

GEM INC. MASTER TERMS AND CONDITIONS FOR PURCHASE CONTRACTS FOR SERVICES

- 1) **General.** Vendor hereby agrees to be bound by the following terms and conditions (the “**Agreement**”), which Agreement is incorporated into the purchase contract issued by Buyer to Vendor, to which this Agreement applies (the “**Purchase Contract**”). The Purchase Contract supersedes all prior or contemporaneous written or oral agreements between the parties with respect to the subject matter hereof. For purposes of this Agreement, “**Buyer**” means GEM Inc. or any affiliate or subsidiary thereof issuing the Purchase Contract; “**Vendor**” means the person or entity named on the applicable Purchase Contract that is furnishing the Services; “**Owner**” means the person or entity with which Buyer has entered into a contract relating to the Project and, if such person or entity is not the owner of the Project, shall include the Project owner; “**Project**” means the project identified in the applicable Purchase Contract; and “**Services**” means the services and any related goods or materials related to the Project that is the subject matter of the Purchase Contract, including all work reasonably inferable therefrom as being required to produce the intended result.
- 2) **Services.** Vendor shall perform all Services described in the Purchase Contract in a good and workmanlike manner, in compliance with all applicable laws, ordinances, codes, rules, and regulations of federal, state, county, and/or municipal governmental entities having jurisdiction over Vendor, the Services, the Project, and/or the Project site (collectively, “**Laws**”), in accordance with Buyer’s instructions and any standards or specifications referenced or described in the Purchase Contract, and in conformance with the agreement between Buyer and Owner (the “**Owner/Buyer Agreement**”), which is incorporated herein by reference and available upon request. Time is of the essence with respect to performance of the Services. Should any event delay or threaten to delay the timely performance of the Services, Vendor shall immediately give Buyer written notice thereof.
- 3) **Payment.** Buyer shall pay Vendor the sum set forth in the Purchase Contract for furnishing the Services described therein. Unless otherwise provided in the Purchase Contract, payment of undisputed amounts invoiced will be made forty five (45) days after receipt by Buyer of Vendor’s invoice or within ten (10) days after receipt by Buyer of corresponding payment from Owner, if later. Vendor shall furnish any waivers, guarantees, or any other documents required by Buyer within ten (10) days of notification of need for the same. Vendor shall not be entitled to recover interest on late or past due payments. Buyer may withhold payment or deduct from any amount due or to become due Vendor any sums owing by Vendor to Buyer as the result of any breach by Vendor of any provision of the Purchase Contract, together with an amount sufficient to completely protect Buyer from any and all related losses, damages, or expenses until Vendor has remedied the situation to the satisfaction of Buyer.
- 4) **Insurance.** Vendor shall carry and maintain, at its own cost, the following minimum insurance coverages, or as set forth in the Purchase Contract: (a) workers’ compensation and employer’s liability insurance to the full extent required by applicable laws; (b) commercial general liability coverage, naming the Buyer and Owner as additional insureds, with limits of not less than \$500,000 per occurrence and \$1,000,000 annual aggregate; and (c) business automobile liability insurance covering owned, non-owned and leased vehicles with limits not less than \$1,000,000 combined single limit. Vendor shall provide Buyer with certificates of insurance evidencing the coverages and amounts set forth in this Section. Vendor’s certificate of insurance shall contain a provision that the coverage afforded under the policy(ies) will not be canceled without at least thirty (30) days’ prior written notice to Buyer. All policies shall be endorsed to provide a waiver of subrogation in favor of Buyer and Owner, and such other entities as are required by the Owner/Buyer Agreement.
- 5) **Indemnity.** To the fullest extent not prohibited by Law, Vendor shall indemnify, defend, and hold harmless Buyer, Owner, and their respective officers, directors and employees, from and against any and all claims, liability, damages, actions, and causes of actions, and all related costs and expenses (including costs of litigation or arbitration, attorneys’ fees, expert and consulting fees) of any nature, kind, or description arising out of Vendor’s performance of the Services, or the negligence or intentional misconduct of Vendor, anyone directly or indirectly employed by Vendor, or anyone for whose acts or omissions Vendor may be liable.
- 6) **Dispute Resolution.** At the sole option of Buyer, any and all claims, disputes, and other matters in question arising out of or relating to this Agreement or breach thereof shall be decided in mandatory and binding arbitration in Walbridge, Ohio in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. The award of the arbitrator(s) shall be final and binding, and the award may be entered as a judgment by any court of competent jurisdiction. This agreement to arbitrate shall be specifically enforceable under the Ohio Arbitration Act, Ohio Rev. Code Ann. § 2711.01 *et seq.* Alternatively, Buyer, in its sole discretion, may require Vendor to submit such matter to the dispute resolution procedures set forth in the Owner/Buyer Agreement, and such matter may, as Buyer deems appropriate, be consolidated with other claims involving common questions of law or fact.
- 7) **Cancellation/Termination.** Buyer shall have the right to cancel or terminate this Purchase Contract, in whole or in part, at its convenience and without cause upon not less than three (3) days’ prior written notice to Vendor. Buyer may also terminate the Purchase Contract in whole or in part on written notice to Vendor upon Vendor’s breach of any provision hereof. Upon receipt of notice of termination, and unless otherwise directed by Buyer, Vendor will promptly terminate all Services and cooperate with Buyer’s reasonable requests in connection with such termination.
- 8) **Confidential Information; Project Information.** Vendor acknowledges that, in the course of this Agreement, it may obtain from Buyer or Owner information that is of a confidential or proprietary nature (“**Confidential Information**”). Vendor shall keep confidential, and not use for any purposes outside of the Purchase Contract, any and all such Confidential Information. Vendor shall be responsible for compliance with this provision by its officers, directors, shareholders, employees, consultants, and subcontractors.
- 9) **Miscellaneous.** No modification of this Agreement will be binding on Buyer unless expressly agreed in writing by Buyer. If any provision of this Agreement conflicts with any other provision of the Purchase Contract documents, the provision imposing the higher

quality, greater quantity, or greater duty or obligation on Vendor, or granting greater rights or remedies to Buyer or Owner, shall govern. This Purchase Contract and any and all claims, controversies or disputes arising from or relating to this Agreement, shall be governed by and interpreted in accordance with the laws of the State of where the Services are performed, without regard to its conflict of laws principles. Vendor's status shall be that of an independent contractor and not that of an agent or employee of Buyer. Vendor shall not assign or subcontract any part of the Purchase Contract without the prior written consent of Buyer. Vendor agrees to the assignment of the Purchase Contract to the Owner as may be required by the Owner/Buyer Agreement. All rights granted to Buyer hereunder shall be cumulative and in addition to, and not in lieu of, Buyer's rights arising by operation of law or in equity.