this agreement with the Buyer; (c) "Contract," "Subcontract," "Purchase Order," "Agreement," and "Order" (whether capitalized or not) are used interchangeably and refer to this contractual instrument; (d) "Government" means the Government of the United States; and (e) "Prime Contract" means the Government contract, grant or cooperative agreement under which this order is issued.
2. **APPLICABLE LAW.** This Order shall be governed by and construed in accordance with the internal laws, and not the laws of conflicts, of the State of Colorado.
3. **COMPLIANCE WITH LAWS.** Where applicable, Seller shall comply with all applicable, federal, state, and local laws, rules, regulations and orders in effect on the date of this order, including but not limited to the following, as amended: (a) 2 CFR Part 215 (OMB Circular A-110) and the provisions to be included in contracts set forth in Appendix A thereof; (b) the Fair Labor Standards Act of 1938; (c) the Federal Occupational Safety and Health Act of 1970 (OSHA); (d) the Toxic Substances Control Act of 1976; (e) the Walsh-Healy Public Contracts Act; and (f) any other federal law concerning labor relations, non-discrimination in employment, minimum wages, overtime compensation, and hours of employment. Seller agrees to indemnify and hold Buyer harmless against any loss or liability due to Seller's violation or non-compliance with such regulations. Upon Buyer's request, Seller shall furnish evidence demonstrating such compliance. Suppliers shall provide Material Safety Data Sheets (MSDS) with delivering items when such information is required per applicable regulations.
4. **INTERPRETATION OF ORDER.** This Order and any documents incorporated by reference or attached constitute the parties' complete agreement. No prior representations or agreements, either written or oral, shall be considered to change, add to, or contradict it. Any ambiguity, conflict, or inconsistency in this Order shall be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the parties' intentions at the time of contracting.
5. **ACCEPTANCE OF ORDER.** This Order supersedes all previous written or oral representations and agreements between the parties with respect to the subject matter hereof and becomes a binding agreement, subject to the specific terms and conditions stated herein, upon Seller's acceptance by acknowledgement or commencement of work. This Order contains the entire agreement of the parties and expressly limits acceptance to the terms and conditions stated. Any terms or conditions proposed by Seller inconsistent with or in addition to the terms and conditions hereof are objected to and void unless agreed to in writing by the Buyer.
6. **ASSIGNMENT.** This Order shall inure to the benefit of and be binding upon each party hereto and their respective successors and assigns. This Order may not be assigned in whole or part by either party without the prior written consent of the other party, except upon merger, consolidation, sale or other transfer of all or substantially all of the assets of either party.
7. **SETOFF.** Buyer shall have the right at all times to set off any amount due or payable to Seller hereunder against any claim or charge Buyer may have against Seller.
8. **TAXES.** The price of the supplies/services procured hereunder includes all applicable federal, state, and local taxes and duties unless otherwise stated in this Order.
9. **SELLER CONTACTS WITH BUYER'S CUSTOMER AND OTHER VENDORS.** Buyer shall be responsible for all liaison and communication with Buyer's customer and Buyer's other vendors for the term of this Order. Seller shall not communicate with Buyer's

customer or Buyer's other vendors regarding this Order unless authorized to do so by Buyer. Any information or knowledge Seller discloses to Buyer regarding this Order shall not be deemed confidential or proprietary unless expressly agreed upon by the parties in writing. Any such unpatented information or knowledge shall be acquired by Buyer free of any restrictions.

10. **INVOICES.**

Suppliers agree to comply with the following requirements for invoicing.

- a. One copy of the itemized invoice shall be submitted to the address shown on the face of the order to the attention of the Accounts Payable Department.
- b. The Supplier shall not mix invoices for orders and shall submit an invoice for a single order in order to match receipt of supply or services.
- c. The invoice must contain the Order number, description of supplies/services furnished, quantity, unit prices, and total price. The invoice must match the items by number and description.
- d. Payment of invoices may be delayed pending correction of any errors or omissions.
- e. The due date for payment shall be in accordance with agreed net terms, commencing on the date a correct and complete invoice is received by Battelle Ecology.
- f. Invoices may be submitted electronically to: AccountsPayable@battelleecology.org
- g. Payments of invoices should be submitted on complete and delivered orders only. Complete orders are desirable.
- h. Disputes over payment must be submitted in writing and fully explain the circumstances and position of the supplier. In the event of a disputed invoice, Battelle Ecology will treat the submitted invoice as in dispute and hold invoice, request a new invoice on settlement or make a correction on the invoice and make a payment less than requested on settlement.

11. **OVERAGES AND DAMAGED GOODS**

- a. **OVERAGES** – The Supplier is responsible for the delivery of each item quantity within allowable variations, if any, as stated on the applicable agreement. If the Supplier delivers and Battelle Ecology receives quantities of any item in excess of the quantity called for (after considering any allowable variation in quantity), such excess quantities will be treated as being delivered for the convenience of the Supplier. If the purchase order authorizes variable quantities within a percentage range as an acceptable stated variable quantity or if not so stated, otherwise delivers an extra quantity not ordered, the Supplier agrees that Battelle Ecology may retain such excess quantities up to \$300 in value without compensating the Supplier therefor and the Supplier agrees that Battelle Ecology may credit any invoice for said extra quantities or the Supplier agrees it will not invoice for the overage. In the event of an overage of less than \$300, Supplier waives all right, title, or interests therein.
- b. **QUANTITIES IN EXCESS OF \$300** will, at the option of Buyer and at Buyer's discretion, either be returned at the Supplier's expense or retained and paid for by Buyer at the ordered unit price. Battelle Ecology Procurement will call the Supplier to confirm the overage and request a Return Authorization. If the Supplier does not issue a Return Authorization and refuses to receive the overage to be returned, Battelle Ecology will consider such action, a breach of contract and pursue a course for termination of the order or equity credit on invoice or setoff another order or agreement at its own election. If the Supplier refuses acceptance of the return shipment of the overage, Battelle Ecology may consider the overage as abandoned and may consider the disposition of the excess quantities as a surplus under its property disposition policy.
- c. **DAMAGES** If damages are discovered within a reasonable time after receiving the shipment at a Battelle Ecology facility, Procurement will inform the Supplier, who will notify its Carrier of the damaged item (s) and request an authorization for Battelle Ecology to file claim along with disposition instructions.

12. **INDEMNIFICATION.** Seller agrees to indemnify, defend, and hold harmless Buyer, its customer, and those for whom Buyer may act as agent from any and all costs, expenses, damages, and liabilities (including, without limitation, reasonable attorney's fees) that Buyer, its customer or such person may incur arising out of any claim by a third party of bodily injury, property damage or other injury or damage to the third party caused (a) by any defect in the products furnished by Seller hereunder or (b) by the negligent performance by Seller of the services performed hereunder.

13. **PATENT, COPYRIGHT AND TRADEMARK INDEMNITY.** Seller agrees to indemnify, defend, and hold harmless Buyer, its customer, and those for whom Buyer may act as agent from any and all costs, expenses, damages, and liabilities (including, without limitation, reasonable attorney's fees) that Buyer, its customer or such person may incur as a result of any proceedings charging infringement of any patent, copyright, or trademark by reason of sale or use of any supplies/services/data furnished by Seller. Seller shall have no liability regarding alleged patent infringement for supplies furnished to Buyer in accordance with Buyer's design specifications.

14. **WARRANTY OF SUPPLIES/SERVICES.** Seller warrants that all supplies/services furnished under this Order shall conform to the Buyer's drawings, specifications, or other description and will be of good material and workmanship and free of defects. Seller further warrants that the supplies/services will meet Seller's published specifications and standards, will be new (not used or reconditioned unless otherwise specified), merchantable and suitable for the purpose intended. These warranties shall survive inspection, acceptance, and payment. Supplies/services that do not conform to the above warranties may, at any time within twelve (12) months after delivery to Buyer, be rejected and returned to Seller, at Seller's expense, for correction or replacement. If Seller does not promptly correct or replace same, Buyer may correct or replace the nonconforming

supplies/services at Seller's expense. The forgoing warranties are in addition to all other warranties expressed or implied by law. Buyer reserves the right, before making any payments, or at any time during the progress of the Services, to require Supplier and its Subcontractors to furnish to Buyer a lien waiver (in a form acceptable to supplier) that all claims, liens and causes of action, if any, for the payment of wages or salaries or the payment of charges for labor, materials, tools, machinery, or supplies have been satisfied, released or settled. Where Supplier fails to furnish a lien waiver, the amount of such claims, liens, and causes of action may be retained from any monies due Supplier until the waiver is furnished.

15. **PRICE WARRANTY.** Seller warrants that the price(s) charged for the supplies/services specified in this order do not exceed the selling price(s) Seller charges its most favored customer for the same or substantially similar items, whether sold to the Government or to any other purchaser, taking into account the quantity purchased and terms and conditions of sale. Seller further agrees that in the event of an announced price reduction prior to complete shipment of supplies or performance of services, said price reduction shall be passed on to Buyer for supplies remaining to be shipped or services still to be performed.

16. **CHANGES.** Changes in the terms and conditions of this Order may be made only by written agreement of the parties.

17. **DISPUTES.** Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The place of arbitration shall be Boulder, Colorado.

18. **TERMINATION FOR CONVENIENCE.** Buyer reserves the right, at any time, in its own best interest and without liability, to terminate this order in whole or in part by written notice of termination for convenience to Seller. If the order is so terminated, within thirty (30) days following Seller's receipt of the termination notice, Seller shall submit a claim for equitable adjustment. If the termination involves only services, Buyer shall be obligated to pay only for services performed before the termination date. Seller shall provide Buyer any supporting information necessary to document the reasonableness of Seller's termination for convenience claim.

19. **TERMINATION FOR DEFAULT.** Buyer may, without liability, and in addition to any other rights or remedies provided herein or by law, terminate this order in whole or in part by written notice of default if Seller: (a) fails to deliver the supplies or perform the services within the time specified; (b) fails to make sufficient progress with the work, thereby endangering completion of performance within the time specified; or (c) fails to comply with any of the other instructions, terms, or conditions. Buyer's right to terminate for default may be exercised if Seller does not cure the failure within ten (10) days after receiving Buyer's notice of such failure. If Buyer terminates this order in whole or in part, Buyer may purchase similar supplies or services from others and Seller shall be liable for any additional costs above the original price for the terminated supplies/services. In the event of a partial termination, Seller shall continue the work not terminated. Buyer shall pay Seller the order price for any completed supplies/services delivered and accepted. Buyer and Seller shall agree on the amount of payment for manufacturing materials (parts, tools, dies, jigs, planes, drawings, etc.) delivered and accepted by Buyer. Buyer may withhold from any payments due Seller any sum necessary to protect Buyer against any liability or expenses due to the termination for default. Seller may not terminate this order without giving Buyer ten (10) days prior written notice and an opportunity to cure and shall, in connection with such notice, provide Buyer any supporting information necessary to document the reasonableness of Seller's termination for default claim.

20. **PACKAGING AND PACKING.** Seller shall be responsible for properly packing and packaging the supplies in suitable containers for protection during shipment in accordance with transportation regulations and good commercial practice. No additional charge will be allowed for packing and packaging unless specifically agreed to in writing. Seller shall label each package with the corresponding Order number. Seller shall prepare an itemized packing list bearing the Order number, description of items, part number, and quantity shipped for each package. One copy of the packing list shall be placed in the shipping container. Failure to provide required packing lists may delay payment pending verification of receipt.

21. **PERMITS, FEES AND LICENSES.** Except as may be otherwise provided in this order, Seller shall obtain and pay for all permits, fees, and licenses required for the work at no additional charge to Buyer.

22. **CESSATION OF PRODUCTION.** If Seller plans to permanently discontinue production of any of the supplies, parts, support services, etc. provided to Buyer hereunder at any time during the useful life of such items, Seller shall give Buyer at least six (6) months advance written notification of such discontinuance and, during this time, agrees to accept Buyer's orders for such items.

23. **ORDER OF PRECEDENCE.** The following descending order of precedence shall apply in the event of an ambiguity, discrepancy, or conflict in the documents composing this Order: (a) the schedule of the Order, (b) the statement of work, (c) the technical specifications and drawings, (d) these terms and conditions, and (e) any other documents referenced or appended to the Order. However, in the event of an ambiguity, discrepancy, or conflict in any of the technical requirements or drawings, Seller shall immediately consult Buyer for a resolution.

24. **INSPECTION/ACCEPTANCE.** The Seller shall only tender for acceptance those items that conform to the requirements of this Order. Buyer reserves the right to inspect or test any supplies or services that have been tendered for acceptance. Buyer may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in order price. Buyer must exercise its post-acceptance rights (a) within a reasonable time after the defect was discovered or should have been discovered; and (b) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

25. **CERTIFICATION OF INDEPENDENT PRICE DETERMINATION**. Seller certifies that the price(s) proposed in connection with this order have been arrived at independently, without consultation, communication, or agreement with any others for the purpose of restricting competition, and that Seller has not and will not knowingly disclose the price(s), directly or indirectly, to any other Offeror.
26. **EXCUSABLE DELAYS**. The Seller shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Seller and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Seller shall notify the Buyer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Buyer of the cessation of such occurrence.
27. **PUBLIC RELEASE OF INFORMATION**. No public release of information, news release, announcement, advertisement, denial or confirmation of this order or the subject matter hereof shall be made without Buyer's prior written approval.
28. **WAIVER OF RIGHTS**. Failure of either party to insist on performance of any provision of this order shall not be construed as a waiver of that provision or a waiver of Buyer's or Seller's right to require compliance with such provision in any later instance. One or more waivers by either party of any provision, term or condition shall not be construed by the other party as a waiver of any subsequent breach of the same provision, term or condition.
29. **INSOLVENCY**. If Seller ceases to conduct normal business operations (including inability to meet its obligations), or if any proceedings under bankruptcy or insolvency laws is brought by or against Seller, or a receiver for Seller is appointed or applied for, or Seller makes an assignment for the benefit of creditors, Buyer may terminate this order, without liability, except for deliveries previously made and for supplies completed and subsequently delivered in accordance with the terms of the order. In the event of Seller's insolvency, Buyer, in addition to any other rights it may have hereunder, shall have the right to procure the balance of this order from others without liability.
30. **INSURANCE**. Where applicable, Seller shall maintain insurance in at least the following amounts: (a) Comprehensive General Liability: \$1,000,000 each occurrence and \$2,000,000 general aggregate, and \$2,000,000 Products/Completed Operations Aggregate; (b) Automobile Liability: \$1,000,000; (c) Excess/Umbrella Liability: \$2,000,000; (d) Standard Workers Compensation and Employers' Liability Insurance: \$100,000 or such greater amount as may be required under applicable state or federal statutes. If any of the work is to be performed on Buyer's or Buyer's customer's premises, Seller shall, if so requested, furnish Buyer certificates of such insurance prior to commencement of work. Upon Seller's failure thereof, Buyer may obtain, at Seller's expense, the insurance coverage required for such compliance. Seller also agrees to provide insurance for all Buyers' property in Seller's possession against loss or damage resulting from fire or theft, including extended coverage, malicious mischief and vandalism. Buyer shall be given at least ten (10) days advance written notice of cancellation of any such insurance.
31. **NOTICE OF LABOR DISPUTES**. When an actual or potential labor dispute or other condition delays or threatens to delay the timely performance of this order, Seller shall immediately notify Buyer in writing. Such notice shall include all relevant information regarding such dispute or other condition. Seller shall insert the essence of this provision in all lower-tier procurements issued hereunder.
32. **TRANSPORTATION CHARGES, TITLE AND RISK OF LOSS**. Unless otherwise provided in this Order, transportation charges shall be prepaid and separately invoiced to Buyer. No premium transportation costs will be allowed unless authorized by Buyer. The F.O.B. point shall be the delivery destination indicated in this order, and title to the supplies and risk of loss or damage shall pass to Buyer upon Buyer's acceptance of the supplies regardless of where Buyer takes physical possession. If the F.O.B. point is designated as the Seller's location, then title and risk of loss or damage to the supplies shall pass to Buyer upon Seller's delivery of the supplies to the carrier.
33. **GRATUITIES**. By accepting this Order, Seller warrants that it has not offered or given and will not offer or give to any employee, agent, or representative of Buyer a payment, gratuity, or kickback for obtaining or rewarding favorable treatment by Buyer with respect to the terms, conditions, price, performance, or award of an order. A breach of this warranty shall be considered a material breach of the order and may result in Buyer's termination of the order and/or notification to Buyer's customer of such breach.
34. **LIMITATION OF LIABILITY**. The Buyer's liability to Seller hereunder shall not, under any circumstances, be greater than the total dollar amount of the order indicated herein.
35. **ACCESS TO PERTINENT RECORDS**. If this Order is in excess of the simplified acquisition threshold (currently \$100,000) and is entered into by less than full and open competition, Buyer, the Director of the NSF, the Comptroller General of the U.S., or any of their duly authorized representatives, shall have access to pertinent records of Seller to make audits, examinations, excerpts and transcriptions.
36. **SEVERABILITY**. If any provision of this order is found to be illegal or unenforceable under any law, that provision shall be deleted; however, all other provisions of this order shall not be affected thereby, and shall remain in full force and effect.

ADDITIONAL PROVISIONS APPLICABLE TO ENGINEERING SERVICES

1. **DEFINITIONS** As used in this contractual agreement, the below terms shall have the following meanings: (a) "Contractor," "NEON" or "BATTELLE ECOLOGY" means the legal entity purchasing the supplies/services; (b) "Subcontractor," "CONTRACTOR," "Supplier," or "Vendor" means the legal entity that has entered into this agreement with the BATTELLE ECOLOGY; (c) "Contract," "Subcontract," "Purchase Order," "Agreement," and "Order" (whether capitalized or not) are used interchangeably and

refer to this contractual instrument; (d) "Government" means the Government of the United States; and (e) "Prime Contract" means the Government contract, grant or cooperative agreement under which this order is issued.

2. **ASSIGNMENT.** This Order shall inure to the benefit of and be binding upon each party hereto and their respective successors and assigns. This Order may not be assigned in whole or part by either party without the prior written consent of the other party, except upon merger, consolidation, sale or other transfer of all or substantially all of the assets of either party. Notwithstanding, the Buyer at the direction of the National Science Foundation may assign this Order to the NSF or to the U. S. Government. Seller shall be given prior written notice of such directed assignment of this Order. In no circumstance shall this Order be construed as binding on the U. S. Government or the National Science Foundation or to imply that U. S. Government or the National Science Foundation are a party to this Order, except to the extent this Agreement is assigned in accordance with this clause.

3. **WORK ON BUYER'S OR BUYER'S CUSTOMER'S PREMISES.** If this Order requires Seller to perform work on Buyer's or Buyer's customer's premises, Seller shall take all reasonable and necessary precautions to prevent any injury to persons or damage to property during the progress of such work. Except to the extent that any injury to persons or damage to property is due to Buyer's or its customer's fault or negligence, Seller agrees to indemnify Buyer and its customer against all loss or liability resulting from any negligent acts or omissions of Seller, its employees, agents, or subcontractors.

4. **WARRANTIES** Seller warrants that all material and equipment furnished under this Agreement will be new unless otherwise specified, of good quality, in conformance with the requirements of this Agreement, and free from defective workmanship. Warranties shall commence on the date of substantial completion of the work or designated portion. Seller agrees to correct all construction performed under this Agreement which proves to be defective in workmanship or materials within a period of one year for the date of substantial completion, provided Seller has been provided prompt written notice of such defect. THE WARRANTIES CONTAINED IN THIS ARTICLE ARE IN LIEU OF ALL OTHER WARRANTIES EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Notwithstanding anything to the contrary, Seller's responsibility is limited to services specifically performed by Seller for Buyer. Seller will not be responsible for acts or omissions of Buyer, its officers, directors, employees or agents, or any third parties not under the direct control of Buyer. Seller does not warrant any specific results of any kind.

5. **TERMINATION FOR CONVENIENCE.** Buyer reserves the right, at any time, in its own best interest and without liability, to terminate this order in whole or in part, by written notice of termination for convenience to Seller. If the order is so terminated, within thirty (30) days following Seller's receipt of the termination notice, Seller shall submit a claim for equitable adjustment. If the termination involves only services, Buyer shall be obligated to pay only for services performed before the termination date, and such costs as reasonable to reimburse Seller for demobilizations, terminations of subcontracts and purchase orders, normal site clean-up and closure, etc. Seller shall provide Buyer any supporting information necessary to document the reasonableness of Seller's termination for convenience claim.

6. **PERMITS, FEES AND LICENSES.** Except as may be otherwise provided in this order, Seller shall obtain and pay for all permits, fees, and licenses required for the work at no additional charge to Buyer. Buyer shall be responsible for the needed land permits for the location.

7. **EXCUSABLE DELAYS** .The Seller shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Seller and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Seller shall notify the Buyer in writing within seven (7) days after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Buyer of the cessation of such occurrence. Seller shall be entitled to additional time to perform this Agreement equal to the time of such delay.

8. **INSURANCE.** Where applicable, Seller shall maintain insurance in at least the following amounts: (a) Comprehensive General Liability: \$1,000,000 each occurrence and \$2,000,000 general aggregate, and \$2,000,000 Products/Completed Operations Aggregate; (b) Automobile Liability: \$1,000,000; (c) Excess/Umbrella Liability: \$2,000,000; (d) Standard Workers Compensation and Employers' Liability Insurance: \$100,000 or such greater amount as may be required under applicable state or federal statutes. Seller shall, if so requested, furnish Buyer certificates of such insurance prior to commencement of work. Upon Seller's failure thereof, Buyer may obtain, at Seller's expense, the insurance coverage required for such compliance. Seller also agrees to provide insurance for all Buyers' property in Seller's possession against loss or damage resulting from fire or theft, including extended coverage, malicious mischief and vandalism. Buyer shall be given at least ten (10) days advance written notice of cancellation of any such insurance. Seller agrees to list Buyer as an additional insured under Seller's construction contractor's liability insurance policies.

9. **LIMITATION OF LIABILITY.** Regardless of anything to the contrary in any other part of this Agreement, neither party shall be liable to the other party for any special, indirect, incidental or consequential damages, whether based on contract, extra-contractual liability (tort, including negligence) strict liability or otherwise.

10. **CONSTRUCTION PROCEDURE.** Buyer's observation or monitoring of portions of the work performed under this Order shall not relieve the Seller from its responsibility for performing the work in accordance with the applicable contract documents and the laws of the state where the work is performed. Buyer shall not control, have charge of, or be responsible for construction means,

methods, techniques, sequences, or procedures, health or safety programs or precautions connected with the work and shall not manage, supervise, control or have charge of Seller personnel. Buyer shall not be responsible for negligent acts or omissions of the Seller.

11. **CHANGED CONDITIONS.** The discovery of any hazardous waste, substances, pollutants, contaminants, underground obstructions, conditions or utilities on or in the job site which were not brought to the attention of the Seller prior to the date of this Agreement will constitute a materially different site condition entitling the Seller, at its option, to terminate this Agreement (and to receive payment for all work performed up to and including the date of such termination) or to receive payment of an equitable adjustment in the Agreement price and time for performance. Seller, however, shall only have the right to terminate if such different site conditions(s) creates additional health and safety risks or requires the Seller to perform work outside the original scope of work or beyond its capabilities.

ADDITIONAL PROVISIONS APPLICABLE TO COMMERCIAL FIRM FIXED PRICE CONSTRUCTION

1. **ASSIGNMENT.** This Order shall inure to the benefit of and be binding upon each party hereto and their respective successors and assigns. This Order may not be assigned in whole or part by either party without the prior written consent of the other party, except upon merger, consolidation, sale or other transfer of all or substantially all of the assets of either party. Notwithstanding, the Buyer, at the direction of the National Science Foundation, may assign this Order to the NSF or to the U. S. Government. Seller shall be given prior written notice of such directed assignment of this Order. In no circumstance shall this Order be construed as binding on the U. S. Government or the National Science Foundation or to imply that U. S. Government or the National Science Foundation are a party to this Order, except to the extent this Agreement is assigned in accordance with this clause.

2. **WORK ON BUYER'S OR BUYER'S CUSTOMER'S PREMISES.** If this Order requires Seller to perform work on Buyer's or Buyer's customer's premises, Seller shall take all reasonable and necessary precautions to prevent any injury to persons or damage to property during the progress of such work. Except to the extent that any injury to persons or damage to property is due to Buyer's or its customer's fault or negligence, Seller agrees to indemnify Buyer and its customer against all loss or liability resulting from any negligent acts or omissions of Seller, its employees, agents, or subcontractors.

3. **WARRANTIES.** Seller warrants that all material and equipment furnished under this Agreement will be new unless otherwise specified, of good quality, in conformance with the requirements of this Agreement, and free from defective workmanship. Warranties shall commence on the date of substantial completion of the work or designated portion. Seller agrees to correct all construction performed under this Agreement which proves to be defective in workmanship or materials within a period of one year for the date of substantial completion, provided Seller has been provided prompt written notice of such defect. THE WARRANTIES CONTAINED IN THIS ARTICLE ARE IN LIEU OF ALL OTHER WARRANTIES EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Notwithstanding anything to the contrary, Seller's responsibility is limited to services specifically performed by Seller for Buyer. Seller will not be responsible for acts or omissions of Buyer, its officers, directors, employees or agents, or any third parties not under the direct control of Buyer. Seller does not warrant any specific results of any kind.

4. **TERMINATION FOR CONVENIENCE.** Buyer reserves the right, at any time, in its own best interest and without liability, to terminate this order in whole or in part by written notice of termination for convenience to Seller. If the order is so terminated, within thirty (30) days following Seller's receipt of the termination notice, Seller shall submit a claim for equitable adjustment. If the termination involves only services, Buyer shall be obligated to pay only for services performed before the termination date, and such costs as reasonable to reimburse Seller for demobilizations, terminations of subcontracts and purchase orders, normal site clean-up and closure, etc. Seller shall provide Buyer any supporting information necessary to document the reasonableness of Seller's termination for convenience claim.

5. **PERMITS, FEES AND LICENSES.** Except as may be otherwise provided in this order, Seller shall obtain and pay for all permits, fees, and licenses required for the work at no additional charge to Buyer. Buyer shall be responsible for the needed land permits for the location.

6. **EXCUSABLE DELAYS.** The Seller shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Seller and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Seller shall notify the Buyer in writing within seven (7) days after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Buyer of the cessation of such occurrence. Seller shall be entitled to additional time to perform this Agreement equal to the time of such delay.

7. **LIMITATION OF LIABILITY** Regardless of anything to the contrary in any other part of this Agreement, neither party shall be liable to the other party for any special, indirect, incidental or consequential damages, whether based on contract, extra-contractual liability (tort, including negligence) strict liability or otherwise.

8. **CONSTRUCTION PROCEDURE.** Buyer's observation or monitoring of portions of the work performed under this Order shall not relieve the Seller from its responsibility for performing the work in accordance with the applicable contract documents and the laws of the state where the work is performed. Buyer shall not control, have charge of, or be responsible for construction means,

methods, techniques, sequences, or procedures, health or safety programs, or precautions connected with the work and shall not manage, supervise, control or have charge of Seller personnel. Buyer shall not be responsible for negligent acts or omissions of the Seller.

9. **CHANGED CONDITIONS** The discovery of any hazardous waste, substances, pollutants, contaminants, underground obstructions, conditions or utilities on or in the job site which were not brought to the attention of the Seller prior to the date of this Agreement will constitute a materially different site condition entitling the Seller, at its option, to terminate this Agreement (and to receive payment for all work performed up to and including the date of such termination) or to receive payment of an equitable adjustment in the Agreement price and time for performance. Seller, however, shall only have the right to terminate if such different site conditions(s) creates additional health and safety risks or requires the Seller to perform work outside the original scope of work or beyond its capabilities.

NATIONAL SCIENCE FOUNDATION FLOWDOWN PROVISIONS
APPLICABLE TO FIXED PRICED SUPPLY OR SERVICES, ENGINEERING SERVICES & CONSTRUCTION SERVICES

I. NATIONAL SCIENCE FOUNDATION (NSF) SPONSORSHIP:

- a) **NSF Approval:** This Agreement, any amendments, and delivery orders therein may be subject to the approval of the National Science Foundation and award is contingent on their approval.
- b) **NSF Funding:** This Agreement, any amendments and delivery orders may be contingent to funding by the National Science Foundation and any incurrence of cost in advance of authorized funds, without written approval by the BATTELLE ECOLOGY Contracts Department will not be accepted.
- c) **Binding:** This Agreement does not bind nor purport to bind the National Science Foundation or any other federal government sponsors.
- d) **Communication:** All communication and exchanges on this Agreement will be directed to Battelle Ecology, who has privity of contract with the Supplier. All communication with the National Science Foundation will be communicated exclusively through BATTELLE ECOLOGY at its discretion.

II. CERTIFICATIONS AND COMPLIANCE:

- a) **Debt and Debarment:** In submitting its offer/proposal, The Supplier certifies that it is not delinquent on any Federal Debt. Seller certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any U.S. Government department or agency.
- b) **Lobbying:** No federal appropriated funds have been paid or will be paid, by or on behalf of the Seller, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- c) **Equal Employment Opportunity:** The Supplier is in compliance with Executive Order 11246, entitled "Equal Employment Opportunity" as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR - Part 60).
- d) **Pollution Control:** The Supplier will comply with all applicable standards, orders and regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 1857 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq. as amended).
- e) **Flow Down:** The Supplier is responsible for including in any contracts with its Subcontractors any clauses and provisions necessary to fulfill the terms of this agreement. The National Science Foundation requires that the inclusion of, as applicable, the following referenced Articles of the Financial & Administrative Terms and Conditions as incorporated into the Cooperative Agreement be included; the flow down requirements are incorporated in this Agreement by this reference, https://www.nsf.gov/pubs/policydocs/cafatc/cafatc_117.pdf (*Effective January 2017*).