

1. **ATTORNEY'S FEES** If a suit or action is filed to enforce any of the terms of this Contract, the prevailing party shall be entitled to recover from the other party, in addition to costs and disbursements provided by statute, any sum which a court, including any appellate court, may adjudge reasonable as attorney's fees.
2. **BEST PRACTICES FOR COLLECTION AND USE OF PERSONALLY IDENTIFIABLE INFORMATION** Recipients who collect personally identifiable information (PII) are required to have a publicly available privacy policy that describes standards on the usage and maintenance of the PII they collect. PII is any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual.
3. **BREACH OF CONTRACT** Consultant/Contractor shall remedy any breach of this Contract within the shortest reasonable time after Consultant/Contractor first has actual notice of the breach or ~7~ notifies Consultant/Contractor of the breach, whichever is earlier. If Consultant/Contractor fails to remedy a breach in accordance with this Section, ~7~ may terminate that part of the Contract affected by the breach upon written notice to Consultant/Contractor, may obtain substitute services in reasonable manner, and may recover from Consultant/Contractor the amount by which the price for those substitute Services exceeds the price for the same Services under this Contract.
 - A. Default. If the breach is material and Consultant/Contractor fails to remedy the breach in accordance with this Section, ~7~ may declare Consultant/Contractor in default and pursue any remedy available for a default.
 - B. Suspended Services. Pending a decision to terminate all or part of this Contract, ~7~ unilaterally may order Consultant/Contractor to suspend all or part of the services under this Contract. If ~7~ terminates all or part of the Contract pursuant to this Section, Consultant/Contractor shall be entitled to compensation only for services rendered prior to the date of termination, but not for any services rendered after ~7~ ordered suspension of those services. If ~7~ suspends certain services under this Contract and later orders Consultant/Contractor to resume those services, Consultant/Contractor shall be entitled to reasonable damages actually incurred, if any, as a result of the suspension.
 - C. Payment Recovery. To recover amounts due under this Section, ~7~ may withhold from any amounts owed by ~7~ to Consultant/Contractor, including but not limited to amounts owed under this or any other contract between Consultant/Contractor and ~7~.
4. **CHANGES - CONTRACT MODIFICATION** Any modification of the provisions of this Contract shall be reduced to writing and signed by the Parties.
5. **CHANGES - SCOPE OF WORK** Only the ~7~ Project Manager may authorize extra (and/or change) work. Failure of Consultant/Contractor to secure authorization in writing for extra work shall constitute a waiver of all right to adjustment in the Contract price or Contract time due to such unauthorized extra work and Consultant/Contractor thereafter shall be entitled to no compensation whatsoever for the performance of such work.
6. **CIVIL RIGHTS, DISABILITY AND REHABILITATION LAWS** Without limiting the generality of the foregoing, contractor/consultant expressly agrees to comply with:

- A. Title VI of the Civil Rights Act of 1964;
 - B. Section V of the Rehabilitation Act of 1973;
 - C. The Americans with Disabilities Act of 1990 (Pub L No. 101—336), ORS 659.425, and all regulations and administrative rules established pursuant to those laws; and
 - D. All other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
7. **COMPENSATION – PAYMENTS TO CONTRACTORS** ~7~ agrees to pay, and Consultant/Contractor agrees to accept in full payment for the performance of this Contract, according to the terms contained in Exhibit A.
8. **COMPLIANCE WITH APPLICABLE LAW** Consultant/Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Services under this Contract. Workers' Compensation Law. Consultant/Contractor, and all employers providing Services, labor or materials under this Contract are subject employers under the Oregon workers' compensation law and shall comply with ORS 656.017. Consultant/Contractor warrants that all persons engaged in contract work and subject to the Oregon workers' compensation law are covered by a workers compensation plan or insurance policy that fully complies with Oregon law. Without limiting Consultant/Contractor's general indemnification obligations as specified herein, Consultant/Contractor shall indemnify ~7~ for any liability incurred by ~7~ as a result of Consultant/Contractor's breach of the warranty under this Subsection.
9. **CONTINUING ENFORCEMENT** Agreements, promises, conditions and covenants in this Contract which by their nature require continuing enforcement shall not be released by any Contract termination.
10. **CONTRACT PERFORMANCE** The Consultant/Contractor shall at all times perform the Services diligently, without delay and punctually fulfill all requirements herein, consistent with the schedule for the performance of Consultant/Contractor's Services set forth in Exhibit A. The passage of the Contract expiration date shall not extinguish, prejudice, or limit either Party's right to enforce this Contract with respect to any default or defect in performance. Time is of the essence in the performance of this Contract.
- Errors. Consultant/Contractor shall perform such additional work as may be necessary to correct errors or omissions in the work required under this Contract without undue delays and without additional cost.
11. **DEFAULT** ~7~, by written notice of default (including breach of contract) to Consultant/Contractor, may terminate the whole or any part of the Contract:
- A. If Consultant/Contractor fails to provide Services called for in this Contract within the time or manner specified herein, or any extensions thereof; or
 - B. If Consultant/Contractor fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of written notice from ~7~, fails to correct such failures within ten (10) days or such longer period as ~7~ may authorize.
 - C. In addition to any other remedies available to ~7~ for Contract default, ~7~ shall not be obligated to pay Contract close-out costs.

12. **DRUG-FREE WORKPLACE REGULATIONS** Consultant/Contractor must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 C.F.R. Part 3001, which adopts the Government-wide implementation (2 C.F.R. Part 182) of Sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101-8106).
13. **DURATION OF CONTRACT** The duration of this Contract shall be from _____ until not later than _____ unless terminated earlier under the provisions of this Contract. This Contract shall become effective on the date the Contract is fully executed by the Parties. This date is known as the Contract Effective Date.
14. **DUTY TO INFORM** Consultant/Contractor shall give prompt written notice to ~7~'s Project Manager if, at any time during the performance of this Contract, Consultant/Contractor becomes aware of actual or potential problems, faults or defects in the project, any nonconformity with the Contract, or with any federal, state, or local law, rule or regulation, or has any objection to any decision or order made by ~7~. Any delay or failure on the part of ~7~ to provide a written response to Consultant/Contractor shall constitute neither agreement with nor acquiescence in Consultant/Contractor's statement or claim and shall not constitute a waiver of any of ~7~'s rights.
15. **EXECUTION AND COUNTERPARTS** This Contract, and any amendments to this Contract, may be executed in counterparts (each of which shall be an original and all of which shall constitute one and the same instrument) or in multiple originals. A faxed or emailed form of this Contract or any amendment thereto, executed by one or more of the parties, will constitute a counterpart hereof, as long as the counterpart bearing the party's original signature is transmitted to the other party and received by that party forthwith.
16. **FALSIFICATION OF DOCUMENTS** The falsification of any contract certifications may subject Consultant/Contractor to civil or criminal prosecution under 18 USC 1001 and 31 USC 231.

Consultant/Contractor or subcontractor shall make the records required available for inspection, copying, or transcription by authorized representatives of the awarding agency or the DOL, and shall permit such representatives to interview employees during working hours on the job. If Consultant/Contractor or subcontractor fails to submit the required records or to make them available, the awarding agency, FEMA or DOL, or all may, after written notice to Consultant/Contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds of debarment action pursuant to 29 CFR 5.12.

17. **FEDERAL LEADERSHIP ON REDUCING TEXT MESSAGING WHILE DRIVING**
Consultants/Contractors are encouraged to adopt and enforce policies that ban text messaging while driving.
18. **FEDERAL, STATE AND LOCAL PAYROLL TAXES** Neither federal, state nor local income tax, nor payroll tax of any kind, shall be withheld or paid by ~7~ on behalf of Consultant/Contractor. Consultant/Contractor is not and shall not be treated as an employee with respect to the services performed hereunder for federal or state tax purposes. Consultant/Contractor agrees that Consultant/Contractor is solely responsible to pay, according to law, Consultant/Contractor's income tax, including federal withholding. Further,

Consultant/Contractor agrees that it is responsible and liable for all other taxes, including self-employment (social security) taxes.

19. **FORCE MAJEURE** Neither party shall be held responsible for delay or default caused by fire, riot, acts of nature, or war which is beyond such party's reasonable control. Consultant/Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under the Contract.
20. **GOVERNING LAW; JURISDICTION; VENUE** This Contract shall be governed by and construed in accordance with the laws of the State of **Oregon** without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between ~7~ and Consultant/Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of **Lane County** for the State of **Oregon**; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of **Oregon, Eugene Division**. Consultant/Contractor, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE *IN PERSONAM* JURISDICTION OF SAID COURTS.
21. **INSURANCE AND INDEMNITY REQUIREMENTS**
INSURANCE REQUIREMENTS

TYPES AND AMOUNTS.

A. *WORKERS' COMPENSATION & EMPLOYERS' LIABILITY:*

All employers, including Contractor, that employ subject workers, as defined in **ORS** 656.027, shall comply with **ORS** 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under **ORS** 656.126(2). Consultant/Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject employer, as defined in **ORS** 656.023, Contractor shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If contractor is an employer subject to any other state's workers' compensation law, Contractor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

B. *COMMERCIAL GENERAL LIABILITY:*

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to ~7~ and OEM. This insurance shall include personal and advertising injury liability, products and completed operations. Contractual liability coverage for the indemnity provided under this contract, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

C. *AUTOMOBILE LIABILITY INSURANCE:*

Automobile Liability Insurance covering Contractor's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than

\$1,000,000 for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

D. *ADDITIONAL INSURED:*

All liability insurance, except for Workers' Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Subcontract must include an additional insured endorsement specifying the State of **Oregon**, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and noncontributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 IO 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 3 7 07 04 or equivalent.

E. *WAIVER OF SUBROGATION:*

Contractor shall waive rights of subrogation which Contractor or any insurer of Contractor may acquire against ~7~ or the State of **Oregon** by virtue of the payment of any loss. Contractor will obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not ~7~ has received a waiver of subrogation endorsement from Consultant/Contractor or Consultant/Contractor's insurer(s).

F. *TAIL COVERAGE:*

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Contractor shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Subcontract, for a minimum of 24 months following the later of (i) Contractor's completion and ~7~'s acceptance of all Services required under this Subcontract, or, (ii) ~7~'s or Contractor termination of contract, or, iii) The expiration of all warranty periods provided under this Subcontract.

G. *CERTIFICATE(S) AND PROOF OF INSURANCE:*

Contractor shall provide ~7~ a Certificate(s) of Insurance for all required insurance before delivering any goods and performing any services required under this Contract. The Certificate(s) shall list ~7~ and OEM, their officers, employees and agents as Certificate holders and as an endorsed Additional Insured. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by this contract. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance ~7~ and OEM have the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Contract.

H. NOTICE OF CHANGE OR CANCELLATION:

Consultant/Contractor or its insurer must provide at least 30 days' written notice to ~7~ before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

I. INSURANCE REQUIREMENT REVIEW:

Contractor agrees to periodic review of insurance requirements by ~7~ and OEM under this agreement and to provide updated requirements as mutually agreed upon by Contractor and ~7~.

J. STATE ACCEPTANCE:

All insurance providers are subject to ~7~ and OEM acceptance. If requested by ~7~ or OEM, Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to ~7~ or OEM's representatives responsible for verification of the insurance coverages required under this Insurance Requirements clause.

22. **LABOR - RECRUITMENT OF EMPLOYEES** When advertising for employees, Consultant/Contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

Consultant/Contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, Consultant/Contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to Consultant/Contractor for employment consideration.

In the event Consultant/Contractor has a valid bargaining agreement providing for exclusive hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits Consultant/Contractor's compliance with EEO contract provisions. (The DOL has held that where implementations of such agreements have the effect of discriminating against minorities or women, or obligates Consultant/Contractor to do the same, such implementation violates Executive Order 11246, as amended.)

Consultant/Contractor will encourage their present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

23. **MEDIATION/TRIAL WITHOUT A JURY** Should any dispute arise between the Parties it is agreed that such dispute will be submitted to a mediator prior to any litigation and the Parties hereby expressly agree that no claim or dispute arising under the terms of this Contract shall be resolved other than first through mediation and only in the event said mediation efforts fail, then through litigation. Any litigation arising under or as a result of this Contract shall be tried to the court, without a jury.

Mediator Selection. The Parties shall exercise good faith efforts to select a mediator who shall be compensated equally by the Parties. Mediation will be conducted in Eugene, Oregon. Parties agree to exercise good faith efforts to resolve disputes covered by this Section through the mediation process. If a party requests mediation and the other party fails to respond within ten (10) days, or if the Parties fail to agree on a mediator within ten (10) days, a mediator shall be appointed by the presiding judge of the Lane County Circuit Court upon the request of either party. The Parties shall have any rights at law or in equity with respect to any dispute not covered by this Section.

24. **MERGER CLAUSE** THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES ON THE SUBJECT MATTER ADDRESSED HEREIN. THE TERMS OF THIS CONTRACT CAN NOT BE WAIVED, ALTERED, MODIFIED, SUPPLEMENTED, OR AMENDED, IN ANY MANNER WHATSOEVER, EXCEPT BY WRITTEN INSTRUMENT SIGNED BY THE PARTIES. ANY SUCH WAIVER, ALTERATION, MODIFICATION, SUPPLEMENTATION, OR AMENDMENT, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, REGARDING THIS CONTRACT EXCEPT AS CONTAINED, INCORPORATED OR REFERENCED HEREIN. Consultant/Contractor, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.
25. **NOTICE** Except as otherwise expressly provided in this Contract, any notices to be given hereunder shall be given in writing by personal delivery, facsimile, email, or mailing the same, postage prepaid, to Consultant/Contractor or ~7~ at the address or number set forth on this Contract, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any notice so addressed and mailed shall be deemed to be given five (5) calendar days after the date of mailing. Any notice delivered by facsimile shall be deemed to be given when the transmitting machine generates a receipt of the transmission. To be effective against ~7~, any facsimile or email communication or notice must be confirmed by telephone notice to ~7~'s project manager as indicated in this Contract, and shall not be deemed to be given until such confirmation is completed. Any notice by personal delivery shall be deemed to be given when actually delivered. Regular, day-to-day communications between the Parties may be transmitted through one of the methods set forth above, in person, by telephone, by e-mail, or by other similar electronic transmission.
26. **PAYMENT FOR LABOR OR MATERIAL** Consultant/Contractor shall not permit any lien or claim to be filed or prosecuted against ~7~ on account of any labor or material furnished. Consultant/Contractor shall make payment promptly, as due, to all persons supplying to Consultant/Contractor labor or material for the performance of the work provided for in this Contract.
27. **PAYMENT OF CLAIMS BY ~7~** If Consultant/Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Consultant/Contractor by any person in connection with this Contract as the claim becomes due, ~7~ may pay the claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to Consultant/Contractor pursuant to this Contract. ~7~'s payment of a claim under this Section shall not relieve Consultant/Contractor or Consultant/Contractor's surety, if any, from responsibility for those claims.

28. **PROJECT MANAGERS**

~7~'s Project Manager or their designate is: _____

Consultant/Contractor's Project Manager is: _____

29. **PUBLICATION OF PROJECT INFORMATION** No information, news, or press releases related to the Project shall be made to representatives of newspapers, magazines, television and radio stations, or any other news medium without the prior authorization of ~7~'s project manager.

30. **REPRESENTATIONS AND WARRANTIES** Consultant/Contractor's Representations and Warranties; Standard of Care. Consultant/Contractor represents and warrants to ~7~ that:

- A. Consultant/Contractor has the power and authority to enter into and perform this Contract;
- B. When executed and delivered, this Contract shall be a valid and binding obligation of Consultant/Contractor enforceable in accordance with its terms;
- C. Consultant/Contractor shall, at all times during the term of this Contract be duly licensed to perform the Services, and if there is no licensing requirement for the profession or Services, be duly qualified and competent;
- D. The Services under this Contract shall be performed in accordance with the professional skill, care and standards of other professionals performing similar services under similar conditions in the Eugene metropolitan area;
- E. The persons executing this Contract on behalf of the Consultant/Contractor have the actual authority to bind the Consultant/Contractor to the terms of this Contract; and
- F. The provisions of this Contract do not conflict with, or result in a default under, any agreement or other instrument binding upon the Consultant/Contractor and do not result in a violation of any law, regulation, court decree or order applicable to the Consultant/Contractor.

Automated Systems; Representations and Warranties. Consultant/Contractor represents and warrants to ~7~ that the "Automated Systems" specified, designated and planned pursuant to this Contract shall operate in conformance with the agreed-upon specifications for those Automated Systems For the purposes of this subsection, "Automated Systems" shall mean any computers, software, firmware, HVAC systems, elevators, electrical systems, fire/life safety systems, security systems and any other electrical, mechanized or computerized devices serving the Project.

Representations and Warranties Cumulative. The representations and warranties set forth in this Section are in addition to, and not in lieu of, any other representations and warranties provided herein.

31. **SCOPE OF WORK** AND MAKE SURE THERE IS AN "EXHIBIT A" EXHIBIT A MIGHT BE FREE-FORM TEXT AND MIGHT INCLUDE ONE OR MORE ATTACHMENTS. JUST NEED TO ENSURE THAT EXHIBIT A IS INCLUDED. This Contract is for all services related to completion of the project more particularly described in Exhibit A (the "Project"), attached hereto and incorporated herein by

this reference. No services shall be performed prior to the Contract Effective Date. Any conflict between the Contract and Consultant/Contractor's Proposal shall be resolved in favor of the Contract. Generally, the services to be performed by the Consultant/Contractor on the Project consist of the following and as more specifically described in Exhibit A (the "Services"):

32. **SEVERABILITY** The Parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
33. **SUCCESSORS & ASSIGNMENTS** The provisions of this Contract shall be binding upon and shall inure to the benefit of the Parties, and their respective successors and assigns. Consultant/Contractor shall not assign or transfer any of its interest in this Contract without the prior written consent of ~7~.

34. **TERMINATION**

- A. ~7~'s Right to Terminate for Cause. ~7~ may, at its sole discretion, terminate all or part of this Contract by written notice to the Consultant/Contractor in the event of failure by contractor to perform in accordance with the scope of work and failure to remedy a breach as described in Section 26 of this contract.
- B. **TERMINATION FOR CAUSE** ~7~ may terminate this agreement upon 30 days written notice in the event of failure by Consultant/Contractor to perform in accordance with the scope of work. However, Consultant/Contractor shall have 10 business days from receipt of the termination notice to submit a plan reasonably acceptable to ~7~ to cure the identified failure ("Corrective Action Plan"). If Consultant/Contractor has not cured, or commenced to cure (if a cure cannot be performed within the time period set forth below), the default within ten (10) business days after receipt of ~7~'s written acceptance of Consultant/Contractor's Corrective Action Plan, ~7~ may terminate this agreement. In the event of termination for cause, ~7~ will pay Consultant/Contractor for services performed up to the date of termination.
- C. Parties Right to Terminate for Convenience. This Contract may be terminated by written mutual consent of the Parties.

~7~'s Right to Terminate for Convenience. ~7~ may, at its sole discretion, terminate all or part of this Contract by written notice to the Consultant/Contractor at any time specifying the termination date of the Contract.

Cessation of Services. Upon receiving a notice of termination, and except as otherwise directed in writing by ~7~, Consultant/Contractor shall immediately cease all activities related to the Services or the Project.

Delivery of Work Product/Retained Remedies of ~7~. As directed by ~7~, Consultant/Contractor shall upon termination, deliver to ~7~ all then existing Work Product and other property that, if the Contract had been completed, would be required to be furnished to ~7~. By Consultant/Contractor's signature on this Contract, Consultant/Contractor allows ~7~ to use said Work Product and other property for ~7~'s intended use. The rights and remedies of ~7~ provided in this Section related to defaults by

the Consultant/Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

Payment upon Termination In the event of termination pursuant to this Section, Consultant/Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Services multiplied by the percentage of Services completed and accepted by ~7~ plus Consultant/Contractor's reasonable Contract close- out costs, less previous amounts paid and any claim(s) which ~7~ has against Consultant/Contractor. Within thirty (30) days after termination, Consultant/Contractor shall submit an itemized invoice for all un-reimbursed Contract Services completed before termination and all Contract close-out costs actually incurred by Consultant/Contractor. ~7~ shall not be obligated to pay for any such costs invoiced to and received by ~7~ later than thirty (30) days after termination. If previous amounts paid to Consultant/Contractor exceed the amount due to Consultant/Contractor under this Section, Consultant/Contractor shall pay any excess to ~7~ upon demand.

35. **THIRD PARTY BENEFICIARIES** Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against ~7~ or Consultant/Contractor. Consultant/Contractor's Services under this Contract shall be performed solely for ~7~'s benefit, and no other entity or person shall have any claim against ~7~ or Consultant/Contractor because of this Contract for the performance or nonperformance of Services hereunder.
36. **WAIVER** The failure of ~7~ to enforce any provision of this Contract shall not constitute a waiver by ~7~ of that or any other provision.
37. **OWNERSHIP OF WORK PRODUCT; CONFIDENTIALITY** Definitions. As used in this Section, and elsewhere in this Contract, the following terms have the meanings set forth below:
- (i) **Consultant/Contractor Intellectual Property** means any intellectual property owned by Consultant/Contractor and developed independently from this Contract.
- (ii) **Third Party Intellectual Property** means any intellectual property owned by parties other than

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