

**PURCHASE AND INSTALLATION AGREEMENT PO#**

This Purchase and Installation Agreement (this "Agreement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between WHICH EQ COMPANY. ("EQ"), a Michigan corporation, with address at SITE ADDRESS and CONTRACTOR'S NAME, ("Contractor") with address at CONTRACTOR'S ADDRESS, a corporation in the state of STATE LOCATED.

WITNESSETH:

WHEREAS, EQ desires Contractor to furnish and install \_\_\_\_\_ as shown in the attached specifications and drawings.(the "Equipment"); and

WHEREAS, Contractor desires to furnish and install the Equipment pursuant to this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **AGREEMENT**. Contractor agrees to furnish and install, the Equipment described in Exhibit A - Specifications in accordance with the specifications set forth therein. In addition, Contractor shall be responsible for the work specified and outlined in the bid documents, this contract document, drawings and specifications.

2. **TIME OF PERFORMANCE**. Unless otherwise provided in writing, Contractor agrees to provide and install the Equipment in accordance with the dates set forth on Exhibit B – Implementation Schedule.

OR

Unless otherwise provided in writing, Contractor agrees to provide and install the Equipment by \_\_\_\_\_, 2009. Failure of the Contractor to complete the work within the time allowed will result in damages being sustained by the EQ. Unless otherwise provided herein, the Contractor will pay to EQ for the liquidated damages of \$\_\_\_\_\_ for each calendar day of delay in finishing the work in excess of the time specified for completion, which said sums, EQ shall have the right to deduct from any monies in its hands, otherwise due, or to become due, to said Contractor or to sue for and recover compensation or damages for non performance of this Contract at the time stipulated herein and provided for.

3. **PURCHASE PRICE**. Subject to the performance by Contractor of its obligations hereunder, EQ agrees to pay Contractor the sum of \_\_\_\_\_ Dollars(\$ ) payable Net 45 after the completion and acceptance by EQ.

In order to receive payment set forth above, Contractor shall submit each invoice, to EQ, Attn: Accounts Payable, 36255 Michigan Avenue, Wayne, MI 48184. Invoices must

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show 1) the EQ purchase order number and 2) the address of the locations where the labor and materials were shipped. Payment is not assignable by Contractor without prior written approval of EQ. Requests for assignment must be made by an officer (if a corporation), an owner or partner (if a partnership) of Contractor.

4. **PAYMENT.** EQ agrees to pay Contractor in accordance with Section 3 subject to additions and deductions for changes.

Contractor agrees, as a condition precedent to partial payments or final payment, to furnish EQ satisfactory releases, waivers of lien, affidavits, etc., and such further evidence as may be required by EQ to substantiate all reasonably valid claims for labor, material, equipment, appurtenances, etc., used in connection with this Agreement have been fully paid for and are unencumbered.

EQ may withhold, in good faith, any payment on account of: (a) defective work which Contractor has not cured within five (5) days of receiving written notice from EQ (or such longer period if mutually agreed upon); (b) reasonably valid claims filed or reasonable evidence indicating probable filing of a claim; (c) failure of Contractor to make reasonably valid payments properly to its subcontractors or for material, labor or fringe benefits; or (e) any other grounds for withholding payment allowed by law. When the above matters are rectified, such amounts as then due and owing shall be paid or credited to Contractor.

In the event that Contractor fails to pay and discharge when due any bills of any kind or nature incurred by Contractor in fulfillment of this Agreement, or if there shall be evidence of any lien or claim against EQ as a result of Contractor's operations, EQ shall have the right to retain out of any payment due, or any payment to become due, an amount sufficient for EQ to completely indemnify EQ and each of their subsidiaries and affiliates and its and their respective officers, directors, shareholders, agents, representatives, employees, successors and assigns against any such lien or claim, including reasonable attorneys' fees incurred by reason thereof. Contractor shall be notified of any claim or lien against EQ. Contractor shall be given 30 days to rectify the claim or lien prior to any action by EQ.

No payment made under this Agreement, shall be conclusive evidence of the performances of this Agreement either wholly or in part, and no payment, including final payment, shall be construed to be an acceptance of defective workmanship or improper materials.

5. **SETOFF.** EQ shall be entitled at all times to set-off any amount owing at any time from Contractor to EQ against any amount payable at any time by EQ under this Purchase Agreement. In addition to any right of set off or recoupment provided by law, all amount due Contractor shall be considered net indebtedness of Contractor and its affiliates/subsidiaries; and EQ shall have the right to setoff against or to recoup from any amounts due Contractor and its affiliates/subsidiaries from EQ and its affiliates/subsidiaries.

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6. **SHIPMENT, TRANSPORTATION, AND DELIVERY.** Shipment of the Equipment will be within \_\_\_\_\_ (\_\_\_\_) weeks from receipt of the purchase order. The estimated installation time is \_\_\_\_\_ (\_\_\_\_) weeks.

Contractor shall bear full responsibility for delivery of all components to:

Site:

Attn:

Phone:

Fax:

A notice of shipment shall be sent to **THE EQ CONTACT** at the time of shipment which shall state the order number, quantity, description of the goods or materials shipped, and the route by which the shipment is being made. All goods and materials shall be suitably packed, marked and shipped in accordance with shipping instructions specified in this Agreement and the requirements of common carriers.

Prices included herein are FOB jobsite. Transportation and Insurance charges, if any, are to be prepaid by Contractor.

Contractor shall be responsible for any difference in shipping charges arising from its failure to follow the shipping instructions specified in this Agreement or to properly describe the shipment. No additional charge shall be made to EQ for packing, crating, shipping, delivery, freight or other costs unless specifically agreed to by EQ in writing. Unless otherwise specified in this Agreement, the price stated herein includes all charges and expenses of Contractor, including, but not limited to, packing, crating and cartage.

Risk of loss and/or damage shall pass to EQ upon delivery of the Equipment to EQ's specified facility unless and to the extent loss and/or damage is caused by Contractor.

EQ shall have no liability for payment for materials or Equipment delivered that are in excess of quantities specified in this Agreement.

Contractor is solely responsible, unless otherwise agreed to by EQ, to schedule deliveries of equipment, tools, materials and supplies at a time that is mutually agreed upon by EQ and Contractor; provide personnel, equipment and tools as needed to properly and safely offload each delivery or arrange for another, qualified person(s), with EQ's approval, to properly and safely offload each delivery; and inspect each delivery to verify acceptability and/or conformance to project specifications.

If Contractor designates an alternate representative to properly and safely offload a delivery and to inspect a delivery to verify acceptability and/or conformance to project specifications, Contractor is solely responsible for ensuring that such representative strictly complies with the terms and conditions of this Agreement.

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7. **CHANGES IN SPECIFICATIONS.** EQ, by a writing signed by EQ and sent to Contractor, shall have the right at any time to make changes in the specifications of any goods, materials, and/or services covered by this Agreement, or the method of shipment or packing or the place of inspection, delivery or acceptance. Upon receipt of any such notice, Contractor shall proceed promptly to make such changes in accordance with the terms of such notice. Contractor shall deliver to EQ, within ten (10) days of receipt of EQ's change notice, a statement showing the effect of any such change in the cost of, and/or the time required for performance of this Agreement, and equitable adjustments shall be made in the contract price or delivery schedule, or both. If any such changes cause an increase or decrease in the time required for performance, an equitable adjustment shall be made and the order modified in writing accordingly. EQ's failure to object to provisions contained in any communication from Contractor shall not be deemed an acceptance of such provisions or a waiver of the provisions of this Agreement. Contractor shall not make any change in the design, processing, packing, shipping or place of delivery of the materials, goods or services without EQ's prior written approval.

8. **EXCUSABLE DELAYS.** Neither Contractor nor EQ shall be liable for loss, damages, detention or delays resulting from delays beyond its reasonable control or caused by but not limited to strikes, restrictions of the United States Government or other governments having jurisdiction, delays in transportation, inability to obtain necessary labor, materials or manufacturing facilities.

9. **WAIVER OF LIEN.** Contractor shall guarantee the Equipment shall not be subject to invocation of Subcontractor(s) claims to take and sell or hold the Equipment as security or payment of debt from Contractor to the Subcontractor(s) with issuance of applicable Waivers of Lien to EQ. To guarantee the Equipment is free of lien, Contractor shall provide EQ with waivers of lien. Contractor shall execute on behalf of itself and obtain from any of Contractor's subcontractors, material men, mechanics, laborers, and any other persons, firms, corporations, or entities possessing any right to any lien under applicable law, interim or final affidavits and lien waivers for any performance or work done hereunder and for any items sold hereunder or services performed hereunder in exchange for interim or final payment for said items or services. Contractor hereby agrees to pay promptly any lien and Contractor shall indemnify, protect and hold harmless EQ, its successors and assigns from all costs and expenses, including reasonable attorneys' fees, damages or claims arising out of any of Contractor's subcontracts or disputes between Contractor and its subcontractors or other said entities or from failure of Contractor to pay promptly its subcontractors and other entities possessing any right to any lien.

10. **GENERAL PRODUCT WARRANTY, EXTENDED WARRANTY AND PERFORMANCE WARRANTY.** If there is any of the above, list the information in this paragraph.

11. **TITLE.** Title to the Equipment shall pass to EQ upon completion. Until the title has passed to EQ, the Equipment shall remain the personal property of Contractor and shall not become a part of the real estate irrespective of how the same may be affixed or attached to the premises wherein the Equipment is installed.

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12. **ADDITIONS/DELETIONS TO THE WORK.**

a. Any and all work performed in addition to or different from the work described in this Agreement and Exhibits hereto, shall only be performed pursuant to an accepted Change Order.

b. EQ shall have the right from time to time to order additions to, or deletions from, or any other changes in extent and character of the work as may be required. A Change Order is an instrument for such changes in form and content similar to the form attached hereto as Exhibit B to this Agreement and shall specify (a) the changes in Contractor services (additions and/or deletions); (b) the change in the cost of Contractor services; (c) any changes in the work schedule as a result of the change in Contractor services; and (d) other such information as EQ may reasonably request.

c. An accepted Change Order is a Change Order which has been signed by both parties. Only authorized persons who may sign this Agreement on behalf of Contractor and EQ may sign Change Order(s), on behalf of their respective organizations. This duty may be delegated to a subsequent person within their respective organizations; however, notice of this delegation must be made in writing to the other party. Each accepted Change Order shall be incorporated herein by this reference and shall be subject to all of the terms and conditions contained herein.

13. **CANCELLATION.** EQ, by written notice to Contractor without waiving any other legal rights it may have, reserves the right to cancel the whole or any part of this Agreement without charge or to postpone delivery of any of the Equipment, or postpone performance of any services, covered by this Agreement if:

a. Contractor fails to perform or breaches of any of the terms of this Agreement relating quality and performance requirements or so fails to make progress as to endanger performance of this Agreement in accordance with its terms; or

b. Equipment or materials purchased are not in accordance with Exhibit A - Specifications or are defective in workmanship or quality and not remedied by Contractor in a timely manner as defined by the terms of this contract.

EQ shall not be responsible for any costs incurred by Contractor due to EQ's cancellation hereunder in accordance with the above, including, but not limited to, Contractor's costs for goods or materials not accepted by EQ or goods or material in process by Contractor. In the event of any such cancellation, EQ, without prejudice to any other legal or equitable remedies available to it by law or agreement, shall have the right to: (i) refuse to accept delivery of any and all goods and materials covered by this Agreement and to return such goods or materials to Contractor at Contractor's risk and expense; (ii) return to Contractor any and all goods already delivered and accepted and to recover from Contractor all payments made by EQ for such returned goods; and (iii) recover any payments made by EQ to Contractor for undelivered or returned goods or materials.

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In addition, EQ may terminate all or part of this Agreement for its convenience and without cause upon written notice to Contractor. In such event, EQ shall pay to Contractor the value of any goods or materials delivered and accepted by EQ and/or services rendered by Contractor to EQ. EQ shall be subject to reasonable cancellation charges; in connection with Contractor's actual costs in winding down operations at EQ's site. In no event shall EQ be responsible for any lost profit damages, expectation damages, or any consequential or special damages of any kind. Winding down of operations shall include costs Contractor with materials and equipment manufactured or in the process of being manufactured and has not been delivered and cannot be returned. Materials and equipment that have not been incorporated into the work and are returnable may be returned to the supplier and any restocking charges shall be the responsibility of EQ. Costs for material and equipment that are not returnable shall be owed to Contractor when transferred to EQ.

14. **INSURANCE**

a. Contractor shall not commence work under this Contract until it has obtained all insurances required as hereinafter set forth and certificates of insurance delivered to EQ.

b. Unless otherwise agreed by the parties, Contractor shall maintain insurance coverage in the forms and in at least the amounts specified below during the term of this Agreement and until one (2) years after the completion of the installation to be performed hereunder.

Workman's Compensation Employers Liability	Statutory Limits
Each Accident	\$1,000,000
Disease - Ea. Employee	\$1,000,000
Disease – Policy Limit	\$1,000,000
Commercial General Liability	
Each Occurrence	\$1,000,000
General Aggregate	\$1,000,000
Products/Completed OP Aggregate	\$1,000,000
Personal Injury and Advertising	\$1,000,000
Automobile Liability	
Each Occurrence	\$1,000,000
Pollution Liability	
Each Occurrence	\$1,000,000
Professional Errors and Omissions	
Each Occurrence	\$1,000,000
Commercial Umbrella Liability	
Each Occurrence	\$5,000,000

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c. Contractor's Commercial General Liability, Commercial Umbrella Liability, and Commercial Automobile Liability shall name EQ Holdings, Inc. and Affiliated Companies Attn: Purchasing Dept. 36255 Michigan Ave, Wayne MI 48184 as an additional insured certificate holder. Contractor insurance shall be primary and non-contributory, and to include a Waiver of Subrogation in favor of EQ Holdings, Inc. and Affiliated Companies. The above insurance limits are minimum requirements and do not constitute limits on Contractor's liability.

d. All insurance shall be written by companies with an AM Best rating of "A" or higher. Such certificates shall require that the policies shall not be canceled or reduced in coverage until thirty (30) days written notice of such cancellation or reduction has been received by Contractor and EQ.

e. If Contractor neglects or refuses to provide any insurance required herein, or if any insurance is canceled, EQ may, at its option, procure such insurance and adjust the Agreement Price downward by the reasonable amount of premiums paid or to be paid.

f. In the event Contractor subcontracts any portion of the work covered by this Agreement, Contractor shall require its subcontractor to abide by the terms of this Section 14.

15. **PRICE COMPETITIVENESS.** Contractor warrants that prices specified in this Agreement are not higher than those charged other same type of goods or materials in similar quantities or the same type of services. Contractor further agrees that the prices charged for the goods, materials or services covered by this Agreement are not in violation of any government price regulation. EQ may inform Contractor if it can purchase goods or materials of like quality at a lower delivered cost or similar services at a lower cost than under this Agreement. Contractor shall have fifteen (15) days to inform EQ if it will meet such lower cost for an equal quantity of goods, materials or services. If it does not, EQ may purchase such goods, materials or services from the other source and such quantity of goods or materials or such services shall be deducted from EQ's obligation hereunder, but this Agreement otherwise shall remain unaffected.

16. **INDEMNIFICATION.** Contractor shall indemnify, hold harmless and, at EQ's option, defend EQ, its affiliates, and subsidiaries and their respective officers, directors, shareholders, employees, representatives, agents, successors and assigns (the "Indemnitees") against any and all claims, losses, damages, liabilities and expenses (including costs of defense arbitration, settlement, reasonable attorney's fees and litigation) for death of or bodily injury to any person, destruction of or damage to any property related to and Contractor with the construction project, violation of governmental laws, regulations or orders, or any other damages claimed by Contractor or any third parties if and to the extent they result from, arise out of or are in connection with (a) any negligent or willful act or omission of Contractor, its employees, agents, representative and its Subcontractors, (b) Contractor's breach of any representation, warranty, term or provision of this Agreement, or (c) any alleged or actual infringement by Contractor of any patent or other intellectual property rights. Contractor shall not be responsible for any claim, loss, damage, liability or expense to the extent caused solely by the negligence or willful misconduct of

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EQ, its employees, representatives or agents. The obligations of indemnification imposed by this section shall survive the termination of this Agreement.

In addition, Contractor shall indemnify, hold harmless and, at EQ's option, defend Indemnitees against any death or bodily injury to any Contractor employee or subcontractor working on EQ's premises, regardless of howsoever caused.

In addition, EQ shall indemnify, hold harmless and, at Contractor's option, defend Indemnitees against any death or bodily injury to any EQ employee or subcontractor working on EQ's premises, regardless of howsoever caused.

17. **ASSIGNMENTS.** Contractor shall not assign or transfer this Agreement or any part thereof without the written approval of EQ.

18. **POLLUTION CONTROL TAX EXEMPTION. If applicable**

a. Owner may elect to apply and receive pollution control tax exemption certificates from the State of Michigan, Department of Treasury in accordance with Pollution Control Act 451 of 1994. Owner shall advise Contractor of applicable pollution control tax exemption certificates and of applicable pollution control tax exemption applications.

b. Contractor and Subcontractor shall use the tax exemption certificate number to exempt sales and use tax payments for suppliers/services provided in accordance with the Agreement, and shall not include exempt taxes in invoices to the Owner.

c. Contractors and Subcontractors shall obtain tax refunds from suppliers for sales/use tax payments made to suppliers prior to receipt of an approved tax pollution control tax exemption certificate (and number.)

d. Contractor and Subcontractor shall obtain applicable sales/use tax refunds within 90 days of receipt of approved tax pollution control tax exemption certificate(s) from Owner.

e. Contractor shall remit subsequent refunds to Owner within 30 days of receipt and shall provide monthly written reports of refunds to Owner until Contractor remits all applicable sales/use tax refunds are remitted to Owner.

19. **INTELLECTUAL PROPERTY.** Contractor represents that the Work shall not infringe on any patent or other intellectual property right of any third party.

20. **COMPLIANCE WITH LAWS.**

a. Contractor shall acquaint itself with all rules, regulations and laws in connection with EQ's worksite and shall strictly comply, and cause all subcontractors, agents and employees to strictly comply, with such rules, regulations and laws.

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b. Contractor agrees to perform all installation in accordance with applicable local, state and federal codes, ordinances and regulations having jurisdiction over such work at the time the work is performed.

c. Contractor shall be solely responsible for compliance by Contractor, its employees and its subcontractors and suppliers with all applicable local, state and federal law and any rules promulgated thereunder while performing all or any portion of the work hereunder.

21. **APPROVALS, CERTIFICATES, PERMITS AND LICENSES.**

a. Contractor shall, if necessary with the reasonable assistance of EQ, secure all design, engineering, construction and installation and operating approvals, certificates and permits that may be required for the proper execution and completion of the work.

b. Contractor shall deliver to EQ copies of all such approvals, certificates and permits. All such approvals, certificates and permits shall be in the name of Contractor as representative of EQ.

c. The costs of all permits shall be the responsibility of EQ

22. **INSPECTION AND EXAMINATION.** Contractor hereby acknowledges that prior to the execution of this Agreement, Contractor has examined and inspected the worksite and the safety documents provided by EQ or has waived such examination and inspection. Contractor herewith acknowledges all field conditions at the worksite are acceptable.

23. **SAFETY.**

a. Contractor shall initiate and maintain, and shall cause all subcontractors or agents to initiate and maintain, for the limited purpose of performing the Work, reasonable safety precautions and programs to conform with applicable provisions of federal, state and local safety or health laws, codes, rules, regulations, ordinances or other requirements to prevent injury to persons or damage to property on, about or adjacent to the Site, all before commencement of Work on the Site.

b. Contractor shall participate in EQ's Contractor Environmental Health and Safety program including, but not limited to:

1. Contractor shall complete and return with an EQ Contractor Pre-Job Checklist QES-FM-071-ALL with requested attachments to the EQ Representative, EQ Project Manager, or QEHS Manager, prior to beginning any work. This checklist shall be completed also for any and all subcontractors.

2. Contractor shall review and understand the rules and policies of the sections of the EQ Environmental Health and Safety Manual as directed by the EQ Representative, EQ Project Manager or EQ QEHS Manager with QES-FM-

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120-ALL, Contractor EHS Manual Section Checklist.) The sections are available at [www.eqonline.com/purchasing/supplier-qualification-process.asp](http://www.eqonline.com/purchasing/supplier-qualification-process.asp).

3. Contractor shall review the EQ Contractor Orientation Form QES-FM-093-ALL with the EQ Representative, EQ Project Manager, or EQ QEHS Manager, prior to the start of work at an EQ site. This form is developed by the EQ Representative for this specific work being done.

**All participants in the orientation shall sign an attendance sheet, which will be attached to the signed “Contractor Sign-Off Sheet” (Appendix B) cited below.**

4. Contractor’s Designated Representative shall sign the Contractor Environmental Health and Safety Manual Sign Off Sheet (Appendix B), QES-FM-098-ALL Sign Off Sheet to acknowledge receipt of the applicable sections of the EQ Contractor Environmental Health and Safety Manual and understanding of requirements thereof, and that it is the Contractor’s representative’s responsibility to disseminate this information to Contractor’s employees and subcontractors.

5. Contractor shall upon request, provide the Owner with a copy or description of additional safety precautions and programs.

c. Contractor shall take reasonable steps to erect and maintain safeguards for the protection of workers and eliminate or abate safety hazards created by or otherwise resulting from performance of the Work.

d. Contractor shall take all precautions reasonably necessary for the safety and health of, and shall use efforts to prevent damage, injury or loss to: (a) all persons working at the Site, (b) all materials and equipment, whether in storage on or off the Site, under the care, custody or control of Contractor or any subcontractor, and (c) other property at the Site or adjacent to the Site.

e. Contractor shall not load, or permit any part of the structures or appurtenances for which Contractor is responsible to be loaded, with a weight that will endanger the safety of any person.

f. For projects involving excavation and/or trenching of any kind, Contractor is responsible for complying with all applicable rules and regulations regarding excavation and trenching safety including whether a Qualified Person, as defined by the Michigan Occupational Safety and Health Administration (MIOSHA), must be present on site during the performance of the work.

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24. **EQUIPMENT, STORAGE AND HOUSEKEEPING.**

a. Contractor agrees to furnish all equipment required for its work. Contractor shall have the right to use the worksite, in pursuit of the performance of this Agreement, for the storage of tools, construction equipment, materials, and supplies when and where as directed and authorized by EQ.

b. It shall be the sole responsibility of Contractor to properly store and protect its delivered, construction equipment and tools. Any loss in connection with such construction equipment and tools resulting from damage, theft or otherwise shall be borne solely by Contractor. EQ shall be responsible for any loss in connection with material and equipment that is delivered by Contractor to the site.

c. Contractor agrees to do all clean up and promptly remove all rubbish and debris caused by the work. If Contractor refuses to properly and promptly cause the aforementioned to be done, EQ shall cause it to be done and charge all costs incurred to Contractor. EQ shall not unreasonably encumber any part of the worksite with its materials. Cardboard and recyclable material will be segregated for recycling. Other trash will be disposed in EQ trash containers.

25. **MATERIALS AND MATERIALS SUPPLIERS.** EQ shall have the right to order Contractor to change material suppliers and/or substitute materials in the event Contractor's material suppliers have not or will not, in EQ's sole opinion, be able to fulfill the terms and conditions of this Agreement, including, without limitation, quality, scheduling and specification terms as described herein. Any such requests by EQ shall be made pursuant to a Change Order; provided, however, that such requests shall not require Contractor's consent. If such change increases the cost for the work EQ shall bear the extra cost.

26. **MEETINGS AND REPORTS.**

a. Contractor, and relevant subcontractors if necessary and if requested by EQ, shall schedule and attend regular progress meetings with EQ for the purpose of reviewing progress of the work, adherence to the Implementation Schedule, and other issues relevant to this Agreement and the work. Meetings shall be held no less than monthly at EQ's facility once construction begins or at such other place as EQ and Contractor may mutually agree upon. Meetings prior to the start of construction shall be completed by telephone. All attendees shall sign in at every meeting. Meeting minutes will be recorded by EQ or EQ's representative. A copy of the sign-in sheet and meeting minutes shall be sent to Contractor and to EQ within five (5) business days of each meeting.

b. Contractor shall provide EQ with a written report of all changes to the Implementation Schedule on a monthly basis and shall include a corrective action plan, if applicable, addressing how Contractor intends to conform to the Implementation Schedule. Such monthly report shall be provided to EQ no later than five (5) business days after the end of the month for which such report is being produced.

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27. **COMPLIANCE WITH EMPLOYEE SCREENING; DISMISSAL OF WORKMEN.**

a. Contractor hereby represents, covenants and agrees that it will provide EQ with an employee screening policy (including drug and alcohol screening) that Contractor and its subcontractors at the worksite prior to commencement of the work at the worksite will follow with respect to all of Contractor and subcontractor employees prior to performance of the work at the worksite by such employees, which may include monthly screening.

b. Upon EQ's request, Contractor shall dismiss any workman or others employed performing the work that EQ deems incompetent, improper or a hindrance to progress of any of the work, and any so discharged shall not be again employed on any part of the work without the written consent of EQ.

28. **EQ'S RIGHT TO DO WORK.** If Contractor should neglect to prosecute the work properly or fail to perform any provision of this Agreement, EQ, after five (5) days' written notice to Contractor may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due Contractor.

29. **SUSPENSION OF WORK.** Should Contractor be delayed on account of material to be furnished by EQ, or any other delay caused by EQ, Contractor shall be granted an extension to the Implementation Schedule to account for such delay. In no event shall Contractor have a claim of damages or extra compensation on account of such delay.

30. **INDEPENDENT Contractor.**

a. Contractor is an independent contractor and not a partner, joint venture, subsidiary or affiliate of EQ.

b. No contractual relationship shall be deemed to exist by virtue of this Agreement between EQ and any of Contractor's suppliers or subcontractors and their employees and agents.

c. Notwithstanding the foregoing, Contractor shall cause each of its suppliers and subcontractors, and their employees and agents, to comply with all terms and conditions of this Agreement.

d. All acts, and omissions to act, of said suppliers and subcontractors, their employees and agents, shall be deemed to be the acts and omissions of Contractor.

31. **SUBCONTRACTS AND SUBCONTRACTORS.** Contractor shall have the right to have any of the installation accomplished by subcontractors pursuant to written subcontracts between Contractor and such subcontractors provided, however, that i) Contractor shall be solely responsible for the engagement and management of the subcontractors in the performance of the Work; ii) Contractor shall be solely liable under all such subcontracts to

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perform all of its duties and obligations under such subcontract and EQ shall not have any obligation or liability under any such subcontracts; iii) Nothing in any subcontracts shall in any way diminish or relieve Contractor from any duties or obligations under this Agreement; and iv) EQ shall have the right to refuse any proposed subcontractor in the exercise of EQ's reasonable discretion.

32. **APPLICABLE LAW.** This Agreement will be governed by, and construed and enforced in accordance with, the laws of the State of Michigan, without regard to conflict of laws principles. The parties hereby agree that the courts located in Wayne County, Michigan shall be the exclusive forum for all disputes in connection with this Agreement or its subject matter, and the parties irrevocably submit to the personal jurisdiction of such forum.

33. **CONFIDENTIALITY.** The information, drawings, plans and specifications furnished by EQ have been developed at EQ's expense and shall not be used or disclosed by Contractor other than to install, maintain and operate the goods supplied hereunder, which the parties acknowledge may include disclosure of some or all of the information, drawings, plans and specifications to the regulatory authority.

Contractor hereby agrees that Contractor shall consider all work performed for EQ and the results thereof, including, but not limited to, any reports or test results (hereinafter "Confidential Information"), as confidential and proprietary to EQ to be shared only with EQ and EQ's legal counsel. Contractor agrees that any and all proprietary information or any private information provided to Contractor in connection herewith shall also be considered Confidential Information which shall not be disclosed to others.

Contractor further agrees that it will not, without the prior written consent of EQ, publish or otherwise divulge or disclose, or discuss with anyone, the Confidential Information irrespective of the source of such Confidential Information, other than publications thereof to EQ and EQ'S legal counsel, and parties designated by either EQ or EQ's legal counsel. Contractor shall take all reasonable precautions to assure that such Confidential Information is not used by or disclosed to others, directly or indirectly, other than as provided herein. Said precautions shall include, but not be limited to, the following: (a) advising all of Contractor's directors, officers, agents, employees and representatives, including, but not limited to, subcontractors, laboratories, technicians, engineers and consultants retained by Contractor, of such privileged, confidential, and proprietary status, and securing verbal or written agreements to honor same, and (b) refraining from publishing or divulging any such information in breach of the intent hereof.

Notwithstanding the above, Contractor may comply with all legally binding judicial orders or governmental directives, and federal, state and local laws, rules, regulations and ordinances mandating the reporting to the appropriate public agencies Contractor's knowledge of findings which indicate that there exists a danger to public health, safety or the environment; provided, however, that in the event Contractor determines that it is required to disclose any Confidential Information under such circumstances, Contractor shall, unless precluded by applicable law, judicial orders or governmental directives, notify EQ in writing at least 24 hours prior to disclosure and EQ may, but shall not be obligated to, interpose all objections it may have

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to the disclosure of such information, including, but not limited to, the right to seek an appropriate protective order. If Contractor is required to disclose such Confidential Information by legally binding judicial orders or governmental directives, and federal, state and local laws, rules, regulations and ordinances mandating the reporting to the appropriate public agencies, the scope of Contractor's disclosure of such Confidential Information shall be as narrow as is legally permitted by such applicable laws, provided, that EQ may waive such limitation, in its sole discretion, by providing Contractor with written notice of such waiver.

The obligation of Contractor to maintain the Confidential Information in confidence shall continue indefinitely except with regard to any Confidential Information that, after the date hereof, through no action on the part of Contractor, becomes generally available to the public. Furthermore, regardless of whether the information shall be a part of public record or is generally available to the public or to governmental officials, Contractor shall refrain from and avoid any additional publicity or notoriety with respect to EQ, this Agreement or environmental matters pertaining to any of them.

34. **RECORDS AND DOCUMENTS.** EQ shall provide to Contractor all the reports, data, studies, plans, specifications, documents and other information which, to its knowledge, are relevant to the work performed herein. Contractor shall be entitled to reasonably rely upon the reports, data, studies, plans, specifications, documents and other information provided by EQ in performing the work. Notwithstanding the foregoing, Contractor shall not be entitled to reasonably rely on such reports, data, studies, plans, specifications, documents and other information if Contractor knew or should have known that such reports, data, studies, plans, specifications, documents and other information contained inaccuracies or were not reliable. Note that at the date of this contract the only reports, data, studies, plans, specifications and documents provided to Contractor is the pilot data and the specifications contained herein.

All reports, documents, information, and any materials generated by or furnished to Contractor under this Agreement, as well as any plans, specifications or other similar materials provided to Contractor or any subcontractor by EQ, shall be and remain the property of EQ and shall be returned to EQ immediately upon EQ's request therefore. Contractor shall not use any such reports, documents or information developed during performance of the work nor any such materials for any other purpose other than performance of the work without the prior written consent of EQ. EQ shall have the exclusive right to make any use that is ethical and appropriate of such reports, documents, information and/or similar materials.

35. **SURVIVAL OF PROVISIONS.** All covenants, agreements, indemnities, guarantees, and warranties made by Contractor shall survive completion of the work and payment of the purchase price, in full or in part.

36. **REMEDIES NOT EXCLUSIVE.** Each and every of the rights, remedies, and benefits provided to EQ by this agreement shall be cumulative, and shall not be exclusive of any other of said rights, remedies and benefits, or of any other rights, remedies and benefits allowed by law or equity or otherwise.

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37. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

38. **NON-EXERCISE OF RIGHTS.** The failure at any time to enforce any provision of this Agreement or failure to exercise any right herein granted shall not constitute a waiver of such provision or of such right thereafter to enforce any or all of the provisions of this Agreement.

39. **NOTICE.** Any notice, request, instruction or other document to be given hereunder by either party to the other shall be in writing, and delivered personally or by courier, express mail, telefax or certified mail, postage prepaid, return receipt requested (such mailed notice to be effective on the date such receipt is signed by the receiving party) as follows:

If to EQ:           SITE NAME  
                          Attn:  
                          SITE ADDRESS  
                          Phone:  
                          Fax:

If to Contractor:

                          CONTRACTOR's NAME  
                          Attn:  
                          ADDRESS  
                          Phone:  
                          Fax:

40. **SEPARABILITY.** If any portion of this Agreement is adjudged illegal, invalid, or unenforceable, such illegality, invalidity or unenforceability shall not affect any other portion of this Agreement.

41. **MODIFICATION.** No modification or waiver of any part of these Terms and Conditions shall be valid unless it is in writing and signed by an authorized representative of EQ, and an officer of Contractor.

42. **ENTIRE AGREEMENT.** EQ by acceptance of Contractor's offer does acknowledge and agree to the terms and conditions contained herein. Only representations, promises, conditions or understandings subsequently reduced to writing and signed by an authorized representative of EQ and officer of Contractor shall be binding on either party.

43. **CONFLICT.** In the event of any conflict or inconsistency between the terms of this Agreement and/or any accepted Change Orders, the terms of this Agreement, modified by such accepted Change Orders, shall control. This Agreement shall also prevail over and nullify

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any standard terms and conditions of delivery and/or acceptance that may be delivered by Contractor with the Equipment.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year set forth above.

Contractor's Name

Name of EQ Legal Entity

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

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**Exhibit A**  
**Specifications & Drawings**

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**CONTRACTOR'S NAME.**

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**Exhibit B**  
**Implementation Schedule**

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**Exhibit C**  
**TYPICAL SAMPLE (To be completed for Change Orders Only)**

**Change Order**  
**(Additions/Deletions to this Agreement)**

Project Name

Contract No.

Change Order No.

Date:

Requested By:

Site Location:

Reason for Additional Services:

Description of Change Order:

Cost of Additional Services:

Total Cost of Change Order No. \_\_\_\_\_:        \$

This Change Order is hereby made a part of and incorporated into the Agreement between EQ and Contractor dated \_\_\_\_\_ . All work performed pursuant to this Change Order shall be performed in accordance with and shall be governed by the terms and conditions of this Agreement.

**Agreed to and accepted:**

Contractor'S Name \_\_\_\_\_

Name of EQ Legal Entity \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

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