

BLU54, LLC VENDOR SERVICES TERMS AND CONDITIONS

1. SCOPE OF WORK AND ACCEPTANCE. BLU54 is purchasing from Vendor the Services described in the Purchase Order ("Work") upon the terms and conditions stated herein and in the Purchase Order (these "Terms and Conditions", together, the "Agreement"), and will become a binding contract upon acceptance either by Vendor's acknowledgement or performance in whole or in part. In the event of a conflict between these Terms and Conditions and a Purchase Order, the terms included on the face of the Purchase Order shall govern. No additional or different terms contained in any Vendor invoice, quote, proposal, sales order or other document required or provided by Vendor will be binding on BLU54 and BLU54 rejects such additional or different terms.

2. COMPENSATION AND PAYMENT. As full consideration for performance of the Work, BLU54 agrees to pay Consultant as provided for in the Schedule of Costs set forth in the Purchase Order, including a Maximum Authorization of billable dollar value for the performance of the Work and payment of all reimbursable expenses under this Agreement. Absent a separate written agreement to the contrary, the Maximum Authorization shall not be exceeded and BLU54 shall not be liable for Work or other costs or expenses in excess thereof.

Within thirty (60) calendar days after receipt of an invoice, BLU54 shall pay Vendor the full amount of the invoice. BLU54 shall be entitled to a 2% discount on the invoiced amount for Work if BLU54 pays Vendor the full amount of such invoice within 10 days of the applicable date in the preceding sentence. BLU54 shall be entitled to a 1% discount on the invoiced amount for such Work if BLU54 pays Vendor the full amount of such invoice within 20 days of the applicable date in the preceding sentence. However, if BLU54 objects to all or any portion of any invoice, it shall notify Vendor within ten (10) calendar days from date of receipt of invoice of its objection and both parties shall immediately make every effort to settle the disputed portion of the invoice prior to the date that payment is due. In the event the settlement of a disputed portion of an invoice is not reached by the date that payment is due, BLU54 will pay only that portion of the invoice that is not in dispute.

When required by BLU54 and as a prerequisite to payment, Vendor shall provide, in a form satisfactory to BLU54, partial lien or payment claim waivers and affidavits from Vendor and its sub-consultants for completed Work. Such waivers may be made conditional upon payment.

3. PROSECUTION OF WORK. Time is of the essence. Vendor shall perform the Work in a diligent, efficient and skillful manner. If Vendor is working in a BLU54 facility, BLU54 shall have sole authority with respect to access to and usage of this facility. Vendor shall notify BLU54 prior to each delivery of goods and/or services, materials and equipment, and BLU54 in its sole discretion, shall determine times and location for all such deliveries. If Vendor is working at a BLU54 facility or site, Vendor shall clean up and remove from the site all debris caused by its performance of the Work no less than once each workday. Should Vendor fail to provide such cleanup and debris removal, BLU54, upon forty-eight (48) hours' notice to Vendor, may arrange to have such work performed and Vendor shall be responsible for all costs incurred. Vendor shall be solely responsible for protection of any work, materials, equipment or services provided as part of the Work and for loss or damage to materials, tools, equipment, or other personal property, owned or rented or used by Vendor in performance of the Work. Vendor shall provide all tools, materials, equipment and any other items necessary to perform the Work. Vendor shall not employ personnel, means, materials or equipment which may cause interference with performance of the Work or otherwise provide personnel objectionable to BLU54.

4. SAFETY. Vendor shall perform the Work in a safe manner, shall comply with all safety measures existing or initiated by BLU54, and shall comply with all applicable laws, codes, ordinances, rules, regulations and orders of any public authority for the safety of persons or property, including such provisions as are more strict or more expensive than the safety measures of BLU54. Vendor shall be solely responsible for protection and safety of its employees, including employees of its

vendors and suppliers of every tier, for final selection of safety methods and means, for required safety reports and records, for daily inspection of the area where the Work is being performed and its employees' safety equipment, and for instruction of its employees on health and safety. Vendor agrees to establish a goal of zero accidents and injuries for the Work, and to implement, maintain and enforce a safety program consistent with such goal. Vendor shall comply with the more stringent of all safety program requirements established at the location the work is taking place, or those required by law. Vendor shall reimburse BLU54 for all costs, including reasonable attorney fees, incurred by BLU54 arising out of or connected with a failure or alleged failure of Vendor to comply with this Article, including costs of investigation and fines and penalties imposed upon BLU54 for alleged safety violations by or unsafe performance of the Work by Vendor (or any of its lower tier subcontractors or suppliers) regardless of whether BLU54 has or has not assisted or advised Vendor in fulfilling such responsibilities. Vendor shall stop any part of the Work which either BLU54 or Vendor determines to be unsafe until corrective measures have been taken. Failure on the part of BLU54 to stop any part of the Work shall in no way relieve Vendor of its responsibility hereunder.

5. LAWS AND PERMITS. The Price includes, and Vendor shall obtain and pay for all permits, licenses, and fees necessary to complete the Work. Vendor shall perform the Work in compliance with all applicable federal, state, municipal and local laws, codes, ordinances, rules, regulations, and requirements, including without limitation those relating to O.S.H.A., non-discrimination in employment, fair employment practices and equal employment opportunity, without additional expense to BLU54, and shall correct and indemnify and hold BLU54, harmless from any loss or damages arising in connection with for any violations thereof. Vendor shall furnish such proof as BLU54 may request showing compliance and correction of violations.

6. TAXES AND CONTRIBUTIONS. The Price includes, and Vendor hereby accepts exclusive liability for payment of, all federal, state, county, municipal and other taxes imposed by law or contract, and based upon labor, services, materials, equipment or other items acquired, performed, furnished or used in connection with the Work, including but not limited to (a) contributions, taxes or premiums (including interest and penalties) measured upon payroll or required to be withheld from employees; (b) pension, welfare, vacation, annuity and other benefit contributions payable in connection with labor agreements or applicable law; or (c) taxes, tariffs, duties or fees payable in connection with goods imported from a foreign country as part of this scope of work.

If Vendor provides materials as part of this Agreement, Vendor shall not include or add the following taxes to the Price. The Price excludes all sales, use, personal property and other taxes (including interest and penalties), whether stated separately, imposed by reason of furnishing such materials, or the acquiring, furnishing, ownership or use of any materials, equipment, labor, services or other items in connection with the Work.

7. INSPECTION. BLU54 and its authorized representatives shall have the right to inspect the Work and components thereof at all times and places to verify standards of good workmanship and compliance with the terms of this Agreement. All inspections and tests are for the benefit of BLU54 and shall not relieve Vendor of responsibility for providing its own quality control measures and otherwise performing the Work in accordance with the terms and conditions of this Agreement.

8. TAKING OVER PERFORMANCE-TERMINATION FOR DEFAULT. Should Vendor at any time: (a) fail to maintain the insurance coverages specified in this Agreement; (b) fail to supply sufficient skilled workers, equipment or materials of proper quality and quantity; (c) fail to prosecute the Work with promptness and diligence; or (d) should there be filed by or against Vendor a petition in bankruptcy or for an arrangement or reorganization (BLU54 being unwilling to accept and hereby declines performance by any trustee in bankruptcy); or (e) Vendor become insolvent or go into liquidation or dissolution or make a

general assignment for the benefit of creditors or otherwise acknowledge insolvency; then in any of such events, each of which shall constitute a default of Vendor, BLU54 shall have the right, to the extent permitted by law, after seventy-two (72) hours written notice to Vendor mailed or delivered to its last known address, (i) to perform (through itself or through others) any or all of the uncompleted part of the Work and to deduct the cost thereof from any monies due or to become due to Vendor under the Agreement but if such costs shall exceed such monies, then Vendor shall pay the difference to BLU54 or (ii) to terminate the Agreement in whole or in part, for all or any portion of the Work, deduct all resulting costs thereof from any monies due or to become due to Vendor under the Agreement, or in the event such costs shall exceed such monies, recover such excess costs from Vendor, and take possession of all materials, equipment, and other items thereon, all of which Vendor hereby transfers, assigns and sets over to BLU54 for the purpose of completing the Work, and to employ persons as necessary to complete the Work and to provide all labor, services, materials, equipment and other items required therefore.

9. INSURANCE. Prior to starting to perform the Work, Vendor shall procure, maintain and pay for such insurance as will protect against claims for bodily injury or death, or for damage to property, including loss of use, which may arise out of operations by Vendor or by any of its subcontractors or suppliers or by anyone employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall not be less than the greater of coverages and limits of liability specified in the Agreement or coverages and limits required by law.

(a) Vendor shall procure and maintain the following minimum insurance coverages and limits of liability:

Workers' Compensation	Statutory Limits
Employer's Liability	\$1,000,000 each accident \$1,000,000 disease policy limit \$1,000,000 disease each employee
Commercial General Liability	\$2,000,000 each occurrence \$2,000,000 general aggregate applicable on a per project basis \$2,000,000 products/completed operations aggregate
Automobile Liability	\$2,000,000 each accident
Property Insurance	Covering materials in an amount not less than 100% of the replacement cost while stored and during transit

(i) Commercial General Liability insurance required under this Paragraph shall be written on an occurrence form (ISO Form CG 00 01 or equivalent).

(ii) Automobile Liability insurance required under this Paragraph shall include coverage for all owned, hired and non-owned automobiles.

(iii) Workers' Compensation coverage shall include a waiver of subrogation against BLU54.

(iv) Vendor shall place, or cause to be placed, property insurance covering the materials while stored and during transit. In addition to providing coverage for the materials while stored and during transit, Vendor shall maintain insurance covering their storage facility in an amount not less than 100% of the replacement cost thereof insuring against the perils and costs of fire, lightning, extended coverage, vandalism, sprinkler leakage, malicious mischief, liability and rental interruption and such other insurance as BLU54 shall deem necessary. Additionally, for any materials being delivered, delivery shall be DDP project site with all transportation, freight and delivery charges, insurance and taxes paid.

(v) If the Work include(s) any portion of i) building enclosure systems (including, without limitation, vapor or moisture barriers, roofing or

flashing, exterior windows, curtainwall components or systems, plaster or stucco or exterior stone or masonry). ii) plumbing, heating, ventilating or air conditioning systems, iii) drywall or insulation, or iv) building foundations, Vendor shall procure, maintain and pay for Contractors Pollution Liability insurance. Such insurance shall have limits of not less than \$2,000,000 per claim and \$2,000,000 annual aggregate, and shall include coverage for Completed Operations extending four (4) years. The definition of Property Damage shall include clean-up costs. The definition of Pollutant shall include any form of fungus, including mold. If such insurance is written on a claims-made basis, the policy retroactive date shall be prior to the start of Vendor's Work. Renewal policies during this period shall maintain the same retroactive date.

(b) Employer's Liability, Commercial General Liability and Automobile Liability insurance may be arranged under single policies for full minimum limits required, or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy. The General aggregate on the Commercial General Liability policy shall apply on a project-specific basis.

(c) Vendor shall endorse its Commercial General Liability (including Products/Completed Operations coverage and utilizing ISO endorsements CG 20 10 10 01 and CG 20 37 10 01 or equivalent), Automobile Liability, Umbrella/Excess Liability, Contractors Pollution Liability (if required herein, and including Completed Operations coverage), policies to add BLU54 as "additional insureds" with respect to liability arising out of (a) operations performed for BLU54, by or for Vendor, (b) Vendor's completed Work, (c) acts or omissions of BLU54, in connection with their general supervision of operations by or for Vendor, (d) Vendor's use of an additional insured's tools and equipment, and (e) claims for bodily injury or death brought against any of the additional insureds by Vendor's employees, or the employees of its subcontractors of any tier, however caused, related to the performance of operations. Such insurance afforded to additional insureds under Vendor's policies shall be primary insurance and not excess over, or contributing with, any liability insurance purchased or maintained by the additional insureds.

(d) Vendor shall maintain in effect all insurance coverages required under this Article at Vendor's sole expense and with insurance carriers licensed to do business in the state in which the Project is located and having a current A.M. Best rating of not less than "A-" unless a different A.M. Best rating is accepted by BLU54 in writing. In the event Vendor fails to produce or maintain any insurance required by this Article, BLU54 may, at its option, purchase such coverage and deduct the cost thereof from any monies due to Vendor, withhold funds from Vendor in an amount sufficient to protect BLU54, Inc. and other insured parties, or terminate the Agreement pursuant to its terms.

(e) Certificates of Insurance shall be filed with BLU54 prior to commencing any Work. Renewal certificates shall be provided to BLU54, not less than ten (10) days prior to the expiration date of any of the required policies. All Certificates of Insurance shall be in a form acceptable to BLU54 and shall provide satisfactory evidence that Vendor has complied with all insurance requirements. BLU54 shall not be obligated to review certificates or other evidence of insurance, or to advise Vendor of any deficiencies in such documents, and receipt thereof shall not relieve Vendor from, nor be deemed a waiver of BLU54's right to enforce, the terms of Vendor's obligations hereunder. All insurance policies shall contain a provision that coverages and limits afforded thereunder shall not be canceled, materially changed, or non-renewed, without thirty (30) days prior written notice to BLU54. In the event that the insurer will not agree to provide such notice, the Vendor shall provide notice to BLU54. BLU54 shall have the right to examine any policy required under the Agreement.

(f) BLU54 and Vendor agree to waive all rights of recovery against each other, and their respective subcontractors and employees for loss or damage to BLU54's or Vendor's personal property including automobiles, other vehicles, equipment, tools and all other personal property that was not intended to become a permanent part of the Work, whether or not such loss or damage is insured. If such property is insured, the policies will be endorsed to include a waiver of subrogation against the parties referenced above.

(g) Any deductible amount applied to any loss payable under the Builder's Risk or Commercial Property insurance shall be borne by the

insured whose work is damaged in direct proportion as its individual loss bears to the total loss, regardless of whether such loss is to work installed and completed, to materials stored on or off site, or to materials in transit. BLU54 neither represent nor assume responsibility for the adequacy of builder's risk or property insurance to protect the interest of Vendor. It shall be the obligation of Vendor to purchase and maintain any supplementary property insurance that it deems necessary to protect its interest in the Work. To the extent of coverage afforded by builder's risk or property insurance, BLU54 and Vendor waive all rights against each other, and subcontractors, agents and employees of each other, for loss or damage to the extent that the interests of BLU54 and Vendor are covered by such insurance, except such rights as they may have to the proceeds of such insurance.

10. INDEMNITY. To the fullest extent permitted by law, Vendor shall defend and indemnify BLU54, any party BLU54 is required to indemnify, and their parent company and affiliates, and the directors, officers, members, employees, successors, and assigns of each of them (each an "Indemnified Party"), from and against any and all suits or claims alleging damages, losses and expenses, including attorneys' fees, attributable to injuries to persons or damage to property (including loss of use), arising out of or resulting from a defect in any material supplied by Vendor or the negligent or wrongful act or omission of Vendor. Vendor understands and agrees to pay any and all attorneys' fees and expenses incurred by any of the Indemnified Parties in connection with enforcing the obligations of this article. Vendor understands and agrees to undertake these obligations regardless of whether the injured person asserting a suit or claim is an employee of Vendor, its suppliers, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Vendor's indemnity obligation under this article shall not be limited in any way by the operation of a workers' or workmen's compensation act, any disability act, or any other employee benefit act.

11. WARRANTY. Vendor warrants and guarantees that it shall perform the Work in a skillful manner, and, if supplying materials, shall furnish new materials and equipment of good quality, fit for the purpose intended and free from defects; that without cost to BLU54 it shall promptly correct improper or defective workmanship, materials, equipment and other work affected by such correction which may be discovered within one year from the date of final acceptance by BLU54 of the Work or the date of acceptance of corrections or repairs subsequent to said final acceptance. The time periods established herein relate only to the Vendor's specific obligation to correct improper or defective workmanship, materials, equipment and other work affected by such correction and do not limit Vendor's responsibility for any loss or damages caused by latent defects.

12. DISPUTES. If BLU54, in its sole discretion, elects to demand arbitration with Vendor, any dispute arising between BLU54 and Vendor under the Agreement, including breach hereof, shall be decided by

arbitration in accordance with the then current Arbitration Rules of the American Arbitration Association. Subject to applicable law, arbitration proceedings shall be held in Minneapolis, Minnesota, or such other place as BLU54 may designate. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Any claim by Vendor involving, in whole or in part, acts, errors or omissions of third parties may be joined, at BLU54's discretion, with any dispute resolutions involving such third parties.

13. ASSIGNMENT AND SUBLETTING. Neither the Agreement nor any monies due or to become due hereunder shall be assigned without prior written consent of BLU54. Any assignment without prior written consent shall be of no effect and shall vest no right in the assignee against BLU54 or any other party referenced in this Agreement. BLU54's consent to any assignment shall not relieve Vendor of any of its obligations under the Agreement and Vendor shall remain as responsible for the defaults, acts and omissions of its assignee and all persons directly or indirectly employed by its assignee as it is for its own defaults, acts and omissions and those of its own officers, agents, and employees.

14. EQUAL OPPORTUNITY. Vendor, during performance of the Agreement, shall take affirmative action to insure that all employees and applicants are treated without discrimination with regard to race, color, creed, age, sex, disability, or national origin; shall comply with all applicable federal, state and local laws, ordinances, orders and regulations with respect to employment practices; and shall certify that it does not maintain or provide for its employees any segregated facilities at any of its establishments as required by the law, ordinance, order or regulation.

15. MISCELLANEOUS. (a) BLU54's waiver of a breach of the provisions of the Agreement must be specifically set forth in writing and shall not extend to any other or future breaches. BLU54's remedies herein are cumulative and in addition to other remedies in law or equity. (b) Vendor shall perform the provisions of the Agreement as an independent contractor and is not, and shall not be deemed, an agent or employee of BLU54. (c) In the event any term or provision of the Agreement is deemed void or unenforceable, it shall not thereby invalidate or be construed to invalidate any other term or provision of the Agreement, which shall remain in full force and effect to the extent the intent of the Agreement remains unchanged.

16. IDENTIFICATION OF SHIPMENTS - Seller shall provide to BLU54 all shipping papers, including, without limitation, the original bill of lading and packing slip. Such documents will not amend in any manner the terms of the Purchase Order or these Terms and Conditions. Seller shall furnish BLU54 with all Material Safety Data Sheets for qualifying material upon delivery of such material to BLU54.