



GENERAL TERMS AND CONDITIONS

1. **STANDARD OF CARE.** The Services shall be performed in a manner consistent with the level of care and skill ordinarily exercised by members of Eco-Analysis Group LLC's (Eco-Analysis Group) profession currently practicing under similar conditions and in the same locality as the Project. Data, interpretations and recommendations by Eco-Analysis Group will be based solely on information discovered by, or made available to, Eco-Analysis Group during the course of the engagement. In connection with such information, Eco-Analysis Group shall not be responsible for the use or interpretation of such information by non-parties to this Agreement. Eco-Analysis Group shall not be held liable for problems that may occur if Eco-Analysis Group's recommendations are not followed.

1.1 It is understood and agreed that the Eco-Analysis Group shall not be held responsible for any inaccuracies in any materials, data or records as provided to the Eco-Analysis Group by the CLIENT, which have been prepared by any other person, firm or agency and on which Eco-Analysis Group in its professional judgment has relied and/or utilized in the performance of Eco-Analysis Group's services. Client agrees that Eco-Analysis Group shall not be responsible for the means, methods, procedures, performance, site safety of the construction contractors or subcontractors, or for their errors or omissions. Client agrees that the work created pursuant to this Agreement is for the sole and exclusive use of Client and is not for the benefit of any third parties. This Agreement and the Services to be performed hereunder shall in no way be construed as a guarantee of deficient-free construction.

1.2 Eco-Analysis Group makes no warranty, either express or implied, as to its findings, recommendations, plans, specifications, or professional advice except that the services were performed in a manner consistent with the level of care and skill ordinarily exercised by members of Eco-Analysis Group's profession currently practicing under similar conditions and in the same locality as the Project.

2. **PAYMENTS.** Eco-Analysis Group will submit to Client invoices for the balance due, which shall be due and payable net thirty (30) days from date of respective invoice. If Client objects to all or any portion of any invoice, Client will so notify Eco-Analysis Group in writing within ten (10) calendar days of the invoice date, identify the cause of disagreement, and immediately pay that portion of the invoice not in dispute. In the absence of written notification described above, the balance as stated on the invoice shall be deemed accepted. Invoices are delinquent if payment has not been received when due. In such event, Client shall pay an additional charge of one and one-half (1.5) percent per month (or the maximum percentage allowed by law, whichever is lower) on any delinquent amount. Payment thereafter will first be applied to accrued interest and then to the principal unpaid amount. Eco-Analysis Group shall be entitled to recover for all costs and expenses incurred (including any attorney's fees) in connection with collection of any delinquent amount. Eco-Analysis Group reserves the right to withhold all reports or deliverables unless and until payment is made by Client in accordance with this Agreement.

If the Client fails to make payment when due, Eco-Analysis Group may, upon seven (7) days written notice to the Client, suspend performance of services under this Agreement. Suspension of services will include, depending on the phase of the project, withholding delivery of reports, studies, construction documents, affidavits, closeout documents, and/or other applicable documents. In the event of a suspension of services, Eco-Analysis Group will have no liability to the Client and/or Owner for delay or damage caused the Client/and or Owner because of such suspension of service.

If applicable, within a reasonable period of time after submitting our invoices to the Client, Eco-Analysis Group reserves the right to contact the Owner directly for assistance and/or to have payment made directly from the Owner to EAG in lieu of receiving payments from the Client.

3. **REIMBURSABLE EXPENSES.** Transportation, lodging and meals in connection with travel; postage and delivery charges; reproduction and plotting costs; automobile travel; miscellaneous items, and subconsultants/subcontracts (if required) will be invoiced **as stated in the Agreement**. Mileage charges for automobiles will be invoiced at the prevailing rate established by the IRS. In those situations where reimbursable expenses are invoiced separately, backup for expenses will be provided only if required contractually by the Client or Owner.

4. **WORK PERFORMED BY OTHERS.** If the Client or the Owner engages other consultants, firms, or contractors, to provide services on the Project, Eco-Analysis Group will have no responsibility or liability for the performance or technical sufficiency of the services of such separately engaged firms, or any means, methods, sequencing, or safety responsibility of any construction contracts.

5. INTELLECTUAL PROPERTY AND WORK PRODUCT. (i) All processes, procedures, work product, materials, methodologies or services used or provided by Eco-Analysis Group in connection with this Project was, shall remain, or will always be, the intellectual property of Eco-Analysis Group. Nothing in this Agreement shall operate as a waiver of ownership or a sale of ownership of any Eco-Analysis Group intellectual property. (ii) Client represents and warrants that Client owns and/or has the right to use the intellectual property that is contained in any instrument, report, media, drawing, design, submittal, or document that Client provides to Eco-Analysis Group in connection with the Project, and that said Client-provided document does not and shall not infringe, misappropriate, or violate the intellectual property rights of any third-parties (iii) All documents including reports, electronic media, and drawings, prepared or furnished by Eco-Analysis Group and its subconsultants pursuant to this Agreement are instruments of service in respect of this Project and Eco-Analysis Group will retain an ownership and property interest therein whether or not the Project is completed. The Client may make and retain copies of such documents for information and reference in connection with the Project; however, such documents are not intended or represented to be suitable for reuse by the Client, including extensions of the Project or on any other project, nor are they to be relied upon by anyone other than the Client. Accordingly, the Client will, to its fullest extent permitted by law, defend, indemnify and hold harmless Eco-Analysis Group from and against any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions and damages whatsoever arising out of or resulting from any unauthorized reuse of the documents or disbursement by Client to third parties. If it is necessary to distribute any documents to an unrelated third party, both the third party and Client agree: (a) the third party is bound by all of the conditions and limitations of this Agreement and related documents; and (b) the third party is bound by all limitations of liability or indemnity provisions

6. DISPUTE RESOLUTION. Client agrees that in the event Eco-Analysis Group institutes litigation to enforce or interpret the provisions of this Agreement, such litigation is to be brought and adjudicated in Texas, and Client waives the right to bring, try or remove such litigation to any other county or judicial district. The Client shall make no claim for professional negligence, either directly or by way of a cross complaint against the Eco-Analysis Group, unless the Client has first provided the Eco-Analysis Group with a written certification executed by an independent consultant currently practicing in the same discipline as the Eco-Analysis Group and licensed in the same State. This certification shall: (i) contain the name and license number of the certifier; (ii) specify the acts or omissions that the certifier contends are not in conformance with the standard of care in paragraph 23; and

(iii) state in detail the basis for the certifier's opinion that such acts or omissions do not conform to the standard of care. After attempting to negotiate among themselves in good faith, and prior to the initiation of any legal proceedings, the parties agree to submit all claims, disputes or controversies arising out of or in relation to the interpretation, application or enforcement of this Agreement to non-binding mediation. Mediation will be conducted under the auspices of a mediation service or professional mediator as the parties agree upon. The party seeking to initiate mediation shall do so by submitting a formal written request to the other party to this Agreement. This Article will survive completion or termination of this Agreement, but under no circumstances will either party call for mediation of any claim or dispute arising out of this Agreement after such period of time as would normally bar the initiation of legal proceedings to litigate such a claim or dispute under the laws of the State of Texas. The parties agree that all causes of action against each other shall accrue no later than the date of substantial completion of the project.

7. JOBSITE SAFETY. Neither the professional activities of Eco-Analysis Group, nor the presence of Eco-Analysis Group or its employees and subconsultants at a construction/project site, will relieve the Owner and Contractor of its obligations, duties and responsibilities, including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the Work in accordance with the contract documents and any health or safety precautions required by any regulatory agency. Eco-Analysis Group has no authority to exercise any control over any contractor in connection with the Work, including construction means, methods, sequence, techniques or procedures. The parties agree that Eco-Analysis Group shall not be responsible or liable for jobsite safety.

8. COST ESTIMATES. As Eco-Analysis Group has no control over construction costs or contractor's prices, any reasonable estimate of construction costs made by Eco-Analysis Group will be on the basis of Eco-Analysis Group's experience and judgment as design professionals. Eco-Analysis Group cannot and does not warrant or guarantee that contractor's proposals, bids or costs will not vary from our estimates.

9. ENERGY ESTIMATES/MODELING. Eco-Analysis Group has no control over building and equipment operation and/or maintenance, or climatic conditions. Accordingly, any energy estimates and/or models are made on the basis of Eco-Analysis Group's experience and judgment as design professionals. Eco-Analysis Group cannot and does not warrant or guarantee that actual building or system operating costs will not vary from our estimates and/or models.

10. HAZARDOUS MATERIALS. Eco-Analysis Group will have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, PCB's, or other toxic substances.

11. **CLIENT'S RESPONSIBILITIES.** The Client will provide Eco-Analysis Group with all existing, reliable, and accurate information relating to the Project, but not limited to existing conditions, soils investigations, and program data. If the Client becomes aware of any fault or defect in the Project or Eco-Analysis Group's services, he/she will promptly notify Eco-Analysis Group. The Client will furnish required information or services as expeditiously as necessary for the orderly performance of the services.

12. **OWNER REPRESENTATIVE.** If the Owner retains an Owner Representative for the Project, the Owner shall provide to Eco-Analysis Group, in writing, a list of duties, responsibilities and authority (DR&A list) the Owner Representative has been assigned by the Owner. Eco-Analysis Group shall be entitled to rely upon the proper performance by the Owner Representative for the items on the DR&A list and shall bear no responsibility to the Owners or its representative(s) for any opinions, directions or decisions given by the Owner and Owner Representative that are in conflict with DR&A. In the event the Owner makes any changes to the Owner Representative's DR&A list, the Owner shall notify Eco-Analysis Group, in writing, in a timely manner. Eco-Analysis Group shall be entitled to rely solely upon the Owner Representative's decisions and directions as to all areas listed in the DR&A list. If any Owner-directed changes to the Owner Representative's DR&A list result in additional time or expense in order for Eco-Analysis Group to prepare, coordinate or respond to changes to the plans or specification, Eco-Analysis Group shall be entitled to an equitable adjustment in fees and schedule for the performance of these additional services.

13. **INSURANCE.** At all times during the terms of this Agreement the Eco-Analysis Group shall maintain, at its own cost and expense, insurance coverage as protection from claims filed against Eco-Analysis Group as follows:

- Workers Compensation (as required by law)
- Commercial General Liability (to person or property)
- Commercial Automobile Liability (to person or property)
- Professional Liability (errors and omissions)

At the request of the Client, Eco-Analysis Group shall provide appropriate certificates thereof. In the event a claim against the Eco-Analysis Group is brought, alleging errors or omissions by the Eco-Analysis Group and Eco-Analysis Group is found NOT to be legally liable, then Client shall pay all costs incurred by Eco-Analysis Group in defending itself against such claim.

14. **GREEN/LEED® DESIGN.** If the Project includes any level of LEED, Green Building Rating System and other similar environmental guidelines (collectively "LEED"), the Client and/or Owner recognize that the achievement of such certification is subject to third parties over which Eco-Analysis Group has no control, and may require the cooperation of the Client, Owner, Contractor, and others. The Client and/or Owner acknowledge and understand LEED is subject to various and possible contradictory implementation. Therefore, the Parties agree that if LEED certification is the stated goal of the Project, Eco-Analysis Group shall use reasonable care in its design to achieve the goal but makes no warrantee or guarantee that the Project, when complete, will actually achieve LEED certification. In addition, the Client and/or Owner acknowledge that its desire to achieve LEED may impact the available design and product options and may impact the overall cost, schedule, and performance of the complete project. The Client and/or Owner have accepted these potential impacts in the recognition of the importance it has placed on the values of a LEED project.

15. **PERIOD OF PERFORMANCE.** Except as otherwise provided for in the Agreement, if the services covered under this agreement have not been completed within twelve (12) months, through no fault of Eco-Analysis Group, the amounts of compensation, rates and multipliers set forth herein will be equitably adjusted with respect to services performed after that date.

16. **TAX CREDIT.** The Client agrees that any State or Federal energy related tax deduction and/or credit available to Eco-Analysis Group as result of the Project, including but not limited to the 179-D Tax Credit, will be assigned to Eco-Analysis Group as the MEP/FP Engineering Consultant.

17. **WAIVER OF CONSEQUENTIAL DAMAGES.** To the fullest extent permitted by law, neither the Client nor Eco-Analysis Group, its subconsultants and subcontractors, shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or this Agreement. This mutual waiver of consequential damages shall include, but not be limited to loss of use, loss of profit, loss of business, loss of income, loss of reputation, increased energy, water and other operational costs, unrealized tax incentives, credits, deductions and or rebates, and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract, and breach of strict or implied warranty.

18. **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to both the Client and Eco-Analysis Group, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of Eco-Analysis Group to the Client, and anyone claiming by, through or on behalf of the Client for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert witness fees and costs, so that the total aggregate liability of Eco-Analysis Group to the Client shall not exceed \$25,000.00, or Eco-Analysis Group's total fee for services paid on this Project, whatever is less. It is understood that this limitation applies to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law. It is intended that this limitation

of liability applies to all services performed on the project (including any future assignments or enlargements to the scope of services). It is also intended that this limitation of liability applies to Eco-Analysis Group and its employees.

19. **CONTINGENCY.** The Client and/or Owner and Eco-Analysis Group agree that certain increased costs and changes may be required because of possible omissions, ambiguities, or inconsistencies in the drawings and specifications prepared by Eco-Analysis Group and, therefore, that the final construction cost of the Project may exceed the contracted construction cost. The Client and/or Owner agrees to set aside a reserve in the amount of five percent (5%) of the Project construction cost as a contingency to be used, as required, to pay for any such increased costs and changes. The Client and/or Owner further agrees to make no claim by way of direct or third-party action against Eco-Analysis Group or its subconsultants with respect to any increased costs within the contingency because of such changes. Not included in the contingency are typical change orders for owner requested changes, unforeseen conditions, substitution of equipment, changes in design, and/or code official required changes.

20. **TERMINATION OR ABANDONMENT.** The Agreement may be terminated by Eco-Analysis Group upon no less than seven (7) days written notice, should the Client fail substantially to perform in accordance with the terms of this agreement through no fault of Eco-Analysis Group.

21. **MISCELLANEOUS.** This Agreement (consisting of the "Standard Terms and Conditions" and the Letter Agreement) constitutes the complete and sole agreement between Eco-Analysis Group and the Client with respect to the Project, and may be amended only by a written document signed by both parties, and will be governed by the laws of the State of Texas.

22. **SUCCESSORS AND ASSIGNS.** Neither the Client nor the Eco-Analysis Group shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that are or may become due) this document, or any claims that may arise from the performance of services under this agreement, without the written consent of the other, except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this document. Nothing contained in this paragraph shall prevent the Eco-Analysis Group from employing such independent consultants, associates and subcontractors, as it may deem appropriate to assist in the performance of services hereunder. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than the Client and the Eco-Analysis Group. Nothing herein shall create a contractual relationship with or cause of action in favor of a third party against either the Client or Eco-Analysis Group.

All claims and causes of actions between the parties to this agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of substantial completion for acts or failures to act occurring prior to substantial completion, or the date of the issuance of the final certificate for payment for acts or failures to act occurring after substantial completion.

23. **MISCELLANEOUS.** This Agreement represents the entire agreement between the parties. No other prior written or oral representations, negotiations, or discussions are part of this agreement. To the extent allowed by law, any agreement that is a part of the scope of Eco-Analysis Group services and incorporated by reference into this Agreement shall be subordinated to the terms and conditions of this Agreement where they conflict. ● Should a court find one of the provisions of this Agreement unenforceable, the remaining provisions of this Agreement shall remain in full force and affect. ● This Agreement shall be interpreted by the parties in a manner that ensures this Agreement's compliance with applicable local, state, federal, or foreign laws. The parties affirm that this Agreement is a collaborative effort between Client and Eco-Analysis Group, with no single party considered the drafter of this Agreement or having the drafting of this document construed against them. ● No waiver by a party of any condition or of any breach of any term contained in this Agreement shall be effective unless in writing and signed by the waiving party, and no waiver in any one or more instances shall be deemed to be a continuing waiver of any such condition or breach in other instance or a waiver of any other condition or breach of any other term.