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**PURCHASE ORDER/SERVICE ORDER TERMS AND CONDITIONS**

1. **ALL PURCHASES**. This Article 1 will apply with respect to all purchases and Seller shall comply with all applicable federal, state and local laws, ordinances, rules and regulations for any purchases under this Purchase Order (this “**Order**”). Similarly, and in connection with the Goods, as defined in Section 2.A., and/or Services, as defined in Section 3.A., purchased under this Order, Seller agrees to abide by any and all requirements of ESG, as defined in Section 1.A., including any and all qualification requirements imposed upon Seller as a condition of doing business with ESG, whether required by ESG directly or indirectly through an ESG Affiliate. To the extent Seller has agreed prior to its execution of the Order to abide any prequalification obligation, term, or condition related to its provision of Goods and/or Services to or on behalf of ESG, Seller agrees that such commitments are specific conditions to its performance of the Order hereunder, for which consideration is made by ESG. “**Affiliate**” means any legal operating entity that is owned or controlled by ESG Holdings Group, LLC, including but not limited to PacificWest Energy Solutions, Inc., Yearout Energy Services Company, LLC (d/b/a Energy Systems Group Southwest, LLC), and Energy Systems Group, LLC. In such case, the term “ESG” as used in this Order shall, for the purposes of Order, issued by an ESG Affiliate, be deemed to include only the ESG Affiliate issuing such Order. ESG SHALL HAVE NO LIABILITY NOR SHALL ESG INCUR ANY OBLIGATION OR BE RESPONSIBLE FOR THE FAILURE OF ANY ESG AFFILIATE TO PERFORM ITS OBLIGATIONS UNDER THIS ORDER OR ANY WORK ORDER PLACED BY ANY ESG AFFILIATE.
	1. **Invoicing and Payment:** As full consideration for all Goods and/or Services purchased under this Order, Energy Systems Group, LLC, on behalf of itself and its Affiliates procuring Goods and/or Services under this Order (“ESG”) will pay to Seller the total cost stated in this Order. Seller will deliver its invoice via email to ap@energysystemsgroup.com (preferred method), or via mail to 9877 Eastgate Court, Newburgh, IN 47630 after delivery of the Goods and Services. Every package, bill of lading, delivery ticket, or invoice must identify the Order number and prime contract number set forth in the Order. ESG will not be obligated to pay Seller until all documents required by this Order have been received and accepted by ESG. ESG may, at its option, demand lien releases, payment vouchers, or other releases and/or as a condition to making any payment or portion thereof directly to any of Seller’s vendors or by joint check payable to Seller and any of its subcontractors, suppliers and/or laborers. In the event ESG elects to issue a joint check, Subcontractor shall submit separate outstanding invoices of its subcontractors, suppliers and/or laborers to ESG with all information necessary for ESG to issue payment. Seller agrees, if practical, to endorse the joint check in person at ESG’s place of business for delivery by ESG to the payee. If an in-person signature is not practical, Seller agrees to execute a limited power of attorney to ESG for paying Seller’s subcontractors, suppliers and/or laborers. In the alternative, Seller agrees to endorse a joint check and promptly deliver it to its subcontractors, suppliers and/or laborers. Failure to endorse and deliver without delay will subject Seller to any set-off rights created by this agreement or any other agreements between ESG and Seller. A joint check issued by ESG for the benefit of Seller’s subcontractors, suppliers and/or laborers shall be considered property of the sub-subcontractor, supplier or laborer for whose benefit payment is made and not property of Seller.
	2. **Related documents:** Seller shall submit a completed W-9 and ESG supplier certification form before initiating performance. ESG may require documentation concerning Seller’s history, performance, creditworthiness and its provision of Goods and/or Services, including certified payroll reports, unconditional progress or final lien waivers, and/or payment releases and insurance. ESG may require additional waivers or releases from Seller as governed by local law or ESG’s customer’s requirements. Seller agrees that if requested, its delivery of such documents will be a condition of payment or performance, as the case may be; and if ESG has already paid Seller, then delivery of the documents will not unreasonably be withheld by Seller.
	3. **Cancellation or Suspension of Order by ESG:** ESG reserves the right to suspend, delay, or cancel this Order at any point upon written notice to Seller. Seller will act immediately to minimize its costs in such event. The parties will negotiate a reasonable settlement that covers Seller’s unavoidable and non-recoverable costs incurred, plus a reasonable profit, and will address return of ESG’s deposit and any other payments, if applicable, which shall be full and final settlement of this Order, and Seller shall not otherwise be entitled to compensation for profit and overhead, loss of business, lost profits, loss of income or the like.
	4. **Indemnification:** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SELLER WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS ESG, THE SITE OWNER, ESG’S CUSTOMER, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, OWNERS, SUCCESSORS, AND ASSIGNS (COLLECTIVELY, THE “**INDEMNITEES**”) OF AND FROM ALL CLAIMS, LOSSES, LIABILITIES, JUDGMENTS AND EXPENSES, INCLUDING ATTORNEY FEES, ARISING OUT OF OR RELATED TO SELLER’S PERFORMANCE OF THIS ORDER, OR THE ACTIONS OF ANYONE FOR WHICH SELLER IS RESPONSIBLE. SELLER WILL NOT BE OBLIGATED TO INDEMNIFY AN INDEMNITEE TO THE EXTENT THE INDEMNITEE’S OWN NEGLIGENCE OR MISCONDUCT CAUSED THE LOSS GIVING RISE TO THE LIABILITY FOR WHICH INDEMNIFICATION IS SOUGHT. THE INDEMNITEES’ RIGHTS TO INDEMNIFICATION WILL BE INDEPENDENT OF RIGHTS UNDER THE INSURANCE REQUIRED BY THIS ORDER. ESG WILL HAVE THE RIGHT TO BE PRESENT AND REPRESENTED BY COUNSEL AT ALL TIMES DURING ANY LITIGATION AND OTHER DISCUSSIONS RELATING TO ANY CLAIMS COVERED BY AN INDEMNITY OBLIGATION IMPOSED ON SELLER BY THIS ORDER. NEITHER SELLER NOR ESG WILL SETTLE OR COMPROMISE ANY SUCH LITIGATION WITHOUT THE CONSENT OF THE OTHER IF SUCH SETTLEMENT OR COMPROMISE ADMITS FAULT ON THE PART OF THE OTHER PARTY, OBLIGATES THE OTHER TO MAKE ANY PAYMENT OR PART WITH ANY PROPERTY OR ASSUME ANY OBLIGATION OR GRANT ANY LICENSE OR OTHER RIGHTS OR BE SUBJECT TO ANY INJUNCTION BY REASON OF SUCH SETTLEMENT OR COMPROMISE. IF THIS ORDER INCLUDES THE PURCHASE OF SERVICES FROM SELLER, ANY ACCEPTANCE OF A CERTIFICATE OF INSURANCE BY ESG SHALL IN NO WAY LIMIT OR RELIEVE SELLER OF ITS DUTIES AND RESPONSIBILITIES UNDER THIS ORDER.
	5. **Insurance Requirements:** Seller shall carry General Liability, Workmen's Compensation, and Automobile Liability insurance for the complete protection of ESG from any and all claims arising in any fashion whatever from this Order. Before commencing work, the Seller shall provide ESG with a current certificate from Seller's insurance carrier evidencing coverage as follows: (a) Workers Compensation coverage complying with the statutory requirements of the state in which the work is to be performed and Employers Liability with the limit of not less than $1,000,000.00 per occurrence, (b) General Liability coverage with limits of not less than $1,000,000.00 per occurrence and $2,000,000 aggregate which includes Contractual Liability coverage, and (c ) Automobile Liability coverage with limits of not less than $1,000,000.00 per each accident. For General Liability and Automobile Liability, coverages must name ESG, ESG’s customer (if applicable), and the site owner as an Additional Insured and include a 30-day notice of cancellation. All policies held by both Seller and its contractors or subcontractors that will be performing work shall include a waiver of subrogation in favor of ESG. If Seller will provide professional services, then Seller shall carry Professional Liability and Errors & Omissions insurance coverage with limits not less than $1,000,000 per occurrence and $2,000,000 aggregate. Seller is responsible to provide Pollution Liability insurance coverage with limits not less than $1,000,000 per occurrence and $1,000,000 aggregate if pertinent to their business under this Order.
	6. **Applicable Law and Jurisdiction:** To the extent permitted by applicable law,the definition of terms used, interpretation or construction of this Order, and the rights of all parties under this Order shall be interpreted, construed and governed by the laws of the state of Indiana, excluding any conflict of laws principles. Venue is hereby stipulated in the local and federal courts located in Vanderburgh County, Indiana. The parties specifically waive application of the UN Convention on Contracts for the International Sale of Goods. Seller shall comply with all applicable federal, state, and local laws, codes, and regulations in performing this Order.
	7. **Independent Contractor:** In performing this Order, Seller is acting as an independent contractor. Neither Seller nor any of Seller’s employees, subcontractors or agents will be construed as employees, agents, partners or joint venturers of ESG in any respect whatsoever. Unless specifically indicated otherwise in the Order, Seller will be responsible for all taxes, insurance, workers’ compensation and other costs and payments required to be withheld or provided in connection with Seller’s performance
	8. **Intellectual Property:** Any project-specific design or other project-specific Work or Services purchased under this Order is a “work for hire” with the intellectual property rights in such work vesting in ESG upon its full payment of the contract price. Seller agrees to sign any documents necessary to reflect ESG’s ownership of such rights, including assignment documents, if necessary, at no additional cost to ESG.Unless specifically stated in this Order, this Order will not be deemed to waive, impair, or transfer any patent, copyright, trademark, trade secret, or other intellectual property rights of Seller or ESG relating to anything provided in this Order. If ESG is prohibited from using infringing or allegedly infringing Goods or Services for its intended purpose, Seller will, at its expense: (1) procure on behalf of ESG the right to use such infringing or allegedly infringing Goods or Services; (2) replace such infringing or allegedly infringing Goods or Services with equivalent, non-infringing Goods or Services; (3) or modify such infringing or allegedly infringing Goods or Services so that it becomes non-infringing but retains its functionality. If neither (1), (2), nor (3), above, are commercially reasonable, Seller will refund all compensation paid by ESG to Seller for such infringing or allegedly infringing Goods or Services. Seller shall provide to ESG and ESG shall own and have the right to transfer to the customer, all information and deliverables (“**Deliverables**”) and all rights therein, including without limitation, all patent, copyright, trademark, service mark, trade secret or other intellectual property rights therein. Seller shall obtain and/or retain no right, title or interest in or to the Information and/or the Deliverables, including without limitation, any patent, copyright, trademark, service mark, trade secret or other intellectual property rights therein, and hereby assigns and transfers to ESG any such rights Seller may have in such Information and Deliverables. Seller agrees that any copyrightable Deliverables are a work made for hire. Seller hereby expressly grants ESG an irrevocable license, regardless of whether this agreement is completed, suspended or terminated, to use and reuse all Information and Deliverables prepared by Seller or his lower tier Subcontractors or Subconsultants for any purpose in connection with this project, including, but not limited to, original construction, future expansion, renovation, maintenance and repair. Seller further agrees to execute, deliver, and perform all documents, acts, or things that may be necessary to assign or transfer to ESG the rights granted hereby. Notice of copyright ownership of ESG shall be placed by Seller on all Deliverables in a manner and location as to give reasonable notice of the claim of copyright. To Seller's actual knowledge, the Services and the Deliverables do not infringe on the ownership or intellectual property rights of any third party. Application for copyright and/or patent registration shall be the responsibility of ESG. Seller shall deliver such information and Deliverables free and clear of all liens, claims, and encumbrances of any kind. This Section shall survive termination of this Agreement.
	9. **Effect of Master Subcontract Agreement or Indefinite Delivery/Indefinite Quantity Agreement:** If ESG or its Affiliate and the Seller have previously entered into a Master Subcontract Agreement, master or global purchase or Service agreement, or Indefinite Delivery/Indefinite Quantity agreement (generally, a “**MSA**”) that governs future transactions or future agreements relating to a specific site, facility, maintenance, program, operation, or Service plan, these terms and conditions apply to this transaction to the extent they do not conflict with the terms of the MSA but in the event of conflict, the terms of the MSA shall control. If the Seller is procuring Goods for or on behalf of ESG but is also providing Work on a Project, as those terms are defined under an existing MSA and/or Work Order, then any Goods required to be procured by Seller pursuant to this Order shall be considered reasonably required for Seller to perform its Work under such MSA.
	10. **Miscellaneous:** No ESG waiver of any Seller default will be deemed a waiver by ESG of any other default. No waiver will be effective unless in writing and signed by an officer of ESG. Payment by ESG for Goods and/or Services hereunder shall not waive claims associated with Seller’s breach of this Order. Failure to enforce any provision of this Order shall not be construed as a waiver. The parties' rights shall be deemed cumulative, such that the exercise of one shall not preclude the exercise of others. If any clause of this Order is held as a matter of law to be unenforceable or unconscionable, then (a) that provision shall be deemed amended to achieve an economic effect that is as near as possible to that provided by the original provision, and (b) the legality, validity and enforceability of the remaining provisions of this Order shall not be affected thereby. The representations, warranties, covenants and agreements made herein shall survive termination or cancellation of this Order
	11. **Conflicts of Interest**: Conflicts of interest relating to this Order are strictly prohibited. Except as otherwise expressly provided in this Order, neither Seller nor any director, employee, or agent of Seller or its subcontractors or vendors will give to or receive from any director, officer, employee, or agent of ESG, or of any ESG customer, any gift, entertainment, or other favor of significant value, or any commission, fee, or rebate without prior written consent of ESG’s General Counsel and Vice President. Likewise, neither Seller nor any director, employee, or agent of Seller or its subcontractors or vendors will, without prior written consent of ESG’s General Counsel and Vice President, enter into any business relationship with any director, officer, employee, or agent of ESG or any ESG Affiliate, unless such person or entity is acting for and on behalf of ESG or its customer. Seller will promptly notify ESG of any violation of this Section 1.K., and any consideration received because of such violation will be paid over or credited to ESG. Additionally, in the event of any violation of this Section 1.K, including any violation occurring prior to the date of this Order, resulting directly or indirectly in ESG's consent to enter into this Order, ESG may, at ESG's sole option, terminate this Order at any time. Any representatives authorized by ESG may audit all records of Seller and its subcontractors and vendors for the sole purpose of determining whether there has been compliance with this Section 1.K.
	12. **Entire Agreement, Conditional Offer:** Unless ESG and Seller have entered into an MSA that applies to this Order as described above, this Order, including all incorporated documents, constitutes the entire agreement between ESG and Seller and will supersede all prior or contemporaneous representations, agreements, or understandings of any kind, relating to this transaction. Seller agrees to accept the terms and conditions of this Order to the exclusion of any and all other terms and conditions contained in any other writing associated with this Order. ESG’s acceptance of this Order is conditional on Seller’s full acceptance of these terms and conditions.
	13. **Precedence of Conflicting Terms:** All estimates, letters, drawings, product or technical specifications, job specific requirements, or other materials attached to or referenced in this Order will be deemed a part of this Order provided ESG has expressly approved such documentation or materials. To the extent any job specific requirements are attached to or referenced in this Order, the Services identified in such requirements will supersede the description contained on the first page of this Order. ESG expressly disclaims any terms and conditions contained in Seller’s documentation attached to or referred to in this Order. If any applicable term contained in these terms and conditions conflicts with a term identified on the first page of this Order, the terms first page of this Order will govern, and the conflicting term will be stricken.
	14. **Books and Records:** Seller shall maintain financial books, documents, and cost accounting records with respect to this Order for a period of five (5) years after the expiration of this Order. ESG, or an independent certified public accountant designated by ESG, shall have the right to audit, during Seller’s normal working hours, Seller’s accounts and records relating to this Order. The expense of such audit shall be borne by ESG. The obligations imposed by this Section shall survive termination of this Agreement.
	15. **Assignment**: This Order shall not be assigned or subcontracted by the Seller without the prior written consent of ESG.
	16. **Confidentiality:** Seller agrees to keep confidential all information acquired because of providing goods or services under this Order, except for information already known to Seller without breach of this provision or in the public domain or information required to be disclosed by law. The obligations imposed by this Section shall survive termination of this Agreement. The obligations imposed by this Section shall survive termination of this Agreement.
	17. **179D Tax Benefit:** Seller acknowledges ESG shall be the “designer” as that term is identified in the Internal Revenue Code (IRC) Section 179D, and ESG shall have the exclusive right to report to any federal, state, or local agency, authority or other party, including without limitation under IRC Section 179D, any tax benefit associated with the Work.
2. **PURCHASES OF GOODS**. If Seller is furnishing movable products, goods, equipment, or materials pursuant to this Order, then this Article 2 will apply to the transaction in addition to all other applicable terms and conditions contained within this Order.
	1. **Product Specifications**: Seller will, at its own risk and expense, sell to ESG the items described on page 1 of this Order, under the heading “Item/Description” (“**Goods**”) and provide any services incidental to the Goods (“**Services**”). Specified Goods, including description or specifications, may be changed only by request of ESG evidenced by a revised Order signed by both ESG and the Seller on ESG’s standard form.
	2. **Delivery Terms**: Seller will ship and deliver Goods FOB or DDP destination (Incoterms 2020) as indicated within the Order (*i.e.*, the “Ship to” location on Page 1 of this Order). In all instances, Seller will deliver Goods in good and undamaged condition and in conformance with any and all product and general technical specifications.
		1. Title and Risk of Loss**:** Title and risk of loss transfer from Seller to ESG when the Goods are delivered and accepted. A rejection or other refusal by ESG to receive or retain the Goods, whether or not justified, or a justified revocation of acceptance revests title in Seller by operation of law and is not a "sale".
		2. Delivery Instructions**:** Seller will mark or otherwise conspicuously identify all Goods with reference to this Order number, the Goods included, and the project location or shipment destination. Seller will transmit a copy of the bill of lading to ESG at the time of departure of each shipment, together with written confirmation of the expected arrival date. ESG will give Seller reasonable notice of any changes in delivery instructions.
		3. Late Deliveries**:** This Order specifies a delivery date mutually acceptable to ESG and Seller (the “**Due Date**”). ESG will plan with and make commitments to third parties in reliance on Seller’s commitment to meet the Due Date. If Seller fails to deliver Goods by the Due Date for reasons that are in the control of the Seller, including delay by a carrier, Seller agrees to reimburse ESG for all costs and expenses, including consequential and incidental damages, incurred by ESG because of the late delivery.
		4. Seller’s Title Warranties**:** Seller warrants that the Goods are conveyed with good title, free of any rightful claim of any third person by way of infringement, security interests, liens, or any other encumbrance of the same or similar nature. The obligations imposed by this Section shall survive termination of this Agreement.
		5. Security Interest**:** Upon remittance of applicable payment to Seller, ESG shall have a valid and continuing security interest (as defined in the UCC) in the Goods, which security interest is prior to all other liens and is enforceable as such against creditors of and purchasers from Seller.
	3. **Rejection of Goods**: ESG has no obligation to accept, and is not obligated to pay for, any Goods that do not conform to this Order or that do not satisfy any specifications, standards, or warranties incorporated into this Order, including Goods that are damaged. If ESG rejects Goods as non-conforming, ESG will, at Seller’s cost and expense, make good faith efforts to follow any reasonable instructions received from the Seller within seven (7) days of ESG’s rejection with respect to such Goods. If ESG does not receive instructions from Seller, it may take any action it deems necessary to minimize its losses, including, selling the Goods, in which case ESG will be entitled to payment by Seller of a sales commission equal to ten percent (10%) of the gross proceeds. ESG will be entitled to reimbursement from Seller for all reasonable expenses of preserving, warehousing, securing, protecting, or caring for Goods rejected as non-conforming.
	4. **Warranties:** Seller warrants that the Goods will conform to the requirements of the Order, including any standards, estimates, letters, drawings, descriptions, memoranda, general technical specifications, and product specifications attached to or referred in this Order, and that such Goods will be merchantable, fit for their intended purposes, free from all defects in materials and workmanship, fit for any particular purpose represented by Seller, will conform to any sample supplied to ESG for inspection, and, to the extent not manufactured pursuant to a detailed design furnished by ESG, free from defects in design. If testing of the Goods is required by the job specific requirements, product specifications, or general technical specifications attached to this Order, testing will be conducted in accordance with requirements of any applicable American Society for Testing and Materials standards, ESG will have access to test results, and the Seller warrants that in such event, the Goods will perform in the field, as installed or used, in conformance with any favorable shop or other tests performed pursuant to this Order. Seller’s warranties are to ESG, ESG’s customer and the site owner. These warranties shall last for the longer of one year from the date of the owner’s final acceptance or the period otherwise provided by the Uniform Commercial Code. ESG will rely upon Seller's warranties in fulfilling ESG’s contractual commitments to third parties and may assign the warranties to its customer.
3. **PURCHASES OF SERVICES**. If Seller is performing any Services pursuant to this Order, whether the Seller is also and primarily furnishing Goods, then this Article 3 will apply to the transaction in addition to all other applicable terms and conditions contained within this Order.
	1. **Scope of Work:** Seller will perform the services and work more particularly described on Page 1 of this Order, under the heading “Item/Description” (“**Services**”). Seller will furnish said Services in addition to supplying or installing any Goods incidental thereto. Services may be changed only by request of ESG evidenced by a revised order signed by both ESG and the Seller on ESG’s standard form. All Services are subject to inspection and acceptance by ESG and its customer.
	2. **Requirements before Performance of Services:** Seller will not furnish any Services or install any Goods and will not subcontract with third parties to furnish Services or install Goods under this Order before (a) ESG accepts satisfactory proof of insurance required in Section

1.E of this Order and (b) ESG has notified the Seller to proceed. Seller will commence and complete performance of Services at the location, in the manner, and as otherwise identified in this Order.

* 1. **Service Warranty:** Seller warrants that Services, including the incidental Goods furnished under this Order, will conform to the requirements of this Order, including all descriptions, specifications, and drawings, that the Services will be performed in a reasonable and workmanlike manner, and that any Goods incidentally furnished under this Order will conform to the Product Warranties contained in Section 2.D. of this Order. Seller’s warranties will apply to ESG and to ESG’s customer and the site owner. Unless otherwise specified, the warranties contained in this Order begin on the date indicated on the certificate of final completion and continue for one year thereafter. ESG will rely upon Seller's warranties in fulfilling ESG’s contractual commitments to third parties and may assign the warranties to its customer and to the site owner. Additional warranty provisions, if any, will be identified and incorporated herein by a separate attachment to this Order.
	2. **Installation Services:** This Section 3.E. will apply if installation of the Goods is required by the Order. Seller will furnish all Services required for installation of Goods and will install the Goods in accordance with all product specifications and Order provisions. Seller will, if applicable, be properly licensed to install any Goods required to be installed by the Order. Seller will conduct installation Services in a manner that will cause a minimum of inconvenience, without undue interruption during the installation Services, to ESG, its employees, subcontractors, subcontractors’ employees, customer(s), or the site owner. Seller will check or test each installed good to confirm proper installation and agrees to warrant any Goods installed pursuant to the warranties contained in Section 2.D. of this Order.
	3. **Certified Payroll Reporting:** If any portion of the Services are subject to local, state, or federal prevailing wage laws, then Seller agrees to supply ESG with, and in addition to any other information or documents required pursuant to Section 1.B. of this Order, certified payrolls and statement(s) of compliance, as applicable. ESG reserves the right to withhold payment to Seller until Seller submits appropriate certified payroll documentation.
1. **CONSULTING AND PROFESSIONAL SERVICES.** If Seller is performing any consulting or professional Services pursuant to this Order, whether the Seller is also and primarily furnishing Goods, then this Article 4 will apply to the transaction in addition to all other applicable terms and conditions contained within this Order.
2. **Performance.** Seller represents to ESG that Seller possesses the degree of skill and knowledge necessary to perform its obligations under this Order, and that the Services and Deliverables (as identified on Page 1 of this Order, under the heading “Item/Description” (**Deliverables** – in all cases shall include all electronic files associated with the Services being performed, including but not limited to Word, Excel, Trane Trace, AutoCAD, etc.) provided by Seller under this Order shall be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the work is performed. If Seller's performance of this Order requires any permits, licenses, or performance bonds, Seller has obtained all such permits, licenses, and performance bonds in the states which the work will be performed, and shall maintain them in full force and effect throughout the term of this Order. Seller shall provide copies of all such permits, licenses, and performance bonds to ESG, upon request. Seller will, at its own expense, promptly and properly perform, at the written request of ESG, all corrective services necessary to conform the Services and Deliverables to the foregoing representations. Seller understands and acknowledges that ESG will rely upon the competence and completeness of Seller's Services in fulfilling ESG's contractual commitments to third parties.
3. **Patents and copyrights**. Seller shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Services or the incorporation in the Services of any invention, design, process, product or publication which is the subject of patent rights or copyrights held by others. Seller shall indemnify and save harmless ESG from all claims and liability of any nature of any kind, including costs and expenses, arising from or occasioned by any infringement or alleged infringement of patent rights or copyrights on any invention, design, process, product or publication, or any part thereof, furnished or installed by Seller or used in the performance of the Services by said Seller or arising from their use by the Owner.
4. **PURCHASES FOR FEDERAL GOVERNMENT PROJECTS**. If, but only if, the Seller is providing Goods and/or Services under this Order as part of a project on which the federal government is the owner, then this Article 4 applies to this transaction. The following terms and conditions apply to the Seller to the same extent they apply to and/or are required by law, rule, regulation, the project, or the prime or owner contract or site owner for whom or for whose benefit they are being purchased by ESG. It is the Seller’s responsibility to determine whether the provisions contained within this Article 4 apply by law, including but not limited to, prevailing wage laws and/or labor agreements (Davis-Bacon Act, prevailing wages in Service contracts, and other related acts), the current version of the Federal Acquisition Regulation (“**FAR**”) as promulgated by the General Services Administration, Department of Defense, and National Aeronautics and Space Administration, as amended, and the Federal Property and Administrative Services Act of 1949, codified at 40 U.S.C. §§ 471-514 and 41 U.S.C. §§ 251-260, as amended.
	1. **Data Privacy:** For purposes of this provision, “**Personal Data**” means any information that can be used directly or indirectly, alone or in combination with other information, to identify an individual. Seller will handle all Personal Data it processes on behalf of ESG in accordance with all applicable laws and ESG’s reasonable requests with respect to protecting Personal Data, including but not limited to: restricting employee and agent/subcontractor access to Personal Data, following ESG’s instructions in connection with processing Personal Data, not disclosing Personal Data to any third party without ESG’s written permission, applying appropriate security measures to protect Personal Data, and deleting any Personal Data in its possession or control at the expiry or termination of this Service Order unless otherwise agreed between the Parties. In the event of any unauthorized, unlawful, and/or unintended processing, access, disclosure, exposure, alteration, loss, or destruction of Personal Data, Seller will immediately notify ESG and cooperate with ESG’s reasonable requests to investigate and remediate such incident and provide appropriate response and redress.
	2. **Prohibited Parties and Transactions**: ESG is a United States company with a policy requiring it to comply with all applicable laws, including economic sanctions and trade restrictions imposed by the United States government. ESG has undertaken to provide its parent organization with any information relevant to its potential involvement with any party that may be the target of such sanctions and restrictions. Accordingly, Seller will provide ESG with reasonable advance notice of the names and addresses of any member of Seller’s organization which may be any of the following: (a) the target of, or owned or subject to control by any country, institution, organization, entity or person that is the target of, economic sanctions and trade restrictions imposed by the United States government; (b) Debarred or otherwise excluded or declared ineligible to participate in United States government contracts or contracts, grants or other programs financed in whole or in part by the United States government; or (c) Listed by the United States Departments of Commerce or State as an entity with which United States persons may not engage in export or re-export related transactions.
	3. **FAR Clauses:** The following FAR clauses are incorporated into the contract between ESG and its customer and are specifically designated and incorporated into this Order and apply to the Seller as they apply to ESG. Additional FAR clauses, if any, may be identified by a separate attachment to the Order and are incorporated by this reference into the Order.

52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

52.214.26 Audit and Records

52.219-8 Utilization of Small Business Concerns

52.222-4 Contract Work Hours and Safety Standards Act – Overtime Comp.

52.222-6 Davis – Bacon Act

52.222-7 Withholding of Funds 52.222-8 Payrolls and Basic Records

52.222-9 Apprentices and Trainees

52.222-10 Compliance with Copeland Act Requirements

52.222-11 Subcontracts (Labor Standards)

52.222-12 Contract Termination – Debarment

52.222-13 Compliance with Davis-Bacon and Related Act Regulations

52.222-14 Disputes concerning Labor Standards

52.222-15 Certification of Eligibility

52-222-21 Certification of Non-Segregated Facilities

52.222-23 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction

52.222-26 Equal Opportunity

52.222-37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era

52.222-41 Service Contract Act of 1965, as Amended

52.222.54 E-Verify

52.223-6 Drug-Free Workplace 52.225-1 Buy American Act – Supplies

52.225-5 Trade Agreements

52.225-8 Duty-Free Entry

52.225-9 Buy American Act-Construction Materials

52.225-11 Buy American Act-Construction Materials Under Trade Agreements

52.225-13 Restriction on Certain Foreign Purchases

* 1. **Flowdown Provisions.** For all Orders on a project for a federal customer, Seller shall fully comply with all federal Applicable Laws and contract provisions that ESG is required to flow down from the customer prime contract (the “**Flowdowns**”). Such Flowdowns are listed in the Federal Business Services Addendum found at: <https://energysystemsgroup.com/terms/>.
	2. **Additional Insurance Requirements Pursuant to FAR 52.228-5 and Audit and Records Pursuant to FAR 52.214.26:** Seller must maintain all insurance required in this Order and its certificate of insurance (COI) must identify proof that Seller has procured an endorsement providing that any cancellation or material change adversely affecting ESG or the federal government’s interests with respect to insurance required hereunder will not be effective (a) for such period as the laws of the state in which this Order is to be performed prescribe, or (b) until thirty (30) days after the insurer or ESG gives written notice to the contracting officer, whichever period is longer. ESG has inserted this Section 4. E., including paragraph (c) of 48 CFR 52.228-5, in this Order provided it represents a contract that requires work on a federal government installation and requires Seller to provide and maintain the insurance required in Section 1. E., or as required by documents attached or incorporated by reference within this Order. Further, regarding FAR 52.214.26, ESG shall be construed as the “Contracting Officer” for purposes of this regulation.
	3. **Employee Rights under The National Labor Relations Act:** Seller must post a notice of employee rights under the National Labor Relations Act (“**NLRA**”), as amended, in conspicuous places in its plants and offices where employees covered by the NLRA engage in activities relating to the performance of this Order. The contract clause set forth in 29 CFR Part 471, Appendix A to Subpart A, is incorporated by reference as if fully set forth herein.
	4. **E-Verify**: E-Verify [(http://www.dhs.gov/e-verify)](http://www.dhs.gov/e-verify%29) is a website through the Department of Homeland Security in which employers must register, then enter citizenship-related information, from a completed Form I-9 Employment Eligibility Verification, regarding all employees working on any qualifying contract with the Federal Government, either as an employer with a contract directly with the Federal Government or as a subcontractor (at any tier) to an employer with a contract directly with the Federal Government. Seller is responsible, as subcontractor under a federal contract, to list all employees doing work under this Order on the website referenced above. (See FAR 52.222.54).
	5. **Reporting Executive Compensation**: Section 2(d) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109- 282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252) (the “**Transparency Laws**”), requires certain first-tier subcontractors on all Federal Government contracts to report to prime contractors the names and total compensation of each of their five most highly compensated executives. If ESG is a prime contractor under the Transparency Laws, this Section 4. H. may apply, depending on whether Seller, as first-tier subcontractor, meets the conditions of sub-section II or the exemption of sub-section III. Note: The Transparency Laws require all information reported herein to be made public. “**Executive**” means officers, managing partners, or any other employees in management positions., (ii) “**Total compensation**” means the cash and noncash dollar value earned by the executive during the Seller’s preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)): (a) Salary and bonus; (b) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments; (c) Earnings for Services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives and are available generally to all salaried employees; (d) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans; (e) Above-market earnings on deferred compensation which is not tax qualified; and (f) Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds$10,000
	6. **Reporting Information within Ten (10) Days.** Within ten (10) days of Seller’s execution of this Order (or any modification to the Order that changes previously reported data), Seller will report the following information to ESG for posting on the Federal Government database at [http://www.fsrs.gov:](http://www.fsrs.gov/) (i) Unique identifier (DUNS Number) for the Seller receiving the award and for the Seller’s parent company, if applicable; (ii) Name of the Seller; (iii) Amount of the Order; (iv) the Date of the Order execution; (v) A description of the Goods or Services (including construction) being provided under the Order, including the overall purpose and expected outcomes or results of the Order; the (vi) Order number; (vii) Seller’s physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district; (viii) Seller’s primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district; and (ix) the applicable North American Industry Classification System code (or “**NAICS**”).
	7. **Reporting of Information within Twenty (20) Days.** Within twenty (20) days of Seller’s execution of this Order, and annually thereafter, Seller will report to ESG the names and total compensation of each of the five most highly compensated executives for the Seller’s preceding completed fiscal year at [http://www.ccr.gov,](http://www.ccr.gov/) if, (i) in the Seller’s preceding fiscal year, the Seller received (A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and (B) $25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and (ii) The public does not have access to information about the compensation of the executives through periodic reports filed under Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or Section 6104 of the Internal Revenue Code of 1986, as amended. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.).
	8. **Exemption to Reporting Requirements**. If the Seller in the previous tax year had gross income, from all sources, under $300,000, the Seller is exempt from the requirement to report executive compensation.
	9. **Reporting Format:** If the Seller is exempt from the requirement to report executive compensation under Sections 4. H. II or III, an officer of the Seller will certify that fact to ESG within twenty (20) days of the award of this Order. The certification will take the following form:

This is to certify that, to the best of my knowledge and belief, Seller did not receive 80 percent or more of its annual gross revenues in its preceding completed fiscal year from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements. This is to certify that, to the best of my knowledge and belief, Seller did not receive $25,000,000 or more in annual gross revenues in its preceding fiscal year from federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements. This is to certify that, to the best of my knowledge and belief, Seller has filed periodic reports under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986 containing information about the compensation of its executives, which are available to the public. This is to certify that Seller had gross income from all sources in the previous tax year under $300,000.

The certification must be signed by an officer of Seller in the following format:

Firm:

Signature:

Name: Title:

Date of Execution:

* 1. **Safety**: If requested by ESG and/or required by the contract between ESG and its Customer, the Seller will comply with this Section 4.M. The Seller will establish its own safety plan, and require each employee to sign an onsite log book / daily roster each day and complete a job safety analysis (“**JSA**”) for all work to be performed on-site. Seller will provide adequate training and supervision to ensure that its employees and subcontractor’s work safely. If work cannot be performed safely, Seller will stop work immediately and notify ESG. ESG may stop work if it deems that Seller is doing the work in an unsafe manner. In such event, Seller may not restart work until the work can be done safely and the JSA amended to incorporate the new protocol.

Seller will not be entitled to additional compensation or an extension of time if work is stopped due to unsafe conditions. Seller and its subcontractor’s, if any, will comply with all ESG’s customer’s or the site owner’s safety procedures and protocols, including those identified in ESG’s construction site safety plan, as well as all applicable local, state, and federal safety codes and requirements, including OSHA. Seller will give prompt written notice, within 24 hours of an occurrence implicating safety to ESG if any of the following occurs to Seller’s employees and lower tiered subcontractor’s employees: (1) a near miss (incident that could have resulted in personal injury or damage to property); (2) an incident requiring First Aid; (3) any accident involving personal injury requiring a physician’s care; or (4) any property damage. Lost time accidents will be fully investigated by Seller with a written report provided to ESG within thirty (30) days. Appropriate modifications/updates to the JSA will be implemented before the same task can continue.

Upon the request of ESG, Seller will provide the following written information:

1. Before furnishing Services, each of Seller’s and its subcontractors / employees will attend an ESG site safety orientation. Seller and its subcontractors, if any, will be trained in the recognition of job site hazards, and work in a safe, controlled manner at all times while at ESG’s customer’s or the site owner’s facilities;
2. A JSA for each task or activity to be performed on a given day, specific to the site conditions and including a rescue plan as appropriate for specific tasks and Services. The Seller will prepare the JSA through an employee who is on-site and familiar with the work to be performed and will submit the JSA to ESG’s on-site representative for review. All Seller employees and all lower-tier Seller employees who perform the Services will thoroughly read and understand each JSA applicable to them and will daily acknowledge in writing their understanding of the JSA;
3. Seller’s designated safety representative will conduct daily, documented safety briefings including review of the JSA’s for a given day’s activities with Seller’s employees before furnishing any Services;
4. Seller will provide ESG a completed daily roster for each day that on-site Services are furnished. ESG’s standard daily roster format or similar form as approve by ESG, will be used. The Seller will require each employee and any lower-tiered subcontractor’s employees to sign the daily roster each day;
5. Seller will provide to ESG a daily report to record the progress and activities of Seller’s Services. ESG’s standard daily report template or similar form as approved by ESG will be used, which document will be made available to Buyer upon request;
6. Seller’s employees and any lower-tiered subcontractors will have their employer’s name on their hard hat or readily identified on their clothing. ESG’s badging system will be used by the Seller and any lower-tiered subcontractors, or similar system as approved by ESG;
7. Seller and its lower-tier subcontractors will provide certificates proving each person that is operating equipment on-site has received proper training and is licensed or certified as applicable;
8. Each piece of equipment must be inspected prior to use at each shift. A manufacturer’s inspection checklist will be completed by Seller before use at the start of a given shift and submitted to the ESG’s construction manager or designated on-site representative the following morning with the prior day’s paperwork; and/or
9. Seller will show proof of Hazcom training for on-site employees. Hazcom training may be addressed within the JSA by referencing the product(s) being used, risks involved, and the mitigation / remediation measures contained in the MSDS.

Seller’s safety plan and JSAs for the specific Services must conform to those required or recommended by governmental and quasi- governmental authorities having jurisdiction, and by ESG and its customer or the site owner, including, but not limited to, requirements imposed by the prime or owner contract documents and/or ESG’s customer agreement. Seller will maintain copies of all JSAs at the site location and will update JSAs when and as conditions change.