



**TERMS AND  
CONDITIONS  
FOR  
CONSTRUCTION**

**Form 00700 (Rev. April 4, 2024)**

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## 1.0 DEFINITIONS

For purposes of these Terms and Conditions and as used in the purchase order or Agreement incorporating these Terms and Conditions, the following commonly used terms, wherever used with initial capitalization, whether in the singular or the plural, are defined as follows:

- 1.1 “Affiliate” means any entity Controlled by, Controlling, or under common Control with an entity.
- 1.2 “Agreement” means the form of agreement document executed by the Company and the Contractor setting out, among other things, the parties and the term. Where no such form of agreement document is entered into, the Agreement shall be the purchase order issued to the Contractor by the Company which refers expressly to these Terms and Conditions. For the avoidance of doubt, a notification by the Company to the Contractor of the award of a contract shall not constitute an Agreement and shall not create any contract between the Company and the Contractor. For the further avoidance of doubt, where a purchase order and a formal form of agreement document are issued by the Company, then the formal form of agreement document shall take precedence and no contract shall be formed until that form of agreement document has been executed by both parties.
- 1.3 “CIP” means Critical Infrastructure Protection as defined in the contract document that contains the NERC reliability standards.
- 1.4 “Company” or “Owner” means the entity identified as such in the Agreement (usually National Grid USA Service Company, Inc. and/or one or more of its Affiliates, successors and assigns).
- 1.5 “Contract Administrator” means the Company’s representative(s) designated to direct, inspect and coordinate the performance and delivery of the Work.
- 1.6 “Contract Documents” means all documents identified as such in the Agreement.
- 1.7 “Contract Number” means the SAP numeric associated with the Agreement.
- 1.8 “Contract Price” shall have the meaning set forth in the Agreement, or if not expressly set forth, shall mean the total amount to be paid by the Company to Contractor under the Agreement.
- 1.9 “Contractor” means the business entity named in the Agreement as the party furnishing Work to the Company, and, if authorized by the Company, Contractor’s successors and assigns.
- 1.10 “Contractor Environmental Requirements” means the Company’s environmental policy document for contractors, to be provided to Contractor.
- 1.11 “Contractor Safety Requirements” means the Company’s safety policy document for contractors, to be provided to Contractor.
- 1.12 “Control” (including with correlative meanings, the terms “Controlling,” “Controlled by” and “under common Control with”) means the possession directly or indirectly of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by trust, management agreement, contract or otherwise, provided, however, that beneficial ownership of 50% or more of the voting equity interests of an entity shall be deemed to be Control.
- 1.13 “Critical Asset” means facilities, systems, and equipment which, if destroyed, degraded, or otherwise rendered unavailable, would affect the reliability or operability of the Bulk Electric System (as defined by FERC).
- 1.14 “Critical Cyber Assets” mean Cyber Assets that are essential to the reliable operation of Critical Assets.
- 1.15 “Cyber Assets” means programmable electronic devices and communication networks including hardware, software, and data.
- 1.16 “Day” means a calendar day, except that if an obligation of the Agreement falls due on a Saturday, Sunday or legal holiday in the jurisdiction where the Site is located such obligation shall be due the next regular working day.
- 1.17 “Direct Pay Permit” or “DPP” means the certificate from individual states authorizing the Company to self-assess and pay directly to the state any Sales or Use Tax on materials and equipment purchases and certain

- rentals, thereby relieving a retailer, or contractor acting as a retailer in the outright sale or transfer of goods, of responsibility to collect said taxes from the Company, in the event tax has not already been paid by the Contractor.
- 1.18 “Dollars” and “\$” means United States of America dollars.
- 1.19 “Drawings” means those drawings listed in the Specification or other Contract Documents. Such Drawings are incorporated by reference as if fully set forth in the Agreement.
- 1.20 “Field Representative” means the on-site representative of the Company. Unless otherwise specified, all matters relating to the Agreement and coordination of the Contractor activities with the Company shall be directed through this individual.
- 1.21 “Final Acceptance” means that date when the Company issues a certificate to the Contractor certifying that the Work has been fully performed in accordance with the terms and conditions of the Agreement, including all punch-list items.
- 1.22 “Goods” means all goods to be provided by the Contractor under the Agreement, including all equipment and materials indicated in the Specification.
- 1.23 “HUBZone Small Business Concern” means a Small Business Concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.
- 1.24 “Indemnified Parties” means the Company or Owner, its Affiliates, and their officers, directors, employees, agents, successors and assigns, and any third party that Company or its Affiliates are required to hold harmless or indemnify by law or pursuant to: (a) a contract or agreement for operations, Work, and Services performed under or in connection with this Agreement or (b) any property or access rights obtained in support of the operations, Work, and Services performed under or in connection with this Agreement.
- 1.25 “Insured Parties” means the Company or Owner, its Affiliates, and their officers, directors, employees, agents, successors and assigns and any third party that Company or its Affiliates are required to hold harmless or indemnify by law or pursuant to: (a) a contract or agreement for operations, Work, and Services performed under or in connection with this Agreement or (b) any property or access rights obtained in support of the operations, Work, and Services performed under or in connection with this Agreement.
- 1.26 “ISNetworkworld” and “ISN” mean the fee-based third party services contracted by Company to receive, store, manage and maintain various records for Company related to Contractor safety and vendor On-boarding.
- 1.27 “NERC” means the North American Electric Reliability Corporation.
- 1.28 “Partial Performance Payment” means the payment to which the Contractor is entitled for Work actually performed after the Company has provided Contractor with notice to commence Work and before the Company terminates all or a portion of the Agreement for convenience.
- 1.29 “Party” means either the Company or the Contractor, and any reference to “Parties” shall mean the Company and the Contractor.
- 1.30 “Physical Security Perimeter” means the physical completely enclosed (“six-wall”) border surrounding computer rooms, telecommunications rooms, operations centers, and other locations in which Critical Cyber Assets are housed and for which access is controlled.
- 1.31 “Prohibited Act” means:
- 1.31.1 offering, giving or agreeing to give to the Company, any of its Affiliates, or any persons associated with it or them including its or their officers, employees or agents, any gift or consideration of any kind as an inducement or reward: (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of the Agreement or any other contract with the Company or any of its Affiliates; or (ii) for showing or not showing favor or disfavor to any person in relation to the Agreement or any other contract with the Company or any of its Affiliates;
- 1.31.2 entering into the Agreement or any other contract with the Company, any of its Affiliates, or any persons associated with it or them where a commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless, before the relevant contract is entered into, particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Company;

- 1.31.3 committing any offense: (i) under the United Kingdom’s Bribery Act 2010 (or engaging in any activity, practice or conduct which would constitute an offense under that act if such activity, practice or conduct had been carried out in the United Kingdom); (ii) under the United Kingdom’s Modern Slavery Act 2015 (or engaging in any activity, practice or conduct which would constitute an offense under that act if such activity, practice or conduct had been carried out in the United Kingdom); (iii) under legislation creating offenses in respect of fraudulent acts; or (iv) at common law in respect of fraudulent acts in relation to the Agreement or any other contract with the Company or any of its Affiliates;
- 1.31.4 engaging in any activity, practice or conduct which does not comply with the Company’s anti-bribery, anti-corruption and anti-slavery policies as notified in writing to the Contractor from time to time by or on behalf of the Company;
- 1.31.5 doing, or omitting to do, any act that will cause or lead the Company or any of its Affiliates to be in breach of the Bribery Act 2010, the Modern Slavery Act 2015, and/or the policies referred to in Section 1.31.4 above; or
- 1.31.6 defrauding, attempting to defraud or conspiring to defraud the Company or any of its Affiliates.
- 1.32 “Project” means the totality of a Company-defined scope, to be completed within a specified time and cost, and all things associated therewith, of which the Work performed under the Agreement may be the whole or a part and which may include work performed by the Company or its Affiliates or by other contractors.
- 1.33 “Punch List” means a list of all items and Work prepared by Contractor following Substantial Completion or as otherwise directed by the Company to be completed by Contractor prior to Final Acceptance. Punch List items cannot, in the Company’s sole discretion, affect the operability, safety, mechanical or electrical integrity of the project, and the total value of all Punch List items cannot exceed \$250,000.00.
- 1.34 “Purchase Order” means the serially numbered document issued by the Owner for accounting purposes. Purchase Order numbers should be referenced by the Contractor for invoicing purposes.
- 1.35 “Purchase Order Number” means the number identified as such in the Agreement which may be used for the Company’s internal accounting and document tracking.
- 1.36 “RFP” and “Request for Proposal” mean the documentation associated with the tender solicitation.
- 1.37 “Safety Requirements” has the meaning set forth in Section 16.6.
- 1.38 “Service-Disabled Veteran” means a veteran, as defined in 38 U.S.C. § 101(2), with a disability that is service connected, as defined in 38 U.S.C. § 101(16).
- 1.39 “Service-Disabled Veteran-Owned Small Business Concern” means a Small Business Concern not less than 51 percent of which is owned by one or more Service-Disabled Veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more Service-Disabled Veterans; and the management and daily business operations of which are controlled by one or more Service-Disabled Veterans or, in the case of a Service-Disabled Veterans with permanent and severe disability, the spouse or permanent caregiver of such veteran
- 1.40 “Services” means all the labor and other services provided by the Contractor in connection with the Agreement.
- 1.41 “Site” means the geographical location or facility where the Work will be performed.
- 1.42 “Small Business Concern” means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.
- 1.43 “Small Disadvantaged Business Concern” means a Small Business Concern that represents, as part of its offer, that it has received certification as a Small Disadvantaged Business Concern consistent with 13 CFR § 124, Subpart B; and that no material change in disadvantaged ownership and control has occurred since its certification.
- 1.44 “Specification” means the technical requirements and procedures, including any accompanying appendices, contained in, referenced by, or attached to the Agreement.
- 1.45 “Subcontractor” means any organization, firm or individual, regardless of tier, which the Contractor retains during the term of the Agreement to provide Goods or Services in connection with the Agreement.

- 1.46 “Substantial Acceptance” means that date when the Company issues a certificate to the Contractor providing final approval, certifying that the Work has been completed to a sufficient extent to satisfy the requirements of Substantial Completion.
- 1.47 “Substantial Completion” means that date, as certified by the Company, when the construction of the Work, or a specified portion of the Work, is sufficiently completed in accordance with the Agreement so the Company can occupy or utilize the Project, or a specified portion of the Project, for its intended purpose, including removal of any temporary facilities, removal of any rubbish that poses an obstacle to operation or threat to safety, delivery of any required documentation, and repair of any significant damage done by Contractor to the Site or Company equipment. All required Work, other than Punch List items, must be complete to achieve Substantial Completion.
- 1.48 “Supplemental Conditions” means those terms and conditions, if included in the Agreement, which add to or modify other Contract Documents and are incorporated by reference as if fully set forth in the Agreement. In the case of a conflict between the Supplemental Conditions and any other Contract Document the Supplemental Conditions shall prevail.
- 1.49 “Veteran-Owned Small Business Concern” means a Small Business Concern not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. § 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and the management and daily business operations of which are controlled by one or more veterans.
- 1.50 “Women-Owned Small Business Concern” means a Small Business Concern that is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more women.
- 1.51 “Work” means all operations, duties, responsibilities, and obligations to be performed by the Contractor as specified, stated, indicated or implied, whether temporary or permanent, by the Agreement including, but not limited to, the provision of Goods and Services.

## **2.0 SCOPE OF WORK**

- 2.1 The Contractor shall perform all Work and Services and do all that is necessary to complete its portion of the Project in accordance with the Agreement (including all Contract Documents and any attached schedules, exhibits and appendices which are incorporated by reference), and in accordance with all applicable permits, Federal, state, and local engineering, construction, safety, environmental, building and electrical codes, standards, directives, requirements, rules, regulations, laws and ordinances (whether the same are in force upon the execution of the Agreement or may in the future be passed, enacted or directed.) The Contractor is, and shall at all times remain, an independent contractor.
- 2.2 The Contractor shall be solely responsible for all construction means, methods, techniques, sequences, procedures, safety, and compliance programs in connection with the performance of the Work. The Contractor shall supply and be fully responsible for temporary facilities. The Contractor shall locate such facilities only in approved areas designated by the Company. Temporary facilities, located at the Site, shall be removed by the Contractor prior to final payment, unless otherwise authorized in writing by the Company.
- 2.3 The Contractor represents that it has fully acquainted itself with, and has carefully examined all documents and conditions relevant to the Work and the Project to insure that they are sufficient to properly complete the Work; all relevant plans, surveys, measurements, dimensions, calculations, and estimates to be sure that they contain no errors or inaccuracies; the nature and location of the Work, the character of equipment, materials and facilities needed preliminary to and during the prosecution of the Work; the general and local conditions (including environmental conditions and labor relations); and all other matters which can in any way affect the Project and the Work and its cost under the Agreement. The Company assumes no responsibility whatsoever for ascertaining for the Contractor any facts which the Contractor could have ascertained for itself through such investigation. The Contractor shall notify its Subcontractors of the requirements of this Section 2.3. Lack of knowledge of any of the foregoing matters shall not constitute an excuse for delay or failure of performance under the Agreement, nor shall it justify any increase in the price as determined under the Agreement. The Contractor hereby represents that it has all information and documentation with respect to equipment, materials, facilities or any other matters which are or will be necessary to enable the Contractor to safely and reliably perform the Work. Except as is otherwise specified within the Agreement, all loss or damage to the Contractor arising out of its performance of the Work, whether due to the elements, unforeseen

circumstances, subsurface conditions or otherwise, shall be sustained and borne by the Contractor at its sole cost and expense.

- 2.4 The Contractor hereby acknowledges and agrees that the Company will only be responsible for providing such materials and services as are expressly indicated to be the Company's responsibility in the Specification.
- 2.5 Instructions or explanations given by the Contract Administrator or the Company to the Contractor to complete, clarify or give proper effect to the Specifications will be deemed a part of the Specifications. The Contractor shall, immediately upon identification of same, notify in writing the Company's Field Representative and/or Contract Administrator of any discrepancy in materials, quantity, quality defects, or damages noted upon the Contractor's receipt of Company-furnished materials. If there is any doubt as to the meaning of any portion or portions of the Specifications, such documents will be interpreted as calling for the best quality, as to materials, equipment and workmanship capable of being supplied or applied, and any explanation provided by the Contract Administrator will be final and conclusive.
- 2.6 The Company and its engineers make no warranty for the detail, accuracy, or completeness of the Contract Documents including, but not limited to, the Specification and Drawings. The Company's review of or comments on any document shall not relieve the Contractor of its sole responsibility for the correctness and adequacy of the Contractor's Work, including but not limited to the correctness of design, detail, dimensions, or erection or any other obligation of the Contractor hereunder.
- 2.7 All documents furnished by the Company, including but not limited to the Specification and Drawings and copies thereof and documents produced by the Contractor for the Company shall be the property of the Company, shall be used by the Contractor only for performance of the Project, shall not be used on any other jobs, shall not be delivered to any third parties except as is necessary for performance of the Project hereunder, and shall be returned to the Company upon completion, cancellation or termination of the Agreement.
- 2.8 The Contract Documents including, but not limited to, the Specification and Drawings may not be complete in every detail. The Contractor shall comply with their manifest intent and general purpose, taken as a whole, and shall not ignore or misuse any errors or omissions therein to the detriment of the Project. Should any error, omission, conflict or discrepancy appear in the Contract Documents, referenced documents, or codes, standards or instructions, the Contractor shall immediately notify the Company in writing and the Company shall issue written instructions, however, unless otherwise instructed the more stringent requirement shall apply. If the Contractor proceeds with any of the Work in question prior to receiving such instructions, then required corrections shall be at the Contractor's expense.
- 2.9 If the Contractor observes that any requirement specified in the Agreement is at variance with any governing laws, ordinances, rules, regulations, permits or licenses it shall promptly notify the Company in writing before incurring any further liability, expense or obligation for the Contractor or the Company.
- 2.10 Without limiting the requirements in Section 2.1, the Contractor hereby represents and warrants that all Work done by it under the Agreement shall be fully compliant with *N.Y. Lab. Law § 224-F* (the "Prevailing Wage Law"), wherever relevant, including, without limitation, that for any covered excavation project in New York, as such term is defined in the Prevailing Wage Law, Contractor and its Subcontractors shall pay to each worker not less than the prevailing rate of wage in the same trade or occupation in the locality within the state where such covered excavation project is situated. Contractor agrees that it shall cooperate as reasonably required by Company or as requested by any New York State authority to document its and its Subcontractor's compliance with the Prevailing Wage Law in relation to Work done under the agreement, including certifying in writing as to such compliance.

### **3.0 CONTRACTOR PERSONNEL**

- 3.1 The Contractor shall provide a competent full-time superintendent and any necessary assistants, all satisfactory to the Company, at the Site during the progress of the Work to ensure that the Work is being performed in accordance with the Agreement. The superintendent shall not be removed from the Project without the Company's prior written approval. The superintendent shall represent the Contractor, and all directions given the superintendent shall be binding as if given to the Contractor.
- 3.2 The Contractor's personnel on the Site shall include, but not be limited to, a quality-assurance representative, a certified safety professional, and an individual knowledgeable in environmental rules and regulations. In the event that the Company believes, in its sole judgment, that any of the Contractor's personnel are



objectionable, the Company shall so notify the Contractor, whereupon the Contractor shall promptly investigate and take appropriate corrective action including, where requested by the Company, removal of such personnel and replacement with personnel acceptable to the Company. Whenever required by law, regulations, or code, or any applicable governmental approval, the Contractor shall employ only licensed and properly trained personnel in the performance of the Work. The Contractor and all Subcontractors shall have full responsibility for all employees employed on or in connection with the Project and shall employ only such employees who shall cooperate with all other individuals working at the Site.

- 3.3 The Contractor shall, and shall require its Subcontractors to, comply with the Company's background check requirements as defined in the Company's policies and procedures set forth in this Agreement and as may be amended from time to time.
- 3.4 In the event of the Contractor's non-compliance with any or all of these background-check requirements, the Company may cancel the Agreement for its convenience pursuant to the termination provisions contained in the Agreement except that in no event shall the Company or its Affiliates be liable for any termination cost/charges to the Contractor beyond compensation for Work performed up to the date of such cancellation.
- 3.5 The Contractor shall be wholly and solely responsible for all acts of its personnel while engaged in the Work. Any illegal acts, including but not limited to terrorism affecting property and/or personnel of the Company or its Affiliates, the Contractor or third parties shall be considered grounds for finding the Contractor in default and terminating the Agreement for cause in accordance with Section 18.1, in addition to all other rights and remedies available to the Company and its Affiliates under applicable law.

#### 4.0 TIME OF PERFORMANCE

- 4.1 The Contractor shall submit a schedule for the assigned Work, and provide the Company with updated progress and scheduling information as required and set forth in the Agreement. The Contractor shall perform the Work in accordance with the schedule agreed to by the Parties. Once commenced the Work shall be prosecuted continuously to completion unless otherwise agreed to by the Company. Contractor shall notify the Company orally and then in writing of any anticipated delays; however, such notification shall not relieve Contractor of any of its obligations or affect any of the Company's available remedies.
- 4.2 The Contractor shall maintain a labor force of sufficient size and competence to conform to and complete all Work on schedule and within the scheduled hours and days set forth in the schedule unless otherwise directed or approved by the Company.
- 4.3 The Contractor shall limit the Work at the Site to eight hours per day and 40 hours per week and normal working hours, between 7:00 a.m. - 5:00 p.m., Monday through Friday, unless otherwise specified elsewhere in the Agreement. Extended hours shall be subject to the Company's prior written approval.
- 4.4 **Time of performance is of the essence.** If, at any time during the term of the Agreement, except for delays occurring pursuant to Section 21.0, in the opinion of the Company the Contractor does not meet the schedule, the Company may for each incident of delay, at no additional cost to the Company, at its sole option, in addition to any other rights it may have:
  - 4.4.1 Require the Contractor to get back on schedule by working additional shifts and/or additional days and/or increasing its manpower, supervision, tools, and/or equipment; and/or
  - 4.4.2 Treat such failure as a material breach and repudiate and terminate the Agreement in accordance with Section 18.1 and collect damages; and/or
  - 4.4.3 Require the Contractor to pay the Company liquidated damages, as may be provided for in the Agreement, provided, however, once the Company elects liquidated damages for an incident of delay its right to invoke the remedies under 4.4.1 or 4.4.2 for such delay shall be extinguished.
- 4.5 Any failure by the Company to invoke any of the provisions of Section 4.4 shall not constitute a waiver of its right to subsequently invoke such provisions or its entitlement to any other damages provided for elsewhere in this Agreement.
- 4.6 No request for extension of time for completion of the Work, or any other change to an approved schedule, shall be granted to the Contractor unless in a writing signed by the Company and except as provided in Sections 21.0, 14.0, and 19.0.
- 4.7 Notwithstanding the foregoing, if the Contractor incurs delays and believes that changes in the Project or changed conditions beyond the Contractor's control are the cause of the delay, the Contractor shall provide

prompt written notice to the Company in the manner set forth in Section 14.3 of the changes or changed conditions that it believes justify excusing the Contractor from meeting the schedule. If the Company agrees with the Contractor, the Company will, in accordance with Section 14.3, approve an extension of time for completion of the Work. Such extensions of time however shall not include any additional payment for extended overhead.

- 4.8 If the Contractor is delayed by any act or omission by the Company, or by interference by a public authority, or strikes or injunctions, none of which are caused, instituted, or provoked by the Contractor or by any Subcontractor, agent or representative of the Contractor, and if the Contractor cannot with reasonable diligence, due to such act or omission, interference, strike or injunction, make up for such delay or delays, then the specified date or dates for completion of the work or services or the portion or portions thereof so delayed will be extended by the Company by the amount of time for such delay as determined by the Contract Administrator. Notwithstanding the foregoing, no periods of such delay will be deemed to begin until written notice thereof has been given by the Contractor to the Company. If the Contractor cannot make up for such delay by applying reasonable diligence and speed, then the Contractor may receive compensation for such delay, if appropriate. The Contract Administrator shall determine the time period covered by the delay and the amount of compensation payable to the Contractor.
- 4.9 When necessary to accommodate the Company's operating requirements, the Company shall have the option to order any portion of the Project performed at times other than normal working hours or on weekends or holidays, in which event extra costs, if any, for such work shall be paid to the Contractor in accordance with Section 14.5.

## **5.0 PERMITS AND LICENSES**

- 5.1 Permits and licenses of a temporary nature necessary for the prosecution of the Work shall be secured and paid for by the Contractor. Unless otherwise specified, permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Company. In either case the Contractor shall be responsible for prosecuting the Work in accordance with the provisions of all applicable permits and licenses.
- 5.2 The Contractor shall maintain all permits and licenses required and necessary to complete the Work so that it complies with all applicable laws, rules, regulations, requirements, orders, directives, ordinances, codes and standards of all Federal, state, and local governmental agencies having jurisdiction over the Company and its Affiliates, the Contractor, the Subcontractors, or the Project, whether the same are in force at the execution of this Agreement or may in the future be passed, enacted or directed.
- 5.3 The Contractor shall not enter into negotiations with any governmental authority or agency for acceptance of variations from or revisions to safety or health, or air, water or noise pollution laws or regulations relating to the Agreement or to the performance thereof, without the Company's prior written consent.

## **6.0 SHIPMENT AND TITLE**

- 6.1 The Contractor shall select the best practical mode of transportation unless otherwise specified in the Agreement. The Contractor shall deliver, receive, unload, store in a secure place, and deliver from storage all equipment and material (whether furnished by the Company or the Contractor) required for the performance of the Work, in accordance with the Agreement and all manufacturers' recommendations. Receiving of equipment and materials, (whether furnished by the Company or the Contractor) shall include inspection for correctness of quantity, quality, and damage, all of which shall be reported in accordance with Section 31.0. Deliveries shall be made between the hours of 7:00 a.m. and 2:00 p.m., Monday through Friday, unless otherwise arranged with the Field Representative or otherwise specified in the Agreement. The Contractor shall bear the cost of all packaging and shipment of equipment and material to the Site, of all unloading, storage, protection and installation of equipment and material at the Site, and of any insurance on the equipment prior to Final Acceptance by the Company, regardless of whether title has passed to the Company.
- 6.2 The Contractor warrants and shall take all action necessary to ensure that all Goods are delivered to the Company with good, clear and marketable title, free from any defects, liens, encumbrances and claims of any kind, and shall indemnify and hold harmless the Indemnified Parties and warrant and defend title against any claims or demands of third parties; and shall take such action at the Contractor's sole expense as may be necessary to discharge any defect in title, or lien or encumbrance on the Goods. Unless otherwise specified

in the Agreement, title to Goods furnished hereunder shall pass to the Company upon delivery thereof F.O.B. Destination. Passage of title shall not be construed to impair any rights which the Company may otherwise have to recover damages or reject equipment which does not meet the requirements of the Agreement.

## **7.0 RISK OF LOSS**

- 7.1 Risk of loss or damage to the Work shall remain with the Contractor until Final Acceptance by the Company, regardless of whether title has passed. The Contractor shall bear the risk of loss or damage to any Work during its repair, replacement, or cure if the Contractor is responsible for such repair, replacement or cure.
- 7.2 The Contractor shall be solely responsible for storage and protection of equipment and material (whether furnished by the Company or the Contractor) against deterioration or damage from any cause, vandalism, and theft until Final Acceptance. The Contractor shall obtain a receipt from a duly authorized representative of the Company when returning material or equipment to a designated Company facility.
- 7.3 The Contractor shall be responsible for the security of all (1) materials and equipment under its custody and control, and unless otherwise stated in the Agreement, (2) the Site. The Contractor shall cooperate with the Company regarding all security measures instituted at the Site.
- 7.4 The Contractor shall at all times conduct operations in a manner to ensure the safety of the general public and to avoid the risk of loss, theft, or damage by vandalism, sabotage, or any other means. The Contractor shall continually inspect the Project, materials, and equipment to discover and determine any conditions that might involve such risks and shall be solely responsible for discovery, determination, and correction of any such conditions.

## **8.0 WARRANTY/REMEDY**

- 8.1 The Contractor warrants that it is aware of the purpose for which the Work is being used and that its Work shall be suitable for such purpose. In addition to all other warranties, express or implied in fact or law, the Contractor warrants: 1) all Work shall conform to all requirements of the Agreement, including the Drawings and Specification, and any Supplemental Conditions or change orders, 2) if not otherwise specified, all Work shall be consistent with industry standards for the Goods and Services specified and the intended use by the Company; 3) all Goods shall be merchantable and new and be of size, capability and material sufficient to meet the Company's specifications in all respects, or as agreed to by the Company; 4) all Services shall be performed by qualified, competent, and experienced personnel, and in accordance with the highest standards of care, skill, and diligence, and consistent with recognized and sound engineering and construction practices and procedures, 5) that all Work shall be free from defects in design, workmanship, and materials of any kind, for a period of 12 months from the date placed in service or 24 months from the date of receipt, whichever is later; 6) no Work shall infringe or violate the intellectual property rights of any third party, or violate any agreement or confidentiality obligation by which the Contractor may be bound; 7) all Goods shall be free of all liens, claims and other restrictions on the Company's receipt, ownership and use thereof, and 8) all equipment shall be installed to meet current OSHA regulations. Items of materials, equipment or otherwise shall not be substituted for those specified, nor shall "or equal" items be furnished pursuant to the Agreement without the Company's prior written approval. The Company's decision on item equality shall be final and binding.
- 8.2 If the Work provided by the Contractor or its Subcontractors fails to conform to the warranties set forth above, in addition to all other remedies available at law or equity, the Contractor shall, at its sole expense and at the Company's option, promptly: 1) repair or replace the nonconforming Work; 2) refund the amount of money paid by the Company for such nonconforming Work; or 3) reimburse the Company for the cost of repairing, or replacing the nonconforming Work or having the nonconforming Work repaired or replaced by a third party. The Company may require the Contractor to use overtime work at no cost to the Company if such additional effort will shorten the time the Work is nonconforming. All warranty Work performed by the Contractor shall be scheduled by and at times acceptable to the Company. If any warranty Work is provided, the Contractor's warranties shall recommence upon the Company's acceptance of such repaired Work and shall be in effect for the duration of the warranty period or for 24 months after completion of the warranty Work, whichever is later. The terms of this section shall survive termination of the Agreement and shall survive delivery, inspection, tests, acceptance and use of the Work.
- 8.3 In addition to all remedies permitted by law, the Company reserves the right to reject and return to the Contractor for full credit and at the Contractor's expense, all over-shipments and all Work that does not

conform to the Company's specifications or requirements. Further, the Company may, at its option, and without limiting its other rights, cancel all or any unfilled part of the Agreement if conforming deliveries are not made within the time specified. The Company reserves the right to charge the Contractor, and the Contractor shall be liable for any loss or expense incurred as the result of the Contractor's failure to make timely delivery. The acceptance of any late delivery shall not constitute waiver to reject subsequent deliveries not made as originally scheduled.

- 8.4 The Contractor shall obtain from each Subcontractor, and extend to the Company for its benefit, warranties for all Work performed or supplied by such Subcontractor, substantially identical to the warranties the Contractor is required to provide hereunder. Any such warranties shall be in addition to and shall not be limited by or themselves limit, the warranties of the Contractor otherwise provided in the Agreement. The Contractor shall deliver to the Company copies of any Subcontractor's warranties.
- 8.5 Company may be required by a relevant state Department of Transportation or other authority to produce certifications regarding the origin and manufacturing of certain products covered by the Buy America requirements of 23 U.S.C. § 313 (the "Buy America Requirements"), in the event such products are used in a project eligible for federal highway funding. In the event that Company notifies Contractor that Goods to be provided hereunder are subject to the Buy American Requirements, Contractor represents and warrants that all relevant Goods shall be compliant with the Buy America Requirements, and Contractor shall, upon request, produce a certification, signed by an officer of the Contractor, to that effect, stating that "all manufacturing processes for these steel and iron materials, including the application of coatings (unless granted a waiver pursuant to 23 CFR § 635.410), have occurred in the United States."
- 8.6 In the event that Company notifies Contractor that a particular order is subject to the Buy America Requirements as part of the RFP or ordering process for such Work, or otherwise prior to receiving a price quotation, Contractor agrees that all quoted pricing shall be inclusive of any cost to comply with the Buy America Requirements. In the event that Company notifies Contractor of the applicability of the Buy America Requirements subsequent to receiving a quotation, and such Buy America Requirements increase Contractor's costs, Contractor shall notify Company of such increase, and Company may, at its discretion: (a) require Contractor to comply with the Buy America Requirements and adjust the contract price to address such increased costs, or (b) request that the relevant state Department of Transportation or other authority petition the Federal Highway Administration for a waiver of such requirement, in which case the Contractor shall reasonably cooperate in making such petition.

## **9.0 PRICE/PAYMENT**

- 9.1 The Company will compensate the Contractor for Work provided on the basis of prices stated in the Agreement.
- 9.2 Standard payment terms are "2% 10, Net 30." The Company shall pay all invoices, less monies withheld under Section 9.8, not more than 30 days after receipt by Company's Accounts Payable Department of a proper invoice and any required supporting documentation, subject to the Company's right to contest, in good faith, all or any part of the charges set forth therein. If the Massachusetts Prompt Payment Act applies to this Agreement, invoices shall be approved or rejected within 15 days of submission by Contractor. If the New York Prompt Payment Act applies to this Agreement, invoices shall be approved or rejected within 12 days of submission by Contractor. Payment shall not relieve the Contractor from any responsibilities or obligations under the Agreement, nor shall the Company's payment constitute acceptance or a waiver of any claim arising hereunder. No payment made hereunder, including the payment following Substantial Acceptance, shall be considered as acceptance of any Work. All payments shall be subject to correction or adjustment in subsequent payments.
- 9.3 Company reserves the right to utilize a variety of payment channels, including but not limited to Virtual Card, ACH, Ghost Cards and P-Cards. Contractor agrees that it will not impose a surcharge on Company's payment. In the performance of this Agreement during which Contractor will accept, store, use, process, transmit or have access to payment account, cardholder or transaction data belonging to Company, Contractor shall (a) comply with the Payment Card Industry Data Security Standard ("PCI-DSS"), as set forth at <https://www.pcisecuritystandards.org/> and as may be updated from time to time by the Payment Card Industry Security Standards Council, and (b) upon request by Company not more than once annually, provide Company an Attestation of Compliance (AOC), certifying Contractor's compliance with PCI-DSS for purposes of the Agreement.

- 9.4 The Company reserves the right to determine and choose the most economical freight mode of transportation. In cases where freight is added as a line item to an invoice or otherwise, the Company will not accept markups of any form on the freight portion of an invoice. All freight must be invoiced at the Contractor's cost. The Company reserves the right to require the Contractor to secure, at the Contractor's expense, original freight invoices for verification of the freight charges added to an invoice. The Company reserves the right to withhold payment on all invoices where freight discrepancies occur, or the Contractor fails to supply validation of freight charges.
- 9.5 The Company will not accept any restocking charges for the following returns to the Contractor: (1) defective materials, (2) over shipments, (3) material not as specified, (4) materials not requested, (5) shipments made to other than stipulated location, or (6) unauthorized delivery in advance of specified dates.
- 9.6 The Contractor shall submit invoice(s) in accordance with the Agreement. Each invoice shall reference the Company's Purchase Order Number. Such invoice(s) shall include cost breakdowns and unit quantities as specified by the Company. If required by the Company, the Contractor shall submit a completed and properly executed Partial Lien Release, as set forth in the Agreement, with each invoice, for the Work included in such invoice.
- 9.7 In addition to the specific requirements for each payment, the Contractor's submittal of an invoice shall represent a certification by the Contractor that it has complied with all relevant terms of the Agreement, including, without limitation: (a) the quality assurance requirements set forth in Section 10.1; (b) all scheduling requirements set forth in Section 4.0; (c) the Safety Requirements set forth in Section 16.0; and (d) all environmental requirements set forth in Section 41.0.
- 9.8 Ten percent of each invoice (or five percent of each invoice, in the case of projects within Massachusetts with an original contract price of \$3,000,000 or more), shall be retained by the Company until Substantial Acceptance by the Company, provided, however, that in the case of construction projects in New York having a value of \$150,000 or more, in no event will the total retained amount exceed 5% of the total contract value. Prior to Substantial Acceptance, Contractor shall submit an invoice to Company for the retention and any other amounts owed, along with an affidavit affirming that all Subcontractors have been fully paid and that neither Contractor nor any Subcontractor has any liens against Company in relation to the Agreement.
- 9.9 The Company shall, without waiver or limitation of any rights or remedies, be entitled from time to time to deduct from any amounts due or owing the Contractor under the Agreement any and all amounts owed by the Contractor to the Company or a Company Affiliate, whether or not in connection with the Agreement. The Company shall not be required to provide any written statement to Contractor in respect of any disapproved invoice or other request for payment. Notwithstanding the foregoing, if the Agreement is subject to the Massachusetts Prompt Payment Act, any full or partial rejection of an invoice shall be made in writing and include (a) the factual and contractual basis for the rejection and (b) a certification that the rejection is made in good faith. No interest shall accrue on any payment due to Contractor in accordance with this Agreement or any portion of retainage that is not timely released to Contractor in accordance with this Agreement.
- 9.10 Unless otherwise specified in the Agreement, the Contractor shall submit all invoices for executed Services and delivered Goods at the start of each month for any such Work carried out during the preceding month. If Contractor fails to invoice Company for any amount within six (6) months of the later of (i) the month in which the Work in question is rendered or the expense incurred, or (ii) the date the Contractor has the right to issue an invoice to Company for payment, the Contractor shall be deemed to have waived any right it may otherwise have to invoice for and collect such amount.

## **10.0 TAXES**

- 10.1 The Contract Price shall include any applicable sales, use and similar taxes, unless otherwise provided for in the Agreement, including sales and use tax that will be paid by the Contractor for Goods, materials, and equipment used in the Work, and for which the Contractor is unable to claim exemption. Where no exemption applies, it is the Contractor's responsibility to include in their material and equipment pricing as part of their Contract Price, the Sales and Use taxes they will be required to pay the State in which the Project is located. All Sales and Use tax to be paid by the Contractor for Goods, materials, or equipment used in the Work will thereby become a direct pass through to the Company, with no additional overheads added to the tax. Also, the tax amount will be based strictly on the Contractor's net cost (out of pocket or supplier invoice value of the Goods, material or equipment before any mark-up is applied). Under no circumstances is the Contractor

- to claim exemption, or later make claim against the company for unpaid tax due to failure to account for tax in their cost of materials charged to the company, and all Contractor invoices are to include the statement: “The contractor has paid all applicable [name of State where project is located] taxes on materials used for this construction/EPC/capital improvement project.” The Company shall not be responsible for any Federal, state, and/or local, personal property, license, privilege, or other like taxes owed by the Contractor, which may now or hereafter be applicable to the transactions between the Contractor and the Company under the Agreement.
- 10.2 In any State where the Contractor may apply for Sales and Use Tax exemption, they are expected to do so, and maintain records of the exemptions taken, thereby eliminating any need to “pass through” the cost of such taxes to the Company. For example, in the Commonwealth of Massachusetts the Contractor is expected, as applicable, to complete an ST-12 Exempt Certificate that will certify that “The materials, tools or fuel will be consumed and used directly and exclusively in, or The machinery, and/or replacement parts thereof, will be used directly and exclusively in furnishing gas, water, steam or electricity when delivered to consumers through mains, lines or pipes.” In New York State Contractors are to use Form ST-120.1 to reduce the amount of sales tax as applicable.
- 10.3 The Contractor shall be responsible to pay all applicable Sales and Use Taxes for which they are not exempt. Contractor is advised that access to a National Grid Direct Pay Permit (DPP) for any jurisdiction or State in which a National Grid Construction, Capital Improvement, or Engineering, Procurement, Construction (EPC) project is being built by the Contractor, **does not** provide any exemption for the Contractor with respect to their responsibility to pay Sales and Use Tax on materials or equipment that the Contractor purchases or rents for the Project. For the States in which National Grid operates; i.e. New York, Massachusetts, and Rhode Island, the construction Contractor, not National Grid, is considered the end user of goods and materials that become a permanent part of the capital asset being constructed and is therefore responsible for all Sales Tax.
- 10.3.1 For Projects in New York, Massachusetts, and Rhode Island, the correct National Grid Subsidiary Company DPP may be used by any retail company or contractor acting as a retailer selling or transferring parts, materials, equipment, or renting equipment directly and outright, or as part of a service to National Grid, to release the retail company or contractor from the obligation to collect tax on the sale or rental of those items, since the DPP authorizes National Grid to self-assess these taxes and pay these taxes directly to the State.
- 10.3.1.1 In this instance the retail company or contractor selling the goods outright to National Grid must have the correct National Grid Direct Pay Permit for the applicable state in which the goods are being received, and for the correct National Grid Subsidiary purchasing the goods and **shall not** include Sales and Use Tax as a line item on their invoices to National Grid.
- 10.3.1.2 In the event that no Direct Pay Permit is available for the specific National Grid Subsidiary purchasing the goods, and the State in which the retail sale or service is being transacted, the retail company or contractor acting as a retailer **shall** include the Sales and Use Tax as a line item on their invoices to National Grid.
- 10.3.2 For all projects in the State of New York, the Construction/Capital Improvement/EPC Contractor may obtain from the Company a Form ST-124 Certificate of Capital Improvement with the ‘Customer’ portion of the form filled in and signed by the Company. This form provides evidence that the Contractor is not required to collect Sales and Use Tax from the Company for any materials used in the construction/capital improvement/EPC project providing they become a permanent part of the real property.
- 10.4 Contractor shall be accountable to understand and comply with each state’s laws governing sales and use tax liability when fulfilling construction contracts. Accordingly, when Contractor is performing a construction contract in Massachusetts or Rhode Island and Contractor does not maintain a permanent and registered place of business in the applicable state, Contractor shall comply with the regulatory requirements for the applicable state: a) Provide a surety bond to cover all potential state tax liabilities related to the construction contract to the satisfaction of the applicable taxing authority; or b) Company will withhold from each payment to Contractor the percent, as determined by applicable state regulation, for the purpose of covering applicable state tax liability. Said withholding will be released to Contractor after the completion of the contract, only after review and certification by the applicable taxing authority that no further state taxes are due. Taxes due by a non-resident contractor that have not been paid by the non-resident contractor when due and that are instead collected by the taxing authority of the applicable state from National Grid, are non-recoverable by the Contractor.

- 10.5 The Contractor shall pay or cause to be paid all taxes and employer contributions imposed by present and future Federal, state, and local laws with respect to compensation of employees of the Contractor and all interest and penalties payable under such laws as a result of noncompliance therewith, and the Contractor shall indemnify and hold harmless the Indemnified Parties from and against any and all claims, liabilities and expenses with respect to the foregoing by its employees or the applicable taxing authority.

## **11.0 INSPECTION AND QUALITY ASSURANCE**

- 11.1 The Contractor shall inspect all Work and make or cause to be made all tests required by the Agreement.
- 11.2 All work will be subject to the Contract Administrator's inspection, direction, and approval. The Contractor agrees to furnish all the information pertaining to the Work as the Contract Administrator may require.
- 11.3 The Company shall have the right to inspect any Work covered by the Agreement and, at no cost to the Company, the right to inspect and/or audit any of the Contractor's or its Subcontractors' inspection records and associated costs pertaining to the Agreement. Such audits may be performed by either or both the Company's employees or professional auditing firms chosen by the Company. In the event the Work or associated costs are found to be deficient or not in accordance with the Agreement, the Company shall be entitled to seek reimbursement for such audit costs.
- 11.4 The Company shall advise the Contractor of errors, or variations from the requirements of the Agreement, and of defects in the Work, but it is expressly agreed that any omission on the Company's part to advise the Contractor of any such errors, variations, or defects or to provide any instructions or explanations shall not give the Contractor any right or claim against the Company, and shall not in any way relieve the Contractor from its obligation to provide the Work in accordance with the Agreement.
- 11.5 At any time during the term of the Agreement, the Company or its designated representative shall be entitled to: (1) conduct and/or witness any test required by the Agreement; (2) otherwise inspect, witness and/or test the Work; (3) review the Contractor's and Subcontractor's procedures and documents pertaining to inspection, testing or witnessing of tests; and (4) review the Contractor's and Subcontractor's documents pertaining to the Work. For such purposes the Company and its representatives shall be provided access to the Contractor's or Subcontractors' facilities or Work, when and in such manner as the Company may require. In the event the Contractor employs Subcontractors for any part of the Work, the Contractor shall require Subcontractors to comply with the provisions of this Section 11.5.
- 11.6 The Contractor shall provide and maintain an examination, inspection and testing system acceptable to the Company as required by the Agreement. The Contractor shall submit to the Company the results of all such examinations, tests and inspections and shall maintain records of the same and make them available to the Company.
- 11.7 In addition to any notice requirements otherwise set forth in the Agreement, the Contractor shall give the Company (a) five days prior written notice of any tests and inspections required by the Agreement, the Company or its representatives' instructions, laws, regulations or ordinances to be witnessed or approved by the Company, (b) timely notice of all other tests and inspections, and (c) 48 hours additional notice prior to actual performance of any test or inspection. Inspections by the Company shall be made promptly, and where practicable at the source of supply. If such Work should be covered up without approval or consent of the Company, the Work shall, if required by the Company, be uncovered for examination and properly restored at the Contractor's expense.
- 11.8 In all cases other than those specified in Section 11.7, if the Company requests Work to be uncovered for re-examination, the Contractor shall so comply. If such Work is found to be in accordance with the Agreement, the Company shall pay the cost of re-examination and replacement. If such Work is not in accordance with the Agreement, the Contractor shall pay such cost. If the Company is required to reimburse the Contractor for this Work, it shall be on the basis of Section 14.5.
- 11.9 All testing and inspections required under the Agreement shall be done in accordance with the Agreement. The Company may perform technical inspection of the Work as may be set forth more fully in the Specification. The Field Representative shall have authority to reject all Work and materials which do not conform to the Agreement and respond to questions which arise in the execution of the Work.
- 11.10 Neither the Company's nor its representative's inspection or testing, or witnessing of tests or inspections of the Work nor its failure to perform, require or approve tests or inspections shall (1) affect the warranties and

guarantees of the Contractor, (2) relieve the Contractor from any responsibility or liability with respect to workmanship, materials or equipment, (3) constitute an acceptance of the Work by the Company or an agreement by the Company that the Work meets specified requirements, (4) impair the Company's right to reject nonconforming or defective Work, (5) constitute a waiver by the Company of any rights under the Agreement, or (6) relieve the Contractor of any of its obligations under the Agreement, notwithstanding the Company's opportunity to inspect the Work, the Company's knowledge of the nonconformance or defect, or the Company's failure to earlier reject the Work.

- 11.11 The Company shall have the right to inspect all materials, supplies, and equipment that are to be incorporated in the Project and make or cause to be made all tests required by the Agreement. The making of such inspections and tests by the Company shall not relieve the Contractor of its responsibility for inspection and testing.
- 11.12 If the Company determines that any Work has not satisfactorily passed any test or inspection or does not meet the requirements of the Agreement or that the Contractor has not conducted or has improperly conducted any required test or inspection, the Company shall have the right, in addition to any other rights set forth in the Agreement, to (1) reject the Work and (2) stop the Work in accordance with Section 18.1.
- 11.13 The Company reserves the right to inspect all Work prior to shipment. The Contractor shall notify the Company in writing of all shipments not less than ten Days prior to the date of shipment.
- 11.14 The Contractor shall maintain a formal quality assurance program throughout the duration of the Work. The quality assurance program shall provide continual inspection of construction operations and shall include coordination of the various trades involved in the Work.
- 11.15 The Company shall have the right at any time during the term of the Agreement to review the Contractor's quality assurance program and to have the Contractor's Work tested and inspected by a third party. If such Work is found to be in accordance with the Agreement, the Company shall pay the cost of re-examination and replacement. If such Work is not in accordance with the Agreement, the Contractor shall pay such cost.
- 11.16 The Company shall have the right at any time during the term of the Agreement to require the Contractor to remove and/or correct any Work at the Contractor's expense that is not performed in compliance with the Contractor's quality assurance program.
- 11.17 The Contractor shall retain all quality assurance documents, including but not limited to nondestructive examination records and testing records for the term of the Agreement. Upon Final Acceptance, termination, cancellation, expiration or as may be otherwise required by the Agreement, or sooner if requested by the Company, the Contractor shall submit copies of all such documents to the Company.
- 11.18 The Contractor shall designate a quality control representative who shall be responsible for the administration and performance of the quality assurance program. This person shall be authorized to stop the Work or any portion thereof without fear of retribution.

## **12.0 SUBSTANTIAL COMPLETION INSPECTION/FINAL INSPECTION/ACCEPTANCE/PAYMENT**

- 12.1 Upon receipt of written notice from the Contractor that the Work is completed sufficiently to qualify for Substantial Completion, the Company shall inspect the Work and determine if the Work is substantially complete in accordance with the terms and conditions of the Agreement.
- 12.2 If the Company determines the Work is not substantially complete, its written notice of rejection shall include a list of defects, nonconforming Work and incomplete Work that the Contractor shall complete to the satisfaction of the Company in order for the Work to be substantially complete under the terms and conditions of the Agreement. The Contractor shall within two Days of such notice provide for the Company's review and approval a schedule detailing when all defects and nonconforming Work will be corrected and/or the Work completed. Upon approval of the Contractor's proposed schedule by the Company, the Contractor shall remedy such defective and incomplete portions of the Work. The steps in Sections 12.1 and this Section 12.2 shall be repeated until the Company accepts the Work as substantially complete and so notifies the Contractor of its acceptance.
- 12.3 Upon Substantial Completion, the Contractor shall deliver to the Company a complete set of as-built drawings, and shall satisfy the Company through the execution and filing with the Company of the Lien and



Claim Waiver and Release form, as set forth in the Agreement, that (i) all bills for labor, materials, licenses, taxes and other expenses and claims for which the Company might be sued or for which a lien might be filed on account of the Work under the Agreement through Substantial Completion have been fully satisfied, (ii) the Contractor waives, to the fullest extent permitted by law, any and all rights to have filed and/or maintained a mechanics lien or other liens or claims for or on account of the Work, Goods or Services and/or materials furnished or to be furnished by the Contractor under or in connection with the Agreement, and (iii) that the Contractor shall secure Lien and Claim Waiver and Releases from all suppliers and subcontractors who either performed Work or Services or furnished Goods in connection with or on account the Agreement and, upon request, provide evidence of payment to such suppliers and subcontractors. Upon the Company's acceptance of the Work and the Contractor's satisfactory fulfillment of the requirements of this Section 12.3, the Company will notify the Contractor of its Substantial Acceptance of the Work.

- 12.4 Upon Substantial Acceptance, final payment, including money retained in accordance with Section 9.8, will be made.
- 12.5 Acceptance of the final payment shall constitute a waiver of all claims by the Contractor.
- 12.6 Final payment shall not relieve the Contractor of any warranty, guarantee or other continuing obligations under the Agreement.
- 12.7 Upon receipt of written notice from the Contractor that the Work is complete and ready for final inspection and Final Acceptance, including completion of all Punch List items, the Company shall inspect the Work and determine if the Work has been fully performed in accordance with the terms and conditions of the Agreement.
- 12.8 If the Company determines the Work is not complete, its written notice of rejection shall include a list of items that the Contractor shall finish in order for the Work to be complete under the terms and conditions of the Agreement. The Contractor shall within two Days of such notice provide for the Company's review and approval a schedule detailing when all defects will be corrected and/or the Work completed. Upon approval by the Company, the Contractor shall remedy such defective and incomplete portions of the Work. The steps in Sections 12.7 and this Section 12.8 shall be repeated until the Company accepts the Work as complete and so notifies the Contractor of its acceptance.
- 12.9 Upon acceptance, the Contractor shall satisfy the Company through the execution and filing with the Company of the Final Lien and Claim Waiver and Release form, as set forth in the Agreement, that all bills for labor, materials, licenses, taxes and other expenses and claims for which the Company might be sued, including but not limited to cumulative impact claims or loss of productivity claims, or for which a lien might be filed on account of the Agreement through Final Acceptance have been fully satisfied. Upon the Company's acceptance of the Work and the Contractor's satisfactory fulfillment of the requirements of this Section 12.9 and Section 33.3, the Company will notify the Contractor of its Final Acceptance of the Work.

### **13.0 WITHHOLDING PAYMENT**

- 13.1 The Company may withhold payment (in such amount as is deemed necessary by the Company, in the Company's sole judgment and discretion), in whole or in part, to the extent and for the time reasonably necessary, in the Company's sole judgment and discretion, to protect the Company from loss caused by, but not limited to:
  - 13.1.1 Defective Work not remedied;
  - 13.1.2 Claims filed or reasonable evidence indicating probable filing of claims against the Company or by the Company or other parties against the Contractor;
  - 13.1.3 Failure of the Contractor or Subcontractors (of any tier) to make payments properly to Subcontractors (of any tier) or for material or labor or for any taxes due;
  - 13.1.4 Damage to another contractor;
  - 13.1.5 Removal and replacement of condemned Work and/or material;
  - 13.1.6 Incomplete documentation;
  - 13.1.7 Inadequate insurance coverage;
  - 13.1.8 Disputed Work;

- 13.1.9 Environmental damage caused by or exacerbated by Contractor or any Subcontractor;
  - 13.1.10 Bonding of a Contractor lien;
  - 13.1.11 Failure of the Contractor or any Subcontractors to properly clean up the Site;
  - 13.1.12 Damage to utilities caused by Contractor or any Subcontractor;
  - 13.1.13 Damage to public or private property caused by Contractor or any Subcontractor; and
  - 13.1.14 Liquidated damages assessed to the Contractor.
- 13.2 When the above grounds are removed or the Contractor provides a surety bond satisfactory to the Company which protects the Company in the amount withheld, payment shall be made within 30 days thereafter to the Contractor for the amount withheld.
- 13.3 In addition to the right to delay payment as set forth above, the Company shall have the right to require that the Contractor shall, in any event, take all necessary steps, at its sole cost and expense, to cause any lien filed against the Company's or its Affiliates' property to be satisfied on the record within ten days from the Company's notice that such lien has been filed.

## **14.0 CHANGES TO WORK SCOPE/AGREEMENT CHANGES**

- 14.1 No additions to, deletions from, or alterations in the Work and no amendment or repeal of, and no substitution for any terms, conditions, provisions or requirements of the Agreement shall be made unless first authorized in writing by the Company. No oral changes in the Agreement shall be recognized by the Company unless in accordance with Section 26.2.
- 14.2 The Company may at any time make additions to or deletions from or changes in the Project and/or Work, including changes to the Specification, Drawings or the schedule. If a Company-directed change will add to or deduct from the Contractor's cost of the Work or affect the schedule the Contractor shall notify the Company in writing within five Days of receipt of such Company-directed change and provide a written estimate of such cost and/or schedule modifications and, if the Company approves a cost and/or a schedule modification for the Company-directed change, the Agreement will be adjusted accordingly. Any claim for an extension in the schedule caused by a Company-directed change shall be adjusted at the time of directing such change and the value of any such change shall be determined as provided in Section 14.5.
- 14.3 If the Contractor desires a change in the Work necessary to complete the Work or believes that any order, instruction, request, clarification or interpretation of the Company, or its representatives or compliance with any laws, orders or regulations, constitutes a substantial change in the Work, the Contractor shall submit, to the Company, prior to performance of any such Work, and within five Days of receipt or discovery thereof, a written change claim specifying the nature of the change, any increase or decrease in the cost of performing the Work, and any resulting adjustment in the schedule. Within 30 Days of receipt of such change claim, the Company shall determine whether the change claim constitutes a change in the Work and if so to what extent the Agreement should be modified. The Company shall then notify the Contractor, in writing, of its decision. Any change in the schedule resulting from the change claim shall be specified in the Company's notice and any change in price shall be determined by the Company in accordance with Section 14.5. Notwithstanding anything to the contrary in the foregoing, if the Massachusetts Prompt Payment Act applies to this Agreement, any change order invoices shall be approved or rejected by the Company within 30 days of the Contractor submitting them, and any full or partial rejection of a change order invoice shall be made in writing and include (a) the factual and contractual basis for the rejection and (b) a certification that the rejection is made in good faith.
- 14.4 The Company may require the Contractor to proceed with Work which is the subject of a Company-directed change or a Contractor change claim prior to the Company's consent to any change in the price or schedule, in which event the Company shall so notify the Contractor in writing, and the Contractor shall then proceed with the Work, and keep an accurate account as required under Section 14.5(c), including but not limited to, submittal to the Field Representative by 10:00 a.m. of the next Day worked, of an accurate daily account of the cost and time thereof for each Day worked on each Company-directed change or Contractor change claim, and the Contractor and the Company shall then negotiate in good faith with respect to such change.
- 14.5 If the Company authorizes a change in the Work as set forth in this Section 14.0 which adds to or decreases the cost of the Work, the Contractor shall proceed with the Work as changed, and the Company shall, in its

sole discretion, adjust the price by (a) a mutually agreed upon lump sum or unit price, (b) a unit price as set forth in the Agreement or, (c) in accordance with the following:

- 14.5.1 Reimbursement for all labor will be based on the actual direct verifiable amount of time incurred in performing the changes, at the labor rates set forth in the Agreement, which labor rates include all indirect and overhead expenses, including, but not limited to, field supervision, an allowance for small tools and equipment with a value less than \$1,500.00, and an allowance for new, and light duty vehicles up to 1.5 tons gross weight, and such items shall not be separately charged.
  - 14.5.2 Labor not anticipated by or itemized in the Agreement shall not be utilized by Contractor without the Company's prior written approval.
  - 14.5.3 The labor rates payable for an individual shall be reduced for each individual when that individual reaches the maximum annual FICA, FUI and SUI contribution limits;
  - 14.5.4 Except as otherwise provided in Section 14.5.1, reimbursement for the Contractor-owned tools and equipment not already employed at the Site (unless reimbursement is otherwise authorized by the Company), will be based on the actual verifiable amount of time incurred in performing the changes, at the equipment rates set forth in the Agreement, which equipment rates include costs for fuel, oil, grease, repair, parts, taxes, insurance, service and maintenance of any kind and all necessary attachments, overheads and profit and such items shall not be separately charged.
  - 14.5.5 Reimbursement shall not be allowed for any equipment or tools with a new cost of the equivalent of one thousand five hundred Dollars (\$1,500.00) or less, each.
  - 14.5.6 Contractor owned or purchased equipment not anticipated by or itemized in the Agreement shall not be utilized by Contractor without the Company's prior written approval, and the rate for such equipment shall in no event exceed the rates published in the most current "Rental Rate Blue Book for Construction Equipment" then in effect for the same or like equipment;
  - 14.5.7 Reimbursement for rental of equipment, not set forth in the Agreement, will be based on the actual verifiable cost for rental and necessary attachments, to the extent actually incurred in performing changes, plus, if applicable, the hourly operating cost, less operator and any assistants included in labor rates as set forth in Section 14.5.1. The rental rates shall in no event exceed the rates published in the then-most-current "Rental Rate Blue Book for Construction Equipment". Reimbursement shall not be allowed for any equipment or tools with a new cost of the equivalent of one thousand Dollars five hundred (\$1,500.00) or less, each.;
  - 14.5.8 Reimbursement for all Subcontractors, subject to the Company's prior authorization to subcontract in each specific instance of change, will be based on costs actually and reasonably incurred in performing changes. Applicable Subcontractor costs shall be subject to the same terms and conditions set forth in Sections 14.5.1 through 14.5.7, and 14.5.9 and 14.5.10, unless otherwise agreed to by the Company;
  - 14.5.9 Reimbursement for the actual verifiable net (no mark-ups) cost of materials directly purchased in support of the changed Work as authorized by the Company.
  - 14.5.10 In the event that the Contractor is to be paid pursuant to Sections 14.5.1 through 14.5.9, the Contractor shall, on a daily basis, furnish the Field Representative with Daily Work Reports (in a format acceptable to the Company) which briefly describe the Work rendered during the preceding Day and which are itemized to reflect: the names of all the Contractor's and the Subcontractor's personnel who performed Work under this Section 14.5(c), their rate per hour, the individual and total number of hours worked, and the total labor cost for the Day; equipment used, its rate per hour, the individual and total hours worked and the total equipment costs for the Day; and quantity(ies) of the Contractor furnished material(s) received and consumed for the Day, and the cost thereof if requested by the Company. All labor hours, equipment hours and material quantities shall be verified by signature of the Field Representative. A duplicate of the original signed Daily Work Report and receipts and invoices for the Contractor furnished materials, rented equipment and Subcontractors shall accompany all invoices which the Contractor presents for payment.
- 14.6 If the Company authorizes a change in the Work which decreases the amount and cost of the Work, such decrease shall not constitute basis for a claim by the Contractor for any loss or damages including anticipated profit.
  - 14.7 The Company shall not accept any changes submitted by the Contractor pursuant to this Section 14.0 after final payment.

- 14.8 All additional Work shall be performed in accordance with the terms and conditions of the Agreement unless otherwise specified.
- 14.9 Without limiting the foregoing, Contractor is responsible for evaluating and determining the applicability of New York's Roadway Excavation Quality Assurance Act (S.4887/A.5608) (the "REQAA") for each project. Any financial impact of the REQAA shall be included in the Contract Price. No change orders relative to the impact, financial or otherwise, of the REQAA shall be entertained and/or accepted by the Company under this Section 14.0 or other provision within this Agreement, and any costs associated with compliance with the REQAA shall be borne by the Contractor in its Contract Price.

## **15.0 CHANGED CONDITIONS**

- 15.1 The Contractor shall promptly, and before such conditions are disturbed, give the Field Representative written notice in accordance with Section 14.3 of subsurface or latent physical conditions at the Site differing materially from those indicated in the Agreement. The Company shall promptly investigate the conditions, and if it finds that the Company bears the risk under the terms of the Agreement of such unanticipated conditions and that such conditions do so materially differ and cause an increase or decrease in the cost of, or the time required for, performance of the Agreement, an equitable adjustment shall be made in accordance with Section 14.0. Any claim of the Contractor for adjustment hereunder shall not be allowed unless it has given notice as above required and before such conditions are disturbed.

## **16.0 SAFETY**

- 16.1 The Contractor shall be solely responsible and assume all liability for the safety and supervision of its employees and other persons engaged in the Work or on the Site. The Contractor shall establish and effectively and continuously implement a safety program that includes both occupational and process safety as applicable. The Contractor shall, and shall require its Subcontractors and their employees to comply with all applicable Federal, state and local safety directives, requirements, rules, regulations, laws and ordinances, whether the same are in force upon the execution of the Agreement or may in the future be passed, enacted or directed, including without limitation, compliance with the safety regulations and standards adopted under the Occupational Safety and Health Act of 1970 (OSHA), as amended from time to time. The Contractor shall continually inspect the Project and supervise its personnel to determine and enforce compliance with the above provisions.
- 16.2 The Contractor shall, and shall require its Subcontractors and their employees to comply with the Company's Safety and applicable Process Safety Requirements and all established Project safety rules as they may be amended from time to time and to take all necessary safety and other precautions to protect property and persons from damage or injury arising out of performance on the Project, whether the same are in force at the execution of this Agreement or may in the future be passed, enacted or directed.
- 16.3 The Contractor shall provide adequate safeguards, safety devices and protective equipment and enforce their use and take any other needed actions to protect the life, health and safety of the public and to protect property in connection with its performance on the Project.
- 16.4 The Contractor shall be responsible for providing adequate fire protection, shall take all necessary measures to prevent fire from occurring at the Site, and shall be responsible for all fires associated with or affecting the Work. The Contractor shall comply with the good practices recommended in National Fire Prevention Association Standard 241 and other national consensus standards for fire safety on construction projects.
- 16.5 The Contractor shall at its sole expense provide adequate first aid facilities and shall make those facilities available for the treatment of persons who may be injured or become ill at the Site or while engaged in the performance of Work.
- 16.6 In the event that the Contractor breaches or violates (a) the terms of this Section 16.0, (b) the requirements in the Contractor Safety Requirements, or (c) any applicable Federal, state or local safety directives, requirements, rules, regulations, laws or ordinances, including without limitation, compliance with the safety regulations and standards adopted under the Occupational Safety and Health Act of 1970 (OSHA) (collectively, the "Safety Requirements"), National Grid may, in its sole discretion:
- 16.6.1 Interrupt, suspend or delay the Project pursuant to Section 19.0; and/or
- 16.6.2 Require the Contractor to implement a corrective action plan pursuant to the Contractor Safety Requirements; or

16.6.3 terminate the Agreement for cause, pursuant to Sections 18.1 hereunder.

## **17.0 SURVEYS**

- 17.1 If specified, the Company will furnish the primary control to be used for establishing lines and grades required for the Work. The Contractor shall preserve all monuments, benchmarks, reference points and stakes. From the information provided by the Company, the Contractor shall develop and make all detail surveys needed for the performance of the Work.

## **18.0 TERM/TERMINATION**

### **18.1 Termination for Cause.**

- 18.1.1 If, during the term of the Agreement, the Company notifies the Contractor that any part of the Work is defective or deficient or not in accordance with any provision of the Agreement, regardless of the stage of its completion or the time or place of discovery of such errors and regardless of whether the Company has previously accepted it, the Company may order the Contractor to stop performing the Work until such defect or default has been corrected at the Contractor's sole expense. If the Contractor does not correct the default or defect within ten Days of notice, the Company may suspend its performance until such defect or default is corrected, and/or removed and replaced at the Contractor's expense.
- 18.1.2 The Contractor shall, at its sole expense, promptly remove from the Project all Work condemned by the Company as failing to meet the requirements of the Agreement, whether incorporated in the Project or not. The Contractor shall, at its sole expense, promptly replace and re-execute the condemned Work in accordance with the Agreement and shall remedy and/or correct all portions of the Project damaged by such removal and/or correction, including the work of other contractors.
- 18.1.3 If the Contractor does not take action to remove such condemned Work within ten Days after written notice from the Company, the Company may remove such Work and store it at the Contractor's expense. If the Contractor does not pay the expense of such removal and storage within ten Days thereafter, the Company may, upon written notice, remove such Work, which cost shall be borne by the Contractor, or sell such Work at auction or at private sale and retain the proceeds.
- 18.1.4 If the Company corrects Work or has Work corrected that has been damaged or that was not done in accordance with the Agreement, the Company may deduct the cost from the price as determined under the Agreement or invoice the Contractor for such costs, at its sole option. If the Company elects to invoice the Contractor, the Contractor shall remit to the Company such invoiced amount within thirty days of the date of the invoice.
- 18.1.5 The Contractor shall not be entitled to an extension of time by reason of the Work being found defective, deficient or in any way not in accordance with the requirements of the Agreement.
- 18.1.6 Notwithstanding any other provision of the Agreement, if the Contractor: (1) fails to prosecute the Work with diligence or has fallen behind the schedule and if in the opinion of the Company, fails to take all necessary steps to remedy the Contractor's failure to comply with the terms of the schedule; (2) fails to make prompt payment when due to Subcontractors; (3) fails to comply with any of the terms or conditions of the Agreement; (4) sells or transfers all or substantially all of its assets without the Company's prior written consent; (5) enters into any voluntary or involuntary bankruptcy proceeding or receivership; (6) makes a general assignment for the benefit of its creditors; (7) experiences a labor dispute which threatens adversely to affect the progress or cost of the Project hereunder or the Company's operation; (8) abandons the Work; (9) loses control of the Work from any cause; (10) refuses or neglects to provide sufficient and properly skilled or other labor or sufficient materials of proper quality; (11) does not meet the Company's requirements of a passive dashboard grade in ISN, "C" or above, prior to the contract award and throughout the lifecycle of the contract, or (12) fails to comply with the Safety Requirements, or (13) directly or indirectly causes a disruption of the Project, or should its presence result in a disruption of the Project or the Company's operation, then the Company shall have the right, without prejudice to any other right or remedy to terminate the Agreement, in whole or part. Such termination shall be effective upon written notice to the Contractor setting forth (a) the date of the termination and (b) that the Contractor shall immediately discontinue the Work to the extent specified in such notice. The Company may exercise its right of partial termination under the Agreement any number of times.

- 18.1.7 In the event the Company terminates all or any part of the Agreement for cause, the Company may finish the Work or have the Work finished by a third party by whatever method it may deem expedient. The Company shall not be required to obtain the lowest price for completion of the Work, but may make such reasonable expenditures as may best accomplish such completion; and the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price as determined under the Agreement exceeds the expense of finishing the Work, including compensation for additional managerial and administrative services and all other costs and expenses actually incurred by the Company as a direct result of the breach and termination, the Contractor hereby waives such excess. If such expenses exceed the unpaid balance, the Contractor shall pay the difference to the Company within 30 Days of the Company's notice thereof to the Contractor.
- 18.1.8 If all or any part of the Agreement is terminated for cause, the Company shall be entitled, at its option, to (a) retain any Work previously delivered to the Project or paid for by the Company, (b) require delivery of any Work and/or documents, regardless of their stage of completion which are in the Contractor's possession or control, (c) require the Contractor to assign to the Company all or any of the Contractor's rights with respect to orders or subcontracts which relate to the Project, (d) reject all or any of the Work, regardless of whether it has been delivered to the Project, (e) require the Contractor to cooperate with a new contractor for the period of time necessary to familiarize the new contractor with the Project, (f) have another contractor complete the Agreement at the Contractor's expense, (g) require completion according to the terms of the Agreement of any Work which has not been terminated, and (h) take possession of all or part of the Contractor's equipment located at the Site for the purpose of completing the Work. The Contractor shall be required to refund to the Company any payments theretofore made for rejected Work. The Company shall be entitled to withhold from any payment otherwise due to the Contractor an amount sufficient to protect the Company from any outstanding or anticipated liens or claims in connection with Work which has not been rejected or anticipated costs to complete the Work in excess of the remaining Contract Price. The Company shall not be liable for any loss or damage (including, but not limited to, special, indirect, incidental, or consequential damages or anticipated profits) incurred by reason of termination for cause of the Agreement.
- 18.1.9 No amount shall be paid or payable by the Company for the Contractor's termination costs including, but not limited to, demobilization costs, costs associated with the transfer or termination of personnel, or loss of anticipated profit.
- 18.1.10 All warranties and guarantees, including without limitation those set forth in Section 8.0, shall survive termination of the Agreement to the extent that they relate to Work which has not been rejected or terminated, and any other provisions of the Agreement which survive the date of termination shall continue to be binding upon the Contractor.
- 18.1.11 In the event that a termination by the Company of all or part of the Agreement for cause, under Section 18.1 is determined to have been made without cause, such termination shall thereafter be treated as termination for convenience under Section 18.2.
- 18.2 Termination for Convenience.
- 18.2.1 Notwithstanding any other provision of the Agreement, the Company may, at its sole discretion, at any time, for any reason, by notice to the Contractor, terminate the Agreement in whole or in part without cause, and such termination shall not constitute a breach of contract. Such termination shall be effective upon the date set forth in the written notice and the Contractor, unless otherwise directed by the Company, shall immediately:
- (a) Stop the Work hereunder on the date and to the extent specified in such notice;
  - (b) Place no further orders or subcontracts for any part of the Project other than for Work which has not been terminated;
  - (c) Terminate, as directed by the Company, all orders and subcontracts to the extent that they relate to Work which has been terminated;
  - (d) Settle, with the approval or ratification of the Company, to the extent the Company may require, all outstanding liabilities and claims arising out of the Contractor's termination of orders and subcontracts pursuant to Section 18.2;
  - (e) Assign to the Company, as required by the Company, any and all of the Contractor's rights with respect to orders or subcontracts which relate to terminated Work;

- (f) Deliver to the Company, as required by the Company, any or all Work or documents, technical data or other information and materials regardless of their stage of completion, which are in the Contractor's possession or control;
  - (g) Use its best efforts to sell, transfer or otherwise dispose, for the Company's credit, in the manner, at the times, to the extent and at the prices directed or authorized by the Company, any or all of the Work, provided that the Contractor (a) shall not be required to extend credit to any buyer, and (b) may acquire any such Work upon the same terms as it would be entitled to sell or transfer such Work to a third party;
  - (h) Work with a new contractor for the period of time necessary to familiarize the new contractor with the Project;
  - (i) Complete any Work which has not been terminated pursuant to such notice; and
  - (j) Take whatever action may be necessary to preserve and protect the Work and to mitigate the Contractor's damages in connection with the partial or complete termination of the Agreement.
- 18.2.2 In no event shall the total of the Partial Performance Payment and/or termination costs (as provided in Section 18.2.6) exceed the price as determined under the Agreement.
- 18.2.3 The Contractor's claim for Partial Performance Payment and/or termination costs shall be contingent upon the Contractor's good faith diligent compliance with the provisions of Section 18.2 to the Company's satisfaction which will not be unreasonably withheld, and shall be submitted to the Company within three months of the effective date of termination for convenience. If such claim is not submitted within three months, the Contractor waives any right to the claim for Partial Performance Payment and/or termination costs.
- 18.2.4 All warranties and guarantees set forth in Section 8.0 shall survive termination of the Agreement to the extent that they relate to Work which has not been rejected or terminated, and any other provisions of the Agreement which survive the date of termination shall continue to be binding upon the Contractor.
- 18.2.5 A termination for convenience shall not entitle the Contractor to damage remedies that would normally arise as a result of breach of contract, whether such damage remedies are categorized as direct, special, indirect, incidental or consequential damages. Rather, the Contractor's rights are exclusively limited to Partial Performance Payment and/or termination costs.
- 18.2.6 In the case of termination for convenience of the Agreement, the Contractor's termination costs shall be limited to: (1) reasonable documented direct costs that are directly associated with termination responsibilities identified in Section 18.2; and (2) reasonable demobilization costs incurred within thirty days of the date of termination. In no case shall the Contractor be entitled to recover lost profits, nor to recover any costs and expenses associated with the inability of the Contractor to find work for idle employees and equipment that have been rendered idle as a result of termination of the Agreement.
- 18.3 In the case of termination of the Agreement, the Contractor, if notified to do so by the Company, shall promptly, but in any event no more than seven Days from the Company's request, remove any part or all of its equipment, material, and supplies from the Site, failing which the Company shall have the right to remove such equipment and supplies at the expense of the Contractor.
- 18.4 The Agreement shall become effective when executed by both parties and shall continue in full force and effect until the expiration of all guarantees, warranties and indemnities provided for therein, unless earlier terminated in accordance with Section 18.1 or 18.2.

## **19.0 COMPANY'S RIGHT TO SUSPEND THE AGREEMENT**

- 19.1 The Company may at its sole discretion interrupt, suspend or delay execution of all or any part of the Project for any reason whatsoever upon written notice to the Contractor specifying the nature and expected duration of the interruption, suspension or delay. The Company's notice of suspension shall designate the amount and type of labor and equipment to be committed to the Work, if any, during the period of suspension. The Contractor shall utilize its labor, equipment and any other resources so that costs are minimized during the suspension. Except as provided in Section 34.6, if, in the Contractor's opinion, such interruption would result in substantially increased cost, the Contractor shall promptly notify the Company in writing in accordance with Section 14.0.

- 19.2 The Contractor shall immediately resume any of the Work so interrupted, suspended or delayed when directed to do so by the Company. Except as provided in Section 18.1.9, the schedule and price as determined under the Agreement shall be revised to compensate for the interruption, suspension or delay. Adjustments to the price shall be adequate to compensate the Contractor for any verifiable reasonable costs or expenses the Contractor actually incurs as a direct result of the interruption, suspension or delay despite reasonable efforts to mitigate such costs and expenses. Such adjustment to the price and schedule shall constitute full settlement to the Contractor for the suspension. In no event shall the total paid to the Contractor exceed the Contract Price as set forth in the Agreement. In no event shall the Contractor be entitled to any damages, including loss of anticipated profits.
- 19.3 In its notice of suspension, the Company will designate what Work, if any, is to be continued. Upon receipt of such notice, the Contractor shall, unless otherwise directed by the Company:
- 19.3.1 Immediately discontinue the Work on the date and to the extent specified in the notice;
  - 19.3.2 Place no further orders or subcontracts for or in connection with the Project other than to the extent required in the notice of suspension;
  - 19.3.3 Promptly make every reasonable effort to obtain suspension upon terms satisfactory to the Company of all orders and subcontracts to the extent required by the suspension; and
  - 19.3.4 Continue to protect and preserve the Project.
- 19.4 Notwithstanding any other provision of the Agreement, no compensation or extension of time will be granted to the Contractor for any suspension to the extent that the suspension is caused directly or indirectly by the Contractor's acts or failure to act, including, but not limited to, the Contractor's failure to comply with the safety and environmental protection provisions of the Agreement or to the extent that an equitable adjustment is provided for or excluded under any other provision of the Agreement.
- 19.5 Notwithstanding the foregoing, if the Work may directly affect the continuity of electrical or gas service, the Company, at its option, may from time to time immediately suspend the Contractor's Work without prior written notice in order to avoid problems such as safety hazards or interruption of service.

## **20.0 EMERGENCY ASSISTANCE (CONTRACTOR'S RIGHT TO SUSPEND PERFORMANCE)**

- 20.1 If the Contractor is notified and requested to provide emergency assistance, by an entity other than the Company, the Contractor shall request a temporary release from the Agreement. It will be in the Company's discretion as to whether this request will be granted. If the Company agrees to temporarily authorize the release of the Contractor from its current obligations, both parties shall sign a temporary release document, indicating for whom the Contractor will be working and the anticipated release period. The temporary release document will include the Contractor warranties that the Company will not incur any costs or liabilities due to the Contractor's release and that the release will cause no significant delay in the completion of the Company's Project.

## **21.0 FORCE MAJEURE**

- 21.1 Any delay of either party in the performance of its required obligations hereunder shall be excused if and to the extent caused by unprecedented weather conditions, fire, explosion, riot, war, strike by the Company's or its Affiliates' employees, court injunction or order, federal and/or state law or regulation, or order by any federal or state regulatory agency, but only to the extent that: 1) such events are beyond the reasonable control of the party affected, 2) such events were unforeseeable by the affected party and the effects were beyond its reasonable efforts to prevent, avoid or mitigate, 3) the affected party uses every reasonable effort to prevent, avoid or mitigate the effects, 4) prompt written notice of such delay be given by such affected party to the other; and 5) the party affected uses its best efforts to remedy the resulting effects in the shortest practicable time. Upon receipt of such notice, if necessary, the time for performing the affected activities shall be extended for a period of time reasonably necessary to overcome the effect of such delays. Such extension shall be the sole remedy and compensation for each *force majeure* event. Notwithstanding the foregoing, the Company shall have the right to terminate the Agreement under Section 18.2.
- 21.2 The written notice required under Section 21.1 shall be sent by the affected party within five Days of the commencement of any such delay and shall specify the nature, cause, date of commencement and anticipated extent of such delay or nonperformance and whether it anticipates that any delays in scheduled delivery or



performance will result. Such notice shall be submitted in ample time to permit full investigation and evaluation of any claimed delay or nonperformance. Failure to provide such notice shall constitute a waiver of any claim.

- 21.3 Within 30 Days after the termination of any delay occasioned by an event of *force majeure*, the affected party shall give written notice to the other party specifying the actual duration and impact of the delay.
- 21.4 Notwithstanding the foregoing, neither the Contractor's inability to obtain required permits on schedule, nor strikes and/or labor disputes involving the Contractor's and its Subcontractors' employees shall be considered a *force majeure* event.
- 21.5 The Company shall extend the schedule for changes in the Project, as provided in Section 14.0, for *force majeure* events, as provided in Section 21.0, or for suspension of Work, as provided in Section 19.0. Unless pursuant to Sections 14.0 or 19.0, extensions of time shall not be a basis for any increased payment under the Agreement.
- 21.6 The Contractor shall give the Company prompt written notice of any occurrence or conditions which in the Contractor's opinion entitle it to an extension of time. Such notice shall be submitted in ample time to permit full investigation and evaluation of the Contractor's claim. Failure to provide such notice shall constitute a waiver by the Contractor of any claim.

## **22.0 LIABILITY AND INDEMNIFICATION**

- 22.1 If any act or omission on the part of the Contractor or its Subcontractors or any person under Contractor's control causes in whole or in part, death or injury to any person, including but not limited to the Company's or its Affiliates' employees, or any damage to, environmental contamination of, or destruction of any property, including but not limited to property of the Indemnified Parties, the Contractor shall be liable for any claims, losses, damages and costs (including legal expenses) arising therefrom.
- 22.2 To the fullest extent allowed by law, the Contractor shall indemnify, defend, and save harmless the Indemnified Parties from any loss, damage, liability, cost, third party suit, charge, expense, or third party cause of action, including the Indemnified Parties' legal expenses, whether unconditionally certain or otherwise, as they exist on the effective date of the Agreement or arise at any time thereafter, (including but not limited to reasonable fees and disbursements of counsel incurred by an Indemnified Party in any action or proceeding between an Indemnified Party and any third party) arising out of any damage or injury to property of an Indemnified Party, the Contractor and/or third parties (including real property, personal property and environmental damages), persons (including injuries resulting in death), or economic damages, directly or indirectly caused by or arising out of or in any way connected with (i) Work or Services performed in connection with the Agreement, including, but not limited to, any act or omission of the Contractor, its agents, employees, Subcontractors, or suppliers, including any breach of the Agreement thereby, (ii) any negligence, willful misconduct, or breach of law of the Contractor, its agents, employees, Subcontractors, and suppliers, (iii) any third party claim under U.S. law pertaining to copyright infringement, trademark infringement, patent infringement, libel, slander, defamation, invasion of privacy, piracy, or plagiarism arising from the Company's use, consistent with the terms of the Agreement, of the final deliverables (except to the extent that such third party claim arises from materials supplied by the Company, or any unauthorized modifications to the deliverables by the Company), (iv) any equipment, property or facilities used by the Contractor, its agents, employees, Subcontractors, and suppliers, or (v) failure of the Contractor or its Subcontractors to comply with Laws and Standards.
- 22.3 The Contractor shall take prompt action to defend and indemnify the Indemnified Parties against claims, actual or threatened, but in no event later than notice by the Company to the Contractor of the service of a summons, complaint, petition or other service of process against the Company alleging damage, injury, liability, or expenses subject to the indemnification obligations set forth in Section 22.1. If such claim is subject to the foregoing indemnity obligation, the Contractor shall defend any such claim or threatened claim, including as applicable, engagement of legal counsel, to respond to, defend, settle, or compromise any claim or threatened claim. The Contractor shall not settle any claim, action, suit or proceeding for which it is indemnifying the Company in a manner that would impose any legal liability or financial obligation on the Company without first obtaining the Company's written consent.
- 22.4 Furthermore, the Contractor understands that, in the event that it has breached its obligations under this Section 22.0, it is responsible for any and all reasonable costs and expenses incurred by the Company to enforce this indemnification provision.

- 22.5 The Company may participate in the defense and retain its own counsel in connection with any claim. If the Contractor fails to assume control of the defense of any claim, the Company may defend the claim at the Contractor's cost. The Company's defense of a claim does not relieve the Contractor from its obligations to defend or indemnify.
- 22.6 The obligations under Section 22.0 shall not be limited in any way by any limitation on the Contractor's insurance or by a limitation on the amount or type of damages. In addition, the obligations under Section 22.0 shall not be limited in any way by any compensation or benefits payable by or for the Contractor or any Subcontractor under worker's compensation acts, disability benefit acts or other employee acts.
- 22.7 The Contractor shall obtain from its Subcontractors, for the Indemnified Parties' benefit, agreements substantially similar to those contained in this Section 22.0. Notwithstanding any other provision of the Agreement, this Section 22.0 shall survive the termination, cancellation, or expiration of the Agreement.

## 23.0 INSURANCE

- 23.1 From the commencement of the Agreement, through final expiration or longer where specified below, the Contractor shall provide and maintain, at its own expense, insurance policies, intended to be primary (with no right of contribution by any other coverage available to the Insured Parties), covering all Work and Services to be performed under or in connection with this Agreement, issued by reputable insurance companies with an A.M. Best Rating of at least B+, which at least meet or exceed the requirements listed herein:

- 23.1.1 Workers Compensation and Employers Liability Insurance as required by the applicable law. Coverage shall include the U.S. Longshoremen's and Harbor Workers Compensation Act, the Jones Act, and Alternate Employer endorsement, if applicable. The employer's liability limit shall be at least \$1,000,000 each per accident, per person disease and disease policy limit. In the event the Alternate Employer endorsement has not been added to the policy at the time a claim arises, the Contractor shall indemnify and hold harmless the Insured Parties from any liability that would have otherwise been covered had that endorsement been added. If the Contractor is exempt from having to obtain and maintain workers' compensation coverage due to their legal status as a sole proprietor or partnership, Contractor shall obtain: 1) Long term disability insurance covering any illness or injury incurred in connection with this Agreement that prevents the Contractor from working, with benefits of at least 50% of the Contractor's monthly income on the last day before the disability begins; and 2) Health care insurance, covering any loss occasioned by bodily injury, sickness or disease, and medical expense, with limits, coverage, deductibles, co-insurance payments, and any other cost sharing features customarily maintained by other contractors of a similar size and business nature.

- 23.1.2 Commercial General Liability Insurance ("CGL"), covering all Work to be performed under the Agreement, with minimum limits of:

Combined Single Limit	\$1,000,000 per occurrence
General Aggregate and Product Aggregate	\$2,000,000

Downstate NY Requirements:

Combined Single Limit	\$2,000,000 per occurrence
General Aggregate and Product Aggregate	\$4,000,000

This policy shall include Contractual Liability (with this Agreement being included under the definition of "Insured Contract" thereunder), Products-Completed Operations coverage, and, if applicable, explosion, collapse, and underground coverage ("XC&U"). If the Products-Completed Operations coverage is written on a claims-made basis, coverage shall be maintained continuously until the later of: (a) three years after Final Acceptance, or (b) the applicable state statute of repose.

A liability insurance policy containing an annual aggregate limit of liability shall be amended to reflect that the annual aggregate limit applies on a per project basis.

- 23.1.3 Automobile Liability, covering all owned, non-owned and hired vehicles used in connection with all Work or Services to be performed by or on behalf of Contractor with minimum limits of:
- |                       |                            |
|-----------------------|----------------------------|
| Combined Single Limit | \$1,000,000 per occurrence |
|-----------------------|----------------------------|
- 23.1.4 Umbrella or Excess Liability, with a minimum per occurrence limit of \$4,000,000 (or \$8,000,000 if the Work involves Downstate New York paving Work or \$25,000,000 if the Work involves Downstate New York gas mains and services). This coverage shall run concurrent to the CGL required in 23.1.2 above, shall apply excess of the required automobile, CGL and employer's liability coverage required in this Section 23.0, and shall provide additional insured status as outlined below.
- 23.1.5 Watercraft Liability, if the Work or Services requires the use of watercraft, with the same minimum limits of liability as outlined in Section 23.1.2.
- 23.1.6 Aircraft Liability, if the Work or Services requires the use of aircraft, with a limit of liability of not less than \$10,000,000 combined single limit.
- 23.1.7 Owners & Contractors Protective Liability, with a limit of liability not less than \$1,000,000, if required by use of subcontractors in the work being performed and mutually agreed to by the Company and the Contractor. Proof of coverage under the Contractor's CGL policy will satisfy this requirement.
- 23.1.8 Cyber Liability Insurance, (if applicable), either purchased separately or endorsed to Professional Liability/Errors & Omissions, covering liability arising from or out of the Services that involve the use and access of data and/or the need for the Contractor to use security measures and requirements under this Agreement at minimum limits of \$10,000,000 "per claim". Coverage shall include, but not be limited to, the following, as applicable - Internet and network liability (providing protection against liability for system attacks; denial of service attacks or loss of service; introduction, implantation, or spread of malicious software code; and unauthorized access and use), infringement of privacy or intellectual property rights, breach mitigation and regulatory coverage, internet advertising and content offenses, defamation, errors or omissions in software and/or systems development, implementation and maintenance. Waiver of Subrogation required from this policy in favor of Company and its affiliates.
- 23.1.9 Other insurance as required and as mutually agreed upon by the Company and the Contractor.
- 23.1.10 The Contractor shall name the Insured Parties as additional insureds, in order to provide the same protection under the Contractor's policies as other insureds automatically covered, on the coverages in Sections 23.1.2, 23.1.3, and 23.1.4. The following language should be used when referencing the additional insured status: **National Grid USA, its direct and indirect parents, subsidiaries and affiliates shall be named as additional insured.** These policies shall be primary and noncontributory for liabilities associated with or arising out of all Work or Services to be performed by or on behalf of the Contractor, including ongoing and completed operations.
- 23.1.11 Contractors Pollution Liability ("CPL"): covering any sudden and accidental pollution liability which may arise out of, under, or in connection with this Agreement, including all Work and Services to be performed by or on behalf of Contractor, or that arise out of the Contractor's use of any owned, non-owned or hired vehicles, with a minimum liability limit of: (a) Bodily Injury ("BI") - \$1,000,000 per occurrence and Property Damage ("PD") - \$ 500,000 per occurrence; or (b) Combined Single Limit - \$1,000,000 per occurrence. This coverage shall apply on a per project basis. This requirement may be satisfied by providing either this CPL policy, which would include naming the Insured Parties, including their officers and employees, as additional insured's as outlined in this section **OR** by providing coverage for sudden and accidental pollution liability under the CGL and commercial automobile insurance policies required above - limited solely by the Insurance Services Organization ("ISO") standard pollution exclusion, or its equivalent. In the event the Contractor is unable to secure and/or maintain any or all of this sudden and accidental

pollution liability coverage, the Contractor agrees to indemnify and hold the Insured Parties harmless against any and all liability resulting from any coverage deficiency that is out of compliance with this insurance requirement

- 23.1.12 Risk of Loss: The Contractor shall be responsible for all risk of loss to its equipment and materials, and any other equipment and materials owned by its employees or by other third parties that may be in their care, custody and control. If this coverage is excluded from the Commercial General Liability policy, then Company will accept coverage under the Contractor's property policy. In the event that any Goods are supplied by the Insured Parties, Company will provide the insurable value of the Goods to the Contractor in writing, both cumulatively and on a maximum per item basis. The Contractor will provide replacement cost insurance for these Goods under a blanket builder's risk policy, an equipment floater, or other equivalent coverage, while such Goods are under the care, custody and control of the Contractor. Such insurance shall cover all Goods outlined in the Agreement or as noted on subsequent contract amendments. The coverage limit shall apply on either a per location basis or a maximum per item basis, and shall name the Insured Parties, as a Loss Payee with respect to their insurable interest.
- 23.2 These requirements are in addition to any which may be required elsewhere in this Agreement. In addition, the Contractor shall comply with any governmental and/or site-specific insurance requirements even if not stated herein. This includes providing evidence of insurance and additional insured status, if necessary, to any third party property owner on which the Contractor's work activities associated with this Agreement may be taking place as required by law or permit. The Contractor shall comply with any governmental and/or site-specific insurance requirements even if not stated herein.
- 23.3 Subcontractors. In the event that the Contractor uses subcontractors in connection with the provision of the Goods, the Contractor shall require all such subcontractors provide the same insurance coverages as shown in Sections 23.1.1, 23.1.2, 23.1.3, and 23.1.4. The Contractor shall remain liable for the performance of the subcontractor, and such contract relationship shall not relieve the Contractor of its obligations under this agreement. In additions, such subcontractor shall name both the Insured Entities and Contractor as additional insured under the coverages in Sections 23.1.2, 23.1.3, and 23.1.4. If requested, Contractor will provide Company with an insurance certificate from its subcontractor evidencing this coverage.
- 23.4 Certificate(s) of Insurance. Prior to providing the Services or starting the Work, Contractor shall promptly provide the Company with Certificate(s) of Insurance for all coverages required in the Agreement at the address National Grid USA, Attention Risk & Insurance Department, 300 Erie Blvd West, A-4, Syracuse, NY 13202. Policies shall provide that at least 30 days prior written notice shall be given to the Company in the event of any cancellation or diminution of coverage and certificates shall outline the amount of deductibles or self-insured retentions which shall be for the account of the Contractor. Such deductibles or self-insured retentions shall not exceed \$100,000 unless agreed to by the Company's Risk & Insurance Department.
- 23.5 Any combination of Commercial General Liability, Automobile Liability and Umbrella Liability policy limits can be used to satisfy the limit requirement in Sections 23.1.2 ("CGL"), 23.1.3 ("Automobile Liability") and 23.1.4 ("Umbrella or Excess Liability") above.
- 23.6 Proof of qualification as a qualified self-insurer, if approved in advance in writing by Company, will be acceptable in lieu of securing and maintaining one or more of the coverages required in this Insurance Section 23.0. Such acceptance by Company shall become a part of this insurance provision by reference herein.
- 23.7 The Contractor and its insurance carrier(s) shall waive all rights of recovery against the Insured Parties and their directors, officers and employees, for any loss or damage covered under those policies referenced in this insurance provision, or for any required coverage that may be self-insured by the Contractor. To the extent the Contractor's insurance carriers will not waive their right of subrogation against the Insured Parties, the Contractor agrees to indemnify the Insured Parties for any subrogation activities pursued against them by the Contractor's insurance carriers. However, this waiver shall not extend to the gross negligence or willful misconduct of the Insured Parties or their employees, subcontractors or agents.
- 23.8 If any policy should be canceled before final payment by the Company to the Contractor and the Contractor fails immediately to procure other insurance as specified, the Company reserves the right to procure such insurance and to deduct the cost thereof from any sum due the Contractor under the Agreement or to invoice the Contractor.

- 23.9 The Contractor shall furnish the Company's Risk & Insurance Department with copies of any accident report(s) sent to the Contractor's insurance carriers covering accidents, incidents or events occurring in connection with or as a result of the provision of the Work or Services. If the Company is named in a lawsuit involving the operations and activities of the Contractor associated with this agreement, the Contractor shall promptly provide copies of all insurance policies relevant to this accident or incident if requested by Company.
- 23.10 The Contractor represents that it has full policy limits available and shall notify the Company's Risk & Insurance Department in writing when coverages required herein have been reduced as a result of claim payments, expenses, or both.
- 23.11 Nothing contained in these insurance requirements is to be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from its work under the Agreement, or limiting, diminishing, or waiving the Contractor's obligation to indemnify, defend and save harmless the Company and the Indemnified Parties in accordance with these Terms and Conditions.

## **24.0 RIGHTS, CLAIMS AND DISPUTES**

- 24.1 Any claim which the Contractor may have against the Company arising out of the Work shall be presented in writing to the Company no later than 30 days after the first occurrence of the circumstance which gave rise to the claim. The claim shall contain a concise statement of the question or dispute and the relevant facts and data (including the applicable Agreement provision) which support the claim. The Contractor shall furnish any additional information which the Company may require to enable it to evaluate and decide the claim.
- 24.2 Failure to submit any claim in such 30-day period shall constitute a waiver on the Contractor's part for entitlement to either additional reimbursement or additional time for performance under the Agreement
- 24.3 Any dispute between the Company and the Contractor with respect to the Agreement that cannot be resolved in the normal course by the respective representatives of the Parties, shall be referred to the responsible officers of the Company and the Contractor for resolution. Notwithstanding the existence of a dispute, the Company shall be obligated to maintain payments not in dispute to the Contractor and the Contractor shall be obligated to proceed (or to continue) with the provision of Goods unless otherwise directed by the Company.

## **25.0 RIGHTS AND REMEDIES; COMPANY LIABILITY**

- 25.1 The rights and remedies of the Company herein shall not be exclusive and are in addition to any other rights or remedies provided by law or equity.
- 25.2 The Company shall in no event be liable to the Contractor for any incidental, consequential, special, contingent, multiple, or punitive damages in connection with the Agreement, including, without limitation, loss of profits, attorney's fees, or litigation costs for any actions undertaken in connection with or related to the Agreement, including without limitation damage claims based on causes of action for breach of contract, tort (including negligence), Massachusetts Chapter 93A, or any other theory of recovery.
- 25.3 All provisions related to warranty, indemnification, confidentiality and proprietary rights shall expressly survive termination or expiration of the Agreement.
- 25.4 In no case shall the Company's liability to the Contractor exceed the price for Work as determined under the Agreement.

## **26.0 DISCREPANCIES AND CLAIMS**

- 26.1 If the Contractor, in the course of the Work, finds any discrepancy between the Agreement, or what could have been reasonably inferred or interpreted there from, and the physical conditions of the locality, or any errors or omissions in the Agreement or in the layout as given by survey points and instructions, or if the Contractor believes, determines or observes that performance of any part of the Project as required by the Agreement would or might result in the Project being deficient or unsafe or failing to comply with standard practice, law or regulation, the Contractor shall immediately notify the Field Representative in writing and shall suspend that part of the Work until otherwise directed by the Company. Any Work done after such discovery or after the Contractor should have been reasonably expected to make such discovery, until

authorized by the Company, shall be done at the Contractor's risk, and the Contractor shall be liable for all costs arising there from, unless otherwise authorized in writing by the Company.

- 26.2 Except in an emergency endangering life or property, if the Contractor claims that any instructions, written or oral, or by Drawings or other media issued after the date of the Agreement involve extra cost and/or an extension of time, it shall give the Company written notice thereof as set forth in Section 14.3. No such claim shall be valid unless so made.

## **27.0 DOCUMENTS/INTELLECTUAL PROPERTY**

- 27.1 The Contractor shall supply all documents in quantities and types, at times, according to instructions, and in the manner set forth in the Agreement. Upon the Company's request, any other documents prepared by the Contractor in connection with the Project shall be delivered to the Company upon completion, cancellation or termination of the Agreement. Any document, which is prepared by the Contractor in connection with the Agreement, shall be submitted in accordance with the Agreement, with sufficient time for the Company to review and comment.
- 27.2 All documents prepared, procured, or developed by the Contractor and furnished to the Company in connection with the Project shall be the property of the Company and may be used by the Company without restriction, whether during the term of the Agreement or thereafter.
- 27.3 If the Work, any intellectual property utilized by the Contractor in providing the Work, or the Company's use of the Work (each an "Infringing Element") becomes the subject of any claim, suit, or proceeding for infringement or other intellectual property right violation, the Contractor shall, at its sole expense and at the Company's option: 1) secure for the Company the right to its continued use, 2) replace the Infringing Element with a substantially equivalent, non-infringing item, or 3) modify the Infringing Element so that it is non-infringing.
- 27.4 Royalties and fees for patents covering materials, articles, apparatus, devices, equipment or processes used in the Work shall be included in the Contract Price. The Contractor shall satisfy all demands that may be made at any time for such royalties or fees.
- 27.5 Any and all works, expressions, inventions, ideas, discoveries, improvements or developments (whether or not patentable), as well as all copyrights, patents or trademarks thereof, that may be conceived or made by the Contractor or Contractor's partner(s), employee(s), agent(s), vendor(s), contractor(s), supplier(s) or any other party employed by Contractor, or subcontractor to Contractor of any tier, to satisfy its obligation under the Agreement shall be work made for hire and shall be deemed the property of Company. All such works, expressions, inventions, ideas, discoveries, improvements or developments, as well as all copyrightable expressions thereof, shall be deemed to fit into one or more of the specifically enumerated categories of works contained in 17 U.S.C. § 101 *et seq.*, and any subsequent revisions thereof. The Contractor and/or Contractor's partner(s), employee(s), agent(s), vendor(s), contractor(s), supplier(s), or any other party employed by Contractor, or subcontractor to Contractor of any tier, to satisfy its obligation under the Agreement shall promptly furnish Company with complete information, including, without limitation, a written description thereof giving the date of the work, invention or expression and naming the inventors or authors and others involved in the development or writing of the work, invention or expression. Company shall have the sole power to determine whether or not and in which countries and jurisdictions patent application shall be filed or copyrights registered and to determine the disposition of title to and rights in any works, expressions, inventions, ideas, discoveries, improvements or developments and in any United States and foreign patent applications, patents or copyrights that may result. Memoranda, notes and experimental works, descriptions, diagrams and other data generated in performance of the Work pertaining to any and all works, expressions, inventions, ideas, discoveries, improvements and developments covered by the Agreement shall be available at reasonable times to Company. Contractor shall assist Company in the implementation of this section by obtaining and providing detailed written descriptions of each invention, idea, discovery or expression sufficient for filing patent or copyright applications, by providing an evaluation of the patentability or copyrightability of each disclosure, by assisting Company in the prosecution of patent and copyright applications, and by executing or having executed by appropriate persons any and all documents which may be necessary or desirable to cause title in such inventions, ideas, discoveries, or expressions to vest with Company. The cost of such assistance shall be considered separate and distinct and shall be mutually agreed upon between the Company and Contractor.

## **28.0 CONFIDENTIALITY/PROPRIETARY INFORMATION**

- 28.1 The Contractor hereby acknowledges that during the course of the Contractor's participation in a bid and/or selection process and in the performance of the requirements of the Agreement, the Contractor may be furnished with or exposed to information that is proprietary and confidential to the Company and/or its Affiliates, ("Confidential Information"). The Party disclosing such Confidential Information is referred to herein as the "Disclosing Party" and the Party receiving such Confidential Information is referred to herein as the "Receiving Party." Confidential Information shall include but shall not be limited to information concerning pricing, terms and conditions, customers, employees, facility locations, techniques, methods, computer programs, software, drawings, maps, plans, and data relating to the Company and/or its Affiliates.
- 28.2 The Contractor agrees that (a) the Contractor shall use such Confidential Information only in connection with its participation in a bid and/or selection process or the requirements performed under the Agreement and (b) shall not disclose such Confidential Information to third parties or use such Confidential Information for any other purpose without the prior written consent of an authorized representative of the Company.
- 28.3 The Contractor may disclose Confidential Information to its partner(s), employee(s), agent(s), vendor(s), contractor(s), Subcontractor(s), or any other party employed by the Contractor if and only if 1) such disclosure is necessary in order to perform the Work and/or Service under the Agreement; and 2) the party to whom the Confidential Information will be disclosed has executed and delivered to the Company a Non-Disclosure Agreement. If the Contractor has any question about whether information is Confidential Information, it shall contact the Company prior to disclosing such information for a determination as to its proprietary status.
- 28.4 Upon termination of the Agreement, the Contractor shall immediately return such Confidential Information, including without limitation any drawings, maps, or electronic data or copies thereof, to the Company.
- 28.5 Both Parties acknowledge that the breach of the Contractor's obligations under this provision will result in irreparable harm to the Company and/or its Affiliates. Any breach of these provisions by the Contractor shall entitle the Company and/or its Affiliates to make use of any and all available remedies, at law and in equity including, but not limited to, injunctive relief.
- 28.6 If either Party is required by law to disclose Confidential Information of the other Party (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demands, regulation, statute or otherwise), the Party required to make such disclosure will, when permitted by law, (i) notify the other Party and provide the other Party the opportunity to review the Confidential Information, and (ii) provide the other Party the opportunity to seek a protective order or other appropriate remedy. In the event that a protective order or other remedy is not obtained or is not pursued within a reasonable period of time, the Party required to make disclosure or such Party's representatives will furnish only that portion of the Confidential Information that it is legally required to disclose and the Party required to make disclosure will request that confidential treatment be accorded to the Confidential Information by relevant third parties.
- 28.7 Notwithstanding anything to the contrary in this Section 28.0, neither Party shall be required to hold confidential any information that (i) becomes publicly available other than through disclosure by the Receiving Party; (ii) is independently developed by the Receiving Party; or (iii) becomes available to the Receiving Party without restriction from a third party, provided that such third party is not bound by a confidentiality agreement with the Disclosing Party or its representatives.
- 28.8 In no event shall data or information provided by the Contractor under the Agreement or generated as a result of performance of the Work thereunder be deemed as proprietary to the Contractor. Likewise, reports generated as a result of performance of the Work thereunder shall not be proprietary to the Contractor.
- 28.9 The obligations set forth in this Section 28.0 shall survive expiration or termination of this Agreement for a period of five years.
- 28.10 Notwithstanding any other provision of this Agreement, in the event the Parties have executed a Non-Disclosure Agreement ("NDA") that concerns the subject matter of this Agreement, including any NDA that is attached to this Agreement (as a schedule, exhibit, or otherwise), or made a part of the Agreement by reference, such NDA shall govern the exchange of confidential information between the parties in relation to this Agreement, i.e. Information (as defined in such NDA), and, notwithstanding any terms to the contrary in the NDA regarding term or expiration, shall remain in full force and effect for the duration of this Agreement, or such for longer time as the NDA may provide.

## **29.0 PUBLICITY**

- 29.1 Notwithstanding any other provision of the Agreement, the Contractor shall not, without the Company's prior written consent, publish any information pertaining to the Agreement, whether during the term of the Agreement or thereafter.
- 29.2 The Contractor shall not display any sign, posters or other advertising matter in or around the Site without prior written approval of the Company.

## **30.0 COMMUNICATIONS WITH REGULATORS, MEDIA, OR PUBLIC**

- 30.1 The Contractor shall immediately notify the Company of all communications from regulatory agencies including, but not limited to, notices, postings, letters, telephone calls or visits. If a Notice of Noncompliance or any other official correspondence is received by the Contractor from a regulatory agency, a copy of the notice or correspondence shall be provided to the Company within 24 hours of its receipt.
- 30.2 The Contractor shall immediately notify the Company of any inquiries from the media. Requests for information from the media shall be reviewed and approved by the Company prior to response by the Contractor.
- 30.3 The Contractor shall immediately notify the Company of any calls or other communications from the public. Requests for information from the public shall be reviewed and approved by the Company prior to response by the Contractor.
- 30.4 The Contractor shall notify the Company as soon as the Contractor becomes aware of a current or scheduled regulatory inspection. The Company will arrange a time for the inspection and designate a Company representative who will accompany the regulatory inspectors. The Contractor shall also designate a representative who will accompany the regulatory inspectors. The Contractor shall fully cooperate with the Federal, state, and local regulatory agencies during inspections or other official functions. If an inspector from a Federal, state or local regulatory agency arrives at a location unannounced and wishes to conduct an inspection, the Contractor shall obtain and subsequently submit to the Company the inspector's name, agency and telephone number and shall accommodate the inspector. If the conduct of an inspection will, for reasons such as safety considerations, put the inspector or the Contractor's representative at risk of injury, the Contractor shall attempt to reschedule the inspection at a date and time acceptable to all parties.
- 30.5 During a regulatory inspection, the inspector may request permission to sample fluids, soils or other materials. If samples are taken, the Contractor shall request the inspector to provide duplicate samples, and the Contractor shall forward them to the Company as soon as possible. The Contractor shall request the inspector to provide duplicate copies of all photographs and/or such other records or reports taken during or generated by an inspection and shall submit them to the Company upon their receipt by the Contractor.

## **31.0 MEETINGS AND REPORTS**

- 31.1 The Contractor shall attend Project meetings as often as deemed necessary by the Company during the term of the Agreement.
- 31.2 By 10:00 a.m. of the next day worked, the Contractor shall submit a written daily report to the Field Representative for each day worked, which shall include, but not be limited to the date, weather, listing of all the Contractor's and Subcontractor's construction force (itemized by craft, supervisory, and employer), Work performed (type, amounts, locations), equipment used (idle equipment so noted), materials received, delays encountered and their cause, recordable and "Lost Time" accidents or incidents, instructions given to the Contractor, general remarks, and Project Site visitors. The Contractor shall also submit to the Company a daily report for all days not worked by the end of the next day worked which shall include, but not be limited to, the date, weather, and the reason no work was performed.
- 31.3 In addition to Contractor's obligations pursuant to the Contractor Safety Requirements, the Contractor shall notify the Company of any safety occurrence as set forth in the Agreement. The Contractor shall submit to the Company a written report of each accident/incident involving personal injury or property damage. This report shall include, but not be limited to: the date, names of injured individuals, the Contractor and Subcontractors involved, any third parties involved, employer, supervisor's name, description of injury and/or property damage, description of how accident/incident occurred, names of witnesses (and, if expressly required by company, social security number or tax identification number thereof) involved, and safety



equipment employed or not utilized. The Contractor may suggest preventative procedures to be implemented to prevent reoccurrence.

- 31.4 The Contractor shall submit to the Company specific reports as may be required elsewhere in the Agreement.

## **32.0 NERC CIP**

- 32.1 For any Work that requires access to the Physical Security Perimeter at a current control house as identified by the Company, or is in the process of constructing a new control house environment, the Contractor shall, and shall require its Subcontractors to (1) complete the contract document containing National Grid Contractor Requirements for Compliance with NERC Cyber Security Standards attached to this Agreement, and (2) comply with the terms and conditions and obligations of the Contractor with respect to NERC CIP. The Contractor shall be responsible hereunder for any breach of such terms and conditions and obligations of the Contractor with respect to NERC CIP under this Agreement to the extent caused by its Subcontractors.
- 32.2 In the event of non-compliance or breach on the part of Contractor, its employees, agents or subcontractors with or of any or all of the NERC Cyber Security Standards, the Contractor shall be solely liable for any and all resulting costs, losses, penalties, damages and liabilities, including any costs, losses, penalties, damages or liabilities incurred by the Company, and the Company may terminate this Agreement for cause, pursuant to the termination provisions contained herein.

## **33.0 CLEANING UP**

- 33.1 The Contractor shall at all times keep its work areas in a neat, clean, and safe condition in accordance with the Agreement.
- 33.2 The Contractor shall, on a daily basis, clean up and remove from the Site and adjoining property and rights-of-way all waste materials and rubbish and appropriately manage recyclables as directed by Company.
- 33.3 Upon completion of the Work, the Contractor shall remove all excess material, equipment, temporary facilities and rubbish; shall repair or replace, in an acceptable manner, all property which may have been damaged or destroyed at the Site; and shall leave the Site in a neat and presentable condition and return disrupted or damaged areas to the condition existing before the start of the Work. Site clean-up approval is required from the Company prior to Final Acceptance.
- 33.4 Work shall be performed in a manner which minimizes to the greatest extent possible any disruption to the surrounding landscape, waterways, communities and the general public.
- 33.5 In the event of the Contractor's failure to comply with this Section 33.0, the Company shall be entitled to withhold from the Contractor, or obtain reimbursement from the Contractor for, any costs incurred in accomplishing the same.

## **34.0 LABOR RELATIONS**

- 34.1 The Contractor shall give the Company prompt written notice of any labor dispute or anticipated labor dispute which may reasonably be expected to affect: (1) the cost, schedule or performance of the Project; (2) other activities at the Site; or (3) the Company's ongoing operations.
- 34.2 The Contractor shall conduct its labor relations in accordance with its established labor agreements. The Contractor agrees to advise the Company, prior to making any new commitments, whether the negotiation of new agreements or understandings with local or national labor organizations affect the Work to be performed under the Agreement.
- 34.3 In addition to the Contractor's legal obligations under the Labor Management Relations Act, in the event the Contractor is a subscriber to a multi-employer bargaining association or group, the Contractor shall, if the Company so directs, participate to the fullest extent in the collective bargaining of that group with any of those labor organizations claiming jurisdiction over any portion of the Project under the Agreement or any subcontract.
- 34.4 To the extent applicable to Work being performed under the Agreement, the Contractor shall supply the Company with copies of all national agreements to which it is a party. No later than 30 Days before the

expiration of any labor agreement which may affect the Project, the Contractor shall meet with the Company to discuss the appropriate course of action.

- 34.5 The Contractor shall take any and all steps that may be available in connection with the resolution of violations of collective bargaining agreements and jurisdictional disputes, including, without limitation, the filing of appropriate process with any court or administrative agency having jurisdiction to settle, enjoin or to award damages resulting from violations of collective bargaining agreements or jurisdictional disputes.
- 34.6 In the event of a labor dispute which threatens to adversely affect the progress or cost of the Project, the Company reserves the right to restrict additional hiring of employees by the Contractor or any Subcontractors, or to suspend or delay the Project, or in the Company's sole discretion to terminate the Agreement for cause under Section 18.1, without incurring contractual liability to the Contractor or its Subcontractors or suppliers. This section shall be applicable whether or not the Contractor or any Subcontractor is directly involved in such labor dispute and whether or not the dispute involves or affects employees or disputing parties standing in the proximate relation of employer and employee with the Contractor or Subcontractor.

### **35.0 ADDITIONAL CONTRACTS AND INTERESTS**

- 35.1 Whenever work being done by the Company's or by other contractors' forces is contiguous to Work covered by the Agreement, the respective rights of the various interests involved shall be established by the Company to secure the completion of the various portions of the Project in an orderly and timely manner. At no time shall the Contractor restrict the movement of other personnel and/or equipment in the performance of their work.
- 35.2 The Contractor shall be responsible for promptly notifying the Company in the event that it shall be necessary to coordinate work between the Contractor and others.
- 35.3 The Company reserves the right to enter into other contracts related to the Agreement or the Project and may require any other contractor, including the Company or its Affiliates, to provide labor or materials to the Project, and such other contracts shall not be cause for the Contractor to claim a change in the Project under Section 14.0. The Contractor shall afford other contractors, the Company or its Affiliates reasonable opportunity for the introduction and storage of their materials and the execution of their work, and the Contractor shall cooperate with the Company, its Affiliates and any other contractors in coordinating their activities.
- 35.4 The Contractor acknowledges that coordination with other contractors, the Company or its Affiliates and occasional rescheduling of the Work or Project may be required and that minor delays in performance of the Work may result. Any difference or conflict which may arise between the Contractor and other contractors, or between the Contractor and workmen of the Company or its Affiliates, in regard to their work, shall be resolved as determined by the Company. Notwithstanding any other provision of the Agreement, the Contractor acknowledges that such coordination, occasional rescheduling and minor delays shall not justify an increase in the price as determined under the Agreement or an extension of time for delivery or performance.
- 35.5 The Contractor shall promptly remedy, at its sole expense, any injury or damage that may be sustained by other contractors or the Company and its Affiliates as a result of the Contractor's activities under the Agreement.
- 35.6 If the Contractor's Work depends upon the work of others, the Contractor shall inspect and give the Company prompt written notice of any defects in the work that renders it unsuitable for the Contractor to perform the Work.

### **36.0 LIENS/BONDS**

- 36.1 The Contractor, for itself, its Subcontractors and all other persons performing under the Agreement hereby waives, to the full extent permitted by law, all right to have filed or maintained any mechanics' or other liens or claims for or on account of the services, labor or materials to be furnished under the Agreement. The Contractor shall pay punctually for all labor, equipment and materials and all liabilities incurred by it in performance of the Agreement, and when requested shall furnish the Company with satisfactory evidence of such payment.

- 36.2 The Contractor shall (1) indemnify and save harmless the Company and its Affiliates and their officers, directors, employees, agents, servants, and assigns from all laborers', materialmen's, and mechanics' liens upon the real property upon which the Project is located arising out of the Services, equipment and materials furnished by the Contractor and its Subcontractors in connection with the Project, and (2) to the full extent permitted by law, keep such property free and clear of all liens, claims, and encumbrances arising from the performance of the Agreement by the Contractor and Subcontractors.
- 36.3 The Contractor shall give the Company 20 Days written notice prior to filing a lien on the property and shall use all reasonable efforts to give the Company 20 Days written notice prior to a Subcontractor filing a lien on the property.
- 36.4 If the Contractor places a lien on the Company's or its Affiliates' property or fails to provide a bond and subsequently discharge a Subcontractor lien, the Company shall have the right to bond such lien or take other similar action to discharge the lien and withhold payment therefore from the Contractor as set forth in Section 13.1. The Contractor shall be liable to the Company for all costs and legal expenses incurred by the Company in bonding or discharging such liens.
- 36.5 If the Company does not require a lien bond under Section 36.6 and if a lien is placed on the property by any Subcontractor, the Contractor shall within 48 hours, or such other time as agreed to by the Company, post a bond covering the lien and shall discharge the lien within 30 Days.
- 36.6 Within 15 Days of signing the Agreement, the Contractor shall, at the Company's option, provide the Company with an executed copy of each a Payment Bond, a Performance Bond and a Lien Bond for the Work in the amount of the Contract Price covering the payment of, and performance of all obligations arising under the Agreement and to keep the Company's property clear of any encumbrances relating to the Agreement. The Company may require additional bonds if the value of the Agreement, in the Company's opinion, is appreciably increased.
- 36.7 The Payment Bond and the Performance Bond form shall be AIA Document A312, as most recently published by the American Institute of Architects, except that the definition of claimant found in the Payment Bond, shall be modified to include all persons or entities, of any tier, having a direct contract with the Contractor or with a Subcontractor (including suppliers), of any tier, to furnish labor, materials or equipment for use in the performance of the Agreement. All other parts of the definition of claimant shall remain unmodified. The Lien Bond shall be on the form as set forth in the Agreement.
- 36.8 The Contractor shall furnish a copy of the Payment Bond to all Subcontractors (including suppliers) with whom it has a contract to furnish labor, equipment or materials for use in the performance of the Agreement, and shall require that all Subcontractors, of any tier, supply copies of the Payment Bond to their Subcontractors (including suppliers).
- 36.9 The cost for the Payment Bond, Performance Bond, and Lien Bonds are included in the prices referenced in the Agreement or Purchase Order.

## **37.0 ASSIGNMENT/SUBCONTRACTING**

- 37.1 The Agreement is binding upon the Parties and their heirs, executors, administrators, successors, and assigns. The Contractor shall not assign the Agreement, or any of the moneys to become due and payable under the Agreement, or subcontract the whole or any part of the Work, without first having obtained the Company's written consent to such assignment or subcontract. Any such assignment or subcontract for which the Company's written consent is not obtained will be null and void. If the Contractor proposes to subcontract any of the Work, it shall give written notice thereof to the Company specifying the name, address, qualifications, and experience of the Subcontractor, and the specific Work which the Subcontractor is to perform. If the Company consents in writing, the Contractor may subcontract the specific Work to the Subcontractor. All Work performed for the Contractor by a Subcontractor shall be pursuant to an agreement between the Contractor and Subcontractor which binds the Subcontractor to the applicable terms and conditions of the Agreement for the benefit of the Company and its Affiliates.
- 37.2 The Company may assign the Agreement or any part thereof to any Affiliate.
- 37.3 If the Contractor terminates its existence as a corporate entity or if the Contractor is part of a merger, acquisition, sale, consolidation or take-over, or if all or substantially all of the Contractor's assets are transferred to another person, or business entity, the Company shall, in its sole discretion, have the right to

terminate the Agreement as set forth in Section 18.1 or to require the Contractor's successor to carry out the duties and obligations of the Contractor under the Agreement.

- 37.4 If at any time during the performance of the Project, the Company determines that any Subcontractor is not performing in accordance with the Agreement, the Company may so notify the Contractor who shall take immediate steps to remedy the performance or to cancel the subcontract, whichever the Company so requests.
- 37.5 All Subcontractors shall be subject to the foregoing provisions, and nothing contained in the Agreement shall create any contractual relation between any Subcontractor and the Company or its Affiliates, nor relieve the Contractor of any obligation to perform the Work. No Subcontractor is intended to be or shall be deemed a third party beneficiary of the Agreement. As a condition of any subcontract, the Contractor shall require any Subcontractor to remove any claim it might have, in law or equity directly against the Company or its Affiliates. The Contractor shall be fully responsible to the Company for the acts and/or omissions of any Subcontractor and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by the Contractor as if no Subcontractors were in place. Any obligation imposed by the Agreement upon the Contractor, where applicable, shall be equally binding upon and shall be construed as having application to any Subcontractor.
- 37.6 To the fullest extent permitted by law, the Contractor shall require Subcontractors to indemnify, defend at the Company's option, and hold the Indemnified Parties harmless from and against any and all claims, demands, actions, losses, damages and expenses, including attorney's fees and other expenses, resulting from or arising out of any of its Subcontractors' performance of Work or Services. The complete or partial failure of any insurance carrier to fully protect and indemnify the Indemnified Parties, or the inadequacy of the insurance, shall not in any way lessen or affect the obligation of the Contractor or its Subcontractors to indemnify the Indemnified Parties.
- 37.7 Notwithstanding any other provision of the Agreement, Section 37.6 shall survive the termination or expiration of the Agreement

## **38.0 ENTIRE AGREEMENT**

- 38.1 The Agreement constitutes the entire Agreement between the Company and the Contractor with respect to the Work specified, and all previous representations relative thereto, either written or oral are hereby annulled and superseded. No modification of any of the provisions of the Agreement shall be binding unless in writing and signed by a duly authorized representative of each party hereto.

## **39.0 SEVERABILITY/MISCELLANEOUS**

- 39.1 If any section, phrase, provision or portion of the Agreement is, for any reason, held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such section, phrase, provision or portion so adjudged will be deemed separate, distinct and independent and the remainder of the terms of the Agreement will be and remain in full force and effect and will not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication. The parties shall negotiate in good faith an equitable adjustment in the affected provision of the Agreement; however, the validity and enforceability of the remaining parts thereof shall be otherwise fully enforceable. Paragraph headings are for the convenience of the Parties only and are not to be construed as part of the Agreement.

## **40.0 COMPLIANCE WITH LAWS AND STANDARDS**

- 40.1 The Contractor shall, in connection with any Work provided by the Contractor hereunder, comply with all applicable federal, state and local laws, ordinances, rules, regulations, codes, permits, licenses, authorizations, and orders of any governmental body, agency, authority, or court having jurisdiction over the Company or the supply of the Work ("Laws"),
- 40.2 In connection with any Work provided by the Contractor hereunder, the Contractor shall and shall provide that its Subcontractors, agents, and representatives shall, at all times: 1) strictly comply with the Company's safety and environmental standards, rules, regulations, directives, and procedures, including, without limitation, Company's Contractor Safety Requirements and Contractor Environmental Requirements, and with any and all applicable federal, state, municipal, and local laws, rules, regulations, codes, and ordinances related to employee and public health, safety, and/or the environment (as in force upon the date of the Agreement and as in the future passed, enacted, directed, or amended), collectively, ("Standards,") and 2)

conduct all operations in a manner to ensure the safety of all personnel, the general public, and the protection of the environment and so as to avoid the risk of injury, death, loss, theft, or damage by accident, vandalism, sabotage, or any other means. In cases where one or more conflicting Standards may be applicable, the Contractor shall comply with the most stringent applicable Standard.

- 40.3 The Contractor warrants that it has not offered or given and will not offer or give to the Company or its Affiliates, or any of their officers, directors, employees, agents, trustees, successors or assigns ("Purchasing Parties") any gratuity, or any kickback within the meaning of the Anti-Kickback Act of 1986 in order to secure any business from or influence the Purchasing Parties with respect to the terms, conditions or performance of any contract with or purchase from the Company or its Affiliates.
- 40.4 The Contractor shall, in connection with anything provided by the Contractor hereunder, comply with Company's Diversity Program requirements. Such requirements include but are not limited to completion and return of the "The Contractor Diversity Bid Form," quarterly reporting on the Contractor's utilization of diversified sellers, and maintenance of certifications from accredited institutions on file which files will be subject to Company audit.
- 40.5 The Contractor shall comply with Company's disclosure reporting requirements as defined in Company's policies and procedures as set forth in this Agreement, and as such policies and procedures may be amended by Company and notified to Contractor from time to time.

## **41.0 ENVIRONMENTAL COMPLIANCE**

- 41.1 Without limiting the provisions of Section 40.0, the Contractor shall conduct all Work and Services in such a manner to minimize the impact upon the natural environment and shall comply fully with all applicable federal, state and local laws, ordinances, rules, regulations and permits for the protection and preservation of the environment, as may be amended from time to time, and all applicable environmental policies and practices prescribed by the Company, including without limitation, the Resource Conservation and Recovery Act, the Hazardous Materials and Transportation Act, the Occupational Safety and Health Act of 1970 ("OSHA"), the New York Environmental Conservation Law, regulations of the Environmental Protection Agency, the Department of Transportation and the New York Department of Environmental Conservation (when applicable for the jurisdiction) issued pursuant thereto, and the terms of Company's Special Conditions of Contract - Environmental, if incorporated in the Agreement by the Company. The Contractor shall impose the requirements of this Section 41.0 upon its Subcontractors and suppliers.
- 41.2 The Contractor shall provide to the Company and post in a conspicuous location at the Site, safety data sheets ("SDS") as required for products used in the Contractor's performance under the Agreement. The Contractor shall post, control and disseminate SDS in accordance with Company's Hazard Communication Program National Grid Safety Procedure F-610 and the applicable edition of OSHA Standard No. 1910.1200. Contractor shall provide periodic updates of the SDS documentation; and copies thereof shall also be retained at the Site and shall be readily available to all the Contractor's personnel engaged in the Work, including, without limitation all the Contractor's personnel engaged in manufacturing Goods or providing Services. The cited standard and policy are available through Company's Safety Department and are incorporated by reference in these Terms and Conditions.
- 41.3 The Contractor shall immediately notify the Company of any citations or notices incurred on the Project and forward copies thereof immediately upon receipt to the Company. If any violation of environmental permits, licenses, and other environmental regulations or statutes occurs, the Contractor shall take immediate action to mitigate any further violation. The Contractor shall immediately notify the Company of the violation and wait for further instructions from the Company. If the Company instructs the Contractor to remedy the violation, the Contractor shall contact the appropriate government agencies as required by law and report to the Company, in writing, what actions it has performed and intends to take to remedy the violation. The Contractor shall also report to the Company its intended procedures for preventing recurrence of such violations.
- 41.4 The Contractor shall, at its expense, take all actions necessary to protect the Company, its Affiliates and all third parties, including without limitation employees and representatives of the Company, from any exposure to, or hazards of, hazardous and/or toxic wastes or substances. In the event of a release or discovery of hazardous waste, the Contractor shall respond in accordance with the Agreement.
- 41.5 If the Contractor fails to correct an environmental violation when directed by the Company to do so, the Company may direct a third party to do so at the Contractor's expense.

- 41.6 The Company will notify the Contractor of any observed non-compliance; however, failure of the Company to recognize or notify the Contractor of any non-compliance shall not relieve the Contractor of its contractual and legal responsibility for such non-compliance and to protect the environment.

## **42.0 UTILIZATION OF SMALL BUSINESS CONCERNS**

- 42.1 It is the policy of the United States that Small Business Concerns, Veteran-Owned Small Business Concerns, Service-Disabled Veteran-Owned Small Business Concerns, HUBZone Small Business Concerns, Small Disadvantaged Business Concerns, and Women-Owned Small Business Concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with Small Business Concerns, Veteran-Owned Small Business Concerns, Service-Disabled Veteran-Owned Small Business Concerns, HUBZone Small Business Concerns, Small Disadvantaged Business Concerns, and Women-Owned Small Business Concerns.
- 42.2 If the Contractor is not a small business concern and the total contract value is in excess of \$700,000 (or \$1,500,000 if the contract involves construction of any public facility), Contractor agrees that it will have and maintain a subcontracting plan consistent with supporting the policy referenced in section 42.1 to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.
- 42.3 The Contractors acting in good faith may rely on written representations by their Subcontractors regarding their status as a Small Business Concern, a veteran-owned Small Business Concern, a Service-Disabled Veterans-owned Small Business Concern, a HUBZone Small Business Concern, a Small Disadvantaged Business Concern, or a Women-Owned Small Business Concern.

## **43.0 EQUAL EMPLOYMENT OPPORTUNITY**

- 43.1 The Contractor shall comply with all applicable federal, state and local anti-discrimination laws, the standards and regulations issued thereunder and the amendments thereto, including Executive Order 11141 relating to age discrimination, Executive Order 11246 relating to equal employment opportunity, Executive Order 11625 relating to minority business enterprise, Executive Order 11701 relating to employment of veterans and Executive Order 11758 relating to handicapped employment. The aforementioned are incorporated herein as if set forth herein verbatim. The Contractor agrees to comply with the Human Rights Law of the State of New York (Section 15 of the Executive Law), if applicable.
- 43.2 Without limiting the foregoing, the Contractor agrees as follows:
- 43.2.1 The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- 43.2.2 The Contractor will in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.
- 43.2.3 The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 43.2.4 The Contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

- 43.2.5 The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 43.3 All subcontracts and agreements that the Contractor enters into to provide the Work under the terms of the Agreement shall obligate such Subcontractors to comply with the foregoing provisions.

#### **44.0 JURISDICTION AND GOVERNING LAWS**

- 44.1 Unless other governing laws and/or other jurisdictions are specifically established in the Agreement, the Agreement shall be deemed to be executed in the State of New York and shall be interpreted and enforced according to the Laws of the State of New York. It is the intention of the parties that, to the extent not prohibited by Article 35-E of the General Business Law of the State of New York, commonly known as the New York Prompt Payment Act ("New York Prompt Payment Act"), or otherwise expressly provided in this Agreement, the terms and conditions of this Agreement shall supersede the provisions of the New York Prompt Payment Act in their entirety and, accordingly, (i) the New York Prompt Payment Act shall not apply to this Agreement, and (ii) the absence of any provision in this Agreement covering any matter addressed in the New York Prompt Payment Act shall not be construed to mean that the parties have agreed that the applicable provision in the New York Prompt Payment Act shall govern with respect to that matter. Notwithstanding the foregoing, if the Agreement provides that the Agreement shall be subject to the Laws of the Commonwealth of Massachusetts, the applicable provisions of the Massachusetts Prompt Payment Act, M.G.L. c. 149, §29E ("Massachusetts Prompt Payment Act") shall supersede the terms and conditions of this Agreement to the extent such terms and conditions contradict the provisions of the Massachusetts Prompt Payment Act.
- 44.2 Unless otherwise specifically established in the Agreement, only the courts of New York shall have jurisdiction over the Agreement and any controversies arising out of the Agreement; any controversies arising out of the Agreement shall be submitted only to the courts of New York; the Contractor hereby submits to the courts of New York for the purposes of interpretation and enforcement of the Agreement.
- 44.3 The Contractor hereby waives personal service by manual delivery and agrees that service of process on the Contractor in any action arising out of the Agreement may be made by registered or certified mail, return receipt requested, directed to the Contractor at its address set forth on the Agreement.

#### **45.0 WAIVER**

- 45.1 No delay or omission in the exercise of any right under the Agreement will impair any such right or will be taken, construed or considered as a waiver or relinquishment thereof, but any such right may be exercised from time to time and as often as may be deemed expedient. If any of the provisions of the Agreement are breached and thereafter waived, such waiver will be limited to the particular breach so waived and will not be deemed to be a waiver of any other breach under the Agreement.

#### **46.0 PROVISIONS REQUIRED BY LAW DEEMED INSERTED**

- 46.1 Each and every provision of law and governmental regulation required by law to be inserted in the Agreement is deemed inserted and the Agreement will be read and enforced as though the same were so included in the Agreement. If through mistake or otherwise any such provision is not inserted or is not correctly inserted, then, upon the application of either party, the Agreement shall be deemed to be amended to make such insertion or correction.

#### **47.0 NOTICES**

- 47.1 All notices, demands, requests, and other communications required or desired to be given hereunder must be in writing and sent by United States registered mail, return receipt requested, or by nationally recognized overnight carrier, and addressed to the person or position identified on the Agreement, at its address set forth in the Agreement and in the case of a notice given to the Company, Contractor shall also send a copy to Assistant General Counsel, Commercial Legal National Grid, 170 Data Drive, Waltham, Massachusetts, 02451.

## **48.0 PREVENTION OF CORRUPTION, BRIBERY AND SLAVERY**

- 48.1 The Contractor shall conduct itself in an ethical manner and provide services to the highest ethical standards. The Contractor shall not be a party to the following: bribery of any kind; collusion with other contractors; regulatory agencies or other third parties; provision of enticements to the Company's officers, directors, employees, agents, successors, assigns, and servants in any form including, but not limited to, gifts, gratuities or other benefits. Without limiting the foregoing, the Contractor represents and warrants to the Company that the Contractor, its Subcontractors, its and their Affiliates, employees, officers, agents and shareholders, have not committed and shall not commit any Prohibited Act.
- 48.2 If the Contractor, any Subcontractor, any of its or their Affiliates, employees, officers, agents or shareholders, commit any Prohibited Act, then the Company shall be entitled to act in accordance with Sections 48.3 to 48.7 (inclusive) below.
- 48.3 If a Prohibited Act is committed by the Contractor, any of its Affiliates, or any of its or their employees, officers, agents or shareholders not acting independently of the Contractor and its Affiliates, then the Company shall be entitled to terminate the Agreement for cause, under Section 18.1, by giving written notice to the Contractor, specifying the date on which the Agreement shall terminate.
- 48.4 If a Prohibited Act is committed by an employee or agent of the Contractor or of any of its Affiliates, acting independently of the Contractor and its Affiliates, then the Company may give written notice to the Contractor of termination of the Agreement for cause, under Section 18.1, and the Agreement will terminate 10 business days after the date of such notice, unless, within such 10 business day period, the Contractor terminates (or arranges for the termination of) such employee's employment or agent's engagement and (where applicable) ensures that the performance of such employee's or agent's obligations in relation to the Agreement are performed by another person.
- 48.5 If a Prohibited Act is committed by a Subcontractor or by an employee or agent of that Subcontractor not acting independently of that Subcontractor, then the Company may give written notice to the Contractor of termination of the Agreement for cause, under Section 18.1, and the Agreement will terminate 10 business days after the date of such notice, unless, within such 10 business day period, the Contractor terminates the relevant subcontract and ensures that the performance of the Subcontractor's obligations in relation to the Agreement are performed by another person.
- 48.6 If the Prohibited Act is committed by an employee or agent of a Subcontractor acting independently of that Subcontractor, then the Company may give written notice to the Contractor of termination of the Agreement for cause, under Section 18.1, and the Agreement will terminate 10 business days after the date of such notice, unless within such 10 business day period, the Subcontractor terminates the employee's employment or agent's engagement and ensures that the performance of that employee's or agent's obligations in relation to the Agreement are carried out by another person.
- 48.7 If the Prohibited Act is committed by any person not specified in Sections 48.2 to 48.6 (inclusive) above (or by any person specified in such conditions but acting in a capacity not specified in such conditions) then the Company may give written notice to the Contractor of termination of the Agreement for cause, under Section 18.1, and the Agreement will terminate 10 business days after the date of such notice, unless, within such 10 business day period, the Contractor (a) arranges for the termination of such person's employment or engagement, and the appointment of their employer or the person who engaged them (where not employed or engaged by the Contractor or any relevant Subcontractor) and (b) ensures that the performance of that person's obligations in relation to the Agreement are performed by another person.
- 48.8 The Company shall specify, in any notice of termination under this Section 48.0 the general nature of the relevant Prohibited Act and the identity of the party whom the Company believes has committed such Prohibited Act.
- 48.9 Without prejudice to the Company's other rights and remedies, the Contractor shall indemnify the Indemnified Parties in full and on demand against all losses, liabilities, costs, claims and expenses incurred directly or indirectly by the Company as a result of the performance of any Prohibited Act by the Contractor, any Subcontractor, any of its or their Affiliates, employees, officers, agents or shareholders, or any the Contractor personnel in connection with the Agreement, its subject matter or any agreements (including any sub-contracts of whatever tier) relating to the Agreement.
- 48.10 Without prejudice to the other provisions of this Section 48.0, the Contractor shall ensure that:



- 48.10.1 all the Contractor personnel are fully aware of the Company's policies on anti-bribery, anti-corruption, and anti-slavery notified in writing to the Contractor from time to time by or on behalf of the Company and that all Subcontractors and agents (of whatever tier) are engaged upon terms which contain provisions in relation to prevention of bribery, corruption and slavery which are no less onerous than this Section 48.0; and
- 48.10.2 it has and shall maintain in place throughout the term of the Agreement, its own policies and procedures, (including adequate procedures under the Bribery Act 2010 and the Modern Slavery Act 2015), to ensure compliance with the Company's policies on anti-bribery, anti-corruption and anti-slavery notified in writing to the Contractor from time to time by or on behalf of the Company, and will enforce them where appropriate.
- 48.11 The termination of the Agreement pursuant to this Section 48.0 shall entitle the Company and each of its Affiliates to terminate any other contracts between the Contractor and the Company, or the Contractor and such Affiliate (as appropriate) on written notice to the Contractor, under their respective termination-for-cause provisions.
- 48.12 Notwithstanding Sections 24.0 and 44.0, any dispute relating to the interpretation of this Section 48.0 or the amount or value of any gift, consideration or commission shall be determined by the Company, and the Company's decision shall be final and conclusive.

## **49.0 RECORDS**

- 49.1 The Contractor shall, and shall require Subcontractors, for the Company's benefit, at their own expense, to maintain a method of accounting in accordance with generally accepted accounting procedures and practices with respect to all matters pertinent to the Agreement. In so far as the Contractor's and Subcontractors' books, records, books of account, correspondence, contracts and subcontracts, and vouchers pertain to Work under the Agreement, or claims made by the Contractor for extension of time, costs, or expenses under any provisions of the Agreement, they shall be made available to the Company or its authorized representative for inspection and audit and shall be kept in a manner which (1) adequately permits evaluation and verification of any invoices, payments or claims based on the Contractor's or Subcontractors' actual costs incurred in the performance of the Project and (2) permits the Contractor to furnish the Company an accurate written allocation of the total amount paid for the Project and such further records as may be reasonably required by the Company.
- 49.2 The Contractor shall maintain records during the term of the Agreement, including any records relating to the employment or hiring of minorities and/or females, until (1) three years after the expiration of the last expiring warranty, or (2) the expiration of any period for which the Company or its Affiliates are required, by any regulatory agency, to have such records maintained, whichever is later. Additionally, records that relate to disputes, appeals, litigation, or the settlement of claims arising out of the performance of the Agreement shall be retained until such disputes, appeals, litigation, or claims have been finally settled. In lieu of retaining such records the Contractor may deliver such records to the Company at any time after the expiration of the last expiring warranty. The Contractor agrees to make such records available to the Company or its authorized representative at no cost to the Company or its authorized representative for inspection or audit at any time during such period.
- 49.3 The Company shall give the Contractor and Subcontractors reasonable notice of any intended inspection or audit of their records.
- 49.4 The Company and its authorized representative shall have access, during normal working hours, to all necessary the Contractor and Subcontractor facilities and shall be provided with an adequate and appropriate work space in order to conduct inspections and audits of such records.
- 49.5 The Contractor shall require Subcontractors to comply with the provisions of this Section 49.0 for the benefit of the Company.
- 49.6 If the Company's inspection or audit identifies any inconsistencies, errors or costs not expended in accordance with the Agreement, the Contractor shall make appropriate adjustments as may be required, including refund to the Company.

## **50.0 REGULATORY FILINGS**

- 50.1 It is understood and agreed that the Agreement and Purchase Order may be required to be filed with a state regulatory agency having jurisdiction over the Company or one of its Affiliates prior acceptance in order for it to become fully effective and binding.
- 50.2 The Company shall promptly take all necessary steps to accomplish such filing, if deemed necessary, and, if so filed, the Agreement will be subject to and conditioned upon the agency's acceptance for filing within 90 days from the date of such filing. The Company agrees to notify the Contractor as soon as practicable of the receipt of agency's acceptance for filing.
- 50.3 If the agency's acceptance for filing is not received by the Company, the Agreement will be deemed null and void, and neither party will have any other or further liability to the other for anything arising out of or in connection with these Terms and Conditions, except as may otherwise be mutually agreed to by the Parties.

## **51.0 E-COMMERCE/ISNETWORLD**

- 51.1 The Company reserves the right, but shall not be obligated, to (a) convert all terms that are the subject of this transaction to an 'e-commerce' format to enable the Company to conduct its management of and performance under this Agreement over the Internet, and (b) to use the services of a third party provider to furnish or create the required "e-commerce" solution for such Internet capability.
- 51.2 The Company utilizes ISN as the primary contractor information management system for all contractors to gather safety information in order to verify and evaluate the information based on the Company's criteria. The ISN database is designed specifically to pre-qualify and monitor contractors.
- 51.3 The Contractor shall (a) subscribe in ISN, at Contractor's cost; (b) receive a passing Dashboard Grade of "C" or above prior to contract award; and (c) maintain a passing grade as assigned by ISN throughout the lifecycle of the contract.
- 51.4 Contractor is responsible to maintain an active ISN subscription account and have all required information up-to-date in the system.
- 51.5 Contractor will continue to be responsible for ensuring that its Subcontractors are in compliance with all of the Company's safety (and other) standards, and shall ensure Subcontractor data is updated and current in ISN on a continual basis.
- 51.6 If during the project/contract term, Contractor's grade falls below the company's minimal requirements of a "C", the Company has the right to (1) apply a probation period where all work performed by Contractor is temporarily stopped until an investigation is performed; (2) suspend the agreement as provided in Section 19.0, which, as provided in section 19.4 shall not entitle the Contractor additional compensation or an extension of time; (3) terminate the Agreement for cause, in accordance with Section 18.1, if, in the Company's sole opinion, the grade cannot be improved to a passing level within a reasonable time.