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April 12, 2006

HAND DELIVERY

RECEIVED

Elizabeth O'Donnell
Executive Director
Public Service Commission of Kentucky
211 Sower Boulevard
Frankfort, Kentucky 40602

APR 12 2006

PUBLIC SERVICE
COMMISSION

Re: Kentucky Utilities Company

Case No. 2006-00155

Dear Ms. O'Donnell:

Enclosed for filing please find the original and ten copies of the Application of Kentucky Utilities Company for an Order Authorizing the Issuance of Securities and the Assumption of Obligations. We are also simultaneously filing a Petition for Confidential Protection for certain information contained in Exhibit 2 to the Application. An extra copy of the Application and the Petition are enclosed to be file stamped and returned to the undersigned.

Please do not hesitate to contact me if you have any questions or require additional information.

Very truly yours,

J. Wade Hendricks

JWH/cjg

Enclosures

cc: Elizabeth E. Blackford, Esq.
Daniel Arbrough
Kent W. Blake
Allyson K. Sturgeon, Esq.
Roger Hickman
Elliott Home

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APR 12 2006

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In The Matter Of:

**THE APPLICATION OF KENTUCKY)
UTILITIES COMPANY FOR AN ORDER)
AUTHORIZING THE ISSUANCE OF)
SECURITIES AND THE ASSUMPTION)
OF OBLIGATIONS)**

CASE NO. 2006-00155

APPLICATION

Kentucky Utilities Company (“KU” or the “Company”) hereby requests, pursuant to KRS 278.300, that the Commission authorize the issuance of securities, assumption of obligations and entrance into all necessary agreements and other documents relating thereto as more fully described herein. Specifically, KU requests authority to obtain long-term debt financing from an affiliate within the E.ON AG (“E.ON”) Holding Company System. In support of this Application, KU states as follows:

1. The Company’s full name is Kentucky Utilities Company. The post office address of the Company is One Quality Street, Lexington, Kentucky 40507. KU is a Kentucky and a Virginia corporation, a utility as defined by KRS 278.010(3)(a), and provides retail electric service to approximately 525,000 customers in seventy-seven counties in Kentucky and five counties in southwest Virginia. A description of KU’s properties is set out in Exhibit 1 to this Application. A certified copy of the Company’s Articles of Incorporation was filed with the Commission in Case No. 2005-00471 (In the Matter of: Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Authority to Transfer Functional Control of their Transmission System) and is incorporated by reference herein.

2. KU funds its capital projects through numerous sources of capital, including the form of debt that is the subject of this Application. KU does not assign specific financing to any particular project, and otherwise does not project finance capital projects. Thus the uses cited

below are general reasons for KU's need for additional debt financing, rather than projects for which the financing will be required.

3. KU anticipates incurring capital expenditures during 2006 for routine and ongoing upgrades and expansions related to its distribution and transmission systems and other capital projects including, but not limited to pollution control facilities at the Company's Ghent Generating Station in Carroll County, Kentucky (the "Pollution Control Project"). The Pollution Control Project is described in Exhibit 2 hereto, and in Case No. 2004-00426 (In the Matter of the Application of Kentucky Utilities Company for a Certificate of Public Convenience and Necessity to Construct Flue Gas Desulfurization Systems and Approval of its 2004 Compliance Plan for Recovery by Environmental Surcharge). The Commission granted the requested Certificate of Public Convenience and Necessity by Order dated June 20, 2005, in Case No. 2004-00426, the record of which is incorporated herein.¹

4. The Commission has previously approved similar, long-term debt financing between KU and an affiliate within the E.ON Holding Company System. See Case No. 2005-00117, Order of May 10, 2005, Case No. 2003-00301, Order of September 22, 2003 and Case No. 2003-00059, Orders of April 14, 2003 and April 30, 2003.

Description of KU's Position Within the Holding Company and the Affiliate

5. E.ON U.S. LLC ("E.ON US") is an indirect subsidiary of E.ON. The Company is a wholly owned subsidiary of E.ON US. E.ON U.S. Holding GmbH, is also a subsidiary of E.ON. Fidelia Corporation ("Fidelia"), a finance company subsidiary organized in Delaware, is

¹ The Company is making every effort to finance eligible portions of the Pollution Control Project with tax-exempt debt. See Case No. 2005-00183, Order of June 20, 2005 and Case No. 2005-00357, Order of October 14, 2005, authorizing the Company to issue securities and assume obligation in connection with private activity bond allocations from the Kentucky Private Activity Bond Allocation Committee. On March 2, 2006 the Company submitted another request to the Allocation Committee seeking an allocation from the 2006 private activity pool. The application requested \$16,693,620, the maximum allowed for a single private activity. The Company intends to continue seeking allocations from the state ceiling for private activity bonds and the opportunity to finance additional, eligible portions of the Pollution Control Project with tax-exempt financing resulting in lower costs.

a subsidiary of E.ON U.S. Holding GmbH. Fidelia lends money to companies in the E.ON Holding Company System and upon request of the Company would lend money to the Company as set out in this Application.

Description of the New Long-Term Debt

6. This Application relates to the issuance of long-term unsecured debt by KU to Fidelia. The Company proposes to borrow money from Fidelia in an amount not to exceed \$100,000,000 at various times during the period ending December 31, 2006. The Company anticipates issuing unsecured notes to Fidelia with final maturity not to exceed thirty years. Such borrowings would only occur if the interest rate on the loan would result in an equal or lower cost of borrowing than the Company could obtain in a loan from E.ON or in the capital markets on its own. All borrowings from Fidelia would be at the lowest of 1) E.ON's effective cost of capital; 2) Fidelia's effective cost of capital; and 3) the Company's effective cost of capital determined by reference to the effective cost of a direct borrowing by the Company from an independent third party for a comparable term loan that could be obtained at the time of the loan (the "Best Rate Method"). The Best Rate Method assures the Company that it will not pay more for a loan from Fidelia than it would pay in the capital markets for a similar loan. The Company's treasury group has evaluated its capital requirements through December 31, 2006, and the appropriate sources of capital available to it (both existing and potential). The Company has determined that it is cost effective to borrow money from Fidelia through this intercompany loan facility and desires to take advantage of this opportunity.

7. The interest rates will be set at the time of issuance of each note and would depend on the maturity of the notes. The interest rate on each note would be the lower of (a) the average of three quotes obtained by the affiliate company from international investment banks for an unsecured bond issued by E.ON for the applicable term of the loan; and (b) the lowest of

three quotes obtained by the Company from international investment banks for a first mortgage bond issued by the Company with the applicable term of the loan. This method complies with the Best Rate Method because this rate would be determined using the lower of the average of actual quotes obtained based upon the credit of E.ON or the lowest of three actual quotes obtained by the Company.

8. The interest rate would be determined as described in Paragraph 7 herein. The term of the loan would not exceed thirty years as determined by the Company based on, among other things, the Company's financing needs. A note would be executed by the Company each time a loan was made by Fidelia to the Company stating the interest rate, maturity date and payment terms. Attached to the Application as Exhibit 3 is the form of the intercompany loan agreement and note. Issuance expenses for the intercompany loans described herein will not exceed, in total, the sum of \$50,000. In connection with the issuance of the debt, KU may enter into one or more interest rate hedging agreements (T-bill lock, swap or similar agreement, collectively the "Hedging Facility") either with an E.ON affiliate or with a bank or financial institution. The Hedging Facility would be an interest rate agreement designed to allow the Company to lock in the underlying interest rate on the loan in advance of the closing of the loan. The Hedging Facility will set forth the specific terms under which the Company will agree to make payments, and the other terms and conditions of any rights or obligations thereunder.

9. No contracts have been made for the disposition of any of the securities which KU proposes to issue. A redacted copy of a contract for construction of KU's Pollution Control Project is attached as Exhibit 2. Simultaneous with the filing of this Application, KU is filing a Petition for confidential protection for certain portions of Exhibit 2, as more particularly set out in the Petition.

10. KU shall, as soon as reasonably practicable after the issuance of each note referred to herein, file with the Commission a statement setting forth the date or dates of issuance of the notes, the proceeds of such notes, the interest rates, costs or gains with the Hedging Facility, and all fees and expenses involved in such issuance.

11. Exhibit 4 to this Application contains the financial exhibit required by 807 KAR 5:001, Section 11(2)(a), and described by 807 KAR 5:001, Section 6. It also contains information required by 807 KAR 5:001, Section 11(2)(b).

12. Exhibit 5 to this Application is a certified copy of KU's Board of Directors resolution authorizing the issuance of the notes, and the transactions related thereto as discussed in this Application.

13. Other requirements of the Commission's regulation regarding this Application, 807 KAR 5:001, Section 11, including (1)(b) regarding the amount and kind of notes, etc., and (1)(c) regarding the use to be made of the proceeds, have been supplied in the discussion above in Paragraphs 2 through 9 of this Application.

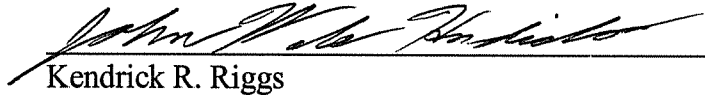
WHEREFORE, Kentucky Utilities Company respectfully requests that the Commission enter its Order, authorizing it to issue securities and to execute, deliver and perform the obligations of KU under the intercompany loan agreement and the notes, as set forth in this Application. KU further requests that the Order of the Commission specifically include provisions stating:

1. KU is authorized to issue and deliver its unsecured notes in an aggregate principal amount not to exceed \$100,000,000 in the manner set forth in its Application.

2. KU is authorized to execute, deliver and perform the obligations of KU under, *inter alia* the loan agreement with Fidelia Corporation, the notes, and such other agreements and

documents as set out in its Application, and to perform the transactions contemplated by such agreements.

Respectfully submitted,



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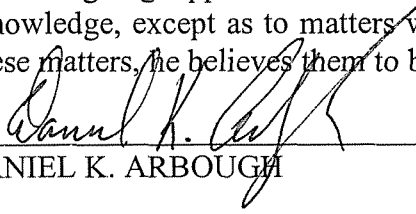
Allyson K. Sturgeon
Attorney
E.ON U.S., LLC
220 West Main Street
Louisville, KY 40202
Counsel for Kentucky Utilities Company

VERIFICATION

COMMONWEALTH OF KENTUCKY

COUNTY OF JEFFERSON


Daniel K. Arbough being first duly sworn, deposes and says that he is Treasurer for Kentucky Utilities Company, that he has read the foregoing Application and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated on information or belief, and that as to these matters, he believes them to be true.



DANIEL K. ARBOUGH

Subscribed and sworn before me this 30th day of March, 2006.

My Commission Expires: August 31, 2007



NOTARY PUBLIC, STATE AT LARGE

KENTUCKY UTILITIES COMPANY
(807 KAR 5:001, Section 11, Item I (a))

A DESCRIPTION OF APPLICANT'S PROPERTY, INCLUDING A
STATEMENT OF THE NET ORIGINAL COST OF THE PROPERTY
AND THE COST THEREOF TO APPLICANT

January 31, 2006

The applicant owns and operates four coal fired steam electric generating stations having an estimated total effective capacity, with all equipment in service, of about 2,934 Mw; a hydroelectric generating station having an estimated total effective capability of about 24 MW; and seventeen gas/oil peaking units having an estimated total effective capability of about 1,499 Mw.

The applicant's owned electric transmission system includes 110 substations with a total capacity of approximately 16,978 Mva and approximately 4,031 miles of lines. The electric distribution system includes 492 substations with a total capacity of approximately 6,322 Mva, 13,746 miles of overhead lines, and 1,704 miles of underground conduit.

Other properties include office buildings, service centers, warehouses, garages, and other structures and equipment.

The net original cost of the property and cost thereof to the applicant at January 31, 2006, was:

	<u>Utility Plant</u>
Original Cost	
Intangible Plant	\$ 27,205,948
Production Plant	2,017,708,698
Transmission Plant	504,193,899
Distribution Plant	986,463,763
General Plant	89,850,671
Transportation Plant	23,834,695
Construction Work in Progress	201,020,607
Plant Purchased or Sold	82,656
Total Plant at Original Cost	<u>\$ 3,850,360,937</u>
Less Reserve for Depreciation	1,792,709,125
Net Original Cost	<u>\$ 2,057,651,812</u>

Redacted

FLUE GAS DESULFURIZATION PROJECT

ALLIANCE AGREEMENT

BETWEEN

KENTUCKY UTILITIES COMPANY

AND

FLUOR ENTERPRISES, INC.

DATED June 15, 2005

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FLUE GAS DESULFURIZATION PROJECT ALLIANCE AGREEMENT

This Flue Gas Desulfurization Project Alliance Agreement (this "Agreement") is made by and between Kentucky Utilities Company, a Kentucky corporation ("Company") and Fluor Enterprises, Inc., a California corporation ("Alliance Contractor"), on this 15th day of June, 2005 (the "Effective Date").

WHEREAS, Company has determined to substantially reduce its SO₂ emissions; and

WHEREAS, Alliance Contractor has offered to design, engineer, supply, and construct FGDs and related systems in order to provide substantial SO₂ reduction at certain generation units located at the Company's E. W. Brown and Ghent facilities; and

WHEREAS, Alliance Contractor has proposed to provide the services and otherwise perform the obligations described herein of Alliance Contractor; and

WHEREAS, in light of Alliance Contractor's substantial air pollution (including SO₂) control equipment experience, expertise, and technology, Company desires to engage Alliance Contractor to design, engineer, supply, and construct FGDs and related systems on certain generation units described herein in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the premises, the mutual covenants and agreements made herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do agree as follows:

1.0 DEFINITIONS

- 1.1 *Definitions.* The following terms have the respective meanings specified in this Article 1 when capitalized and used in this Agreement or in any notice delivered under or in respect of this Agreement.

An "Affiliate" of a Party shall mean any entity that, directly or indirectly, controls, is controlled by, or under common control with such Party, with "control" meaning for these purposes only the ownership or the right to vote of at least a fifty percent (50%) voting equity interest.



“Alliance Contractor Expense” shall mean an expense or cost of Alliance Contractor’s performance hereunder that is to be the sole responsibility of Alliance Contractor and is not to be reimbursed as a Reimbursable Expense. Alliance Contractor Expense shall include, without limitation, any expense or cost associated with (a) any royalties, license fees, or similar costs associated with any technology owned by Alliance Contractor to be supplied as part of the Work, (b) Alliance Contractor’s indemnification obligations hereunder, (c) Alliance Contractor’s warranty obligations hereunder (except to the extent such are specifically described in Article 8 hereof as Reimbursable Expenses), (d) Alliance Contractor’s expenses of negotiating this Agreement, (e) attorneys’ fees (whether inside or outside), costs, settlements, and judgments incurred in connection with any dispute of any nature between Company and Alliance Contractor (including any Affiliate of either Party), and (f) any liquidated damages and Performance Buydown.

“Alliance Contractor’s Representative” shall have the meaning set forth in Section 4.17.

“Applicable Law” shall mean any applicable statute, law (including common law), rule, treaty, regulation, Code, ordinance, permit, approval, injunction, judgment, decree, writ, order or the like, including the Permits, when issued, enacted or promulgated by a Governmental Authority and interpretations thereof by a Governmental Authority.

“Base Fee” shall be determined on a System by System basis by multiplying [REDACTED] by the difference of the Target Costs for that System (as the Target Costs may be adjusted from time to time pursuant to this Agreement) minus the No Fee Reimbursable Expenses for that System.

“Business Day” shall mean a Day excluding all Saturdays, Sundays, and Company holidays.

“Capped Alliance Contractor Expenses” means all Alliance Contractor Expenses other than (a) any liquidated damages and Performance Buydown (b) Alliance Contractor Expenses and obligation to return Fee Amount pursuant to Section 7.4.1 or 7.4.2, (c) claims which arise from the fraudulent or intentionally unlawful acts of Alliance Contractor, its Subcontractors, or others for whom Alliance Contractor is responsible, and (d) those Alliance Contractor Expenses identified in Sections 4.6, 4.9, 4.13, 11.3, 11.7, 11.8, Articles 8 and 13, and clauses (a), (b), (c), (d), and (e) of the definition of Alliance Contractor Expense.

“Certificate of Final Completion” will be in the form set forth in Exhibit A.

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“Certificate of Mechanical Completion” will be in the form set forth in Exhibit B.

“Claim” shall mean a claim, cause of action, proceeding, demand or suit.

“Codes” shall mean the most recent edition of the codes, standards and guidelines applicable to the Work.

“Commencement of Construction” shall mean the date on which Alliance Contractor begins construction once mobilized for construction at the applicable System Site.

“Company Design or Specification Override” shall have the meaning set forth in Section 3.2.1.

“Company Indemnitee(s)” shall have the meaning set forth in Section 9.1.

“Company Property” shall mean (1) all materials, equipment, and other Work supplied by and/or incorporated into the Work by Alliance Contractor, and (2) the facilities at which Work is being performed (including all existing property owned, operated, or leased by Company) and any other property of the Company,

“Company-Required Subcontractor” shall have the meaning set forth in Section 4.10.

“Company Supplied Items” shall mean any labor, materials, or other items supplied by Company for or in connection with the Work, the supply of which may be elected by Company in accordance with Section 4.7.

“Company Surplus Commodities” shall have the meaning set forth in Section 4.7.

“Company’s Representative” shall have the meaning set forth in Section 5.2.

“Computer Program(s)” shall mean a sequence of instructions, data, or equations in any form, and explanations thereof, intended to cause a computer, a control data processor or the like to perform any kind of operation, which is provided to Company by Alliance Contractor or its Subcontractors under this Agreement.

“Conceptual Scope” shall be determined on a System by System basis and shall mean the general scope of the Work requested by Company in a Level One Notice to Proceed.



“Day” shall mean a calendar day and shall include Saturdays, Sundays and Company holidays.

“Deadband” shall mean with respect to a System, a range of costs between the Deadband Percentage above and the Deadband Percentage below the Target Costs (as the Target Costs may be adjusted from time to time pursuant to this Agreement).

“Deadband Percentage” shall mean with respect to a System a percentage no greater than [REDACTED] and no less than [REDACTED] set by agreement of Company and Alliance Contractor as part of the Scope and Targets Agreement. It is intended that the percentage at the lower end of this range will be used for Systems with fewer unknowns (especially for subsequent Systems).

“Derate” shall mean a Unit is only operable on a restricted basis and the Derate Amount is in excess of [REDACTED] of that Unit’s net rated capacity.

“Derate Amount” shall mean (i) for a Unit that is experiencing a Derate, the difference between the net rated capacity of the Unit minus the capacity to which the Unit has been reduced because of the Derate (e.g., a 500 megawatt Unit that is only operable at 400 megawatts has a 100 megawatt Derate Amount) and (ii) for a Unit that is experiencing an Outage, that Unit’s net rated capacity.

“Design” shall mean all design and engineering, including all preliminary and detailed design of the Systems by Alliance Contractor and the Subcontractors as it evolves during the performance of the Work.

“Design Documents” shall mean all drawings, specifications, calculations, plans, reports or other Design documentation (including all media) for the Work, setting forth in detail the requirements for the construction of each System in accordance with this Agreement.

“Design Work” shall mean the portion of the Work consisting of detailed design and engineering.

“Fee Amount” shall be determined on a System by System basis by starting with the Base Fee and making adjustments thereto as described in Section 6.3.

“FGD” shall mean a flue gas desulfurization system, which generally encompasses those items set forth in Attachment 2.3.3.

“Final Completion” shall be determined on a System by System basis and shall mean the date that all of the following have been completed or achieved: (a) Mechanical Completion, (b) Successful Testing or the Payment of the Performance



Buydown with respect to each Initial Performance Testing criteria not achieved, (c) completion of all obligations of Alliance Contractor set forth in Section 4.9(a), (d) delivery of any CAD as-built drawings, other drawings, manuals, and spare parts lists as described in Sections 4.3 and 4.27, (e) completion of demobilization by Alliance Contractor and its Subcontractors, and (f) there is no claim or lien against the Work, the Unit(s), or the Job Site arising out of the Work, which claim or lien arises out of nonpayment for goods or services provided to Alliance Contractor or its Subcontractors.

“Force Majeure Event” shall have the meaning set forth in Section 10.4.

“Guarantor” shall have the meaning set forth in Section 14.14.

“Hold Point” shall mean an Inspection Point with respect to which Alliance Contractor may not proceed further unless and until Company has inspected the applicable Work and authorized Alliance Contractor to proceed or has waived such inspection in writing. Hold Points include those points designated in Exhibit C, those designated in the Target Schedule and those designated by Company from time to time by formal notice to Alliance Contractor.

“Incidence Rate” shall mean a measure of safety determined by multiplying the number of Recordable Incidents by 200,000 and dividing the result by total person hours actually worked. The Incidence Rate is to be determined in a manner consistent with that by which OSHA computes incidence rates.

“Information” shall mean all manuals; training materials; Computer Programs; operating and maintenance guidelines and procedures; Design; and Design Documents supplied by Alliance Contractor, whether directly itself or indirectly through Subcontractors, whether paper or electronic media, in performance of this Agreement which would be reasonably useful or necessary in Company’ operation, maintenance, repair, modification, or use of any System.

“Initial Performance Testing” shall mean the initial performance testing to take place pursuant to Section 8.7 to determine whether the System performs in accordance with the Target System Performance Parameters.

“Inspection Point” shall mean a point in the Work at which the Company has the right to inspect or witness the Work. Inspection Points include those points designated in Exhibit C, those designated in the Target Schedule and those designated by Company from time to time by formal or informal notice to Alliance Contractor.

A small, handwritten mark or signature in the bottom right corner of the page, consisting of a circle with a vertical line extending downwards from its center.

“Intellectual Property” shall mean all patents, patent applications, copyrights, trade secrets and other intellectual property rights.

“Inventions” shall have the meaning specified in Section 13.2.1.

“Job Site” shall mean for Systems at the E. W. Brown Generating Station, all of that station and surrounding real estate owned by the Company and for Systems at the Ghent Generating Station, all of that station and surrounding real estate owned by the Company.

“Letter of Credit” shall have the meaning set forth in Section 11.3.

“Level One Notice to Proceed” shall mean Company’s notice to Alliance Contractor (referencing this Agreement) that Company releases Alliance Contractor to begin conceptual engineering necessary to develop the Targets and that the Parties commence negotiations with respect to such Targets for (a) the design, engineering, supply, and installation of a System.

“Level Two Notice to Proceed” shall mean Company’s notice to Alliance Contractor (referencing this Agreement) that Company releases Alliance Contractor to commence the detailed design and engineering of a System.

“Level Three Notice to Proceed” shall mean Company’s notice to Alliance Contractor (referencing this Agreement) that Company releases Alliance Contractor to commence the supply and construction of a System.

“Liability” means a judgment, liability, loss, expense, damage, fine or penalty (including court costs, reasonable attorneys’ fees and costs, whether incurred as the result of a third party claim or a claim to enforce any indemnity obligation of Alliance Contractor), and pre- and post-judgment interest.

“Lien” means any stop notice, lien (statutory or otherwise), attachment, mortgage, pledge, hypothecation, deposit arrangement, encumbrance, charge, preference, priority or security agreement, Claim, judgment, levy, security interest or similar interests filed against all or any portion of the Work, the Job Site or any other Company property and arising in connection with the Work.

“Mechanical Completion” shall be determined on a System by System basis and shall mean the date that all of the following have been completed or achieved: “(i) all equipment has been furnished and installed in accordance with manufacturers’ requirements (and in a manner that does not void any warranty) and the terms of this Agreement and, as appropriate, checked for alignment, lubrication, rotation, and hydrostatic and pneumatic pressure integrity; (ii) all

subsystems have been installed, cleaned and statically tested and cold commissioning has been completed; (iii) the appropriate subsystems have been flushed and cleaned out as necessary; (iv) the System and all of its subsystems can be operated in a safe and prudent manner; (v) the System is ready to commence hot commissioning, testing and integrated operations without the use of temporary equipment or installations; (vi) an initial Punch List has been established and mutually agreed upon by Company and Alliance Contractor, (vii) the System performance test protocol has been submitted to and accepted by Company (such acceptance shall not be unreasonably withheld), (viii) the System Turnover Package has been delivered to Company and all equipment and subsystems have been operated in a safe and prudent manner, (ix) Tie-in has occurred, and (x) Company has executed the Certificate of Mechanical Completion.

“Memorandum of Understanding” shall mean that Memorandum of Understanding by and among the Parties dated January 12, 2005.

“No Fee Reimbursable Expense” shall mean a Reimbursable Expense which shall be excluded from the Target Costs for the purpose of computing the Base Fee. Certain such expenses are set forth in Attachment 1B.

“Notice to Proceed” shall mean a Level One Notice to Proceed, a Level Two Notice to Proceed, or a Level Three Notice to Proceed.

“Outage” shall mean a Unit is out and not producing electricity.

“Party” shall mean either of Company or Alliance Contractor, and “Parties” shall mean Company and Alliance Contractor, collectively.

“Pass-through Expense” shall mean an expense incurred by Contractor for which it is entitled to reimbursement, but which shall not be treated as a Reimbursable Expense, nor as part of the Reimbursement Amount, nor shall it be considered in setting or adjusting Target Costs.

“Performance Buydown” shall have the meaning set forth in Section 8.8.

“Performance Gurantee” shall mean the guarantee provided pursuant to Section 8.7.

“Permit” shall mean any waiver, exemption, variance, franchise, permit, authorization, approval, identification number, inspection, certification, license, clearance or similar order, filing, registration, application of, from or to any Governmental Authority related to the design and construction of the Work.



“Personal Injury” shall mean death, personal or bodily injury, defamation, discrimination, harassment, or any employment-related torts or statutory claims.

“Person” means any individual, company, corporation, firm, joint venture, partnership, association, limited liability entity, organization, trust, Governmental Authority or similar entity.

“Pre-Existing Hazardous Material” is any hazardous or toxic substance at any facilities at which Work is performed under this Agreement which was not brought on to such facility by Alliance Contractor and/or its Subcontractors.

“Professional Standards” means those standards and practices used by, and the degree of skill and judgment exercised by, recognized national engineering and construction firms when performing quality services on utility power plants.

“Project Requirements” means with respect to the Work or any portion of it, (i) Applicable Laws, (ii) the provisions of this Agreement, (iii) the warranty conditions of Subcontractors (iv) all designs and specifications developed by the Parties in accordance with this Agreement, (v) the requirements of insurers providing insurance pursuant to Article 9, (vi) project documentation, and (vii) the Professional Standards.

“Proprietary and Confidential Information of Alliance Contractor and Subcontractor” means all information that is directly or indirectly disclosed to Company by or on behalf of Alliance Contractor or Subcontractor that is both (i) developed or otherwise obtained by Alliance Contractor or Subcontractor independent of the Work and (ii) clearly marked when disclosed to Company as confidential or proprietary to Alliance Contractor or Subcontractor.

“Recordable Incidents” shall have the meaning set forth in the Safety Standards.

“Reimbursable Expenses” shall be determined and measured with respect to Work on a System by System basis and shall mean any and all reasonable expenses associated with Alliance Contractor’s Work (net of any rebates, discounts, or similar arrangements actually received, whether based on quantity, volume, or any other factor), some of which are further detailed in Attachment 1.A hereto, subject to those limitations and conditions set forth herein. As described in more detail in Attachment 1.A, Reimbursable Expenses with respect to Alliance Contractor’s employee labor and general and administrative costs shall be determined by using labor rates and/or applying one or more multipliers or markups to the base compensation (as defined in Attachment 1.A) of each Alliance



Contractor employee properly allocable to the performance of the Work, or to the total Reimbursable Expenses with respect to materials. Such labor rates, multiplier(s), and/or markup(s) shall be negotiated in good faith by the Parties and must be mutually agreed at the time of agreement upon the Scope and Targets. Such labor rates, multipliers, and/or markups are intended to account for Alliance Contractor's personnel labor costs and general and administrative costs as set forth in Attachment 1.A, and shall be reviewed initially and annually for any necessary adjustments, which adjustment will only be made upon mutual agreement by the Parties (except as set forth in Attachment 1.A with respect to statutory changes). If the Parties do not agree on an initial or an annual adjustment, then either Party may request that such dispute be escalated to upper management review by both Parties. Reimbursable Expenses shall not include (i) any Alliance Contractor Expense except if the Capped Alliance Contractor Expenses exceed the Fee Amount, the excess shall be a Reimbursable Expense or (ii) any amounts representing any profit, fee (including without limitation the Fee Amount), commission, or other compensation (above cost reimbursement) of any nature to Alliance Contractor or its Affiliates. All Reimbursable Expenses must be documented by Alliance Contractor as Company shall reasonably request or such shall be deemed to be Alliance Contractor Expenses.

"Reimbursement Amount" shall be determined and measured with respect to Work on a System by System basis and shall mean the total amount of all Reimbursable Expenses incurred by Alliance Contractor with respect to that System.

"Safety Standards" shall mean 29 CFR 1910 and 1926 (including successors thereto) as they may be amended from time to time and all supplements thereto as may be published and amended from time to time by the Kentucky Labor Cabinet.

"Scope" shall mean the detailed scope of the Work developed in accordance with Section 2.3 and to be supplied by Alliance Contractor with respect to each System (including the balance of plant Work, if any), as such may be revised in writing by the mutual agreement of the Parties or as directed by Company from time-to-time in accordance with this Agreement.

"Scope and Targets Agreement" shall have the meaning set forth in Section 2.4

"SO₂" shall mean sulfur dioxide.

"Subcontract" shall mean any contract, agreement or other arrangement between a Person and either Alliance Contractor or a Subcontractor pursuant to which the

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Person acts as a Subcontractor, including with respect to the supply of materials, services or equipment in connection with the Work.

“Subcontractor” means and refers to a Person (at any tier other than Alliance Contractor) which has a Subcontract to perform a portion of the Work, including the supply of materials, services or equipment in connection with the Work.

“Substantial Completion” shall be determined on a System by System basis and shall mean the date that both of the following has occurred with respect to that System: (i) Mechanical Completion and (ii) either Successful Testing or the payment of the Performance Buydown in accordance with Section 8.8 with respect to each Initial Performance Testing criteria not achieved

“Successful Testing” shall mean the Work (including without limitation the System) has successfully passed the Initial Performance Testing showing concurrent achievement of all Target System Performance Parameters in accordance with this Agreement.

“System” shall mean the Work covered by a single Scope which may include an FGD for a Unit Candidate and/or Work that is ancillary to, supports, or is done in preparation for an FGD for a Unit Candidate, including common balance of plant systems (e.g., limestone handling, limestone reactant preparation, gypsum treatment and gypsum handling).

“System Site” shall mean for a System, the portion of the Job Site on which the System is to be constructed, including areas for parking, storage, laydown and office facilities, as may be designated by Company from time to time in Level One Notice to Proceed for that System or otherwise.

“System Turnover Package” means a collection of documents, drawings, specifications, manuals and diagnostic equipment tests which comprises a complete description of a System and its operating requirements in form and substance reasonably acceptable to Owners.

“Target Costs” shall be determined on a System by System basis and shall mean the estimate of the Reimbursement Amount to perform the Scope agreed upon by the Parties in accordance with this Agreement (subject to adjustment as set forth in this Agreement) with respect to that System.

“Target Incidence Rate” shall mean an Incident Rate of [REDACTED]

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“Target Safety” shall be the safety standard of achieving the Target Incidence Rate for the Work with respect to each System.

“Target Schedule” shall be determined on a System by System basis and shall mean the estimated schedule for performance of the Work agreed upon by the Parties in accordance with this Agreement (subject to adjustment as set forth in this Agreement) with respect to a particular Scope, including, without limitation, Tie-in Outage schedules. The Target Schedule shall contain key milestones set by Company and agreed to by Alliance Contractor.

“Target Substantial Completion Date” shall be determined on a System by System basis and shall mean the estimated date agreed upon by the Parties in accordance with this Agreement (subject to adjustment as set forth in this Agreement) by which, pursuant to the agreed Target Schedule, the Parties have estimated that the System will achieve Substantial Completion.

“Target System Performance Parameters” shall be determined on a System by System basis and shall mean the System performance parameters agreed upon by the Parties in accordance with this Agreement (subject to adjustment as set forth in this Agreement) as the desired performance capabilities of the applicable System as described in Attachment 2.3.6.

“Targets” shall mean the Target Costs, the Target Schedule, the Target Final Completion Date, the Target System Performance Parameters, and the Target Safety.

“Term” shall have the meaning set forth in Section 7.1.

“Termination Fee” shall mean the amount derived from the table in Attachment 7.4.

“Threshold Incidence Rate” shall mean an Incident Rate of [REDACTED]

“Tie-in” shall mean the connection of a System to the Unit after all Work with respect to that System required to be performed prior to connection has been performed.

“Tie-in Outages” shall mean for a System, the Outages planned for the Unit during which the Tie-in of that System is to occur, the times and dates for such Outages will be set, and are subject to change, by Company from time to time.

“Unit” shall mean with respect to a System, the electrical generating unit or units to which that System is or is to be connected.

“Unit Candidates” shall mean Ghent 1, 2, 3, and 4 and E.W. Brown 1, 2, and 3.

“Unit Forced Outage or Derate” shall mean a forced Outage or Derate of one or more Units caused by the Work with respect to a System or the operation or failure of a System other than for reasons beyond the reasonable control of Alliance Contractor prior to the Substantial Completion of that System.

“Unpaid Base Fee” shall mean with respect to a System, an amount equal to the difference of (A) the lesser of (i) [REDACTED] multiplied by the amount of Reimbursable Expenses incurred up to the date of termination or (ii) the Base Fee, minus (B) any Fee Amount previously paid to Alliance Contractor.

“Unpaid Termination Fee” shall mean with respect to a System, an amount equal to the difference of (A) the Termination Fee, minus (B) any Fee Amount previously paid to Alliance Contractor.

“Work” shall mean the engineering, design, supply, construction and all additional work performed by Alliance Contractor pursuant to this Agreement, including those items set forth in each Scope.

“Work Defect” shall have the meaning set forth in Section 8.3.

1.2 Contract Interpretation. In this Agreement, unless the context otherwise requires:

- (i) the singular number includes the plural number and vice versa;
- (ii) reference to any Person includes such Person’s successors and assigns, to the extent that such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity;
- (iii) reference to any agreement (including this Agreement), document, insurance policy or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof including (in the case of agreements or instruments) by waiver or consent and references to all attachments thereto and instruments incorporated therein;
- (iv) any accounting term used and not otherwise defined in the Agreement has the meaning assigned to such term in accordance with generally accepted accounting principles consistently applied;

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- (v) “including” (and “include”) means (i) including without limiting the generality of any description preceding such term, and (ii), with respect to any description following such term, means “including, without limitation” and “including, but not limited to”;
- (vi) reference to Applicable Law means Applicable Law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time;
- (vii) when applied to equipment or Systems, “furnish” “provide” or words of similar import means to secure, pay for, deliver to the System Site (or other portions of the Job Site, as appropriate), unload, inspect and uncrate, store per manufacturer’s recommendations and any other services or activities appropriate to that portion of the Work;
- (viii) when applied to equipment or Systems, “install” or “installation” or words of similar import mean to assemble, place in position, incorporate, adjust, clean, make fit for use and any other services or activities appropriate to that portion of the Work;
- (x) unless the context specifically requires otherwise, the terms “approval,” “consent,” “accept,” “acceptance,” “authorization,” and terms of similar import shall be deemed to be followed by the phrase “which shall not be unreasonably withheld, unreasonably conditioned or unreasonably delayed”;
- (xi) the words “shall” and “will” mean must and have equal force and effect;
- (xii) the words “herein,” “hereof,” or “hereunder” or similar terms refer to this Agreement as a whole and not to any specific section or article;
- (xiii) the table of contents and article, section and exhibit titles and similar headings are inserted for convenience only and shall not be used for the purposes of construing or interpreting this Agreement;
- (xix) any listing of types of work such as “construct,” “erect,” “check” or “align” is not meant to be exclusive in the context of this Agreement or exclude similar or other services or activities appropriate to that portion of the Work;
- (xx) words and abbreviations not defined in this Agreement which have well-known technical or design, engineering or construction industry meanings are used in this Agreement in accordance with such recognized meanings;

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- (xxi) all documentation to be supplied under this Agreement shall be provided in the English language. All dimensions shall be specified in the U.S. Customary System (e.g., feet, inches, gallons, pounds, degrees Fahrenheit); and
 - (xxii) references to Sections or Articles shall refer to Sections and Articles of this Agreement unless otherwise stated.
- 1.3 Notice to Proceed. Alliance Contractor shall not commence any Work not released in a Notice to Proceed and Company shall be under no obligation to issue any Notice to Proceed, even when Company has issued a lower level Notice to Proceed for a particular System (e.g., the issuance of a Level One Notice to Proceed with respect to a System shall not obligate Company to issue a Level Two Notice to Proceed for that System, etc.).

2.0 DEVELOPMENT OF TARGETS AND OTHER INITIAL WORK

- 2.1 Initial Work. The Parties acknowledge that pursuant to the Memorandum of Understanding, Alliance Contractor has performed certain preliminary Work. This Agreement supercedes the Memorandum of Understanding. Neither Party shall have any liability with respect to the Memorandum of Understanding which shall be null, void and of no force or effect *ab initio*. All Work performed pursuant to the Memorandum of Understanding prior to the date of this Agreement, and the Parties' respective rights and obligations with respect to such Work (including Alliance Contractor's right to reimbursement), shall be governed by this Agreement as if this Agreement had been entered into (and Company gave a Level One Notice To Proceed (but not a Level Two Notice To Proceed or a Level Three Notice To Proceed) with respect to Work authorized by Company pursuant to the Memorandum of Understanding) as of the date of the Memorandum of Understanding; provided, that Alliance Contractor shall not perform any further Work with respect to any System after the execution of this Agreement until after receipt of, and only consistent with, a Notice to Proceed for that System. Notice to Proceed shall not amend or add to this Agreement in any respect, except as contemplated by the terms of this Agreement. Additional or conflicting contractual terms or conditions may be added only by formal amendment to the Agreement signed by both Parties and not through a Notice to Proceed issued only by Company.
- 2.2 Notice to Establish Targets. From time-to-time during the Term, Company may send Alliance Contractor a Level One Notice to Proceed with respect to any one or

more Systems. The Level One Notice to Proceed, if any, shall be given by Company using the format set forth in Attachment 2.2 hereto and shall include the Conceptual Scope.

2.3 Scope and Targets. Following Alliance Contractor's receipt of the Level One Notice to Proceed, the Parties shall meet and work together as a team in an effort to reach agreement on the Scope, the Target Costs, the Target Schedule, the Target Substantial Completion Date, the Target System Performance Parameters, and the Target Safety with respect to the applicable System, as set forth below:

2.3.1 Scope and Targets Generally. Company shall have sole discretion as to the selection of technologies to the extent the use of such technologies is technically feasible as contemplated in this Agreement. All Targets shall be derived using any relevant information that is available, including without limitation (i) those estimates previously supplied to Company by Alliance Contractor, (ii) the Parties' experience with respect to or knowledge of previously-built FGDs and Systems, (iii) volume or similar discounts or rebates that may be or may become available to either Party or its Affiliates, and (iv) any other open market information that the Parties may obtain regarding material, equipment, labor, and overhead costs, as well as such other items that may impact the Targets. Where possible, Alliance Contractor shall seek to standardize FGDs and their equipment. All designs will focus on the best long-term life cycle costs (using economic parameters set by Company) to Company (including all balance of plant issues affected by the System implementation), including without limitation the minimization of the required operations and maintenance labor and other expenditures to correctly utilize the System over the long-term, and shall develop final operating plans that outline long-term labor and material requirements.

2.3.2 Information Sharing. Neither Party will knowingly withhold from the other any information regarding any existing or proposed rebates, discounts, or similar arrangements, whether based on quantity, volume, or any other factor, nor will either Party otherwise knowingly withhold from the other any other relevant information (except such other information regulatorily restricted from disclosure) that the other would reasonably view to be relevant to the setting of the Targets.

2.3.3 Scope. The Scope shall be developed using the Conceptual Scope provided to Alliance Contractor by Company and shall be generally in the form of Attachment 2.3.3.

- 2.3.4 Target Costs. The Target Costs shall be an estimate of all Reimbursable Expenses within the Scope. The Target Costs shall not include any Alliance Contractor Expenses or any estimates of losses which, if incurred, are Reimbursable Expenses pursuant to Section 4.13.
- 2.3.5 Target Schedule. The Target Schedule shall include critical target milestone dates which may include, without limitation, the date of completion of: (a) all deliveries of major equipment and critical materials, (b) conceptual engineering, (c) detailed engineering, (d) balance of plant engineering, (e) Tie-in Outage(s) (including duration), (f) Mechanical Completion (which for the FGDs shall be no later than the dates set forth in Attachment 2.3.5), (g) check-out, equipment start-up, and FGD and/or balance of plant System commissioning, and (h) Initial Performance Testing. The Parties acknowledge that there will be critical milestones that will vary according to specific outage and generation needs (including without limitation Company's outage and generation schedules) and that all negotiations shall seek to not only minimize required Tie-in Outage time but also ensure that Company meets its overall goal of completing FGDs with respect to the Unit Candidates by June 1, 2009. Alliance Contractor recognizes that the dates that Company schedules Tie-in Outages are subject to change in Company's sole discretion. Alliance Contractor's volume of work for third parties shall not be relevant to the Parties' development of the Target Schedule, but external market conditions causing shortages of third-party supplied materials and/or labor (whether due to purchases by Alliance Contractor or otherwise) shall be relevant. The Parties estimate, based on current external market conditions for third-party supplied materials and labor, and timely Work releases that a typical FGD System can be completed in 16 to 18 months following the Commencement of Construction or 26 to 28 months following the issuance of the Level One Notice to Proceed, whichever is later. Each Target Schedule shall include no less than ten (10) Business Days for Company's review and approval of all significant project documents including, without limitation, pre-bid specifications, RFQ/RFPs, bidders lists, bids, construction drawings, conceptual P&ID's, general arrangement drawings, and one-line drawings.
- 2.3.6 Target System Performance Parameters. Using the following procedures, the Parties shall work to obtain agreement for target values, deadbands and/or ranges for the Target System Performance Parameters which are set forth in Attachment 2.3.6, along with System performance test protocol and testing vendor(s), if any. It is anticipated that Company shall provide Alliance Contractor with Company's desired operating and performance

parameters for the applicable System, along with any desired deadbands and/or ranges of acceptable performance. Alliance Contractor shall, in the process of working to obtain agreement, develop technical proposals and alternatives as requested by Company in an attempt to meet Company's desired operating and performance parameters. Company may select from among such proposals developed by Alliance Contractor. The Parties anticipate that, with respect to a typical FGD, Target System Performance Parameters with the Target values equal to those set forth in Attachment 2.3.6 can be achieved, and the FGD will be designed to operate across the full load range and fuel ranges of the Unit(s) as specified by Company. Company shall specify the fuel characteristics for which the FGD System will be designed. The Target System Performance Parameters will be based upon a range of specified fuel characteristics which shall be supplied by Company, and Alliance Contractor shall advise Company as to which fuel data are needed for Alliance Contractor's evaluation.

2.3.7 Target Safety. Alliance Contractor shall maintain high safety standards, it being the goal of the Parties to avoid all injuries to workers and to have no Recordable Incidents. In light of the Parties' desire to encourage Alliance Contractor to improve its performance on safety through financial incentives and disincentives, the Parties have adopted in Section 6.3.5 the adjustments to the Fee Amount for safety performance relative to the Incident Rate for each Scope.

2.4 Agreement on Scope and Targets. Upon agreement by the Parties as to the Scope and Targets with respect to a System ("Scope and Targets Agreement"), they shall execute a document in the format attached hereto as Attachment 2.4; provided, however, that such agreement shall not be construed as requiring Company to proceed with the issuance of a Level Two Notice to Proceed or a Level Three Notice to Proceed. In no event shall anything in this Agreement obligate the Parties to reach agreement with respect to the Scope and Targets, which agreement may be withheld by either Party in its sole discretion following good faith negotiations in an attempt to agree upon the Scope and Targets. If the Parties, following good faith negotiations and upper management review by both Parties, fail for whatever reason within ninety (90) Days from issuance of the Level One Notice to Proceed (or, with respect to Ghent Unit 3, within thirty (30) days of the selection of the FGD technology provider) to agree upon the Scope or any of the Targets, each of the Parties shall have the continuing option of exercising its termination rights pursuant to Article 7 or continuing such negotiations.

2.5 Adjustment of Targets. Following the execution by the Parties of a document in the form of Attachment 2.4 setting forth their Scope and Targets Agreement, such

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Targets shall govern without further adjustment unless adjusted in accordance with this Agreement. Notwithstanding the foregoing, the Targets and the Scope shall be equitably adjusted, if appropriate, to reflect: (a) the mutual agreement of the Parties, (b) changes to the Work made by Company in accordance with the terms of this Agreement (including, without limitation, Company's decision to provide any Company Supplied Items other than any contemplated in the Targets and any change in the scheduled dates for a Tie-in Outage other than a change made to accommodate Alliance Contractor's request or need), (c) acts or omissions of Company (or others under Company control, including, without limitation, Company's other contractors) that delay, interfere, or impacts cost, schedule or performance parameters related to the Work and which are contrary to normal operating practices or which were not included in setting the Target Schedule including failure to approve (or note exceptions to) Work subject to Hold Points within the time period allowed for it by the Target Schedule (or if not included in the Target Schedule, within a reasonable time), (d) physical, subsurface or operating conditions (other than those covered by clauses (l) or (m), below) which differ from those upon which the agreed Targets are based, to the extent that a reasonable site inspection or review of data or information supplied to Alliance Contractor would not have revealed such conditions, (e) changes to Applicable Law (including new Applicable Law) or Codes and standards which the Parties have agreed will apply to the Work, (f) a Force Majeure Event, (g) any changes to the Scope which are not due to defective Work, (h) suspension of the Work as provided in Section 10.2 or rescheduling of the Work to accommodate Company's needs, (i) if any Party violates Section 2.3.2 prior to the setting of such Targets (j) Company Design or Specification Overrides, (k) use of a Company Required Subcontractor other than as contemplated in the Targets, (l) if Company provides Alliance Contractor with a condition report on a piece of existing equipment noted in a conceptual scope and Alliance Contractor could not have reasonably inspected the equipment prior to Scope and Targets Agreement and the actual condition of the equipment is materially different than represented in the condition report, or (m) geotechnical, topographical, geological, seismic, hydrographical, hydrological, or other natural physical conditions related to the Job Site, including conditions relating to foundation Design or construction, Job Site preparation, piling, Design, construction or any other portion of the Work are different than those that could have been reasonably anticipated at the time of the Scope and Targets Agreement. Notwithstanding anything in this Agreement to the contrary, any increase in Reimbursable Expenses resulting from the events described in clauses (f), (l), and (m) shall be No Fee Reimbursable Expenses. No Target adjustments shall be made with respect to changes in Alliance Contractor's costs included in its labor rates or multipliers.

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- 2.6. Local Conditions. Alliance Contractor represents that it has taken, or prior to establishing applicable Targets it will take, steps necessary (including conducting such tests as it may desire and reviewing information provided by or on behalf of Company relating to surface and subsurface conditions) to examine and ascertain the nature and location of and all conditions relevant to the Work and its surroundings, and to determine the general and local conditions that can affect the applicable System and/or the performance of the Work, including (i) conditions bearing upon access, egress, transportation, waste and water disposal, handling, laydown, parking and storage; (ii) the availability, nature and conditions of labor, water, electric power, the Internet, other utilities and roads; (iii) uncertainties of weather or other physical conditions at the Job Site and the proximate area; (iv) the character of construction aids, equipment or other facilities needed preliminary to and during the performance of the Work, (v) the condition of the existing facilities, and (vi) the proximity of the existing facilities, local residences and businesses. Information provided by or on behalf of Company to Alliance Contractor concerning the System Site, the Job Site, the existing facilities or surrounding areas, is or will be made without representation or warranty of any kind or nature. Any failure by Alliance Contractor to take the actions described in this Section 2.6 will not be the basis for a Target adjustment.

3.0 DETAIL DESIGN, PROCUREMENT AND CONSTRUCTION WORK

- 3.1. Notice to Proceed with Detail Engineering. At any time following the Scope and Targets Agreement with respect to any System, Company may, in its sole discretion, send Alliance Contractor a Level Two Notice to Proceed. At any time following a Level One Notice to Proceed with respect to any System, Company may, in its sole discretion, send Alliance Contractor a Level Two Notice to Proceed releasing only a portion of the Work that would otherwise be done pursuant to a Level Two Notice to Proceed. The Level Two Notice to Proceed shall be in the form set forth in Attachment 2.2 hereto. Following Alliance Contractor's receipt of the Level Two Notice to Proceed, Alliance Contractor shall promptly commence and diligently complete the performance of the released Design Work, subject to the terms and conditions hereof.
- 3.2. Approval by Company. The Design Work shall include development by Alliance Contractor of all "for construction" drawings, all "for construction" specifications, and all other pre-construction engineering and constructability studies with respect to the requested Work. The Design Work (including all drawings, specifications, and studies) shall also be denominated showing English language and U.S. Customary System (e.g., feet, inches, gallons, pounds, degrees

Fahrenheit) when metric or other non-U.S. measurement equivalents are utilized. Company shall be entitled to review and approve all Design Work, but such review and approval by Company shall not relieve Alliance Contractor of its warranty obligations or other obligations hereunder. The Company shall use commercially reasonable efforts to review such Design Work within the timeframe for such review identified in the Target Schedule, provided that Company's failure to review in such time period shall not be deemed an approval thereof. If Company's review and approval of an item of Design Work has not been designated as a Hold Point and Alliance Contractor has not received any comments or changes from Company with respect to that item within the time period allowed in the Target Schedule, Alliance Contractor may proceed with the Work without Company's approval of that item.

3.2.1. Company Design or Specification Override. Company shall be entitled to make such changes to the specifications or designs developed by Alliance Contractor as Company shall determine in its sole discretion. Any objection by Alliance Contractor must be reasonable and must be made in writing within 10 Business Days and specifically state the cause of such objection. Such objection shall not limit Company's ability to make such changes; and such changes shall be identified as a "Company Design or Specification Override."

3.3. Design and Flow Models. Title to all Design Work, including, without limitation, any flow models developed as part of the Design Work, shall pass to Company as the Work is performed. Alliance Contractor shall provide all such Design Work to Company upon Company's request, but in any event, all Design Work with respect to a System will be provided no later than 60 Days following Substantial Completion for such System (provided, that Company may, at its option, decline to take possession of the flow models). Risk of loss of the Design Work shall remain with Alliance Contractor until it passes possession of the Design Work to Company.

3.4. Notice to Proceed with Procurement and Construction. At any time following Company's issuance to Alliance Contractor of the Level Two Notice to Proceed with respect to any System, Company may, in its sole discretion, send a Level Three Notice to Proceed to Alliance Contractor releasing all or a portion of the remaining Work for that System. At any time following a Level One Notice to Proceed with respect to any System, Company may, in its sole discretion, send Alliance Contractor a Level Three Notice to Proceed releasing only a portion of the Work that would otherwise be done pursuant to a Level Three Notice to Proceed. All Level Three Notices to Proceed shall be in the form set forth in Attachment 2.2 hereto. Within 14 Days of the issuance of a full Level Three Notice to Proceed, both Parties shall give the other's respective Representative notice of any adjustments to Scope and Targets required pursuant to Section 2.5

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(an "Initial Adjustment Notice"). If a Party fails to give an Initial Adjustment Notice during that 14 Day period with respect to a circumstance of which it is aware, that Party may not assert that circumstance as a basis for a Scope or Target adjustment pursuant to Section 2.5. If either or both of the Parties give an Initial Adjustment Notice during the 14 Day period, then the Parties shall attempt in good faith to agree upon any appropriate adjustments. If no Initial Adjustment Notice was given or if the Parties come to a written agreement as to any adjustments appropriate under Section 2.5 as to any Initial Adjustment Notice given, Alliance Contractor shall promptly commence and diligently complete the Work released by the Level Three Notice to Proceed.

- 3.5. Testing. In the process of agreeing upon the Scope and Targets, the Parties will also agree upon the performance test protocol for the Scope, which shall be generally in the form of Attachment 2.3.6. The testing to be performed shall include the Initial Performance Testing in compliance with the System performance testing protocol, the goal of the Initial Performance Testing being to measure the performance of the System against the Target System Performance Parameters. Other testing to be performed may also include balance of plant performance tests, operating condition testing, and start up testing. For the avoidance of doubt, Alliance Contractor does not guarantee any performance except in the Initial Performance Testing, but this is not intended to relieve Alliance Contractor of its warranty obligations under Section 8.1. Any performance testing related to balance of plant Work, if any, shall be agreed upon by the Parties as part of the Scope and Targets Agreement.
- 3.6. Training. The Scope shall include training programs and manuals to a level and at such sites as Company specifies.
- 3.7. Alliance Contractor Availability. During the Term and subject to the terms and conditions hereof (including without limitation agreement by the Parties as to the Scope and Targets), Alliance Contractor shall, assuming timely Notices to Proceed, be available and make available its resources to perform any Work (a) with respect to design, engineering, supply, and construction of Systems for the Unit Candidates, as requested by Company, so that Company meets its goal of completing FGDs for the Unit Candidates by the dates set forth in Attachment 2.3.5, and (b) which otherwise may be agreed upon by the Parties. The Parties acknowledge that there is no promise or guarantee by Company as to the number, if any, of Systems that Company will request Alliance Contractor to design, engineer, supply, and/or install or otherwise as to the volume of Work to be performed by Alliance Contractor pursuant to this Agreement. Further, Company shall be entitled to use other parties or internally implement throughout the Term such System or other SO₂ reduction solutions as Company shall elect in its sole discretion.

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4.0 ADDITIONAL CONDITIONS OF WORK

- 4.1. Allocation of Responsibilities. Except as otherwise expressly provided herein, Alliance Contractor shall supply all labor, supervision, materials, equipment, tools, and warehousing, and shall pay all expenses, necessary or appropriate in the performance of the Work. Alliance Contractor shall supply, install, properly maintain, and remove all temporary facilities and utilities necessary for performance of the Work. Company shall supply all necessary electric power at hook up points on the System Site and sufficient lay down areas for the Work. Unless otherwise agreed, Alliance Contractor shall not use construction tools and equipment owned by Company. Company will supply all consumables necessary to operate the Unit(s). Notwithstanding the foregoing allocation of responsibilities, the Parties may agree to change this allocation of responsibilities in the process of agreeing upon the Scope and Targets for a particular Scope, and the agreed upon allocation of responsibilities will be reflected in the Scope and Targets. Alliance Contractor is responsible for the conduct of Persons who perform any of the Work to the same extent as if Alliance Contractor performed such Work.
- 4.2. Specifications and Standards of Work. Alliance Contractor shall diligently perform the Work in compliance with the Project Requirements and all exhibits attached by Company to the Level One (or subsequent) Notice to Proceed, which may include without limitation the following: System Site location map, gate procedures, sample form contract activities daily report, sample form certification and release, LG&E Energy Contractor Safety Rules, and LG&E Energy Code of Business Conduct. Alliance Contractor shall supervise, coordinate and direct the Work, using Alliance Contractor's best skill, judgment and attention. Alliance Contractor shall promptly and diligently correct and repair all defects in the Work discovered between Mechanical Completion and Substantial Completion of a System. If such defect causes an Outage or Derate of a Unit, impairs the safety of any person or otherwise impairs the safe and efficient operation of a Unit, Alliance Contractor shall do such correction and repair Work on an urgent basis. There will be no Target Adjustment on account of Work performed pursuant to this Section 4.2.
- 4.3. Project Documentation. The Work shall be performed using only the drawings and specifications approved for construction by Company. Alliance Contractor shall, to the extent reasonably possible, perform all Work outside of the portion of the Scope marked "Hold" on specifications and drawings to maintain the schedule of the Work but shall not perform any Work in the areas or sections marked "Hold" on "Approved for Construction" specifications and drawings. Alliance Contractor shall

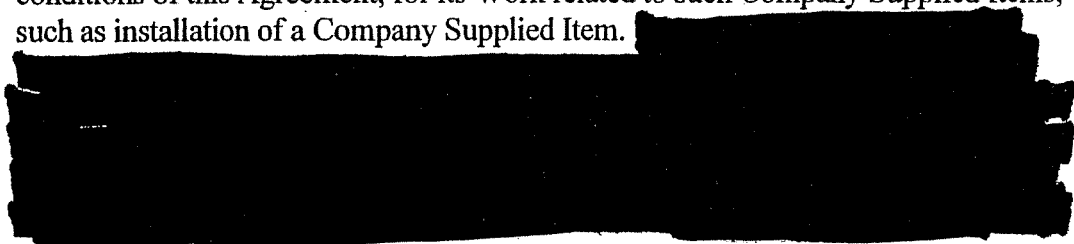
prepare as-built prints which include, at a minimum, all changes to underground utilities, P&ID's, and electrical power and control, and significant mechanical deviations in design. Alliance Contractor shall deliver such prints to Company at completion of the Scope. Delivery of the as-built prints shall be in CAD form reasonably acceptable to Company, with all construction changes incorporated, and otherwise in accordance with such reasonable requests as Company shall make. Company shall be entitled to additional project documentation, spare parts lists, surplus materials lists, and manuals as Company shall request from time-to-time in a Company-approved format.

- 4.4. Asbestos, Lead, and Other Materials. UNLESS APPROVED EXPRESSLY AND SPECIFICALLY IN WRITING IN ADVANCE BY COMPANY'S REPRESENTATIVE, NO MATERIALS CONTAINING ASBESTOS SHALL BE SUPPLIED OR USED IN THE PERFORMANCE OF WORK. In addition with the other requirements of this Agreement, Alliance Contractor shall comply with all requirements (a) set forth in the lead construction standard 29 CFR 1926.62 and (b) set forth in other Applicable Law dealing with the same and other hazardous materials. Notwithstanding anything herein to the contrary, in no event shall Alliance Contractor's Scope include the removal, disposal, or handling of any pre-existing asbestos or lead materials except as set forth in Section 4.9.
- 4.5. Alliance Contractor Facilities and Inspection. The type of Alliance Contractor facilities, move-in and move-out dates, and locations on Job Site shall be subject to and in accordance with the review and approval of Company. Company, its representatives (and others as may be required by Applicable Law) shall have the right at all reasonable times to inspect the Work and all material, supplies, and equipment for the Work at the Job Site and at Alliance Contractor's and its Subcontractors' shops for conformance with this Agreement. Alliance Contractor shall provide or cause to be provided access and sufficient safe and proper facilities for such inspections. Alliance Contractor shall cooperate with Company in scheduling visits to vendor factories or sub-assembly locations for such Persons for purposes of inspecting the Work. Company has the right to reject any portion of the Work that does not comply with Project Requirements. Alliance Contractor shall also afford Company with advanced notice of and the opportunity to witness and/or inspect the Work at each Inspection Point. Alliance Contractor shall provide written notice to Company's Representative of all events Alliance Contractor is entitled to witness pursuant to the terms of its agreements with Subcontractors promptly upon execution of such agreements. Alliance Contractor shall provide Company's Representative with reasonable notice (but not less than fifteen (15) Days in each instance) of the schedule of the occurrence of all such events and with reasonable advance notice of any rescheduling of all such events. Company's failure to inspect the Work or any materials, supplies, or

equipment for the Work or to object to defects therein at the time Company inspects the same shall not relieve Alliance Contractor of its responsibilities for defective material, equipment, or Work nor be deemed to be a waiver of Company's rights to subsequently reject defective material, equipment, or Work. If Company's review and approval of an item of Work that has been designated as an Inspection Point but not a Hold Point and Alliance Contractor has not received any comments or changes from Company with respect to that item within the time period allowed in the Target Schedule (or within a reasonable time if no period is designated for that item in the Target Schedule), Alliance Contractor may proceed with the Work without Company's review or approval of that item.

4.6. Covering. No portion of the Work (including foundations) may be covered without (a) conducting (and passing) any test required pursuant to this Agreement, (b) permitting Company to witness and/or inspect the Work at all designated Inspection Points and (c) obtaining Company's authorization to proceed with respect to all designated Hold Points. Alliance Contractor shall as an Alliance Contractor Expense without Target adjustment (i) uncover any Work that is covered in violation of the previous sentence, (ii) correct all deficiencies in the Work, if any, and (iii) recover such Work. If a portion of the Work has been covered which Company have not specifically requested to observe prior to its being covered, Company may request to see such Work and it shall be uncovered by Alliance Contractor. If such Work is in accordance with this Agreement, costs of uncovering and replacement shall, by appropriate Target adjustment, be charged to Company. If such Work is not in accordance with this Agreement, Alliance Contractor will not be permitted any Target adjustment in connection therewith.

4.7. Company Supplied Items. Except as the Parties may otherwise agree in writing, Company shall not be obligated to furnish or cause to be furnished to Alliance Contractor any labor, materials, or other items for or in connection with performance of the Work. However, Company may elect to supply Company Supplied Items. Any Company Supplied Items shall be deemed to be removed from Alliance Contractor's Scope and the Targets, and Alliance Contractor shall have no responsibility or liability in connection with any Company Supplied Items, except that Alliance Contractor will be responsible, in accordance with the terms and conditions of this Agreement, for its Work related to such Company Supplied Items, such as installation of a Company Supplied Item.



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Alliance Contractor may not utilize material from Company's surplus in connection with the Work ("Company Surplus Commodities"). Company shall defend, indemnify and hold Alliance Contractor harmless from any liability arising from any defects in any Company Supplied Items.

4.8. Bond. Before Work (other than Design Work) with respect to each System is scheduled to begin, Alliance Contractor shall provide Company with the pricing of surety bonds for Alliance Contractor covering the faithful performance of the payment of all obligations of the Alliance Contractor arising hereunder in a sum satisfactory to Company, which shall be in a form and issued by a company acceptable to Company. If Company so requests in writing (or if such bonds are included in the agreed Scope), Alliance Contractor shall acquire such bond for Company's benefit and such cost shall be a Pass-through Expense. Company shall be entitled to propose other methods of security as Company shall request, all expenses of which (if the Parties agree to implement them) shall be Reimbursable Expenses hereunder (any agreement to implement them shall include an agreement on any Target Cost adjustments to be made in connection therewith).

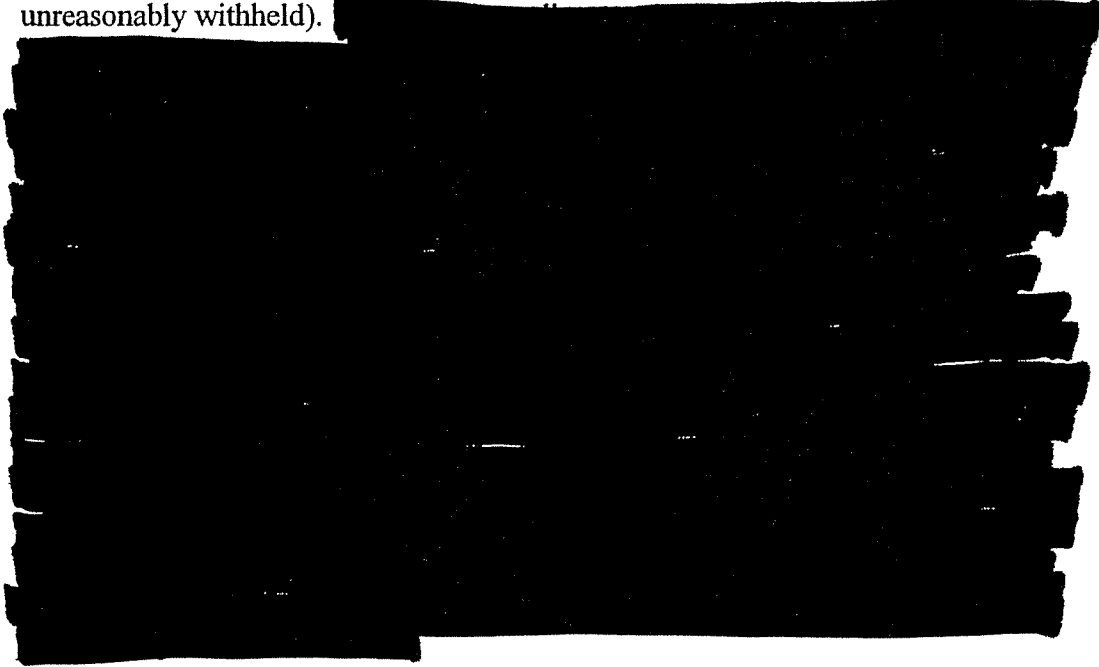
4.9. Housekeeping and Hazardous Materials. (a) Alliance Contractor shall at all times keep its Work area in a neat, clean and safe condition and remove from the Work area and the vicinity thereof and properly dispose of off site in accordance with applicable local, state and federal regulations all debris and rubbish and hazardous wastes caused by Alliance Contractor's operations. Alliance Contractor shall carry out all dewatering, storm water control drainage, pumping and disposal required to keep the Work dry during performance of the Work. In no event shall Alliance Contractor (i) place Hazardous Substances (including site soils or water that may be contaminated), waste materials, trash or rubbish, or (ii) discharge contaminated water, into any area that will pollute a natural stream or body of water. No discharge of contaminated water may be permitted to cause soil contamination (whether documented or undocumented) in violation of any Applicable Law.

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Alliance Contractor shall report all such spills, releases, and

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aggravations (whether or not negligently caused) immediately to Company and to the appropriate regulatory authorities as required by Applicable Law. Upon completion of the Work, Alliance Contractor shall promptly return unused materials furnished by Company and remove from Company's premises all of Alliance Contractor's equipment, material, scaffolding, and like items, leaving Company's premises and the vicinity clean, safe, and ready for use. If Alliance Contractor shall fail to maintain its work area as described above and in a manner reasonably satisfactory to Company or to effect such cleanup or removal within a reasonable time after written notice to do so, Company shall have the right with reasonable written notice to Alliance Contractor, to perform such cleanup on behalf of Alliance Contractor as an Alliance Contractor Expense (which amount Company may choose to offset against any Reimbursement Amount or Fee Amount yet to be paid hereunder). All of Alliance Contractor's non-hazardous waste materials hauled from the Work area by Alliance Contractor must be disposed of in accordance with Applicable Law, at Trimble County Landfill (Valley View Landfill) managed by Laidlaw Waste Systems, Inc., Route 157, P. O. Box 3, Sulfur, Kentucky or Browning Ferris Inc. C/O Stevens Disposal Service, 700 Dillehay Street, Danville, Kentucky 40422, unless prior written approval has been obtained from Company's Environmental Affairs Department (which approval will not be unreasonably withheld).



- 4.10. Subcontracting. Alliance Contractor may have portions of the Work performed by Subcontractors, including entities related to or affiliated with Alliance Contractor. No contractual relationship will exist between Company and any Subcontractor with respect to the Work to be performed hereunder except as

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specifically provided by this Section 4.10. Notwithstanding whether any provision of this Agreement specifically refers to Alliance Contractor's Subcontractors, Alliance Contractor will be fully responsible for all acts, omissions, failures or faults of any Subcontractor (and its personnel) as fully as if they were the acts, omissions, failures or faults of Alliance Contractor (or its personnel) and will require its Subcontractors to provide or perform their portion of the Work in a manner consistent with this Agreement. If any Subcontractor fails to perform any portion of the Work as such Work is required to be performed in accordance with this Agreement, Alliance Contractor is responsible therefor and shall promptly and diligently correct such failure in accordance with this Agreement. Alliance Contractor shall require any Subcontractor to perform its portion of the Work under Alliance Contractor's supervision. Unless otherwise authorized by Company with respect to a specific Subcontract, Alliance Contractor shall not subcontract performance of all or any portion of the Work (including adding any work to an existing Subcontract more than \$ [REDACTED] without first (a) notifying Company of the intended portion of the Work to be subcontracted, (b) soliciting bids using a mutually agreed upon bidder's list (that takes into consideration Section 4.10.1), unless Company approves sole sourcing, (c) cooperating generally with Company in connection with the bidding process, including by disclosing such information as Company shall request, (d) attempting to require the Subcontractor's agreement to terms and conditions substantially similar to those set forth in Attachment 4.10 hereto, and, in any event, any material revisions thereto must be approved by Company, and (e) following the other procedures set forth in this Section 4.10. Alliance Contractor will provide Company with a copy of all Subcontracts and purchase orders as they are issued. Each Party shall use reasonable, good faith efforts to mutually agree on each Subcontractor selection. If such agreement is reached, Alliance Contractor shall issue the Subcontract, and there shall be no Target adjustments as a result of such Subcontractor's selection. If the Parties do not agree on the selection of a Subcontractor, the Parties shall use reasonable, good faith efforts to reach a compromise through agreement to adjustments to the Targets. If such compromise efforts are successful, then Alliance Contractor shall issue the Subcontract and the Targets shall be adjusted as agreed. If the parties do not agree on a Subcontractor selection and are unable to reach a compromise through agreement to Target adjustments, then the decision shall be referred to upper management of both Parties for resolution. If upper management of both Parties reaches agreement on Subcontractor selection (whether or not through Target adjustments), then Alliance Contractor shall issue the Subcontract and the Targets shall be adjusted, if adjustments were agreed. If upper management of the Parties cannot reach agreement or compromise on a Subcontractor selection, then Company reserves the right to direct the Alliance Contractor to use any Subcontractor which (a) Alliance Contractor is willing to use with no Target

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adjustments, in which case the Targets will not be adjusted as a result of such Subcontractor's selection, or (b) Alliance Contractor is willing to use but only with Target adjustments, in which case the Subcontractor shall be deemed to be a "Company Required Subcontractor" and the Targets shall be equitably adjusted, if appropriate. The foregoing shall not be construed to limit the Company from supplying the materials, equipment, and/or services that would be supplied under the Subcontract at issue as a Company Supplied Item to the extent permitted by Section 4.7. Nothing in any Subcontract shall be construed to limit or modify Alliance Contractor's primary obligation to comply with all the terms of this Agreement. Company may contact Alliance Contractor's Subcontractors directly, provided Alliance Contractor is informed of all such communications. However, Alliance Contractor shall be solely responsible for providing all information and direction to its Subcontractors necessary for its Subcontractors to perform the Work, and Alliance Contractor shall have a representative at the Job Site during performance of the Work by any Subcontractors. If any Subcontractor makes a claim for compensation and/or reimbursement beyond that set forth in the Subcontract or there is any dispute with regard to the performance of any Subcontractor (in terms of quality, timeliness, or otherwise), then Alliance Contractor shall notify Company of such and include Company in any discussions and correspondence regarding such. Before resolving such claim or dispute, Alliance Contractor shall provide Company with all relevant information and give Company the opportunity to comment. If Alliance Contractor desires to resolve such claim or dispute, Alliance Contractor shall request Company's approval of such settlement. If Company approves such settlement, all amounts paid pursuant to such settlement shall be Reimbursable Expenses. If Company does not approve such settlement, then, notwithstanding the definition of Reimbursable Expenses contained in this Agreement, all amounts paid by Alliance Contractor with respect to such settlement shall only be Reimbursable Expenses to the extent that, prior to such settlement, the Subcontractor was legally entitled, under the Subcontract, to such amount.

4.10.1. Minority, Women, Disadvantaged and Local Business Enterprises.

Company has a Supplier Diversity Policy to provide the maximum opportunity for Minority Business Enterprises (MBE), Women Business Enterprises (WBE), and Disadvantaged Business Enterprises (DBE) to participate as subcontractors for goods and services. As such, every attempt should be made by Alliance Contractor to include MBEs, WBEs, DBEs, as well as local (as defined by Company from time to time) Union & Non-Union Contractors (LC), on subcontract bid lists for Systems. Where appropriate, this requirement shall be passed down to lower tier Subcontractors as well. Alliance Contractor shall provide a Supplier Diversity program for the Work. Elements of such a program shall at a

minimum include: (i) a goal setting process for identifying MBE/WBE/DBE/LC opportunities for involvement in the Work, (ii) an outreach process to identify and attract possible MBE/WBE/DBE/LC business interest in the Systems, including working with local organizations such as Kentuckiana Minority Business Council, (iii) a pre-qualification process to assess the suitability of interested MBE/WBE/DBE/LCs, (iv) a bidding process inclusive of suitable MBE/WBE/DBE/LCs on subcontract bid lists, and (v) a monitoring process to provide statistical reporting on opportunities and utilization.

- 4.11. Cooperation and Interference at Site. Alliance Contractor recognizes that Company and other contractors, may be working concurrently at the Job Site and that Company will have ongoing operations. Alliance Contractor agrees to cooperate with Company and other contractors so that the performance of the Work will be performed in a manner which minimizes the impact on other work being performed at the Unit and the operations and maintenance at such facility. Company reserves the right to direct Alliance Contractor to schedule the order of performance of its Work in such manner as not to interfere with the performance of others and the operations and maintenance at such facility.
- 4.12. Overtime. Overtime or premium time shall be considered a Reimbursable Expense. Alliance Contractor shall notify Company in advance of all overtime to be worked at the Job Site.
- 4.13. Title to, Risk of Loss of, and Protection of Property. (a) Title with respect to all equipment and materials supplied as part of the Work shall pass to Company on the delivery of same to the applicable System Site or other agreed upon delivery point. (b) With respect to each System, Alliance Contractor shall, as a No Fee Reimbursable Expense, replace or repair, as appropriate, any portion of the Work that experiences damage or other loss prior to Substantial Completion, or any sooner transfer of care, custody, and control to Company made in accordance with this Agreement, and the Target Costs shall be increased by the total aggregate amount of all such No Fee Reimbursable Expenses in excess of [REDACTED] per occurrence and [REDACTED] aggregate per System; provided, however, Alliance Contractor shall, as a Reimbursable Expense, maintain appropriate levels of transit insurance during transit. All proceeds of such transit insurance and any insurance maintained under Section 9.4.3 shall be paid to Company. Except to the extent provided in Article 8, after Substantial Completion, or any sooner transfer of care, custody, and control to Company made in accordance with this Agreement, of a System, (i) Alliance Contractor shall have no responsibility to replace or repair any portion of that System (or the Work composing that System)

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that experiences damage or other loss and (ii) Company shall assume the responsibility to repair and or replace that System (and the Work composing that System). Alliance Contractor shall in accordance with standard industry practices preserve and protect (1) materials, equipment and other Work from damage or loss due to weather, fire, theft, unexplained disappearance, or other casualty and (2) equipment and materials (whether stored or installed), paving, structures, and any and all other items on the Job Site belonging to Company or others. (c) Company assumes responsibility for and waives all rights of recovery against Alliance Contractor with respect to all loss of or damage to Company Property, however such loss or damage shall occur; provided, however, that Alliance Contractor shall be responsible, as an Alliance Contractor Expense, for loss or damage to Company Property to the extent caused by Alliance Contractor's or a Subcontractor's gross negligence, or willful misconduct, however Alliance Contractor's liability shall in no event exceed the limits set forth in Section 14.16. Except as set forth in this Section 4.13, Company assumes and at its election insures all risk of loss or damage to any Company Property. Company waives its recovery rights against Alliance Contractor for any loss or damage arising from risks assumed by Company hereunder and shall cause all of its property insurance underwriters to waive their rights of subrogation against Alliance Contractor and its Affiliates and Subcontractors (covering all of their operations) with respect to all loss or damage resulting from the Work to all materials, equipment, any other Work and all Company Property. If Company is not the sole owner of all the facilities and other property for which Company assumes the risk of loss above, Company shall obtain an agreement from all the other owners thereof sufficient to provide Alliance Contractor with the same protection from liability for loss or damage to all such property as would be afforded to Alliance Contractor under this Agreement if Company were the sole owner.

- 4.14. Equipment Alliance Contractor shall ensure that all construction equipment used in the performance of the Work on the Job Site shall be in first-class operating condition, safe, fit for the uses for which intended and suitable for the safe, legal and efficient performance of the Work and protection of the environment. Any such equipment of Alliance Contractor that is not conforming with the foregoing shall be promptly removed by Alliance Contractor, and replaced with proper equipment. The costs of making such replacement, to the extent in excess of the cost of such equipment agreed to in the Target Costs, shall be an Alliance Contractor Expense. Alliance Contractor shall not be obligated to use any of Company's construction equipment.
- 4.15. Shipments of Alliance Contractor Supplied Material and Equipment. Alliance Contractor shall be responsible for arranging all shipments of Alliance Contractor supplied materials and equipment to the System Site and shall consign such

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shipments to itself as consignee at the project shipping address, freight fully prepaid. Alliance Contractor shall be responsible for making demurrage agreements and settlement with carriers for its shipments. Alliance Contractor shall advise Company in advance of major shipments of Alliance Contractor's materials and equipment and shall coordinate with Company the arrival, loading, unloading, and release of carriers' equipment. If Alliance Contractor is unable to promptly unload its shipment, Alliance Contractor shall notify Company of such inability at least two (2) Days in advance of arrival. Company may, but shall not be obligated to, unload or make arrangements for others to unload such shipments and the Target Cost shall be decreased by the amount of Company's reasonable expense incurred in doing so.

- 4.16. Shipments of Company Supplied Items. Alliance Contractor shall carefully inspect and note any visible damage to Company Supplied Items prior to Alliance Contractor's acceptance of delivery. Alliance Contractor shall notify Company of any Company Supplied Items that are surplus and shall cooperate with Company in the disposition of such surplus as directed by Company. Alliance Contractor shall notify Company of the requirement for Company Supplied Items in sufficient time for Company to furnish said materials or equipment in advance of Alliance Contractor's need. Alliance Contractor shall promptly notify Company if any Company Supplied Items are not in compliance with the applicable specifications. Alliance Contractor shall take all reasonable steps to avoid standby time due to such noncompliance or lack of Company Supplied Items and to continue progress of other portions of Work pending correction of such noncompliance or lack of Company Supplied Items.
- 4.17. Alliance Contractor Personnel. Alliance Contractor shall provide an adequate number of supervisory staff, craft persons, and other personnel to perform the Work, all of whom shall be appropriately qualified and competent. At all times during the course of the Work, Alliance Contractor shall provide at each of the Job Sites a responsible site manager (the "Alliance Contractor's Representative") who shall be reasonably satisfactory to Company and have the responsibility and authority to direct and manage the Work, administer this Agreement, serve as Contractor's primary point of contact from and with Company and be authorized to make decisions related to the Work and bind Alliance Contractor. As long as sufficient work is available under this Agreement, Alliance Contractor's project management team shall be assigned to work exclusively on the Work. As long as sufficient work is available under this Agreement, Alliance Contractor shall provide a program manager, a program site manager and, for each Job Site, a site manager, each of whom shall be responsible and reasonably satisfactory to Company. Alliance Contractor shall not transfer or remove any of its personnel acting as program manager, program site manager, or site manager from performance of Work without the prior consent of Company, and Alliance Contractor will work to

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minimize any impact to the Work resulting from any such change. Any personnel of Alliance Contractor deemed by Company, in its reasonable judgment, to be objectionable shall be removed from the Job Site immediately upon Company's request and shall be promptly replaced by Alliance Contractor at no additional expense to Company. Alliance Contractor shall maintain reasonable workable and harmonious relations with its personnel and between Alliance Contractor's personnel and the personnel of other contractors, subcontractors, and the personnel of Company. Whenever either Party has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the Work, that Party shall immediately give notice thereof, including all relevant information, to the other Party. Alliance Contractor shall enforce strict discipline and good order among Alliance Contractor's personnel, Subcontractors' personnel and any other Persons carrying out portions of the Work and provide for the protection and maintenance of the Work and of all Persons and property related thereto. Alliance Contractor shall at all times take all reasonable precautions to prevent any unlawful or disorderly conduct by or amongst its personnel and the personnel of Subcontractors and for the preservation of peace and protection of Persons and property at, or in the neighborhood of, the Job Sites. Alliance Contractor shall not permit the employment of unfit Persons or Persons not skilled in tasks assigned to them.

- 4.18. Certain Applicable Matters. To the extent applicable, Alliance Contractor shall comply with all of the following provisions that are incorporated herein by reference: (1) Equal Opportunity regulations set forth in 41 CFR ¶ 60-1.4(a) and (c) prohibiting discrimination against any employee or applicant for employment because of race, color, religion, sex, or national origin; (2) Vietnam Era Veterans Readjustment Assistance Act regulations set forth in 41 CFR ¶ 60-250.4 relating to the employment and advancement of disabled veterans and veterans of the Vietnam era; (3) Rehabilitation Act regulations set forth in 41 CFR ¶ 60-741.4 relating to the employment and advancement of qualified disabled employees and applicants for employment; (4) The clause known as "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals" set forth in 15 USC § 637(d)(3); and (5) Subcontracting plan requirement set forth in 15 USC § 637(d). Alliance Contractor will give local (as defined by Company from time to time) qualified workers priority when hiring personnel to perform the Work.
- 4.19 Safety and Security. Alliance Contractor is responsible for taking necessary or appropriate precautions to protect all persons from injury or illness arising from the performance of the Work. Without limitation of the foregoing, Alliance Contractor shall comply strictly with all Applicable Laws, including without limitation those pertaining to health or safety that are applicable to Alliance Contractor or the Work,



including, but not limited to, the Occupational Safety and Health Act of 1970, as amended, and any state plans approved thereunder and regulations thereunder to the extent applicable. The Alliance Contractor will also provide, manage, and safely comply with a site safety program approved by the Company that is in compliance with Company, Job Site, and Alliance Contractor safety requirements. Approval by the Company of a site safety program shall in no way limit Alliance Contractor's obligation regarding safety hereunder or shift any responsibility regarding safety to Company. Alliance Contractor will provide a safety inspector for each Job Site. The safety program will contain a substance abuse and screening policy for all personnel of Alliance Contractor (and Subcontractors) included in the site safety program. A safety incentive program will be developed and implemented for workers located at the Job Sites to help facilitate achieving a safe work environment. The costs of the safety program and safety incentive plan will be a Reimbursable Expense included in the Target Costs. In the event of any emergency at the System Site endangering life or property, Alliance Contractor shall take such action as may be reasonable and necessary to prevent, avoid or mitigate injury, damage or loss and shall, as soon as possible, report any such incidents, including Contractor's response thereto, to Company.

- 4.20 Drugs and Alcohol. No individual will perform any of the Work while under the influence of any illegal or controlled substance or alcohol. No alcohol may be consumed four (4) hours prior to any individual's performance of the Work or anytime during the workday. An individual will be deemed under the influence of alcohol if a level of .02 percent blood alcohol or greater is found as determined by a breathalyzer test. In addition to the requirements of the drug and/or alcohol testing program set forth in Attachment 4.20, Alliance Contractor shall (i) institute a random drug and/or alcohol testing program covering all individuals that will perform any of the Work, (ii) promptly, upon the written request of Company, perform drug and/or alcohol tests on all individuals that will perform any of the Work, and (iii) perform drug and/or alcohol tests on any individual that will perform any of the Work under either of the following circumstances: (a) where the individual's performance either contributed to an accident or cannot be completely discounted as a contributing factor to an accident which involves off-site medical treatment of any individual; and (b) where Company determines in its sole discretion that there is reasonable cause to believe such individual is using drugs or alcohol or may otherwise be unfit for duty. Such individuals tested in accordance with clause (a) or (b) above will not be permitted to perform any Work until the test results are established. Alliance Contractor shall be solely responsible for administering and conducting drug and alcohol testing, as set forth herein. As applicable and in addition to any other requirements under this Agreement, Alliance Contractor shall develop and strictly comply with any and all alcohol and/or drug testing requirements required by Applicable Law.

Notwithstanding anything to the contrary herein, if the rules and regulations of Company pertaining to a Job Site shall at any time be more stringent than the requirements of this Agreement, Alliance Contractor will comply and cause its Subcontractors to comply with such more stringent rules and regulations.

4.21 Design and Engineering. As engineer of record, Alliance Contractor has full Design responsibility for the performance of the Work and the Systems. Alliance Contractor shall engage all supervisors, engineers, designers, draftsmen, Subcontractors and others necessary for the Design of the Systems (including modification of the drawings of existing facilities as appropriate) and the preparation of all drawings, specifications, calculations, plans, reports or other Design documentation (including all media) for the Work, setting forth in detail the requirements for the construction of the Systems in accordance with this Agreement. Alliance Contractor shall Design the Systems in accordance with Project Requirements and to be capable of operating in conformance with the Target System Performance Parameters. Design Documents will be available to Company electronically in an agreed format, and in hard copy. Company will be entitled, but not obligated, to review and comment upon the Design Documents prior to Alliance Contractor commencing with any subsequent phase of the Work related to such Design Documents. Alliance Contractor shall provide adequate furnished office facilities for Company's personnel in Alliance Contractor's offices in Greenville, South Carolina during the Design and procurement phase of the Work. Design Documents will be deemed final when stamped by Alliance Contractor as "issued for permit or for construction," except to the extent such documents are subject to review, comment and approval by Company. Design Documents that are required to be certified or under seal shall be certified or sealed by professional engineers, licensed and qualified to perform engineering services in the applicable jurisdictions. In no event will any review, comment or approval of Company, or acceptance or acknowledgment of any of the Work, in any way, relieve Alliance Contractor of any of its guarantees or obligations hereunder, including its responsibility for errors and omissions, confirming all quantities, selection of fabrication processes, construction techniques, the accuracy of the dimensions, details and the quality of its instruments of service prepared in connection with the Systems as well as its responsibility for the quality, integrity, safety and timely performance of the Work.

4.22 Quality Control. Alliance Contractor shall develop, implement and maintain a quality assurance plan for the Work which must include: Systems quality assurance; management and control of the Design, engineering, construction, procurement and supply services; and management and control of Subcontractors. Such plan must be designed to meet Project Requirements, include procedures for effective implementation, and must be submitted to Company within sixty (60)

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Days of the date of this Agreement for Company's review and approval. Alliance Contractor shall also require Subcontractors to establish, implement and maintain comparable quality control and safety programs with respect to their respective portions of the Work. Compliance with the quality assurance plan will not relieve Alliance Contractor of any duty, obligation or responsibility under this Agreement.

- 4.23 Control of Work. Alliance Contractor shall be responsible for all Design and construction means, methods, techniques, sequences, procedures, quality assurance and quality control programs in connection with the performance of the Work.
- 4.24 Use of Site. Alliance Contractor shall have access to the System Site. Access to other portions of the Job Site, including the location of the existing facilities shall be on an as-needed basis as requested by Alliance Contractor sufficiently in advance of such needs to allow Company to schedule such activities without adversely impacting the operations of any of the existing facilities. Alliance Contractor shall be entitled to utilize the internal roadways of the applicable Job Site as may be designated by Company. Such use is not exclusive and shall not interfere with the ongoing operations of the existing facilities. Any use of such roadways that could result in such interference shall be subject to the prior approval of Company. Alliance Contractor shall confine its operations at the Job Site to areas permitted by Applicable Law and this Agreement and, with respect to the existing facilities or other areas of Job Site where Work is to be performed, the instructions of Company. Any office space or building facilities made available by Company for the administration of the Work and other uses approved by Company are made available on a "as is, where is" basis. Alliance Contractor shall be entitled to modify such facilities, at its sole cost and expense, provided it receives the prior written consent of Company. Alliance Contractor shall keep the facilities neat and clean and maintain them in good condition. Such facilities shall be returned to Company within thirty (30) Days following the earlier of a request by the Company, Final Completion of the Applicable Systems or termination of this Agreement, neat and clean and in good condition, normal wear and tear accepted, and, to the extent requested by Company, with any modifications made by Alliance Contractor restored to their original state. Notwithstanding anything in this Agreement to the contrary, Alliance Contractor shall use all reasonable efforts not to interfere with the conduct of the existing facilities (including deliveries thereto) or any business operating adjacent to or in close proximity to the Job Site. Alliance Contractor shall coordinate its performance of the Work with the requirements and business operations of the existing facilities. Alliance Contractor shall prepare a coordination plan to be delivered to Company with respect to each System, setting forth procedures and guidelines to be implemented

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by Alliance Contractor and Company to maximize site coordination and minimize the likelihood of interference and any adverse effect therefrom on the operations of the existing facilities. Company shall be entitled to review and comment on such plan and any such comments shall be incorporated into the final version of such plan which shall be issued no later than at the time of the Scope and Targets Agreement for each System. Alliance Contractor shall:

- (i) use, and shall cause all Subcontractors and their respective personnel to use, only such gate(s) for access to the Job Site, as designated by Company. All equipment shall be received, stored and routed, and all demolition debris shall be routed and stockpiled in strict accordance with the Job Site coordination plan prepared by Alliance Contractor and approved by Company, as described above. Alliance Contractor shall not load, or permit to be loaded, any part of the Work in such fashion that may damage any part of the Work or endanger the safety of any part thereof;
- (ii) be responsible for the security of the Work and the System Site until the Final Completion of that System, it being acknowledged by Alliance Contractor that neither Alliance Contractor nor its Subcontractors are entitled to rely on any security measures or procedures in place at the Job Sites for the protection of Persons or property;
- (iii) confine temporary structures, machinery, equipment and other property of Alliance Contractor (and its Subcontractors), and the storage of materials to the laydown or other areas permitted by Applicable Law, by this Agreement and by Company. Temporary structures shall be neat in appearance, may not constitute a fire or any other safety hazard and must be properly maintained;
- (iv) obtain an approval from the Company's Representative prior to performing any Work on the Job Site that is not wholly within the System Site. Requests for a work order shall be made in writing within a reasonable time prior to the need therefor. Alliance Contractor understands that it must consult with the Company's Representative to assure that operation by the Existing Facilities will not be interrupted by the Work to be performed and that decisions made by the Company's Representative hereunder will be based upon the operating and maintenance requirements of the Existing Facilities;
- (v) except as expressly permitted with the prior written consent of Company, which will not be unreasonably withheld, not deliver any equipment or perform any Work that would be considered "heavy

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construction” except during the hours of 6 a.m. to 7 p.m. (but not on holidays). Alliance Contractor will not schedule deliveries during hours that school bus transportation is scheduled to utilize roads in the general vicinity of the Job Site; and

(vi) develop and implement a construction environmental control plan in connection with each System for the purpose of properly managing the sediment control, erosion, fugitive dust, storm water runoff, noise and other adverse environmental impacts of construction, all in conformance with the Project Requirements. Company shall be entitled to review and comment on such plan and any such comments shall be incorporated into the final version of such plan. Such plan shall be submitted thirty (30) Days prior to Scope and Targets Agreement with respect to each System.

- 4.25 Periodic Meetings. Until Final Completion of each System, Alliance Contractor shall attend and participate in meetings on a daily, weekly and monthly basis among Alliance Contractor and Company for the purpose of discussing the status of the Work and anticipating and resolving problems. Such meetings may also include other Persons at the invitation of Company, such as consultants of Company, provided such Persons execute reasonable and customary agreements to maintain Work-related information on a confidential basis. Other Persons shall be permitted to attend with the prior consent of Company, which consent may not be unreasonably withheld. Alliance Contractor shall prepare and distribute notes of monthly meetings. Publication or distribution of notes of such meetings shall neither constitute a notice pursuant to Article 12 for any purpose under this Agreement nor a permitted basis to assert claims or Target or Scope adjustments under this Agreement. No implication whatsoever shall be drawn as consequence of a failure by any Party to comment upon or object to meeting notes prepared or distributed by the other Party.
- 4.26 Signage. Alliance Contractor shall not display, install, erect or maintain any advertising or other signage at the applicable Job Sites without Company’s prior written approval, except as may be required by Applicable Law.
- 4.27 Spare Parts. Alliance Contractor shall provide and properly store all spare parts included within the Scope with respect to each System, including start-up and commissioning spare parts, on or prior to Tie-in for that System. Spare parts must be equivalent or better to and interchangeable with the original parts they are intended to replace. Such spare parts must be of the same material, of identical manufacture and must present the same properties as the corresponding parts of the equipment (except to the extent upgraded by the manufacturer thereof). Spare

parts must be properly treated and packed for prolonged storage, considering Job Site ambient conditions. All boxes and packing shall be labeled, marked and numbered for identification and a detailed packing list shall be provided. Spare parts are to be delivered to storage locations specified by Company. Alliance Contractor shall implement all necessary precautions for proper storage. Alliance Contractor shall provide spare parts information in a manner fully compatible for downloading into the spare parts monitoring software maintained by Company. Alliance Contractor shall give Company the right to purchase, at no more than Alliance Contractor's out-of-pocket cost, any surplus items on the Job Site upon Final Completion. Alliance Contractor shall be entitled to use any spare parts that are acquired by Company and are then available on the Job Site, provided that Alliance Contractor shall replace the spare parts it uses immediately F.O.B. Job Site. Alliance Contractor shall provide to Company a list of strategic and other spare parts that Alliance Contractor and its Subcontractors recommend be purchased for the reliable operation and maintenance of the System. The spare parts list shall identify the price of each such part (which shall be valid for no less than twelve months), the OEM and other vendors, the manufacturer's part name and/or number, expected useful lives and typical delivery lead times. Such list shall be delivered no later than 180 Days prior to the Tie-in Date. Alliance Contractor agrees to purchase additional spare parts requested by Company that are not included in the Work, the cost of which shall be a Reimbursable Expense and, to the extent not already included in the Scope, grounds for a Target adjustment. Alliance Contractor will cooperate with Company to determine the best pricing for obtaining spare parts. The acquisition, storing and maintenance of all spare parts not included in the Scope will be the responsibility of the Company.

- 4.28 Interference with Traffic. Alliance Contractor shall carry out the Work so as not to damage or unreasonably interfere with access to, use or occupation of, public or private roads, docks, waterways, footpaths or other properties, whether in the possession of the Company or of any other Person. Alliance Contractor shall communicate with, and ascertain the requirements of, all Governmental Authorities in relation to vessel or vehicular access to and egress from the Job Sites and shall comply with those requirements. Alliance Contractor shall be deemed to have satisfied itself as to and shall be fully responsible for the routing for deliveries of equipment including delivery of heavy, large or oversize loads to the Job Site.
- 4.29 Supply of Water. Alliance Contractor shall make available an adequate supply of drinking and other water for the benefit of those working on the System Site.



- 4.30 Cutting and Patching. Alliance Contractor shall be responsible for all cutting, repairing, fitting or patching which is required to complete or repair the Work or to make its parts fit together properly. It is the intent of this Agreement that all areas requiring cutting, fitting, repairing or patching will be restored to a completely finished equivalent-to-new condition.
- 4.31 Deliveries by Truck. Alliance Contractor shall provide Company's Representative with reasonable advance notice of any delivery of equipment that is to arrive by truck and is oversized or is extraordinary in any other material way.
- 4.32 Artifacts and Other Valuable Items. If Alliance Contractor should discover any artifact, fossil or other items of historical, geological, archeological or other value, it shall immediately cease Work in the immediate vicinity thereof, notify Company and take reasonable actions to preserve and protect such items from damage or theft. All such items are the property of Company and Company will provide Alliance Contractor with direction on how to proceed. If the progress of the Work is delayed due to Contractor's discovering or Company's inspection of such items, then the Targets shall be equitably adjusted.

5.0 SPECIFIC REPORTING REQUIREMENTS

- 5.1. Reports. Alliance Contractor shall promptly submit the schedules and reports set forth below, all in such format and at such times as Company shall reasonably request from time-to-time:
- 5.1.1. Safety reports, including performance and results for previous month, including statistics, lost time accidents, OSHA recordables and near misses, as well as root causes and corrective actions
- 5.1.2. Alliance Contractor Activities Report as follows: (a) daily for onsite construction workforce and Subcontractors, and (b) weekly for all other activities.
- 5.1.3. Critical Path Schedule (or Bar Chart Schedule) as specified by Company.
- 5.1.4. A report every month showing scheduled progress versus actual progress, giving details of how the Work will be completed in relation to the schedule, and any problems foreseen by Alliance Contractor.

- 5.1.5. Schedule for the procurement and receipt of materials, equipment and subcontract service by Alliance Contractor and a monthly status report of all such materials and equipment.
 - 5.1.6. Cost reports as specified by Company.
 - 5.1.7. Executive summaries and assistance with periodic executive level reporting.
 - 5.1.8. Reports regarding compliance with Section 4.10.1 regarding opportunities for, and utilization of, MBEs, WBEs, DBEs, and LCs.
 - 5.1.9. A report on any significant issues including Target and Scope adjustments that remain unresolved, and Alliance Contractor's recommendations for resolution of the same.
 - 5.1.10 A monthly report setting forth the schedule for upcoming Hold Points and Inspection Points.
- 5.2. Key Company Personnel. The Company shall designate, from time to time, one or more individuals who will act on Company's behalf, in connection with the Work, together with the scope of their authority. Among such designees, there must be appointed a principal representative of Company (the "Company's Representative"), who will be Company's authorized representative, and who will receive and initiate all communications from and with Alliance Contractor.

6.0. COMPENSATION

- 6.1 Generally. As full compensation for its performance hereunder, Alliance Contractor shall be entitled to compensation for the Work in two (2) components, Reimbursement Amount and Fee Amount, if any. Alliance Contractor shall be entitled to no other compensation, commissions, or reimbursements of any other nature except as expressly provided in this Agreement.
- 6.2 Reimbursement Amount. The Reimbursement Amount shall be calculated with respect to each particular Scope.
- 6.3 Fee Amount. The Fee Amount shall equal the Base Fee, as increased or decreased by the following adjustments, along with such other adjustments that may be mutually agreed during the development of Targets:

6.3.1 Target Costs within Deadband.

[REDACTED]

6.3.2 Target Costs Underruns.

[REDACTED]

6.3.3 Target Costs Overruns.

[REDACTED]

6.3.4 Early Outage Completion.

[REDACTED]

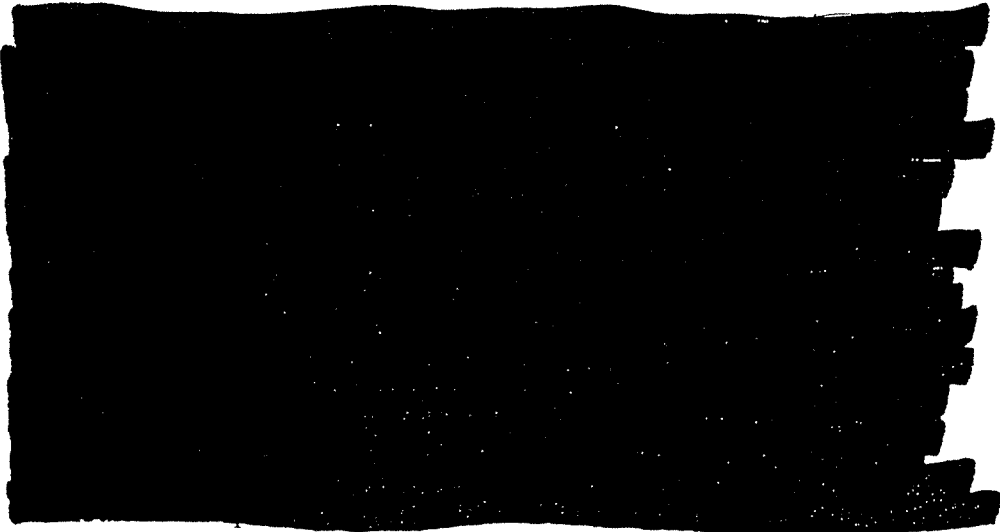
6.3.5 Target Safety.

[REDACTED]

6.3.6 Adjustments Generally.

[REDACTED]

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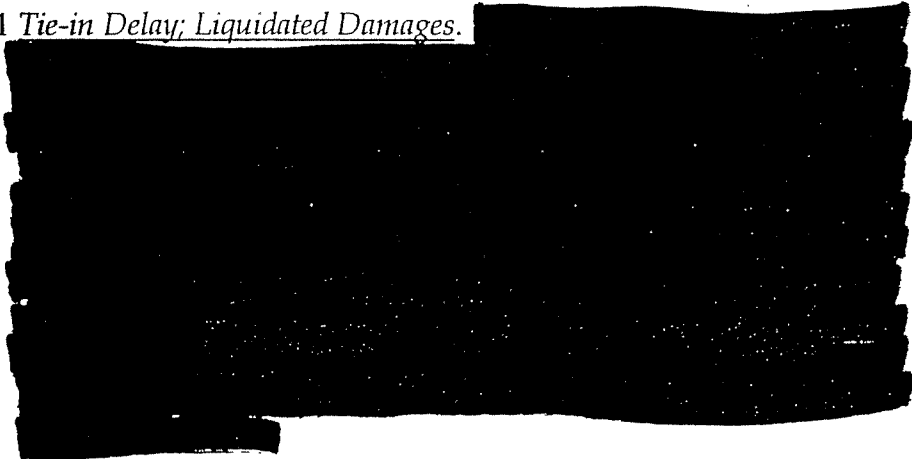


6.4 Liquidated Damages.

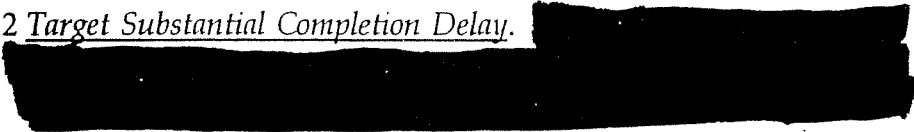
6.4.1 Delays, Outages, and Derates.



6.4.1.1 Tie-in Delay; Liquidated Damages.



6.4.1.2 Target Substantial Completion Delay.



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6.4.1.3 Unit Forced Outage or Derate.

[REDACTED]

[REDACTED]

6.4.2 Work Scheduling and Liquidated Damages.

[REDACTED]

6.4.3 Payment.

[REDACTED]

7.0 TERM

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7.1 Term. This Agreement shall become effective on the Effective Date and continue through the completion of all Work with respect to those Systems for which Company has issued a Notice to Proceed, subject to earlier termination pursuant to Sections 7.2 and 7.3 below (the "Term"). The Term can only be extended by mutual written agreement of the Parties.

7.2 Termination by Company. Without prejudice to any of its rights against Alliance Contractor, Company shall have the option of terminating this Agreement in each of the following situations:

7.2.1 Termination for Cause.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

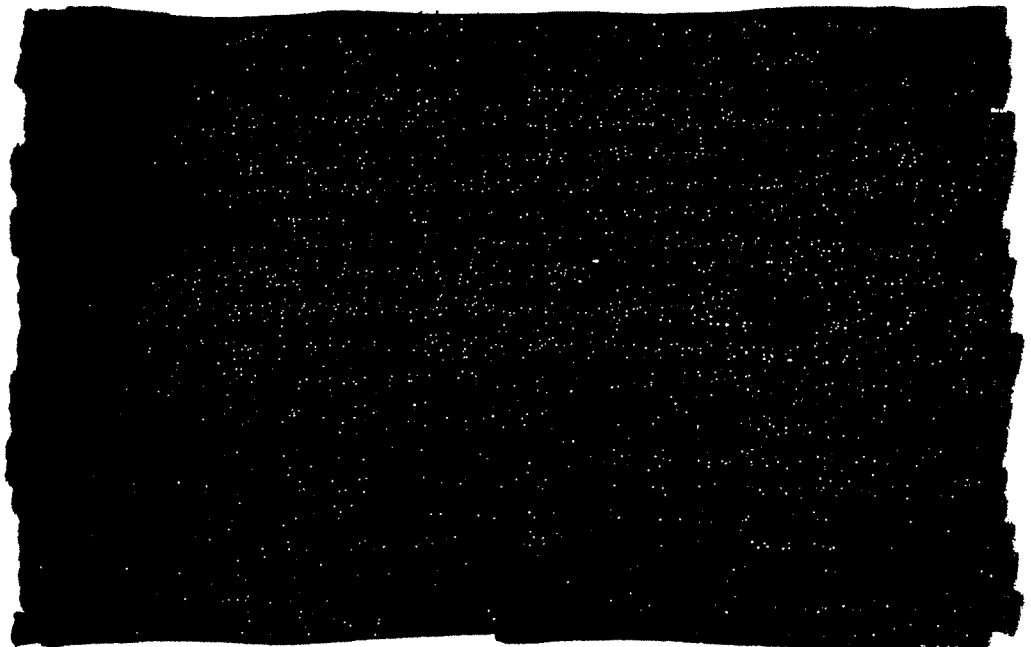
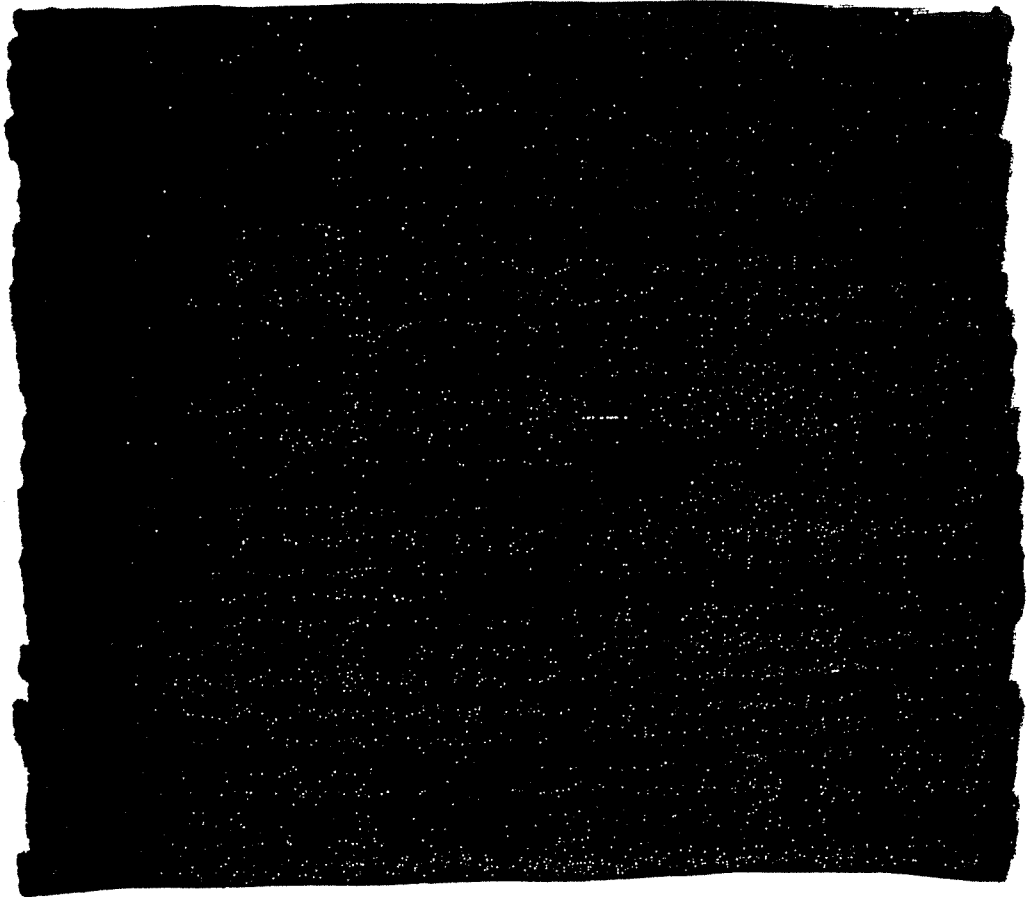
[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

7.2.2 Force Majeure Termination.

[REDACTED]

7.2.3 Termination for Convenience.

[REDACTED]

7.3 Termination by Alliance Contractor. Without prejudice to any of its rights against Company, Alliance Contractor shall have the option of termination in each of the following situations:

7.3.1 Termination for Cause.

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7.3.2 *Failure to Agree to Targets*

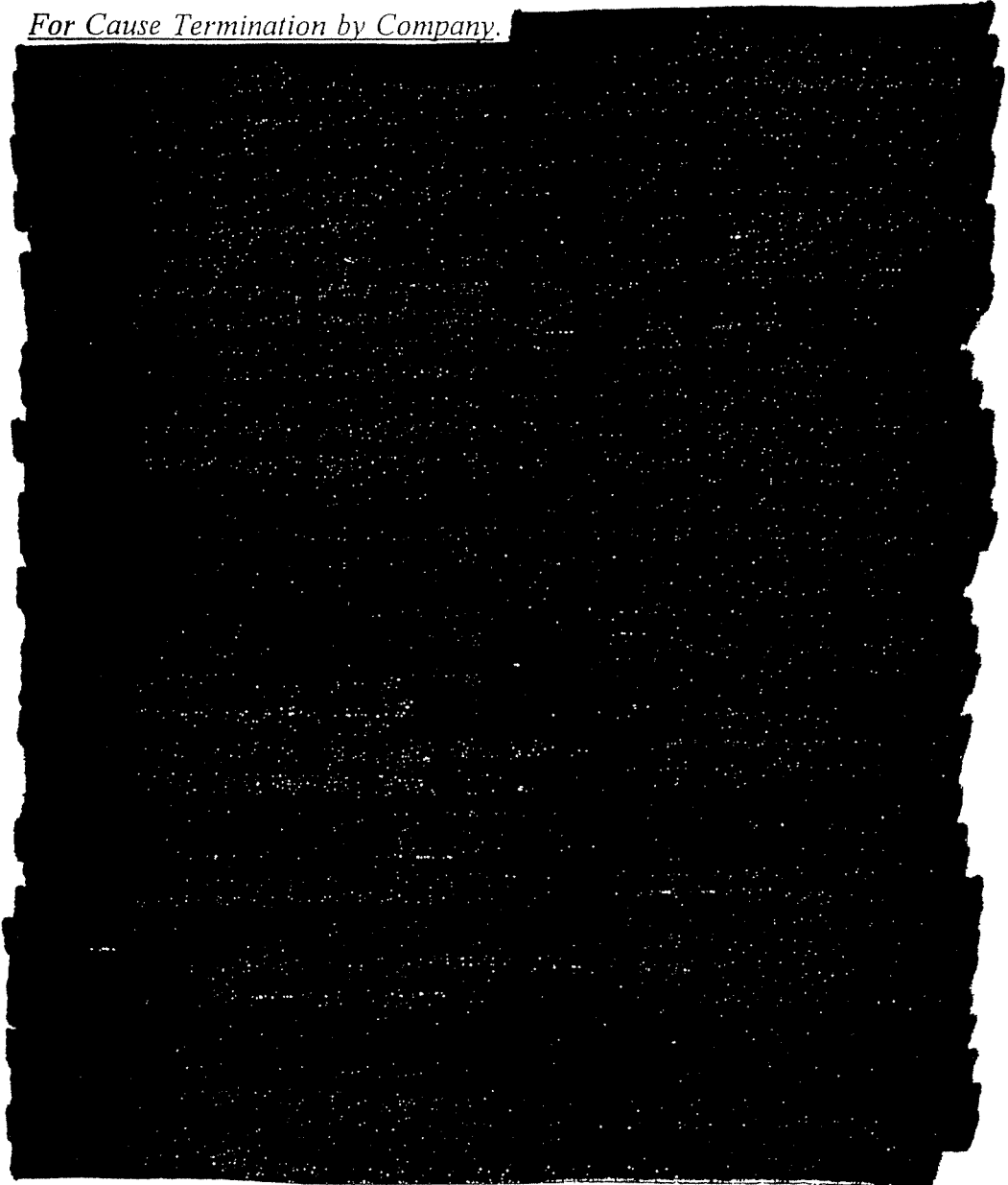
[REDACTED]

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7.4 Effect of Termination. Upon termination of this Agreement with respect to some or all of the Systems, Alliance Contractor shall immediately cease the performance of all terminated Work, and the following shall apply:

7.4.1 For Cause Termination by Company.

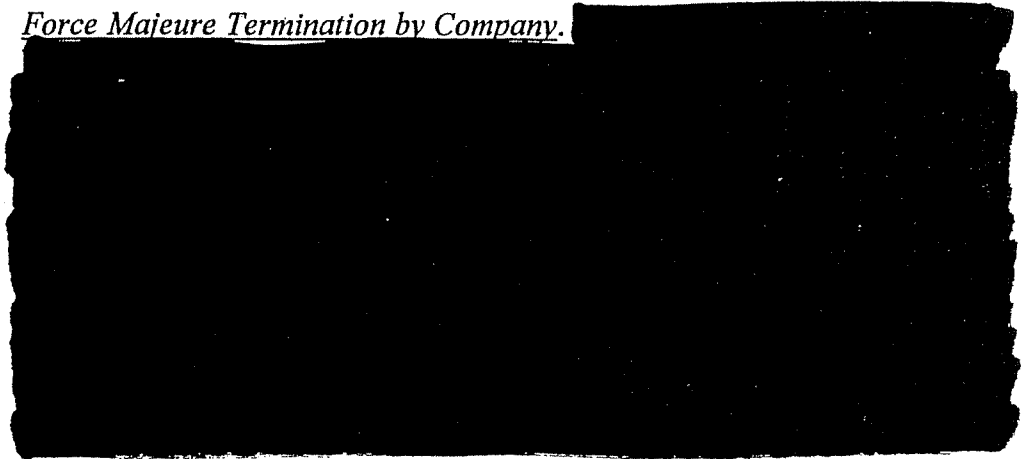


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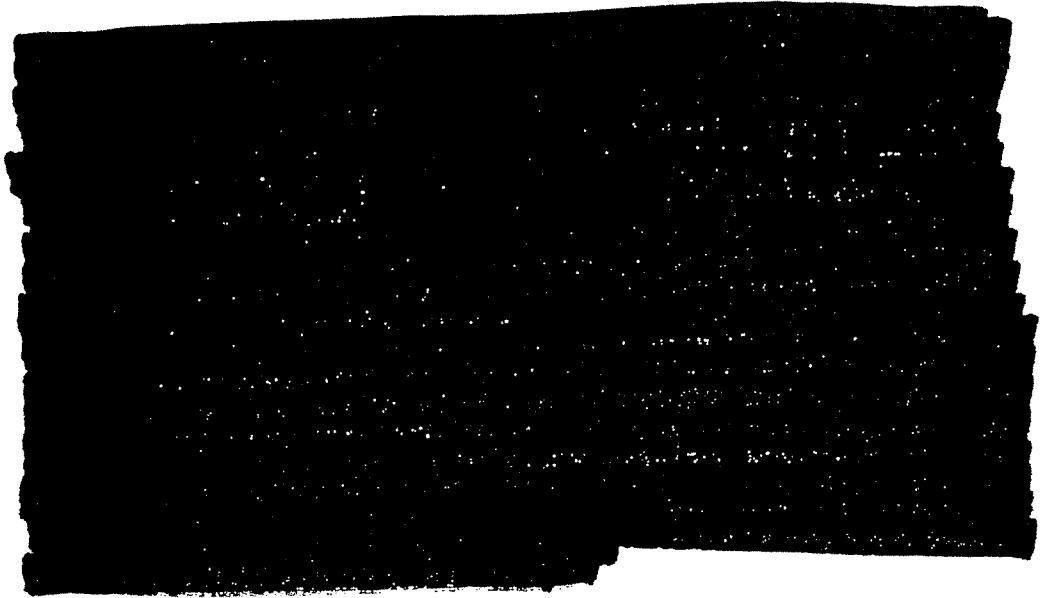
7.4.2 For Convenience Termination by Company.



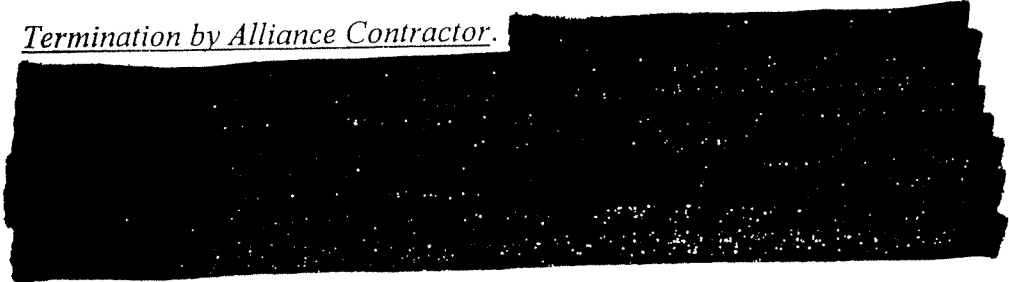
7.4.3 Force Majeure Termination by Company.



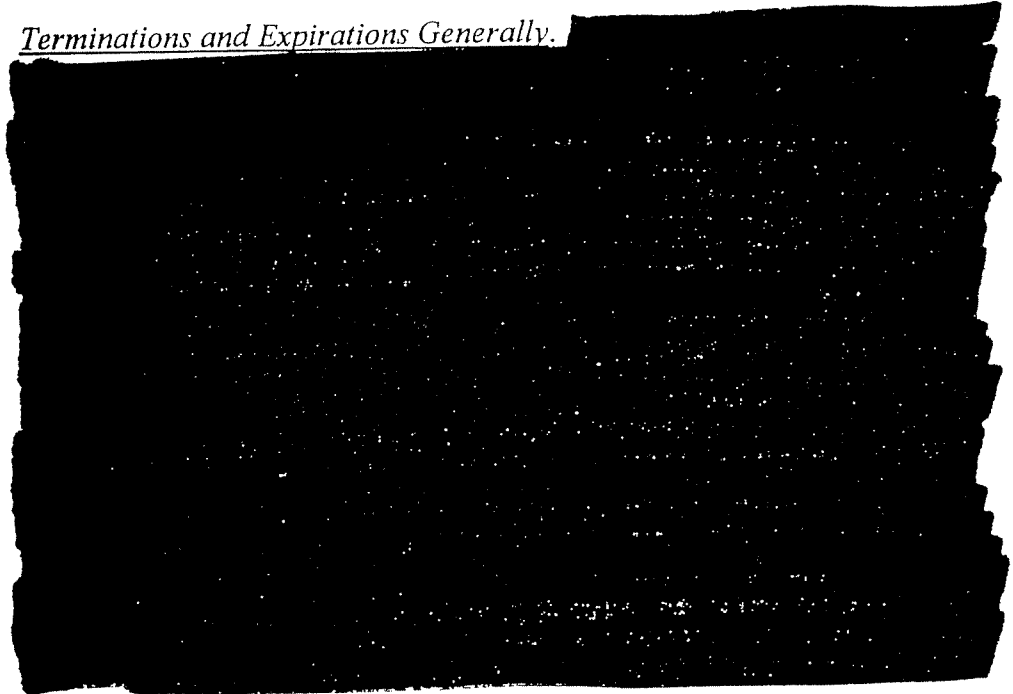
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7.4.4 Termination by Alliance Contractor.



7.4.5 Terminations and Expirations Generally.

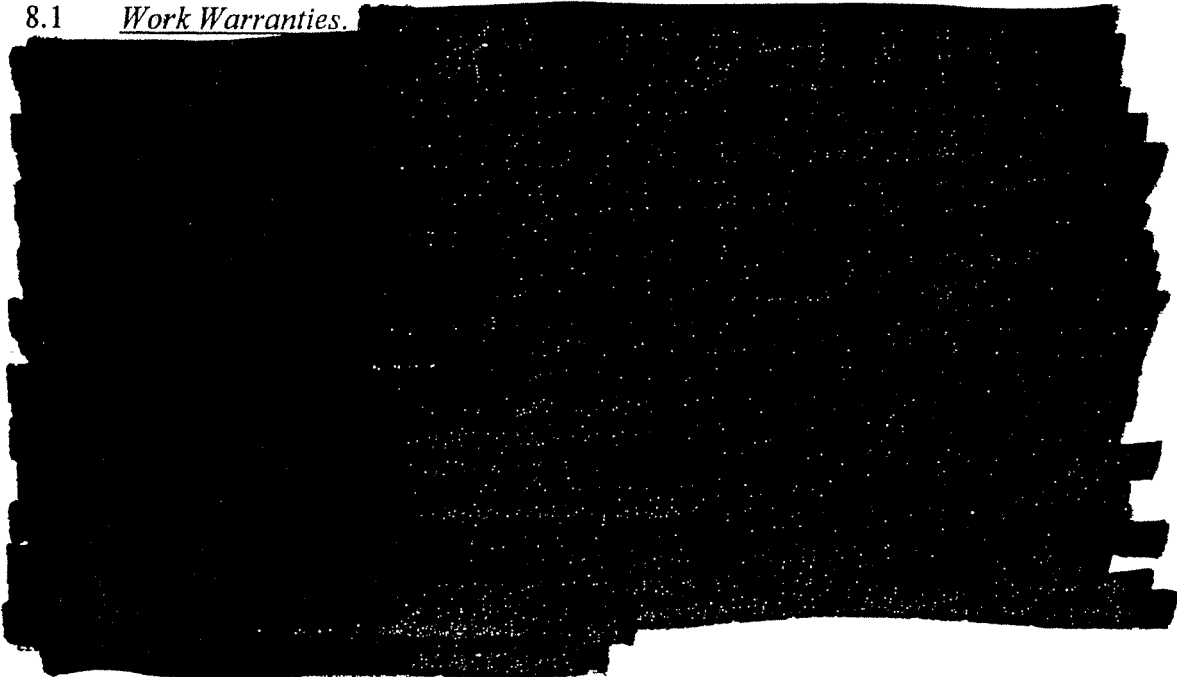




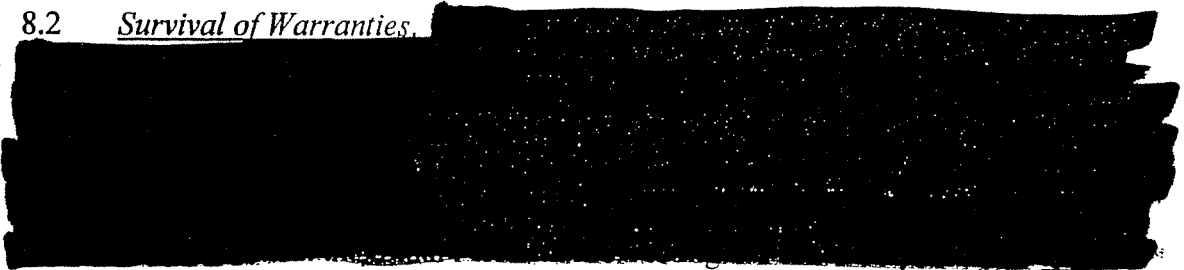
7.4.6 Effect of Termination on Drawings, Trade Secret and Proprietary Information. No termination of this Agreement shall alter Company's or Alliance Contractor's rights as set forth in Article 13.

8.0 WARRANTY

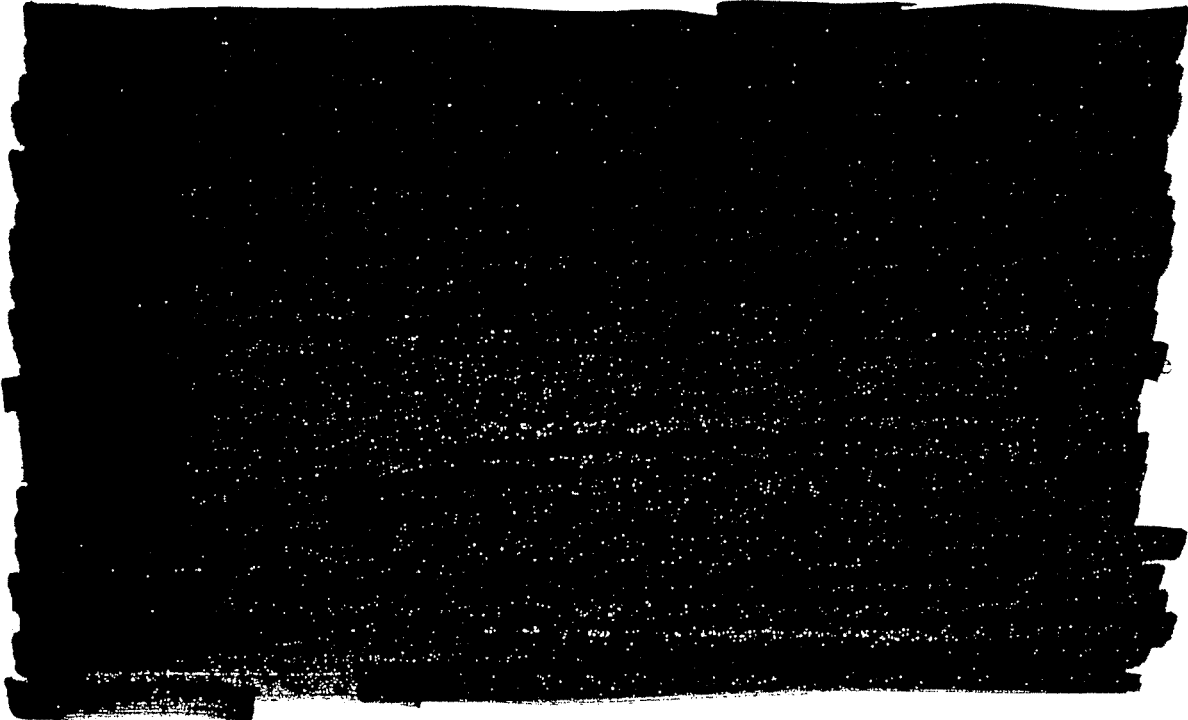
8.1 Work Warranties.



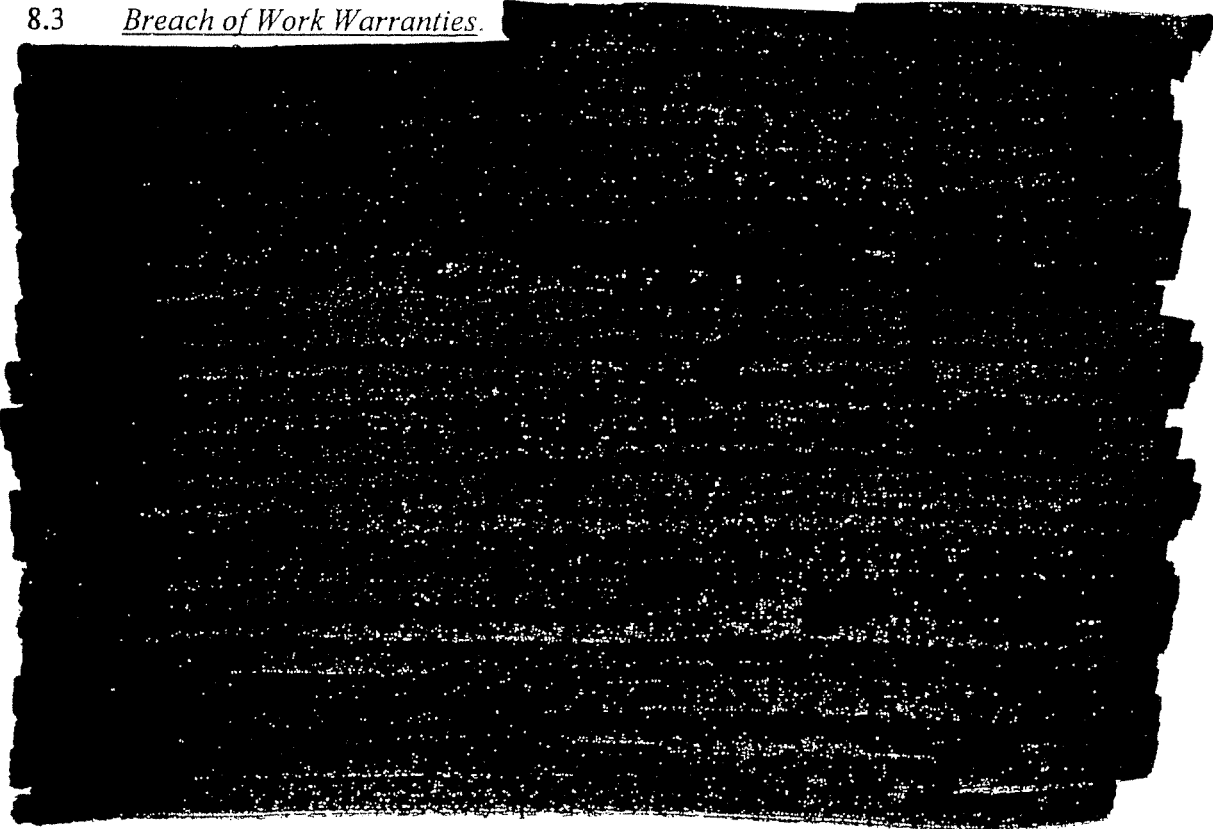
8.2 Survival of Warranties.



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8.3 Breach of Work Warranties.



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[REDACTED]

8.4 Failure to Fulfill Work Warranties.

[REDACTED]

8.5 Work Warranties with Respect to Subcontractor Performed Work.

[REDACTED]

8.6 Title Warranty and Remedy

[REDACTED]

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[REDACTED]

8.7 Performance Guarantee.

[REDACTED]

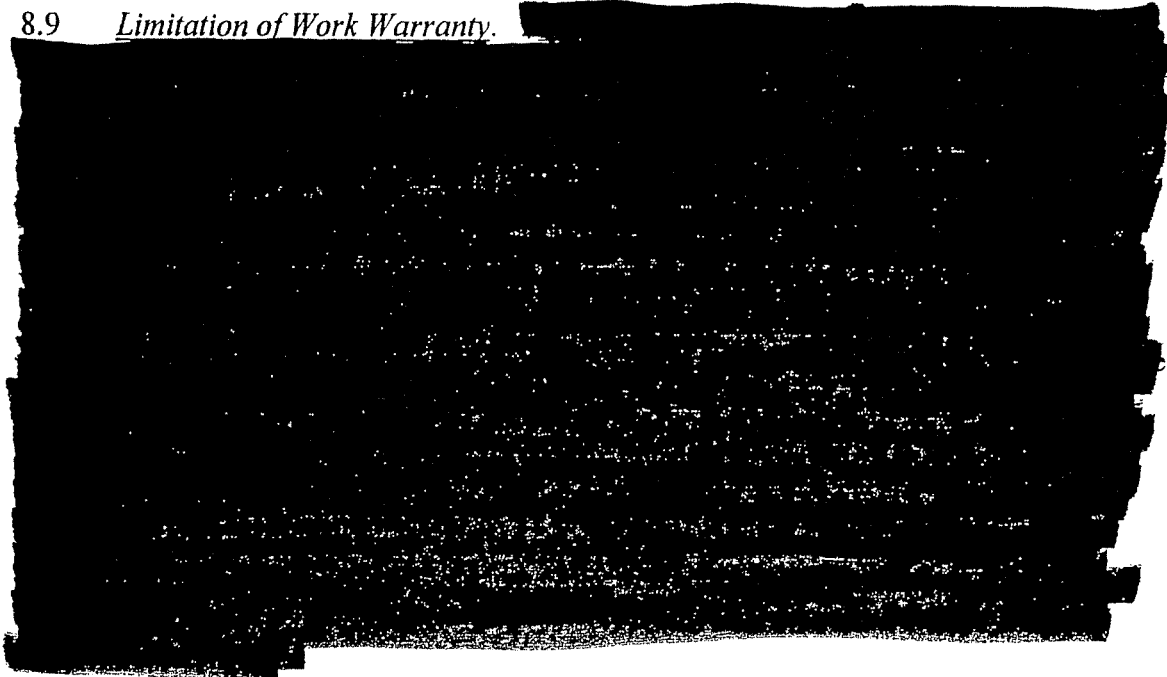
8.8 Performance Guarantee Remedies.

[REDACTED]

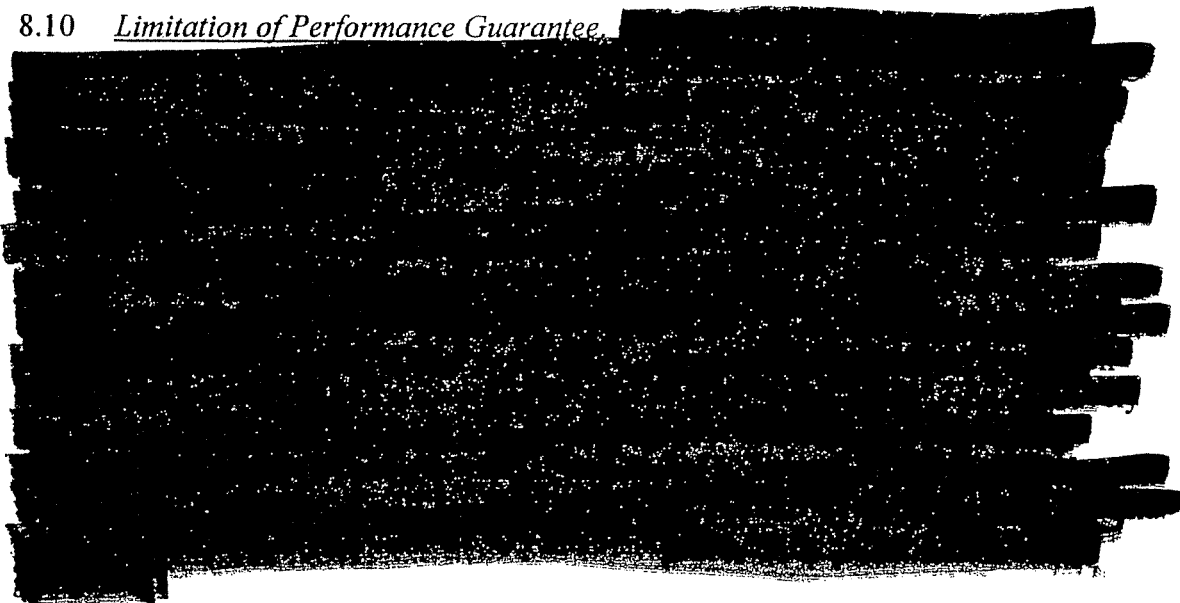
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ALLIANCE CONTRACTOR'S BREACH OF THE PERFORMANCE GUARANTEE SET FORTH IN SECTION 8.7.

8.9 Limitation of Work Warranty.



8.10 Limitation of Performance Guarantee.



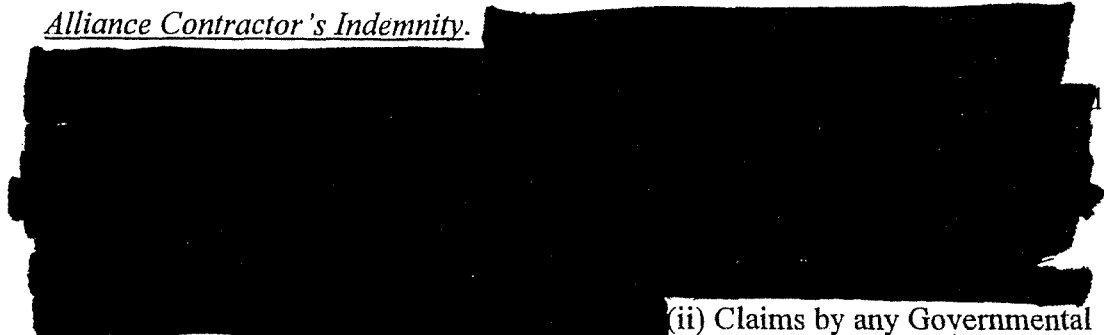
8.11 Exclusivity of Warranties and Remedies. THE WARRANTIES AND GUARANTEES PROVIDED IN THIS ARTICLE 8 ARE EXCLUSIVE AND NO OTHER WARRANTIES OR GUARANTEES OF ANY KIND, WHETHER

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STATUTORY, EXPRESS, OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE) SHALL APPLY. THE REMEDIES SET FORTH IN THIS ARTICLE ARE THE EXCLUSIVE REMEDIES OF COMPANY FOR ANY FAILURE BY ALLIANCE CONTRACTOR TO COMPLY WITH ITS WARRANTY AND GUARANTEE OBLIGATIONS SET FORTH IN THIS ARTICLE 8 (OTHER THAN WITH RESPECT TO SECTION 8.6).

9.0 INDEMNIFICATIONS AND INSURANCE

9.1 Alliance Contractor's Indemnity.



(ii) Claims by any Governmental Authority for failure to pay taxes that are the responsibility of Alliance Contractor or any of its Subcontractors or any of their respective agents or personnel with respect to any payment for the Work made to or earned by Alliance Contractor or any of its Subcontractors or any of their respective agents or personnel under this Agreement, or (iii) Claims arising out of bodily injury or Claims by any third party for property damage to the extent resulting from the negligent or intentionally wrongful acts or omissions of Alliance Contractor, its Subcontractors, agents or anyone directly or indirectly employed by them or anyone whose acts they may be responsible, provided, however, this indemnity shall not apply to the extent any such Claims or Liabilities arise or result from the negligent or intentionally wrongful acts or omissions of the Company. This indemnification, defense and hold harmless obligation shall survive the termination or expiration of this Agreement until the expiration of the applicable statute of limitations therefor. In claims against any Company Indemnitee under this Section 9.1 by an employee of Alliance Contractor, a Subcontractor, anyone employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 9.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Alliance Contractor, a Subcontractor or any other above-referenced Person under compensation acts, disability benefit acts, or other employee benefit acts.

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9.2 Defense of Claims or Actions.

9.2.1 Notice. If any Claim is made or brought by any third party with respect to which a Company Indemnatee believes it is entitled to indemnification, the Company Indemnatee shall give written notice of such Claim (a "Claim Notice") and a copy of the Claim, process and all legal pleadings with respect thereto (to the extent available to the Company Indemnatee) to the Alliance Contractor within ten (10) Days of being served with such claim, process or legal pleading. Failure to give such notice in a timely manner shall not diminish the indemnification obligations of the Alliance Contractor under this Agreement except to the extent the failure or delay in giving such notice results in actual and material prejudice to the Alliance Contractor. Any Party seeking indemnification hereunder shall deliver to Alliance Contractor a detailed schedule setting forth a description (including the nature of the Claim and the amount thereof) of each Claim providing the basis for indemnification.

9.2.2 Assumption of Defense. The Alliance Contractor shall have the right to assume the defense of any such Claim. If the Alliance Contractor wishes to assume the defense of such Claim, such assumption shall be evidenced by written notice to the Company Indemnitees. After such notice, the Alliance Contractor shall engage independent legal counsel of reputable standing selected by such Alliance Contractor and reasonably acceptable to the Company Indemnitees, to assume the defense and may contest, pay, settle or compromise any such Claim on such terms and conditions as the Alliance Contractor may determine. If the Alliance Contractor assume the defense of any such Claim, the Company Indemnitees shall have the right to employ their own counsel, at their own expense, and if the Company Indemnitees shall have reasonably concluded and specifically notified the Alliance Contractor either that there may be specific defenses available to them which are different from or additional to those available to the Alliance Contractor or that such Claim involves or could have a material adverse effect upon them with respect to matters beyond the scope of the indemnity provided hereunder, then the counsel representing them, to the extent made necessary by such defenses and to the extent of matters beyond the scope of the indemnity provided hereunder, shall have the right to direct such defenses of such Claim on their behalf and with respect to matters beyond the indemnity provided hereunder, at such Company Indemnatee's cost and expense. Independent Counsel. If the Alliance Contractor shall not agree in writing to assume the defense of such Claim, the Company Indemnitees may engage independent counsel of reputable standing selected by them to assume the defense and may contest, pay,

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settle or compromise any such Claim on such terms and conditions as the Company Indemnitees may determine; provided, however, that the Company Indemnitees shall not settle or compromise any Claim without the prior consent of the Alliance Contractor if such Alliance Contractor acknowledges in writing its liability for any Liabilities incurred or required to be paid in respect of such Claim and provide reasonable assurances of its ability to satisfy any such Liabilities.

9.2.4 Cooperation. The Company Indemnitees and the Alliance Contractor shall cooperate in good faith in connection with such defense and all such parties shall have the right to employ their own counsel, but, except as provided above, the fees and expenses of their counsel shall be at their own expense. The Company Indemnitees or the Alliance Contractor, as the case may be, shall be kept fully informed of such Claim at all stages thereof whether or not they are represented by their own counsel.

9.2.5 Settlement. The Alliance Contractor shall not, except with the consent of the Company Indemnitees, enter into any settlement or consent to entry of any judgment on behalf of any Company Indemnitee that (i) does not include as an unconditional term thereof the giving by the Person or Persons asserting such Claim to all Company Indemnitees of an unconditional release from all liability with respect to such Claim and (ii) includes a statement as to an admission of fault, culpability or failure to act by or on behalf of any Company Indemnitee, provided, however, that for settlements with any Governmental Authority, the consent of the Company Indemnitees shall not be unreasonably withheld or delayed and in making such determination, the Company Indemnitee shall exercise its reasonable business judgment (without taking into account the indemnity afforded hereby) consistent with usual and customary settlement terms, conditions and practices for the applicable Governmental Authority.

9.3 Liens.

[REDACTED]

[REDACTED] Alliance Contractor further agrees to cause each Subcontractor to similarly release, disclaim and waive its Lien rights as a condition of performing any portion of the Work hereunder. Alliance Contractor shall notify Company of all substantial claims and promptly settle or pay any undisputed claims of any and all Subcontractors. Alliance Contractor shall not suffer to exist and shall promptly discharge and bond over or obtain release for any actual or claimed Liens, including Liens by Alliance Contractor, its Subcontractors and others for whom Alliance Contractor is responsible, and shall

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indemnify, defend and hold harmless Company from and against all costs, charges and expenses including attorneys' fees and charges, and pre- and post-judgment interest that the Company may incur resulting from or arising out of any such Liens. Alliance Contractor's obligations with respect to Liens covered by this Section 9.3 are subject to the following terms:

- 9.3.1 the provisions of 9.2.1 shall apply;
- 9.3.2 Alliance Contractor is not liable for any additional expenses resulting from Company failing to reasonably cooperate in the defense of any such Liens at Alliance Contractor's expense (as an Alliance Contractor's Expense); and
- 9.3.3 Alliance Contractor has sole control of the defense and settlement for any such Liens, provided that Alliance Contractor shall promptly confirm in writing its obligation to indemnify, defend and hold Company harmless from and against all costs and expenses with respect to such Lien as an Alliance Contractor Expense. Alliance Contractor shall take prompt steps to discharge any such Liens filed against Company, the Systems, or upon any equipment or structures encompassed therein, or upon the premises upon which they are located. If the Alliance Contractor fails to promptly (but in no event later than thirty (30) Days after the filing or creation of same) discharge or bond the payment of any such Liens, Company may promptly notify Alliance Contractor in writing and take any action to satisfy, defend, settle or otherwise remove such Lien at Alliance Contractor's expense, including attorneys' fees and charges. Company shall have the right but not the obligation to (i) deduct any such expenses from any payment due, or which may become due, to Alliance Contractor or and/or (ii) collect from Alliance Contractor any balance remaining. Alliance Contractor shall have the right to contest any such Liens, provided it first provides to Company (on behalf of Company) a bond to assure payment reasonably satisfactory to Company, in the amount of such Liens.

9.4 Insurance

9.4.1 Policies.



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9.4.1.1 Workers' Compensation and Employer's Liability Policy: Prior to the start of the Work, Alliance Contractor shall submit evidence of Workers' Compensation and Employer's Liability Insurance coverage for all of its workers, and each such policy shall include:

9.4.1.1.1 Workers' Compensation in accordance with the laws of the state where the Work is performed;

9.4.1.1.2 Employer's Liability with a limit of [REDACTED]

9.4.1.1.3 [REDACTED]

9.4.1.1.4 [REDACTED]

9.4.1.2 Commercial General Liability Policy: Prior to the start of Work, Alliance Contractor shall provide [REDACTED]

9.4.1.2.1 [REDACTED]

9.4.1.2.2 [REDACTED]

9.4.1.2.3 [REDACTED]

9.4.1.2.4 [REDACTED]

9.4.1.2.5 [REDACTED]

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9.4.1.3 [Redacted]

9.4.1.4 [Redacted]

9.4.1.5 [Redacted]

9.4.1.6 [Redacted]

9.4.2 Professional Liability. [Redacted]

9.4.3 Builders' Risk Policy. [Redacted]

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with the performance of the Work). Alliance Contractor shall receive a waiver of subrogation on any such policy.

9.4.4 OCIP. [REDACTED]

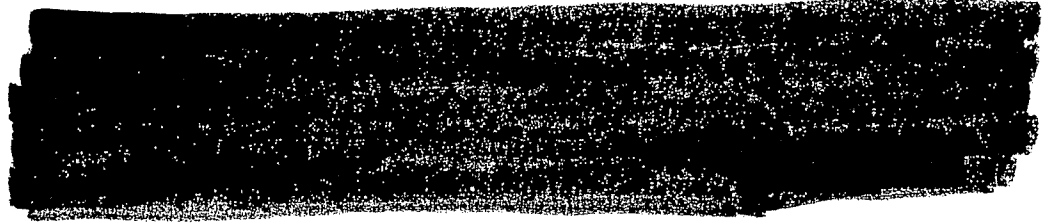
9.4.5 Quality of Insurance Coverage. [REDACTED]

9.4.6 Implication of Insurance. [REDACTED]

9.4.7 Other Notices. [REDACTED]

9.4.8 Reimbursement for Insurance. [REDACTED]

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10.0 CHANGES IN SCOPE OR EVENTS

10.1 Change Orders. Upon notice to Alliance Contractor, Company may change (whether through increase, decrease, or modification) the Work or the timing of any event applicable to the Work in Company's sole discretion. If such change does not involve (a) a change in Scope or of any of the Targets, or (b) any increase in Reimbursable Expenses in excess of [REDACTED] then, upon the oral approval of Company's project manager at the Job Site, Alliance Contractor shall perform the change. Otherwise, promptly following such notice, Company shall clarify to Alliance Contractor, if Alliance Contractor so requests, the extent of such change. Prior to Alliance Contractor's commencement of Work encompassing such change, Alliance Contractor shall submit by notice to Company an appropriate description of the change, along with a detailed estimate of the effects of such change on the Targets and any other obligation of Alliance Contractor under this Agreement (including without limitation any performance guarantee or warranty obligations). If Company agrees with the descriptions of the change and the changes on such Targets and obligations, then Company shall execute such submittal and the change shall thereafter become part of the Work and the Targets will thereafter be deemed to have been revised in accordance with such submittal to reflect the change. If Company does not agree with the description of the change, the Parties shall negotiate to reach agreed descriptions of the change and revisions to the appropriate Target(s). In the event that the Parties do not agree, then the change shall be deemed to be as described by Company and the adjustments to the Targets and obligations shall be equitable adjustments appropriate for such changes. Alliance Contractor shall not perform changes, whether or not requested by Company, without following the preceding procedure.

10.2 Suspension of Work. Company may at any time and from time to time by notice to Alliance Contractor suspend further performance of all or any portion of the Work by Alliance Contractor. Said notice of suspension shall specify the date of suspension and the estimated duration of the suspension. Upon receiving any such notice of suspension, Alliance Contractor shall promptly suspend further performance of the Work to the extent specified and during the period of such suspension shall properly care for and protect all Work in progress and all

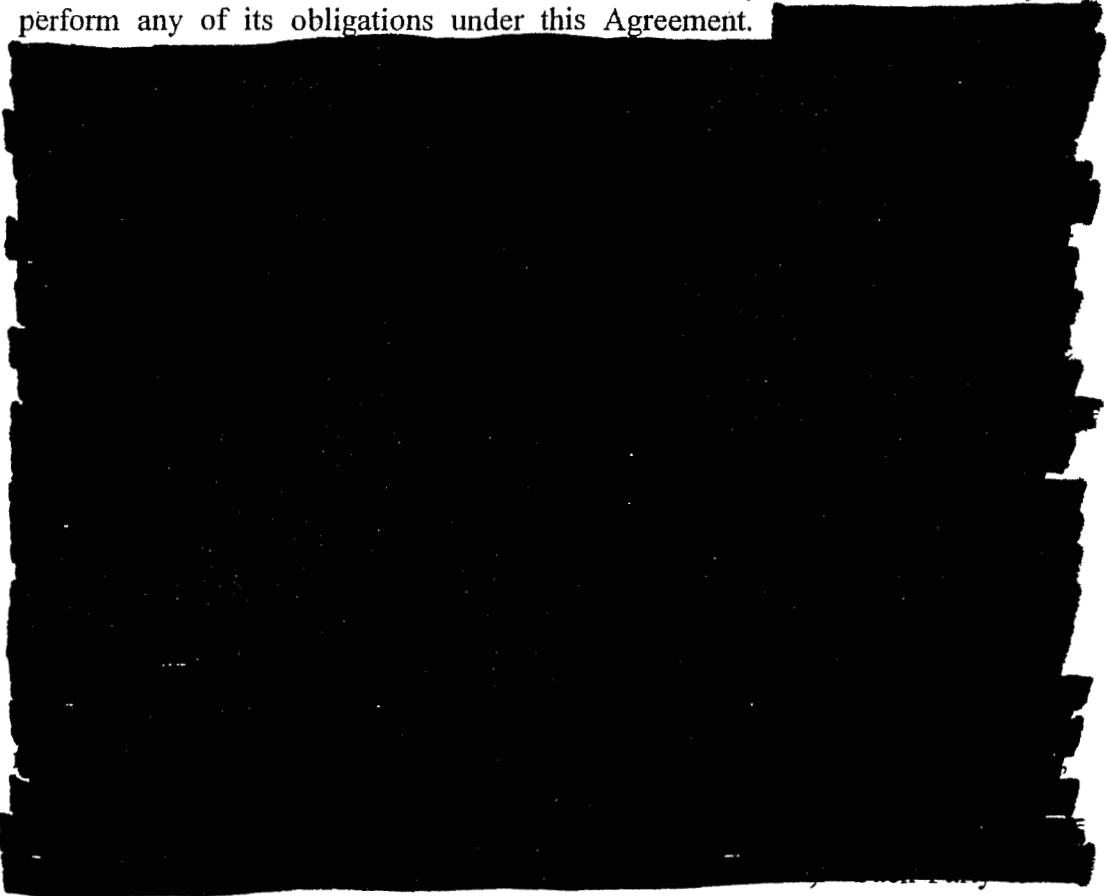
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materials, supplies, and equipment. Alliance Contractor shall properly protect the environment from exposure to hazardous materials that Alliance Contractor has on hand for performance of the Work in accordance with Applicable Law. Upon request of Company, Alliance Contractor shall promptly deliver to Company copies of outstanding Subcontracts and shall take such action relative to such Subcontracts as Company may direct. Company may, at any time, withdraw the suspension of the Work as to all or part of the suspended Work by notice to Alliance Contractor, specifying the effective date and scope of the withdrawal, and Alliance Contractor shall resume diligent performance of the Work for which the suspension is withdrawn on the specified effective date. If Alliance Contractor believes that any such suspension or withdrawal of suspension justifies modification of the Targets, Alliance Contractor shall give Company notice of such, and the suspension or withdrawal shall be treated as a change and managed pursuant to Section 10.1.

- 10.3 Claims. Within seven (7) calendar Days following (a) Alliance Contractor's knowledge of the happening of any event that Alliance Contractor believes may give rise to a claim by Alliance Contractor for change in the Targets or limitation of warranty or performance guarantee or (b) the making of any claim by any Subcontractor for compensation beyond that set forth in the Subcontract or the emergence of a dispute with a Subcontractor and, subject to the provisions of Section 10.1, Alliance Contractor shall give Company reasonable written notice thereof. With regard to items described in Subsection (a) above, such notice shall include or be followed within a reasonable amount of time by a statement supporting Alliance Contractor's claim, which statement shall include Alliance Contractor's detailed estimate and description of the change in the Targets or limitation of warranty or performance guarantee occasioned thereby. If requested by Company, Alliance Contractor shall substantiate its claim with documents satisfactory to Company and subject to Company's verification. Company shall not be liable for, and Alliance Contractor hereby waives, any claim or potential claim of Alliance Contractor (including claims for reimbursement of amounts paid to a Subcontractor with respect to claims or disputes described in Subsection (b) above) with respect to any claim, dispute, or event if Alliance Contractor fails to give Company notice of such claim, dispute, or event in accordance with the provisions of this Section 10.3 (other than the provisions stating when notice is to be given) within 30 days of the date that any member of Alliance Contractor's management (including, program manager, program site manager, or site manager) knew or should have known of such fact or event. Alliance Contractor shall continue performance of the Work during the time that any claim hereunder by Alliance Contractor is pending.



10.4 Force Majeure. Neither Party shall be liable for any damages for any failure to perform, or for any delays or interruptions in performing any of such Party's obligations under this Agreement due to events or circumstances beyond such Party's reasonable control (a "Force Majeure Event"), including: acts of God, fires, explosions, floods, earthquakes, riots, civil insurrection, acts of the public enemy or terrorism, strikes, lockouts, acts or failures to act of civil or military authority or the other Party, and acts or omissions of a governmental entity; provided, however, a Force Majeure Event shall only exist if and only to the extent that (i) such condition, event, or circumstance is not within the reasonable control of the Party affected, (ii) such condition, event, or circumstance, despite the exercise of reasonable diligence, cannot be prevented, avoided, or removed by such Party, (iii) such condition, event, or circumstance materially and adversely affects the ability of the affected Party to fulfill its obligations under this Agreement, (iv) the affected Party has taken all reasonable precautions, due care, and reasonable alternative measures in order to avoid the effect of such condition, event, or circumstance on the affected Party's ability to fulfill its obligations under this Agreement and to mitigate the consequences thereof, and (v) such condition, event, or circumstance is not the result of any failure of such Party to perform any of its obligations under this Agreement.



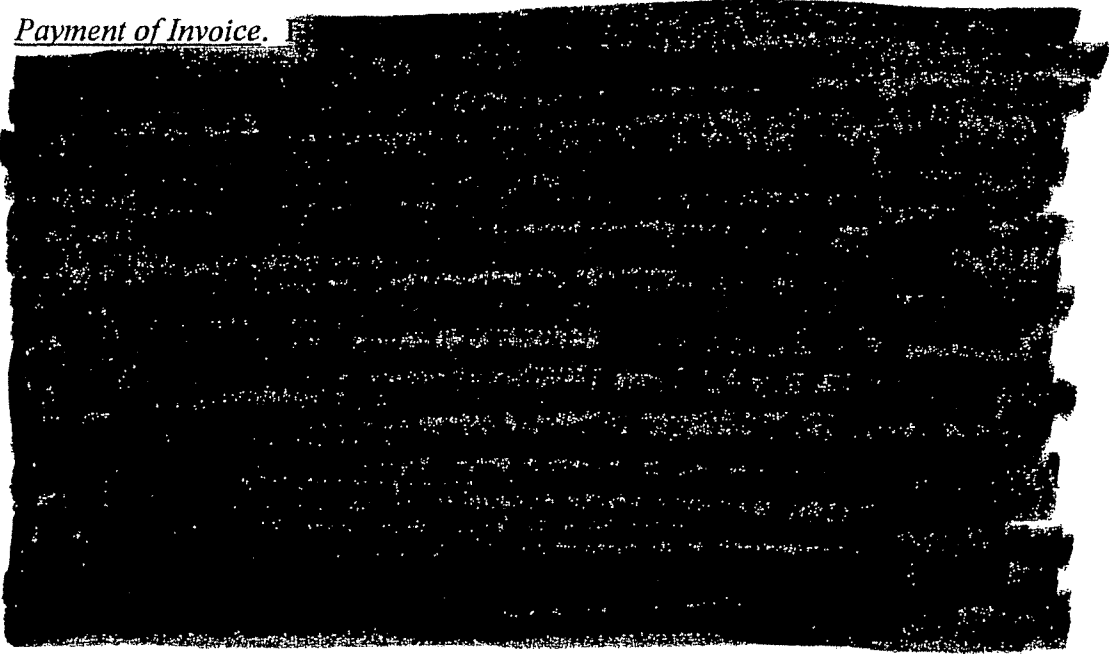
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advise the other Party immediately of any anticipated and actual failure, delay, or interruption and the cause and estimated duration of such event. Any such failure, delay, or interruption, even though existing on the date of this Agreement or on the date of the start of the Work, shall require Alliance Contractor to within 5 Days submit a recovery plan detailing the manner in which the delay shall be remedied, the revised schedule, and any added expenses. Alliance Contractor shall diligently proceed with the Work notwithstanding the occurrence thereof. A Force Majeure Event shall apply only to the part of the Work affected by the particular failure, delay, or interruption, and shall not apply to any unaffected part thereof.

11.0 PAYMENT

11.1 Invoice. On or about the first and fifteenth day of each calendar month following execution of this Agreement, Alliance Contractor shall furnish Owner with an invoice with respect to the Work in such format as Company shall reasonably request. Each such invoice shall include Alliance Contractor's Reimbursable Expenses for Alliance Contractor (but not Subcontractor) labor cost incurred since the date of the previous invoice. The mid-month invoices shall also include all other Reimbursable Expenses incurred since the date of the previous mid-month invoice. As provided in Section 11.2, all invoices will also include a portion of Base Fee with respect to the Reimbursable Expenses invoiced. Each invoice shall set forth a detailed listing of the Reimbursable Expenses being invoiced.

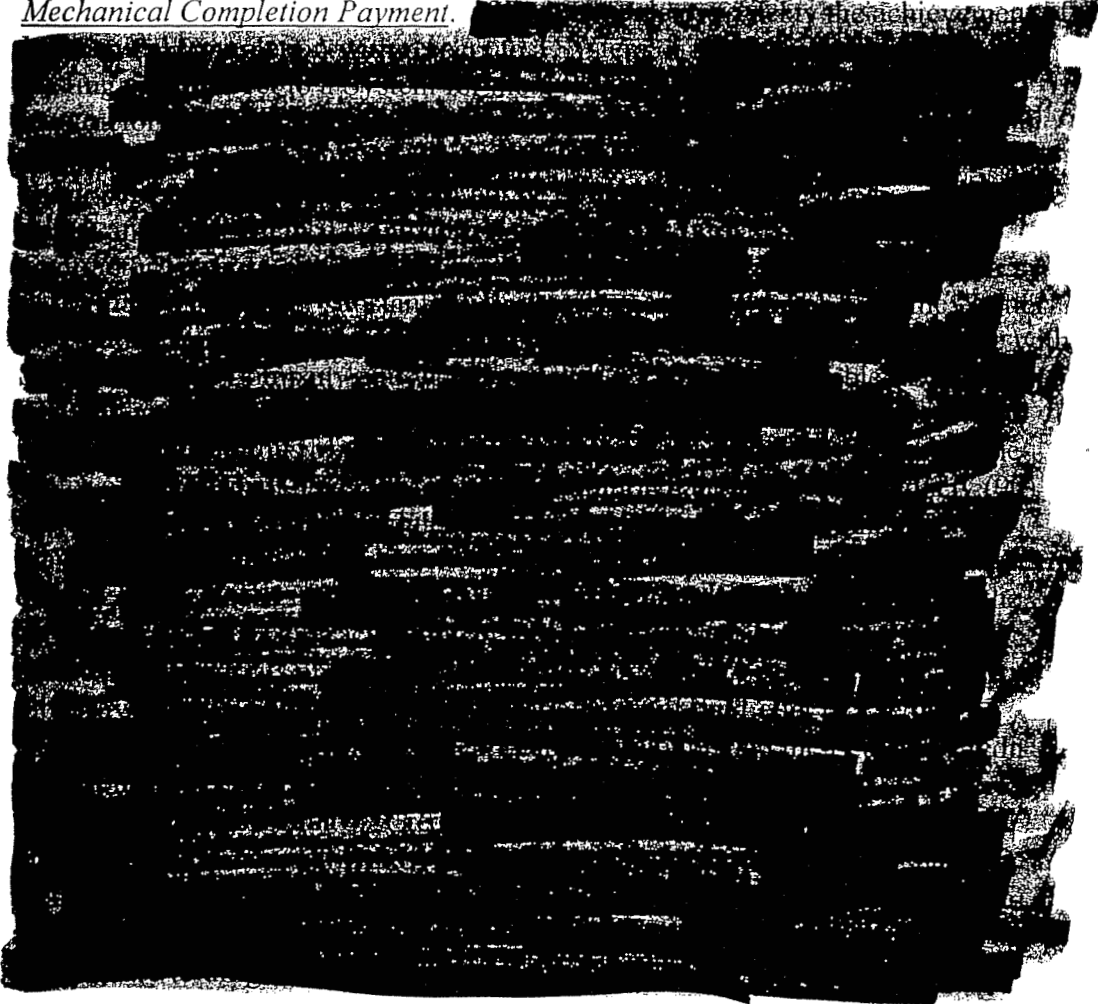
11.2 Payment of Invoice. [REDACTED]



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11.3 Mechanical Completion Payment.



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[REDACTED]

11.4 *Final Payment*

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[Handwritten signature]



11.5 Invoices. Invoices shall include reference to Company's internal payment processing requirements (i.e., "Contract No." purchase order number, project account numbers, etc.) which are supplied to Alliance Contractor by Company and shall be prepared in one original and copies distributed as follows:

Original: Kentucky Utilities Company
c/o LG&E Services Company
820 West Broadway (40202)
Louisville, Kentucky
ATTN: Eileen L. Saunders,
Manager, FGD Projects

Copy: Kentucky Utilities Company
c/o LG&E Services Company
820 West Broadway (40202)
Louisville, Kentucky
ATTN: Scott Straight,
Director, Project Engineering

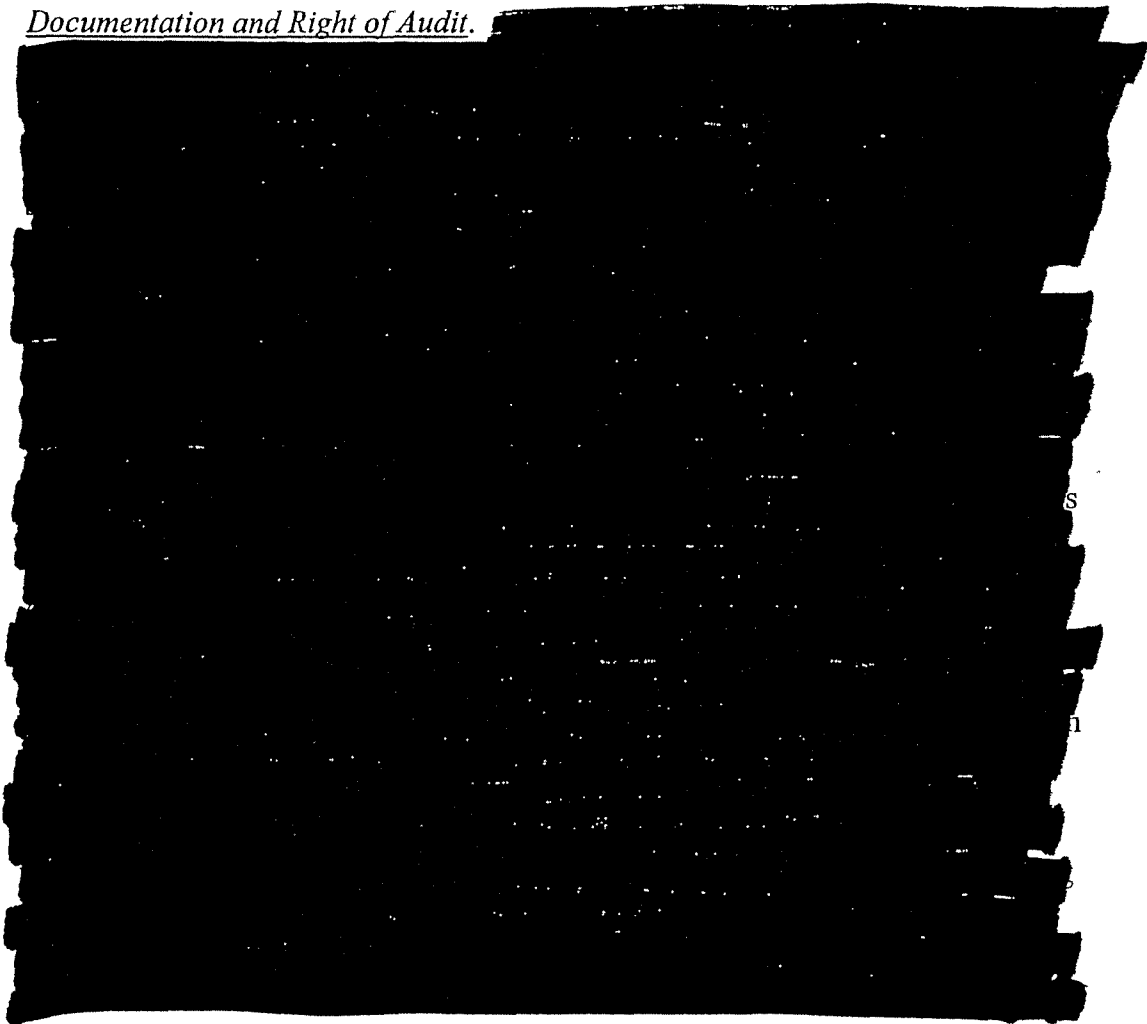
11.6 Travel. Travel costs will be No Fee Reimbursable Expenses hereunder, but only to the extent that all travel relates to the performance of the Work, is reasonably necessary, appropriate, and not excessive in Company's reasonable discretion, and is in compliance with Alliance Contractor's travel policy which has been provided to Company under cover of a memo. All other travel expenses are Alliance Contractor Expenses. Company may audit and reject travel costs on a case by case basis in the event such costs are not in accordance with this Section. Documentation must accompany any invoice which contains charges for travel. This documentation should include the purpose of such travel and the location, including company name and address.

11.7 Taxes, Duties, and Fees. Alliance Contractor agrees to cooperate with Company as Company shall request to ensure that, to the extent available, Alliance Contractor and its Subcontractors utilize Kentucky sales or use tax exemptions available to Company. Alliance Contractor shall pay when due (i) all taxes

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(including but not limited to state sales tax), duties, fees, and other assessments of whatever nature imposed on Alliance Contractor or its Subcontractors by governmental authorities and applicable to this Agreement and the performance of the Work and (ii) all payroll taxes and contributions that are measured by remuneration paid to persons employed by Alliance Contractor or its Subcontractors in connection with the Work or that arise by virtue of their employment and that now or hereafter are imposed by any governmental authority. All such taxes, duties, and fees (excluding taxes on the gross revenue or net income of Alliance Contractor, which are in no event reimbursable) are No Fee Reimbursable Expenses, except to the extent included in any multipliers described in Attachment 1.A (such taxes are not separately reimbursable) and except that any interest or penalties associated with Alliance Contractor's failure to file or pay such taxes, duties, and fees in a timely fashion (other than in reliance on instructions from Company) shall be an Alliance Contractor Expense.

11.8 Documentation and Right of Audit.



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11.9 Offset.



12.0 NOTICES

All references in this Agreement to a notice (other than notices which are explicitly to be given to the Company's Representative) shall mean a notice in writing, signed by a duly authorized representative of the Party giving such notice and shall be deemed given when received by personal delivery, certified mail, recognized express courier, or facsimile (followed by certified mail or recognized express courier) to the other Party at the address designated below:

Company's address: Kentucky Utilities Company
c/o LG&E Services Company
820 West Broadway
Louisville, Kentucky 40202
ATTN: Eileen L. Saunders,
FGD Project Manager
(502) 627-2431
(502) 627-3502 (FAX)

Copies to: Kentucky Utilities Company
c/o LG&E Services Company
820 West Broadway
Louisville, Kentucky 40202
ATTN: Scott Straight,
Director, Project Engineering
(502) 627-4942
(502) 627-3502 (FAX)

And

LG&E Energy LLC
220 West Main Street

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Louisville, Kentucky 40202
ATTN: General Counsel
(502) 627-3665
(502) 627-4622 (FAX)

Alliance Contractor's Address: Fluor Enterprises, Inc.
100 Fluor Daniel Drive
Greenville, SC 29607-2770
ATTN: Nick Saliagas,
KU FGD Program Manager
864-281-4832
864-676-7088 (FAX)

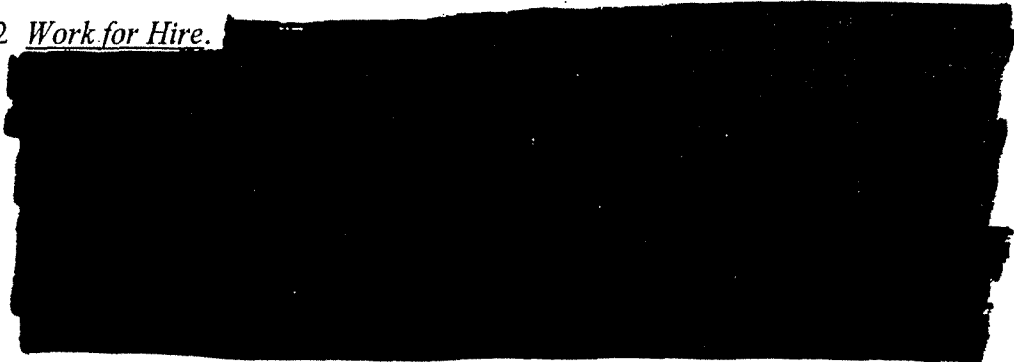
Copies to: Fluor Enterprises, Inc.
100 Fluor Daniel Drive
Greenville, SC 29607-2770
ATTN: Don Broeils,
Director, Plant Betterment
864-281-4078
864-676-7589 (FAX)

13.0 INTELLECTUAL PROPERTY

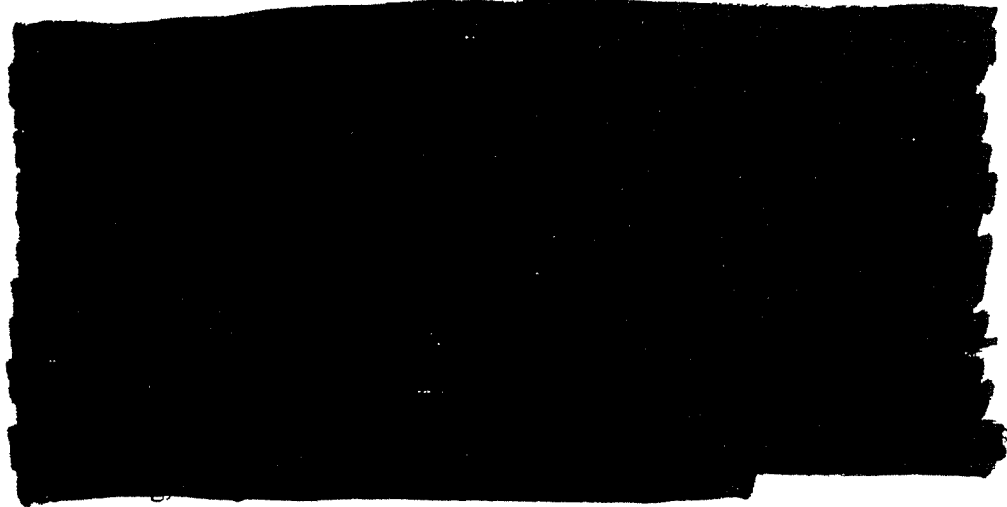
13.1 Ownership/License.

13.1.1 Warranty. Subject to Company' license rights hereunder and Section 13.2, Alliance Contractor warrants that it owns, controls, or has the rights to the Design Documents and the Intellectual Property therein contained necessary to grant Company all rights granted in Section 13.1, all at no additional expense to Company.

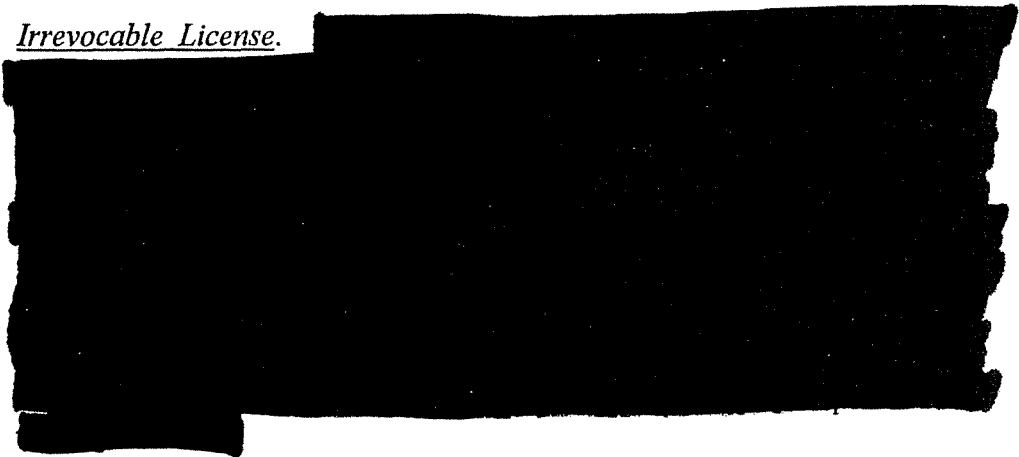
13.1.2 Work for Hire.



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13.1.3 Irrevocable License.



13.1.4 Subcontractor Licenses. Alliance Contractor shall obtain the same rights and/or licenses with respect to Information and Intellectual Property from, and with respect to any Work performed by, any Subcontractor as are necessary to provide Company with the rights and licenses to which they are entitled under this Agreement. Without limiting the foregoing, such rights shall include the right for Company to receive or obtain design and manufacturing information reasonably necessary for Company to obtain, directly or indirectly (e.g., by third party manufacture), parts for any equipment provided by such Subcontractors.

13.1.5 Proprietary Calculations. Upon request by Company, Alliance Contractor will (and will cause all applicable Subcontractors to) provide any confidential or proprietary design calculations or other formulas not otherwise provided to Company hereunder which may be useful to Company in the operation, maintenance, repair, modification, improvement, and

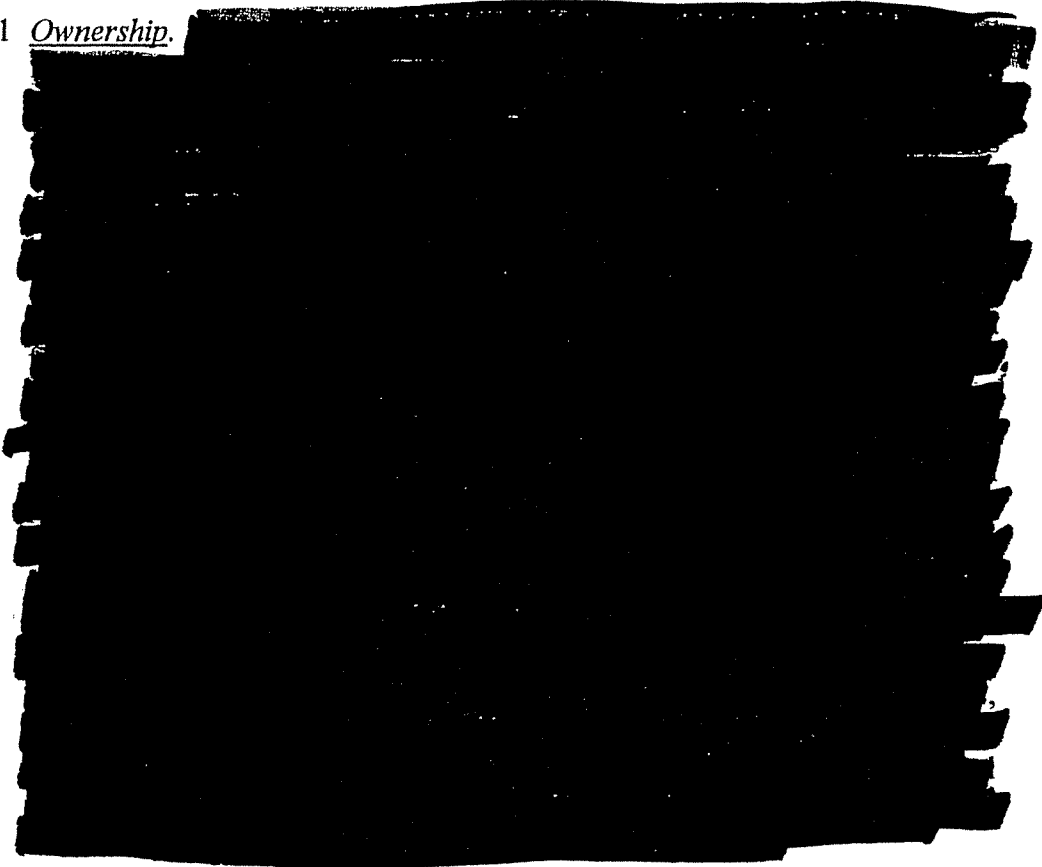
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alteration of any System, any unit or component thereof, and any successor thereto.

13.1.6 Non-exclusive License. Company hereby grants Alliance Contractor a personal, limited, nonexclusive, and nontransferable license to use any proprietary information received from Company for the sole purpose of performing the Work. The term of such license shall end upon the earliest of (i) Final Completion; (ii) termination of this Agreement, or (iii) Company's revocation of such license. Without Company's prior written consent, any transfer of control by Alliance Contractor shall void such license. Alliance Contractor shall indemnify, hold harmless and defend Company from any misuse of the license granted herein.

13.2 Inventions of Alliance Contractor.

13.2.1 Ownership.



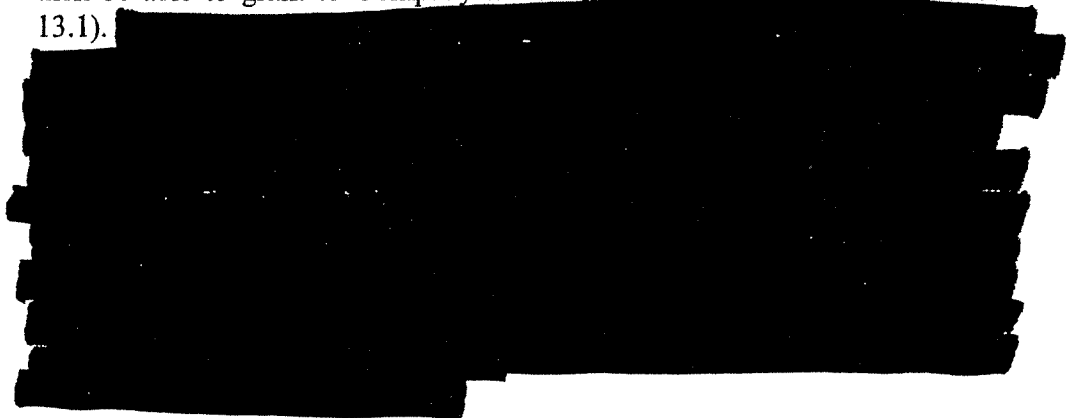
13.2.2 Company As Attorney-in-Fact. If Company is unable, after reasonable effort, to secure Alliance Contractor or another person or entity's signature on any document or instrument necessary to obtain or secure letters patent or

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other analogous protection relating to an Invention, for any reason whatsoever, Alliance Contractor and anyone under its direction or control hereby irrevocably designates and appoints Company and its respective duly authorized officers and agents as Alliance Contractor's agent and attorney in fact, authorized to act for and on Alliance Contractor's behalf and stead to execute or cause the execution of and file any such application, declaration or assignation, or other document and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent or other Intellectual Property protection thereon with the same legal force and effect as if executed by Alliance Contractor.

13.3 Indemnity Against Intellectual Property Infringement.

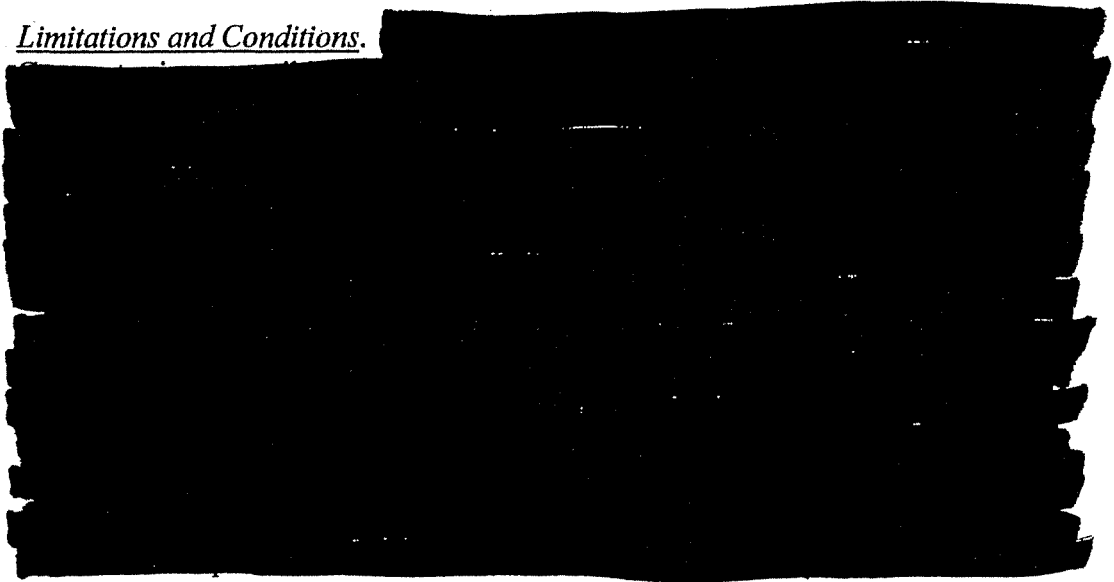
13.3.1 Indemnity. Alliance Contractor warrants that all Intellectual Property rights which may exist in the Information or other items to be furnished to Company hereunder in connection with the Work are now (or shall at their creation be) vested in Alliance Contractor (or that Alliance Contractor shall then be able to grant to Company the license rights referred to in Section 13.1).



13.3.2 Claim of Infringement. If any of the Work or the System (or any part or component thereof) becomes subject to a claim of infringement or any related injunction, or if Alliance Contractor believes that it may be subject to such a claim, Alliance Contractor shall remove such infringement as an Alliance Contractor Expense by any reasonable means, including (i) replacing or modifying the allegedly infringing element(s) without loss of functionality, or (ii) securing for Company the right to continue to use such element(s); provided, that this obligation shall not apply to infringements to the extent they arise from a Company Design or Specification Override or as a result of the use of a Company Required Subcontractor.

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- 13.3.3 Indemnity by Company. Company shall indemnify and hold harmless Alliance Contractor against all liabilities based upon a breach by Company of the license granted under Section 13.1.3.
- 13.4 Alliance Contractor's Responsibility for Litigation. If any Claim for infringement results in a Claim required to be indemnified under Section 13.3, the procedures for such indemnification shall be as set forth in Article 9.0.
- 13.5 Assistance. If Alliance Contractor has charge of any suit brought against Company pursuant to Section 13.3.1, the Company at Alliance Contractor's expense (which shall be an Alliance Contractor Expense), shall render such assistance as Alliance Contractor may reasonably request in the defense of such suit except Company has the right to be represented therein by counsel of its own choice and at its own expense.
- 13.6 Injunction. If Company or Alliance Contractor is/are enjoined from completing a System or any part thereof or from the use, operation or enjoyment of a System or any part thereof or any permitted use of the Information or any Intellectual Property as a result of any Claim, Alliance Contractor shall, as an Alliance Contractor Expense, exercise its best efforts to have such injunction removed. Any failure to secure such injunction shall not constitute an event of Force Majeure hereunder.
- 13.7 Alliance Contractor's Continuing Obligation. The acceptance of the Work by Company shall not be construed to relieve Alliance Contractor of any obligation hereunder.
- 13.8 Limitations and Conditions.

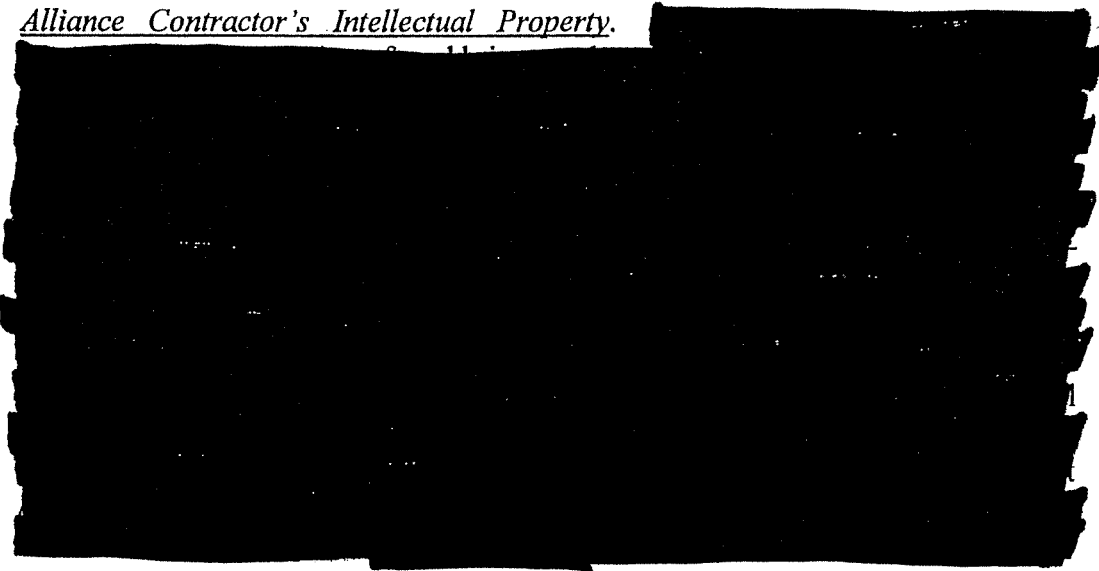


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13.9 Availability of Intellectual Property. The rights and license granted under or pursuant to this Agreement by Alliance Contractor to Company are, for all purposes of Section 365(n) of Title 11 of the United States Code (“Title 11”), licenses or rights to “intellectual property” as defined in Title 11. During the term of this Agreement, Alliance Contractor shall create and maintain current copies to the extent practicable of all such intellectual property or its embodiment, including the Design Documents and proprietary calculations. If a bankruptcy proceeding is commenced by or against Alliance Contractor under Title 11, Company shall be entitled to a copy (including electronic format) of any and all such intellectual property and all embodiments of such intellectual property, and the same, if not in the possession of Company, shall be promptly delivered to it (i) upon Company’s written request following the commencement of such bankruptcy proceeding, unless Alliance Contractor, or its trustee or receiver, elects within thirty (30) Days to continue to perform all of its obligations under this Agreement, or (ii) if not delivered as provided under clause (i) above, upon Company’s request following the rejection of this Agreement by Alliance Contractor. If Company has taken possession of all applicable embodiments of the intellectual property of Alliance Contractor pursuant to this Section 13.9 and the trustee in bankruptcy of Alliance Contractor does not reject this Agreement, Company shall return such embodiments upon request. If Alliance Contractor seeks or involuntarily is placed under Title 11 and the trustee rejects this Agreement as contemplated under 11 U.S.C. 365(n)(1), Company hereby elects, pursuant to Section 365(n) to retain all rights granted to Company under this Agreement to the extent permitted by Applicable Law.

13.10 Alliance Contractor’s Intellectual Property.



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14.0 MISCELLANEOUS

14.1 Representations and Warranties.

14.1.1 Company hereby represents and warrants the following to Alliance Contractor on and as of the Effective Date, which representations and warranties shall survive the execution and delivery of this Agreement and any termination (for whatever reason) or expiration of this Agreement:

- (a) That Company is a corporation duly organized, validly existing under the laws of the Commonwealth of Kentucky, and duly qualified to do business in the Commonwealth of Kentucky; and
- (b) That this Agreement has been duly authorized, executed, and delivered by and on behalf of Company and constitutes the legal, valid, and binding agreement of Company, enforceable against Company in accordance with its terms.

14.1.2 Alliance Contractor hereby represents and warrants the following to Company on and as of the Effective Date, which representations and warranties shall survive the execution and delivery of this Agreement and any termination (for whatever reason) or expiration of this Agreement:

- (a) That Alliance Contractor is able to furnish the tools, materials, supplies, equipment, labor, supervisory and design, engineering, and construction services required to complete the Work and perform its obligations hereunder, and has sufficient experience and competence to do so;
- (b) That Alliance Contractor is a corporation duly organized, validly existing, and in good standing under the laws of California and is duly qualified to do business in the Commonwealth of Kentucky;
- (c) That Alliance Contractor is properly licensed by all necessary governmental and quasi-governmental authorities having jurisdiction over Alliance Contractor and the Work;

- (d) That no litigation, investigation, or proceeding of or before any arbitrator or governmental body is pending against or, to the knowledge of Alliance Contractor, threatened against or affecting Alliance Contractor or any of its properties, rights, reserves, or assets: (i) which could reasonably be expected to have a material adverse effect on the properties, business, prospects, operations, or financial condition of Alliance Contractor or (ii) which could reasonably be expected to have a material adverse effect on the ability of Alliance Contractor to perform its obligations under this Agreement; and
 - (e) That this Agreement has been duly authorized, executed, and delivered by Alliance Contractor and constitutes the legal, valid, and binding agreement of Alliance Contractor, enforceable against it in accordance with the terms of this Agreement.
- 14.2 Permits and Licenses. Alliance Contractor shall have responsibility for any permits (excluding building and environmental permits and those issued by the Army Corp of Engineers, which are Company's responsibility), certificates, or licenses which are required in connection with the performance of the Work. Each Party shall cooperate with the other in obtaining any required permits, certificates, or licenses.
- 14.3 Independent Alliance Contractor. Nothing in this Agreement shall be deemed to constitute Alliance Contractor or any of Alliance Contractor's personnel or agents to be the agent, representative, or employee of Company. Alliance Contractor shall be an independent contractor and shall have responsibility for and control over the details and means for performing the Work, provided that Alliance Contractor shall comply with the other express terms of this Agreement.
- 14.4 Confidentiality. The Parties shall concurrently herewith enter into the form of Confidentiality Agreement set forth in Attachment 14.4.
- 14.5 Publicity. Neither Party shall publicize the relationship of the Parties set forth herein or that the Work is being done except to the extent required by law without first obtaining the other Party's written approval (which the other Party may withhold in its sole discretion). Further, neither Party shall use any trademark (including logos) of the other Party without the other Party's written approval (which the other Party may withhold in its sole discretion).
- 14.6 Assignment. Except in connection with any merger or consolidation by Company, neither Party shall assign this Agreement, in whole or in part, voluntarily, by operation of law, or otherwise, without first obtaining the written consent of the other Party. Any assignment in violation of the foregoing shall be at the option of



the other Party void. Subject to the foregoing, the provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties.

14.7 Interpretation.

[REDACTED]

14.8 Laws and Regulations. In performing the Work, Alliance Contractor shall strictly comply with all Applicable Laws. Alliance Contractor shall not under any circumstances apply to or enter into negotiations with any governmental authority or agency for acceptance of variations from or revisions to safety or health, or air, water waste, or noise pollution or hazardous waste, hazardous material release or other environmental laws or regulations relating to this Agreement or the performance thereof without Company's prior written approval.

14.9 Remedies.

[REDACTED]

14.10 Entire Agreement. This Agreement, including all attachments and exhibits, constitutes the entire agreement between the Parties relating to the Work and supersedes all prior or contemporaneous oral or written agreements, negotiations, understandings, and statements pertaining to the Work or this Agreement. Without limiting the foregoing, the Memorandum of Understanding is hereby superceded and replaced by this Agreement.

14.11 Governing Law and Choice of Venue. This Agreement shall be governed by the law of the Commonwealth of Kentucky, without regard to its principles of conflicts of laws. In the event of a dispute hereunder, the Parties hereby irrevocably consent to the jurisdiction of the state and federal courts having their situs in Jefferson County, Kentucky and agree that venue in such courts shall be the sole appropriate venue for any action pursuant to this Agreement.

14.12 No Amendment or Waiver. This Agreement may not be amended without written agreement thereto by each Party. Failure by a Party to enforce its rights hereunder in one instance shall not limit that Party's later right to assert that right.

14.13 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

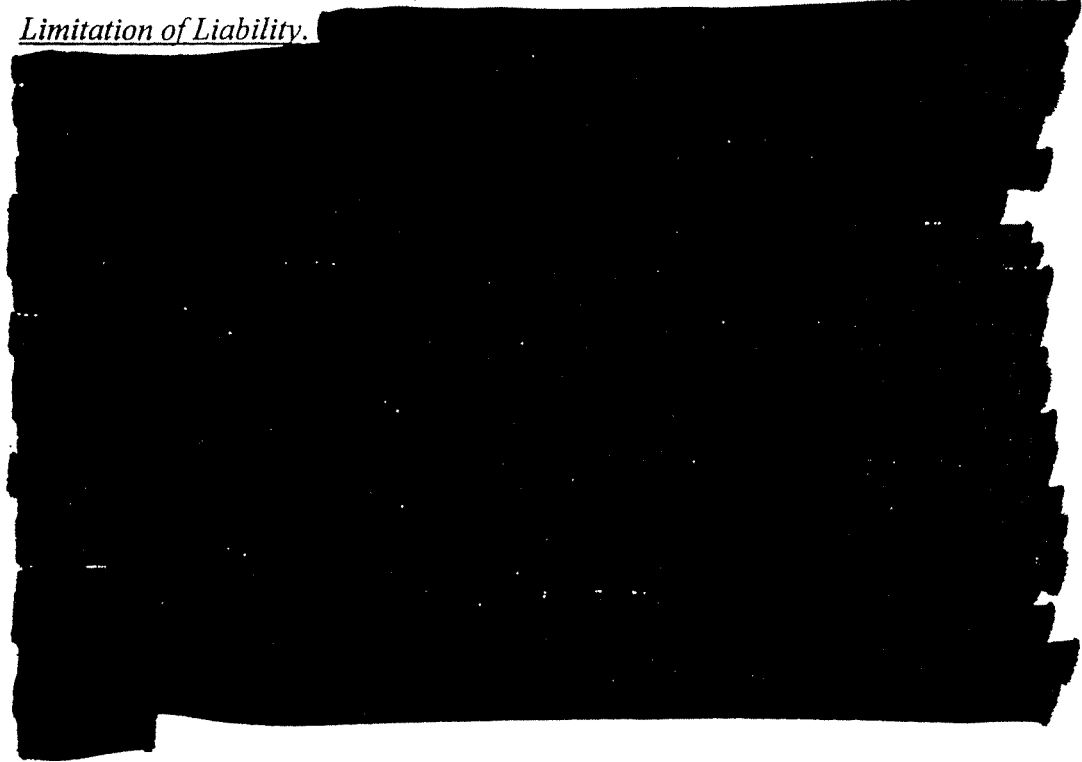
JFE

14.14 Alliance Contractor Parent Guarantee. Within thirty (30) Days of the execution of this Agreement, Alliance Contractor shall cause Fluor Corporation (“Guarantor”) to provide Company with a parent guarantee in the form of Attachment 14.14 which guarantees Alliance Contractor’s obligations under this Agreement.

14.15 Other Owners.



14.16 Limitation of Liability.



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14.17 No Consequential Damages

[REDACTED]

14.18 Treatment of Payments from Subcontractors.

[REDACTED]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates written below, but it is effective as of the Effective Date first written above.

FLUOR ENTERPRISES, INC.

KENTUCKY UTILITIES COMPANY

By: [Signature]

By: [Signature]

Name: ROBERT HICKEY

Name: Paul W. Thompson

Title: SENIOR VP

Title: Senior V.P.

Date: JUNE 17, 2005

Date: June 23, 2005

APPROVED
[Signature]
LSG

JAH

LIST OF ATTACHMENTS

- 1A Reimbursable Expenses
- 1B No Fee Reimbursable Expenses
- 2.2 Form of Level One Notice to Proceed, Level Two Notice to Proceed, and Level Three Notice to Proceed
- 2.3.3 Form of Scope
- 2.3.5 Target Schedule
- 2.3.6 Target FGD Performance and Testing Parameters, and FGD Design Criteria
- 2.4 Form of Agreement on Scope and Targets
- 4.10 Standard Terms and Conditions for Subcontractors and Assignment of Subcontracts
- 4.20 Substance Abuse Policy
- 7.2.1(b) Alliance Contractor's Key Personnel
- 7.4. Termination for Convenience Fee Schedule
- 8.8 Performance Buydown
- 11.3 Form of Letter of Credit
- 14.4 Form of Confidentiality Agreement
- 14.14 Form of Parent Guarantee

Exhibits

- A - Certificate of Final Completion
- B - Certificate of Mechanical Completion
- C - Hold Points/Inspection Points



ATTACHMENT 1A

REIMBURSABLE EXPENSES

I. LABOR

Alliance Contractor will be reimbursed for the labor cost of Alliance Contractor employees as follows:

- A. Home Office Personnel. Home Office Personnel (meaning all Alliance Contractor personnel who are not permanently assigned to a project location that include, but are not limited to, the following: program managers, project managers, engineers, draftsmen, or construction project management personnel, such as schedulers, cost accounting personnel, and estimators) will be billed at their base compensation rate multiplied by a multiplier of [REDACTED] except that contract agency Home Office Personnel will be billed at the amount invoiced to Alliance Contractor for such personnel multiplied by a multiplier of [REDACTED]



The foregoing multipliers shall be subject to an annual review and adjustment in accordance with the definition of Reimbursable Expenses for this Agreement; provided, however, that annual adjustments due to statutory payroll burden changes shall be automatic. The foregoing multipliers cover all of the following costs related to Alliance Contractor (and such costs shall not separately be Reimbursable Expenses):

- | | |
|---|---|
| Statutory payroll taxes and insurance for Home Office Personnel | Home office furniture and fixtures |
| Worker's Compensation and Employer's Liability insurance for Home Office Personnel | Home office taxes and licenses |
| Company-wide CGL and Auto Liability insurance (that does not include Project Specific purchased CGL and Excess Liability insurance) | Non-Project printing and reproduction in the home office |
| Group employee benefit plans (such as life insurance, health insurance, disability insurance, 401(k), and retirement) for Home Office Personnel | Telephone systems, telecopiers, and other office equipment (excluding computers) in the home office |
| Home office facility and space cost | Home office document storage and retrieval |
| Home office utilities (such as light, heat, water, sewer and local phone service) | Long distance telephone calls and faxes in the home office |
| | Home office payroll personnel and other administrative support related to Home Office Personnel |
| | Home office general office supplies |
| | Home office word processing Equipment |

IFU

Consumable engineering supplies in the home office
Accounting (Non-Project), legal, executive management, marketing, risk management (Non-Project), finance, treasury, and tax services rendered by internal Alliance Contractor personnel.

All other non-project personnel of Alliance Contractor
Costs (including attorneys' fees) associated with any employment or tort-related claims made against Alliance Contractor by Alliance Contractor personnel

- B. Field Personnel. Field Personnel (consisting of Alliance Contractor personnel who are permanently assigned to a project location) will be as follows: (1) Field Staff will be billed at Base Compensation (Refer to Home Office Personnel) multiplied by a multiplier of [REDACTED] for straight time hours worked, and [REDACTED] for overtime hours worked, except that contract agency field personnel will be billed at the amount invoiced to Alliance Contractor for such personnel multiplied by a multiplier of [REDACTED] (2) Field Craft will be billed at "Payroll Cost" times [REDACTED] for straight time hours worked, and [REDACTED] for overtime hours worked per the payroll register. [REDACTED]

[REDACTED] The foregoing multipliers shall be subject to an annual review and adjustment in accordance with the definition of Reimbursable Expenses for this Agreement; provided, however, that annual adjustments due to statutory payroll burden changes shall be automatic. The foregoing multipliers cover all of the following costs related to Alliance Contractor (and such costs shall not separately be Reimbursable Expenses):

Statutory payroll taxes and insurance for Field Staff Personnel
Worker's Compensation and Employers Liability insurance for Field Personnel
Company-Wide CGL and Auto Liability insurance (that does not include Project Specific purchased CGL and Excess Liability insurance)
Employee benefit cost (such as life insurance, health insurance, disability insurance, 401(k), and retirement) for Field Personnel
Vacation, sick leave and paid time off for Field Staff Personnel included in Base Compensation
Home Office based payroll processing, human resource placement and separation services, and similar home office support of Field Personnel

Non-Project printing and reproduction in the home office
Telephone systems and telecopiers in the home office
Home office document storage and retrieval
Long distance telephone calls and faxes in the home office
Home office payroll personnel and other administrative support related to Home Office Personnel
Home office general office supplies
Home office word processing
Equipment
Consumable engineering supplies in the home office
Accounting (Non-Project) and legal services rendered by internal Alliance Contractor personnel

II. OTHER EXPENSES

All expenses set forth in this Attachment 1.A shall be subject to any limits set forth in the Agreement. The following are merely categories of expected Reimbursable Expenses.

- A. Home Office Communication. Home office communication expenses (such as courier services, telegrams and teleconferences) for the Project.
- B. Home Office Reproduction. Home office reproduction expenses (such as blue-line prints, drawing reproduction, specification books and RFQ packages) for the Project.
- C. Home Office Computers. Home Office computers will be billed at [REDACTED] per hour of Home Office Personnel straight time only (which is subject to adjustment to cover increased computer costs), plus the cost of special computer software and hardware.
- D. Construction Tools and Equipment. The cost of construction tools and equipment with an initial cost greater than [REDACTED] and all construction machinery and equipment (including, without limitation, fuel, lubrication, maintenance and repairs, insurance, transportation, assembly and disassembly, storage, loading and unloading). All such tools and equipment which are purchased for Work under this Agreement and the full purchase cost of which is paid by Company shall be the property of Company and returned upon completion of the Scope of Work. A tracking report for small tools and equipment will be provided to Company.
- E. Materials and Supplies. The cost of materials, machinery, equipment, supplies, consumables, parts and related services (including, without limitation, transportation, insurance, loading and unloading, storage, servicing, assembly and erection).
- F. Subcontractors and Purchase Orders. All costs of subcontracts, purchase orders and other such agreements in accordance with the Agreement.
- G. Taxes. The cost of taxes, duties, assessments, and other such fees and charges (except taxes on Alliance Contractor's net income) in accordance with the Agreement.
- H. Permits. The cost of licenses and permits necessary to perform the Work.
- I. Inspection and Testing. The cost of inspection, investigation, analysis and testing (including, without limitation, soils, concrete, welding, piping, electrical, plumbing, HVAC, fire protection and performance testing).
- J. Compliance with Laws. Costs incurred in connection with the compliance with statutes, rules, regulations, ordinances, orders and other laws.

- K. Travel and Relocation. The costs of travel, relocation, lodging, meals, per diem and other travel expenses in accordance with the Agreement.
- L. Insurance. The cost of any insurance purchased specifically for Work in accordance with this Agreement.
- M. General Field Expense. The cost of providing temporary facilities at the job site; expendable construction supplies; operating and maintaining roads, parking areas and a job office, necessary field shops and fabricating facilities, and warehouse and storage facilities, including the cost of the office furnishings, equipment and supplies, communication and reprographic expenses; electricity, water, sewer, gas and other utilities; janitorial expenses; temporary toilets and related facilities; guard and security expenses; fencing and gates; scaffolding; temporarily light, heat and power; compressed air and gasses; first aid facilities; drug and alcohol testing; fuel, lubricants, chemicals, and other consumables and supplies; ice and cups; unloading and loading, assembling, handling, storing and servicing material; equipment and supplies; dumpsters and waste disposal; and all other field office services and expenses.
- N. Litigation and Related Costs. The cost of outside attorney's fees, costs, settlements and adjustments which are directly related to the Project, and incurred in connection with any labor of commercial matters, litigation, arbitration, claims, or disputes (except disputes between Company and Alliance Contractor and these matters included in the labor multipliers).
- O. Environmental Compliance. The cost of silt fences, drainage control and other environmental compliance measures.
- P. Audits, Monitoring and Accounting. The cost of periodic product audits and similar programs monitoring the financial or other aspect of the work, and any project-specific accounting functions, such as the preparation of property or tax allocation records, with the exception of administrative costs included in Alliance Contractor's labor rate multipliers.
- Q. Temporary Roads. The cost of temporary roads, parking areas, lay-down and storage areas.
- R. Miscellaneous. Miscellaneous expenses, such as custom printed forms, drafting supplies; photography or video taping, special publications (such as local codes and standards); and other costs and expenses incurred in connection with this Agreement.
- S. Training. The cost of Company personnel training as requested by Company.

Contract No. 413982

- T. Small tools: The cost of small tools and equipment (less than [REDACTED]) will be billed at a rate in accordance with the small tools and equipment Subcontract.

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ATTACHMENT 1B

NO FEE REIMBURSABLE EXPENSES

Certain Alliance Contractor expenses are defined as No Fee Reimbursable Expenses, as follows:

1. FGD Technology Subcontract.
2. Expenses described in Section 2.5 (f), (l), and (m).
3. Expenses described in Section 4.13 (b).
4. Expenses described in Section 11.6.
5. Expenses described in Section 11.7.

ATTACHMENT 2.2

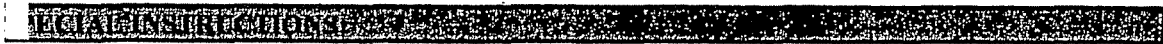
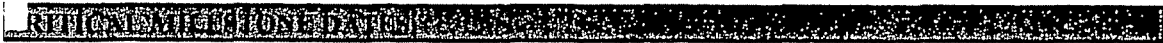
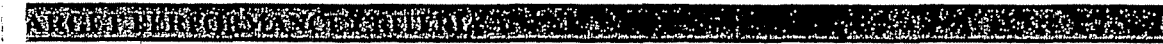
FORM OF LEVEL ONE, LEVEL TWO, AND LEVEL THREE NOTICE TO PROCEED



JNIT _____

- LEVEL 1 - CONCEPTUAL ENGINEERING & TARGET DEVELOPMENT
- LEVEL 2 - DETAILED ENGINEERING
- LEVEL 3 - PROCUREMENT, CONSTRUCTION & INITIAL PERFORMANCE TESTING

RELEASED SCOPE OF WORK



THE UNDERSIGNED HEREBY ACKNOWLEDGE THE SENDING AND RECEIPT OF THIS FORM AND FURTHER ACKNOWLEDGE THAT IT IS SUBJECT TO THE TERMS AND CONDITIONS OF THAT FLUE GAS DESULFURIZATION PROJECT ALLIANCE AGREEMENT BY AND AMONG KENTUCKY UTILITIES COMPANY AND FLUOR ENTERPRISES, INC DATED _____ 2005.

Company FGD Project Director (date)

Alliance Contractor FGD Project Director (date)

ATTACHMENT 2.3.3

FORM OF SCOPE

The Scope shall consist of the design, procurement and erection of a System, such System may include an FGD or other balance of plant work to meet the required and targeted design limits set forth for the System specified. This Scope is to be used as a baseline only for discussions in accordance with Section 2.3 of the Agreement. The Scope shall be as agreed by the Parties pursuant to Section 2.4 of the Agreement, including, but not limited to, the following:

A. Civil, Structural and Architectural

- 1) Evaluation and Verification of Underground Utilities**
- 2) Foundations**
- 3) Building and/or Siding Modifications**
- 4) Demolition/Relocation of Structural Steel, Buildings, Flues or Piping**
- 5) Reactor, Equipment and Flue Gas Duct Support Steel**
- 6) Access Steel (including handrails, platforms, stairs, flooring, grating, etc)**
- 7) Enclosures (if required)**

- **FGD Process Building**
- **Control Rooms**
- **Limestone Processing Building**
- **Limestone Storage Enclosure**
- **Gypsum Dewatering Process Building**
- **Material Handling Conveyors and/or Transfer Buildings**
- **Warehouse Relocations**

B. FGD System

- 1) Absorber and Casing (w/platforms, stairs, ladders, etc)**
- 2) Absorber Internals**
- 3) Inspection/Access Doors**
- 4) Gas Sample Test Ports**
- 5) Forced Oxidation Air Compressors**
- 6) Piping**
- 7) Recycle Pumps**
- 8) Insulation and Lagging**

C. Flue Gas Duct for FGD

- 1) Absorber Inlet/Outlet Gas Duct System
- 2) Absorber Inlet/Outlet Dampers
- 3) Expansion Joints
- 4) Insulation and Lagging
- 5) Air/Gas System Stiffening Existing Duct
- 6) Seal Air Piping Ducts to and from Interface
- 7) Flue Inspection Doors
- 8) Flue Internals (vanes, perforated plates, etc.)
- 9) Test Connections/Ports

D. Fans (New or Modifications)

- 1) Fans and/or Motors
- 2) Insulation and Lagging
- 3) VFD System

E. Electrical Power, Instrumentation and Control System

- 1) Relocation/Demolition of Electrical Equipment or Systems
- 2) Damper Power and Controls
- 3) Seal Air Power and Controls
- 4) SOx and CEMS Analyzers (Power, Controls and Plant Control Interfaces)
- 5) FGD System Controls (DCS interfaces with Plant Controls, Local and Remote Control, Misc. Instrumentation, etc.)
- 6) Enclosure Power and lighting
- 7) DCS Interface I/O
- 8) Furnace Draft Controls
- 9) Oxidation Air Power and Controls
- 10) Recycle Pump Power and Controls
- 11) Cathodic Protection
- 12) Electrical Power Supply Systems
- 13) Grounding and Lighting Protection Systems
- 14) Area Lighting
- 15) Plant Communications System
- 16) Motors (< than or equal to 250 HP)
- 17) Motors (> than 250 HP)
- 18) Motor Control Centers (w/starters) Raceway, Conduit, Pullboxes, Wiring, Cabling and Other Misc. Materials.
- 19) Heat Tracing
- 20) (Transformers)



F. Engineering Program Management

- 1) FGD and BOP Project Schedules
- 2) Process Design PFDs and P&IDs
- 3) General Arrangements
- 4) Electrical Load List
- 5) Boiler and Economizer Performance Models
- 6) Flow and Dust Models
- 7) Spare Parts
- 8) Project labor Agreement
- 9) Start-Up Field Service
- 10) Personnel Training
- 11) O&M Manuals
- 12) Equipment Storage and Maintenance Construction

H. Limestone System

- 1) Barge/Rail Unloading System
- 2) Conveyor System
- 3) Grinding System
- 4) Slurry Tanks
- 5) Reclaim System

I. Gypsum System

- 1) Primary/Secondary Dewatering System
- 2) Stack Out
- 3) Conveyor System
- 4) Loading System

J. Cooling Tower Relocation at Ghent (Optional)

- 1) Riverbank Stabilization
- 2) Basin/Foundation
- 3) Prefab Modular Tower
- 4) Recirculation Piping
- 5) Pumps
- 6) Demolition of Old Tower

2 SCR Structure Enclosure (Alternate to Relocating Cooling Tower)

2. Stacks

- 1) Foundation
- 2) Chimney/Liner
- 3) Duct Interface
- 4) Recondition of Existing Stacks

I. Miscellaneous

- 1) Primer Paint
- 2) Finish Paint and Field Touch Up
- 3) Paint Removal (Includes Lead Paint on Structural Steel)
- 4) Insulation Removal (No Asbestos)
- 5) Site Clean-Up
- 6) Demolition

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ATTACHMENT 2.3.5

PLANNED TARGET SCHEDULE

Unit	Tie In Outage Start (note 1)	Tie In Outage Finish (note 1)	Mechanical Completion
Ghent 3	March 12, 2007	April 29, 2007	April 2007
Ghent 1 & 2	U1 - March 17, 2008 U2 - April 14, 2008	U1 - April 13, 2008 U2 - May 25, 2008	April 2008 May 2008
Ghent 4	February 09, 2009	April 12, 2009	April 2009
Brown 1, 2, 3	March 30, 2009	May 10, 2009	April 2009

Note 1 Above Tie In outage dates are Planned Target Dates to be assessed and verified as more Target information on design, option selection, material supply and construction is developed.

Note 2 The goal of the schedule is to avoid the months of December and January for unit outages and to complete each FGD by May, prior to ozone season.

ATTACHMENT 2.3.6

TARGET FGD PERFORMANCE AND TESTING PARAMETERS, AND FGD DESIGN CRITERIA

Parameter	Initial Performance Test	Final Performance Test
SO₂ Removal Rate	98%	98%
Gypsum Moisture Content	TBD	TBD
Limestone Utilization	97%	97%
Pressure Drop	TBD	TBD

NOTES: This table applies mainly to the FGD Technology Supplier

1. As used in the above chart, "TBD" refers to values which will be agreed upon by the Parties during the agreement upon Scope and Targets pursuant to Section 2.4.
2. The value in the chart above for the SO₂ Removal Rate for the Initial and Final Performance Tests is what the Parties Anticipate to be a typical minimum value for the Target FGD Performance Parameter for SO₂ removal rate for purposes of Initial and Final Performance Testing at the maximum continuous rating of the boiler.
3. The Company will specify the operating load conditions and the fuel requirements for the Initial Performance Testing, both of which must be within the design parameters established by the Parties during the agreement on Scope and Targets pursuant to Section 2.4.
4. The SO₂ Removal Rate will be measured for each test which is part of the Initial Performance Testing provided that in no event shall Alliance Contractor be allowed to exceed a Performance Parameter set forth in the chart above in order to meet or satisfy another Performance Parameter set forth in the chart above. If, after Alliance Contractor has taken all reasonable remedial efforts and conducted retesting to pass the Initial Performance Testing, the FGD still fails to achieve the Performance Deadband Minimum (as defined in Attachment 8.8) for one or more performance tests which are part of the initial Performance Testing, Alliance Contractor shall pay the Performance Buydown set forth in Attachment 8.8 for the test which, after all such remedial efforts and retesting, achieves the lowest SO₂ removal rate (while such FGD meets or satisfies all other Performance Parameters set forth in the chart above).

5. The Parties shall agree upon a complete testing protocol for the Initial Performance Testing during the agreement on Scope and Targets pursuant to Section 2.4. The Parties anticipate that such testing protocol shall include use of third party testing vendors.
6. The following chart contains preliminary design values for the specified FGD design criteria (The Parties will use these Preliminary Design Criteria as a baseline for establishing the final design criteria for the FGD):
7. Gypsum Moisture: In the event a Barge Loadout system is employed, a maximum of 10% moisture content will be required. If the gypsum will be ponded, the target is to be determined.

DESIGN CRITERIA
Fuels
Limestone Spec
Water Analysis-Chemistry
Water Analysis-Quantity
Flue Gas Flow Rate
Boiler Excess Air
Boiler Heat Rate
Acceptable Blow Down Rate
Particulate Loading
LOI

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ATTACHMENT 2.4

FORM OF AGREEMENT ON SCOPE AND TARGETS

Unit: _____

Date of Agreement: _____

The Parties hereby agree that the attached Scope and Targets shall apply with respect to the Work which Company may subsequently request with respect to a System.

THE UNDERSIGNED HEREBY ACKNOWLEDGE THAT THIS FORM IS EXECUTED
SUBJECT TO THE TERMS AND CONDITIONS OF THAT FLUE GAS
DESULFURIZATION PROJECT ALLIANCE AGREEMENT BY AND AMONG
KENTUCKY UTILITIES COMPANY AND FLUOR ENTERPRISES, INC. EFFECTIVE AS
OF _____, 2005.

Company FGD Project Director (date)

Alliance Contractor FGD Project Director (date)

JFL

ATTACHMENT 4.10

STANDARD TERMS AND CONDITIONS FOR SUBCONTRACTORS

Refer to the attached standard purchase order and subcontract terms and conditions of Alliance Contractor.

ASSIGNMENT OF SUBCONTRACTS

All subcontracts shall include provisions, which Alliance Contractor may not waive, release, modify or impair, (i) giving Alliance Contractor an unrestricted right, without the consent of the Subcontractor, to assign the relevant subcontract and any or all benefits, interests, rights and causes of action arising under it to Company and/or its designees (and such assignment right will be assigned as part of such assignment), (ii) complying with the provisions of Section 9.3, (iii) authorizing either the Company or Alliance Contractor to enforce guarantees and warranties, (iv) requiring Subcontractors to comply with the plan provided for in Section 4.19 of this Agreement, (v) indemnifying Company on the terms and conditions set forth in Article 9, and (vi) incorporating Section 13.9.

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FLUOR

Modifications to Terms and Conditions of Purchase
Form 420.1220 Exhibit 1, dated 05Nov03

Article 6. Warranty

In paragraph three, line two, delete the words

[REDACTED]

Article 28. Insurance

Add sub-article 28.1.5 -

[REDACTED]

Add sub-article 28.1.6 - Professional Liability -

[REDACTED]

JFC

TERMS AND CONDITIONS OF PURCHASE
(U.S. Version)

FLUOR

<u>Article No.</u>	<u>Article Title</u>
1.	Shipment
2.	Complete Agreement
3.	Title
4.	Reservation of Rights
5.	Waiver
6.	Warranty
7.	Supplier Quality Surveillance (SQS) Inspection and Expediting
8.	Indemnity
9.	Delays
10.	Assignment
11.	Changes
12.	Cancellation for Default
13.	Termination for Convenience
14.	Laws and Regulations
15.	Liens
16.	Suspension of Performance
17.	Independent Contractor
18.	Gratuities
19.	Confidential Information
20.	Hazardous Materials
21.	Validity of Provisions
22.	Arbitration
23.	Right to Offset
24.	Security
25.	Survival
26.	Trial
27.	Export Authorizations
-WORK SITE TERMS-	
28.	Insurance
29.	Health, Safety and Environmental Regulations

1. SHIPMENT: Partial shipments must be accompanied by identifying documents, but such shipments shall not be construed as making the obligations of Seller severable. No charge will be allowed for packing, shipment or handling unless stated in this Purchase Order. Seller shall pay for damaged goods resulting from improper packing or marking. Itemized packing lists must accompany each shipment. Buyer's count will be accepted as final and conclusive on shipments not accompanied by Seller's itemized packing list. If applicable, shipments shall be palletized to the maximum extent of palletization. Costs for palletizing are included in the purchase price. All goods received in excess of Purchase Order requirements will be subject to return for credit at Seller's expense.

2. COMPLETE AGREEMENT: This Purchase Order shall become a binding agreement of Seller and Buyer upon Seller signing and returning an acceptance copy of this Purchase Order, or upon Seller otherwise acknowledging acceptance of this Purchase Order or commencing performance of this Purchase Order, whichever occurs first. This Purchase Order, together with the specifications, drawings and documents referred to herein and the other documents referred to therein, which by this reference are all made a part hereof, constitute the entire agreement between the parties, and all prior negotiations, proposals, and writing pertaining to this Purchase Order, or the subject matter hereof, are superseded hereby. Any reference to Seller's quotation, bid, or proposal does not imply acceptance of any terms, conditions, or instruction contained in such document.

Any invoice, acknowledgment or other communication issued by Seller in connection with this Purchase Order shall be construed to be for record and accounting purposes only. Any terms and conditions stated in such communication shall not be applicable to this Purchase Order and shall not be considered to be Seller's exceptions to the provisions of this Purchase Order. Trade custom and/or trade usage is superseded by this Purchase Order and shall not be applicable in the interpretation of this Purchase Order.

Anything that may be called for in the specifications and not shown on the drawings, or shown on the drawings and not called for in the specifications, shall be of like effect as if called for and shown in both. In the event of any ambiguities, express conflicts or discrepancies in the specifications, drawings or other documents which are a part of this Purchase Order, Seller shall immediately submit the matter to Buyer for its determination and shall comply with the determination of Buyer in such matter.



TERMS AND CONDITIONS OF PURCHASE
(U.S. Version)

FLUOR

All headings and numbering in this Purchase Order are for convenience of reference only and shall in no way be used in interpretation of any of the provision in this Purchase Order.

3. TITLE: Seller warrants full and unrestricted title to Buyer for all goods, services and documents furnished by Seller under this Purchase Order free and clear of any and all liens, restrictions, reservations, security interests, and encumbrances.

If Buyer makes progress payments to Seller under this Purchase Order, title to the goods ordered hereunder shall pass to Buyer at the time that Seller identifies the goods to this Purchase Order. Seller shall clearly identify the goods as property of Buyer by visible marking or tagging, and Buyer shall have the right, at Buyer's option, to inspect and verify that said goods have been identified as Buyer's property. Care, custody, and control of such goods remains with the Seller until such time as Buyer takes physical possession or otherwise agrees in writing by change order to this Purchase Order.

Seller shall properly store and ensure maintenance, custody and control of any and all goods in accordance with the requirements of this Purchase Order and the best professional practices and shall protect the same against weather hazards, water, humidity, dirt, fire, theft, vandalism and the like. Seller shall use every means to prevent at all times any damage or loss whatsoever to the goods in its custody.

4. RESERVATION OF RIGHTS: The making or failure to make any inspection of, or payment for, the goods or services covered by this Purchase Order shall in no way impair Buyer's right to reject nonconforming or defective goods or services, nor be deemed to constitute acceptance by Buyer of the goods or services, nor affect in any way Seller's obligations under this Purchase Order notwithstanding Buyer's opportunity to inspect the goods or services, Buyer's knowledge of the non-conformity or defect, its substantiality or the ease of its discovery, nor Buyer's earlier failure to reject the goods or services.

5. WAIVER: Buyer's failure to insist on performance of any term, condition, or instruction, or failure to exercise any right or privilege, or its waiver of any breach, shall not thereafter waive any such term, condition, instruction, right or privilege.

Buyer's acceptance of any goods shall not operate as a waiver of rights hereunder or otherwise relieve Seller from its responsibility for supplying and delivering goods in accordance with the requirements of this Purchase Order or any other obligation of Seller under this Purchase Order.

6. WARRANTY: Seller warrants to Buyer and Owner that all goods and services covered by this Purchase Order will conform with the specifications, drawings, and other descriptions supplied or adopted by Buyer and will be new, of good quality, fit and sufficient for the purposes for which they are intended as evidenced in this Purchase Order and in the drawings and specifications referred to herein, of good materials, design and workmanship, free from defects, and will fulfill satisfactorily the operating conditions specified herein.

These warranties shall extend to Buyer, Owner, their successors and assigns.

Seller, at its expense, (including without limitation costs of removal, packing, transportation and reinstallation) shall promptly either repair or replace any goods and services furnished to Buyer which within twelve (12) months after operational start-up or within eighteen (18) months after shipment, whichever occurs first, shall fail to conform to the requirements of this Purchase Order. Goods or services that are repaired or replaced by Seller pursuant to this Warranty shall be warranted, according to the terms hereof, for an additional twelve (12) months from the date of such repair or replacement. Seller will at any time be chargeable for repairs made by Buyer to correct such a failure to meet the warranty herein when Seller has been given notice of such failure and thereafter has failed to take prompt and effective action to correct the failure in accordance with the foregoing.

The above warranties are in addition to all other warranties as may be express or implied at law or equity.

7. SUPPLIER QUALITY SURVEILLANCE (SQS) INSPECTION AND EXPEDITING: Seller shall be responsible for the performance of all activities affecting quality and schedule including those of its suppliers. Buyer shall have the right to reject any and all goods which fail to conform to the specifications under which they were purchased or to proper standards of workmanship. Buyer reserves the right to review Seller's Quality Assurance and Quality Control Procedures. Seller's Quality Plan submittal requirements, if applicable, are defined in the "Supplier Drawing and Data Commitment Form" section of this Purchase Order.

The goods provided by Seller under this Purchase Order are subject to SQS inspection, expediting, audit of Quality Plan implementation and witnessing of Seller testing by the Buyer's representative and/or the Owner, who shall be granted access to all parts of the Seller's plant(s) or Seller's supplier's plant(s) engaged in the manufacturing or processing of this Purchase Order. The representative's inspection and witnessing of testing, or lack of inspection, witnessing of testing or response, shall in no way release the Seller from any obligations related to this Purchase Order. Seller shall further ensure

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that these terms and conditions become a part of its purchase orders to its suppliers for all goods or services which are used in the products purchased under this Purchase Order. Seller is further responsible for obtaining and submitting Quality Plans as required from its suppliers.

Seller and/or Seller's suppliers will notify Buyer at least five (5) calendar days in advance of the date inspection or test can be made. If for any reason the date should be set back, Seller shall telephone, wire or facsimile Buyer immediately. NOTE: THE SELLER SHALL NOT SHIP THE GOODS ON THIS PURCHASE ORDER WITHOUT EITHER BUYER'S FINAL INSPECTION OR A WRITTEN WAIVER OF INSPECTION FROM BUYER. VIOLATION OF THIS REQUIREMENT SHALL CONSTITUTE A REJECTION OF THE GOODS, WITH SUBSEQUENT RETURN OR OTHER ACTION AT SELLER'S COST.

Complete and accurate information is required to maintain the overall schedule. Unless otherwise stated, Seller shall at a minimum furnish every fourteen (14) days, status of engineering, material procurement, production and shipping information.

8. INDEMNITY:

8.1 Seller agrees to defend, indemnify and hold harmless Buyer and Owner, the affiliated companies of each, and their directors, officers, employees, agents and representatives, from and against all claims, demands, causes of action, liability, loss or expense arising from or relating to any actual or asserted:

8.1.1 Failure by Seller to comply with any law, ordinance, regulation, rule or order, or with this Purchase Order. This Section 8.1.1 includes, but is not limited to, fines or penalties by government authorities and claims arising from Seller's actual or asserted failure to pay taxes.

8.1.2 Violation or infringement of rights in any patent, copyright, proprietary information, trade secret or other property right caused or alleged to be caused by the use or sale of goods, materials, equipment, methods, processes, designs or information furnished by Seller or its suppliers. Should any goods or services provided by Seller become, or appear likely to become, the subject of a claim of infringement of a patent, copyright or other property right, Seller shall, at Buyer's option, either procure for Buyer and Owner the right to continue using such goods or services, replace same with equivalent, non-infringing goods or services, or modify the goods or services so that the use thereof becomes non-infringing, provided that any such modification or replacement is of equal quality and provides equal performance to the infringing goods or services.

The preceding paragraph shall not apply to any goods, or any part thereof, manufactured to designs furnished and required by Buyer, nor shall it apply to claims that the sale or use of a process or use of a combination of the goods supplied by Seller hereunder with other goods infringes a patent, if such process or other goods were not supplied by Seller and Seller's supplying of the goods hereunder does not constitute contributory patent infringement.

8.1.3 Injury to or death of persons (including employees of Buyer, Owner, Seller and Seller's suppliers) or from damage to or loss of property (including the property of Buyer or Owner) arising directly or indirectly out of this Purchase Order or out of any acts or omissions of Seller or its suppliers. Seller's defense and indemnity obligations hereunder include claims and damages arising from non-delegable duties of Buyer or Owner or arising from use by Seller of construction equipment, tools, scaffolding or facilities furnished to Seller by Buyer or Owner.

8.1.4 Contamination, pollution, or public or private nuisance, arising directly or indirectly out of this Purchase Order or out of any acts or omissions by Seller, its suppliers or subsuppliers.

8.2 Seller's defense and indemnity obligations shall apply regardless of whether the party to be indemnified was concurrently negligent, whether actively or passively, excepting only where the injury, loss or damage was caused solely by the negligence or willful misconduct of, or by defects in design furnished by, the party to be indemnified. Seller's defense and indemnity obligations shall include the duty to reimburse any attorneys' fees and expenses incurred by Buyer or Owner for legal action to enforce Seller's indemnity obligations.

8.3 In the event that any indemnity provisions in this Purchase Order are contrary to the law governing this Purchase Order, then the indemnity obligations applicable hereunder shall be construed to apply to the fullest extent allowed by applicable law.

8.4 With respect to claims by employees of Seller or its suppliers, the indemnity obligations under this Purchase Order shall not be limited by the fact of, amount, or type of benefits or compensation payable by or for Seller, its suppliers or subsuppliers under any workers' compensation, disability benefits, or other employee benefits acts or regulations, and Seller waives any limitations of liability arising from workers' compensation or such other acts or regulations.

8.5 Seller acknowledges specific payment of \$10.00 incorporated into the Purchase Order Price as legal consideration for Seller's indemnities as may be provided in this Purchase Order.

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9. DELAYS: TIME OF DELIVERY IS OF THE ESSENCE FOR THIS PURCHASE ORDER. Seller shall promptly notify Buyer of any actual or anticipated delay in delivery and take all reasonable steps to avoid or end delays without additional cost to Buyer. Where the delay is caused by acts of God, acts of civil or military authority, epidemics, war, riot, or other similar causes beyond Seller's control and which Seller could not have reasonably foreseen or provided against, Buyer shall have the right to either: (i) terminate by written notice to Seller all or part of this Purchase Order in accordance with its terms or (ii) extend the date of delivery or performance for a period equal to the durations of the delay, but Seller shall not be entitled to any extra compensation for such delay. Seller shall not be excused from performance hereunder where alternate sources of supply of materials, goods or services are available.

10. ASSIGNMENT: Neither this Purchase Order nor any portion hereof shall be assigned or delegated without Buyer's prior written consent and any such assignment or delegations shall be void. Buyer reserves the right to assign this Purchase Order to the Owner or Owner's successors or assigns or to Buyer's affiliates and Seller hereby consents to any such assignment.

11. CHANGES: No substitutions shall be made in this Purchase Order without the prior written consent of Buyer.

Buyer shall have the right by written direction to make changes in the specification and drawings for goods or services covered by this Purchase Order. If Seller believes that such change affects the price or delivery date for such goods or services, Seller shall so notify Buyer in writing (with adequate supporting documentation) within five (5) working days after receipt of said written direction. Seller shall suspend performance of the change unless thereafter released in writing by Buyer to perform said change, and Buyer and Seller shall mutually agree in writing upon an equitable adjustment in the price and/or delivery date to reflect the effect of such change.

Seller's request for any adjustments shall be deemed waived unless submitted in writing within such five (5) working days after Seller receives direction to make such changes. Seller shall not suspend performance of the unaffected portion of this Purchase Order while Buyer and Seller are in the process of making such changes and any related adjustments or at any time thereafter unless so instructed in writing by Buyer. If released in writing by Buyer, Seller shall comply with and perform such change in accordance with the terms of this Purchase Order during the time Seller and Buyer require to mutually agree upon an equitable adjustment. No agreement or understanding modifying the conditions of terms of this Purchase Order shall be binding upon Buyer nor will extra compensation be paid by Buyer unless the agreement or understanding is made in writing.

12. CANCELLATION FOR DEFAULT: In the event Seller shall be adjudged bankrupt, make a general assignment for the benefit of its creditors, or if a receiver shall be appointed on account of Seller's insolvency, or in the event Seller is in default of any material provisions or requirement of this Purchase Order, Buyer may, by written notice to Seller, without prejudice to any other rights or remedies which Buyer may have, cancel further performance by Seller under this Purchase Order, in whole or in part. In the event of such cancellation, Buyer may complete the performance of the terminated portions of this Purchase Order by such means as Buyer selects, and Seller shall be responsible for any additional costs incurred by Buyer in so doing. Seller shall deliver or assign to Buyer any work in progress as Buyer may request. Any amounts due Seller for goods and services completed by Seller in full compliance with the terms of this Purchase Order prior to such cancellation, as verified by Buyer, shall be subject to set off of Buyer's additional costs of completing the Purchase Order and other damages incurred by Buyer as a result of Seller's default. Waiver by Buyer of any default of Seller shall not be considered to be a waiver by Buyer of any provision of this Purchase Order or of any subsequent default by Seller. If Seller's contract is terminated by virtue of default, and it is later determined by the final judgement or order of a court of competent jurisdiction, arbitration entity or administrative proceeding of any type whatsoever that the Seller was not in default, the parties agree that the termination shall then be considered a termination for convenience.

13. TERMINATION FOR CONVENIENCE: Buyer shall have the right to terminate for its convenience further performance of all or any separable part of this Purchase Order at any time by written notice to Seller. On the date of such termination stated in the notice, Seller shall discontinue all work pertaining to this Purchase Order, shall place no additional orders, and shall preserve and protect materials on hand purchased for or committed to this Purchase Order, work in progress, and completed work both in Seller's and in its supplier's plants pending Buyer's instructions, and shall dispose of same in accordance with Buyer's instructions. Termination payment to Seller or refund to Buyer, if any, shall be promptly and mutually agreed to by Buyer and Seller, based on that portion of the work satisfactorily performed to the date of cancellation, including reimbursement for actual costs, reasonable overhead and profit on such work, plus reasonable and necessary expenses resulting from the termination, disposition of work and material on hand, and amounts previously paid by Buyer, all as substantiated by documentation satisfactory to and verified by Buyer. Seller shall not be entitled to any loss of prospective profits, contribution to overhead or incidental, consequential or other damages because of such termination.

Seller shall deliver or assign all goods with all applicable warranties or dispose of goods as directed by Buyer prior to final payment.

14. LAWS AND REGULATIONS: Seller warrants that all goods and services supplied pursuant to this Purchase Order will comply with all applicable laws, ordinances and regulations, and further Seller shall provide all permits, certificates and

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licenses which may be required for the performance of the Purchase Order. This Purchase Order shall be subject to the law and jurisdiction of the State of California unless expressly designated otherwise in the Purchase Order.

The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Purchase Order and shall be disclaimed and excluded from any contracts placed by Seller with its suppliers.

Seller further warrants that all goods furnished by Seller in performance of this Purchase Order will comply fully with the Occupational Safety and Health Act of 1970 (84 U.S. Stat 1590), as amended and the State plans approved under such Act, and the regulations thereunder, to the extent applicable to such equipment, and in addition to any other rights or remedies which Buyer may have, Seller shall indemnify, defend and hold harmless Buyer and its Owner from and against any and all claims, loss, or liability arising from failure of such goods to comply therewith.

Seller certifies that it has an affirmative action policy ensuring equal employment opportunity without regard to race, color, national origin, sex, age, religion or handicap, that it maintains no employee facilities segregated on the basis of race, color, religion or national origin and that it is not debarred or suspended from being awarded Federal or Federally assisted contracts.

If applicable to this Purchase Order, the following laws, orders and regulations, as amended, are hereby incorporated by reference: Executive Order 11246; Vietnam Era Veterans Readjustment Act; Rehabilitation Act of 1973; Veterans Compensation, Education and Employment Act; 41 CFR 60-1.4 (Equal Employment Opportunity); 41 CFR 60-250.4 (Veterans Affirmative Action); 41 CFR 60-741.4 (Handicap Affirmative Action); 41 CFR 601.40 (Affirmative Action Plans); 41 CFR 601.7 (EE01 Reports); 41 CFR 61650 (Veterans Employment Reports).

Seller hereby certifies that the goods and services provided hereunder shall be produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act of 1938, as amended, and the regulations and orders of the U.S. Department of Labor issued under Section 14 thereof, and that each invoice submitted hereunder shall be correct and authentic and the only one issued for the goods and services mentioned.

15. LIENS: Seller agrees to indemnify, hold harmless and defend Buyer and Owner from and against all laborers', materialman's, mechanics', or other liens arising from the performance of Seller's obligations under this Purchase Order and shall keep the premises of Buyer and Owner free from all such claims, liens, and encumbrances. To the full extent permitted by applicable law, Seller, for itself and all of its suppliers of any tier, waives all rights of lien against the property and premises of Buyer and Owner for labor performed or for goods furnished for the Work.

16. SUSPENSION OF PERFORMANCE: Buyer may at any time, and from time to time, by written notice to Seller, suspend further performance of all or any portion of this Purchase Order by Seller. Such suspensions shall not exceed more than one hundred eighty (180) consecutive calendar days each nor aggregate more than two hundred seventy (270) calendar days. Upon receiving any such notice of suspension, Seller shall promptly suspend further performance of the Purchase Order to the extent specified, and during the period of such suspension shall properly care for and protect all work in progress and materials, supplies, and equipment Seller has on hand for performance of the Purchase Order. Seller shall use its best efforts to utilize its material, labor and equipment in such a manner as to mitigate costs associated with suspension. Buyer may at any time withdraw the suspension as to all or part of the suspended performance by written notice to Seller specifying the effective date and scope of withdrawal and Seller shall, on the specified date of withdrawal, resume diligent performance of the work for which the suspension is withdrawn.

If Seller believes that any such suspension or withdrawal of suspension justifies modification of the Purchase Order price or time for performance, Seller shall comply with the provisions set forth in Article 11, entitled CHANGES. In no event shall Seller be entitled to any loss of prospective profits, contributions to overhead or any incidental, consequential or other damages because of such suspensions or withdrawals of suspension.

17. INDEPENDENT CONTRACTOR: Seller shall act as an independent contractor and not as an agent or employee of Buyer or Owner and shall not subcontract any portion of the work without the written consent of Buyer.

18. GRATUITIES: Buyer may, by written notice to the Seller, terminate the right of the Seller to proceed or continue under this Purchase Order if it is found that gratuities (in the form of entertainment, gifts or otherwise), were offered or given by the Seller, or any agent or representative of the Seller to any officer or employee of the Owner or Buyer with a view toward securing this Purchase Order or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of this Purchase Order.

In the event this Purchase Order is terminated as provided in this provision, Buyer shall be entitled to pursue the same remedies against the Seller as it could pursue in the event of a material breach of the Purchase Order by the Seller.

The rights and remedies of Buyer provided in this or any other article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Purchase Order.

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19. CONFIDENTIAL INFORMATION: The documents and all other information designated as confidential or proprietary and contents thereof are referred to as "Information". Seller agrees to retain the Information in confidence and not to disclose it to any third party or use such Information for any other purpose, except as authorized by Buyer for the performance of this Purchase Order. Seller shall not publicize the existence or scope of this Purchase Order without Buyer's written consent. Seller shall require these same agreements on the part of any supplier of Seller's to whom the Information is disclosed. Seller shall return all Information and copies thereof to Buyer upon written request.

20. HAZARDOUS MATERIALS: Seller shall notify Buyer in writing if goods furnished are subject to laws or regulations relating to hazardous or toxic substances, or when disposed of, to regulations governing hazardous wastes, or to any other health, safety and/or environmental regulations. Seller shall furnish: all appropriate shipping certification; labeling in compliance with the Workplace Hazardous Materials Information System; Material Safety Data Sheets in compliance with the Workplace Hazardous Materials Information System; and instructions for shipping, safety, handling, exposure and disposal in a form sufficiently clear for use by Buyer's non-technical personnel and sufficiently specific to identify all action which the user must take concerning the material. The following certification must be made on the bill of lading: "This is to certify that the above named articles are properly classified, described, packaged, marked and labeled and are in proper condition for transportation according to any applicable transportation regulations."

21. VALIDITY OF PROVISIONS: In the event any Provision, or any part or portion of any Provision of this Purchase Order shall be held to be invalid, void or otherwise unenforceable, such holding shall not affect the remaining part or portions of that Provision, or any other Provision hereof.

22. ARBITRATION: In the event that Buyer is required to arbitrate a dispute with a third party, which dispute arises out of this Purchase Order or is in any way connected with Seller, Seller agrees to join in such arbitration proceeding as Buyer may direct and shall submit to such jurisdiction and be finally bound by the judgment rendered in accordance with the arbitration rules as may be established therein.

23. RIGHT TO OFFSET: Buyer, without waiver or limitation of any rights or remedies of Buyer or Owner, shall be entitled from time to time to deduct from any amounts due or owing by Buyer to Seller in connection with this Purchase Order, any and all amounts owed by Seller to Buyer or Owner.

24. SECURITY: If Buyer makes any advance or progress payment to Seller under the Purchase Order, upon Buyer's request, Seller agrees to execute a Security Agreement and Financing Statement (both in form satisfactory to Buyer) granting a Security interest to Buyer effective in all states of fabrication or manufacture in the proceeds, raw materials and goods which are purchased, manufactured, or otherwise obtained pursuant to the Purchase Order.

25. SURVIVAL: The provisions of this Purchase Order which by their nature are intended to survive the termination, cancellation, completion or expiration of this Purchase Order shall continue as valid and enforceable obligations of the parties notwithstanding any such termination, cancellation, completion or expiration.

26. TRIAL: Seller hereby knowingly, voluntarily and intentionally waives (to the extent permitted by applicable law) any right it may have to a trial by jury of any dispute arising under or relating in any way to this Purchase Order and agrees that any such dispute may, at Buyer's option, be tried before a judge sitting without a jury.

27. EXPORT AUTHORIZATIONS: When equipment, material, supplies, technology or other items furnished under this Purchase Order are for export and ultimate use in a country other than the United States, Seller shall provide to Buyer/Owner or Agent, within thirty (30) days after issuance of this Purchase Order, a written notice stating whether any authorization for the export of such items is required by the exporting country. Seller shall assist, without any additional cost to Buyer/Owner or Agent, the Buyer/Owner or Agent in obtaining all such authorizations for export. Assistance shall be in the form of technical data, drawings, brochures, technical expertise or other means as deemed necessary.

- WORK SITE TERMS -

WHEN THIS ORDER COVERS THE SUPPLYING OF SERVICES OR SERVICES AND MATERIALS ON THE PREMISES OF BUYER OR OWNER, OR ON THE CONSTRUCTION SITE, IT IS SUBJECT TO THE FOLLOWING ADDITIONAL TERMS AND CONDITIONS ARTICLES 28 AND 29, INCLUSIVE.

28. INSURANCE:

28.1 If Seller or its employees or agents come onto the Buyer's property or the Project site in connection with this Order, Seller shall, at its sole cost, obtain and maintain in force for the duration of the Purchase Order (including the warranty period) insurance of the following types, with limits not less than those set forth below:

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28.1.1 Workers' Compensation Insurance, including occupational illness or disease coverage, in accordance with the laws of the nation, state, territory or province having jurisdiction over Seller's employees, and Employer's Liability Insurance with a minimum limit of \$1,000,000 per accident and, for bodily injury by disease, \$1,000,000 per employee. Seller shall not utilize occupational accident or health insurance policies, or the equivalent, in lieu of mandatory Workers' Compensation Insurance, or otherwise attempt to opt out of the statutory Workers' Compensation system. If applicable, such insurance shall include coverage under the United States Longshore & Harbor Workers' Act, Maritime Coverage - Jones Act, \$1,000,000 each accident/aggregate.

28.1.2 Commercial General Liability Insurance ("Occurrence Form") with a minimum combined single limit of liability of \$1,000,000 each occurrence for bodily injury and property damage; with a minimum limit of liability of \$1,000,000 each person for personal and advertising injury liability; and a minimum limit of liability of \$1,000,000 each occurrence for products/completed operations liability including (1) Broad Form Property Damage coverage without exclusions for explosion, collapse and underground exposures; (2) Products and Completed Operations liability coverage; and (3) Contractor's Protective Liability. Such policy shall have a general aggregate limit of not less than \$2,000,000. The products/completed operations liability coverage shall be maintained in full force and effect for not less than three (3) years following completion of any activities by Seller or its employees on the property of Buyer or the Project site. The policy shall be endorsed to name Buyer and Owner, including their respective affiliates, directors and employees, as additional insureds. Such endorsement shall be made upon ISO Endorsement CG 20 10 11 85, "Additional Insured - Owners, Lessees or Contractors (Form B)."

28.1.3 Automobile Liability Insurance covering use of all owned, non-owned and hired vehicles, with a minimum Combined Single limit of liability for bodily injury and property damage of \$1,000,000 per occurrence. The policy shall be endorsed to name Buyer and Owner, including their respective affiliates, directors and employees, as additional insureds.

28.1.4 If Seller will utilize tools or equipment in the performance of its services under this Order, Equipment Floater Insurance (Tools and Equipment Insurance) covering physical damage to or loss of all major tools and equipment, construction office trailers and their contents, and vehicles for which Seller is responsible, throughout the course of the work.

28.2 Seller hereby releases Buyer and Owner, including their respective affiliates, directors and employees, and shall cause Seller's Insurers to waive their rights of subrogation against such released parties, for losses or claims for bodily injury, property damage or other insured claims arising out of Seller's performance of the Order.

28.3 Certificates of Insurance satisfactory in form to Buyer (ACCORD form or equivalent) shall be supplied to Buyer evidencing that the above insurance is in force, that not less than thirty (30) days written notice will be given Buyer prior to any cancellation or restrictive modification of the policies, that the carriers maintain an "AM Best" rating of A- or higher, and that the waivers of subrogation are in force. Seller shall also provide with its Certificate of Insurance executed copies of the additional insured endorsements required in this Article 28. At Buyer's request, Seller will provide a certified copy of each insurance policy required under this Order.

28.4 The foregoing insurance coverages shall be primary and non-contributing with respect to any other insurance or self insurance which may be maintained by Buyer or Owner. Seller's General and Automobile Liability Insurance policies shall contain a Cross Liability or Severability of Interest clause. The fact that Seller has obtained the insurance required in this Article shall in no manner lessen nor affect Seller's other obligations or liabilities set forth in this Purchase Order.

29. HEALTH, SAFETY AND ENVIRONMENTAL REGULATIONS: While on the premises of Buyer or Owner, Seller and its employees shall comply with all applicable health, safety and environmental laws, regulations, and ordinances and with the health, safety and environmental plant regulations of Buyer and Owner, and shall ensure that all of its employees and agents have a safe place of work on said premises. Seller shall keep said premises and the vicinity thereof clean of debris and rubbish caused by its work and, upon completion of its work, shall leave the premises clean and ready for use. Upon request of Buyer or Owner, and at no cost or expense to Buyer or Owner, Seller shall promptly remove from said premises any person under the control of Seller who violates any of the aforesaid health, safety and environmental or plant laws, regulations, ordinances or rules or who may cause or threaten to cause a breach of the peace, or who is otherwise objectionable to Buyer or Owner.

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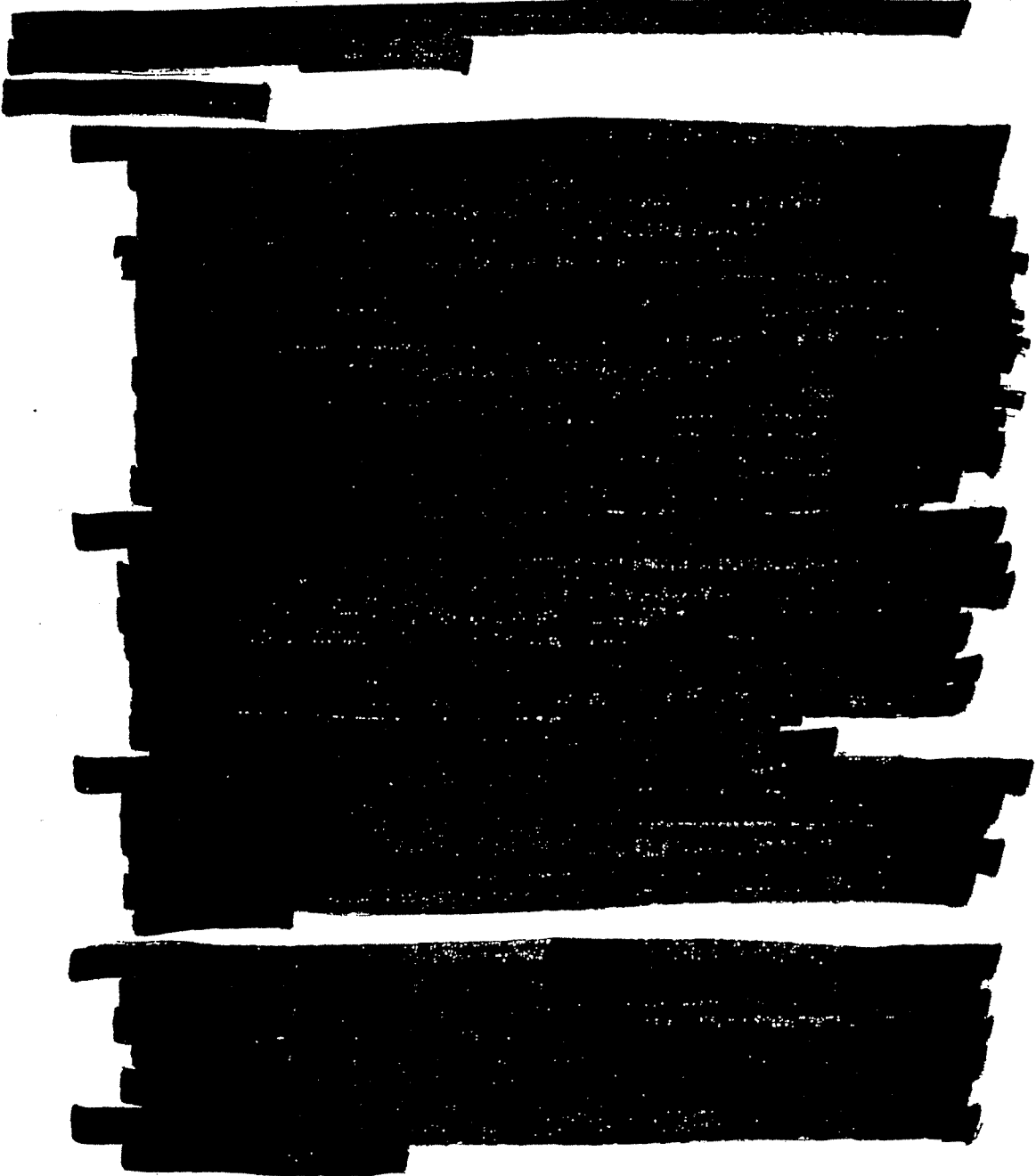
CONTRACTS PART IV – SPECIAL TERMS
CONTRACT NO. 00A2APTBD
Rev. 0

KU SO2 COMPLIANCE PROGRAM

CONTRACT PART IV – SPECIAL TERMS

THIS PART IV CONTAINS ALL TERMS AND CONDITIONS PARTICULAR TO THIS CONTRACT, INCLUDING ALL CHANGES, ADDITIONS OR DELETIONS TO PART III – GENERAL TERMS - STANDARD. CHANGES MADE HEREIN ARE PARTICULAR TO THIS CONTRACT AND ESTABLISH NO PRECEDENCE FOR NEGOTIATIONS REGARDING FUTURE WORK.

1.0



Contract Management

Contractor

Company

(JFC)

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CONTRACTS PART IV – SPECIAL TERMS

CONTRACT NO. 00A2APTBD

Rev. 0

KU SO2 COMPLIANCE PROGRAM

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CONTRACTS PART IV – SPECIAL TERMS

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WORK QUALITY STANDARDS

1.0 GUARANTEES

- 1.1 Contractor guarantees Company and Owner that the Work shall comply strictly with the provisions of this Contract and all specifications, drawings and standards referred to in this Contract or thereafter furnished by Company, and that the Work shall be first-class in every particular and free from defects in materials and workmanship and in any design or engineering furnished by Contractor. Contractor further guarantees Company and Owner that all materials, equipment and supplies furnished by Contractor for the Work shall be new, merchantable, of the most suitable grade and fit for their intended purposes. Without limitation of any other rights or remedies of Company or Owner, if any defect in the Work in violation of the foregoing guarantees arises within the period set forth below, Contractor shall, upon receipt of written notice of such defect, promptly furnish, at no cost to Company or Owner, design and engineering, labor, equipment and materials necessary to correct such defect and cause the Work to comply fully with the foregoing guarantees.
- 1.2 Contractor's guarantees set forth in Section 1.1 shall extend for twenty-four (24) months after the date of final written acceptance of the Work by Company, or eighteen (18) months after the start of regular operation or use of the Work by Company, whichever occurs first. Any period wherein the Work is not available for use due to defects in materials, workmanship or engineering furnished by Contractor shall extend the guarantee period by an equal period of time.
- 1.3 Design and engineering, labor, equipment and materials furnished by Contractor pursuant to Section 1.1 to correct defects shall be guaranteed by Contractor in accordance with the guarantees set forth in Section 1.1 for a period of eighteen (18) months from the date of completion of the correction, or for the remainder of the guarantee period set forth in Section 1.2 above whichever is longer
- 1.4 In the event Contractor shall have been notified of any defects in the Work in violation of Contractor's foregoing guarantees and shall fail to promptly and adequately correct such defects, Company and Owner shall have the right to correct or to have such defects corrected for the account of Contractor, and Contractor shall promptly pay Company or Owner the costs incurred in correcting such defects.
- 1.5 Contractor shall include, at a minimum, the foregoing guarantee requirements in any subcontract that it places.



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2.0 INSPECTION, TESTING AND QUALITY CONTROL

- 2.1 Contractor shall inspect all materials, supplies and equipment which are to be incorporated in the Work. In addition, Contractor shall conduct a continuous program of construction quality control for all Work. Contractor's quality control program and inspection procedures for the foregoing shall be submitted in writing to Company for review and approval, in sufficient detail to delineate those items to be inspected and the manner in which they are to be inspected, and shall adequately describe all construction quality control activities contemplated, including provision for adequate documentation of Contractor's performance of such quality control and inspection.
- 2.2 Contractor shall, during the course of performance of the Work hereunder, without additional compensation, make or cause to be made all tests required by this Contract. Company may require additional inspections and tests. Contractor shall furnish Company with satisfactory documentation of the results of all inspections and tests. Company shall be given not less than five (5) working days notice of any tests to be made by Contractor or Contractor's subcontractors in order that Company and/or Owner may witness any such tests.
- 2.3 Company and Owner and their representatives, and others as may be required by applicable laws, ordinances and regulations, shall have the right at all reasonable times to inspect the Work and all material, supplies and equipment for the Work at the jobsite and at Contractor's and its subcontractors' shops for conformance with the Contract. Contractor shall provide, or cause to be provided access and sufficient, safe and proper facilities for such inspections. Neither the failure to make such inspection nor to discover defective workmanship, materials or equipment, nor approval of or payment to Contractor for such Work, materials or equipment shall prejudice the rights of Company or Owner.
- 2.4 If Contractor covers any portion of the Work prior to any inspection or test provided for in the specifications, inspection schedule, or as previously requested by Company, the cost of uncovering and covering the Work to allow for such inspection or test shall be borne by the Contractor. Reexamination of any Work may be ordered by Company. In the event of such reexamination, if any material, equipment or any part of the Work is determined by Company to be defective, Contractor shall not be reimbursed for uncovering, repair or corrective and restoration costs. If such Work is found to be in accordance with the Contract requirements upon such reexamination, Company shall pay Contractor the cost of uncovering and restoration.
- 2.5 Rejection by Company of any or all parts of defective Work for failure to conform with this Contract shall be final and binding. Such rejected Work shall be promptly corrected or replaced by Contractor at Contractor's expense. If Contractor fails to commence and diligently continue correction or replacement

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of such rejected Work immediately after receipt of written notice from Company to correct or replace the rejected Work, Company may at its option remove and replace the rejected Work, and Contractor shall promptly reimburse Company for the costs of such removal and replacement of defective Work.

3.0 CONDITIONS AND RISKS OF WORK

Contractor represents that it has carefully examined the documentation, drawings and specifications for the Work and has fully acquainted itself with all other conditions relevant to the Work, and its surroundings, and Contractor assumes the risk of such conditions and will, regardless of such conditions, the expense, difficulty of performing the Work, or negligence, if any, of Company or Owner, fully complete the Work for the stated Contract Price without further recourse to Company or Owner. Information on the site of the Work and local conditions at such site furnished by Company or Owner in specifications, drawings or otherwise is not guaranteed by Company or Owner and is furnished only for the convenience of Contractor.

4.0 ISSUED FOR CONSTRUCTION DRAWINGS AND SPECIFICATIONS

- 4.1 The Work shall be performed using only drawings and specifications marked "Issued for Construction" or equivalent by Company. Such indication shall not relieve Contractor of any obligations under this Contract, nor constitute Company assumption of responsibility for the accuracy or adequacy of any of Contractor's information or Work incorporated in such documents.
- 4.2 Contractor shall perform all Work outside of the areas marked "HOLD" on "Issued for Construction" specifications and drawings to maintain the schedule of Work, but shall not perform any Work in the areas or sections marked "HOLD" on "Issued for Construction" specifications and drawings until revised "Issued for Construction" specifications and drawings are received with the "HOLD" markings deleted.
- 4.3 If Contractor's schedule will be delayed by "HOLD" markings on specifications and drawings, Contractor shall report such delay to Company in writing not less than five (5) working days prior to the start of the delay.
- 4.4 Contractor shall maintain at the work site a complete and current set of "Issued for Construction" drawings and specifications.

5.0 INTENT OF SPECIFICATIONS AND DRAWINGS

- 5.1 The specifications 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 make use of any errors or omissions therein to the detriment of the Work. Should any conflict, error, omission or discrepancy appear in the drawings, specifications, instructions, in work done by others, or in site conditions Contractor shall notify Company in writing at once and

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Company will issue written instructions to be followed. If Contractor proceeds with any of the Work in question prior to receiving such instructions then required corrections shall be at Contractor's expense.

- 5.2 Contractor shall not deviate from the specifications and drawings without prior written approval from Company.
- 5.3 Materials shall not be substituted for those specified, nor shall "or equal" items be furnished pursuant to the specifications without Company prior written approval.

6.0 SAFETY

- 6.1 Contractor shall take necessary safety and other precautions to protect property and persons from damage, injury or illness arising out of the performance of the Work. Contractor shall comply strictly with local, municipal, provincial, state and national laws, orders, and regulations pertaining to health or safety which are applicable to Contractor or to the Work, including without limitation the Occupational Safety and Health Act of 1970 (84 U.S. Statutes 1590), as amended, and any state plans approved thereunder and regulations thereunder, to the extent applicable, and Contractor warrants the materials, equipment and facilities, whether temporary or permanent, furnished by Contractor in connection with the performance of the Work shall comply therewith. At all times while any of Contractor's employees, agents or subcontractors are on Owner's or Company's premises, Contractor shall be solely responsible for providing them with a safe place of employment, and Contractor shall inspect the places where its employees, agents or subcontractors are or may be present on Owner's or Company's premises and shall promptly take action to correct conditions which are or may become an unsafe place of employment for them.
- 6.2 Accidents, injuries and illnesses requiring medical attention other than first aid, damage to property of Company, Owner or Contractor, and fires shall be orally reported to Company at the time of the incident. Written reports, satisfactory in form and content to Company shall be submitted by Contractor within forty-eight (48) hours after each incident.
- 6.3 Contractor shall maintain, in form and content approved by Company, jobsite accident, injury and illness statistics which shall be available for inspection by, and submitted to, Company upon its written request.

7.0 SUBCONTRACTS AND PURCHASE ORDERS

- 7.1 Contractor shall not subcontract performance of all or any portion of the Work under this Contract without first notifying Company of the intended subcontracting and obtaining Company acceptance in writing of the subcontracting and the subcontractor. If requested by Company, Contractor

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shall furnish Company a copy of the proposed subcontract (with price deleted if the subcontracted work is part of fixed price Work of Contractor under this Contract) for Company review of the terms and conditions thereof and shall not execute such subcontract until Company has accepted such terms. Failure of Contractor to comply with this Section may be deemed by Company to be a material breach of this Contract.

- 7.2 Contractor guarantees that its subcontractors will comply fully with the terms of this Contract applicable to the portion of the Work performed by them. If any portion of the Work which has been subcontracted by Contractor is not prosecuted in accordance with this Contract, on request of Company, the subcontractor shall be replaced at no additional cost to Company and shall not be employed again on the Work.
- 7.3 Contractor shall include a provision in every subcontract that it places authorizing assignment of such subcontract to Company or Owner without requiring further consent from such subcontractor or supplier.
- 7.4 Company shall have the right from time to time to contact Contractor's subcontractors to discuss their progress.
- 7.5 As used in this Contract, the term "subcontract" shall also include purchase orders and rental agreements for materials or equipment, and the term "subcontractor" shall also include vendors or suppliers of such material or equipment.
- 7.6 Contractor shall not be relieved of its responsibility for the Work by virtue of any subcontracts it may place regardless of Company's acceptance of such subcontract.
- 7.7 The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Contract and shall be disclaimed and excluded from any subcontracts placed by Contractor.

8.0 TERMINATION FOR DEFAULT

- 8.1 In the event that Contractor shall default in the performance of any obligation to be performed by Contractor under this Contract and shall fail to correct such default within five (5) working days following written notice thereof from Company, Company may, without prejudice to any other rights or remedies Company may have, hold in abeyance further payments to Contractor and/or terminate Contractor's right to continue performance of this Contract by written notice to Contractor specifying the date of termination. In the event of such termination, Company may take possession of the Work at the jobsite and any or all materials and plant equipment (whether delivered to the jobsite or on order therefore by Contractor), tools and construction equipment at jobsite and finish the Work by whatever method Company may deem expedient.

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- 8.2 In the event of termination by Company under Section 8.1, Contractor shall, upon request by Company, promptly advise it of all outstanding subcontracts, rental agreements and purchase orders which Contractor has with others pertaining to performance of the Work and furnish Company with complete copies thereof. Upon request by Company, Contractor shall assign to Company or Owner, in form and content satisfactory to Company, Contractor's title to materials and plant equipment for the Work and those subcontracts designated by Company.
- 8.3 In the event of termination by Company under Section 8.1, Contractor shall not be entitled to receive any further payment until the Work is completed. Upon completion and final acceptance of the Work, Company will determine the total cost incurred in completing the Work including, without limitation, additional overhead, legal and other costs incurred by Company to effect such termination and to complete the Work, plus a markup for profit in the amount of 10 percent (10%) on the total cost of the Work performed by Company. If the total costs noted above exceed the balance of the Contract price unpaid at the time of the termination, Contractor shall, promptly after receipt of an invoice, pay to Company the amount of such excess. Company shall have the right and is authorized to set-off against and deduct from any excess payable to Contractor any other damages suffered by Company or Owner due to said default or event giving rise to the termination or due to other defaults of Contractor in complying with the terms of this Contract. Contractor shall continue to be fully liable for all such other damages to Company and Owner. A waiver by Company of one default by Contractor shall not be considered to be a waiver of any subsequent default by Contractor, nor be deemed to amend or modify the terms of this Contract. Contractor expressly waives any formal notice by Company of Contractor's failure to perform, or passive breach of, Contractor's express obligations under this Contract.
- 8.4 Contractor agrees that upon commencement of a case, receivership, civil action or other proceeding by or against Contractor under state, federal or other applicable insolvency law, or upon any general assignment by Contractor for the benefit of its creditors, Company may, in its sole discretion, treat Contractor as in default under Section 8.1 and may exercise any of the remedies of this article. In the event Company's remedies under this Section 8.4 are limited by the commencement by or against the Contractor of a case under any chapter of the United States Bankruptcy Code, Contractor stipulates, acknowledges and agrees that time is of the essence in determination of whether this contract should be "assumed" or "rejected," within the meaning of 11 U.S.C. § 365; and Contractor therefore further stipulates and agrees that subject only to calendaring constraints of the Bankruptcy Court having jurisdiction, it will take all necessary action to cause the assumption or rejection of this contract on or before the thirtieth day filing the Petition commencing any such case. In such event, if Contractor seeks to "assume" this contract, Contractor expressly stipulates, acknowledges and agrees that "adequate assurance of future performance" within the meaning of

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11 U.S.C. § 365 (b)(1)(C) means a determination that there is no foreseeable likelihood that there will be any further interruption of Contractor's performance under this Contract following its assumption.

- 8.5 Contractor shall be considered in default from complying with the obligations of this Contract whenever, by reason of strikes, picketing or disputes of any nature between Contractor and any individual, group or organization, Contractor persistently, repeatedly, or for any period of five (5) consecutive working days, should be unable to supply enough properly skilled workers or proper materials or equipment to execute the Work.
- 8.6 If any termination for default is determined to have been made in error, the provisions of Article 17, TERMINATION AT COMPANY'S OPTION, shall apply.
- 8.7 In the event Contractor abandons the Work or otherwise repudiates this Contract, the notice requirements of Section 8.1 shall not apply.

9.0 STOP WORK ORDERS

Upon failure of Contractor or its subcontractor(s) to comply with any of the requirements of this Contract, Company shall have the authority to stop any operations of Contractor or its subcontractors affected by such failure until such failure is remedied or to terminate this Contract in accordance with Article 8.0. No part of the time lost due to any such stop work orders shall be made the subject of a claim for extension of time or for increased costs or damages by Contractor.

TIMING OF WORK

10.0 SCHEDULING, REPORTING AND COORDINATION

- 10.1 Contractor shall schedule and coordinate the details of the Work being performed to meet the schedule requirements set forth in PART I of this Contract. Within thirty (30) calendar days after award of this Contract and before submittal of the first progress payment invoice, Contractor shall submit to Company for approval, a detailed schedule showing the sequence in which Contractor proposes to perform the Work, the start and completion dates of all separable portions of the Work, manpower forecasts, materials procurement and delivery plans and any other information specified by Company. Contractor agrees to adhere to the schedule approved by Company and attend and participate in scheduled progress and coordination meetings called by Company.
- 10.2 During the performance of Work, Contractor shall submit to Company periodic progress reports on the actual progress and updated schedules as may be required by this Contract or requested by Company. In the event Contractor's performance of the Work is not in compliance with the schedule established for such performance Company may, in writing, require the Contractor to submit

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its plan for schedule recovery, or specify in writing the steps to be taken to achieve compliance with such schedule, and/or exercise any other remedies under this Contract. Contractor shall thereupon take such steps as may be directed by Company or otherwise necessary to improve its progress without additional cost to Company.

10.3 Contractor recognizes that Company, Owner, other contractors and subcontractors may be working concurrently at the jobsite. Contractor agrees to cooperate with Company, Owner and other contractors so that the project as a whole will progress with a minimum of delays. Company reserves the right to direct Contractor to schedule the order of performance of its Work in such manner as not to interfere with the performance of others.

10.4 If any part of Contractor's Work is dependent upon the quality and/or completeness of work performed under another contract, Contractor shall inspect such other work and promptly report to Company any defects therein which render such work unsuitable for the proper execution of the Work under this Contract. Failure to make such inspections or to report any such defects to Company shall constitute Contractor's acceptance of such other work as suitable to receive Contractor's Work provided however, that Contractor shall not be responsible for defects which could not have reasonably been detected.

11.0 OVERTIME

Unless expressly stated elsewhere in this Contract, Work at the jobsites shall be compatible with Company's starting and quitting times or other times approved by Company. Scheduled overtime work by Contractor must be approved in advance and in writing by Company. Contractor shall notify Company in advance of any incidental spot overtime which Contractor elects to work due to such operations as concrete placement, nondisruptable work activities and emergencies to protect life and/or property. Overtime work, whether scheduled or incidental, shall be to Contractor's account unless the compensation therefore is specifically authorized in writing by Company. In the event Company approves compensation of Contractor's overtime in advance, such compensation as separately authorized shall be limited to the actual cost to Contractor of the premium portion only of all applicable wages, craft fringe benefits, and payroll burdens imposed by any governmental authority and measured by the compensation payable to employees. To establish the amount of payment, Contractor shall submit supporting documents satisfactory in form and content to Company for its verification and approval.

12.0 DELAYS

12.1 In the event Contractor or Company is delayed in performing any of their respective obligations in this Contract and such delay is caused by acts of God, war, riots, civil insurrection, acts of the public enemy, accidents, acts of civil or military authority, fires, floods, or earthquakes, beyond the reasonable control of the party delayed, such delay will be excused and the period of such

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delay will be added to the time for performance of the obligation delayed, unless the date, schedule or time period for performance of the obligation is expressly stated in this Contract to be guaranteed. In the event any delay due to the foregoing causes or events occurs or is anticipated, the party delayed or anticipating delay shall promptly notify the other party in writing of such delay or expected delay and the cause and estimated duration of such delay. In the event of a delay due to the foregoing causes or events, the party delayed shall, at no cost to the other party, exercise due diligence to shorten and avoid the delay and shall keep the other party advised as to the continuance of the delay and steps taken to shorten or terminate the delay.

- 12.2 Contractor shall, within five (5) working days of the commencement of any delay, give to Company written notice thereof and of the anticipated effects thereof. Within two (2) working days of the termination of any delay, Contractor shall file a written notice with Company specifying the actual duration of the delay. If Company determines that a delay was beyond the control and without the fault or negligence of Contractor or its subcontractors and not foreseeable by Contractor at the effective date of this Contract, Company shall determine the duration of the delay and shall extend the time of performance of this Contract thereby.
- 12.3 Contractor shall not be entitled to, and hereby expressly waives recovery of, any damages suffered by reason of delays of any nature, and extension of time shall constitute the sole liability of Company and Owner and Contractor's sole remedy for delays.

13.0 POSSESSION PRIOR TO COMPLETION

Company and/or Owner shall have the right to move into Contractor's working and storage areas and the right to take possession of or use any completed or partially completed part of Contractor's Work as Company or Owner deem necessary for their operations. In the event Company or Owner desire to exercise the foregoing right, Company will so notify Contractor in writing. Such possession or use shall not constitute acceptance of Contractor's Work.

14.0 NOTICE OF COMPLETION AND FINAL ACCEPTANCE

- 14.1 When Contractor deems the Work fully completed, including satisfactory completion of such inspections, tests and documentation as are specified in this Contract, Contractor shall, within ten (10) working days thereafter, give a written Notice of Completion of the Work to Company, specifying the Work completed and the date it was completed. Within thirty (30) calendar days after receipt of said Notice of Completion, Company may inspect the Work and shall either reject the Notice of Completion and specify defective or uncompleted portions of the Work, or shall give the Contractor a written Notice of Acceptance of the Work either for the purpose of final payment only, or for the purposes of final payment and final acceptance.

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- 14.2 In the event Company rejects the Notice of Completion and specifies defective or uncompleted portions of the Work, Contractor shall within five (5) working days provide for Company review and approval a schedule detailing when all defects will be corrected and/or the Work will be completed and shall proceed to remedy such defective and uncompleted portions of the Work. Thereafter, Contractor shall again give Company a written Notice of Completion of the Work, specifying a new date for the completion of the Work based upon the date such defective or uncompleted portions of the Work were corrected. The foregoing procedure shall apply again and successively thereafter until Company has given Contractor written Notice of Acceptance for purposes of final payment and final acceptance.
- 14.3 Any failure by Company to inspect or to reject the Work or to reject Contractor's Notice of Completion as set forth above, shall not be deemed to be acceptance of the Work for any purpose by Company or Owner nor imply acceptance of, or agreement with, said Notice of Completion.

WORK CHANGES

15.0 CHANGES

- 15.1 The Scope of Work shall be subject to change by additions, deletions or revisions thereto by Company. Contractor will be notified of such changes by receipt of additional and/or revised drawings, specifications, exhibits or other written notification.
- 15.2 Contractor shall submit to Company within (10) ten working days after receipt of notice of a change, a detailed takeoff with supporting calculations and pricing for the change together with any requested adjustments in the schedule. The pricing shall be itemized as required by Company and shall be in sufficient detail to permit an analysis of all labor, material and equipment and shall cover all work involved in the change, whether such work was deleted, added or modified. Amounts related to subcontracts shall be supported in similar detail. In addition, if the proposal includes a time extension, justification therefore shall also be furnished.
- 15.3 Contractor shall not perform changes in the Work in accordance with Sections 15.1 and 15.2 until Company has approved in writing the pricing for the change and any adjustment in the schedule for performance of the Work, except as set forth in Section 15.4. Upon receiving such written approval from Company, Contractor shall diligently perform the change in strict accordance with this Contract.
- 15.4 Notwithstanding Section 15.3 Company may expressly authorize Contractor in writing to perform the change prior to such approval by Company. Contractor shall not suspend performance of this Contract during the review and negotiation of any change, except as may be directed by Company pursuant to

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Article 16.0, SUSPENSION OF WORK. In the event Company and Contractor are unable to reach timely agreement regarding any change, Contractor shall then comply with Article 18.0, CLAIMS.

- 15.5 Contractor shall not comply with oral changes in the Work. If Contractor believes that any oral notice or instruction received from Company will involve a change in the cost, time to perform or integrity of the Work, it shall require that the notice or instruction be given in writing and shall comply with the provisions of Sections 15.2, 15.3 and 15.4. Any costs incurred by Contractor to perform oral changes shall be for Contractor's account, and Contractor waives any and all rights to claim from Company or Owner for such costs or additional time to perform the Work as a result of compliance by Contractor with such oral changes.

16.0 SUSPENSION OF WORK

- 16.1 Company may, at any time and from time to time, by written notice to Contractor, suspend further performance of all or any portion of the Work by Contractor. Said notice of suspension shall specify the date of suspension and the estimated duration of the suspension. Such suspensions shall not exceed one hundred eighty (180) consecutive calendar days each nor aggregate more than two hundred seventy (270) calendar days. Upon receiving any such notice of suspension, Contractor shall promptly suspend further performance of the Work to the extent specified, and during the period of such suspension shall properly care for and protect all Work in progress and materials, supplies, and equipment Contractor has on hand for performance of the Work. Upon the request of Company, Contractor shall promptly deliver to Company copies of outstanding subcontracts of Contractor and shall take such action relative to such subcontracts as may be directed by Company. Contractor shall use its best efforts to utilize its material, labor and equipment in such a manner as to mitigate costs associated with suspension. Company may, at any time, withdraw the suspension of performance of the Work as to all or part of the suspended Work by written notice to Contractor specifying the effective date and scope of withdrawal, and Contractor shall resume diligent performance of the Work for which the suspension is withdrawn on the specified effective date of withdrawal.
- 16.2 If Contractor believes that any such suspension or withdrawal of suspension justifies modification of the Contract price or time of completion, Contractor shall comply with the provisions of the procedure set forth in Article 15.0, CHANGES. Contractor shall not be entitled to any prospective profits or any damages because of such suspension or withdrawals of suspension.

17.0 TERMINATION AT COMPANY'S OPTION

- 17.1 Company may, with or without cause, terminate further performance of all or part of the Work by written notice to Contractor specifying the date of

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termination. On the date of such termination stated in said notice, Contractor shall discontinue performance of the Work and shall preserve and protect tools, construction equipment and facilities on jobsite, materials and plant equipment purchased for or committed to the Work (whether delivered to the jobsite or on order), Work in progress and completed Work (whether at jobsite or other locations) pending Company instructions and, if requested by it, shall turn over the same to Company, or Owner, including title to said materials and plant equipment, or dispose of same in accordance with Company instructions.

- 17.2 Upon receipt of said notice, Contractor shall advise Company of its outstanding subcontracts pertaining to performance of the terminated work and, upon request, furnish Company with complete copies. Contractor shall place no further subcontracts except as may be necessary for completion of such portion of the Work as is not terminated. Contractor shall promptly make every reasonable effort to procure cancellation, upon terms satisfactory to Company, of all subcontracts to the extent they relate to the performance of Work terminated or, as directed by Company, shall assign to Company or Owner, in form satisfactory to Company, such of its subcontracts as are designated by Company or shall take such other action relative to such subcontracts as may be directed by Company.
- 17.3 If Contractor has fully and completely performed all obligations under this Contract up to the date of termination, Contractor shall recover from Company as complete and full settlement for such termination for Work to be performed under this Contract, the actual costs of all such Work satisfactorily executed to the date of termination, plus an allowance for reasonable overhead and profit on such costs incurred prior to termination (but not to exceed a pro rata portion of such Contract Price for such Work based on the percentage of Work properly completed to the date of termination), together with reasonable costs occasioned by such termination and not previously paid for, less such sums as Contractor has already received on account of the Work performed. In no event shall total payment to Contractor exceed the Contract Price.
- 17.4 All requests for compensation under any of the foregoing provisions of Section 17.3 shall be submitted to Company in accordance with the provisions of Article 15.0, CHANGES. In no event shall Contractor be entitled to any prospective profits or any damages.

18.0 CLAIMS

Contractor shall give Company written notice within five (5) working days after the happening of any event which Contractor believes may give rise to a claim by Contractor for additional time or money. Within ten (10) working days after the happening of such event, Contractor shall supply Company with a statement supporting Contractor's claim, including but not limited to, Contractor's detailed estimate of the change in Contract Price and scheduled time occasioned thereby.

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Contractor shall substantiate its claim with payroll documents, paid invoices, receipts, records of performance and other documents satisfactory to Company and subject to its verification. Neither Company nor Owner shall be liable for, and Contractor hereby waives, any claim or potential claim of Contractor which was not reported by Contractor in accordance with the provisions of this Article. The parties shall negotiate diligently to reach an agreement, but in no case, except with Company prior written consent, shall any work be halted pending such agreement, whether or not the claim can be resolved to Contractor's satisfaction, and Contractor shall be bound by the terms and conditions of this Contract to prosecute the Work without delay to its successful completion. Company shall not be bound to any adjustments in the Contract Price or scheduled time unless expressly agreed to by Company in writing. No claim hereunder by Contractor shall be allowed if asserted after final payment under this Contract. Contractor's remedies are limited to those expressly set forth in this Contract.

MATERIALS AND EQUIPMENT

19.0 PROTECTION OF MATERIALS, EQUIPMENT AND WORK

Contractor shall at all times, in accordance with the best practices and at no additional cost to Company, preserve and protect material and equipment used by Contractor in the execution of the Work from damage or loss due to weather, fire, theft, unexplained disappearance or other similar casualty.

19.1 Contractor shall at all times, in accordance with the best practices and at no additional cost to Company, protect from damage due to Contractor's operations, equipment and materials (whether stored or installed), paving, structures and any and all other items on jobsite belonging to Owner, Company or others.

19.2 Neither Company nor Owner shall be responsible for any loss suffered by Contractor, or damage to the Work, or to materials, tools and equipment of Contractor or of any other contractor, and Contractor assumes responsibility for any such loss or damage and for any cost of repairing, making good, or replacing any such loss or damage that may be directed by Company or Owner.

20.0 CONTRACTOR'S CONSTRUCTION EQUIPMENT

Construction equipment obtained or furnished by Contractor which is to be used by Contractor on the jobsite shall be in first-class operating condition, safe, fit for the uses for which intended, and suitable for the safe, legal and efficient performance of the Work. Such equipment shall be subject to inspection from time to time by Company. Any such equipment of Contractor which is rejected by Company as not conforming with the foregoing shall be promptly removed by Contractor and replaced with equipment acceptable to Company, without additional cost to Company and without delaying the schedule for performance of the Work by Contractor.

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21.0 CONTRACTOR'S SHIPMENTS

- 21.1 Contractor shall be responsible for arranging all shipments of Contractor supplied materials and equipment to the site of the Work and shall consign such shipments to itself as Consignee at the project shipping address, freight fully prepaid. Contractor shall be responsible for making demurrage agreements and settlement with carriers for its shipments.
- 21.2 Contractor shall advise Company in writing in advance of major shipments of Contractor's materials and equipment and shall coordinate with Company the arrival, unloading and release of carriers' equipment. Contractor shall promptly unload its shipments and promptly release carrier's equipment.
- 21.3 In the event Contractor may be unable to promptly unload its shipment, Contractor shall notify Company of such inability not less than ten (10) working days in advance of arrival. Company, at its option, may unload or make arrangements for others to unload such shipments for the account and risk of Contractor. Contractor will promptly pay Company for such costs of unloading.

22.0 CONTROL OF COMPANY FURNISHED MATERIALS

- 22.1 Materials and equipment furnished by Company shall be received by Contractor in the presence of Company authorized representative and quantities thereof shall be checked jointly by Contractor and Company. The delivery and acceptance of all such materials and equipment shall be recorded in writing, and Contractor shall evidence receipt and acceptance of such materials and equipment by signing forms satisfactory to Company.
- 22.2 Contractor shall carefully note any visible damage to Company furnished materials and equipment prior to Contractor's acceptance of delivery. After Contractor has accepted delivery of such materials and equipment, Contractor shall assume full responsibility for any loss of or damage to such materials and equipment. Contractor shall notify Company of any materials and equipment supplied to Contractor by Company which are surplus and, without additional compensation, shall cooperate with Company and Owner in the disposition of such surplus as directed by Company.
- 22.3 Contractor shall notify Company of any lack of, or requirement for, materials and equipment required under this Contract to be supplied by Company in sufficient time for Company to furnish said materials or equipment in advance of Contractor's need. In the event of misfit of Company furnished materials or equipment, Contractor shall promptly notify Company of such misfit. Contractor shall take all reasonable steps to avoid standby time due to such misfit or lack of Company furnished materials or equipment and to continue progress of other portions of Work pending correction of such misfit and/or the furnishing of materials or equipment.

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23.0 CARE, CUSTODY, CONTROL AND TITLE TO MATERIALS AND EQUIPMENT

- 23.1 Good and clear title to all materials and equipment furnished by Contractor under this Contract for the Work shall, except as expressly provided otherwise, elsewhere in this Contract, pass to Owner upon incorporation into the permanent plant. Contractor shall ensure that subcontractors from whom Contractor obtains materials and equipment do not retain, encumber or reserve title to such items, and Contractor shall defend, indemnify and hold Company and Owner harmless from any such claims by its subcontractors.
- 23.2 Notwithstanding the provisions of Section 23.1, the care, custody and control of Contractor's Work incorporated into the permanent plant shall remain with Contractor until such Work has been accepted in writing by Company and shall thereupon pass to Company unless Company or Owner notify Contractor in writing that such care, custody, and control is assumed by Company or Owner at an earlier date. The taking of possession of such Work pursuant to Article 13.0, POSSESSION PRIOR TO COMPLETION, shall not constitute the assumption of care, custody and control of such Work until such time as such Work has either been accepted in writing by Company or Contractor has been notified as set forth herein.
- 23.3 Contract revenues representing payments to subcontractors shall not be considered to be earned by Contractor unless and until Contractor has paid the current invoices of such subcontractor. In the event Company determines, in its sole discretion, that Contractor has become insolvent or is in danger of becoming insolvent, then Company is authorized, but not required, to make direct payment to Contractor's subcontractors with respect to any current or past-due invoices then outstanding. Alternatively, Company may, in its sole discretion, require that contracts between Contractor and any such subcontractor be assigned to Owner or Company, and Contractor hereby authorizes and consents to any such assignment. Owner and Company shall be entitled to full credit against any obligations to Contractor for any payments made to any subcontractor under this Section 23.3, whether made pursuant to assigned subcontracts or otherwise. Title to any materials or equipment for which such direct payment is made shall pass directly from such subcontractor to Company or Owner.

LABOR AND WORK RULES**24.0 CONTRACTOR'S PERSONNEL**

- 24.1 At all times during the course of the Work, Contractor shall provide at the jobsite a qualified, competent and responsible supervisor who shall be satisfactory to Company. The supervisor shall have authority to represent Contractor and directions given to him shall be binding on Contractor. Upon Company written request, Contractor shall give the supervisor, in writing, complete authority to act on behalf of, and to bind Contractor in all matters

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pertaining to the Work and this Contract. Contractor shall furnish Company a copy of the authorization. Contractor shall not transfer or remove any of its supervisory or key personnel from performance of Work without the prior written approval of Company.

24.2 Any employee of Contractor deemed by Company or Owner, in their sole judgment, to be objectionable shall be removed from the jobsite immediately upon Company request and shall be promptly replaced by Contractor at no extra expense to Company or Owner. Contractor shall nevertheless retain all authority and control over its employees, including responsibility for all costs arising from providing reasonable accommodations for its employees.

24.3 If requested by Company, Contractor shall furnish it with the names and addresses of Contractor's subcontractors, field employees of Contractor and its subcontractors, and others who have performed or are performing the Work hereunder.

25.0 LABOR HARMONY

Contractor agrees that all labor employed by it, its agents, and/or subcontractor's for Work on the jobsites shall be in harmony with and be compatible with all other labor used by Company or other Contractors. Whenever Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the Work, Contractor shall immediately give notice thereof including all relevant information to Company.

26.0 EMPLOYMENT CERTIFICATIONS AND PRACTICES

26.1 Contractor certifies that it has an affirmative action policy ensuring equal employment opportunity without regard to race, color, national origin, sex, age, religion or handicap, that it maintains no employee facilities segregated on the basis of race, color, religion or national origin and that it is not debarred or suspended from being awarded Federal or Federally assisted contracts.

26.2 If applicable to this Contract, the following laws, orders and regulations, as amended, are hereby incorporated by reference: Executive Order 11246; Vietnam Era Veterans Readjustment Act; Rehabilitation Act of 1973; Veterans Compensation, Education and Employment Act; 41 CFR 60-1.4 (Equal Employment Opportunity); 41 CFR 60-250.4 (Veterans Affirmative Action); 41 CFR 60-741.4 (Handicap Affirmative Action); 41 CFR 601.40 (Affirmative Action Plans); 41 CFR 601.7 (EE01 Reports); 41 CFR 61650 (Veterans Employment Reports).

26.3 Upon request of Company, Contractor will furnish it with a certificate satisfactory in form to Company that goods furnished by Contractor in performance of this Contract were produced in full compliance with the requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act of 1938,

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as amended, and the regulations and orders of the U.S. Department of Labor issued under Section 14 thereof.

27.0 WORK RULES

Contractor shall comply strictly with Company and Owner's rules governing the conduct of Contractor and Contractor's employees, agents and subcontractors at and about the jobsite. Contractor agrees that it shall ensure that its supervisory personnel, employees, agents and subcontractors at the jobsite comply strictly with such rules. Company and Owner reserve the right to, from time to time, revise any such rules, and Contractor shall comply fully with such rules as revised in accordance with the foregoing provisions.

INDEMNIFICATION AND INSURANCE

28.0 INDEMNITY

28.1 Contractor agrees to defend, indemnify and hold harmless Company and Owner, the affiliated companies of each, and all of their directors, officers, employees, agents and representatives, from and against any claim, demand, cause of action, liability, loss or expense arising:

28.1.1 By reason of Contractor's actual or asserted failure to comply with any law, ordinance, regulation, rule or order, or with this Contract. This Section 28.1.1 includes, but is not limited to, fines or penalties by government authorities and claims arising from Contractor's actual or asserted failure to pay taxes.

28.1.2 From actual or asserted violation or infringement of rights in any patent, copyright, proprietary information, trade secret or other property right caused or alleged to be caused by the use or sale of goods, materials, equipment, methods, processes, designs or information, including construction methods, construction equipment and temporary construction facilities, furnished by Contractor or its subcontractors in performance of the Work. Should any goods or services provided by Contractor become, or appear likely to become, the subject of a claim of infringement of a patent, copyright or other property right, Contractor shall, at Company's option, either procure for Company and Owner the right to continue using such goods or services, replace same with equivalent, non-infringing goods or services, or modify the goods or services so that the use thereof becomes non-infringing, provided that any such modification or replacement is of equal quality and provides equal performance to the infringing goods or services.

28.1.3 From injury to or death of persons (including employees of Company, Owner, Contractor and Contractor's subcontractors) or

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from damage to or loss of property (including the property of Company or Owner) arising directly or indirectly out of this Contract or out of any acts or omissions of Contractor or its subcontractors. Contractor's defense and indemnity obligations hereunder include claims and damages arising from non-delegable duties of Company or Owner or arising from use by Contractor of construction equipment, tools, scaffolding or facilities furnished to Contractor by Company or Owner.

- 28.1.4 From actual or alleged contamination, pollution, or public or private nuisance, arising directly or indirectly out of this Contract or out of any acts or omissions of Contractor or subcontractors.
- 28.2 Contractor's indemnity obligations shall apply regardless of whether the party to be indemnified was concurrently negligent, whether actively or passively, excepting only where the injury, loss or damage was caused solely by the negligence or willful misconduct of, or by defects in design furnished by, the party to be indemnified. Contractor's defense and indemnity obligations shall include the duty to reimburse any attorneys' fees and expenses incurred by Company or Owner for legal action to enforce Contractor's indemnity obligations.
- 28.3 In the event that the indemnity provisions in this Contract are contrary to the law governing this Contract, then the indemnity obligations applicable hereunder shall be construed to be to the fullest extent allowed by applicable law.
- 28.4 With respect to claims by employees of Contractor or its subcontractors, the indemnity obligations created under this Article 28.0 shall not be limited by the fact of, amount, or type of benefits or compensation payable by or for Contractor, its subcontractors or suppliers under any workers' compensation, disability benefits, or other employee benefits acts or regulations, and Contractor waives any limitation of liability or immunity arising from workers' compensation or such other acts or regulations.
- 28.5 Company shall be entitled to retain from payments otherwise due Contractor such amounts as shall reasonably be considered necessary to satisfy any claims, suits or liens for damages that fall within Contractor's indemnity obligations under this Article 28.0, until such claims suits or liens have been settled and satisfactory evidence to that effect has been furnished to Company.
- 28.6 Contractor acknowledges specific payment of \$10.00 incorporated into the Contract Price as legal consideration for Contractor's indemnity obligations as may be provided in this Contract.

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29.0 INSURANCE

29.1 Contractor shall, at its sole cost, obtain and maintain in force for the duration of the Contract (including the Guarantee period) insurance of the following types, with limits not less than those set forth below:

29.1.1 Workers' Compensation Insurance, including occupational illness or disease coverage, in accordance with the laws of the nation, state, territory or province having jurisdiction over Contractor's employees and Employer's Liability Insurance with a minimum limit of \$1,000,000 per accident and, for bodily injury by disease, \$1,000,000 per employee. Contractor shall not utilize occupational accident or health insurance policies, or the equivalent, in lieu of mandatory Workers' Compensation Insurance or otherwise attempt to opt out of the statutory Workers' Compensation system.

29.1.2 Commercial General Liability Insurance ("Occurrence Form") with a minimum combined single limit of liability of \$1,000,000 each occurrence for bodily injury and property damage; with a minimum limit of liability of \$1,000,000 each person for personal and advertising injury liability; and a minimum limit of liability of \$1,000,000 each occurrence for products/completed operations liability. Such policy shall have a general aggregate limit of not less than \$2,000,000, which general aggregate limit will be provided on a per project basis by means of ISO Endorsement CG 25 03 11 85. The products/ completed operations liability coverage shall be maintained in full force and effect for not less than three years following completion of Contractor's Services. The policy shall be endorsed to name Company and Owner, including their respective affiliates, directors and employees, as additional insureds. Such endorsement shall be made upon ISO Endorsement CG 20 10 11 85, "Additional Insured - Owners, Lessees or Contractors (Form B)."

29.1.3 Automobile Liability Insurance covering use of all owned, non-owned and hired automobiles with a minimum combined single limit of liability for bodily injury and property damage of \$1,000,000 per occurrence. This policy shall be endorsed to name Company and Owner, including their respective affiliates, directors and employees, as additional insureds.

29.1.4 If Contractor will utilize tools or equipment in the performance of its services under the Contract, Equipment Floater Insurance (Tools and Equipment Insurance) covering physical damage to or loss of all major tools and equipment, construction office trailers and their contents, and vehicles for which Contractor is responsible, throughout the course of the Work.

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- 29.2 Contractor hereby releases Company and Owner, including their respective affiliates, directors and employees, and shall cause Contractor's Insurers to waive their rights of subrogation against such released parties, for losses or claims for bodily injury, property damage or other insured claims arising out of Contractor's performance under the Contract.
- 29.3 Certificates of Insurance satisfactory in form to Company (ACCORD form or equivalent) shall be supplied to Company evidencing that the insurance required above is in force, that not less than thirty days written notice will be given to Company prior to any cancellation or restrictive modification of the policies, and that the waivers of subrogation are in force. Contractor shall also provide with its Certificate of Insurance executed copies of the additional insured endorsements and dedicated limits endorsements required in this Article 29.0. At Company's request, Contractor will provide a certified copy of each insurance policy required under this Contract.
- 29.4 The foregoing insurance coverages shall be primary and non-contributing with respect to any other insurance or self insurance which may be maintained by Company or Owner. Contractor's General and Automobile Liability Insurance policies shall contain a Cross Liability or Severability of Interest clause. The fact that Contractor has obtained the insurance required in this Article shall in no manner lessen nor affect Contractor's other obligations or liabilities set forth in this Contract.
- 29.5 Builder's Risk Insurance covering loss or damage to materials and equipment furnished by Company or Owner that are to be incorporated into the completed facility shall be provided by Company or Owner. Contractor shall be responsible for the payment of the applicable deductible (which will not exceed \$5,000 per occurrence) for each loss to such materials or equipment which are in the care, custody and control of Contractor.

30.0 BONDS

If requested by Company, Contractor shall obtain payment and performance bonds, each in an amount equal to 100% of the Contract Price. The bonds shall be written on forms satisfactory to Company. Contractor's sureties shall be only those approved by the Department of Treasury, as indicated in Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies."

WORK CONDITIONS

31.0 CONTRACTUAL RELATIONSHIP

Contractor represents that it is fully experienced and properly qualified to perform the class of Work provided for herein, and that it is properly equipped, organized and financed to perform such Work. Contractor represents that at the time of submission

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of its quotation for performance of the Work, it was properly licensed and qualified to do business in all governmental jurisdictions in which the Work is to be performed. Upon written request by Company, Contractor shall furnish to it such evidence as Company may require relating to the Contractor's ability to fully perform this Contract. Nothing contained in this Contract or any subcontract awarded by Contractor shall create any contractual relationship between any subcontractor and Company or Owner. Contractor agrees that Contractor is an independent contractor and an employer subject to all applicable unemployment compensation, occupational safety and health, workers' compensation, or similar statutes so as to relieve Company of any responsibility or liability for treating Contractor's employees as employees of Company for the purpose of their safety or of keeping records, making reports or paying of any payroll taxes or contribution; and Contractor agrees to defend, indemnify and hold Company harmless and reimburse it for any expense or liability incurred under said statutes in connection with employees of Contractor, including a sum equal to any unemployment benefits paid to those who were Contractor's employees, where such benefit payments are charged to Company under any merit plan or to Company reserve account pursuant to any statute. The Contractor further agrees, as regards the items set forth below and for Work under this Contract, that it will keep and have available all necessary records and make all payments, reports, collections and deductions and otherwise do any and all things so as to fully comply with all federal, state and local laws, ordinances and regulations as they affect performance of this Contract, so as to fully relieve and protect Company and Owner from any and all responsibility or liability therefore or in regard thereto: (1) the production, purchase and sale, furnishing and delivering, pricing, and use or consumption of materials, supplies and equipment; (2) the hire, tenure or conditions of employment of employees and their hours of work and rates of the payment of their work, and (3) the keeping of records, making of reports, and the payment, collection and/or deduction of federal, state, commonwealth and local taxes, contributions, pension funds, welfare funds, or similar assessments.

32.0 PERMITS AND LICENSES

Contractor shall promptly apply for and procure without additional compensation all permits (except for such permits as may be specifically set forth as Company responsibility elsewhere in this Contract), certificates and licenses required by governmental authorities having jurisdiction over the Work, Contractor or the location of the Work.

33.0 INDEPENDENT CONTRACTOR

Nothing in this Contract shall be deemed to represent that Contractor, or any of Contractor's employees or agents, are the agents, representatives or employees of Company or Owner. Contractor shall be an independent contractor and shall have responsibility for and control over the details and means for performing the Work, provided that Contractor is in compliance with the terms of this Contract. Anything in this Contract which may appear to give Company the right to direct Contractor as to the details of the performance of the Work or to exercise a measure of control over

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Contractor shall mean that Contractor shall follow the desires of Company only as to the intended results of the Work.

34.0 CONFIDENTIAL INFORMATION

Drawings, specifications, and other information obtained by Contractor from Company or Owner in connection with the Work shall be held in confidence by Contractor and shall not be disclosed to third parties or used by Contractor for any purpose other than for the performance of Work or as authorized in writing by Company. All such documents furnished by Company or Owner to Contractor shall remain their property, and upon completion of the Work Contractor shall, as requested by Company, either destroy or return such documents including any copies thereof.

35.0 PUBLICITY

Contractor shall not make news releases, publicize or issue advertising pertaining to the Work or this Contract without first obtaining the written approval of Company.

36.0 OWNERSHIP AND USE OF DRAWINGS

Drawings, technical documents and data prepared or developed by Contractor and furnished to Company in performance of the Work shall be the property of Company and may be used by Company or Owner without restriction.

37.0 ASSIGNMENTS

Contractor shall not assign this Contract wholly or in part, voluntarily, by operation of law, or otherwise without first obtaining the written consent of Company. Any assignment of this Contract in violation of the foregoing shall be, at the option of Company, void. Subject to the foregoing, the provisions of this Contract shall extend to the benefit of and be binding upon the successors and assigns of the parties hereto. Company reserves the right at its sole option to assign this Contract to Owner, Owner's designated agent, or to Company affiliates.

38.0 LAWS AND REGULATIONS

38.1 Contractor shall comply strictly with local, municipal, state, federal and governmental laws, orders, codes and regulations applicable to Contractor's operations in the performance of the Work hereunder.

38.2 Contractor shall not, under any circumstances apply to or enter into negotiations with any governmental authority or agency for acceptance of variations from or revisions to safety or health, or air, water or noise pollution laws or regulations relating to this Contract or to the performance thereof, without Company and Owner's prior written approval.

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38.3 Contractor shall not, under any circumstances, cause or permit, in connection with the Work to be performed hereunder, the discharge, emission or release of any hazardous substance and/or waste, pollutant, contaminant or other substance in violation of any applicable laws, rules or regulations which are now or hereafter promulgated by any governmental authorities having jurisdiction over the Work. Contractor shall comply with all legal regulatory requirements applicable to the Work performed under this Contract and shall be responsible for compliance with all hazardous waste, health and safety, notice, training, and environmental protection laws, rules, regulations and requirements. "Hazardous waste" includes all substances which are or may be identified as such in 40 C.F.R. Part 261 or other applicable laws or regulations. Contractor shall submit to Company material safety data sheets (OSHA Form 20) as required by applicable regulation. As an inducement to award of this Contract, Contractor warrants full compliance and that it will adhere to all applicable project hazardous waste procedures and, if necessary, obtain or arrange for, at its expense, all identification numbers, permits, applications and other things required in connection with the activities under this Contract. Contractor agrees that it will not store any hazardous wastes at the jobsite for periods in excess of ninety (90) days or in violation of the applicable site storage limitations imposed by law, the Owner or Company, whichever shall be more restrictive. Contractor further agrees that it will not permit any accumulation in excess of the small quantity generator exclusion of 40 C.F.R. Part 261 or other applicable law, as amended. Contractor agrees to take, at its expense, all actions necessary to protect third parties, including without limitation, employees and agents of Owner and Company from any exposure to, or hazards of, hazardous and/or toxic wastes or substances generated or utilized in Contractor's operations. Contractor agrees to report to the appropriate governmental agencies all discharges, releases and spills of hazardous substances and/or wastes required to be reported by law and to immediately notify Owner and Company of same.

38.4 This Contract shall be subject to the law and jurisdiction of the State of California, unless expressly designated otherwise within this Contract.

39.0 EMERGENCY MEDICAL SERVICES

Company or Owner may furnish emergency medical treatment or related services to Contractor's employees in the case of job connected illness or injury occurring at the jobsite. In the event that such services are available, all such treatment or services, if any, are furnished on a Good Samaritan basis and not as a contractual obligation. In consideration of any such treatment or services, Contractor acknowledges that it assumes full and complete responsibility and liability for all injuries and damages to any of its employees arising out of or allegedly attributable in any way thereto. Nothing herein contained shall be construed as imposing any duty upon Company or Owner to provide facilities necessary to furnish emergency medical treatment or related services to Contractor's employees or to make such facilities and/or services available to Contractor's employees.

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DOCUMENTATION, LIENS AND OFFSETS

40.0 DOCUMENTATION AND RIGHT OF AUDIT

- 40.1 Where Contractor's Invoice includes compensation for Work performed at a unit price, Contractor shall submit its determination of units of Work performed, determined in accordance with the provisions of this Contract, and substantiated by documents satisfactory in form and content to Company. Upon verification by Company of said documents, Company will advise Contractor in writing of either acceptance of Contractor's determination of units or of Company determination of such units. If Contractor believes that Company has incorrectly determined the units of Work performed, Contractor shall comply with the provisions of Article 18.0, CLAIMS.
- 40.2 Where Contractor's invoice includes compensation for Work performed for a reimbursable Contract Price, all costs, expenses and other amounts so invoiced shall be substantiated and supported by equipment time slips, paid invoices, time sheets, receipts and other documents satisfactory to and verified by Company.
- 40.3 Contractor shall maintain for a period of two (2) years after final payment under this Contract, all records and accounts pertaining to Work performed by Contractor under this Contract for a unit price, a reimbursable price, or otherwise authorized in writing by Company for performance on a reimbursable basis. Company and/or Owner shall have the right to audit, copy and inspect said records and accounts at all reasonable times during the course of such Work and for the above two (2) year period for the purpose of verifying units furnished and/or costs incurred, as applicable.

41.0 LIENS

- 41.1 To the full extent permitted by applicable law, Contractor hereby waives and releases any and all rights of mechanic's lien and similar rights for payment for services, labor, equipment, or materials furnished by Contractor in performance of the Work and granted by law to persons supplying materials, equipment, services and other things of value to approve or modify land or structures hereon, which Contractor may have against Owner's premises, property belonging to Company and Owner, or to either of them, or funds payable by Owner to Company.
- 41.2 Contractor shall at all times promptly pay for all services, materials, equipment and labor used or furnished by Contractor in the performance of the Work under this Contract and shall, to the fullest extent allowed by law, at its expense keep Owner's premises and all property belonging to Company and Owner, or to either of them, free and clear of any and all of the above mentioned liens and rights of lien arising out of services, labor, equipment or materials furnished by Contractor or its employees, materialmen or

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subcontractors in the performance of the Work. If Contractor fails to release and discharge any lien or threatened lien against Owner's premises or the property of Company and Owner, or of either of them, arising out of performance of the Work within five (5) working days after receipt of written notice from Company to remove such claim of lien, Company may, at its option, discharge or release the claim of lien or otherwise deal with the lien claimant, and Contractor shall pay Company any and all costs and expenses of Company in so doing, including reasonable attorneys' fees incurred by Company.

42.0 RIGHT TO OFFSET

Company, without waiver or limitation of any rights or remedies of Company or Owner, shall be entitled from time to time to deduct from any amounts due or owing by Company to Contractor in connection with this Contract (or any other contract with Company), any and all amounts owed by Contractor to Company or Owner in connection with this Contract.

43.0 FINAL PAYMENT CERTIFICATION AND RELEASE

Company shall not be obligated to make final payment to Contractor until Contractor has delivered to Company a certificate and release satisfactory to Company that Contractor has fully performed under this Contract and that all claims of Contractor for the Work are satisfied upon the making of such final payment, that no property of Owner or property used in connection with the Work is subject to any unsatisfied lien or claim as a result of the performance of the Work, that all rights of lien against Owner's property in connection with the Work are released (including without limitation, if Company requests, releases of lien satisfactory in form to Company executed by all persons who by reason of furnishing material, labor or other services to Contractor for the Work or potential lienors against Owner's property), and that Contractor has paid in full all outstanding obligations against the Work.

GENERAL

44.0 ARBITRATION OPTION

In the event that Company is required to arbitrate a dispute with a third party, which dispute arises out of or is directly related to this Contract, Contractor agrees to join in such arbitration proceeding as Company may direct and shall submit to such jurisdiction and be finally bound by the judgment rendered in accordance with the arbitration rules as may be established therein.

45.0 VALIDITY OF PROVISIONS

In the event any section, or any part or portion of any section of this Contract shall be held to be invalid, void or otherwise unenforceable, such holding shall not affect the remaining part or portions of that section, or any other section hereof.

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46.0 WAIVER

Company's failure to insist on performance of any term, condition, or instruction, or to exercise any right or privilege included in this Contract, or its waiver of any breach, shall not thereafter waive any such term, condition, instruction, and/or any right or privilege.

No asserted waiver of any right or benefit by Company shall be valid unless such waiver is in writing, signed by Company, supported by consideration and specifies the extent and nature of the rights or benefits being waived.

47.0 GRATUITIES

47.1 Contractor, its employees, agents or representatives shall not offer or give to an officer, official or employee of Company or Owner, gifts, entertainment, payments, loans or other gratuities to influence the award of a contract or obtain favorable treatment under a contract.

47.2 Violation of this Article may be deemed by Company to be a material breach of this Contract and any other contract with Company and subject all contracts with Contractor to Termination for Default, as well as any other remedies at law or in equity.

48.0 INTERPRETATION

Headings and titles of Articles, Sections, paragraphs or other subparts of this Contract are for convenience of reference only and shall not be considered in interpreting the text of this Contract. No provision in this Contract is to be interpreted for or against any party because that party or its counsel drafted such provision.

49.0 SURVIVAL

The provisions of this Contract which by their nature are intended to survive the termination, cancellation, completion or expiration of this Contract shall continue as valid and enforceable obligations of the parties notwithstanding any such termination, cancellation, completion or expiration.

50.0 TRIAL

Contractor hereby knowingly, voluntarily and intentionally waives (to the extent permitted by applicable law) any right it may have to a trial by jury of any dispute arising under or relating in any way to this Contract and agrees that any such dispute may, at Company's option, be tried before a judge sitting without a jury.

END OF PART III

Contract No. 413982

ATTACHMENT 4.20

SUBSTANCE ABUSE POLICY

Reference Substance Abuse Policy of Alliance Contractor, dated January 2004, which is to apply to Alliance Contractor and its Subcontractors.

ATTACHMENT 7.2.1 (b)

ALLIANCE CONTRACTOR'S KEY PERSONNEL

For the purposes of Section 7.2.1, Alliance Contractor's Key Personnel are defined as follows:

1. Nick Saliagas, Program Manager
2. Mark Wills, Program Site Manager
3. Art Mims, Site Manager

JFC

ATTACHMENT 7.4

TERMINATION FOR CONVENIENCE FEE SCHEDULE

In the event that (a) Company terminates this Agreement pursuant to Section 7.2.3, and (b) Company actually completes the supply and construction of an FGD with respect to the terminated System in accordance with the Target Schedule, then the Termination Fee with respect to each FGD for which the Agreement is terminated pursuant to Section 7.2.3 shall be as follows:

TIME OF TERMINATION	TERMINATION FEE
	KU FGD
Prior to the Level Two Notice to Proceed has been given	[REDACTED]
Level Two Notice to Proceed has been given	[REDACTED]
Full Level Three Notice to Proceed has been given.	[REDACTED]

The Termination Fee shall never be less than [REDACTED] and the Termination Fee plus the Fee Amount earned to date shall never be more than the Base Fee. Except for those situations described above in this Attachment 7.4, in the event that Company terminates this Agreement pursuant to Section 7.2.3, the Termination Fee with respect to any System terminated pursuant to Section 7.2.3 shall be [REDACTED]

JFC

ATTACHMENT 8.8

PERFORMANCE BUYDOWN

The Performance Buydown shall be calculated as follows for a System:

System SO ₂ Removal	Performance Buydown As A Percentage of Target Cost
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

In the event that the SO₂ removal is below by any partial point, the Performance Buydown shall be calculated by prorating between the Performance Buydown for the two nearest full points on the above scale.

This Performance Buydown is not intended as a penalty but is intended to compensate Company for damages it will suffer which are difficult to ascertain in advance and the Parties agree that this Performance Buydown is reasonable in light of the anticipated harm caused by a failure of the FGD to perform in accordance with the Target FGD Performance Parameters.

These Performance Buydown amounts are to be treated in accordance with Section 14.18. The percentages shown in the right hand column of the table above will be reduced proportionately to the same extent, if any, by which any cap on the aggregate amount of performance liquidated damages set forth in the Subcontract with the FGD technology supplier is less than [REDACTED] of the FGD subcontract price (e.g., if the Subcontract with the FGD technology provider caps the provider's aggregate liability for performance liquidated damages a [REDACTED] of that Subcontract price, each of the percentages in the right hand column of the above table will be reduced by [REDACTED]).

JFC

ATTACHMENT 11.3

FORM OF IRREVOCABLE LETTER OF CREDIT IN LIEU OF RETENTION

ISSUING BANK: A1 CREDIT BANK
COMPLETE ADDRESS

BENEFICIARY: FULL CLIENT NAME
COMPLETE ADDRESS
ATTN: CONTACT NAME

AT THE REQUEST AND FOR THE ACCOUNT OF (CONTRACTOR), COMPLETE ADDRESS, ATTN: CONTACT NAME, WE HEREBY ISSUE THIS IRREVOCABLE STANDBY LETTER OF CREDIT IN THE AMOUNT OF () WHICH IS AVAILABLE AGAINST SIGHT DRAFT(S) OF THE BENEFICIARY BEARING THE CLAUSE "DRAWN UNDER LETTER OF CREDIT NUMBER _____" AND ACCOMPANIED BY THE FOLLOWING DOCUMENTS:

- 1. A CERTIFICATE DATED AND SIGNED BY A PURPORTED AUTHORIZED OFFICER OF THE BENEFICIARY STATING: "WE CERTIFY THAT WE ARE ENTITLED TO MAKE THE ACCOMPANYING DRAWING UNDER LETTER OF CREDIT NUMBER _____ PURSUANT TO THE TERMS OF KU CONTRACT NO. _____ DATED _____."
- 2. A CERTIFICATE DATED AND SIGNED BY A PURPORTED AUTHORIZED OFFICER OF THE BENEFICIARY STATING: "WE CERTIFY THAT THE AMOUNT OF THE DRAFT PRESENTED DOES NOT EXCEED THE AMOUNT ALLOWED PURSUANT SAID CONTRACT."

WE ENGAGE WITH YOU THAT ALL DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED UPON DELIVERY OF DOCUMENTS AS SPECIFIED IF PRESENTED AT THIS OFFICE ON OR BEFORE 0?/0?/0? (MUST FURNISH EXPIRATION DATE).

ALL AMOUNTS DRAWN IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT WILL BE TRANSFERRED BY WIRE TRANSFER INTO THE BENEFICIARY'S ACCOUNT NUMBER _____ IN (BANK), _____ (CITY), _____ (STATE).

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EXCEPT AS FAR AS OTHERWISE EXPRESSLY STATED HEREIN, THIS STANDBY LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES ("ISP98"), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590, AND AS TO MATTERS NOT GOVERNED BY THE ISP98, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AND APPLICABLE U.S. FEDERAL LAW.

JFC

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ATTACHMENT 14.4

CONFIDENTIAL NON-DISCLOSURE AGREEMENT

Refer to attached agreement with effective date of November 29, 2004.

(JFE)
L.A.

CONFIDENTIAL NON-DISCLOSURE AGREEMENT

THIS AGREEMENT ("Agreement") dated as of Nov. 29, 2004 between FLUOR ENTERPRISES, INC. ("Company"), of Greenville, South Carolina, and KENTUCKY UTILITIES COMPANY of Lexington, Kentucky ("KU") (KU and the Company are each a "Party").

1. **Purpose:** KU and Company desire to evaluate a proposed business relationship (the "Proposed Relationship") related to fine gas desulfurization projects (including ancillary systems) at certain of KU's coal fired generating units. This Agreement governs the use and treatment of each Party's trade and business information that may be disclosed to the other Party in connection with the Proposed Relationship.
2. **Definition:** "Confidential Information" means all information of one Party disclosed (either directly or indirectly in writing, orally or by drawings or inspection of parts or equipment) to the other Party in connection with the Proposed Relationship, including, without limitation, technical data, fuels data, operating parameters, know-how, research, products, software, services, development, inventions, processes, designs, drawings, engineering, marketing, or finances. Confidential Information of one Party (the "Disclosing Party") does not include information that (i) before it is disclosed by the Disclosing Party is already known by the other Party; or (ii) before or after it has been disclosed to the other Party, is in or enters the public domain (other than as a result of a breach by the other Party); or (iii) is developed by the other Party completely independently from Confidential Information of the Disclosing Party; or (iv) is or becomes available to the other Party on a nonconfidential basis from a source which, to the best of the other Party's knowledge after due inquiry, is not prohibited from disclosing such information to the other Party by a legal, contractual or fiduciary obligation to the Disclosing Party.
3. **Non-Disclosure of Confidential Information:** Each Party agrees not to use the other Party's Confidential Information for any purpose except in connection with the Proposed Relationship. Each Party agrees not to disclose the other Party's Confidential Information except (i) to such of its affiliates, directors, officers, employees, agents, representatives and legal and financial advisors (each one of whom is a "Representative" for purposes of this Agreement) whose knowledge and evaluation of the Confidential Information shall be reasonably necessary in connection with the Proposed Relationship; provided, that each Party shall be obligated to cause each of its Representatives to comply with this Agreement as if that Representative were the Party; or (ii) to the extent the Party reasonably determines it to be legally compelled to make a disclosure under any applicable law, statute or regulation or by any court or other governmental agency or municipality having jurisdiction over it (in which event the Party shall, to the extent it is permitted to do so, provide the other Party with prompt reasonable notice of such compelled disclosure). Except as otherwise explicitly provided in this Agreement, each Party agrees that it shall protect the confidentiality of and take all reasonable steps to prevent disclosure or use of the other Party's Confidential Information and to prevent it from falling into the possession of unauthorized persons.

DFD

JFC

Return of Materials: At any time requested by either Party, the other Party shall either return to the requesting Party or destroy all of the requesting Party's Confidential Information in its or its Representative's possession (including that recorded in computer records and that communicated

with other information or analyses of the other Party) and certify to the requesting Party that it has done so.

5. No Obligation to Disclose: Acquirer of Information: Neither Party shall be under any obligation to proceed with the Proposed Relationship unless both Parties enter into a definitive agreement (a "Definitive Agreement") providing therefor which either Party may decide to do at any time at its sole and absolute discretion. Neither Party makes any representation or warranty as to the accuracy of, nor shall either Party have any liability in connection with any omission or inaccuracies in, any of the information provided by it or on its behalf in connection with the Proposed Relationship except to the extent any such representations or warranties are given, or such liabilities arise, under a Definitive Agreement.

6. Miscellaneous: No failure or delay by either Party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder. This Agreement contains the entire agreement between the Parties concerning the subject matter thereof, and no modifications or variations of this Agreement or waiver of the terms and conditions hereof will be binding, unless approved in writing by each Party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year below written.

Kanuckly Utilities Company:

By: Scott Stalder

Title: Director Project Execution

Date:

By: John N. Vayles

Title: Vice President Regional Generation

Date:

Prime Enterprises, Inc.

By: [Signature]

Title: Director, Sales

Date: Nov. 29, 2004

By:

Title:

Date:

ATTACHMENT 14.14

FORM OF PARENT COMPANY GUARANTEE

PARENT GUARANTEE OF CONTRACTOR'S OBLIGATION

Project No. _____

This Guarantee (the "Guarantee") is given as of this _____ day of _____, 2005, by _____, a _____ corporation ("Guarantor") to _____ (the "Owner").

WHEREAS, Guarantor owns, directly or indirectly, [an interest in _____] ("Contractor");

WHEREAS, the Owner wishes to enter into *Flue Gas DeSulfurization Project Alliance Agreement* with Contractor (as the same may be amended, modified and supplemented from time to time in accordance with its terms, the "Agreement"); and

WHEREAS, the Owner is willing to enter into the Agreement on the condition that the Guarantor enter into this Guarantee; and

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Agreement.

NOW, THEREFORE, the Guarantor, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agrees as follows:

1. From and after the date hereof, Guarantor hereby irrevocably and unconditionally guarantees the due and punctual payment and performance by Contractor of all of its obligations under the Agreement, as it from time to time may be amended. Guarantor hereby agrees that its obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Agreement (including, without limitation, whether the Agreement was properly authorized and executed by or on behalf of the

Contractor) or any change therein or amendment thereto, the absence of any action to enforce the same, any waiver or consent by the Owner with respect to any provision thereof, the recovery of any judgment against Contractor or any action to enforce the same, or any other circumstances which may otherwise constitute a legal or equitable discharge or defense of a guarantor and Guarantor hereby waives presentment, demand of payment, protest or notice with respect to the Agreement and the obligations set forth therein or herein (except as provided herein). Guarantor covenants that this Guaranty will not be discharged except by complete performance of the obligations contained in the Agreement and in this Guaranty. This is a guaranty of payment and performance, and not of collection, and there shall be no requirement that Owner first proceed against Contractor. It being, however, explicitly understood and agreed that Contractor's limits of liability set forth in the Agreement shall also apply to the Guarantor's liability hereunder.

2. Guarantor shall be subrogated to all rights of the Company in respect of any amounts paid or obligations performed by Guarantor pursuant to the provisions of this Guaranty; provided, however, that Guarantor shall be entitled to enforce, or to receive any payments arising out of or based upon, such right of subrogation only after all amounts and obligations owed to the Company under the Agreement have been paid or performed in full.
3. Notwithstanding any other provision herein to the contrary, Guarantor retains all rights, including, but not limited to, the right to assert any and all claims, defenses, set-offs, and limitations of liability, possessed by Contractor under the terms of the Agreement or arising from the parties performance or failure to perform thereunder.
4. This Guarantee shall be valid until all of the Contractor obligations under the Agreement are discharged. Thereafter, except as otherwise stated in this Guarantee, this Guarantee shall be null and void, whether returned to Guarantor or not.
5. This Guarantee shall be binding upon Guarantor and its successors and assigns. This Guarantee is assignable by the Owner (to the extent that Guarantor's rights and duties are not altered by such assignment) and shall inure to the benefit of the Owner, its successors and assigns.
6. This Guarantee is direct, and absolute. Without limiting the generality of the foregoing, Guarantor agrees that this Guarantee is not conditioned upon its receipt of any type of notice (including, but not limited to, notice of acceptance of this Guarantee and notice of any developments), and Guarantor hereby waives any right it may otherwise have to same. Further, the Guarantor hereby unconditionally waives, as a condition precedent to the performance of its obligations hereunder, (a) notice of acceptance hereof, (b) notice of any action taken or omitted to be taken by the Owner in reliance hereon, and (c) any requirement that the Owner exhaust any right, power or remedy or proceed against the Contractor under the Agreement or any other agreement or instrument referred to therein,



or against any other person under any other guarantee of any of Contractor's obligations under the Agreement. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not affect the liability of the Guarantor hereunder:

- (i) at any time or from time to time, without notice to the Guarantor, the time for any performance of or compliance with any of Contractor's obligations under the Agreement. shall be extended, or such performance or compliance shall be waived;
 - (ii) any of the acts mentioned in any of the provisions of the Agreement or any other agreement or instrument referred to therein shall be done or omitted;
 - (iii) any of Contractor's obligations under the Agreement shall be modified, supplemented or amended in any respect in accordance with the terms of the Agreement;
 - (iv) the Owner's acceptance of any instrument in substitution for any claim or debt;
 - (v) any leniency or failure to pursue collection by the Owner with respect to the Contractor;
 - (vi) any release or impairment of collateral, if any, which secures payment of Contractor's obligations to the Owner; or
 - (vii) the inclusion by any subsequent separate agreement or by any amendment of this Guarantee at a later date of additional guarantors of the obligations guaranteed hereunder; or the subsequent release of any of same.
7. The Obligations of the Guarantor under this Guarantee shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Contractor in respect of its obligations under the Agreement is rescinded or must be otherwise restored by any holder of any of such obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise.
8. The Guarantor represents and warrants to the Owner that this Guarantee has been duly executed and delivered by the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms, except to the extent that such enforceability may be limited by applicable bankruptcy, insolvency, reorganization and similar laws affecting creditors' rights generally, and subject to general principles of equity, including the discretion of a court in granting equitable remedies.



9. This Guarantee is subject to and shall be construed in all respects with United States law as well as laws of the State of Kentucky. The courts in the State of Kentucky are to have exclusive jurisdiction to settle any dispute, which may arise out of or in connection with this Guarantee.

In Witness whereof, Guarantor has caused this Guarantee to be executed and delivered to Owner in the name and on behalf of Guarantor by one of its representatives who is duly authorized to do so on behalf of Guarantor.

[GUARANTOR]

By: _____

Title: _____

JFC

EXHIBIT A
FORM OF CERTIFICATE
OF
FINAL COMPLETION

Unit _____

Based on having met the following unit project milestones:

(a) Mechanical Completion, (b) Successful Testing or the Payment of the Performance Buydown with respect to each Initial Performance Testing criteria not achieved, (c) completion of all obligations of Alliance Contractor set forth in Section 4.9(a), (d) delivery of any CAD as-built drawings, other drawings, manuals, and spare parts lists as described in Sections 4.3 and 4.27, (e) completion of demobilization by Alliance Contractor and its Subcontractors, and (f) there is no claim or lien against the Work, the Unit(s), or the Job Site arising out of the Work, which claim or lien arises out of nonpayment for goods or services provided to Alliance Contractor or its Subcontractors.

The Company certifies that the unit Final Completion has been completed or achieved

Fluor Project Manager:

Kentucky Utilities FGD Project Manager

Name:

Name:

Signature:

Signature:

Date:

Date:



EXHIBIT B
FORM OF CERTIFICATE
OF
MECHANICAL COMPLETION

Unit _____

Based on:

(i) all equipment has been furnished and installed in accordance with manufacturers requirements (and in a manner that does not void any warranty) and the terms of this Agreement and, as appropriate, checked for alignment, lubrication, rotation, and hydrostatic and pneumatic pressure integrity; (ii) all subsystems have been installed, cleaned and statically tested and cold commissioning has been completed; (iii) the appropriate subsystems have been flushed and cleaned out as necessary; (iv) the System and all of its subsystems can be operated in a safe and prudent manner; (v) the System is ready to commence hot commissioning, testing and integrated operations without the use of temporary equipment or installations; (vi) an initial Punch List has been established and mutually agreed upon by Company and Alliance Contractor, (vii) the System performance test protocol has been submitted to and accepted by Company (such acceptance shall not be unreasonably withheld), (viii) the System Turnover Package has been delivered to Company and all equipment and subsystems have been operated in a safe and prudent manner, (ix) Tie-in has occurred,

The Company certifies that the Unit Mechanical Completion has been competed or achieved.

Fluor Site Construction Manager

Kentucky Utilities FGD Project Manager

Name:

Name:

Signature:

Signature:

Date:

Date:



EXHIBIT C

HOLD POINTS

In addition to Hold Points designated in the Target Schedule and those designated by Company from time to time by formal notice to Alliance Contractor, the following list of activities should also be treated as Hold Points:

Backfill Placement Compaction Testing

Rebar Placement

Concrete Placement

Insulation Placement over Ductwork (Weld Inspections)

Paint Primer and Final Coat

Bearing Pile Blow Count

Structural Steel Connection Final Bolt Up

Embedded Grounding and Conduits (Prior to Concrete Pour)

Electrical Devices (Transformers, Switchgear, MCC, Controls) Prior to Energization

INSPECTION POINTS

In addition to Inspection Points designated in the Target Schedule and those designated by Company from time to time by formal or informal notice to Alliance Contractor, the following list of activities should also be treated as Inspection Points:



Kentucky Utilities Company
(as Borrower)

Fidelia Corporation
(as Lender)

LOAN AGREEMENT

Contents

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THIS AGREEMENT made on _____

Between

KENTUCKY UTILITIES COMPANY, a Kentucky and Virginia corporation,
as borrower (the *Borrower*); and

FIDELIA CORPORATION, a Delaware corporation, as lender (the
Lender).

Whereas

(A) The Lender and the Borrower hereby enter into an agreement for the
provision by the Lender to the Borrower of a loan in the amount of
_____ (the Loan Amount).

Now it is hereby agreed as follows:

1. Definitions

1.1 In this Agreement

Business Day means a day on which banks in New York are generally
open

Default Interest Rate means: the rate, as determined by the Lender,
applying to the principal element of an overdue amount under Clause 6.3,
calculated as the sum of the interest rate in effect immediately before the
due date of such amount, plus 1%;

Effective Date shall have the meaning given to it in Clause 2.1;

Final Repayment Date means _____;

Interest Payment Date means _____ and _____ of each year
during the term of this agreement, provided, that:

any Interest Payment Date which is not a Business Day shall be extended
to the next succeeding Business Day;

Loan Amount means _____;

Maturity Date means the Final Repayment Date;

Request means a request for the Loan Amount from the Borrower to the Lender under the terms of clause 3.1;

Termination Event means an event specified as such in Clause 7;

Value Date means the date upon which cleared funds are made available to the Borrower by the Lender pursuant to a Request made in accordance with Clause 3.1. Such date shall be a Business Day as defined herein.

2. Term Loan

- 2.1 This Agreement shall come into effect on _____ (the "Effective Date").
- 2.2 The Lender grants to the Borrower upon the terms and conditions of this Agreement a term loan in an amount of _____.
- 2.3 The new indebtedness shall be evidenced by a note in substantially the form of Exhibit "A" attached hereto.

3. Availability of Requests

- 3.1 On the Effective Date, the Borrower will submit a request (the "Request") to the Lender for the Loan Amount, such Request specifying the Value Date, the Maturity Date and the bank account to which payment is to be made. The Request shall be submitted to the Lender by the Borrower and delivered in accordance with Clause 9.3.

4. Interest

- 4.1 The rate of interest on the Loan Amount is x.xx%.
- 4.2 Interest shall accrue on the basis of a 360-day year consisting of twelve 30 day months upon the Loan Amount.
- 4.3 Interest shall be payable in arrears on each Interest Payment Date.

5. Repayment and Prepayment

- 5.1 The Borrower shall repay the Loan Amount together with all interest accrued thereon and all other amounts due from the Borrower hereunder on the Final Repayment Date, whereupon this Agreement shall be terminated.
- 5.2 On any Interest Payment Date, and with at least three business day's prior written notice, the Borrower shall be entitled to prepay any amount of the loan outstanding, provided such payment is not less than \$1,000,000 and, provided further, the Borrower shall pay a prepayment charge equal to the present value of the difference between (i) the interest payable provided in this loan agreement and (ii) the interest payable at the prevailing interest rate at the time of prepayment, for the period from the date of prepayment through the Maturity Date, which difference, if negative, shall be deemed to be zero. The present value will be determined using the prevailing interest rate at the time of the prepayment as the discount rate.
- 5.3 A certificate from the Lender as to the amount due at any time from the Borrower to the Lender under this Agreement shall, in the absence of manifest error, be conclusive.

6. Payments

- 6.1 All payments of principal to be made to the Lender by the Borrower shall be made on the Final Repayment Date, or on an Interest Payment Date under Clause (5.2) to such account as the Lender shall have specified.
- 6.2 Interest shall be payable in arrears on each Interest Payment Date.
- 6.3 If and to the extent that full payment of any amount due hereunder is not made by the Borrower on the due date then, interest shall be charged at the Default Interest Rate on such overdue amount from the date of such default to the date payment is received by the Lender.

7. Termination Events

- 7.1 The Borrower shall notify the Lender of any Event of Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of it.
- 7.2 The following shall constitute an Event of Default hereunder:
- 7.2.1 Default is made by the Borrower in the payment of any sum due under this Agreement and such default continues for a period of 10 Business Days;
 - 7.2.2 Bankruptcy proceedings are initiated against the Borrower;
 - 7.2.3 The Borrower leaves the E.ON Group (i.e. the companies consolidated in EON AG's balance sheet);
 - 7.2.4 Securities and Exchange Commission or Public Utility Holding Company Act (PUHCA) requirements prohibit the transactions hereunder.

If a Termination Event occurs under Clause (7.2.2) of this section, the Loan Amount outstanding together with interest will become due and payable immediately.

If a Termination Event occurs according to Clauses (7.2.1) or (7.2.3) or (7.2.4) of this Section, Lender shall at its discretion grant Borrower a reasonable grace period unless such grace period shall be detrimental to the Lender. If the Termination Event is uncured at the expiration of such period, the Loan Amount outstanding together with interest will become due and payable immediately.

8. Operational Breakdown

- 8.1 The Borrower is not liable for any damages incurred by the Lender and the Lender is not liable for any damages incurred by the Borrower caused by Acts of God or other circumstances incurred by one party for which the other party cannot be held responsible (i.e. power outages, strikes, lock-outs, domestic and foreign acts of government and the like).

9. Notices

- 9.1 Each communication to be made in respect of this Agreement shall be made in writing but, unless otherwise stated, may be made by facsimile transmission or letter.
- 9.2 Communications to the Borrower shall be addressed to: Kentucky Utilities, 220 W. Main St., Louisville, KY 40202, Attn: Treasurer fax# (502) 627-4742 and to One Quality Street, Lexington, KY 40507, except for confirmations which should be sent to the attention of Mimi Kelly.
- 9.3 Communications to the Lender shall be addressed to: Fidelity Corporation, 300 Delaware Avenue, Suite 545, Wilmington, Delaware 19801, fax# (302) 427-5913, Attn: Executive Vice President

10. Assignment

- 10.1 The Lender may at any time assign, novate or otherwise transfer all or any part of its rights and obligations under this Agreement to any affiliate of the Lender.

11. Severability

- 11.1 If any of the provisions of this Agreement becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

12. Counterparts

- 12.1 This Agreement may be executed in any number of counterparts that shall together constitute one Agreement. Any party may enter into an Agreement by signing any such counterpart.

13. Law

13.1 This Agreement shall be governed by and construed for all purposes in accordance with the laws of Delaware.

IN WITNESS whereof the parties have executed this Agreement the day and year first above written.

SIGNED by _____)
for and on behalf of)
Kentucky Utilities Company)
in the presence of:)

SIGNED by _____)
for and on behalf of)
Fidelia Corporation)
in the presence of:)

EXHIBIT "A"

PROMISSORY NOTE

U.S. _____

Louisville, KY, _____

Kentucky Utilities Company ("KU"), for value received, hereby promises to pay to the order of FIDELIA Corporation ("FIDELIA") in lawful money of the United States of America (in freely transferable U.S. dollars and in same day funds), in accordance with the method of payment specified in that certain Loan Agreement dated as of _____, between FIDELIA and KU ("the Agreement"), the principal sum of _____, which amount shall be payable at such times as provided in the Agreement.

KU promises also to pay interest on the unpaid principal amount hereof in like money and in like manner at the rates which shall be determined in accordance with the provisions of the Agreement, said interest to be payable at the times provided for in the Agreement. This Note is referred to in the Agreement and is entitled to the benefits thereof and the security contemplated thereby. This Note evidences a loan made by FIDELIA, during such time as such loan is being maintained. This Note is subject to prepayment as specified in the Agreement. In case KU defaults on the loan, the principal and accrued interest on this Note may be declared to be due and payable in the manner and with the effect provided in the Agreement.

KU hereby waives presentment, demand, protest or notice of any kind in connection with this Note.

Kentucky Utilities Company

By: _____

KENTUCKY UTILITIES COMPANY

FINANCIAL EXHIBIT
(807 KAR 5:001 SEC. 6)

January 31, 2006

(1) Amount and kinds of stock authorized.

80,000,000 shares of Common Stock, without par value.
5,300,000 shares of Cumulative Preferred Stock, without par value.

(2) Amount and kinds of stock issued and outstanding.

Common Stock:
37,817,878 shares issued and outstanding.

(3) Terms of preference of preferred stock whether cumulative or participating, or on dividends or assets otherwise.

None

(4) Brief description of each mortgage on property of applicant, giving date of execution name of mortgagor, name of mortgagee, or trustee, amount of indebtedness authorized to be secured thereby, and the amount of the indebtedness actually secured, together with any sinking fund provisions.

Mortgage indenture dated May 1, 1947, executed by and between the Company and U.S. Bank National Association (the "Trustee") and Richard Prokosch, as trustees and amended by the several indentures supplemental thereto. As of January 31, 2006, the amount of indebtedness secured thereby was \$361,563,900. The indenture does not fix an overall limitation on the aggregate principal amount of bonds of all series that may be issued or outstanding thereunder.

- (5) Amount of bonds authorized, and amount issued giving the name of the public utility which issued the same, describing each class separately, and giving date of issue, face value, rate of interest, date of maturity and how secured, together with an amount of interest paid thereon during the last fiscal year.

First Mortgage Bonds authorized and issued by Kentucky Utilities Company at January 31, 2006, secured by a first mortgage lien, subject only to permitted encumbrances, on all or substantially all the permanent fixed properties, other than excluded property, owned by the Company:

Series	Date of Issue	Date of Maturity	Rate of Interest	Principal Amount		Interest Expense Year Ended January 31, 2006
				Authorized	Outstanding at January 31, 2006	
P	05/15/92	05/15/07	7.92%	\$ 53,000,000	\$ 53,000,000	\$ 4,197,600
R	06/01/95	06/01/25	7.55%	50,000,000		1,384,167
S	01/15/96	01/15/06	5.99%	36,000,000	-	2,156,400
Pollution Control Bonds						
10	11/01/94	11/01/24	Variable	54,000,000	54,000,000	1,424,594
11	05/01/00	05/01/23	Variable	12,900,000	12,900,000	340,900
12	02/01/02	02/01/32	Variable	20,930,000	20,930,000	557,873
13	02/01/02	02/01/32	Variable	2,400,000	2,400,000	63,970
14	02/01/02	02/01/32	Variable	7,200,000	2,400,000	63,970
15	02/01/02	02/01/32	Variable	7,400,000	7,400,000	197,241
16	07/01/02	10/01/32	Variable	96,000,000	96,000,000	2,620,147
17	10/01/04	10/01/34	Variable	50,000,000	50,000,000	1,285,688
18	07/07/05	06/01/35	Variable	13,266,950	13,266,950	206,695
19	11/17/05	06/01/35	Variable	13,266,950	13,266,950	82,995
					325,563,900	14,582,240
Interest rate swap						(3,926,028)
Long term debt mark to market					1,908,000	(676,400)
Total					\$ 327,471,900	\$ 9,979,812

- (6) Each note outstanding, giving date of issue, amount, date of maturity, rate of interest in whose favor, together with amount of interest during the last 12-month period.

<u>Payee</u>	<u>Date of Issue</u>	<u>Amount</u>	<u>Rate of Interest</u>	<u>Date of Maturity</u>	<u>Interest Expense Year Ended January 31, 2006</u>
E.ON U.S. LLC	12/31/00	\$ 69,665,000	Various	Various	\$ 1,211,357
Fidelia Corp.	04/30/03	100,000,000	4.55%	04/30/13	4,550,000
Fidelia Corp.	08/15/03	75,000,000	5.31%	08/15/13	3,982,500
Fidelia Corp.	11/24/03	33,000,000	4.24%	11/24/10	1,399,200
Fidelia Corp.	12/18/03	75,000,000	2.29%	12/19/05	1,512,354
Fidelia Corp.	01/15/04	50,000,000	4.39%	01/16/12	2,195,000
Fidelia Corp.	07/08/05	50,000,000	4.735%	07/08/15	1,335,007
Fidelia Corp.	12/19/05	75,000,000	5.36%	12/21/15	480,167

- (7) Other indebtedness, giving same by classes and describing security, if any with a brief statement of the devolution or assumption of any portion of such indebtedness upon or by person or corporation if the original liability has been transferred, together with amount of interest paid thereon during the last fiscal year.

None, other than current and accrued liabilities.

- (8) Rate and amount of dividends paid during the five previous fiscal years, and amount of capital stock on which dividends were paid. (1)

Dividends on Common Stock, without par value

2001	30,500,000
2002	-
2003	-
2004	63,000,000
2005	50,000,000

- (1) As of May 1998, the 37,817,878 shares are all owned by E.ON U.S. LLC and all dividends declared by KU's Board of Directors are paid to E.ON U.S. LLC.

Dividends on 4 3/4% Cumulative Preferred Stock

For each of the quarters in the previous five fiscal years, the Company declared and paid dividends of \$1.1875 per share on the 200,000 outstanding shares of 4 3/4% Cumulative Preferred Stock, \$100 stated value, for a total of \$ 237,500 per quarter. On an annual basis the dividend amounted to \$4.75 per share, or \$950,000. This series of preferred stock was redeemed on October 24, 2005.

Dividends on 6.53% Cumulative Preferred Stock

For each of the quarters in the previous five fiscal years, the Company declared and paid dividends of \$1.6325 per share on the 200,000 outstanding shares of 6.53% Cumulative Preferred Stock, \$100 stated value, for a total of \$326,500 per quarter. On an annual basis the dividend amounted to \$6.53 per share, or \$1,306,000. This series of preferred stock was redeemed on October 24, 2005.

(9) Detailed Income Statement and Balance Sheet

Monthly Financial and Operating Reports are filed each month with the Commission. Our most recent mailing covered financial statements for periods through January 31, 2006. Attached are detailed Statements of Income, Balance sheets and Retained Earnings for the Company for the period ending January 31, 2006.

KENTUCKY UTILITIES COMPANY
(807 KAR 5:001, Section 11, Item 2(a))

The 2005 Form 10-K Annual Report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 (combined form 10-K, separately filed by Louisville Gas and Electric Company and Kentucky Utilities Company) contains Statements of Income, Balance Sheets, Statements of Retained Earnings, Statements of Cash Flows, Statements of Capitalization, Statements of Other Comprehensive Income, Management's Discussions and Analysis of Financial Condition and Results of Operation, and Notes to Financial Statements, for Louisville Gas and Electric Company ("LG&E") and Kentucky Utilities Company ("KU"). The Annual Report, the FERC Form 1, and subsequent monthly reports of KU have been previously filed with the Commission.

We have also attached the succeeding three pages, detailed Statements of Income, Balance Sheets, and Statements of Retained Earnings for KU for the period ending January 31, 2006.

KENTUCKY UTILITIES COMPANY
STATEMENT OF INCOME
JANUARY 31, 2006

	<u>YEAR ENDED CURRENT MONTH</u>
	<u>THIS YEAR</u> <u>AMOUNT</u>
Electric Operating Revenues.....	1,202,586,007.66
Rate Refunds.....	-
Total Operating Revenues.....	1,202,586,007.66
Operating Expenses	
Fuel	382,124,644.52
Power Purchased.....	217,657,261.82
Other Operation Expenses.....	204,140,523.52
Maintenance.....	71,937,976.27
Depreciation.....	109,703,174.74
Amortization Expense.....	5,285,675.95
Regulatory Credits.....	(7,155,978.31)
Taxes	
Federal Income.....	58,375,979.18
State Income.....	10,937,555.19
Deferred Federal Income - Net.....	(5,809,323.74)
Deferred State Income - Net.....	(761,253.92)
Federal Income - Estimated.....	(1,859,242.19)
State Income - Estimated.....	(714,746.92)
Property and Other.....	16,605,796.43
Loss (Gain) from Disposition of Allowances.....	(1,108,364.26)
Accretion Expense.....	1,410,462.24
Total Operating Expenses.....	1,060,770,140.52
Net Operating Income.....	141,815,867.14
Other Income Less Deductions	
Other Income Less Deductions.....	1,894,443.97
AFUDC - Equity.....	49,195.33
Total Other Income Less Deductions.....	1,943,639.30
Income Before Interest Charges.....	143,759,506.44
Interest on Long Term Debt.....	25,434,039.99
Amortization of Debt Expense - Net.....	2,931,673.64
Other Interest Expenses.....	3,663,547.30
AFUDC - Borrowed Funds.....	(13,940.71)
Total Interest Charges.....	32,015,320.22
Net Inc Before Cumulative Effect of Acctg Chg.....	111,744,186.22
Cumulative Effect of Accounting Chg Net of Tax.....	3,337,340.49
Net Income.....	108,406,845.73
Preferred Dividend Requirements.....	1,648,137.92
Earnings Available for Common.....	106,758,707.81

KENTUCKY UTILITIES COMPANY
BALANCE SHEET AS OF JANUARY 31, 2006

<u>ASSETS AND OTHER DEBITS</u>	<u>THIS YEAR</u>	<u>LIABILITIES AND OTHER CREDITS</u>	<u>THIS YEAR</u>
Utility Plant		Capitalization	
Utility Plant at Original Cost.....	3,850,360,937.02	Common Stock.....	308,139,977.56
Less Reserves for Depreciation & Amortization....	<u>1,792,709,125.40</u>	Common Stock Expense.....	(321,288.87)
		Paid-In Capital.....	15,000,000.00
Total.....	<u>2,057,651,811.62</u>	Other Comprehensive Income.....	-
		Retained Earnings.....	714,328,514.19
Investments - At Cost		Unappropriated Undistributed Subsidiary Earnings..	<u>16,642,514.00</u>
Ohio Valley Electric Corporation.....	250,000.00	Total Common Equity.....	<u>1,053,789,716.88</u>
Nonutility Property-Less Reserve.....	895,722.54	Preferred Stock.....	-
Investments in Subsidiary Companies.....	17,938,314.00		
Special Funds.....	5,639,107.06	First Mortgage Bonds.....	325,563,900.00
Other.....	<u>441,354.99</u>	Other Long-Term Debt.....	-
		LT Notes Payable to Associated Companies.....	383,000,000.00
Total.....	<u>25,164,498.59</u>	Long-Term Debt Marked to Market.....	<u>1,908,000.00</u>
		Total Long-Term Debt.....	710,471,900.00
Current and Accrued Assets		Total Capitalization.....	<u>1,764,261,616.88</u>
Cash.....	6,298,676.58	Current and Accrued Liabilities	
Special Deposits.....	21,671,931.44	Advances from Associated Companies.....	-
Temporary Cash Investments.....	14.45	Long-Term Debt Due in 1 Year.....	-
Accounts Receivable-Less Reserve.....	147,244,234.43	Notes Payable.....	-
Notes Receivable from Assoc. Companies.....	-	Notes Payable to Associated Companies.....	112,920,000.00
Accounts Receivable from Assoc Companies.....	27,967,807.96	Accounts Payable.....	63,790,691.31
Materials & Supplies-At Average Cost		Accounts Payable to Associated Companies.....	58,728,742.10
Fuel.....	56,020,650.75	Customer Deposits.....	17,355,495.91
Plant Materials & Operating Supplies.....	24,916,708.48	Taxes Accrued.....	23,064,094.62
Stores Expense.....	6,074,571.32	Interest Accrued.....	6,182,613.90
Allowance Inventory.....	1,375,306.51	Dividends Declared.....	-
Prepayments.....	4,372,935.27	Misc. Current & Accrued Liabilities.....	<u>11,816,242.34</u>
Miscellaneous Current & Accrued Assets.....	<u>1,247,385.29</u>	Total.....	<u>293,857,880.18</u>
Total.....	<u>297,190,222.48</u>	Deferred Credits and Other	
		Accumulated Deferred Income Taxes.....	328,953,646.02
Deferred Debits and Other		Investment Tax Credit.....	2,015,491.32
Unamortized Debt Expense.....	5,018,341.07	Regulatory Liabilities.....	31,645,705.11
Unamortized Loss on Bonds.....	10,953,807.90	Customer Advances for Construction.....	1,480,096.71
Accumulated Deferred Income Taxes.....	42,695,366.19	Asset Retirement Obligations.....	26,936,675.92
Deferred Regulatory Assets.....	64,206,860.27	Other Deferred Credits.....	15,356,978.01
Other Deferred Debits.....	<u>62,165,628.66</u>	Misc. Long-Term Liabilities.....	32,020,605.63
		Accum Provision for Post-Retirement Benefits.....	<u>68,517,841.00</u>
Total.....	<u>185,040,004.09</u>	Total.....	<u>506,927,039.72</u>
		Total Liabilities and Other Credits.....	<u>2,565,046,536.78</u>
Total Assets and Other Debits.....	<u>2,565,046,536.78</u>		

KENTUCKY UTILITIES COMPANY
ANALYSIS OF RETAINED EARNINGS
JANUARY 31, 2006

	<u>Year Ended Current Month</u>
	<u>Total</u>
	<u>Retained</u>
	<u>Earnings</u>
Retained Earnings and Undistributed Earnings	
Balance Beginning of Period.....	663,240,038.53
Net Income To Date.....	108,406,845.73
Adjust for Equity in Subsidiary	
Earnings for Year	
-EE Inc.....	(4,556,843.00)
Dividends Rec'd Current Year	
-EE Inc.....	-
Preferred Stock Dividends.....	(1,648,137.92)
Common Stock Dividends.....	(50,000,000.00)
Preferred Stock Redemption Exp.	(1,113,389.15)
Balance End of Period.....	714,328,514.19

KENTUCKY UTILITIES COMPANY
(801 KAR 5:001, Section 11, Item 2(b))

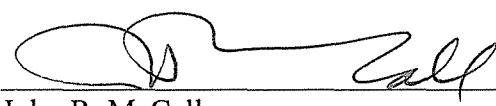
The Applicant's Indenture of Mortgage or Deed of Trust dated May 1, 1947, as heretofore amended, securing Applicant's outstanding First Mortgage Bonds has heretofore been filed with the Commission. The most recent Supplemental Indenture, dated November 1, 2005, is on file with the Commission in Case No. 2005-00357 (In the Matter of: Application of Kentucky Utilities Company for an Order Authorizing the Issuance of Securities and the Assumption of Obligations).

SECRETARY'S CERTIFICATE

I, John R. McCall, do hereby certify that I am the duly qualified and acting Executive Vice President, General Counsel and Corporate Secretary of Kentucky Utilities Company and that as Corporate Secretary, I have access to all original records of the Company and that I am authorized to make certified copies of the Companies' records on their behalf. I further hereby certify that the attached resolution was adopted by the Board of Directors of the Company by unanimous written consent in lieu of a meeting on February 3, 2006, and that the attached is a full, true and correct copy of said resolution as it appears on the records of the Company and that the same has not been altered, amended or repealed.

[Signature page follows.]

IN WITNESS WHEREOF, I have executed this Certificate this 5th day of April 2006.



John R. McCall
Executive Vice President, General
Counsel and Secretary

COMMONWEALTH OF KENTUCKY)

SS:

COUNTY OF JEFFERSON)

On this 5th day of April, 2006, before me, Betty Brinley, a duly appointed Notary Public in and for the Commonwealth of Kentucky, appeared John R. McCall, to me known and known to me to be the Executive Vice President, General Counsel and Secretary of Kentucky Utilities Company, respectively, and the person who executed the foregoing instrument personally acknowledged to me that in this capacity and with authority to issue this document he executed the same.


Notary Public, State at Large, Kentucky

MY COMMISSION expires: 6/21/06.

APPROVAL OF INTERCOMPANY LOAN FACILITIES

WHEREAS, the Company desires to enter into intercompany long-term loans with Fidelia Corporation or other affiliates of E.ON AG (collectively, "Fidelia"), in the amount of up to \$100 million (the "Intercompany Loans"), and

WHEREAS, the Intercompany Loans will enable the Company to continue expenditures on the previously approved flue gas desulphurization capital projects; and

NOW, THEREFORE, BE IT RESOLVED, that the Company is hereby authorized and directed to proceed with the Intercompany Loans as generally described in these resolutions; and

FURTHER RESOLVED, that, subject to receipt of all required regulatory approvals regarding the Intercompany Loans, the Company is authorized enter such loans; and

FURTHER RESOLVED, that the appropriate officers of the Company be, and each of them hereby is, authorized and directed, for and on behalf of the Company to take such actions and to execute, deliver and file the Intercompany Loans and such other agreements and documents, and to make changes thereto, as they shall, in their discretion, deem necessary, appropriate or advisable to consummate the transactions contemplated by these resolutions, with the taking of such actions and the execution of such agreements or documents conclusively to evidence the authorization thereof by the Board of Directors; and

FURTHER RESOLVED, that the appropriate officers of the Company be, and each of them hereby is, authorized and directed to prepare, execute and deliver such applications, filings or notices to governmental, commercial or financial entities as they may deem necessary or advisable in connection with the Intercompany Loans, including but not limited, to submissions to federal and state regulatory agencies; and

FURTHER RESOLVED, that all actions heretofore or hereafter taken by any officer of the Company in connection with the transactions contemplated by these resolutions be, and they hereby are, approved, ratified and confirmed in all respects.