

OFF-SITE REPAIR 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 (including teardown, inspection, and refurbishment of Elk Ridge Equipment), materials, parts, 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, acceptance of Elk Ridge Equipment for repair, 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; ACCEPTANCE; WARRANTY:**
 - A. Upon issuance of the Contract, Elk Ridge's equipment specified on the face of the Contract to be repaired ("Elk Ridge Equipment") shall be shipped by Elk Ridge to Seller's facility. Upon receipt of Elk Ridge Equipment, Seller shall tear down and inspect Elk Ridge Equipment. After teardown and inspection of Elk Ridge Equipment, Seller shall issue a quotation to Elk Ridge with the inspection findings and the cost of such repair. Elk Ridge will determine within a reasonable time if Elk Ridge will proceed with the repair. If Elk Ridge decides to proceed with the repair, the necessary changes to the Contract will be made in accordance with Section 3 to reflect the revised Services. If Elk Ridge decides not to proceed with the repair, Seller shall (i) promptly return Elk Ridge Equipment, at Elk Ridge's cost, to the location specified by Elk Ridge or (ii) if instructed by Elk Ridge, either dispose or sell for scrap left-over materials at a fair market value as mutually agreed upon by the parties.
 - B. Seller shall perform the Services set forth on the face of the Contract. Upon completion of the Services, Seller shall ship back to Elk Ridge the repaired Elk Ridge Equipment to the location specified by Elk Ridge. The cost and responsibility for shipment shall be as mutually agreed to by the parties. Upon request, Elk Ridge, at its expense, may inspect the Services during Seller's normal business hours. If, prior to final acceptance of the repaired Elk Ridge Equipment, any Service is found to be incomplete or not as specified, Elk Ridge may (i) reject the Services and require Seller to correct it without charge (including shipping the repaired Elk Ridge Equipment back to Seller's facility) (ii) or require delivery of such Services at a reduction in price that is equitable under the circumstances. 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.
 - C. Seller warrants that the Services shall be free from all defects in performance, design, workmanship and materials 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 (including shipping the repaired Elk Ridge Equipment back to Seller's facility), 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 and expenses incurred by Elk Ridge to correct such nonconformance. Notwithstanding acceptance and payment, Seller shall be liable for latent defects in the Services.
3. **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.

4. TERM; TERMINATION; REMEDIES:

- A. The Contract shall automatically terminate after final acceptance of the Services and final payment by Elk Ridge; provided that if Elk Ridge decides not to proceed with the repair the Contract shall automatically terminate (i) after return of Elk Ridge Equipment to Elk Ridge or (ii) sale/disposal for scrap of the Elk Ridge Equipment and final payment, if instructed by Elk Ridge pursuant to Section 2(A). Notwithstanding the above, this Section 4 and Sections 2, 6 – 9, 12, 16, and 18 and 21-24 of these Terms shall survive any such termination.
- B. Elk Ridge may terminate the Contract in whole or in part for convenience at any time on written notice to Seller. If Elk Ridge terminates prior to deciding to proceed with the repair, Elk Ridge shall compensate Seller for the cost incurred by Seller to teardown and inspect Elk Ridge Equipment through the effective date of termination. If Elk Ridge terminates after deciding to proceed with the repair, Elk Ridge shall compensate Seller for the cost incurred by Seller to teardown, inspect, and repair Elk Ridge Equipment through the effective date of termination. Upon receipt of notice of termination, Seller shall promptly return Elk Ridge Equipment to the location specified by Elk Ridge, at Elk Ridge's expense.
- C. 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. Upon receipt of notice of termination for default, Seller shall promptly return Elk Ridge Equipment to the location specified by Elk Ridge, at Seller's expense.
- D. 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.

5. **EMPLOYEE REQUIREMENTS:** 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.

6. **TITLE AND RISK OF LOSS:** Title to Elk Ridge Equipment shall remain with Elk Ridge throughout the course of the Contract; provided (i) if Elk Ridge decides to permit Seller to sell Elk Ridge Equipment for scrap materials, title shall pass as mutually agreed upon by the parties or (ii) Seller removes parts from Elk Ridge Equipment that will not be reinstalled and thus constitutes scrap, then title to such parts shall pass to Seller upon delivery of the repaired Elk Ridge Equipment to Elk Ridge. Title to the Services shall pass to Elk Ridge upon delivery of the repaired Elk Ridge Equipment. Unless otherwise provided on the face of the Contract, risk of loss of or damage to Elk Ridge Equipment shall pass from Elk Ridge to Seller upon delivery to Seller's facility. Unless otherwise provided on the face of the Contract, risk of loss or damage to Elk Ridge Equipment shall transfer back to Elk Ridge upon shipment of the Elk Ridge Equipment back to Elk Ridge. Seller shall be responsible for and shall make good at its own expense and all losses, damage or destruction of Elk Ridge Equipment, while in the care, custody and control of Seller.

7. **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 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.

8. **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.
9. **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.
10. **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.
11. **CHARACTER OF SERVICES:** Seller shall furnish all equipment, personnel, and material sufficient to perform the Services in accordance with the Contract expeditiously and efficiently. Time is of the essence in the performance of the Services.
12. **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.
13. **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.
14. **SAFETY:** Seller shall protect the health and safety of all personnel and the general public and shall

comply with all applicable health and safety laws, regulations and requirements (including reporting requirements).

15. **ENVIRONMENTAL COMPLIANCE:** Seller shall comply with all applicable environmental laws, rules and regulations as they apply to the Services. Seller shall promptly notify Elk Ridge of any non-compliance and take appropriate corrective action.

16. **INSURANCE REQUIREMENTS:**

- A. Seller shall 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 warranty work insurance in the following types and limits; provided that if no limit is specified below (i.e. commercial general liability), Seller shall provide Elk Ridge its current limits for that coverage:
 - i. Commercial general liability insurance. Such insurance shall cover bodily injury and property damage; including liability arising from premises, operations, 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); and
 - ii. Professional liability (E&O) insurance with a 1 year extended reporting period in an amount of \$1,000,000 per claim and \$1,000,000 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. 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.
- C. 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.

17. **PERMITS; COMPLIANCE WITH LAW:** Seller shall procure all permits and licenses and abide by all applicable laws, regulations, and ordinances in the locale where the Services are performed.

18. **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.

19. **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.

20. **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.

21. **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.

22. **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.
23. **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.
24. **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.
25. **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.
26. **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.