

Date: 9/16/2024



Region: 4C

CSS No.: 98900

FAC ID: WV022

Maximo WO No.: 16628

Asset #: NA

Priority: Routine

Original Work Request:

Repair BAS controls - need tied into the new HVAC equipment.

Description of Repairs Needed:

Labor and material to a.) Demo existing AHU temperature controls, b.) Furnish & install Distech BACnet controller with the following: - Supply air temperature sensor - Return air temperature sensor - Mixed air temperature sensor - Outside air temperature sensor - 3-way hot water valve & actuator - Mixed air damper actuator - Bypass damper actuator - Supply fan current switch - Low temperature limit switch - Filter pressure switch, c.) Provide labor for programming, commissioning, integration, engineering, & graphics in the existing JACE, d.) Provide two hours of Owner training

Labor:	Labor Hrs	Labor Rate	Total
BAS Technician	116	\$ 165.00	\$ 19,140.00
			\$ -

Material List:	Quantity	Cost	Total
Distech BACnet Controller Ecy-450-CO	1	\$ 3,700.00	\$ 3,700.00
Supply air temperature sensor TS-D2X006	1	\$ 43.00	\$ 43.00
Return air temperature sensor TS-D2X006	1	\$ 43.00	\$ 43.00
Mixed air temperature sensor TS-AP2X144	1	\$ 185.00	\$ 185.00
Outside air temperature sensor TS-O2X	1	\$ 60.00	\$ 60.00
3-way hot water valve & actuator B325+LF24-MFT US	1	\$ 1,223.00	\$ 1,223.00
Mixed air damper actuator AFRB24-SR	1	\$ 1,018.00	\$ 1,018.00
Bypass damper actuator AFRB24-SR	1	\$ 1,018.00	\$ 1,018.00
Supply fan current switch C-2300	1	\$ 54.00	\$ 54.00
Low temperature limit switch TS-FS-50-DIS	1	\$ 612.00	\$ 612.00
Filter pressure switch PS-ADPS01WCPRN	1	\$ 73.00	\$ 73.00
Wire, conduit, misc material	1	\$ 1,341.00	\$ 1,341.00

Equipment List:	Quantity	Cost	Total
			\$ -
			\$ -
			\$ -

PM WO History:

NA

Estimate Summary:

Labor	Material	Equipment
\$ 19,140.00	\$ 9,370.00	\$0.00

Sub Total	G&A 12%	Fee 6%	Total Estimate
\$28,510.00	\$3,421.20	\$1,710.60	\$33,641.80



QUOTE

Client: USARC Kingwood
Contact: Julie Pape
Date: 9/5/2024
Quote# 212810
Location: Kingwood, WV

PO Box 627
540 Leon Sullivan Way
Charleston, WV 25301
Fax 304-346-8920

PROJECT: AHU-1 Temperature Controls Replacement

SCOPE OF WORK:

Demo existing AHU temperature controls **WIRE, CONDUIT, MISC. MATERIAL = \$1,341**
Furnish & install Distech BACnet controller with the following: **ECY-450-C0 @ \$3,700**

- Supply air temperature sensor **TS-D2X006 @ \$43**
- Return air temperature sensor **TS-D2X006 @ \$43**
- Mixed air temperature sensor **TS-AP2X144 @ \$185**
- Outside air temperature sensor **TS-O2X @ \$60**
- 3-way hot water valve & actuator **B325+LF24-MFT US @ \$1,223**
- Mixed air damper actuator **AFRB24-SR @ \$1,018**
- Bypass damper actuator **AFRB24-SR @ \$1,018**
- Supply fan current switch **C-2300 @ \$54**
- Low temperature limit switch **TS-FS-50-DIS @ \$612**
- Filter pressure switch **PS-ADPS01WCPRN @ \$73**

Provide labor for programming, commissioning, integration, engineering, & graphics in the existing JACE
Provide two hours of Owner training

MATERIAL = \$9,370.00

LABOR = \$165/hr @ 116 hours = \$19,140.00

The stated price \$28,510.00

The stated price listed above is for the above scope of work (including all state and local taxes). Additional services, repairs, or improvements that are not presented in the above description are excluded from this price.

EXCLUSIONS:

1. Network drop and IP address to be provided by the customer
2. Repairs to existing controls
3. The price of a performance/payment bond
4. The cost of permits and inspections by outside authorities

CLARIFICATIONS:

1. Our terms are net 30 days
 2. Price will be held firm for 60 days
 3. Work will be performed during normal working hours
 4. Normal working hours are M-F 8:00 am to 4:30 pm
 5. 1-Year Parts and Labor Warranty is Included
 6. Project may be progress billed if deemed necessary
- ☐ **Check box if a payment schedule is needed**

APPROVED:
USARC Kingwood

Authorized Representative

Title

Acceptance Date

Purchase Order Number

APPROVED:
CASTO TECHNICAL SERVICES

Brandon Vance
Authorized Representative

BAS Operations Manager
Title

9/5/2024
Proposal Date

TERMS AND CONDITIONS – QUOTED SERVICE

“Company” shall mean Casto Technical Services, Inc. and “Customer” shall mean above aforementioned “Client”.

1. Acceptance; Agreement

a. These terms and conditions (these “Terms”) are an integral part of Company’s offer as set forth in the attached proposal, dated on the quote sheet, the (“Proposal”) presented to the Customer. Should Customer accept the Proposal or place an order, these Terms shall, together with the Proposal, form the agreement (the “Agreement”) of the Company and Customer for the services described in the Proposal (the “Work”).

b. The Proposal shall remain valid only for 30 days from the date thereof. If Customer’s adds to, deletes from, or alters in any manner, these Terms or the Proposal, Customer’s proposed modifications are automatically rejected by the Company and shall not become a part of the Agreement. Customer’s acceptance of the Work by Company will, in any event, constitute an acceptance by Customer of these Terms and the Proposal as originally delivered to Customer as the terms of the Agreement without modification.

c. The Proposal is subject to credit approval by Company of Customer. Company may delay or suspend performance or, at its option, renegotiate prices and/or the Terms or the Proposal should Customer’s credit profile be determined to be unacceptable to Company in Company’s exclusive discretion. If Company and Customer are unable to agree on revisions following an unfavorable credit finding, the Proposal shall be cancelled by Company without any liability, other than Customer’s obligation to pay for Work rendered by Company to the date of cancellation.

2. Pricing; Taxes

a. Unless otherwise specifically noted, the price in the Proposal includes, if required by law, all sales, consumer, use and similar taxes legally enacted as of the date hereof for Work provided by Company. Customer agrees to pay all applicable taxes, and should Company inadvertently fail to charge applicable taxes to Customer, Customer shall pay the same when invoiced by Company.

b. If Customer claims that it is exempt from certain tax requirements, Customer shall, within three (3) business days of the date of this Proposal, furnish appropriate certificates evidencing Customer’s tax exempt status. Customer shall indemnify Company for any costs, fines, fees, taxes, penalties, or other charges or expenses of any kind or character (including reasonable attorneys’ fees and costs) related to any tax liabilities imposed upon Company for which Customer had asserted to Company that it was exempt.

c. Company shall charge Customer, and Customer agrees to pay Company for any additional costs related to any bonds agreed to be provided, whether or not such costs are included on the Proposal.

d. Any delay in the Work as a result of Customer’s act(s) or failure(s) to act, may cause prices to increase during the period of delay and Company may charge Customer with its out of pocket costs associated with the delay. Additionally, Customer shall indemnify Company from and against any costs to Company or losses suffered by Company as a result of delays caused by Customer’s act(s) or failure(s) to act.

e. Unless a separate and distinct price or arrangement is quoted in the Proposal, Customer shall pay Company’s overtime, special or emergency rates for all work performed outside of Company’s normal business hours.

3. Payment

a. Customer shall pay Company’s invoices on a net 30 days basis from the date of the invoice. Company may invoice Customer for all equipment or material furnished, whether delivered to the installation site or to an off-site storage facility and for all Work performed on-site or off-site.

b. No retention shall be withheld from any payments except as expressly agreed in writing by Company, in which case retention shall be reduced per the contract documents and released in full no later than the date of substantial completion.

c. If payment is not received as required, Company may suspend performance and the time for completion shall be extended for a reasonable period of time not less than the period of suspension. Customer shall be liable to Company for all reasonable shutdown, standby and start-up costs as a result of the suspension. Company reserves the right to add to any account outstanding for more than 30 days a service charge equal to 1.5% of the principal amount due at the end of each month. Customer shall pay all costs (including attorneys’ fees) incurred by Company in attempting to collect amounts due and otherwise enforcing these terms and conditions. If requested, Company will provide appropriate lien waivers upon receipt of the payment of all sums to Company.

4. Customer Breach

a. Each of the following events or conditions shall constitute a breach by Customer and shall give Company the right, without an election of remedies, to terminate this Agreement or suspend performance by delivery of written notice declaring termination or suspension, upon which event Customer shall be liable to Company for all Work furnished to date and all damages sustained by Company (including lost profit and overhead):

(1) Any failure by Customer to pay amounts when due;

(2) Any general assignment by Customer for the benefit of its creditors, or if Customer becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors, or makes or proposes to make any proposal or arrangement with creditors, or if any steps are taken for the winding up or other termination of Customer or the liquidation of its assets, or if a trustee, receiver, or similar person is appointed over any of the assets or interests of Customer;

(3) Any representation or warranty furnished by Customer in this Agreement is false or misleading in any material respect when made; or

(4) Any failure by Customer to perform or comply with any provision of this Agreement.

b. No delay or failure by Company to exercise any right under this Agreement, and no partial or single exercise of any right under this Agreement, shall constitute a waiver of such or any other right, unless otherwise expressly provided herein.

c. Nothing in this Agreement is intended to, and the parties agree that this Agreement does not, waive, limit, supplant or replace any other remedies that may be available to Company at law or in equity, including but not limited to the use of statutory liens.

5. Performance

a. Company shall perform the Work in accordance with industry standards generally applicable under similar circumstances as of the time Company performs the Work.

b. Company may refuse to perform any Work where working conditions could endanger property or put at risk the safety of persons including but not limited to Company’s employees or contractors. Unless otherwise agreed to by Customer and Company, Customer will provide any necessary access platforms, catwalks and all other environmental requirements on site, at Customer’s expense and before the Work begins, in order to permit Company to safely perform the Work in compliance with OSHA or state industrial safety regulations.

6. Exclusions Company’s obligation is limited to the Work, as defined, and does not include any modifications to the Work or the worksite under any law or building code(s), including but not limited to the Americans With Disabilities Act. In no event shall Company be required to perform work Company reasonably believes is outside of the defined Work without a written change order signed by Customer and Company. Unless expressly included in the Proposal, the Services do not include, and Company shall not be liable for, any of the following: (1) Any guarantee of room conditions or system performance; (2) Inspection, operation, maintenance, repair, replacement or performance of work or services outside the Services; (3) Damage, repairs or replacement of parts made necessary as a result of the acts or omission of Customer or any Event of Force Majeure, as hereinafter defined; (4) Any claims, damages, losses, or expenses, arising from or related to conditions that existed in, on, or upon the premises prior to the commencement of Services (“Pre-Existing Conditions”) including, without limitation, damages, losses, or expenses involving a Pre-Existing Condition of building envelope issues, mechanical issues, plumbing issues, and/or indoor air quality issues involving mold/mould and/or fungi; or (5) Replacement of refrigerator.

7. Time for Completion Except to the extent otherwise expressly agreed in writing signed by an authorized representative of Company, all dates provided by Company or its representatives for commencement, progress or completion are estimates only. While Company shall use commercially reasonable efforts to meet such estimated dates, Company shall not be responsible for any damages for its failure to do so.

8. Access Company and its subcontractors shall be provided access to the Work site during regular business hours, or such other hours as may be requested by Company and acceptable to the Work site’ owner or tenant for the performance of the Work, including sufficient areas for staging, mobilization, and storage. Company’s access to correct any emergency condition shall not be restricted. Customer represents and warrants that Customer has all requisite right to authorize access to the Work site by the Company and its agents, employees, officers and contractors. Access to the Work site shall include, but not necessarily be limited to, physical access to all areas of the Work site relevant to the Work to be performed, ingress and egress rights over and through areas necessary for access to the Work site and the corresponding rights to transport personnel, equipment, merchandise, tools and other necessary persons and materials to and from the Work site. Customer hereby agrees to indemnify and defend Company, its agents, employees, subcontractors, contractors officers and directors from and against any claims, losses or liabilities arising from Company’s access to the Work site.

9. Completion

a. For any task performed as a part of the Work, when Company informs Customer that the task has been completed, Company may (but shall not be obligated to) request, and in the event of such a request Customer agrees to comply, that Customer inspect the Work in the presence of Company’s representative. Upon such an inspection Customer shall either (a) accept the Work related to the task in its entirety by executing Company’s paperwork to that end, or (b) accept the Work related to the task in part and specifically identify, in writing, any exception items. Customer agrees to re-inspect any and all excepted items as soon as Company informs Customer that all such excepted items have been completed.

b. In the event of a request under Sub-Section (a), the initial acceptance inspection shall take place within ten (10) days from the date when Company informs Customer that the Work associated with a task has been completed. Any subsequent re-inspection of excepted items shall take place within five (5) days from the date when Company informs Customer that the excepted items have been completed. Customer’s failure to cooperate and complete any of said inspections within the required time limits shall constitute complete acceptance of the Work related to that task as of ten (10) days from date when Company informs Customer that the Work, or the excepted items, if applicable, has/have been completed.

10. Permits and Governmental Fees; Easements and Approvals

a. Company shall secure (with Customer’s assistance) and pay for building and other permits and governmental fees, licenses, and inspections necessary for proper performance and completion of the Work which are legally required when bids from Company’s subcontractors are received, negotiations thereon concluded, or the effective date of a relevant Change Order, whichever is later. Customer agrees that it shall be responsible for the costs of such permits, fees, licenses, and inspections and if those costs are not separately included in the Proposal, Company will invoice Customer for such costs over and above the costs and fees set forth in the Proposal and Customer agrees to pay all such invoices on the same terms and conditions as any other payment that is a part of this Agreement.

b. Customer is responsible for obtaining any necessary approvals, easements, assessments and charges for construction, use or occupancy of permanent structures or for permanent changes to existing facilities prior to the beginning of any Work.

11. Utilities During Construction Customer shall provide, without charge to Company, all water, heat, electricity, and other utilities required for performance of the Work (which shall include garbage or refuse disposal and haul away costs and fees unless specifically agreed in the Proposal). Customer shall be responsible for any delays in the performance of the Work by Company occurring as a result of a lack of availability of required utilities. Company may invoice Customer, and Customer agrees to pay such invoices, for costs incurred by Company as a result of such delays. Continuing failure by Customer to provide necessary utilities services may result in the termination of this Agreement by Company.

12. Concealed or Unknown Conditions

a. In the performance of the Work, if Company encounters conditions at the Work site that are (i) concealed physical conditions that differ materially from those indicated on drawings, plats, plans, schematics, or other depictions or descriptions of the conditions on site that impact the Work that have been discussed by the parties or have been incorporated into the Proposal or (ii) unknown physical conditions of an unusual nature that differ materially from those conditions ordinarily found to exist and generally recognized as inherent in construction activities of the type and character as the Work, Company shall notify Customer of such conditions promptly, prior to significantly disturbing same.

b. If such conditions differ materially and cause an increase in Company’s cost of, or time required for, performance of any part of the Work, Company shall be entitled to, and Customer shall consent by Change Order to, an equitable adjustment in the Contract Price, contract time, or both.

13. **Pre-Existing Conditions.** Company is not liable for any claims, damages, losses, or expenses, arising from or related to conditions that existed in, on, or upon the Work site before the date that Company began Work on the site ("Pre-Existing Conditions"), including, without limitation, damages, losses, or expenses involving Pre-Existing Conditions of building envelope issues, mechanical issues, plumbing issues, and/or indoor air quality issues involving mold/mould and/or fungi. Company also is not liable for any claims, damages, losses, or expenses, arising from or related to work done by or services provided by individuals or entities that are not employed by or hired by Company. If such pre-existing conditions differ materially from the understanding of the parties or the anticipated circumstances on the Work site and cause an increase in Company's cost of, or time required for, performance of any part of the Work, Company shall be entitled to, and Customer shall consent by Change Order to, an equitable adjustment in the Contract Price, contract time, or both.

14. **Asbestos and Hazardous Materials**

- a. Company's Work and other services in connection with this Agreement expressly excludes any identification, abatement, cleanup, control, disposal, removal or other work connected with asbestos, polychlorinated biphenyl ("PCB"), or other hazardous materials (hereinafter, collectively, "Hazardous Materials").
- b. Customer represents and warrants that, except as set forth in a writing signed by Company, there are no Hazardous Materials on the Work site that will in any way affect Company's Work and Customer has disclosed to Company the existence and location of any Hazardous Materials in all areas within which Company will be performing the Work.
- c. Should Company become aware of or suspect the presence of Hazardous Materials, Company may immediately stop work in the affected area and shall notify Customer. Customer will be exclusively responsible for taking any and all action necessary to correct the condition in accordance with all applicable laws and regulations. Customer shall be exclusively responsible for and, to the fullest extent permitted by law, shall indemnify and hold harmless Company (including its employees, agents and subcontractors) from and against any loss, claim, liability, fees, penalties, injury (including death) or liability of any nature, and the payment thereof arising out of or relating to any Hazardous Materials on or about the Work site, not brought onto the Work site by Company. Company shall be required to resume performance of the Work in the affected area only in the absence of Hazardous Materials or when the affected area has been rendered harmless.
- d. In no event shall Company be obligated to transport or handle Hazardous Materials, provide any notices to any governmental agency, or examine the Work site for the presence of Hazardous Materials.

15. **Limited Warranty; Warranty Exclusions**

- a. Company warrants that the labor portion of the Services is warranted to have been properly performed for a period of 90 days from date of completion, including, but not limited to, any obligation of Company for equipment start-up, if provided in the Proposal (the "Warranty Period"). Defects in the Service must be reported to Company within the Warranty Period. Company's obligation under the warranty is limited to correcting any improperly performed labor. No liability whatsoever shall attach to Company until the Services have been paid for in full.
- b. Company does not make, and expressly disclaims, any representations or warranties for any materials, equipment, manufactured goods, parts, machinery, or components nor for any damages or failures related to the foregoing arising from any cause, including but not limited to: (a) wear and tear; corrosion, erosion, deterioration; (b) Customer's failure to follow any maintenance plan as provided by Company or the manufacturer; (c) or any damages or losses resulting from modifications made by others to equipment. Some components of the equipment described in the Proposal may be warranted directly from the component supplier or manufacturer, in which event the warranty given by such component supplier or manufacturer may apply, however, such coverage claims shall be made by Customer not by Company.
- c. Notwithstanding the foregoing, all warranties provided herein shall terminate upon termination or cancellation of this Agreement.
- d. THE WARRANTY AND LIABILITY SET FORTH IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES AND LIABILITIES, WHETHER IN CONTRACT OR IN NEGLIGENCE, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR FITNESS FOR A PARTICULAR PURPOSE AND/OR OTHERS ARISING FROM COURSE OF DEALING OR TRADE. UNLESS EXPRESSLY WARRANTED IN WRITING THE COMPANY MAKES NO REPRESENTATION OR WARRANTY EXPRESS OR IMPLIED REGARDING PREVENTION BY THE SCOPE OF SERVICES, OR ANY COMPONENT THEREOF, OF MOLD/MOULD, FUNGUS, BACTERIA, MICROBIAL GROWTH, OR ANY OTHER CONTAMINATES. COMPANY SPECIFICALLY DISCLAIMS ANY LIABILITY IF THE SCOPE OF SERVICES OR ANY COMPONENT THEREOF IS USED TO PREVENT OR INHIBIT THE GROWTH OF SUCH MATERIALS. THE WARRANTY AND LIABILITY SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES AND LIABILITIES, WHETHER IN CONTRACT OR IN NEGLIGENCE, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

16. **Indemnity.**

- a. To the fullest extent permitted by law, Company and Customer shall indemnify, defend and hold harmless each other from any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, resulting from death or bodily injury or damage to real or tangible personal property, to the extent caused by the negligence or misconduct of their respective employees or other authorized agents in connection with their activities within the scope of this Agreement. Neither party shall indemnify the other against claims, damages, expenses or liabilities to the extent attributable to the acts or omissions of the other party. If the parties are both at fault, the obligation to indemnify shall be proportional to their relative fault. The duty to indemnify will continue in full force and effect, notwithstanding the expiration or early termination hereof, with respect to any claims based on facts or conditions that occurred prior to expiration or termination.
- b. Customer shall indemnify Company for any costs, fines, fees, taxes, penalties or other charges or expenses of any kind or character (including reasonable attorneys' fees and costs) related to any claims against Company that arise from any failure of Customer to obtain any necessary approvals, easements, assessments and charges for construction, use or occupancy of permanent structures or for permanent changes to existing facilities prior to the beginning of any Work as required by this Agreement.
- c. Customer shall indemnify Company, its employees, contractors, agents, officers and directors, from any and all claims of any kind or character stemming from any assertion by any party that Company or its employees, contractors, agents, officers and directors were not permitted, or properly authorized to, access to the Work site during regular business hours, or such other hours as may be requested by Company, including sufficient areas for staging, mobilization, and storage and for any claims related in any way to Company's access to correct any emergency condition.
- d. The requirements of Section 16(b) and 16(c) shall not be subject to the limitation on actions set forth in Section 21(b) of this Agreement.

17. **Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE OR EXEMPLARY DAMAGES OF ANY NATURE (INCLUDING WITHOUT LIMITATION PRODUCT LOSS, LOST REVENUE, OR LOST PROFITS), WHETHER CLAIMED UNDER CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL THEORY OR FACTS. In the event that Company nevertheless is found liable for any damages, they shall be limited to the purchase price of the Services for any one location of Customer over a 12 month term. IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY DAMAGES RESULTING FROM ANY MOLD, FUNGUS, BACTERIA, MICROBIAL GROWTH, OR OTHER CONTAMINATES OR AIRBORNE BIOLOGICAL AGENTS FOUND AT ANY OF CUSTOMER'S LOCATIONS.

18. **Commencement of Statutory Limitation Period.** Except as to warranty claims and any claims by Company for indemnification under this Agreement, any applicable statutes of limitation for acts or failures to act shall commence to run, and any alleged cause of action stemming therefrom shall be deemed to have accrued, in any and all events not later than the last date that Casto Technical Services, Inc. or its subcontractors physically performed work on the project site.

19. **Insurance.** Company agrees to maintain the following insurance during the term of this Agreement with limits not less than shown below and will, upon request from Customer, provide a Certificate of Insurance evidencing the following coverage:

Commercial General Liability	\$1,000,000 Each Occurrence Limit – CSL (Bodily Injury and Property Damage)
Automobile Liability	\$1,000,000 Each Accident – CSL (Bodily Injury and Property Damage)
Workers Compensation	Statutory Limits
Employer's Liability	\$1,000,000 Bodily Injury by Accident – Each Accident
	\$1,000,000 Bodily Injury by Disease – Policy Limit
	\$1,000,000 Bodily Injury by Disease – Each Employee

If Customer has requested to be named as an additional insured under Company's insurance policy, Company will do so but only subject to the use of an Additional Insured endorsement form that has been approved by the appropriate state insurance department for use under its primary Commercial General Liability policy. In no event does Company waive its right of subrogation.

20. **Force Majeure.** Company's duty to perform under this Agreement is contingent upon the non-occurrence of an Event of Force Majeure. If Company shall be unable to carry out any material obligation under this Agreement due to an Event of Force Majeure, this Agreement shall at Company's election (i) remain in effect but Company's obligations shall be suspended until the uncontrollable event terminates or, at Company's option, (ii) be terminated upon 10 days notice to Customer, in which event Customer shall pay Company for all parts of the Work furnished to the date of termination. An "Event of Force Majeure" shall mean any cause or event beyond the control of Company. Without limiting the foregoing, "Event of Force Majeure" includes: acts of God; acts of terrorism, war or the public enemy; flood; earthquake; tornado; storm; fire; civil disobedience; pandemic insurrections; riots; labor disputes; labor or material shortages; sabotage; restraint by court order or public authority (whether valid or invalid), and action or non-action by or inability to obtain or keep in force the necessary governmental authorizations, permits, licenses, certificates or approvals if not caused by Company; and the requirements of any applicable government in any manner that diverts either the material or the finished product to the direct or indirect benefit of the government.

21. **General.**

- a. **Governing Law; Venue.** Except as provided below, to the maximum extent provided by law, this Agreement is made and shall be interpreted and enforced in accordance with the laws of the State of West Virginia, without regard to choice of law principles which might otherwise call for the application of a different state's law. Any dispute arising under or relating to this Agreement that is not disposed of by agreement shall be decided by litigation in a court of competent jurisdiction located in the State of West Virginia.
- b. **Time Limitation on Claims.** Any action or suit arising out of or related to this Agreement must be commenced within one year after the cause of action has accrued.
- c. **Entire Agreement; Modification.** This Agreement, together with all of the attachments and exhibits included herewith, contains all of the agreements, representations and understandings of the parties and supersedes all previous understandings, commitments or agreements, oral or written, related to the subject matter hereof. This Agreement may not be amended, modified or terminated except by a writing signed by the parties hereto.
- d. **Provisions Severable.** If any term or condition of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, all other terms and conditions of this Agreement will nevertheless remain in full force and effect as long as the economic or legal substance of the transaction contemplated hereby is not affected in a manner adverse to any party hereto.
- e. **Assignment.** Customer may not assign, transfer, or convey this Agreement, or any part hereof, or its right, title or interest herein, without the written consent of the Company. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of Customer's permitted successors and assigns. Company may assign, transfer or convey this Agreement at any time without the consent of the Customer.
- f. **Counterparts.** This Agreement may be executed in several counterparts, each of which when executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement. A fully executed facsimile copy hereof or the several counterparts shall suffice as an original.

22. **Equal Employment Opportunity/Affirmative Action Clause.** Company is a federal contractor which complies fully with Executive Order 11246, as amended, and the applicable regulations contained in 41 C.F.R. Parts 60-1 through 60-60, 29 U.S.C. Section 793 and the applicable regulations contained in 41 C.F.R. Part 60-741; and 38 U.S.C. Section 4212 and the applicable regulations contained in 41 C.F.R. Part 60-250 and Executive Order 13496 and Section 29 CFR 471, appendix A to subpart A, regarding the notice of employee rights in the United States.

23. **Subcontractors.** Nothing in this Agreement shall limit the right of Company to utilize contractors and subcontractors to complete the Work as called for in this Agreement.

24. **No Third Party Beneficiaries.** This Agreement is for the benefit of the parties who are signatories hereto and it shall not give rise to any claims by, nor be enforced against either party by, or for the benefit of, any third party.