

**VIRGIN ISLANDS WATER AND POWER AUTHORITY  
GENERAL CONTRACT TERMS FOR EQUIPMENT &  
SUPPLIES**

**TABLE OF CONTENTS**

**CLAUSE NO.**

1. DEFINITIONS
2. GENERAL STATEMENT OF RESPONSIBILITY OF CONTRACTOR
3. COMMENCEMENT, PROSECUTION and COMPLETION OF PROJECT
4. SITE WORK
5. EFFECTIVE DATE OF CONTRACTS
6. CHANGES
7. A. TERMINATION FOR DEFAULT  
B. TERMINATION FOR CONVENIENCE
8. CONTRACT PRICE
9. TERMS OF PAYMENT
10. EXCUSABLE DELAY AND DAMAGES
11. DELIVERY AND FORCE MAJEURE
12. COMPLIANCE WITH APPLICABLE LAWS and ACCEPTABLE PRACTICES
13. INSURANCE
14. PERFORMANCE BOND
15. INSPECTION AND TESTS
16. RIGHT TO AUDIT
17. SUBCONTRACTING
18. ASSIGNMENT
19. CONFIDENTIALITY
20. INDEMNITY

- 21. WARRANTIES
- 22. FALSE CLAIMS
- 23. DELIVER, TITLE and RISK OF LOSS
- 24. GOVERNING LAW
- 25. TERMINATION FOR CONVENIENCE
- 26. ENTIRE AGREEMENT: MODIFICATION

**VIRGIN ISLANDS WATER AND POWER AUTHORITY  
GENERAL CONTRACT TERMS FOR EQUIPMENT & SUPPLIES**

**1. DEFINITIONS**

As used herein, the following terms shall have the meanings set forth below:

a. The term **"Work"** shall mean all equipment and/or supplies described in the Specifications, Request for Proposal, purchase orders or contract, and shall include any alternatives or exceptions to the Specifications incorporated in the bid and all work required by these General Contract Terms.

b. The term **"Specifications"** shall mean the detailed description of, and requirements for, equipment to be purchased or manufactured, including all plans and drawings, which are a part of the Specifications.

c. The term **"Authority"** shall mean the purchaser and owner of the Work, the Virgin Islands Water and Power Authority, or an authorized agent thereof.

d. The term **"Contractor"** shall mean the successful bidder who had been awarded the Contract for the performance of the Work, and shall include his/her legal personal representatives, successors, and assigns. Contractor shall also mean the "Seller", which is providing the Authority with Equipment or Supplies.

e. The term **"Contract"** shall mean the written agreement between the Authority and the Contractor.

f. The term **"Site"** shall mean the area within which the equipment is to be delivered and/or installed.

g. The term **"Contracting Officer"** shall mean the Executive Director of the Authority and any other officer or employee who is properly designated and shall include, except as otherwise provided, the authorized representative of the Contracting Officer acting within the limits of his authority. The Contracting Officer shall not mean the Project Coordinator.

## **2. GENERAL STATEMENT OF RESPONSIBILITY OF THE CONTRACTOR**

a. The Contractor shall perform the Work in accordance with the terms of the Contract. This Work includes all necessary services, the furnishing of all labor, materials, equipment, tools, supervision, transportation and insurance, and documentation except as otherwise provided necessary to comply with the Work. The obligation of the Contractor shall be deemed to carry with it the obligation to incur all items of necessary expense to perform the Work.

b. The Contractor shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of the Authority as to the work to be subcontracted; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials; and provided further, that the Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting. Nothing contained herein shall create any contractual rights in any subcontractor against the Authority. Contractor shall cause all subcontracts applicable to any portion of the Work on the Authority's premises to contain provisions which require the subcontractor to provide the same insurance coverage as is required of the Contractor, naming both Authority and Contractor as an additional insured.

c. Any provisions of the Purchase Order or Contract which appear to give the Authority a right to direct the Contractor as to the means by which the Work is to be performed, or to exercise any control over the Work shall mean that the Contractor shall be obliged to follow the desires of the Authority only as to the end results and shall not in any way modify or relieve the Contractor of his/her complete and undivided responsibility for the means by which the Work is to be performed.

d. All supplies and/or equipment supplied or services performed by Contractor under the Contract shall strictly comply with the terms, conditions, and requirements of the contract and these terms and conditions

e. The Contractor shall deliver the supplies and/or equipment and perform any services to be furnished in accordance with the scheduled delivery dates and any schedule of performance stated herein. It is understood and agreed by the Contractor that time is of the essence of each and every

portion of the Work for which a certain length of time or a completion date is fixed for performance. Receipt and acceptance by the Authority of revised schedules from the Contractor during the work shall not be deemed a waiver of the contract completion date, unless agreed to by the Authority in writing.

### **3. COMMENCEMENT, PROSECUTION AND COMPLETION OF WORK**

a. The Contractor shall furnish and maintain at the Site a competent resident supervisory representative who shall have the title of Project Manager: Provided that the Authority shall have the right to require the removal from the Site of any employee of the Contractor or any subcontractor if in the judgment of the Contracting Officer such removal is necessary to protect the interest of the Authority.

b. The Contract completion date shall be the date specified on the Bid form, or the Purchase Order or Contract, unless the Contractor has designated a later date that is acceptable to the Authority. The Work shall be deemed to be completed upon acceptance by the Contracting Officer following written notification from the Contractor that the Work is ready for final inspection and acceptance.

### **4. SITE WORK**

When any aspect of this Contract involves attendance at or the performance of Services at the Authority's plant site or the site of any of the Authority's customer, the following additional provisions shall apply: (a) Contractor and its agent, officers, employees, and subcontractors shall comply with all site rules and all safety and security regulations imposed by the Authority (or its customer, if at such customer's site); (b) Contractor shall take all necessary precautions to prevent the occurrence of any injury to person or property during the performance of the services; (c) Contractor shall maintain the following insurance during the performance of the Services, and shall provide the Authority with satisfactory proof of such insurance coverage: (i) general liability insurance covering all sums for which Contractor shall become legally liable to pay as damages arising out of property damage, personal injury, bodily injury, sickness or death; (ii) automobile liability insurance covering all sums for which the Contractor shall become legally liable to pay as damages arising out of bodily injury, sickness or death or property damage, arising out of the operation of owned or non-owned automobiles; (iii) Worker's Compensation

Insurance to conform with the laws and limits in accordance with statutory requirements of the applicable jurisdiction, and employer's liability insurance covering all sums for which Contractor shall become legally liable to pay as damages arising out of bodily injury to or occupational disease of the employees of Contractor or employees of any subcontractor of Contractor; (iv) if the Services required any professional engineering, design, architectural, or survey services, professional liability insurance covering all sums for which Contractor shall become liable to pay as damages arising out of property damage or personal injury, bodily injury, sickness, or death (such policy shall be maintained for three years beyond final completion of the Services); (d) all required insurance coverage specified above shall; (i) except as otherwise expressly provided, provide for combined single limit of liability for each occurrence of not less than \$1,000,000.00; (ii) include a waiver of subrogation clause in favor of the Authority; (iii) name the Authority as an additional insured with respect to the operations of Contractor; and (iv) provide that at least 30 days' written notice shall be given to the Authority prior to any material change or cancellation of any such policy or policies.

## **5. EFFECTIVE DATE**

The Contract shall become effective upon the date of signature by the authorized representative of the Contractor or the Authority, whichever is later, which later date shall be the effective date of the Contract.

## **6. CHANGES**

The Authority may at any time, by written notice to Contractor, change this order or the Contract as to (1) designs or drawings of or specifications for the equipment, (2) time or place of delivery or performance, (3) method of packing or shipment, or (4) quantity of the goods or extent of the services. If this causes a change in Contractor's cost or time of performance, then an equitable adjustment shall be made in the price or time for delivery or performance, or both, if Contractor give the Authority a written request for an adjustment within 20 days after the Authority notifies Contractor of the change. All changes must be documented and approved in writing by the Authority project manager before authorizing any changes. Contractor's actions in proceeding with the changes to the Scope of Work without first securing written authorization from the Contracting Officer shall result in a legal presumption

that shall be prima facie that Contractor is not entitled to additional compensation. Compensation, for changes to the Scope of Work, or extensions of the completion date because of changes, or other modifications of the Contract due to change shall be set forth in change orders or contract addendums. Provided however, that the disagreement between the parties on adjustments for changes shall not excuse the Contractor from proceeding with the completion of the Work as changed.

Termination under this paragraph shall terminate or impact only the Contractor's obligation and right regarding the delivery of goods or in providing services under any provision of the Contract, including this paragraph, and shall not terminate or impair Contractor's other obligations, or any of the Authority's rights, under the Contract.

**7. A. TERMINATION FOR DEFAULT**

- (i) If the Contractor shall commit a material breach or default of any of its covenants or obligations under the Contract and shall fail to commence to remedy the same within seven (7) work days after receipt of written notice thereof by the Authority, and also to proceed with due diligence to remedy the same and in all events, to remedy the same within ten (10) work days after such written notice, the Authority may terminate by fifteen (15) days written notice the Contractor's right to proceed with the Work or such part thereof as to which there has been a default. In such event, the Authority may take over the Work and prosecute same to completion by contract or otherwise and the Contractor and his sureties may be liable to the Authority for any excess cost occasioned the Authority thereby, and for damages inclusive of any excess cost occasioned by the Authority until such reasonable time as may be required for final completion of the Work. If the Contractor's right to proceed is so terminated, the Contractor shall provide so that the Authority can utilize in the completion of the Work such materials, data, reports, calculations, and information as has been compiled by Contractor in the performance of the Work which the Authority has previously paid for.
- (ii) If the Authority shall commit a material breach or default of any of its covenants or obligations under

the Contract and shall fail to commence to remedy the same within seven (7) work days after receipt of written notice thereof by the Contractor, and also to proceed with due diligence to remedy the same and in all events, to remedy the same within ten (10) work days after such written notice, the Contractor may, by fifteen (15) days written notice to the Authority, terminate the Authority's right to proceed with the Work or such part thereof as to which there has been a default. In such event, the Authority may be liable for damages.

- (iii) Upon receipt of a termination notice, Contractor shall
- (a) promptly discontinue all Work to the extent directed; and
  - (b) secure the Work site to avoid damage or injury to persons or property.

**B. TERMINATION FOR CONVENIENCE**

- (a) The Authority may, at any time, terminate the Contract for its convenience and without cause.
- (b) Upon receipt of written notice from the Authority of such termination for the Authority's convenience, the Contractor shall:
  - i. cease operations as directed by the Authority in the notice;
  - ii. take actions necessary, or that the Authority may direct for the protection and preservation of the Work;
  - iii. except for Work directed to be performed prior to the effective date of the termination stated in the notice, terminate all existing subcontracts and purchase order and enter into no further subcontracts and purchase orders.
- (c) In the case of such termination for Authority's convenience, the Contractor shall be entitled to receive payment for Work executed and reasonable costs incurred (as outlined in b(iii)) by reason of such termination. All materials, supplies and equipment purchased in connection with the scope of work shall, if and when paid for by the Authority, become the property of the Authority.



## **8. CONTRACT PRICE**

Unless otherwise expressly and specifically provided herein, the prices stated in the purchase order, contract, contract addendum or change orders are firm and are not subject to increase. Unless the Authority agrees otherwise in writing, the Authority shall not be required to pay any sales, use or other taxes arising because of the Authority's purchase from the Contractor. The Authority shall not be required to pay any late charge, interest, finance charge, or similar charge, unless the parties agree otherwise in writing. The Authority's payment of the purchase price does not constitute its acceptance of the goods or services.

## **9. TERMS OF PAYMENT**

1. Payments will be in accordance with the following:

a. Unless otherwise specified in the Purchase Order or Contract, payment shall be made by the Authority to the Contractor within thirty (30) days after receipt and processing of a properly executed and duly certified invoice thereof with required supporting documentation.

b. Should the Purchase Order or Contract contain a schedule of payments, such schedule will be appropriately adjusted for any delays in delivery or other performance.

c. The acceptance by the Contractor of final payment, except for any express written reservation of rights, shall be and shall operate as a release of the Authority from all claims of and all liability to the Contractor for all things done or furnished in connection with the Purchase Order or Contract, and for every act and neglect of the Authority and others for whom the Authority is or may be responsible relating to or arising out of the Purchase Order or Contract. However, no payment, final or otherwise, shall operate to release the Contractor from any obligations under the Purchase Order or Contract.

## **10. EXCUSABLE DELAY AND DAMAGES**

(a) Contractor shall be excused for any delay in performance hereunder arising from a cause beyond its control which it could not by the exercise of due diligence have

avoided, including an act of any governmental authority, an act of God, extraordinary weather conditions, flood, an accident such as a fire or explosion not due to the negligence of the Contractor, a strike not caused or prolonged by an unfair labor practice of the Seller, public disorder or riot, a failure of public transportation facilities, and inability of the Authority to provide access due to plant malfunctions. Delay in the Contractor's receipt of subcontracted supplies or services, even for reasons beyond the control of the subcontractors, shall not be excusable delay hereunder if the supplies or services are available to the Contractor from another source. The Contractor shall give written notice and full particulars of the cause of delay relied upon within 48 hours after the Contractor knows, or should know, of the occurrence. The time for performance in any such instance shall be extended by a period equal to the time lost by reason of the excusable delay. The Authority shall not be liable for any additional costs incurred as a result of such delay.

(b.) If the Contractor should fail to meet the Contract completion date, for any cause other than excusable causes as defined in paragraph a, above, the Contractor and his sureties shall be liable to the Authority, and shall be assessed liquidated damages and not as a penalty subject to a maximum of liquidated damages not greater than of the total consideration, which amount the Authority may deduct from payments thereafter due the Contractor.

(c.) The Authority reserves the right under this clause to forego its claim for liquidated damages for delays and to sue for actual damages incurred as a result of such delays.

## **11. DELIVERY AND FORCE MAJEURE**

Unless the Authority agrees otherwise in writing, Contractor shall deliver the goods DDP ("delivered duty paid") and F.O.B. (Uniform Commercial Code term) to the location identified by the Authority, except that the Authority may, at its option, take delivery of all or any part of the goods at Contractor's facility; provided however that it shall be the responsibility of the Contractor to ensure delivery of the equipment to the designated location and further provided that the Contractor shall deliver the equipment or supplies to a reputable shipping agency and insure the equipment or supplies for 120% of the value of the Contract or Purchase Order. Time of delivery or performance is of the essence, and the Authority's stated delivery or performance date and the date for performance of any other obligation of

Contractor shall not be extended for any reason, including delays in manufacture or shipment that Contractor cannot control, except as provided in the following sentence. Contractor shall not be liable for any nonperformance or delay in performance caused solely by a strike, lockout, riot, war, insurrection, act of God or public enemy, if Contractor immediately notifies the Authority of the event and gives the Authority a detailed description of the non-performance and/ or delay in completion of the Work that will be caused by it.

The Authority shall then have the option to terminate the Contract, without liability to Contractor, by giving written notice of termination to Contractor. Except as provided in this paragraph, no event or circumstance shall limit Contractor's liability for any non-performance or delay, even if the event or circumstance is beyond Contractor's control.

## **12. COMPLIANCE WITH APPLICABLE LAWS AND ACCEPTED PRACTICES**

a. The Contractor shall comply strictly with all applicable federal, state, territorial and local laws, codes, orders and regulations in connection with the performance of the scope of work. The Contractor shall provide the Authority, upon request, with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with this Article.

b. Contractor acknowledges that it is required to comply with applicable export laws and regulations relating to the sale, exportation, transfer and usage of the Supplies or Equipment provided under the Contract, including any export license requirements. Contractor agrees to indemnify and hold the Authority harmless from any and all costs, liabilities, penalties, sanctions and fines related to non-compliance with applicable export laws and regulations.

## **13. INSURANCE**

The insurance requirements are as set forth in the attached Exhibit A.

## **14. PERFORMANCE BOND**

INTENTIONALLY OMITTED

## **15. INSPECTION AND TESTS**

- A. The Authority shall have the right to inspect any and all records of the Contractor or its subcontractors whenever the Authority believes that this is necessary to assure it that equipment to be furnished hereunder is being produced and will be produced in full compliance with the requirement of the Contract or Purchase Order and on schedule. In addition, the Contractor shall provide, and shall cause its subcontractors to provide, access to factories and shops at all reasonable times for the Authority to inspect work in progress. The Authority shall have the right to be present and witness tests relating to the equipment purchased hereunder. The Authority, in addition, shall have the right to require additional tests to be performed at all reasonable times and places. Any special tests ordered in writing by the Authority will be paid for by the Authority, provided that if such tests reveal nonconformity with the Purchase Order requirements, the cost of such tests shall be borne by the Contractor. No inspection, failure to inspect or waiver of inspection by the Authority or anyone acting on its behalf shall relieve the Contractor of its obligation to furnish equipment and services fully in accordance with the requirements of the Contract or Purchase Order. All equipment is received subject to inspection and approval, notwithstanding prior payment, it being understood that payment does not constitute acceptance. All rejected equipment will be held at the Contractor's expense and risk, pending the Contractor's disposition instructions.
- B. The Authority shall have the right to inspect the Goods, if any, at Contractor's plant or other place of manufacture. Notwithstanding any such inspection, all Goods are subject to the Authority's final inspection and acceptance on deliver. If rejected, the Goods will be held for disposal at Contractor's risk and expense. No inspection, acceptance of any part or all the Goods, or payment shall relieve Contractor from full responsibility for furnishing Goods conforming to the requirements of this Contract, nor prejudice any claim, right, or privilege the Authority may have for defective or unsatisfactory Goods, delays in delivery, or other non-compliance with this Contract by Contractor.

## **16. RIGHT TO AUDIT**

1. The Authority reserves the right to review original estimate files, change order estimate files, detailed worksheets; subcontract and supplier proposals for both successful and unsuccessful bidders; all project-related correspondence; subcontractor and supplier change order files (including detailed documentation covering negotiated settlements); back-charge logs and supporting documentation; any records detailing cash, trade or volume discounts earned and insurance proceeds, rebates, or dividends received.
2. The contractor shall provide the Authority with copies of records in computer-readable format as well as a hard copy.
3. The Authority reserves the right to audit any supporting evidence necessary to substantiate charges related to the contract or purchase order (both direct and indirect costs, including overhead allocation as may apply to costs associated with the contract or purchase order).
4. The Authority reserves the right to audit any records necessary to evaluate and verify (a) contractor compliance with contract requirements, (b) compliance with the Authority's business ethics policies, and (c) compliance with provisions for pricing change orders, payment, or claims submitted by the contractor or any of payees.
5. The contractor's records shall be subject to audit throughout the term of the contract and for a period of five years after final payment or longer, if required by law.
6. The contractor shall include the Authority's right to audit provisions in contracts of all subcontractors, insurance agents, material suppliers, or any other business entity providing goods and services
7. The Contractor shall permit the Authority to interview any of the contractor's current and former employees during the audit.
8. The Contractor shall provide adequate work space and

access to photocopy machines.

9. The Authority shall recoup the cost of the audit if the audit detects over charges greater than 0.5 % of the total contract billings.

#### **17. SUBCONTRACTING**

The Contractor shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of the Authority as to the work to be subcontracted and the subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials; and provided further, that the Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting. Nothing contained herein shall create any contractual rights in any subcontractor against the Authority. Contractor shall cause all subcontracts applicable to any work on the Authority's premises to contain provisions which require the subcontractor to provide the same insurance coverage as is required of the Contractor, naming both the Authority and Contractor as additional insureds. Subcontracts shall provide for the Contractor the same rights against the subcontractor as the Authority has hereunder against the Contractor and shall expressly state that such provisions shall also be for the benefit of the Authority.

#### **18. ASSIGNMENT**

The Contractor shall not assign the Purchase Order or Contract or any of its rights thereunder the Purchase Order or Contract without the prior written consent of the Authority, and any assignment made without such consent shall be void.

#### **19. CONFIDENTIALITY**

All reports, specifications, software, drawings, photographs, technical information, and information regarding locations of facilities, furnished by the Authority or originally furnished or prepared by the Contractor or its subcontractors in connection with the Purchase Order or Contract shall, except to the extent indicated in writing by the Authority, be held confidential and not disclosed to any third parties, be used only in connection with the performance of the Purchase Order or Contract, and be delivered or returned to the Authority upon completion of such performance. The Contractor shall not use the Authority's

name in connection with any advertisement or any announcement regarding its work under the Purchase Order or Contract or for any other purpose without obtaining the Authority's prior written permission. The Contractor acknowledges that its violation of the provisions of this article may result in irreparable harm to the Authority, the amount of which would be difficult to ascertain and which would not be adequately compensated for by monetary damages.

Accordingly, the Contractor agrees that the Authority will be entitled to injunctive relief to enforce the terms of this article, in addition to its remedies at law.

## **20. INDEMNITY**

(a) Contractor shall indemnify and hold the Authority harmless (and defend the Authority, upon its request) as to any claims, liabilities, losses, damages and expenses (including, without limitation, attorneys' fees and other legal expenses) brought against the Authority or incurred by the Authority because of: (1) any breach by Contractor of any of its representations or warranties to, or agreements with, the Authority; (2) any claim that any of the supplies, equipment or services provided by the Contractor infringes upon any patent, trademark, copyright or other intellectual property right, anywhere in the world; or (3) any death, injury, cause of action or damage to any person or property alleged to have been caused by the Contractor in performance of the Work.

(b) If the Authority is sued for acts arising out of those set out in (a) above, the Contractor shall promptly accept the tender of defense made by the Authority, as a condition of this contract.

(c) It is further agreed to by the parties that the Authority shall have the sole authority to direct the defense of and settle any indemnified claim. Further that the Authority shall not contribute to any settlement so long as the demand is within the insurance policy limits required by the contract or purchase order.

## **21. WARRANTIES**

The Contractor warrants that the equipment furnished hereunder will be new and free from defects in title, design, material, fabrication and workmanship, will conform strictly to applicable specifications, drawings, standards and codes, regulatory requirements, and other descriptions

incorporated herein, will be suitable for its intended purpose and of merchantable quality, and will comply with and be usable in compliance with its intended purpose and with all applicable laws and regulations. The Contractor further warrants that any services furnished hereunder shall be rendered competently by qualified personnel and in accordance with the best accepted practices. Should any failure to meet any of the warranties stated herein appear within twelve (12) months after commencement of commercial operation of the equipment or eighteen (18) months after acceptance of the equipment by the Authority, whichever first occurs, the Contractor shall upon notice by the Authority repair or replace the equipment and perform the services not conforming to the foregoing warranties, promptly and without expense to the Authority. In the event of a failure of the Contractor to promptly remedy any breach of warranty as aforesaid, the Authority may correct the deficiencies and charge the Contractor for the cost thereof, which costs the Contractor shall pay. The aforesaid warranties shall survive acceptance of and payment for equipment and services furnished hereunder. After any equipment or services have been repaired, replaced or redone pursuant to the foregoing warranties, they shall be subject anew to the original warranties.

## **22. FALSE CLAIMS**

Contractor warrants that it shall not, with respect to any Contract or Purchase Order, make or present any claim upon or against the Authority and/or the Government of the Virgin Islands, or any officer, department, board, commission, or other agency thereof, knowing such claim to be false, fictitious or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is an offense under Virgin Islands law.

## **23. DELIVERY, TITLE and RISK OF LOSS**

Delivery of the Goods, if any, to the Authority shall take place at The Authority's plant site or such other shipping destination specified on the face of this Contract. Notwithstanding any shipping arrangement specified in this Contract, Contractor shall have the risk of loss for all Goods shipped under this Contract until receipt of delivery and acceptance pass to the Authority. Partial shipments are not permitted unless otherwise agreed to in writing by the Authority. For the purpose of securing Contractor's performance of its obligations under this Contract, Contractor hereby grants to the Authority a security interest in and to the completed or partially



completed Goods covered by any progress payments by the Authority.

#### **24. GOVERNING LAW**

The laws of the United States Virgin Islands shall govern the interpretation and construction to the extent applicable. The Authority shall not invoke the defense of sovereign immunity in any litigation arising under the contract.

#### **25. TERMINATION FOR CONVENIENCE:**

- (c) The Authority may, at any time, terminate the Contract for its convenience and without cause.
- (d) Upon receipt of written notice from the Authority of such termination for the Authority's convenience, the Contractor shall:
  - i. cease operations as directed by the Authority in the notice;
  - iv. take actions necessary, or that the Authority may direct for the protection and preservation of the Work;
  - v. except for Work directed to be performed prior to the effective date of the termination stated in the notice, terminate all existing subcontracts and purchase order and enter into no further subcontracts and purchase orders.

(c) In the case of such termination for Authority's convenience, the Contractor shall be entitled to receive payment for Work executed and reasonable costs incurred (as outlined in b(iii)) by reason of such termination. All materials, supplies and equipment purchased in connection with the scope of work shall, if and when paid for by the Authority, become the property of the Authority.

#### **26. ENTIRE AGREEMENT: MODIFICATION**

The Contract constitutes the entire agreement between the parties. The Contract may not be amended or modified except by an instrument in writing signed by duly authorized representatives of the parties.

# EXHIBIT A

## WAPA INSURANCE REQUIREMENTS

Page 1 of 5

<b>A. Liability and Workers Compensation Insurance Requirements</b>					
<p>During construction, Contractor and/or its general contractor are to carry the liability and workers' compensation insurances set out below. Subcontractors are to carry the same coverages but required limits may be amended at the discretion of the Contractor for subcontractors to reflect the size of their contracts, subject to a minimum limit of \$1,000,000 each for Commercial General Liability, Automobile Liability and Employers Liability. After receipt of evidence of insurance for any subcontractor, WAPA reserves the right to require limits up to those required for the Contractor.</p> <p>Once operations have begun, Contractor and/or its general contractor shall have in place and at all times maintain the below liability and workers' compensation insurances.</p>					
	<b>Coverage Type</b>	<b>Minimum Limit</b>		<b>Maximum Deductible or Retentions</b>	
1.	Commercial General Liability	\$2,000,000*	Combined single limit per occurrence and in the aggregate where applicable	\$100,000	Per occurrence
2.	Automobile Liability	\$2,000,000*	Combined single limit per accident	\$100,000	Per accident
3.	Employers Liability	\$2,000,000*	Each accident for bodily injury by accident Each employee and policy limit for bodily injury by disease	\$100,000	Each accident or employee (for disease)
4.	Workers Compensation	Statutory requirements	Per occurrence	N.A.	N.A.
5.	Professional Liability	\$2,000,000*	Per occurrence and in the aggregate	\$25,000	Per occurrence
* Combination of primary and excess or umbrella liability policies. Any combination of primary and excess limits is acceptable if the total equals or exceeds the specified amount.					
<b>Liability Insurance Terms and Conditions</b>					
	a.	Occurrence Basis	The primary General Liability policy and any Excess or Umbrella Liability policy that provides additional limits over the primary General Liability policy shall be "occurrence-based" policies. Claims-made policies will not be accepted.		
	b.	Additional Insured	The General Liability policy and any Excess or Umbrella Liability policy shall be endorsed to name WAPA as an additional insured. Any such policy shall contain language that: "Such insurance as afforded by this policy for the benefit of WAPA shall be primary as respects any claims, losses, damages, expenses, or liabilities arising out of this Agreement, and insured hereunder, and any insurance carried by WAPA shall be excess of and noncontributing with insurance afforded by this policy."		
	c.	Completed Operations	The Contractor and any subcontractors' General Liability coverage in place during construction shall include Completed Operations coverage,		

# EXHIBIT A

## WAPA INSURANCE REQUIREMENTS

Page 2 of 5

			which coverage is to continue for a minimum of two years following completion of construction.
	d.	Defense Costs	Defense costs in all primary liability policies shall be “outside the limit”, i.e., the full policy limits are for the payment of damages.

<b>B. Environmental Impairment Liability Insurance Requirements</b>			
<p>Contractors are to carry Environmental Impairment Liability (“EIL”) insurance with a minimum limit of \$2,000,000 annual aggregate. EIL coverage is to be maintained during the full term of the contract and for five years following completion of construction. The EIL policy (or policies if the limit is met with a combination of primary and excess policies) are subject to the following terms and conditions:</p> <ol style="list-style-type: none"> <li>1. There shall be no exclusion for prior acts or conditions of which the insured is unaware.</li> <li>2. The EIL policy shall be endorsed to name WAPA as an additional insured. Any such policy shall contain language that "Such insurance as afforded by this policy for the benefit of WAPA shall be primary as respects any claims, losses, damages, expenses, or liabilities arising out of this Agreement, and insured hereunder, and any insurance carried by WAPA shall be excess of and noncontributing with insurance afforded by this policy."</li> <li>3. The EIL policy will cover liability for property damage or bodily injury to third parties, including clean-up or remediation of any damaged property.</li> <li>4. The insurer may, but is not required to participate in the defense of any claim.</li> <li>5. Defense costs are to be covered as part of the annual aggregate limit.</li> </ol>			
<b>C. Property Insurance Requirements</b>			
<p>Property policy(ies) shall cover all risks of direct physical loss to the property, including coverage for collapse and transit (with respect to property in transit that will become a part of buildings or structures under construction).</p> <p>Boiler and machinery coverage on a breakdown basis is to be included in the All Risk policy or provided in a separate policy. Testing of any equipment is to be included.</p> <p>There shall be no exclusion for the perils of explosion, collapse or underground damage.</p>			
1.	Builder’s Risk Property Insurance (to be in place from inception of construction through final testing and acceptance at which time property insurance converts to the permanent property insurance program (see B.2.),		
	<b>Coverage Type</b>	<b>Minimum Limit</b>	<b>Maximum Deductible or Retentions</b>

# EXHIBIT A

## WAPA INSURANCE REQUIREMENTS

Page 3 of 5

	Earth Movement including Earthquake, Volcanic Activity, and Subsidence.	Replacement Value of Insurable Real and Personal Property	Annual Aggregate	5% of Replacement Value	Per Occurrence
	Hurricane/ Windstorm		Annual Aggregate	5% of Replacement Value	Per Occurrence
	Flood including Tsunamis		Annual Aggregate	5% of Replacement Value	Per Occurrence
	Debris Removal	20% of Replacement Value	Per occurrence	Included	
	Ordinance or Law	10% of Replacement Value	Per occurrence	Included	
	Expediting Expense	20% of Replacement Value	Per occurrence	Included	
	All Other Perils (including boiler and machinery perils where applicable)	Replacement Value of Insurable Real and Personal Property	Per occurrence	\$100,000	Per Occurrence
	Soft Costs	100% of costs which would be incurred again following a total loss at the end of construction.		45 Days	Per Occurrence
2.	Property Insurance (Permanent program to be in place simultaneously with the expiration or cancellation of the Builders’ Risk coverage (see B. 1.) and shall remain in place continuously through the term of the Agreement)				
	Coverage Type	Minimum Limit		Maximum Deductible or Retentions	
	Earth Movement including Earthquake, Volcanic Activity, and Subsidence.	Replacement Value of Insurable Real and Personal Property.	Annual Aggregate	5% of Replacement Value	Per Occurrence
	Hurricane/ Windstorm		Annual Aggregate	5% of Replacement Value	Per Occurrence
	Flood including Tsunamis		Annual Aggregate	5% of Replacement Value	Per Occurrence
	Debris Removal	20% of Replacement Value	Per occurrence	Included	

# EXHIBIT A

## WAPA INSURANCE REQUIREMENTS

Page 4 of 5

	Ordinance or Law	10% of Replacement Value	Per Occurrence	Included	
	All Other Perils (including boiler and machinery perils where applicable)	Replacement Value of Insurable Real and Personal Property	Per Occurrence	\$500,000	Per Occurrence
	Extra Expense/ Expediting Expense Combined	20% of Replacement Values	Per Occurrence	Included	
	Replacement Power Extra Expense	To the extent coverage is reasonably available, 100% of incremental expense that WAPA incurs to replace the annual output of the Facility for one year following a covered occurrence, such amount to be determined with WAPA each year.		45 Days	Per Occurrence
	Property Insurance Terms and Conditions				
	a.	Coinurance	No property policy may contain a coinsurance clause.		
	b.	Ordinance or Law	Each property policy is to cover the costs incurred in repairing or replacing the damaged property to meet current building codes. Coverage is to be provided for: Loss to the Undamaged Portion of the Building Demolition Cost Increased Cost of Construction		
	c.	Terrorism	Terrorism coverage is not required.		
<b>D. Requirements Applicable to All Insurance Policies</b>					
	1.	Insurance Company Rating	All insurance companies shall be rated A- or better by A.M. Best's. Should an insurance company's rating fall below A-, Seller (or its general contractor) shall replace that insurance company with a qualifying insurance company within 60 Days.		
	2.	Notice of Cancellation	Each insurance company shall provide written notification to WAPA 60 Days prior to the effective date of any cancellation or non-renewal.		
	3.	Evidence of Compliance with Insurance Requirements at Insurance Date	Evidence is to consist of an original certificate of insurance signed by an approved officer of the insurance company or its authorized representative. The certificate shall show: <ul style="list-style-type: none"><li>• The name of the insurance company</li><li>• The policy period</li><li>• The policy number</li><li>• The description of the property</li><li>• The name of the Seller/Policyholder</li><li>• WAPA as an additional insured (General Liability and Excess or Umbrella Liability only)</li></ul>		

**EXHIBIT A**  
**WAPA INSURANCE REQUIREMENTS**

Page 5 of 5

			<ul style="list-style-type: none"><li>• WAPA as loss payee (Builders Risk Property Insurance and Property Insurance including Replacement Power Extra Expense)</li><li>• The 60 Days cancellation notice</li></ul> <p>Liability insurance certificates are to be on ACORD form 28 or its equivalent for property insurance and ACORD form 25 or its equivalent for liability insurance. Evidence of workers' compensation insurance shall be issued by the appropriate Workers' Compensation Administration bureau of the Government of the Virgin Islands.</p>
	4.	Evidence of Renewal or Replacement Policies	Contractor shall advise WAPA of any renewals or replacements of the required insurances by providing the same documentation required in C.3 above. Such evidence shall be provided prior to the expiration date of the policy that is being renewed or replaced.