

EXHIBIT A

TERMS AND

CONDITIONS

FOR

ENGINEERING, PROCUREMENT AND CONSTRUCTION

Form 0800 (Rev. March 12, 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 “Acceleration Plan” means the plan and associated schedule prepared by Contractor at the Company’s direction as provided for in Section 4.10.7 of these Terms and Conditions.
- 1.2 “Affiliate” means any entity Controlled by, Controlling, or under common Control with another entity.
- 1.3 “Agreement” means the Cover Agreement and each of the exhibits (and appendices referred to therein) identified in Article 1 of the Cover Agreement. Where no such form of agreement document is entered into, the Agreement shall be the Purchase Order issued to Contractor by the Company which refers expressly to these Terms and Conditions and the exhibits (and appendices referred to therein) to said Purchase Order. For the avoidance of doubt, a notification by the Company to Contractor of the award of a contract shall not constitute an Agreement and shall not create any contract between the Company and Contractor. For the further avoidance of doubt, where a Purchase Order and a form of agreement document are issued by the Company, then the 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.
- 1.4 “Amendment to the Agreement” means changes to the original negotiated and executed Agreement, and or the Contract Documents. All Amendments to Agreement shall be reflected in a writing executed by duly authorized representatives of the parties.
- 1.5 “Archaeological Finds” means discoveries, not known to Contractor prior to a) the execution of the Agreement and b) any excavation Work under the Agreement, on the Project Site of subsurface prehistoric fossils, antiquities, biofacts, cultural artifacts, cultural landscapes, or other archaeological materials required to be reported to any Governmental Authorities or protected under Applicable Laws.
- 1.6 “Applicable Codes and Standards” means those codes and standards that are applicable to the Work.
- 1.7 “Applicable Laws” means all Laws, statutes, rules, regulations, ordinances, codes, Applicable Codes and Standards required under Applicable Laws, rules of common law, and judgments, decisions, interpretations, orders, directives, Permits and requirements or conditions contained in any Permit relating to the Work, including any condition on or with respect to the issuance, maintenance, renewal or transfer of any Permit or any application for a Permit, any injunctions, writs, decrees, stipulations, or wards of any applicable Governmental Authority or duly authorized official, court or arbitrator thereof, in each case, now existing or which may be enacted or issued after the Effective Date and that may be applicable to the Parties, the Project, the Facility, the Agreement or the performance or enforcement thereof.
- 1.8 “Application for Payment” means Contractor’s Monthly partial invoice for payment that includes any portion of the Work that has been completed for which an invoice has not been submitted and performed in accordance with the requirements of the Contract Documents, which shall be submitted in the form set forth in Exhibits J (Application for Payment/Form of Invoice) and K (Application for Final Payment/Form of Final Payment Invoice), as applicable.
- 1.9 “Baseline CPM Schedule” shall have the meaning set forth in Section 4.10.1.1 of these Terms and Conditions.
- 1.10 “Books and Records” shall have the meaning set forth in Section 4.1.1 of these Terms and Conditions.
- 1.11 “Business Day” means each calendar day Monday through Friday, excluding any Company recognized management holiday.
- 1.12 “Capital Spare Parts” shall have the meaning set forth in Section 2.12.3 of these Terms and Conditions.
- 1.13 “Change in Law” means any change in any Applicable Laws as in effect on the Effective Date, including the enactment, adoption, promulgation or imposition of any new Applicable Laws with substantively different terms, or change in binding interpretation by any Governmental Authority of any Applicable Laws after the Effective Date, but excluding any such enactment, adoption, promulgation, imposition or change in binding interpretation: (i) with respect to any Contractor-Acquired Permit; (ii) in accordance with a proposed regulatory change that was enacted prior to the Effective Date with an effective date subsequent to the Effective Date, but only if such newly enacted law had been published by the applicable

Governmental Authority on the applicable Governmental Authority's website prior to the Effective Date; or (iii) that increases or decreases Contractor taxes based on Contractor's net income or equity.

1.14 "Change Order" means a formal written statement reflecting the Parties' agreement on a CCR as approved by the Company. The Change Order will be in a format acceptable to the Company and will include an identifying title, Change Order number, and date.

1.15 "Change Order Log" is an Excel spreadsheet file containing a chronological record, with date initiated, status, and proposed or approved value of all CCRs; all Change Orders; all Change Orders that are in process or finalized; and all approved Change Orders as of the date of the Change Order Log.

1.16 "Changed or Unforeseen Site Conditions" shall have the meaning set forth in Section 17.0 of these Terms and Conditions.

1.17 "CIP" means Critical Infrastructure Protection and shall refer to the NERC Reliability Standards for the Bulk Electric Systems of North America.

1.18 "Claim" means a written demand or written assertion by one of the contracting Parties seeking, as a matter of right, the payment of money, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a Claim. The submission may be converted to a Claim, by written notice to the other Party, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

1.19 "Company" means the entity identified as such in the Agreement.

1.20 "Company-Acquired Permits" means all Permits set forth in Exhibits T-1 (Company-Acquired Permits (non-FERC Projects)) or T-2 (Company-Acquired Permits (FERC Projects)).

1.21 "Company-Caused Delay" means a delay in the Work for which the Company may be at least partially responsible under the following circumstances, except to the extent such occurrence is as a direct result of or due to the acts or omissions of Contractor (or any third party under Contractor's Control): (i) the Company's failure to perform or cause to be performed any of the material obligations of the Company as explicitly set forth in the Agreement, (ii) the Company's failure to allow Contractor to perform Work at any portion of the Project Site provided Contractor is not in breach of the Agreement and subject to any restrictions set forth in the Agreement; (iii) the Company's suspension of the Work under Article 21 herein, and (iv) the Company requested changes to the Work and/or Project Schedule provided such changes are not a result of Contractor's negligence or breach of the Agreement. Any Company-Caused Delay is subject to the Company's time sensitive allowance of ten (10) Business Days per incident of delay as provided in Section 4.3 of these Terms and Conditions, up to a renewable maximum of thirty-five (35) Days per annum as provided in Section 4.8.2 of these Terms and Conditions.

1.22 "Company Directives" shall have the meaning as set forth in Section 16.2 of these Terms and Conditions.

1.23 "Company Furnished Information" means information relative to the Facility, the Work, or related matters provided by the Company to Contractor.

1.24 "Company Invoice Response" has the meaning set forth in Section 10.4 of these Terms and Conditions.

1.25 "Company Policies and Procedures" shall mean those policies and procedures including, but not limited to, work methods, technical bulletins and advisories of the Company in effect at the time the Work is being performed, but which may be updated from time to time at the Company's sole discretion. Company Policies and Procedures related to gas work methods are set forth in the password protected website found at <https://snp-nationalgridplc.msapproxy.net/codesnstds/sp3indexb.asp>, access to which is available upon request from the Company by email at StandardsAndPolicyInquiries@nationalgrid.com. Company Policies and Procedures are also accessible via the password protected website found at <http://gridhome.nationalgrid.com>. Instructions to access Company Policies and Procedures, including via these websites, may be provided with the Request for Proposal and are available upon request from the Company. Copies of certain Company Policies and Procedures may also be provided in the Request for Proposal and may also be included as Contract Documents.

1.26 "Company Property" shall have the meaning set forth in Section 37.2 of these Terms and Conditions.

1.27 "Confidential Information" shall have the meaning set forth in Section 29.1 of these Terms and Conditions.

1.28 “Company Instructions” shall have the meaning set forth in Section 16.5 of these Terms and Conditions.

1.29 “Construction Equipment” means the equipment, machinery, structures, scaffolding, materials, tools, supplies, consumables, Systems, and temporary buildings, in each case owned, rented or leased by Contractor or its Subcontractors for use in accomplishing the Work, but not intended for incorporation in the Work.

1.30 “Contract Documents” has the same meaning as “Agreement”. Notwithstanding anything to the contrary set forth in the Agreement, under no circumstances shall any subsurface evaluation materials of any kind including, but not limited to, geo-technical reports, borings and test reports provided by the Company fall within the definition of Contract Documents.

1.31 “Contract Number” means the SAP 10 digit numeric associated with the Agreement.

1.32 “Contract Price” means the total lump sum, fixed price, turnkey amount to be paid by the Company to Contractor in U.S. dollars under the Agreement, subject to any allowance(s) set forth in Exhibit D (Contract Pricing).

1.33 “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.

1.34 “Contractor-Acquired Permits” means each and every Permit, to be acquired in the name of Contractor, that is required by any Applicable Laws to be obtained by Contractor or that is otherwise necessary for the performance of the Work, listed as Contractor-Acquired Permits on Exhibits U-1 (Contractor-Acquired Permits (non-FERC Projects)) and U-2 (Contractor-Acquired Permits (FERC Projects)) and all:

- (a) building Permits required for the construction of the Project;
- (b) labor or health standard Permits and approvals reasonably related to construction of the Project;
- (c) business Permits reasonably related to the conduct of the operations of Contractor and all Suppliers in the Commonwealth of Massachusetts or state of New York as applicable and any other location where such Permits may be required (including all contractors’ Licenses and related documents);
- (d) Permits, approvals, consents or agreements from or with any Person necessary (i) for the performance by Contractor of the Work or its warranty obligations hereunder; (ii) for the transportation or importation of Equipment; or (iii) for the transportation or importation of Construction Equipment;
- (e) Permits for the temporary Work, disposal Permits, road use Permits, Permits related to the use, storage and disposal of Hazardous Materials generated or released by Contractor Personnel and Permits issued pursuant to any building, mechanical, electrical, plumbing or similar Applicable Codes and Standards; and
- (f) Permits, visas, approvals and certifications necessary for Contractor’s employees to legally perform the Work in the Commonwealth of Massachusetts or the state of New York as applicable (including documentation of citizenship or legal residency in the U.S.); but excluding Company-Acquired Permits.

1.35 “Contractor Change Request” or “CCR” means a formal document prepared by Contractor setting forth a proposed change to the Work in the form of an addition, deletion, or other change to the Technical Scope of Work, the Specifications, costs, or the Schedule. Contractor shall provide that the CCR includes the date and title of the proposed change as well as all supporting documentation supporting the request. A CCR will precede all Change Orders and will be considered for review purposes only. A CCR will only become a Change Order after review and written approval by the Company Project Manager.

1.36 “Contractor Environmental Requirements” means the Company’s Contractor environmental requirements published in Exhibit PP (Environmental) as Environmental Procedure No. 6 Appendices B and C and all other environmental procedure (EP) and environmental guidance (EG) documentation issued with the RFP or referenced in the Contract Documents; together with any Project specific Permits; any Army Corps of Engineers, or state environmental management requirements, including any stormwater pollution prevention plan (SWPPP) requirements, or Federal EPA or any other environmental regulatory requirements.

1.37 “Contractor Financial Assurances” means: (i) disclosure of Contractor’s financial condition, including: annual reports; profit and loss statements; disclosure of any current or pending legal proceedings; available financial reserves and lines of credit; credit ratings; and (ii) credit instruments or surety that Contractor will remain solvent and complete the Project, in the form of parent guarantee; performance bond; letter of credit; or bank guarantee.

- 1.38 “Contractor Guarantee” means a guarantee executed by Contractor Guarantor in favor of Company in the form attached hereto as Exhibit L (Form of Contractor Guarantee).
- 1.39 “Contractor Guarantor” means the entity identified as the guarantor in the Contractor Guarantee set forth in Exhibit L (Form of Contractor Guarantee).
- 1.40 “Contractor Letter of Credit” has the meaning set forth in Section 14.2.1 of these Terms and Conditions.
- 1.41 “Contractor Personnel” means (i) Contractor, its direct and indirect employees, agents, Subcontractors, and Suppliers, (ii) any such Subcontractor’s direct and indirect employees, agents and Subcontractors of any tier, and (iii) any such Supplier’s direct and indirect employees, agents and Subcontractors of any tier.
- 1.42 “Contractor Project Team” means Contractor Key Personnel (see Key Personnel definition below).
- 1.43 “Contractor Safety Requirements” means the Company’s safety policy document for contractors N-1402, attached as Exhibit QQ-1, and any safety related requirements under the Agreement including any process hazard assessment (PHA) or specific safety procedures or guidance included in the bid and/or Agreement documents.
- 1.44 “Contractor’s Warranty” means the warranty provided by Contractor to the Company covering all Services and materials delivered under the Agreement and effective as of the date of Final Acceptance for a period of at least twenty-four (24) Months.
- 1.45 “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 25% or more of the voting equity interests of an entity shall be deemed to be Control.
- 1.46 “CPM Schedule” shall have the meaning set forth in Section 4.10.1.1 of these Terms and Conditions.
- 1.47 “Creditworthy Bank” means a national commercial bank or trust company, or other financial institution organized in the United States that issues letters of credit in the ordinary course of business, or such other financial institution as the Company deems creditworthy. Provided that in any such case, such Creditworthy Bank shall have a capital surplus of at least \$10 billion and credit ratings of at least A-form Standard & Poor’s and A3 from Moody’s.
- 1.48 “Critical Asset” means facilities, systems and equipment which, if destroyed, degraded or otherwise rendered unavailable, would adversely affect the reliability or operability of the Bulk Electric System (as defined by FERC).
- 1.49 “Critical Cyber Asset” means the programmable electronic devices and communication networks including hardware, software, and data that are essential to the reliable operation of Critical Assets.
- 1.50 “Critical Path” means the essential timeline throughout the Work and the Project Schedule wherein a delay or change in duration could reasonably be expected to impact the achievement of Substantial Completion of the Project.
- 1.51 “Critical Path Item” means the discrete portion of the Work identified as Critical Path items to be completed by the applicable date set forth in the Project Schedule, which critical path reflects Contractor’s planned date for Substantial Completion.
- 1.52 “Daily Progress Report” shall have the meaning set forth in Section 32.2 of these Terms and Conditions.
- 1.53 “Day” means a period of twenty-four consecutive hours commencing at midnight Eastern Clock Time on any calendar day.
- 1.54 “Defect” means any failure of the Work to comply with any term of the Agreement.
- 1.55 “Defective” means that the applicable Work contains a Defect.
- 1.56 “Defective Work” shall have the meaning set forth in Section 20.1.1 of these Terms and Conditions.
- 1.57 “Delay Liquidated Damages” shall have the meaning set forth in Section 4.9.1 of these Terms and Conditions.
- 1.58 “Delay Notice” means the written notice of delay provided by Contractor to the Company notifying the Company of a condition that may impact the Project Schedule. Such Delay Notice will at a minimum include a sufficient explanation

of the condition, the cause of the condition and the estimated delay resulting from such condition and will be provided in a form acceptable to the Company. Such Delay Notice must be provided to the Company within five (5) Business Days of when Contractor first becomes aware of the potential for delay as provided in Section 4.6 of these Terms and Conditions.

1.59 “Deliverables” means all Goods, Services, information, data, guarantees, warranties, compliance, performance, capabilities, milestones, schedules, pricing, and communications to be provided by Contractor to the Company under the Agreement.

1.60 “Demobilization” means the opposite of Mobilization and includes the removal of Contractor temporary Facilities, equipment, and personnel from the Project Site or Site(s), typically occurring at the conclusion of the Project; a partial Demobilization of Contractor resources may occur at any point as different stages of the Project are completed.

1.61 “Designated Claim” shall have the meaning set forth in Section 41.2.3 of these Terms and Conditions.

1.62 “Direct Pay Permit” or “DPP” means the certificate from a state 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 the responsibility to collect said taxes from the Company, in the event tax has not already been paid by Contractor.

1.63 “Disclosing Party” shall have the meaning set forth in Section 29.1 of these Terms and Conditions.

1.64 “Dispute” means any dispute, controversy or Claim between the Company and Contractor arising under or related to the Agreement.

1.65 “Dollars” and “\$” means United States of America dollars.

1.66 “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.

1.67 “Eastern Clock Time” means U.S. Eastern Standard Time, as may be adjusted for daylight saving.

1.68 “Effective Date” shall be the date specified in the Agreement for Engineering, Procurement and Construction.

1.69 “Environmental Law(s)” shall mean all federal, state, and local laws ordinances and regulations and standards, rules, policies and other binding governmental requirements now or hereafter enacted or in force, and any court judgments applicable to Contractor or the Project Site relating to the protection of human health (including industrial hygiene and worker safety) and the environment, including, but not limited to laws relating to the generation, manufacture, storage, handling, transportation, disposal, release, emission or discharge of Hazardous Materials; laws relating to construction, fuel supply, power generation and transmission, waste disposal or any other operations or processes relating to the Project Site; and laws relating to the atmosphere, soil, surface and ground water, wetlands, stream sediment and vegetation on, under, in or about the Project Site.

1.70 “Environmental Procedures and Guidance” means all Environmental Procedure (EP) and Environmental Guidance (EG) documentation issued by the Company with the RFP and the Agreement; together with any Project specific environmental Permits.

1.71 “Engineering, Procurement and Construction Contract” has the same meaning as “Agreement.”

1.72 “Event of Contractor Default” shall have the meaning set forth in Section 20.2.1 of these Terms and Conditions.

1.73 “Excusable Condition” means a material change in Contractor’s performance of the Work to the extent actually and demonstrably caused by: (i) a Company-Caused Delay, or (ii) changes in law following the execution of the Agreement that were not identified in the Agreement and applicable to the Company as a regulated energy utility (excluding changes in law of a general applicable nature), or (iii) the circumstances set forth in Article 17 of these Terms and Conditions.

1.74 “Equipment” means any and all materials, supplies, equipment and Facilities of whatever nature, intended to become a permanent part of the Project Facility(ies).

1.75 “Facility” or “Facilities” means those components, equipment, infrastructure, and utilities to be designed, and built as part of the Project.

1.76 “Factory Acceptance Testing” means first-hand witness of factory tests at the manufacturer verifying that all Specifications and performance criteria have been met and documented in accordance with design and applicable industry requirements.

1.77 “Final Acceptance” means that date when the Company authorizes a certificate to Contractor certifying that Final Completion has been achieved.

1.78 “Final Completion” means that the Company has determined that all Work has been fully performed in accordance with the Agreement, all Contractor obligations for Final Completion have been met as set forth in the Agreement and that the following conditions have been satisfied:

- (a) Substantial Completion has been achieved;
- (b) the Company has accepted and countersigned a Substantial Completion Certificate;
- (c) the Company has determined that Contractor has completed all Punch List Items, including the demolition and removals required by the Agreement, in strict accordance with the Agreement;
- (d) the Company has received from Contractor and Key Supplier an executed Final Lien and Claim Waiver relating to all of the Work;
- (e) no Event of Contractor Default shall exist; and
- (f) all of Contractor’s representations and warranties contained in the Agreement are true and correct and Contractor has performed its obligations under its covenants and agreements.

1.79 “Final Completion Certificate” means the certificate authorized by the Company certifying Final Acceptance.

1.80 “Final Lien and Claim Waiver” means the waiver and release provided to the Company by Contractor or a Supplier in accordance with the requirements of Section 13.6 of these Terms and Conditions, which shall be in the form of Exhibits P-1 and P-2 (Form of Contractor Final Lien and Claim Waiver) for Contractor and in the form of Exhibit Q (Form of Supplier Final Lien and Claim Waiver) for such Supplier, or, if another form is required under Applicable Laws for a final lien and claim waiver to accomplish the waivers and releases contemplated by Exhibits P-1 and P-2 (Form of Contractor Final Lien and Claim Waiver) and/or Exhibit Q (Form of Supplier Final Lien and Claim Waiver), as applicable, in the form required under Applicable Laws.

1.81 “Final Payment” means the last and final payment under the Agreement from the Company to Contractor, which shall include payment of Contractor’s final invoice.

1.82 “Flow Down Agreement” means an agreement or contract between Contractor and any Subcontractor or Supplier that fully supports the Agreement between the Company and Contractor.

1.83 “Force Majeure Event” shall have the meaning provided in Section 23.1 of these Terms and Conditions.

1.84 “Full Notice to Proceed” or “FNTF” means the written notice to proceed issued by the Company, under which Contractor is authorized to commence with the full scope of the Work.

1.85 “GAAP” means generally accepted accounting principles, consistently applied.

1.86 “Goods” means all goods to be provided by Contractor under the Agreement, including all Equipment, Construction Equipment and materials indicated in the Specification.

1.87 “Governmental Authority” means any United States federal, state or local government or any foreign government, or political subdivision thereof, or any multinational organization or authority or any authority, agency or commission entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, any court or tribunal (or any department, bureau or division thereof).

1.88 “Government Official” means an official of a Governmental Authority, a candidate for political office, an official of a political party, a political party, and an employee of a public international organization.

1.89 “Guaranteed Performance Levels” means those performance levels set forth in Exhibit G (Completion, Testing, Acceptance, Performance Guarantees and Performance Liquidated Damages).

1.90 “Guaranteed Performance Levels Cure Period” shall have the meaning set forth in Section 5.2.4 of these Terms and Conditions.

1.91 “Guaranteed Substantial Completion Date” is the date certain that Substantial Completion shall be achieved, as set forth in Article 3 of Exhibit F (Schedule Milestones and Guaranteed Completion Dates).

1.92 “Hazardous Materials” means any substance that under Applicable Laws, including Environmental Laws is considered to be hazardous or toxic or is required to be remediated, including: any petroleum and petroleum products, flammable explosives, radioactive materials (excluding radioactive materials in smoke detectors), polychlorinated biphenyls, chlorofluorocarbons, lead, asbestos in any form that is or could become friable, hazardous waste, toxic or hazardous substances or other related materials whether in the form of a chemical, element, compound, solution, mixture or otherwise, including, but not limited to, those materials defined as “hazardous substances,” “extremely hazardous substances,” “hazardous chemicals,” “hazardous materials,” “toxic substances,” “solid waste,” “toxic chemicals,” “air pollutants,” “toxic pollutants,” “hazardous wastes,” “extremely hazardous waste,” or “restricted hazardous waste” or otherwise regulated under any Applicable Laws, including environmental Laws in any manner whatsoever or which may be the subject of liability for damages, costs, or remediation.

1.93 “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.

1.94 “Indemnified Parties” means the Company, its Affiliates, and their officers, directors, employees, agents, successors and assigns, and any third party that the 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 the Agreement or (b) any property or access rights obtained in support of the operations, Work, and Services performed under or in connection with the Agreement.

1.95 “Industry Practice” means during the relevant time period, (i) any of the practices, methods, and acts engaged in or approved by (a) a significant portion of the electric or gas utility industry and (b) contractors that design, engineer, procure equipment and construct facilities for the utility industry, (c) the Company, and (d) operators or maintainers of facilities similar in size and operational characteristics to those to be designed, procured and constructed under the Agreement, and (ii) any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition consistent with Applicable Law, environmental considerations, and the manufacturer’s maintenance requirements.

1.96 “Infringing Element” shall have the meaning set forth in Section 28.4 of these Terms and Conditions.

1.97 “Inspection Activities” shall have the meaning set forth in Section 12.6 of these Terms and Conditions.

1.98 “Insured Parties” means the Company, its Affiliates, and their officers, directors, employees, agents, successors and assigns and any third party that the Company or its Affiliates are required to hold harmless or indemnify by law or pursuant to: (i) a contract or agreement for operations, Work, and Services performed under or in connection with the Agreement or (ii) any property or access rights obtained in support of the operations, Work, and Services performed under or in connection with the Agreement.

1.99 “Intellectual Property” means all (i) patents, patent disclosures and Inventions (whether patentable or not); (ii) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith; (iii) copyrights and copyrightable works (including computer programs), mask works, sui generis data or database rights, and other rights in and to data and databases; (iv) trade secrets, know-how and other Confidential Information; and (v) all other intellectual property rights and proprietary rights, in each case whether registered or unregistered, and including all applications for , renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection provided by Applicable Law in any jurisdiction throughout the world as well as all rights of priority or benefit and all rights to sue for past, present and future infringement, misappropriation, dilution, misuse or other violation of any of the foregoing.

1.100 “Interim Lien and Claim Waiver” means the waiver and release provided to the Company by Contractor or Suppliers in accordance with the requirements of Section 10.3.1 of these Terms and Conditions, which shall be in the form of Exhibit N (Form of Contractor Interim Lien and Claim Waiver) for Contractor and Exhibit O (Form of Supplier Interim Lien and Claim Waiver) for such Supplier, or if another form is required under Applicable Law for an interim lien and claim waiver to accomplish the waivers and released contemplated by Exhibit N (Form of Contractor Interim Lien and Claim Waiver)

and/or Exhibit O (Form of Supplier Interim Lien and Claim Waiver), as applicable, in the form required under Applicable Law.

1.101 “Inventions” shall have the meaning as set forth in Section 28.6 of these Terms and Conditions.

1.102 “ISNetworld” and “ISN” mean the fee-based third-party services contracted by the Company to receive, store, manage and maintain various records for the Company related to Contractor safety and vendor on-boarding.

1.103 “Key Personnel” means Contractor’s and Subcontractor’s Contractor Personnel identified as “Key Personnel” for the Work as set forth in the Agreement.

1.104 “Key Subcontractor” means Contractor’s Subcontractors identified as “Key Subcontractors” for the Work as set forth in the Agreement.

1.105 “Key Supplier” means Contractor’s and Subcontractor’s Suppliers identified as “Key Supplier” for the Work as set forth in the Agreement.

1.106 “Laws” means all applicable federal, state, and local statutes, ordinances, rules, regulations, directives, codes, Permits, Licenses, authorizations, common law, notices or requirements, orders, and regulatory practices of any federal, state, or local statutory, governing or public body, agency, or authority, or court having jurisdiction over the Company, Contractor, the Site, or the Work.

1.107 “Letter of Intent and Limited Notice to Proceed” or “LOI and LNTP” means a two part document with the first part being the written Letter of Intent expressing the Company’s intent to award the EPC Project to Contractor, contingent on the fulfillment of certain conditions or requirements by either the Company, and/or Contractor, and/or a third party as may be applicable; and the second part being a Limited Notice to Proceed issued by the Company under which Contractor is to complete certain Deliverables set forth in such Limited Notice to Proceed, which may include execution of the full contract Agreement, before a Full Notice to Proceed will be issued. The Limited Notice to Proceed may also be tied to other conditions including but not limited to: specified payment commitment limits; a certain time period; preliminary survey Work, Permit issuance, and/or Permit compliance.

1.108 “Level of Effort” or “LOE” means an activity that must be performed to support other construction activities (ex. procurement of materials and equipment, maintenance of equipment, police, flaggers, clerical work, etc.).

1.109 “License” means any license necessary in connection with the use of licensed technology in the Work.

1.110 “Lien” means any lien, encumbrance, charge, hypothec or security interest, or encumbrance upon real or personal property, and includes builders’ liens, mechanics’ liens, materialmen’s liens, and Suppliers’ liens, upon the Facility, the Work or the Project Site, or any Equipment, supplies or materials encompassed therein, or any other property of the Company that arises out of the Work or by or through Supplier or its Subcontractors in connection with the Work.

1.111 “Limited Notice to Proceed” or “LNTP” means Contractor has been given authorization by the Company to proceed with a limited Scope of Work for a specified period of time and/or a limited portion of the Project Schedule.

1.112 “Loss” shall have the meaning set forth in Section 37.2 of these Terms and Conditions.

1.113 “Major Equipment” or “Identified Equipment” means the materials and equipment comprising the major components of a System, as further identified in Exhibit C (Technical Scope of Work) and the Contract Documents.

1.114 “Massachusetts Prompt Payment Act” shall have the meaning set forth in Section 46.6 of these Terms and Conditions.

1.115 “Material Adverse Change” has the meaning set forth in Section 14.3 of these Terms and Conditions.

1.116 “Mechanical Completion” means that the Company has determined that the following conditions have been met:

- (a) the Work has been mechanically completed in accordance with the Agreement, without Defect except for Non-Critical Deficiencies which have been identified by Contractor in a report to the Company;
- (b) the Work has been inspected for completeness in accordance with the provisions delineated in the Contract Documents, including the Technical Scope of Work, any Specifications, and Drawings;

- (c) Contractor has conducted all necessary field tests, inspections, and has, where necessary, restored Systems or components to operating condition;
- (d) all safety and fire protection requirements have been met, and all safety and fire protection Systems have been installed and are operable pursuant to all Applicable Laws and Industry Practices;
- (e) all test and inspection certificates, and reports applicable to the Work, as applicable, have been submitted to and accepted by the Company;
- (f) all necessary insulation and fireproofing of Equipment where applicable, has been completed such that: (i) commissioning and start-up operations shall not be adversely affected; and (ii) insurance requirements and requirements of Applicable Laws, Industry Practices, and the requirements specified in the Contract Documents in each case with respect to placing the Project Facility(ies) into commercial operation, are satisfied;
- (g) the Work has been performed so as not to adversely affect any manufacturer's warranty;
- (h) the Work is ready for start-up, except as restricted by commissioning activities;
- (i) all temporary supports, bracing or other foreign objects that were installed in Equipment to prevent damage during shipment, storage, installation, construction or erection have been removed;
- (j) all mechanical and electrical safety devices have been tested, adjusted and sealed where necessary or desirable, and a list of proper settings and certification records for such devices have been provided to the Company;
- (k) all Systems have been (i) cleared and are free of construction debris and (ii) satisfactorily chemically cleaned and flushed where required;
- (l) clean-up of the Project Site has been completed, including removal of all waste materials, including used cleaning fluids, in compliance with Applicable Laws and Industry Practices relating to the handling of such materials to the extent that clean-up does not interfere with the commissioning, Start-Up Activities and commercial operations of the Project Facility;
- (m) all emission control Systems have been installed and certified as required by Applicable Laws and Industry Practices;
- (n) all System walkdowns have been satisfactorily completed and all pre-start and final System turnover packages have been submitted to and accepted by the Company for all Systems that are part of the Work, as more particularly described in Exhibit DD (Document Requirements);
- (o) all Equipment and Systems that are part of the Work have been checked to verify that they have been correctly installed so as to respond to simulated test signals equivalent to actual signals received during operation;
- (p) commissioning, operating and maintenance procedures for the Project Facility have been prepared by Contractor and reviewed and accepted by the Company;
- (q) System tests, emissions tests and Performance Test protocols have been accepted by the Company;
- (r) the training and testing program for the Operating Personnel identified in Exhibit EE (Training Program) has been completed and records verifying the successful completion of the training and testing program and qualification of the Operating Personnel shall have been delivered to the Company;
- (s) the Company has received all O&M Manuals and such O&M Manuals are acceptable to the Company;
- (t) all Permits for commissioning and start-up of the Work have been obtained and all requirements of Applicable Laws with respect to commissioning and start-up of the Work have been fulfilled, including all requirements under Applicable Laws with respect to the security of the Work;
- (u) all spare parts for the Work have been delivered to the Project Site and secure and appropriate storage for such spare parts has been provided;

- (v) no Event of Contractor Default exists; and
- (w) all of Contractor's representations and warranties contained in the Agreement are true and correct and Contractor has performed all of its obligations under its covenants and agreements.

1.117 "Mechanical Completion Certificate" means the document which the Company provides to Contractor upon successful achievement of Mechanical Completion, as defined in the Agreement and substantially in the form of Exhibit GG (Form of Mechanical Completion Certificate).

1.118 "Milestone" means a discrete portion of the Work, as identified and set forth in Exhibit F (Schedule Milestones and Guaranteed Completion Dates)

1.119 "Milestone Payment Schedule" means a schedule of dates for Contractor completion of Project Schedule Deliverables upon which Milestone payments will be approved by the Company. Milestone payment dates may correspond with full completion or percentage completion of Project Schedule Deliverables in order to maintain regular periodic payments and adequate cash flow to sustain the Project. Milestone payments, however, will be approved by the Company Project Manager for verified completion of Work only, and are not to be construed as progress payments. If Work for a specific payment Milestone has not been completed to the Company's satisfaction, the Company may withhold payment as per Article 15 of these Terms and Conditions.

1.120 "Minimum Performance Standards" means the performance levels set forth in Section 6.5 of Exhibit G (Completion, Testing, Acceptance, Performance Guarantees and Performance Liquidated Damages).

1.121 "Mobilization" means the on-Site set-up activities typically associated with the start-up of a construction Project and includes the mobilizing of non-construction resources required for pre-construction activities including surveys, environmental assessment, geotechnical studies, preliminary engineering, permitting, and similar activities.

1.122 "Month" means the period beginning on the first calendar day of a calendar month and ending immediately prior to the beginning of the first calendar day of the next succeeding month.

1.123 "Near Critical Path" shall mean an activity or activities in paths having an aggregate float of fourteen (14) Days or less to the Critical Path end date, which, if delayed, will become part of the Critical Path.

1.124 "NERC" means the North American Electric Reliability Corporation.

1.125 "New York Prompt Payment Act" shall have the meaning set forth in Section 46.6 of these Terms and Conditions.

1.126 "Non-Critical Deficiencies" means each item of incomplete or otherwise Defective Work that:

- (a) requires completion or contains Defects;
- (b) does not, in the Company's sole judgment, impede the safe operation of the Project in accordance with Industry Practices;
- (c) does not, in the Company's sole judgment, affect the operability, safety or mechanical or electrical integrity of the Project or any of its Systems;
- (d) can be corrected safely with the Project operating at design capacity;
- (e) does not increase the cost of operating the Project; and
- (f) does not, in the Company's sole judgment, materially and adversely affect the economic benefits to the Company that arise from the operation of the Project; and does not have a cost or estimated cost to complete or rectify in excess of \$10,000 per incomplete and/or Defective individual item, up to a maximum cumulative amount of \$250,000 for all such items.

1.127 "Notice of Suspension" means written notice from the Company to Contractor to cease all Work activities for a specified period of time, or, if that time period has not been determined, until further notice. The Notice of Suspension may include instructions to partially, or fully demobilize from the Project Site if construction activities are affected.

1.128 "O&M Manuals" means the operation and maintenance manuals to be delivered by Contractor or an Affiliate thereof as set forth in Exhibit DD (Document Requirements).

1.129 “Operating Personnel” means the Company’s operating personnel, including operators, maintenance personnel, safety, engineering and other operating support personnel designated by the Company.

1.130 “Optional Work” means that additional Work, set forth in Exhibit D (Contract Pricing), or elsewhere in this Agreement, that Contractor agrees to perform solely at the option and discretion of the Company, the election of which option by the Company shall be in writing and memorialized as a Change Order pursuant to Article 16 of these Terms and Conditions.

1.131 “Partial Performance Payment” means the payment to which 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 as set forth in Section 20.3 of these Terms and Conditions.

1.132 “Party” means either the Company or Contractor, and any reference to “Parties” shall mean the Company and Contractor.

1.133 “Pass-Through Warranty” means any Supplier, Subcontractor or original equipment manufacturer (“OEM”) warranty that extends beyond the expiration of the Contractor’s Warranty and will be honored by Contractor, the Supplier, Subcontractor, or OEM as a Pass-Through Warranty to which the Company is entitled and of which it will be the ultimate beneficiary.

1.134 “Payment Schedule” shall have the meaning set forth in the Agreement.

1.135 “Performance Liquidated Damages” shall have the meaning set forth in Section 5.2 of these Terms and Conditions, as further set forth in Section 6.6 of Exhibit G (Completion, Testing, Acceptance, Performance Guarantees and Performance Liquidated Damages).

1.136 “Performance Test” means the test(s) (including any repetition thereof) to be performed by Contractor to demonstrate the Project Facility’s ability to satisfy the required performance levels, all as more fully defined in Exhibit G (Completion, Testing, Acceptance, Performance Guarantees and Performance Liquidated Damages).

1.137 “Performance Test Procedures” shall have the meaning set forth in Section 13.3.1 of these Terms and Conditions.

1.138 “Performance Requirements” means types and levels of performance related to the function, capacity, and/or operation of any Deliverable, capability, throughput, or output of the Work as specified in the Agreement, including, by reference, all RFP Event, Proposal, and RFP Event correspondence.

1.139 “Permits” means all permit, authorizations, variances, approvals, registrations, certificates of legal status, certificates of occupancy, orders or other approvals or Licenses granted or issued by any Governmental Authority having or asserting jurisdiction over the Project or matters covered by the Agreement, including the Contractor-Acquired Permits and the Company-Acquired Permits.

1.140 “Person” means any individual, firm, corporation, trust, partnership, limited liability company, association, joint venture, other business enterprise or any Governmental Authority.

1.141 “Pre-Existing Hazardous Materials” means a Hazardous Material present on the Site prior to Contractor’s entry thereupon.

1.142 “Physical Security Perimeter” shall have the meaning set forth by NERC in its Glossary of Terms found at https://www.nerc.com/pa/Stand/Glossary%20of%20Terms/Glossary_of_Terms.pdf.

1.143 “Primavera P6 PPM” means the version of the Oracle Primavera P6 Professional Project Management scheduling software that is being used by the Company at the time of Performance of the Work.

1.144 “Prohibited Act” means:

- (a) 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;

- (b) 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 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;
- (c) 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 legislation creating offenses in respect of fraudulent acts, or (iii) 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;
- (d) engaging in any activity, practice or conduct which does not comply with the Company's anti-bribery and anti-corruption policies as notified in writing to Contractor from time to time by or on behalf of the Company;
- (e) 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 United Kingdom's Bribery Act 2010 and/or the policies referred to in subparagraph (d) above;
- (f) defrauding, attempting to defraud or conspiring to defraud the Company or any of its Affiliates; or
- (g) any act of commission or omission in contradiction to the Company's global supplier code of conduct.

1.145 "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 is the whole, except for: (i) any limited Scope of Work identified in the Agreement to be performed by the Company or its Affiliates or by other contractors; and (ii) added or deleted Scope of Work due to Change Orders.

1.146 "Project Execution Plan" means the plan prepared by Contractor and set forth in Exhibit FF (Project Execution Plan Instructions) for the execution of the Work and Contractor's performance of its obligations under the Agreement.

1.147 "Project Facilities" means both permanent and temporary equipment, structures, buildings, and/or dedicated vehicles located at a Project Site(s) or other Project Work area(s) including staging, storage, test, and development areas.

1.148 "Project Manager" (for the Company) means the Company's representative for the Project. Unless otherwise specified, all matters relating to the Agreement and coordination of the Company's activities with Contractor shall be directed through this individual.

1.149 "Project Manager" (for Contractor) means Contractor's representative for the Project. Unless otherwise specified, all matters relating to the Agreement and coordination of Contractor activities with the Company shall be directed through this individual.

1.150 "Project Schedule" or "Schedule" means the schedule(s) for the Project as required by Article 4 of these Terms and Conditions and include the CPM Schedule, the Baseline CPM Schedule, the Updated CPM Schedule, and the Three Week Look-Ahead Schedule.

1.151 "Project Schedule Changes" means changes to the Project Schedule that will impact Schedule Milestones including Mechanical Completion, Substantial Completions, and/or Final Completion. Project Schedule Changes for which Contractor is entitled to an extension of time under the Agreement will be processed and reviewed as Change Orders and will require an Amendment to the Agreement if impacting Articles of the Agreement such as Liquidated Damages, and/or Contract Documents in the Agreement such as the Project Milestone Schedule and Milestone Payment Schedule.

1.152 "Project Schedule Milestones" means significant Critical Path events in the Project Schedule including engineering issue for construction; Major Equipment/Identified Equipment purchases; delivery of Major Equipment/Identified Equipment; major construction Milestones; Mechanical Completion; Substantial Completion; and Final Completion (also see Schedule Milestones).

1.153 "Project Site" is any location where the Work of the Project is being performed.

1.154 "Proposal" means the entirety of Contractor's responses to an RFP.

- 1.155 “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.
- 1.156 “Punch List Item” means those items identified in accordance with Section 13.4.4 of these Terms and Conditions as Defective or incomplete Work that are Non-Critical Deficiencies.
- 1.157 “Punch List Reserve” shall have the meaning set forth in Section 13.4.4.3 of these Terms and Conditions.
- 1.158 “Purchase Order” means the serially numbered document issued by the Company for accounting purposes. Purchase Order Numbers should be referenced by Contractor for invoicing purposes.
- 1.159 “Purchase Order Number” means the 10-digit SAP number associated with the Contract Number and issued to Contractor as authorization for invoicing Work completed against the Milestone Payment Plan under the Agreement.
- 1.160 “Purchasing Parties” shall have the meaning set forth in Section 38.3 of these Terms and Conditions.
- 1.161 “Quality Management System” shall have the meaning set forth in Section 12.11 of these Terms and Conditions.
- 1.162 “RFP” and “Request for Proposal” mean the tender solicitation and all associated documentation for the Project.
- 1.163 “RFP Event” means the full duration of the Request For Proposal process from the initial issue of the RFP until a Contractor is selected and an Agreement to perform the Project between Contractor and the Company is fully executed; or the RFP is cancelled. The RFP Event includes all documentation, communications, and correspondence between the Company and bidding contractors, including the awarded Contractor, from the opening of the RFP until an Agreement (contract) is executed.
- 1.164 “Real Estate” means Company owned or leased real property and Rights of Way or easements.
- 1.165 “Receiving Party” shall have the meaning set forth in Section 29.1 of these Terms and Conditions.
- 1.166 “Recovery Plan” shall have the meaning set forth in Section 4.10.5.2 of these Terms and Conditions.
- 1.167 “Retainage” means the percentage of the Contract Price that will be held by the Company beginning with the first invoice payment until Substantial Completion, provided that the Company issues final approval that the Work was completed in accordance with the terms and conditions of the Agreement. All Retainage is released as part of the Final Payment to Contractor.
- 1.168 “Safety Program” has the meaning set forth in Article 18 herein. For further information see Exhibit QQ (Safety).
- 1.169 “Safety Requirements” has the meaning set forth in Section 18.6 of these Terms and Conditions.
- 1.170 “Schedule Milestones” means those activities and their required start and end dates critical to the success of the Project and which individually and collectively identify the Critical Path to completion of the Project. For EPC Projects, these activities will include but are not limited to: execution of Agreement; permitting; Real Estate transactions/filings; pre-engineering; engineering; major materials procurement; construction Mobilization; Full Notice to Proceed (FNTP); Mechanical Completion; Substantial Completion, and Final Completion. Also see Project Schedule Milestones.
- 1.171 “Schedule of Values” means, for billing and payment purposes, a list of Project Work items, along with an agreed-to billing value for each item so that the entire contract sum is allocated for billing purposes among the various portions of the Work.
- 1.172 “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).
- 1.173 “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.
- 1.174 “Services” means all the labor and other services provided by Contractor in connection with the Agreement.
- 1.175 “Site” means the geographical location or Facility where the Work will be performed.

1.176 “Small Business Concern” means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

1.177 “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 Part 124, Subpart B; and that no material change in disadvantaged ownership and Control has occurred since its certification.

1.178 “Specification” means the technical requirements and procedures, including any accompanying appendices, contained in, referenced by, or attached to the Agreement.

1.179 “Start-Up Activities” means those activities referred to in Section 13.2 of these Terms and Conditions.

1.180 “Start-Up Certificate” means the document which the Company provides to Contractor upon achievement of start-up, as defined in the Agreement and substantially in the form of Exhibit HH (Form of Start-Up Certificate).

1.181 “State Tax Liability Withholding” has the meaning set forth in Section 11.5 of these Terms and Conditions.

1.182 “Subcontractor” means any organization, firm or individual, regardless of tier, which Contractor retains to provide Goods or Services in connection with the Agreement.

1.183 “Substantial Completion” means that the Company has determined that the following conditions have been satisfied:

- (a) Mechanical Completion has been achieved;
- (b) the Company has accepted and countersigned a Mechanical Completion Certificate;
- (c) all Suppliers’ and other manufacturers’ instructions and Drawings relating to Equipment have been transmitted to the Company as per the agreed format and numbers (but not construction record Drawings);
- (d) all special tools, spare parts, and other items required to be provided by Contractor that are necessary for the operation of the Work and/or Facility have been turned over to the Company;
- (e) a complete set of as-built Drawings and Specifications for the Work with redlined comparisons against the previous draft of each portion of the as-built Drawings have been submitted to the Company for its review and have been approved by the Company;
- (f) all pre-commissioning and commissioning activities have been successfully completed and the control System for the Work, as applicable, is fully operational;
- (g) all functional tests have been successfully completed and accepted by the Company;
- (h) all applicable consumables for Equipment for the Project Facility have been provided, together with refills of applicable consumables for such Equipment as necessary to meet requirements of the applicable Suppliers of such Equipment;
- (i) the Project Facilities have been integrated with the existing Facilities described in Exhibit V (Work Site);
- (j) each Performance Test has been Successfully Run during the last attempt of that Performance Test commenced by Contractor, including any Performance Tests required under Section 13.3 of these Terms and Conditions; and either
 - (i) each Guaranteed Performance Level for the Work has been achieved during each Performance Test commenced by Contractor; or
 - (ii) (a) each Minimum Performance Standard for the Work has been achieved during the Performance Tests commenced by Contractor; and (b) Contractor has paid all applicable Performance Liquidated Damages;
- (k) Contractor has paid all Delay Liquidated Damages within five (5) Days of the Substantial Completion Date (if applicable) pursuant to Sections 4.9 and 5.2 of these Terms and Conditions;
- (l) the Company has received the operating spare parts as required under Section 2.12.2 of these Terms and Conditions and the Capital Spare Parts as required under Section 2.12.3 of these Terms and Conditions and

such manual and instruction books as may be necessary to operate the Project Facility in a safe, efficient and effective manner;

- (m) all Contractor Liens relating to the Project Facility have been discharged and all Interim Lien and Claim Waivers have been delivered by Contractor and all Key Suppliers to the Company in accordance with this Agreement;
- (n) the entire Work has been completed, without Defect, including items on the Punch List or open items list that were designated to be completed prior to Substantial Completion, except for Non-Critical Deficiencies that have been included on the applicable Punch List submitted to and accepted by the Company;
- (o) The Company has received from Contractor all Contractor-Acquired Permits required for continuous use and operations of the Project Facility and, to the extent any Contractor-Acquired Permit is required to be “closed out” or similar process by the applicable Government Authority, Contractor has satisfied all such requirements for such Contractor-Acquired Permit.
- (p) Contractor has assigned to the Company all Supplier warranties required to be assignable under Section 9.8 and Section 9.9 of these Terms and Conditions and has certified that all such warranties are valid and in full force and effect;
- (q) the Company has received from Contractor a statement summarizing and reconciling all previous invoices, payments and Change Orders;
- (r) the Company has received from Contractor and each Key Supplier an executed Final Lien and Claim Waiver relating to all of the Work;
- (s) the Company has received all (1) documents identified in the Scope or Work, and (2) all test data and other technical information and documents required hereunder and same are satisfactory to the Company;
- (t) the Company has received the Capital Spare Parts and operating spare parts as required under Section 2.12.3 of the Terms and Conditions and such manuals and instruction books as may be necessary to operate the Project Facility in a safe, efficient, and effective manner;
- (q) no Event of Contractor Default exists; and
- (r) all of Contractor’s representations and warranties contained in the Agreement are true and correct and Contractor has performed its obligations under its covenants and agreements.

1.184 “Substantial Completion Certificate” means the certificate in the form of Exhibit II (Form of Substantial Completion Certificate).

1.185 “Successfully Run” shall mean, with respect to a Performance Test, that: (i) the applicable Performance Test was completed in accordance with the conditions and requirements for the proper performance of such Performance Test set forth in Exhibit G (Completion, Testing, Acceptance, Performance Guarantees and Performance Liquidated Damages) and the other provisions of this Agreement applicable to any such Performance Test; and (ii) the results from such Performance Test demonstrate that the Project Facility (or the applicable component thereof) has successfully achieved the Minimum Performance Standards.

1.186 “Supplier” means any individual or entity engaged by Contractor or its Subcontractors, at any tier, to provide Goods or other materials, Equipment or Construction Equipment in connection with the Project.

1.187 “Supplemental Conditions” means supplements and changes to these Terms and Conditions. The Supplemental Conditions are included in the Agreement with the Terms and Conditions and reference the altered or amended sections of the Terms and Conditions with superseding language that, where so referenced, prevail over the corresponding Terms and Conditions, or add to them.

1.188 “System” means a subdivision of a Facility and/or Project, which is either a process or utility performing a major operational function.

1.189 “Technical Scope of Work” shall have the meaning set forth in Exhibit C.

1.190 “Three Week Look-Ahead Schedule” shall have the meaning set forth in Section 4.10.4.2 of these Terms and Conditions.

1.191 “Updated CPM Schedule” shall have the meaning set forth in Section 4.10.2 of these Terms and Conditions.

1.192 “Unifier” means the Oracle change management software.

1.193 “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.

1.194 “Visitors” means anyone entering the Project Site that is not employed to Work on the Site by Contractor. This includes all Company employees.

1.195 “Warranty Period” means a period beginning upon Final Acceptance by the Company of all the Work in accordance with this Agreement and continuing for a period of 24 Months or longer as specified in the Agreement.

1.196 “Warranty Work” shall have the meaning set forth in Section 9.3 of these Terms and Conditions.

1.197 “Week” means a seven-day period beginning on a Sunday and ending at the end of the immediately following Saturday.

1.198 “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.

1.199 “Work” means all operations, duties, responsibilities, and obligations to be performed by Contractor as specified, stated, indicated or, implied, whether temporary or permanent, by the Agreement including, but not limited to, the provision of engineering, design, procurement of Goods and Services, testing, and commissioning.

1.200 “Work Authorization” means a written authorization from the Company Project Manager to Contractor to Mobilize onto, and/or begin Work at the Project Site; a Work Authorization may be issued with or without a Limited or Full Notice to Proceed.

1.201 “Work Breakdown Structure” or “WBS” means a clear and logical grouping of a technical scope of Work Deliverable as identified in the Schedule of Values.

1.202 “Work Documents” shall have the meaning set forth in Section 41.2.3 of these Terms and Conditions.

1.203 “Work Product” shall have the meaning set forth in Section 28.1 of these Terms and Conditions.

2.0 SCOPE OF WORK

2.1 In consideration of the Contract Price payable in accordance with the Agreement, Contractor shall provide or perform the Work, or cause the Work to be provided or performed, in accordance with the terms of the Agreement. The Work shall mean all obligations, work, duties, responsibilities, jobs, Services, Goods, Equipment, Deliverables, engineering, supervision, oversight, coordination, management, direction and other activities to be performed or provided by, or on behalf of Contractor under the Agreement, in each case in accordance with the terms of the Agreement, including the Project Schedule and the Project Execution Plan, and whether or not such activities, Services or items are specifically identified in Exhibit C (Technical Scope of Work), the other portions of this Agreement, or any communication between the Parties, such that the Project is fully functional and capable of being operated in accordance with Applicable Laws, Industry Practice and the terms of the Agreement, including:

2.1.1 the design of the Project, including the preparation of all Drawings and Specifications in accordance with the Technical Scope of Work;

2.1.2 the fabrication and construction of the Project, all erection and installation of Equipment, and all commissioning, start-up (including calibration, inspection, and start-up operation) and testing included in or required for the Project;

- 2.1.3 the construction of the Project Facilities as called for in the Technical Scope of Work and the integration and interconnection of any new-build Facilities with existing Facilities and permanent utilities;
- 2.1.4 construction activities and Services, including construction utilities and necessary Project Site preparation, excavation and grading and proper disposal of all excavated materials and furnishing of fill materials if and as required in connection with performance of the Work;
- 2.1.5 procurement and supply of all supplies, materials, Goods, consumables, tools, temporary Facilities, including offices and warehouses, vehicles, Equipment, Construction Equipment and machinery necessary to conduct the Work;
- 2.1.6 supply of all labor required to timely perform the Work including skilled and unskilled labor, supervisory, quality management and support service personnel required to perform the Work;
- 2.1.7 procurement, management, supervision and oversight of Subcontractors and Suppliers, including quality management and project management of Subcontractors and Suppliers
- 2.1.8 provision of all training and testing programs for Operating Personnel, as set forth in Exhibit EE (Training Program), including the provision and delivery to the Company of all required records verifying the successful completion of the training and testing programs and qualifications of all Operating Personnel;
- 2.1.9 procurement of all Licenses for and in the name of the Company;
- 2.1.10 procurement of all Contractor-Acquired Permits;
- 2.1.11 procurement of any lay-down areas, easements, access rights or other Real Estate rights necessary or desirable for Contractor to perform its obligations under the Agreement and not provided as part of the Project Site; and
- 2.1.12 all activities, Services and items specifically described in, or reasonably inferable from the Technical Scope of Work or elsewhere in the Agreement.

2.2 Contractor shall perform all Work and Services and do all that is necessary to complete the Project in accordance with (a) the terms of the Agreement (including all Contract Documents and any attached schedules, exhibits and appendices which are included or incorporated by reference), (b) all Applicable Laws, (c) Industry Practices, (d) engineering, construction, safety, environmental, building and electrical codes, standards, directives, and requirements, as well as, (e) Company Policies and Procedures, Company specific standards, Company specific Specifications, and Company guidance (whether the same are in force upon the execution of the Agreement or may in the future be passed, enacted or directed). Where Industry Practice conflicts with any of clauses (a), (b), (d), or (e), in such case clause (a), (b), (d), or (e) shall prevail.

2.3 Without limiting the requirements in Section 2.2, 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.

2.4 Contractor shall be solely responsible for all construction means, methods, techniques, sequences, procedures, safety, and compliance programs, including supervision and direction thereof, in connection with the performance of the Work. Contractor shall supply and be fully responsible for all Mobilization(s) and logistics to perform the Work and all temporary Facilities (such Facilities, including, without limitation, construction trailers, construction power and lighting, access roads and bridges, matting, temporary structures, wiring, conduit, cable, switching and transformation). When such Facilities are to be located at the Project Site, Contractor shall locate such Facilities only in approved areas designated by the Company. After submitting its Application for Final Payment and receiving approval from the Company, as a condition precedent to receiving Final Payment, Contractor shall fully demobilize, including to remove all temporary Facilities located at the Project Site. If Contractor fails to remove such temporary Facilities, the Company reserves the right to withhold payment.

2.5 Contractor acknowledges and represents that it has fully acquainted itself with, and has carefully examined:

- 2.4.1 the Drawings and Specifications, and all other documents and conditions relevant to the Work and the Project to ensure that they are sufficient to properly complete the Work;
- 2.4.2 all relevant plans, surveys, measurements, dimensions, calculations, and estimates to ascertain that they contain no errors or inaccuracies;
- 2.4.3 the nature and location of the Work, the character of Equipment, Construction Equipment, materials and Facilities needed preliminary to and during the prosecution of the Work; and
- 2.4.4 the general and local conditions (including environmental conditions and labor relations) which can in any way affect the Project and the Work and its cost under the Agreement.

2.6 With respect to the above information, Contractor represents and warrants to the Company that it has the skills and experience necessary to review the information and that it has examined all such information with care and that it has determined that such information is adequate and complete for Contractor to conduct the Work for the Contract Price in accordance with the Project Execution Plan and within the required times set forth in the Project Schedule, and in accordance with all requirements of the Agreement, including Applicable Laws, Industry Practices and the Guaranteed Performance Levels.

Contractor shall promptly report to the Company in writing any errors or inaccuracies it discovers in information provided by or through the Company. The Company shall have no responsibility whatsoever for ascertaining for Contractor any facts which Contractor could have ascertained for itself through an investigation of conditions at the Site or as publicly available. Contractor shall notify its Subcontractors of the requirements of this Section 2.5 of these Terms and Conditions. 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 Contract Price.

Contractor hereby represents and warrants to the Company that it has all information and documentation with respect to Construction Equipment, Equipment, materials, Facilities, or any other matters which are or will be necessary to enable Contractor to safely and reliably perform the Work. Except as set forth in Article 17 of these Terms and Conditions or as is otherwise specified within the Agreement, Contractor agrees (a) all loss or damage to 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 Contractor at its sole cost and expense, and (b) Contractor shall have no right to claim or seek an increase in the Contract Price or an adjustment to the Project Schedule with respect to physical conditions at or around the Site.

2.7 Contractor Acknowledgments.

2.6.1 Project Site.

Prior to the Effective Date, Contractor represents and warrants to the Company that (i) it has assessed all conditions at the Project Site that will affect Contractor's conduct of the Work thereupon, including natural conditions; (ii) it has satisfied itself that the Project Site is adequate and sufficient for Contractor to (a) complete the Work for the Contract Price in accordance with the Project Schedule and the Contract Execution Plan, (b) to achieve Substantial Completion by the Guaranteed Substantial Completion Date, (c) to perform and complete the Work in accordance with all requirements of the Agreement, and all Applicable Laws and Industry Practices, and (d) achieve the Guaranteed Performance Levels.

Contractor further represents and warrants to the Company, without limiting the generality of the immediately preceding paragraph, that (i) the Project Site is adequate for Contractor's temporary office, warehouse, craft change rooms and shop buildings, storage of Equipment, employee parking and other Work lay-down and staging purposes; and (ii) there is sufficient access to the Project Site to transport personnel and all necessary Equipment and Construction Equipment.

Accordingly, with the exception of Changed or Unforeseen Site Conditions as defined in Section 17.0 of these Terms and Conditions, Contractor hereby (a) agrees that it shall have no right to claim or seek an increase in the Contract Price or an adjustment to the CPM Schedule with respect to the physical conditions at or around the Project Site including Site conditions; and (a) waives and releases the Company from and against such claims.

2.6.2 Scope of Work and Design Basis.

Prior to the Effective Date, Contractor represents and warrants to the Company that it has reviewed and is fully responsible

for the contents of Exhibit C (Technical Scope of Work) as if furnished by Contractor under the Agreement, including for all purposes the warranties provided under Section 9.1 of these Terms and Conditions and elsewhere in this Agreement.

Contractor further represents and warrants to the Company that it is entering into this Agreement based on such review and that notwithstanding the actual review undertaken by Contractor, Contractor shall be deemed to have reviewed and verified the information provided by the Company with respect to the Technical Scope of Work and all attachments thereto. If any ambiguities, discrepancies or inconsistencies are identified among any of the Agreement, these Terms and Conditions, the Technical Scope of Work or any of the attachments thereto, any of the Drawings and Specifications, or any of the other exhibits or appendices, that cannot be readily resolved pursuant to Article 1 of the Engineering, Procurement and Construction Contract, the interpretation of the Company as to the prevailing requirement will control. Accordingly, Contractor hereby: (i) agrees that it shall have no right to claim or seek an increase in the Contract Price or an adjustment to the Project Schedule with respect to any incomplete, inaccurate or inadequate information or requirements that may be contained or referenced in the Technical Scope of Work; and (ii) waives such claims and releases the Company from and against such claims. As set forth in Section 2.7 and Section 2.9 below and elsewhere, the Company makes no guaranty, representation, or warranty, express or implied, as to the accuracy, adequacy or completeness of any such information that is contained or referenced in the Technical Scope of Work or otherwise furnished in connection with this Agreement.

2.8 Company Provided Equipment. Contractor hereby acknowledges and agrees that the Company shall only be responsible for providing the Equipment, materials and Services that are expressly set out in the Specifications. Contractor shall be responsible for providing all other Equipment, materials and Services required for the completion of the Project. Upon receipt of materials and Equipment whether supplied by the Company or Contractor, Contractor shall inspect all such materials and upon identification of any discrepancy in materials, quantity, quality, Defects, or damages noted, Contractor will immediately notify the Company verbally and in writing before the close of business of any discrepancy in materials and quantity, or any quality, Defects or damages to such Equipment or materials. Notwithstanding the foregoing, Contractor shall be fully responsible for the receipt, inspection and secure storage of all Company furnished Equipment and materials.

2.9 Instructions or explanations given by the Company Project Manager or the Company to Contractor to complete, clarify or give proper effect to the Specifications will be deemed a part of the Specifications. 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 complying with Industry Practices as to standards, specifications, and quality, as applied to engineering and design, procurement and supply of materials and Services, means and methods of construction, testing and commissioning. Further explanation or direction provided by the Company Project Manager shall be final and conclusive barring any conflict with Industry Practices, Contractor Safety Requirements and Environmental Procedures and Guidance. Should Contractor identify a conflict or potential conflict, Contractor shall so notify the Company and the Company and Contractor shall promptly meet to resolve the conflict or potential conflict.

2.10 The Company makes no warranty, express or implied, for the detail, accuracy, or completeness of the Request for Proposal, the Technical Scope of Work, or any technical documents or other Contract Documents including, but not limited to, surveys, studies, Specifications, Drawings, and subsurface evaluation materials of any kind, including by not limited to geotechnical reports, boring and test reports provided by the Company. The Company's review of, provision of or comments on any document shall not relieve Contractor of its sole responsibility for the correctness and adequacy of Contractor's Work, including but not limited to the correctness of design, detail, dimensions, material, Equipment, supplies, construction, construction methods, scheduling, testing, commissioning or any other obligation of Contractor under the Agreement.

2.11 The Contract Documents including, but not limited to, the Specification and Drawings may not be complete in every detail. 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, Contractor shall immediately notify the Company in writing and the Company shall issue written instructions; however, unless otherwise instructed, in the case of a conflict, the more stringent requirement shall apply. If Contractor proceeds with any of the Work in question prior to receiving the Company's instructions, then required corrections shall be at Contractor's expense.

If Contractor observes that any requirement specified in the Agreement is at variance with any Applicable Laws, it shall immediately, but no later than within twenty-four (24) hours of such observation and before incurring any further liability, expense or obligation for Contractor or the Company, notify the Company verbally and in writing. Contractor is fully liable for any Work performed by Contractor Personnel that is at variance with any Applicable Laws.

2.12 Independent Contractor. In the performance of the Agreement, Contractor acknowledges and agrees that (i) it is an independent contractor, (ii) none of Contractor, Contractor Personnel, Subcontractors or their respective employees or invitees are agents, employees or invitees of the Company, and (iii) the entire performance, operation, management, supervision, coordination and direction of the Work and all construction means, methods, techniques, sequences and procedures for coordinating all portions of the Work shall be under the exclusive Control, command and direction of Contractor unless the Agreement otherwise provides specific instructions concerning such matters. The foregoing notwithstanding, Contractor shall strictly comply with all provisions, terms and conditions of the Agreement and the fact that Contractor is an independent contractor shall not relieve it from its responsibility to fully, completely, timely and safely perform and deliver the Work and cause its Subcontractors and it and their respective personnel to safely perform and deliver the Work in strict compliance with the Agreement. Contractor shall be solely responsible for the payment of labor employed or hired by Contractor, whether on contract or other status, including all social benefits, compensation, termination payments, and all benefits of whatever description required by Contractor's employment policies or practices.

2.13 Spare Parts.

2.12.1 Commissioning Spare Parts. Contractor shall provide all pre-commissioning, commissioning, testing and start-up spare parts necessary for the Work to achieve Substantial Completion and shall, prior to and as a condition precedent to achieving Mechanical Completion for the Work, deliver such spare parts for such Work, as applicable, to the Project Site and provide for the secure and appropriate storage for such spare parts through Final Completion. The cost associated with all Work related to such pre-commissioning, commissioning, testing and start-up spare parts is included in the Contract Price, including the cost to procure, furnish and store such spare parts and the actual purchase price of such spare parts as well as the cost of storing.

2.12.2 Operating Spare Parts. With respect to operating spare parts for the Equipment for use after Substantial Completion of the Work, no later than 180 Days before the date on which commissioning of the Work is scheduled to begin as set forth on the CPM Schedule, Contractor shall deliver to the Company a detailed list of the manufacturer- and Contractor-recommended operating spare parts for each applicable item of Equipment necessary for operating such Equipment (including components and Systems of such Equipment). The list shall consist of two years-worth of operating spare parts, and shall include details of each proposed operating spare part to fully enable its procurement (including the manufacturer, ordering contact information, complete item description, part number, quantity to order based on manufacturer's recommendation and a separate column indicating the quantity recommended by Contractor based on its experience for each part necessary for operating such Equipment (including components and Systems of such Equipment)). The Company may elect to review the list and provide comments to Contractor on such operating spare parts list. Upon receipt of any comments from the Company, Contractor shall update such list and provide a revised list to the Company within 30 Business Days after receipt of comments from the Company to such list. Thereafter, the Company may identify the operating spare parts, if any, that the Company wishes Contractor to procure as part of its execution of a Purchase Order. The cost associated with all Work related to the development of the list of two year's operating spare parts is included in the Contract Price. In the event the Company requests in writing that Contractor procure any operating spare parts on the Company's behalf, Contractor shall be entitled to a Change Order to the extent provided in Article 16 of these Terms and Conditions. The operating spare parts so requested by the Company shall be delivered to the Project Site (or to another location reasonably requested by the Company) as a condition of Substantial Completion of such Work. Contractor shall maintain, and update as necessary, a summary list of all operating spare parts ordered and delivered, that includes detailed information regarding the operating spare parts delivered, including the manufacturer, complete item description, part number, quantity ordered, and amount paid for such operating spare parts. Contractor shall provide the Company with the summary listing and any updates thereto.

2.12.3 Capital Spare Parts. With respect to the spare parts identified on Exhibit LL (Capital Spare Parts) (the "**Capital Spare Parts**"), Contractor shall deliver to the Company a detailed list of information regarding each proposed Capital Spare Part to fully enable its procurement (including the manufacturer, ordering contact information, complete item description, part number, quantity to order based on manufacturer's recommendation and a separate column indicating the quantity recommended by Contractor based on its experience for each part necessary for operating such Equipment (including components and Systems of such Equipment)). The Company may elect to review the list and provide comments to Contractor on such Capital Spare Parts list. Contractor shall update such list and provide a revised list to the Company within

30 Business Days after receipt of comments from the Company to such list. All the costs associated with the creation of the list of Capital Spare Parts including all Work required to develop such list are included in the Contract Price, provided, that the Contract Price will be adjusted with respect to the aggregate of the actual purchase price and delivery costs of such Capital Spare Parts by Change Order to the extent provided in Article 16 of these Terms and Conditions. The Capital Spare Parts so requested by the Company shall be delivered to the Project Site (or to another location reasonably requested by the Company) as a condition of Substantial Completion of the Work. Contractor shall maintain, and update as necessary, a summary list of all Capital Spare Parts ordered and delivered, that includes detailed information regarding the Capital Spare Parts delivered, including the manufacturer, complete item description, part number, quantity ordered, and amount paid for such Capital Spare Parts. Contractor shall provide the Company with the summary listing and any updates thereto.

- 2.12.4 Contractor Use of Company Spare Parts. Contractor shall be entitled to utilize any of the operating spare parts procured by Contractor pursuant to Section 2.12.2 of these Terms and Conditions or otherwise procured by the Company, or any Capital Spare Parts, in the course of performing the Work without the Company's prior written consent. In the event Contractor utilizes any such spare parts, Contractor shall supply the Company free of charge with new spare parts equivalent in quality and quantity of such spare parts used by Contractor, from the original manufacturer of the spare parts used, or otherwise as agreed to by the Company, as soon as possible following Contractor's use of such spare parts, or shall reimburse the Company for the complete replacement costs incurred by the Company to replace such spare parts.

3.0 CONTRACTOR PERSONNEL / SUBCONTRACTORS / SUPPLIERS / CUSTODIANSHIP

3.1 Contractor shall provide the Company with a full listing of Key Personnel, Key Subcontractors and Key Suppliers with resumes for each, and a Project organization chart that identifies all direct line and dotted line reporting relationships between the Contractor Project Team and all Key Subcontractors and Key Suppliers. Contractor shall identify and provide relevant experience of all Key Personnel, Key Subcontractors, and Key Suppliers, including references and vetting information as the Company may require. Key Personnel shall include but are not limited to: the Project Manager; the engineering manager; the construction manager; the site safety professional; and the quality manager. Contractor shall identify an individual member of their Key Personnel, typically the Contractor's Project Manager, who will be Contractor's main point of contact with the Company. Contractor shall not remove or replace its Project Manager from the Project without the Company's prior written approval. The Contractor's Project Manager shall represent Contractor, and all directions given to the Contractor's Project Manager shall be binding on Contractor. All Key Personnel, Key Subcontractors, and Key Suppliers are subject to Company approval.

3.2 In the event that the Company believes, in its sole judgment, that any Contractor Personnel are objectionable for any reason, the Company may so notify Contractor, whereupon Contractor shall promptly investigate and take appropriate corrective action including, where requested by the Company, removal of such Contractor Personnel and replacement with Contractor Personnel acceptable to the Company. Whenever required by Applicable Law, Contractor shall employ only licensed, qualified and properly trained Contractor Personnel in the performance of the Work. Contractor and all Subcontractors shall have full responsibility for all employees employed on or in connection with the Project and shall provide that its employees cooperate with all other individuals working at the Project Site.

3.3 Key Personnel, Key Subcontractors and Key Suppliers shall be devoted to the Project for all the time which is necessary to perform the Work. Contractor shall not remove or replace any of the Key Personnel, Key Subcontractors and/or Key Suppliers without the prior written approval of the Company. All requests by Contractor for replacement or substitution of Key Personnel, Key Subcontractors and/or Key Suppliers shall include a detailed explanation and reason for the request and the resume of professional education and experience for replacement candidate(s) of suitable qualifications and experience. Contractor shall allow for an overlap of a reasonable amount of time during which both the Key Personnel, Key Subcontractors and/or Key Suppliers to be replaced and the new Key Personnel, Key Subcontractors and/or Key Suppliers shall work together full time at no additional cost to the Company.

3.4 If, after the effective date of the Agreement, Contractor proposes to further subcontract any of the Work, prior to arranging the subcontract, Contractor 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, Contractor may subcontract the specific Work to the Subcontractor.

3.5 All Work performed for Contractor by a Subcontractor shall be pursuant to a Flow Down Agreement between Contractor and Subcontractor which binds the Subcontractor to the applicable terms and conditions of the Agreement for the benefit of the Company. Upon request, Contractor shall provide the Company with a copy of such Flow Down Agreement. Should Contractor fail to secure a Flow Down Agreement with any of its Subcontractors and a dispute or other circumstance arises from which the Company would have been protected by such Flow Down Agreement, the cost, and any delay to the Project Schedule resulting from resolving the situation shall be borne entirely by Contractor, with no cost or liability to the Company. Any changes to Contractor Personnel, Subcontractors and Suppliers shall not entitle Contractor to a Change Order under Article 16 herein. However, changes to Key Subcontractors and/or Suppliers shall be documented by Amendment to the Agreement. Contractor shall and shall require all Contractor Personnel to comply with the Company's background check requirements as defined in the Company's policies and procedures set forth in the Agreement, as may be amended from time to time and in Exhibit NN (National Grid Contractor Background Check Program).

3.6 In the event of Contractor's or Contractor Personnel's non-compliance with any or all of the Company's background-check requirements, including those set forth in Exhibit NN (National Grid Contractor Background Check Program), the Company may cancel the Agreement for cause pursuant to the termination for cause provisions contained in Section 20.2 of these Terms and Conditions. Neither the Company nor its Affiliates shall be liable for any termination cost/charges to Contractor beyond compensation for Work performed up to the date of such cancellation.

3.7 Contractor shall be wholly and solely responsible for all Contractor Personnel and for the effective management, oversight, direction and supervision of all Contractor Personnel. The Company may require the removal of any Contractor Personnel for any reason whatsoever except as prohibited by Applicable Laws. Following notification of removal from the Company, Contractor shall promptly provide a list of replacement personnel of suitable qualifications and experience, and promptly remove the Contractor Personnel and promptly replace such Contractor Personnel (with the Company's written approval where required under this Agreement).

3.8 Contractor shall be wholly and solely responsible for all acts or omissions of its Contractor Personnel while engaged in the Work. Unsafe acts, and any illegal acts including, but not limited to harassment, theft, vandalism, and/or terrorism affecting the property and/or personnel of the Company or its Affiliates, Contractor or third parties shall be considered grounds for finding Contractor in default and termination of the Agreement for cause in accordance with Section 20.2 of these Terms and Conditions, in addition to all other rights and remedies available to the Company and its Affiliates under Applicable Law.

3.9 Contractor shall be wholly and solely responsible for Custodianship of all Project assets, including the Project Site(s), Project Facilities and all ordered, in transit, delivered or on-hand Project materials and Equipment from the time of Mobilization until Final Completion and Demobilization. Custodianship includes but is not limited to responsibility for controlling access to the Project Site(s) and all Project Facilities whether temporary or permanent, including: all off-Site marshalling and staging yards; off-Site parking areas; off-Site storage and warehousing; any off-Site receiving, inspection, or temporary storage areas, docks, yards, containers, etc. rented, leased or used by permission. Contractor's Custodianship for the Project Site(s) and all Project Facilities includes responsibility for security and security record keeping including maintaining Visitor logs, records of all receipts and shipments, inventory, location, and status records of all Goods, materials, supplies, and Equipment, and rosters of all crews. Security responsibilities extend to maintaining control of all Project Site(s) and Project Facilities during all working and non-working hours, including use of third-party security personnel, and/or electronic and/or video monitoring as required. Custodianship responsibilities also include the safety of all Contractor Personnel while on Project business, and all Visitors to the Site(s). As custodian, Contractor shall be in full compliance with all Applicable Laws, all Contractor Safety Requirements and all Environmental Procedures and Guidance.

3.10 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 Contractor and Contractor shall take immediate steps to remedy the performance or to cancel the subcontract, whichever the Company so requests.

3.11 Nothing contained in the Agreement shall create any contractual relation between any Subcontractor and the Company or its Affiliates, nor relieve Contractor of any obligation to perform the Work. No Subcontractor or Supplier is intended to be or shall be deemed a third-party beneficiary of the Agreement. As a condition of any subcontract, Contractor shall require any Subcontractor to remove any claim it might have, in law or equity directly against the Company or its Affiliates. 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 Contractor as if no Subcontractors were in place. Any obligation imposed by the Agreement upon Contractor, where applicable, shall be equally binding upon and shall be construed as having application to any Subcontractor.

3.12 To the fullest extent permitted by law, Contractor shall require all Subcontractors to indemnify, defend, 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, any act or omission, breach of contract, negligence and tort. This indemnity provision shall apply to first party and third-party claims.

3.13 Notwithstanding any other provision of the Agreement, Section 3.12 of these Terms and Conditions shall survive the termination or expiration of the Agreement.

4.0 TIME OF PERFORMANCE / PROJECT SCHEDULE

4.1 Commencement of Work; Notice to Proceed. Contractor shall not commence performance of the Work until the Company issues (i) both an LOI and LNTP or (ii) a Full Notice to Proceed authorizing such commencement. Upon Contractor's receipt of (i) both an LOI and LNTP or (ii) a Full Notice to Proceed, Contractor shall commence with the performance of the Work in accordance with the instructions set forth therein. Notwithstanding the foregoing, the Company, at its sole discretion, may issue a Limited Notice to Proceed that specifies the portion of the Work being authorized and the portion of the Contract Price payable for such Work.

4.1.1 Contractor shall not commence Mobilization nor shall it begin any Work on the Site until the Company issues a Work Authorization. Upon receipt of Work Authorization, Contractor shall commence the Work as of the date set forth in (i) the LOI and LNTP, or (ii) Full Notice to Proceed.

4.1.2 In the event that an LOI and LNTP is issued prior to execution of the Agreement, the Effective Date of the Agreement shall be the date the LOI and LNTP was issued, and the Agreement shall apply to all Work performed under the LOI and LNTP.

4.1.3 Contractor acknowledges the date of commencement of the Work as written on the LNTP (or LOI and LNTP, as applicable) as the sole start date for the Work. No other date, herein or elsewhere, shall be considered the Project start date. Contractor acknowledges and agrees that the Company is not liable for any actual or perceived costs associated with down time between Project award and Project start date.

4.2 Project Schedule. Contractor shall perform the Work in accordance with the Project Schedule. **TIME IS OF THE ESSENCE.** Contractor acknowledges and agrees that the Project Schedule shall, inter alia, account for any Company planned or scheduled outages, and any required Work stoppages due to observed holidays, or Company designated seasonal restrictions. For the avoidance of doubt, Contractor shall be solely responsible for any delays arising from such events. Once Contractor has received the Work Authorization, Contractor shall prosecute the Work continuously to completion unless otherwise agreed to in writing by the Company. Contractor shall notify the Company both verbally and in writing of any anticipated delays as required by the Agreement; however, such notification shall not relieve Contractor of any of its obligations or affect any of the Company's remedies under the Agreement and the Law. By executing the Agreement, Contractor confirms, accepts and agrees that the time limits and deadlines set forth in the Agreement are **OF THE ESSENCE** and are reasonable for the performance of the Work.

4.2.1 Contractor shall provide the Company with updated progress and scheduling information as required by the Agreement, including but not limited to tracking and progress against Schedule Milestones; delivery and installation of Major Equipment/Identified Equipment; Mechanical Completion; Substantial Completion; and Final Completion.

4.2.2 As provided in Article 2 herein and elsewhere in this Agreement, Contractor shall provide and maintain an appropriately credentialed, trained, qualified, and competent labor force which is sufficiently sized to successfully complete all Work timely and in accordance with the Project Schedule and within the scheduled hours and Days set forth in the Project Schedule, unless otherwise directed or approved by the Company in writing.

4.3 Project Site Hours. Contractor shall limit the Work at the Site to eight (8) hours per Day and forty (40) hours per Week and normal working hours, between 7:00 a.m. – 5:00 p.m., Monday through Friday, unless otherwise specified in the Statement of Work, or as otherwise necessary to maintain schedule and/or complete Work in preparation for or during scheduled and planned outages. Extended or reduced hours for Work on the Project shall be subject to any Applicable Law, or municipal or sensitive receptor restrictions and the Company's prior written approval.

4.4 Extension of Time. No request for extension of time for completion of the Work, or any other change to the Project Schedule, shall be granted to Contractor unless in a writing signed by the Company in accordance with Article 16 and/or Article 23 of these Terms and Conditions, as applicable. Notwithstanding the foregoing, upon commencement of the Work, the Parties acknowledge and agree that the Project Schedule shall be deemed to include an allowance of ten (10) Business Days built into the Project Schedule for each incident of delay requested or caused by the Company which allowance shall be exhausted before Contractor is entitled to any time extension and/or Change Order on account of delay (as set forth in Article 16 and/or Article 23 herein) based on any Company-Caused Delays. Irrespective of the required 10 Business Day allowance, Contractor shall make all reasonable efforts to accommodate and/or mitigate delays and/or changes in Schedule caused by the Company, such that no time extension and/or Change Order becomes necessary.

4.5 Project Changes; Changed Conditions. Notwithstanding the foregoing, if Contractor incurs delays and believes that it is entitled to a time extension on account of changes in the Project, Changed or Unforeseen Site Conditions or other circumstances beyond Contractor's control which Contractor believes entitle it to a time extension under this Agreement, Contractor shall, within five (5) Days, provide written notice to the Company in the manner set forth in Section 16.5 of these Terms and Conditions and describe the changes, changed conditions or circumstances that it believes justify excusing Contractor from meeting the Project Schedule. Contractor's entitlement to a time extension shall be governed by this Section 4 and Sections 14 and 23 of these Terms and Conditions. No extension of time or Change Order shall entitle Contractor to recover home office overhead and/or extended overhead.

4.6 Delay Notice. In the event Contractor becomes aware of a condition that may impact, or which Contractor believes may impact the Project Schedule, within five (5) Business Days of becoming aware of such condition, Contractor shall provide the Company with a Delay Notice which shall identify in reasonable detail the cause of the delay and the anticipated impact. Failure to provide a Delay Notice within such time shall be deemed conclusive evidence that the condition either did not occur or did not negatively impact Contractor's ability to perform the Work, the Project Schedule and/or Contractor's other obligations hereunder. Provision of the Delay Notice to the Company does not automatically deem such condition an Excusable Condition or entitle Contractor to a time extension or Change Order for delay or costs. Notwithstanding the foregoing, if Contractor becomes aware of a condition that will materially impact the Project Schedule, Contractor shall immediately notify the Company and then provide the Delay Notice within (5) Business Days as set forth herein.

4.7 Delays Caused by the Company. If Contractor is delayed by any unforeseeable act or omission of the Company, or by interference by a public authority, or strikes or injunctions, none of which are caused, instituted, or provoked by Contractor or by any Subcontractor (at any tier), agent or representative of Contractor, and which are beyond the fault or negligence of Contractor and Subcontractor at any tier, and if Contractor cannot with reasonable diligence, due to such act or omission, interference, strike or injunction, make up for such delay or delays, and provided further that such delays are Critical Path delays, then and in such event, the specified date or dates for completion of the Work or Services or the portion or portions thereof so delayed shall be extended by the Company by an amount of time as determined by the Company. Notwithstanding the foregoing, no periods of such delay shall be deemed to have begun until the Company has received the Delay Notice. The Company may, in its sole discretion, in lieu, in part or in whole, of granting an extension of time, choose to compensate Contractor to maintain/recover the Project Schedule and thereby offset delays outside of Contractor's control. In such event, Contractor shall submit to the Company a proposed Change Order identifying the costs necessary to work additional hours/Days and/or add personnel needed to recover the Project Schedule in accordance with a Recovery Plan pursuant to Section 4.10.5 of these Terms and Conditions, which the Company will review and in its sole discretion may approve or disapprove.

4.8 Guaranteed Substantial Completion Date. Contractor shall perform the Work in accordance with the Project Schedule such that Substantial Completion shall be achieved not later than the Guaranteed Substantial Completion Date. Attached to the Agreement as Exhibit F (Schedule Milestones and Guaranteed Completion Dates) is a preliminary Project Schedule, which lists the Milestones, including the Guaranteed Substantial Completion Date (GCD-2), and the applicable dates of completion for each such Milestone. The Project Schedule, including Milestones and the Guaranteed Substantial Completion Date shall be subject to adjustment only pursuant to Section 4.4 of these Terms and Conditions and Articles 16 and 23 of these Terms and Conditions. In the event that Contractor fails to achieve Substantial Completion on or before the Guaranteed Substantial Completion Date, Contractor shall be liable for Delay Liquidated Damages as provided for in Section 4.9 of these Terms and Conditions.

4.8.1 Time is of the Essence. Contractor acknowledges that timely achievement of Substantial Completion by the Guaranteed Substantial Completion Date and maintaining progress in accordance with the Project Schedule is essential to the Company, and therefore TIME IS OF THE ESSENCE in the performance of all of Contractor's obligations under this Agreement. In each instance of delay, at no additional cost to the

Company, the Company may, in its sole discretion, in addition to any other rights that it may have under the Agreement, separately or in combination: (i) require Contractor to develop and implement a Recovery Plan pursuant to Section 4.10.5 of these Terms and Conditions and work additional Days, overtime and increase labor resources, supervision, tools, and or Equipment, all at Contractor's sole expense; (ii) treat such delay as a material breach; (iii) terminate the Agreement in accordance with Section 20.2 of these Terms and Conditions; and/or (iii) require Contractor to pay Delay Liquidated Damages as provided for in the Agreement. Any failure of the Company to invoke any of the foregoing remedies shall not constitute a waiver of the Company's right to subsequently invoke such remedies or its entitlement to any remedies provided for in the Agreement or by law.

- 4.8.2 Company Float. The Company shall have a time sensitive allowance of thirty-five (35) Days per annum which shall be deemed to have been incorporated in the Project Schedule and which shall be exhausted by Contractor before Contractor will be entitled to a time extension or Change Order based upon a claim of Company-Caused Delay, as set forth in more particular detail in Section 16 of these Terms and Conditions. Contractor shall further provide that the Project Schedule includes sufficient time for all planned engineering reviews, inspections, and other similar tasks to be conducted by the Company pursuant to the Agreement. Contractor shall, at its sole expense, proactively update and adjust the Project Schedule to optimize distribution of Work across all available resources and take advantage of all opportunities to gain time and efficiency wherever and whenever it is safe and prudent to do so including accommodating the Company's operating requirements and performing Work at times other than normal working hours including weekends or holidays.

4.9 Delay Liquidated Damages.

- 4.9.1 Delay Liquidated Damages. In the event that Contractor fails to achieve Substantial Completion on or before the Guaranteed Substantial Completion Date, Contractor shall pay to the Company upon demand the dollar amount set forth in Section 4.0 of Exhibit B (Statement of Work) as liquidated damages per Day for each Day, or portion thereof, between the Guaranteed Substantial Completion Date and the date that Substantial Completion (the "**Delay Liquidated Damages**") is achieved.

4.9.2 Delay Liquidated Damages Not a Penalty; Exclusive Remedies.

4.9.2.1 The Parties hereby acknowledge and agree that it would be difficult, if not impossible, to ascertain and quantify the actual damages that the Company would incur if Contractor should fail to meet the Guaranteed Substantial Completion Date. Accordingly, it is expressly agreed that liquidated damages payable under the Agreement do not constitute a penalty and that the Parties, having negotiated in good faith for such specific Delay Liquidated Damages and having agreed that the amount of such Delay Liquidated Damages is reasonable in light of the anticipated harm caused by the breach related thereto, are estopped from contesting the validity or enforceability of the per-Day rate of the Delay Liquidated Damages on the basis that such per-Day rate constitutes a penalty or is otherwise unenforceable or invalid. Notwithstanding any provision hereto to the contrary, if Contractor, Contractor Guarantor or anyone on their behalf successfully challenges the per-Day rate of any Delay Liquidated Damages, Contractor specifically agrees to pay the Company all actual damages incurred by the Company in connection with such breach, including any and all consequential damages (such as loss of profits and revenues, business interruption, loss of opportunity and use) and all costs incurred by the Company in proving the same, without regard to any limitations whatsoever set forth in the Agreement.

4.9.2.2 Payment of Delay Liquidated Damages with respect to any Work shall be in addition to, and not in lieu of, Contractor's other obligations under the Agreement and the Company's other remedies under the Agreement and by Law. Notwithstanding the foregoing, Delay Liquidated Damages shall be the sole and exclusive damages owed by Contractor for failing to achieve Substantial Completion on or before the Guaranteed Substantial Completion Date, provided that the foregoing shall not be construed or deemed to limit the Company's right to receive and Contractor's obligation to pay Performance Liquidated Damages to the extent provided for in the Agreement.

4.10 Critical Path Method Schedule; Acceleration and Schedule Recovery.

4.10.1 Critical Path Method Schedule.

- 4.10.1.1 Within 90 Days after the Notice to Proceed, Contractor shall develop and deliver to the Company in hard copy and electronic (.XML and .PDF) format for review and comment, using Primavera P6 PPM, a Level III detailed resource/work-hour loaded Critical Path Method Schedule and detailed resource plan (the “**Baseline CPM Schedule**”). The Baseline CPM Schedule shall comply with the requirements of this Section 4.10 and all applicable requirements of the Agreement. The term “**CPM Schedule**” shall mean the Baseline CPM Schedule and all updates thereto. Except as set forth in this Section 4.10, Contractor shall not add to, delete from, modify, re-sequence, or otherwise make any change the Baseline CPM Schedule without the Company’s written consent.
- 4.10.1.2 The Baseline CPM Schedule shall, at a minimum, be detailed as a resource loaded Schedule with Project, area, and discipline (as described in the work breakdown structure) for all activities for the Work (including engineering, procurement, construction, commissioning, testing and start-up) logically tied to each other, and shall show all Critical Path Items and Near Critical Path Items, including primary, secondary and tertiary Critical Path Items, and an uninterrupted Critical Path from the Notice to Proceed through Mechanical Completion, Substantial Completion and Final Completion. The Baseline CPM Schedule shall also include and a statement of activities with durations of no greater than fourteen (14) Days, provided however, that the Company may request that construction activities be broken down to lesser durations to provide essential details and logics of key activities, and the Company may approve longer durations for LOE activities. The Project Schedule(s) shall incorporate best scheduling practices, including but not limited to, actualizing all started and completed activities, showing activity progress, and rescheduling the remaining activities. The Project Schedule shall contain no negative lag. The Company reserves the right to reject any Project Schedule that uses float suppression techniques such as preferential sequences, special lead/lag logic restraints, extended activity times, or imposed dates.
- 4.10.1.2.1 With respect to each activity in the Baseline CPM Schedule, including each Critical Path Item, the Baseline CPM Schedule shall show the activity number, activity description, early start and early finish dates, late start and late finish dates, duration, float value by activity and total float value, cost and production curves showing the actual curve, forecast and remaining early and late curves, projected man-hours and manpower (whether provided by Contractor or any Subcontractor) for construction activities, and any Subcontractor performing such activity, as well as identify the Work interfaces for activities on the Project Site of other Persons (including the Company, the Company’s other contractors, and utility companies), which shall be sorted by the Work breakdown structure and scheduled start, or another format agreed upon by the Company.
- 4.10.1.2.2 The Baseline CPM Schedule shall represent Contractor’s best judgment as to how it shall complete the Work in compliance with the Project Schedule Milestones. Contractor shall prepare the Baseline CPM Schedule in accordance with recognized best practices with respect to Critical Path scheduling.
- 4.10.1.2.3 The Baseline CPM Schedule shall be submitted to the Company in electronic (native file) format, created using the Primavera P6 PPM software back-up utility and including all Primavera P6 PPM network data of the Baseline CPM Schedule.
- 4.10.1.2.4 Contractor shall submit to the Company with the Baseline CPM Schedule the following: (1) Primavera P6 PPM software “predecessor/successor” tabular format showing all activities in the Baseline CPM Schedule, their predecessor activities and relationships and their successor activities and relationships; (2) progress “S” curves, showing the baseline plan, and actual, early and late forecast progress by Month for total progress of the Work, which shall be based on the Baseline CPM Schedule; (3) construction manpower histograms showing forecast manpower required by Month, for scheduled completion of the Work; (4) a Deliverable log showing the Deliverable number, title, planned, actual and forecast issue for construction release dates by discipline and reporting period; and (5) a procurement log showing the equipment

Subcontract order number, description, forecast and actual bid release dates, equipment Subcontract order release dates, required-at-Project Site dates and delivery dates.

- 4.10.2 Updates to Baseline CPM Schedule. Contractor shall manage and update (no less frequently than once every Month for all activities and no less frequently than once every two Weeks for construction and commissioning activities) the Baseline CPM Schedule using Primavera P6 PPM, using the Critical Path Method (the “**Updated CPM Schedule**”). Contractor shall provide to the Company monthly Project Schedule updates (in hard copy and electronic (.XML and .PDF files)) every two (2) Weeks, on the second and fourth Wednesday of the applicable calendar Month, or as directed by the Company. Each Updated CPM Schedule shall satisfy all of the requirements of Section 4.10.1.2 of these Terms and Conditions, and in addition shall: (i) at a minimum be prepared with the same level of detail as the Baseline CPM Schedule; (ii) show the Baseline CPM Schedule; (iii) for each activity completed, show the actual start and finish dates for each such completed activity; (iv) for each activity started but not yet completed, show the actual start date for each such activity and forecasted completion date for each such activity; (v) for each activity not yet started, show the forecasted start and completion date for each such activity; (vi) show total float, variance from the Baseline CPM Schedule and physical percentage complete; (vii) cost and production curves showing the actual curve, forecast and remaining early and late curves; (viii) include a list of approved logic changes; (ix) include a list of proposed logic changes, new activities, and deleted activities if any, (x) show the forecasted Mechanical Completion Date and Substantial Completion Date, and the forecasted Final Completion Date, and (xx) update the Baseline CPM Schedule with all other information shown in the Baseline CPM Schedule, reflecting the Work as actually performed or as forecasted.
- 4.10.3 Company Review of CPM Schedule. If, upon review, the Company in its sole discretion determines that the Baseline CPM Schedule or any Updated CPM Schedule does not meet the requirements of the Agreement, upon the Company’s direction, Contractor shall promptly but in no event less than 10 Days after the Company’s direction, revise and resubmit to the Company the Baseline CPM Schedule or Updated CPM Schedule, as applicable. The Company’s review of, comment on, acceptance or rejection of the Baseline CPM Schedule and any Updated CPM Schedule shall not relieve Contractor of any obligations for the performance of the Work, change the Guaranteed Substantial Completion Date or the date of any Milestone, or be construed to establish the reasonableness of the Baseline CPM Schedule or any Updated CPM Schedule. Notwithstanding any Company review of or comment on the Baseline CPM Schedule or any Updated CPM Schedule, the Company shall be entitled to reasonably rely upon the preliminary Project Schedule attached to the Agreement as Exhibit F (Schedule Milestones and Guaranteed Completion Dates), the Baseline CPM Schedule and any Updated CPM Schedule, including reliance that Contractor has developed a comprehensive, reasonable and accurate Schedule to plan, organize, direct, coordinate, perform, execute and complete each portion of the Work. To the extent that there is any conflict between (i) the Baseline CPM Schedule or the Updated CPM Schedule and (ii) the requirements of the Agreement, the Agreement shall take precedence.
- 4.10.4 Three Week Look-Ahead Schedule. Contractor shall submit to the Company a Three Week Look-Ahead Schedule every two (2) Weeks, two (2) Days prior to weekly progress meetings. The Three Week Look-Ahead Schedule shall be based on the Baseline CPM Schedule or Updated CPM Schedule, as applicable, showing in detail the activities to be performed during such Month, including target, forecast and actual dates for each activity, shall be detailed into Project, area and discipline, and shall meet all other requirements of updates to the Baseline CPM Schedule as described in this Section 4.10 of these Terms and Conditions (the “**Three Week Look-Ahead Schedule**”).
- 4.10.5 Recovery and Recovery Plan. If, at any time during the prosecution of the Work:
- 4.10.5.1 Should the latest Baseline CPM Schedule, Updated CPM Schedule, Three Week Look-Ahead Schedule or Monthly Progress Report show, or if Contractor fails to provide a current Updated CPM Schedule, Three Week Look-Ahead Schedule or Monthly Progress Report in compliance with the requirements of the Agreement and the Company reasonably determines that:
- 4.10.5.1.1 any Critical Path Item is delayed such that the actual forecast progress “S” curve for such Critical Path Item is equal to the late completion forecast progress “S” curve for such Critical Path Item by fourteen (14) Days;

- 4.10.5.1.2 Substantial Completion of any Phase will occur thirty (30) or more Days after the applicable Guaranteed Substantial Completion Date; or
- 4.10.5.1.3 any Milestone will be delayed by thirty (30) Days or more from the date for achievement of that Milestone on the CPM Schedule (as such Milestone may be adjusted only by Change Order executed by the Parties).
- 4.10.5.2 and, in addition to the conditions set forth in Section 4.10.5.1, Contractor or any of its Suppliers are in the Company's reasonable judgment responsible for such delay, the Company may, in addition to any other remedies that it may have under the Agreement, require that Contractor prepare a plan and associated schedule to explain and display how it intends to regain compliance with the CPM Schedule (collectively, a "**Recovery Plan**").
- 4.10.6 Contractor shall take the following actions after written notification by the Company of the requirement for a Recovery Plan:
- 4.10.6.1 Within ten (10) Business Days after such written notification, Contractor shall prepare the Recovery Plan and submit it to the Company for the Company's review and comment, and the Company shall have the right to accept or reject such Recovery Plan. Contractor shall prepare the Recovery Plan even if Contractor disputes the Company's determination of the need for a Recovery Plan. The Recovery Plan shall represent Contractor's best judgment as to how it shall regain compliance with the Baseline CPM Schedule. The Recovery Plan shall be prepared in accordance with Industry Practices and to a similar level of detail as the Baseline CPM Schedule, and shall have a completion date ending no later than sixty (60) Days after such written notification; provided, however, that the Parties may agree upon a later day for completion of the Recovery Plan, if it is not possible to regain compliance with the Baseline CPM Schedule within sixty (60) Days from such written notification.
- 4.10.6.2 Within ten (10) Business Days after Contractor submits a Recovery Plan, Contractor shall participate in a conference with the Company, and with any other Person, including Suppliers, whom the Company designates to participate, to review and evaluate the Recovery Plan. Any revisions necessary as a result of this review shall be resubmitted to the Company within three (3) Days after the conference, and the Company will have the right to accept or reject such revised Recovery Plan. If the Company indicates in writing that it accepts the revised Recovery Plan, the revised Recovery Plan shall then be the plan which Contractor shall use in planning, organizing, directing, coordinating, performing, and executing the Work (including all activities of Suppliers) for the duration specified in Section 4.10.6.1 of these Terms and Conditions, to regain compliance with the Baseline CPM Schedule.
- 4.10.6.3 Contractor shall perform the Work covered by the Recovery Plan in accordance with the Recovery Plan.
- 4.10.6.4 Weekly, during the performance of the Recovery Plan, Contractor shall meet with the Company at the Project Site to determine the effectiveness of the Recovery Plan and to determine whether Contractor has regained compliance with the Baseline CPM Schedule. At the direction of the Company, one of the following shall happen:
- 4.10.6.4.1 If, in the reasonable opinion of the Company, Contractor is still behind schedule, Contractor shall be required to prepare another Recovery Plan pursuant to Section 4.10.6.1 of these Terms and Conditions. Contractor shall prepare such Recovery Plan even if Contractor disputes the Company's opinion.
- 4.10.6.4.2 If, in the reasonable opinion of the Company, Contractor has sufficiently regained compliance with the Baseline CPM Schedule, Contractor shall return to the use of the Baseline CPM Schedule after written notice from the Company.
- 4.10.6.5 In preparing and executing the Recovery Plan, Contractor shall take all steps necessary to regain compliance with the Baseline CPM Schedule, including establishing additional shifts, hiring

additional manpower, paying or authorizing overtime, providing additional Equipment, and resequencing activities.

- 4.10.6.6 The cost of preparing the Recovery Plan, and performing in accordance therewith, shall be at Contractor's sole cost and expense and Contractor shall not include and shall not be entitled to the cost associated with preparing a Recovery Plan in any Change Order. Contractor shall document the cost associated with the preparation of the Recovery Plan and shall promptly provide such documentation to the Company in response to the Company's request.
 - 4.10.6.7 The Company's requirement for, its review of and comment on the Recovery Plan, or its decision not to request a Recovery Plan, shall not relieve Contractor of any obligations for the performance of the Work, change the Guaranteed Substantial Completion Date or other Milestones, or be construed to establish the reasonableness of the Recovery Plan.
 - 4.10.6.8 If at any time prior to the Guaranteed Substantial Completion Date, Contractor's performance of the Work is sufficiently delayed, and Contractor fails to propose a reasonable Recovery Plan in accordance with this Section 4.10.6, or Contractor provides a Recovery Plan, but fails to materially comply with that Recovery Plan, then Contractor shall be in default and the Company shall have all rights granted to it under the Agreement and by law, including but not limited to, the right to terminate Contractor for cause.
- 4.10.7 Acceleration and Acceleration Plan. Even if the Work is otherwise in compliance with the Project Schedule, the Company may, at any time, direct Contractor by unilateral or mutually agreed Change Order to accelerate the Work by, among other things, establishing additional shifts, paying or authorizing overtime, providing additional Construction Equipment or expediting equipment orders. In no event shall a Recovery Plan be deemed to be an Acceleration Plan, and this Section 4.10.7 does not apply to the matters described in Section 4.10.5 or 4.10.6 of these Terms and Conditions. If the Company directs Contractor in writing to accelerate the Work, Contractor shall immediately commence and diligently perform the acceleration of the Work as directed by the Company and shall prepare a plan and associated schedule to explain and display how it intends to accelerate the Work and how that acceleration will affect the Critical Path of the Project Schedule and CPM Schedule ("**Acceleration Plan**"). With respect to an Acceleration Plan:
- 4.10.7.1 No later than the 10th Business Day after such directive or such longer time as may be mutually agreed in writing by the Parties, Contractor shall prepare the Acceleration Plan and submit it to the Company for its review and comment, and the Company shall have the right to accept or reject the Acceleration Plan. The Acceleration Plan shall represent Contractor's best judgment as to how it shall satisfy the Company's acceleration directive and shall reflect Contractor's best estimate of the additional costs that will be incurred, with reasonable explanation thereof. Contractor shall prepare the Acceleration Plan shall be based upon Industry Practices and to a similar level of detail as the Baseline CPM Schedule.
 - 4.10.7.2 On the 10th Business Day after such directive (or such longer time as may be mutually agreed in writing by the Parties), Contractor shall participate in a conference with the Company, and with any other Person, including Suppliers, whom the Company designates to participate, to review and evaluate the Acceleration Plan. The Contractor shall submit any revisions to the Acceleration Plan necessitated as a result of this review to the Company no later than the 10th Day after such meeting or such other date as may be agreed in writing by the Parties, and the Company will have the right to accept or reject such revised Acceleration Plan. Upon the Company's acceptance of the revised Acceleration Plan, the Acceleration Plan shall be the schedule which Contractor shall use in planning, organizing, directing, coordinating, performing, and executing that portion of the Work that is affected by such acceleration, with the Baseline CPM Schedule governing the performance of all other Work.
 - 4.10.7.3 The Company's review of and/or comment on the Acceleration Plan shall not constitute an independent evaluation or determination by the Company of the workability, feasibility, or reasonableness of that schedule.

5.0 PERFORMANCE GUARANTEES

5.1 Guaranteed Performance Levels and Minimum Performance Standards. Contractor guarantees that the Project Facilities shall meet all the Guaranteed Performance Levels set forth in Exhibit G (Completion, Testing, Acceptance, Performance Guarantees and Performance Liquidated Damages) on or before the expiration of the Guaranteed Performance Levels Cure Period. If, prior to the expiration of the Guaranteed Performance Levels Cure Period, Contractor fails to meet all of the Guaranteed Performance Levels set forth in the Contract Documents, Contractor shall be liable for the liquidated damages provided for in Section 5.2 of these Terms and Conditions.

5.2 Liquidated Damages.

5.2.1 Performance Liquidated Damage Amounts. If the Project Facilities meet the Minimum Performance Standards set forth in the Contract Documents, but fail to meet the Guaranteed Performance Levels set forth in the Contract Documents on or before the last Performance Test conducted by Contractor prior to the Guaranteed Substantial Completion Date, then Contractor shall be responsible for the payment of Performance Liquidated Damages, as set forth in Section 6.6 of Exhibit G (Completion, Testing, Acceptance, Performance Guarantees and Performance Liquidated Damages).

5.2.2 Performance Liquidated Damages Not a Penalty.

5.2.2.1 The Parties hereby acknowledge and agree that due to the nature and complexity of the Project, it would be difficult if not impossible to ascertain and accurately quantify the actual damages that the Company would incur if Contractor should fail to meet the Guaranteed Performance Levels. Accordingly, it is expressly agreed that liquidated damages payable under this Agreement do not constitute a penalty and that the Parties, having negotiated in good faith for such specific Performance Liquidated Damages and having agreed that the amount of such Performance Liquidated Damages is reasonable considering the anticipated harm caused by the breach related thereto, are estopped from contesting the validity or enforceability of the rate of Performance Liquidated Damages on the basis that such rate constitutes a penalty or is otherwise unenforceable or invalid. If Contractor, Contractor Guarantor, or anyone on their behalf successfully challenges the rate of any Performance Liquidated Damages, Contractor specifically agrees to pay the Company any and all actual damages incurred by the Company in connection with such breach, including but not limited to any and all consequential damages (including but not limited to loss of profits and revenues, business interruption, loss of opportunity and use, and attorney's fees and costs) and all costs incurred by the Company, without regard to any limitations whatsoever set forth in this Agreement.

5.2.2.2 Payment of Performance Liquidated Damages with respect to any Work shall be in addition to, and not in lieu of, Contractor's other obligations and liabilities under this Agreement. Notwithstanding the foregoing, subject to Section 20.2.1 of these Terms and Conditions, Performance Liquidated Damages shall be the sole and exclusive damages owed by Contractor for failure to meet the Guaranteed Performance Levels subject to the provisions of this Section; provided, that the foregoing shall not be construed or deemed to limit the Company's right to receive and Contractor's obligation to pay Delay Liquidated Damages in accordance with Section 4.9 of these Terms and Conditions if Contractor fails to achieve Substantial Completion on or before the Guaranteed Substantial Completion Date.

5.2.3 Achievement of Substantial Completion. If the Minimum Performance Standards are met during the Performance Tests but any of the Guaranteed Performance Levels to which such Minimum Performance Standards apply are not met, and all other conditions to Substantial Completion have been met by Contractor or waived by the Company, then Contractor shall have the option to achieve Substantial Completion by (i) performing remedial Work to correct the Defect in performance and re-perform, at Contractor's sole cost and expense, the failed Performance Test and attempt to correct the Work in accordance with Section 5.2.4 of these Terms and Conditions to enable the Work to achieve all of the Guaranteed Performance Levels for the Project Facilities; provided that within five (5) Days of the Company's request, Contractor shall increase the amount of the Contractor Letter of Credit in connection with the Performance Liquidated Damages due with respect to the Guaranteed Performance Levels that have not been met; or (ii) subject to Section 5.2.5 of these Terms and Conditions, paying the Company the applicable Performance Liquidated Damages within five (5) Days from the Company's request.

- 5.2.4 Contractor Option to Attempt to Achieve Guaranteed Performance Level. If Contractor elects to exercise its option to correct the Work pursuant to Section 5.2.3(i) of these Terms and Conditions, Contractor may attempt for a period of up to thirty (30) Days commencing on the date that Contractor exercises its option under Section 5.2.3(i) of these Terms and Conditions (“**Guaranteed Performance Levels Cure Period**”), to perform curative Work; provided that the Company shall have the right to direct Contractor to suspend performance of such curative Work as determined by the Company in connection with the Company’s operations, and Contractor shall be granted a day-for-day extension for any such suspension of Work. Within ten (10) Days after exercising its option under Section 5.2.3(i) of these Terms and Conditions and prior to commencing any curative Work during the Guaranteed Performance Levels Cure Period, Contractor shall submit a plan for the correction or repair or remedy of any of the Work necessary to achieve the relevant Guaranteed Performance Levels, for review and acceptance by the Company. The Company shall direct Contractor as to the period of availability of the Project Facilities for such curative Work. Contractor shall take such steps as may be necessary to minimize any interference that performance of the curative Work may have on the Project Facilities and the Company’s operations. Contractor shall complete all the curative Work in accordance with the plan as accepted by the Company. If within five (5) Days of the expiration of the Guaranteed Performance Levels Cure Period Contractor has not paid the Performance Liquidated Damages due and owing or met the Guaranteed Performance Levels, then the Company may draw down on the Contractor Letter of Credit any Performance Liquidated Damages payable under the Agreement.
- 5.2.5 Company Option to Cause Contractor to Complete Work. Notwithstanding anything to the contrary contained herein, upon Contractor’s election to pay the Company Performance Liquidated Damages in accordance with Section 5.2.3(ii) of these Terms and Conditions, the Company shall have the right to direct Contractor to: (i) increase the amount of the Contractor Letter of Credit in connection with the Performance Liquidated Damages due with respect to the Guaranteed Performance Levels that have not been met, and (ii) correct the Work, using commercially reasonable efforts which shall be determined by taking into consideration reasonable cost, time, availability of Subcontractors and Suppliers and likelihood of success, to enable the Work to achieve all of the Guaranteed Performance Levels for the Facility.
- 5.2.6 Contractor Access. During any Guaranteed Performance Levels Cure Period, except as limited by the Company’s operations at the Site, the Company, at its sole discretion, shall provide Contractor with access to the Project Site, sufficient to perform its curative Work under the Agreement in accordance with the plan as accepted by the Company pursuant to Section 5.2.4 of these Terms and Conditions, so long as such access does not unreasonably interfere with the Company’s operations at the Site. If during performance of the curative Work Contractor determines that any activities that were not contemplated in the plan as accepted by the Company have become necessary, Contractor shall provide prior written notice to the Company if performance of the curative Work will or is likely to interfere with the Company’s operations at the Site. In such event the Company may place reasonable limitations on Contractor’s access to the Project Site such that performance of the Work will minimize disruption to the Company’s operations and loss of revenue resulting from performance of such Work.
- 5.2.7 Delay Liquidated Damages Amounts. Contractor guarantees that Substantial Completion shall be achieved by the Guaranteed Substantial Completion Date set forth in the Agreement. If Contractor fails to achieve Substantial Completion by the Guaranteed Substantial Completion Date set forth in the Agreement, Contractor shall be liable for the Delay Liquidated Damages for each Day or portion thereof until Substantial Completion is achieved. The amount of Delay Liquidated Damages payable pursuant to this provision shall be as set forth in Exhibit B (Statement of Work).
- 5.2.8 Payment of Delay Liquidated Damages. After the scheduled Substantial Completion Date, the Company shall have the right to request payment by Contractor for Delay Liquidated Damages accrued under Section 5.2.7 of these Terms and Conditions on a Monthly basis by delivery of a notice to Contractor specifying the amount of Delay Liquidated Damages accrued and Contractor shall pay the amount specified within fifteen (15) Days of any such request. The Company shall have the right to offset any liability of Contractor under this section against any amount due or to become due from the Company to Contractor under this or any other Agreement.

6.0 PERMITS

6.1 Contractor-Acquired Permits. On or before the date that they are required for performance of the Work in accordance with the Project Schedule, Contractor shall obtain and maintain all Contractor-Acquired Permits, including those identified or described in Exhibits U-1 (Contractor Acquired Permits (non-FERC Projects) and U-2 (Contractor Acquired Permits (FERC Projects)) as well as all those Permits required and necessary to complete the Work so that it complies with all Applicable Laws whether the same are in force at the execution of the Agreement or may in the future be passed, enacted or directed.

6.2 Compliance with Permits. Contractor shall perform all of the Work in strict compliance with the terms and conditions of all Permits, including without limitation those terms and conditions that may require a restricted construction workday or advanced notice of permanent paving activities. No addition compensation shall be given to Contractor for compliance with these restrictions.

6.3 Company-Acquired Permits. Contractor shall cooperate with and provide reasonable and timely assistance to the Company in obtaining the Company-Acquired Permits, including the collecting of any information reasonably available to Contractor required for, and the preparation of, any applications for such Permits.

6.4 Governmental Authorities. Contractor shall at all times cooperate and coordinate with the Company with respect to all interactions with Governmental Authorities. Contractor shall not enter into negotiations with any Governmental Authority 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 as provided in the Company's sole discretion.

6.5 General Requirement. Contractor shall obtain and maintain all Contractor-Acquired Permits, including those identified or described in Exhibits U-1 (Contractor Acquired Permits (non-FERC Projects) and U-2 (Contractor Acquired Permits (FERC Projects)), on or before the date that they are required for performance of the Work in accordance with the Project Schedule. Contractor shall Work under Permits obtained by the Company and will have copies of all Permits at the Project Site, where required. Contractor shall cooperate with and provide reasonable assistance to the Company in obtaining the Company-Acquired Permits, including the collecting of any information reasonably available to Contractor required for, and the preparation of, any applications for such Permits. Contractor shall at all times cooperate and coordinate with the Company with respect to all interactions with Governmental Authorities. Specifically, without limiting the foregoing, Contractor shall:

- 6.5.1 notify the Company of Contractor's intent to obtain or renew any Permit at least thirty (30) Days in advance of such filing;
- 6.5.2 copy the Company on all filings, applications, and written correspondence with any Governmental Authority as such relates to Contractor's execution of the Work;
- 6.5.3 invite the Company to attend and participate in each meeting between Contractor and any Governmental Authority relating to the Work;
- 6.5.4 if Contractor encounters any issue or problem with any Governmental Authority in connection with the Work or any of Contractor's obligations hereunder, (i) promptly notify the Company thereof and (ii) coordinate and cooperate fully with the Company to solve such issue or problem; and
- 6.5.5 promptly notify the Company (which notice shall include a copy of the relevant correspondence from the applicable Governmental Authority) if Contractor or any Supplier receives any notice of violation or similar notification from a Governmental Authority which asserts or alleges any breach or violation of any Permit.

Notwithstanding the foregoing, Contractor acknowledges and agrees that: (i) no such cooperation or coordination nor provision of any assistance or advice by the Company shall reduce, diminish or otherwise affect any obligation of Contractor hereunder; (ii) Contractor shall not be entitled to a Change Order as a result of any such cooperation or coordination or provision of assistance or advice, regardless of whether the Company is successful in addressing any issue or problem; and (iii) the cost of obtaining and maintaining the Permits is included in the Contract Price.

6.6 Contractor Failure to Timely Obtain or Maintain Permit(s). Failure by Contractor to timely obtain or maintain a required Permit, or comply with any Permit requirements may result in termination for cause if Contractor should reasonably

have known: (i) the Permit was required; (ii) Contractor was the responsible Party to file for the Permit either by direction, common practice, or default; (iii) Contractor should have reasonably understood the compliance requirements of the Permit (whether obtained by the Company or Contractor).

In lieu of termination, the Company may require Contractor to: (x) obtain the Permit; or fulfill compliance requirements; (y) pay any penalties associated with the late filing, or non-compliance; and/or (z) recover any lost Project Schedule time at Contractor's expense.

If a Permit extension is required due to the fault or negligence of Contractor and/or other inexcusable delay, then Contractor shall be back-charged the cost of the Permit extension fee.

7.0 SHIPMENT AND TITLE

7.1 Unless otherwise specified in the Agreement, Contractor shall select the best practical mode of transportation for Equipment, Goods, and materials to be delivered to the Project Site. Contractor shall deliver, receive, unload, store in a secure place, and deliver from storage all Equipment, Goods, and materials (whether furnished by the Company or Contractor) required for the performance of the Work, in accordance with the Agreement and all manufacturers' recommendations and/or Specifications. When receiving Equipment, Goods, and materials (whether furnished by the Company or Contractor), Contractor shall inspect such Equipment, Goods, and materials for correctness of quantity, quality, and damage, all of which shall be reported to the Company in accordance with Article 32 herein. Contractor shall provide that deliveries are made on scheduled working Days between the hours of 7:00 a.m. and 2:00 p.m., Monday through Friday, unless otherwise arranged with the Company's Project Manager or otherwise specified in the Agreement. Contractor shall bear the cost of all packaging and shipment of Equipment, Goods, and materials to the Site, as well as the cost of all unloading, storage, protection and installation of Equipment, Goods, and materials at the Site. Contractor shall further provide for and bear the cost of any insurance on the Equipment, Goods, and materials prior to Final Acceptance by the Company, regardless of whether title has passed to the Company.

7.2 Contractor warrants and shall take all action necessary to ensure that all Equipment, Goods, and materials 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 Contractor's sole expense as may be necessary to discharge any defect in title, or Lien or encumbrance on the Equipment, Goods, and materials. Unless otherwise specified in the Agreement, title to Equipment, Goods, and materials furnished hereunder shall pass to the Company upon the earlier of (i) delivery of the Equipment, Goods and materials to the Project Site, (ii) Substantial Completion of the Work, or (iii) the effective date of termination or cancellation of the Agreement. Passage of title shall not be construed to impair any rights which the Company may otherwise have to recover damages or reject Equipment, Goods, and materials that are Defective or that do not otherwise meet the requirements of the Agreement. Transfer of title to the Company of any Equipment, Goods and materials does not relieve Contractor in any way of its obligations, including but not limited to its custodial obligations, or liabilities under the Agreement, including as per Section 7.1 above and Section 3.9 of these Terms and Conditions.

8.0 RISK OF LOSS

8.1 Risk of loss or damage to the Work shall remain with Contractor until Final Acceptance by the Company, regardless of whether title has passed to the Company. Contractor shall bear the risk of loss or damage to any Work during its repair, replacement, or cure if Contractor is responsible for such repair, replacement or cure, regardless of whether title has passed to the Company.

8.2 Contractor shall be solely responsible for storage and protection of Equipment, Goods, and materials (whether furnished by the Company or Contractor) against deterioration or damage from any cause, vandalism, and theft until Final Acceptance. Contractor shall obtain a receipt from a duly authorized representative of the Company when returning Equipment, Goods, and materials to a designated Company Facility. Failure by Contractor to obtain such receipt or provide proof of such receipt upon request by the Company shall create a rebuttable presumption that the Equipment, Goods, and/or materials was not returned to a duly authorized representative of the Company.

8.3 Unless otherwise stated in the Agreement, Contractor shall be responsible for the security of (i) all Equipment, Goods and materials under its custody and control, and (ii) the Site or Sites. Contractor shall cooperate with the Company regarding all security measures instituted at the Site or Sites.

8.4 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 to the Work, Project, Site, Equipment, Goods, and materials. Contractor shall continually inspect the Work, Project, Site, Equipment, Goods, and materials, 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.

9.0 WARRANTY / REMEDY

9.1 Contractor warrants and acknowledges to the Company in addition to all other warranties, express or implied in fact or law, as follows: (i) Contractor is aware of and understands the purpose for which the Work is being used; (ii) the Work shall be suitable for such purpose; (iii) all Work shall conform to all requirements of the Agreement, including the Drawings and Specifications, any and all Supplemental Conditions, and Change Orders; Applicable Laws and Industry Practices; (iv) the completed Work and Project shall meet all required standards and levels of performance as required in and by the Agreement; (v) unless a higher standard is required by the Agreement, in which case such higher standard shall apply, Contractor shall perform all Work, including all Services, using its best skills, attention, care and diligence, in accordance with the highest industry standards customarily practiced by the leading engineering and construction firms in the industry performing similar Work on Projects, including but not limited to Industry Practices, and the intended use by the Company; (vi) the Work, including all Goods and Equipment incorporated in the Work shall be merchantable, new and be of size, capability and material sufficient to meet the requirements of the Agreement, including, but not limited to, the Drawings and Specifications in all respects and suitable for its intended use in the Project Facilities; (vii) the Work, including, but not limited to, engineering, procurement, construction, installation of Goods and Equipment, refurbishment, and repairs, shall be free from Defects in design, workmanship, and materials of any kind, for a period of at least twenty-four (24) Months from the date of Final Acceptance by the Company unless otherwise provided; (viii) no Work shall infringe or violate the Intellectual Property rights of any third party, or violate any agreement or confidentiality obligation by which Contractor may be bound; (ix) the Company shall receive good and marketable title to and ownership of the Work, and each component of the Work, including all Goods, and shall be free of all Liens, claims and other restrictions on the Company's receipt, ownership and use thereof; (x) the Work, including all Equipment installed and each and every component thereof, shall be installed in accordance with and satisfy the requirements of the Agreement, and shall be in compliance with all Applicable Laws (including but not limited to current OSHA regulations) and Industry Practices; (xi) unless otherwise approved in writing by the Company, all Work and each and every component thereof shall be composed and made of only proven technology, of a type in commercial operation as of the Effective Date. Contractor shall provide the Company, within thirty (30) Days of such request, with satisfactory evidence that the Work, or any Goods, materials, Equipment or other component thereof, satisfies the warranties set forth in this Section 9.1. No Goods, materials, Equipment or other components of the Work shall 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.

9.2 These warranties are independent of any and all Minimum Performance Standards, Performance Requirements or Guaranteed Performance Levels required by the Agreement.

9.3 If the Work provided by Contractor or its Subcontractors fails to conform to the warranties set forth above or if the Work is deemed in any way by the Company to be Defective, in addition to any and all other remedies available to the Company in the Agreement, at law or equity, the Company may provide notice to Contractor identifying and describing the non-conforming and/or Defective Work and demanding that same be cured. Upon receipt of such notice, Contractor shall prepare a proposal in writing to the Company setting forth in reasonably sufficient detail how Contractor, at Contractor's sole expense, proposes to correct the non-conforming and/or Defective Work. At the Company's option and with the Company's written approval, Contractor shall, at Contractor's sole expense, promptly: (i) repair or replace the nonconforming and/or Defective Work ("**Warranty Work**"); (ii) refund the amount of money paid by the Company for such nonconforming and/or Defective Work; (iii) reimburse the Company for the actual cost and /expenses of any Warranty Work performed by a third party, and/or (iv) any combination of the foregoing in the sole discretion of the Company. For all such Warranty Work performed by Contractor, the Company may, at its option, require Contractor to use overtime Work at no cost to the Company if such additional effort will shorten the time the Work is nonconforming and/or Defective. The cost of all required transportation, Equipment, and access to a Defective product or Defective installation to affect the repair or replacement thereof, as well as the cost of any clean-up or restoration of the areas and/or structures surrounding the repair to as-was "undisturbed" condition shall be borne by Contractor. All Warranty Work performed by Contractor shall be scheduled at and by times acceptable to the Company. With respect to Warranty Work, Contractor's warranties shall recommence upon the Company's acceptance of such Warranty Work and shall be in effect for the remaining duration of the Warranty Period or for twenty-four (24) Months after completion of the Warranty Work, whichever period is longer. No such Warranty Work

shall be considered complete until it meets the requirements of the Agreement. The terms of this Section shall survive termination of the Agreement and shall survive delivery, inspection, tests, acceptance (including Final Acceptance) and use of the Work. Notwithstanding the foregoing, if any condition created by or Work performed by Contractor presents an imminent threat to safety, health or the environment, the Company may proceed to perform or cause such Warranty Work to be performed without prior notice to Contractor, and Contractor shall nonetheless be liable to the Company for the actual costs and expenses arising out of or relating to such Warranty Work.

9.4 In the event that Warranty Work is performed by Contractor, the Company shall provide Contractor with access to the portions of the Project Facilities and shall otherwise take such other actions as are reasonably necessary for Contractor to safely access such nonconforming and/or Defective Work and to perform its Warranty Work, so long as such activities do not unreasonably interfere with the construction and/or operation of the Project Facilities, and subject to any reasonable security or Safety Requirements of the Company. Contractor shall not utilize spare parts owned by the Company in the course of performing any Warranty Work without the Company's prior written consent. In the event Contractor utilizes spare parts owned by the Company in the course of performing any Warranty Work, Contractor shall supply the Company, at no cost to the Company, with new spare parts equivalent in quality and quantity to all such spare parts used by Contractor, from the original manufacturer of the spare parts used, as soon as possible following the utilization of such spare parts, or shall reimburse the Company for the complete replacement costs incurred by the Company to replace such spare parts.

9.5 If during the Warranty Period any part or component of the Work is changed, repaired or replaced once due to failure to comply with or satisfy the warranties set forth in Section 9.1, and such part or component is found to be Defective again during the applicable Warranty Period (as extended), Contractor shall as promptly as practicable after such Defective part or component is identified, and at Contractor's sole expense, undertake a technical root cause analysis of such failures and provide the Company with a copy of such analysis. If there is a root cause that is correctable, Contractor shall determine what changes, repairs, replacements or other corrections are necessary to avoid further failures of the identified part or component. Contractor shall, at its sole expense, make such necessary changes, repairs or replacements with respect to all such parts or components (on a Project Facilities-wide basis), as part of its warranty obligations hereunder. If the root cause cannot be identified after reasonable investigation by Contractor, which investigation shall be to the satisfaction of the Company, Contractor shall, at its sole expense, take such action as the Company directs, consistent with Contractor's warranty obligations and the provisions of Section 9.3 of these Terms and Conditions. Without limiting the above, in each case, during the Warranty Period, Contractor shall repeat such process on an iterative basis until such Defects and the underlying cause thereof are corrected, and until such part or component has not failed again during the immediately succeeding 365 Day period (or such shorter period remaining before expiration of the Warranty Period). Contractor shall complete any root cause analysis commenced during a Warranty Period and shall provide such root cause analysis to the Company whether or not such analysis was completed before the end of such Warranty Period.

9.6 Contractor shall make available for service one representative of Contractor, acceptable to the Company, to assist in coordinating resolution of any nonconforming and/or Defective Work. Contractor shall provide a replacement representative in the event the appointed representative shall, for any reason, become dissociated with Contractor and during any periods of vacation or extended illness of the appointed representative of Contractor.

9.7 In addition to any and all other remedies permitted by Law, the Company reserves the right to reject and return to Contractor for full credit and at Contractor's expense, all over-shipments and all Work that does not conform to the requirements of the Agreement. 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 Contractor, and Contractor shall be liable for any loss or expense incurred as the result of Contractor's failure to make timely delivery. The acceptance of any late delivery shall not constitute waiver by the Company to reject subsequent deliveries not made as originally scheduled.

9.8 Contractor shall obtain from each Subcontractor and extend to the Company for its benefit and at no additional cost to the Company, warranties for all Work performed or supplied by such Subcontractor, substantially identical to the warranties Contractor is required to provide hereunder. Any such warranties shall be in addition to and shall not be limited by or themselves limit, the Contractor's Warranties otherwise provided in the Agreement. Contractor shall be and remain fully responsible and liable to the Company for its warranty and Warranty Work obligations and liability under the Agreement for all Work. Contractor shall deliver to the Company copies of all Subcontractor warranties. Notwithstanding the foregoing, Contractor's Warranty as stated in Section 9.1 above, is inclusive of all subcontracted Work, Goods, Equipment, and materials whether or not a specific Subcontractor warranty is provided. If a Subcontractor warranty provides greater duration and/or coverage than Contractor's Warranty as required by Section 9.1 of these Terms and Conditions, such Subcontractor warranty shall be provided to the Company by Contractor as a Pass-Through Warranty with the Company named as the

recipient and beneficiary of such warranty in addition to Contractor. Contractor shall provide that Pass-Through Warranties include at least twenty-four (24) Months warranty extension after repair or replacement.

9.9 Contractor shall obtain from each OEM and Supplier and extend to the Company for its benefit and at no additional cost to the Company, the best available warranties for all OEM and Supplier Equipment, Goods and materials. All such warranties shall be in addition to and shall not be limited by or themselves limit, the Contractor's Warranties otherwise provided in the Agreement. Contractor shall deliver to the Company copies of any OEM and Supplier warranties. Notwithstanding the foregoing, Contractor's Warranty as stated in Section 9.1 of these Terms and Conditions, is inclusive of all OEM and Supplier Equipment. Goods and materials whether or not a specific OEM or Supplier warranty is provided. If an OEM or Supplier warranty provides greater duration and/or coverage than Contractor's Warranty under Section 9.1 of these Terms and Conditions, such OEM and Supplier warranty shall be provided to the Company by Contractor as a Pass-Through Warranty with the Company named as the recipient and beneficiary of such warranty in addition to Contractor. Contractor shall provide that Pass-Through Warranties include at least twenty-four (24) Months warranty extension after repair or replacement is also required. All warranties provided by any OEM and Supplier shall be in such form as to permit direct enforcement by Contractor or the Company as a third-party beneficiary of the warranty against any OEM and Supplier. Contractor shall, upon the Company's request, provide reasonable assistance to the Company in the enforcement of OEM and Supplier warranties.

9.10 The Company may be required by Applicable Law or other authority to produce certifications regarding the origin and manufacturing of certain products, including, but not limited to those products covered by the Buy America Act requirements of 23 U.S.C. § 313 and other federal, state or local law. In the event that the Company notifies Contractor that Equipment, Goods, or materials to be provided hereunder are subject to any certification or reporting requirements regarding the origin or manufacturing of certain products, Contractor represents and warrants that all relevant Equipment, Goods or materials shall be compliant with all Applicable Law. Contractor shall, upon request from the Company, produce sufficient documentation to show the origin and manufacture of the requested Equipment, Goods or materials along with a certification, signed by an officer of Contractor, certifying the place of origin and manufacture of such Equipment, Goods, or materials.

9.11 In the event that, as part of the RFP or ordering process for such Work, or otherwise prior to receiving a price quotation, the Company notifies Contractor that a particular order is subject to any Applicable Law requiring that any Equipment, Goods, or materials be procured from limited or restricted places of origin or manufacture, Contractor agrees that all quoted pricing shall be inclusive of any cost to comply with such requirements and Contractor shall procure such Equipment, Goods, or materials only from compliant places of origin or manufacture.

9.12 If during the course of conduct of the Work in the judgment of the Company any Work is Defective, the Company may provide written notice to Contractor identifying and describing with reasonable specificity that portion of the Work that the Company believes is Defective. Upon receipt of such written notice, the Contractor shall, at its own expense, promptly correct such Defective Work, whether by repair, replacement or otherwise. The correction of Defective Work identified before Substantial Completion shall be completed before Substantial Completion unless on the agreed Punch List it is to be completed after Substantial Completion, provided that such Defect is a Non-Critical Deficiency. Subject to Contractor's right to pursue a Dispute under Article 26 of these Terms and Conditions, the decision of the Company shall be conclusive as to whether the Work is conforming or Defective and Contractor shall comply with the instructions of the Company in all such matters while pursuing any such Dispute. The cost of disassembling, dismantling or making safe finished Work for the purpose of inspection and corrective Work under this Section 9.12, and reassembling such portions (and any delay associated therewith) shall, if requested by the Company, be borne by the Company if such Work is found to conform with the requirements of this Agreement and shall be borne by Contractor if such Work is found to be Defective.

10.0 PRICE / PAYMENT

10.1 Contract Price. The Company shall pay the Contract Price for the Work in accordance with the Payment Schedule and Retainage requirements set forth in the Agreement. The Parties acknowledge and agree that the Contract Price is fixed and firm for the duration of the Agreement. The Contract Price is a lump sum amount to be paid in U.S. dollars that is an all-inclusive amount that represents the entire compensation to Contractor for all Work set forth in the Agreement, inclusive of all costs (direct and indirect), overhead (field and home office), contingency, earned allowances, sales tax and profit for the Work described in the Agreement. Except with regard to allowances, the Contract Price is not subject to adjustment, fluctuation or escalation on the basis of Contractor's cost experience in performing the Work. For the avoidance of doubt, the Parties further acknowledge and agree that the Contract Price shall not be increased due to changes in Work resulting from Contractor's fault, negligence or breach of the Agreement, including, without limitation, errors in planning, scheduling, design, equipment, materials, means and methods, or construction of the Work.

- 10.1.1 The original Contract Price as documented in Exhibit D (Contract Pricing) of the Agreement is fixed and not subject to change except as otherwise provided herein. The mechanism for any change to Contract Price is set forth in Article 16 of these Terms and Conditions. As provided therein, all such changes are to be documented, negotiated, executed and managed pursuant to Article 16 of these Terms and Conditions.
- 10.1.2 Optional Work. The Company has the right to exercise an option requiring that Contractor perform certain Optional Work on the Project, as set forth in Exhibit D (Contract Pricing). In the event the Company elects to exercise its right to require the performance of any Optional Work, the Company shall notify the Contractor in writing of such election, which election shall be submitted by the Company as a Change Order pursuant to Article 16 of these Terms and Conditions. Contractor agrees to perform such Optional Work in the time directed by the Company, in the quantities and for the amounts as set forth in Exhibit D (Contract Pricing). Contractor acknowledges and agrees that the amounts for the Optional Work quoted in Exhibit D (Contract Pricing) shall remain valid for the duration of the Agreement. Contractor further acknowledges and agrees that the prices for Optional Work quoted in Exhibit D (Contract Pricing) are all-inclusive amounts that represent the entire compensation to Contractor for each item of optional Work identified therein, inclusive of all costs (direct and indirect), overhead (field and home office), contingency, earned allowances, sales tax and profit for the optional Work described therein. Contractor's quoted pricing for all Optional Work is not subject to adjustment, fluctuation or escalation for any reason, including on the basis of Contractor's cost experience in performing the Work. For the avoidance of doubt, other than the amounts set forth in the "Option Pricing" tab of Exhibit D (Contract Pricing), Contractor shall not be entitled to any other or additional compensation or schedule relief in connection with the Company's election of its right to have Contractor perform any Optional Work. Unless otherwise agreed to by the Parties in writing, all Optional Work shall be performed in accordance with the terms of this Agreement.

10.2 Payment Terms. Unless otherwise provided in the Agreement, the Company's standard payment terms are "2%10, Net 30." The Company shall pay all invoices in accordance with such standard payment terms, less Retainage withheld under Section 10.7 of these Terms and Conditions not more than thirty (30) Days after receipt by the Company's accounts payable department of a conforming invoice and all required supporting documentation as required herein, subject to the Company's right to contest, in good faith, all or any part of the charges set forth therein. Contractor waives any claim for statutory interest for payments made after the proscribed period.

10.2.1 If the Massachusetts Prompt Payment Act applies to the Agreement, invoices shall be approved or rejected within fifteen (15) Days of submission by Contractor.

10.2.2. If the New York Prompt Payment Act applies to the Agreement, invoices shall be approved or rejected within twelve (12) Days of submission by Contractor.

10.3 Invoices and Supporting Documentation. Contractor shall submit invoice(s) in accordance with the Agreement, by no later than the 10th Day of each Month. Subject to Section 10.2.1 of these Terms and Conditions, in the event that Contractor submits an Application for Payment after the 10th Day of the Month, the Company, at its sole discretion, reserves the right to review, and approve and process as appropriate, such Application for Payment beginning on the first Day of the Month following submission of the Application for Payment and the Company's standard payment terms (2%10 Net 30) shall begin to run on the first Day of the following Month. All invoicing and payments under the Agreement shall conform to the Payment Schedule and provide all necessary documentation to verify that invoicing and payments are issued for verified and completed percentage of Work under the Project Schedule. At the Company's request, the Contractor shall provide requested documentation of completed Work for invoice verification purposes. Company shall have the right to withhold payment until satisfactory documentary evidence is furnished by Contractor, provided that the Company issues a written statement disapproving all or a portion of the invoice. Company shall in no event pay for uncompleted Work. If determined by the Company in its sole discretion, the Payment Schedule will be updated by Contractor periodically to remain consistent with any updates to the Project Schedule.

10.3.1 Using the Application for Payment/Form of Invoice and including all of the information set forth in Exhibit J (Application for Payment/Form of Invoice) or Exhibit K (Application for Final Payment/Form of Final Payment Invoice) to the Agreement, as appropriate, Contractor shall include a reference to the Company's Purchase Order Number and Contract Number on each submitted invoice and shall further include on such invoices cost breakdowns and unit quantities as specified by the Company. Such Application for Payment shall be for the full amount claimed by Contractor to be due for completed Work and materials furnished and installed at the Project through the last day of the Month. The amount shall be adjusted for any amounts

previously invoiced by Contractor and reduced by the applicable amounts for Retainage. Work shall be considered completed upon the approval of the Company's Project Manager. Contractor shall submit completed and properly executed Interim Lien and Claim Waivers, using the forms set forth in Exhibit N (Form of Contractor Interim Lien and Claim Waiver) and Exhibit O (Form of Supplier Interim Lien and Claim Waiver) to the Agreement, as appropriate, with each invoice, for the Work included in such invoice. The Company shall not accept, and Contractor shall not include on any submitted invoices, any restocking charges for the following returns to or by Contractor for: (i) Defective materials, (ii) over shipments, (iii) material not as specified, (iv) materials not requested, (v) shipments made to other than stipulated location, or (vi) unauthorized delivery in advance of specified dates.

- 10.3.2 When invoicing the Company as set forth in the Agreement, Contractor shall credit the Company for the value of any materials, Goods, Equipment and/or Services which were to be provided by Contractor under the Agreement, but instead were provided by the Company or a third party on behalf of the Company, or materials, Equipment or Services included within the scope of the Agreement that for any reason were not provided by Contractor. The value of such materials, Goods, Equipment or Services shall be determined based on the rates set forth in the Schedule of Values contained in Exhibit D (Contract Pricing). If the required detail to determine such a credit is not provided for in Exhibit D (Contract Pricing), the Company's net actual cost or fair market value shall be used at the Company's sole discretion.
- 10.3.3 Contractor Certification. In addition to the specific requirements for each payment, Contractor's submittal of an invoice using the Application for Payment/Form of Invoice set out in Exhibit J (Application for Payment/Form of Invoice) to the Agreement shall represent a certification by Contractor that it has complied with all relevant terms of the Agreement, including, without limitation: (i) the quality management requirements set forth in Article 12 herein; (ii) all scheduling requirements set forth in Article 4 herein; (iii) the Safety Requirements set forth in Article 18 herein; and (iv) all environmental requirements set forth in Article 39 of these Terms and Conditions. Contractor shall use the Application for Final Payment/Form of Invoice set out in Exhibit K (Application for Final Payment/Form of Final Payment Invoice) to the Agreement for Final Payment.
- 10.3.4 Change Order Invoices. Contractor shall submit all Change Order invoices, with all required backup documentation, separately from Payment Schedule invoicing. Contractor shall not submit an invoice for Work under a Change Order unless and until Contractor has received written approval of the Change Order(s) from the Company Project Manager. Notwithstanding anything to the contrary in the foregoing, if the Massachusetts Prompt Payment Act or the New York Prompt Payment Act applies to the Agreement, any Change Order invoices shall be approved or rejected by the Company (i) within fifteen (15) Days of Contractor submitting them for Projects within Massachusetts and (ii) within twelve (12) Days of Contractor submitting them for Projects within New York, and any full or partial rejection of a change order invoice shall be made in writing and include (i) the factual and contractual basis for the rejection and (ii) a certification that the rejection is made in good faith.

10.4 Invoice Review and Payment. As provided above, Contractor shall furnish such supporting documentation and certificates and provide such further information as may be requested by the Company in connection with the Company's review of an invoice. Without limiting the Company's rights of review under the Agreement, within (i) fifteen (15) Days for Projects within Massachusetts or (ii) twelve (12) Days for Projects within New York after the Company receives an invoice and all accompanying documentation required under Section 10.3 of these Terms and Conditions, the Company shall (i) (a) determine whether the Work covered thereby has been completed as described by Contractor; (b) determine whether the invoice has been properly submitted; and (d) whether the Company will dispute any invoiced amount; and (ii) notify Contractor whether or not the Company disputes any invoiced amount and the basis for such Dispute ("**Company Invoice Response**"). Unless disputed by the Company, each invoice (less any withholdings allowed under the Agreement) shall be due and payable ten (10) Days after the Company delivers the Company Invoice Response to Contractor.

10.5 Disputed Payments. If the Company disputes one or more items in an invoice, the Company shall notify Contractor in writing of the item or items under Dispute and the reasons therefor and the Dispute provisions of Article 26 of these Terms and Conditions shall apply. Thereafter, the Company shall either pay the portion of the invoice that is not disputed by the due date for payment or the Company, at the Company's option, may require Contractor to submit an amended invoice in the amount not in dispute. The Company shall have the right to withhold payment of disputed items without payment of interest until settlement or other resolution of the Dispute. The Company's withholding of payment of an amount in Dispute and identified as provided in this Section until a resolution of such Dispute in accordance with the Agreement shall not in

any manner alleviate, diminish, modify, or excuse the performance of any of Contractor's obligations under the Agreement, including Contractor's obligation to meet the Guaranteed Substantial Completion Date. Notwithstanding the foregoing, if the Agreement is subject to the Massachusetts Prompt Payment Act or the New York Prompt Payment Act, any full or partial rejection of an invoice shall be made in writing and include (i) the factual and contractual basis for the rejection and (ii) a certification that the rejection is made in good faith.

10.6 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.

10.7 Retainage.

10.7.1 For Projects outside of Massachusetts and New York, and for Projects within Massachusetts with an original Contract Price of less than \$3,000,000 and Projects within New York with an original Contract Price of less than \$150,000, the Company shall be entitled to withhold ten percent (10%) of each invoice as Retainage until Final Acceptance by the Company. When Contractor has received the Final Completion Certificate from the Company, Contractor may submit its Final Payment invoice to the Company for the remaining Retainage and any other amounts owed, along with all other required documentation as further set forth in Section 13.5 of these Terms and Conditions.

10.7.2 For all Projects within Massachusetts with an original Contract Price of \$3,000,000 or more, the Company shall withhold five percent (5%) of each invoice as Retainage. Within fourteen (14) Days of Substantial Completion, Contractor must submit a Notice of Substantial Completion, which the Company shall accept or reject within fourteen (14) Days of receipt. Upon acceptance, Contractor may submit an Application for Payment for such Retainage within sixty (60) Days. If the Application for Payment of Retainage is accepted, the Company shall pay same within thirty (30) Days of submission of the Application for Payment, subject to the Retainage holdbacks set forth herein. .

10.7.3 For all Projects within New York with an original Contract Price of \$150,000 or more, the Company shall withhold five percent (5%) of each invoice as Retainage. Retainage shall be released by the Company to the Contractor no later than thirty (30) Days after Substantial Completion, provided that the Company issues final approval that the Work was completed in accordance with the terms and conditions of the Agreement

10.8 Withholding of Payment and Set-Off Payment. As further provided in Article 15 of these Terms and Conditions, 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 Contractor under the Agreement and/or under any other agreement between the Company and Contractor and/or any and all amounts owed by Contractor to the Company or a Company Affiliate, whether or not in connection with the Agreement.

10.9 Effect of Payment. No approval of any payment, and no payment, final or otherwise, shall constitute a waiver of claims by the Company or be considered or deemed to represent that the Company has inspected the Work, nor shall it constitute or be deemed an acceptance, in whole or in part, of any portion of the Work not in accordance with the Agreement. The Company expressly retains the right to dispute the amount of any portion of an Application for Payment at any time. Payment shall not relieve 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. All payments shall be subject to correction or adjustment in subsequent payments.

10.10 Certain Conditions Precedent to Payment. Without limiting any other requirements to payment set forth herein, Contractor acknowledges and agrees that it shall be a condition precedent to Contractor's entitlement to receive any payment from the Company under the Agreement that Contractor has provided to the Company and is maintaining: (i) the Contractor Guarantee in accordance with Section 14.1 of these Terms and Conditions; and (ii) the insurance policies in accordance with Section 25.1 of these Terms and Conditions.

11.0 TAXES

11.1 Contract Price. Contractor acknowledges and agrees that the Contract Price is inclusive of any applicable sales, use and similar taxes, unless otherwise provided for in the Agreement, including sales and use tax that will be paid by Contractor for Goods, materials, Equipment and Construction Equipment used in the Work, and for which Contractor is unable to claim exemption. Where no exemption applies, it is Contractor's responsibility to include in its materials and Equipment pricing as part of the Contract Price, the sales and use taxes that Contractor will be required to pay the state in which the Project is located. All sales and use tax to be paid by Contractor for Goods, materials, Equipment and Construction Equipment used in the Work shall thereby become a direct pass through to the Company, with no additional overheads added to the tax. For the avoidance of doubt, Contractor acknowledges and agrees that the tax amount included in the Contract Price shall be based strictly on Contractor's net cost (out of pocket or Supplier invoice value of the Goods, materials, Equipment or Construction Equipment before any mark-up is applied). Under no circumstances is Contractor to claim exemption, or later make a Claim against the Company for unpaid tax due to Contractor's failure to account for tax in their cost of materials, Equipment and Construction Equipment charged to the Company. Contractor shall include the following statement on all invoices submitted to the Company under the Agreement: "Contractor has paid all applicable state 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 Contractor, which may now or hereafter be applicable to the transactions between Contractor and the Company under the Agreement.

11.2 Exemption. Contractor and the Company shall cooperate with each other to minimize the liabilities for taxes of both Parties to the extent legally permissible and to secure tax credits and incentives, such as sales, use or property tax abatements, the Company may obtain for the Project, including separately stating the cost of the Equipment, supplying resale and exemption certificates, if applicable, and any other information as reasonably requested or required by Governmental Authorities or the Company. In connection therewith Contractor shall, and shall instruct its Suppliers to, ensure that all bills of lading and other shipping documentation reflect delivery of all items and components of Equipment to the Project Site, and Contractor shall, and shall instruct its Suppliers to, take delivery of Equipment at the Project Site or such other location so as to minimize Taxes.

11.3 In any state where Contractor may be eligible to apply for sales and use tax exemption, Contractor shall timely apply for such exemptions in that state, and maintain records of the exemptions taken, thereby eliminating any need to "pass through" the cost of such taxes to the Company. In the Commonwealth of Massachusetts, Contractor shall, as applicable, to complete and file 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, shall 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 shall complete and file Form ST-120.1 to reduce the amount of sales tax as applicable.

11.4 Contractor shall pay all applicable sales and use taxes for which they are not exempt. Contractor acknowledges and agrees that access to a Company direct pay permit (DPP) for any jurisdiction or state in which a Company construction, capital improvement, or engineering, procurement and construction (EPC) Project is being built by Contractor, does not provide any exemption for Contractor with respect to Contractor's responsibility to pay sales and use tax on Goods, materials, Equipment or Construction Equipment that Contractor purchases or rents for the Project. For the states in which the Company operates; i.e., New York, Massachusetts, and Rhode Island, the Contractor, not the Company, shall be considered the end user of Goods, materials and Equipment that become a permanent part of the capital asset being constructed and therefore Contractor shall be responsible for all sales tax.

11.4.1 For Projects in New York, Massachusetts, and Rhode Island, the DPP authorizes the Company to self-assess these taxes and pay these taxes directly to the state. Where Contractor acts as a retailer selling or transferring tools, parts, materials, or Equipment or renting Construction Equipment directly and outright, or as part of a service to the Company, Contractor may use the DPP to release Contractor from the obligation to collect tax on the sale or rental of such items.

11.4.1.1 In this instance, the retail company or contractor selling the Goods, materials, Equipment or Construction Equipment outright to the Company must have the correct Company DPP for the applicable state in which the Goods are being received, and for the correct Company Affiliate purchasing the Goods and shall not include sales and use tax as a line item on their invoices to the Company.

11.4.1.2 In the event that no DPP is available for the specific Company Affiliate purchasing the Goods, materials, Equipment or Construction Equipment 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 the Company.

- 11.4.1.3 For all Projects in the state of New York, 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 Contractor is not required to collect sales and use tax from the Company for any Goods, materials or Equipment used in the construction/capital improvement/EPC Project provided that the materials become a permanent part of the real property.

11.5 State Tax Liability Withholding. Contractor acknowledges and agrees that it is 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 by providing a surety bond to cover all potential state tax liabilities related to the construction contract to the satisfaction of the applicable taxing authority. If Contractor fails to provide a required surety bond, the Company shall have the right to withhold from each payment to Contractor under the Agreement a percentage of the amount due, as determined by applicable state regulation, for the purpose of covering applicable state tax liability ("**State Tax Liability Withholding**"). Upon completion of the Project, and review and certification by the applicable taxing authority that no further state taxes are due, the Company will release the State Tax Liability Withholding as appropriate. Where taxes due by a non-resident Contractor that have not been paid by the non-resident Contractor when due and are instead collected by the taxing authority of the applicable state from the Company, the Company reserves the right to invoice Contractor for amounts collected.

11.6 Compliance with Law. Contractor shall pay or cause to be paid all taxes and employer contributions imposed by Applicable Law with respect to compensation of employees of Contractor and all interest and penalties payable under Applicable Laws as a result of noncompliance therewith. 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.

11.7 Company's Audit Right. The Company shall have the right to have its tax consultant audit the Books and Records of Contractor and Subcontractors to confirm (i) that all taxes paid by Contractor and its Subcontractors in connection with the Work are properly owed under Applicable Laws, (ii) the quantities and descriptions of any Equipment installed on or ordered for the Project, and (iii) such other information as the Company or the Company's tax consultant may deem reasonably necessary in connection with the preparation of the Company's tax returns or other tax documentation in connection with the Project.

11.8 Contractor shall provide the Company information reasonably necessary for the Company to maintain segregated accounts for its tax records and fixed asset records. Such information may include but not be limited to a breakdown of the Contract Price by individual category (i.e., "soft costs" (e.g., engineering, permitting, etc.) and "hard costs" (e.g., Goods, materials, labor, Equipment and Construction Equipment, etc.)). Contractor shall further provide the Company information necessary to assist the Company with any tax abatement filings or other filings with any Governmental Authority. Contractor, upon reasonable request by the Company, will timely provide information sufficient for the Company to comply with FERC and state regulation, including the Uniform System of Accounts where applicable.

12.0 INSPECTION / TESTING / QUALITY MANAGEMENT

12.1 Contractor shall inspect all Work and make or cause to be made all tests and reviews required by the Agreement, Applicable Laws or by any vendor or Supplier.

12.2 All Work shall be subject to the Company Project Manager's inspection, direction, and approval. Contractor shall timely furnish all the information pertaining to the Work as the Company Project Manager may require.

12.3 The Company shall have the right to inspect and review any Work covered by the Agreement and, at no cost to the Company, the right to inspect and/or audit any of Contractor's, Contractor Personnel's or Subcontractors' inspection records and associated costs pertaining to the Work and/or 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 Defective or not in accordance with the Agreement, the Company shall be entitled to seek reimbursement for such audit costs. The Company may perform technical inspections of the Work as may be set forth more fully in the

Specification. The Company Project Manager 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.

12.4 The Company may at any time require a review of any or all engineering and design documents and Drawings. Contractor shall submit all engineering Work for review in accordance with the Project Schedule, and in an electronic format acceptable to the Company. Contractor shall allow a minimum of twenty (20) Business Days for each such review by the Company from the date of receipt by the Company of all required documents and Drawings.

12.5 The Company may advise 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 Contractor of any such errors, variations, or Defects or to provide any instructions or explanations shall not give Contractor any right or Claim against the Company, and shall not in any way relieve Contractor from its obligation to provide the Work in accordance with the Agreement.

12.6 At any time during the term of the Agreement, the Company or its designated representative shall be entitled to: (i) conduct and/or witness any test required by the Agreement; (ii) otherwise inspect, witness and/or test the Work; (iii) review Contractor's and Subcontractor's procedures and documents pertaining to inspection, testing or witnessing of tests; and (iv) review Contractor's and Subcontractor's documents, including, without limitation, all engineering and design documents, pertaining to the Work or the Agreement (collectively referred to as "**Inspection Activities**"). Contractor shall provide the Company and its representatives with access to Contractor's or Subcontractors' facilities and/or the Work, when and in such manner as the Company may require in order that the Company may carry out the Inspection Activities. In the event Contractor employs Subcontractors for any part of the Work, Contractor shall require Subcontractors to comply with the provisions of this Section 12.6.

12.7 Contractor Inspection and Testing. Contractor shall provide and maintain an examination, inspection, and testing system acceptable to the Company. 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.

12.7.1 In addition to any notice requirements otherwise set forth in the Agreement, Contractor shall give the Company Project Manager and/or other designated Company representative (i) five (5) Business Days prior written notice of any tests and inspections required by the Agreement, the Company or its representatives' instructions, or Applicable Laws, to be witnessed or approved by the Company, (ii) timely notice of all other tests and inspections, and (iii) 48 hours additional notice prior to the actual performance of any test or inspection. If Contractor fails to comply with the notice provisions of this section and covers Work, or otherwise makes the Work inaccessible without approval or consent of the Company, the Work shall, if required by the Company, be uncovered and/or otherwise made accessible for examination and properly restored at Contractor's sole expense.

12.7.2 In all cases other than those specified in Section 12.9 of these Terms and Conditions, if the Company requests Work to be uncovered or otherwise made accessible for re-examination, Contractor shall promptly 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, Contractor shall pay such cost of this re-examination. If the Company is required to reimburse Contractor for this Work, reimbursement will be based on Section 16.8 of these Terms and Conditions.

12.7.3 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 (i) affect the warranties and guarantees of Contractor, (ii) relieve Contractor from any responsibility or liability with respect to workmanship, materials or Equipment, (iii) constitute an acceptance of the Work by the Company or an agreement by the Company that the Work meets specified requirements, (iv) impair the Company's right to reject nonconforming or Defective Work, (v) constitute a waiver by the Company of any rights under the Agreement, or (vi) relieve 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.

12.8 Factory Acceptance Testing. Contractor shall conduct or observe Factory Acceptance Testing of all Major Equipment/Identified Equipment prior to its delivery to the Project Site. Contractor shall provide the Company with no less than ten (10) Business Days written notice of the scheduled dates for the conduct of and opportunity (along with any invitee of the Company) to witness the Factory Acceptance Testing. If the schedule for the conduct of any such Factory Acceptance

Testing changes, Contractor shall provide the Company with written notice of the revised schedule as promptly as practicable. Contractor shall provide the Company with copies of all Factory Acceptance Testing results as soon as such information becomes available, irrespective of whether any Company representative witnesses such test. Contractor shall arrange for the Company access to any place where Major Equipment/Identified Equipment is being manufactured, assembled or prepared for incorporation into the Work, for the purpose of inspecting production and observing tests on such Major Equipment/Identified Equipment.

12.9 Company Inspection. The Company shall have the right to, at any time, inspect all Goods, 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, including without limitation all Factory Acceptance Testing as set forth in Section 12.8 of these Terms and Conditions. The making of such inspections and tests by the Company shall not relieve Contractor of its responsibility for inspection and testing.

12.9.1 The Company reserves the right to inspect all Work prior to shipment. Contractor shall notify the Company in writing of all shipments not less than ten (10) Business Days prior to the date of shipment.

12.10 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 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: (i) reject the Work and require Contractor to immediately correct the Defective Work before proceeding further, at no additional cost to the Company; (ii) stop the Work in accordance with Section 20.2 of these Terms and Conditions; and/or (iii) correct or remove and replace such Work at Contractor's expense.

12.11 Contractor Quality Management System. Contractor shall, at its sole expense, implement and maintain a formal quality management system detailing Contractor's system, including quality plans and procedures, to direct and control its organization with regard to quality, which Contractor represents is consistent with Applicable Laws, Industry Practices and the requirements of Exhibit AA (Quality Management Systems) (the "**Quality Management System**") throughout the duration of the Work and which shall be to the satisfaction of the Company. The Quality Management System shall provide continual inspection of construction operations and shall include coordination of the various trades involved in the Work. No later than the Effective Date, Contractor shall provide to the Company a copy of Contractor's Project quality plan, as further set forth in Exhibit AA (Quality Management Systems). The Company's review of the Project quality plan shall in no way relieve Contractor of its responsibility for performing the Work in compliance with the Agreement and/or Applicable Laws.

12.11.1 Contractor shall designate a Project quality manager who shall be responsible for the administration and performance of the Quality Management System. This Person shall be authorized to stop the Work or any portion thereof without fear of retribution.

12.11.2 The Company shall have the right at any time during the term of the Agreement to review Contractor's Quality Management System and to have Contractor's Work examined, 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, Contractor shall pay such cost. Further, specific examination, testing, and inspections by a third party may be included in Contractor's Technical Scope of Work per the Agreement, in which case Contractor is fully and wholly responsible for any costs to cover this Technical Scope of Work.

12.11.3 The Company shall have the right at any time during the term of the Agreement to require Contractor to remove and/or correct any Work at Contractor's expense that is not performed in compliance with Contractor's Quality Management System.

12.11.4 Contractor shall retain all quality records and documentation, 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, Contractor shall submit copies of all such documents to the Company.

13.0 MECHANICAL COMPLETION / COMMISSIONING AND START-UP ACTIVITIES / PERFORMANCE TESTING / SUBSTANTIAL COMPLETION / FINAL

COMPLETION / PAYMENT

13.1 Mechanical Completion.

- 13.1.1 Mechanical Completion Certificate. When Contractor believes that all of the Mechanical Completion requirements have been satisfied, Contractor shall execute and deliver to the Company a Mechanical Completion Certificate, together with a report of the Work completed with sufficient detail to enable the Company to determine whether the Mechanical Completion requirements have been satisfied.
- 13.1.2 Company Approval or Rejection. As soon as practicable following its receipt of a Mechanical Completion Certificate delivered pursuant to Section 13.1.1 or Section 13.1.3 of these Terms and Conditions, the Company shall inspect the Work and notify Contractor of any matter of which it is aware that, if not remedied, would prevent the Company from accepting and countersigning the Mechanical Completion Certificate. As soon as practicable, and in any event no later than within fifteen (15) Days following the Company's receipt of a Mechanical Completion Certificate, the Company shall consider the report submitted by Contractor and either: (i) accept and countersign and deliver to Contractor the Mechanical Completion Certificate; or (ii) reject and notify Contractor in writing that Mechanical Completion has not been achieved, stating the reasons for said rejection.
- 13.1.3 Corrective Action. If the Mechanical Completion Certificate has been rejected by the Company, Contractor shall promptly take such corrective action or perform such additional Work to achieve Mechanical Completion and shall issue to the Company a new Mechanical Completion Certificate pursuant to Section 13.1.1 of these Terms and Conditions. Neither the Company's execution of the Mechanical Completion Certificate nor any matter reported by the Company pursuant to Section 13.1.2 of these Terms and Conditions, nor any action taken by Contractor pursuant to this Section 13.1.3 shall diminish Contractor's obligations pursuant to Article 9 herein.
- 13.1.4 Failure to Agree Upon Achievement of Mechanical Completion. If the Company and Contractor do not agree upon whether Mechanical Completion has been achieved, the Dispute provisions of Article 26 of these Terms and Conditions shall apply.

13.2 Commissioning and Start-Up Activities.

- 13.2.1 Conditions to Commencement of Commissioning and Start-Up. Contractor shall not commence commissioning and start-up unless all items designated in the commissioning and start-up procedures accepted by the Company to be completed prior to commissioning and start-up have been accepted and approved by the Company as complete, and no Defects except for Non-Critical Deficiencies exist.
- 13.2.2 Commencement of Commissioning and Start-Up. Subject to the requirements of Section 13.2.1, of these Terms and Conditions, Contractor shall commence commissioning and Start-Up Activities promptly after the Company's issuance and approval of the Mechanical Completion Certificate but in no event later than the date provided for by the Company in the Mechanical Completion Certificate approved and issued by the Company.
- 13.2.3 Requirements for Commissioning and Start-Up Activities; Start-Up Certificate.
- 13.2.3.1 No later than thirty (30) Day prior to achieving Mechanical Completion, Contractor shall provide the Company with a detailed commissioning and start-up procedures for review which shall include checklists of commissioning and start-up requirements for each Equipment System and subsystem in accordance with the requirements set forth in the Contract Documents. If the Company provides any comments to the commissioning and start-up procedures, Contractor shall revise the commissioning and start-up procedures and resubmit it to the Company until the Company accepts the commissioning and start-up procedures. Contractor shall comply with all of the requirements for commissioning and Start-Up Activities as set forth in the Agreement, and the commissioning and start-up procedures as accepted by the Company and Contractor as provided in this Section 13.2.3.1.
- 13.2.3.2 Within five (5) Days of acceptance of the commissioning and start-up procedures, Contractor shall furnish all operations, maintenance, safety, technical and supervisory personnel and all utilities, materials, consumable items, spare parts and tools required for the safe and efficient

commissioning, start-up, testing, operation and maintenance of the Project Facilities that are necessary for the conduct of the Performance Tests.

13.2.3.3 Contractor shall follow the commissioning procedures and conduct the commissioning tests for the Project Facilities in accordance with Contractor's commissioning and start-up procedures as accepted by the Company pursuant to Section 13.2.3.1 of these Terms and Conditions.

13.2.3.4 No later than ten (10) Days prior to Contractor determining that each System or subsystem of Equipment is ready for start-up, Contractor shall deliver a Start-Up Certificate to the Company with respect to such System or subsystem. Contractor shall provide that the Start-Up Certificate is accompanied by all supporting documentation as may be required to establish that the requirements for commissioning and start-up have been met. The Company shall inspect the applicable Systems or subsystem and promptly notify Contractor of any matter of which the Company is aware that, if not remedied, would prevent start-up. As soon as practicable, and in any event within seven (7) Days following its receipt of a Start-Up Certificate for such System or subsystem, the Company shall consider the report submitted by Contractor and either: (i) countersign and deliver to Contractor the Start-Up Certificate for such System or subsystem; or (ii) notify Contractor in writing that the System or subsystem is not ready for start-up, stating the reasons that said System or subsystem is not ready for start-up.

13.2.4 Upon receipt of any notice from the Company that the System or subsystem is not ready for start-up, Contractor shall promptly and in any event no later than three (3) Days of receipt of said notice, take such corrective action or perform such additional Work as will permit the start-up for such System or subsystem and shall issue to the Company another Start-Up Certificate.

13.2.5 Following the Company's acceptance of Start-Up Certificates for each System or subsystem, Contractor shall follow the start-up procedures and conduct the Start-Up Activities in accordance with that commissioning and start-up procedures accepted by the Company in accordance with Section 13.2.3.1 of these Terms and Conditions.

13.3 Performance Testing.

13.3.1 Performance Test Procedures. No later than sixty (60) Days prior to the Substantial Completion Date, Contractor shall propose detailed final test procedures for the conduct of Performance Tests to the Company for the Company's review and acceptance. Contractor shall provide that the proposed test procedures incorporate all of the requirements and comply with the conditions of testing described in Exhibit G (Completion, Testing, Acceptance, Performance Guarantees and Performance Liquidated Damages). Upon the Company's written acceptance of the performance test procedures ("**Performance Test Procedures**"), the Performance Test Procedures will form a part of the requirement for the conduct of the Performance Tests.

13.3.2 Notice of Readiness for Performance Testing. No later than ninety (90) Days prior to conducting any Performance Test, unless otherwise agreed by the Company in writing, Contractor shall provide the Company with written notice of the time in which Contractor expects to conduct Performance Tests. Contractor shall provide that all functional tests are performed prior to the Performance Tests.

13.3.3 Contractor to Provide Consumables. No later than thirty (30) Days prior to Substantial Completion, Contractor shall furnish all utilities, materials, consumable items, spare parts, and tools required for the safe and efficient operation and maintenance that are required for the conduct of the Performance Tests. Contractor shall provide all operations, maintenance, safety, technical and supervisory personnel on the date(s) on which Performance Tests are to occur.

13.3.4 Company Access; Performance Test Reports. The Company and its invitees may attend each of the Performance Tests. Contractor shall analyze the data obtained during all Performance Tests and provide that such data reflects the performance standards provided for in the Agreement. Upon the completion of each Performance Test, Contractor shall provide the Company with a copy of all raw performance data and a detailed listing of all testing instrumentation utilized in the conduct of the tests. Within ten (10) Days of the completion of each Performance Test, Contractor shall provide the Company with a Performance Test report and analysis. Each such report shall include, at a minimum, the following: (i) the raw data; (ii) the instrumentation utilized in the conduct of the tests; (iii) a description of the Performance Test

Procedures and confirmation of Contractor's compliance with same; (iv) calculations and information, and a full explanation of same; and (v) any other supporting information used to demonstrate that the Work has met the Minimum Performance Standards, Performance Requirements, Guaranteed Performance Levels, and other requirements of the Agreement.

- 13.3.5 Contractor Right to Repeat Performance Tests Prior to Guaranteed Substantial Completion Date. Until Substantial Completion has occurred, Contractor may repeat at its sole expense, the Performance Tests as Contractor deems appropriate, subject to Contractor's compliance with its obligations under the Agreement, including but not limited to the obligation to provide the Company with prior written notice of the conduct of any Performance Tests. All the results and supporting data for each of the Performance Tests performed shall be made available to the Company and/or its designated representatives within five (5) Days of any request for such information.

13.4 Substantial Completion.

- 13.4.1 Substantial Completion Certificate. When Contractor believes that all of the Substantial Completion requirements have been satisfied, Contractor shall execute and deliver to the Company a Substantial Completion Certificate, together with a report of the Work completed along with supporting documentation providing sufficient detail to enable the Company to determine whether the Substantial Completion requirements have been satisfied.

- 13.4.2 Company Approval or Rejection. As soon as practicable following the Company's receipt of a Substantial Completion Certificate delivered pursuant to Section 13.4.1 or Section 13.4.3 of these Terms and Conditions, the Company shall inspect the Work and notify Contractor of any matter of which the Company is aware that, if not remedied, would prevent the Company from countersigning the Substantial Completion Certificate. As soon as practicable, and in any event within fifteen (15) Days for Projects within Massachusetts and twelve (12) Days for Projects within New York following the Company's receipt of a Substantial Completion Certificate, the Company shall consider the report submitted by Contractor and either: (i) countersign and deliver to Contractor the Substantial Completion Certificate; or (ii) notify Contractor in writing that Substantial Completion has not been achieved stating the reasons therefor.

- 13.4.3 Corrective Action. If Substantial Completion has not been achieved, Contractor shall promptly take such corrective action or perform such additional Work to achieve Substantial Completion, including all Work required to achieve the Guaranteed Substantial Completion Date and any applicable Guaranteed Performance Levels and shall issue a new Substantial Completion Certificate to the Company pursuant to Section 13.4.1 of these Terms and Conditions. Neither the Company's execution of the Substantial Completion Certificate nor any matter reported by the Company pursuant to Section 13.4.2 of these Terms and Conditions and action taken by Contractor under this Section 13.4.3 shall diminish Contractor's obligations under Article 9 herein.

13.4.4 Punch List.

- 13.4.4.1 Preparation of Punch List. Prior to Substantial Completion or as otherwise directed by the Company, Contractor and the Company shall inspect the Work and Contractor shall prepare the Punch List of Punch List Items for the Work identified as needing to be completed or corrected as a result of such inspection. Contractor shall promptly provide the Punch List to the Company for the Company's review and written acceptance together with an estimate of the time necessary to complete or correct each Punch List Item on the Punch List. Contractor shall add to any proposed, updated or revised Punch List any Punch List Items that are identified by the Company based on the Company's review. Notwithstanding the foregoing, Contractor shall add any items to the Punch List that are deficient, Defective or incomplete that are discovered by either Party prior to Substantial Completion regardless of whether the Company previously accepted such Work through mistake, inadvertence, oversight, or otherwise, and Contractor agrees that the failure to include any items on the Punch List shall not alter the obligation of Contractor to complete all Work in accordance with the Agreement.

- 13.4.4.2 Completion/Correction of Punch List Items. Contractor shall promptly initiate measures to

complete or correct as appropriate any Punch List Item on the Punch List within the estimated time necessary to complete or correct the Punch List Item. On a Weekly basis, Contractor shall revise and update the Punch List to include the dates that items listed on the Punch List are completed by Contractor and accepted by the Company. Despite any designation given to a Punch List Item on the Punch List, a Punch List Item shall not be considered complete until the Company has inspected the Punch List Item and acknowledged by notation on the updated Punch List that the Work related to that Punch List Item is complete.

13.4.4.3 Punch List Reserve. At Substantial Completion, the Company shall be entitled to withhold from the amount payable following Substantial Completion an amount equal to the cost of completing all Punch List Items (“**Punch List Reserve**”). Upon completion of all Punch List Items, Contractor may apply to the Company for payment of the Punch List Reserve. Upon the Company’s determination, in its sole discretion, that Contractor has completed all Punch List Items to the Company’s satisfaction, the Company shall pay the Punch List Reserve in accordance with the Agreement.

13.4.5 Failure to Agree Upon Achievement of Substantial Completion. If Contractor and the Company cannot agree upon whether Substantial Completion has been achieved, the Dispute provisions of Article 26 of these Terms and Conditions shall apply.

13.4.6 Achievement of Substantial Completion Through Payment of Performance Liquidated Damages.

13.4.6.1 Achievement of Substantial Completion. If the Minimum Performance Standards are met during the Performance Tests but any of the Guaranteed Performance Levels to which such Minimum Performance Standards apply are not met and all other conditions to Substantial Completion have been met or waived by the Company, then Contractor may, at the Company’s option, and in the Company’s sole discretion, achieve Substantial Completion by either (i) performing remedial Work to correct the Defects in the performance and re-perform the failed Performance Test and attempt to correct the Work, to enable the Work to achieve all of the Guaranteed Performance Levels; or (ii) pay the Company the applicable Performance Liquidated Damages within forty-five (45) Days of the Company’s request.

13.5 Final Completion.

13.5.1 Final Completion Certificate. When Contractor believes that all of the Final Completion requirements have been satisfied, Contractor shall execute and deliver to the Company a Final Completion Certificate, together with a report of the Work completed with sufficient detail to enable the Company to determine whether the Final Completion requirements have been satisfied along with all other supporting documentation as may be required to establish that the requirements for Final Completion have been met.

13.5.2 Company Approval or Rejection. As soon as practicable following receipt of a Final Completion Certificate and accompanying report and documentation, the Company shall inspect the Work and notify Contractor of any matter of which the Company is aware that, if not remedied, would prevent the Company from countersigning the Final Completion Certificate. Thereafter, the Company shall consider the report submitted by Contractor and either (i) countersign and deliver to Contractor the Final Completion Certificate; or (ii) notify Contractor in writing that Final Completion has not been achieved, stating the reasons therefor and include a list of items that Contractor shall be required to finish in order for the Final Completion to be achieved.

13.5.3 Corrective Action. If the Company notifies Contractor that Final Completion has not been achieved, within two (2) Business Days of Contractor’s receipt of such notice, Contractor shall provide a schedule detailing when all items will be corrected, and/or the Work completed for the Company’s review and approval. Upon approval by the Company, Contractor shall remedy the Defective and/or incomplete portions of the Work. The steps in Sections 13.5.1 and 13.5.2 of these Terms and Conditions shall be repeated until the Company accepts the Work as complete and authorizes the Final Completion Certificate.

13.5.4 Failure to Agree Upon Achievement of Final Completion. If the Company and Contractor do not agree upon whether Final Completion has been achieved, the Dispute provisions of Article 26 of these Terms and Conditions shall apply.

13.6 Final Payment. Upon achievement of Substantial Completion, provided that the Company issues final approval that the Work was completed in accordance with the terms and conditions of the Agreement, Final Payment, including money retained in accordance with Section 10.7 of these Terms and Conditions, shall be made in accordance with the Agreement. Contractor's acceptance of the Final Payment shall constitute a waiver of all Claims by Contractor.

13.7 Final Payment shall not relieve Contractor of any warranty, guarantee or other continuing obligations under the Agreement.

14.0 FINANCIAL SECURITY

14.1 Contractor Guarantee. Simultaneously with the execution of the Agreement, Contractor shall deliver to the Company the Contractor Guarantee in the form set forth in Exhibit L (Form of Contractor Guarantee) whereby Contractor Guarantor shall guarantee the full and punctual payment and performance of all obligations of Contractor under the Agreement.

14.2 Letter of Credit.

14.2.1 Contractor Letter of Credit. Prior to the Company's issuance of the Notice to Proceed, and as a condition precedent to Contractor's right to receive any payments under the Agreement, Contractor shall deliver to the Company an irrevocable stand-by letter of credit in the form of Exhibit M (Form of Contractor Letter of Credit) (or if required by a Creditworthy Bank, in a different but substantially equivalent form that is acceptable to the Company), naming the Company as beneficiary, in the amount of 10% of the Contract Price, and issued by a Creditworthy Bank ("**Contractor Letter of Credit**"). If at any time the bank issuing the Contractor Letter of Credit ceases to be a Creditworthy Bank, Contractor shall replace the Contractor Letter of Credit with an equivalent instrument issued by a Creditworthy Bank in the United States within ten (10) Days of the date on which Contractor knew or should have known that the issuing bank had ceased to be a Creditworthy Bank.

14.2.2 The Company's Right to Draw. The Company shall have the right to draw down on or collect against the Contractor Letter of Credit upon the Company's demand in the event of the following: (i) in the event of a breach by Contractor of its obligations under the Agreement; or (ii) the occurrence of an Event of Contractor Default, including a failure by Contractor to pay any amount owing to the Company for Delay Liquidated Damages or Performance Liquidated Damages when due. The amount drawn on the Contractor Letter of Credit shall not be greater than the amount that the Company, at the time of the drawing, reasonably estimates it is owed under the Agreement. In addition, if at any time, the issuing bank notifies the Company pursuant to the terms of the Contractor Letter of Credit that the issuing bank has decided not to extend or renew the Contractor Letter of Credit beyond the then current expiration date of the Contractor Letter of Credit and Contractor has not, at least thirty (30) Days before the then current expiration date of the Contractor Letter of Credit, delivered to the Company a replacement Contractor Letter of Credit from a Creditworthy Bank, the Company then shall have the right to draw or collect against the Contractor Letter of Credit that is not being extended or renewed for all remaining funds and hold them as security until Contractor delivers a new Contractor Letter of Credit in accordance with this provision. Partial drawings shall be permitted under the Contractor Letter of Credit.

14.2.3 Letter of Credit Increases; Change Order Impacts. Within ten (10) Days of the Company's acceptance of any Change Order pursuant to the Agreement that increases the Contract Price, Contractor shall increase the amount of the Contractor Letter of Credit issued to the Company in proportion to such increase to the Contract Price. Contractor shall then deliver a replacement Contractor Letter of Credit to the Company upon issuance but no later than ten (10) Days after the Company's acceptance of the Change Order. The Company shall return the Contractor Letter of Credit then held by the Company to Contractor upon the Company's receipt of a replacement Contractor Letter of Credit.

14.2.4 Contractor Letter of Credit Reductions. The Contractor Letter of Credit shall be decreased upon: (i) the achievement of Substantial Completion, payment of all Delay Liquidated Damages, and payment of all Performance Liquidated Damages, if any, owing; and (ii) the expiration of the Warranty Period. To obtain any such decrease, Contractor must submit to the issuing bank a certificate jointly signed by Contractor and the Company confirming that the relevant conditions for reducing the amount of the Contractor Letter of Credit have been satisfied and setting forth the amount of the reduction.

- 14.2.5 Term. The Contractor Letter of Credit shall remain in full force and effect, subject to reductions in the amount of such Contractor Letter of Credit in accordance with Section 14.2.4 of these Terms and Conditions, from the issuance of the Contractor Letter of Credit until the expiration of the Warranty Period, at which time the Company shall return the Contractor Letter of Credit to Contractor.

14.3 Further Assurances. If at any time during the term of the Agreement, a Material Adverse Change shall occur, as a condition of the Company's further performance under the Agreement, the Company may, in its sole discretion and without prejudice to any other rights or remedies it may have hereunder or in law or equity, require Contractor to provide a complete set of current Contractor Financial Assurances, including further assurances of: (i) Contractor's creditworthiness, financial responsibility and Contractor's ability to perform its obligations under the Agreement; and/or (ii) Contractor Guarantor's creditworthiness, financial responsibility and ability to perform its obligations under its Contractor Guarantee, and Contractor shall supply such further assurances in accordance with this Section 14.3. The Company shall notify Contractor regarding its request for such Contractor Financial Assurances, which assurance may include, in form and amount reasonably satisfactory to the Company, any one or more of a cash deposit (including by way of Retainage), a letter of credit, or a payment and performance bond. "**Material Adverse Change**" for the purposes of this Section 14.3 means adverse changes, events or effects that have occurred or been threatened which could reasonably be likely to: (i) materially adversely affect the business, operations, properties, condition (financial or otherwise), assets or liabilities of Contractor or Contractor Guarantor; (ii) prevent or materially delay the performance by Contractor of any of its obligations under the Agreement; (iii) create a reasonable basis for the Company to have serious doubts about Contractor's creditworthiness, financial responsibility or Contractor's ability to perform its obligations under the Agreement, including a downgrade of Contractor's senior unsecured long-term debt rating; (iv) prevent or materially delay performance by Contractor Guarantor of any of its obligations under its Contractor Guarantee; or (v) create a reasonable basis for the Company to have serious doubts about Contractor Guarantor's creditworthiness, financial responsibility or ability to perform its obligations under its Contractor Guarantee, including a downgrade of Contractor Guarantor's senior unsecured long-term debt rating. If Contractor fails to provide to the Company, in form and amount satisfactory in the Company's opinion, assurances of Contractor's or Contractor Guarantor's, as the case may be, creditworthiness or financial responsibility or Contractor's ability to perform its obligations hereunder within forty-five (45) Days following the Company's request for such assurance, the Company may terminate the Agreement as to all or any part of the Work pursuant to Section 20.2 of these Terms and Conditions upon notice to Contractor given no less than ten (10) Days in advance of the effective date of such termination.

15.0 WITHHOLDING PAYMENT

15.1 The Company may withhold payment to Contractor of amounts otherwise due Contractor and deduct or set off monies due or owed by Contractor to the Company under the Agreement or any other agreement between Contractor and the Company (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:

- 15.1.1 Any breach by Contractor of the Agreement;
- 15.1.2 Disputes over any amount claimed to be due in an invoice;
- 15.1.3 Defective Work not remedied, including but not limited to the removal and replacement of condemned Work and/or material;
- 15.1.4 Claims and/or Liens filed or reasonable evidence indicating probable filing of claims or Liens against the Company and/or the Project or by the Company or other parties against Contractor;
- 15.1.5 Failure of Contractor or Subcontractors (of any tier) to make payments due to Subcontractors and/or Suppliers of any tier for Goods, Equipment, Construction Equipment, material, labor, or taxes due;
- 15.1.6 The filing of a Lien against the Project;
- 15.1.7 Failure to bond any Liens filed against the Project, Site, or the Company;
- 15.1.8 Failure to credit the Company for Company provided Goods, material, Equipment, Construction Equipment or Services as set forth in Section 10.3.2 of these Terms and Conditions;
- 15.1.9 Damage to another contractor caused by Contractor or any Subcontractor;

- 15.1.10 Assessment of any fines or penalties against the Company as a result of Contractor's failure to comply with Applicable Laws;
- 15.1.11 Disputed Work (including, without limitation, unauthorized Work or unapproved Change Orders);
- 15.1.12 Change in Work methods specified in the Agreement without the Company's prior written approval;
- 15.1.13 Change in Key Personnel, Key Subcontractors or Key Suppliers without the Company's prior written approval;
- 15.1.14 Failure of Contractor or any Subcontractor to properly clean up the Site of any environmental damage caused by or exacerbated by Contractor or any Subcontractor;
- 15.1.15 Damage to utilities or to public or private property caused by Contractor or any Subcontractor;
- 15.1.16 Failure to complete the Work as provided in the Project Schedule. Failure to meet performance and Project Schedule requirements as set forth in the Agreement, including failure to meet Payment Schedule Milestone completion or percent complete targets; and
- 15.1.17 Liquidated damages assessed to Contractor.

15.2 If Contractor remedies or removes the cause or causes for withholding any payment and provides the Company with satisfactory evidence, in the Company's sole discretion, of such remedy or removal, or Contractor provides a surety bond satisfactory to the Company which, in the Company's sole discretion, protects the Company in the amount withheld, payment shall be made within thirty (30) Days thereafter to Contractor for the amount withheld. No interest, statutory or otherwise, shall be payable on any amounts withheld in accordance with this Article.

15.3 If Contractor fails or refuses to remedy or remove any cause for the Company's withholding of payment for thirty (30) Days after the Company has notified Contractor that the Company intends to or is withholding such payment, the Company may remedy or remove the same or cause the same to be remedied or removed, and may recover from Contractor the total cost to the Company thereof or the Company may deduct the cost thereof from any amounts due and owing to, or that may become due and owing to Contractor.

15.4 If insufficient funds are available for full offset by the Company, then upon receipt of the Company's written notice of Contractor's outstanding obligations hereunder, Contractor shall promptly remit all amounts due and owing under the Agreement to the Company. If Contractor fails to pay such amount within sixty (60) Days of the Company's notice, the Company may at its sole discretion draw such amounts on the Contractor Letter of Credit, in addition to any other remedies that may be available to the Company.

15.5 In addition to the right to delay payment under this Article 15, the Company shall have the right to require that 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 (10) Business Days from the Company's notice that such Lien has been filed.

15.6 Contractor shall not have any rights of termination or suspension because of the Company's exercise of its rights under this Article 15 and shall proceed with the Work diligently and without interruption subject to Article 26 of these Terms and Conditions.

16.0 CHANGES TO WORK SCOPE / CHANGE ORDERS / AMENDMENT TO AGREEMENT

16.1 Scope of Changes. No changes, additions to, deletions from or alterations in the Work may be made or become effective except as provided in this Article 16. For any changes, additions to, deletions from, or alterations in the Work to be effective, such changes, additions, deletions, or alterations must be set forth in a writing executed by the Company. Contractor shall not make any change to the Work, Project, and/or Project Schedule without the prior written approval of the Company.

16.2 Company Directives. At any time after the Effective Date of the Agreement, the Company may by written notice to Contractor make changes in the Work, Project and/or Project Schedule, including changes to the Specifications, Drawings and/or schedules, as well as planned or scheduled outages ("**Company Directives**"). The Company shall submit any

Company Directives to Contractor in writing via email or other designated communications method sent to the Contractor's Project Manager and their designee.

- 16.2.1 Change Orders to Perform Optional Work. In the event that the Company exercises its right to require that Contractor perform any or all of the Optional Work identified in Exhibit D (Contract Pricing), such option shall be submitted to Contractor in writing as a Change Order, which shall include an identification of the Optional Work to be performed and the schedule by which such Optional Work must be completed (if required). Other than the amounts set forth in Exhibit D (Contract Pricing), Contractor shall not be entitled to any additional compensation or schedule relief in connection with its performance of any Optional Work. All Company issued Change Orders for the performance of Optional Work shall become binding on all Parties upon issuance by the Company.

16.3 Within five (5) Business Days of Contractor's receipt of such Company Directive, Contractor shall respond to the Company with a Contractor Change Request using Unifier or other Company approved change management method setting forth the effect, if any, that the Company Directive will have on Contractor's cost of the Work or the Project Schedule, and confirming where applicable that there is no effect on Contractor's cost of the Work or the Project Schedule. Contractor shall provide to the Company all backup documentation relating to the effect, if any, that the Company Directive will have on the Contractor's cost of the Work of the Project Schedule. If Contractor does not respond to the Company Directive within five (5) Business Days of receipt, Contractor waives any Claim against the Company for additional costs or Project Schedule changes arising out of the Company Directive. Contractor acknowledges and agrees that its failure to respond to the Company Directive shall not relieve Contractor of its obligation to perform the Work as set out in the Company Directive.

16.4 If Contractor responds within five (5) Business Days to the Company Directive with a CCR via Unifier or other Company approved change management tool, the Company may elect to accept or reject any modifications that Contractor may propose to the Company Directive. If the Company Project Manager approves the cost and/or Project Schedule modifications proposed by Contractor in the CCR in response to the Company Directive, the Company shall issue a Change Order to Contractor which shall become binding on all Parties. If the Company rejects the Contractor proposed CCR, the Company will state its reasons for doing so, and/or make a counter proposal. Any change in price shall be determined in accordance with Section 16.8 of these Terms and Conditions.

16.5 Contractor Change Requests. If Contractor wishes to propose a change in the Work, Project and/or Project Schedule necessary to complete the Work or reasonably believes that any order, instruction, request, clarification or interpretation of the Company or its representatives (collectively referred to as "**Company Instructions**") received after the Effective Date of the Agreement, constitutes or requires a change in the Work, Project and/or Project Schedule resulting in a change to Contractor's cost of the Work or the Project Schedule, then and in such event, prior to performance of any such Work, and within no more than five (5) Business Days of receipt of Company Instructions or the identification by Contractor of a change in Work necessary to complete the Work, Contractor shall submit a CCR to the Company in Unifier or other change management method approved by the Company specifying the nature of the change, any increase or decrease in the cost of performing the Work, and any resulting adjustment in the Project Schedule, along with all support documentation relating to the impact the CCR will have on Contractor's cost of the Work or the Project Schedule. Within thirty (30) Days of receipt of the CCR, the Company shall determine whether the CCR constitutes a change in the Work and if the proposed cost and/or schedule adjustment is justified. The Company Project Manager shall then notify Contractor, in writing, of the Company's decision. If accepting the CCR, the Company's notice will be accompanied by a Change Order. If rejecting the CCR, the Company will state its reasons for doing so, and/or make a counter proposal. Any change in price shall in determined in accordance with Section 16.8 of these Terms and Conditions.

16.6 Except where Contractor has reasonable grounds to believe that an emergency endangering life or property may arise out of any Company Instructions and or that an emergency endangering life or property necessitates a change in the Work, Contractor shall adhere in all respects to the notice requirements set out in Section 16.3 of these Terms and Conditions. Once Contractor has taken the steps in the field to address the emergency necessitating a change in the Work, Contractor shall immediately comply with the requirements of this Article 16 for any changes to cost or schedule.

16.7 The Company may require Contractor to proceed with Work which is the subject of a Company Directive or a CCR prior to the Company's approval of any change in the price or schedule, in which event the Company shall so notify Contractor in writing, and Contractor shall then proceed with the Work, and keep an accurate account as required under Section 16.8.10 of these Terms and Conditions, including but not limited to submittal to the Company Project Manager, 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 Directive or CCR. Contractor and the Company shall negotiate in good faith with respect to such change on basis of such daily account, subject to the conditions set forth in Section 16.8 of these Terms and Conditions.

16.8 If the Company authorizes a change in the Work, the authorized change will be documented as a Change Order as set forth in this Article 16 which may add to or decrease the cost of the Work, and the change in cost shall, at the Company's sole discretion, be based on: (i) a mutually agreed upon fixed price amount, (ii) the unit prices as set forth in Exhibit D (Contract Pricing), or elsewhere in the Agreement, or (iii) in accordance with the following:

- 16.8.1 Labor Rate Reimbursement. Reimbursement for all labor shall be based on the actual direct verifiable amount of time incurred in performing the approved changes, at the fully burdened labor rates set forth in the Agreement, which labor rates include all indirect and overhead expenses, including but not limited to costs for: field supervision, management and administrative costs, an allowance for small tools and Construction Equipment with a value less than \$2,500.00, and an allowance for vehicles up to 7.0 tons gross weight. Contractor shall not separately charge for such items. Labor rates for Subcontractors shall be the same rates established under the Agreement and no additional mark-ups are permitted for Subcontractor labor due to a Change Order.
- 16.8.2 Labor not anticipated by or itemized in the Agreement shall not be utilized by Contractor without the Company's prior written approval.
- 16.8.3 The labor rates payable for an individual shall be reduced for each individual when that individual reaches the maximum annual Federal Insurance Contributions Act (FICA), Federal Unemployment Insurance (FUI) and State Unemployment Insurance (SUI) contribution limits.
- 16.8.4 Tools and Equipment Rates. Except as otherwise provided in Section 16.8.1 of these Terms and Conditions, reimbursement for Contractor-owned tools and Construction 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. No payment shall be made for stand-by time.
- 16.8.5 Reimbursement shall not be allowed for any Construction Equipment or tools with a new cost of the equivalent of two thousand five hundred Dollars (\$2,500.00) or less, each.
- 16.8.6 Contractor owned, purchased, or rented Construction 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 Construction 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. No payment shall be made for stand-by time.
- 16.8.7 Reimbursement for rental of Construction Equipment, not set forth in the Agreement, shall be based on the actual verifiable cost for rental and necessary attachments, to the extent actually incurred in performing changes. No payment shall be made for stand-by time.
- 16.8.8 Subcontractor Costs. Subject to the Company's prior authorization to subcontract in each specific instance of change, the reimbursement of Contractor for all Subcontractors, will be based on costs actually and reasonably incurred in performing changes. Unless otherwise agreed to by the Company and reflected in a writing executed by the Company, applicable Subcontractor costs shall be subject to the same terms and conditions set forth in Section 16.8 of these Terms and Conditions.
- 16.8.9 Material Costs. Reimbursement of Contractor shall be limited to the actual verifiable net (no mark-ups and net of all discounts) cost of materials, Goods and Equipment directly purchased in support of the changed Work as authorized by the Company.
- 16.8.10 Submittal of Daily Work Reports. In the event that Contractor is to be paid pursuant to Sections 16.8.1 through 16.8.4 of these Terms and Conditions, Contractor shall, on a daily basis, furnish the Company Project Manager and their designee with Daily Work Reports (in a format acceptable to the Company) which reports are to briefly describe the Work performed during the preceding Day in sufficient detail to identify Change Order Work, itemized to reflect: the names of all Contractor's and Subcontractor's personnel who performed Work under this Section 16.8, their rate per hour, the individual and total number of hours worked, and the total labor cost for the Day; Construction Equipment used, its rate per hour, the individual and total hours worked and the total Construction Equipment costs for the Day; and quantity(ies)

of Contractor furnished material(s) received and consumed for the Day, and the cost thereof. Contractor shall provide that the Daily Work Reports submitted by Contractor distinguish what in-scope and out-of-scope Work is performed by Contractor and or Subcontractors as well as the times of day during which such Work is performed. Contractor shall provide that a duplicate of the original Daily Work Report as well as receipts and invoices for Contractor furnished materials, Goods, Equipment and rented Construction Equipment and Subcontractors accompanies all invoices which Contractor presents for payment.

16.9 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 Contractor for any loss or damages including anticipated profit.

16.10 The Company shall not accept, and Contractor shall not be entitled to, any changes submitted by Contractor pursuant to this Article 16 after final payment.

16.11 Each Change Order issued in accordance with this Section constitutes a final settlement of, and waiver by Contractor of the right to assert (i) any further Claim for payment based on or arising out of the subject matter of the Change Order; or (ii) any further Claim in any way addressed by the items set forth in the Change Order, including any increase in compensation based upon any theory, including loss of productivity, lost efficiency, constructive acceleration or cardinal change, or cumulative impact losses.

16.12 Contractor shall not suspend Work pending the resolution of any proposed CCR unless directed by the Company and shall proceed diligently with the Work, including any Work set out in a Company Directive.

16.13 All additional Work shall be performed in accordance with the terms and conditions of the Agreement unless otherwise specified in the applicable Change Order.

16.14 Contractor shall maintain a Change Order Log of all Changes to include Change Order: date; identification number and name; brief description; current review and approval status; proposed dollar value; agreed dollar value; invoice number and date of issue once value is agreed. All Change Orders opened prior to Substantial Completion must be approved and invoiced, or permanently cancelled, prior to the Company recognition that Substantial Completion has been achieved. Additionally, all CCRs must be approved through Company issuance of a Change Order or permanently cancelled prior to achieving Final Completion.

16.15 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 16.0 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.

17.0 UNFORESEEN SITE CONDITIONS

17.1 Contractor has, by careful examination, satisfied itself as to the nature, location and character of the Project and the Project Site, including, without limitation, the surface and subsurface (by review of available reports and information) condition of the land and all structures and obstructions thereon, both natural and man-made, and all surface and subsurface (by review of available reports and information) water conditions of the Project Site and the surrounding area. Subject to the provisions of Sections 2.5, 2.6 and 2.9 of these Terms and Conditions, (i) should concealed or unknown conditions be encountered in the performance of the Work below the surface of the ground which Contractor would be unable to ascertain upon a reasonable investigation of subsurface conditions, and should such concealed or unknown conditions be at variance with the conditions indicated by the Contract Documents, or (ii) should unknown physical conditions below the surface of the ground or concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Agreement exist, then and in such event Contractor may be entitled to an equitable adjustment by Change Order, subject to the provisions of and the Change Order procedures contained in Article 16 of these Terms and Conditions.

17.2 Contractor shall promptly but no later than within five (5) Days of discovery of such conditions, and before such conditions are disturbed, furnish the Company Project Manager with written notice in accordance with Section 16.3 of these Terms and Conditions of any conditions at the Site that it contends satisfy the requirements of Section 17.1 of these Terms and Conditions. Contractor shall include in the written notice a detailed description of the condition, including photographs, sampling data, survey measurements or other evidence of the discovered conditions. Contractor shall further include in such

notice, Contractor's professional recommendation of the most efficient and cost-effective means to mitigate the discovered conditions for the Company's review. The Company will conclude its review and advise Contractor on how to proceed within no more than thirty (30) Business Days of receipt of the notice. Except a condition which satisfies the requirements of Section 17.1 of these Terms and Conditions, the Company accepts no liability, or responsibility, for any Changed or Unforeseen Site conditions discovered after the Effective Date of the Agreement that Contractor could have reasonably undertaken to research and/or survey and/or negotiate an allowance for post-Agreement investigation and cost assessment, including, but not limited, to: (i) Archaeological Finds; (ii) endangered and/or protected species discovery; (iii) environmental contamination and Hazardous Materials; and/or (iv) unexploded ordinance.

18.0 SAFETY

18.1 Contractor shall be solely responsible and assume all liability for the safety and supervision of all Contractor Personnel and other persons engaged in the Work or on the Site. Contractor shall establish and effectively and continuously implement a Safety Program that includes both occupational and process safety, as applicable. Contractor shall provide that this Safety Program includes empowerment of all Contractor Personnel to call a stop to the Work at any time to address a safety issue. Contractor shall and shall require its Subcontractors and their employees to comply with all Applicable Laws, 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, and any state plans approved thereunder and regulations implemented thereunder. Contractor shall continually inspect the Project and supervise all Contractor Personnel to determine and enforce compliance with the above provisions.

18.2 Contractor shall, and shall require its Contractor Personnel, Subcontractors and their employees to comply with the Company's safety and applicable process Safety Requirements, as defined in Section 18.6 of these Terms and Conditions, 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 of the Project, whether the same are in force at the execution of the Agreement or may in the future be passed, enacted or directed.

18.3 Contractor shall provide all adequate and necessary 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.

18.4 Contractor shall be responsible for providing adequate fire protection, shall take all adequate and necessary measures to prevent fire from occurring at the Site, and shall be responsible for all fires associated with or affecting the Work. 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.

18.5 Contractor shall at its sole expense provide all adequate and necessary first aid facilities and shall make those facilities available for the treatment of individuals who may be injured or become ill at the Site or while engaged in the performance of Work.

18.6 Should the Company at any time observe Contractor, Contractor Personnel or any Subcontractor performing the Work in an unsafe manner, or in a manner that may, if continued, become unsafe, or if Contractor breaches, fails to comply with, or violates (i) the requirements of this Article 18, (ii) the requirements in the Contractor Safety Requirements, or (iii) any Applicable Laws, including without limitation, the safety regulations and standards adopted under the Occupational Safety and Health Act of 1970 (OSHA) (collectively, the "**Safety Requirements**"), the Company may, in its sole discretion:

18.6.1 Interrupt, suspend or delay the Project pursuant to Article 21 of these Terms and Conditions; and/or

18.6.2 Require Contractor to implement a corrective action plan pursuant to the Contractor Safety Requirements;
or

18.6.3 Terminate the Agreement for cause, pursuant to Section 20.2 of these Terms and Conditions.

19.0 SURVEYS

19.1 If specified in the Contract Documents, the Company will furnish the primary control to be used for establishing lines and grades required for the Work. Contractor shall preserve all monuments, benchmarks, reference points and stakes. If Contractor, Contractor Personnel or any Subcontractor moves, alters, destroys or renders inaccurate any survey control,

including without limitation the primary control, supplied by the Company, such control shall be replaced by Contractor at Contractor's sole expense and Contractor shall be liable to the Company for all other damages, costs, losses and expenses arising out of such relocation or destruction. From the information provided by the Company, Contractor shall develop and make all detail surveys needed for the performance of the Work.

20.0 TERMINATION

20.1 Defective Work.

20.1.1 If, during the term of the Agreement, the Company notifies Contractor that any part of the Work is Defective or deficient or not in accordance with any provision of the Agreement ("**Defective Work**"), 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 Contractor to stop performing the Work, or any portion thereof, until such Defective Work has been corrected at Contractor's sole expense. If Contractor does not correct the Defective Work within ten (10) Days of notice, the Company may direct Contractor to suspend, at Contractor's sole expense, its performance of the Work or any portion thereof, until Contractor corrects, removes or and/or replaces such Defective Work to the satisfaction of the Company and at Contractor's sole expense. The Company may, in its sole discretion, correct, remove and /or replace such Defective Work with others and charge the cost of such correction, removal and replacement against Contractor. The Company may, in its sole discretion, remove such Work and store it at Contractor's expense. The Company may deduct the cost of correction, removal, replacement and storage from the Contract Price as determined under the Agreement or invoice Contractor for such costs, at the Company's sole option. If the Company elects to invoice Contractor, Contractor shall remit to the Company such invoiced amount within thirty (30) Days of the date of the invoice.

20.1.2 Whether notified pursuant to Section 20.1.1 of these Terms and Conditions or not, Contractor shall not perform Defective Work and, at its sole expense, promptly remove from the Project all Defective Work, whether incorporated in the Project or not. Contractor shall, at its sole expense, promptly correct, remove, replace and re-execute any and all Defective 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.

20.1.3 Contractor shall not be entitled to an extension of time by reason of Defective Work.

20.2 Termination For Cause.

20.2.1 Notwithstanding any other provision of the Agreement, if Contractor: (i) fails to perform any material covenant or obligation hereunder; (ii) 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 Contractor's failure to comply with the terms of the Agreement, including but not limited to the Schedule and, as applicable to the Agreement, has reached the maximum cap of liquidated damages for such delay; (iii) is insolvent and/or fails to make prompt payment when due to Subcontractors or the Company; (iv) fails to comply with any of the terms or conditions of the Agreement; (v) sells or transfers all or substantially all of its assets without the Company's prior written consent; (vi) enters into any voluntary or involuntary bankruptcy proceeding or receivership; (vii) makes a general assignment for the benefit of its creditors; (viii) has a trustee or receiver appointed with respect to all or a portion of its assets, properties or affairs; (ix) experiences a labor dispute which threatens adversely to affect the progress or cost of the Project hereunder or the Company's operation; (x) abandons the Work; (xi) loses control of the Work from any cause; (xii) refuses or neglects to provide sufficient and properly skilled or other labor or sufficient materials, Goods, Equipment or Construction Equipment of proper quality; (xiii) does not meet the Company's requirements of a passing dashboard grade in ISN of "C" or above, prior to the contract award and throughout the lifecycle of the Agreement; (xiv) fails to comply with the Safety Requirements; (xv) 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; (xvi) should Contractor's quality of Work be unacceptable to the Company; or (xvii) fails to meet minimum Performance Requirements, or fails to satisfy Performance Requirements established under Performance Liquidated Damages and, as applicable to the Agreement, has reached the maximum cap of liquidated damages for such failure (collectively, each an "**Event of Contractor Default**") then and in such event the Company shall have the right, without prejudice to any

other right or remedy available to the Company at law or equity, to terminate the Agreement for cause, in whole or part. Such termination shall be effective upon written notice to Contractor setting forth (a) the date of the termination and (b) that Contractor shall immediately discontinue the Work to the extent specified in such notice. The Company may exercise its right of partial or complete termination under the Agreement any number of times.

- 20.2.2 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 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 Contractor's breach and termination, Contractor shall not be entitled to any further payment and shall pay the difference to the Company within thirty (30) Days of the Company's notice thereof to Contractor.
- 20.2.3 If all or any part of the Agreement is terminated for cause, the Company shall be entitled, at its option, to (i) retain any Work previously delivered to the Project or paid for by the Company, (ii) require delivery of any Work and/or documents, regardless of their stage of completion which are in Contractor's possession or control, (iii) require Contractor to assign to the Company all or any of Contractor's rights with respect to orders or subcontracts which relate to the Project, (iv) reject all or any of the Work, regardless of whether it has been delivered to the Project, (v) require Contractor to cooperate with a new contractor for the period of time necessary to familiarize the new contractor with the Project, (vi) have another contractor complete the Work at Contractor's expense, (vii) require completion by Contractor according to the terms of the Agreement of any Work which has not been terminated, and (viii) enter the Project Site and take possession of all or part of the Contractor's Construction Equipment located at the Site for the purpose of completing the Work. Contractor shall be required to refund to the Company any payments theretofore made for Defective Work. The Company shall be entitled to withhold from any payment otherwise due to 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.
- 20.2.4 No amount shall be paid or payable by the Company for Contractor's termination costs including, but not limited to, Demobilization costs, costs associated with the transfer or termination of Contractor Personnel, or loss of anticipated profit.
- 20.2.5 All warranties and guarantees, including without limitation those set forth in Article 9 herein, 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 Contractor. In the event of termination for cause or for convenience, all Warranty coverage will become effective on the date of termination.
- 20.2.6 In the event that a termination by the Company of all or part of the Agreement for cause, under Section 20.2.1 of these Terms and Conditions is determined by a final judgement issued pursuant to Article 26 of these Terms and Conditions to have been made by the Company without proper cause, such termination shall thereafter be treated for all purposes as a termination for convenience under Section 20.3 of these Terms and Conditions. In such event Contractor's entitlement shall be limited to recovery of costs as provided for under Section 20.3 of these Terms and Conditions or Article 21 herein, as applicable.

20.3 Termination for Convenience.

- 20.3.1 Notwithstanding any other provision of the Agreement, the Company shall have the right to and may, at its sole discretion, at any time, for any reason, by notice to Contractor, terminate the Agreement in whole or in part for its convenience and 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 Contractor, unless otherwise directed by the Company, shall immediately:

- 20.3.1.1 Stop the terminated portion of the Work on the date and to the extent specified in such notice;
- 20.3.1.2 Place no further orders or subcontracts for any part of the Project other than for Work which has not been terminated;
- 20.3.1.3 Terminate, as directed by the Company, all orders and subcontracts to the extent that they relate to Work which has been terminated;
- 20.3.1.4 Settle, with the approval or ratification of the Company, to the extent the Company may require, all outstanding liabilities and claims arising out of Contractor's termination of orders and subcontracts pursuant to Section 20.3.1.3 of these Terms and Conditions;
- 20.3.1.5 Assign to the Company, as required by the Company, any and all of Contractor's warranty rights with respect to orders or subcontracts which relate to terminated Work;
- 20.3.1.6 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 Contractor's possession or control;
- 20.3.1.7 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 Contractor (i) shall not be required to extend credit to any buyer, and (ii) may acquire any such Work upon the same terms as it would be entitled to sell or transfer such Work to a third party;
- 20.3.1.8 Work with a new contractor for the period of time necessary to familiarize the new contractor with the Project;
- 20.3.1.9 Complete any Work which has not been terminated pursuant to such notice; and
- 20.3.1.10 Take whatever action may be necessary to preserve and protect the Work and to mitigate Contractor's costs in connection with the partial or complete termination of the Agreement.
- 20.3.2 In no event shall the total of the Partial Performance Payment and/or termination costs (as provided in Section 20.3.6 of these Terms and Conditions) exceed the Contract Price as determined under the Agreement.
- 20.3.3 Contractor's Claim for Partial Performance Payment and/or termination costs shall be contingent upon Contractor's good faith diligent compliance with the provisions of Section 20.3.1 of these Terms and Conditions to the Company's satisfaction and shall be submitted to the Company within three (3) Months of the effective date of termination for convenience. If such Claim is not submitted within three (3) Months, Contractor waives any right to the Claim for Partial Performance Payment and/or termination costs.
- 20.3.4 All warranties and guarantees set forth in Article 9 of these Terms and Conditions 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 Contractor. In the event of termination whether for cause pursuant to Section 20.2 of these Terms and Conditions or for convenience pursuant to Section 20.3 of these Terms and Conditions, all Contractor's Warranty coverage will become effective on the date of termination.
- 20.3.5 A termination for convenience shall not entitle 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, Contractor's rights are exclusively limited to Partial Performance Payment and/or termination costs.
- 20.3.6 In the case of termination for convenience of the Agreement, Contractor's termination costs shall be limited to: (i) reasonable documented direct costs that are directly associated with termination responsibilities identified in Section 20.3 of these Terms and Conditions and (ii) reasonable documented Demobilization costs incurred within thirty (30) Days of the date of termination. In no event shall Contractor be entitled to recover any breach of contract damages, consequential damages, lost profits, unabsorbed overhead, contingency, risk or to recover any costs and expenses associated with the inability of Contractor to find

work for idle employees and Construction Equipment that have been rendered idle as a result of termination of the Agreement.

20.3.7 With respect to payments made for reaching Milestones pursuant to the Milestone Payment Schedule, the Parties recognize and agree that the amount and timing of the Milestone Payments have been determined in part to provide a mutually agreeable cash flow to Contractor and do not necessarily represent the value of the Work performed under the Milestone Payment Schedule. As such, subject to the limitations set forth in Section 20.3.2 and 20.3.3 of these Terms and Conditions, in case of such termination for the Company's convenience, Contractor shall not be entitled to the full compensation for such Milestone Payments performed but instead the Company shall pay, in accordance with Exhibit D (Contract Pricing) of the Agreement, for Work properly executed and actual documented costs reasonably incurred by reason of the termination, including actual documented, reasonably incurred costs attributable to the termination of subcontracts, and overhead and profit therefor. Provided, however, in no event shall Contractor be entitled to payment for Work not performed and for overhead and profit on Work not performed. Contractor shall provide the Company with full documentation to support any Claim for payment pursuant to Section 20.3 of these Terms and Conditions.

20.3.8 In the event the Company exercises its right to terminate for convenience prior to its issuance of the Notice to Proceed, the Company shall have no payment obligations to Contractor, and Contractor shall have no right of recovery from the Company other than the return of any Letter of Credit then held by the Company, if applicable.

20.4 In the case of a termination of the Agreement whether for cause under Section 20.2 of these Terms and Conditions or for convenience under Section 20.3 of these Terms and Conditions, Contractor, if notified to do so by the Company, shall promptly, but in any event no more than seven (7) Days from the Company's request, remove any part or all of its Construction Equipment, material, and supplies from the Site, failing which the Company shall have the right to remove such Construction Equipment and supplies at the expense of Contractor.

20.5 Each Party waives any right it may have under any Applicable Laws or otherwise to terminate performance of the Work, except as expressly authorized by this Article 20 or elsewhere in the Agreement.

21.0 SUSPENSION

21.1 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 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. Contractor shall utilize its labor, equipment and any other resources so that costs are minimized during the suspension. If, in Contractor's opinion, such interruption would result in substantially increased cost, Contractor shall promptly notify the Company in writing in accordance with Article 16 of these Terms and Conditions. The foregoing shall not alter the Parties' rights and obligations under Section 35.6 of these Terms and Conditions.

21.2 Contractor shall immediately resume any of the Work so interrupted, suspended or delayed when directed to do so by the Company. If the suspension is of such duration as to cause a partial or complete Demobilization, and/or impact Project Schedule Milestones, including Mechanical Completion, Substantial Completion, and/or Final Completion, the Schedule as documented under the Agreement shall be revised by a duly executed Change Order and Amendment to the Agreement. This Change Order may also include a mutually agreed Change Order dollar amount to compensate Contractor for additional direct and indirect field costs only, but in no event shall it include any amount for home office overhead and/or profit, resulting from the interruption, suspension or delay. Adjustments to the price shall be adequate to compensate Contractor for any verifiable and documented reasonable direct and indirect field costs or expenses Contractor actually incurs as a direct result of the interruption, suspension or delay despite reasonable efforts to mitigate such costs and expenses. Upon request by the Company, Contractor shall provide a narrative summary with supporting documentation of its reasonable efforts to mitigate costs and expenses. These costs may include: Demobilization and Remobilization expenses, or as-bid cost for such activity; Construction Equipment rental or idled Construction Equipment charges; material storage and/or transportation charges for delayed delivery; and additional labor and/or overtime costs to recover schedule. The mutually agreed Change Order dollar amount shall constitute full settlement to Contractor for the suspension, and any resulting expedite or schedule recovery costs. In no event shall the total paid to Contractor under the Change Order exceed the remaining unpaid balance of the Contract Price as set forth in the Agreement where the unpaid balance is the Contract Price less all invoices submitted

and approved for payment prior to the date of the Notice of Suspension. In no event shall Contractor be entitled to any damages, including loss of profits or loss of anticipated profits. In the event that the Suspension duration does not result in any change to the Project Schedule Milestones, including Mechanical Completion, Substantial Completion, and/or Final Completion, no Amendment to the Agreement is required, and Contractor shall fully comply with the Change Order requirements of Article 16 of these Terms and Conditions.

21.3 In its Notice of Suspension, the Company will designate what Work, if any, is to be continued. Upon receipt of such notice, Contractor shall, unless otherwise directed by the Company:

- 21.3.1 Immediately discontinue the Work on the date and to the extent specified in the notice;
- 21.3.2 Prior to discontinuing the Work, take all necessary steps to assure that the Site is in a secure and safe condition;
- 21.3.3 Place no further orders or subcontracts for or in connection with the Project other than to the extent required in the Notice of Suspension;
- 21.3.4 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
- 21.3.5 Continue to protect and preserve the Project.

21.4 Unless otherwise instructed by the Company, Contractor shall during any suspension maintain its staff and labor on or near the Project Site and otherwise be ready to proceed expeditiously with the Work upon receipt of the Company's further instructions; provided that after a period of thirty (30) Days, Contractor may fully demobilize the Work; provided, further, that, during any suspension, notwithstanding any Demobilization, and until termination of this Agreement, Contractor shall maintain, at a minimum, Project Site management and security.

21.5 Notwithstanding any other provision of the Agreement, no compensation or extension of time will be granted to Contractor for any suspension to the extent that the suspension is caused directly or indirectly by Contractor Personnel's acts or failure to act, including, but not limited to Contractor Personnel'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.

21.6 Notwithstanding the foregoing, if the Work may directly affect the continuity of electrical or gas service or present a safety concern, the Company, at its option, may from time to time immediately suspend Contractor's Work without prior written notice to avoid safety hazards or interruption of service.

21.7 Each Party waives any right it may have under any Applicable Laws or otherwise to suspend performance of the Work, except as expressly authorized by this Article 21 of these Terms and Conditions or elsewhere in the Agreement.

22.0 EMERGENCY ASSISTANCE / CONTRACTOR REQUEST TO SUSPEND PERFORMANCE / COMPANY'S RIGHT OF REFUSAL

22.1 If Contractor is notified and requested to provide emergency assistance by an entity other than the Company, Contractor may request a temporary release from the Agreement. It will be at the Company's sole discretion as to whether this request will be granted or refused. If the Company agrees to temporarily authorize the release of Contractor from its current obligations, both Parties shall sign a temporary release document, indicating for whom Contractor will be working and the anticipated release period. The temporary release document will include Contractor warranties that the Company will not incur any costs or liabilities due to Contractor's release and that the release will cause no significant delay in the completion of the Company's Project. If the Company refuses Contractor's request to suspend performance, there will be no interruption of the Work and Contractor's obligations under the Agreement will remain unchanged.

23.0 FORCE MAJEURE

23.1 In no event will either Party be liable or responsible to the other Party for any delay in the performance of its required obligations hereunder if and to the extent caused by unprecedented weather conditions, fire, explosion, riot, war, strike by the Company's or its Affiliates' or its separate contractors' employees, court injunction or order, federal and/or state law or regulation, or order by any federal or state regulatory agency ("**Force Majeure Event**"), but only to the extent that: (i) such events are beyond the reasonable control of the Party affected; (ii) such events were unforeseeable by the affected Party and

the effects were beyond its reasonable efforts to prevent, avoid or mitigate; (iii) the affected Party uses every reasonable effort to prevent, avoid or mitigate the effects; (iv) prompt written notice giving full particulars of the Force Majeure Event and the reason for the Force Majeure Event preventing the affected Party from, or delaying that Party from performing its obligations under the Agreement is given by such affected Party to the other; and (v) the affected Party uses its best reasonable 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 Article 20 herein.

23.2 The written notice required under Section 23.1 of these Terms and Conditions shall be sent by the affected Party within five (5) Days of the commencement of any such Force Majeure Event 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.

23.3 Within thirty (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.

23.4 Notwithstanding the foregoing, neither Contractor's inability to obtain required Permits timely, nor strikes and/or labor disputes involving Contractor's and its Subcontractors' employees shall be considered a Force Majeure Event.

23.5 The Company shall extend the Schedule for changes in the Project, as provided in Article 16 herein, for Force Majeure Events, as provided in Article 23 herein, or for suspension of Work, as provided in Article 21 herein. Unless provided pursuant to Article 16 or 21 of these Terms and Conditions, extensions of time shall not be a basis for any increased payment under the Agreement.

23.6 A Force Majeure Event does not relieve a Party from liability for an obligation which arose before the occurrence of that event, nor does that event affect the obligation to pay money in a timely manner which matured prior to the occurrence of that event.

24.0 LIABILITY AND INDEMNIFICATION

24.1 If any act or omission on the part of 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, Contractor shall be liable for any claims, losses, damages and costs (including legal expenses) arising therefrom. Under no circumstances shall Contractor's liability be less than the awarded value of the Agreement, plus the sum of all Company-issued Change Orders, and any damages claimed by the Company and/or third parties arising from acts of Contractor and/or Contractor's Personnel.

24.2 To the fullest extent allowed by law, 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, 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 Contractor, its agents, employees, Subcontractors, or Suppliers, including any breach of the Agreement thereby, (ii) any negligence, willful misconduct, or breach of law of Contractor, its agents, employees, Subcontractors, and Suppliers, (iii) any third party claim under U.S. law pertaining to copyright infringement, trademark 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 Construction Equipment, property or Facilities used by Contractor, its agents, employees, Subcontractors, and Suppliers, or (v) failure of Contractor or its Subcontractors to comply with Applicable Laws and Standards.

24.3 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 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 24.1 and Section 24.2 of these Terms and Conditions. If such claim is subject to the foregoing indemnity obligations, 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. 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.

24.4 Furthermore, Contractor understands that, in the event that it has breached its obligations under this Article 24, it is responsible for any and all reasonable costs and expenses incurred by the Company to enforce this indemnification provision.

24.5 The Company may participate in the defense and retain its own counsel in connection with any claim. If Contractor fails to assume control of the defense of any claim, the Company may defend the claim at Contractor's cost. The Company's defense of a claim does not relieve Contractor from its obligations to defend or indemnify.

24.6 The obligations under this Article 24 shall not be limited in any way by any limitation on Contractor's insurance or by a limitation on the amount or type of damages. In addition, the obligations under this Article 24 shall not be limited in any way by any compensation or benefits payable by or for Contractor or any Subcontractor under worker's compensation acts, disability benefit acts or other employee acts.

24.7 Contractor shall obtain from its Subcontractors, for the Indemnified Parties' benefit, Flow Down Agreements substantially similar to those contained in this Article 24. Notwithstanding any other provision of the Agreement, this Article 24 shall survive the termination, cancellation, or expiration of the Agreement.

25.0 INSURANCE

25.1 From the Effective Date of the Agreement, through Final Acceptance or longer where the date of Final Acceptance precedes the expiration or anniversary date of a specific policy, 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 the Agreement, issued by reputable insurance companies with an A.M. Best Rating of at least A, which at least meet or exceed the requirements listed herein:

25.1.1 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, Contractor shall indemnify and hold harmless the Insured Parties from any liability that would have otherwise been covered had that endorsement been added. If Contractor is exempt from having to obtain and maintain workers' compensation coverage due to its legal status as a sole proprietor or partnership, Contractor shall obtain: (i) long term disability insurance covering any illness or injury incurred in connection with the Agreement that prevents Contractor from working, with benefits of at least 50% of Contractor's Monthly income on the last Day before the disability begins; and (ii) 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.

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

Combined Single Limit	\$2,000,000 per occurrence
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General Aggregate and Product Aggregate	\$4,000,000
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This policy shall include Contractual Liability (with the 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: (i) three years after

Final Acceptance, or (ii) 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.

- 25.1.3 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
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If vehicles are used for transporting Hazardous Materials, Contractor's Automobile Liability insurance, or the insurance carried by Contractor's hazardous waste transporter shall be endorsed to provide pollution liability broadened coverage (endorsement CA 99 48) and include an MCS-90 endorsement.

- 25.1.4 Umbrella or Excess Liability, with a minimum per occurrence limit of \$10,000,000 (subject to review and approval of the Company's insurance and risk organization. Larger and/or more complex projects may require a higher amount of coverage). This coverage shall run concurrent to the CGL required in Section 25.1.2 of these Terms and Conditions above, shall apply excess of the required automobile, CGL and employer's liability coverage required in this Article 25, and shall provide additional insured status as outlined below.
- 25.1.5 Watercraft Liability, if the Work or Services requires the use of watercraft, with the same minimum limits of liability as outlined in Section 25.1.2 of these Terms and Conditions above.
- 25.1.6 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.
- 25.1.7 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 Contractor. Proof of coverage under Contractor's CGL policy will satisfy this requirement.
- 25.1.8 Professional Liability providing coverage for negligent acts, errors, and omissions in an amount of \$1,000,000 per claim and in the aggregate.
- 25.1.9 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.
- 25.1.10 Other insurance as required and as mutually agreed upon by the Company and Contractor.
- 25.1.11 Contractor shall name the Insured Parties as additional insureds, in order to provide the same protection under Contractor's policies as other insureds automatically covered, on the coverages in Sections 25.1.2, 25.1.3, and 25.1.4 of these Terms and Conditions. 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 Contractor, including ongoing and completed operations.
- 25.1.12 Contractors Pollution Liability ("CPL"): covering any sudden and accidental pollution liability which may arise out of, under, or in connection with the Agreement, including all Work and Services to be performed by or on behalf of Contractor, or that arise out of Contractor's use of any owned, non-owned or hired vehicles, with a minimum liability limit of: (i) Bodily Injury (BI) - \$1,000,000 per occurrence and

Property Damage ("PD") - \$500,000 per occurrence; or (ii) 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 insureds 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 Contractor is unable to secure and/or maintain any or all of this sudden and accidental pollution liability coverage, 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

25.1.13 Risk of Loss and Builders All Risk Insurance: Contractor shall be responsible for all risk of loss to its Construction 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 the Company will accept coverage under Contractor's property policy providing that the Company is satisfied that Contractor has sufficient coverage under said policy. For the purposes of insuring all Goods, Equipment, Construction Equipment, materials, equipment, supplies, tooling, and Work in progress whether provided by Contractor or the Company, to be used in, or required for completion of the Work Product, as well as insuring any portion of the Work Product partially completed or completed, a Builder's All Risk Insurance policy will be obtained. Unless otherwise agreed in writing elsewhere in the Agreement, this policy will be underwritten with a per occurrence and aggregate limit covering the full Contract Price of the Project and will include a deductible as recommended by the Company's Insurance & Risk organization such that the premium cost for the full term of the Project through Final Completion is reduced to the most cost-effective level without carrying an excessive deductible. The coverage period will be for the full duration of the Project Schedule from Notice to Proceed to Final Completion, with the option to extend annually thereafter, unless otherwise determined by the Company's Insurance & Risk organization. The policy shall include coverage for all Goods, materials, Equipment, Construction Equipment, supplies, tooling, and Work Product as described above, and apply to all Project Sites and locations where Project Work is performed, or where Project records, documents, materials, Equipment, Construction Equipment, and tools are stored, including but not limited to: offices; storage and transportation Facilities; construction Sites, and property parcels, easements and rights-of-way. The coverage shall further include all Project materials, Goods, Equipment, Construction Equipment, supplies, and tooling in transit to a Project Site or location. and shall name the Insured Parties, as a loss payee with respect to their insurable interest.

25.1.14 The Company, at its sole discretion, may elect to have Contractor obtain the Builders All Risk Policy, or may choose to obtain the policy itself. In either case the Insured Parties will be the Company and its Affiliates, and the underwriter's policy proposal will be reviewed and approved by the Company's Insurance and Risk organization prior to purchase. Approval of the policy will include an agreement between the Company and Contractor on any apportioning of responsibility for the deductible, irrespective of who owns the policy. For example, the Company may elect to take responsibility for buying the policy, but negotiate that, as an offset to this cost, Contractor will accept responsibility for any and all deductibles.

25.1.15 Any other insurance policy or coverage as needed to maintain a passing grade of 'C' or better in the Company's ISNetworld registry.

25.2 These requirements are in addition to any which may be required elsewhere in the Agreement. In addition, 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 Contractor's Work activities associated with the Agreement may be taking place as required by law or Permit. Contractor shall comply with any governmental and/or Site-specific insurance requirements even if not stated herein.

25.3 Subcontractors. In the event that Contractor uses Subcontractors in connection with the provision of the Work, Contractor shall require all such Subcontractors to provide the same insurance coverages as shown in Sections 25.1.1, 25.1.2, 15.1.3 and 25.1.4 of these Terms and Conditions. as applicable to their portion of Work. Contractor shall remain liable for the performance of each Subcontractor, and such contract relationship shall not relieve Contractor of its obligations under the Agreement. In addition, each Subcontractor shall be required to name both the Insured Parties and Contractor as additional

insured under the coverages in Sections 25.1.2, 25.1.3 and 25.1.4 of these Terms and Conditions. If requested, Contractor will provide the Company with an insurance certificate from its Subcontractor evidencing this coverage.

25.4 **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 thirty (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 Contractor. Such deductibles or self-insured retentions shall not exceed \$100,000 unless agreed to by the Company's Insurance & Risk Department.

25.5 Any combination of Commercial General Liability, Automobile Liability and Umbrella/Excess Liability policy limits can be used to satisfy the limit requirement in Section 25.1.2 ("CGL"), Section 25.1.3 ("Automobile Liability") and Section 25.1.4 ("Umbrella or Excess Liability") of these Terms and Conditions.

25.6 Proof of qualification as a qualified self-insurer, if approved in advance in writing by the Company, will be acceptable in lieu of securing and maintaining one or more of the coverages required in this Article 25. Such acceptance by the Company shall become a part of this insurance provision by reference herein.

25.7 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 Article 25, or for any required coverage that may be self-insured by Contractor. To the extent Contractor's insurance carriers will not waive their right of subrogation against the Insured Parties, Contractor agrees to indemnify the Insured Parties for any subrogation activities pursued against them by 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.

25.8 If any policy should be canceled before Final Payment by the Company to Contractor and 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 Contractor under the Agreement or to invoice Contractor.

25.9 Contractor shall furnish the Company's Risk & Insurance Department with copies of any accident report(s) sent to 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 Contractor associated with the Agreement, Contractor shall promptly provide copies of all insurance policies relevant to this accident or incident if requested by the Company.

25.10 Contractor represents that it has full policy limits available as required by the Agreement and shall notify the Company's Risk & Insurance Department in writing when coverages required herein have been reduced.

25.11 Nothing contained in these insurance requirements is to be construed as limiting the extent of Contractor's responsibility for payment of damages resulting from its Work under the Agreement, or limiting, diminishing, or waiving Contractor's obligation to indemnify, defend and save harmless the Company and the Indemnified Parties in accordance with these Terms and Conditions.

26.0 CLAIMS / DISPUTES AND DISPUTE RESOLUTION / RIGHTS AND REMEDIES

26.1 Contractor Submission of Claim. Contractor shall present any Claim which Contractor may have against the Company arising out of or relating to the Work, Agreement, and/or Project in writing to the Company's Project Manager no later than ten (10) Days after the first event or occurrence giving rise to the Claim. Contractor shall provide a detailed written statement of the basis of the Claim including but not limited to the relevant facts and data (including the applicable Agreement provision) supporting or relating to the Claim. Contractor shall furnish any and all additional supporting information necessary for or requested by the Company to evaluate the Claim.

26.1.1 Contractor's failure to submit any Claim within such ten (10) Day period shall constitute a waiver and release by Contractor of any entitlement to additional reimbursement and/or additional time for performance under the Agreement

26.2 Appointment of Senior Representatives. The Company and Contractor shall each appoint a "Senior Representative" to attempt to resolve any Dispute or Claims referred to them by the respective Project Managers. The submission of a Dispute or Claim to the Senior Representatives shall be a condition precedent to mediation of any Dispute or Claim, unless ninety

(90) Days have passed since the referral of the Dispute or Claim to the Senior Representatives without resolution of the Dispute or Claim.

26.2.1 Any Dispute between the Company and Contractor with respect to the Agreement that cannot be resolved in the normal course at the Project Manager level shall be referred in writing to the Senior Representatives designated by the Company and Contractor for resolution.

26.2.2 The Senior Representatives shall engage in good faith communications and meetings in an effort to resolve each Dispute or Claim referred to them. Within fifteen (15) Days after the matter is referred to them, the Senior Representatives shall arrange a mutually convenient time to meet and attempt to amicably resolve the Dispute or Claim. The Senior Representatives may take one or more of the following actions: (i) request additional supporting data from the claimant or a response with supporting data from the other Party; (ii) reject the Claim in whole or in part; (iii) approve the Claim; (iv) suggest a compromise; or (v) advise the parties that the Senior Representatives are unable to resolve the Dispute or Claim.

26.3 Notwithstanding the existence of a Dispute or Claim, the Company shall be obligated to maintain payments not in dispute to Contractor for actual and verifiable Work accepted by the Company as provided under the Agreement, subject to the provisions of Article 15 of these Terms and Conditions; and Contractor shall be obligated to proceed (or to continue) with the advancement of all of the Work, including any Disputed Work, unless otherwise directed by the Company.

26.4 If the Dispute or Claim is not resolved within ninety (90) Days after it is referred to the Senior Representatives pursuant to Section 26.2.1 of these Terms and Conditions, either Party may file for mediation as provided below in Section 26.7 of these Terms and Conditions.

26.5 In the event of a Dispute or Claim against Contractor, the Company may, but is not obligated to, notify the surety, if any, of the nature and amount of the Dispute or Claim. If the Claim relates to a possibility of Contractor's default, the Company may, but is not obligated to notify the surety and request the surety's assistance in resolving the Dispute.

26.6 If the Parties exercise their right to refer a Dispute or Claim to the Senior Representatives for resolution, all statements, information, or documents made, presented, or exchanged between the Senior Representatives or their designees are privileged settlement discussions, are made without prejudice to any Party's legal position, and are inadmissible for any purpose in any administrative, arbitration and/or legal proceeding, unless there is an independent evidentiary basis for its admission. Such statements, information, and documents are subject to and governed by Federal Rule of Evidence 408 and the Applicable Laws governing the Project as provided in the Agreement.

26.7 Mediation. Claims or Disputes arising out of or related to the Agreement shall be subject to mandatory mediation as a condition precedent to litigation in a court of competent jurisdiction.

26.7.1 The Parties shall endeavor to resolve Claims and Disputes arising out of or related to the Agreement through private mediation. The Parties shall jointly select an attorney experienced in construction law with experience in mediation of complex construction disputes to serve as the mediator. The Parties shall share the costs of the mediation equally and the mediation shall be held in the place where the Project is located unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Any communications made during the mediation process, including settlement terms, proposals, offers, or other statements, whether made privately to the mediator or when all Parties are present, are confidential, shall be treated in the same manner as compromise offers and negotiations pursuant to Federal Rule of Evidence 408, may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the Parties or the mediator in any subsequent proceeding.

26.8 Litigation. If the mediation conducted pursuant to Section 26.7 of these Terms and Conditions does not result in a settlement of the Dispute or Claim, either Party may proceed to litigation of any Dispute or Claim pursuant to Section 46.6 of these Terms and Conditions.

26.9 The Company shall in no event be liable to 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.

26.10 All provisions related to warranty, indemnification, confidentiality, and proprietary rights shall expressly survive termination or expiration of the Agreement.

26.11 In no event shall the Company's liability to Contractor exceed the price for Work as determined under the Agreement.

27.0 REPRESENTATIONS AND WARRANTIES

27.1 Representations and Warranties of Contractor. Contractor represents and warrants to the Company that on the Effective Date and each date Contractor requests a payment:

- 27.1.1 Organization, Standing and Qualification. Contractor is duly organized, validly existing, and in good standing and has full power and authority to execute, deliver and perform its obligations hereunder and to engage in the business it presently conducts and contemplates conducting. Contractor is and during the term of the Agreement shall be duly licensed or qualified to do business and in good standing under the laws of the state where the Project is to be performed and in each other jurisdiction wherein the nature of the business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder.
- 27.1.2 Professional Skills. Contractor has all the required authority, ability, knowledge, skills, experience and capacity necessary to perform and shall diligently perform the Work in a timely and professional manner, utilizing sound engineering principles, project management procedures, construction procedures and supervisory procedures, all in accordance with Industry Practices. Contractor has the experience, knowledge, and skills necessary to determine, and Contractor has reasonably determined, that Contractor can perform the Work for the Contract Price, subject to adjustment in accordance herewith.
- 27.1.3 Enforceable Agreement. The Agreement has been duly authorized, executed, and delivered by or on behalf of Contractor and is, upon execution and delivery, the legal, valid, and binding obligation of Contractor, enforceable against Contractor in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar Laws affecting creditors' rights generally.
- 27.1.4 No Conflict. The execution, delivery and performance by Contractor of the Agreement: (i) will not conflict with or cause any default under: (a) its organizational documents; (b) any indenture, mortgage, chattel mortgage, deed of trust, lease, conditional sales contract, loan or credit arrangement or other agreement or instrument to which Contractor is a party or by which it or its properties may be bound or affected; or (c) any Applicable Laws; and (ii) shall not subject the Project or any component part thereof or the Project Site or any portion thereof to any Lien other than as contemplated or permitted by the Agreement.
- 27.1.5 Government Approvals. The Contractor-Acquired Permits either have been obtained by Contractor and are in full force and effect on the date hereof or shall be obtained by Contractor and shall be in full force and effect on or prior to the date on which they are required, under this Agreement and Applicable Laws, to be in full force and effect, so as to permit Contractor to commence and prosecute the Work to completion in accordance with the Project Execution Plan and the Project Schedule. Other than with respect to the Contractor-Acquired Permits, none of the execution, delivery or performance by Contractor of the Agreement requires the consent or approval of, or the giving of notice to or registration with, or the taking of any other action in respect of, any Governmental Authority.
- 27.1.6 No Suits, Proceedings. There are no actions, suits, proceedings, patent or License infringements, or investigations pending or, to Contractor's knowledge, threatened against it at law or in equity before any court (U.S. or otherwise) or before any Governmental Authority (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Contractor or in any impairment of its ability to perform its obligations under the Agreement. Contractor has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any court or any Governmental Authority that may result in any such material adverse effect or such impairment.

- 27.1.7 Intellectual Property. Contractor owns or has the right to use all Intellectual Property rights, other than Company Intellectual Property, necessary to perform the Work without conflict with the rights of others.
- 27.1.8 Business Practices. Contractor and its representatives have not made any payment or given anything of value, and Contractor will not, and Contractor will direct its Contractor Personnel, including but not limited to any employees, agents, and Subcontractors and Suppliers, at any time, and their employees or agents to not, make any payment or give anything of value, in either case to any Government Official (including any officer or employee of any Governmental Authority) to influence his, her, or its decision or to gain any other advantage for the Company or Contractor in connection with the Work to be performed hereunder. None of Contractor, Contractor Personnel, any Subcontractors, Suppliers, nor any of their employees or agents shall take any action that violates the United States Foreign Corrupt Practices Act or any similar Applicable Law. Contractor shall immediately notify the Company of any violation of this covenant.
- 27.1.9 Turnkey Project. Contractor acknowledges that the Agreement constitutes a fixed price obligation to engineer, design, procure, construct, test and start up through the end of the expiration of the last Warranty Period to expire with respect to the Facilities (including the training and testing program for the Operating Personnel, as set forth in Exhibit EE), complete in every detail, within the time and for the purpose designated herein. References to the obligations of Contractor under the Agreement as being “turnkey” and performing the Work on a “turnkey basis” mean that subject to the provisions hereof, Contractor is obligated to supply all of the Equipment, labor and design Services and to supply and perform all of the Work, in each case as may reasonably be required, necessary, incidental, or appropriate (whether or not specifically set forth in the Agreement) to complete the Work such that the Project satisfies the applicable terms, conditions, and other guarantees and requirements set forth in the Agreement, all for the Contract Price.
- 27.1.10 Information. The Company may provide or may have provided Contractor with copies of Company Furnished Information, which Company Furnished Information includes, but is not limited to, the Site Reports, and Contractor acknowledges that all such documents or information have been or will be provided as background information and as an accommodation to Contractor. The Parties acknowledge and agree that all such Company Furnished Information shall be deemed Confidential Information of the Company hereunder. Contractor further acknowledges that the Company does not make any representation or warranty with respect to the accuracy of the Company Furnished Information or opinions therein contained or expressed and any error identified in any such Company Furnished Information shall not be considered a breach of any covenant, condition, representation or warranty of the Company.
- 27.1.11 Applicable Laws. Contractor has knowledge of all of the Applicable Laws that must be followed in performing the Work and Contractor’s warranty obligations herein. The Project can and shall be built in conformity with, and the Work performed in accordance with, all Applicable Laws.
- 27.1.12 Financial Condition. Contractor is financially solvent, able to pay its debts as they mature or come due and possessed of sufficient working capital to complete its obligations under the Agreement.
- 27.1.13 Licenses. All Persons who perform any portion of the Work have and shall have all business and professional certifications required by Applicable Laws to perform such Work under the Agreement.
- 27.1.14 No Suspension or Debarment Actions. Contractor is not now, nor has Contractor ever been, suspended, debarred or proposed for suspension or debarment from bidding on any work offered by a Governmental Authority. No such suspension or debarment actions have been commenced or threatened against Contractor or any of its Affiliates or their respective officers, directors, shareholders, managers, agents, consultants, or employees. There is no valid basis for the suspension or debarment of Contractor or such other Persons from bidding on contracts or subcontracts for or with any Governmental Authority. No cure notice or show cause notice has been issued by any Governmental Authority with respect to Contractor or such other Persons and remains outstanding.

28.0 DOCUMENTS / INTELLECTUAL PROPERTY

28.1 Contractor shall supply all required Deliverables prepared as part of the Work, including but not limited to: Drawings, studies, surveys, inventories, reports, computer models, software, and data files (collectively “**Work Product**”), in the quantities and types, at the times, according to the instructions, and in the manner set forth in the Agreement. Upon

the Company's request, any other documents prepared by Contractor or Contractor Personnel in connection with the Project shall be delivered to the Company promptly, but in no case more than five (5) Days following any such request, unless otherwise permitted by the Company.

28.2 All Work Product and other documents prepared, procured, or developed by Contractor or any Contractor Personnel 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, and without regard to any copyright notices or confidentiality legends to the contrary which may have been placed on or affixed to any Work Product, whether during the term of the Agreement or thereafter. The Company shall retain all rights, title, and interest in the Work Product which Contractor or Contractor Personnel prepare, procure, develop and/or deliver to the Company under the Agreement.

28.3 All documents furnished by the Company, including but not limited to Specifications and Drawings, if any, copies thereof, and documents produced by Contractor or Contractor Personnel for or in connection with the Project shall be and remain the property of the Company, shall be used by Contractor only for performance of the Project, shall not be used for any other purpose and/or on any other Projects, jobs or contracts, 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. Under no circumstances shall the furnishing by the Company of any Specification, Drawings, or other document result in or be interpreted as the transfer of ownership of such materials to Contractor.

28.4 If the Work, the Work Product, any Intellectual Property utilized by Contractor or Contractor Personnel in providing the Work, or the Company's use of the Work or the Work Product (each an "**Infringing Element**") becomes the subject of any claim, suit, or proceeding for infringement or other Intellectual Property right violation, Contractor shall, at Contractor's sole expense and at the Company's option: (i) secure for the Company the royalty-free right to the continued use of the Infringing Element, (ii) replace, subject to the approval of the Company, the Infringing Element with a substantially equivalent, non-infringing item, or (iii) modify, subject to the approval of the Company, the Infringing Element so that it is non-infringing.

28.5 Contractor acknowledges and agrees that all royalties and fees for patents, Licenses, trademarks and/or other Intellectual Property rights covering materials, articles, apparatus, devices, equipment or processes used in the Work are included in the Contract Price and that there will be no separate or continuing charges for such fees. Contractor shall satisfy, at its sole cost, all demands that may be made at any time for such royalties or fees. Under no circumstances shall Contractor be entitled to any Change pursue to Article 16 of these Terms and Conditions, and/or any time extension of the Project Schedule as a result of Contractor's failure or inability to secure the use of any materials, articles, apparatus, devices, equipment or processes used in the Work because of any royalty, patent, License, trademark or other Intellectual Property issue.

28.6 Any and all works, expressions, Inventions, ideas, discoveries, improvements or developments whether or not patentable, as well as all copyrights, patents, or trademarks thereof (collectively, "**Inventions**"), and Work Product that may be conceived, developed or made by Contractor or Contractor Personnel shall be "works made for hire" and shall be deemed to be solely the property of the Company. If, for any reason, any part of or all of the Work Product or any Invention is determined not to be a "work made for hire" for the Company or if ownership of all right, title, and interest in the Work Product does not otherwise vest in the Company, Contractor shall assign, in writing, without further consideration or compensation, all ownership right, title, and interest in the Work Product or any Invention to the Company, and the Company shall thereafter own all right, title, and interest in the Work Product or any Invention, including all copyright, trademark and patent interests. Contractor shall record all copyright assignments with the United States Copyright Office at Contractor's sole expense.

28.7 Upon the request of the Company and/or to otherwise satisfy Contractor's obligations under the Agreement, Contractor and/or Contractor Personnel shall promptly furnish the Company with complete information, including, without limitation, a written description of any Invention used, developed, created or written in connection with the Work, giving the date of the Invention and naming the inventors or authors and others involved in the use, development, creation, or writing of the Invention. Contractor shall make the following available to the Company upon request: memoranda, notes, experimental works, descriptions, diagrams, sketches, Drawings, and other data generated in performance of the Work pertaining to any and all Inventions covered by the Agreement.

28.8 With respect to Inventions, the Company shall have the sole right to determine whether or not and in which countries and jurisdictions patent or trademark application(s) shall be filed, or copyright(s) registered and to determine the disposition of title to and rights in any Inventions and resulting patents, trademarks, or copyrights.

28.9 Contractor shall assist the Company in the implementation of this Article 28 by (i) obtaining and providing detailed written descriptions of and other background information regarding each Invention sufficient for filing patent or trademark applications, or registering a copyright, (ii) providing an evaluation of the patentability, trademark registrability or copyrightability of each Invention, (iii) assisting the Company in the prosecution of all patent, and trademark applications, and copyright registrations for any Invention, (iv) protecting the Company's rights to own and enforce all Inventions, and (v) executing or having executed by appropriate persons any and all documents that may be necessary or desirable to cause title in such Inventions to vest with the Company. The cost of such assistance, as set forth in this Section 28.9, shall be considered separate and distinct from the other payments for Work contemplated by the Agreement and shall be mutually agreed upon between the Company and Contractor.

29.0 CONFIDENTIALITY / PROPRIETARY INFORMATION

29.1 Contractor hereby acknowledges that during the course of Contractor's participation in a bid and/or selection process for this Project and in the performance of the requirements of the Agreement, 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.

29.2 Contractor agrees that (i) 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 (ii) 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.

29.3 Contractor may disclose Confidential Information to its partner(s), employee(s), agent(s), vendor(s), Supplier(s), Subcontractor(s), or any other party employed by Contractor if and only if (i) such disclosure is necessary in order to perform the Work and/or Services under the Agreement; and (ii) the party to whom the Confidential Information will be disclosed has executed and delivered to Contractor a non-disclosure agreement identical to or fully supporting the Non-Disclosure Agreement Contractor has executed with the Company, as set forth in Exhibit MM (Non-Disclosure Agreement). If 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 confidential or proprietary status.

29.4 Upon termination of the Agreement, Contractor shall immediately return all Confidential Information, including without limitation any Drawings, maps, or electronic data or copies thereof, to the Company.

29.5 Both Parties acknowledge that the breach of Contractor's obligations under this provision will result in irreparable harm to the Company and/or its Affiliates. Any breach of these provisions by 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.

29.6 If either Party is required by Applicable 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.

29.7 Notwithstanding anything to the contrary in this Article 29, 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.

29.8 In no event shall data or information provided by Contractor under the Agreement or generated as a result of performance of the Work thereunder be deemed as proprietary to Contractor. Likewise, reports generated as a result of performance of the Work thereunder shall not be proprietary to Contractor.

29.9 The obligations set forth in this Article 29 shall survive expiration or termination of the Agreement for a period of five (5) years.

30.0 PUBLICITY

30.1 Notwithstanding any other provision of the Agreement, 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.

30.2 Contractor shall not display any sign, posters or other advertising matter in or around the Site without prior written approval of the Company.

31.0 COMMUNICATIONS WITH REGULATORS, MEDIA, OR PUBLIC

31.1 Contractor shall immediately notify the Company of all communications from Governmental Authorities, 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 Contractor from a Governmental Authority, a copy of the notice or correspondence shall be provided to the Company within twenty-four (24) hours of its receipt. Contractor shall not contact or correspond with regulatory, federal, state, or local agencies unless specifically directed to do so by the Company. Also see Section 31.4 of these Terms and Conditions below.

31.2 Contractor shall immediately notify the Company verbally and in writing of any inquiries from the media. Requests for information from the media shall be reviewed by the Company, and the Company shall direct Contractor how to respond, if at all, or if the Company will respond instead. Any written or oral response to media inquiries by Contractor or Contractor Personnel shall be reviewed and approved, in writing, by the Company, prior to release.

31.3 Contractor shall immediately notify the Company verbally and in writing of any calls or other communications from the public, or public official, including municipal officials. Contractor shall immediately provide the Company with any requests for information received by Contractor from the public, public officials, or Governmental Authorities for review by the Company, and the Company shall direct Contractor how to respond, if at all, or if the Company will respond instead. Contractor shall provide that any written or oral response by Contractor or Contractor Personnel to inquiries from the public, public officials, or Governmental Authorities, is reviewed and approved, in writing by the Company prior to release.

31.4 Contractor shall notify the Company as soon as Contractor becomes aware of a current or scheduled inspection by a Governmental Authority. The Company will arrange a time for the inspection and designate a Company representative who will accompany the Governmental Authority inspectors. Contractor shall also designate a representative who will accompany the Governmental Authority inspectors. Contractor shall fully cooperate with the Governmental Authority during inspections or other official functions. If an inspector from a Governmental Authority arrives at a Project location unannounced and wishes to conduct an inspection, 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 Contractor's representative at risk of injury, Contractor shall attempt to reschedule the inspection at a date and time acceptable to all Parties.

31.5 During a Governmental Authority inspection, the inspector may request permission to sample fluids, soils or other materials. If samples are taken, Contractor shall request the inspector to provide duplicate samples, and Contractor shall forward them to the Company as soon as possible. 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 Contractor.

32.0 MEETINGS AND REPORTS

32.1 Project Meetings. During the term of the Agreement, Contractor shall attend Project meetings as requested and scheduled by the Company. Project meetings shall include and address all aspects of the Work, as necessary, including but not limited to: real estate and siting; non-environmental permitting; environmental permitting, assessment, and compliance; engineering and design; equipment and materials to be evaluated, specified, procured, and tested – especially long lead-time items; schedules, cut-overs; temporary or preliminary Work; Work by others; safety protocols and concerns; construction; testing and commissioning; outage planning; and close-out activities. The Company Project Manager or their designee will set the agenda for the Project meetings and the Company Project Manager or their designee may take the meeting minutes which should include all action items, due dates, and further follow-ups required unless otherwise agreed.

32.2 **Daily Progress Reports.** On a daily basis, for each Day that Contractor is on or is scheduled to be on the Site, Contractor shall submit, in the manner directed by the Company, a written daily report to the Company's on-Site construction supervisor and Project Manager ("**Daily Progress Report**"), which report at a minimum shall include the following information: date Contractor was on Site or scheduled to be on Site; weather conditions; listing of all Contractor's and Subcontractor's construction force on Site including but not limited to itemization of craft, supervisory, and employer personnel; description of Work performed or Work scheduled to be performed but not performed and the reason therefore, including but not limited to nature and type, amounts, locations of the Work, Construction Equipment used and idle Construction Equipment present on Site, Goods, materials and Equipment received, delays encountered and their cause; recordable and "lost time" accidents or incidents; instructions given to Contractor; general remarks; and listing of Project Site Visitors.

32.3 **Periodic Reports.** Contractor shall submit the daily, Weekly, and Monthly reports on the schedule and in the manner specified in Exhibit BB (Reporting Requirements).

32.4 **Incident Reporting.** In addition to Contractor's obligations pursuant to the Contractor Safety Requirements (N-1402), Contractor shall immediately notify the Company of any Work-related incidents or accidents involving injury or illness to employees, or the public, or property damage (including Contractor vehicle accidents). Contractor shall submit to the Company a written report of each incident or accident involving personal injury, property damage or any event that may have any public, media or governmental impact. At a minimum, Contractor shall include the following in this report: date, names of injured individuals, Contractor and Subcontractors involved, any third parties involved, employer, supervisor's name, description of injury and/or property damage, description of how incident or event occurred, names of witnesses (and, if expressly required by the Company, social security number or tax identification number thereof) involved, and safety equipment employed or not utilized. Contractor shall include any preventative procedures that could be implemented to prevent reoccurrence. Unless otherwise directed by the Company, Contractor shall submit any reports required by this section in writing, transmitted by email. Contractor will hold a damage findings meeting with the Company and the Person(s) involved within twenty-four (24) hours of any incident or accident involving injury or illness to employees, or the public, or property damage (including Contractor vehicle accidents). The findings and actions taken at that meeting will be disclosed to Contractor employees, their designated agents and all Company employees. The Contractor shall use the findings to establish and insure all Work procedures and methods are reviewed with its personnel as a "lessons learned" within seven (7) working days.

32.5 **Other Reporting Requirements.** Contractor shall submit to the Company specific reports as may be required elsewhere in the Agreement, including but not limited to accident reports required under Section 25.9 of these Terms and Conditions.

33.0 NERC CIP

33.1 For any Work that requires access to the Physical Security Perimeter at a current control house as identified by the Company, or where the Work includes constructing a control house environment, Contractor shall, and shall require its Subcontractors to (i) complete the compliance certification, available at <https://www.nerc.com/pa/Stand/Pages/CIPStandards.aspx> containing the Contractor requirements for compliance with NERC cyber security standards, and (ii) comply with the terms and conditions and obligations of Contractor with respect to NERC CIP. Contractor shall be responsible hereunder for any breach of such terms and conditions and obligations of Contractor with respect to NERC CIP under the Agreement to the extent caused by its Subcontractors.

33.2 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, 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 the Agreement for cause, pursuant to Section 20.2 of these Terms and Conditions.

34.0 CLEAN UP AND CLOSE-OUT ACTIVITIES

34.1 Contractor shall at all times keep its Work areas in a neat, clean, and safe condition in accordance with the Agreement.

34.2 On a daily basis, Contractor shall 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 the Company, including collection and turn-over of recyclables and de-commissioned equipment to the Company's resource recovery personnel. Contractor shall

not be entitled to any Change Order or additional compensation or time extension for any overtime or other additional costs required to make Project Site safe at end of day. If an unsafe, hazardous, deficient or Defective condition exists that poses immediately risk of harm to persons or property, the Company may, at its sole discretion, correct these conditions, and Contractor will be back charged the correction cost by the Company.

34.3 Upon completion of the Work, Contractor shall remove all excess material, Construction 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. Prior to achieving Final Completion, Contractor shall provide that the Site clean-up has been inspected and approved by the Company in writing.

34.4 Contractor shall provide that the Work is performed in a manner which minimizes to the greatest extent possible any disruption to the surrounding landscape, waterways, communities, and the general public.

34.5 Prior to achieving Final Completion, Contractor must ensure that: (i) all clean-up activities have been performed to the satisfaction of the Company; (ii) all Punch List items have been completed to the satisfaction of the Company; and (iii) all items under Section 13.5 of these Terms and Conditions have been completed to the satisfaction of the Company.

34.6 If Contractor fails to comply with this Article 34, the Company shall be entitled to withhold from Contractor, or obtain reimbursement from Contractor for, any costs incurred by the Company in accomplishing the clean-up and close out activities at the Site.

35.0 LABOR RELATIONS

35.1 Contractor shall give the Company prompt written notice of any labor dispute or anticipated labor dispute which may reasonably be expected to affect: (i) the cost, schedule or performance of the Project; (ii) other activities at the Site; or (iii) the Company's ongoing operations.

35.2 Contractor shall conduct its labor relations in accordance with its established labor agreements. Prior to making any new commitments, Contractor shall advise the Company whether the negotiation of any new agreements or understandings with local or national labor organizations may affect the Work to be performed under the Agreement.

35.3 In addition to Contractor's legal obligations under the Labor Management Relations Act, in the event Contractor is a subscriber to a multi-employer bargaining association or group, 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.

35.4 To the extent applicable to Work being performed under the Agreement, Contractor shall supply the Company with copies of all national agreements to which it is a party. No later than thirty (30) Days before the expiration of any labor agreement which may affect the Project, Contractor shall meet with the Company to discuss the appropriate course of action.

35.5 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. Contractor shall use every reasonable means to provide for prompt settlement of any or all labor disputes involving or caused by its workers.

35.6 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 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 20.2 of these Terms and Conditions, without incurring contractual liability to Contractor or its Subcontractors or Suppliers. This Section 35.6 shall be applicable whether or not 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 Contractor or Subcontractor.

36.0 ADDITIONAL CONTRACTS AND INTERESTS

36.1 Whenever Work is being done by the Company's or by other contractors' forces 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 Contractor restrict the movement of the personnel of the Company or other contractors and/or Equipment in the performance of their Work.

36.2 Contractor shall be responsible for promptly notifying the Company when it is necessary to coordinate Work between Contractor and others.

36.3 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 Contractor to claim a change in the Project under Article 16 of these Terms and Conditions. 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 at the Site or location contiguous to the Site, and Contractor shall cooperate with the Company, its Affiliates and any other contractors in coordinating their activities.

36.4 Contractor acknowledges and agrees 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 Contractor and other contractors, or between Contractor and the workforce 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, Contractor acknowledges and agrees 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.

36.5 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 Contractor's activities under the Agreement.

36.6 If Contractor's Work depends upon the work of others, Contractor shall inspect and give the Company prompt written notice of any defects in the work that renders it unsuitable for Contractor to perform the Work.

37.0 LIENS / BONDS

37.1 Contractor Liens – Waiver. Pursuant to Article 10 of these Terms and Conditions, and as a condition precedent to entitlement to payment, Contractor shall submit with each Application for Payment signed and completed Lien and Claim Waivers, in the form as set forth in Exhibits N (Form of Contractor Interim Lien and Claim Waiver), O (Form of Supplier Interim Lien and Claim Waiver), P-1 and P-2 (Form of Contractor Final Lien and Claim Waiver) or Q (Form of Supplier Final Lien and Claim Waiver), as appropriate, executed by Contractor and each Subcontractor, Supplier and Person or entity entitled to assert a Lien or Claim against the Project or the Company in connection with the Work.

37.1.1 Contractor hereby waives, to the fullest extent permitted by Applicable Laws, any and all of its rights to have filed and/or to maintain any mechanic's or other Liens or claims for or on account of the Work, Goods, Services, labor, Equipment Construction Equipment and/or materials furnished or to be furnished by Contractor under or in connection with the Agreement.

37.1.2 Contractor shall pay punctually, on time and pursuant to the terms of any prevailing sub-agreements with all Contractor Personnel for all Work, tools, Services, labor, Equipment, Construction Equipment and materials and all liabilities incurred by Contractor in connection with the performance of the Agreement and the Work, and shall, in addition to the submission of all Lien and claim waivers under Section 37.1 of these Terms and Conditions, upon request by the Company, furnish the Company with satisfactory evidence of such payment.

37.2 Indemnity. To the fullest extent permitted by law and in addition to the provisions of Article 24 of these Terms and Conditions, Contractor shall indemnify, reimburse, hold harmless and defend the Company and its Affiliates and their officers, directors, employees, agents, and assigns from and against all Liens, mechanics' Liens, claims, damages, losses, and expenses, including, but not limited to, attorneys' fees and legal expenses ("Loss") caused by, arising out of or relating to the assertion of laborers', materialmen's and mechanics' Lien claims upon the real property upon which the Project is located ("Company Property") arising out of or relating to the Work, Goods, Services, labor, Equipment Construction Equipment and/or materials furnished by Contractor, and/or Subcontractors and/or Suppliers of any tier, and against any assertion of security interests by any Subcontractor and/or Supplier of any tier. Contractor shall keep all Company Property free and clear of all Liens, claims, and encumbrances arising from the performance of the Agreement by Contractor and/or Contractor Personnel. The indemnity provisions of this Section shall apply to both first party Claims and third-party claims.

37.3 Discharge of Subcontractor and Supplier Liens. Contractor shall be solely responsible for payment of all its obligations and the payment by Subcontractors and/or Suppliers of any tier of their obligations. Contractor shall keep the Company's Property free of Liens filed by Subcontractors and/or Suppliers of any tier. If any such Subcontractor and/or Supplier Lien is filed against the Company's Property, Contractor shall, at its sole expense, promptly, but no later than within five (5) Days after such filing, commence appropriate action to remove such Subcontractor/Supplier Lien, and shall thereafter diligently pursue the release of such Lien. If any Subcontractor/Supplier Lien is not removed within thirty (30) Days after it is filed, Contractor shall furnish a bond reasonably satisfactory to the Company to cause discharge of the Lien and secure payment of such Lien or otherwise guarantee payment thereof in a form reasonably satisfactory to the Company. Contractor shall, at its sole expense, defend any action which results in or from the assertion of a Subcontractor and/or Supplier Lien or other similar remedy in connection with the performance of the Work. If a Subcontractor and/or Supplier Lien or other similar remedy is asserted and Contractor does not secure the removal of, release of, discharge of or bonding off of such Lien in the time set forth herein, in addition to the other remedies set forth herein, the Company shall have the right to: (i) audit Contractor's relevant Books and Records, (ii) at Contractor's sole expense and indemnity, remove, release, discharge or bond off such Subcontractor/Supplier Lien using whatever means the Company, in its sole discretion, deems appropriate, including but not limited to payment of settlement amounts that the Company, in its sole discretion, deems appropriate, (iii) withhold payment therefore from Contractor as set forth in Section 15.1 of these Terms and Conditions to bond off or otherwise satisfy the Lien and Company's costs in connection therewith, or (iv) any combination thereof. Contractor shall, within fifteen (15) Days, reimburse the Company for any Loss including, but not limited to, amounts paid to remove, release, discharge, bond off or settle any Subcontract and/or Supplier Lien.

37.4 Payment and Performance Bonds. Within fifteen (15) Days of signing the Agreement, Contractor shall at the Company's option and direction, provide the Company, in a form and from a surety acceptable to the Company, with an executed copy of each a payment bond, and a performance bond for the Work in the amount of the Contract Price covering the payment of, and performance of all obligations arising under the Agreement. The Company may require additional bonds if the value of the Agreement, in the Company's opinion, is appreciably increased.

37.4.1 The payment bond and the performance bond form shall be in the form substantially set forth in 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 Contractor or with a Subcontractor (including Suppliers), of any tier, to furnish labor, materials, Goods, Equipment and Construction Equipment for use in the performance of the Agreement. All other parts of the definition of claimant in the AIA Document A312 shall remain unmodified.

37.4.2 Contractor shall furnish a copy of the payment bond to all Subcontractors (including Suppliers) with whom it has a contract to furnish labor, Goods, Equipment, Construction 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).

37.4.3 The cost for the payment bond and performance bond are included in the Contract Price of this Agreement.

38.0 COMPLIANCE WITH LAWS AND STANDARDS

38.1 Contractor shall, in connection with any Work provided by Contractor hereunder, comply with all Applicable Laws.

38.2 In connection with any Work provided by Contractor hereunder, Contractor shall and shall provide that its Subcontractors, agents, and representatives shall, at all times: (i) strictly comply with all of the Company's safety, operational, and environmental standards, rules, regulations, directives, processes, procedures, and Work methods including, without limitation, all Contractor Safety Requirements, all Contractor Environmental Requirements, all Company Policies and Procedures, and with any and all Applicable Laws related to employee and public health, safety, and/or the environment, as well as all Applicable Codes and Standards, including, but not limited to API 1173, in force upon the date of the Agreement and as in the future passed, enacted, directed, or amended, and (ii) conduct all operations in a manner to ensure the safety of all Contractor Personnel, the general public, and the protection of the environment and so as to avoid the risk of injury, death, loss, theft, damage by accident, vandalism, sabotage, contamination, pollution, or any other means. In cases where one or more conflicting standards may be applicable, Contractor shall comply with the most stringent applicable standard. Contractor shall obtain all necessary licenses and/or permissions to view all applicable codes and standards, including, but not limited to API 1173.

38.3 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.

38.4 Contractor shall, in connection with anything provided by Contractor hereunder, comply with the Company’s diversity program aspirations and requirements. Such requirements include but are not limited to completion and return of a Contractor diversity bid form, quarterly reporting on Contractor’s utilization of diversified Services and Suppliers, and maintenance of certifications from accredited institutions on file, subject to Company audit.

39.0 ENVIRONMENTAL COMPLIANCE

39.1 Without limiting the provisions of Article 38 of these Terms and Conditions, Contractor shall conduct all Work and Services in an environmentally sound manner to minimize the impact upon the natural environment and shall comply fully with environmental Laws, any and all Applicable Laws and the terms of the Company’s additional environmental requirements included in the Technical Scope of Work. Contractor shall impose the requirements of this Article 39 upon its Contractor Personnel, Subcontractors and Suppliers.

39.2 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 Contractor’s performance under the Agreement. In addition, Contractor shall post in a conspicuous location an OSHA injury and illness log for all workers at the Site. Contractor shall post, control, and disseminate SDSs in accordance with the Company’s hazard communication program safety procedure F-610 and the applicable edition of OSHA Standard No. 1910.1200. Contractor shall provide periodic updates of the SDS documentation; and Contractor shall ensure that copies thereof are retained at the Site and are readily available to all Contractor Personnel engaged in the Work, including, without limitation all Contractor Personnel engaged in manufacturing Goods or providing Services. The cited standard and policy are available through the Company’s safety department and are incorporated by reference in these Terms and Conditions. Contractor shall conduct a safety briefing to address any environmental hazards and/or environmental health and safety issues prior to conducting the Work as required by the Contractor Safety Requirements.

39.3 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, or other environmental Laws, regulations or statutes is known, suspected or alleged to have occurred or in the event of any unplanned or threatened release, spill or discharge of any reportable quantity of Hazardous Material(s) to the environment, Contractor shall take immediate action to mitigate any further such known, suspected or alleged violation or release, threatened release, spill or discharge of any Hazardous Material(s) and to report same to any applicable Governmental Authorities. Contractor shall also notify the Company as soon as practicable of any such known, suspected or alleged violation and/or release, threatened release, spill or discharge involving any Hazardous Material(s). Contractor shall also provide an incident investigation pursuant to the Contractor Safety Requirements which, at a minimum, shall include a report to the Company of Contractor’s intended procedures for preventing recurrence of such known, suspected or alleged violations and/or any release, threatened release, spill or discharge of any Hazardous Material(s).

39.4 Contractor shall, at its expense, take all actions necessary to protect property, Persons and the environment from damage or injury arising from any release, threatened release, spill or discharge of any Hazardous Material(s) as well as the Company, its Affiliates and all third parties, including without limitation employees and representatives of the Company. In the event of a reportable release, spill or discharge of any Hazardous Material(s), Contractor shall immediately respond in accordance with environmental Laws and the Agreement. The term “reportable” includes, but is not limited to, any event that requires reporting to a federal, state, or local government agency(s) or Government Authorities.

39.5 If the Company determines that Contractor has failed to take adequate measures to mitigate or otherwise address a known, suspected or alleged violation and/or any release, threatened release, spill or discharge of any Hazardous Material(s), the Company may, at its election, undertake such measures it deems necessary to mitigate or otherwise address the release, threatened release, spill or discharge of any Hazardous Material(s) at Contractor’s expense or it may direct a third party to do so at Contractor’s expense.

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

39.7 Unforeseen Hazardous Site Condition(s).

- 39.7.1 Unless otherwise expressly provided in the Agreement to be part of the Work, Contractor shall not be responsible for any Pre-Existing Hazardous Materials or other hazardous conditions encountered at the Site. Upon encountering any suspected Hazardous Materials, Contractor shall stop Work immediately in the affected area and immediately notify the Company, verbally and in writing of the hazardous condition(s) encountered including a detailed description of the condition(s), the source (if known) of the condition(s), photographs, test results and other information necessary to understanding the nature, extent and type of hazardous condition(s) encountered. The foregoing notwithstanding, Contractor shall be responsible, and shall indemnify the Company, for any liabilities, losses, damages, costs, expenses, causes of action, suits, claims, obligations, or demands of judgment arising from any act or omission of Contractor and/or any Subcontractor which exacerbates any pre-existing hazardous Site condition and/or release of Hazardous Materials.
- 39.7.2 Upon receiving notice of the presence of any Changed or Unforeseen Site Condition, including but not limited to suspected Hazardous Materials, to the extent not otherwise mitigated by Contractor, the Company shall direct any necessary measures required to remediate or otherwise address the Changed or Unforeseen Site Condition. Contractor shall cooperate with all remediation or other efforts and coordinate its Work accordingly. Contractor shall ensure that the handling of all impacted soil, concrete, or other Hazardous Materials by Contractor is performed by properly equipped and trained Contractor Personnel (hazardous waste operations and emergency response (HAZWOPER) 40-hour trained personnel, for example).

40.0 PREVENTION OF CORRUPTION AND BRIBERY

40.1 Contractor shall conduct itself in an ethical manner and provide Services to the highest ethical standards. 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, Contractor represents and warrants to the Company that Contractor, its Subcontractors, its and their Affiliates, employees, officers, agents and shareholders, have not committed and shall not commit any Prohibited Act, and shall require a similar representation from its Subcontractors.

40.2 If 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 40.3 through 40.7 (inclusive) of these Terms and Conditions.

40.3 If a Prohibited Act is committed by Contractor, any of its Affiliates, or any of its or their employees, officers, agents or shareholders not acting independently of Contractor and its Affiliates, then the Company shall be entitled to terminate the Agreement for cause, under Section 20.2 of these Terms and Conditions, by giving written notice to Contractor, specifying the date on which the Agreement shall terminate.

40.4 If a Prohibited Act is committed by an employee or agent of Contractor or of any of its Affiliates, acting independently of Contractor and its Affiliates, then the Company may give written notice to Contractor of termination of the Agreement for cause, under Section 20.2 of these Terms and Conditions, and the Agreement will terminate ten (10) Business Days after the date of such notice, unless, within such ten (10) Business Day period, 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.

40.5 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 Contractor of termination of the Agreement for cause, under Section 20.2 of these Terms and Conditions, and the Agreement will terminate ten (10) Business Days after the date of such notice, unless, within such ten (10) Business Day period, 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.

40.6 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 Contractor of termination of the Agreement for cause, under Section 20.2 of these Terms and Conditions, and the Agreement will terminate ten (10) Business Days after the date of such

notice, unless within such ten (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.

40.7 If the Prohibited Act is committed by any Person not specified in Sections 40.2 to 40.6 of these Terms and Conditions (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 Contractor of termination of the Agreement for cause, under Section 20.2 of these Terms and Conditions, and the Agreement will terminate ten (10) Business Days after the date of such notice, unless, within such ten (10) Business Day period, Contractor (i) 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 Contractor or any relevant Subcontractor) and (ii) ensures that the performance of that Person's obligations in relation to the Agreement are performed by another Person.

40.8 The Company shall specify, in any notice of termination under this Article 40 the general nature of the relevant Prohibited Act and the identity of the party whom the Company believes has committed such Prohibited Act.

40.9 Without prejudice to the Company's other rights and remedies, 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 Contractor, any Subcontractor, any of its or their Affiliates, employees, officers, agents or shareholders, or any of 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.

40.10 Without prejudice to the other provisions of this Article 40, Contractor shall require that:

40.10.1 all Contractor Personnel are fully aware of the Company's policies on anti-bribery and anti-corruption notified in writing to Contractor from time to time by or on behalf of the Company and that all Subcontractors and Suppliers (of whatever tier) are engaged upon terms which contain provisions in relation to prevention of bribery and corruption which are no less onerous than this Article 40; and

40.10.2 it has and shall maintain in place throughout the term of the Agreement, its own policies and procedures (including adequate procedures under the United Kingdom's Bribery Act 2010, to ensure compliance with the Company's policies) on anti-bribery and anti-corruption notified in writing to Contractor from time to time by or on behalf of the Company and will enforce them where appropriate.

40.11 The termination of the Agreement pursuant to this Article 40 shall entitle the Company and each of its Affiliates to terminate any other contracts between Contractor and the Company, or Contractor and such Affiliate (as appropriate) on written notice to Contractor, under their respective termination for cause provisions.

40.12 Notwithstanding Article 26 herein and Section 46.6 of these Terms and Conditions, any dispute relating to the interpretation of this Article 40 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.

41.0 BOOKS AND RECORDS / AUDITS

41.1 Maintenance of Books and Records. Contractor shall keep full and detailed books, construction logs, records, daily reports, safety records, logs and records, accounts, schedules, payroll records, receipts, statements, correspondence, vouchers, memoranda, electronic files, job cost reports, accounting records, written policies and procedures, Subcontractor files, including the agreement(s) between Contractor and Subcontractor, original estimates, estimating worksheets, correspondence, Change Order files (including documentation covering negotiated settlements), all documentary information used in Contractor's preparation of the Contract Price and other pertinent documents as may be necessary for the proper management under the Agreement, including but not limited to records on the employment of minorities and women, agreements, contracts, and subcontracts ("**Books and Records**"). Contractor shall maintain all such Books and Records in accordance with GAAP applicable in the U.S. and shall retain all such Books and Records for a minimum period of seven (7) years after Final Completion, or such greater period of time as may be required under Applicable Laws. To the extent that Contractor does not have any of the foregoing information and material, Contractor shall certify the same in writing to the extent requested by the Company. In lieu of retaining such Books and Records, Contractor may deliver such Books and Records to the Company at any time after the expiration of the last expiring warranty. Contractor agrees to make such Books and Records available to the Company or its authorized representative at no additional cost to the Company or its authorized representative for inspection or audit at any time during such period at a site within the Company's service territory.

41.2 Audit. Books and Records, including but not limited to those pertaining to Work under the Agreement, or claims made by Contractor for extension of time, delay or other costs, or expenses under any provisions of the Agreement, shall be made available to the Company or its authorized representative for inspection and audit and shall be kept in a manner which (i) adequately permits evaluation and verification of any and all claims including but not limited to claims for additional cost and/or for time extensions and all invoices, payments and/or claims based on Contractor's or Subcontractors' actual costs incurred in the performance of the Project and (ii) permits 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.

41.2.1 Notice. Upon reasonable notice, the Company and any of its representatives and consultants, shall have the right to audit or to have audited Contractor's Books and Records with respect to: (i) any Drawings, Specifications or other technical documents required under the Agreement to be prepared, delivered or maintained by Contractor or any of its Subcontractors; (ii) ensuring that Contractor is acting in compliance with any and all Applicable Laws and Industry Practice, including any documents relating to safety, security, quality or Permits relating to the Agreement; (iii) any Claim for additional compensation or schedule relief claimed by Contractor or any Subcontractor (including Claims based on or arising out of on an Excusable Condition or a Force Majeure Event); (iv) any amounts billed on a provisional basis and later reconciled to actual, billed under cost reimbursable or unit price Change Orders or otherwise reimbursable under the Agreement; (v) any Claims for compensation under Section 20.3 of these Terms and Conditions; and (vi) Contractor payment of Contractor taxes required under Article 11 of these Terms and Conditions.

41.2.2 Access to Books and Records. The Company and its authorized representative shall have access, during normal working hours, to all necessary Contractor and Subcontractor Facilities. When requested by the Company, Contractor shall provide the Company's auditors with reasonable access to all such Books and Records during normal business hours, and Contractor's personnel shall cooperate with the Company's auditors to effectuate the audit or audits hereunder and shall further provide adequate and appropriate workspace in order to conduct inspections and audits of such Books and Records. The auditors shall have the right to copy all such Books and Records. Contractor shall bear at its own cost and expense all costs incurred by it in assisting the Company with audits performed pursuant to this Section 41.2.2.

41.2.3 Designated Claims. With respect to: (i) audits related to ensuring that Contractor is acting in compliance with any and all Applicable Laws and Industry Practice; and (ii) any claim of Contractor (or any Subcontractor for which Contractor seeks compensation from the Company) related to: (a) a Change Order under which the applicable Work will be performed on a non-lump sum basis; (b) any Claim for additional compensation or schedule relief claimed by Contractor or any Subcontractor (including Claims based on or arising out of on an Excusable Condition or Force Majeure); (c) Claims for compensation arising out of Section 20.3 of these Terms and Conditions; or (d) taxes payable by the Company that are subject to an inquiry by a Governmental Authority (clause (i) and (ii) each, a "**Designated Claim**"), the Company shall have the right, in its sole discretion and at reasonable times (until the seventh anniversary of the Final Completion Date) to: (x) audit all Services provided and all charges and costs submitted by Contractor related to the Designated Claim; and (y) inspect all of Contractor's non-attorney-client privileged Books and Records and any other information relating to the Designated Claims (the documents related to Designated Claims shall be referred to as the "**Work Documents**"). The Company's audit and inspection rights shall include the right to inspect and copy written and electronic Work Documents at the Company's expense, and the right to conduct interviews of personnel employed by Contractor and its Subcontractors at a reasonable place(s), date(s) and time(s), which personnel shall be made available and shall participate in such interview(s) at no cost to the Company. Contractor shall provide reasonable access for inspection and copying of Work Documents, and shall make such personnel reasonably available for interviews, within a reasonable time after the Company's request.

41.3 If the Company's inspection or audit identifies any inconsistencies, errors or costs not expended in accordance with the Agreement, Contractor shall provide a full and detailed explanation for same and make appropriate adjustments as may be required, including refund to the Company.

41.4 The restrictions in this Article 41 to the audit rights of the Company, or its consultants or representatives, shall not alter or take precedence over any rights the Parties may have under Applicable Laws, in discovery in any litigation against any parent or Affiliate company of Contractor or other entity providing Contractor Financial Assurances hereunder.

41.5 If Contractor is not able to substantiate costs for which the Company provided reimbursement, those costs shall conclusively be deemed not to have been incurred by Contractor and the Company shall be reimbursed accordingly.

41.6 Nothing in this Article 41 shall be deemed to limit or otherwise affect the Company's right to have access to and to review all of Contractor's daily reports, logs and records relating to the Work.

41.7 Contractor shall require Subcontractors to comply with the provisions of this Article 41 for the benefit of the Company.

42.0 REGULATORY FILINGS

42.1 It is understood and agreed the Parties that the Company may be required to file the Agreement and any Purchase Order 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.

42.2 The Company shall promptly take all necessary steps to accomplish such filing, if deemed necessary by the Company, and, if so filed, the Agreement will be subject to and conditioned upon the agency's acceptance for filing within ninety (90) Days from the date of such filing. The Company agrees to notify Contractor as soon as practicable of the receipt of agency's acceptance for filing.

42.3 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.

43.0 UTILIZATION OF SMALL BUSINESS CONCERNS

43.1 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.

43.2 If 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 will have and maintain a subcontracting plan consistent with supporting the policy referenced in Section 43.1 of these Terms and Conditions, to the fullest extent consistent with efficient contract performance. Contractor will 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 Contractor's compliance with this clause.

43.3 Contractor, acting in good faith, may rely on written representations by its 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.

44.0 EQUAL EMPLOYMENT OPPORTUNITY

44.1 Contractor shall comply with all Applicable Law, including but not limited to 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. Contractor agrees to comply with the Human Rights Law of the state of New York (Article 15 of the Executive Law), and Section 312 of the New York State Executive Law, if applicable.

44.2 Without limiting the foregoing, Contractor agrees as follows:

44.2.1 Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. 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. 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.

- 44.2.2 Contractor shall in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.
- 44.2.3 Contractor shall 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 Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 44.2.4 Contractor shall comply with all provisions of Executive Order 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 44.2.5 Contractor shall furnish all information and reports required by Executive Order 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.

44.3 All subcontracts and agreements that Contractor enters into to provide the Work under the terms of the Agreement shall obligate such Subcontractors to comply with the foregoing provisions.

45.0 E-COMMERCE / ISNETWORLD

45.1 The Company reserves the right, but shall not be obligated, to (i) 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 the Agreement over the Internet, and (ii) to use the Services of a third-party provider to furnish or create the required "e-commerce" solution for such Internet capability.

45.2 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.

45.3 Contractor shall (i) subscribe in ISN, at Contractor's cost; (ii) receive a passing Dashboard Grade of "C" or above prior to contract award; and (ii) maintain a passing grade as assigned by ISN throughout the term of the Agreement.

45.4 Contractor shall, at its sole expense, be responsible to maintain an active ISN subscription account and have all required information up to date in the system, including as outlined in Contractor Safety Requirements document N-1402, Section 17.

45.5 Contractor shall provide that its Subcontractors comply with all of the Company's safety (and other) standards and shall verify that Subcontractor data is updated and current in ISN on a continual basis if Subcontractors are enrolled under the Company's ISN program.

45.6 If, at any time during the term of the Agreement, Contractor's grade falls below the Company's minimal requirement of a "C", the Company may, upon notice to Contractor, elect to (i) apply a probation period to Contractor and require that Contractor temporarily stop all Work until the Company provides for an investigation; or (ii) suspend the Agreement as provided in Article 21 of these Terms and Conditions; in either case, Contractor will not be entitled to any additional compensation or an extension of time. If, in the Company's sole opinion, Contractor's grade cannot be improved to a passing level within a reasonable period of time, the Company may terminate the Agreement for cause, in accordance with Section 20.2 of these Terms and Conditions.

46.0 MISCELLANEOUS

46.1 Entire Agreement. The Agreement constitutes the entire Agreement between the Company and 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.

46.2 Survivability. All representations, warranties, covenants and agreements made herein shall be considered to have been relied upon by the Parties and shall survive the execution and delivery of the Agreement. Notwithstanding anything in the Agreement or implied by law to the contrary, each provision of the Agreement which by its nature is intended to survive the termination, cancellation, completion or expiration of the Agreement, including any express limitations of or releases from liability shall continue as a valid and enforceable obligation of the Parties notwithstanding any such termination, cancellation, completion or expiration.

46.3 Severability. 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.

46.4 Assignment. The Agreement is binding upon the Parties and their heirs, executors, administrators, successors, and assigns. 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 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, Contractor may subcontract the specific Work to the Subcontractor. All Work performed for Contractor by a Subcontractor shall be pursuant to an agreement between Contractor and Subcontractor which binds the Subcontractor to these Terms and Conditions, and all other applicable conditions of the Agreement such that all obligations of Contractor to the Company flow down to the Subcontractor for the benefit of the Company and its Affiliates. The Company may assign the Agreement or any part thereof to any Affiliate at any time and without Contractor approval.

46.5 Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in the Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

46.6 Jurisdiction and Governing Laws. 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 the Agreement, the terms and conditions of the 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 the Agreement, and (ii) the absence of any provision in the 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 the Agreement to the extent such terms and conditions contradict the provisions of the Massachusetts Prompt Payment Act.

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; Contractor hereby submits to the courts of New York for the purposes of interpretation and enforcement of the Agreement.

46.7 Waiver of Personal Service. Contractor hereby waives personal service by manual delivery and agrees that service of process on Contractor in any action arising out of the Agreement may be made by registered or certified mail, return receipt requested, directed to Contractor at its address and addressee as set forth in the Agreement under Section 46.10 of these Terms and Conditions.

46.8 Waiver. 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.

46.9 Provisions Required By Law Deemed Inserted. 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.

46.10 Notices. 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 point of contact identified in Article 6 of 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.

46.11 Effect of Company's Inspection, Testing, Approval, Acceptance, Review, Comment, Authorization and/or Witnessing of Contractor's Work or Services. Subject to Contractor's ongoing warranty obligations as set forth in Article 9 of these Terms and Conditions, and except for Final Acceptance, the Company's, or its representative's, inspection or testing, approval, acceptance, review, comment, authorization and/or witnessing of Work or Services performed by Contractor, Subcontractor(s) and/or Supplier(s) shall not in any way (i) affect the warranties and guarantees of Contractor, (ii) relieve, mitigate or alter Contractor's obligation to perform such Work or Services in accordance with the Agreement, including with respect to workmanship, materials or Equipment, (iii) constitute an acceptance of the Work by the Company or an admission or agreement by the Company that the Work meets specified requirements, (iv) impair the Company's right to reject nonconforming or Defective Work, (v) constitute a waiver by the Company of any rights under the Agreement, including without limitation the Company's right to audit such Work or Services, or (vi) relieve 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.