

caused directly by an event beyond such Party's control, without such Party's fault or negligence and that by its nature could not have been foreseen by such Party or, if it could have been foreseen, was unavoidable (which events may include natural disasters, embargoes, explosions, riots, wars, or acts of terrorism) (each, a "Force Majeure Event"). Grantee's financial inability to perform, changes in cost or availability of materials, components or services, market conditions, or supplier actions or contract disputes will not excuse performance by Grantee under this Section. Grantee shall give the Department prompt written notice of any event or circumstance that is reasonably likely to result in a Force Majeure Event, and the anticipated duration of such Force Majeure Event. Grantee shall use all diligent efforts to end the Force Majeure Event, ensure that the effects of any Force Majeure Event are minimized and resume full performance under this Agreement.

- 37. Severability.** If any of the provisions of this Agreement are or become illegal, unenforceable or invalid, in whole or in part for any reason, the remainder of this Agreement shall remain in full force and effect without being impaired or invalidated in any way.
- 38. Remedies.** No remedies or rights herein conferred upon the Parties are intended to be exclusive of any remedy or right provided by law, but each shall be cumulative and shall be in addition to every other remedy or right given hereunder or now or hereafter existing at law or in equity (including the right of specific performance).
- 39. Waiver.** The failure of either party to exercise or enforce any right conferred upon it hereunder shall not be deemed to be a waiver of any such right nor operate to bar the exercise or performance thereof at any time or times thereafter; nor shall its waiver of any right hereunder at any given time, including rights to any payment, be deemed a waiver thereof for any other time.
- 40. Counterparts; Electronic Transmission.** This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.
- 41. Captions.** The captions contained in this Agreement are for reference and convenience only and may not be used to interpret the provisions or intent of this Agreement.
- 42. Agreement Attachments and Exhibits.** This Agreement includes as its attachments and exhibits the documents listed below: