



## STANDARD PURCHASE ORDER TERMS AND CONDITIONS

These Standard Purchase Order Terms and Conditions (these “**Terms**”) are incorporated in this purchase order, request for proposal, bid solicitation, or similar document (collectively, this “**Order**”) that the Vigor entity listed in the Order (“**Vigor**”) submits to the subcontractor, materialman, supplier, or vendor listed in the Order (“**Seller**”). Vigor and Seller may be referred to as a “**Party**” or collectively as the “**Parties**.”

The term “**Goods**” means the goods and other deliverables, and the term “**Services**” means the services, described in this Order and in any drawings, specifications, or other documents referenced in these Terms and/or in, or attached to, this Order (collectively, the “**Specifications**”), whether those Goods or Services are used by Vigor or for the benefit of Vigor’s customer or the ultimate end user (collectively, the “**Customer**”).

This Order will become a binding contract when (but not before) Vigor receives an acknowledgement, acceptance, or confirmation of this Order from Seller, or when Seller begins performance. Seller will be deemed to have acknowledged, accepted, and confirmed this Order unless Seller objects to this Order in writing within 10 days of Seller’s receipt of this Order. Facsimile or electronic signatures will be deemed original signatures for all purposes. This Order may be delivered by facsimile or electronically, and that type of delivery will have the same effect as physical delivery of an original.

### 1. Price.

#### 1.1 *T&M and Cost-Plus Orders.*

(a) If this Order provides for payment to Seller on a time and material (“**T&M**”) or cost-plus basis, Seller will invoice Vigor only as follows:

(i) for productive hours actually worked by Seller’s workforce (the “**Resources**”), at the hourly rates appropriate for the Resources’ job classification, provided those rates do not exceed the rates in this Order (or if no rates are specified in this Order, the rates will not exceed Seller’s published rates). In no event will Seller charge Vigor for time Seller’s Resources spend performing administrative activities such as accounting and billing, promotion and publicity, preparation of internal management reports, preparation of change requests, or except as permitted in Section 1.4 (Expenses), nonworking travel time; and

(ii) for materials at Seller’s invoice price, less any rebates, volume discounts or other concessions that have the effect of reducing the price payable by Seller.

(b) Seller will promptly notify Vigor if at any time Seller has reason to believe that it will not be able to deliver the Goods and complete the

Services for the fees and reimbursable expenses estimated in this Order. Seller will not invoice Vigor under any T&M or cost-plus Order for an amount greater than the estimate in this Order unless Vigor’s project manager approves a change order under Section 21 (Changes) before those additional charges are incurred; however, Seller will not be required to perform additional Services until Vigor’s project manager approves that change order.

(c) Seller will keep adequate records of all Services performed, invoices issued and payments received. Once each year Vigor and/or Customer will have the right during ordinary business hours to audit (or to cause its designated representative to audit) Seller’s records with respect to any amount payable to Seller under any T&M or cost-plus Order. Those audits will be conducted at Vigor’s or Customer’s expense. However, if an audit discloses that Vigor overpaid Seller, Seller will refund to Vigor the amount of that overpayment; and if Seller invoiced Vigor for five percent (5%) or more of the amount actually due and payable to Seller during the period covered by the audit, Seller will also reimburse Vigor or Customer for the costs of that audit. These obligations will survive for three years following the expiration or earlier termination of this Order.

1.2 *Firm Fixed Price Orders.* Unless this Order is conspicuously designated as a T&M or cost-plus Order, it is a "Fixed Price" Order, and Seller will sell the Goods and perform the Services at the price stated in this Order. Seller will invoice Vigor the agreed amount for each milestone referenced in this Order, or if this Order does not include milestones, Seller will invoice Vigor upon delivery of the Goods and completion of the Services. Milestone payments will not constitute acceptance of a Good or Service unless the milestone requires satisfactory completion of acceptance testing.

1.3 *All Orders.*

(a) If the price reflected in a T&M, cost-plus, Fixed Price or any other type of Order is contingent on the accuracy of any assumptions or the fulfillment of any conditions, those assumptions and conditions must be included in this Order.

(b) Under no circumstances will Vigor be obligated to place any minimum number of Orders or to purchase any minimum quantity of Goods or Services from Seller. From time to time, Vigor may (but will not be obligated to) provide Seller with a good faith projection or estimate of Vigor's requirements for Goods or Services, but those forecasts do not create a binding obligation on Vigor to purchase the Goods or Services included in those forecasts.

1.4 *Travel Expenses.* Vigor will reimburse Seller only for Seller's actual, out-of-pocket cost for travel expenses (without markup) and that have been pre-approved in writing by Vigor, but only if Seller provides receipts and other supporting documentation reasonably requested by Vigor.

1.5 *Price Warranty.* Seller represents and warrants to Vigor (and upon Vigor's request, Seller will deliver a written certification signed by officer of Seller confirming) that the prices reflected in this Order for Goods and Services (a) include all charges except those specifically identified in this Order; and (b) are equal to or lower than the best price Seller has charged any other customer during the six months preceding the date of this Order for comparable goods and services in comparable quantities.

1.6 *Configuration Management.* Seller will not make any changes to the design, source of

supply, or manufacturing process of the Goods or Services, or substitute any Goods or Services (including at a lower price) without Vigor's prior written consent. If Vigor consents to any such substitution, Seller will be deemed to have represented and warranted that those substituted Goods and Services comply with the Specifications.

1.7 *Guaranty of Continuing Supply; Notice of Obsolescence.* Seller will notify Vigor immediately if at any time: (a) Seller decides to stop supplying any Goods or Services previously delivered to Vigor, and in any event Seller will not refuse to fill any new Order for those Goods and Services unless and until Seller (i) has given Vigor at least six (6) months' advance notice of that decision; and (ii) permits Vigor to purchase its anticipated needs of the Goods and Services being discontinued; and (b) Seller learns that any of its vendors intend to stop supplying any part or component used in any such Goods, or to stop performing any such Services, and Seller will use commercially reasonable efforts to ensure Vigor receives at least six (6) months' advance notice of each such discontinuance.

2. Payment Terms. Unless expressly provided otherwise in this Order or in a written addendum to these Terms: (a) Seller will not issue any invoice before physical delivery of the Goods or completion of the Services; (b) Seller will (i) include on each invoice this Order number, a description of the Goods and/or Services provided, the quantity of Goods shipped and/or Services performed, the unit of measure, the unit price and the extended total price, the date of shipment, shipping point, and will include with each invoice a copy of the bill of lading or express receipt, and each invoice will otherwise comply with any other reasonable invoice instructions Vigor provides; (ii) deliver with each invoice a release of lien in the form reasonably requested by Vigor; and (iii) issue invoices in US Dollars; and (c) Vigor will pay Seller the amount properly invoiced within 30 days after Vigor's receipt of each undisputed invoice that complies with this Section 2 (i.e., Vigor's obligation to pay Seller's invoices will not arise until Seller submits an invoice that complies with the requirements in Section 2). If Vigor fails to pay any amount when due, any late payment fee will not exceed the federal funds rate.

3. Taxes. If this Order includes a line for federal, state, and local sales and use taxes, ad valorem taxes, value added taxes, tariffs, or duties, Vigor

will pay those taxes, tariffs and duties upon its receipt of Seller's invoice, and Seller will remit those payments to the appropriate governmental authorities.

#### 4. Delivery.

4.1 *Generally.* Unless provided otherwise in this Order: (a) Seller will deliver the Goods FOB/FCA destination and will prepay all shipping costs and expenses; (b) Seller will notify Vigor of Seller's intention to ship the Goods five (5) days before the proposed shipment date and will also notify Vigor of the carrier's name, the bill of lading number, and the tracking number; (c) Seller will attach to each shipping container (i) a copy of this Order; (ii) a packing slip that includes this Order number and a description of the Goods, including quantity; and (iii) a copy of any warranty certificate and any safety or other certifications specified in this Order; and (d) the Goods must be prepared for shipment in accordance with good shipping practices and industry standards. Seller will not charge Vigor for packing, boxing, crating, cartage, drayage, or storage and will be responsible for any excess transportation costs resulting from improper packing. Seller will deliver the Goods by the date specified in this Order. If Vigor is responsible for shipping costs, Seller will comply with Vigor's shipping and packing instructions.

4.2 *Schedule and Completion Date.* Vigor's production schedule and its ability to meet its obligations to Customer depend on Seller's delivery of Goods and performance of Services by the dates specified in this Order (the "**Completion Date**"). If at any time Seller learns of any actual or potential labor dispute or any other event or circumstance that will delay, or threatens to delay, the timely performance of this Order (including delays caused by force majeure events or by Vigor or any member of its Related Group (defined below)), Seller will immediately notify Vigor of that event or circumstance. Seller will include in that notice a description of the nature of the event or circumstance, the length of the delay (if known, or otherwise the anticipated length of the delay), the steps that Seller has taken and/or will take to minimize the delay to the maximum extent practicable, and any other information reasonably requested by Vigor. Seller's delivery of a notice of delay to Vigor will not excuse Seller's obligation to timely deliver the Goods and perform the Services.

#### 5. Inspection.

5.1 *FAT.* Vigor and its representatives will have the right to inspect and test the Goods at any reasonable time at Seller's factory during manufacture. Seller will notify Vigor of the date, time, and location of any factory acceptance test (FAT) at least five (5) business days before that test, and Vigor will have the right to send a representative to Seller's facility to observe the FAT.

5.2 *After Delivery.* All Goods are subject to Vigor's inspection within a reasonable time after delivery; i.e., Vigor will inspect the Goods for visible damage before using them or installing them. Those inspections do not, however, preclude Vigor from revoking acceptance, or asserting a warranty claim for damage or defects. If the Goods are found to be unsatisfactory because of damage, defective material, inferior quality, or workmanship, or for failure to meet any other requirements of this Order, Vigor may return the Goods to Seller, and Seller will reimburse Vigor for all amounts previously paid to Seller for those Goods, together with any costs Vigor incurs in connection with the handling and shipment of the Goods. Seller will not ship replacement Goods to Vigor unless Vigor specifically instructs Seller in writing to do so. Vigor must agree in writing to any extension of the scheduled delivery date for any replacement Goods.

#### 6. Warranty.

6.1 *Performance Warranty; Disclaimers.* Seller's standard warranties are incorporated in these Terms and are supplemented by the following express warranties: (a) Seller warrants to Vigor, and if applicable, to the Customer that purchases the Goods from Vigor or for whom the Services are being performed, that the Goods and Services are new, they conform to the description in this Order, and they comply with (i) the Specifications, (ii) any samples provided by Seller, (iii) industry standards, including if applicable the AISC Code of Standard Practice for Structural Steel Building and Bridges, and (iv) applicable law; (b) Seller warrants to Vigor, and if applicable, to the Customer that the Goods are free from defects in materials and workmanship, and if any Goods or Services were designed by Seller or by Seller's suppliers, they are free from defects in design. These warranties will not apply to the extent any defect was caused by Vigor's or Customer's breach of Seller's operating

instructions or any abuse or misuse of the Goods or Services. Vigor's acceptance, approval, or participation in any FAT or site acceptance test does not in any way limit Seller's warranty.

6.2 *Warranty Period.* Unless otherwise specified in this Order, the term "**Warranty Period**" means the longer of: (a) for Goods, Seller's standard warranty period for the Goods or one year following the ultimate Customer's acceptance of the Goods (or the Vigor product containing the Goods); and (b) for Services, Seller's standard warranty period for those Services or one year following Customer's acceptance of the Vigor services and any related deliverables. If a defect is latent, the Warranty Period will be extended for an additional year for Goods and an additional 90 days for Services.

6.3 *Remedy.* Seller will, without additional cost to Vigor or Customer, promptly repair or replace any defective Goods, re-perform any defective Services, and otherwise make good any deficiencies caused by any defective Goods or Services discovered during the Warranty Period. A new Warranty Period for those repaired or replaced Goods and re-performed Services will begin on the date the Goods are repaired or replaced, or the Services are re-performed. If the Goods have been incorporated into a vessel and it is not practical for Seller to do the warranty work described above, either Vigor or Customer will, after reasonable advance notice to Seller, have the right to perform the warranty work, and in that case, Seller will pay or reimburse Vigor or Customer for the lesser of (a) the reasonable cost of that work or (b) the value of that work had it been performed by Seller.

6.4 *Limitations.* EXCEPT FOR THE REMEDIES DESCRIBED IN SECTION 6.3, TO THE MAXIMUM EXTENT PERMITTED BY LAW, SELLER WILL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY, OR INCIDENTAL DAMAGES ARISING FROM A DEFECTIVE PRODUCT EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE TYPES OF DAMAGES, AND SELLER'S LIABILITY FOR MONEY DAMAGES FOR BREACH OF WARRANTY WILL NOT EXCEED THE GREATER OF (A) THE AMOUNT COVERED BY THE INSURANCE SELLER CARRIES OR IS REQUIRED TO CARRY UNDER THESE TERMS; OR (B) THE AMOUNT PAID OR PAYABLE UNDER THE MASTER AGREEMENT PLUS ANY LIQUIDATED DAMAGES SPECIFIED IN

THE PRIME CONTRACT (DEFINED BELOW) TO WHICH THE CLAIM RELATES. THESE LIMITATIONS WILL APPLY REGARDLESS OF THE LEGAL THEORY OF LIABILITY, WHETHER UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR ANY OTHER THEORY WHATSOEVER.

6.5 *Q/A Compliance.* Seller confirms that it has a written quality assurance program that includes quality control plans, scheduled inspections of Seller's suppliers and sources, and investigations of manufacturing and test problems that follow a standardized, systemic root cause analysis procedure.

## 7. Prime Contracts; Subcontracting and Assignment.

7.1 *Prime Contracts.* If this Order is issued in connection with a contract between Vigor and a Customer (each, a "**Prime Contract**"), each provision in the Prime Contract that is applicable to the Goods and Services is incorporated in this Order, including the warranty, intellectual property ownership, liquidated damages, and flow down provisions. Vigor will, upon Seller's written or electronic request, provide a list or copy of the flow down provisions applicable to this Order. Without limiting the preceding and notwithstanding any other provision in these Terms or this Order, or in any other document by or between Vigor and Seller, Seller agrees that: (a) all obligations, responsibilities and liabilities imposed by the Prime Contract on Vigor or by operation of law, including those in the flow down provisions, are and will be assumed by Seller with respect to the Goods and Services provided by Seller; (b) to the extent any standard or requirement in the Prime Contract conflicts with this Order, these Terms, or any other document by or between Vigor and Seller, the more stringent requirement controls; (c) Seller will reimburse Vigor for any liquidated damages Vigor is required to pay the Customer to the extent caused by or arising out of the acts or omissions of Seller or its agents; (d) to the extent Customer is entitled to withhold a percentage of its payment to Vigor for the Goods and Services, Vigor will be entitled to withhold that same percentage from the amount payable by Vigor to Seller for those Goods and Services; and (e) in any event and notwithstanding Section 2 (Payment Terms) above, Vigor will pay Seller for the Goods and Services only as and when Vigor receives

payment from Customer for those Goods and Services.

*7.2 Prohibition on Assignment and Subcontracting.* Without Vigor's express written consent, Seller will not: (a) assign this Order to any other person, or (b) subcontract more than 10% of this Order to any other person, except that this restriction does not prohibit Seller's purchase of components in the ordinary course of Seller's business from vendors in its regular supply chain, subject to and in accordance with Section 7.3.

*7.3 Claims for Payment.* Vigor may condition its payment(s) to Seller upon Seller's delivery to Vigor of a release of liens signed by Seller's subcontractors, suppliers, and vendors substantially in the form of the appropriate lien release attached as Appendix 1. Whether or not Vigor requests a release of lien, Seller agrees to hold the payments Seller receives from Vigor in trust for the benefit of all persons furnishing labor, materials, and/or equipment included in or related to this Order, and to use Vigor's payments first to pay those persons before Seller uses or applies Vigor's payments in any other manner or uses them for any other purpose.

8. Liens; Good Title. Seller warrants that the Goods are free and clear of all liens and encumbrances and that upon their delivery to Vigor, Vigor will have good and marketable title to those Goods.

## 9. Term and Termination.

*9.1 Termination for Cause.* If one Party has breached a material provision of these Terms or this Order, the other Party may terminate this Order and any other outstanding purchase orders: (a) effective immediately by giving the other Party written notice if the breach is incapable of being cured; or (b) if the breach is capable of being cured, the breach remains uncured for 30 days after the breaching Party receives notice of the breach, except that nothing in this Section 9.1 will extend the delivery date, the ship date or the Completion Date under this Order. For purposes of this Section, the following will constitute a material breach that is incapable of being cured: (i) a breach of Section 10 (Insurance); Section 12 (Confidential Information and other Intellectual Property); and any provision described as incapable of being cured in this Order; (ii) the other Party dissolves or otherwise ceases to function as a going concern

or to conduct its operations in the normal course of business, or it becomes insolvent, fails to pay its obligations when due, makes an assignment for the benefit of creditors, becomes subject to any proceeding in bankruptcy, or a trustee or receiver is appointed for it or its business.

*9.2 Termination of Orders for Convenience.* Vigor may terminate any or all part of this Order at any time without cause, and in that event, Seller will immediately stop work on the Goods and Services described in this Order, and Vigor's sole liability to Seller will be to pay Seller the Termination Payment described below. Seller may not terminate this Order for convenience. Payment of the Termination Payment is Seller's sole and exclusive remedy for Vigor's termination of this Order without cause.

*9.3 Termination Payment.* If Seller terminates this Order for cause under Section 9.1 or if Vigor terminates this Order for convenience under Section 9.2, Vigor's sole obligation to Seller will be to pay Seller's unrecoverable out-of-pocket costs (the "**Termination Payment**"); i.e., the Termination Payment will not include, and Vigor will not be obligated to pay for, items that Seller is able to return to its suppliers, to use in Seller's operations, or to sell to Seller's other customers. Upon Vigor's payment of the Termination Payment, Seller will promptly deliver to Vigor all nonreturnable, unusable materials, components, work-in-process and finished goods and other materials.

*9.4 Return of Vigor Property.* Upon termination of this Order for any reason, or earlier at Vigor's request, Seller will return to Vigor all property provided by Vigor to Seller, including equipment, inventory, drawings, designs, and any other tangible or intangible property.

*9.5 Survival.* The following provisions will survive and continue in full force and effect after this Order is fully performed or is earlier terminated: Section 6 (Warranty); Section 7.1 (Prime Contracts); this Section 9 (Term and Termination); Section 10 (Insurance); Section 11 (Returns); Section 12 (Confidential Information and other Intellectual Property; Publicity); Section 13 (Indemnification for Liens, Personal Injury, Property Damage, etc.); Section 14 (Conditions for Indemnification; Procedural Protections); Section 15 (Compliance with Applicable Law); and Sections 17 (Independent

Contractor) through Section 29 (Entire Agreement); any other indemnity obligation; and each other provision of these Terms or this Order (including its exhibits, schedules and the other attachments) that expressly or by its nature provides for rights, obligations or remedies that extend beyond the expiration or earlier termination of this Order; and all claims that arose before the expiration or earlier termination of this Order.

10. Insurance. Without limiting Seller's obligation to indemnify Vigor or any of its other obligations under this Order or these Terms, Seller will, at all times maintain in effect, and ensure that each of its subcontractors maintains in effect, insurance policies with at least the limits of insurance described in Appendix 2. All policies will: (a) be written by insurers that are licensed to do business in the jurisdiction where Services are performed or Goods are manufactured or assembled; (b) be written by insurers that have a policyholder's rating of not less than A VIII in the most current edition of *A.M. Best's Rating Guide* or with underwriters at Lloyds of London with similar A.M. Best ratings; and (c) provide that Vigor will be given thirty (30) days' advance written notice of cancellation or a material reduction in coverage; and (d) be primary with respect to any insurance or self-insurance programs maintained by Vigor or Customer. The limits specified in Appendix 2 may be achieved through a combination of primary and umbrella policies.

11. Returns. Vigor may return any Stock Goods to Seller for full credit as long as they are in saleable condition and Vigor has not received a notice of discontinuance in accordance with Section 1.6 (Guaranty of Continuing Supply; Notice of Obsolescence). "**Stock Goods**" means any Goods that are not designated as custom or specialty Goods on the face of this Order. Vigor may return to Seller, at Seller's cost, expense, and risk of loss: (a) any unauthorized advance shipments; (b) any shipments other than for the quantity ordered by Vigor; and (c) at any time before acceptance, any defective Goods.

12. Confidential Information and other Intellectual Property; Publicity.

12.1 *Duty of Confidentiality.* Seller will not disclose to anyone (other than to Seller's Resources who have a need to know) any information that Vigor or Customer provides to

Seller that is marked "confidential" or "proprietary" or that Seller knows or should know is confidential or proprietary information. Seller will not use any of Vigor or Customer's confidential or proprietary information for any purpose other than to perform its obligations under this Order. Seller will ensure that its subcontractors agree to be bound in writing by similar or stronger non-disclosure and non-use provisions with respect to the Vigor IP (defined below). Seller will be responsible for any violations of the non-disclosure and non-use provisions by Seller's subcontractors and Resources.

12.2 *Ownership.* Seller will retain ownership of any of its intellectual property that was in existence before the date of this Order (the "**Seller IP**"). As between Seller and Vigor, Vigor will own the following intellectual property (the "**Vigor IP**"): (a) the Specifications and any designs, drawings, bills of materials, software, and other intellectual property that Vigor or Customer delivers to Seller; and (b) the designs, drawings, software, and other works of authorship, that Vigor pays Seller to develop or create and all inventions Seller creates or discovers in connection with the performance of the Services whether or not reduced to practice (except that Vigor IP will not include any Seller IP).

12.3 *License.* (a) Vigor grants to Seller a royalty-free license to use the Vigor IP as necessary to perform Seller's obligations under this Order. (b) Seller grants to Vigor, Customer, and their subcontractors a world-wide, fully paid up, perpetual, irrevocable, license to use the Seller IP in connection with their construction, operation, repair, and maintenance of the Goods and any product into which the Goods are incorporated. These rights are transferrable only in connection with the sale or charter of the Goods or the product into which they have been incorporated.

12.4 *Noninfringement and Designs.* Seller represents and warrants to Vigor and to Customer that (a) the Goods and Services do not infringe any other person's patents or copyrights or misappropriate any other person's confidential information, trade secrets or other intellectual property right; and (b) any designs created by Seller comply with the requirements of each governmental authority that has jurisdiction over the Goods or the product containing the Goods,

including the US Coast Guard and the American Bureau of Shipping.

12.5 *Indemnification for Intellectual Property Infringement.* Subject to compliance with the procedural protections in Section 14 below:

(a) *By Vigor.* Vigor will hold harmless, indemnify, and defend Seller and Seller's affiliates and subcontractors, and their respective members, shareholders, managers, directors, officers, employees, agents, representatives, and customers (collectively, a "**Related Group**") from, for, and against all claims, demands, actions, suits, liabilities, damages, costs, and expenses, including reasonable attorney fees, arising out of or in connection with any claims for alleged infringement of any patents, copyrights, or other intellectual property or proprietary rights of any person related to the Vigor IP; except that Vigor will not be obligated to hold harmless, indemnify, and defend Seller or any member of Seller's Related Group to the extent a claim arises from or relates to any modifications, alterations, or changes to the Vigor IP by Seller or any member of Seller's Related Group.

(b) *By Seller.* Seller will hold harmless, indemnify, and defend Vigor and the members of Vigor's Related Group from, for, and against all claims, demands, actions, suits, liabilities, damages, costs, and expenses, including reasonable attorney fees, arising out of or in connection with any claims for alleged infringement of any patents, copyrights, or other intellectual property or proprietary rights of any person related to the Goods, the Services, or the Seller IP; except that Seller will not be obligated to hold harmless, indemnify, and defend Vigor or any member of Vigor's Related Group to the extent a claim arises from or relates to Seller's compliance with detailed requirements of the Specifications or any material provided by Vigor or Customer. If Vigor or Customer is or is likely to be enjoined by a court of competent jurisdiction from using the Services, the Goods, or any material component of the Goods for their intended purpose because of any claim for which Seller is obligated to indemnify Vigor or any member of the Vigor Related Group under this Section 12.5(b), then Seller may, at its option, either: (i) procure for Vigor and Customer a license to continue using the otherwise infringing Goods and Services; (ii) modify the infringing Goods and Services to make them non-infringing without materially impairing their performance;

or (iii) replace the infringing Goods and Services with a non-infringing item substantially equal in performance.

12.6 *Publicity.* Seller must obtain Vigor's prior written approval of the text of any external announcement, publication or other type of public communication with respect to this Order, the existence of the business relationship between Seller and Vigor, the identity of the Customer(s), and/or work Seller is to perform in connection with this Order, before its release, and Seller will impose this same pre-approval requirement on each of its subcontractors.

13. Indemnification for Liens, Personal Injury, Property Damage, etc. Subject to compliance with the procedural protections in Section 14 below:

13.1 *Liens.* Seller will indemnify, defend, and hold harmless the Vigor Related Group from any and all third party liens, expenses, claims, and demands whatsoever (including costs and reasonable attorney fees) against the Vigor Related Group, and any product that incorporates the Goods, arising from Seller's failure to pay its employees and subcontractors, vendors, agents and representatives for the work to be performed by Seller under this Order.

13.2 *Personal Injury and Property Damage.* To the maximum extent permitted by law, each Party will indemnify, defend, and hold harmless the other Party and the members of its Related Group from and against all liabilities, losses, damages, liens, causes of action, suits, claims, judgments, expenses, and costs (including costs and reasonable attorney fees), of every nature, kind, and description, for bodily injury, illness, or death, or for any loss of or damage to property, asserted against the other Party or against any member of its Related Group to the extent the claim arose from the actual or alleged negligence (joint, sole, or concurrent, active or passive), fault, strict liability, or tort of the indemnifying Party or any member of its Related Group. SELLER AND VIGOR EACH EXPRESSLY AND SPECIFICALLY WAIVES ANY IMMUNITY OR LIMITATION ON DAMAGES THAT WOULD OTHERWISE APPLY UNDER THIS AGREEMENT OR UNDER ANY INDUSTRIAL INSURANCE AND/OR WORKERS' COMPENSATION STATUTES FOR PURPOSES OF THIS INDEMNIFICATION PROVISION, AND EACH ACKNOWLEDGES THAT THIS WAIVER WAS MUTUALLY NEGOTIATED BY THE PARTIES.

14. Conditions for Indemnification; Procedural Protections. The obligations of each Party (the “**Indemnitor**”) to indemnify, defend, and hold harmless the other Party and the members of its Related Group (each, an “**Indemnitee**”) under Section 12 (Confidential Information and Other Intellectual Property; Publicity), Section 13 (Indemnification for Liens, Personal Injury, Property Damage, etc.), or elsewhere in these Terms or in this Order are contingent on the Indemnitee: (a) giving the Indemnitor prompt written notice of the claim (except that failure to provide prompt notice will not affect the Indemnitee’s rights unless the Indemnitor is prejudiced by that failure, and then only to the extent of the prejudice); (b) tendering control of the defense of the claim to the Indemnitor (although the Indemnitor will not settle a claim without the Indemnitee’s consent if the settlement (i) imposes any obligation on the Indemnitee (other than the payment of money to be paid by the Indemnitor on behalf of the Indemnitee), (ii) requires the Indemnitee to admit fault or guilt, or (iii) is otherwise materially prejudicial to the Indemnitee; and (c) reasonably cooperating with the Indemnitor in the defense of that claim, including making and signing of statements and affidavits; attending depositions, hearings and trials; producing documents; and assisting in securing and giving evidence and obtaining the attendance of witnesses, except that neither Party will, however, be required to waive the attorney-client, or any other, privilege.

15. Compliance with Applicable Law.

15.1 *Employment Laws.* Vigor is an Affirmative Action, Equal Opportunity Employer. As such, Seller will abide, and will ensure that each of its subcontractors abide, by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a), which prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. These regulations require covered prime contractors and subcontractors to take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability. Seller warrants and certifies that in the performance of this Order, it will comply with all other applicable statutes, rules, regulations, and orders (including executive orders) of the United States, and of any state or

political subdivision, including laws and regulations pertaining to labor (including any collective bargaining agreements), wages (including prevailing wage requirements), hours and other conditions of employment, applicable price ceilings, if any, and that the Goods will be produced in compliance with the Fair Labor Standards Act.

15.2 *Other Laws.* Seller will comply with applicable domestic and foreign laws, rules, regulations, and executive orders, including the Foreign Corrupt Practices Act, anti-boycott laws, U.S. export control laws and regulations governing the transfer, export, or re-export of technical data, executive orders imposing restrictions on trade with Russia, rules regarding the use of conflict minerals, rules against money laundering, and rules prohibiting dealing with specially designated nationals and persons on the blocked persons list. Vigor will provide copies of these rules, regulations and orders to Seller upon Seller’s request.

16. Performance on Vigor’s Property. If Seller performs any work at any facility owned or operated by Vigor or any member of the Vigor Related Group (each, a “**Vigor Site**”), Seller will comply with Vigor’s fire, safety, environmental, and other policies applicable generally to contractors who perform work at that Vigor Site, and Seller will ensure that each of its subcontractors, employees, agents, and representatives complies with those policies. Seller will keep the portion of the Vigor Site where Seller is working clean, orderly, and free from debris. Upon Seller’s completion of work at the Vigor Site, Seller will remove all of Seller’s equipment and unused materials, clean up all refuse and debris generated by Seller and its subcontractors, and leave the Vigor Site clean, orderly and in good condition. Any equipment and materials not removed from the Vigor Site within two (2) business days following Seller’s completion of its work at the Vigor Site will be deemed to have been abandoned, and Seller authorizes and instructs Vigor to use or dispose of those items, at Vigor’s option. Seller will reimburse Vigor for the costs of any disposal.

17. Independent Contractor. Seller is an independent contractor. Seller is not a partner, employee, or agent of Vigor, does not have the authority to bind Vigor, and will not in any way (including by silence) indicate it is anything but



an independent contractor supplier of Vigor.

18. Future Cooperation. Seller will cooperate with Vigor and Customer so the entire project can be performed and completed with the utmost speed, consistent with good practices. Seller will, upon Vigor's request, execute and deliver any other agreements and instruments and take any further actions that are reasonably necessary to give full effect to the transactions contemplated by this Order.

19. Notices. All notices and other communications required or permitted in these Terms must be in writing and must be sent to the other Party at the address for that Party on this Order. Notices under Section 14 (Conditions for Indemnification; Procedural Protections) must be delivered personally or by a recognized international courier, or sent by certified mail (postage prepaid, return receipt requested). All other notices and communications may be given by any of those methods, or by email. A Party may at any time and from time to time change its address by giving written notice to the other Party in the manner described in this section.

20. Interpretation. Section and paragraph headings are for convenience only and do not affect the meaning or interpretation of the text in the body of those sections and paragraphs. The word "business day" means Monday through Friday except for federal holidays. Any other reference to a "day" means a calendar day. The words "includes" and "including" are not limited in any way and mean "includes or including without limitation." The word "person" includes individuals, corporations, partnerships, limited liability companies, co-operatives, associations and other natural and legal persons. The term "and/or" means each and all of the persons, words, provisions or items connected by that term; i.e., it has a joint and several meaning. The words "will," "shall," and "must" are synonyms, and each refers to action that is mandatory rather than optional. All documents and exhibits attached to or referenced in this Order or these Terms are a part of and are incorporated in this Order and/or these Terms. Both Parties have had the opportunity to have these Terms reviewed by their attorneys; therefore, no rule of construction or interpretation that disfavors the Party drafting these Terms, or that favors the other Party, will apply to the interpretation of these Terms. Instead, these Terms will be interpreted according to their fair meaning.

21. Changes. After this Order becomes a binding contract, the Parties cannot change this Order or these Terms except in a writing that: (a) expressly refers to the provision(s) of this Order or these Terms to be amended; (b) provides the full text of the amendment; and (c) is signed by an authorized representative of both Parties.

22. No Election of Remedies. All remedies are cumulative and are in addition to any other remedies a Party may have at law or in equity, unless this Order expressly provides otherwise. Remedies may be exercised concurrently or separately, and the exercise of any remedy will not be deemed to constitute an election of that remedy to the exclusion of any other remedy.

23. Nonsolicitation; Contact with Customers.

23.1 Nonsolicitation. From the date of the earlier of Seller's acceptance of this Order and for a period continuing until the first anniversary of the final delivery of all Goods specified in this Order and completion of all Services described in this Order, neither Party will solicit for employment, or hire, any employee (whether full time, part time, or temporary) of the other Party who was, within the six month period immediately preceding the solicitation or hire, an employee of the other Party. The placement of a general help-wanted advertisement in a periodical of general circulation will not constitute a breach of this provision's prohibition on solicitation.

23.2 Restrictions on Contact with Customers. Seller will not at any time during the Term sell or offer to sell any Goods to, or perform or offer to perform any Services for, Customers or any of its affiliates. Seller will not contact or otherwise communicate with Customers about this Order, the Goods, the Services, the Prime Contract, the project or program described in the Prime Contract, or any related matter, without Vigor's prior written consent.

24. Succession. These Terms and this Order will bind and inure to the benefit of both Seller and Vigor and their respective permitted successors and assigns.

25. Third Party Beneficiaries. Other than Customer, there are no intended third party beneficiaries, and nothing in these Terms gives any person other than Seller, Vigor and Customer

any legal or equitable right, remedy, or claim under or with respect to this Order, except those rights that inure to a successor or permitted assignee under Section 7. However, Seller and Vigor may modify or terminate this Order or these Terms without the consent of Customer.

26. Severability; Blue Penciling. If any court, arbitrator, or arbitration panel finds any of these Terms to be invalid or otherwise unenforceable, that provision will be void to the extent it is contrary to applicable law. However, that finding will not affect the validity of any other provision, and the rest of these Terms will remain in full force and effect unless enforcement of these Terms without the invalidated provision would be grossly inequitable under all of the circumstances or would frustrate the primary purposes of this Order. Alternatively, if a court, arbitrator, or arbitration panel determines that any of these Terms is not enforceable as expressly written, it is the intention of the Parties that those provisions be modified by the court, arbitrator, or arbitration panel only as is necessary for them to be enforceable.

27. Waiver. A Party's delay or failure to enforce or insist on strict compliance with any of these Terms or the rest of this Order will not constitute a waiver or otherwise modify this Order or these Terms. A Party's waiver of any right on one occasion will not (a) waive any other right;

(b) constitute a continuing waiver of that same right; or (c) waive that right on any other occasion.

28. Governing Law; Jurisdiction and Venue; Attorney Fees. The laws of the State of Oregon will govern this Order (except that the *United Nations Convention on Contracts for the International Sale of Goods* will not apply). If this Order becomes the subject a dispute, that dispute will be subject to the exclusive jurisdiction and venue of the state and federal courts located in the state where Vigor is located as indicated in this Order, and the prevailing Party in that dispute will be entitled to recover, in addition to its damages, its reasonable attorney fees, costs and expenses, incurred in connection with the trial and on appeal.

29. Entire Agreement. Unless the Parties have entered into Vigor's *Master Agreement re Purchase Order Terms and Conditions*, the Parties agree that (a) these Terms are incorporated in and form a part of this Order, and (b) this Order, including these Terms, is the entire understanding between the Parties regarding the Goods and Services described in this Order and in the Specifications. Any additional or inconsistent provision in Seller's acknowledgement, acceptance, or confirmation of this Order, or in Seller's invoices, will be disregarded and will not bind Vigor.

(Rev. 4.19.16)

List of Attachments:

APPENDIX 1 – Form of Release of Lien  
APPENDIX 2 – Insurance Requirements

**APPENDIX 1**

**VENDOR RELEASE OF LIEN FORMS**

**I. FORM OF INTERIM LIEN RELEASE** *(Release to be submitted by Seller with each invoice)*

**SELLER'S REQUEST FOR PAYMENT AND INTERIM RELEASE OF LIENS AND CLAIMS**  
(this "**Request**")

TO: _____ (" <b>Vigor</b> ")	PURCHASE ORDER NO.: _____
FROM: _____ (" <b>Seller</b> ")	INVOICE NO.: _____ (the " <b>Invoice</b> ")
PROJECT/VESSEL:	AMOUNT VIGOR HAS PREVIOUSLY PAID SELLER: \$ _____
PERIOD COVERED BY REQUEST/INVOICE: _____, 201__ to _____, 201__ (the " <b>Period</b> ")	

**SELLER'S STATEMENT:**

- |  |                 |
|--|-----------------|
| 1. Original Order <sup>1</sup> Amount  | \$ _____        |
| 2. Total approved Change Order (s) ____ (per attached breakdown)   | \$ _____        |
| 3. Adjusted Order amount (Line 1 plus Line 2)  | \$ _____        |
| 4. The adjusted Order, including all Change Orders, is __% complete, and the value provided to Vigor in connection with the Project/Vessel is at least (Line 3 multiplied by the completion percentage stated) | \$ _____        |
| 5. Total previously billed to Vigor (Line 10 of all previous requests)   | \$ _____        |
| 6. Total retainage (Line 3 multiplied by __%, the retainage percentage)  | \$ _____        |
| 7. Amount previously retained  | \$ _____        |
| 8. Amount due before application of retainage  | \$ _____        |
| 9. Retainage applicable to this Invoice (Line 8 multiplied by retainage percentage in Line 6)  | \$ _____        |
| <b>10. AMOUNT DUE UNDER THIS REQUEST</b>   | <b>\$ _____</b> |

Seller represents, warrants, and covenants to Vigor as follows:

A. The value of the Goods and Services supplied to Vigor through the last day of the Period represent the actual value of those Goods and Services under the Order (as it has been modified by Change Orders that have been signed by Vigor), and the remaining balance of the Order is sufficient to cover all costs of completing the work and materials described in the Order.

<sup>1</sup> Capitalized terms that are used but not defined in this Release have the meanings assigned to those terms in the *Master Agreement re Purchase Order Terms and Conditions* between Vigor and Seller, or if none, in Vigor's standard *Purchase Order Terms and Conditions*, [http://vigor.net/\\_\\_\\_\\_\\_](http://vigor.net/).

B. Attached to this Request are conditional lien/claim releases from all lower tier subcontractors and suppliers who have applied for payment related to the Goods and Services described in the Invoice.

C. Effective upon Seller's receipt of the amount due under this Request: (i) Seller waives and releases through and including the last day of the Period described above any and all mechanics' liens, materialmen's liens, boat liens, maritime liens, stop notice rights, bond claims, retainage claims, and all other claims and liens arising by or through Seller; and (ii) until Seller has paid all labor, subcontractors, suppliers, taxes, and assessments arising from or related to the Goods and/or Services described in the Invoice or this Request, Seller will hold in trust all funds paid by Vigor, and Seller will not apply or use those funds for any other purpose.

D. Not more than five days after Seller's receipt of the amount due under this Request, Seller will pay all of Seller's lower-tier subcontractors/suppliers and for all material, equipment, labor, taxes, and assessments for the work they performed and for the materials they provided related to the Goods and Services described in the Invoice, less only the applicable retention (which does not exceed Seller's retention percentage listed in Line 6 in the table above). Not more than ten days after Seller's receipt of the amount due under this Request, Seller will delivery to Vigor copies of unconditional lien/claim releases from those lower-tier subcontractors/suppliers.

E. Seller represents and warrants that for each invoice related to the Project/Vessel that Vigor has previously paid (each, a "**Paid Invoice**"): (i) Seller has paid its employees, subcontractors, suppliers, and agents for the work they performed and the materials they provided related to or covered by the Paid Invoices; and (ii) to the extent Seller has not previously delivered lien/claim releases to Vigor, Seller has attached to this Request unconditional lien/claim releases from all lower tier subcontractors and suppliers who performed work or provided materials related to those Paid Invoices.

F. Seller has (i) complied with all federal, state, and local tax laws, including without limitation, social security laws, unemployment compensation laws, and workers' compensation laws, to the extent they apply to the Goods and Services covered by this Request and/or the Invoice, and (ii) paid all such taxes, premiums, and/or assessments arising out of or related to those Goods and Services and all other goods and services related to the Project/Vessel.

Seller has caused this Release to be executed this \_\_\_ day of \_\_\_\_\_, 201\_.

<b>SELLER:</b> _____  <b>By:</b> _____ <b>Name:</b> _____ <b>Title:</b> _____	<b>ATTEST/WITNESS:</b>  <b>Signature:</b> _____ <b>Name:</b> _____ <b>Title:</b> _____
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**II. FORM OF FINAL LIEN RELEASE** *(Release to be submitted by Seller with final invoice)*

**SELLER'S REQUEST FOR FINAL PAYMENT AND RELEASE OF LIENS AND CLAIMS**  
(this "**Final Request**")

<b>TO:</b> Vigor _____ (" <b>Vigor</b> ")	<b>PURCHASE ORDER NO.:</b> _____ (the " <b>Order</b> ")
<b>FROM:</b> _____ (" <b>Seller</b> ")	<b>INVOICE NO.:</b> _____ (the " <b>Final Invoice</b> ")
<b>PROJECT/VESSEL:</b>	<b>AMOUNT OF FINAL INVOICE:</b> \$ _____

To induce Vigor to pay the Final Invoice, Seller represents, warrants, and covenants to Vigor as follows:

1. Upon Vigor's payment of the Final Invoice, Seller forever, unconditionally, and irrevocably waives and releases: (a) all mechanics', material, boat, and maritime liens, all stop notice rights, all rights to assert claims against bonds, retainage amounts, or any other amounts payable to Vigor; all other claims, liens, lien rights, privileges, charges, security interests, mortgages, and encumbrances; against or related to Vigor and/or the Project/Vessel, including without limitation, for any work performed and for any materials provided or used in the construction of, or installed on or in, the Project/Vessel; and (b) all related demands, suits, and causes of action. Seller has not assigned, conveyed, or transferred any such liens, claims, rights, demands, suits, or causes of action. Nothing in this Request releases Seller, its insurance carrier, or any surety of Seller, from any unperformed obligation, including but not limited to the warranty, indemnification, and hold harmless obligations.
2. Seller has paid its employees, subcontractors, suppliers, and agents for all work performed and for all materials provided or used in the construction of, or installed on or in, the Project/Vessel, and Seller has attached to this Request unconditional lien/claim releases from all lower tier subcontractors and suppliers who performed work and/or provided materials used in the construction of, or installed on or in, the Project/Vessel.
3. Seller will indemnify, defend, and hold Vigor and the Project/Vessel harmless from and against, all claims, demands, suits, or causes of action, whether presently known or unknown, and all related costs and expenses (including without limitation, reasonable attorney fees and expenses), related to or arising from claims asserted against Vigor by any of Seller's employees, suppliers, subcontractors, and agents alleging that Seller failed to pay for work performed or materials provided or used in the construction of, or installed or in, the Project/Vessel.
4. Seller has (a) complied with all federal, state, and local tax laws, including without limitation, social security laws, unemployment compensation laws, and workers' compensation laws, to the extent they apply to the Goods and Services covered by this Final Request and all prior requests and by the Final Invoice and all prior invoices, related to the Project/Vessel; and (b) paid all such taxes, premiums, and/or assessments arising out of or related to those Goods and Services and all other goods and services provided by or through Seller in connection with the Project/Vessel.

Seller has caused this Release to be executed this \_\_\_ day of \_\_\_\_\_, 201\_.

<p><b>SELLER:</b> _____</p> <p><b>By:</b> _____</p> <p><b>Name:</b> _____</p> <p><b>Title:</b> _____</p>	<p><b>ATTEST/WITNESS:</b></p> <p><b>Signature:</b> _____</p> <p><b>Name:</b> _____</p> <p><b>Title:</b> _____</p>
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## APPENDIX 2

### Insurance Requirements

Seller will comply with the following obligations regarding insurance:

**1. Insurance Types and Amounts.** Seller must obtain and maintain the insurance coverages described in this Section 1 (the “**Required Insurance**”) from the date of each Order through the last day of the Warranty Period for the Goods and Services described in this Order. Each insurance policy and each certificate of insurance must provide that: (a) the insurer waives all rights of recovery or subrogation against Vigor, Customer, their affiliates, the vessels, and their respective underwriters that might arise by reason of any payment under each policy with respect to liabilities assumed by Seller under the Terms or any Order; (b) each policy, except the workers' compensation/employers liability policy, names Vigor, Customer, their affiliates, and any vessel(s) as an additional insured and is primary to all other insurance policies available to Vigor, Customer, their affiliates, and any vessel(s), and any insurance Vigor carries will be excess and non-contributory; and (c) territorial limits include all areas in which the work is to be performed.

- All risk property insurance for all properties owned and operated by Seller on a full replacement basis, including real property, personal property, and property of others, including the perils of fire, wind, flood, and earthquake, with extension of coverage for electronic data, programs, or software. This insurance must include business interruption and extra expense, property damage, service interruption, time element, transportation, expediting costs, operational testing, personal property not at Seller's facilities, and mobile equipment. The deductible for this insurance must not exceed USD \$100,000. This insurance must name Vigor as a loss payee as its interest may appear.

- Workers Compensation insurance coverage with statutory limits as required by the law of the state where the Goods are manufactured or the Services are performed, with appropriate endorsements to provide coverage to full statutory limits; Employment Practices Liability insurance coverage with a policy limit of not less than USD \$1,000,000, with third party extension; and, if Seller will perform Services at any Vigor's shipyard, USL&H, Jones Act and Maritime Employer's Liability insurance coverage.

- Comprehensive Marine General Liability and/or General Liability Insurance, subject to standard forms, including premises, operations, completed operations coverage, product liability coverage, pollution and contractual liability coverage including tort liability of another assumed an Order or any other business contract, and all indemnity obligations, including for bodily injury (including death), property damage, independent contractors, and advertising injury, along with associated defense costs, with limits of not less than USD \$1,000,000 each occurrence, combined single limit, and \$2,000,000 annual policy in the aggregate, for personal injury and property damage, with an annual deductible of not more than USD \$100,000. Any watercraft exclusion clause must be deleted from these insurance policies in order to provide for vessel coverage.

- Automobile liability insurance coverage for any vehicle licensed for public road use, including, owned, non-owned, and hired autos, as required by statute or local regulation but with a minimum combined single limit of USD \$1,000,000 per occurrence on vehicles owned, leased, or rented by Seller or by its subcontractors while performing under any Order. The business automobile liability insurance policy will be written on an occurrence basis.

- Excess (umbrella) liability insurance coverage with minimum limits of USD \$2,000,000 per occurrence and in the aggregate.

Seller will also carry the following types of insurance:

If Seller will have access to Vigor or Customer's bank accounts, computer network, precious metals, or other valuable property:

Crime insurance in an amount not less than USD \$1,000,000 covering the acts of its officers, employees and agents, in performing any and all of the services required to be performed under each Order. Seller will promptly notify VIGOR in writing of any material amendment or cancellation of this policy or bond and of any decrease in the amount of available coverage. Seller will also promptly notify VIGOR in writing when available limits drop to less than USD \$1,000,000.

If Seller will perform professional Services:

Errors and omissions liability insurance coverage written on a claims-made or project-specific basis, with a limit of not less than USD \$2,000,000 per claim. The policy's retroactive coverage date will be no later than the date of each Order. Upon the full performance or earlier termination of an Order, Seller will maintain an active policy, or purchase an extended reporting period, providing for claims first made and reported to the insurance company within two (2) years after Vigor's final payment for Seller's performance under an Order.

If Seller will perform design or engineering Services:

Professional liability insurance for design and engineering Services with limits of USD \$5,000,000 per occurrence and in the annual aggregated. Covered professional services must specifically include design and engineering performed under the Agreement.

If Seller will perform Services on a vessel:

Vessel pollution insurance covering all owned or operated watercraft used in manufacturing the Goods and/or performing the Services. This coverage must be written on the Water Quality Insurance Syndicate policy form, or equivalent, and must include bodily injury. Limits of liability will be in accordance with OPA90, but will be not less than USD \$1,000,000 each occurrence. The vessel owner or operator must also have Certificate of Financial Responsibility pursuant to OPA90, Coast Guard Regulations and if applicable, the State of Washington.

If Seller will perform Services that involve hazardous materials or have the potential of causing a release of hazardous materials:

Environmental pollution / contractor's pollution liability - pollution liability policy form or other policy form acceptable to Vigor providing coverage for liability caused by pollution conditions arising out of Seller's operations. Coverage must apply to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured, cleanup costs, and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims. The policy limit must not be less than USD \$5,000,000 per claim and USD \$10,000,000 general aggregate. All activities contemplated in each Order must be specifically scheduled on the policy as "covered operations." The policy must provide coverage for the hauling of waste from Seller's site and if applicable, from the Vigor Site, to the final disposal location, including non-owned disposal sites. There will not be any exclusion for work in, on, or under water. Coverage must be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using subcontractors the policy must include work performed "by or on behalf" of the insured. The policy coverage term must be equal to the total period of construction and also provide 10 years of completed operations coverage after the project construction is complete.

If Seller has access to Vigor’s computer network or to the personal, financial, and/or health information of Vigor’s employees or any other individual:

Cyber / privacy insurance for claims and losses with respect to network or data risks (such as data breaches, release of confidential information, unauthorized access/use of information, and identity theft) with minimum limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.

Seller is responsible for and will pay all deductible payments and self-insured retentions under the Required Insurance, and Seller will act as Vigor’s and Customer’s insurer for the amount of those deductibles and retentions under the terms and conditions of the policies to which the deductibles pertain.

**2. Insurance Certificates.** On the effective date of the Order, and upon the renewal of the Required Insurance policies, Seller will deliver to Vigor at 5555 N. Channel Avenue, Portland, OR 97217, Attn: Risk Management, certificate(s) of insurance for the insurance coverages required under Section 1 above and, if requested by Vigor, copies of the policies, evidencing not less than the coverage described in Section 1. The certificates must evidence the most recent AM Best or Lloyds of London rating of each insurer. If any of the Required Insurance coverages specified in Section 1 are required to remain in force after final payment, an additional certificate evidencing continuation of that coverage must be submitted with the final application for payment. Seller’s failure to provide those certificate(s), or Vigor’s failure to request those certificate(s) or copies of those policies does not and will not relieve Seller of the responsibility to maintain full coverage described in this Appendix.

**3. Other Insurance Requirements.** The Required Insurance must be primary and any other insurance does not apply to Vigor or Customer with respect to the liabilities assumed by Vigor. Any “sue and labor” provisions in the Required Insurance do not apply to Vigor or Customer. Seller’s insurance companies will not have any recourse against Vigor or Customer for payment of any premium or for assessments under any mutual form of policy.

**4. Breach.** If Seller fails to comply with the insurance requirements in this Appendix, Vigor may, at its election (a) provide written notice to Seller of that failure and if Seller does not remedy the failure within five days of receipt of that notice, immediately terminate any or all Orders under Section 9.1 of the Terms; or (b) purchase the required insurance coverage and charge the premium to Seller.