



## MASTER SERVICES AGREEMENT

Reference Number UQA4000581

This Master Services Agreement is made on August 14, 2013 between **Lloyd's Register Quality Assurance, Inc.** ("LRQA"), a Delaware corporation, having its principal office at 1330 Enclave Parkway, Suite 200, Houston, TX 77077, and **The City of Los Angeles acting by and through its Board of Harbor Commissioners for the City of Los Angeles Construction and Maintenance (C&M) Division** ("Client"), having its principal office at 425 South Palos Verdes Street, CA 90731.

### 1. Definitions

- 1.1 "**Agreement**" means this Master Services Agreement and any Schedules or other documents incorporated into it.
- 1.2 "**Deliverables**" means the tangible items or objects that LRQA prepares for and delivers to the Client under any Schedule.
- 1.3 "**LR Group**" means LRQA, its affiliates and subsidiaries, and the officers, directors, employees, representatives, and agents of any of them, individually or collectively.
- 1.4 "**Services**" means collectively all the services to be performed or provided by LRQA under this Agreement. If used in a Schedule, Services means the services to be performed under that Schedule.
- 1.5 "**Schedule**" means a document that is signed by both Parties and that specifies the Services to be performed, where they will be performed, and related information about the Services.
- 1.6 "**Party**" means LRQA or Client and "**Parties**" means both LRQA and Client.

### 2. Services

- 2.1 LRQA will perform Services as more fully described in the Schedules:
- 2.2 LRQA may perform one or all of the following Services:
  - (A) Provide commercial training
  - (B) Undertake a preliminary assessment of Client's management system(s) and provide a report.

- (C) Assess and approve Client's management system(s) to establish compliance with the standard(s) specified in the Schedules.

### **3. Status of LRQA**

This Agreement calls for LRQA to perform Services as an independent contractor, and LRQA, its employees, officers, and directors will not be considered to be employees, servants, partners, or joint-venturers of the Client or to be entitled to any of Client's employee benefits. The conduct and control of the Services lies solely with LRQA. Client is interested solely in the deliverables. LRQA is free to contract to perform similar services for other individuals or entities during the term of this Agreement.

### **4. Personnel**

- 4.1 Personnel LRQA assigns to perform the Services are qualified to perform assigned duties under this Agreement. LRQA reserves the right to determine which of its personnel to assign to the Services and to reassign or replace personnel during the Services. Client may request appropriate personnel changes, which request will not be unreasonably denied. LRQA also reserves the right to subcontract to its affiliates or to qualified third parties any part of the Services under this Agreement.
- 4.2 LRQA is responsible for all employee withholding required by federal, state, and local laws, including deductions for Social Security, withholding taxes, and unemployment compensation. LRQA maintains employer's liability insurance and worker's compensation in accordance with law.
- 4.3 Client acknowledges that LRQA personnel are not authorized to sign any type of document to gain access to the Client's site(s). Client further acknowledges that any terms and conditions pertaining to access to Client's site are addressed in this Agreement and Schedule(s).

### **5. Schedules**

- 5.1 The Parties may make agreed additions or modifications to the Services without invalidating this Agreement.
- 5.2 Each Schedule will cover a three-year certification period. When the Certificate of Approval expires, the parties may sign a new Schedule to renew the certification.
- 5.3 If any conflict arises between the terms and conditions of any Schedule and this Agreement, either in meaning or by implication, the terms and conditions of the Schedule will govern the Services.

### **6. Client's Obligations**

- 6.1 Client will supply LRQA with all information and facilities necessary for the Services.

- 6.2 Following LRQA's approval, Client will maintain its management system in compliance with the standard(s) in the Schedules. Client's must remain compliant with all accreditation guidelines, local regulations, laws and any additional rules and regulations.
- 6.3 The length of time between surveillance visits may not exceed 12 months. Client must notify LRQA if the planned surveillance dates cannot take place within the 12 months.
- 6.4 Client will comply with LRQA's rules, as amended from time to time, governing use of the LRQA management-system marks and the accreditation-body marks applicable to any certificate issued under this Agreement. LRQA will supply Client with a copy of these rules when the certificate is issued. The marks indicate approval and are defined symbols and property of LRQA and of the applicable accreditation body.
- 6.5 Client will inform LRQA of all changes to the approved management system likely to affect either the management system's compliance with the criteria referred to in this Agreement or the approvals issued under this Agreement.
- 6.6 Client will permit representatives from the accreditation body to accompany the LRQA audit team and witness the audit for any certificate issued under this Agreement.
- 6.7 Client has a duty to provide a safe place of work for LRQA's personnel. This duty relates to places of work that are under the Client's control, including but not limited to factories, foundries, refineries, offices, offshore platforms, shipyards, and ships.

## **7. Certificate of Approval and Complaints**

- 7.1 On completing a satisfactory assessment of the Client's management system, LRQA will issue a Certificate of Approval.
- 7.2 Unless otherwise provided in this Agreement, the Certificate of Approval is valid from the original date of approval until its expiration date as long as the routine visits set out in the Schedules prove satisfactory.
- 7.3 The Certificate of Approval remains the property of LRQA. If the approval lapses or is withdrawn, Client must return or destroy the certificate.
- 7.4 If Client is dissatisfied with the Services and has exhausted the LRQA complaint system, then Client may appeal directly to LRQA's Technical Committee.
- 7.5 Complaints against Client
  - (A) If a third party makes a complaint against Client in connection with the Services, the certificates issued, or standards Client is required to maintain, LRQA will investigate the complaint.

- (B) If the complaint proves to be well-founded, LRQA's approval initially will be suspended, and Client will be notified of the remedial action required and the time by which the remedial action must be taken.
- (C) The approval may subsequently be withdrawn if required remedial action has not been taken within the specified time.

## **8. Fees and Terms of Payment**

### **8.1 Fees**

- (A) Fees for the Services are set out in the Schedules. Pricing will be in accordance with LRQA's rates or prices in effect at the time the Schedule is signed. LRQA will increase the assessor-day rate set out in the Schedule and applicable to this Agreement on January 1<sup>st</sup> of each year by a percentage equal to the Consumer Price Index for the previous year as reported by the U.S. Department of Labor ([www.bls.gov](http://www.bls.gov)).
- (B) Unless otherwise stated, all fees are exclusive of travel and other expenses associated with visits to Client's site(s). LRQA will charge at cost the reasonable travel and expenses it incurs.
- (C) LRQA will charge Client for any fees or costs associated with third-party invoicing that the Client requests or with Client's special processes for invoicing, procurement, vendor setup, and similar matters.

### **8.2 Terms of Payment**

- (A) Client must pay all amounts due under this Agreement in the currency specified in the Schedules within 30 days of Client's receipt of an invoice (the due date). If the Client disputes an invoice, or part of an invoice, the Client must immediately notify LRQA in writing. If no notification is received by the due date, the Client will be deemed to have accepted the invoice in full. Where only part of an invoice is disputed, the undisputed amount must be paid by the due date. If payment is past due, LRQA reserves the right to charge interest at an annual rate of 2% above the greater of the London Interbank Offered Base Rate (LIBOR) (or the equivalent in the country where the Client maintains its principal office) on any amount remaining unpaid beyond the due date and may withhold any Services until the arrears, including interest, are paid in full. LRQA may at its sole discretion at any time allocate payment received from the Client to satisfy earlier invoices that remain unpaid by the Client.
- (B) LRQA will invoice fees after each visit. LRQA will add to the invoices any applicable taxes on the Services.
- (C) Client will provide, within 10 days of signing this Agreement, any purchase-order

numbers it requires. If LRQA issues invoices without purchase-order numbers because Client has failed to supply them in accordance with this Section 8.2C, Client must pay those invoices in accordance with the other provisions of this Agreement.

- (D) If Client's financial condition at any time gives LRQA, in its sole discretion, reasonable grounds for insecurity concerning Client's ability to perform its obligations under this Agreement, LRQA has the immediate and unconditional right to require adequate assurance of Client's future ability to perform, including without limitation full or partial payment in advance for the Services. Additionally, LRQA may suspend the Services until payment has been received.

### 8.3 Taxes.

- (A) Client will pay or reimburse LRQA for any present or future sales, use, excise, or other taxes relating to the Services. LRQA is responsible for its franchise taxes, employment taxes, and taxes based on its net income.
- (B) For Services provided by LRQA in the U.S. and offshore U.S., LRQA will pay any license fees and taxes levied, assessed, or imposed on LRQA to enable it to perform Services under each Schedule. All compensation and payments due LRQA under this Agreement, however, are stated exclusive of any value-added tax, sales and use taxes, and similar taxes that may be levied on the compensation or payments. Any of these taxes, if imposed, will be separately stated on the applicable invoice and will be paid by Client in accordance with the requirements of local law.
- (C) For Services provided by LRQA outside the U.S., LRQA agrees to pay any tax or assessment on its charges under this Agreement, which tax or assessment is based on or measured by income and is imposed or levied by the U.S. federal government or by those jurisdictions where LRQA is registered to do business. If the Client desires LRQA to perform Services in any jurisdiction in which LRQA is not registered to do business, specific tax provisions will be set forth in the applicable Schedule.

8.4 LRQA will take all reasonable measures to prevent any lien created or caused by LRQA to become fixed upon any of Client's property. Nothing in this Agreement, however, prevents LRQA from claiming, filing, or enforcing any lien when the lien rights arise directly from Client's failure to pay LRQA in breach of this Agreement.

### 8.5 Cancellation/Postponement Charges

- (A) Certification Clients must give 6 weeks' notice if Client cancels or postpones any visit, unless canceling the visit occurs in accordance with Section 12.2A. Client will be responsible for the following fees pro rata:

- (1) 4-6 weeks' notice, 25% of the fees for the scheduled visit, including assessor's travel time;
  - (2) 2-4 weeks' notice, 50% of the fees for the scheduled visit, including assessor's travel time;
  - (3) less than 2 weeks' notice, 100% of the fees for the scheduled visit, including assessor's travel time.
- (B) Before charging Client for the cancellation or postponement, LRQA agrees to use reasonable efforts to assign its personnel to other clients, generating similar fee income to LRQA.
- (C) For commercial training Services, LRQA will charge 50% of the course fee plus any nonrefundable costs it incurs in connection with the course booking if the Client cancels the course fewer than 10 working days before the scheduled course date. If, for reasons beyond LRQA's control, LRQA must cancel the course, LRQA's liability is limited to a refund of any fees paid by the Client.

## **9. Confidentiality**

- 9.1 LRQA and its officers, employees, and agents agree to maintain as confidential and not to use or disclose to any third party, without Client's consent, any information derived from Client in connection with the Services, except to the extent the information is reasonably necessary to perform the Services in accordance with this Agreement. LRQA may disclose to an accrediting body information that is required for LRQA to achieve or maintain its accreditation.
- 9.2 This confidentiality obligation survives termination of this Agreement and remains in effect for three years from the date of termination of the Schedule unless otherwise provided in the Schedule.
- 9.3 This confidentiality obligation does not apply to the following:
- (A) information that was in LRQA's possession before Client disclosed it;
  - (B) information that is or becomes part of the public domain, other than through LRQA's fault;
  - (C) information that otherwise lawfully becomes available to LRQA from an independent source.
- 9.4 If LRQA is required to disclose any confidential information to comply with any law, statute, rule, regulation, or order of a court of competent jurisdiction, LRQA will promptly notify Client, unless prohibited by law or competent authority, and, to the extent practicable, provide Client the opportunity to take protective action.

**10. LIABILITY**

- 10.1 **LRQA MAKES NO WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR PURPOSE, OR OTHERWISE IN CONNECTION WITH THE SERVICES.**
- 10.2 **EXCEPT AS SET OUT IN THIS AGREEMENT, LRQA WILL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR EXPENSE SUSTAINED BY ANY PERSON AND CAUSED BY ANY INACCURACY IN ANY INFORMATION OR ADVICE GIVEN IN ANY WAY BY OR ON BEHALF OF THE LR GROUP, EVEN IF HELD TO AMOUNT TO A BREACH OF WARRANTY, OR CAUSED BY ANY ACT, OMISSION, ERROR, NEGLIGENCE, OR STRICT LIABILITY OF ANY OF THE LR GROUP. NOTWITHSTANDING THE PREVIOUS SENTENCE, IF THE CLIENT USES THE SERVICES OR RELIES ON ANY INFORMATION OR ADVICE GIVEN BY OR ON BEHALF OF THE LR GROUP AND AS A RESULT SUFFERS LOSS, DAMAGE, OR EXPENSE THAT IS PROVED TO HAVE BEEN CAUSED BY THE LR GROUP, THEN LRQA WILL PAY COMPENSATION TO THE CLIENT FOR ITS PROVED LOSS UP TO BUT NOT EXCEEDING THE AMOUNT OF THE FEE (IF ANY) CHARGED BY LRQA FOR THAT PARTICULAR SERVICE, INFORMATION, OR ADVICE.**
- 10.3 **NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY, WHETHER BY WAY OF INDEMNITY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR STRICT LIABILITY FOR ANY FACILITY DOWNTIME OR FOR LOSS OF ANY OF THE FOLLOWING: REVENUE, PROFIT, ANTICIPATED PROFIT, USE, PRODUCTION, PRODUCT, PRODUCTIVITY, CONTRACT, OR BUSINESS OPPORTUNITY, OR FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, OR PUNITIVE LOSSES OR DAMAGES ARISING OUT OF THIS AGREEMENT.**
- 10.4 **THIRD PARTY.**
- (A) **NO LR GROUP ENTITY WILL BE LIABLE OR RESPONSIBLE IN NEGLIGENCE OR OTHERWISE TO ANY PERSON NOT A PARTY TO THE AGREEMENT UNDER WHICH ANY CERTIFICATE, STATEMENT, DATA, OR REPORT IS ISSUED BY AN LR GROUP ENTITY FOR THE FOLLOWING:**
- (1) **ANY INFORMATION OR ADVICE EXPRESSLY OR IMPLIEDLY GIVEN BY AN LR GROUP ENTITY,**
- (2) **ANY OMISSION OR INACCURACY IN ANY INFORMATION OR ADVICE GIVEN, OR**
- (3) **ANY ACT OR OMISSION THAT CAUSED OR CONTRIBUTED TO THE ISSUANCE OF ANY CERTIFICATE, STATEMENT, DATA, OR REPORT CONTAINING THE INFORMATION OR ADVICE.**
- (B) **NOTHING IN THIS AGREEMENT CREATES RIGHTS IN FAVOR OF ANY PERSON WHO IS NOT A PARTY TO THE CONTRACT WITH AN LR GROUP ENTITY.**

## 11. INDEMNITIES

- 11.1 **INFRINGEMENT.** THE CLIENT WILL INDEMNIFY AND HOLD ALL MEMBERS OF THE LR GROUP HARMLESS FROM ALL CLAIMS, COSTS, PROCEEDINGS, DAMAGES, OR EXPENSES (INCLUDING LEGAL AND OTHER PROFESSIONAL FEES AND EXPENSES), AWARDED AGAINST, INCURRED, OR PAID BY ANY MEMBER OF THE LR GROUP AS A RESULT OF OR IN CONNECTION WITH ANY ALLEGED OR ACTUAL INFRINGEMENT, WHETHER UNDER ENGLISH LAW OR A DIFFERENT LAW, OF ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS (INCLUDING COPYRIGHT) OR OTHER RIGHTS ARISING OUT OF THE USE OR SUPPLY OF THE INFORMATION BY OR ON BEHALF OF THE CLIENT TO ANY MEMBER OF THE LR GROUP.
- 11.2 **MISUSE.** CLIENT WILL INDEMNIFY AND DEFEND LRQA AGAINST ANY LOSSES SUFFERED BY OR CLAIMS MADE AGAINST LRQA AS A RESULT OF CLIENT'S MISUSE OF ANY APPROVAL, CERTIFICATE OF APPROVAL, OR LICENSE TO USE ANY ACCREDITATION MARK GRANTED BY LRQA UNDER THIS AGREEMENT.

## 12. Term

- 12.1 This Agreement remains in effect until for three (3) years as further explained in Exhibit A.
- 12.2 This Agreement or any Schedule may be terminated as follows:
- (A) If the Client defaults in the payment of any amount due under any Schedule and does not cure the default within 10 days after receiving written notice of the default, LRQA has the option to terminate the Schedule or this Agreement (including all Schedules) by providing 10 days' written notice of termination to the Client.
  - (B) If either Party materially defaults in the performance of any provision of a Schedule or this Agreement, other than by nonpayment, and does not substantially cure the default within 30 days after receiving written notice of the default, then the nondefaulting Party may terminate the affected Schedule by providing 10 days' prior written notice of termination to the defaulting Party.
  - (C) Either Party may terminate this Agreement by providing the other Party with at least 30 days' prior written notice of termination.
- 12.3 All Schedules terminate immediately on termination of this Agreement.
- 12.4 The effective date of termination is the date specified in the notice.
- 12.5 Regardless of who initiated the termination, the Client must pay for all Services performed and expenses incurred by LRQA up to the effective date of termination. If this Agreement or any Schedule calls for a flat fee, and the Schedule containing a

flat fee is terminated before the work is completed, the value of LRQA's Services and LRQA's compensation amount may be established by calculating the percentage of the work completed. In this case, LRQA's compensation equals that percentage times the flat fee.

- 12.6 Effect of Termination. Termination of the relationship does not affect the provisions of any articles or sections that by their nature survive any termination or expiration of this Agreement including, without limitation, Articles 9, 10, 11, 13, and 16.
- 12.7 On the date this Agreement terminates, any Certificate of Approval granted under this Agreement immediately ceases to be valid, and Client must destroy or return the certificate.
- 12.8 If either party:
- (A) becomes insolvent or unable to pay its debts as they become due or admits this in writing,
  - (B) has a receiver, conservator, trustee, or administrator appointed for it or for all or a material part of its property, or
  - (C) is dissolved,

the other party may, without waiving any other remedy, suspend the performance of, or terminate, the Agreement without advance notice and without incurring any liability except for any actions taken in accordance with the Agreement before termination or suspension.

### **13. Insurance**

- 13.1 LRQA will provide the following insurance for the duration of any Schedule to the extent applicable:
- (A) Workers' Compensation and Employer Liability with a minimum limit of \$1,000,000 per occurrence
  - (B) US Longshoremen's & Harbor Workers (Maritime) with a minimum limit of \$1,000,000 per occurrence
  - (C) Automobile Liability with a minimum limit of \$1,000,000
  - (D). Professional Indemnity with a minimum limit of GBP 1,000,000
  - (E) Commercial General Liability with a minimum limit of \$1,000,000 in the aggregate.
- 13.2 The following will apply to the insurance provided under Section 13.1:

- (A) Before commencing Services, LRQA will furnish the Client a certificate of insurance or letters of proof of insurance confirming all insurance in Section 13.1.
- (B) To the extent liabilities are assumed by LRQA under this Agreement, the insurance policies will satisfy the following:
  - (1) provide that Client will be an additional insured (except Worker's Compensation) or note Client as principal under an Indemnity-to-Principals clause;
  - (2) contain a waiver of subrogation against Client (except Worker's Compensation and professional-liability coverage); and
  - (3) be primary coverage and noncontributing with respect to any insurance carried by the Client.
- (C) LRQA agrees to notify Client when any policy is cancelled or materially changed where the material change has a direct effect on the Services.

#### **14. Force Majeure**

- 14.1 Any failure to perform by either party will not constitute default under this Agreement or give rise to any claim for damages or otherwise if, and to the extent, caused by an occurrence beyond the reasonable control of the party affected ("Force Majeure").
- 14.2 Force Majeure includes, but is not limited to, compliance with acts of governmental authority; acts of God; strikes or other concerted acts of workmen; fires; floods; explosions; riots; war or armed conflict, declared or undeclared; rebellion; and sabotage. Force Majeure does not include failure to make any payment because of the party's financial condition.
- 14.3 The party affected by Force Majeure must do the following:
  - (A) give notice to the other party within five working days of its commencement,
  - (B) work diligently to terminate or work around the Force Majeure, and
  - (C) keep the other party informed of action taken to terminate or work around the Force Majeure.

#### **15. Assignment**

This Agreement may not be assigned except between affiliated entities in an acquisition, merger, reorganization, or consolidation.

## **16. Law and Jurisdiction**

This Agreement will be construed and interpreted under the laws of the State of California. Nothing in this Agreement limits LRQA's right to take debt collection proceedings against the Client in any court of competent jurisdiction.

## **17. Entire Agreement**

This Agreement, including its Schedules, constitutes the entire Agreement between the parties and supersedes all prior negotiations, representations, or agreements related to its subject matter, whether written or oral. No changes, modifications, or alterations to this Agreement will be effective unless in writing and signed by the authorized representatives of LRQA and Client.

## **18. Notices**

18.1 All notices required or allowed under this Agreement will be given as follows:

- (A) by hand delivering the notice,
- (B) by mailing the notice by certified mail, return-receipt requested, postage prepaid, to the party being notified at its address shown at the beginning of this Agreement,
- (C) by fax, or
- (D) by e-mail.

18.2 Either party may change in writing to the other party any address or fax number for notices.

18.3 All notices and other communications will be deemed to be given at the time of hand-delivery, fax or e-mail confirmation, or on the date of delivery shown on the return receipt, or if no date is shown on the return receipt, 5 days after the date of mailing.

## **19. Invalidity**

If a court of competent jurisdiction holds any provision of this Agreement to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if the offending provision had never been in the Agreement.

## **20. Waiver**

The failure of either party to exercise any option, right, or privilege under this Agreement or to demand compliance with any obligation will not constitute a waiver of the right, privilege, or option or of the strict performance of the obligation unless an express written

waiver is properly executed.

**21. Successors**

This Agreement is not binding on the parties until it is signed by an authorized representative of each Party. When fully executed, this Agreement is effective as of the date first written above and is binding on and inures to the benefit of the heirs, personal representatives, successors, and assigns of the parties.

**22. City Provisions**

The terms and conditions in Exhibit A are hereby incorporated herein. In the event of any inconsistency, the provisions of Exhibit A shall supersede anything herein and shall govern.

**For and on behalf of Client**

Signed: \_\_\_\_\_

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

Name: \_\_\_\_\_  
(BLOCK CAPITALS)

Company: \_\_\_\_\_

**Lloyd's Register Quality Assurance, Inc**

Signed:  \_\_\_\_\_

Title: **Contract Coordinator**  
\_\_\_\_\_

Name: **Alice Foster**  
\_\_\_\_\_ (BLOCK CAPITALS)

Ref Number: 4000581

## EXHIBIT A

As stated in section 22, in the event of any inconsistency between the Agreement and the terms and conditions in the Exhibit A, the terms and conditions in this Exhibit A shall supersede and govern. Client may be referred to herein as "City", and LRQA may be referred to herein as "Consultant."

### I. EFFECTIVE DATE AND TERM OF AGREEMENT

A. Subject to the provisions of Charter Section 245, the effective date of this Agreement shall be the date of its execution by Executive Director upon authorization of the Board. Consultant is aware that the City Council, pursuant to Charter Section 245 of the City of Los Angeles, has the right to review this Agreement. Accordingly, in no event shall this Agreement become effective until the sixth Council meeting day after Board action or the City Council's approval of the Agreement.

B. This Agreement shall be in full force and effect commencing from the date of execution and shall continue until the earlier of the following occurs:

1. Three (3) years have lapsed from the effective date of this Agreement;

or

2. The Board of Harbor Commissioners, in its sole discretion, terminates and cancels all or part of this Agreement for any reason upon giving to Consultant ten (10) days' notice in writing of its election to cancel and terminate this Agreement.

### II. TERMINATION DUE TO NON-APPROPRIATION OF FUNDS

This Agreement is subject to the provisions of the Los Angeles City Charter which, among other things, precludes the City from making any expenditure of funds or incurring any liability, including contractual commitments, in excess of the amount appropriated thereof.

The Board, in awarding this Agreement, is expected to appropriate sufficient funds to meet the estimated expenditure of funds through June 30 of the current fiscal year and to make further appropriations in each succeeding fiscal year during the life of the Agreement. However, the Board is under no legal obligation to do so.

The City, its boards, officers, and employees are not bound by the terms of this Agreement or obligated to make payment thereunder in any fiscal year in which the Board does not appropriate funds therefore. The Consultant is not entitled to any compensation in any fiscal year in which funds have not been appropriated for the Agreement by the Board.

Although the Consultant is not obligated to perform any work under the Agreement in any fiscal year in which no appropriation for the Agreement has been made, the Consultant agrees to resume performance of the work required by the Agreement on the same terms and conditions for a period of sixty (60) days after the end of the fiscal year if an appropriation therefore is approved by the Board within that 60-day period. The Consultant is responsible for maintaining all insurance and bonds during this 60-day period until the appropriation is made; however, such extension of time is not compensable.

If in any subsequent fiscal year funds are not appropriated by the Board for the work required by the Agreement, the Agreement shall be terminated. However, such termination shall not relieve the parties of liability for any obligation previously incurred.

### III. COMPENSATION AND PAYMENT

Consultant shall submit invoices in quadruplicate to City monthly following the effective date of this Agreement for services performed during the preceding month. Each such invoice shall be signed by the Consultant and shall include the following certification:

"I certify under penalty of perjury that the above bill is just and correct according to the terms of Agreement No. \_\_\_\_\_ and that payment has not been received.

\_\_\_\_\_  
"\_\_\_\_\_  
(Consultant's Signature)

A. Consultant must include on the face of each itemized invoice submitted for payment its Business Tax Registration Certificate number, as required at Article V of this Agreement. No invoice will be processed for payment by City without this number shown thereon. All invoices shall be approved by the Executive Director or his or her designee prior to payment. All invoices due and payable and found to be in order shall be paid as soon as, in the ordinary course of City business, the same may be approved, audited and paid.

Consultant shall submit appropriate supporting documents with each invoice. Such documents may include provider invoices, payrolls, and time sheets. The City may require, and Consultant shall provide, all documents reasonably required to determine whether amounts on the invoice are allowable expenses under this Agreement.

B For payment and processing, all invoices should be mailed to the following address:

Accounts Payable Section  
Harbor Department, City of Los Angeles  
P.O. Box 191  
San Pedro, CA 90733-0191

#### IV. INDEPENDENT CONTRACTOR

Consultant, in the performance of the work required by this Agreement, is an independent contractor and not an agent or employee of City. Consultant shall not represent itself as an agent or employee of the City and shall have no power to bind the City in contract or otherwise.

#### V. BUSINESS TAX REGISTRATION CERTIFICATE

The City of Los Angeles Office of Finance requires the implementation and enforcement of Los Angeles Municipal Code Section 21.09 et seq. This Code Section provides that every person, other than a municipal employee, who engages in any business within the City of Los Angeles, is required to obtain the necessary Business Tax Registration Certificate and pay business taxes. The City Controller has determined that this Code Section applies to consulting firms that are doing work for the Department.

#### VI. INDEMNIFICATION AND INSURANCE

##### A. Indemnification

Except to the extent caused by negligence or willful misconduct of the City, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Consultant undertakes and agrees to defend, indemnify and hold harmless the City and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to City, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, or damage or destruction of any property of City, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, to the extent caused by the negligent acts, errors, omissions or willful misconduct of Consultant in the performance of this Agreement by Consultant or its subcontracts of any tier.

##### B. Acceptable Evidence and Approval of Insurance

Electronic submission is the required method of submitting Consultant's insurance documents. Consultant's insurance broker or agent shall register with the City's online insurance compliance system **Track4LA**™ at <http://track4la.lacity.org/> and submit the appropriate proof of insurance on Consultant's behalf.

##### C. General Liability Insurance

Consultant shall procure and maintain in effect throughout the term of this Agreement, without requiring additional compensation from the City, commercial general liability insurance covering personal and advertising injury, bodily injury, and

property damage providing contractual liability, independent contractors, products and completed operations, and premises/operations coverage written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Consultant's normal limits of liability but not less than One Million Dollars (\$1,000,000) combined single limit for injury or claim. Said limits shall provide first dollar coverage except that Executive Director may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of Consultant. The retention or self-insurance provided shall provide that any other insurance maintained by the Harbor Department shall be excess of Consultant's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision and a severability of interest clause. Additionally, to the extent of liabilities assumed by Consultant, each policy shall include an additional insured endorsement (CG 2010 or equivalent) naming the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds. Consultant agrees to notify City when any policy is cancelled or materially changed where the material change has a direct effect on the Services.

**D. Automobile Liability Insurance**

Consultant shall procure and maintain at its expense and keep in force at all times during the term of this Agreement, automobile liability insurance written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Consultant's normal limits of liability but not less than Five Hundred Thousand Dollars (\$500,000) covering damages, injuries or death resulting from each accident or claim arising out of any one claim or accident. Coverage shall contain a defense of suits provision and a severability of interest clause. Additionally, to the extent of liabilities assumed by Consultant, each policy shall include an additional insured endorsement (CG 2010 or equivalent) naming the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds. Consultant agrees to notify City when any policy is cancelled or materially changed where the material change has a direct effect on the Services.

**E. Workers' Compensation and Employer's Liability**

Consultant shall certify that it is aware of the provisions of Section 3700 of the California Labor code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that Consultant shall comply with such provisions before commencing the performance of the tasks under this Agreement. Coverage for claims under U.S. Longshore and Harbor Workers' Compensation Act, if required under applicable law, shall be included. Consultant shall submit Workers' Compensation policies whether underwritten by the state insurance fund or private carrier, which provide that the public or private carrier waives its right of subrogation against the City in any circumstance in which it is alleged that actions or omissions of the City contributed to the accident.

F. Professional Liability Insurance

Consultant shall procure and maintain professional liability insurance in the amount of GBP One Million Dollars (\$1,000,000) which covers work to be performed pursuant to this Agreement and that it will keep such insurance or its equivalent in effect at all times during performance of said Agreement.

Consultant agrees to notify City when any policy is cancelled or materially changed where the material change has a direct effect on the Services.

G. Carrier Requirements

All insurance which Consultant is required to provide pursuant to this Agreement shall be placed with insurance carriers authorized to do business in the State of California and which are rated A-, VII or better in Best's Insurance Guide. Carriers without a Best's rating shall meet comparable standards in another rating service reasonably acceptable to City.

H. Modification of Coverage

Executive Director, at his or her reasonable and justified discretion, based upon recommendation of independent insurance consultants to City, may increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to Consultant.

I. Renewal of Policies

At least thirty (30) days prior to the expiration of each policy, Consultant shall direct their insurance broker or agent to submit to the City's online insurance compliance system Track4LA™ at <http://track4la.lacity.org/> a renewal endorsement or renewal certificate showing that the policy has been renewed or extended or, if new insurance has been obtained, evidence of insurance as specified above. If Consultant neglects or fails to secure or maintain the insurance required above, Executive Director may, at his or her own option but without any obligation, obtain such insurance to protect City's interests. The cost of such insurance will be deducted from the next payment due Consultant.

VII. AFFIRMATIVE ACTION

The Consultant, during the performance of this Agreement, shall not discriminate in its employment practices against any employee or applicant for employment because of employee's or applicant's race, religion, national origin, ancestry, sex, age, sexual orientation, disability, marital status, domestic partner status, or medical condition.

VIII. CONFLICT OF INTEREST

It is hereby understood and agreed that the parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of

the California Government Code relating to conflict of interest of public officers and employees, as well as the Los Angeles Municipal Code (LAMC) Municipal Ethics and Conflict of Interest provisions of Section 49.5.1 et seq. and the Conflict of Interest Codes of the City and the Department. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of City relating to this Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such financial interest does exist at the inception of this Agreement, City may immediately terminate this Agreement by giving written notice thereof.

IX. GOVERNING LAW / VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law, rules and principles of such State. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal courts located in the County of Los Angeles, State of California, in the judicial district required by court rules.

X. TAXPAYER IDENTIFICATION NUMBER (TIN)

The Internal Revenue Service (IRS) requires that all consultants and suppliers of materials and supplies provide a TIN to the party that pays them. Consultant declares that its authorized TIN is \_\_\_\_\_. No payment will be made under this Agreement without a valid TIN.

XI. WAGE AND EARNINGS ASSIGNMENT ORDERS / NOTICES OF ASSIGNMENTS

The Consultant and/or any Subconsultant are obligated to fully comply with all applicable state and federal employment reporting requirements for the Consultant and/or Subconsultant's employees.

The Consultant and/or Subconsultant shall certify that the principal owner(s) are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignments applicable to them personally. The Consultant and/or Subconsultant will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with Cal. Family Code Sections 5230 et seq. The Consultant or Subconsultant will maintain such compliance throughout the term of this Agreement.

XII. STATE TIDELANDS GRANTS

This Agreement is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore, this Agreement is at all times subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled "An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State

Within the Boundaries of Said City," approved June 3, 1929 (Stats. 1929, Ch. 651), as amended, and provisions of Article VI of the Charter of the City of Los Angeles relating to such lands. Consultant agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.



## EMS Renewal Schedule

Reference Number UQA4000581

This Schedule is made on August 14, 2013 between **Lloyd's Register Quality Assurance, Inc.** ("LRQA") and **The City of Los Angeles acting by and through its Board of Harbor Commissioners for the City of Los Angeles Construction and Maintenance (C&M) Division** ("Client"). This Schedule incorporates the terms and conditions of the Master Service Agreement between LRQA and The City of Los Angeles acting through its Board of Harbor Commissioners for the City of Los Angeles Construction and Maintenance (C&M) Division dated August 14, 2013 ("Agreement"). "Party" means LRQA or Client, and "Parties" means both LRQA and Client.

### **1. Services**

1.1 LRQA will provide Services at Client's facility located at 500 Pier A Street, Wilmington, CA 90744.

1.2 Assessment Standard: ISO 14001:2004

1.3 Proposed Scope: Construction and Maintenance Activities at the Port of Los Angeles

The proposed scope of approval may be amended by the Parties during the scheduled visits.

#### 1.4 Scheduled Visits

A. Certificate-renewal visit to confirm that the management system continues to comply with the standard(s) and that the Certificate of Approval remains valid.

B. Routine surveillance visits.

#### 1.5 Special Visits

A. If LRQA reports major nonconformity notes during assessment, surveillance, or certificate-renewal visits, LRQA will schedule additional follow-up visits or off-site reviews as necessary to verify corrective actions. The additional follow-up visits will be charged at the assessor-day rate applicable at the time of the visit.

B. If LRQA reports minor nonconformity notes during assessment, surveillance, or certificate-renewal visits, LRQA will verify corrective action at the next scheduled visit within 6 months. If the next scheduled visit is beyond 6 months, LRQA will schedule additional follow-up visits or off-site reviews as necessary to verify corrective actions. Client will pay **\$725.00** for each off-site review, per site, regardless of the number of minor nonconformity notes reported.

C. LRQA may have to conduct audits of certified Clients on short notice to investigate complaints, to respond to changes, or to follow up on suspended Clients. The following will apply to these audits:

(1) LRQA will describe and make known in advance to the certified Clients the conditions under which these short-notice visits will be conducted.

(2) LRQA will exercise care in assigning the audit team because the Client will not have an opportunity to object to audit-team members.

D. Special visits will be charged at the assessor-day rate applicable at the time of the visit.

**2. Fees**

**2.1 Accreditation, Training and Other Fees**

- A. Client will pay an annual, nonrefundable accreditation fee of **\$850.00**. The first year's fee will be invoiced when LRQA receives this signed Schedule of Work. Accreditation Fee includes a complimentary attendance at one training class of choice per year at Houston training facility subject to availability.
- B. Client will pay all fees under this Schedule in U. S. currency.
- C. If Client requests special handling of invoices, Client will pay an annual fee of **\$450.00**.

**2.2 Scheduled Visit**

This table sets out the fees for the scheduled visits based on an assessor day rate of **\$1,450.00**. Any travel from an assessor's home location to a Client's site that is over two hours in any one direction will be charged **\$850.00** per day.

Scheduled Visit	Days on Site	Assessors on Team	Total Assessor Days*	Total Cost
Recertification Assessment	4	1	4	\$5,800.00USD
Non-Conformance (Contingency Day)	1	1	1	\$1,450.00USD
Surveillance (2 visits at 12 & 24 months)	4 (2/2)	1	4	\$5,800.00USD
<b>Three Year Cost</b>				<b>\$13,050.00USD</b>

\* The number of assessor days may need to be revised as a result of the Stage 1 visit.

In no event shall the contract exceed twenty five thousand dollars (\$25,000.00).

**2.3 Optional Charges**

- A. Two Certificates of Approval with one accreditation mark are included in the costs. Each extra copy of the Certificate of Approval will cost **\$50.00**. A translation fee of **\$100.00** will be charged for Certificates of Approval in a language other than English.
- B. Client is entitled to one accreditation mark per Certificate of Approval. A **\$1,200.00** fee will be charged for each additional accreditation mark and will be invoiced when the Certificate of Approval is issued.

2.4 LRQA will charge fees for any additional documentation or off-site reviews mandated by any applicable standards.

**3. Consultancy**

By signing this Agreement, the Parties confirm that Client has not received within the past two years, and will not receive, any consultancy from LRQA, Lloyd's Register Quality Assurance Ltd., or any of their affiliates.

**4. When Parties Bound**

This Schedule is not binding on the Parties until it is signed by an authorized representative of both Parties.

**For and on behalf of Client**

**Lloyd's Register Quality Assurance, Inc.**

Signed: \_\_\_\_\_

Signed:  \_\_\_\_\_

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

Title: **Contract Coordinator**

Name: \_\_\_\_\_  
(Printed Name)

Name: **Alice Foster**  
(Printed Name)

Company : \_\_\_\_\_

Ref. Number UQA 4000581