

## MASTER SERVICES AGREEMENT

This Master Services Agreement (“**Agreement**”) is made and entered into this [redacted] day of [redacted] 2015 (the “**Effective Date**”), by and between **Roseton Generating LLC**, a Delaware limited liability company (“**Roseton**”) and [redacted], a [redacted] (“**Contractor**”). Roseton and Contractor are collectively referred to herein as the “**Parties**” and sometimes individually referred to herein as a “**Party**.” Terms not defined in the body of this Agreement are defined on **Exhibit A** attached hereto.

For and in consideration of the mutual covenants and agreements contained herein, Contractor and Roseton agree as follows:

### 1. NATURE OF BASE AGREEMENT/STATEMENT OF WORK

**1.1 Base Agreement:** This Agreement shall act as a base agreement under which the Parties can enter into multiple specific transactions by executing a Purchase Order made by Roseton, a form of which is attached hereto as **Exhibit B**, or another form previously approved or accepted by an authorized representative of Roseton. At any time and for any reason, Roseton may submit to Contractor proposed changes or additions to and/or deletions from the Work covered by any Purchase Order, and no such changes, additions or deletions shall become effective or paid for by Roseton unless via a Change Order authorized by Roseton in advance in writing. This Agreement (including all exhibits listed below), the individual Purchase Order(s) and any related Change Order shall form a single integrated agreement between the Parties. Any conflict or inconsistency between the terms and conditions of this Agreement, a particular Purchase Order and/or a Change Order shall be resolved in favor of the terms and conditions of the documents in the following order: this Agreement first, the Change Order second, and the Purchase Order third. The Parties agree that the sole purpose of any such Purchase Order and/or Change Order or other any other instrument furnished or utilized by Contractor or Roseton in connection with the Work is limited to describing specific Work to be performed and/or provided (including the applicable rate/compensation for such Work), and any other language or provision in any such instrument that purports to expand, limit, modify, waive or otherwise define the rights or duties of the Parties shall be null and void *ab initio*, and shall not be binding on Roseton or Contractor.

For reference purposes, the following is a listing of the exhibits to this Agreement:

- Exhibit A** – Definitions
- Exhibit B** – Purchase Order Form
- Exhibit C** – Roseton’s Minimum Contractor Safety Requirements
- Exhibit D** – Insurance Requirements for Contractor
- Exhibit E** – Roseton’s Non-Discrimination and Harassment Policy
- Exhibit F** – Rate Schedule

**1.2 Acceptance of Purchase Order:** Contractor’s acceptance of Roseton’s Purchase Order shall be accomplished by the earlier of execution of the Purchase Order or commencement of Services or shipment of any Product specified in the Purchase Order.

### 2. TERM

The term of this Agreement shall begin upon the Effective Date, and will continue in effect until terminated, as provided herein, by either Party. Purchase Orders shall be for a term or for specific Work as specified therein and

shall continue in effect until completion of the Work or termination by Roseton pursuant to Sections 17.3, 17.4 and/or 17.5.

### 3. COMPENSATION, INVOICING AND PAYMENT

**3.1 Compensation:** Contractor shall receive the compensation agreed to in the applicable Purchase Order.

**3.2 Invoicing:** Contractor shall invoice Roseton on or before the fifteenth (15<sup>th</sup>) day of each month for Work performed by Contractor during the prior month. All invoices shall: (a) be in accordance with the Rate Schedules, (b) refer to the applicable Purchase Order number, and (c) include sufficient line item detail and supporting documents for Roseton to reasonably verify the basis of the charges, including quantities and pricing.

**3.3 Payment:** Payment terms are net 30 days from the date the invoice is received unless otherwise specified in the Purchase Order.

**3.4 Dispute:** In the event of a dispute or question regarding any invoice submitted by Contractor: (a) all amounts not disputed or in question shall be promptly paid as and when required by this section; (b) Roseton shall promptly transmit to Contractor a written explanation of the dispute or question; (c) Roseton and Contractor shall immediately seek to resolve the dispute or question; and (d) payment of any remaining amount shall be made within thirty (30) days of when the dispute or question is resolved according to Section 22. Contractor may charge and accrue interest on any past due amounts (other than disputed amounts or amounts in question as described herein) at the lesser of 1% per month or the maximum rate permitted by law. During the term of the dispute, in no event shall Contractor stop or suspend the Work as long as Roseton is paying undisputed invoice amounts in accordance with this Section 3.

**3.5 Return of invoice:** Return of any invoice to Contractor for any reason not attributable to Roseton's fault including, without limitation, improper invoicing by Contractor, will extend the discount period (if applicable) and the payment period so that it commences on the date Roseton subsequently receives a proper invoice.

**3.6 Transportation charges:** Transportation charges paid by Contractor for Roseton's account must be shown separately on invoices, and Contractor shall provide supporting documentation for such charges with each invoice.

### 4. INDEPENDENT CONTRACTOR

This Agreement is made with the express understanding that Contractor is an independent contractor. This Agreement is a contractual relationship, and nothing contained herein shall be construed or applied to create the relationship of employer and employee or principal and agent or master and servant between Roseton and Contractor or any of Contractor's Subcontractors, their employees or other personnel. Neither Contractor, its Subcontractors nor any of their employees or other personnel are authorized to act or appear to act as agents or representatives of Roseton, whether in performing the Work or otherwise. Any provisions of this Agreement or any Purchase Order which may appear to give Roseton the right to direct Contractor as to details of performing any Work, or to exercise a measure of control over Contractor's performance of the Work, shall be interpreted to mean that Contractor will follow the instructions of Roseton with respect to the results of the Work achieved only and not in the means whereby the Work are to be accomplished. Contractor shall have complete and authoritative control as to the details of performing the Work and shall control all indicia of employment with respect to its staff including being solely responsible for compliance with any obligations that might arise out of any employer-employee relationship that may exist between Contractor and its staff as well as such other obligations as are set forth in Section 10.2. All Work contemplated hereunder, however, shall meet the approval of Roseton and shall be subject

to the general right of inspection. Nothing in this Agreement shall be construed or interpreted to create a partnership or joint venture between Roseton and Contractor.

## 5. PERFORMANCE OF WORK

**5.1 Conditions of Roseton's property:** Contractor will make a reasonable inspection of the surface and subsurface at each Site and shall notify Roseton in writing of any hazardous or unusual conditions identified prior to commencement of any particular Work. Roseton will notify Contractor of any known surface or subsurface hazardous or unusual conditions at each Site prior to commencement of any particular Work, it being recognized by the Parties that conditions normally encountered at an oil and gas wellsite (whether on the surface or below surface) are not considered "hazardous or unusual" for purposes hereof. Roseton makes no representation as to any conditions at any Roseton Site, and Contractor agrees to rely solely on Contractor's own examination and investigation of the surface and subsurface conditions at such Sites.

**5.2 Applicable Laws:** Contractor shall observe and abide by all Applicable Laws. **CONTRACTOR FURTHER AGREES TO INDEMNIFY, DEFEND AND HOLD ROSETON HARMLESS FOR, FROM AND AGAINST ANY AND ALL CLAIMS ARISING OUT OF OR RESULTING FROM AN ASSERTED OR ESTABLISHED VIOLATION OF SUCH APPLICABLE LAWS BY THE CONTRACTOR AND ITS SUBCONTRACTORS.**

**5.3 Contractor's responsibility for materials, personnel, etc.:** Contractor shall furnish all materials, labor, supplies, tools, equipment, facilities, services and transportation necessary to perform the Work. All personnel furnished by Contractor shall be duly qualified and experienced in their respective capacities. All tools and equipment provided by Contractor shall be repaired and maintained by Contractor at its cost. Contractor shall examine all equipment, machinery, tools, or other items furnished by Roseton at Contractor's request that are employed in the Work or that would reasonably come to Contractor's attention during the course of the Work performed hereunder. If apparent defects are found therein sufficient to make the use of such items unsuitable or unsafe, Contractor shall immediately notify Roseton. All Roseton tools and equipment provided by Roseton to Contractor shall be repaired and maintained by Contractor at its cost.

**5.4 Contractor shall not encumber the Site:** Contractor shall confine its materials and equipment and the operations of its workers to the limits indicated by Roseton, and shall not unreasonably encumber the Site. Contractor shall keep stored material in good order, the Site free of rubbish and surplus material, and shall, in accordance with Applicable Laws, remove all rubbish and waste material caused by an operation under its charge.

**5.5 Timely and workmanlike performance of Work:** Contractor shall immediately notify Roseton, in writing, of any event or circumstance that may, immediately or in the future, impede the proper and timely execution of any Work so that remedial action, as is appropriate under the circumstances, may be taken. If at any time, Contractor fails to perform the Work: (a) in the manner set forth in this Agreement and/or the applicable Purchase Order; (b) in a good and workmanlike manner and in accordance with accepted industry practices for such Work prevailing at the time and place where the Work is being furnished; or (c) at the specific times as may be subsequently agreed to, then Contractor shall, immediately upon the request of Roseton and at no additional cost to Roseton, take all necessary steps, including: (i) the replacement of defective equipment; (ii) the provision of additional equipment and/or labor; (iii) the institution of changes in method and manner of performance; and (iv) other measures as required so to perform. The request by Roseton of such measures shall be without prejudice to any other rights or remedies Roseton may have under this Agreement or at law.

**5.6 Monitoring of Contractor's Work:** Contractor shall provide to Roseton the ability to monitor Contractor's Work under this Agreement. Contractor shall provide Roseton the right to inspect, at any reasonable time, Contractor's operations and facilities including tools, equipment, materials, services and

inventory thereof. Inspections or failure to report any deficiency noted therein shall not diminish Contractor's obligations hereunder or constitute a waiver of any Roseton rights hereunder.

**5.7 Monthly Reports:** If the Work being performed under a Purchase Order takes longer than thirty (30) days to complete, Contractor shall, upon Roseton's request, furnish written monthly reports to Roseton on or before the first day of every month concerning the status of the Work and the results of the activities of Contractor under the applicable Purchase Order(s). The form and format of said report shall be as directed by Roseton.

**5.8 Smoke-free Site:** Roseton has banned smoking in all its buildings and vehicles. Smoking is permitted out-of-doors in designated smoking areas only. All Contractors and their Subcontractors are required to comply with this policy and, by Contractor's execution of this Agreement, Contractor agrees to abide by and enforce the same.

## 6. SUBCONTRACTORS

Contractor shall be entitled to retain Subcontractors necessary to assist Contractor in performance of the Work, upon Roseton's prior written approval. The creation of any Subcontractor relationship shall not relieve Contractor of any of its obligations under this Agreement. Contractor shall be fully responsible to Roseton for the acts and/or omissions of any Subcontractor it hires, or any subcontractor hired by its Subcontractors, as if Contractor itself had acted or failed to act. **CONTRACTOR SHALL FULLY RELEASE, DEFEND, INDEMNIFY AND HOLD ROSETON HARMLESS FOR, FROM AND AGAINST ANY AND ALL CLAIMS ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OF THE SERVICES OR ANY OTHER ACTIVITIES OF SUCH SUBCONTRACTOR AND ITS SUBCONTRACTORS.**

## 7. SAFETY REQUIREMENTS

**7.1 Compliance:** In performing all Work under the Agreement, Contractor shall (i) fully comply with all Applicable Laws pertaining to safety, health, and the environmental, (ii) fully comply with of Roseton's Minimum Contractor Safety Requirements of Roseton as set forth in **Exhibit C**, attached hereto, (iii) provide its employees with appropriate safety, health, and environmental training (especially with respect to the identification, handling, labeling, packaging, loading, transporting, unloading, storing, and disposal of hazardous or otherwise dangerous substances), (iv) provide its employees with appropriate, functioning safety equipment, (v) ensure that its employees use the provided safety equipment at all times in a proper and safe manner, and (vi) ensure that its Subcontractors comply with the requirements of this Section 7.1. Contractor represents and warrants that it has established, and shall continue to maintain, an appropriate safety and environmental program in compliance with industry standards and Applicable Law which shall include the training of personnel in operational aspects of their functions and the establishment of a program to instill in each individual at the Site a conscious desire to conduct safe and pollution-free operations. Contractor warrants that each of its employees and other personnel brought to the Site have received or shall receive immediately upon arrival sufficient training to be able to utilize and operate properly all safety equipment at the Site. Contractor also warrants that it has trained all of its employees and other personnel brought to the Site to perform their assigned work in a safe and competent manner. When Contractor's employees and other personnel report to the Site, they shall immediately familiarize themselves with any posted safety and environmental rules of Roseton, emergency procedures and other safety and environmental requirements. Should Contractor engage any Subcontractor to perform Work at any Site, Contractor warrants that the Subcontractor has complied or shall comply immediately upon arrival with the safety and environmental requirements set forth in the Agreement.

**7.2 Safety Requirements:** Contractor represents and warrants that it has fully read the Minimum Contractor Safety Requirements and fully understands them. If at any time during the term of this Agreement Roseton changes or modifies the Minimum Contractor Safety Requirements, Roseton may insist that Contractor

execute the revised Minimum Contractor Safety Requirements for the continuation of the Work by Contractor. If Contractor refuses to execute such revised Minimum Contractor Safety Requirements, then Roseton may treat Contractor as if it has failed to comply with the Minimum Contractor Safety Requirements and Roseton shall have the right to immediately terminate this Agreement and/or any outstanding Work for cause upon notice to Contractor. **CONTRACTOR SHALL FULLY RELEASE, DEFEND, INDEMNIFY AND HOLD ROSETON HARMLESS FOR, FROM AND AGAINST ANY AND ALL CLAIMS ARISING OUT OF OR RESULTING FROM CONTRACTOR'S (AND ITS SUBCONTRACTORS') BREACHES OF ROSETON'S MINIMUM CONTRACTOR SAFETY REQUIREMENTS.**

**7.3 Substance Abuse Testing and Background Testing Requirements:** Contractor represents and warrants that it has established, and shall continue to maintain, a substance abuse and testing policy in compliance with industry standards and Applicable Law. Roseton shall have the right to immediately terminate this Agreement and/or any outstanding Work for cause in the event Roseton determines, in its sole discretion, that Contractor's substance abuse and testing policy is not in compliance with industry standards and Applicable Law. Contractor agrees further that any of Contractor's employees or any other staff assigned by Contractor to provide Services at a Roseton Site shall be subject to a background check to be conducted by and at the expense of Contractor, the results of which must confirm, prior to placement, previous education and work experience as well as an absence of prior criminal convictions.

**7.4 Roseton Right to Audit Contractor's Safety and Drug Programs:** Contractor must be pre-qualified by the Roseton Safety Vendors for its overall safety program and/or its substance abuse testing program prior to beginning the Work. During the term that Contractor is performing any Work for Roseton pursuant to a Purchase Order under this Agreement, Contractor shall be under a continuing duty to cooperate with the Roseton Safety Vendors which will include but not be limited to Contractor diligently responding with full, complete and accurate information to any request and notifying such Roseton Safety Vendor of any circumstances that would lead to a change in any of Contractor's responses to the Pre-selection Questionnaires. Contractor has a duty to satisfy the safety and substance abuse testing requirements of Roseton or the Roseton Safety Vendors, and Roseton and/or the Roseton Safety Vendors may audit Contractor for its compliance with its safety and/or substance abuse programs at any point in time. Roseton shall have the right to immediately terminate this Agreement and/or any outstanding Work in the event Roseton determines, in its sole discretion, that: (a) Contractor is in breach of this Section 7.4, or (b) Contractor's safety program and/or substance abuse testing program is below industry standards or not in compliance with Applicable Law. Roseton makes no representation about the quality of services being performed by the Roseton Safety Vendors. Roseton's use of the Roseton Safety Vendors in connection with the Work shall not be construed as Roseton assuming responsibility or liability for safety under this Agreement or at law, and does not relieve Contractor from full compliance with its legal and contractual obligations. The Roseton Safety Vendors are independent contractors, and any acts or omissions by them shall not be considered an act or omission of Roseton; the Roseton Safety Vendors are not agents of Roseton.

**7.5 Sour Gas:** It is specifically understood, and by its execution of this Agreement Contractor expressly acknowledges, that the Work may involve exposure to hazardous substances, including but not limited to hydrogen sulfide gas, commonly known as sour gas. Contractor has the duty to notify, provide appropriate safety equipment for and train its employees and the employees of any Subcontractor as to these exposures. Contractor has the duty to monitor a safety program addressing these points when these exposures exist and insist that all safety measures be carried out by all such employees. Contractor will require that all such employees wear the safety equipment when the work contemplates exposure to hazard substances.

**7.6 Prohibited Articles:** Contractor and any of its employees or other personnel brought to the Site or any Roseton location shall not possess or bring onto the Site or any Roseton location any illegal drugs, prescription drugs for which the individual has no prescription, legal drugs in excessive amounts, drug paraphernalia, alcoholic beverages, firearms and other weapons, contraband, or stolen property. If any of the above articles are

brought onto the Site or any Roseton location, the individual possessing the prohibited articles will be ordered off the premises and may not, in Roseton's sole discretion, be permitted to re-enter. Roseton's personnel may conduct inspections and searches of any individual or property on the Site or any Roseton location without prior announcement at such times and at such locations as Roseton considers appropriate. Contractor shall inform its employees, Subcontractors and other personnel of the provisions of this Section 7.6 to ensure compliance. If, in Roseton's sole judgment it is desirable, the Contractor at Roseton's request shall remove any of Contractor's employees, Subcontractors or other personnel from the Work and/or Roseton's Site. **ROSETON SHALL HAVE NO LIABILITY TO CONTRACTOR AND CONTRACTOR AGREES, WITHOUT LIMIT AND AT ITS OWN COST, TO RELEASE, DEFEND, INDEMNIFY AND HOLD THE ROSETON GROUP HARMLESS FOR, FROM AND AGAINST ANY AND ALL CLAIMS ARISING OUT OF OR RESULTING FROM ANY SUCH REMOVAL.**

**7.7 Occurrence of damage or injury:** Contractor shall orally report to Roseton, as soon as possible, followed by an appropriate written report within 48 hours of the event, all accidents or occurrences resulting in death or injuries to any person, or damage to property of Roseton, Contractor or third parties, arising out of or during the course of Work to be performed hereunder. Contractor shall furnish Roseton with a copy of all documents and reports prepared by Contractor and submitted to Contractor's management, insurer, governmental authorities or any other party regarding such accidents and occurrences.

## **8. INDEMNITY AND LIMITATION OF LIABILITY**

### **8.1 Mutual Indemnification for Bodily Injury, Illness or Death:**

**8.1.1 Roseton. ROSETON SHALL FULLY RELEASE, DEFEND, INDEMNIFY AND HOLD EACH MEMBER OF CONTRACTOR GROUP HARMLESS FOR, FROM AND AGAINST ALL CLAIMS ARISING OUT OF, RELATING TO, OR CONNECTED WITH THIS AGREEMENT OR THE PERFORMANCE THEREOF AND BROUGHT BY OR ON BEHALF OF ANY MEMBER OF ROSETON GROUP ALLEGING BODILY INJURY, PERSONAL INJURY, ILLNESS, OR DEATH OF ANY MEMBER OF ROSETON GROUP OR THEIR INVITEES.**

**8.1.2 Contractor. CONTRACTOR SHALL FULLY RELEASE, DEFEND, INDEMNIFY AND HOLD EACH MEMBER OF ROSETON GROUP HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS ARISING OUT OF, RELATING TO, OR CONNECTED WITH THIS AGREEMENT OR THE PERFORMANCE THEREOF AND BROUGHT BY OR ON BEHALF OF ANY MEMBER OF CONTRACTOR GROUP ALLEGING BODILY INJURY, PERSONAL INJURY, ILLNESS, OR DEATH OF ANY MEMBER OF CONTRACTOR GROUP OR THEIR INVITEES.**

### **8.2 Mutual Indemnification for Property Damage:**

**8.2.1 Roseton. ROSETON SHALL FULLY RELEASE, DEFEND, INDEMNIFY AND HOLD EACH MEMBER OF CONTRACTOR GROUP HARMLESS FOR, FROM AND AGAINST ALL CLAIMS ARISING OUT OF, RELATING TO, OR CONNECTED WITH THIS AGREEMENT OR THE PERFORMANCE THEREOF AND BROUGHT BY OR ON BEHALF OF ANY MEMBER OF ROSETON GROUP ALLEGING DAMAGE TO, LOSS OF, OR LOSS OF USE OF ANY PROPERTY OF ANY MEMBER OF ROSETON GROUP OR THEIR INVITEES.**

**8.2.2 Contractor. CONTRACTOR SHALL FULLY RELEASE, DEFEND, INDEMNIFY AND HOLD EACH MEMBER OF ROSETON GROUP HARMLESS FROM AND AGAINST**

**ANY AND ALL CLAIMS ARISING OUT OF, RELATING TO, OR CONNECTED WITH THIS AGREEMENT OR THE PERFORMANCE THEREOF AND BROUGHT BY OR ON BEHALF OF ANY MEMBER OF CONTRACTOR GROUP ALLEGING DAMAGE TO, LOSS OF, OR LOSS OF USE OF ANY PROPERTY OF ANY MEMBER OF ANY MEMBER OF CONTRACTOR GROUP OR THEIR INVITEES.**

**8.3 Supporting Insurance:** In the event this Agreement is subject to the indemnity limitations of any State anti-indemnity statute (including, but not by way of limitation, Chapter 127 of the Texas Civil Practices and Remedies Code or any successor statute), and so long as such limitations are in force, each Party covenants and agrees to support its respective mutual indemnity obligations contained in Sections 8.1 and 8.2 above by carrying insurance (or qualified self-insurance) in equal amounts of the types and in the minimum amounts as specified in the insurance requirements hereunder.

**8.4 Pollution:** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, CONTRACTOR SHALL FULLY RELEASE, DEFEND, INDEMNIFY AND HOLD EACH MEMBER OF ROSETON GROUP HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS ARISING OUT OF, RELATING TO, OR CONNECTED WITH THIS AGREEMENT OR THE PERFORMANCE THEREOF FOR POLLUTION OR CONTAMINATION (INCLUDING CONTROL AND REMOVAL THEREOF) WHICH ORIGINATES OR EMANATES FROM ANY CONTRACTOR GROUP PROPERTY OR ANY OTHER PROPERTY WHICH IS IN THE POSSESSION, CARE, CUSTODY, OR CONTROL OF CONTRACTOR GROUP.

**8.5 Third-party Claims:** With regard to the Claims of third parties for injury to, illness or death of any person or loss of or damage to any third party property, arising out of or resulting from the performance or nonperformance of this Agreement or the Work, **EACH PARTY SHALL, AT ITS OWN COST, FULLY INDEMNIFY, DEFEND AND HOLD THE OTHER PARTY'S INDEMNIFIED PARTIES (THE ROSETON GROUP OR CONTRACTOR GROUP, AS APPLICABLE) HARMLESS FOR, FROM AND AGAINST ALL SUCH THIRD PARTY CLAIMS TO THE EXTENT OF THE NEGLIGENCE OR LIABILITY WITHOUT FAULT OF THAT PARTY OR ITS AFFILIATES, OR ANY OF THEIR RESPECTIVE EMPLOYEES OR AGENTS, OR IN THE CASE OF THE CONTRACTOR, ITS SUBCONTRACTORS.**

**8.6 Compliance with Applicable Laws:**

**8.6.1 Generally.** The indemnities in this Agreement are limited to the extent necessary to comply with all Applicable Laws and each indemnity provision is deemed to be amended so as to comply with Applicable Laws but shall be interpreted to give the fullest effect not inconsistent with Applicable Laws.

**8.6.2 Tex. Ins. Code §151.001(5) and N.Y. Gen. Oblig. Law § 5-322.1.** The Parties do not intend this Agreement to be construed (a) as a "construction contract" within the meaning of Tex. Ins. Code §151.001(5) nor (b) as a "covenant, promise, agreement or understanding in, or in connection with or collateral to a contract or agreement relative to the construction, alteration, repair or maintenance of a building, structure, appurtenances and appliances including moving, demolition and excavating connected therewith" within the meaning of N.Y. Gen. Oblig. Law § 5-322.1. If this Agreement is construed as a "construction contract" within the meaning of Tex. Ins. Code §151.001(5) or as a "covenant, promise, agreement or understanding in, or in connection with or collateral to a contract or agreement relative to the construction, alteration, repair or maintenance of a building, structure, appurtenances and appliances including moving, demolition and excavating connected therewith" within the meaning of N.Y. Gen. Oblig. Law § 5-322.1 by a court of competent jurisdiction, then the indemnities provided in this Section 8

shall be deemed to be amended so as to comply with the relevant statute but shall be interpreted to give the fullest effect not inconsistent with the relevant statute.

**8.7 EXPRESS NEGLIGENCE: EXCEPT AS OTHERWISE EXPRESSLY PROVIDED TO THE CONTRARY, THE RELEASE, DEFENSE, INDEMNITY AND HOLD HARMLESS OBLIGATIONS CONTAINED IN THIS AGREEMENT SHALL APPLY TO THE MAXIMUM EXTENT ALLOWED BY LAW EVEN IF THE CLAIMS ARE CAUSED, IN WHOLE OR IN PART, BY THE JOINT, SOLE OR CONCURRENT NEGLIGENCE, STRICT LIABILITY OR OTHER FAULT, WHETHER PASSIVE OR ACTIVE, OF ANY PERSON OR ENTITY, INCLUDING BUT NOT LIMITED TO THE PERSON OR ENTITY SEEKING RELEASE, DEFENSE AND/OR INDEMNITY HEREUNDER, PROVIDED THAT NO PERSON OR ENTITY SHALL BE ENTITLED TO INDEMNITY TO EXTENT A CLAIM IS CAUSED BY OR RESULTS FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PERSON OR ENTITY SEEKING RELEASE, DEFENSE AND/OR INDEMNITY HEREUNDER. BOTH PARTIES AGREE THAT THIS STATEMENT COMPLIES WITH THE REQUIREMENT KNOWN AS THE EXPRESS NEGLIGENCE RULE, TO EXPRESSLY STATE IN A CONSPICUOUS MANNER AND TO AFFORD FAIR AND ADEQUATE NOTICE THAT THIS ARTICLE HAS PROVISIONS REQUIRING ONE PARTY TO BE RESPONSIBLE FOR THE NEGLIGENCE, STRICT LIABILITY, CONTRACTUAL LIABILITIES TO THIRD PARTIES, OR OTHER FAULT OF ANOTHER PARTY.**

**8.8 NO SPECIAL DAMAGES: NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INDIRECT, OR INCIDENTAL DAMAGES ARISING OF THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT OR THE WORK, INCLUDING BY WAY OF EXAMPLE, BUT NOT LIMITATION, DAMAGES RESULTING FROM LOSS OF USE, LOST PROFITS OR REVENUE, INTEREST OR GOODWILL.**

## **9. INSURANCE**

During the performance of the Work under this Agreement and/or any Purchase Order, Contractor, at its sole cost and expense, shall obtain and maintain, and shall require its agents, representatives, contractors and Subcontractors performing any portion of the Work to procure and maintain insurance coverage at the minimum coverages, levels, limits and conditions set forth in **Exhibit D**. Liability of Contractor under this Agreement, including the indemnity and hold harmless provisions of this Agreement, or otherwise at law, shall not be limited to or by the insurance Contractor is required to provide as set forth in **Exhibit D**.

## **10. COMPLIANCE WITH SPECIFIC APPLICABLE LAWS**

While Contractor has the general duty under Section 5.2 to comply with all Applicable Laws, Contractor represents and warrants that it will fully comply, and it will cause its Subcontractors to fully comply, with all Applicable Laws, including but not limited to the following specific Applicable Laws:

### **10.1 Hazardous Substance Disposition:**

**10.1.1 Non-hazardous substances.** Contractor shall dispose of any and all non-hazardous samples whether taken at the Site where the Work is performed or elsewhere. Further, Contractor shall dispose of, in accordance with Applicable Laws, any and all non-hazardous by-products that result from activities performed by Contractor.

**10.1.2 Hazardous Substances.** Contractor shall be responsible for packaging and disposing of, in accordance with Applicable Laws, any and all Hazardous Substances that Contractor uses or



creates in performing the Work at the Site or brings onto the Site. Contractor shall not otherwise dispose of Hazardous Substances under this Agreement.

**10.1.3 Materials that cannot be introduced back into the environment.** Contractor shall advise Roseton of any material, including Hazardous Substances, discovered by Contractor on the Site that cannot be introduced back into the environment under Applicable Laws without additional treatment. Contractor shall package any such material, in accordance with Applicable Laws, and turn it over to Roseton for appropriate disposal. At Roseton's request, Contractor shall assist Roseton in identifying appropriate alternatives for off-site treatment, storage, or disposal of any such material. Contractor shall make no independent determination relating to the selection of treatment, storage, or disposal of any such material, nor shall Contractor subcontract for the treatment, storage, or disposal of any such material through transporters or others.

**10.2 Employment-related Laws:** Contractor shall be solely responsible for complying with: (a) all laws pertaining to the employment and/or separation from employment of any staff placed by Contractor pursuant to this Agreement, including required withholdings and payment of all federal, state and local taxes or contributions, the maintenance of workers compensation insurance coverage, and proper classification with regard to employment status and overtime eligibility; (b) all laws relating to the training, health and safety of the Contractor's employees including all regulations and standards promulgated under the Occupational Safety and Health Act of 1970, as amended; (c) all laws relating to compliance with U.S. Department of Labor requirements relative to required treatment of and notices to employees of Contractor and its Subcontractors; and (d) the following implementing regulations, including any revision and redesignation thereof: 41 C.F.R. § 60 – 1.8 (Certification of Non-Segregated Facilities); 48 C.F.R. § 52.203-6 (Subcontractor Sales to Government); 48 C.F.R. §§ 22.804-1 (Affirmative Action) and 52.222-26 and 41 C.F.R. § 60-1.4 (Equal Opportunity); 48 C.F.R. §§ 52.222-35 and 52.222-37 and 41 C.F.R. § 60-250.4 (Disabled and Vietnam Era Veterans); 48 C.F.R. § 52.222-36 and 41 C.F.R. § 60-741.4 (Disabled Workers).

**10.3 Equal Opportunity Employer:**

**10.3.1 Roseton.** Roseton is an equal opportunity employer. Roseton will not discriminate against any contractor, vendor or customer because of race, color, creed, religion, gender, age, veteran status, disability, citizenship, national origin or any other trait protected by federal, state or local law, regulation or ordinance. Roseton is committed to taking affirmative action to ensure nondiscrimination and attainment of the goals of its Affirmative Action Plan. The cooperation and commitment of contractors, vendors and customers is necessary to achieve effective and meaningful equal employment opportunity.

**10.3.2 Contractor.** As a material condition of this Agreement, Contractor expressly agrees not to discriminate against anyone in the conduct of its business with respect to race, color, creed, religion, gender, age, veteran status, disability, citizenship, national origin or any other trait protected by federal, state or local law, regulation or ordinance. Unless Contractor is exempt or is not subject to the requirements of such laws, Contractor certifies that it is an equal opportunity employer and is in compliance with, and shall remain so throughout the term of this Agreement, all applicable federal, state and local laws and regulations and amendments thereto, insofar as they relate to nondiscrimination in employment, including: Executive Order 11246 (3 C.F.R. 339), as amended by Executive Order 11375 (3 C.F.R. 684) and Executive Order 12086 (3 C.F.R. 230), and all regulations of the Secretary of Labor promulgated thereunder; the Rehabilitation Act of 1974, 29 U.S.C. §793 *et seq.*; the Vietnam Era Veteran's Readjustment Assistance Act of 1973, 38 U.S.C. §4211 *et seq.*; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e *et seq.*, as amended by the Civil Rights Act of 1991; the Civil Rights Act of

1966, 42 U.S.C. §§1981, 1983 and 1985; the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §301 *et seq.*; the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §12101 *et seq.*; the Age Discrimination in Employment Act of 1967, 29 U.S.C. §621 *et seq.*, as amended by the Older Workers Benefit Protection Act of 1990; the Family and Medical Leave Act of 1993, 29 U.S.C. §2601 *et seq.*; the Fair Labor Standards Act, 42 U.S.C. §201 *et seq.*, including the wage and hour laws relating to payment of wages. Contractor also certifies that it does not and will not maintain any facilities it provides for its employees in a segregated or discriminatory manner, or permit its employees to perform their services in a discriminatory manner at any location under its control.

**10.4 IRCA:** Contractor certifies that its employees and the employees of its Subcontractors who perform Work under this Agreement are legally authorized to work in the United States as required by IRCA and that it complies with the documentation requirements of IRCA. Contractor further agrees to obtain a certification from its Subcontractors performing Work that all of their employees are legally authorized to work in the United States as required by the IRCA and that such Subcontractors comply with IRCA.

**10.5 Conflicts of Interest and Prohibited Payments:**

**10.5.1 Conflicts of interest.** Conflicts of interest relating to this Agreement are strictly prohibited. Contractor shall not hire or solicit the employment of any employee of Roseton or its Affiliates during the term of this Agreement without prior written consent from Roseton or its Affiliate, as appropriate.

**10.5.2 Reporting.** Contractor represents that no unrecited consideration, kickbacks, fees, payments or things of value above what is ordinarily encountered in usual and customary business practices and what is permitted by any applicable antikickback law, were given to or requested by any Roseton employee as an inducement to enter into or continue this Agreement, and that Contractor further agrees to immediately report any such request, demand or occurrence by any Roseton employee to: Office of General Counsel, Castleton Commodities International LLC, 2200 Atlantic Ave., Suite 800, Stamford, CT 06902; Telephone (203) 564-8382; Facsimile/telecopier (203) 564-8217. For Contractor's information, Roseton's corporate policy prohibits employees from receiving gifts from suppliers, potential suppliers, or competitors, except as common courtesies usually associated with customary business practices. In addition, Roseton's corporate policy requires Roseton employees to report gifts with a value exceeding \$150.00.

**10.5.3 Prohibited Payments.** Contractor shall comply with, and shall require its Affiliates and Subcontractors to comply with, all laws, rules and regulations relating to improper or illegal payments, gifts or gratuities. In any event, Contractor agrees not to, and to cause its Affiliates and Subcontractors not to, offer, pay or authorize the offer or payment of any money or anything of value directly or indirectly to any entity or person (whether a governmental official or private individual) for the purpose of illegally or improperly influencing an act or decision of an official of any government in his/her official capacity or inducing him or her to use his or her influence with that government to take any action favorable to Contractor or Roseton or any of their respective Affiliates or Subcontractors or any of Roseton's projects. Likewise, Contractor agrees not to, and to require its Affiliates and Subcontractors not to, make, offer or authorize any payment to any government agency, political party or political candidate for the purpose of influencing any official act or decision, or inducing such entity or person to use any influence with that government with respect to Contractor or Roseton or any of their respective Affiliates or Subcontractors or any of Roseton's projects. In addition, Contractor acknowledges that Roseton, its Affiliates and contractors, including Contractor, are subject to the FCPA.

Contractor agrees that it and its Affiliates will not take any action, or fail to take any action, as appropriate, when Contractor knows, has reason to know or suspects that such act or such failure to act would subject Roseton, its Affiliates or any Roseton contractor or any of their respective Affiliates to liability under the FCPA or the laws of any applicable jurisdiction dealing with improper or prohibited payments as described in this Section 10.5.

**10.6 Indemnity: IN ADDITION TO ANY OTHER REMEDIES UNDER THIS AGREEMENT, CONTRACTOR SHALL, WITHOUT LIMIT AND AT ITS OWN COST, FULLY RELEASE, DEFEND, INDEMNIFY AND HOLD THE ROSETON GROUP HARMLESS FOR, FROM AND AGAINST ANY AND ALL CLAIMS ARISING OUT OF OR RESULTING FROM CONTRACTOR'S OR ITS SUBCONTRACTORS' BREACH OF ANY REPRESENTATION, WARRANTY, CERTIFICATION OR OBLIGATION PROVIDED FOR IN SECTIONS 10.1 THROUGH 10.5.**

## **11. PACKAGING, SHIPPING AND ACCEPTANCE OF MATERIALS**

**11.1 Contractor's preparation of Products:** Contractor shall: (a) efficiently and timely prepare Products for pick up by the transportation carrier; (b) be responsible for proper shipping papers, packaging, labeling, marking, placarding and preparation for shipment of Products and all such activities shall be in full compliance with all Applicable Laws, including DOT, OSHA EPA and State law requirements; and (c) include with each shipment or delivery a Material Safety Data Sheet for each item for which a Material Safety Data Sheet is required by Applicable Laws.

**11.2 Delivery of Products:** All shipments of Products shall be made either F.O.B. Destination or F.O.B. Shipping Point as designated in the Purchase Order.

**11.3 Compliance with specifications/right to inspect:** Contractor shall not substitute any Products that have been specified by Roseton without authority from Roseton. All Products furnished will be subject to Roseton's right of inspection and approval after delivery. Roseton reserves the right (payment notwithstanding) to reject and return, at Contractor's risk and expense, that portion of any shipment that may be defective or that fails to comply with Roseton's specifications or the warranties set forth in this Agreement and all applicable Purchase Order(s). Neither acceptance nor payment by Roseton nor its inspection or failure to inspect limits or excludes Roseton's express warranties provided for in this Agreement or any warranties implied by law or waives any of Roseton's rights or remedies.

## **12. WARRANTIES**

**12.1 Warranties for Services and Products:** Contractor represents and warrants that: (a) the Services will be performed in a good and workmanlike manner, in accordance with all specifications for the Services set forth in this Agreement and all applicable Purchase Order(s), and in accordance with accepted industry practices prevailing at the time and place where the Services are being rendered; (b) that, if any Services require certifications or licenses, that the workers performing such Services shall be so certified and/or licensed; and (c) that the product of any Services performed under this Agreement will be free from defects in design, workmanship and materials. Contractor further represents and warrants that any Products furnished under this Agreement are free from defects in design, workmanship and materials, are in compliance with all specifications for Products set forth in this Agreement and all applicable Purchase Order(s), are not counterfeit, and that unless otherwise specified are new and have not been previously used. If prior to completion of any Work or within one (1) year following the completion of such Work (or longer if so specified in the Purchase Order) Roseton shall reasonably determine that: (x) Contractor has not performed the Services or supplied Products that are in accordance with the standards set forth in this section; or (y) Contractor has made a material error or omission in the performance of the Services or the provision of Products, then Contractor, at its own expense, shall promptly undertake and complete such corrective action as is necessary to remedy the error, omission, defect, or non-

conformance. If Contractor does not complete such required corrective action within the deadline established by Roseton following receipt of written notice from Roseton that such corrective action is required, then Roseton may either perform such corrective action itself or hire one or more third parties to perform such corrective action and Contractor shall be liable to Roseton for the cost of such corrective action. No acceptance or payment by Roseton shall constitute a waiver of any of the foregoing warranties or Contractor's obligations hereunder.

**12.2 Manufacturer's warranties:** All manufacturer's warranties and remedies applicable to Products shall be assigned and transferred by Contractor to Roseton and Contractor agrees to fully assist and cooperate with Roseton in the enforcement of such warranties; provided, however, no such warranty shall in any way relieve Contractor from its obligations to Roseton with regard to any warranty under this Section 12.

### 13. CONFIDENTIALITY

**13.1 Confidential information:** In order for Contractor to provide Work under this Agreement, it may be necessary for Roseton to disclose Confidential Information to Contractor. For a period of three (3) years after the completion or termination of Work under a Purchase Order, Contractor shall receive and maintain in strictest confidence the Confidential Information and will not disclose the Confidential Information to others, except as otherwise permitted under the terms of this section. Contractor will not use Confidential Information for any purpose other than the performance of the Work and will disclose the Confidential Information only to those of its Representatives whom Contractor considers to have the need to know the Confidential Information for purposes of providing the Work, each of whom shall be informed of the confidential nature of the Confidential Information and agree to comply with the terms of this section and Contractor agrees to be responsible for any breach of this section by such Representatives.

**13.2 Exceptions to Confidential Information:** The provisions of this section shall not apply to any portion of the Confidential Information that: (a) was developed by Contractor and in Contractor's possession prior to Contractor's first receipt thereof directly or indirectly from Roseton; (b) is now or hereafter becomes through no act or failure to act on Contractor's or any of Contractor's Representative's part generally available on a non-confidential basis to the public; (c) was heretofore or hereafter furnished to Contractor by a source other than Roseton as a matter of right without restriction on disclosure; or (d) is required by law to be publicly disclosed by Contractor; provided, however, that Contractor timely notifies Roseton of any such requirement in order to provide Roseton a reasonable opportunity to seek an appropriate protective order, and, in the event such protective order or other remedy is not obtained, Contractor agrees to furnish only that portion of the Confidential Information that Contractor is legally required to furnish.

**13.3 Return of Confidential Information:** Contractor shall, upon Roseton's request, return the Confidential Information to Roseton within thirty (30) days following receipt of Roseton's request, or certify in writing by an officer or authorized agent of Contractor that the Confidential Information has been destroyed. This provision shall be extended to and required of Contractor's Subcontractors for the specific and expressed benefit of Roseton.

**13.4 Remedy for Breach:** Contractor recognizes that Roseton may not have an adequate remedy at law in the event that Contractor, its employees, agents or Subcontractors breach the confidentiality provisions of this Agreement and that, in such event, Roseton may suffer irreparable damages or injury. Therefore, Roseton shall be entitled to equitable relief, including temporary or permanent injunctive relief against Contractor in the event of a breach of the confidentiality provisions of this Agreement. Such permanent or injunctive relief shall in no way limit other remedies that Roseton may have against Contractor for any breach of the terms of these provisions.

## 14. OWNERSHIP OF INTELLECTUAL PROPERTY; CLAIMS FOR INFRINGEMENT

**14.1 Ownership by Roseton:** All work product developed by Contractor under this Agreement, including designs, technical data, reports, blueprints, drawings and customized tooling and dies, shall be Roseton's property and may be used, disclosed, or transferred by Roseton in any manner it finds appropriate, other than providing them to a competitor of Contractor for the purpose of helping that competitor develop competing bids against Contractor. Any and all work product shall be considered "Work for Hire" under applicable U.S. Copyright laws and be turned over to Roseton upon request or upon completion or termination of Work under a Purchase Order. Contractor will hold the same in confidence pursuant to the terms of Section 13 and will not use it for any purpose other than the performance of the Work.

**14.2 Assignment to Roseton:** All inventions, discoveries, and improvements, patentable and unpatentable, that are made or conceived by Contractor's personnel arising out of the performance of the Work, including all patent rights therein and all copyrights in materials related thereto, both domestic and foreign, shall belong to, and are hereby assigned and shall be assigned by Contractor, Subcontractor(s) and such personnel to Roseton or its designee. Contractor and/or Contractor's personnel shall promptly and fully disclose all such inventions, discoveries and improvements to Roseton and shall cooperate with Roseton or its nominee as may be reasonably required in order to obtain patent protection therefore, including the signing of assignments of inventions and patent rights therein, and the signing of any property affidavits, declarations, patent applications and the like. Roseton or its nominee, at Roseton's own expense, shall handle the general preparation and prosecution of patent applications. During such preparation and prosecution, Contractor and/or Contractor's personnel shall be consulted only on technical features that may arise.

**14.3 Infringement Warranty and Indemnity:** Contractor warrants that the Work and Contractor's work product will not infringe on any copyright, patent, or trade secret. **CONTRACTOR SHALL FULLY INDEMNIFY, DEFEND AND HOLD THE ROSETON GROUP HARMLESS FOR, FROM AND AGAINST ALL CLAIMS FOR ANY COPYRIGHT OR PATENT INFRINGEMENT OR MISAPPROPRIATION OF A TRADE SECRET, ARISING OUT OF OR RESULTING FROM CONTRACTOR'S OR ITS SUBCONTRACTORS' PERFORMANCE OF THE WORK, INCLUDING ROSETON'S USE OF ANY DESIGNS OR OTHER WORK PRODUCT DEVELOPED BY CONTRACTOR, AND CONTRACTOR SHALL REIMBURSE THE ROSETON GROUP FULLY FOR ANY ROYALTIES, DAMAGES OR OTHER PAYMENTS THAT A ROSETON GROUP SHALL BE OBLIGATED TO PAY.** In the event Roseton's use of any work product developed by Contractor is interrupted as a result of such a claim, then Contractor shall either: (a) procure for Roseton, at no cost to Roseton, the right to continue using the infringing work product as though it were non-infringing; or (b) replace or modify the infringing work product with a work product that is non-infringing and that does not violate the property rights of others. The Roseton Group shall have the right to be present and represented by counsel, at its own expense, at all times during litigation or other discussions relating to claims under this provision. Neither Contractor nor a Roseton Group shall settle or compromise any such litigation without the consent of the other if such settlement or compromise 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.

## 15. TAXES

**15.1 Contractor's responsibility:** Contractor shall be fully responsible for reporting and discharging all local, state and federal income or profit taxes or taxes imposed in lieu of an income or profit tax, franchise tax, pension benefits, payroll taxes including social security taxes, employment, disability and other customary insurance and for any other taxes (except sales, use, excise and gross receipts taxes addressed below) or payments, together with any interest and penalties, additions to tax, or additional amounts with respect thereto, which may be due and owing by Contractor or which are the result of fees or amounts paid by Roseton to

Contractor under this Agreement. **CONTRACTOR SHALL FULLY INDEMNIFY, DEFEND AND HOLD THE ROSETON GROUP HARMLESS FOR, FROM AND AGAINST ANY CLAIMS RESULTING FROM CONTRACTOR'S OR ITS SUBCONTRACTORS' FAILURE TO PAY ANY TAXES THAT ARE CONTRACTOR'S OR ITS SUBCONTRACTORS' RESPONSIBILITY UNDER THIS SECTION.**

**15.2 Taxes related to the Services/Products/Transaction:** With respect to federal, state and local sales, use, excise and gross receipts taxes, Contractor is responsible for reporting and discharging taxes statutorily imposed on Contractor. Where such taxes are statutorily imposed on Roseton, Contractor shall collect such taxes from Roseton, unless Roseton presents vendor with a valid exemption certificate. If the Contractor is not required or registered to collect such taxes, Roseton shall remit the applicable taxes to the proper taxing jurisdiction. Both Contractor and Roseton agree to provide each other with the necessary information to determine the taxability of the charges incurred pursuant to this Agreement, which may include providing support for the breakout of materials from labor where requested.

## **16. MECHANIC'S LIENS**

**16.1 Duties and obligations:** Contractor shall keep the Facilities, Site, premises of Roseton, Products and Work free of all mechanic's, supplier's and materialmen's liens, claims, encumbrances and stop notices, which results from Contractor's Work. Contractor will furnish, upon request, receipts and releases with respect to Work, showing that all cost and expenses of the Work have been paid and that no third party claims, liens, or rights of liens exist by reason thereof against Roseton or its property. In the event that any lien, encumbrance or stop notice is made or filed against the Facilities, Site, premises of Roseton, Products or work related to Contractor's provision of the Work, which does not result from Roseton's failure to pay Contractor, Contractor shall immediately pay and discharge such lien, encumbrance or stop notice or provide Roseton with a bond over such claim in an amount sufficient to fully discharge such lien, encumbrance or stop notice and pay any and all costs, expenses and fees (including a reasonable attorney's fee) which may be incurred by Roseton.

**16.2 Indemnity:** Final payment to Contractor shall not relieve Contractor of its obligation to discharge and release any lien filed before or after Contractor is paid for the Work and **CONTRACTOR AGREES THAT IT IS STRICTLY LIABLE FOR AND SHALL, WITHOUT LIMIT AND AT ITS OWN COST, FULLY INDEMNIFY, DEFEND AND HOLD THE ROSETON GROUP HARMLESS FOR, FROM AND AGAINST ALL CLAIMS FOR LIENS OR DAMAGES RESULTING FROM THE FILING, PROSECUTION OR EXECUTION OF SUCH LIENS ARISING OUT OF OR RELATED TO THE PERFORMANCE OF THE WORK.**

**16.3 Notice:** Contractor shall immediately provide written notice to Roseton of any and all notices of lien or notices of intent to file a lien that it may receive from any materialmen, mechanic or supplier in relation to the provision of the Work at or upon the Facilities, Site or premises of Roseton. Contractor agrees to provide Roseton with any and all relevant information and documentation related to any such notice of lien or notice of intent to file lien.

## **17. DEFAULTS, REMEDIES AND TERMINATION**

**17.1 Events of Default:** Each of the following shall constitute an Event of Default under this Agreement:

**17.1.1 Material Breach.** Either Roseton or Contractor shall fail in any material respect to comply with, observe, or perform, or shall default in any material respect in the performance of, the terms and conditions of this Agreement.

**17.1.2 Material Misrepresentation.** Any representation made by either Roseton or Contractor hereunder shall be deemed false or incorrect in a material respect when made, or deemed false

in a material respect at any point in time, if said representation is one which Roseton or Contractor has a continuing duty to make.

**17.1.3 Bankruptcy.** Either Roseton or Contractor shall: (a) apply for or consent to the appointment of a trustee, receiver, liquidator, custodian, or the like for itself or its properties, or same is sought without Contractor's consent in any case or proceeding; (b) be unable, or admit in writing the inability, to pay its debts as they mature, or liquidation, reorganization of its debts, dissolution, or winding-up, or the composition or readjustment of its debts, is sought without Contractor's consent in any case or proceeding; (c) make a general assignment for the benefit of its creditors; (d) commence a voluntary case, or have an involuntary case commenced against it, under the chapter of the Bankruptcy Reform Act of 1978 or other applicable legal requirement, or file a petition, answer, or consent seeking reorganization; or (e) take any action for the purpose of effecting, or acquiescing in or to, any of the foregoing.

**17.2 Remedies for Default:** Except to the extent more limited rights are provided elsewhere in this Agreement, if an Event of Default occurs as defined in Section 17.1, the non-defaulting Party shall provide the defaulting Party with notice of the Event of Default. Following receipt of a notice of an Event of Default, the defaulting Party shall have ten (10) days to cure such Event of Default after receipt of notice thereof from the other Party, provided that if such failure is not capable of being cured within such ten (10) day period with the exercise of reasonable diligence, then such cure period shall be extended for an additional reasonable period of time, not to exceed thirty (30) days, so long as the defaulting Party is exercising reasonable diligence to cure such failure.

**17.3 Termination:** Either Party shall have the right to immediately terminate this Agreement for an Event of Default as defined in Section 17.1.3. If the required notice under Section 17.2 was given for an Event of Default as defined in Section 17.1.1 or 17.1.2 and the Event of Default is not cured by the expiration of the corresponding period for cure provided above, then the Party not in default, by notice in writing to the defaulting Party, may, in addition to any other rights and remedies available to it under this Agreement, terminate this Agreement and/or any Purchase Order upon at least thirty (30) days prior written notice to the defaulting Party. Upon termination or expiration of this Agreement, Contractor shall render a final invoice to Roseton reflecting all outstanding fees and any outstanding reimbursable expenses incurred prior to termination or expiration. Upon termination of this Agreement and/or any Purchase Order, all rights and obligations hereunder shall terminate, and neither Party shall have any further obligation or liability hereunder to the other Party, except for liabilities that are incurred prior to or upon termination and any other rights, obligations, or liabilities that which, by their nature, are intended to survive termination of the Agreement and/or any Purchase Order.

**17.4 Termination of Agreement for Convenience of Roseton:** Roseton may terminate the Agreement, or any part thereof, at any time and from time to time, for its sole convenience by giving to Contractor, in any manner prescribed in the Agreement for the giving of notices, prior written notice to such effect, stating that it is a notice of termination pursuant to the section entitled "Termination for Convenience of Roseton" and stating the portion or portions (which may include the entire Agreement) so terminated. In the event of any such termination, Contractor shall immediately stop all Work within the allotted time and, unless notified by Roseton to the contrary, shall immediately cancel orders and commitments to its suppliers and Subcontractors, and cause all of its suppliers or Subcontractors to cease all work related to the Agreement. In the event of such termination for convenience, Roseton shall pay Contractor as a termination charge that portion of the contract price (or, if there is no contract price, that portion of the total consideration specified in the Agreement) equal to the portion of the Work completed to Roseton's satisfaction prior to such termination, together with Contractor's actual, reasonable, verifiable direct costs, if any, incurred in closing-out such Work, less any payments made prior to such termination. Contractor shall not be paid for any Work performed after receipt of any such notice of termination relating to such Work, nor for any costs incurred by Contractor's suppliers or Subcontractors that

Contractor could reasonably have avoided. Contractor shall have no further claim against Roseton on account of such termination.

**17.5 Termination of Purchase Order for Convenience of Roseton:** Roseton may terminate any Purchase Order, or any part thereof, at any time and from time to time, for its sole convenience by giving to Contractor, in any manner prescribed in the Agreement for the giving of notices, prior written notice to such effect. In the event of any such termination, Contractor shall immediately stop all Work pertaining to the applicable Purchase Order within the allotted time and, unless notified by Roseton to the contrary, shall immediately cancel all applicable orders and commitments to its suppliers and Subcontractors, and cause all of its suppliers or Subcontractors to cease all work related to the Purchase Order. In the event of such termination for convenience, Roseton shall pay Contractor as a termination charge that portion of the Purchase Order price (or, if there is no Purchase Order price, that portion of the total consideration specified in the Purchase Order) equal to the portion of the Work completed to Roseton's satisfaction prior to such termination, together with Contractor's actual, reasonable, verifiable direct costs, if any, incurred in closing-out such Work, less any payments made prior to such termination. Contractor shall not be paid for any Work performed after receipt of any such notice of termination relating to such Work, nor for any costs incurred by Contractor's suppliers or Subcontractors that Contractor could reasonably have avoided. Contractor shall have no further claim against Roseton on account of such termination.

## **18. FORCE MAJEURE**

**18.1 Force Majeure:** In the event either Party is rendered unable, wholly or in part, by Force Majeure to carry out its obligations under this Agreement, other than to make payments then or thereafter due hereunder, it is agreed that on such Party giving notice and full particulars of such Force Majeure in writing to the other Party as soon as possible after the occurrence of the cause relied on, then the obligations of the Party giving such notice, so far as they are affected by such Force Majeure, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall as far as possible be remedied with all reasonable and diligent dispatch by the Party claiming such in order to put itself in a position to carry out its obligations under this Agreement. The term "**Force Majeure**" shall mean any causes, whether of the kind herein enumerated or otherwise, not within the control of the Party claiming suspension and which by the exercise of due diligence such Party could not have prevented, including any act of God, any act or omission of any government authority, explosions, fire, riot, war, and in Roseton's case, its need for the Work being reduced. Specifically excluded from the definition of Force Majeure is: (a) any labor strike, labor dispute, work stoppages, boycotts, walkouts and other labor difficulties or shortages resulting therefrom; (b) the inability to obtain labor, equipment or other materials or supplies for the Work; (c) changes in market conditions; (d) failure to timely apply for permits or approvals; or (e) any act or event to the extent resulting from the fault or negligence of any person claiming Force Majeure, or the financial inability of any person to perform its obligations under this Agreement.

**18.2 No Damages for Delay:** In no event shall Roseton be liable to Contractor for any damages or increased compensation of any kind for any delay or disruption to Contractor's performance of Work regardless of whether such delay is caused by Roseton, or by other parties under Roseton's control, or by Force Majeure, or by any other cause.

## **19. AUDIT**

Contractor shall, and ensure that its Subcontractors shall, maintain a true and correct set of records pertaining to all activities relating to its performance hereunder and all transactions related thereto. Contractor further agrees, and shall ensure that its Subcontractors agree, to retain all such records for a period of not less than three (3) years after the completion or termination of Work under a particular Purchase Order hereunder. Contractor agrees that all records pertaining to charges made to Roseton under this Agreement will be subject to audit by Roseton or



representatives of Roseton. Roseton, or its representatives, shall have access during normal working hours to Contractor's records and facilities and shall be provided adequate and appropriate workspace in order to conduct audits. Roseton shall have the right to interview current and former Contractor employees as part of any such audit. Should errors, overcharges or undercharges occur, reimbursement shall be made to the appropriate Party.

## 20. NOTICES

**20.1 PO point of contact:** Billing, invoices and reports required of Contractor hereunder shall be addressed to the individual designated as the "Ship To" contact on the particular Purchase Order.

**20.2 Agreement point of contact:** Notices and correspondence required of the Parties hereunder shall be made in writing and addressed to:

If to **Roseton:**

**Roseton Generating LLC**  
811 Main Street, Suite 3500  
Houston, TX 77002  
Attention: Legal Dept.  
Facsimile: (281) 378-1150

If to **Contractor:**

[Company name]  
[Address]  
[Address]  
Attention: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

With Copies To:

**Roseton Generating LLC**  
2200 Atlantic Street, Suite 800  
Stamford, CT 06902-6834  
Attn: General Counsel  
Facsimile: (203) 564-8217

**Roseton Generating LLC**  
992 River Road  
Newburgh, NY 12550  
Attn: Plant Manager  
Facsimile: (845) 563-4906

**20.3 Deemed delivered:** Any notice or correspondence provided for in this Agreement shall be duly given if delivered by: (a) hand; (b) registered or certified mail, return receipt requested, postage pre-paid; or (c) facsimile to the Party for which it is intended. The Parties may change their respective addresses hereunder upon reasonable advance notice to the other. Any notice, consent, endorsement, election, certification, report, request, demand, tender, authorization, or approval given by: (i) hand delivery or registered mail shall be deemed given at the time of delivery, and (ii) facsimile transmission shall be deemed to be given at the time transmission has been confirmed; provided, however, that where the time of transmission falls outside the normal business hours of the recipient, delivery shall be deemed to be given at 0900 hours (recipient's local time) on the next business day at the location of receipt.

## 21. NON-DISCRIMINATION AND HARASSMENT POLICY

Attached as **Exhibit E** are Roseton's policies and procedures on non-discrimination and harassment. To the extent applicable to Contractor, Contractor will abide by these policies and procedures, and will ensure that all of its employees, representatives, agents and Subcontractors providing Work hereunder abide by these policies and procedures as well.

## **22. DISPUTE RESOLUTION PROCEDURES**

The Parties shall endeavor to resolve amicably any Dispute in the ordinary course of business between the Parties' representatives. If the Parties' representatives are unable to resolve the Dispute in the ordinary course of business, then the Dispute shall be referred to the Parties' senior management for resolution. If the Parties' senior management cannot resolve the Dispute within thirty (30) days of a Party's notice to the other Party that such Dispute should be taken to the Parties' senior management, then either Party may initiate litigation. Pending resolution of any Dispute, under this Section 22, Contractor and Roseton shall proceed with the performance of its undisputed obligations consistent with its respective position in the Dispute, including but not limited to payment of undisputed amounts.

## **23. CUMULATIVE, BUT EXCLUSIVE REMEDIES**

The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any Party shall not preclude or waive its right to use any or all other remedies provided for in this Agreement. However, the remedies of the Parties set forth in this Agreement are the exclusive remedies available to the Parties.

## **24. GOVERNING LAW, JURISDICTION, VENUE AND WAIVER OF JURY TRIAL**

This Agreement shall be governed and construed in accordance with the laws of the State of Texas, and any and all disputes hereunder shall be resolved in accordance with the laws of the State of Texas, except for any such law that would direct the application of the law of a different jurisdiction. The Parties consent to personal jurisdiction in any action brought in any court, federal or state, within Harris County, Texas, having personal and subject matter jurisdiction arising under this Agreement and with respect to any such claim the Parties irrevocably waive, to the fullest extent permitted by law, any claim, or any objection they may now or hereafter have, that venue is not proper with respect to any such suit, action, or proceeding brought in such a court in Harris County, Texas, including any claim that such suit, action, or proceeding brought in such court has been brought in an inconvenient forum and any claim that a Party is not subject to personal jurisdiction or service of process in such Harris County forum.

**BOTH CONTRACTOR AND ROSETON EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES AND FOREVER RELINQUISHES ANY AND ALL CLAIMS OR RIGHTS THAT SUCH PARTY MAY HAVE TO ANY TRIAL BY JURY ON ANY ISSUE ARISING OUT OF ANY LITIGATION OR DISPUTES OR CLAIMS UNDER THIS AGREEMENT OR ANY PURCHASE ORDER OR IN ANY WAY ASSOCIATED THEREWITH, SUCH PARTIES INTENDING TO WAIVE AND FOREVER RELINQUISH ANY RIGHT UNDER THE SEVENTH AMENDMENT OF THE UNITED STATES CONSTITUTION TO TRIAL BY JURY AND ANY CLAIMS OR RIGHTS TO A TRIAL BY JURY UNDER THE CONSTITUTION OF THE STATE OF TEXAS OR ANY OTHER CONSTITUTIONAL, STATUTORY OR OTHERWISE APPLICABLE LAW PROVIDING FOR A RIGHT OF TRIAL BY JURY.**

## **25. SEVERABILITY**

If any provision of this Agreement is held to be illegal, invalid, or unenforceable and such invalidity or unenforceability does not have a material and substantial negative impact on the rights, duties and obligations of either Party hereto: (a) such provision will be fully severable; (b) this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement; and (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore: (i) in lieu of such illegal, invalid, or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and as may be legal, valid, and enforceable; and (ii) such illegality, invalidity or unenforceability shall not affect the validity or enforceability in

that jurisdiction of any other provision of this Agreement nor the validity or enforceability in other jurisdictions of that or any other provision of this Agreement.

## **26. NON-WAIVER**

No waiver by either Party of the performance of any provision, condition or requirement of this Agreement shall be deemed to be a waiver of, or in any manner release the other Party from, performance of any other provision, condition or requirement of this Agreement; nor shall it be deemed to be a waiver of, or in any manner release the other Party from future performance of the same provision, condition, or requirement; nor shall any delay or omission of a Party in exercising any right hereunder in any manner impair the exercise of any such right or any like right accruing to it thereafter. No waiver shall be effective unless made in writing and signed by the Party to be charged with such waiver.

## **27. AUTHORITY**

Contractor represents and warrants to Roseton that it has the power, authority and right to enter into this Agreement and to carry out and perform the terms hereof.

## **28. ASSIGNMENT**

Contractor shall not assign this Agreement or any of Contractor's rights or obligations under this Agreement without the prior written approval of Roseton. Subject to the foregoing, this Agreement and the covenants, obligations, undertakings, rights and benefits set forth herein shall be binding on and inure to the benefit of the Parties and their respective successors and assigns.

## **29. REQUIRED CONSENTS**

Neither Contractor nor Roseton will reveal any information concerning details of this Agreement to the press or a news-disseminating agency without the other Party's prior written approval. No photographs of the Facilities or any of its components are to be taken without prior written approval by an authorized representative of Roseton.

## **30. RULES OF CONSTRUCTION**

In construing this Agreement, the following principles shall be followed: (a) no consideration shall be given to the fact or presumption that one Party had a greater or lesser hand in drafting this Agreement **IT BEING EXPRESSLY ACKNOWLEDGED BY THE PARTIES THAT THEY HAVE REVIEWED, UNDERSTAND AND AGREED TO ALL THE PROVISIONS CONTAINED IN THIS AGREEMENT AND HAVE HAD ADEQUATE OPPORTUNITY TO OBTAIN REVIEW BY LEGAL COUNSEL REGARDING SAME;** (b) examples shall not be construed to limit, expressly or by implication, the matter they illustrate; (c) the word "includes" and its syntactical variants mean "includes, but is not limited to" and corresponding syntactical variant expressions; (d) the plural shall be deemed to include the singular and vice versa, as applicable; and (e) the descriptive headings of the provisions of this Agreement are formulated and used for convenience only and shall not be deemed to affect the meaning or construction of any such provision. **EACH OF THE PARTIES HERETO SPECIFICALLY ACKNOWLEDGES AND AGREES: (A) THAT IT HAS A DUTY TO READ ALL OF THE DOCUMENTS CONSTITUTING THIS AGREEMENT AND THAT IT IS CHARGED WITH NOTICE AND KNOWLEDGE OF THE TERMS HEREIN; AND (B) THAT IT HAS IN FACT READ THIS AGREEMENT AND IS FULLY INFORMED AND HAS FULL NOTICE AND KNOWLEDGE OF THE TERMS, CONDITIONS AND EFFECTS OF THIS AGREEMENT. EACH PARTY HERETO FURTHER AGREES THAT IT WILL NOT CONTEST THE VALIDITY OR ENFORCEABILITY OF ANY PROVISION OF THIS AGREEMENT ON THE BASIS THAT IT HAD NO NOTICE OR KNOWLEDGE OF SUCH PROVISION OR THAT SUCH PROVISION IS NOT "CONSPICUOUS".**

### **31. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the Parties in relation to the Work and supersedes all prior agreements, understandings and commitments, whether oral or in writing, between the Parties. This Agreement may not be amended or modified in any manner except by a written document signed by authorized representatives of both Parties which conspicuously and expressly identifies itself as an amendment to this Master Service Agreement and conspicuously and expressly identifies the specification section(s) and/or rights and obligations affected. All additional and/or conflicting terms and conditions that may appear on Contractor written documents, including delivery tickets, service order tickets, daily time sheets, invoices or any other document shall be null and void and Roseton's signature on any Contractor written document shall not constitute Roseton's consent to any terms or conditions set forth in such document. Roseton rejects any additional or contrary terms and conditions contained in any such document, and Roseton's signature on any such document shall not constitute Roseton's consent to any terms and conditions contained therein.

### **32. COUNTERPARTS**

This Agreement may be executed and delivered in one or more counterparts, each of which when executed and delivered shall be an original, and all of which when executed shall constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile or by electronic image scan transmission in .pdf format shall constitute effective execution and delivery of this Agreement.

[Signatures are on the next page.]

**IN WITNESS WHEREOF**, by execution of this Agreement in the space provided below, the Parties acknowledge and agree with the foregoing terms and conditions as of the Effective Date first written above.

Accepted and Agreed to:

Accepted and Agreed to:

**CONTRACTOR**

**ROSETON GENERATING LLC**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: Joseph E. Rothbauer

Title: \_\_\_\_\_

Title: Senior Vice President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Federal Tax ID # or SSN: \_\_\_\_\_

Address: 811 Main Street,  
Suite 3500  
Houston, TX 77002

Incorporation Status:

Incorporated ( ) Not Incorporated ( )

State License No. \_\_\_\_\_

(where required by state law)

## EXHIBIT A - MASTER SERVICES AGREEMENT

### DEFINITIONS

---

The following capitalized terms, whether in the singular or the plural or in the present or past tense, shall have the meanings set forth below whenever such terms appear in the Agreement.

**“Affiliate”** means any Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the specified Person.

**“Agreement”** means this Master Services Agreement.

**“Applicable Laws”** means all applicable laws, regulations, ordinances, and other rules of the federal, state, municipality, territory, tribe, parish, county, local government or political subdivision thereof or any other duly constituted public authority having jurisdiction over Contractor, the Roseton Site or the activities being performed.

**“Roseton”** has the meaning indicated on the first page of this Agreement.

**“Roseton Group”** means Roseton, its parent and subsidiary companies as defined by the term **“Affiliate”**, those persons or entities with whom Roseton or its parent and subsidiary companies are associated as operator or non-operator, working interest owner, co-lessee, co-owner, partner or joint venture, its and their contractors of whatever tier (other than members of **“Contractor Group”**) and the officers, directors, employees, agents and representatives of all of the foregoing.

**“Roseton Safety Vendors”** means the vendors that Roseton utilizes in its sole discretion to screen, audit and evaluate the safety program and/or substance abuse testing program of its Contractors, which at the time of this draft of this Agreement is ISNetwork (by ISN Software Corporation) and DISA Global Solution, Inc. respectively.

**“Change Order”** means a revision to a Purchase Order that is agreed to in writing according to Section 1.1.

**“Claims”** means any and all liabilities, judgments, costs (including court costs, reasonable attorney’s fees and costs of investigation), fines, penalties, expenses, damages, claims, causes of action, suits and demands, whether based in tort, contract, strict liability, or otherwise, and whether or not there be any basis in law or in fact.

**“Confidential Information”** means Roseton information that is confidential or proprietary business or technical information and any notes, analyses, studies and other documents prepared by Contractor or its Representatives that contain or otherwise reflect such information.

**“Contractor”** has the meaning indicated on the first page of the Agreement.

**“Contractor Group”** means Contractor, its parent and subsidiary companies as defined by the term **“Affiliate,”** and its and their respective Subcontractors and contractors of whatever tier and the officers, directors, employees, agents and representatives of all of the foregoing.

**“Control”** means ownership, directly or indirectly, of fifty percent (50%) or more of either the outstanding voting stock of the controlled Person or any other ownership interest in the controlled Person if such interest

has, directly or indirectly, the power to direct or cause the direction of the management and policies of such relevant Person.

**“Dispute”** means any dispute arising out of or relating to this Agreement or a breach thereof.

**“DOT”** means the U.S. Department of Transportation or of any governmental organization of any state in the USA that regulates transportation within that state and any successor organizations to the authority thereof.

**“Effective Date”** has the meaning ascribed to it in the first paragraph of the Agreement.

**“EPA”** means the U.S. Environmental Protection Agency.

**“Facilities”** and **“Site”** are used interchangeably to mean the facilities and/or location where Work is provided by Contractor and/or its Subcontractors.

**“FCPA”** means the U.S. Foreign Corrupt Practices Act, as amended from time to time.

**“F.O.B. Destination”** means:

- free of expense to Roseton, on board the carrier’s conveyance, at the delivery point specified by Roseton;
- delivery of the Products in good order and condition to the point of delivery specified by Roseton - Contractor shall be responsible for any loss of and/or damage to the Products occurring before receipt of the shipment by Roseton at the specified delivery point, and Contractor will be responsible for filing, processing and recovering any other discrepancies;
- Contractor shall schedule and designate the delivering carrier; and
- Contractor shall bear and pay all transportation charges to the specified point of delivery.

**“F.O.B. Shipping Point”** means:

- free of expense to Roseton, on board Roseton’s specified carrier’s conveyance, at the shipping point specified by Roseton;
- delivery of the Products in good order and condition to point of shipment specified by Roseton - Contractor shall be responsible for any loss of and/or damage to the Products occurring before receipt of the shipment by Roseton on board the carrier’s conveyance at the specified shipping point;
- Roseton shall schedule and designate the delivering carrier; and
- Roseton shall bear and pay all transportation charges, customs charges and import duties/taxes to Roseton’s specified point of delivery.

**“Force Majeure”** has the meaning ascribed to it in Section 18.1 of the Agreement.

**“Hazardous Substances”** means any and all hazardous wastes, toxic substances, radioactive wastes or hazardous substances (as such terms may be defined in any statute or ordinance or regulations enacted or promulgated by any federal, state or local governmental authority of the United States or the country of the site).

“**IRCA**” means the Immigration Reform and Control Act of 1986.

“**Minimum Contractor Safety Requirements**” means the Roseton safety and security policies and procedures as set forth in **Exhibit C**, attached to this Agreement.

“**OSHA**” means the U.S. Occupational Safety and Health Administration.

“**Party**” means either Roseton or Contractor, while “**Parties**” means both Roseton and Contractor.

“**Person**” means an individual, corporation, limited liability company, partnership, joint venture, unincorporated organization or any other legal entity.

“**Preselection Questionnaires**” mean the safety questionnaires and substance abuse testing questionnaires or other screening tools used by the Roseton Safety Vendors in evaluating Contractor.

“**Products**” means all materials, goods, equipment and/or products provided to Roseton under this Agreement.

“**Purchase Order**” means the purchase order form attached to this Agreement as **Exhibit B**. A Purchase Order may also be referred to as a “**PO**”.

“**Rate Schedule**” means **Exhibit F** to this Agreement, which is applicable to Purchase Orders, if an **Exhibit F** is attached to this Agreement and initialed by Roseton when originally executed or if added by later mutual written agreement between the Parties.

“**Rentals**” shall mean Products rented or leased to Roseton under this Agreement.

“**Representatives**” means Contractor’s officers, employees, agents and Subcontractors.

“**Services**” means services to be performed by Contractor or any of its Subcontractors under this Agreement, including all materials, equipment, and personnel required to provide such services.

“**Site**” and “**Facilities**” are used interchangeably to mean the facilities and/or location where the Services are performed.

“**Subcontractors**” means any entity(ies) or person(s) hired by Contractor and necessary to perform work required to assist Contractor in performance of the Work.

“**Work**” shall mean Products, Services, and/or Rentals.



**EXHIBIT B - MASTER SERVICES AGREEMENT**

**PURCHASE ORDER FORM**

**Purchase Orders**

Roseton Generating LLC  
 [Address]  
 [Address]  
 USA  
**Telephone No.**  
**Ext.**  
**Fax**

**Purchasing Center** [Roseton Generating LLC]  
**PO No.**  
**MSA No.**  
**Release No.**  
**Order Date**  
**Request Status**  
**Revision No.**

<b>VENDOR</b> [Name] [Address] [Address] USA <b>Contact</b> <b>Telephone No.</b> <b>Ext.</b> <b>Fax</b>	<b>SHIP TO</b>    <b>Telephone No.</b>
<b>INVOICE TO</b>	<b>CONFIRM TO</b>
Freight Terms Ship Via Freight Carrier	Payment Terms     NET 30  Shipping Terms

Item	Qty	Item No./Service Code	Vendor's Item No.	Receive To ID		
	Unit	Cost Center	Description	Unit Cost	\$	Total Cost \$
	Due Date	Account Code	Specifications			
1						
2						

<b>Subtotal</b>	<b>\$</b>
<b>Tax Charge</b>	<b>\$</b>
<b>Shipping</b>	<b>\$</b>
<b>Misc.</b>	<b>\$</b>
<b>Order Total</b>	<b>\$</b>

**Additional Terms and Conditions**

This Purchase Order is made expressly subject to that certain Master Service Agreement [MSA Contract No. \_\_\_\_\_] dated \_\_\_\_\_, \_\_\_\_ by and between Roseton and Contractor (the "MSA"). Roseton acknowledges that MSA was entered into on its behalf; ratifies the execution of such MSA; and agrees to be bound thereby with respect to this Purchase Order. Contractor

acknowledges that MSA was entered into on its behalf; ratifies the execution of such MSA; and agrees to be bound thereby with respect to this Purchase Order. THIS PURCHASE ORDER MAY NOT AMEND, MODIFY OR CHANGE THE MSA. IN THE EVENT OF A CONFLICT OR INCONSISTENCY BETWEEN THE TERMS AND CONDITIONS OF THE MSA AND THIS PURCHASE ORDER, THE TERMS AND CONDITIONS OF THE MSA SHALL GOVERN AND CONTROL.

If Contractor has not entered into a master agreement with Roseton or any of Roseton's Affiliates, by placing this order for the services and/or materials specified by this Purchase Order, Contractor hereby accepts the terms and conditions set forth in Roseton's Master Services Agreement which Contractor has fully read, understood and accepted the terms and conditions set forth in Roseton's Master Services Agreement in its entirety and without modification. Contractor is under a duty to obtain Roseton's Master Services Agreement from either its point(s) of contact at Roseton, or as posted on Roseton's website at <http://CCI.com/Master-Services-Agreements>. Contractor acknowledges that it had the opportunity to review and discuss the terms and conditions set forth in Roseton's Master Services Agreement with Roseton prior to entering into this Purchase Order. Should Contractor desire to discuss the Roseton Master Services Agreement terms and conditions with Roseton, or if Contractor has difficulty retrieving the posted Roseton master agreement, please call Roseton representative listed as the "Buyer" above to assist. Roseton reserves the right to modify the terms and conditions set forth in Roseton's Master Services Agreement located at the above Internet address from time-to-time at its sole discretion; thus, Contractor should refer to these terms and conditions for each Purchase Order it receives from Roseton or any of Roseton's Affiliates.

This Purchase Order may be amended, modified or changed only by a written amendment that is signed by an authorized representative of each Party. Roseton expressly disclaims any unsigned amendments, alterations or modifications to this Purchase Order.

All shipments, shipping papers, invoices, and correspondence under this Purchase Order must include the Roseton's name and Purchase Order Number as set forth above.

Acceptance by Contractor of this Purchase Order may be accomplished by delivery to Roseton of a signed Purchase Order or by commencement of any Work provided for in this Purchase Order.

**BINDING SIGNATURES – ALL REQUIRED PRIOR TO BEGINNING WORK**

AUTHORIZED CONTRACTOR REPRESENTATIVE	DATE	AUTHORIZED Roseton REPRESENTATIVE	DATE

**EXHIBIT C - MASTER SERVICES AGREEMENT**  
**ROSETON'S MINIMUM CONTRACTOR SAFETY REQUIREMENTS**

---

**Forward**

Roseton maintains a strong, dedicated commitment to the health and safety of every individual working for Roseton. While Roseton commits considerable resources to promote and maintain a safe working environment and protect workers from injury, a portion of the responsibility for safety lies in the hands of each individual, and contractors must take full responsibility for ensuring the safety of their employees and others who might be affected by the work.

A successful incident prevention program requires a conscientious work force that knows, understands and follows established safety rules and guidelines. As an employee of a contractor performing services for Roseton, you, as well as your company, are required to know and follow Roseton's safety requirements. This document was created to provide you with the **minimum safety requirements** Roseton expects from contractor personnel. However, this information does not address every conceivable practice, procedure or situation you may encounter while working for Roseton. It is your responsibility to conduct your job in accordance with established safety practices and, where applicable, take additional precautionary measures to ensure the health and safety of all personnel at the job site.

Considered as part of these minimum safety requirement but not specifically set forth herein are that contractor and subcontractor personnel will also be responsible for observing and abiding by: 1) all applicable laws, regulations, ordinances, and other rules of the federal, state, municipality, territory, parish, county, local government or political subdivision thereof or any other duly constituted public authority having jurisdiction over contractor and subcontractor personnel, the site upon which the services are provided or the activities being performed, and 2) any other safety requirement which is reasonable and customary for the services prevailing at the time and place where the services are being rendered.

Through our combined efforts we can reach our ultimate objective: *a safe and healthy, incident free, work force.*

**Introduction**

The following information sets forth the **minimum safety requirements** Roseton expects from Contractors (including their subcontractors) in the performance of their operations. Each Contractor shall be responsible for ensuring that both contractor and subcontractor personnel comply with all applicable requirements. This document does not, however, address every conceivable practice or procedure that could affect safety at Roseton facilities and locations. **It is the responsibility of each Contractor to implement and enforce any additional safety practices or procedures that may be necessary for the safe performance of operations by contractor and subcontractor personnel.**

**Roseton reserves the right to inspect and deny access or use of any equipment or substance brought on site. Notwithstanding the foregoing, Roseton assumes no obligation to conduct such inspections, and it remains the Contractor's responsibility to insure the proper and safe condition of all equipment and materials brought onto or used at the Roseton premises.**

## **Pre-Job Meeting**

**Complete understanding of the health and safety requirements of the job is critical to the overall success of the project. After awarding of bids, Contractors will be required to attend a pre-job meeting to discuss Contractor Safety Requirements and job site safety/hazard information.**

## **Reporting To Work**

All Contractor personnel shall report to their appropriate supervisor upon arrival at a Roseton work location. Contractor Management shall ensure that Contractor personnel are given safety orientations for familiarization with potential job site hazards and emergency procedures.

## **Accident, Injury, and Illness Reporting Procedures**

All work-related accidents, injuries, and illnesses shall be reported immediately or as soon as is safely possible to the appropriate Roseton representative. It is the responsibility of the Contractor's designated person-in-charge to ensure that documented reports for all accidents or serious near miss situations on Roseton property involving personnel injury or illness, fire and/or explosions, property damage, hazardous material spills, and vehicles, if involving another party, are delivered to the appropriate Roseton representative. The Contractor is also responsible to report contractor's incidents to all applicable federal, state, and local governmental bodies and agencies having jurisdiction, as required.

## **Contractor Responsibilities**

1. For projects involving 25 or more contractor and subcontractor workers onsite, the Contractor shall designate or provide a full-time "Site Safety Representative" to enforce Roseton and Contractor safety requirements. For contracts involving less than 25 workers onsite, the Contractor shall designate one onsite individual as the person responsible for supervision of contractor safety.
2. Contractor is to ensure that all Contractor personnel, including Contractor's subcontractors, are qualified and trained to perform contracted services, i.e., DOT Operator Qualification, OSHA Power Generation, Transmission and Distribution Standard, Confined Space Entry, Respiratory Protection, etc.
3. Contractor is to provide its personnel with proper and well maintained equipment and tools necessary for the particular job being performed, unless otherwise specified by contract language. The use of Roseton equipment and tools is strictly prohibited, unless expressly permitted by Roseton Facility Management.
4. Contractor is to adhere to all applicable federal, state, and local regulations pertaining to a particular operation for which its services are contracted.
5. Contractor is responsible for ensuring that all operations are conducted in a safe manner, and for promptly correcting and reporting to Roseton and to Contractor's and subcontractor's employees all known or suspected hazards or unsafe conditions.
6. Contractor is to instruct its personnel to report any known or suspected hazards or unsafe conditions to the immediate supervisor. Contractor shall immediately notify the appropriate Roseton representative if known or suspected hazards or unsafe conditions involve Roseton equipment/personnel.
7. Contractor is to ensure the work area is maintained in a clean and orderly fashion.

8. Contractor is responsible for supplying its personnel with all necessary personal protective equipment and other safety equipment, unless otherwise specified by contract language.
9. Contractor is responsible for enforcing Roseton safe work policies, practices, and procedures, in order to provide a safe working environment.
10. Contractor personnel violating any Roseton safety policy, practice, or procedure or applicable governmental regulation is subject to immediate removal by Roseton from the Roseton property.

### **Illegal Drugs, Unauthorized Material, Search and Screening**

1. No illegal drugs, intoxicating beverages, unauthorized dangerous materials, firearms or weapons allowed on this property.
2. Persons possessing or under the influence of drugs, chemical substances or alcohol are not allowed on this property. Violators are subject to removal and/or discharge.
3. All persons on Roseton property are subject to search or drug and alcohol screening. Vehicles and other personal effects are also subject to search. Contractors are responsible for insuring they provide a drug free workforce and shall provide information as to their drug testing procedure. Contractor employees on a Roseton site may be entered into a site random testing program where required by local procedures.

### **Personal Protective Equipment**

This section lists general personal protective equipment requirements for Contractors working at Roseton facilities and locations. Additional personal protective equipment or other special items may be specified by Roseton facility requirements. Contractor's personal protective equipment requirements shall be identified through a written hazard analysis process and be made available to Roseton if requested.

1. Head Protection

A non-conductive hard hat that meets the requirements of ANSI Z89.1 (Type 1 or 2, Class E or G) shall be worn in all work areas when a potential hazard of head injury exists or can be anticipated, or when required by Roseton facility management.

2. Foot Protection

Steel-toe shoes or boots in good condition and appropriate to the work and hazards being performed shall be worn in work areas designated by Roseton facility management.

3. Eye/Face Protection

- a) Eye protection shall be worn in all work areas when known or potential eye or face injury hazard exists or can be anticipated, or when required by Roseton Management. Minimum protective eyewear shall be clean ANSI Z87.1 safety glasses including side shields. All eye / face protection shall meet the requirements of and be marked as complying with ANSI Z87.1.
- b) Face shields must be worn over protective eyewear (safety glasses or goggles) when performing work that involves a potential for corrosive / caustic chemical, flying particles such as those generated from grinding or other tasks, or when required by Roseton management.

#### 4. Hearing Protection

Hearing protection devices that reduce noise exposure below 90 dba shall be worn in all posted high noise areas, when performing work that generates noise above 90 dba, or when required by Roseton Management.

#### 5. Work Clothing

- a) The minimum clothing suitable for work at the facility or job location will be appropriate to the tasks being performed and when required by Roseton facility management.
- b) Appropriate protective clothing shall be worn when handling hazardous materials or chemicals, when specified by the applicable Material Safety Data Sheet (MSDS), working in an area with the potential for contact with or chemical or hazardous materials are stored, or when required by Roseton Management. Protective clothing that becomes contaminated with hazardous materials or chemicals must be decontaminated at the end of the work shift and/or disposed of properly.
- c) Fire Retardant Clothing (FRC) shall be worn as an outer garment in all “designated FRC areas”, when performing work that exposes the individual to an arc flash, when performing work within thirty-five (35) feet of hydrocarbons, or when required by Roseton facility management.
- d) Contractor personnel involved in spray painting, coating, or abrasive blasting operations shall wear the appropriate outer garment identified by the contractor such as disposable Tyvek or similar material to prevent contamination of personal clothing or FRC worn underneath.
- e) Jewelry or loose clothing that may become entangled in tools or equipment must be secured or removed. Jewelry that may contact energized electrical equipment must be made non-conductive by removal.

#### 6. Hand Protection

Protective gloves shall be worn where there is a risk of exposure to high temperatures, electricity, sharp edges, chemicals, hazardous materials, or any other conditions or materials that may cause injury to the hands, or when required by Roseton Management.

#### 7. Fall Protection

- a) All work performed 4' above ground level (individuals foot to ground distance), or where a fall hazard of 4' exists, will be conducted in accordance with the applicable requirements of OSHA 1926 Subpart M - Fall Protection and Roseton requirements.
- b) Work performed from ladders will be minimized whenever possible. Scaffolding, scissor lifts, manlifts, and bucket trucks shall be the preferred method to access elevated locations. Crane-operated personnel baskets are not recommended for use; but if such apparatus must be used, Contractor shall strictly conform to all requirements of OSHA 1926.550 (g).
- c) All ladders must conform to OSHA requirements. Makeshift ladders are not permissible. Ladders must be properly secured. Stepladders shall not be used as straight or extension ladders. Non-conductive ladders must be used around electrical conduit or energized equipment. Personnel working from ladders will not overextend their reach. **PERSONNEL SHALL MOVE LADDERS TO PROVIDE PROPER ACCESS.** All ladders must be tied off while working from the ladder. Ladder weight restrictions must be enforced.

- d) Scaffolding must meet the requirements of OSHA 1910.28 - Safety Requirements for Scaffolding and OSHA 1926.451 - Scaffolding, and must be inspected/approved and tagged by contractor personnel (inspections must occur each day prior to work beginning), who are a competent person under OSHA's scaffolding requirements, certifying compliance before its use.

#### 8. Respiratory Protection Equipment

- a) Respiratory protection equipment shall be utilized whenever work activities involve potential exposure to atmospheres that are oxygen-deficient or contain air contaminants that may be harmful to health, or when required by Roseton Management.
- b) The Contractor's respiratory protection equipment shall be selected, inspected, maintained, and used in accordance with OSHA 1910.134 - Respiratory Protection, and Roseton requirements.
- c) The Contractor shall ensure that personnel using respiratory protection equipment have received appropriate medical clearance, fit testing and respiratory protection training. Documentation of the above shall be available upon request.
- d) Compressors used to provide breathing air must be equipped with a high temperature alarm, carbon monoxide (CO) monitor / alarm, and air cleaning / filtering devices as needed to produce Grade "D" quality breathing air. A laboratory analysis verifying Grade "D" output air for breathing shall be available for inspection upon request.

#### 9. Personal Flotation Device (PFD)

- a) Contractors working or traveling over water shall have access to U. S. Coast Guard approved personal flotation device (PFD).
- b) The PFD must be worn when riding anywhere other than inside the cabin of a boat. When riding or working in a small open boat, a PFD must be worn at all times.
- c) When working within a properly guard railed platform, a PFD need not be worn. If the work is being done outside of a guardrail, or if there is no guardrail, each person must wear a PFD.
- d) A PFD shall be worn by any person involved in transfers between vessels and structures and while working on barge or boat decks. [What about Coast Guard sites/TWIC?]

#### 10. NORM Personal Protective Equipment

Contractor personnel involved in any work with Naturally Occurring Radioactive Material shall wear the appropriate outer garment, including eye protection, hard hat, FRC under Tyvek clothing, rubber gloves, boot covers and dust mask.

#### 11. Other Personal Protective Equipment

Special situations may require the use of additional personal protective equipment. Each contractor shall be solely responsible for recognizing when such equipment is required and shall be responsible to provide such equipment. Additional personal protective equipment requirements may also be specified by Roseton Facility Management.

## **Safe Work Practices**

The following items address recognized basic safe work practices:

### 1. Safety Meetings

- a) Prior to beginning an unfamiliar, hazardous, or major project, Contractor personnel must conduct a documented safety analysis to discuss safe procedures and work practices.
- b) Contractors shall conduct daily “tailgate” safety meetings to discuss the day's work assignments and proper safety precautions.

### 2. Smoking

Smoking is absolutely prohibited at all facilities except in designated smoking areas.

### 3. Signs

Contractor personnel shall be familiar with and comply with all signs posted throughout Roseton facilities.

### 4. Control of Hazardous Energy (Lockout / Tagout)

All Contractors are required to be familiar with and comply with Roseton site-specific lockout/tagout procedures while working on powered equipment, when performing confined space entry operations, or when engaged in other work activities where the control of hazardous energy is necessary to ensure personnel safety.

### 5. Permit to Work Systems

All Contractors must be familiar with and comply with all permit requirements when working at Roseton facilities. Permits, if required, must be issued prior to the work beginning, and may only be issued by Roseton personnel.

### 6. Confined Space Entry

All Contractors performing work involving “Confined Space Entry” must comply with requirements in OSHA 29 CFR and shall be familiar with and comply with Roseton confined space entry permit procedures.

### 7. Hot Work

All Contractors conducting “Hot Work” (welding, cutting, etc.) must comply with requirements in OSHA 29 CFR and shall be familiar with and comply with Roseton hot work permit procedures.

### 8. Hazard Communication

- a) All Contractor personnel shall be familiar with and comply with Roseton’s site-specific Hazard Communication Program requirements and procedures.
- b) Roseton will provide to Contractor, upon request, an appropriate Material Safety Data Sheet (MSDS) for hazardous chemicals that the contractor could come in contact with.



- c) Contractor shall maintain onsite an appropriate MSDS for any hazardous material or chemical that Contractor brings or uses onsite. Contractor is to submit an MSDS, to the Roseton Representative, for every hazardous material brought on site. Such hazardous materials or chemicals will be properly stored and labeled in accordance with safety and environmental regulations.

9. Potential Exposure to Toxic Materials

- a) All work involving the potential exposure to toxic materials (Hydrogen Sulfide, arsenic, lead, benzene, etc.) must be conducted in accordance with applicable state or federal regulations, and Roseton requirements.
- b) Depending upon the nature of the work to be performed and whether the presence of toxic materials is anticipated. Training, respiratory protection equipment, gas detection / alarm equipment, and other protective measures may be required.

10. Excavation

All excavation related work must be conducted in accordance with OSHA 1926 Subpart P - Excavations, and Roseton requirements.

11. Fire Prevention and Control

- a) Smoking is permitted only in designated smoking areas approved by Roseton Facility Management.
- b) Welding and cutting is prohibited outside of designated safe welding areas unless controlled by a hot work permit. A fire watch is required for all hot work, unless the work takes place inside a designated safe welding area.
- c) Contractor shall provide all portable fire extinguishers for all Contractor-engaged hot work, open flames, or use of flammable gas / liquids presenting a risk of fire. Personnel designated to utilize fire extinguishers must be familiar with their proper use and limitations. Fire extinguishers must be maintained in good working order, and inspected in accordance with state or federal regulations.
- d) Good housekeeping is an important part of fire prevention, and must be strictly enforced. Oily rags, debris, trash, and other unnecessary material must be picked up and disposed of regularly. Trash receptacles must be available in the area and emptied on a regular basis.
- e) Minor spills or leaks of flammable / combustible liquids must be cleaned up promptly, and the source of spill / leak repaired.
- f) Bulk transporters or tank trucks loading or unloading flammable liquids must utilize grounding / bonding equipment to prevent ignition of flammable vapors due to static electrical discharge.
- g) The potential for static electrical discharge must be considered for other flammable liquid transfers, such as filling drums, buckets, or other small containers. Use of bonding equipment and other precautions to prevent ignition of flammable vapors will be utilized whenever appropriate.
- h) Gasoline is a fuel and must not be used as a cleaning agent.

- i) Portable tanks and drums for flammable liquid storage must be:
  - (i) Stored in U.L./F.M. approved containers.
  - (ii) Constructed of metal unless the liquid is corrosive to metal.
  - (iii) Adequately vented with flame arresting capability whenever possible.
  - (iv) Equipped with self-closing spouts to prevent spillage.
  - (v) Located as far as feasibly possible from electrical and mechanical equipment or other ignition sources.
  - (vi) Stored in the appropriate location.

Metal safety cans are required for gasoline being stored. Transfer of gasoline may occur in approved plastic containers designed for the transportation of gasoline.

## 12. Vehicle Operations

- a) Contractors must operate vehicles in full compliance with all applicable federal, state, and local regulations.
- b) No motor powered vehicle will be left running if the operator leaves the operating position unless for the purpose of using power-take-off equipment.
- c) **STAY WITHIN POSTED SPEED LIMITS.** On right-of-ways or other roadways which do not have posted speed limits, **SLOW DOWN** and be alert for other vehicles, pedestrians, livestock, wildlife, etc.
- d) Seat belt use is **mandatory** for all persons riding vehicles that are equipped with seat belts.
- e) **DRIVE DEFENSIVELY** at all times.
- f) All contractor vehicle accidents that occur on Roseton property must be reported promptly to the Roseton Facility Management.

## 13. Emergency Drills

Contractor personnel must become familiar with their prescribed assignments in an emergency and participate in drills conducted on Roseton facilities, when requested.

## 14. Entry into Water

Non-rescue entry into the water from a Roseton facility is strictly prohibited, unless specifically authorized by Roseton in order to perform services (i.e., diving).

## 15. Equipment Operator Qualifications

- a) Any Contractor employee required to operate a crane, forklift, or other heavy equipment, shall be qualified to operate the equipment and comply with applicable OSHA and Roseton operating procedures. All operator qualifications are subject to approval by Roseton. Notwithstanding the foregoing, Roseton assumes no obligation to review, monitor or approve the training or

qualifications of any Contractor employee, and it remains the Contractor's responsibility to insure that all of its employees are trained and qualified for the work to which they are assigned at the Roseton premises.

- b) No motor powered vehicle will be left running if the operator leaves the operating position, unless operating power-take-off (PTO) driven equipment.

#### 16. Protection of Openings

- a) All hole and floor openings will be constantly attended while opened and not barricaded.
- b) All hole and floor opening barricades must be constructed to prevent accidental entry.

17. Trailers and temporary buildings will be secured by anchors. If electrical power is used, the building must be grounded.

18. The contractor shall establish and maintain electrical ground fault protection by using either Ground Fault Circuit Interrupters or implementing an Assured Electrical Equipment Grounding Conductor Program. The program will cover all cord sets and receptacles that are not a part of the permanent wiring of a building or structure. Including equipment connected by cord and plug that are available for use or are used by contractor employees. This program will comply with the minimum standards set forth in 29 CFR Part 1926.404b.

#### Training

The Contractor is responsible for conducting and documenting all Contractor employee (including Contractor's subcontractors) training required by federal, state, or local safety and health regulations. Such documentation may be subject to review by Roseton at any time prior to, during or after completion of any project or work. Notwithstanding the foregoing, Roseton assumes no obligation to review, monitor or approve the training or qualifications of any Contractor employee, and it remains the Contractor's responsibility to insure that all of its employees are trained and qualified for the work to which they are assigned at the Roseton premises.

#### **Process Safety Management**

Contractors working at Roseton facilities covered by OSHA 1910.119 - Process Safety Management and whose work involves plant process areas, product storage areas, or other "covered processes" (as defined by OSHA) must:

1. Establish procedures to properly conduct those contractor performed maintenance activities that affect process safety.
2. Contractor must document that each contractor employee has been trained in the work practices necessary to safely perform his/her job.
3. Contractor must document that each contractor employee has been instructed in the known and potential fire, explosion, or toxic release hazards related to his/her job and the process.
4. Document that each contractor employee has been instructed in the applicable provisions of the facility Emergency Action Plan.

5. Assure that each contractor employee follows all applicable safety rules of the facility or work location.
6. Advise Roseton of any unique hazards presented by the contractor's work, and any hazards identified by the contractor or its employees during the work.

Documentation required in "2", "3", and "4" above must include the name of each contractor employee, the date of training, and the means utilized to verify that the employee understood the training.

**EXHIBIT D - MASTER SERVICES AGREEMENT**  
**INSURANCE REQUIREMENTS FOR CONTRACTOR**

---

**(a) Insurers/Insurance Types and Limits**

Contractor agrees to procure and maintain, and shall require its Subcontractors to procure and maintain, insurance coverage with reputable insurers. All insurance policies procured and maintained by Contractor must be written with insurance companies licensed to do business in the state where the work will be performed, and carry a rating of A- V-II or better as shown in the most current issue of A.M. Best's Key Rating Guide, under forms of policies satisfactory to Roseton, in the kinds and amounts as set forth below:

(i) **Worker's Compensation Insurance**, including occupational disease coverage, in accordance with the benefits afforded by the statutory worker's compensation acts applicable to the state, territory or district of hire, supervision or place of accident and including, when applicable, full coverage for maritime obligations, the United States Longshoremen's and Harbor Worker's Compensation Act, Outer Continental Shelf Lands Act, the Jones Act, Death on the High Seas Act, and the Federal Employer's Liability Act. (Sole proprietorships with no employees falling within the jurisdiction of any statutory worker's compensation act must so certify to Roseton in writing.)

(ii) **Employer's Liability Insurance** to include alternate employer, all states and in rem (if applicable) coverage, in an amount not less than \$1,000,000 each accident, \$1,000,000 disease each employee and \$1,000,000 disease policy limit, except for offshore work or other work entailing maritime or U.S. Longshoremen's and Harbor Worker's Compensation Act obligations, in which case limits shall be carried of not less than \$1,000,000 each accident, \$1,000,000 disease each employee and \$1,000,000 disease policy limit.

(iii) **Commercial General Liability Insurance** with a single limit of liability for bodily injury or property damage of \$1,000,000 per occurrence (\$2,000,000 Aggregate) on ISO Coverage Form CG 00 01 (or equivalent), such coverage to include products/completed operations liability, premises/operations, independent Consultants, broad form bodily injury and property damage, personal injury, in rem (if applicable), explosion, blanket contractual liability covering the obligations assumed by Contractor herein and sudden and accidental pollution liability with respect to Contractor and its Subcontractors. The Employer's Liability exclusion shall not apply to Roseton as an Additional Insured.

(iv) **Business Automobile Liability Insurance** covering all owned, non-owned (including Roseton vehicles), leased, rented, and hired motor vehicles, including coverage for loading and unloading, used in the performance of this Agreement, with limits of not less than \$1,000,000 combined single limit. If hazardous materials (as defined in Title 49 of the Code of Federal regulations) are to be hauled, then the policy shall contain an MCS-90 endorsement that evidences a policy limit of \$5,000,000.

(v) Unless another amount is required in a specific Purchase Order, **Excess Liability Insurance** with limits of not less than \$5,000,000 per occurrence and in the aggregate providing additional limits of insurance to the coverage described in subsections ii, iii and iv above.

(vi) If Contractor will be providing any kind of professional, engineering or design services, **Professional Liability Insurance** with limits of not less than \$1,000,000 per act, error or omission.

(vii) Roseton may also require that Contractor provide a payment and/or performance bond with respect to certain Services based on Roseton's review of Contractor's financial strength. If so, such requirements shall be set forth in the applicable Purchase Order.

**(b) Additional Insured and Other Insurance Requirements**

All required insurance shall:

(i) unless Worker's Compensation, Employer's Liability or Professional Liability insurance, name Castleton Commodities International LLC, its affiliates and its coventurers, and all of their officer, directors and employees as Additional Insured with CG 20101185 or equivalent Additional Insured Endorsement;

(ii) be endorsed to be Primary to any other insurance policies carried by Roseton with respect to Contractor's operations;

(iii) require that if such policy is cancelled before the expiration date thereof, notice of such cancellation will be delivered to Roseton in accordance with such policy's provisions; and

(iv) if 'Claims-Made' coverage, have a three-(3) year reporting period extension from completion of Work; all as reasonably satisfactory to Roseton.

**(c) Waiver of Subrogation**

Except where prohibited by law, all policies of insurance pertaining to this Agreement which are procured, held or maintained by Contractor or any Subcontractor, whether required by this Agreement or not, shall be endorsed to provide that the underwriters or insurers waive any and all rights of subrogation against the Roseton Group.

**(d) Certificates of Insurance and Other Contractor Requirements**

Contractor shall:

(i) prior to commencing Services under a specific Purchase Order entered into under this Agreement, provide to Roseton Certificates of Insurance for itself and each of its Subcontractors on a standard ACORD form listing Roseton Generating LLC as the Certificate Holder, signed by an authorized representative evidencing the coverages, limits, endorsements and extensions required herein for Roseton and each entity required to be named as an Additional Insured herein including waiver of subrogation **(such Certificates of Insurance to be provided by Contractor to Roseton by sending them to ISNetworld through Contractor's ISNetworld account)**;

(ii) immediately notify Roseton upon learning of a possible damage claim that might cause a reduction below seventy-five percent (75%) of any aggregate limit of any policy; and

(iii) deliver, or require to be delivered, to Roseton a renewal certificate not less than ten (10) days before policy expiration.

**(e) Right to Self-Insure**

Except where prohibited by law, Contractor may, at its election and upon prior written approval of Roseton, self-insure as to any of the insurance coverages required by this Exhibit D, and in such case shall

administer any claims in the same manner as would be adjusted and administered under an industry standard form policy meeting the above coverage requirements.

## **EXHIBIT E - MASTER SERVICES AGREEMENT**

### **ROSETON'S NON-DISCRIMINATION AND HARASSMENT PREVENTION**

---

Roseton's goal is to promote and maintain a work environment in which all people are treated with dignity and respect.

Roseton prohibits discrimination and harassment on the basis of race, color, religion, national origin, ancestry, sex, sexual orientation, marital status, veteran status, age or disability. Harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward a staff member or a staff member's relatives or associates based on one (1) of these categories.

In accordance with applicable federal and state law, Roseton prohibits unwelcome sexual advances or requests for sexual favors or any verbal or physical conduct of a sexual nature on the part of anyone performing services for Roseton or doing business with Roseton when:

- submission is made explicitly or implicitly a term or condition of employment;
- submission or rejection is used as the basis for employment decisions; or
- the conduct creates an intimidating or offensive work environment that interferes with an individual's work performance.

Acts which may constitute harassment, and which are prohibited when unwelcome, include hugs, touches or kisses and suggestive or lewd remarks, jokes or gestures. Display of posters, cartoons, pictures or drawings which are pornographic or which denigrate others is prohibited. You must exercise good judgment to avoid engaging in conduct that may be perceived by others as harassment.

Roseton provides mandatory training regarding the prevention of discrimination and harassment for all employees.

If you feel that you have been subjected to discriminatory treatment or harassment at work, you are encouraged to inform the offending party that you find his or her conduct inappropriate or unwelcome. If you do not feel comfortable approaching the individual directly, or if the offensive behavior persists in spite of a direct communication, you should discuss the problem with a supervisor at your location, the Senior Vice President of Human Resources or the Legal and Compliance Department. Do not allow inappropriate behavior to continue by not reporting it, regardless of who is creating the situation. No one in this organization is exempt from the prohibition of discrimination and harassment.

Complaints of discrimination or harassment will be taken seriously, investigated swiftly, and will be kept confidential to the maximum extent possible. Appropriate disciplinary action, including verbal or written warnings, counseling or termination of employment, will be taken against any staff member determined to have violated Roseton's non-discrimination and anti-harassment policies. Roseton prohibits any form of retaliation for filing a bona fide complaint under these policies, for assisting in a complaint investigation or for reporting a wrongdoing or unlawful act they have witnessed, which violates Roseton's non-discrimination and anti-harassment policies.



**EXHIBIT F - MASTER SERVICES AGREEMENT**

**RATE SCHEDULE**

---

The parties agree that the following described price lists, rate schedules and/or Services descriptions are agreed to qualify as "Rate Schedules" under the Agreement to which this Exhibit F is affixed and that same were attached and approved at the time of the execution of the Agreement:

<b>Description</b>	<b>No. of Pages</b>

The Parties have initialed each page of the above Rate Schedules for identification purposes.

Unless otherwise agreed by the Parties, the above described and attached Rate Schedules shall be applicable to any Purchase Order(s) placed by Roseton or an Affiliate under the Agreement and accepted by Contractor until new Rate Schedules are mutually agreed upon by the Parties in writing, regardless of any effective dates, expiration dates or other date limitations set forth in the Rate Schedules.

Parties' initials:

\_\_\_\_\_  
Roseton

\_\_\_\_\_  
Contractor