



**TERMS AND CONDITIONS FOR ENGINEERING CONTRACTS**  
(rev. 03/08)

**Section 1. Definitions.**

- (A) “Company” means Alcoa Howmet or any subsidiary or affiliate of Alcoa Howmet executing the Contract to which this document is attached.
- (B) “Seller” means the individual, corporation or other entity which is to perform the Engineering Services purchased by the Company pursuant to this Contract.
- (C) “Engineering Services” means the services to be rendered by Seller as specified in the Contract.
- (D) “Contract” means the written contract, purchase order or agreement which attaches, incorporates or otherwise references these terms and conditions, and any other documents and schedules, if any, which are by reference made a part of this Contract.

**Section 2. Independent Contractor Status.**

- (A) Seller is an independent contractor and not an employee or agent of Company. Company disclaims any right to control the manner of performance by Seller, and Company will not control the manner of performance by Seller.
- (B) Seller has no authority to direct or control the performance of any employee of Company. Seller’s role will be that of adviser and not of master to any Company employee.
- (C) Seller does not have any Company title and Seller is not eligible for Company benefits or employee plans.

**Section 3. Confidentiality.**

- (A) All data and other information of every kind, whether expressed in writing or otherwise, including information of a technical, engineering, operational or economic nature, and including physical embodiments of such data and information, disclosed or revealed at any time to Seller by Company, learned at any time by Seller by observing Company’s facilities, or made or developed by Seller in the course of performing Engineering Services for Company under this Contract (all called “Information”) will be:
  - (1) received and maintained in strict confidence by Seller and will not be disclosed, directly or indirectly, by Seller to any related or unrelated party whatsoever; and

- (2) used by Seller only for the performance of Engineering Services for Company.

Any description of Engineering Services including that set forth in this Contract will, unless otherwise specified, be considered Information.

- (B) The foregoing obligations of confidentiality, limited use and non-disclosure will not apply to the following three exclusions:
  - (1) Information which was known to Seller and reduced to writing or other document form by Seller prior to the date of this Contract, and which was not first acquired, directly or indirectly, from Company; or
  - (2) Information which is or becomes available in issued patents, published patent applications or printed publications of general public circulation other than by acts or omissions of Seller; or
  - (3) Information which Seller after the date of this Contract lawfully obtains without restriction from a third party other than from a third party who obtained such Information from Company.

Notwithstanding the fact that any of the above exclusions apply to any part of Information covered by this Section 3, Seller may not, without the express written approval of Company, directly or indirectly, expressly or impliedly, reveal to any third party, Company's interest in or opinion of any such Information nor reveal Company as a source of such Information. Seller may not reveal to any party whatsoever without Company's express written approval that Seller is performing services for Company or the character of such services.

If Seller believes that any of the exclusions set forth in Subsections 3(B)(1), (2) or (3) apply with respect to certain Information so as to permit disclosure to a third party or use beyond that specified in this Section 3, Seller will first give notice to Company of such belief, specifying the facts upon which such belief is based. Such notice will include specific reference to documents and other writings relied upon by Seller for claiming that an exclusion applies to said Information. Specific Information will not be deemed to be within said exclusions merely because it is embraced by general information within such exclusions nor will a combination of features be deemed within such exclusions merely because the individual features of such combination are separately within such exclusions. Seller will, upon the reasonable request of Company, furnish such available additional information as may be reasonably requested by Company in its evaluation of the validity of the said claim.

- (C) Seller will do the following as part of Seller's compliance with the obligations of confidentiality, limited use and non-disclosure:
  - (1) Seller may reveal Information only to Seller's employees, but only when and to the extent necessary for Seller to perform Engineering Services requested by

Company, and Seller will advise all such employees to whom Information is disclosed of the obligations imposed on Seller.

- (2) Seller will maintain all documents or other media (including computer programs or software) which contain Information, and all copies of the documents or other media, in a secure location inaccessible to third parties and others not authorized to receive Information.
  - (3) All writings, drawings, pictures or other documents or other media, including all copies, which contain Information, will be marked by Seller with the legend "Confidential - Property of Alcoa Inc." or "Confidential - Property of (name of subsidiary or affiliate of Alcoa Inc.)" as the case may be, if they are not already so marked and Seller will not reproduce, copy or photograph any such document or other medium without the prior written approval of Company. Seller will deliver to Company all documents, media or tangible property made or received by Seller which contain Information upon notice from Company requesting the delivery of such documents, media or other tangible property.
- (D) Seller will take the following safeguards for all tangibles as may be provided to Seller, or made by Seller pursuant to this Contract including all products, compositions, machines, equipment, constructions, apparatus, process embodiments, metal or other work stock, tools, dies or other goods or materials:
- (1) maintain and hold such tangibles in a secure area and separate from materials and goods for other parties,
  - (2) use such tangibles only to render Engineering Services to Company as requested by Company.
  - (3) prevent observation of such tangibles by visitors to Seller's premises or by Seller's employees, officers, agents and directors who do not have a need to observe such in order for Seller to perform Engineering Services for Company.
  - (4) maintain such tangibles in the exclusive possession of Seller and not permit such or samples of such tangibles to leave its possession at any time, except with the express (and not implied) written approval of Company.
- (E) The obligations imposed by this Section 3 will continue in effect for a period of ten years from the date on which the last Engineering Services are performed by Seller for Company, and will survive any termination of this Contract by either party.
- (F) Company will have an unlimited right to publish, use, duplicate or disclose Information and all copyrights in Information will be the sole and exclusive property of Company.

#### **Section 4. Export of Information.**

Notwithstanding any other provision or understanding between Company and Seller, Seller will not at any time whatsoever or under any circumstances whatsoever disclose or reveal any Information to any person not a United States citizen and resident, or to any person outside the United States, or to any person within the United States for export outside the United States or to any representative of a foreign national or foreign interest or in any manner export any Information from the United States when to do so would be contrary to or in violation of any law or regulation of the United States or any agency of the United States, including laws and regulations concerning export of data and information. Even after expiration of this Contract and the confidentiality term specified in Section 3(E), Seller may not export any Information or disclose any Information to any such above-mentioned person until Seller has procured the licenses, assurances and approvals, if any, necessary under such laws or regulations.

#### **Section 5. Ownership of Materials and Goods.**

All products, compositions, constructions, machines, equipment, apparatus, processes or other goods or materials, including metal or other work stock and tools and dies as may be provided to Seller by Company for performance of Engineering Services or made by Seller pursuant to this Contract, will be the sole and exclusive property of Company and will be used only for performance of Engineering Services, without modification or alteration, except as reasonably necessary or appropriate to the performance of Engineering Services and, upon Company's request, will be delivered by Seller to Company.

#### **Section 6. Data, Information, Inventions, Patents and Copyrights.**

- (A) Seller will promptly disclose to Company all data, information, discoveries, inventions and improvements, whether or not patentable or copyrightable, including any and all expressions of computer programs, manuals, data bases and all forms of computer hardware, firmware and software, conceived, made, first reduced to practice, or developed by Seller arising out of the performance of Engineering Services, all referred to in this Contract as "Contract Developments". All Contract Developments, including patents and copyrights, will be the sole and exclusive property of Company in respect to any and all countries, their territories and possessions. Company shall have complete and unrestricted right to use all Contract Developments prepared by Seller and its subcontractors in connection with the performance of Engineering Services. Said documents shall constitute the property of Company and are not to be used on other projects except by agreement of Company in writing. At such time as Engineering Services are completed or the Contract is terminated, Seller shall deliver all said Contract Developments to Company. All said Contract Developments may be used by Company for any purpose without additional compensation to be paid to Seller.
- (B) Seller will perform at the request of Company all lawful acts and execute, acknowledge, and deliver all instruments, including assignments, deemed necessary, useful, or appropriate by Company to vest in Company the entire right, title, and interest in and to such Contract Developments and obtain and record title to such Contract Developments

and to enable Company to prepare, file, and prosecute applications for and obtain patents, copyrights and other forms of industrial property protection on such Contract Developments, as well as continuations, divisions, continuations-in-part, additions, reissues, renewals, and extensions of such Contract Developments, as Company at any time deems useful or desirable to preserve such interests in any and all countries selected by Company, and to obtain and record title to patents, copyrights and other forms of industrial property protection and applications for such Contract Developments so that Company will be the sole and absolute owner of Contract Developments in any and all countries in which Company may desire such protection. As used in this Contract, "industrial property" includes patents and copyrights as well as any other form of industrial or intellectual property protection which is presently available or applicable, or which may become available or applicable, to Contract Developments, including developments in expressions of data and computer software. Any reasonable additional costs to Seller required to satisfy the obligations of this Subsection 6(B) will be reimbursed by Company.

- (C) To the extent permitted by law, any Contract Development, including software, that generates copyrightable material will fall within the enumerated categories of §101 of the 1976 Copyright Act definition of "work for hire" subsection (2) and thus be considered a "work made for hire"; and Seller acknowledges that by so considering any Contract Development as a "work made for hire" that Company will own all right, title and interest in and to any copyright associated with such Contract Development. To the extent under applicable law that such work may not be deemed a "work made for hire", Seller expressly assigns and agrees to assign to Company all right, title and interest in and to Seller's copyright for such work. Seller will execute and deliver to Company such instruments of transfer and take other such action that Company may reasonably request, including, without limitation, such assignments and other documents required to vest in Company the entire right, title and interest in and to any copyright associated with such Contract Developments.
- (D) Seller agrees that any Contract Development is the exclusive property of Company and Seller will not sell, trade, give or intentionally make available any Contract Development to any private or public individual, corporation or other entity and will take all reasonable precautions to prevent the illegal use of such Contract Development.

### **Section 7. Skills, Performance and Conflict of Interest.**

- (A) Before Seller takes any action to retain professional assistance or assign or subcontract any tasks covered by this Contract, Company will be consulted about such proposed action and such action will not be consummated by Seller unless Company has given its prior written consent to Seller. No such retention of assistance, assigning or subcontracting of tasks will relieve Seller of its obligations under this Contract.
- (B) Seller will enter into agreements to effectuate the provisions of Sections 3 and 6 with all persons who perform any part of Engineering Services for Company prior to any such

performance, and a copy of said agreements will be provided to Company by Seller if requested by Company.

- (C) Seller represents that Seller has the right to enter into this Contract and perform the Engineering Services for Company and that there are no restrictions whatsoever imposed on Seller nor any conflict of interest which would prevent or conflict with Seller's performance of Engineering Services for Company and compliance with all the provisions of this Contract.
- (D) Seller will not undertake consulting work or projects, including research or development projects, for or on behalf of, a client other than Company when a conflict of interest may result.
- (E) Company has the right to bar or remove from its premises any individual employed or retained by Seller after notice has been given to Seller.
- (F) Seller will undertake to perform the Engineering Services hereunder in accordance with the highest standards of professional and ethical competence and integrity in Seller's industry, and to ensure that employees assigned to perform any Engineering Services under this Contract will conduct themselves in a manner consistent therewith.

#### **Section 8. Seller Liability and Indemnity Obligations.**

SELLER AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS COMPANY, ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, REPRESENTATIVES, SUBSIDIARIES AND AFFILIATED COMPANIES, (COLLECTIVELY "INDEMNITEES") FROM AND AGAINST ALL LIABILITIES, COSTS, CLAIMS, PENALTIES, FORFEITURES, CAUSES OF ACTION, SUITS AND THE COSTS AND EXPENSES INCIDENT THERETO (INCLUDING COSTS OF DEFENSE, SETTLEMENT, AND ATTORNEYS' FEES, INCLUDING THE COSTS OF ATTORNEYS IN THE EMPLOY OF INDEMNITEES) WHICH INDEMNITEES MAY SUFFER, INCUR, BECOME RESPONSIBLE FOR OR PAY OUT AS A RESULT OF DEATH OR BODILY INJURY TO ANY PERSON, DESTRUCTION, LOSS OR DAMAGE TO ANY PROPERTY, REAL OR PERSONAL, CONTAMINATION OF OR ADVERSE EFFECT ON THE ENVIRONMENT, OR VIOLATION OR ALLEGED VIOLATION OF FEDERAL, STATE, LOCAL OR FOREIGN LAW, RULE, REGULATION, ORDINANCE, ORDER, DECREE, DECISION, RESTRICTION, PERMIT OR LICENSE, CAUSED BY OR RESULTING FROM THE NEGLIGENCE OR ACTS OR OMISSIONS OF SELLER, SUBCONTRACTORS OR MATERIALMEN UNDER THIS CONTRACT, OR THE REPRESENTATIVES, AGENTS, EMPLOYEES OR INVITEES OF ANY OF THEM, AS A CONSEQUENCE OF OR IN ANY MANNER CONNECTED WITH PERFORMANCE OF THE CONTRACT. WITH RESPECT TO CLAIMS AGAINST COMPANY BY SELLER'S EMPLOYEES, SELLER AGREES TO, AND HEREIN DOES, EXPRESSLY WAIVE ITS IMMUNITY, AS A COMPLYING EMPLOYER UNDER WORKERS' COMPENSATION LAW, FOR ANY AND ALL RECOVERY UNDER OR ENFORCEMENT OF THIS INDEMNIFICATION OBLIGATION.

THIS WAIVER SHALL APPLY TO ANY IMMUNITY CONFERRED UPON AN EMPLOYER BY ANY STATE'S CONSTITUTION OR WORKERS' COMPENSATION LAWS WITH RESPECT TO LIABILITY FOR CLAIMS ASSERTED AGAINST A THIRD PARTY BY A SELLER'S EMPLOYEE. IN PARTICULAR, BUT WITHOUT ALTERING OR IN ANY WAY LIMITING THE GENERAL APPLICATION OF SUCH WAIVER AS SET FORTH IN THE PREVIOUS SENTENCE, SELLER EXPRESSLY WAIVES APPLICATION OF SECTION 35, ARTICLE II OF THE OHIO CONSTITUTION AND OHIO REVISED CODE SECTION 4123.74, AS MAY BE AMENDED FROM TIME TO TIME. THIS INDEMNIFICATION PROVISION IS IN ADDITION AND CUMULATIVE TO ANY OTHER RIGHT OF INDEMNIFICATION OR CONTRIBUTION WHICH ANY OF THE INDEMNITEES MAY HAVE AT LAW, IN EQUITY, OR OTHERWISE, AND WILL SURVIVE COMPLETION OF THE CONTRACT.

**Section 9. Insurance.**

- (A) Unless otherwise specified in this Contract, Seller will, during the progress of the Engineering Services, maintain the following types of insurance coverage:
- (1) Worker's Compensation Insurance or qualification as a self-insurer to satisfy the laws of the states which have jurisdiction over Seller's employees. To the extent permitted by law, Seller's Worker's Compensation Insurer or Seller, if self-insured, agrees to waive rights of subrogation against Company;
  - (2) Employers' Liability Insurance for Bodily Injury per accident with limits of not less than \$1,000,000 and Bodily Injury by Disease with limits of not less than \$1,000,000 per policy;
  - (3) Commercial General Liability Insurance for bodily injury, personal injury and property damage, including coverage for products/completed operations and contractual liability, with combined limits of not less than \$5,000,000 per occurrence;
  - (4) Automobile Liability Insurance covering use of all owned, non-owned and hired vehicles with minimum combined single limits of liability for bodily injury and property damage of not less than \$1,000,000 per occurrence; and
  - (5) Professional Liability Insurance with limits of not less than \$1,000,000.
- (B) Seller agrees that during the progress of the Engineering Services Company will be an additional insured on Seller's Commercial General Liability and Automobile Liability policies and that all Seller's insurance identified in Section 9(A) above will specifically indicate that coverage with respect to Company will be primary without right of contribution of any other insurance carried by or on behalf of Company. All of the above mentioned Seller insurance will be occurrence-based coverages. Seller may satisfy the limits of insurance required herein with any combination of primary and umbrella/excess insurance policies.

- (C) Upon Company's request, Seller will provide Company with written certification, reasonably acceptable to Company, of Seller's compliance with the requirements listed in Sections 9(A) and (B) above.
- (D) The requirements in this Section 9 are separate and distinct from any other obligations of Seller under this Contract and neither the issuance of any insurance policy nor the minimum limits specified herein shall be deemed to limit or restrict in any way Seller's liability arising under this Contract.

### **Section 10. Publicity.**

No advertising or publicity matter having or containing any reference to Company or to the subject matter or existence of this Contract or in which the name of Company is mentioned will be made by or for Seller without obtaining written approval from Company.

### **Section 11. Termination.**

Company may terminate this Contract, in whole or in part, at any time by giving written notice to Seller. After receiving written notice of termination, Seller will immediately cease the Engineering Services indicated in the notice of termination. In the event of such a termination, unless such termination is due to default of Seller or failure of Seller to assure adequate performance, payment for costs incurred by Seller will be negotiated by Company and Seller on the basis of Seller's actual costs plus a reasonable profit for Engineering Services completed as of the termination date. Upon such payment, all work-in-process and finished services for which Company has paid shall, at Company's option, become the property of Company and shall be released by Seller to Company upon demand. The provisions of this clause are without prejudice to any other rights or remedies of Company, including those resulting from default by Seller hereunder.

### **Section 12. Environment, Health, Safety and Security.**

Seller and any subcontractors agree to comply with Company's rules and regulations, including its environmental, health, safety and security rules and regulations, when performing any Engineering Services for Company.

### **Section 13. Records.**

Seller will complete daily or weekly time records as may be required by Company. Company shall have the right, from time to time and upon reasonable notice, to examine Seller's books and records relating to the direct costs, charges, expenses and disbursements made or incurred in connection with the Engineering Services.

#### **Section 14. No Violation of Law.**

Seller warrants that it will comply with all applicable foreign, federal, state and local laws and regulations in producing and delivering the Engineering Services hereunder. Upon request, Seller will furnish Company with certificates of compliance therewith. Unless this Contract is otherwise exempted by law, Seller will comply with Executive Order 11246, as amended by Executive Order 11375 (Equal Employment Opportunity), the Rehabilitation Act of 1973, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, the Americans with Disabilities Act, as they have been or may be amended from time to time, and regulations implementing such statutes; and any similar state and local laws and ordinances and the regulations implementing such statutes. If requested by Company, Seller will furnish to Company an executed Certificate of Nonsegregated Facilities. Seller warrants that the Engineering Services delivered hereunder were produced at Company facilities complying with all applicable provisions of the Occupational Safety and Health Act and applicable regulations under that Act and agrees to, upon request, provide Company with all explanatory and factual information needed to verify such compliance and to enable Company to comply therewith, and with any other laws and regulations applicable hereto. Seller further warrants that it will comply, where applicable, and without limitation, with all orders, standards, and regulations of the National Highway & Transportations Safety Administration, Federal Aviation Administration, Environmental Protection Administration, Food and Drug Administration, consumer Product Commission, and Occupational Safety & Health Act Administration.

#### **Section 15. Taxes.**

- (A) Seller will bear and pay all applicable taxes of the United States and any other country, including any political subdivision of any of them, if the tax is based on or measured by gross receipts or net income, or payment of which is required to maintain a legal existence or a general right to transact business within the taxing jurisdiction.
- (B) Seller will withhold, and require its subcontractors, where applicable, to withhold all required taxes and contributions of the United States, any other country or any political subdivision of any of them which is measured by wages, salaries or other remuneration of its employees or the employees of its subcontractors as required by the United States Internal Revenue Code, the United States Federal Insurance Contribution Act, the United States Federal Unemployment Act, and any laws of any other country or any political subdivision of any of the foregoing which requires withholding of any income or employment taxes as measured by wages, salaries or other remuneration. Seller will deposit, or cause to be deposited, in a timely manner with the appropriate taxing authorities all amounts required to be withheld.
- (C) Company agrees to pay all value added tax and sales and use tax (including any gross receipts tax imposed similar to a sales and use tax) imposed by any foreign, national, state or local taxing authority on the ultimate purchase price of the Engineering Services provided under this Contract. If Seller is required to collect such value added tax or sales and use tax on behalf of any taxing jurisdiction, Seller will provide to Company invoices which separately state and clearly indicate the amount of tax, and Company will remit

any such tax to Seller. Seller will have the responsibility of complying with all applicable foreign, national, state or local laws regarding value added tax and sales and use tax or substitutes therefor including registration, collection of taxes and the filing of returns where applicable. Notwithstanding whether Seller must collect value added tax or sales and use tax from Company, Seller will state on every invoice the taxing jurisdiction (e.g. country, state and local jurisdiction) in which the Engineering Services invoiced, or allocated portion thereof, was provided. If applicable, in lieu of payment for any sales and use tax, Seller will accept a properly executed exemption or direct pay certificate from Company. The determination of whether an exemption or direct pay certificate will be submitted to Seller in lieu of payment for any sales and use tax will be made by Company on a location by location basis.

- (D) With the exception of value added tax and sales and use tax as described in Section 15(C) above, all other taxes, however denominated or measured, imposed upon the price or compensation under this Contract, or upon the Engineering Services provided hereunder, will be the responsibility of Seller. In addition, all taxes assessed by any taxing jurisdiction based on Seller property used or consumed in the provision of the Engineering Services such as and including ad valorem, use, personal property and inventory taxes will be the responsibility of Seller. The parties will cooperate in good faith to minimize such tax liabilities to the extent legally permissible.
- (E) Seller and subcontractors will file such returns, reports or forms necessary for the payment of all taxes which Seller is required by law to file.
- (F) Seller will, upon written request, submit to Company written evidence of any filings or payments of all taxes, including government-furnished receipts and detailed documentation of a taxing authority. Company reserves the right to contest, or cause Seller to contest, any tax, fee or assessment, and Seller will use its best efforts in cooperating with Company in any such contest.

#### **Section 16. Warranty.**

Seller warrants that (a) it will strictly comply with the descriptions and representations of the Engineering Services (including performance capabilities, accuracy, completeness, characteristics, specifications, standards and requirements) which appear in this Contract, (b) Seller and the Engineering Services will not be in violation of any applicable law, rule or regulation and Seller will have obtained any permits or licenses required to comply with such laws and regulations, (c) the Engineering Services will not violate or in any way infringe upon the rights of third parties, including property, contractual, employment, trade secrets, proprietary information, and nondisclosure rights, or any trademark, copyright or patent rights, (d) it is not subject to and will not enter into any agreements or arrangements which preclude compliance with the provisions of this Contract, (e) it possesses skills and professional ability required to perform Engineering Services, that all Engineering Services will conform to sound, professional and state of the art architectural, engineering, design and drafting practices and procedures and (f) that the Engineering Services will be free from any and all omissions, errors or defects. If within one year from the date of completion of Engineering Services an omission, error or defect

is discovered in the Engineering Services, Seller, at Seller's sole expense will, upon notification by Company, perform such Engineering Services as are necessary, including revising and replacing the Engineering Services so that such omissions, errors or defects are remedied. All costs, expenses, losses or damages incurred by Company associated or in any way connected with any omission, error or defect in the Engineering Services including, but not limited to, costs of labor, material, equipment, repair or rework will be paid by Seller to Company immediately after they are incurred by Company.

### **Section 17. Intellectual Property Indemnification.**

Seller agrees to indemnify, defend hold harmless Company, its officers, directors, shareholders, employees, representatives, subsidiaries and affiliated companies, (collectively "Indemnitees") from and against all liabilities, costs, claims, penalties, forfeitures, causes of action, suits and the costs and expenses incident thereto (including costs of defense, settlement, and attorneys' fees, including the costs of attorneys in the employ of Indemnitees), which Indemnitees may suffer, incur, become responsible for or pay out as a direct or indirect result of any allegation, claim or proceeding involving any question of direct, contributing or indirect infringement of any intellectual property rights, including infringement of any patents or copyrights by reason of the nature, form or condition of any design, plan, drawing, specification, material, process, article or machine supplied by Seller in the performance of this Contract or by reason of the use, sale, offer to sale and/or import by Company of any such design, plan, drawing, specification, material, process, article or machine.

### **Section 18. Schedule.**

Seller agrees to complete Engineering Services in accordance with the schedule set forth in this Contract. Seller agrees that time is of the essence. Seller will immediately notify in writing Company's technical representative designated by Company and Company's procurement representative designated by Company as soon as Seller knows that Seller will not meet a date or dates set forth in the schedule.

### **Section 19. Cost Management.**

Prior to beginning any Engineering Services, Seller must submit to Company's designated technical representative a written estimate of the following:

- (A) the dollar amount of Engineering Services to be rendered by Seller under this Contract,
- (B) a cost breakdown of the labor hours by classification of labor,
- (C) the number of drawings to be prepared by Seller and
- (D) the number of specifications to be prepared by Seller.

After all of the estimates identified in the preceding sentence have been approved in writing by Company's said technical representative, Seller will submit said estimates to Company's

designated procurement representative. When Seller knows that its most recent estimate of the dollar amount of Engineering Services to be rendered by Seller under this Contract, which has been approved in writing by Company's said technical representative, will be exceeded for any reason, including a change in scope, Seller will immediately notify Company's said technical representative and Company's said procurement representative and submit to each of them a revised written estimate of the dollar amount of Engineering Services to be rendered by Seller under this Contract. Seller will not be compensated by Company for any amount in excess of an amount approved in writing by Company's said technical representative and Company's said procurement representative.

#### **Section 20. Liens.**

Seller, subcontractors and materialmen will not file a mechanic's lien or other lien or claim of any kind against Company's property, and Seller, subcontractor and materialmen expressly waive and relinquish any and all rights which they now have or may subsequently acquire to file any such lien or claim. Seller will save and hold Company harmless from and against any and all liens and claims that may be filed by a subcontractor, materialman, or any other person and Seller will, at its own expense, defend any and all actions based upon such liens or claims and will pay all charges of attorneys and all costs and other expenses arising from such liens or claims.

#### **Section 21. Electronic Commerce.**

At Company's request, Company and Seller will facilitate business transactions by electronically transmitting data. Any data digitally signed pursuant to this section and electronically transmitted will be as legally sufficient as written, signed, paper documents exchanged between the parties, notwithstanding any legal requirement that the data be in writing or signed. Each authorized representative of a party will adopt a unique, verifiable digital identification consisting of symbols or code to be transmitted with each transmission. Use of the digital identification will be deemed for all-purpose to constitute a "signature" and will have the same effect as a signature on a written document.

#### **Section 22. Payments.**

Unless otherwise expressly set forth in this Contract, the terms of payment are net 90 days after Company's receipt of either Seller's valid invoice, or the Engineering Services, whichever is later. Payment by Company of an invoice from Seller does not constitute acceptance of the Engineering Services covered by the invoice. If the production or delivery of Engineering Services covered by this Contract may give rise to mechanics' or other similar liens, payment shall not be due and the cash discount period shall not commence until Seller has delivered to Company a complete release of all liens arising out of the production or delivery of such Engineering Services or receipt in full covering all labor and materials for which a lien could be filed or a bond satisfactory to the Company indemnifying it against any lien. If payments are required to be made under this Contract by Company in a currency other than USD, Seller shall provide Electronic Funds Transfer (EFT) instructions to Company and Company shall make such payments to Seller electronically, to the extent permitted by law. Company shall have the right,

at any time, to set off and apply against any monetary obligations that Company owes to Seller hereunder, any obligations that Company, or any of its parents, subsidiaries or affiliates, may owe to Seller.

### **Section 23. Gratuities**

Company may, by written notice to the Seller, terminate the right of the Seller to proceed or continue under this Contract if it is found that gratuities (in the form of entertainment, gifts or otherwise), were offered or given by the Seller, or any agent or representative of the Seller to any officer or employee of the Company with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of this Contract. In the event this Contract is terminated as provided in this provision, Company shall be entitled to pursue the same remedies against the Seller as it could pursue in the event of a material breach by Seller. The rights and remedies of Company provided in this or any other article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

### **Section 24. Miscellaneous Provisions.**

- (A) This Contract may not be assigned by Seller without the prior written approval of Company. Nothing in this Contract, express or implied, is intended or may be construed to confer upon any person other than the parties to this Contract any right, remedy or claim under or by reason of this Contract.
- (B) This Contract sets forth the entire agreement between the parties as to the subject matter of this Contract, and supersedes all prior agreements, commitments, representations, writings and discussions between them, whether written or oral, with respect to the subject matter of this Contract. It is expressly understood that no representations, promises, warranties or agreements have been made by either party except as the same are set forth in this Contract. Except as otherwise expressly provided in this Contract, this Contract may not be amended or terminated except in writing and signed by the proper and duly authorized representatives of the parties.
- (C) No party may be deemed to have waived any right, power or privilege under this Contract or any provision of this Contract unless such waiver is duly executed in writing and acknowledged by the party to be charged with such waiver. The failure of any party to enforce at any time any of the provisions of this Contract may in no way be construed to be a waiver of such provisions nor in any way to affect the validity of this Contract or any part of this Contract, or the right of any party to subsequently enforce each and every such provision. No waiver of any breach of this Contract may be held to be a waiver of any other or subsequent breach. All remedies permitted under this Contract will be taken and construed as cumulative.
- (D) If any provision of this Contract or its application to any person or circumstance is adjudged invalid or unenforceable by a court of competent jurisdiction, then the remainder of this Contract or the application of such provision to other persons or

circumstances will not be affected by such adjudication. If any provision or application of this Contract is invalid or unenforceable, then a suitable and equitable provision will be substituted for such provision in order to carry out, so far as may be valid and enforceable, the intent and purpose of this Contract, including the invalid or unenforceable provision.

- (E) This Contract will be governed by and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, not including, however, the rules relating to the choice or conflict of laws.
- (F) Seller warrants that it will comply with all foreign, federal, state and local laws and regulations.
- (G) Seller will procure all licenses, permits and other approvals from all applicable government authorities and agencies which are necessary for performance of Engineering Services for Company prior to performing such Engineering Services.
- (H) In no event shall Company be liable for consequential, incidental or special damages of any kind or for damages in excess of the price set forth in this Contract for the Engineering Services on which such claim is based. Any action on any claim against Company must commence within one year after the cause of action has accrued or the right to bring such action will be deemed to have been waived by Seller.
- (I) Company may, at any time, in writing, make changes to the general scope of this Contract, and Seller will continue performance of this Contract as so changed. If any such change causes an increase or decrease in the cost of, or time required for, the performance of Seller's obligations under this Contract, an equitable adjustment will be made to the price or delivery schedule, or both, and this Contract will be modified in writing accordingly.