

# TERMS AND CONDITIONS

Client hereby accepts the following general terms and conditions ("Terms and Conditions") applicable to Nutter & Associates, Inc.'s performance of the services described in the attached Proposal (the "Services"):

1. Payment Terms. Client shall pay all amounts due to Nutter & Associates, Inc. ("Nutter & Associates") upon receipt of each invoice from Nutter & Associates. Any amounts not paid by Client within thirty (30) days of the date of such invoices shall accrue interest at a rate of one and one half percent (1.5%) per month until such time as such amounts are paid in full. Client shall be responsible for all reasonable attorney's fees incurred by Nutter & Associates in connection with the collection of any amounts properly due and payable to Nutter & Associates in accordance with the terms of the Proposal and these Terms and Conditions.

2. Performance Standard. Nutter & Associates shall perform the Services using the care and skill ordinarily exercised by organizations performing services in the fields of soil and hydrologic evaluation, ecosystem evaluation and land treatment in the same or similar locality as the location where the Services are rendered. Client hereby acknowledges that Nutter & Associates makes no other representation or warranty with respect to the Services. Client further acknowledges that any oral or written reports furnished by Nutter & Associates shall not be construed as any representation or warranty with respect to the Services. NUTTER & ASSOCIATES HEREBY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES WITH RESPECT TO THE SERVICES, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

3. Limitation of Liability. Client hereby agrees that Nutter & Associates' total aggregate liability for any damages incurred by Client in connection with Nutter & Associates' performance of or failure to perform the Services shall not exceed the greater of (i) Fifty Thousand and No/100 Dollars (\$50,000.00) or (ii) Nutter & Associates total fee for the Services. IN NO EVENT SHALL NUTTER & ASSOCIATES BE LIABLE FOR ANY INDIRECT, INCIDENTAL CONSEQUENTIAL, PUNITIVE OR RELIANCE DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, SAVINGS OR REVENUES OR INCREASED COST OF OPERATIONS, REGARDLESS AS TO THE NATURE OF CLIENT'S CLAIM AGAINST NUTTER & ASSOCIATES.

4. Insurance Coverage. Nutter & Associates shall maintain the following insurance coverages during the period in which the Services are performed: (i) worker's compensation and employer's liability insurance coverage with coverage limits which conform to the requirements of applicable law; (ii) comprehensive general liability insurance coverage on an occurrence basis in an amount not less than \$1,000,000.00 per claim with an aggregate limit of not less than \$2,000,000.00; and (iii) automobile liability insurance coverage for both bodily injury and property damage with a combined single limit of \$1,000,000.00. Nutter & Associates shall provide Client with a certificate of insurance evidencing the aforementioned insurance coverages upon request by Client.

5. Damage to Man-Made Objects. Client shall be responsible for disclosing the presence and accurate location of all underground or otherwise hidden man-made objects which might interfere with field tests or boring to be performed by Nutter & Associates as part of the Services. Client hereby agrees to indemnify and hold Nutter & Associates harmless from and against all claims, suits, losses,

personal injury, death and damage to property ("Indemnified Claims") resulting from unusual subsurface conditions or damage to subsurface structures or objects owned by client or any third parties in connection with Nutter & Associates' performance of the Services where such unusual subsurface conditions or the presence of such subsurface structures or objects are not disclosed by Client to Nutter & Associates in writing prior to the performance of the Services. Client's obligation to indemnify Nutter & Associates in accordance with this Section 5 shall include all expenses incurred by Nutter & Associates in connection with Indemnified Claims, including, without limitation, Nutter & Associates' reasonable attorney's fees.

6. Damage to Work in Place. Client hereby acknowledges that there is the possibility of the occurrence of certain events or conditions which may affect work performed by Nutter & Associates as part of the Services ("Work in Place") and which are outside of the control of Nutter & Associates. Client further acknowledges and agrees that the occurrence of any of the following events and conditions shall not obligate Nutter & Associates to re-perform or replace any Work in Place:

(a) The occurrence of either natural (including, without limitation, weather events) or unnatural (including, without limitation, upstream discharges) events which cause damage to Work in Place, including, but not limited to: (i) failure of any structures installed as part of the Work in Place; (ii) the erosion of or failure of any stream banks; (iii) the erosion or displacement of existing or planted vegetation within stream channels, riparian valleys or riparian zones; or (iv) wind damage to existing or planted vegetation within stream channels, riparian valleys or riparian zones;

(b) The occurrence of either natural (including, without limitation, weather events) or unnatural (including, without limitation, upstream discharges) which cause physical modification of any stream channels;

(c) The cutting and/or removal of either existing vegetation or vegetation planted by Nutter & Associates within the stream channel, riparian zone or riparian valley adjacent to or upstream from the Work in Place; and

(d) Drought conditions which inhibit or permanently damage the vegetative success of vegetation.

In the event any Work in Place is damaged or destroyed as a result of the occurrence of any of the aforementioned events or conditions, Client may request that Nutter & Associates perform such work as may be necessary to correct such damage or destruction. Nutter & Associates shall provide Client with a new proposal for the performance of such work, and Client may but shall not be obligated to engaged Nutter & Associates to perform such work in accordance with the terms of the new proposal.

7. Governing Law. The Proposal and these Terms and Conditions shall be governed by the laws of the State of Georgia.

8. Entire Agreement. The Proposal and these Terms and Conditions constitute the entire agreement between Nutter & Associates and Client with respect to the Services. The Proposal and these Terms and Conditions supersede all prior agreements, proposals, representations, statements or understandings, whether written or oral concerning the Services.

9. Binding Effect. The Proposal and these Terms and Conditions shall be binding upon any successors and assigns of Nutter & Associates and Client.