

Sierra Nevada Corporation Terms and Conditions for Construction Services

1. Background. These Terms and Conditions outline the Agreement for Construction Services (“**Agreement**”) that shall govern the relationship between Contractor and Sierra Nevada Corporation (“**SNC**”) for which Contractor provides work to SNC. This Agreement may only be modified in writing signed by SNC and Contractor. This Agreement supersedes any prior negotiations, representations or agreements, either written or oral.
2. Contract Documents. Any work to be performed pursuant to this Agreement will be authorized via issuance of a written Purchase Order (“**PO**”) from SNC. The Contract Document shall consist of the following documents:
 - a. Purchase Order;
 - b. Sierra Nevada Corporation Terms and Conditions for Construction Services, Exhibit A;
 - c. Lease Conditions relating to Construction, Exhibit B;
 - d. The Statement of Work as specifically identified in the PO;
 - e. The Plans as specifically identified in the PO.

In the event of any conflict between the Contract Documents, the conflict shall be resolved by giving priority to the documents in the order listed in this paragraph. Contractor shall not be entitled to rely on the accuracy of any information, documents, or records provided by either Landlord or SNC unless specifically designated as a Contract Document.

3. Acceptance. The PO is Buyer's offer and shall become a contract only when accepted, either by Seller's signed acknowledgment, by Seller's commencement of performance, by shipment of any of the Products, or by execution of Buyer's Letter of Authorization or written Authorization to Proceed, provided that such Authorization agrees with the PO with respect to description of products, quantity, price and delivery schedule. By acceptance using any of these methods, Seller agrees to all of the terms and conditions set forth herein. Buyer hereby objects to any different or additional terms in Seller's acceptance. To the extent that it is so stated, any acceptance contained in the PO is conditional on Seller's assent to the additional and different terms included therein. The terms set forth herein constitute the entire agreement of the parties and supersede all previous verbal or written representations, offers, or agreements. No modification of the requirements of the PO shall be binding unless authorized by Buyer's authorized representative(s) in writing.
4. Basic Compensation. SNC shall compensate the Contractor for the work set forth in the PO (the “**Work**”) in the amount set forth in the PO (the “**Contract Sum**”). The Contract Sum shall include all amounts for permits necessary to complete the Work. In no event shall this amount be increased without the advance written approval of SNC.
5. Leased Premises. The Contractor acknowledges that SNC has entered into a lease agreement (the “**Lease**”) with the landlord (the “**Landlord**”) for the property on which the Work will be performed. All Work performed by Contractor shall be subject to and governed by the terms of the Lease, which is incorporated herein by reference.
6. SNC's Right to Carry Out the Work. If the Contractor defaults or neglects to carry out the Work and fails within a seven day period after receipt of written notice from SNC to commence and continue correction of such default or neglect with diligence and promptness, SNC may, without prejudice to other remedies, correct such deficiencies. In such case, the Contract Sum shall be adjusted to deduct the cost of correction from payments due to the Contractor.

7. Review of Field Conditions by Contractor and Sufficiency of Contract Sum. Execution of a Purchase Order is a representation that the Contractor has inspected the site and surrounding areas for access and constructability, has reviewed the Scope of Work, and has become familiar with any and all conditions under which the Work is to be performed. Contractor further represents that it has satisfied itself as to the correctness and sufficiency of the Contract Sum, and expressly agrees that the Contract Sum covers all the Contractor's obligations under the Contract, and all things necessary for the proper completion of the Work and the remedying of any defects.
8. Construction Schedule. The Contractor, promptly after execution of the Purchase Order, shall prepare and submit a Contractor's construction schedule for the Work incorporating the commencement and substantial completion dates set forth in the PO. Contractor shall keep SNC apprised on intervals appropriate to the progress of the Work, but in no event less than once a month, as to Contractor's progress under the schedule and shall submit as-built schedules electronically in the format specified in the PO. Contractor shall only be entitled to an extension of the Contract Time if activities of SNC or the Landlord interfere with Contractor's work and if Contractor provides SNC written notice within ten (10) days of the event giving rise to the claim for additional time.
9. Supervision and Construction Procedures. The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work.
10. Labor. Contractor shall comply with all applicable federal, state and local laws, statutes, rules, codes, orders, regulations and ordinances including but not limited to all immigration, environmental, tax, social security, unemployment compensation, workers' compensation and safety laws, statutes, rules, codes, orders and regulations. Contractor shall ensure that all employees of Contractor, and all employees of any of its subcontractors or suppliers, are fully documented and legally permitted to work in the United States, as evidenced by United States birth certificate, passport or valid immigration card. As specified in the PO, proof of U.S. citizenship may be required for any of Contractor's employees entering an SNC facility. Contractor shall assume the defense of, and indemnify, protect and save harmless SNC, its subsidiaries, affiliates, officers and employees from all claims, liability, loss or damage, including attorneys' fees, costs and expenses, resulting from Contractor's violation of any immigration law or regulation.
11. Contractor's Warranty.
 - a. The Contractor warrants that: (1) materials and equipment furnished under the PO will be new and of good quality; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) Contractor will perform the Work in a good and workmanlike manner.
 - b. If, prior to Substantial Completion and within one year after the date of Substantial Completion of the Work, any defective work is found, SNC shall promptly notify the Contractor in writing. Unless SNC provides written acceptance of the condition (in which case the Contract Sum shall be equitably adjusted for any diminution in the value of the Project), the Contractor shall promptly correct the defective work at its own cost and time and bear the expense of additional services required for correction of any defective work for which it is responsible. With respect to any portion of the Work first performed after Substantial Completion, the one-year correction period shall be extended by the period of time between Substantial Completion and the actual performance of the later Work. If Contractor fails to correct any defective work within a reasonable time after receipt of written notice from SNC prior to final payment, SNC may correct it and shall deduct all costs incurred thereto from the final payment due. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to SNC.
 - c. Contractor shall assign all equipment or manufacturer's warranties to SNC.
12. Safety of Persons and Property. The Contractor shall have overall responsibility for safety precautions and programs in the performance of the Work.

- a. Contractor shall seek to avoid injury, loss or damage to persons or property by taking all required steps to protect: (1) its employees and other persons at the site; (2) materials and equipment stored at onsite or offsite locations for use in the Work; and (3) property located at the site and adjacent to Work areas, whether or not the property is part of the Work.
 - b. The Contractor's site Safety Representative's name and contact information shall be provided to SNC prior to start of the Work. Such person shall act as the Contractor's authorized safety representative with a duty to prevent accidents in accordance with this Paragraph. Contractor shall report immediately in writing to SNC all recordable accidents and injuries occurring at the site.
 - c. Damage or loss not insured under property insurance which may arise from the Work, to the extent caused by the negligent acts or omissions of Contractor, or anyone for whose acts Contractor may be liable, shall be promptly remedied by Contractor.
 - d. If SNC deems any part of the Work or site unsafe, SNC, without assuming responsibility for the Contractor's safety program, may require Contractor to stop performance of the Work or take corrective measures satisfactory to SNC and SNC's leaseholder. If Contractor does not adopt corrective measures, SNC may perform them and deduct their cost from the Contract Sum. Contractor agrees to make no claim for damages for an increase in the Contract Sum or for a change in the Contract Time based on Contractor's compliance with SNC's reasonable request.
13. Hazardous Materials. A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal or cleanup. Contractor shall not be obligated to commence or continue work until any Hazardous Material discovered at the site has been removed, rendered or determined to be harmless by SNC as certified by an independent testing laboratory and approved by the appropriate government agency. If after the commencement of the Work Hazardous Material is discovered at the site, Contractor shall be entitled to immediately stop Work in the affected area. Contractor shall report the condition to SNC and, if required, the government agency with jurisdiction. Contractor shall not be required to perform any Work relating to or in the area of Hazardous Material without written mutual agreement. Contractor shall resume Work in the area affected by any Hazardous Material only upon written agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency with jurisdiction. Nothing in this Paragraph shall affect Contractor's obligation to perform Work in an area that SNC, in its reasonable opinion, deems to be unaffected by the Hazardous Material.
14. Subcontracts. Contractor agrees to insert a clause in all of its Subcontracts requiring that any subcontractor engaged to perform Work on the Project shall abide by and be bound by all Safety, Insurance and Indemnity requirements in this Agreement to the same extent as Contractor is bound herein.
15. No Damage for Delay. In no event and under no circumstances shall Contractor be entitled to any payment, compensation or reimbursement for any additional or extended costs, expenses, general conditions or overhead (either Project site or home office), lost profits, impact charges or any other loss or damages whatsoever (hereinafter collectively referred to as "Delay Damages") incurred or sustained by Contractor due to any extension or acceleration of the completion date or enlargement or compression of the Contract Time due to any person or for any reason or cause whatsoever, regardless of whether such delay, acceleration, compression or other conduct on the part of Contractor or SNC, or any other person may be deemed unreasonable or was not contemplated by the parties, and Contractor hereby waives any and all claims for Delay Damages including, without limitation, claims attributable to either breach of contract or tort.
16. Payment. Invoices shall be submitted via email to the attention of SNC Accounts Payable at snccaccountspayable@sncorp.com. For projects exceeding 60 days for completion, Contractor shall submit a monthly invoice detailing all amounts claimed for that month, according to an approved schedule of

values. SNC shall pay Contractor all undisputed amounts within 30 days of receiving its monthly invoice, less 10% retainage. Unless disputed in writing by SNC, amounts unpaid 45 days after the invoice date shall bear interest from the date payment is due at the legal rate prevailing at the location of the Project. SNC shall have the right, but not the obligation, to issue joint checks to Contractor and any of its subcontractors or suppliers.

17. Substantial Completion. Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete so SNC can occupy or utilize the Work for its intended use. When the Work is substantially complete, SNC or its authorized agent will make an inspection to determine whether the Work is substantially complete. When SNC or its authorized agent determines that the Work is substantially complete, SNC shall prepare a Certificate of Substantial Completion that shall establish the Substantial Completion Date, shall establish the responsibilities of SNC and Contractor, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Upon issuance of the Certificate of Substantial Completion, SNC shall pay Contractor all withheld retainage.
18. Final Completion and Final Payment. Upon receipt of a final Application for Payment, SNC or its authorized agent will inspect the Work. When SNC finds the Work acceptable, SNC will issue a final Certificate for Payment. Final payment shall not become due until the Contractor submits to SNC releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests or encumbrances arising out of the Work. Acceptance of final payment by the Contractor, a subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.
19. Changes in the Work. SNC, without invalidating the PO, may order changes in the Work within the general scope of the PO consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly in writing. As soon as Contractor becomes aware of any circumstances which Contractor has reason to believe may necessitate a change in the Work, Contractor shall promptly notify SNC of the change and the impact the change is likely to have on the Contract Sum and the Contract Time. Contractor shall not perform any Work relating to the change until it receives a signed Change Order from SNC. All modifications to the Contract Sum and/or Contract Time shall be made on a lump sum basis. In the event that the parties cannot agree on a lump sum price for any changed or disputed, Contractor shall keep and present to SNC all costs related to the changed work or disputed work.
20. SNC's Contingency Fund. SNC agrees to set aside a reserve in the amount set forth in the PO as a contingency to be used, as required, to pay for any increase in the Contract Sum as a result of a change in the Work as set forth in Paragraph 19 ("SNC Contingency"). The SNC Contingency shall be available solely for use by SNC in the event that SNC authorizes changed work. Any amounts in the SNC Contingency not used during the Project shall be deducted from the Contract Sum by deductive change order.
21. Indemnification. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless SNC, Architect, Landlord, and their agents and employees of, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.
22. Termination by SNC for Cause. SNC may terminate the Agreement and/or any Purchase Order for cause if the Contractor:
 - a. repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
 - b. fails to make payment to subcontractors for materials or labor in accordance with the respective

agreements between the Contractor and the subcontractors;

- c. persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
 - d. is otherwise guilty of substantial breach of a provision of this Agreement.
 - e. When any of the above reasons exist, SNC may without prejudice to any other rights or remedies of SNC and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may take possession of the site and of all materials thereon owned by the Contractor, and finish the Work by whatever reasonable method SNC may deem expedient. When SNC terminates the Agreement for one of the reasons stated in this paragraph, the Contractor shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to SNC. This obligation for payment shall survive termination of the Agreement.
23. Termination by SNC for Convenience. SNC may, at any time, terminate the PO and this Agreement for SNC's convenience and without cause. The Contractor shall be entitled to receive payment for Work executed and costs incurred by reason of such termination. Contractor shall not be entitled to overhead and profit on the Work not executed.
24. Security and Bonds. Upon request by SNC, Contractor shall submit a letter from a surety acceptable to SNC, setting forth Contractor's bonding capacity and bond rates.
25. Insurance. Contractor shall obtain, carry and keep in full force and affect the policies of insurance and minimum types of coverage with minimum limits as set forth below. All policies of insurance procured by Contractor for the Project shall contain provisions to the effect that Contractor's interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Contractor, or any insureds, additional insureds, or loss payees hereunder.
- a. Commercial General Liability (CGL) with limits of Insurance of not less than \$1,000,000 each occurrence and \$2,000,000 Annual Aggregate.
 - i. If the CGL coverage contains a General Aggregate Limit, such General aggregate shall apply separately to each project.
 - ii. CGL coverage shall be written on ISO Occurrence form CG 00 01 1093 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal and advertising injury.
 - iii. Sierra Nevada Corporation and the Landlord shall be included as insured on the CGL, using ISO Additional Insured Endorsement CG 2010 07 04 **AND** CG 20 37 07 04 or an endorsement providing equivalent coverage to the additional insured. This insurance for the additional insured shall be as broad as the coverage provided for the named insured subcontractor. It shall apply as Primary and non-contributing Insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured.
 - iv. Contractor shall maintain CGL coverage for itself and all additional insured for the duration of the project and maintain Completed Operations coverage for itself and each additional insured for at least 3 years after completion of the Work.
 - b. Automobile Liability
 - i. Business Auto Liability with limits of at least \$1,000,000 each accident.
 - ii. Business Auto coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.

- iii. Sierra Nevada Corporation and the Landlord shall be included as additional insured on the auto policy.
 - c. Commercial Umbrella
 - i. Umbrella limits must be at least \$5,000,000.
 - ii. Umbrella coverage must include all entities that are additional insureds on the CGL
 - iii. Umbrella must be excess coverage over the CGL, Automobile Liability and Employers Liability.
 - d. Worker's Compensation and Employers Liability
 - i. Employers Liability Insurance limits of at least \$1,000,000 each accident for bodily injury by accident and \$1,000,000 each employee for injury by disease.
 - ii. Where applicable, U.S. Longshore and Harbor Workers Compensation Act Endorsement shall be attached to the policy.
 - iii. Where applicable, the Maritime Coverage Endorsement shall be attached to the policy
 - iv. Workers Compensation will provide coverage from claims under the Worker's Compensation Law of the state in which the work is being performed
 - e. Waiver of Subrogation
 - i. Contractor waives all rights against Sierra Nevada Corporation, Property Owner, Landlord, their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by commercial general liability, commercial umbrella liability, business auto liability or workers compensation and employers liability insurance maintained per requirements stated above. Contractor shall require that all Subcontractors' Workers Compensation policies have WAIVER OF SNC'S RIGHT TO RECOVER FROM OTHERS ENDORSEMENT with Contractor and Landlord.
 - ii. All insurance coverage required of Contractor and their Subcontractors shall be underwritten in form and by an insurer acceptable to Sierra Nevada Corporation. In any event, all insurance required by this contract shall be maintained diligently and shall only be with an insurer that carries an AM Best Rating of A-, VII or better.
 - iii. It is the responsibility of each Contractor and its Subcontractors to furnish their own coverage for shanties, scaffolding, staging towers, supplies, tools and any other rented/owned equipment not to become part of the permanent structure.
 - iv. Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement that is part of Contractor's Commercial General Liability Policy. These certificates and the insurance policies required by this Article shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least 30 days prior written notice has been given to the Contractor.
26. Legal Requirements. Contractor agrees that all Work provided pursuant to this Agreement shall comply with all federal, state and local laws and ordinances.
27. Licensing. Contractor warrants and represents that, if required, it will register as a Contractor (or as otherwise required by any regulatory or other government body) in good standing and that it has applied for and received permission from all applicable governmental bodies and regulatory agencies to do business with SNC. It is fully understood by and between the parties that licensure of Contractor, if required, shall be and is a condition that must be met before SNC can proceed with this Agreement.
28. Governing Law. This Agreement shall be governed by Nevada law. At the Buyer's sole discretion, venue shall be either the Federal Court System in Reno, Nevada or the Nevada Court System in Reno, Nevada.
29. Forum Selection. The parties agree that any dispute arising out of this Agreement and/or the Contractor's Work shall be brought in arbitration through JAMS in Reno, Nevada. Contractor understands and agrees that any dispute between SNC and others relating to the Work (including Landlord or Architect), may be consolidated with any dispute between SNC and Contractor and that Contractor agrees to submit to the jurisdiction of any related arbitration.

30. Assignment. Neither party to the PO shall assign the PO without written consent of the other.
31. Contractual Direction. Sole authority to make changes in or amendments to this PO and to effect deviations (by way of addition or deletion) from the work specified herein is hereby granted to SNC's Authorized Procurement Representative. All contractual direction in order to be valid must be written and signed by this Authorized Representative.
32. Customer Communication, News and Public Release. SNC shall be solely responsible for all liaison and coordination with the SNC's customer, including the U.S. Government, as it affects the applicable Prime Contract, and this PO and any related contract. Seller will not make, deny or confirm any news release, including photographs and films, advertisement, or public announcement concerning the subject matter of this PO or any phase of the program hereunder without SNC's prior written approval, which will not be unreasonably withheld.
33. Non-Waiver. Any failure at any time of SNC to enforce any provision of this Agreement or PO shall not constitute a waiver of such provision or prejudice the right of SNC to enforce such provision at any subsequent time, including any technical requirements, specifications or drawings or a waiver of a default provision.
34. Partial Invalidity. If any provision of this Agreement or PO is or becomes void or unenforceable by force or operation of law, all other provisions shall remain valid and enforceable.

In witness hereof, the Parties have agreed to these Terms and Conditions and executed this Agreement as of the day and year written above.

"SNC"	"Contractor"
By:	By:
Name:	Name:
Title:	Title:
Date:	Date: