

Commercial Services Terms and Conditions

The Work, as defined in CertaPro Proposal, shall be provided in accordance with the following terms and conditions, except as modified by the Proposal:

1. Lump Sum If the Proposal indicates the Contract Sum is a Lump Sum: Payment shall be made to Contractor in accordance with the payment schedule set forth in the Proposal. In applying for each payment, the Contractor shall submit statements showing the attainment of the milestone which warrants Contractor's request for payment.

2. Time and Materials If the Proposal indicates the Contract Sum is based on Time and Materials, Contractor shall invoice Owner as costs are incurred as follows: (i) the actual invoice costs of materials, supplies, subcontracting costs, equipment rentals, freight and miscellaneous costs incurred in performing the Work, (ii) an overhead and profit fee at a percentage rate, as detailed in the Proposal, of the actual invoice costs set forth in (i) above, and (iii) Contractor's labor costs incurred in performing the Work at the rates set forth in the Proposal for each billing class. Contractor reserves the right to make reasonable increases of these rates from time to time, in its sole discretion.

3. Reimbursable Expenses Owner shall reimburse Contractor for Reimbursable Expenses, in addition to payment of compensation for Time and Materials work and/or the Lump Sum as set forth in the Proposal. "Reimbursable Expenses" means expenditures by Contractor (other than normal overhead expenses) made in relation to the Project and/or the Work, including, without limitation: mileage, airline travel, accommodations, and living expenses when traveling in connection with the Project; reproduction of drawings and specifications; materials and reproduction costs related to mechanized drafting systems; materials and supplies used in connection with the Project; equipment rental; and shipping, postage and delivery charges.

4. Invoicing and Payment

4.1 Contractor shall invoice for Work on a weekly basis. Owner shall remit full payment on all invoices within seven (7) days of the invoice date. A service charge of 1.5% per month (or the maximum legal rate) will be applied to all overdue invoice amounts, until paid. Reimbursable Expenses associated with the Work, as described in Paragraph 3, will be invoiced as incurred.

4.2 The pricing for the Work, as described in the Proposal, has been provided in reliance upon the information provided by Owner at the time the Proposal was generated. Any changes to the Project or the Work after the date of the Proposal shall entitle the Contractor to a change order under Paragraph 5 and will be invoiced as set forth in Paragraph 5.

4.3 Owner shall pay Contractor in full for its Work, all deliverables and all Reimbursable Expenses. Owner's obligation to pay Contractor is not dependent upon Owner's ability to obtain financing or receipt of funding, approval of any governmental or regulatory agency, or upon Owner's successful completion of the Project.

4.4 Contractor reserves the right, in its sole discretion, to suspend or terminate all Work related to the Project in the event of overdue payments, with seven days advance written notice, without waiving any right or claim against Owner and without any liability.

4.5 In the event that any payment remains unpaid ninety (90) days after billing, Owner shall be liable for all costs of collection, including reasonable attorneys' fees and court costs, and the hourly cost to Contractor for employee time expended in litigation or collection efforts. This Paragraph 4.5 shall survive termination.

5. Change Orders

5.1 All changes to the Work shall be accomplished by written change order signed by the Owner and Contractor. If additional cost or additional time is expected to be involved due to the change order, the change order shall detail the estimated additional cost of the change order work and the estimated date of completion of change order work, and the estimated schedule for completion of the Work, if it is affected by the change order. Unless items are specifically expressed in writing as a Lump Sum or as fixed in price, the prices detailed in change order are estimates only. Work performed as a part of a change order will be invoiced on a Time and Materials basis in accordance Paragraphs 2 and 3, unless otherwise agreed to in the change order. Contractor may ask for a deposit on a change order prior to start of the change order work.

This deposit will be credited to the last invoice associated with the change order Work.

5.2 Contractor shall not perform any change order Work or Work for which it is entitled to a change order without a properly executed change order.

6. Termination; Delays

6.1 In addition to Contractor's rights under Paragraph 4.4, this Agreement may be terminated by either party upon seven (7) days written notice at any time for good cause, including failure to perform any material provision of the Agreement.

6.2 If the Work is stopped or delayed for a period of thirty (30) days or more through no fault of Contractor, then Contractor may at its option either (i) update the pricing and/or schedule for the Work in an change order to which it is entitled; or (ii) after providing five (5) days' written notice to the Owner, terminate this Agreement.

6.3 Contractor may terminate this Agreement for cause, upon material default by the Owner, after seven (7) day notice to the Owner and reasonable opportunity to cure.

6.4 In the event of termination by Contractor, Owner shall pay Contractor in full for all Work performed and expenses incurred related to the Work, including Reimbursable Expenses, through the termination date. Owner shall also pay Contractor its reasonable costs and expenses incurred in relation to and as a result of the termination and Contractor's damages for breach of contract, including lost profits.

6.5 The termination of this Agreement for any reason will not affect any other rights or liabilities of the parties which may have accrued prior to the date of termination.

7. Notices

All notices required or permitted to be given hereunder shall be in writing and shall be delivered by first class mail, or overnight delivery service (with receipt signature required) to the parties at the addresses indicated in the Agreement. These addresses may be changed from time to time by either party, by providing notice as set forth above. Notices mailed by first class mail shall be deemed received on the third day after posting. Notices mailed by overnight delivery shall be deemed received upon receipt signature by the recipient.

8. Hazardous Material

8.1 Owner agrees to notify Contractor in advance of the presence in or around the Project area of any known: (a) asbestos or materials containing asbestos, or (b) lead, pollutants, hazardous wastes, hazardous materials, hazardous matter, or contaminants regulated under local, state or federal law (collectively, "Excluded Materials"). Regardless of whether Owner has so informed Contractor, Contractor shall not be responsible for the existence, detection, removal, containment, dispersal, discharge, or treatment of Excluded Materials or any design or engineering related to Excluded Materials, unless expressly detailing in the Proposal.

8.2 Owner agrees that if it is determined at any time that the Project involves any Excluded Materials, Owner will bear the sole risk thereof and all related costs. Owner agrees to release, indemnify, defend and hold harmless Contractor, and its officers, agents and employees (together, the "Indemnitees"), of and from all costs, claims, damages, and liability arising out of or relating to Excluded Materials, acts or omissions of the Releasees, the Owner, or third parties relating thereto, or injury caused thereby, excepting any such costs, claims, damages or liability that are solely the result of any wanton, willful, or reckless act or omission of any of the Indemnitees. The provisions of this Paragraph 10.2 shall survive termination.

9. Unknown Conditions The Agreement is based on the Initial Information provided by the Owner and set forth in the Proposal. The Contractor and Owner agree that the Contractor may rely on the Initial Information. If such Initial Information materially changes or conditions arise unknown to Contractor at the time the Proposal was provided, Contractor shall be entitled to a change order to equitably adjust the Contract Price and the schedule to address resulting changes to the Work, cost to complete the Work, and/or schedule.

10. Limited Warranty, Statute of Limitations, and Owner's Remedies

10.1 Contractor warrants that services completed by Contractor under this Agreement will be performed in accordance with that degree of care and skill ordinarily exercised under similar conditions by professionals

providing similar services practicing in the same locality. THE FOREGOING IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES WHATSOEVER, EXPRESSED, IMPLIED AND STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS. CONTRACTOR, ITS OFFICERS, EMPLOYEES AND AGENTS, HEREBY DISCLAIM ALL WARRANTIES OF ANY KIND (WHETHER EXPRESS, IMPLIED, STATUTORY OR ARISING BY CUSTOM OR TRADE USAGE), INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, DESIGN, NONINFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY CONTRACTOR IN PERFORMING ITS OBLIGATIONS HEREUNDER WILL CREATE ANY WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE WARRANTIES SET FORTH HEREIN.

10.2. Any claim for non-conforming goods shall be in writing and be received by the Contractor within thirty (30) days after its delivery of the goods and any suit or action must be brought within one (1) year of such delivery.

11.2 Remedies

11.2.1 All claims under or related to this Agreement or the Work, including but not limited to warranty claims and related to Owner's termination, shall be made in writing immediately after discovery of any breach and, in any event, within the earlier of the following dates: within twelve (12) months after the last date of Contractor's Work that is the subject of the claim or (2) within twelve (12) months of the date of invoice for Work in question. Any product or work which is the subject of a warranty claim must be held for Contractor's inspection.

11.2.2 Upon submission of a claim by Owner or a third party, as set forth in Paragraph 12.2.1, and reasonable substantiation of the claim by Contractor, Contractor shall at its option either (i) repair or re-perform the warranted Work or (ii) refund an equitable portion of the amount paid by Owner for the Work subject to the claim. If Contractor elects to repair or re-perform the warranted Work, such repair and re-performance shall not include the cost of removing or uncovering products or work from the location in which they have been installed, or the cost of reinstalling them. IN NO EVENT SHALL CONTRACTOR BE LIABLE TO OWNER FOR MORE THAN THE TOTAL AMOUNT PAID BY OWNER TO CONTRACTOR UNDER THE AGREEMENT.

11.2.3. The provisions of this Paragraph 12.2 shall survive termination.

12. Limited Liability PARAGRAPH 12.2 SETS FORTH CONTRACTOR'S ONLY OBLIGATION AND OWNER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY AND OWNER'S EXCLUSIVE REMEDY AGAINST CONTRACTOR AND ITS OFFICERS, DIRECTORS, AND EMPLOYEES FOR ALL CLAIMS ARISING UNDER OR RELATING TO THE PROPOSAL, THE AGREEMENT, OR THE WORK, WHETHER SUCH CLAIMS ARE BASED ON BREACH OF CONTRACT, TERMINATION, TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY, AND PROFESSIONAL MALPRACTICE,) OR OTHER THEORIES. IN NO EVENT SHALL CONTRACTOR, ITS OFFICERS, EMPLOYEES AND AGENTS, BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND WHATSOEVER, INCLUDING WITHOUT LIMITATION DAMAGES RESULTING FROM INTERRUPTION OF BUSINESS OR LOSS OF ANTICIPATED PROFITS, REVENUES, DATA OR BENEFITS, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE FORM (E.G., CONTRACT, TORT, WARRANTY OR OTHERWISE) OF ANY LEGAL OR EQUITABLE ACTION. OWNER'S FAILURE TO SUBMIT A CLAIM AND ABIDE BY THE TERMS PROVIDED IN PARAGRAPH 13.2(A) SHALL SPECIFICALLY WAIVE ALL CLAIMS FOR DAMAGES OR OTHER RELIEF. IN NO EVENT WILL CONTRACTOR' LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE WORK, REGARDLESS OF THE FORM OF THE ACTION OR THE ENTITY THAT BRINGS THE ACTION, EXCEED THE DOLLAR AMOUNT ACTUALLY PAID TO CONTRACTOR BY OWNER HEREUNDER. The provisions of this Paragraph shall survive termination.

13. Applicable Law This Agreement shall be construed in accordance with and governed by the laws of the State of Maine, without regard to choice of law rules. The provisions of this Paragraph 14 shall survive termination.

14. Dispute Resolution

14.1 If the parties become involved in a dispute related to, arising out of, or connected with the Work, change orders, or this Agreement or the interpretation thereof, they shall first attempt to resolve the dispute in mediation, jointly paid for by the parties, with the parties agreeing to enter into a good faith mediation through a neutral mediator in order to

attempt to resolve their differences prior to the filing of a litigation. The location of any such mediation shall be Portland, Maine.

14.2 If the parties are unable to resolve the dispute through mediation within 30 days after one of them requests mediation, then either party may make a demand for arbitration and the dispute will be resolved by binding arbitration between and jointly paid for by the parties as regulated by the Maine Uniform Arbitration Act, with the parties agreeing to accept the final arbitrator's decision. The location of any such arbitration shall be Portland, Maine. In no event shall a demand for arbitration be made after the date when institution of legal or equitable proceedings based on such a dispute would be barred by this Agreement or the applicable statute of limitations.

14.3 Any dispute for which arbitration has been demanded will be resolved by binding arbitration, and judgment shall be entered on the award. If a party after due notice fails to appear at and/or participate in the proceedings, the arbitrator will make an award based on evidence presented by the party who does participate.

14.4 In addition to rights under Paragraph 4.4, if an arbitration or litigation arises out of the Proposal, the Agreement, the Work, this transaction, or related thereto, either because Owner has breached its obligations hereunder or under applicable law, or because Owner has brought invalid claims against Contractor, Contractor shall be entitled to recover reasonable attorneys' fees and costs from the Owner. This right shall be in addition to, and not in limitation of, any right Contractor may have under applicable law.

14.5 Nothing in this Paragraph 14, however, prevents or prohibits Contractor from filing a mechanics lien in the appropriate Registry of Deeds, complaints in court related to such liens, or other acts necessary to perfect such liens. Contractor reserves the right to file and perfect a lien on the Project and agrees to stay such proceeding pending the outcome of mediation and/or binding arbitration.

14.6 The provisions of this Paragraph 15 shall survive termination.

15. Force Majeure In addition to Contractor's rights under Paragraph 8.2, in the event that Contractor is delayed at any time in the commencement, progress, or completion of the Work or performance of the Agreement due to any cause beyond Contractor's control including, but not limited to, strikes, lockouts, industrial disturbances, floods, earthquake, accidents, epidemic, pandemic, fire, weather and the elements, civil authority or action, war, rebellion, civil strife, transportation, condition of ground, lack of readiness of the job site, unavailability of building materials, or acts or God, any time for commencement, progress, or completion set forth in the Agreement shall be equitably extended for a time period not less than time period of the delay and Contractor shall be entitled to equitable compensation for the duration of the delay. The Owner waives all direct and consequential damages caused by the delay.

16. Miscellaneous

16.1 The Owner shall maintain adequate property insurance at its own expense, including builders' risk coverage, to protect the Work for the duration of any construction related to the Work.

16.2 The Proposal and these Terms and Conditions, represent the entire and integrated "Agreement" between Owner and Contractor. The Agreement supersedes all prior negotiations, representations or contracts, either written or oral related to the provision of labor, services, equipment and materials by Contractor. IF OWNER ISSUES A PURCHASE ORDER OR ANY OTHER FORM OF NOTICE TO PROCEED FOR THE WORK, IT SHALL SERVE AS AN ACCEPTANCE OF THE AGREEMENT AND THE PARTIES AGREE THAT THIS AGREEMENT SUPERSEDES ANY ADDITIONAL OR CONFLICTING TERMS IN SUCH PURCHASE ORDER OR NOTICE AND THAT ANY ADDITIONAL OR CONFLICTING TERMS IN SUCH PURCHASE ORDER OR NOTICE SHALL HAVE NO BINDING EFFECT ON CONTRACTOR.

16.4 Owner and Contractor each bind themselves and their successors and assigns, with respect to this Agreement, and neither shall assign or transfer their interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer, employee, or agent of Contractor, nor shall it be construed as giving any right or benefits hereunder to anyone other than Contractor and Owner.

17.5 Owner confirms that neither Contractor nor any of Contractor's subconsultants or subcontractors has offered any fiduciary service to Owner and no fiduciary responsibility shall be owed to Owner by Contractor or any of Contractor's subconsultants or subcontractors, as a consequence of Contractor entering into this agreement with Owner.