TERMS & CONDITIONS – COMMERCIAL SERVICES

1. Acceptance. The Vendor, by acceptance of a Valley Tool and Manufacturing LLC ("Valley Tool") Purchase Order ("PO") for a "Commercial Service" as that term is defined at Federal Acquisition Regulation ("FAR"), 48 C.F.R. 2.101, accepts all the terms and conditions hereof. The term "Commercial Service" includes the term "Service[s]" herein, including any associated Goods or Products. Acceptance of a PO shall take place by execution and return of the signed acknowledgment copy of a PO. Any modifications, alterations, or additions to the terms and conditions of a PO, to be binding, must be in writing, signed by an authorized representative of Valley Tool and delivered by Valley Tool to the Vendor. Any term, condition, reservation, or exception that is inconsistent with the terms hereof that may be contained in any printed or standard Vendor acknowledgment, invoice form or other document issued by Vendor shall be of no effect. Valley Tool hereby objects to any additional terms, inconsistent terms, conditions, exceptions, or reservations and hereby notifies Vendor that they are rejected unless otherwise accepted by Valley Tool in writing and notwithstanding Valley Tool's act of accepting or paying for any Service or otherwise performing the obligations on Valley Tool's part to be observed or performed hereunder. A PO, the referenced terms and documents therein, and these Terms and Conditions integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the parties. The headings used in this document are inserted for the convenience of the parties and shall not define, limit, or describe the scope or the intent of the provisions of the PO.

2. Payment. Unless otherwise stated in a PO, payment terms are Net Thirty (30) days after delivery of Services and after receipt by Valley Tool of a proper invoice from Vendor.

3. Pricing. Vendor represents that any price or prices specified in a PO do not exceed Vendor's current selling prices for the same or substantially similar Services to any other purchaser. Unless otherwise stipulated on a PO, all prices inserted on the face of a PO shall represent the total cost to Valley Tool at the point of delivery specified, including, but not limited to all sales taxes, excise taxes and custom duties and other government and municipal taxes, levies and charges of every description, including charges for packing, crating, boxing, storage and shipping. If a price is not stated on a PO, it is not to be filled at prices higher than the prices last previously quoted or charged for the Service(s) without written consent of Valley Tool.

4. Shipping. Unless otherwise stated on a PO, all Goods or Products related to Services that must be shipped, the Goods or Products shall be shipped F.O.B. destination to the location as stated on the PO. Except for rejected Services, title to any Goods or Products related to the Services shall pass to Valley Tool upon delivery to the identified destination location. Shipping charges must be prepaid in all cases. No additional insurance premium or shipping costs will be reimbursed unless authorized in writing by Valley Tool prior to incurrence of the costs. Goods or Products must be packed and delivered to conform with Uniform Freight Classifications to obtain the lowest shipping rate. Packing slips must be enclosed with all shipments showing order number, line

number, release number, if any, and quantity. Charges accrued though Vendor's failure to ship in accordance with Valley Tool's shipping instructions will be charged to Vendor's account.

5. Performance Time. Time is of the essence for a PO. The Services must be delivered strictly in accordance with the quantities, specifications, and delivery schedule specified, otherwise, in addition to its other available legal remedies, Valley Tool shall be at liberty to cancel a PO, in whole or in part. Valley Tool assumes no obligation for Services provided in excess of the quantities specified in a PO or any Services received by Valley Tool in advance of the specified delivery date.

6. Invoicing. Invoices from Vendor must be sent to Valley Tool within five (5) business days of the delivery of the Services.

7. Return of Documents. All blueprints and required engineering documents provided by Valley Tool are to be returned with the final invoice after all required Services have been provided. Any delay in returning the blueprints or engineering data can result in delayed payment.

8. Inspection. Services are subject to inspection by Valley Tool, and Valley Tool shall be the final judge of the Services. Valley Tool will notify Seller within thirty (30) days of delivery whether a particular Service(s) is/are accepted or rejected. No payment will be made to Vendor with respect to any Services which are rejected on such inspection. Valley Tool reserves the right to retain any portion of any Service not strictly in accordance with specifications and in such case will pay Vendor a reasonable price therefore, but such retention shall not preclude Valley Tool from rejecting the remainder of any other provision of Services and/or the Goods or Products related to the Services. Goods or Products related to rejected Services will be held for Vendor's instructions and at Vendor's risk and expense. If instructions are not received within fifteen (15) business days after notice of rejection, Goods or Products related to Services will either be disposed of or returned at Vendor's expense. No Goods or Products related to Services returned as defective shall be replaced without Valley Tool's written permission. Where re-work is required to meet specification requirements, such re-work shall be arranged by Vendor at no additional cost to Valley Tool. Payment by Valley Tool for Services shall not constitute acceptance thereof by Valley Tool, nor shall Valley Tool's inspection or omission to inspect relieve Vendor of its obligation to furnish all Services in strict accordance with all terms and provisions of a PO.

9. Warranty. (a) Seller warrants that: i. Services shall be performed by employees or agents of Seller who are experienced and skilled in their profession and in accordance with industry standards; ii. Services shall be free from defects in workmanship and conform to the requirements of a PO; and iii. Services shall not infringe any patent, copyright, trademark, or other proprietary right of any third party or misappropriate any trade secret of any third party.

(b) To the extent Vendor's delivery of Services includes Goods or Products, Seller further warrants tthat all Goods or Products covered by a PO will be manufactured and delivered free from defects in strict accordance with applicable Quality control procedures, specifications, drawings, samples, and descriptions. This warranty shall begin upon final acceptance by Valley Tool and extend for a

period of one (1) year. If any nonconforming Services are identified within the warranty period, Vendor, at Valley Tool's option, shall promptly repair, replace, reperform or remanufacture Services. Transportation of replacement Goods or Products, return of nonconforming Goods or Products, reperformance of Services, and remanufacturing of Goods or Products shall be at Vendor's expense. If repair, or replacement, reperformance or remanufacturing of Services is not timely, Valley Tool may elect to return, re-perform, repair, replace, or reprocure the non-conforming Services at Vendor's expense. All warranties shall run to Valley Tool and its customers.

10. Indemnification. Vendor agrees to indemnify and save harmless Valley Tool, its officers, directors, employees, consultants, agents, affiliates, successors, permitted assigns and customers, against all damages, expense, claims, demands, actions, suits and proceedings for actual or alleged infringement of any patent, copyright or trademark by reason of the sale, use or incorporation into manufactured Goods or Products of the Services furnished hereunder. Vendor further agrees to indemnify and save harmless Valley Tool from any and all costs related in any way to Vendor's failure to perform in accordance with the requirements of a PO, including, but not limited to, late delivery fees, restocking fees, and all damages (unliquidated, liquidated, indirect, incidental or consequential) in any way charged to Valley Tool by third parties.

11. Assignment. A PO shall not be assigned by Vendor in whole or in part without previous written consent of Valley Tool.

12. Subcontractors. The use of subcontractors to perform work under a PO is only allowed by written consent of Valley Tool.

13. Remedies. The remedies herein reserved shall be cumulative and additional to any other remedies provided in law or equity. No waiver of breach of any provision of a PO shall constitute a waiver of any other breach, or of such provision.

14. Non-advertisement. The Vendor shall not, without first obtaining the written consent of Valley Tool, in any manner advertise or publish the fact that Vendor has contracted to furnish to Valley Tool the Services listed in a PO. A breach of this provision by Vendor shall be grounds for Valley Tool to cancel a PO, without liability, except for payment for deliveries already made and accepted by Valley Tool.

15. Cessation. If Vendor ceases to conduct its operation in the normal course of business (including without limitation, its inability to meet its obligations as they mature), or if any proceeding under any bankruptcy or insolvency laws is brought by or against Vendor, or a receiver for Vendor is appointed or applies for, or an assignment for the benefit of creditors is made by Vendor, Valley Tool may terminate a PO without liability, except for deliveries already received and accepted.

16. Confidentiality. Vendor shall keep confidential all information, drawings, specifications or data furnished by Valley Tool, or prepared by Vendor specifically in connection with the performance of a PO, and shall not divulge or use such information, drawings, specifications or

data to or for the benefit of any other party. Vendor agrees that if the Services covered by a PO are to be performed to design or based on technical data furnished by Valley Tool, the Vendor shall not, without the prior written consent of Valley Tool, perform any such Services except for and upon the issuance of a PO by Valley Tool.

17. Survivability. All rights, obligations, and duties hereunder, which by their nature or by their express terms extend beyond the expiration or termination of a PO, including but not limited to warranties, indemnifications, intellectual property (including rights to and protection of intellectual property and proprietary information), and support obligations shall survive the expiration or termination of a PO.

18. Termination for Convenience. Valley Tool reserves the right to terminate a PO, or any part thereof, for its convenience. Valley Tool may terminate a PO by delivering to Vendor a Notice of Termination specifying the extent of termination and the effective date. In the event of such termination, Vendor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of a PO, Vendor shall be paid a percentage of the PO price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges Vendor can demonstrate to the satisfaction of Valley Tool, using its standard record keeping system, have resulted from the termination. Vendor shall not be paid for any work performed or costs incurred which reasonably could have been avoided. In no event shall Valley Tool be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total PO price. Vendor's termination claim shall be submitted within sixty (60) days from the effective date of the termination. Vendor shall continue all work not terminated.

19. Applicable Law. A PO shall be governed in all respects by the laws of the State of Delaware without regard to its conflicts of laws provisions. All disputes under a PO that are not resolved by mutual agreement of the parties may be decided by recourse to an action at law or in equity. Each party hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect to any litigation directly or indirectly arising out of under or in connection with a PO. Until final resolution of any dispute hereunder, Vendor shall diligently proceed with the performance of a PO as directed by Valley Tool. In a dispute that is litigated in court or before an arbitrator, the losing party shall pay the winning party’s legal fees.

20. Compliance. Vendor, in the performance of a PO, shall comply with all applicable local, state, and federal laws, orders, rules, regulations, and ordinances. Upon request by Valley Tool, Vendor shall provide evidence of compliance with applicable local, state, and federal laws, orders, rules, regulations, and ordinances (including the place of production or performance of a PO or any part thereof). Vendor shall obtain all licenses/permits, pay all fees, and other required charges, and shall comply with all applicable guidelines and directives of any local, state and/or federal governmental authority. Vendor, at its expense, shall provide reasonable cooperation to Valley Tool in conducting any investigation regarding the nature and scope of any failure by Vendor or its personnel to comply with applicable local, state, and federal laws, orders, rules, regulations, and ordinances that may affect the performance of Vendor’s obligations under a PO.

21. INDEMNITY. VENDOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS VALLEY TOOL, ITS OFFICERS, DIRECTORS, EMPLOYEES, CONSULTANTS, AGENTS, AFFILIATES, SUCCESSORS, PERMITTED ASSIGNS AND CUSTOMERS FROM AND AGAINST ALL LOSSES, COSTS, CLAIMS, CAUSES OF ACTION, DAMAGES, LIABILITIES, AND EXPENSES, INCLUDING ATTORNEYS' FEES, ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, AND COURT COSTS, ARISING FROM ANY ACT OR OMISSION OF VENDOR, ITS OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS, OR SUBCONTRACTORS AT ANY TIER, IN THE PERFORMANCE OF ANY OF ITS OBLIGATIONS UNDER A PO.

22. Independent Contractor. Vendor is an independent contractor in all its operations and activities hereunder. The employees used by Vendor to perform a PO shall be Vendor's employees exclusively, without any relation whatsoever to Valley Tool.

23. Counterfeit Work.

(a) The following definitions apply to this paragraph:

"Counterfeit Work" means work that is or contains unlawful or unauthorized reproductions, substitutions, or alterations that have been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used work represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

"Suspect Counterfeit Work" means work for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the Work part is authentic.

"Work" means all required labor, articles, materials, supplies, Goods, and Services constituting the subject matter of a PO.

(a) Vendor shall not deliver Counterfeit Work or Suspect Counterfeit Work to Valley Tool.

(b) Vendor shall only purchase products to be delivered or incorporated as Work to Valley Tool directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distributor chain. Vendor may use another source only if

(i) the foregoing sources are unavailable,

(ii) Vendor's inspection and other counterfeit risk mitigation processes will be employed to ensure the authenticity of the Work, and

(iii) Vendor obtains the advance written approval of Valley Tool.

(c) Vendor shall maintain counterfeit risk mitigation processes in accordance with industry recognized standards and with any other specific requirements identified in a PO.

(d) Vendor shall immediately notify Valley Tool with the pertinent facts if Vendor becomes aware that it has delivered Counterfeit Work or Suspect Counterfeit Work. When requested by Valley Tool, Vendor shall provide OCM/OEM documentation that authenticates traceability of the affected items to the applicable OCM/OEM. Vendor, at its expense, shall provide reasonable cooperation to Valley Tool in conducting any investigation regarding the delivery of Counterfeit Work or Suspect Counterfeit Work under a PO.

(e) This paragraph applies in addition to and is not altered, changed, or superseded by any quality provision, specification, statement of work, regulatory flowdown clause, or other provision included in a PO addressing the authenticity of Work.

(f) In the event that Work delivered under a PO constitutes or includes Counterfeit Work, Vendor shall, at its expense, promptly replace such Counterfeit Work with genuine Work conforming to the requirements of a PO. Notwithstanding any other provision in a PO, Vendor shall be liable for all costs relating to the removal and replacement of Counterfeit Work, including without limitation Valley Tool's costs of removing Counterfeit Work, of installing replacement Work, and of any testing necessitated by the reinstallation of Work after Counterfeit Work has been exchanged. The remedies contained in this paragraph are in addition to any remedies Valley Tool may have at law, equity or under other provisions of a PO.

(g) Vendor shall include paragraphs (a) through (f) and this paragraph (g) or equivalent provisions in lower tier subcontracts for the delivery of items that will be included in or furnished as Work to Valley Tool.

24. Electronic Transmission. The parties agree that if a PO is transmitted electronically neither party shall contest the validity of a PO, or any acknowledgment thereof, on the basis that a PO or acknowledgment contains an electronic signature.

25. Insurance.

(a) Vendor shall maintain for the performance of a PO the following insurances:

(i) Workers' compensation insurance meeting the statutory requirements where work will be performed;

(ii) Employer's liability ("EL") insurance in the amount of $1 million per each accident or per each employee for disease or illness;

(iii) Commercial general liability ("CGL") insurance including Products Liability and Completed Operations liability in the amount of $1 million per occurrence and $2 million in the aggregate annually, or in such higher amounts as Valley Tool may require;

(iv) Automobile liability ("AL") insurance covering third party bodily injury and property damage with a minimum of $1 million per occurrence limit, or in such higher amounts as Valley Tool may require; and

(v) Such other insurance as Valley Tool may require.

(b) Vendor shall provide Valley Tool thirty (30) days' advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of Vendor's required insurance, provided, however, such notice shall not relieve Vendor of its obligations to maintain the required insurance. Vendor shall have its insurers name Valley Tool as an additional insured on the CGL and AL policies for the duration of the PO. If requested, Vendor shall provide a "Certificate of Insurance" evidencing Vendor's compliance with these requirements. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of Valley Tool and is not contributory with any insurance which Valley Tool may carry. Vendor's obligations herein for procuring and maintaining insurance coverage are freestanding and are not affected by any other provision or language in a PO.

26. Additional Orders. Valley Tool may desire to place additional orders for Services purchased hereunder. Vendor shall provide Valley Tool with a "Last Time Buy Notice" at least twelve (12) months prior to any action to discontinue any Services or related Goods or Products purchased under a PO.

27. Records. Unless a longer period is specified in a PO or by law or regulation, Vendor shall retain all records related to a PO for four (4) years from the date of final payment received by Vendor. Records related to a PO include, but are not limited to, financial, proposal, procurement, specifications, production, inspection, test, quality, shipping, and export, and certification records. At no additional cost, Vendor shall timely provide access to such records to the U.S. Government and/or Valley Tool upon request.

28. Severability of Terms. Each clause, paragraph and subparagraph of a PO and these Terms & Conditions is severable, and if one or more of them are declared invalid, the remaining provisions of a PO and these Terms and Conditions will remain in full force and effect.

29. Changes.

(a) Valley Tool may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of a PO in any one or more of the following:

(i) technical requirements and description, specifications, statement of work, drawings, or designs;

(ii) method of shipping or packing;

(iii) place of inspection, acceptance, or point of delivery; and

(iv) delivery schedule.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of a PO, Valley Tool shall make an equitable adjustment in the PO price and/or delivery schedule, and modify the PO accordingly. Changes to the delivery schedule will be subject to a price adjustment only.

(c) Vendor must assert its right to an equitable adjustment under this clause within twenty (20) days from the date of receipt of the written change order from Valley Tool. If Vendor's proposed equitable adjustment includes the cost of property made obsolete or excess by the change, Valley Tool shall have the right to prescribe the manner of disposition of the property.

(d) Failure to agree to any adjustment shall be resolved in accordance with the Disputes provision of the PO. However, nothing contained in this "Changes" clause shall excuse Vendor from proceeding without delay in the performance of a PO as changed.

(e) All other changes in a PO shall be made by written agreement signed by both parties.

30. Stop Work Order.

(a) Vendor shall stop work for up to ninety (90) days in accordance with any written notice received from Valley Tool, or for such longer period of time as the parties may agree, and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of work stoppage.

(b) Within such period, Valley Tool shall either terminate in accordance with the provisions of a PO or continue the PO by written notice to Vendor. In the event of a continuation, an equitable adjustment in accordance with the principles of the "Changes" clause shall be made to the price, delivery schedule, or other provision(s) affected by the stoppage, if applicable, provided that the claim for equitable adjustment is made within twenty (20) days after the date of notice to continue.

31. Termination for Default.

(a) Valley Tool, by written notice, may terminate a PO for default, in whole or in part, if Vendor

(i) fails to comply with any of the terms of a PO;

(ii) fails to make progress so as to endanger performance of a PO;

(iii) fails to provide adequate assurance of future performance;

(iv) files or has filed against it a petition in bankruptcy; or

(v) becomes insolvent or suffers a material adverse change in financial condition. Vendor shall have ten (10) days (or such longer period as Valley Tool may authorize in writing) to cure any such failure after receipt of notice from Valley Tool. Default involving delivery schedule delays, bankruptcy or adverse change in financial condition shall not be subject to the cure provision.

(b) Following a termination for default of a PO, Vendor shall be compensated only for work actually delivered and accepted.

32. Excusable Delay. Vendor shall not be liable for excess re-procurement costs incurred by Valley Tool because of any failure to perform a PO under its terms if the failure arises from causes beyond the control and without the fault or negligence of Vendor. These causes are:

(a) acts of God or of the public enemy;

(b) acts of the Government in either its sovereign or contractual capacity;

(c) fires;

(d) floods;

(e) epidemics;

(f) quarantine restrictions;

(g) strikes;

(h) freight embargoes; and

(i) unusually severe weather.

In each instance, the failure to perform must be beyond the control and without the fault or negligence of Vendor. Causes beyond the control of Vendor do not include the failure of a subcontractor of Vendor to timely perform its obligations to Vendor. Seller shall notify

Valley Tool in writing within ten (10) days after the beginning of any such cause(s). In all cases, Vendor shall use reasonable efforts to avoid or minimize all such failures, including exercising work-around plans or obtaining Products, Goods or Services from other sources.

33. Priority Rating. If a PO is a "rated order" certified for national defense, emergency preparedness, and energy program use, Vendor shall follow all the requirements of the Defense Priorities and Allocation System Regulation (15 C.F.R. Part 700).

34. Export of Technical Data/ITAR.

(a) Vendor shall comply with all applicable U.S. export control laws and economic sanctions laws and regulations, specifically including but not limited to the International Traffic in Arms Regulations (ITAR), 22 C.F.R. 120 et seq.; the Export Administration Regulations, 15 C.F.R. 730-774; and the Foreign Assets Control Regulations, 31 C.F.R. 500-598 (collectively, "Trade Control Laws"). Without limiting the foregoing, Vendor shall not transfer any export controlled item, technical data, technology, or service, including transfers to foreign persons employed by or associated with, or under contract to Vendor or Vendor's lower tier suppliers, unless authorized in advance by an export license (such as Technical Assistance Agreement ("TAA") or Manufacturing License Agreement ("MLA"), license exception or license exemption, collectively, "Export Authorization"), as required.

(b) Vendor shall notify Valley Tool if any deliverable under a PO is restricted by applicable Trade Control Laws. Before providing Valley Tool any item or data controlled under any of the Trade Control Laws, Vendor shall provide in writing to Valley Tool the export classification of any such item or controlled data (i.e. the export classification under the EAR, ITAR, EU List of Dual Use Items and Technology, Wassenaar Agreement's List of Dual-Use Goods and Technologies or other applicable export control list) and shall notify Valley Tool in writing of any changes to the export classification information of the item or controlled data. Vendor represents that an official authorized to bind the Vendor has determined that the Vendor or the designer, manufacturer, supplier or other source of the work has properly determined their export classification.

(c) Vendor hereby represents that neither Vendor nor any parent, subsidiary or affiliate of Vendor is included on any of the restricted party lists maintained by the U.S. Government, including the Specially Designated Nationals List administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), Denied Parties List, Unverified List or Entity List maintained by the U.S. Commerce Department's Bureau of Industry and Security ("BIS"), or the List of Statutorily Debarred Parties maintained by the U.S. State Department's Directorate of Defense Trade Controls, or the consolidated list of asset freeze targets designated by the United Nations, European Union, and United Kingdom (collectively, "Restricted

Party Lists"). Vendor shall immediately notify Valley Tool Procurement if Vendor, or any parent, subsidiary, or affiliate of Vendor, becomes listed on any Restricted Party List or if Vendor's export privileges are otherwise denied, suspended, or revoked in whole or in part by any U.S. or non-U.S. government entity or agency.

(d) If Vendor is engaged in the business of exporting manufacturing (whether exporting or not) or brokering defense articles or furnishing defense services, Vendor represents that it is and will continue to be registered with the Directorate of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.

(e) Where Vendor is a party to or signatory under a Valley Tool Export Authorization, Vendor shall provide prompt notification to Valley Tool in the event of

(i) changed circumstances, including, but not limited to, ineligibility, a violation or potential violation of the ITAR or other applicable governmental restrictions, and the initiation or existence of a U.S. Government investigation, that could affect Vendor's performance under this Contract, or

(ii) any change by Vendor that might require Valley Tool to submit an amendment to an existing Export Authorization or request a new or replacement Export Authorization. Vendor shall provide to Valley Tool all information and documentation as may reasonably be required for Valley Tool to prepare and submit any required export license applications. Delays on Vendor's part to submit the relevant information for export licenses shall not constitute an excusable delay under a PO.

(f) Vendor shall include paragraphs (a) through (d) and this paragraph (f) of this clause or equivalent provisions in lower tier subcontracts for the delivery of items that will be included in or delivered to Valley Tool. Vendor shall immediately notify Valley Tool upon learning that any lower tier subcontractor with which it engages has become listed on the Restricted Parties List.

(g) Vendor shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of Vendor, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

35. Hazardous Material.

(a) Hazardous material, as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(b) Vendor must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under a PO. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under a PO.

(c) This list must be updated during performance of a PO whenever the Vendor determines that any other material to be delivered under a PO is hazardous.

(d) The Vendor agrees to submit, for each item, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the Vendor is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet may result in the Vendor being terminated for default.

(e) If, during performance, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Vendor shall promptly notify Valley Tool and resubmit the data.

(f) Neither the requirements of this clause nor any act or failure to act by the Government or Valley Tool shall relieve the Vendor of any responsibility or liability for the safety of the Government, Valley Tool, or Vendor personnel or property.

(g) Nothing contained in this clause shall relieve the Vendor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) The Government's rights in data furnished under a PO with respect to hazardous material are as follows:

(i) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to—

(A) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

(B) Obtain medical treatment for those affected by the material; and

(C) Have others use, duplicate, and disclose the data for the Government for these purposes.

(ii) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

(iii) The Government is not precluded from using similar or identical data acquired from other sources.

36. FAR and DFARS Clause.

If a PO is for Services to be utilized under a U.S. Government contract, the following Federal Acquisition Regulation ("FAR") and Defense Federal Acquisition Regulation Supplement ("DFARS") clauses, in effect upon the date of the PO and when applicable to the work being performed, are incorporated herein by reference, with the same force and effect as if they were given in full text, and apply to a PO with the following modifications: the term "Contractor" shall mean "Vendor", the term "Contract" shall mean a PO issued by Valley Tool, and the term "Government" or "Contracting Officer" shall mean "Valley Tool." Notwithstanding the foregoing, the terms "Government" and "Contracting Officer" do not change:

(a) When a right, act, authorization, or obligation can be granted or performed only by the Government or the Prime Contract Contracting Officer or his/her duly authorized representative,

(b) when access to proprietary financial information or other proprietary data is required, or

(c) when title to property is to be transferred directly to the Government. The effective date of the clause will be the stated date of the clause at the time of execution of a PO.

(d) The clauses listed at FAR 52.244-6.

(e) The following DFARS clauses: DFARS 252.203-7002; DFARS 252.203-7003; DFARS 252.204-7018; DFARS 252.204-7020; DFARS 252.223-7008; DFARS 252.225-7048; DFARS 252.225-7052; DFARS 252.225-7056; DFARS 252.225-7058; DFARS 252.225-7060; DFARS 252.226-7001; DFARS 252.227-7019; DFARS 252.227-7037; DFARS 252.244-7000; DFARS 252.246-7003; DFARS 252.246-7007; DFARS 252.246-7008; and DFARS 252.247-7023.

37. Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.

(a) Vendor certifies, to the best of its knowledge and belief, that--

(i) SELLER and/or any of its Principals—

(A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision; and

(ii) SELLER has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency; Have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds the threshold at 9.104-5(a)(2) for which the liability remains unsatisfied.

(b) Vendor shall provide immediate written notice to Valley Tool if, at any time prior to contract award, Vendor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

38. New Materials. The Services to be delivered hereunder shall, as necessary, utilize new materials, not used, or reconditioned, remanufactured, or of such age as to impair usefulness or safety.

39. Order of Precedence. Any inconsistencies in a PO shall be resolved in accordance with the following descending order of precedence:

(a) the face of a PO (including any continuation sheets), as applicable, including but not limited to any special terms and conditions;

(b) these Terms & Conditions; and

(c) the Statement of Work.

END