

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. ("NAI", "We", and "Our") upon receipt of each invoice from NAI. 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 NAI in connection with the collection of any amounts properly due and payable to NAI in accordance with the terms of the Proposal and these Terms and Conditions.
2. **Performance Standard.** NAI 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 NAI makes no other representation or warranty with respect to the Services. Client further acknowledges that any oral or written reports furnished by NAI shall not be construed as any representation or warranty with respect to the Services. NAI 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 NAI's total aggregate liability for any damages incurred by Client in connection with NAI's performance of or failure to perform the Services shall not exceed the lesser of (i) Fifty Thousand and No/100 Dollars (\$50,000.00) or (ii) NAI's total fee for the Services. IN NO EVENT SHALL NAI 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 NAI.
4. **Insurance Coverage.** NAI 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; and (iv) umbrella liability insurance coverage on an occurrence basis in an amount not less than \$5,000,000.00 with an aggregate limit of not less than \$5,000,000.00; and (v) professional liability/contractors pollution insurance coverage for each wrongful act (professional liability) of \$2,000,000.00, each pollution condition (contractors pollution) of \$1,000,000.00 with a policy aggregate limit of not less than \$2,000,000.00. NAI 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 NAI as part of the Services. Client hereby agrees to indemnify and hold NAI 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 NAI's performance of the Services where such unusual subsurface conditions or the presence of such subsurface structures or objects are not disclosed by Client to NAI in writing prior to the performance of the Services. Client's obligation to indemnify NAI in accordance with this Section 5 shall include all expenses incurred by NAI in connection with Indemnified Claims, including, without limitation, NAI's 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 NAI as part of the Services ("Work in Place") and which are outside of the control of NAI. Client further acknowledges and agrees that the occurrence of any of the following events and conditions shall not obligate NAI 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) events which cause physical modification of any stream channels;
 - (c) The cutting and/or removal of either existing vegetation or vegetation planted by NAI 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 NAI perform such work as may be necessary to correct such damage or destruction. NAI shall provide Client with a new proposal for the performance of such work, and Client may, but shall not be obligated, to engage NAI 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 NAI 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 NAI and Client.
10. **Indemnification.** Client shall indemnify, defend and hold harmless, NAI, its directors, employees and agents from and against any claims, damages, losses, liabilities, penalties, costs and expenses (including, but not limited to, reasonable attorneys' fees) incurred or caused to NAI by reason of any breach or violation by Client (including but not limited to its agents, representatives, employees, third-party consultants or contractors) of any representation, warranty, covenant, or condition contained in this Agreement or any negligent, willful or fraudulent act or omission by Client (as defined above) arising from or related to this Agreement.
11. **COVID-19 Impacts.** Due to fluctuating COVID-19 restrictions that are outside of NAI's control, NAI's ability to meet the timelines outlined herein may be compromised. Should timelines vary for this reason, NAI will notify the Client. Additionally, the contract amount stated herein may change if additional time and expense are required to be compliant with unforeseen COVID-19 restrictions or for the related protection of NAI's staff. Should NAI's fees increase accordingly, NAI will quantify the increase and get the Client's written approval before continuing.