

# BJAAM's Standard Terms and Conditions - Revised April 18, 2022

## 1. WARRANTIES

- 1.1. Services not expressly set forth on the reverse page of this Agreement as "Designated Services" are specifically excluded from the scope of this Agreement and BJAAM assumes no duty to Client to perform any such undescribed or assumed services. Client agrees to hold BJAAM harmless for all services not specifically listed by BJAAM as Designated Services, any services for which BJAAM has not agreed to perform, or for which there is not sufficient costs to complete. Additionally, no services performed by BJAAM shall include an analysis or determination by BJAAM as to whether or not Client is in compliance with any federal, state, or local laws, statutes, ordinances, or regulations.
- 1.2. The costs listed on the reverse page of this Agreement will not be exceeded by more than ten percent (10%) without prior Client written approval, unless otherwise specified under this Agreement. If any services performed by BJAAM extend over a period of 180 days or longer, BJAAM reserves the right to adjust its labor and equipment rates to its then standard rates in effect at the time of invoicing.
- 1.3. Client is solely responsible for all regulatory compliance and insurance claim related issues, including payments for all required registrations and premiums. Client is solely responsible for submitting all required governmental and insurance documents including, but not limited to, reports, insurance eligibility applications, and insurance claims to the appropriate agency. Client agrees to indemnify, defend and hold BJAAM harmless from any and all damages and liabilities arising from any missed governmental and insurance submittal deadlines.
- 1.4. Client agrees that if any one of these warrants is not met or is found to be incorrect, then a fully signed and executed "Change Order" with additional costs to Client may be required either during or after the performance of Designated Services, in the sole discretion of BJAAM. Notwithstanding anything to the contrary in this Agreement, Client agrees that for any services required to complete the project, for which costs or expenses are not itemized in this Agreement, will be invoiced to Client at BJAAM's then current rate schedule.
- 1.5. BJAAM shall retain all documents and information connected with its services in accordance with BJAAM's current Document Retention Policy, a copy of which is available upon written request by Client.
- 1.6. Notwithstanding anything to the contrary in the Agreement, if Client fails to fulfill all payment obligations under this Agreement, without limitation, BJAAM may slow the pace of work or suspend services with or without notice to Client. Any resultant consequences of such actions such as, but not limited to, missed deadlines and denied insurance payments will be at Client's sole risk and BJAAM shall be held harmless and indemnified by Client for any and all resultant claims, losses, damages, for taking such actions as a result of Client's failure to meet its payment obligations under this Agreement.
- 1.7. Client shall be fully responsible for and either has already obtained or will obtain the necessary authorizations to allow BJAAM, its agents, subcontractors and representatives, to have access to SITE and necessary building(s) thereon at reasonable times. While BJAAM will take all necessary precautions to minimize damage to SITE, it is understood by Client that in the normal course of performing work described in the Agreement, some damages may occur to SITE and the correction or costs of said damages caused by BJAAM are not part of this Agreement.
- 1.8. Services performed under this Agreement may initiate the requirement by a government agency and/or other third parties for additional services, including but not limited to: free product recovery, emergency response actions, interim remedial measures, additional site assessment, a Phase II ESA, and/or remediation. Services performed in accordance with this Agreement do not include any such government agency and/or third party required additional services. Client agrees to hold BJAAM harmless for any and all such government agency and/or third party required additional services.
- 1.9. Client warrants and agrees that BJAAM did not cause or contribute in any way to any petroleum or chemical release, or portions thereof, at SITE including any properties affected by any petroleum or chemical release migrating from SITE. Client further warrants and agrees (i) that BJAAM shall not be liable in anyway whatsoever for the spreading or migration of any petroleum or chemical release to the fullest extent permitted by law to Client or any third party and (ii) that Client shall indemnify, defend and hold BJAAM harmless to the fullest extent permitted by law for such liability, if any.
- 1.10. If not specifically described and costed out by BJAAM in this Agreement, all soils brought to the surface through the drilling process and purge waters generated during groundwater sampling will be placed in containers by BJAAM, properly labeled, and staged on the site pending proper disposal by Client. At the written request of the Client, BJAAM will coordinate the characterization and disposal of such containers; however, Client will be solely and directly responsible for executing a BJAAM Change Order for the services rendered to characterize, transport and dispose of investigation derived waste prior to BJAAM initiating such activities. Client agrees to sign all transportation and disposal manifests and to pay all third-party transportation and disposal costs directly to the third-party service provider.
- 1.11. Client agrees and acknowledges that any (i) fee, penalty or fine issued by any regulatory agency for any reason whatsoever, (ii) permits, and/or (iii) review fees that may be assessed in association with SITE or Designated Services (collectively referred to as "FEES") are not included in the costs listed on the reverse page of this Agreement. FEES shall always be directly billed to Client by the appropriate governmental authority and Client agrees to pay all FEES directly and in a timely fashion so as not to cause interference to BJAAM in the performance of Designated Services or its obligations under this Agreement.
- 1.12. BJAAM would like to avoid any damage or injury to underground structures, pipelines, and/or utilities. However, it is the duty of the Client to provide accurate documentation to BJAAM prior to commencement of any services which will show the exact location of all subsurface structures, pipelines, and/or utilities. Client agrees to fully assume all responsibility and all liability for any personal and property damages due to BJAAM's interference with subterranean structures including, but not limited to: pipes, tanks, and utility lines that are not correctly and accurately located on any site documents that Client is hereby required to provide to BJAAM prior to commencement of any services.
- 1.13. Unusual drilling conditions such as running sand, auger refusal, or boulders may be encountered. If such drilling conditions are encountered, additional costs will be added to the final invoice. Additionally, subsidence of monitor well(s) and/or well head(s) may occur over a period of time due to the fact that there is no engineered backfilling of the well head area. Client acknowledges and agrees that BJAAM is not liable for any damages due to any subsidence occurring on site and Client further agrees to indemnify, defend and hold BJAAM harmless for any damages or liability with respect to such subsidence.
- 1.14. Client agrees to have an "Authorized Representative" readily available while Designated Services are being performed to make immediate decisions on behalf of Client in the event that unexpected site conditions arise (BJAAM shall not be considered an Authorized Representative of Client). If an Authorized Representative is not present or readily available and fails to make immediate decisions when requested by BJAAM, then additional costs may be incurred by Client and added to the final invoice at the sole discretion of BJAAM.
- 1.15. Client agrees to make all decisions immediately regarding the back filling of the excavation area, and all such Client decisions shall be made known to BJAAM on the day that services are performed. By default, and unless specifically requested otherwise by Client in writing, the re-use of some or all of the excavated material as backfill is hereby approved by the Client. Client agrees to hold BJAAM harmless from any and all liabilities arising from the type, condition or origin of any backfill material used. Unless otherwise specified, Client is solely responsible for all costs associated with site excavation, soil stockpiling, loading, transportation, landfill disposal, and/or clean backfill costs. Client acknowledges and agrees that there will be no engineered compaction of backfill materials unless Client agrees to pay the excavation contractor for said services. Client is solely responsible for the installation of any surface covering materials (permeable or impermeable) including, but not limited to, concrete, asphalt, etc, unless specifically described under the Designated Services and included in the costs by BJAAM.

## 2. WARRANTY / DISCLAIMER

Because geologic and soil formations are inherently random, variable, and indeterminate in nature, the services rendered by BJAAM and opinions provided with respect to such services under this Agreement, including opinions regarding potential cleanup costs, are not guaranteed to be a representation of actual site conditions, actual levels of contamination or costs. Such opinions and interpretations are subject to significant changes with time as a result of natural and/or man-made processes and thus will not be guaranteed by BJAAM. The data, interpretations, and recommendations of BJAAM will be based solely on the information that was in BJAAM's possession at the time made. BJAAM hereby declines to make any representations about conditions that are otherwise not discovered by the methods used in the performance of its services. It is understood and agreed by Client that some of the information in any report generated by the services performed will be second hand and that said information may even have been provided to BJAAM by Client. It is the responsibility of Client to review the any report generated by the services for completeness and accuracy. BJAAM is not responsible for the interpretation or misinterpretation of the data and information by others which conflicts with BJAAM's interpretations. BJAAM's services shall not be subject to any express or implied warranties whatsoever. BJAAM does not guarantee a specific date for the performance or completion of services under this Agreement. BJAAM and Client agree that in connection with the Agreement, BJAAM is acting as an independent contractor and is not an agent, partner or employee of the Client.

## 3. LIMITATION OF RESPONSIBILITIES

- 3.1. Limitation of Liability: Client hereby agrees that to the fullest extent permitted by law, BJAAM shall not be liable to Client for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way relating to the project, the site, or this Agreement from any claim, claims, cause or causes, including BJAAM's gross negligence, errors, and omissions. Notwithstanding anything to the contrary in this Agreement, in no event shall BJAAM's aggregate liability to Client exceed the lesser of 1) the total amount of fees paid to BJAAM hereunder by Client with respect to the services in dispute and 2) ten thousand Dollars (\$10,000), whichever is less. Notwithstanding anything to the contrary in this Agreement, Client and BJAAM agree that to the fullest extent permitted by law, neither party is responsible to the other for any special, indirect, or consequential damages whatsoever.
- 3.2. Indemnification: To the fullest extent permitted by law, Client agrees to defend, indemnify, and hold BJAAM, its agents, subcontractors, and employees harmless from and against any and all claims, defense costs (including reasonable attorney fees), damages, and other liabilities, arising out of or in any way related to BJAAM's services, BJAAM's presence on the site, or the presence, release, or threatened release of asbestos, hazardous substances, or pollutants on or from the site; provided that Client shall not defend, indemnify or hold BJAAM harmless against liability for damages to the extent caused by the intentional misconduct of BJAAM, its agents, subcontractors, or employees. Client shall indemnify, defend and hold BJAAM harmless for any loss or damage actually sustained and incurred by BJAAM, and for which BJAAM is liable or alleged to be liable, that is caused by (i) the negligence or misconduct of the Client, (ii) Client's breach of this Agreement, or (iii) any damages resulting from any missed governmental reporting or filing deadlines.

## 4. SEVERABILITY AND SURVIVAL

Any element of this Agreement later held to violate a law shall be deemed void, and all remaining provisions shall continue in force. However, Client and BJAAM will in good faith attempt to replace any invalid or unenforceable provision with one that is valid and enforceable, and which comes as close as possible to expressing the intent of the original provision. All terms and conditions of this Agreement allocating liability between Client and BJAAM shall survive the completion of any and all services performed hereunder and the termination of this Agreement. This Agreement, although drawn by BJAAM, has been carefully read by Client, and shall be construed fairly and reasonable, and not more strictly against one party than the other party hereto.

## 5. THIRD PARTY INFORMATION REQUESTS

All finished work product will be the property of the Client and shall not be used or provided by BJAAM to any third party without written consent from Client, unless required by law. Client and BJAAM agree that in the event any third party, including any governmental agency or judicial authority, requests verbal or written information from BJAAM, BJAAM shall immediately notify Client. BJAAM shall comply with any lawful directive from Client with regard to disclosure of Client information. In the event the request is before any governmental agency, tribunal, court and/or judicial authority, BJAAM shall disclose only that information which is directed by such inquiry, as required by law. For all action taken by BJAAM pursuant to this Section or any action required by any governmental and/or judicial process, including but not limited to subpoenas, depositions, and fact witnesses, BJAAM shall be reimbursed by Client (i.e. at its then in-effect standard labor rates) for its time and expenses, including reasonable attorney fees if not otherwise provided by Client. Notwithstanding anything to the contrary in this Agreement, BJAAM shall not have any duty to provide any services, data, reports, information, or work product to anyone if not fully paid for in accordance with this Agreement.

## 6. ADDITIONAL PAYMENT TERMS & CONDITIONS

Invoices shall be submitted by BJAAM upon completion of all of the services performed under this Agreement and are due upon presentation, and shall be considered past due if not paid within thirty (30) calendar days of the invoice date. If payment in full is not received by BJAAM within ten (10) calendar days after the due date, the past due invoice shall bear a late charge at one-and-one-half (1.5) percent of the PAST DUE amount per month, which shall be calculated from the invoice due date. Payment thereafter shall first be applied to accrued late charges and then to the unpaid principal. If the Client fails to make payments when due and BJAAM incurs any costs in order to collect overdue sums from the Client, the Client agrees that all such collection costs incurred shall immediately become due and payable to BJAAM. Collection costs shall include, without limitation, legal fees, collection agency fees, and expenses, court costs, collection bonds and reasonable BJAAM staff costs at standard billing rates for BJAAM's time spent in efforts to collect. This obligation of the Client to pay BJAAM's collection costs shall survive the term of this Agreement or any earlier termination by either party. Payment of any invoice by the Client to BJAAM shall be taken to mean that Client is satisfied with BJAAM's services to the date of payment and is not aware of any deficiencies in those services. Payment of invoices shall not be subject to any discount or set-offs by the Client, unless agreed to in writing by BJAAM. Payment to BJAAM for all services rendered and expense incurred shall be due and payable regardless of any subsequent suspension or termination of this Agreement by either party. If the Client fails to make payment when due or otherwise is in breach of this Agreement, BJAAM may suspend performance of any and all services without notice to the Client. BJAAM shall have no liability whatsoever to the Client for any costs of damages as a result of such suspension caused by any breach of this Agreement by the Client. Upon payment in full by the Client, BJAAM shall resume services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for BJAAM to resume performance. If the Client fails to make payment to BJAAM in accordance with the payment terms herein, this shall constitute a material breach of this Agreement and may in BJAAM's sole discretion be cause for termination of this Agreement by BJAAM; provided, however, that Client's obligations to pay the fees of BJAAM and to defend, indemnify and hold BJAAM harmless shall survive any termination of this Agreement. Stark County, Ohio is agreed upon by both parties to be the proper legal venue acknowledging activity having been conducted therein, including the principal place of business of BJAAM.

## 7. DISPUTE RESOLUTION

This Agreement shall be construed according to and governed by the laws of the State of Ohio, United States of America. Both BJAAM and Client (hereinafter collectively "Parties") agree that any controversy, dispute, or claim ("Claim") between the Parties arising out of any relationship between the Parties including but not limited to any Claim arising from or relating to this Agreement, or to the interpretation, breach, or enforcement thereof, shall be resolved through mandatory, binding arbitration conducted in the State of Ohio (United States of America) pursuant to the Commercial Arbitration Rules of the American Arbitration Association (but not through the American Arbitration Association). This arbitration obligation extends to claims against each Parties parents, subsidiaries, affiliates, successors, assigns, employees, directors, shareholders, and agents. The term "Claim" shall have the broadest possible construction. Arbitration shall be conducted using three (3) qualified arbitrators to be selected in the following manner: a disputing party may, at any time it desires arbitration, notify the other party of the name of an arbitrator selected by him, and the other party shall within ten (10) days thereafter select an arbitrator and notify the party desiring arbitration of the name of such arbitrator. However, in the event that the party upon whom arbitration notice is initially served fails to select an arbitrator, or the arbitrator selected by the party desiring arbitration shall be deemed to have been selected by mutual agreement of the Parties. If two (2) arbitrators are selected, they shall within ten (10) days after the appointment of the second arbitrator select a third arbitrator. Each arbitrator shall have at least ten years of experience as an Ohio licensed attorney specializing in contract or business law. The decision of the majority of the arbitrators so appointed shall determine the controversy and such decision in writing shall be final and binding on the Parties hereto. The arbitrators shall issue their ruling by written opinion, and any decision issued or awarded rendered by the arbitrators may be confirmed in a court competent jurisdiction within the State of Ohio (United States of America). The arbitrators shall not have the power or authority to award (i) punitive damages, (ii) consequential damages, or (iii) "lost business" damages. The arbitration will be conducted as an individual arbitration. Neither party shall consent or agree to any arbitration on a class or representative basis, and arbitrator shall have no authority to proceed with arbitration on a class or representative basis. No arbitration will be consolidated with any other arbitration proceeding without the consent of all Parties. This arbitration provision applies to and includes all Claims made and remedies sought as part of any class action, private attorney general action, or other representative action. All costs and fees associated with the arbitration (including reasonable attorney's fees) shall be paid by the party incurring such costs unless otherwise specified in this Agreement. This arbitration provision shall survive the termination or any changes in this Agreement.