

## SERVICES TERMS AND CONDITIONS

**1. COMPLETE AGREEMENT:** These terms and conditions (the "Terms"), the corresponding contract to which these Terms are attached or incorporated by reference and Elk Ridge's specifications or scope of work (collectively, the "Contract") constitute the complete agreement of the parties concerning the subject matter and supersede any previous agreement or understanding, whether oral or written. The services, materials, products, equipment, work product, and supplies described in the Contract (collectively, the "Services") shall be furnished by the vendor identified on the face of the Contract ("Seller"), subject to the Terms. As used in the Contract, "Seller Representatives" includes Seller's employees, subcontractors, suppliers and agents (at any tier). As used in the Contract, "Elk Ridge" means the entity identified on the face of the Contract procuring the Services from Seller for itself and/or on behalf of its subsidiaries. No other terms or conditions shall be binding upon Elk Ridge unless accepted by it in writing. Seller's written acceptance or performance of all or a portion of the Services shall constitute acceptance of the Contract. The terms of any written proposal referred to or attached to the Contract are included and made a part of the Contract only to the extent that such proposal describes the Services, the price and the manner of performance, and only to the extent that such terms do not conflict with the Contract.

**2. MANNER OF PERFORMANCE:** Seller shall perform the Services set forth on the face of the Contract. Seller shall employ persons who possess the skill and training required to properly perform the Services. Seller shall appoint a project manager, who shall be available at all times while the Services are in progress. The project manager shall be competent with experience in the type of Services being performed and capable of properly interpreting the Contract. The project manager shall have full authority to act upon instructions from Elk Ridge.

Seller represents as of the date of the Contract to each of the following:

- A. Seller has investigated and carefully examined the scope of the Services and understands the nature and character of the Services to be performed.
- B. Seller and Seller Representatives have the relevant experience and specialized knowledge to perform the Services.
- C. Seller is licensed under applicable state law to engage in the Services, it is in compliance with all laws and regulations applicable to the Services, and it is aware that Elk Ridge is relying on Seller's skill and judgment in providing the Services to Elk Ridge.
- D. Each Seller Representative that will be on the worksite is properly trained in compliance with applicable MSHA regulations.
- E. The Services and other work performed by Seller do not infringe upon any copyright, patent, trade secret, or other intellectual property right of any third party, and Seller has neither assigned nor otherwise entered into an agreement (oral or written) by which it purports to assign or transfer any right, title, or interest in any technology or intellectual property right that would conflict with its obligations under the Contract.

### **3. ACCEPTANCE OF SERVICES; WARRANTY:**

A. Acceptance. The Services shall be subject to review, inspection and testing by Elk Ridge at all times and places. If, prior to final acceptance and final payment, any Services are found to be incomplete or not as specified, Elk Ridge may (i) reject them and require Seller to correct them without charge or (ii) require delivery of such Services at a reduction in price that is equitable under the circumstances. Seller shall bear risk for all rejected Services. If Seller is unable or refuses to correct the Services within a time deemed reasonable by Elk Ridge, Elk Ridge may terminate the Contract in whole or in part for Seller's default. Notwithstanding acceptance and payment, Seller shall be liable for latent defects. Title and risk of loss or damage to the Services shall transfer from Seller to Elk Ridge upon acceptance.

B. Warranty. Seller warrants that the Services furnished shall comply with the Contract and be free from all defects or failures for a period of 18 months after final acceptance and final payment by Elk Ridge. If the Services do not conform to such standards, Seller shall, upon notice from Elk Ridge within the warranty period, promptly re-perform and make corrections to such Services, at its own expense, to the extent necessary to satisfy the requirements of the Contract. The provisions of this Section shall then apply to said repaired or replaced Services for a period of 18 months from the date such repairs or replacements were completed. If Seller is unable or refuses to correct warranted Services within a

reasonable time, Seller shall reimburse Elk Ridge for the reasonable costs incurred by Elk Ridge to correct such non-conformance.

**4. ORDER MODIFICATION:** Elk Ridge may notify Seller of changes to the Services and subsequently confirm such changes in writing. If the price or time required for performance is affected, Elk Ridge shall equitably adjust the price or time, as applicable. No change by Seller shall be recognized without written approval of Elk Ridge. Seller must make a written claim for an adjustment to the performance period or price within 10 days from the date of receipt of notice of a change in the Services. Nothing in this Section shall excuse Seller from proceeding with performance of the Services as modified by Elk Ridge.

**5. TERM; SUSPENSION; TERMINATION; REMEDIES:**

A. The Contract shall automatically terminate after final acceptance of the Services and final payment by Elk Ridge, except that this Section 5 and Sections 3, 7-11, 14, 15, 19-21, 23 and 26-29 of these Terms shall survive any such termination.

B. Except as provided in Sections 18 and 19, Elk Ridge may suspend performance of the Services in whole or in part for up to 30 days at any time on written notice to Seller and in such event, Elk Ridge shall issue a change order reflecting an equitable adjustment to the price or time, as applicable, upon resumption of the Services.

C. Elk Ridge may terminate the Contract in whole or in part for convenience at any time on written notice to Seller and in such event, Elk Ridge shall compensate Seller through the effective date of termination for the unit or pro rata price for Services performed and accepted.

D. Elk Ridge may terminate the Contract in whole or in part if Seller defaults in the performance of the Services or breaches any provision in the Contract and: (i) Seller does not cure such default or breach after written notice from Elk Ridge within a reasonable time as determined by Elk Ridge or (ii) Elk Ridge determines in its reasonable discretion that such default or breach cannot be cured. Seller shall be liable to Elk Ridge for all costs and expenses in connection with such default or breach.

E. Elk Ridge's rights and remedies in this Section shall not be exclusive and are in addition to any other rights and remedies provided at law or in equity including injunctive relief and specific performance.

**6. SECURITY REQUIREMENTS:**

A. Seller shall ensure that it is in compliance with all Federal and state employment laws and regulations governing verification of eligibility of employment for individuals hired by Seller or Seller Representatives prior to permitting such persons to perform Services.

B. Seller and Seller Representatives will enter and exit Elk Ridge's facility through security access areas, if any.

C. Seller Representatives shall be required to show a valid US Government photo ID (state or Federal), such as a driver's license, law enforcement ID, U.S. military ID, U.S. passport, or current INS card, prior to entering the worksite. Individuals without valid photo ID will not be permitted to enter the worksite. Each Seller Representative shall also show current MSHA training certificate (5000-23) prior to entering the worksite.

D. Prior to commencing the Services at a worksite, Seller shall deliver a detailed list to Elk Ridge of all Seller Representatives who will perform the Services at the worksite. This list shall be updated weekly and delivered to Elk Ridge's security staff for purposes of checking individuals into and out of a worksite.

E. No weapons of any type, including, but not limited to, firearms, archery equipment, explosive or incendiary devices, drugs (unless prescription drugs authorized by a doctor), alcohol or pets are allowed on Elk Ridge's facility. Any person observed with any such prohibited item may be immediately removed from the worksite and detained for local law enforcement authorities.

F. Elk Ridge may examine or search any items brought on or removed from the worksite and may examine or search at any time, in the presence of Seller or a Seller Representative, any enclosure on the worksite, including but not limited to, storage bins, tool cribs, boxes, vehicles, construction equipment, office trailers, tool trailers, and lunch boxes. Items belonging to Seller or a Seller Representative shall also be subject to search, with or without the presence of Seller or a Seller Representative.

G. On request, Seller shall provide Elk Ridge with a list of worksite equipment, tools, parts and materials, which list may be used to conduct inventory inspections.

H. Seller is responsible for transporting Seller Representatives to the worksite and responsible for securing its worksite at Elk Ridge's facility, including, but not limited to: fencing of laydown areas, locks and keys, fabrication, electrical power connections, coverings for equipment or materials, warehousing, lighting, etc.

I. Seller shall confine Seller Representatives to that portion of Elk Ridge's facility where the Services are performed or to roads or areas leading to and from such worksites and to any other area which Elk Ridge has expressly permitted Seller and Seller Representatives to use.

J. Harassment of any type, threats of violence, or actual violence, will not be tolerated. Allegations of any of the above will be investigated and if substantiated, the perpetrator will be removed from the worksite and not allowed to return. If necessary, the perpetrator may be detained by security personnel until local law enforcement authorities arrive.

K. Seller Representatives performing work at Elk Ridge facilities shall immediately notify Elk Ridge after becoming aware that they have a communicable disease. The Seller Representative shall cease performing work at Elk Ridge facilities until the communicable disease is no longer transmissible.

L. Elk Ridge may deny access, or remove and ban from its facility, anyone who violates the foregoing security provisions, has a questionable background, behaves erratically or suspiciously, or jeopardizes Elk Ridge's security measures, equipment, facility, or personnel. Physical force may be authorized to prevent security incidents and law enforcement may be notified. Elk Ridge may change its security procedures at any time without explanation. Changes in security procedures may result in complete lockdown of worksites, increased searches, denial of access to worksites, or other measures.

**7. RESERVED.**

**8. LIABILITY FOR ELK RIDGE-FURNISHED PROPERTY:** Seller assumes all liability for any tools, equipment, materials or other items loaned or provided by Elk Ridge to Seller or a Seller Representative in connection with the Contract, and Seller shall compensate Elk Ridge for any lost or broken tools or equipment and any materials spoiled by Seller or a Seller Representative.

**9. PRICES, INVOICES, AND PAYMENT:** Prices are as indicated on the face of the Contract. Import and export duty/tariffs and brokerage fees shall be included in the price. Any increase or change in any import or export duty/tariffs or brokerage fees shall not entitle or permit Seller to increase the price, suspend or delay delivery of the Services, or claim a force majeure event or commercial impracticability. Seller shall submit an invoice, together with appropriate supporting information such as subcontractor invoices, expense receipts over \$25, and any other reasonable backup documentation as Elk Ridge may require, covering compensation due Seller for Services rendered under the Contract during the preceding month. Sales, purchase, use, and any other taxes shall be itemized separately from the Services on Seller's invoices. Unless otherwise specified, Elk Ridge shall review, approve and pay each non-disputed invoice within 30 days of receipt thereof, unless a delay is caused by any condition within the control of Seller. Until Seller has provided the information required by Elk Ridge and completed any forms required by Elk Ridge to allow payment by electronic means, all payments will be made to Seller by check. If Seller's payment address or method of payment changes, Seller must contact Elk Ridge's Accounts Payable Department via [ElkRidgeAP@tristategt.org](mailto:ElkRidgeAP@tristategt.org) at least thirty (30) days prior to the effective date of such change. Elk Ridge shall have the right to set off any payments owed by Seller to Elk Ridge. The review, approval and payment of any invoice by Elk Ridge shall not preclude the right of Elk Ridge from thereafter disputing any of the items involved in the invoice. Each invoice shall have the Contract number clearly stated on the first page of the invoice. Unless otherwise specified by Elk Ridge, each invoice shall be sent to Elk Ridge as indicated on the face of the Contract.

**10. PAYROLL TAXES:** Seller shall pay all contributions, taxes and premiums measured upon its employee payroll or applicable to the Services, and Seller shall hold Elk Ridge harmless from liability for any such contributions, taxes and premiums.

**11. EXAMINATION OF RECORDS:** Elk Ridge may examine and copy any pertinent books, documents, papers and records of Seller in connection with the Services until the expiration of 3 years after final payment.

12. **INDEPENDENT CONTRACTOR:** Seller and each Seller Representative shall be an independent contractor, and no action, tax, assessment or liability of Seller or a Seller Representative becomes, by reason of the Contract, Elk Ridge's obligation.

13. **CHARACTER OF SERVICES:** Seller shall furnish all equipment, personnel, and material sufficient to perform the Services in accordance with the Contract expeditiously and efficiently during the hours and shifts and at the locations designated by Elk Ridge. Time is of the essence in the performance of the Services, and Seller shall abide by all applicable project schedules in its performance.

14. **INDEMNIFICATION:** To the maximum extent permitted by law, Seller shall indemnify, defend and hold harmless Elk Ridge and its affiliates, directors, officers, employees and agents from and against all claims, demands, causes of action or suits of whatever nature for losses, liability, damages, fines, penalties, awards, judgments, reasonable attorneys' fees, costs, or expenses including bodily injury or death to persons or property damage caused by or resulting from one or more of the following: (i) Seller's or a Seller Representative's negligence or intentional misconduct (but only to the extent of such negligence or intentional misconduct) in connection with performance of the Services; (ii) all laborers', materialmen's, and mechanics' liens threatened or filed of record against Elk Ridge's property in connection with the Services; (iii) any misrepresentation or breach of a covenant, representation or warranty of Seller in connection with the Contract; (iv) any violation or failure of Seller or a Seller Representative to comply with applicable laws, rules and regulations (including health, safety and environmental laws, rules and regulations); and (v) any third party claim of infringement of any patent, trademark, copyright, trade secret or other intellectual property right utilized in connection with the Services. If use of an intellectual property right is enjoined, Seller shall procure for Elk Ridge the right to continue to use such intellectual property, or shall promptly provide a non-infringing substitute acceptable to Elk Ridge. Seller shall also promptly notify Elk Ridge in writing of any claim, demand, cause of action or suit brought in connection with the Services.

15. **LIENS:** Seller shall not receive final payment from Elk Ridge until it delivers evidence to Elk Ridge of a complete release of all liens arising in connection with the Contract, and an affidavit signed by an authorized officer of Seller that Seller has paid in full all laborers, materialmen and suppliers; but Seller may, if any subcontractor or supplier refuses to furnish a release, furnish a bond satisfactory to Elk Ridge indemnifying Elk Ridge against any claim by lien or otherwise. If any lien or claim remains unsatisfied after final payment from Elk Ridge, Seller shall promptly refund to Elk Ridge all monies necessary to discharge such lien or claim, including all costs and reasonable attorneys' fees.

16. **MAINTENANCE OF WORKSITE:** Seller shall at all times keep the worksite and adjoining premises free from waste materials and rubbish, and at the completion of the Services, Seller shall remove all waste, rubbish, tools, scaffolding and surplus materials and shall leave the worksite "broom clean" or its equivalent. Prior to leaving the worksite, Seller and Elk Ridge shall mutually determine the appropriate use and/or disposal of any residual contracted or purchased quantities of chemical or petroleum products. Seller shall coordinate waste management activities with Elk Ridge to ensure compliance with Elk Ridge's permits and all applicable Environmental Laws (as defined in Section 19 below). Seller shall use Elk Ridge-approved waste vendors, transporters, storage companies, and disposal facilities for managing and disposal of waste materials. If Seller fails to comply with the obligations in this Section, Elk Ridge may perform the same and charge its costs to Seller or offset payment to Seller accordingly.

17. **PERSONNEL:** Seller shall employ persons who are skilled and properly trained for the Services, at least 18 years of age, and shall devote only the best-qualified personnel to perform the Services. Should Elk Ridge deem, in its sole discretion, anyone incompetent or unfit to perform the Services and so inform Seller, Seller shall immediately remove such person from employment under the Contract.

18. **SAFETY:** Seller shall comply with all applicable health and safety laws, regulations and requirements (including reporting requirements) and Elk Ridge's Safety and Health requirements, Attachment A, incorporated herein and made a part hereof. Seller understands and agrees that its activities while on Elk Ridge property are governed by the Mine Safety and Health Administration ("MSHA") and the regulations enforced by that agency.

19. **ENVIRONMENTAL COMPLIANCE:** Elk Ridge's policy is to comply with "Environmental Laws" as defined below. Seller shall comply with Attachment B, incorporated herein and made a part hereof. Seller shall have the sole responsibility for compliance with all Environmental Laws applicable to the Services. If

Seller at any time fails to comply with any Environmental Laws, it shall immediately notify Elk Ridge of such non-compliance orally with prompt written confirmation of such non-compliance. Seller shall not take any corrective, clean-up or remedial action without the consent and approval of Elk Ridge to the corrective, clean-up or remedial action being taken; provided that Seller shall take immediate corrective, clean-up or remedial action if any failure to act will endanger the health and safety of any person or damage the environment. If Seller violates any Environmental Laws, fails to notify Elk Ridge of any non-compliance or fails to take appropriate corrective, clean-up or remedial action, Elk Ridge, without prejudice to any other rights it may have under the Contract or applicable law, in addition to the remedies available under the Contract, may (i) take all necessary corrective, clean-up or remedial action, the cost of which shall be reimbursed to Elk Ridge by Seller; and/or (ii) withhold any amounts due to Seller under the Contract until all corrective, clean-up or remedial action has been taken and all costs incurred by Elk Ridge have been reimbursed. Elk Ridge may issue an order stopping all or any part of the Services under this Section, and if Services are stopped, Seller shall not be entitled to an extension of time or additional fees or charges to perform the Services.

Seller shall immediately advise or notify Elk Ridge's shift supervisor on duty and the Elk Ridge OATR for Services performed of any non-compliance with any Environmental Laws or any spills, leaks, releases or discharges of any substance.

For purposes of the Contract, "Environmental Law or Laws" shall mean any and all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any governmental authority regulating, relating to or imposing liability or standards of conduct concerning environmental protection, health or safety matters, as they may now exist or be hereinafter amended, including all requirements pertaining to reporting, licensing, permitting, investigation, removal or remediation of emissions, discharges, releases, or threatened releases of hazardous materials, chemical substances, pollutants or contaminants or relating to the manufacture, generation, processing, distribution, use, treatment, storage, disposal, transport, or handling of hazardous materials, chemical substances, pollutants or contaminants, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, 42 USC §§ 9601, et seq., the Toxic Substances Control Act ("TSCA"), as amended, 15 USC §§ 2601, et seq., the Solid Waste Disposal Act, as amended, including the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 USC §§ 6901, et seq., the Clean Air Act ("CAA"), as amended, 42 USC §§ 7401, et seq., the Federal Water Pollution Control Act (Clean Water Act or "CWA"), as amended, 33 USC §§ 1251 et. seq., the Federal Insecticide, Fungicide, Rodenticide Act ("FIFRA"), as amended, 7 USC §136 et. seq., and the Hazardous Materials Transportation Authorization Act of 1994, as amended, 49 USC §§ 5101, et seq.

**20. COOPERATION; PROPERTY DAMAGE:** Seller shall cooperate with Elk Ridge and third parties employed at or near the worksite and shall not hinder, delay or interfere with the progress of the work of others. At Elk Ridge's request, Seller shall, at its expense, promptly repair or reimburse the party for any damage caused by Seller or Seller Representatives to Elk Ridge's or a third party's property.

**21. INSURANCE REQUIREMENTS:**

A. Seller shall, and require Seller's subcontractors to, take out and maintain throughout the term of the Contract and for a period of 1 year after termination of the Contract and during any on-site warranty work insurance in the following types and amounts:

- i. Workers' compensation insurance with minimum statutory limits to cover obligations imposed by federal and state statutes applicable to its employees and employers' liability insurance for bodily injury by accident of \$500,000 each accident, bodily injury by disease of \$500,000 each employee and \$500,000 each accident; and
- ii. Commercial general liability insurance in the amount of \$2,000,000 per occurrence for bodily injury and property damage and \$4,000,000 annual aggregate. Such insurance shall cover liability arising from premises, operations, mining operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). Limits may be achieved by a combination of commercial general liability and follow form claims made excess liability coverage. Such policy shall provide completed operations coverage for additional insured; and

- iii. Comprehensive automobile liability insurance with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage. Such policy must cover owned, non-owned, and hired vehicles, trailers or semi-trailers designed for travel on public roads; and
- iv. Umbrella liability insurance/excess coverage (following form) in the amount of \$5,000,000 per occurrence and \$5,000,000 annual aggregate; and
- v. Professional liability (E&O) insurance with a 1 year extended reporting period in an amount of \$2,000,000 per claim and \$2,000,000 annual aggregate; provided that such insurance is only required if the Services involve professional services including, but not limited to, engineering, architectural, surveying or consulting services.

B. Insurance policies may include a deductible or self-insured retention reasonably acceptable to Elk Ridge. The required insurance policies (except workers' compensation and professional liability), through policy endorsement, shall each state that they are primary and non-contributing with respect to any insurance maintained by Elk Ridge or its affiliates. The certificates of insurance shall state that each of such policies is primary and non-contributing with respect to any insurance carried by Elk Ridge or its affiliates. There shall be no endorsement or modification limiting coverage for liability assumed under an insured contract.

C. Seller and its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Elk Ridge and its affiliates, officers, employees and agents for all claims and suits. The certificates of insurance must reflect the waiver of subrogation endorsement.

D. The policies for commercial general liability, and umbrella liability/excess coverage insurance must include cross liability coverage either by way of separation of insureds clause or otherwise. Elk Ridge, its affiliates, officers, employees, and agents must be named as an additional insured with respect to the Services and must be indicated on all certificates of insurance required by this Section (except workers' compensation and professional liability).

E. Prior to performing Services pursuant to the Contract, Seller shall provide Elk Ridge acceptable certificates of insurance evidencing the required coverages, endorsements, and, if requested, insurance policies. Seller shall provide copies of all insurance policies and endorsements required in this Section to Elk Ridge within 10 days of Elk Ridge's written request. Each insurance policy shall provide by endorsement for 30 days written notice to Elk Ridge prior to the effective date of any cancellation or material adverse change, and in the event of cancellation for non-payment of premium, 10 days prior written notice; provided, however if Seller is unable to abide by such requirements, Seller must notify Elk Ridge immediately should any of the above described policies be cancelled before the expiration date, if the insured receives a non-renewal notice from its carrier, or any material adverse change of coverage. Seller must cease operations under the Contract and not resume operations until required coverage is in place and proof is provided to Elk Ridge.

22. **PERMITS; COMPLIANCE WITH LAW:** Unless otherwise stated on the face of the Contract, Seller shall procure all permits and licenses and abide by all applicable laws, regulations, and ordinances in the locale where the Services are performed.

23. **WORK PRODUCT:** Upon payment for the Services, title and rights to all drawings, specifications, reports, and other work product of the Services prepared and furnished under the Contract shall vest in Elk Ridge.

24. **WAIVERS:** If Elk Ridge fails at any time, or from time to time, to enforce or require the strict performance of the Contract, such failure shall not constitute a waiver by Elk Ridge of a breach of the Contract, or the right of Elk Ridge to seek any remedy available to it for any such breach.

25. **ASSIGNMENT:** The Contract is assignable by Elk Ridge at any time. The Contract may not be assigned by Seller and none of Seller's obligations may be delegated or subcontracted without Elk Ridge's advance written consent.

26. **CONFIDENTIALITY:** Seller shall keep confidential and not, and Seller shall ensure that each Seller Representative shall keep confidential and not, disclose (i) any information furnished to it by Elk Ridge that is either marked "proprietary" or "confidential" or under the circumstances, could reasonably constitute confidential or proprietary information and (ii) all work product or deliverables developed by it

as part of the Services (collectively, "Confidential Information"); provided that Seller may disclose such Confidential Information to Seller Representatives who have a "need to know" so long as such persons agree to protect the confidentiality of such information in accordance with this Section. Seller and each Seller Representative shall not use the Confidential Information for any purpose other than performing the Services. Seller and each Seller Representative shall use the same degree of care to protect such Confidential Information as such party uses with respect to its own confidential information, but in no event, less than a reasonable degree of care. Seller shall implement reasonable security procedures and practices designed to protect the Confidential Information from unauthorized access, use, modification, disclosure or destruction. Seller shall immediately notify Elk Ridge of any breach by Seller or Seller's Representative of this Section. The obligations contained in this Section shall not apply to information that: (y) was already in Seller's (or a Seller Representative's) possession other than through a breach of this Section or (z) was or becomes generally available to the public other than through a breach of this Section.

27. **SEVERABILITY:** If any of the part of the Contract is held invalid by a court having jurisdiction, Elk Ridge may substitute a term or provision as similar in terms as possible to such invalid term, and, in any event, the remainder of the Contract shall remain in full force and effect.

28. **GOVERNING LAW; JURISDICTION; WAIVER OF JURY TRIAL:** Unless otherwise required by law, the Contract is governed by the laws of the State of Colorado without regard to its choice of law provisions. Jurisdiction and venue for any legal proceedings in connection with the Contract shall be in a court of competent jurisdiction sitting in Colorado. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION RESULTING FROM THE CONTRACT.

29. **COUNTERPARTS:** The Contract, including these Terms, if applicable, may be executed in counterparts, each of which shall constitute an original agreement, but all of which together shall constitute one and the same instrument. The parties agree that the Contract, including these Terms, if applicable, may be electronically signed. The parties agree that the electronic signatures appearing on the Contract, including these Terms, if applicable, are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

30. **SANCTIONS:** Seller shall refrain, and cause its subsidiaries to refrain, from doing business in a sanctioned country or with a sanctioned person, in each case in violation of the economic sanctions of the United States administered by the Treasury's Office of Foreign Assets Control ("Sanctions"). Seller shall not (a) directly or indirectly use the money paid by Elk Ridge pursuant to the Contract or otherwise make available such money to any person to fund, any activities of or business with any person, or in any sanctioned country, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any person of Sanctions or (b) directly or indirectly use the money paid by Elk Ridge pursuant to the Contract for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 or other similar legislation in other jurisdictions.

31. **EEO CERTIFICATION:** The parties hereby incorporate the requirements of 41 C.F.R. § 60-1.4(a) and 29 C.F.R. § 471, Appendix A to Subpart A, if applicable; and the Seller and Seller's subcontractor(s) shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), if applicable. These regulations prohibit discrimination against qualified protected veterans and qualified individuals with disabilities, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.

## **ATTACHMENT A – ELK RIDGE’S SAFETY AND HEALTH REQUIREMENTS**

**A.1 OVERVIEW:** Seller has the sole responsibility for the health and safety of Seller Representatives performing Services including the provision of required safety equipment and personal protective equipment (“PPE”). Elk Ridge is not obligated to provide Seller or Seller Representatives with any safety and health consultation services, advice, training or safety equipment. Elk Ridge has the right, but not the obligation, to inspect Seller's compliance and/or enforce compliance with these Requirements.

THIS ATTACHMENT IS INTENDED TO BE AN OVERVIEW OF ELK RIDGE’S SAFETY AND HEALTH REQUIREMENTS AND IS **NOT** INTENDED TO BE A COMPREHENSIVE OR EXHAUSTIVE LIST. THIS ATTACHMENT IS **NOT** INTENDED TO SUPERSEDE OR REPLACE SELLER’S OBLIGATIONS UNDER THE CONTRACT TO COMPLY WITH (AND ENSURE SELLER REPRESENTATIVES COMPLY WITH) ALL APPLICABLE LAWS, ALL REASONABLE DIRECTIONS AND ORDERS GIVEN BY REPRESENTATIVES OF ELK RIDGE, AND ALL OTHER GUIDELINES, RULES AND PROCEDURES OF ELK RIDGE THAT MAY BE GIVEN TO SELLER FROM TIME TO TIME, INCLUDING WITHOUT LIMITATION, SAFETY AND HEALTH STANDARDS, POLICIES, AND PROCEDURES RESULTING FROM A PRE-JOB RISK ASSESSMENT, AMENDMENTS BY ELK RIDGE, OR AMENDMENTS RESULTING FROM CHANGES IN APPLICABLE LAWS.

### **A.2 SAFETY & HEALTH REQUIREMENTS:**

**A.2.1 Regulatory Compliance:** Seller shall comply with all applicable federal, state and local occupational safety and health laws, regulations and standards. Seller using its own judgment, experience, and knowledge shall identify such additional health and safety measures as may be required for the Services to be performed safely.

**A.2.2 Safety and Occupational Health Supervisor:** Before on-site Services begin, Seller will assign a designated safety and health supervisor, qualified by experience and/or education, for all Services taking place. This person must be dedicated to managing the implementation of the Seller’s safety and health program but may have additional project functions provided they do not interfere with the effective implementation of the program. Seller shall provide Elk Ridge’s OATR with the name and contact information of the assigned supervisor(s) and/or any changes in the assignment.

**A.2.3 Competent and Qualified Persons:** Seller shall also employ a “competent person” and/or “qualified person” capable of identifying unsafe hazards. Such person(s) shall have the authority to take prompt corrective measures to correct such hazards, and to carry out the responsibilities of a "competent" and/or "qualified" person as required by applicable Mine Safety and Health Administration (“MSHA”) standards. Seller shall provide Elk Ridge’s OATR with the name and contact information of the assigned person(s) and/or any changes in the assignment.

**A.2.4 Project Safety Plan (PSP):** Seller shall develop a project safety plan (“PSP”) that describes how the Seller will safely provide Seller’s Services. Content of the plan shall address regulatory compliance and any additional health and safety measures as may be required for the Seller’s Services to be performed safely. A copy of the Seller’s PSP shall be provided to the Elk Ridge OATR prior to the start of on-site work.

**A.2.4.1 PPE:** Seller must ensure that Seller and Seller Representatives comply with all Elk Ridge site requirements for personal protective equipment (“PPE”), which includes, without limitation, eye protection including side shields, hard hats, toe protection, sleeved shirts and full length pants. Additional PPE such as hearing protection, dual hearing protection, dual eye protection and MSHA approved respiratory protection may be required depending on the Services being performed. Seller and Seller Representatives shall comply with MSHA’s requirement that “New Miners” wear distinctively colored hard hats and all PPE shall be ANSI/NIOSH approved. Other requirements for PPE may be included in the Contract or as a result of a risk assessment depending on the nature and scope of the work.

**A.2.5 Monthly Safety and Health Reports:** Within five (5) working days of the end of each calendar month, or after all Services are performed, Seller will provide Elk Ridge’s OATR with a written report containing the following information:

- Number of first aid injuries



- Number of MSHA reportable injuries
- Number of MSHA reportable illnesses
- Number of lost work day cases and lost days
- Number of restricted work day cases and number of restricted days
- Monthly man-hours
- Copies of all incident investigations (regardless of previous transmittal or notification)
- Copies of all completed safety inspections
- Status on all corrective actions required as a result of completed incident investigations or safety inspections
- Copies of all safety meeting minutes and sign-in sheets
- Copies of monitoring and sampling results for personnel and work areas

This information will be provided for Seller and all subcontractors to Seller. A sample report is available upon request from the OATR or contract administrator.

**A.2.6 Safety Meetings:** Seller and Seller Representatives will conduct weekly safety meetings as determined by the Elk Ridge OATR. A written record of this meeting shall be supplied to the Elk Ridge OATR by the end of that shift. Seller and Seller Representatives shall conduct a brief toolbox talk at the beginning of each and every shift to discuss the hazards associated with the scheduled Services, and the steps to be taken to ensure that the Services are performed safely and in accordance with all applicable laws and relevant Elk Ridge safety, health and environmental requirements.

**A.2.7 Accident Reporting and Emergency Care:** Seller will immediately report to Elk Ridge any of the following incidents and complete an incident investigation and corrective action report: all MSHA reportable injuries and illnesses; all property damage; all fires; and near misses which could have resulted in personal injury, illness or property damage.

In the event of a medical emergency or injury requiring offsite treatment, oral notification must be made to Elk Ridge's OATR immediately after attending to the affected employee. All other incidents require oral notification within one working day. Written incident reports are due to Elk Ridge's OATR within one working day of the incident. Completed investigations with corrective actions are due within seventy two (72) hours. Corrective actions must be tracked to completion.

**A.2.8 Safety and Health Program Enforcement; Work Stoppage:** Seller is expected to implement and enforce its safety and health program and these Requirements during the term of the Contract in a proactive manner without direction from Elk Ridge.

If safety or health deficiencies are observed by Elk Ridge during the performance of the Services, Elk Ridge may in its sole discretion, issue a written "safety deficiency notice" or oral notice to Seller for items such as, but not limited to, unsafe conditions, unsafe acts, or non-compliance with MSHA regulations. Seller shall address and correct the conditions identified in the oral or written notice in a timely fashion and notify Elk Ridge in writing when it has been corrected. Elk Ridge's issuance of a "safety deficiency notice" or an oral notice does not relieve Seller of any obligations, responsibilities, or liability under the Contract, these Requirements or applicable laws.

Elk Ridge has the authority to direct Seller to stop work and/or to remove personnel, from Elk Ridge's premises. This direction may be given orally and/or in writing to any Seller Representatives by Elk Ridge.

Examples of reasons Elk Ridge may direct Seller to stop work and/or remove personnel from Elk Ridge's premises include, but are not limited, to the following: imminent or serious hazards, unsafe behaviours or conduct, serious accidents or near misses, issuance of serious, repetitive, or high numbers of oral notices or safety deficiency notices to Seller, failure of Seller to correct safety and health hazards, inspection or surveillance findings, or other subjects of deficiency notices, unprofessional conduct, possession of firearms, weapons, alcohol, illegal substances, or drug paraphernalia, or working under the influence of alcohol or illegal substances.

Elk Ridge will not compensate Seller for costs and expenses associated with safety and health related work stoppages or personnel removal. In addition, Seller may be liable to Elk Ridge for any costs and expenses incurred by Elk Ridge associated with any safety and health related work stoppages. Seller will

not be allowed to add time to schedules, miss milestones, or avoid liquidated damages agreed to in the Contract due to safety or health related work stoppages or personnel removals.

All Seller Representatives shall have the authority to refuse work if they determine that their work conditions are unsafe. Seller Representative's supervisor shall be notified and the condition documented and corrected if necessary. The documentation will be provided to Elk Ridge's OATR within one working-day after the occurrence.

**A.2.9 Safety and Health Inspections:** Elk Ridge personnel may perform periodic safety and environmental inspections of Seller's worksite. Depending on the scope of work, Elk Ridge OATR may require that during each shift, the Seller, at Seller's sole expense, shall ensure that an appropriately certified State and/or MSHA supervisor performs and documents, in an MSHA approved book, a safety inspection of the work area. Seller shall, at its sole expense and before the end of that shift, immediately correct any problems identified during this inspection and immediately provide the Elk Ridge OATR written notice of the problem and Seller's Action Plan to alleviate the problem.

**A.2.9.1 Regulatory Agencies:** Seller shall immediately notify Elk Ridge of any and all government inspectors or compliance officers actually or expected to be on-site. Elk Ridge may elect, at its discretion, to participate in all inspections and reviews conducted on Elk Ridge's premises and any subsequent related activities. Seller shall also notify Elk Ridge of any written complaints, notices of violations, citations, etc. Copies of such materials shall be provided to Elk Ridge upon request.

#### **A.2.10 Training and Orientation:**

**A.2.10.1 Seller Training:** Before the on-site Services begin, Seller will provide occupational safety and health training in accordance with applicable federal, state and local occupational safety and health laws, regulations and standards including the MSHA standards and these Requirements. Contents of the PSP, the job safety analysis and the EAP will also be covered. This training will be documented and available for review onsite by Elk Ridge.

**A.2.10.2 Elk Ridge Provided Orientation:** Elk Ridge will provide Seller with an orientation that discusses location-specific requirements necessary to perform work at Elk Ridge's facility. Attendance and adherence to this orientation by Seller is mandatory. Elk Ridge is not obligated to provide safety and health training, advice, consultation or safety equipment to Seller.

**A.2.10.3 Visitor Orientation:** Seller shall notify Elk Ridge of all visitors and provide all visitors with a visitor orientation that includes, at a minimum, Seller's Emergency Action Plan and PPE requirements. Visitors shall be escorted at all times by a Seller's employee and shall comply with Elk Ridge's security requirements set forth in the Contract.

#### **A.2.11 Representative Conduct:**

- Seller Representatives must conduct themselves in a professional and orderly manner at all times while on Elk Ridge's premises.
- Special areas of Elk Ridge's facilities have been designated "No Smoking" areas. Smoking is not allowed in any enclosed coal handling area.
- Fighting, scuffling, horseplay, and practical joking are dangerous and strictly forbidden. Seller Representatives involved with these activities may be removed from Elk Ridge's premises and/or removed from performance of Services under the Contract.
- No Seller Representatives shall remove, displace, damage, destroy or carry off any safety device, notice or warning sign.
- No Seller Representatives will be permitted to work if, in the judgment of Elk Ridge, the Seller Representative is unable to carry on the work safely.
- Clothing suitable to work must be worn at all times. Shorts, sleeveless shirts and open footwear are not permitted. Additionally, if specific clothing or protective gear is required by the Seller's PPE Hazard Analysis, it must be worn.

#### **A.2.12 Confined Spaces:**

- Confined space is an enclosed or partially enclosed space that: (i) has been identified as such in a risk assessment; (ii) is not intended or designed primarily as a place of work; (iii) may have restricted

entry and exit; and (iv) may (1) have an atmosphere which contains potentially harmful levels of contaminants; (2) not have a safe level of oxygen, e.g., following a nitrogen purge; or (3) cause entrapment or engulfment.

- Working in confined spaces will only be allowed after written approval (permit) has been issued by the Elk Ridge OATR.
- Seller shall have a rescue plan approved by the Elk Ridge OATR in place prior to working in confined spaces.
- Seller and Seller Representatives required to work in a confined space, or to act as a standby person, must be trained, competent and tested.

#### **A.2.13 Control of hazardous energy (Lockout/Tagout):**

- Seller and Seller Representatives shall comply with Elk Ridge's isolation standards. Where required, each of the Seller Representatives doing work in isolation must have the appropriately color-coded personal lock with only one key that is identified with a tag.
- All designated Seller plant, equipment, and systems must have written procedures for isolation, which set out how the plant, equipment, or system is to be made and kept safe. Elk Ridge plant, equipment and systems isolation procedures will be provided to Seller by Elk Ridge.

**A.2.14 Hot work:** All hot work permits will be approved by Elk Ridge before welding or other hot work begins. Hot work permits are required prior to normal welding in areas outside the welding shop. Hot work permits are required for any out-of-the ordinary welding regardless of where it is conducted.

**A.2.15 Health:** If applicable, prior to commencing Services, Seller shall have a Hearing Conservation Plan in place as required by MSHA, CFR Title 30 Part 62. If requested by the Elk Ridge OATR, Seller shall supply Elk Ridge with a copy of this Hearing Conservation Plan. If applicable, prior to commencing Services, Seller shall have a Hazard Communication (Hazcom) Plan in place as required by MSHA, CFR Title 30 Part 47. If requested by the Elk Ridge OATR, Seller shall supply Elk Ridge with a copy of this Hazcom Plan. Seller shall have available copies of material safety data sheets ("MSDS") and/or safety data sheets ("SDS", collectively with the MSDS, the "Data Sheets") for all hazardous chemicals brought onto the site. Seller shall provide the Elk Ridge OATR with copies of Data Sheets for any hazardous materials that (i) Elk Ridge's employees may come into contact with during Seller's work or (ii) Elk Ridge's employees may be exposed to after Seller completes its Services and leaves the worksite.

#### **A.2.16 Vehicles and Driving:**

- Documented pre-operation inspections are required for Seller and Seller Representatives vehicles to be used on the site. Defects affecting safety shall be corrected before vehicle operation.
- Seat belts must be worn at all times that the vehicle is in operation.
- Vehicles to be used by Seller and Seller Representatives to perform Services on the site must be properly registered and licensed.
- Only Seller Representatives who are trained, competent and authorized to operate a particular vehicle shall operate such vehicles.
- Seller and Seller Representatives shall use safe parking procedures whenever the operator leaves the cab, which includes appropriate placing of the gearshift selector, turning off all lights (except where conditions warrant leaving parking lights on to identify the presence of a vehicle), turning off the engine, setting the parking/emergency brake and setting wheel chocks.
- Seller and Seller Representatives shall place a "Buggy Whip" on any vehicle being used by them and traveling on the Elk Ridge's site roads.
- Seller and Seller Representatives operating vehicles on Elk Ridge's site are required to have a Elk Ridge site-specific license to drive.

#### **A.2.17 Working at Heights:**

- Fall protection is required when working above six feet or where a risk assessment indicates a risk of fall.
- Seller shall, whenever practical, use fall prevention methods such as work platforms and scaffolding.
- Full body harnesses are required at all times when required by applicable law or directed by Elk Ridge's OATR.

- Shock absorbing lanyards are required when working above 13 feet.
- Adjustable or retractable lanyards are required when working below 13 feet
- Working at heights will only be allowed after written approval (permit) has been issued by the Elk Ridge OATR.
- All anchorage points must be above the head of the worker and must be certified to ensure that the points can take the required load.
- Seller must have a system to ensure that fall protection equipment is tested and certified for use and inspected by the user before use, and that use is discontinued in the event of a fall or where evidence of excessive wear or malfunction is present.
- Seller shall have a rescue plan approved by the Elk Ridge OATR in place prior to working at heights.

**A.2.18 Electrical:**

- An MSHA qualified electrician must inspect all electrical tools of Seller and Seller Representatives on a monthly basis.
- Colored tape or tie wraps shall be applied to all cords and power tools of Seller and Seller Representatives to indicate the month the inspection occurred.
- All electrical work on mine sites involving voltage above 40 volts must be done by an MSHA qualified electrician or by an experienced electrician working under the direct supervision of an MSHA qualified electrician. As a part of the Contract, Seller shall submit the names of MSHA qualified electricians working under the Contract.

**A.2.19 Change Management:** Seller and Seller Representatives shall be familiar with and use Elk Ridge's change management process, which shall be provided to Seller by the Elk Ridge OATR where applicable.

**A.2.20 Fire Protection:** Seller and Seller Representatives shall have an appropriately sized fire extinguisher mounted on all mobile equipment in a readily accessible location. Each extinguisher must have been inspected within the past six months and have a tag that indicates the month of inspection.

**A.2.21 Work Practices:** Seller Representatives shall not work more than 12 consecutive hours and there shall be a minimum of 10 hours between shifts. In addition, Seller Representatives shall not work more than six consecutive days, and/or 80 hours. The Elk Ridge OATR may periodically audit Seller Representatives time cards to ensure this rule is being adhered to.

**A.2.22 Other Safety and Health Requirements:** Other job-specific occupational safety and health requirements may be addressed in the technical specifications or scope of work of the Contract.

## ATTACHMENT B – ELK RIDGE’S ENVIRONMENTAL REQUIREMENTS

**B.1 SPILL PREVENTION AND COUNTERMEASURES:** Seller and Seller’s Representatives shall have systems in place to eliminate contamination of surface and/or groundwater caused by spills of materials and sediment run-off. Seller is responsible for providing secondary containment for all petroleum products and hazardous chemicals brought onto Elk Ridge’s premises. The secondary containment must be of sufficient size to contain the entire contents of the primary container plus sufficient additional storage capacity for precipitation (at least 110% of the volume of the largest container). The secondary containment must be an impermeable containment basin to prevent any spills or leaks from reaching the ground (e.g. metal stock tank). Any fuel dispensing nozzles and/or associated hoses must be kept inside the containment basin when not in use. All used fluids shall be drained into containers.

Seller is responsible for providing an appropriately trained person to be in attendance while filling its primary containers and fueling its trucks, equipment, etc. during the course of all Service activities. Seller shall also comply with all applicable Department of Transportation (“DOT”) regulations.

**B.2 AIR POLLUTION AND DUST SUPPRESSION:** Seller and Seller’s Representatives shall control emissions, including, without limitation, fugitive and respirable dust, etc., and shall implement safety procedures, e.g., respirators, water sprays, etc., to protect Seller and Seller’s Representatives and third parties (including Elk Ridge personnel) from exposure to such pollutants. Where applicable, Seller and Seller’s Representatives shall employ all practicable methods to minimize emissions of nitrogen oxides (NOx) from their operations, including utilization of fuel efficient motors, best available control methods for minimizing blast emissions, etc.

**B.3 NO DISTURBANCE OF LAND; ARCHAEOLOGICAL FINDS:** Seller and Seller’s Representatives shall receive written authorization from the Elk Ridge OATR prior to impacting any undisturbed lands. Anything having any apparent historical or archaeological interest discovered in the course of performance of the Services shall be preserved. Seller shall leave the archaeological finds undisturbed and immediately report the find to Elk Ridge so that proper authorities may be notified.

**B.4 ADDITIONAL REQUIREMENTS:** If Seller provides Services to Elk Ridge that includes dust suppression products such as magnesium-chloride, surfactants, or other products intended to reduce fugitive dust, then the products must be effective in reducing fugitive dust emissions to levels below 150 ug/m<sup>3</sup> from source materials that could include scoria (porcelainite), shale, clay, sandstone, other sedimentary rock types, and/or coal.

**B.5 TERMS NOT EXCLUSIVE:** The terms and conditions of this Attachment are in addition to and do not supplant any other terms and conditions of any other clause in the Contract except as may be noted in said clause. Nothing in this Attachment limits, in any manner, the rights and remedies available to Elk Ridge for any non-compliance by Seller with any Environmental Law.