

Engineering, Procurement and  
Construction Agreement

Between  
Kentucky Utilities Company,  
as Owner

and

AMEC KAMTECH, INC.,  
as Contractor

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## **ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT**

This Engineering, Procurement and Construction Agreement (“**Agreement**”) is entered into as of the Twenty-First day of November 2013 (“**Effective Date**”), by and between Kentucky Utilities Company, a Kentucky corporation (“**Owner**”), and AMEC KAMTECH, INC., a Delaware corporation (“**Contractor**”).

### **RECITALS**

WHEREAS, Owner desires to enter into an agreement with a qualified contractor to design, engineer, procure, construct, start-up, commission, and test the Subproject (as hereinafter defined) comprising the “Brown Environmental Air Compliance Project” (as hereinafter defined) on a lump-sum turnkey basis as set forth in this Agreement;

WHEREAS, Contractor represents that it is qualified to design, engineer, procure, construct, start-up, commission and test the Subproject and desires to perform all work and services in connection therewith on a lump-sum turnkey basis in accordance with the requirements and provisions of this Agreement;

WHEREAS, Contractor agrees to perform the Work as more specifically described in this Agreement; and

WHEREAS, Owner has entered into an equipment purchase agreement with respect to the pulse jet fabric filter systems to be used in connection with the Work which is to be concurrently assigned to Contractor with the execution of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, do hereby agree as follows:

### **ARTICLE 1**

#### **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.

“**Acceptable Credit Bank**” means a US based bank, or a bank with a major US based branch, acceptable to Contractor and Owner, the long term senior debt obligations of which are rated “A-” or better by S&P or “A3” or better by Moody’s (or an equivalent rating from an equivalent rating agency as may be approved by Contractor and Owner), or whose obligations are guaranteed, insured or otherwise credit enhanced by a bank or financial institution the long term senior unsecured debt obligations of which are so rated and is US based or has a major US based branch.

“**Acceptable Letter of Credit**” means an irrevocable, unconditional standby letter of credit issued by an Acceptable Credit Bank to which Owner is the beneficiary (i) having a stated

expiration date of not earlier than 364 days (or such longer term as may be commercially available) after the date of the original issuance or any renewal thereof; (ii) that automatically renews or permits Owner, on the signature of an authorized representative of Owner, to draw on sight all or any portion of the stated amount if not renewed on or prior to the [REDACTED] Day prior to stated expiration date; (iii) that is payable or negotiable at an office of such Acceptable Credit Bank (or a correspondent bank thereof) in New York City or such other place as the Parties may agree; (iv) which is payable in U.S. Dollars in immediately available funds, and (v) that is governed by the International Standby Practices, International Chamber of Commerce Publication No. 590 (ISP98), and any amendments or revisions thereto, and, to the extent not governed thereby, the laws of the State of New York; and (vi) drawable upon issuance of a drawing certificate signed by an authorized representative of Owner stating that Owner is entitled to be paid under the Engineering, Procurement and Construction Agreement between Kentucky Utilities Company, as Owner and AMEC KAMTECH, INC., as Contractor; and (vii) is otherwise in the form set forth in **Exhibit F-10**.

“**Affiliate**” means with respect to a specified Person any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the specified Person.

“**Agreed Rate**” has the meaning set forth in **Section 25.9**.

“**Agreement**” has the meaning set forth in the first paragraph hereof and includes the body of this Agreement (the “**Body of this Agreement**”) and all Exhibits herein referenced, as amended, modified or supplemented from time to time.

“**Applicable Credits**” has the meaning set forth in **Section 25.11.3**.

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

“**Application For Payment**” means a written request by Contractor to Owner for payment, completed in the form required by **Exhibit F-1** together with the documentation required by **Section 8.6**.

“**As-Built Drawings**” means: (i) all drawings prepared in the performance of the Work that are “issued for construction” by Contractor and (ii) all of the drawings specified by Owner in **Exhibit A**, in each case as modified and updated to accurately show the final actual design and construction of the Work upon Final Completion.

“**Basis of Bid**” has the meaning set forth in **Section 4.41**.

“**Brown Environmental Air Compliance Project Equipment Contract**” means the agreement between Owner and the individual Brown Environmental Air Compliance Project Equipment Supplier attached in **Exhibit Y**.

**“Brown Environmental Air Compliance Project Equipment Supplier”** means Clyde Bergemann Power Group Americas, Inc.

**“Brown Environmental Air Compliance Project”** means Brown Environmental Air Compliance Project as specified in **Exhibit A**.

**“Brown Generating Station Site”** means the site, as more particularly described in **Exhibit S**.

**“Business Day”** means any Day other than a Saturday, Sunday, or a holiday observed by the United States federal government, the Commonwealth of Kentucky, or the Owner.

**“Buydown Performance Guarantees”** means those Performance Guarantees for which liquidated damages are specifically provided in **Section 1.3** of **Exhibit L**.

**“Certificate”** means the applicable Certificate of Tie-in, Mechanical Completion, Commercial Operation, or Final Completion, as the case may be.

**“Certificate of Commercial Operation”** will be in the form set forth in **Exhibit F-2**.

**“Certificate of Final Completion”** will be in the form set forth in **Exhibit F-2**.

**“Certificate of Mechanical Completion”** will be in the form set forth in **Exhibit F-2**.

**“Certificate of Tie-in”** will be in the form set forth in **Exhibit F-2**.

**“Change in Law”** means an amendment, modification, or change of Applicable Law enacted, adopted, or promulgated after the Effective Date by a Governmental Authority. A change in Applicable Law with respect to any of the following will not constitute a Change in Law hereunder: (i) taxes or levies assessed on the basis of Contractor’s income, profits, revenues, gross receipts; (ii) other taxes, duties or imposts for which Contractor is responsible hereunder; (iii) taxes, levies or withholdings that vary the compensation, benefits or amounts to be paid to, on behalf of or on account of Contractor’s or its Subcontractors’ employees; or (iv) amendments, modifications or other changes in Applicable Law enacted, published or issued before the Effective Date whether or not such changes became effective after the Effective Date of this Agreement.

**“Change Order”** has the meaning set forth in **Section 10.1.3**.

**“Change Order Request”** has the meaning set forth in **Section 10.1.1**.

**“Change(s)”** has the meaning set forth in **Section 10.1.1**.

**“Claim Notice”** has the meaning set forth in **Section 20.3.1**.

**“Claims”** has the meaning set forth in **Section 20.1**.

“**Climatic Conditions**” means unusually severe weather conditions at the Job Site such as hurricane force winds, tornadoes, fifty (50) year or greater flood and other similarly unusual severe weather conditions.

“**Codes and Standards**” means the most recent edition of the codes, standards, and guidelines applicable to the Work, including those listed in **Exhibit N**.

“**Commercial Operation**” will have been achieved when all of the following have occurred with respect to the Subproject: (i) Mechanical Completion has occurred; (ii) the Work is complete except Punch List Items; (iii) all Performance Guarantee Tests have been successfully completed in accordance with this Agreement, and Contractor has completed making necessary and desirable system adjustments identified during the start-up and testing process; (iv) all Performance Guarantees other than Buydown Performance Guarantees and Guaranteed Availability have been simultaneously achieved in a single Commercial Operation Test and each Buydown Performance Guarantee has either been achieved or its applicable liquidated damages (including any provisional liquidated damages as provided for by Paragraph 1.3.3 of **Exhibit L**) have been paid by Contractor; (v) all obligations of Contractor expressly required to have been performed as of the Commercial Operation Date have been properly discharged; (vi) the Subproject and the applicable Unit are capable of being operated in the normal course of business up to individual full Unit generating capacity; (vii) Owner has received from Contractor all Permits (including Permits (other than Owner Permits) necessary to allow transfer of care, custody, and control of the Subproject to Owner), all of which shall be valid and in full force and effect; (viii) levels of Consumables associated with the Subproject are fully charged and filled; (ix) final versions of the Operating and Maintenance Manuals approved by Owner have been delivered; (x) currently marked drawings showing as-built conditions or the As-Built Drawings (current as of Commercial Operation) have been delivered; (xi) other submittals required to be submitted prior to or as of Commercial Operation; (xii) all Special Tools have been delivered to Owner; and (xiii) Owner has executed the Certificate of Commercial Operation.

“**Commercial Operation Date**” means the date on which Commercial Operation is achieved.

“**Commercial Operation Test**” has the meaning set forth in **Exhibit G**.

“**Component**” means any and all Systems, subsystems, subassemblies, Equipment, Materials, spare parts, and every item of whatever nature, including all documentation related thereto, connected with the Work performed or provided by Contractor or its Subcontractors under this Agreement that is permanently incorporated into the Subproject, provided as part of the Work, and retained by Owner following Final Completion.

“**Computer Program(s)**” means 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 by Contractor or its Subcontractors under this Agreement.

“**Confidential Information**” has the meaning set forth in **Section 18.1**.

“**Connect**” means the provision by Contractor of all labor, Materials, Equipment, Consumables, and Construction Aids to effect the connection of the Subproject at the applicable Terminal Points.

“**Construction Aids**” means all equipment (including construction equipment), apparatus, tools, supplies, construction tools, personal protection equipment, safety supplies, support services, field office equipment, supplies, structures, apparatus, form lumber, protective fencing, Computer Programs used in the execution, management, maintenance or completion of the Work and other goods and items that are required to construct, clean, commission, or test the Subproject, but which are not incorporated into the Work and retained by Owner.

“**Consumables**” means items such as compressed air or gases, chemicals, oils, lubricants, cleaning materials, demineralized water, valve packing, lamps, light bulbs, gaskets, fuel filters and comparable items which, by normal industry practices, are considered consumables and are replaced on a regular basis, required for cleaning, preparing, or completing the Work or are required for the proper operation of the Subproject.

“**Contract Price**” has the meaning set forth in **Section 8.1**.

“**Contractor**” has the meaning set forth in the preamble of this Agreement.

“**Contractor Change Notice**” has the meaning set forth in **Section 10.2**.

“**Contractor Default**” has the meaning set forth in **Section 24.2.1**.

“**Contractor Indemnitees**” has the meaning set forth in **Section 20.2**.

“**Contractor Hazardous Substances**” has the meaning set forth in **Section 19.1.1(ii)**.

“**Contractor Outage End Time**” means with respect to (i) a Scheduled Tie-in Outage Period, the date and time specified therefor in **Exhibit D** as such time and date may be adjusted pursuant to this Agreement and (ii) any other outage (of any kind) where Owner allows Contractor access to Unit 3, the date and time when Contractor must be entirely withdrawn from Unit 3 as specified by Owner at the start of such outage.

“**Contractor Response**” has the meaning set forth in **Section 10.1.2**.

“**Contractor’s Representative**” means the individual designated by Contractor pursuant to **Section 4.6**.

“**Contractor Taxes**” has the meaning set forth in **Section 8.2.1**.

“**Culpable Conduct**” means willful misconduct or the failure (by act or omission) to exercise the standard of care that a reasonably prudent Person would have exercised in a similar situation.

“**Day**” means a calendar day, including Saturdays, Sundays and legal holidays, except that, in the event that a payment obligation to be performed under this Agreement falls due on a

calendar day that is not a Business Day, the payment obligation shall be deemed due on the next Business Day thereafter.

“**DBE**” means a disadvantaged business enterprise (other than an MBE or WBE) Certified as being at least 51% owned by one or more individuals that are members of one disadvantaged group (or in case of any publicly owned business, at least 51% of the stock of which is owned by one or more individuals that are members of one disadvantaged group) whose management and daily business operations are controlled by one or more such individuals. Disadvantaged groups are those with respect to which the Small Business Administration recognizes disadvantaged businesses.

“**DBE Spend**” means expenditures with DBEs.

“**Defect**” (and derivative forms thereof, *e.g.*, “**Defective**”) has the meaning set forth in **Section 13.3**.

“**Design**” (or any derivation thereof) means all design, calculation, and engineering products or services and the conduct thereof, including all preliminary and detailed design of and associated with the Work (including the manner in which the Subproject is integrated into Unit 3).

“**Design Documents**” has the meaning set forth in **Section 4.7**.

“**Dispute**” has the meaning specified in **Section 23.1**.

“**Effective Date**” has the meaning set forth in the first paragraph of this Agreement.

“**Emergency Notification List**” means a list of Owner personnel, with associated contact information, that sets forth the individuals to be notified first in the event of an emergency involving health or safety, including environmental harm, or material damage to property, as such list is amended by Owner and provided to Contractor from time to time.

“**Environmental Action**” has the meaning set forth in **Section 19.1.1(ii)**.

“**Equipment**” means any product that: (i) is to be incorporated into the Subproject including, as applicable, Unit 3 as part of the Work; (ii) is an assembly of operational and/or non-operational parts, whether motorized or manually operated; and (iii) requires service connections, such as wiring, piping, or other process connections.

“**Excusable Events**” means the following events to the extent that Contractor demonstrates such event materially and adversely (i) affects the critical path of the Work, (ii) results in an increase in Contractor’s cost of performing the Work, or (iii) otherwise materially and [REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“**Exhibits**” means all of the exhibits referenced in this Agreement.

“**Existing Facilities**” means structures, installations, roadways, walkways, natural features, and the Units, and auxiliary and support facilities located on the Brown Generating Station Site, including all existing facilities used in connection with the generation of electricity; the transportation, handling or storage of Fuel; or the transmission of electricity.

“**Existing Facility Requirements**” has the meaning set forth in **Section 4.20**.

“**Extra Test**” has the meaning set forth in **Exhibit G**.

“**Final Completion**” will have been achieved when all of the following have occurred with respect to the Subproject: (i) Commercial Operation has been achieved; (ii) all items identified on the Punch List have been completed; (iii) all As-Built Drawings, Information, Design Documents, Operating and Maintenance Manuals, submittals and other documents required to be delivered to Owner hereunder have been delivered; (iv) all liquidated damages for which Contractor is liable pursuant to **Exhibit L** and other amounts owed by Contractor to Owner under this Agreement, if any, have been paid to Owner; (v) all Work has been completed other than Work (and other obligations) that require future performance (*e.g.*, warranty Work,

achievement of Guaranteed Availability, indemnification); (vi) the completion of Contractor's obligation to perform Corrective Action as defined in and pursuant to **Exhibit L**; and (vii) Owner has issued the Certificate of Final Completion.

**"Final Completion Date"** means, the date on which Contractor successfully achieves Final Completion.

**"Financing"** means any form of construction, interim, long-term debt, lease, tax-exempt, recourse, non-recourse, equity or other form of funding, or refinancing that Owner or an Affiliate of Owner obtains, utilizes or attempts to obtain or utilize in connection with such Owner's obligations hereunder.

**"Financing Parties"** means any Person that provides Financing, or credit support for Financing, any trustee(s) acting in connection therewith, and their respective successors and assigns.

**"Force Majeure"** means any condition, event, or circumstance, including the examples set forth below, but only if, and to the extent: (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, could not be prevented, avoided or removed by such Party; (iii) such condition, event, or circumstance has a material adverse effect on 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. By way of example, such events, conditions and circumstances shall include war, rebellion, sabotage, civil strife, insurrection, public disorder, Climatic Conditions, earthquake, quarantine, acts of terrorism, industry-wide or national strikes, and Changes in Law. Notwithstanding the foregoing, Force Majeure shall not include the following events, conditions or circumstances:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“**Fuel**” means coal, fuel oil, or natural gas, as applicable.

“**Governmental Authority**” means any federal, state, county, regional, city, parish or local government body, agency, authority, branch, department, arbitrator, court or any subdivision, instrumentality or agency thereof, having, or claiming, a regulatory interest in, or jurisdiction over, the Work (or any portion thereof), the Subproject, the Units, the Brown Generating Station Site (or any portion of the foregoing), this Agreement or one or more of the Parties.

“**Guaranteed Air Emissions**” has the meaning set forth in **Exhibit G**.

“**Guaranteed Availability**” has the meaning set forth in **Exhibit G**.

“**Guaranteed Commercial Operation Date**” means the date for Guaranteed Commercial Operation as set forth on **Exhibit D**, which date may be adjusted pursuant to the terms and conditions of this Agreement.

“**Guaranteed Consumption Limits**” has the meaning set forth in **Exhibit G**.

“**Guaranteed Final Completion Date**” means, [REDACTED] Days following the Guaranteed Commercial Operation Date.

“**Guaranteed PJFF Temperature Loss**” has the meaning set forth in **Exhibit G**.

“**Guaranteed Pressure Drops**” has the meaning set forth in **Exhibit G**.

“**Guaranteed Sound Emissions**” has the meaning set forth in **Exhibit G**.

**“Guarantor”** means National Ventures, Inc.

**“Hazardous Substance”** means: (i) any chemicals, materials, substances, or wastes which are now or hereafter defined as or included in the definition of “hazardous substance,” “hazardous material,” “hazardous waste,” “solid waste,” “toxic substance,” “extremely hazardous substance,” “pollutant,” “contaminant,” or words of similar import under any Applicable Law; (ii) any petroleum, petroleum products (including crude oil or any fraction thereof), natural gas, natural gas liquids, liquefied natural gas, or synthetic gas useable for fuel (or mixtures of natural gas and such synthetic gas), or oil and gas exploration or production waste, polychlorinated biphenyls, asbestos or asbestos-containing materials, mercury, urea formaldehyde insulation, radioactive materials, and lead-based paints, or any other substance that has been contaminated, polluted or made toxic; and (iii) any other chemical, material, substances, waste, or mixture thereof which is prohibited, limited, or regulated pursuant to, or that could reasonably be expected to give rise to liability under, any Applicable Law.

**“Hazardous Substances Management Plan”** has the meaning set forth in **Section 4.20(vii)**.

**“Hold Point”** means an inspection point with respect to which Contractor or its Subcontractors may not proceed further with respect to the Work unless and until Owner has either (i) inspected the applicable Work and authorized Contractor (including its Subcontractors) to proceed, or (ii) waived such inspection in writing. Hold Points include those points designated in **Exhibit X**, and those designated by Owner from time to time by formal notice to Contractor.

**“Hopper Heater Guarantee”** has the meaning set forth in **Exhibit G**.

**“Hour”** means a sixty (60) minute period commencing at the top of each clock hour.

**“Improvements”** means inventions, ideas, designs, concepts, discoveries, techniques, works, processes, formulas, or modifications (whether or not patentable, copyrightable, or otherwise protectable as intellectual property) conceived, reduced to practice, developed or acquired by any Party during the term of this Agreement and related directly to the Subproject. Improvements also include modifications and derivative works of any copyrightable works related to any of the foregoing.

**“Indemnified Parties”** has the meaning set forth in **Section 20.3.1**.

**“Indemnifying Parties”** has the meaning set forth in **Section 20.3.1**.

**“Information”** means all drawings; documents; manuals; training materials; Computer Programs; operating, maintenance, and other guidelines and procedures; and Design, Design Documents and other data, trade secrets, and information used or supplied by Contractor, whether directly itself or indirectly through Subcontractors, whether paper or electronic media or format, in performance of this Agreement which would be reasonably useful or necessary in Owner’s operation, maintenance, repair, personnel training, modification, or use of the Subproject and its associated Unit.

“**Insolvency Event**” means, with respect to the Person: (i) the Person’s (a) failure to generally pay its debts as they become due, (b) admission in writing of its inability to pay its debts as they become due or (c) making a general assignment for the benefit of creditors; (ii) any proceeding being instituted by or against the Person seeking: (a) to adjudicate it as bankrupt or insolvent, (b) liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any Applicable Law relating to bankruptcy, insolvency, reorganization or relief of debtors or (c) the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against the person, either such proceeding remains undismissed for a period of [REDACTED] Days or any of the actions sought in such proceeding occur; or (iii) the Person’s taking any action to authorize any of the actions set forth above in this definition.

“**Intellectual Property**” means all Patent Rights, patent applications, copyrights, trade secrets and all other intellectual property rights.

“**Job Site**” means that portion of the Brown Generating Station Site on which the Subproject will be constructed, including areas for parking, storage, laydown, and administrative facilities, as more particularly described in **Exhibit S** hereto.

“**LC**” means a union or non-union local contractor (i.e., a business enterprise) with primary operations within the Commonwealth of Kentucky or one of the Louisville Kentucky, Evansville Indiana, or Cincinnati Ohio Metropolitan Statistical Areas as defined by the U.S. Census Bureau.

“**LD Criteria**” has the meaning set forth in **Section 7.1**.

“**Liabilities**” has the meaning set forth in **Section 20.1**.

“**Lien Indemnitees**” has the meaning set forth in **Section 20.4**.

“**Liens**” has the meaning specified in **Section 20.4**.

“**Local Hires**” means workers hired as a part of Contractor’s and Subcontractors’ direct craft work force whose primary residences are located within: (i) Mercer County, Kentucky, (ii) the Commonwealth of Kentucky, or (iii) the Standard Metropolitan Statistical Area (as defined by the U.S. Census Bureau) for each of Louisville, Kentucky; Evansville, Indiana; or Cincinnati, Ohio.

“**Local Spend**” means expenditures with LCs.

“**Major Subcontractor**” means a Subcontractor providing labor, materials and/or equipment in relation to the Work under this Agreement which has a value of [REDACTED] or more.

“**Marshaling Requirement**” has the meaning set forth in **Section 6.3.3**.

“**Materials**” means any products, supplies, bulks, materials, logic, or Computer Programs that are to be incorporated into the Subproject or Unit 3 as part of the Work, whether or not substantially shaped, cut, worked, mixed, finished, refined or otherwise fabricated or processed, and which are not items of Equipment or Consumables.

“**MBE**” means a minority business enterprise Certified as being at least 51% owned by a minority individual or group (or in case of any publicly owned business, at least 51% of the stock of which is owned by a minority individual or group) whose management and daily business operations are controlled by such individual or members of such group. Minority means African Americans, Hispanic American, Asian Pacific Americans, Native American, Subcontinent Asian American, and other groups approved by Owner.

“**MBE Spend**” means expenditures with MBEs.

“**Mechanical Completion**” will have been achieved when all of the following have occurred: (i) all Equipment and Materials has been furnished and installed in accordance with **Exhibit A** and 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) Turnover Acknowledgement of all Systems has been achieved; (iii) all Systems have been installed, cleaned and statically tested and cold commissioning has been completed; (iv) all initial tests have been completed and all instruments have been calibrated; (v) all Tie-ins have occurred; (vi) Unit 3 as modified by the Subproject is capable of being safely commissioned, tested and operated in the ordinary course of business; (vii) the Subproject has been properly integrated into the applicable Unit (physically and electronically); (viii) the Subproject is ready to commence commissioning, testing and integrated operations without the use of temporary equipment or installations; (ix) an initial Punch List has been established and mutually agreed upon by Owner and Contractor; (x) the Performance Guarantee Test Procedures have been submitted to and accepted by Owner; (xi) the training required by **Section 4.9** has been completed; and (xii) Owner has executed the Certificate of Mechanical Completion.

“**Milestone Payment Schedule**” means the schedule of milestone values as set forth in **Exhibit C**, as it may be adjusted in accordance with this Agreement.

“**Modification**” means: (i) a written amendment to this Agreement signed by all Parties; (ii) a Change Order; or (iii) an Owner Authorization.

“**Month**” means a calendar month.

“**MSDSs**” has the meaning set forth in **Section 19.1.2**.

“**NERC**” means the North American Electric Reliability Corporation, a reliability organization responsible for the oversight of the regional reliability organizations established to ensure the reliability and stability of the regions.

“**NERC Requirements**” has the meaning set forth in **Section 4.39**.

“**NERC Standards**” has the meaning set forth in **Section 4.39**.

“**Notice**” has the meaning set forth in **Section 25.5**.

“**Operating and Maintenance Manuals**” means the operating and maintenance manuals referred to in **Section 4.14**.

“**Owner**” has the meaning set forth in the first paragraph of this Agreement.

“**Owner Authorization**” has the meaning set forth in **Section 10.1.4**.

“**Owner Default**” has the meaning set forth in **Section 24.3.1**.

“**Owner Engineer**” means a third party engineering firm selected by Owner.

“**Owner Indemnitees**” has the meaning set forth in **Section 20.1**.

“**Owner Permits**” means Permits for which Owner is responsible hereunder.

“**Owner Representative**” has the meaning set forth in **Section 5.1**.

“**Owner Response Period**” has the meaning set forth in **Section 10.1.3**.

“**Owner Review Period**” has the meaning set forth in **Section 6.2.2**.

“**Parent Guarantee**” means a guarantee in the form set forth in **Exhibit F-8**.

“**Party**” or “**Parties**” means Owner, Contractor or both of them, as the context or the usage of such term may require.

“**Patent Rights**” mean any and all forms of patents issued or granted anywhere in the world arising from or related to the Work, all conditionals, renewals, extensions and continuations in part, and all applications for such patents which have not been abandoned or expired.

“**Performance Guarantee Test Procedures**” means the final detailed procedures for conducting the Performance Guarantee Tests (*i.e.*, the Commercial Operation Test and any Extra Test) prepared by Contractor and approved, in writing, by Owner in accordance with **Exhibit G**.

“**Performance Guarantee Tests**” means the test required by this Agreement to determine whether the Performance Guarantees (other than Guaranteed Availability) have been achieved.

“**Performance Guarantees**” means the Guaranteed Air Emissions, the Guaranteed Sound Emissions, the Guaranteed Consumption Limits, the Guaranteed Pressure Drops, Guaranteed PJFF Temperature Loss, Hopper Heater Guarantee, Turndown Guarantee, and the Guaranteed Availability, all as set forth in **Exhibit G**.

“**Performance Securities**” means the Phase One Performance Security and the Phase Two Performance Security.

“**Permits**” means 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, including those set forth in **Exhibit P**.

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

“**Phase One Performance Security**” means an Acceptable Letter of Credit to be delivered to Owners in the amount of [REDACTED] of Contract Price.

“**Phase Two Performance Security**” means an Acceptable Letter of Credit to be delivered to Owners in the amount of [REDACTED] of Contract Price.

“**PJFF**” means pulse jet fabric filter.

“**Pre-Existing Hazardous Substance**” means a Hazardous Substance existing on the Job Site as of the Effective Date, which Hazardous Substance is of a nature or exists in an amount that requires special handling, disposal or remediation under Applicable Law. Hazardous Substances that are used or useful in the operation of the Existing Facilities that are labeled and in appropriate containers are not considered Pre-Existing Hazardous Substances under this Agreement.

“**Prime Rate**” means the per annum (365 or 366 Days, as appropriate) prime rate as published from time-to-time in the “Money Rates” table of *The Wall Street Journal*; **provided, however**, if more than one such prime rate is published, the average shall be used for purposes of this Agreement, unless an equivalent bank rate is agreed to by the Parties.

“**Professional Standards**” means those standards and practices used by, and the degree of skill and judgment exercised by, recognized United States national engineering and/or construction firms when performing first class quality services in connection with performing work related to operating coal-fired generation facilities similar to the Brown Generating Station.

“**Project Requirements**” means with respect to the Work, including the Subproject or any portion thereof: (i) Applicable Law; (ii) Codes and Standards; (iii) the provisions of this Agreement; (iv) the Project Schedule; (v) the requirements and warranties of Subcontractors, including Equipment and Materials Subcontractors; (vi) the requirements of insurers providing insurance pursuant to **Article 21**; (vii) the Operating and Maintenance Manuals; and (viii) Professional Standards.

“**Project Schedule**” means the critical path method project schedule, including key dates and milestones for completion of the Work established in accordance with and as set forth in **Exhibit D**, as such Project Schedule may be adjusted pursuant to this Agreement.

“**Prudent Utility Practices**” means the practices, methods, materials, supplies, equipment, and standards of safety, performance, and service that are commonly applied in the electric utility industry in the United States to operate and maintain generating facilities similar to the Units, including the use of, and adherence to, equipment, practices and methods,



applicable industry codes, standards, and regulations that in the exercise of reasonable judgment and in light of the facts and circumstances known at the time the decision was made would be reasonably expected (i) to accomplish the desired result while protecting the Work, the Existing Facilities, the interconnection facilities, individuals, and the environment from damage, loss or injury and (ii) to protect against damage, loss or injury occurring to the transmission grid or the facilities of any utility to which the Facility is directly or indirectly electrically connected. Prudent Utility Practices are not intended to be limited to the optimum practice or method to the exclusion of all others, but rather to be a spectrum of possible, but reasonable practices and methods having due regard for vendor warranty requirements, Applicable Law, and the operating and maintenance procedures of co-located generation and associated facilities.

“**Punch List**” or “**Punch List Items**” means and refers to a comprehensive list initially prepared prior to certification of Mechanical Completion which may be supplemented thereafter to identify those minor defects or deficiencies in the Work that require repair, completion, correction or re-execution, the non-completion of which do not interfere with the occupancy, use, commercial operation in automatic mode, safety, or reliability of the Subproject or Unit 3.

“**Records**” has the meaning set forth in **Section 25.11.1**.

“**Sales Taxes**” has the meaning set forth in **Section 8.2.1**.

“

“**Scheduled Mechanical Completion Date**” means the scheduled mechanical completion date as set forth on **Exhibit D**, which may be adjusted pursuant to the terms and conditions of this Agreement.

“**Scheduled Tie-in Outage Period**” means, for Unit 3 and the Subproject, the scheduled outage period, during which time, but prior to the Contractor Outage End Time, Contractor must complete Tie-in (the time and date for such outage and the period during which Contractor may perform Work is set forth in **Exhibit D** as such time and date may be adjusted pursuant to this Agreement).

“**Senior Officer**” has the meaning set forth in **Section 23.1**.

“**Special Tools**” means tools that are described in the Technical Specification or are specifically designed for the installation, checking, inspection, operation, repair, or maintenance of Equipment or Materials.

“**Specialty Supplier**” means any Subcontractor providing Materials or Equipment for which either (i) there are not at least four competitive alternative suppliers of replacement parts for such Materials and Equipment or (ii) there are not at least four competitive vendors that provide maintenance and repair services with respect to all of the Materials and Equipment provided by that Subcontractor.

“**Subcontractor**” means and refers to a Person (at any tier other than Contractor) which has a contract, agreement or other arrangement to perform a portion of the Work, including the

supply of services, Equipment, Materials, Consumables, or Construction Aids in connection with the Work, including the Brown Environmental Air Compliance Project Equipment Supplier.

“**Subproject**” means the Work.

“**Supplier Diversity Policy**” has the meaning set forth in **Section 25.23**.

“**System**” means a system or subsystem of the Subproject set forth in the plan established pursuant to **Section 6.2**.

“**System Turnover Package**” means the collection of enumerated items of Information including diagnostic equipment tests that comprise a complete description of a System and its operating requirements in form and substance reasonably acceptable to Owner and established pursuant to **Section 6.2**.

“**Technical Specification**” means and refers to **Exhibit A** attached hereto, and documents specified therein that define generally the requirements and the conceptual Design, scope, and purpose of the Work.

“**Terminal Points**” means the specific points of physical connection including the interfaces between the Subproject and the applicable Unit (and/or other portions of the Existing Facilities), as specified in the Technical Specification, and as more particularly set forth in **Exhibit T**.

“**Tie-in**” shall mean when the Subproject (including the gas path) is Connected to all Terminal Points. .

“**Tie-in Date**” means for each Tie-in, the date on which that Tie-in occurs.

“**Turndown Guarantee**” has the meaning set forth in **Exhibit G**.

“**Turnover Acknowledgment**” has the meaning set forth in **Section 6.2.2**.

“**Unit**” means one of the three existing coal-fired units operating on the Brown Generating Station Site that are commonly identified as Units 1, 2, and 3. Unless the context indicates otherwise, the term “Units” refers to all three Units.

“**Unit Outage Hour**” has the meaning set forth in **Exhibit L**.

“**Warranty Period**” means the period described in **Section 13.2**, as it may be extended in accordance with this Agreement.

“**WBE**” means a women business enterprise Certified as being at least 51% owned by a one or more women (or in case of any publicly owned business, at least 51% of the stock of which is owned by one or more women) whose management and daily business operations are controlled by one or more of such women.

“**WBE Spend**” means expenditures with WBEs.

“**Work**” means all of the work, services, Equipment, Materials, Consumables, and Construction Aids to be performed, provided, or installed by Contractor in accordance with this Agreement, including all Job Site preparation, Design, reconditioning, procurement, transportation, expediting, construction, training, start-up, commissioning, testing, clean-up and waste disposal, and other services or items that are necessary or appropriate to complete the Subproject, effect Tie-in and Connect the Subproject, achieve Final Completion of the Subproject and fulfill Contractor’s obligations during the Warranty Period in accordance with this Agreement with respect to the Subproject. Work specifically includes any options exercised by Owner in accordance with **Exhibit O**.

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

- (i) the singular includes the plural 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;
- (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;
- (v) “including” (and “include”) means: (a) including without limiting the generality of any description preceding such term and (b) with respect to any description following such term, means “including, without limitation” or “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 and Materials or Systems, “furnish” “provide” or words of similar import means to secure, pay for, deliver to the Job Site (or other portions of the Brown Generating Station 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, Materials, 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;

- (ix) 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”;
- (x) the words “shall” and “will” have equal force and effect; the words “herein,” “hereof,” or “hereunder” or similar terms refer to this Agreement as a whole and not to any specific section or article;
- (xi) the table of contents and article, section and exhibit titles and similar headings are inserted for convenience only and are not be used for the purposes of construing or interpreting this Agreement;
- (xii) the Work is intended to be a term that encompasses all of the necessary performance obligations of Contractor. 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;
- (xiii) 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;
- (xiv) all documentation to be supplied under this Agreement shall be provided in the English language;
- (xv) all dimensions must be specified in the U.S. customary system;
- (i) this Agreement and all terms hereunder (including terms related to the reasonableness of the Owner’s actions) shall be construed taking into consideration the Existing Facility Requirements; and
- (xvi) payments under this Agreement which are due must be made exclusively in United States dollars.

## **ARTICLE 2**

### **EFFECTIVENESS**

#### **2.1 Effectiveness.**

2.1.1 Effectiveness. This Agreement shall be effective and the Parties shall be bound by the conditions applicable to their conduct upon execution of this Agreement. Contractor shall deliver to Owner the Parent Guarantee and the copies of insurance

policies and certificates required to be obtained by Contractor in accordance with **Article 21** simultaneously with the effectiveness of this Agreement. Contractor shall commence the Work immediately upon the effectiveness of this Agreement. As of the Effective Date, Contractor represents and warrants to Owner that there exist no grounds on which a claim by Contractor pursuant to **Article 9** or **Section 10.2** may be based, which representation and warranty survives the Effective Date.

2.1.2 Assignment. Contemporaneously with the execution of this Agreement, the Parties shall execute an assignment agreement substantially in the form attached hereto as **Exhibit Z** under which, effective as of the Effective Date, Owner shall assign to Contractor all of its right, title, and interest in and to the Brown Environmental Air Compliance Project Equipment Contract and Contractor shall assume all of Owner's obligations under the Brown Environmental Air Compliance Project Equipment Contract. The Brown Environmental Air Compliance Project Equipment Contract requires the Brown Environmental Air Compliance Project Equipment Supplier to provide PJFF equipment for each of Units 1, 2, and 3, but Owner has terminated Units 1 and 2 from such contract. This Agreement only pertains to a PJFF for Unit 3.. Owner hereby represents and warrants the following to Contractor, on and as of the Effective Date, which representations and warranties will survive the execution of this Agreement:

- (i) prior to the Effective Date, there has been no breach or default of any provision of Brown Environmental Air Compliance Project Equipment Contract for which it is responsible;
- (ii) prior to the Effective Date, no amounts have become due under the terms of the Brown Environmental Air Compliance Project Equipment Contract that Owner has not paid;
- (iii) prior to the Effective Date, it has provided Contractor with a true and correct copy of the Brown Environmental Air Compliance Project Equipment Contract together with any amendment and any change order to the Brown Environmental Air Compliance Project Equipment Contract; and
- (iv) promptly after the Effective Date, Owner shall assign to Contractor all letters of credit, parent company guarantees or other security instruments provided to Owner by the counterparty to the Brown Environmental Air Compliance Project Equipment Contract.

From and after the Effective Date, Owner has no authority to authorize the counterparty to the Brown Environmental Air Compliance Project Equipment Contract to make a change to or under the Brown Environmental Air Compliance Project Equipment Contract. Notwithstanding the foregoing, Contractor will not amend or otherwise restrict any right granted to "Owner" under the Brown Environmental Air Compliance Project Equipment Contract and Owner may exercise its rights thereunder, including any required enforcement thereof. Owner shall use reasonable efforts to coordinate the exercise of its rights with Contractor.

## 2.2 Commitments Prior to Mobilization.

Contractor agrees that prior to and as a condition to mobilization to the Job Site, Contractor shall:

- (i) confirm through receipt of notice from Owner that Owner has received all Owner Permits, set forth in **Exhibit P**, as are necessary to commence construction, on terms and conditions acceptable to Owner, which permits, approvals or licenses have become final and are not subject to rehearing or appeal (except to the extent that Owner may allow Contractor to mobilize to the Job Site solely in connection with certain demolition tasks prior to the receipt of all such Permits);
- (ii) deliver the Project Schedule in no less than a Level 3 Primavera® P6 format, with a fully logic-tied schedule showing engineering, procurement, and construction developed and resource-loaded; and
- (iii) provide Owner with all necessary information from to allow Owner to have submitted all necessary filings to Governmental Authorities that are required prior to the commencement of construction.

**2.3 Mobilization.** Contractor shall not commence earth movement, excavation or other heavy construction activities, including delivery of Equipment or Materials to the Job Site with respect to the Subproject until the respective dates specified in the Project Schedule therefor. Contractor may access the Job Site for other activities associated with the Work prior to such dates upon notice and with the prior consent of Owner. Contractor acknowledges that separate contractors of Owner will have access to the Job Site for work, including work described in **Exhibit A** or **S** and Contractor shall cooperate and coordinate with Owner and such separate contractors such that Contractor and Owner's separate contractors can perform their respective scopes of work without delay.

## ARTICLE 3

### GENERAL PROVISIONS

**3.1 Intent of Contract Documents.** It is the intent of the Parties that this Agreement be a lump-sum, turnkey contract with a fixed Contract Price and Project Schedule which will not be increased or lengthened (or decreased or shortened), except in accordance with **Article 10**.

**3.2 Independent Contractor.** Contractor will perform and execute the provisions of this Agreement as an independent contractor to Owner. Contractor is not and may not act as an agent of Owner for any purpose or reason whatsoever.

**3.3 Subcontracting.** Subject to **Section 3.4**, Contractor may have portions of the Work performed by Subcontractors, including entities related to or affiliated with Contractor; **provided, however**, Contractor may not subcontract all or substantially all of the Work. No contractual relationship will exist between Owner and any Subcontractor with respect to the Work to be performed hereunder, except pursuant to **Sections 3.5, 3.6 and 13.4** and except as set

forth in the Brown Environmental Air Compliance Project Equipment Contract as in effect on the Effective Date. Notwithstanding whether any provision of this Agreement specifically refers to Contractor's Subcontractors, Contractor will be fully responsible for all acts, omissions, failures or faults of any Subcontractor as fully as if they were the acts, omissions, failures or faults of Contractor and will require its Subcontractors to provide or perform their portion of the Work in a manner applicable to the performance of Contractor's obligations under 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, Contractor is responsible therefor and hereby binds itself to promptly and diligently correct such failure in accordance with this Agreement, at no cost or expense to Owner. The exercise of the right to subcontract will not in any way increase the cost, expense, or liability of Owner hereunder. Contractor shall require any Subcontractor to perform its portion of the Work: (i) under Contractor's supervision and (ii) in accordance with the requirements of this Agreement. Owner may communicate with Contractor's Subcontractors directly, **provided** Contractor is informed of all such communications. However, Contractor shall be solely responsible for providing all information and direction to its Subcontractors necessary for its Subcontractors to perform the Work.

**3.4 Specified Equipment Subcontractors.** For those items of Equipment specified in **Exhibit E**, Contractor will only use the services of, or procure Equipment from, those Subcontractors listed under the headings specified in **Exhibit E**. Except with respect to the Brown Environmental Air Compliance Project Equipment Contract, Contractor will be responsible for the negotiation of the terms and conditions of any purchase orders or subcontracts entered into with such identified Subcontractors (including cost, performance guarantees and equipment warranties), and it will enter into written purchase orders and/or subcontracts in its own name directly with such Subcontractors, it being the intent of the Parties that such Subcontractors will be subcontractors of Contractor and not of Owner. Operability, maintainability, reliability, quality, and compatibility with Equipment, Materials, and Consumables utilized in the Existing Facilities must be material selection factors in Contractor's procurement decisions. Contractor will undertake to include MBEs, WBEs, DBEs, and LCs to the maximum practicable extent on bid lists for portions of the Work. Contractor agrees that before submitting specifications for bids to Major Subcontractors it will give Owner a reasonable opportunity to comment on such specifications and proposed bid list and Owner agrees that if it wishes to comment, Owner will submit such comments within the time period specified for that item in **Exhibit X** and if not so specified, within [REDACTED] Business Days after delivery of the specifications to Owner. Notwithstanding Owner's right to review and comment in accordance with this **Section 3.4**, no such review or comment will relieve Contractor or otherwise serve as a defense to Contractor's full performance of its obligations hereunder.

**3.5 Certain Provisions in Subcontracts.** All subcontracts or other arrangements with a Major Subcontractor must contain provisions, which Contractor may not waive, release, modify, or impair: (i) giving Contractor an unrestricted right, without the consent of the Subcontractor, to assign (and for the assignee to thereafter reassign) the relevant subcontract and/or any or all benefits, interests, rights and causes of action arising under it to Owner and/or its designees (and such assignment right will be assigned as part of such assignment); (ii) complying with the provisions of **Section 20.4**; (iii) authorizing either Owner or Contractor to enforce guarantees and warranties; (iv) requiring Subcontractors that will have a presence on the Brown Generating Station Site to comply with the plan provided for in **Section 14.1** of this

Agreement; (v) indemnifying Owner on the terms and conditions set forth in **Section 20.1**; (vi) incorporating **Section 16.3**; (vii) granting a warranty with respect to the portion of Work performed under that subcontract that, at a minimum, meets the same terms, conditions, and duration as set forth in **Article 13** of this Agreement; (viii) causing Subcontractors of Equipment or Materials, upon the request of Owner, to segregate such Equipment or Materials at their fabrication facilities and identify Owner's property as such in a manner acceptable to Owner; and (ix) with respect to the Components set forth in **Exhibit AA**, provide warranties substantially on the same terms as in **Article 13** of this Agreement, but with the warranty period as set forth for that component in **Exhibit AA**. As a condition of subcontracting with a Specialty Supplier, Contractor shall require each Specialty Supplier to sign the LG&E and KU Services Company standard General Services Agreement for work, equipment, or materials related to the Brown CCR Treatment System but not part of the Work. Contractor shall notify Owner when it enters into any subcontract(s) or other arrangements with a Major Subcontractor and shall promptly provide Owner with an electronic copy of such subcontracts and all change orders and amendments thereto. Copies of other subcontracts shall be available to Owner upon request.

**3.6 Assignment of Subcontracts.** Contractor shall, if so requested by Owner after termination of Contractor pursuant to **Article 24** or the expiration of the Warranty Period as it may be extended, assign: (i) any subcontract with a Subcontractor and/or (ii) the benefits of any remaining Subcontractor warranty to Owner, its Affiliates, or an operator of the Brown Generating Station or any Unit thereof, which assignment must not require the consent of the Subcontractor.

**3.7 Subcontracts.** All subcontracts with Subcontractors shall provide that title will be transferred in the name of Owner in accordance with **Section 22.1**. Each such subcontract shall limit recourse exclusively to Contractor, except upon the assignment of such subcontract in accordance with **Section 3.6**. Subcontracts shall allow for suspension of all or a portion of the Work to be performed thereunder and shall be terminable for convenience pursuant to a termination payment schedule.

**3.8 Inclusion; Order of Precedence.** The Body of this Agreement and the Exhibits hereto are to be considered complementary and what is required by one will be binding as if required by all. Contractor has included within the Contract Price the cost to complete the Work in its entirety and to fulfill its other obligations hereunder. In addition, the Work includes all that should be properly included and all that would be customarily included within the general scope and magnitude of the Work in order to achieve the Performance Guarantees in accordance with the Project Requirements. The failure to specifically list a requirement in one document, once such requirement is specifically listed in another, does not imply the inapplicability of such requirement and Contractor shall provide or perform, as appropriate, as part of this Agreement all Work or items required to conform to the Technical Specification, the other Exhibits and the standards herein contained. In the event of a conflict between the Body of this Agreement and the Exhibits, the Body of this Agreement governs. In the event of a conflict in an Exhibit or between or among Exhibits, the requirement most favorable to Owner will take precedence, except as may be otherwise determined by Owner. Each Modification will take precedence over that part of this Agreement (including, as applicable, any prior Modification) which it supersedes.



## ARTICLE 4

### CONTRACTOR'S RESPONSIBILITIES

#### 4.1 The Work.

4.1.1 Performance of the Work. Contractor hereby covenants and agrees that it shall continuously and diligently provide, perform, install, and complete the Work and its other obligations hereunder in accordance with Project Requirements and the Project Schedule. Contractor further covenants and agrees that it shall provide and pay for all Equipment, Materials, Consumables (other than Consumables to be provided by Owner pursuant to **Section 5.3**), Construction Aids, and other items or services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work, including all installation, construction services, Design, drafting and procurement, all administration, reporting, expediting, inspection, testing, training, scheduling, and coordination; all start-up, commissioning and testing services; all labor (skilled and unskilled); all insurance (as set forth in **Exhibit I**); Permits and inspections required to be supplied by Contractor under this Agreement; all tools, machinery, storage, and transportation and all other facilities and services necessary to provide and complete the retrofitting of Unit 3 with the Subproject in accordance with **Exhibit A** and this Agreement, it being understood that to the extent **Exhibit A** does not expressly delineate an aspect of the Work, the Parties intend that the Subproject be designed, equipped, and integrated into Unit 3 consistent with Professional Standards. Contractor shall order, expedite, receive, furnish, handle, inspect, store, maintain and install Equipment, Materials, and Consumables in accordance with vendor/manufacture requirements and, in the absence thereof, in accordance with Professional Standards. Contractor will perform all managerial, supervisory, and administrative services that may be necessary to ensure the proper and timely completion of all activities which form a part of the Work. As such, Contractor agrees that Contractor shall be ultimately responsible for the proper and timely completion of the entirety of the Work in accordance with this Agreement, whether performed by Contractor or by any Subcontractor.

4.2 **Sufficient Personnel.** Contractor shall, at all times during the term of this Agreement, employ a sufficient number of qualified and competent supervisory personnel, craft persons, and other persons, so that the Work and the other obligations to be performed by Contractor hereunder are completed in an efficient, prompt, economical, and professional manner. Contractor shall be responsible for all overtime or other premium time Work, except as expressly approved in writing by Owner pursuant to **Article 10**. Without in any way limiting the foregoing, such personnel must include sufficient qualified buyers, inspectors, and expeditors necessary to provide Equipment, Materials, Construction Aids, and Consumables in a timely manner consistent with the Project Requirements. Whenever required by Applicable Law and Professional Standards, licensed (in the applicable jurisdiction) professional engineers will perform the Design services required to perform the Work. Other portions of the Work shall be performed by properly licensed personnel as required by Applicable Law and Professional Standards. Contractor shall also provide all construction and technical services, supervision, and craft personnel as required for system adjustments during start-up, commissioning and testing.

During start-up, testing or the operation of the Work until Commercial Operation, Contractor shall maintain qualified personnel on the Job Site twenty-four (24) hours a Day to advise Owner's operators regarding operation and maintenance of the Subproject. Design Documents must be stamped by a Kentucky Registered Professional Engineer as required by Applicable Law.

### **4.3 Labor Matters.**

4.3.1 Labor Peace. Contractor shall be responsible for labor peace on the Job Site and other portions of the Brown Generating Station Site where Work is to be performed or which is used by Contractor and for maintaining good labor relations with local labor organizations. Contractor shall at all times exert its best efforts and judgment as an experienced contractor to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes, or strikes when reasonably possible and practical under the circumstances. Contractor shall advise Owner promptly, in writing, of any actual, anticipated, or threatened labor dispute that might affect the completion of the Work by Contractor or by any of its Subcontractors in accordance with the Project Schedule.

4.3.2 Verification of Employment Eligibility. Contractor shall comply with the Immigration Reform and Control Act of 1986.

**4.4 Discipline and Protection.** Contractor shall enforce strict discipline and good order among Contractor's employees, Subcontractors' employees, and any other Persons carrying out portions of the Work on the Brown Generating Station Site and provide for the protection and maintenance of the Work and of all Persons and property related thereto. Contractor shall at all times take all necessary precautions to prevent any unlawful or disorderly conduct by or amongst its employees and those employees of Subcontractors and for the preservation of peace and protection of individuals and property at, or in the vicinity of, the Brown Generating Station Site. Contractor shall not permit the employment of unfit individuals or individuals not skilled in tasks assigned to them. Contractor understands the importance of maintaining good relations with the community in which the Existing Facilities are located and shall emphasize the importance of good community relations to its employees and other Persons under its supervision on the Job Site.

**4.5 Supervision.** Contractor shall supervise, coordinate, and direct the Work, using Contractor's best skill, judgment, and attention. Contractor is responsible for the conduct of Persons under its supervision.

**4.6 Contractor's Key Personnel.** Exhibit K contains a list of Contractor's key personnel who will be responsible for supervising the performance of Contractor's obligations hereunder. Such list includes the designation of Contractor's principal representative (the "**Contractor's Representative**"), who will be Contractor's authorized representative having the responsibility and authority to direct and manage the Work, administer this Agreement, serve as Contractor's primary point of contact from and with Owner and be authorized to make decisions related to the Work and bind Contractor. Contractor recognizes that a good working relationship must exist between its key personnel and Owner. Owner has the right to request replacement of

key personnel upon reasonable notice after having given Contractor a reasonable opportunity ( [REDACTED] Days) to rectify the situation leading to such request. Upon the expiration of such period, if Owner remains unsatisfied, Contractor shall promptly effect such replacement. Any replacement of key personnel will be subject to the prior written approval of Owner. Contractor's Representative shall act as Contractor's liaison with Owner.

#### **4.7 Design and Engineering.**

4.7.1 Design Requirements. As engineer of record, Contractor has full Design responsibility for the performance of the Work. Contractor shall engage all supervisors, engineers, designers, draftsmen, Subcontractors, and others necessary for the Design of the Work (including modification of the drawings of Existing Facilities as appropriate) and the preparation of all drawings, specifications, calculations, plans, reports and other Design documentation (including all media) for the Work, setting forth in detail the requirements for the construction of the Subproject and its integration into Unit 3 in accordance with this Agreement (collectively the "**Design Documents**"). Contractor shall Design the Work in accordance with Project Requirements. During performance of the Work, Contractor shall upload to and maintain the Design Documents on a web-based database as and when such Design Documents (or iterations thereof) are completed or revised and Owner shall have unlimited access (including download capability) to the Design Documents on such web-based database. Contractor will provide hard-copy Design Document upon request.

4.7.2 Reviews and Holds. Design Documents will be available to Owner electronically in an agreed format and in hard copy. Owner will be entitled, but not obligated, to review and comment upon the Design Documents and other required submittals in accordance with **Exhibit X** prior to Contractor commencing with any subsequent phase of the Work related to such Design Documents or submittals. Contractor shall give due consideration to Owner's comments in the final version of the Design Documents or submittals. Design Documents that are required to be certified or under seal must 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 Owner, or acceptance or acknowledgment of any of the Work, in any way, relieve Contractor of any of its guarantees or obligations hereunder, including its full 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 Work as well as its responsibility for the quality, integrity, safety, and timely performance of the Work.

**4.8 Quality Control.** Contractor shall develop, implement and maintain a quality assurance plan for the Work which must include: quality assurance; management and control of the Design, engineering, construction, procurement, and supply services; and management and control of Subcontractors and their subcontracts. Such plan must be designed to meet Project Requirements, include procedures for effective implementation, and must be submitted to Owner within [REDACTED] Days of the Effective Date for Owner's review and approval. Contractor shall diligently revise the plan as necessary to obtain Owner's approval. Contractor shall also require

Major 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 Contractor of any duty, obligation or responsibility under this Agreement.

**4.9 Training.** Contractor shall develop and implement a program to adequately instruct and train personnel made available by Owner in accordance with the provisions of **Exhibit U**. Notwithstanding any other provision of this Agreement, training materials do not constitute Confidential Information. Contractor grants Owner the right to record all training sessions and replay or otherwise provide such recordings for retraining or training of others. Contractor shall provide technical assistance to Owner's operating personnel in connection with the development of training procedures.

**4.10 Certain Contractor-Provided Items.** Contractor shall provide and pay for all utilities and associated fees (not provided or paid for by Owner pursuant to **Section 5.3**) required prior to Commercial Operation, including telephone service, Internet service, water, Consumables, sanitary facilities, power, and waste and sewage disposal, including sanitary sewage, and wastewater disposal. Contractor's responsibility for payment shall include all rental, consultation, removal, usage, and other costs or fees. Contractor shall provide its own information technology and telecommunications, cable, and satellite communications. Contractor shall be responsible for providing a first fill of all Consumables as well as refills and replacements during the period prior to Commercial Operation. Contractor shall "top off" Consumables, as appropriate, promptly after Performance Guarantee Tests that occur prior to or as a condition of Commercial Operation. Contractor shall use its best efforts to use the same products for Consumables that are used by Owner in the Existing Facilities.

**4.11 Equipment and Materials Subcontractor Presence.** Contractor shall be responsible for notifying and paying for any Equipment Subcontractor representative that it deems necessary to be present: (i) at any of the training sessions; (ii) for erection supervision; (iii) for commissioning; or (iv) during the Performance Guarantee Tests.

**4.12 Current Records; As-Built Drawings.** Contractor (and its Subcontractors) shall maintain in good order at the Job Site at least one (1) record copy of the Design Documents, marked currently to record changes made during construction, a copy of this Agreement and Modifications thereto, one record copy of approved shop drawings, product dates, samples and other submittals required by Contractor, all of which will be available to Owner for inspection and use at all times. Prior to and as a condition of Final Completion, the As-Built Drawings shall be delivered by Contractor to Owner, as well as a set of reproducible record drawings (in native and other formats requested by Owner) showing all changes made during construction to the Design Documents and to the drawings of the Existing Facilities. From and after Contractor's mobilization to the Job Site, Contractor shall prepare and display for Owner's benefit on the Job Site a visual depiction, in a storyboard format reasonably acceptable to Owner, of the Work to be performed during the current Month and the following Month.

**4.13 Transportation Costs.** Contractor shall arrange and pay for all transportation, freight, storage, and transfer costs (including duties and similar charges) of every kind and nature in connection with the Work. Contractor shall be responsible for arranging all shipments of

Contractor supplied materials and equipment to the Job Site 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. Contractor shall advise Owner in advance of major shipments of Contractor's materials and equipment and shall coordinate with Owner the arrival, loading, unloading, and release of carriers' equipment. If Contractor is unable to promptly unload its shipment, Contractor may notify Owner of such inability at least [REDACTED] Days in advance of arrival. Owner, at Contractor's risk, may, but shall not be obligated to, unload or make arrangements for others to unload such shipments and the Contract Price shall be decreased by the amount of Owner's reasonable expense incurred in doing so.

**4.14 Operating and Maintenance Manuals.** Contractor shall prepare and provide to Owner the Operating and Maintenance Manuals in accordance with the requirements of **Exhibit V**.

**4.15 Control of Work.** Consistent with the terms of this Agreement, Contractor shall be solely 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.

**4.16 Emergency Response.** Contractor shall develop and implement an emergency response plan for use in connection with emergency situations that may occur on the Brown Generating Station Site and arise out of its performance of (or failure to perform) the Work. If such an emergency situation occurs, Contractor may not rely on the services of emergency response teams of Owner and shall put its emergency response plan into effect and take such other actions as are necessary to stabilize and ameliorate the situation. Immediately upon the occurrence of an emergency endangering human health or safety, including environmental harm, or material damage to property, Contractor shall: (i) implement its emergency response plan; (ii) without limiting its other reporting obligations hereunder, immediately orally notify an individual on the Emergency Notification List; (iii) cooperate with Owner by providing information, documentation, and reports as may be appropriate such that both Parties can (a) fulfill all reporting obligations required by Applicable Law and (b) implement procedures appropriate to avoiding a repetition of such occurrence; and (iv) if Owner's emergency response team is at the location of the emergency and informs Contractor's responding personnel that it is taking control of the response, Contractor shall assist as requested and not interfere with Owner's emergency response team. Information on the Brown Generating Station Site, Job Site and for all Units furnished by Owner in specifications, drawings or otherwise is made without representation or warranty of any nature by Owner, is not guaranteed by Owner, and is furnished solely for the convenience of the Contractor.

**4.17 Local Conditions.** Contractor represents that it has taken steps necessary to examine and ascertain the nature and location of and all conditions relevant to the Work and its surroundings, and that it has investigated and satisfied itself as to the general and local conditions that can affect the Work, the Job Site, the Brown Generating Station Site, the performance of the Work, or the construction and operation of the Subproject, 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, roads and other physical conditions at the Job Site, the Brown Generating Station Site and the proximate area; (iii) typical uncertainties of weather (*i.e.* other than weather which constitutes a Force Majeure); (iv) the character of Construction Aids, Equipment and Materials 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. Contractor has conducted a transportation survey to assess the circumstances affecting delivery of Equipment, Materials, Consumables, and Construction Aids to the Job Site. Contractor acknowledges that craft labor and other individuals that are to be present on the Brown Generating Station Site for the performance of all or any portion of the Work will be required to park at a remote location on the Brown Generating Station Site. Contractor shall provide transportation within the Brown Generating Station Site for such individuals as necessary. Contractor assumes the risk of such conditions and the conditions of the Job Site and other portions of the Brown Generating Station Site on which Work is to be performed as more particularly described in **Section 4.18**. Any failure by Contractor to take the actions described in this **Section 4.17** or **Section 4.18** will not relieve Contractor from responsibility for estimating properly the difficulty, time and cost of successfully performing the Work, or for proceeding to successfully perform the Work, without additional expense to Owner. Contractor shall only be entitled to adjustments to Contract Price and Schedule to the extent provided with respect to Excusable Events and Contract Changes as provided in **Articles 9 and 10**.

#### **4.18 Job Site Conditions.**

4.18.1 General. Contractor has inspected the Job Site, the other portions of the Brown Generating Station Site on which Work or access is to occur, the Existing Facilities, and surrounding locations and has had an opportunity to conduct such tests as it may desire, and has reviewed the information provided by or on behalf of Owner, copies of which are attached or referenced in **Exhibits S and A**, relating to both the surface and subsurface conditions, to the extent it deems necessary for its purposes, and is familiar with the conditions thereof related to the performance of the Work. Contractor is aware of the karstic character of the Job Site and the rest of the Brown Generation Station Site. Contractor further understands the scope of construction activity other than the Work that is and will be undertaken on the Brown Generating Station Site during the term of this Agreement and has taken the inherent constraints associated therewith into account in the Project Schedule.

- (i) Relief for Changed Conditions. Information provided to Contractor concerning the Job Site, other portions of the Brown Generating Station Site, the Existing Facilities or surrounding areas, including the information provided in **Exhibits S and A**, specifications, Design documentation or otherwise is made without representation or warranty of any kind or nature. Such information is not warranted by Owner to be accurate, complete, or otherwise suitable or sufficient for Contractor's purposes and is provided solely as a convenience to Contractor. Any reliance thereon by Contractor is at its sole risk. Geotechnical, topographical, geological, seismic, hydrographical, hydrological, or other natural physical conditions related to the Brown Generating Station Site or the Job Site, including

conditions relating to foundation Design or construction, Job Site preparation, Design, construction or any other portion of the Work will neither be deemed nor constitute the basis of an Excusable Event except to the extent actual subsurface conditions are encountered by Contractor that deviate from the information or descriptions of the Brown Generating Station Site or Job Site provided by Owner in this Agreement (including *e.g.*, **Exhibits S** and/or **A**) the examinations and/or observations of Contractor, or the results of any investigation, test result, or information and conditions reasonably inferable therefrom. Notwithstanding the foregoing, the discovery of Pre-Existing Hazardous Substances at the Job Site will be handled as provided in **Article 19**.

**4.19 Witnessing and Inspection Rights.** Owner and its employees, agents, representatives, and invitees are hereby granted access by Contractor to the Work (including the Design Documents) at all times so as to enable them to witness and inspect the Work, including inspection at the point of fabrication, sub-assembly, preparation for shipment or elsewhere. Contractor shall cooperate with Owner in scheduling visits to Subcontractor factories or sub-assembly locations for such Persons for purposes of inspecting the Work. Owner has the right to reject any portion of the Work that does not comply with Project Requirements. Contractor shall also afford Owner with the opportunity to witness the events set forth in **Exhibit A, Exhibit X** (Submittals Reviews and Hold Points), and such other events as to which Owner gives Contractor notice. Contractor shall provide written notice to Owner of all events Owner is entitled to witness pursuant to the terms of its agreements with Major Subcontractors promptly upon execution of such agreements. Contractor shall provide Owner with reasonable notice (but not less than [REDACTED] 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. Contractor shall cause such events to appear on the Project Schedule.

**4.20 Use of Site.** Contractor will have access to the Job Site as provided in **Section 5.5.1**. Access to other portions of the Brown Generating Station Site on which Work is to be performed, will be on an as-needed basis as requested by Contractor sufficiently in advance of such needs to allow Owner to schedule such activities without adversely impacting the operations of any of the Existing Facilities. Contractor shall be entitled to utilize the internal roadways of the Brown Generating Station Site as indicated in **Exhibit S**. Such use is not exclusive and must not interfere with the ongoing operations of the Existing Facilities or other construction or maintenance activities affecting Existing Facilities. Any use of such roadways that could result in such interference shall be subject to the prior written approval of Owner. The Existing Facility is a baseload generating station serving the needs of ratepayers and other customers and supporting the electrical transmission grid. It is critical that the operation of the Existing Facility not be interfered with or otherwise impaired or put at risk except to the extent absolutely necessary for the performance of the Work (the preceding two sentences outline the “**Existing Facility Requirements**”). Even if such interference, impairment or risk is absolutely necessary, Contractor shall be required to coordinate its applicable activities with Owner so that Owner can act to anticipate difficulties that may thereby arise (and Contractor shall comply with Owners reasonable instruction such as requiring such activities take place at such times and in such a manner so as to reduce the impact and/or risk). 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 the Brown Generating Station Site where Work is to be performed, the instructions of Owner. Notwithstanding anything in this Agreement to the contrary, Contractor may not interfere with the conduct of the Existing Facilities (including operations, maintenance, construction, deliveries, and other activities) or any business operating adjacent to or in close proximity to the Job Site or the Brown Generating Station Site. Contractor shall coordinate the performance of the Work with the requirements and business operations of the Existing Facilities and maintenance and construction activities related thereto. Contractor shall prepare a Job Site coordination plan to be delivered to Owner no later than [REDACTED] Days prior to Contractor's mobilization to the Job Site, setting forth the procedures and guidelines to be implemented by Contractor, its Subcontractors, and Owner to maximize site coordination and minimize the likelihood of interference and any adverse effect therefrom on the operations of the Existing Facilities. Owner will be entitled to review and comment on such plan and Contractor shall incorporate any such comments into the final version of such plan. Contractor shall also implement and enforce rules necessary for safe, efficient, and proper prosecution of the Work. At a minimum, Contractor, its Subcontractors, and their respective employees and invitees shall be subject to and shall strictly comply with the health, safety, and environmental protection procedures and regulations established by Owner, including the procedures and regulations set forth in **Exhibit H**, as they may be changed from time to time in the sole discretion of Owner. Failure to strictly comply with the requirements of **Exhibit H** shall be grounds for removal from the Job Site, the Brown Generating Station Site or the Existing Facilities, at the sole discretion of Owner, and any adverse consequence thereof shall be borne by Contractor. In addition, Contractor shall:

- (i) use, and shall cause all Subcontractors and their respective employees to use, only such gate(s) for access to the Job Site, as identified in **Exhibit S**, except as otherwise designated by Owner. All Equipment, Materials, Consumables, and Construction Aids must be received, stored and routed, and all waste and demolition debris shall be routed and stockpiled in strict accordance with the Job Site coordination plan prepared by Contractor and approved by Owner, as described above;
- (ii) be responsible for the security of the Work and the Job Site, it being acknowledged by Contractor that neither Contractor nor its Subcontractors are entitled to rely on any security measures or procedures in place at the Brown Generating Station Site for the protection of individuals or property;
- (iii) within [REDACTED] Days prior to Contractor's mobilization to the Job Site, Contractor shall develop and provide to Owner a temporary facilities plan. Within [REDACTED] Business Days of its receipt of the plan, Owner will provide its comments to Contractor. Contractor shall incorporate Owner's comments into a final version of such plan and revise the plan, as necessary, and issue the final version within [REDACTED] Days of receipt of Owner's comments. Thereafter, Contractor shall implement the provisions of the plan, confine temporary structures, machinery, and other property of Contractor (and its Subcontractors), and the storage of Equipment, Materials, Consumables, and Construction Aids to the



laydown or other areas more specifically identified in **Exhibit S**, or otherwise provided in the plan, permitted by Applicable Law, by this Agreement and by Owner. Temporary structures shall be neat in appearance, must not constitute a fire or any other safety hazard and must be properly maintained;

- (iv) obtain approval from the Owner Representative prior to performing any Work on the Brown Generating Station Site that is not wholly within the Job Site. Requests for a work order shall be made in writing on the appropriate form set forth in **Exhibit F-7** (as such form may be modified by Owner from time to time) within a reasonable time prior to the need therefor. Contractor understands that it must consult with the Owner Representative to assure that operation of the Existing Facilities will not be adversely affected by the Work to be performed and that decisions made by the Owner Representative hereunder will be based upon the operating and maintenance requirements of the Existing Facilities. Contractor further understands that certain activities associated with the Work will require advance notice or approval of Owner, including submission and approval of forms completed by Contractor. The forms to be submitted by Contractor are set forth in **Exhibit F-7** and must be completed and submitted to the Owner Representative a reasonable time prior to the time Contractor needs to conduct the subject activity;
- (v) except as expressly permitted with the prior written consent of Owner, not deliver any Equipment and Materials or perform any Work that would be considered “heavy construction” except during the hours of [REDACTED] Business Days. Contractor will not schedule deliveries during hours that school bus transportation is scheduled to utilize roads in the general vicinity of the Brown Generating Station Site. Compliance with all applicable sound regulations or restrictions imposed by Applicable Law to which the construction activity, the Work, or the Existing Facility is subject shall be strictly followed by Contractor;
- (vi) [REDACTED] Days prior to Contractor’s mobilization to the Job Site, Contractor shall provide to Owner a construction environmental control plan in connection with the Work 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. Within [REDACTED] Business Days of receipt of the plan, Owner shall provide comments to Contractor and Contractor shall incorporate Owner’s comments into the final version of such plan. Thereafter, Contractor shall implement the provisions of the plan;
- (vii) within [REDACTED] Days prior to Contractor’s mobilization to the Job Site (but in any case at least [REDACTED] Days prior to bringing any Hazardous Substances onto the Job Site), Contractor shall provide to

Owner a Hazardous Substances management plan (“**Hazardous Substances Management Plan**”) that it will vigilantly implement during performance of the Work on any portion of the Brown Generating Station Site. Such plan, at a minimum, must incorporate the Brown Generating Station policies and procedures and require Contractor to cooperate and coordinate with Owner. Within [REDACTED] ( [REDACTED] ) Business Days of receipt of the plan, Owner shall provide comments to Contractor and Contractor shall incorporate Owner’s comments into the final version of such plan. Thereafter, Contractor shall implement the provisions of the plan;

**4.21 Compliance With Applicable Law.** Contractor shall comply, and shall cause its Subcontractors to comply, with Applicable Law in effect from time to time relating to the Work, and shall give all applicable notices pertaining thereto. Contractor shall ensure that the Work, as designed, engineered, and constructed, complies and, when fully integrated into Unit 3 and operated in accordance with Prudent Utility Practices, will be capable of complying with Applicable Law.

**4.22 Permits and Approvals.** Contractor shall secure and pay for any and all Permits necessary for the proper execution and completion of the Work, except Owner Permits. Contractor shall maintain and comply with all Permits and monitor and keep accurate records of the status of all Permits. Permits obtained by Contractor shall be maintained on the Job Site and copies shall be available to Owner on request.

**4.23 Periodic Reports & Meetings.**

4.23.1 Monthly Status Report. Within [REDACTED] Days after the end of each Month after the Effective Date, Contractor shall prepare and submit to Owner a status report, covering the previous Month, that will be prepared in a manner, level of detail, and format acceptable to Owner and that must include: (i) a detailed description of the progress of the Work, including a critical path chart illustrating the progress which has been made together with a comparison against the Project Schedule; (ii) a statement of any significant issues and trends, including Change Orders that remain unresolved and Contractor’s recommendations for resolution of the same; (iii) an updated report as to Contractor’s adherence to the Project Schedule; (iv) a summary of any significant events that are scheduled or expected to occur in connection with the Work during the following [REDACTED] Days; (v) a report on safety program performance and results for the previous Month, including statistics, lost time accidents, OSHA recordables and near misses, as well as root causes and corrective actions; (vi) the Monthly reports required pursuant to **Section 25.24.3**, and (vii) such additional information reasonably requested by Owner. Contractor shall also comply with the requirements of **Exhibit M**.

4.23.2 Attendance and Participation. Until Final Completion, Contractor shall attend and participate in meetings on a daily, weekly, and Monthly basis between Contractor and Owner 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 Owner, such as consultants of Owner; **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 Owner. Contractor shall prepare and distribute notes of Monthly meetings. Publication or distribution of notes of such meetings shall neither constitute a notice pursuant to **Section 25.5** for any purpose under this Agreement nor a permitted basis to assert claims 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.

**4.24 Signage.** Contractor shall not display, install, erect, or maintain any advertising or other signage at the Brown Generating Station Site without Owner's prior written approval (which Owner may withhold at its sole discretion), except as may be required by Applicable Law.

**4.25 Spare Parts.** Contractor shall provide and properly store and maintain in strict accordance with manufacturer's requirements all spare parts, including start-up and commissioning spare parts prior to Commercial Operation, in accordance with Project Requirements. 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 must be labeled, marked and numbered for identification and a detailed packing list shall be provided by Contractor. Spare parts are to be delivered to storage locations specified by Owner. Contractor shall implement all necessary precautions for proper storage. Contractor shall provide spare parts information in a manner fully compatible for downloading into the spare parts monitoring software maintained by Owner. Contractor shall give Owner the right to purchase, at no more than Contractor's out-of-pocket cost, any surplus items on the Job Site upon Final Completion. Contractor shall be entitled to use any spare parts that are acquired by Owner and are then available on the Job Site; **provided** that Contractor shall place an order to replace the spare parts it uses immediately and any such parts shall be replaced DDP Job Site (Incoterms 2000) as soon as possible at Contractor's expense. Contractor must provide to Owner a list of strategic and other spare parts that Contractor and its Subcontractors recommend be purchased to maintain reliable Subproject operations. The spare parts list shall identify the price of each such part (which shall be valid for no less than [REDACTED]), the OEM and other vendors, the OEM's part name and the OEM's part number, expected useful life and typical delivery lead times. Such list shall be delivered no later than [REDACTED] Days prior to the Scheduled Mechanical Completion Date. Contractor agrees to purchase additional spare parts requested by Owner that are not included in the Technical Specification. The actual cost of such spare parts will be charged to Owner. Contractor will cooperate with Owner to determine the best pricing for obtaining spare parts.

**4.26 Interference with Traffic.** Contractor shall carry out the Work so as not to damage or interfere with access to, use, or occupation of, public or private roads, footpaths, or other properties, whether in the possession of Owner or of any other Person. Contractor shall communicate with, and ascertain the requirements of, all Governmental Authorities in relation to access to and egress from the Brown Generating Station Site (and the Job Site) and shall comply with those requirements. Contractor shall be deemed to have satisfied itself as to and shall be

fully responsible for the routing for deliveries of Equipment, Materials, Consumables, and Construction Aids, including delivery of heavy, large, or oversize loads to the Brown Generating Station Site or the Job Site, as appropriate.

**4.27 Supplies and Facilities.** Contractor shall make available on the Job Site (i) an adequate supply of potable water and (ii) sanitary facilities, for the benefit of those working on the Job Site.

**4.28 Cutting and Patching.** 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.

**4.29 Cleaning Up.** Contractor shall, at all times during the term of this Agreement, keep the Job Site, other portions of the Brown Generating Station Site and surrounding streets (whether public or private), properties, waterways, sidewalks, and other areas free from accumulations of waste materials, rubbish, dirt, debris and other garbage, liquid and non-liquid materials whether spilled, dropped, left behind, discharged, blown out, or leaked during performance of the Work. Contractor shall maintain its working, storage, laydown, and parking areas in a clean and non-hazardous condition, and shall employ adequate dust control measures. Contractor must provide adequate tire washing facilities for trucks leaving the Job Site. Contractor shall properly maintain Equipment and Systems containing any Hazardous Substances. Contractor shall repair (if necessary) roads and other infrastructure (internal, public or private) on or in the vicinity of the Job Site and the Brown Generating Station Site that are adversely affected by Contractor (and its Subcontractors) and their employees, agent and representatives' construction activities or traffic related to the Work, as needed. Hazardous Substances, including chemicals used by Contractor or its Subcontractors, must be properly handled and must be properly disposed of off the Brown Generating Station Site. Prior to Final Completion, Contractor shall clean up and restore the applicable portion of the Job Site (including laydown, parking, and construction areas), including, the removal of all tools, trailers, surplus, waste materials, and rubbish, and cleaning of all glass (inside and out), removal all paint spots and other smears, stains or scuff marks, cleaning of all plumbing and lighting fixtures, washing of all concrete, tile, and finished floors, and otherwise leaving the Job Site and the Brown Generating Station Site where Work was performed or otherwise utilized by Contractor neat and clean. If Contractor fails to take the actions required by this **Section 4.29**, Owner may do so (or cause it to be done) and the cost thereof will be charged to Contractor.

**4.30 Waste Disposal.** Contractor is responsible for disposal of all wastes generated by it or its Subcontractors during the performance of the Work, including Hazardous Substances, waste water, sanitary wastes, demolition debris, construction debris, spoil, surplus excavation material, office wastes, and wastes related to preparation, commissioning, testing, and start-up of Systems or Equipment. All such wastes must be handled, stored, or disposed of in accordance with Applicable Law in a suitable off-site location. All costs related to such waste disposal are the responsibility of Contractor.

**4.31 Water Control.** Contractor shall carry out all dewatering, storm water control drainage, pumping, and disposal required to keep the Work dry during performance of the Work.

Contractor shall properly dispose of Hazardous Substances (including site soils or water that may be contaminated), waste materials, trash, or rubbish in compliance with Applicable Law. Contractor shall not 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 contamination of soil, natural streams or other bodies of water (whether documented or undocumented) in violation of any Applicable Law.

**4.32 Permit Assistance.** Contractor, at its expense, will reasonably assist and support Owner's efforts to obtain Owner Permits, or to otherwise satisfy the conditions thereof. By way of example, such assistance includes providing customary information and documentation, and Design data. Contractor shall provide all drawings, documents and other information, stamped as appropriate, that are necessary for Owner to properly and timely complete and defend all Permit-related hearings and actions.

**4.33 Deliveries by Truck and Rail.** Contractor shall provide Owner with reasonable advance notice of any delivery of Equipment or Materials that is to arrive: (i) by truck and is oversized or is extraordinary in any other material way or (ii) by rail.

**4.34 Artifacts and Other Valuable Items.** If Contractor should discover any artifact, fossil or other items of historical, religious, monetary, geological, archeological or other value, it shall immediately cease Work in the immediate vicinity thereof, notify Owner and take reasonable actions to preserve and protect such items from damage or theft. All such items are the property of Owner and Owner shall provide Contractor with direction on how to proceed.

**4.35 Release.** Except as otherwise expressly provided in this Agreement. Contractor hereby releases Owner from any and all Liabilities in any way arising from Contractor's reliance on any information, document, statement or report communicated to Contractor related to the condition of the Existing Facilities, the Job Site or the Brown Generating Station Site. Contractor expressly disclaims any right to any Change Order or other adjustment of the terms of this Agreement based on its reliance on information, actions or omissions or Owner with respect to any information, document, statement or report related to the Existing Facilities, the Job Site or the Brown Generating Station Site provided by Owner.

**4.36 Covering.** No portion of the Work (including foundations) may be covered or otherwise be made inaccessible for inspection without (i) conducting (and passing) any test or inspection required pursuant to this Agreement and (ii) allowing Owner to inspect such Work if a Hold Point has been established in relation to such Work. If any Work is covered or made inaccessible for inspection in violation of the previous sentence, Contractor shall uncover (or make accessible) such Work and pay the costs resulting therefrom, including recovery or reinstallation costs. There will be no adjustment to the Project Schedule in connection therewith. If a portion of the Work has been covered or made inaccessible for inspection that Owner has not specifically requested to observe, Owner may request to see such Work and Contractor shall uncover it or make it accessible for inspection. If such Work is in accordance with this Agreement, costs resulting therefrom, including recovering or reinstallation costs, will be borne by Owner, and, if applicable, the Project Schedule will be equitably adjusted. If such Work is not in accordance with this Agreement, Contractor shall pay all such costs and will not be permitted any adjustment to the Project Schedule.

**4.37 Administrative Facilities.** Contractor shall provide adequate furnished office facilities for Owner's personnel in Contractor's offices in Tucker, Georgia during the Design and procurement phase of the Work. Contractor shall provide temporary office facilities for itself and the Brown Environmental Air Compliance Project Equipment Supplier on the Brown Generating Station Site. Such facilities, together with office equipment, sanitary facilities, and communications services are to be provided in accordance with the Technical Specification.

**4.38 No First of a Kind.** Without Owner's written consent, Equipment will not include prototype equipment, meaning any equipment or component thereof that is at that stage in the evolutionary developmental process where the design, functionality, environmental suitability, material composition, scale, reliability, maintainability, and other operational characteristics of the equipment or any component thereof has not been substantiated by at least two (2) full operating years of commercial experience.

**Compliance with Owner Security Controls**

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**4.40 Documentation Requirements or Standards.** Contractor shall provide all drawings required for design, construction, and as-built in accordance **Exhibits A and X and the Project Requirements**.

**4.41 Basis of Bid.** On or before the Effective Date, Contractor and Owner shall have initialed a detailed line-item estimate of the Work that constitutes the agreed upon basis for the Contract Price and the schedule for the performance of the Work (the **“Basis of Bid”**). From and after the Effective Date, Contractor shall provide Owner’s personnel (or their designees) with unlimited access to the Basis of Bid, which access, upon Contractor’s mobilization to the Job Site shall be at the Job Site.

**4.42 Construction Equipment.** 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 that is not conforming with the foregoing shall be promptly removed by Contractor, and replaced with proper equipment.

## ARTICLE 5

### OWNER RIGHTS, DUTIES & OBLIGATIONS

**5.1 Key Personnel.** Owner shall designate, from time to time, one or more individuals who will act on Owner'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 Owner (the "**Owner Representative**"), who will be Owner's authorized representative, and who will receive and initiate all communications from and with Contractor and who will be authorized to render decisions related to the Work and bind Owner.

**5.2 Owner's Review.** Owner will be entitled to review, comment on, evaluate, or approve the Design Documents and other submittals as provided in **Exhibit X**. Contractor shall consider Owner's comments in good faith, **provided, however**, Owner will not have any responsibility or liability for the accuracy or completeness of such documents, for any defects, deficiencies, or inadequacies therein or for any failure of such documents to comply with the requirements set forth in this Agreement, the responsibility for all of the foregoing matters being the sole obligation of Contractor. Contractor shall advise Owner in writing of the disposition of each of the comments.

**5.3 Owner-Provided Items.** Owner, at its expense, shall provide: (i) a location for Contractor to connect to and obtain construction power. Items to be provided by Owner prior to Commercial Operation, including items necessary for start-up, are specifically identified, limited in quantity, and scheduled as set forth in **Exhibit Q**. Additional quantities shall be made available by Owner, subject to availability, at Contractor's expense.

**5.4 Right to Apply Monies.** Owner shall have the right to deduct from any funds or monies due or to become due to Contractor (and/or draw on any of the Performance Securities) any amounts actually due to Owner from Contractor as a result of any losses, expenses, damages, obligations, or liabilities for which Contractor is responsible pursuant to the terms and provisions of this Agreement.

#### **5.5 Access and Inspection.**

**5.5.1 Access to Site.** Owner shall provide reasonable non-exclusive access to the Job Site (as shown in **Exhibit S**), other portions of the Brown Generating Station Site, and the Existing Facilities on which Work is to be performed to Contractor and its Subcontractors, subject to Applicable Law, applicable Brown Generating Station Site regulations, the concurrent use by Owner and its contractors to operate, maintain, modify and otherwise utilize the Brown Generating Station Site, and the terms of this Agreement.

**5.5.2 No Relief.** No inspection or review of, or failure to inspect or review, the Work or any portion thereof by Owner or any other Person on behalf of Owner will



relieve Contractor of its obligation to properly execute and complete the Work. Inspection by Owner will not be deemed to be supervision or direction by Owner, and is only for the purpose of attempting to confirm for Owner's purposes that the Work conforms to the requirements of this Agreement.

**5.6 Owner Permits.** Owner is responsible for obtaining Owner Permits.

**5.7 Right to Carry Out the Work.** If Contractor defaults under this Agreement or neglects to carry out the Work in accordance with this Agreement and fails within a [REDACTED] Day period after receipt of written notice from Owner to commence and diligently continue curing such default or neglect with diligence and promptness, Owner, without prejudice to any other rights or remedies Owner may have under this Agreement, including declaring Contractor in default, and with or without terminating this Agreement, may correct such deficiencies at Contractor's expense (including Owner's internal, general, and administrative expenses) and Owner shall have the right to: (i) deduct an amount equal to the amounts incurred by Owner in so doing from amounts due or to become due to Contractor; (ii) draw such amounts on any of the Performance Securities; and/or (iii) obtain reimbursement of such amounts from Contractor.

**5.8 Rights Not Limited.** The rights and remedies provided in this **Article 5** are in addition to, and not in limitation of, any other rights or remedies otherwise available to Owner under this Agreement.

**5.9 Operating Personnel.** At such time as Contractor has achieved Mechanical Completion, Contractor shall commence commissioning of the Subproject until Commercial Operation is achieved. During commissioning, Owner shall operate Unit 3 (as improved by the Subproject) with its normal complement of personnel. Contractor shall communicate with supervisory personnel identified by Owner to convey any directions with which it wants Owner to comply with respect to the operation of the Subproject during commissioning, hot testing, and the Commercial Operation Test and any Extra Tests. Owner shall undertake to operate the Subproject in accordance with such directions to the extent such directions are consistent with Prudent Utility Practices and comply with Applicable Law. If Contractor directs Owner's operation of the Subproject and such direction is responsible for damage to any of the Units or the Subproject, Contractor shall: (i) reimburse Owner on demand for correction of such damage within any of the Units; (ii) correct damage within the Subproject; and (iii) pay liquidated damages for each Unit Outage Hour, if any, in accordance with **Exhibit L**. Contractor understands that each of the Units is a critical generating resource for Owner and consequently Contractor will exert maximum efforts to give directions that are consistent with Owner's requirement to maximize Unit operations on an unrestricted basis. If Contractor desires or needs to have additional technical personnel and/or special monitoring or measuring equipment for any tests, then Contractor shall furnish such personnel or equipment at no cost to Owner.

**5.10 System Needs.** Each of the Units is a critical generating resource for Owner and must be continually available for full operation after Tie-in commences but prior to Commercial Operation. Thus, Contractor shall plan and implement its Work in such a fashion to ensure that the Units can be so continually operated and will prepare (and, if necessary, implement) contingency arrangements so that the Units can be so operated.

**5.11 Contractor's Personnel.** Owner has the right to object to any representative or Person employed or engaged by Contractor that engages in misconduct, is believed by Owner to lack competence for the tasks assigned, or is negligent while on the Job Site or the Brown Generating Station Site. Contractor shall remove such Person from the Job Site or the Brown Generating Station Site, as applicable, upon receipt of Owner's notice. Any cost for replacement Persons will be at Contractor's expense. The rights of Owner under this **Section 5.11** are in addition to the rights of Owner with respect to the personnel pursuant to **Section 4.6**.

## ARTICLE 6

### PROJECT SCHEDULE

**6.1 Commencement.** Contractor shall immediately commence performance of the Work in its entirety in accordance with the requirements of this Agreement and continuously and diligently fulfill its obligations under this Agreement.

**6.2 Turnover of the Systems.** Not less [REDACTED] Days prior to commencing the turnover process contemplated by this **Article 6**, Contractor shall provide a detailed written turnover and start-up plan to Owner for its review and comment. Such plan must include: a complete listing of the Systems along with a scheduled turnover date for each such System and a schedule of documents to be included in the System Turnover Package that will accompany the System being turned over. Each System Turnover Package must be properly completed and include sufficient checkout and operation information to clearly indicate that the System has been completely checked out, including: instrumentation checkout and calibration data sheets, hydrostatic test reports, factory test reports, chemical cleaning and lubrication records, non-destructive testing records, operating manuals, marked-up P&IDs reflecting as-built conditions, and electrical test data sheets, including megger test reports and vendor field reports. The data provided in each System Turnover Package must be complete and compatible for insertion into Owner's hold card system. Owner will have [REDACTED] Days to review such plan and provide written comments to Contractor. Contractor will promptly address such comments and resubmit the plan until such time as Owner approves the plan. Owner and Contractor will mutually agree on the final turnover and start-up plan prior to its implementation. Thereafter, Contractor's turnover of Systems will be accomplished as follows:

6.2.1 Ready for Turnover. When Contractor deems that it has achieved completion of construction of a System or, in the case of any System that is a modification, expansion or improvement of a portion of Unit 3, completion of such modification, expansion, or improvement, in accordance with this Agreement, including static integrity tests, alignment, electrical continuity tests, lubrication, and demonstration of readiness for operation as appropriate (but exclusive of Punch List Items, final vendor reports, manuals, and other information not necessary for start-up), Contractor shall notify the Owner Representative, in writing, that the System is ready for turnover to Owner, which notice must be accompanied by the applicable System Turnover Package meeting the requirements of this Agreement.

6.2.2 Turnover Acknowledgment. Owner will agree that the System is ready for turnover in writing ("**Turnover Acknowledgment**") within [REDACTED] Days of

receipt by Owner Representative of notification from Contractor (the “**Owner Review Period**”), unless Owner reasonably believes that: (i) the System Turnover Package does not comply with the requirements of this Agreement or (ii) the System: (a) contains deficiencies, defects, or non-conformities that preclude safe testing, safe commissioning, or safe operation; (b) has not been prepared, flushed, or cleaned as necessary or appropriate; (c) requires Work that has not been completed and which does not constitute a Punch List Item; or (d) materially differs from the System required under this Agreement. Owner and Contractor must develop a Punch List and endeavor to ensure that the Punch List contains all deficiencies and incomplete items of Work with respect to the System submitted for Turnover Acknowledgment. Notwithstanding the foregoing, if the turnover of a System by Contractor is not made in accordance with the agreed upon turnover Project Schedule and as a result Owner is unable to accept or reject such System within the Owner Review Period, Owner and Contractor will mutually agree upon a reasonable extension of the Owner Review Period for the affected Systems, which extension will reflect the nature of the affected System. Turnover Acknowledgment and the provision of operating personnel neither constitutes acceptance of any System, Owner’s acceptance of care, custody, or control of such System, nor any transfer of control to Owner, including responsibility for commissioning, start-up, testing, operations, or maintenance.

6.2.3 Deficiencies. If Owner reasonably believes that any of the circumstances set forth in **clauses (i) and (ii) of Section 6.2.2** exist with respect to a System submitted for Turnover Acknowledgment, Owner will so notify Contractor in writing during the Owner Review Period, stating the deficiencies noticed or the incomplete items of Work, as applicable. When Contractor deems it has remedied such deficiencies or completed such items of Work, as applicable, Contractor will then again notify Owner Representative as provided in **Section 6.2.1**. This procedure will be repeated until Owner issues the Turnover Acknowledgment for such System. Nothing contained herein will prevent Owner from identifying any Defects, deficiencies, incomplete Work, or Punch List Items if discovered after Turnover Acknowledgment of any System to be remedied or corrected by Contractor.

### **6.3 Tie-in and Mechanical Completion.**

6.3.1 Sequence. Contractor shall not commence making any Tie-in until (i) Contractor has completed the Marshaling Requirement; (ii) the Subproject is otherwise ready to commence commissioning (except for Work required to be performed as part of the Tie-in); and (iii) Owner has given Contractor its consent to commence the portion of the Work necessary to complete the Tie-in. Contractor will then perform the Tie-in of the Subproject.

6.3.2 Achievement. Contractor shall achieve of the Tie-in prior to the applicable Contractor Outage End Time.

6.3.3 Tie-in



6.3.4 Mechanical Completion. If timely achievement of Mechanical Completion is in jeopardy in the reasonable judgment of Contractor or Owner or if it is not timely achieved, Contractor shall promptly prepare and implement, in good faith, a detailed recovery plan and accelerate the Work such that the performance of the Work can progress in accordance with the Project Schedule. Within [REDACTED] Days after receipt by Owner of written notice from Contractor certifying that Contractor has satisfied the requirements for Mechanical Completion (other than issuance of the Certificate therefor by Owner), Owner shall determine whether the applicable requirements have been achieved and shall either issue the Certificate of Mechanical Completion or give notice to Contractor in writing of Defects in the Work (other than Punch List Items), of which Owner then has knowledge. Owner is obligated to issue the Certificate of Mechanical Completion within such [REDACTED] Day period if Contractor has satisfied the requirements of Mechanical Completion (other than issuance of the

Certificate therefor by Owner). Upon receipt of a written notice of the reasons why Contractor has not achieved Mechanical Completion from Owner, Contractor shall promptly perform corrective measures to eliminate any Defects or deficiencies in the Work and shall thereafter provide another written notice to Owner containing the applicable certification set forth above. Owner shall, within [REDACTED] Business Days after receipt of such written notice, and after each subsequent written notice as may be required, determine whether the applicable requirements have been achieved and either issue the Certificate of Mechanical Completion or advise Contractor of any Defects or deficiencies (other than Punch List Items) remaining in the Work that prevent achievement of Mechanical Completion.

**6.4 Project Schedule Update.** Without altering, revising, or otherwise changing the Scheduled Tie-in Outage Periods, the Scheduled Mechanical Completion Dates, the Guaranteed Commercial Operation Dates, or the Guaranteed Final Completion Dates, Contractor shall submit, on a Monthly basis, with the Monthly status report submitted pursuant to **Section 4.23(i)**, electronic and updated hard copy of a total project integrated Project Schedule, including critical path activities interconnected by schedule logistics, in Level 3 Primavera® P6 format (fully logic-tied and resource loaded) and meeting the requirements set forth in **Exhibit D**, to Owner for Owner's review and comment. All extensions of the Project Schedule to which Contractor is entitled shall be determined by the impact of the delay giving rise to the change in Project Schedule on the critical path.

#### **6.5 Performance Testing.**

6.5.1 Performance Guarantee Tests. At such time as Mechanical Completion has been achieved and Contractor believes that the Subproject is ready for the performance of the Commercial Operation Test, Contractor shall so notify Owner in writing of the date on which it desires to have the Commercial Operation Test conducted, which date must not be earlier than [REDACTED] Days following Owner's receipt of such notice. Contractor will be entitled to reschedule commencement of the Commercial Operation Test on no less than [REDACTED] Days' notice to Owner.

6.5.2 Performance Guarantee Tests. Performance Guarantee Tests shall be scheduled with due regard for minimizing the operating expenses of and maximizing revenues to be derived from Unit operations during such tests. The Performance Guarantee Tests must be conducted by a third party contractor as required by **Exhibit G** and passed simultaneously while Unit 3 as improved by the Subproject is in compliance with Applicable Law. Such tests must be conducted: (i) in the presence of Owner; (ii) in accordance with **Section 5.9**, **Section 6.5.4** and **Article 11**; and (iii) in accordance with the requirements of **Exhibit G** and the Performance Guarantee Test Procedures.

6.5.3 Equipment. No auxiliary, standby, temporary, or spare equipment (whether or not constituting Equipment) may be used during the performance of the Performance Guarantee Tests, unless otherwise approved in writing by Owner. All Equipment and Systems of the Subproject must be operational.

6.5.4 **Testing.** Contractor's directions issued to Owner pursuant to **Section 5.9** must be consistent with Prudent Utility Practices and Applicable Law, including operation of all Systems and Equipment of the Subproject within the manufacturers' specifications, recommendations, and warranty requirements, without over-stressing or over-pressurizing any such systems. Test technicians collecting data and providing other testing-related services may not operate any Equipment during any Performance Guarantee Test.

6.5.5 **Retesting.** If Contractor fails to pass the Commercial Operation Test or Extra Tests, the defects, deficiencies, and other conditions which so prevent performing such tests successfully must be immediately thereafter corrected or remedied in accordance with **Section 12.1**. Upon completion of such corrective or remedial actions, Contractor may cause the Commercial Operation Test or Extra Tests to be re-performed upon not less than forty-eight (48) hours' prior written notice to Owner. The Commercial Operation Test or Extra Tests will be repeated until the Performance Guarantees have been achieved (or liquidated damages, as applicable, have been paid) by Contractor but will in no way excuse Contractor from the timely achievement of the Guaranteed Commercial Operation Date. The results of all inspections and tests will be provided to Owner together with gross and reduced data and other information reasonably requested by Owner. The Commercial Operation Test or Extra Tests will be conducted in accordance with this **Section 6.5**, **Section 5.9**, and **Exhibit G** for the purpose of demonstrating the achievement of Commercial Operation or Final Completion, as the case may be.

**6.6 Re-Setting of Brown Environmental Air Compliance Project.** During those periods after Commercial Operation, Contractor shall perform whatever Work is necessary, including re-setting of Equipment and repairs of damage or modifications caused by testing, to return the Subproject or relevant portion thereof to the normal operating control settings and configurations; **provided, however**, Contractor is not entitled to require that Unit 3 be taken out of service or operate on a restricted basis.

**6.7 Commercial Operation.** Contractor shall successfully achieve Commercial Operation on or before the Guaranteed Commercial Operation Date. At such time as Contractor, in good faith, believes that it has completed the requirements necessary for the achievement of Commercial Operation, including the passage of the Commercial Operation Test required therefor, it shall give written notice of its belief to Owner. Such notice shall be accompanied by a preliminary Commercial Operation Test report as soon as reasonably practicable but in no event more than [REDACTED] hours after the completion of such Commercial Operation Test (or as soon thereafter as such reports are first available to Contractor) providing a summary of the Commercial Operation Test on which it is based and including all raw data taken during such Commercial Operation Test. A final Commercial Operation Test report must be delivered to Owner within [REDACTED] Days of the conclusion of such tests and such report will otherwise be in accordance with **Exhibit G**. Contractor shall include sufficient results of testing in the preliminary Commercial Operation Test report to allow Owner to reasonably determine that there is a high probability that the final Commercial Operation Test results will confirm that the applicable conditions of Commercial Operation have been achieved. As soon as practicable, but in any event within [REDACTED] Days after receipt of the final Commercial Operation

Test report by Owner, Owner shall either issue the Certificate of Commercial Operation or reject Contractor's notice, in which case it shall state its reasons for rejection. Such procedure shall be repeated until Contractor submits a final Commercial Operation Test report demonstrating that it has fulfilled the requirements necessary to achieve Commercial Operation. Owner is obligated to issue the Certificate Commercial Operation within the [REDACTED] Business Day period set forth above if Contractor has satisfied the requirements of Commercial Operation.

**6.8 Possession and Control.** On Commercial Operation, Owner shall take care, custody, and control of the Subproject and thereafter be responsible for the operation and maintenance of the Subproject. Following transfer of possession and control of the Subproject to Owner, Contractor (and its Subcontractors) will have reasonable access to the Subproject to complete any Work still remaining to be performed hereunder; **provided, however**, Contractor will be required to complete any and all Work required to achieve Final Completion of the Subproject in a manner consistent with the operational requirements of Unit 3 (as improved by the Subproject) as directed by Owner. In no event will Owner be required to take any of the Units out of service or otherwise adversely affect any of the Units' operations.

**6.9 Final Completion.** Contractor shall successfully perform all of the Work and obligations (except obligations requiring future performance, *e.g.*, warranty obligations and Guaranteed Availability obligations) and shall achieve Final Completion on or before the Guaranteed Final Completion Date. At such time as Contractor, in good faith, believes that the requirements of Final Completion have been met, Contractor shall give notice to Owner, together with reasonable substantiating documentation thereof, including all gross and reduced data from Performance Guarantee Tests conducted by Contractor. Final laboratory results are not required to be provided with such notice. Within [REDACTED] Days after receipt by Owner of such notice from Contractor, Owner will determine whether the requirements of Final Completion have been achieved, subject to confirmation by reference to the final laboratory results. If Owner agrees with Contractor's notice, upon receipt of final laboratory results that confirm that Final Completion has been achieved, Owner, within [REDACTED] Business Days of the later of receipt of Contractor's notice or such final laboratory results, shall issue the Certificate of Final Completion. If, however, Owner believes that Final Completion has not been achieved, Owner shall give notice to Contractor to that effect, with reasons for such belief, within the [REDACTED] Business Day period and, upon receipt of such notice from Owner, Contractor shall promptly take corrective action to fulfill the requirements of Final Completion. Contractor shall thereafter provide another notice to Owner when it believes that Final Completion has been achieved and the above-described procedures will be repeated until Final Completion is achieved. Owner is obligated to issue the Certificate of Final Completion within [REDACTED] Business Days of receipt of Contractor's notice if Contractor has satisfied the requirements of Final Completion. Nothing in this **Section 6.9** shall relieve Contractor of its obligation to achieve Final Completion by the Guaranteed Final Completion Date.

**6.10 Maintenance Outage.** Owner will inform Contractor as soon as practical if a maintenance outage is scheduled for Unit 3. With Owner's permission, Contractor may use the period established by Owner for such maintenance outage to perform Work, including Work required to achieve Tie-in. Owner may change the schedule for commencement of a maintenance outage without notice. If Contractor causes Owner to extend a maintenance outage beyond the scheduled duration, then each Hour of each affected Unit of such extension will

constitute a Unit Outage Hour and Contractor shall compensate Owner for any such extension at the rate established for liquidated damages pursuant to **Exhibit L**.

**6.11 Contractor Requested Outage.** In addition to the applicable Scheduled Tie-in Outage Period, Contractor may request permission to perform Work during a forced or Owner scheduled outage of Unit 3. If Unit 3 experiences a forced or Owner scheduled outage (other than the Scheduled Tie-in Outage Period), Contractor may give Notice that it wishes to use a portion of such outage to perform Work. Owner, to the extent practicable, will specify the dates, times, and restrictions on Contractor's access to Unit 3 for the performance of such Work. Contractor may also request additional outage time be scheduled to perform Work. Owner may in its sole discretion grant such request. Owner will specify in writing the dates, times, and restrictions on Contractor's access prior to such additional outage time. Owner has the additional right to change the dates and times of such outage or during which Contractor will have such access. If (i) Contractor's request for additional outage time cannot be accommodated during a scheduled or forced outage and Unit 3 must be taken out of service or operated on a restricted basis or (ii) Contractor fails to properly withdraw from the outage under this **Section 6.11** on schedule and thereby causes a delay in start-up beyond the Contractor Outage End Time, as applicable, then, because actual damages would be extremely difficult and impracticable to ascertain and fix, liquidated damages for each Hour of each affected Unit of such additional time or delay will be assessed as Unit Outage Hours under **Exhibit L**.

**6.12 Results of Extra Tests.** Contractor is entitled to arrange for one or more Extra Tests to be conducted, at its expense, following Commercial Operation to demonstrate improved performance with respect to a Buydown Performance Guarantee. If any such Extra Test does establish performance levels that differ from the performance levels on which Commercial Operation was based, Contractor and Owner shall recalculate the amount of Buydown Liquidated Damages due therefor, if any, based on the final results of such Extra Test and any difference from the amount determined upon Commercial Operation shall be paid to the applicable Party within [REDACTED] ([REDACTED] Business Days after the Parties reach agreement on such amount.

## ARTICLE 7

### LIQUIDATED DAMAGES & LIABILITY LIMITATIONS

#### 7.1 Liquidated Damages





[REDACTED]

**7.2 Payment**

[REDACTED]

**7.3 Consequential Damages**

[REDACTED]

**7.4 Limitations of Liability.**

**7.4.1 Liquidated Damages Limit.**

[REDACTED]

**Overall Limit.**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



## ARTICLE 8

### CONTRACTOR'S COMPENSATION

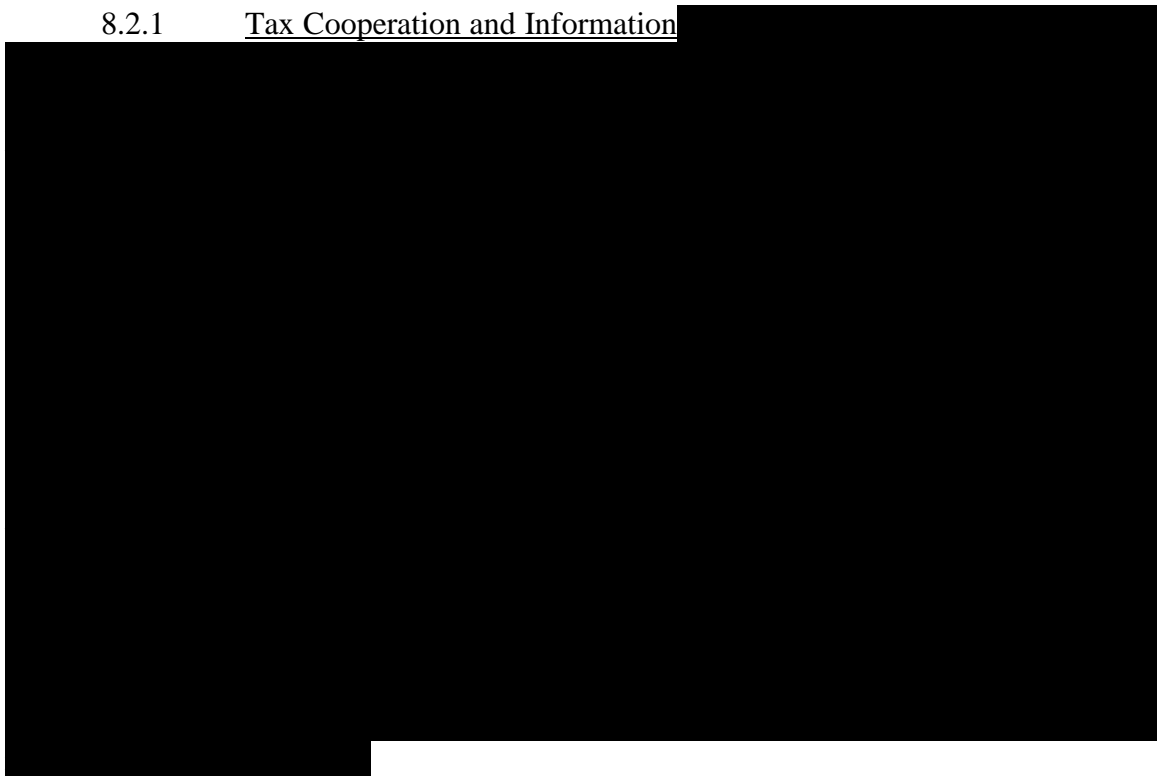
**8.1 Contract Price.** Owner shall pay Contractor for the due, proper, and complete performance of the Work as required hereunder and for the due performance of all other obligations and duties imposed upon Contractor pursuant to this Agreement an amount equal to



subject to adjustments in the event of additions and deductions by Change Order as provided in this Agreement (the "**Contract Price**"). Contractor shall receive the Contract Price as full compensation for the performance of the Work and its other obligations hereunder whether or not Contractor has properly estimated or anticipated the costs required to fully perform its obligations under this Agreement.

### 8.2 Taxes.

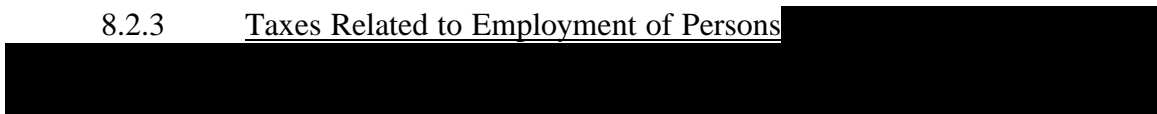
#### 8.2.1 Tax Cooperation and Information



#### 8.2.2 Subcontractors



#### 8.2.3 Taxes Related to Employment of Persons



[Redacted]

8.2.4 Sales and Use Taxes

[Redacted]

Indemnity and Assessment

[Redacted]

Other Taxes

[Redacted]

8.2.7 Tax and Accounting Information

[Redacted]






**8.3 Progress Payments**



**8.4 Application for Payment**



**8.5 Payment of Substantiated Amount.** Owner shall pay Contractor the amount of each Application for Payment which has been substantiated by Owner, less amounts properly withheld hereunder. Owner shall make such payment within  Days after receipt of the complete Application For Payment, subject to the provisions of this **Article 8**. If Owner fails to make a payment in respect of a substantiated Application for Payment when due or improperly withholds amounts due to Contractor, interest will accrue on such overdue amounts at the Agreed Rate from the date such amount was due to have been paid to and until (but not including) the date it is paid. Contractor understands and agrees that Owner's payment determination under this **Article 8** may be made in conjunction with the Financing Parties and that approval of the Financing Parties may be required prior to making payment in accordance with this **Article 8**, subject to payment being due within   Days after receipt of the

completed Application For Payment. Payments made to Contractor in respect of Work performed by Subcontractors constitute trust funds for such Subcontractors and shall not be commingled by Contractor with other funds of Contractor or its Affiliates.

**8.6 Supporting Documentation.** Each Application for Payment submitted by Contractor must be accompanied by the following, all in form and substance satisfactory to Owner:

- (i) a duly executed or acknowledged Contractor's certification stating that:  
(a) all Subcontractors have been paid amounts properly due under their respective subcontracts and identifying all Major Subcontractors with whom Contractor has entered into subcontracts; (b) the applicable Work has been performed in accordance with and complies with this Agreement; (c) it has reviewed all financial information contained in the Application for Payment and it is true, correct and complete; and (d) no Liens or Claims have been filed or commenced in connection with the Work;
- (ii) a detailed description of the Work performed during the period as to which the Application for Payment relates; photographic and other documentation of the status and completion of the Work; reasonable documentation demonstrating achievement of milestones and otherwise demonstrating the earned value of the Work;
- (iii) duly executed partial or final lien waivers, as appropriate, in the forms set forth in **Exhibit F-5** from Contractor and from all Major Subcontractors that are to receive payment. The final Application for Payment must be accompanied by final and full waivers of claims and Liens from Contractor and, to the extent not previously provided, Major Subcontractors entitled to receive payment in connection with the performance of the Work;
- (iv) a copy of the status report pursuant to **Section 4.23.1** for the previous Month;
- (v) a copy of all invoices pursuant to which Contractor has paid sales or use taxes for which it seeks reimbursement; and
- (vi) such other information, documents, and other materials: (a) reasonably required by Owner or this Agreement or (b) as may be required by the laws or customs of the jurisdiction in which the Job Site is located in order to protect the owners of the Brown Generating Station Site from Liens or other liabilities.

**8.7 Withholding to Protect Owner from Loss.** Owner may, without prejudice to other rights of Owner hereunder, withhold payment on an Application for Payment or any other amount due to Contractor or a portion thereof (or draw on the Performance Securities if sufficient funds to withhold are not then available) to the extent such payment is disputed by Owner or because of:

- (i) Contractor's failure to carry out the Work in accordance with this Agreement or any material breach of this Agreement;
- (ii) other amounts due to Owner from Contractor, including liquidated damages then due and owing;
- (iii) the existence of Defective, deficient or nonconforming Work which Contractor has failed to correct whether or not payment for such Work pursuant to **Section 8.5** has been previously made. Contractor may include such amounts withheld in the next regular Application for Payment made after correction or completion of such Work;
- (iv) an amount equal to [REDACTED] of the cost for a third party to complete outstanding Punch List Items. Amounts withheld for completion of Punch List Items may be included by Contractor in the Application for Payment immediately following satisfactory completion of such Punch List Items; or
- (v) Liens filed or Claims commenced by any Person that has performed a portion of the Work unless Contractor has furnished an acceptable bond (as determined in accordance with this Agreement) to protect Owner therefrom.

## **8.8 Final Payment.**

8.8.1 Reconciliation. As a condition of final payment hereunder, Contractor shall have submitted a statement summarizing and reconciling all previous Applications for Payment, payments by Owner, and Change Orders. Subject to the provisions of this Agreement, within [REDACTED] Days of the receipt of such statement, Owner shall pay Contractor all remaining amounts due with. Notwithstanding anything to the contrary contained herein, the final payment will not become due and payable until: (i) a Certificate of Final Completion has been executed by Owner; (ii) Owner has received all warranties, Operating and Maintenance Manuals, schematics, Design Documents, performance testing data, As-Built Drawings and such other items as are required by this Agreement; (iii) all Permits or other approvals required of Contractor have been submitted to Owner; and (iv) the conditions of **Section 8.8.2** and **8.8.3** have been properly completed. The making of final payment constitutes a waiver by Contractor of all claims against Owner (and its property) not previously made in writing by Contractor, except that nothing herein may be construed to imply a waiver of any right to any amount which is the subject of a written protest in accordance with **Article 23** at the time such final payment is made. Owner shall make final payment to Contractor within [REDACTED] Days after the date that all of the preceding matters have been completed or have otherwise occurred.

8.8.2 Release. As a condition of final payment, Contractor shall submit to Owner a general release and an affidavit, in form and substance satisfactory to Owner, that releases all claims of Contractor under the Agreement and represents that all

indebtedness connected with the Work for which Owner or its property might in any way be responsible has been paid, waived or otherwise satisfied; but if any such indebtedness has not been satisfied, Contractor may satisfy this obligation if it furnishes a bond reasonably satisfactory to Owner to indemnify Owner against any such item of responsibility or obligation. If any Claim of any kind or nature whatsoever is filed in respect of the Work and such Claim or any Lien arises from or is alleged to arise from any failure of Contractor or any Subcontractor to pay the indebtedness connected with the Work, Contractor shall indemnify, defend and hold Owner harmless for amounts that Owner must pay, in defending or discharging such Claim or Lien, including all costs, reasonable attorneys' fees, charges and interest. This provision will survive any expiration or termination of this Agreement.

8.8.3 Satisfaction of Obligation. Notwithstanding any provision to the contrary in this Agreement, Owner and Contractor acknowledge and agree that Contractor will not be entitled to final payment of the Contract Price unless and until Contractor has achieved Final Completion.

**8.9 Disputed Applications for Payment.** If there is any dispute about any amount which is requested by Contractor or which is claimed by Owner to be due and payable by Contractor, the amount not in dispute will be promptly paid in accordance with the provisions hereof, and any deduction of a disputed amount that is not specifically agreed to by Contractor or Owner, as applicable, and which is then determined by arbitration, litigation, or by mutual agreement, to have been improperly withheld will be promptly paid by Owner or Contractor, as applicable, together with interest from the date such amount otherwise would have been payable to the date of payment at the Agreed Rate.

**8.10 Payment of Subcontractors.** Contractor shall promptly pay each Subcontractor when due the amount to which such Subcontractor is entitled. Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its sub-subcontractors on the same basis. Owner has no obligation to pay or to see to the payment of any monies to any Subcontractor except as may otherwise be required by Applicable Law, in which event Contractor shall immediately reimburse Owner therefor, with interest thereon at the Agreed Rate.

### **8.11 Performance Securities.**

8.11.1 Security. As security for the full and faithful performance of the Work and the other obligations of Contractor under this Agreement, Contractor shall deliver the Performance Securities to Owner on or before the [REDACTED] Day following the Effective Date. Notwithstanding any other provision of this Agreement to the contrary, Owner will not be obligated to make any payment of the Contract Price to Contractor until Contractor has delivered the Performance Securities to Owner.

8.11.2 Enforcement. Owner shall be entitled to draw on any of the Performance Securities (i) upon the occurrence of any Contractor Default; (ii) as otherwise permitted by the terms of this Agreement; and/or (iii) if any Performance Security required to be maintained hereunder has not been renewed for a period equal to

or greater than [REDACTED] Days prior to the date that is [REDACTED] Days prior to its stated expiration date. If any amount is withdrawn from any of the Performance Securities and thereafter is found to have been improperly withdrawn, such amount shall be repaid together with interest thereon at the Agreed Rate calculated from and including the date of withdrawal to and until, but not including, the date of payment (or any earlier date on which payment is proffered) in exchange for delivery of evidence that such Performance Security has been restored to the proper amount. A draw on any of the Performance Securities shall be made on the signature of one authorized representative of the Owner.

**8.12 Release of Performance Securities Arrangements.** Unless any of the events described in **Section 24.2.1(i)** through **(x)** (regardless of whether any cure period is in effect) has occurred and is continuing or Owner has a warranty or other claim pending against Contractor, the Performance Securities shall be released and returned to Contractor as follows:

[REDACTED]

**8.13 Overpayment.** Any overpayment by Owner to Contractor shall be deemed to be a mistake of fact and promptly repaid to Owner upon demand within [REDACTED] Days.

**8.14 Tax and Accounting Information.** Contractor shall provide tax and accounting information required by Owner with respect to the Work, Equipment and Materials, including information required for submission to Governmental Authorities. For accounting purposes, Contractor shall provide to Owner, as a condition of Final Completion, a cost breakdown of the Contract Price in accordance with **Exhibit W** and the other systems of accounts provided by Owner. The sum of the items listed in Contractor's price breakdowns shall equal the Contract Price. Overhead and profit shall not be listed as separate items.

## ARTICLE 9

### EXCUSABLE EVENTS

#### 9.1 Notice

[REDACTED]





**Rights Limited.**





## ARTICLE 10

### CONTRACT CHANGES

#### 10.1 Owner-Initiated Changes.

10.1.1 Change Order Requests. Owner may, from time to time, without invalidating this Agreement, order changes in (including additions to or deletions of) the Work or changes in the execution of, or time for, or sequence of, completion of all or any portion of the Work (“**Changes**”), by notification in writing to Contractor (a “**Change Order Request**”). If any such change causes an increase or decrease in the cost of, or timing required to provide, the Work, an equitable adjustment determined in a manner consistent with that utilized in the Basis of Bid and **Exhibit R** shall be made to the Contract Price, Project Schedule, or other applicable provision of this Agreement. Each Change Order Request will be accompanied by a description of the Changes requested.

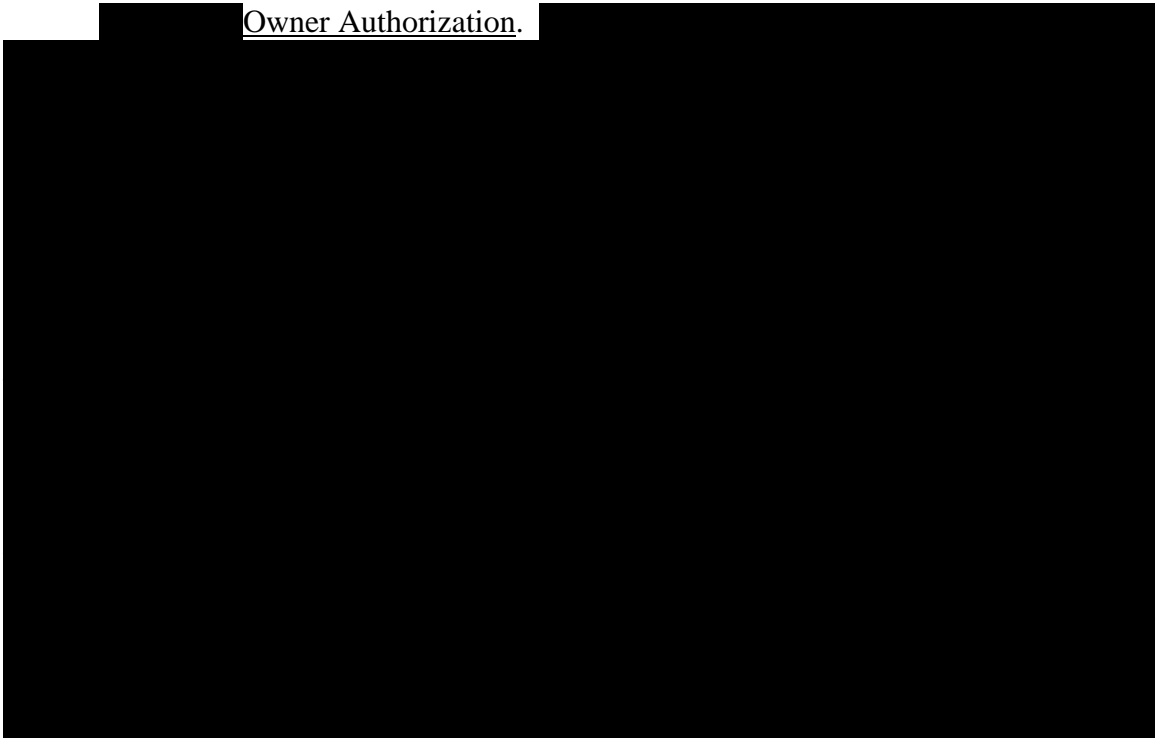
10.1.2 Contractor Response. Contractor shall, within [REDACTED] Days after receipt of a Change Order Request (unless such time period is extended by mutual agreement of Contractor and Owner or as otherwise herein provided), provide Owner for its review and approval, with a written description of any adjustment to the Contract Price, the Project Schedule or any other effect on the Work or the terms of this Agreement resulting from the Changes set forth in the Change Order Request. Any adjustment arising out of a Change will be negotiated by Owner and Contractor on a completely open-book basis. Contractor, among other things, shall provide Owner with an itemization or estimate (which estimate shall be prepared in a manner consistent with **Exhibit R** and the Basis of Bid) of: (i) total job hours increased or decreased (detailed as to each subdivision of each of home office, field staff and field craft labor) and associated labor rates and/ multipliers or markups from **Exhibit R**; (ii) estimated quantities, qualities (as required) and direct costs of Equipment and Materials; (iii) any bids received from any Subcontractors actually contacted by Contractor in connection with such Changes; (iv) all other direct costs associated with the performance of the Work, including travel and living, reproduction, printing, consultants, Subcontractors, costs of Contractor-owned equipment at Contractor’s usual and customary rates; (v) applicable contingencies for the foregoing cost items appropriate and customary for the degree of uncertainty in the estimate; and (vi) the impact, if any, on the Project Schedule (the “**Contractor Response**”). Itemized proposals are also required for Subcontractor costs.

Contractor and Owner shall use their respective good faith efforts to agree on a lump sum, fixed-price for such Change. If Owner and Contractor cannot agree on the

price for such Change, Owner may, at its option, direct Contractor to proceed on an open-book time and materials basis with no contingency in a manner consistent with **Section 10.1.4** hereof, **Exhibit R**, and the Basis of Bid, and, in such event, the Project Schedule will be equitably adjusted to account for additional work included in the Change.

10.1.3 Owner's Response. Owner shall, within [REDACTED] Days after receipt of Contractor Response (the "**Owner Response Period**"): (i) notify Contractor as to whether it agrees or disagrees with such Contractor Response, and of Owner's position regarding the effect of the Changes and the Change Order Request on the Contract Price, Project Schedule, or other applicable provision of this Agreement and (ii) embody the agreed upon changes in the Work, the Contract Price, or the Project Schedule in a document substantially in the form of **Exhibit F-3** to be executed by the Parties (a "**Change Order**"). During the Owner Response Period, the Owner Representative and the Contractor's Representative shall make themselves available and shall use reasonable efforts to meet or otherwise confer to discuss the Change Order Request, Contractor Response and the estimates therein contained, and to answer any questions or clarify any information provided with respect thereto. Owner or the Owner Representative may request the Contractor's Representative to provide additional reasonable information or further information and data to the extent Contractor has failed to provide such information and data required to be provided or if there are errors, mistakes, or omissions in any information or data previously provided as part of the estimates contained in the Contractor Response. If Contractor fails to provide data or information required to be provided as part of the Contractor Response or fails to correct any errors or mistakes in such information or data, which prevents Owner from properly analyzing such data, or information, the Owner Response Period will not commence until the information is received by Owner.

Owner Authorization.





**10.2 Contractor Change Notice.** If Contractor wishes to make a claim for an adjustment of the Contract Price, an adjustment of the Project Schedule, or Change in any other applicable provision under this Agreement (on account of the occurrence of an Excusable Event), Contractor must give notice (“**Contractor Change Notice**”) in accordance with **Article 9**. Such Contractor Change Notice must be given by Contractor before proceeding to execute any additional Work, except in an emergency endangering life or property in which case Contractor may act to prevent threatened damage, injury, or loss. Contractor shall document and otherwise support any Contractor Change Notice on the same basis and within the [REDACTED] -Day periods specified in **Article 9**. Owner shall respond to all such Contractor Change Notices within [REDACTED] Days after receipt of final documentation from Contractor, setting forth Owner’s position, and, if appropriate, issuing a Change Order or Owner Authorization based thereon. All Contractor Change Notices must include sufficient documentation for Owner to be able to make a well-informed decision.

**10.3 Emergencies.** Any request for a Change claimed by Contractor on account of a need to take action in light of an imminent threat to the health and safety of individuals or property will be determined by the Parties based upon the facts of each such incident.

**10.4 Resolution.** In the event of a failure to agree to any adjustment of this Agreement, including, to the Contract Price or Project Schedule as required by the terms of this Agreement as a result of a Change Order Request or a Contractor Change Notice, either Party may demand resolution of such issues in accordance with **Article 23**.

**10.5 Contractor Caused Delays.** To the extent any delay or suspension is caused by Contractor or any of its Subcontractors, no adjustment will be made to the Contract Price, Project Schedule or other provision of this Agreement.

## ARTICLE 11

### TEST AND INSPECTIONS

**11.1 Testing.** Contractor shall conduct, arrange, or obtain (at its sole expense) all inspections and tests, including the Performance Guarantee Tests, required to be performed to meet its obligations under this Agreement (including all certification testing and associated reports required by Applicable Law or applicable Codes and Standards that must be conducted by a qualified independent party). Contractor shall provide for or arrange for all testing personnel (excluding operating personnel to be provided by Owner in accordance with **Section 5.9**). The Performance Guarantee Tests must be conducted: (i) within [REDACTED] Days after completion of hot commissioning of the Subproject on a date selected by Owner; (ii) when all Systems of the Subproject are operating as designed (without temporary equipment); (iii) when the Subproject is operating in full automatic mode; (iv) when commencing performance testing is consistent with Prudent Utility Practices; and (v) pursuant to **Exhibit G**, the Performance Guarantee Test Procedures and in strict accordance with Applicable Law, including 401 KAR Chapter 59. A

draft of the proposed Performance Guarantee Test Procedures for the Subproject shall be prepared by Contractor and delivered to Owner not less than [REDACTED] Days prior to the scheduled commencement of the Scheduled Tie-in Outage Period. Owner shall review such draft and provide written comments to Contractor with [REDACTED] Days of receipt of the draft Performance Guarantee Test Procedures. Contractor and Owner shall cooperate and diligently work to complete an agreed final version of the Performance Guarantee Test Procedures no later than [REDACTED] Days prior to the scheduled commencement of the Scheduled Tie-in Outage Period. Contractor and Owner shall cooperate and in good faith finalize Performance Guarantee Test Procedures in accordance with **Exhibit G**.

**11.2 Witnessing Tests and Inspection.** Contractor shall perform all inspection, pre-Performance Testing, expediting, quality surveillances, and traffic services as necessary for the performance of the Work. Contractor's responsibilities under this **Section 11.2** include inspecting and testing such Work, including Equipment and Materials, as is customarily inspected or tested in accordance with Professional Standards, including inspecting Work in progress off of the Job Site at intervals appropriate to the stage of construction, fabrication, or shipment as necessary to ensure that such Work is proceeding in accordance with this Agreement and the Project Schedule. All third party inspections, tests, or approvals must be performed by qualified organizations acceptable to Contractor and Owner. If Applicable Law requires any Work to specifically be inspected, tested, or approved, Contractor shall assume full responsibility therefor and furnish to Owner the required certificates of inspection, testing, or approval. Not later than one hundred [REDACTED] Days prior to the first expected delivery of Equipment or Materials to the Brown Generating Station Site, Contractor will supply to Owner a quality surveillance plan for all Equipment and Materials that will be inspected by Contractor. A chart, accompanying each Monthly progress report delivered by Contractor shall specify the date, time, and location of factory tests, inspections, and witness points of which Contractor is then aware of and intends to witness with respect to Equipment and Materials or other work to be provided or performed by its Subcontractors in the [REDACTED] Day period following the Month in which each such progress report is delivered to Owner. If and when Contractor obtains new information about such factory tests, inspections, or witness points or other factory tests, inspections, or witness points that was not available to it when the Monthly status report was delivered, it will promptly advise Owner and update such information as necessary to allow Owner a reasonable opportunity to attend such event. Contractor shall give reasonable notice of changes to such dates, times, and locations to allow Owner to make arrangements to attend, it being understood that tests, inspections, or witness points to be performed outside the United States will require additional notice. Owner and its invitees have the right, but not the obligation, to attend any inspections, tests, or approvals of the Work. In no event shall Contractor's obligation to provide notice regarding certain tests, inspections, or approvals or Owner's and its designees' right to attend tests, inspections, or approvals limit, delay, or modify Contractor's obligation to perform all tests, inspections, or obtain approvals required by this Agreement. Successful completion of factory or other off-Job Site tests is a precondition to shipment of such Equipment and Materials to the Job Site or other Contractor storage facility, unless otherwise agreed by Owner. Contractor shall thereafter implement such plan and reperform and demonstrate that such test has been passed. Should Contractor fail to give proper notice under this **Section 11.2**, at Owner's option, Contractor shall reperform or reinspect any such test or inspection as to which Contractor failed to give proper notice if Owner has reviewed the test or inspection results (which are to be provided to Owner within [REDACTED] Days of such failure or as soon thereafter as test results are

available to Contractor) and gives notice to Contractor questioning the validity, accuracy, or completeness thereof. Attendance by Owner at any such test or inspection despite the lack of proper notice will waive Owner's right to cause Contractor to so retest or reinspect.

**11.3 Defects During Performance Guarantee Tests.** Without limiting the requirements of **Section 6.5**, after completion of any Performance Guarantee Test or any retest, Owner and Contractor shall consult concerning the results of such test and Owner shall advise Contractor in writing of any defects, deficiencies, or needed adjustments in the Work that it has discovered or observed during the performance thereof. If Contractor is notified of such defects, deficiencies, or adjustments, Contractor shall immediately commence and promptly: (i) complete corrective measures to rectify such defects or deficiencies and any other defects or deficiencies of which it is aware (including, replacement of any defective parts) and (ii) make any necessary adjustments, in each case, at Contractor's expense. As soon as reasonably practicable but in no event more than twenty-four (24) hours after the completion of such Performance Guarantee Tests (or as soon thereafter as such reports are first available to Contractor) following the applicable test or inspection, Contractor shall forward copies of all test or inspection results together with such other information Owner reasonably requires in relation thereto.

**11.4 Retests.** Prior to any retest, Contractor shall give reasonable notice advising Owner that all Defects and deficiencies have been corrected and all necessary adjustments have been made. Such notice must identify the date upon which the Subproject will be ready for such retesting. Within [REDACTED] Business Days, Owner shall review the adjustments or corrections made by Contractor and will determine whether a retest is warranted. Following a favorable determination by Owner, Contractor shall promptly reperform the retest. After each such retest, Owner and Contractor shall consult concerning the results thereof, and Owner shall advise Contractor in writing of any additional or remaining defects or deficiencies or adjustments that must be corrected or made by Contractor. If the Performance Guarantee Tests are not successfully completed, they must continue to be repeated in accordance with this Agreement.

## ARTICLE 12

### CORRECTION OF WORK

**12.1 Correction of Work.** Prior to the Commercial Operation Date, Contractor shall, at the earliest practical opportunity, correct, repair, or replace any portion of the Work that is defective or does not otherwise conform to the requirements of this Agreement, without regard to the stage of completion of the Work or the time or manner of discovery of the defect or nonconformance. If other portions of the Work are adversely affected by or are damaged by such defective or non-conforming Work, Contractor shall, at its sole cost and expense and at the earliest practical opportunity, correct, repair or replace such affected or damaged Work. Contractor shall bear the cost of correcting such defective or nonconforming Work, including additional testing and inspections and compensation for any Design or engineering services and expenses made necessary thereby.

**12.2 Urgent Repairs.** If by reason of any accident, failure, or event occurring to, in, or in connection with the Work or any part thereof either during the execution of the Work or during any period of warranty hereunder, any remedial or other work or repair is in the opinion

of Owner urgently necessary and Contractor is unable or unwilling at once to do such work or repair, Owner may, with its own forces or other contractors, do such work or repair. If the work or repair so done is Work which Contractor was liable to do at its own expense under this Agreement, all costs and expenses incurred by Owner in so doing as a result of such event shall be paid by Contractor to Owner on demand. Owner, as soon after the occurrence of any such emergency as may be reasonably practicable, shall notify Contractor thereof in writing.

**12.3 Damage to Existing Facilities.** To the extent that Contractor or its Subcontractors cause any physical damage or loss to any equipment, structure, or portion of the Work as to which care, custody, and control and risk of loss has passed to Owner or to the Existing Facilities (but not Work for which care, custody, and control and risk of loss has not yet passed to Owner) Contractor shall be liable for making payment to Owner for the cost to repair, correct, or replace such loss or damage, not to exceed [REDACTED], and upon such payment Owner otherwise releases Contractor from liability for such physical damage to or loss of any equipment, structure, or portion of the Work as to which care, custody, and control and risk of loss has passed to Owner or to the Existing Facilities (but not Work for which care, custody, and control and risk of loss has not yet passed to Owner). Payments to be made by Contractor under this **Section 12.3** shall be made to Owner within [REDACTED] Business Days of Owner's demand therefor.

## ARTICLE 13

### WARRANTY

[REDACTED]

[REDACTED]

[REDACTED]





[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## ARTICLE 14

### PROTECTION OF PERSONS AND PROPERTY

**14.1 Safety Programs.** Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of this Agreement, including a fitness for duty policy and other appropriate precautions and programs for areas in and around the Brown Generating Station Site. Within [REDACTED] Days of the

Effective Date, Contractor shall prepare and deliver to Owner a plan to ensure proper health, safety, and environmentally sound practices are employed and enforced in the performance of the Work. At a minimum, such plan shall require Contractor to comply, and shall cause all Subcontractors to comply, with those rules, regulations and procedures set forth in **Exhibit H**. The efficacy or implementation of such plan will not relieve Contractor of its obligations under this Agreement. If Owner becomes aware of any Work or the performance of any Work, that it reasonably believes constitutes a threat to the health or safety of persons, property, or the environment, then, without limiting any other rights of Owner hereunder, Owner may (but will not be obligated to) immediately suspend the performance of the Work and thereafter promptly advise Contractor of the cause therefor. Such suspension may be maintained until such cause is removed. All costs related to such suspension and any other adverse impact on Contractor or the Work attributable thereto shall be the responsibility of Contractor and no relief under this Agreement shall be provided. Owner, in its reasonable opinion, may exclude from the Brown Generating Station Site any individual whose conduct it believes is prejudicial to safety, health, protection of persons, property, or the environment, or is found or suspected to be in violation or in disregard of the requirements of this Article, this Agreement, or Applicable Law.

**14.2 Applicable Law.** Contractor shall give notices and comply with Applicable Law bearing on the safety of Persons, property and the environment or their protection from damage, injury or loss, including all standards of the U.S. Occupational Safety & Health Administration applicable to the Work.

**14.3 Safety Precautions.** Contractor shall take all reasonable precautions for safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

- (i) employees and Subcontractors or other individuals performing the Work and all other Persons who may be affected thereby, including other individuals on the Brown Generating Station Site;
- (ii) the Work and Equipment, Materials, Consumables, and Construction Aids, whether in storage on or off of the Job Site, under the care, custody or control of Contractor or Subcontractors; and
- (iii) other property at the Brown Generating Station Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, waterways, roadways, structures and utilities, it being agreed that Contractor will be liable for the cost of damages incurred by Owner and caused by Contractor or its Subcontractors.

**14.4 Community Relations.** Contractor recognizes the introduction of Contractor's workforce (and those of its Subcontractors) has the potential to disrupt the local community. Contractor will proactively alert those individuals for whom it is responsible on the Brown Generating Station Site to exercise due caution entering and leaving the Brown Generating Station Site and to otherwise conduct themselves in a manner consistent with good community relations.

**14.5 Security.** Contractor shall take all precautions and measures as may be necessary to secure the Job Site and other portions of the Brown Generating Station Site on which Work is being performed at all hours, including evenings, holidays and non-work hours. Contractor is not entitled to rely on security provided by Owner. Contractor shall coordinate its Job Site security functions with Owner's existing security functions so as not to detract from, or impose upon, existing security measures at the Brown Generating Station Site. Contractor shall erect, maintain, or undertake, as required by existing conditions and the performance of this Agreement, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying Owner and users of adjacent sites and utilities. Such precautions may include the provision of security guards and/or fencing.

**14.6 Dangerous Materials.** When use or storage of dangerous materials or equipment or unusual methods are necessary for execution of the Work, Contractor shall exercise utmost care and carry on such activities only under the supervision of properly qualified personnel. Explosives shall not be used anywhere on the Job Site or the Brown Generating Station Site, without the prior written consent of Owner.

**14.7 Safety Personnel.** Contractor shall assign at least one full-time Job Site safety officer who shall be responsible for introducing, administering, and monitoring procedures to promote safe working conditions on the Job Site (and other areas of the Brown Generating Station Site where Work is to be performed) and compliance with Applicable Law. Contractor shall provide an appropriate medical facility at the Job Site.

**14.8 Loading.** Contractor must not load or permit any part of the construction, the Job Site or other portions of the Brown Generating Station Site to be loaded so as to endanger the safety of Persons or property.

**14.9 Notices to Owner.** Contractor shall immediately (and in each case, but in no event later than a period of time equal to one-half the amount of time Owner has to report any incident to a Governmental Authority) notify Owner by telephone or messenger of any and all potential lost time accidents, recordable injuries (as defined under OSHA), and any property damage arising out of or in connection with the Work. Contractor shall provide Owner with a written report, giving of full details and statements of any witnesses within twenty-four (24) hours of the occurrence of the event.

**14.10 Contractor Code of Business Conduct.** Contractor hereby acknowledges receipt of the LG&E and KU Services Company Contractor Code of Business Conduct and agrees to comply therewith as it may be amended from time to time.

**14.11 Hazards and Training.** Contractor shall furnish adequate numbers of trained, qualified, and experienced personnel and appropriate safety and other equipment in first-class condition, suitable for performance of the Work. Such personnel shall be skilled and properly trained to perform the Work and recognize all hazards associated with the Work. Without limiting the foregoing, Contractor shall participate in any safety orientation of Owner (or any Affiliate of Owner) familiarization initiatives related to safety and shall strictly comply with any monitoring initiatives as determined by Owner. Contractor acknowledges that it has inspected

all equipment, structures, and property of Owner to determine the existence of hazards incident to working thereon or thereabouts, and has adopted suitable precautions and methods for the protection and safety of its employees and the property.

**14.12 Drug 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. In addition to the requirements of the drug and alcohol testing program set forth in **Exhibit H**, Contractor shall: (i) institute a random drug and alcohol testing program covering all individuals that will perform any of the Work; (ii) promptly, upon the written request of Owner, perform drug and/or alcohol tests on all individuals that will perform any of the Work; and (iii) perform drug and 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 dangerous condition or cannot be completely discounted as a contributing factor to an accident or dangerous condition which involves actual or undue risk off-site medical treatment of any individual or property damage or (b) where Owner 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. Individuals tested in accordance with **clause (a)** or **(b)** above will not be permitted to perform any Work until the test results are established. Contractor shall be solely responsible for administering and conducting drug and alcohol testing, as set forth herein, at Contractor's sole expense. As applicable and in addition to any other requirements under this Agreement, Contractor shall develop and strictly comply with any and all alcohol and drug testing requirements required by Applicable Law. Notwithstanding anything to the contrary herein, if the rules and regulations of Owner pertaining to the Brown Generating Station Site are at any time more stringent than the requirements of this Agreement, Contractor will comply and cause its Subcontractors to comply with such more stringent rules and regulations.

## ARTICLE 15

### SEPARATE CONTRACTORS AND ACTIVITIES BY OWNER

**15.1 Separate Work.** Owner reserves the right to perform either with its own forces or through other contractors and subcontractors construction or operations related to any of the Subproject or any other construction or other work at the Job Site or the Brown Generating Station Site.

**15.2 Integration.** Contractor shall use reasonable best efforts to arrange the performance of the Work so that the Work and the work of Owner's forces or any of its separate contractors are properly integrated, joined in an acceptable manner and performed in the proper sequence without any disruption or damage to the Work, the work or business operations of Owner or any work of Owner's forces or its separate contractors.

**15.3 Coordination.** Contractor shall provide for coordination of the activities of Contractor's, and its Subcontractors' forces with the activities of Owner's forces and each of its

separate contractors and Owner, as applicable in accordance with the coordination plan established pursuant to **Section 4.20**.

**15.4 Use of Job Site.** Contractor shall afford all separate contractors reasonable opportunity for storage of their materials and equipment and for performance of their work on the Job Site. Owner shall direct all separate contractors to cooperate with Contractor and to avoid actions that could unreasonably interfere with the activities of Contractor.

**15.5 Deficiency in Work of Owner and Separate Contractors.** Without otherwise limiting Contractor's obligations under this Agreement, if part of Contractor's Work depends for proper execution or results upon construction or operations by Owner or another separate contractor of Owner, Contractor shall, prior to proceeding with that portion of the Work, promptly report to Owner any discrepancies or defects in such other construction or operations that would render it unsuitable for proper execution and results by Contractor. The Parties shall resolve in good faith any such discrepancies or defects or any disagreements relating thereto, and Owner shall correct or cause the separate contractor to correct its defects and deficiencies. Failure of Contractor to promptly report discrepancies or defects of which it has or upon reasonable investigation should have had knowledge shall constitute an acknowledgment by Contractor to Owner that Owner or separate contractor's completed or partially completed construction or operations are fit and proper to receive Contractor's Work, except as to discrepancies and defects not then reasonably discoverable.

## ARTICLE 16

### INTELLECTUAL PROPERTY

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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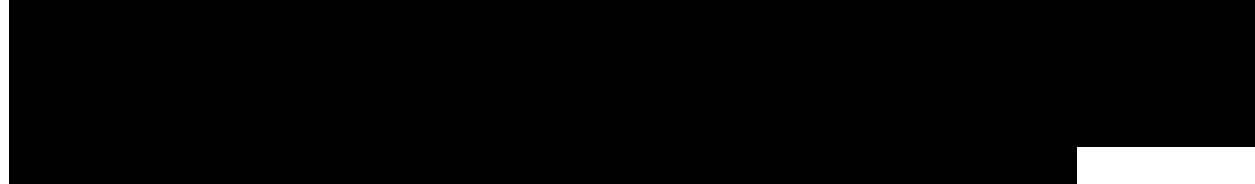
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## ARTICLE 17

### REPRESENTATIONS AND WARRANTIES

**17.1 Contractor.** Contractor hereby represents and warrants the following to Owner, on and as of the Effective Date, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement and the final completion of the Work:

- (i) it is able to furnish the tools, Equipment, Materials, Consumables and Construction Aids, labor, supervision and demolition, Design and construction services required to complete the Work and perform its obligations hereunder, and has sufficient experience and competence to do so;
- (ii) it is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware ;
- (iii) it is authorized to do business in the Commonwealth of Kentucky and properly licensed by all Governmental Authorities having jurisdiction over Contractor or the Work;
- (iv) Contractor is well acquainted with the Brown Generating Station Site, including the general and local conditions, as well as other conditions that may influence the performance of the Work, including the requirements of Applicable Law, the other construction activities that will be performed on the Brown Generating Station Site during performance of the Work, the condition of Existing Facilities on the Brown Generating Station Site that will be utilized, integrated into, interconnected with or modified in the performance of the Work and building standards and trade practices affecting the Work;
- (v) no litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending against or, to the knowledge of Contractor, threatened against or affecting Contractor or any of its properties, rights, revenues assets or the Work (a) which could reasonably be expected to have a material adverse effect on the properties, business, prospects, operations or financial condition of Contractor or (b) which could reasonably be expected to have a material adverse effect on the ability of Contractor to perform its obligations under this Agreement;



- (vi) this Agreement has been duly authorized, executed, and delivered by it and constitutes the legal, valid, and binding agreement of Contractor, enforceable against Contractor in accordance with its terms; and
- (vii) the Guarantee has been duly authorized, executed and delivered by Guarantor and constitutes the legal, valid and binding agreement of Guarantor, enforceable against Guarantor in accordance with its terms.

**17.2 Owner.** Owner hereby represents and warrants the following to Contractor, on and as of the Effective Date, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement and the final completion of the Work:

- (i) it is duly organized, validly existing and in good standing under the laws of the state of its formation and is duly qualified to do business in the Commonwealth of Kentucky;
- (ii) no litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending against or, to its knowledge, threatened against or affecting it or any of its properties, rights, revenues, assets: (a) which could reasonably be expected to have a material adverse effect on the properties, business, prospects, operations or financial condition of it or (b) which could reasonably be expected to have a material adverse effect on its ability to perform its obligations under this Agreement; and
- (iii) this Agreement has been duly authorized, executed, and delivered by it and constitutes the legal, valid, and binding agreement of it, enforceable against it in accordance with its terms.

## ARTICLE 18

### CONFIDENTIAL INFORMATION

**18.1 Confidential Information.** The Parties have a proprietary interest in information that will be furnished pursuant to this Agreement. Each Party shall keep in confidence any such information that in good faith is proprietary and which: (i) is specifically designated in writing as being “confidential” or (ii) is disclosed orally, visually or by way of consigned items, and is orally identified as “confidential” at the time of disclosure, which oral identification is confirmed in writing within [REDACTED] Business Days (“**Confidential Information**”). Each Party agrees not to disclose Confidential Information without the prior written permission of the disclosing Party or use any such information for other than the purpose for which it is supplied, except as provided herein. Information relating to commercial terms of this Agreement shall also be treated as “Confidential Information”; **provided, however**, such restriction is intended only to prevent disclosure of the Contract Price, Performance Guarantees, Fuel quality, outage schedules, limits of liability, liquidated damage categories and amounts, warranty provisions, intellectual property provisions, wage rates and unit rates, information obtained by Contractor

subject to NERC Requirements, and is not intended to restrict Owner from use of the form of agreement. Each Party shall be responsible for requiring any third party (excluding such Party's (or its Affiliates') officers, directors, employees and counsel who, in each case, will be informed of the requirement to comply with the terms of this **Section 18.1**) to whom it wishes to disclose Confidential Information to enter into a confidentiality agreement on reasonable terms and conditions that are customary for confidentiality agreements for similarly situated parties receiving proprietary information comparable to the Confidential Information. The provisions of this **Article 18** shall not apply:

- (a) to information which the receiving Party can substantiate:
  - (1) was in the possession of the receiving Party at the time it was initially furnished, without a breach of this provision;
  - (2) is or becomes part of the public domain without a breach of this provision by the receiving Party;
  - (3) is received from a third party who is, to the knowledge of the receiving Party, under no restriction regarding disclosure;
  - (4) that the receiving party either independently developed or had independently developed for it and was not obtained, in whole or in part, from the disclosing party; or
  - (5) that the disclosing party authorized the receiving party to disclose.

Such information will not be deemed to be within one of the foregoing exceptions if it is merely embraced by more general information available on a non-confidential basis to the receiving Party; or

- (b) to the extent that a receiving Party is required to disclose information pursuant to Applicable Law, discloses it to the Kentucky Public Service Commission or other Governmental Authority, or uses information in connection with any legal proceeding or Dispute under **Article 23** hereof, **provided** that in such disclosure or use, the Party takes reasonable steps to make the other Party's Confidential Information subject to any available procedures for maintaining its confidentiality.

**18.2 Import or Export of Technical Data.** Owner and Contractor agree to comply with Applicable Law regarding the import or export of technical data or information or any product based thereon and shall not ship or communicate or allow to be shipped or communicated, either directly or indirectly, any technical data or information or any product based thereon in connection with the Work to any country or from any country to or from which such shipment or communication is prohibited by Applicable Law.

**18.3 Third Party Proprietary Information.** Contractor also agrees to enter into confidentiality agreements with third parties at Owner's request and to keep in force confidentiality agreements concerning third parties' proprietary information, which agreements

shall permit Contractor to use such parties' proprietary information solely in connection with the Work. Such agreements are to be consistent with current industry practices and will not contain provisions that preclude Contractor's participation in other projects or work.

**18.4 Public Relations.** Contractor agrees that all public relations matters arising out of or in connection with the Work will be the sole responsibility of Owner. Contractor shall obtain Owner's prior written approval of the text of any announcements, publications, photographs, or other type of communication concerning the Work which Contractor or its Subcontractors wish to release for publication, which approval may be withheld in Owner's sole discretion.

## ARTICLE 19

### HAZARDOUS SUBSTANCES

#### 19.1 Hazardous Substances.

19.1.1 Encountering Hazardous Substances. In order to give the Owner an opportunity to discover and, as appropriate remediate, any Pre-Existing Hazardous Substances, Contractor shall give Owner at least ■ days and no more than ■ days advance written notice before it commences disturbing any areas of the Job Site it has not previously disturbed. If, in the course of performance of the Work, Contractor either spills, leaks, or releases (including threatened releases) Hazardous Substances into the environment or encounters Hazardous Substances (or a substance it reasonably believes is a Hazardous Substance) on the Job Site, except as contemplated by **Section 19.1.3**, or any other portion of the Brown Generating Station Site on which Work must occur, in such quantities or at such levels that may require investigation or remediation pursuant to Applicable Law, Contractor shall immediately suspend the Work in the area affected (except as provided below) and immediately orally report the condition to an individual on the Emergency Notification List and to the Owner Representative followed as soon as reasonably possible by a written notice to the Owner Representative. In any such event, the obligations and duties of the Parties are as follows:

- (i) Owner may direct Contractor to take appropriate immediate mitigating action;
- (ii) to the extent such condition involves: (a) a Hazardous Substance introduced to or created on the Job Site or the Brown Generating Station Site by Contractor, its Subcontractors or any Person for whom either may be responsible; (b) a Hazardous Substance contained in or packed with Equipment; (c) a spill, leak, release, or threatened release caused by the Culpable Conduct of Contractor, its Subcontractors or any Person for whom either may be responsible of a Hazardous Substance used by Owner in the operation or maintenance of the Existing Facilities or the Subproject or a portion thereof; **provided** that such Hazardous Substance was properly contained and labeled (or other adequate warning had been given of its existence); (d) a Contractor responsibility as provided in

**Section 19.1.2;** or (e) the exacerbation by Contractor of a Pre-Existing Hazardous Substance caused by the Culpable Conduct of Contractor, its Subcontractors or any Person for whom either may be responsible, then any investigation, response, removal, cleanup, or other remedial action required (1) to restore the *status quo ante* and (2) by Applicable Law or any Governmental Authorities (collectively, “**Environmental Action**”) shall be performed by Contractor. The Hazardous Substances or conditions described in **clauses (a) through (e)** above, collectively are defined as (“**Contractor Hazardous Substances**”).

- (iii) if the condition does not involve a Hazardous Substance in such quantities and/or at such levels that may require investigation or remediation pursuant to Applicable Law, Contractor shall, promptly after receiving written notice from Owner authorizing Contractor to recommence activities in the subject area, resume the portion of the Work that had been suspended;
- (iv) if such condition involves a Pre-Existing Hazardous Substance, except to the extent provided in **clause (ii)** above, then any Environmental Action shall be performed by Owner at its expense. Contractor shall handle, remove, dispose of or remediate, as applicable, Contractor Hazardous Substances in compliance with Applicable Law; and
- (v) except as otherwise required by Applicable Law, any Environmental Action, notification and other communication with third parties, including Governmental Authorities, and reports and documentation related to such Environmental Action shall be undertaken by Owner.

Contractor shall use diligent efforts to avoid any adverse effect on, or impediment to, the efforts undertaken by Owner, its agents, or independent contractors in connection with any Environmental Action or other remedial work Owner deems appropriate at the Job Site or the Brown Generating Station Site during the term of this Agreement. The Parties acknowledge and agree that Contractor shall not commence or continue any construction activities on any portion of the Job Site or the Brown Generating Station Site on, in, or under which Environmental Actions or other remedial actions are to be (or are being) performed until such actions are to the point where construction activities will not interfere with such actions, as evidenced by appropriate certifications from the applicable environmental engineer or remediation contractor and any required approvals of any applicable Governmental Authorities. Contractor agrees to use good faith diligent efforts to continue the unaffected portions of the Work and to adjust and schedule its activities at the Job Site or the Brown Generating Station Site so as to minimize, to the extent reasonably practicable, any adverse effect on the cost and progress of the Work resulting from the performance of any remedial actions.

19.1.2 Contractor Obligations. Contractor shall not generate, dispose, bring, transport, or store (and shall prohibit Subcontractors from generating, disposing, bringing, transporting, or storing) Hazardous Substances to or on the Job Site or the

Brown Generating Station Site, and shall not utilize (and shall prohibit Subcontractors from utilizing) any construction materials or equipment (whether or not totally enclosed) containing asbestos, polychlorinated biphenyls, benzene, lead or urea formaldehyde; **provided, however**, that Contractor (and Subcontractors) may use and store (if properly containerized, labeled and stored) in quantities reasonably necessary to perform the Work the following, but only in accordance with Applicable Law: gasoline, diesel fuel, fuel oil(s), gravel(s), lube oil(s), greases, sealant(s), combustible gases, form oil(s), solvent(s), adhesives, and all other materials, that are normally used or consumed in or during construction or testing of the Work and its constituent Systems and Components. Contractor shall not bring or store any other Hazardous Substances to the Brown Generating Station Site without the specific prior written authorization from Owner. Contractor shall provide Owner with Material Safety Data Sheets in English, (“MSDSs”) properly completed covering any Hazardous Substance brought to the Brown Generating Station Site and furnished by Contractor (or its Subcontractors). Contractor shall maintain on the Job Site, at all times, complete records and inventories, including MSDSs of materials described in this **Section 19.1.2** that are being used by it or its Subcontractors, or any Persons for whose actions it is responsible on the Brown Generating Station Site. Contractor shall be responsible for the management, prompt removal, cleanup and off-site disposal of Hazardous Substances brought to or generated at the Brown Generating Station Site by Contractor, any Subcontractor or any Person for whose actions Contractor or any Subcontractor is responsible, including Hazardous Substances contained or packed in Equipment. In this regard, Contractor shall comply, and shall cause its Subcontractors to comply, with all Applicable Law and the Hazardous Substances Management Plan. Contractor shall have ownership of, and title to, all contaminated media encountered or created in performing its obligations under **Section 19.1.1(ii)** and this **Section 19.1.2**, and shall have sole responsibility in responding to such conditions including complying with reporting obligations, providing for access restrictions and warnings, manifesting and any other obligations under Applicable Law.

Owner shall determine whether reporting is required under Applicable Law and shall initiate the reporting of conditions on the Job Site if required. Unless Owner provides written authorization, Contractor acknowledges and agrees that it shall not report, or cause any other person to report, any information regarding environmental conditions to any Governmental Authority, except, as required by Applicable Law. Contractor shall use its best efforts to afford Owner an opportunity to present all objections and defenses Owner or Contractor may have prior to the making of such report by Contractor. Contractor retains its obligation to report to Owner any conditions created by activities of Contractor, its Subcontractors, or other Persons whose actions Contractor or any Subcontractor is responsible in the course of activities pursuant to this Agreement. Contractor shall be responsible for emergency notification to Owner, in accordance with **Sections 19.1.1** and **4.16**, as well as additional immediate and follow-up reporting with respect to any spill or release of a Hazardous Substance into the environment at the Job Site or the Brown Generating Station Site that occurs after the Effective Date arising out of its performance of the Work.

19.1.3 Hazardous Substances Identified by Contractor. Contractor acknowledges that the process of integrating the Subproject into each of Unit 3 requires

the identification and remediation of asbestos, lead paint, and possibly other Hazardous Substances from Unit structures that will be affected by the Work. Remediation of such Hazardous Substances will be the responsibility of Owner, but will be subject to the conditions set forth in this **Section 19.1.3**. Contractor shall perform such inspections of Unit 3 as necessary prior to commencing any Work to integrate any portions of the Subproject into Unit 3 or its structures. Contractor shall identify each specific area where Hazardous Substances (i) are or may be present; (ii) would be disturbed by performance of the Work involved in integrating the Subproject into Unit 3; and (iii) that need to be remediated. Contractor shall carefully outline each specific area where remediation is to occur with brightly-colored spray paint. Contractor shall confine the marking of areas to the minimum area necessary to allow the Work to safely proceed. Such marking must clearly and distinctly identify and define the precise areas to be remediated. Contractor shall give Owner reasonable advance notice that it will be marking such areas and shall deliver a written notice to Owner when it has finished marking and is ready for Owner to commence remediation. Owner will have no less than [REDACTED] Days to complete such remediation. Upon completion of such remediation, Owner will notify Contractor that it may proceed with the planned Work for such areas. If, during the course of its Work in such areas, Contractor discovers additional areas where Hazardous Substances require remediation that it did not mark as required hereunder, Contractor shall mark such areas as provided in this **Section 19.1.3** and provide written notice to Owner to remediate Hazardous Substances in such areas. Owner will use commercially reasonable efforts to remediate such additional areas as soon as possible but in every case within a reasonable period of time. The cost of all such remediations will be borne by Owner; **provided, however**, if Owner is requested by Contractor to: (a) accelerate any remediation work to be performed by Owner under this **Section 19.1.3** or (b) remediate additional areas that Contractor did not mark at the time it marked other areas within the same general vicinity, Contractor shall be responsible for any incremental costs incurred on account of such acceleration or having to remobilize a third party contractor to perform such additional remediation. Notwithstanding anything in this Agreement to the contrary, Contractor is not entitled to any adjustment of this Agreement, by Change Order or otherwise, on account of Hazardous Substances identified or required to be identified by Contractor in accordance with this **Section 19.1.3**.

19.1.4 Labeling. Contractor and its Subcontractors shall properly store, label and dispose of Hazardous Substances brought to the Brown Generating Station Site by Contractor, its Subcontractors, and others for whom they are responsible, and train their employees in the safe usage and handling of Hazardous Substances, including any training that is required either by the Hazardous Substances Management Plan or Applicable Law.

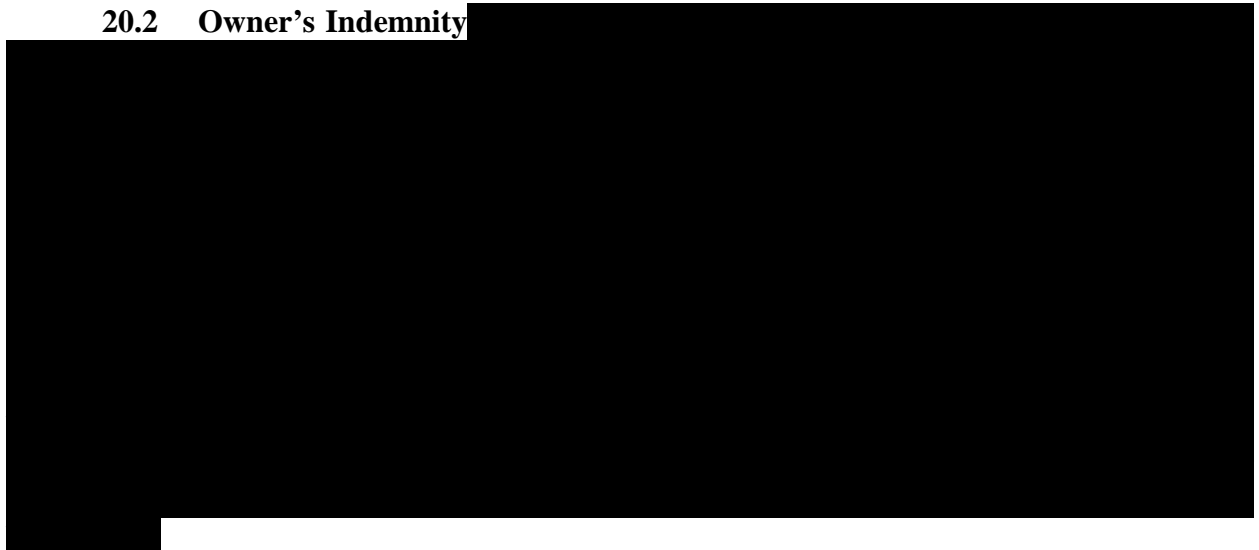
## ARTICLE 20

### INDEMNIFICATION

#### 20.1 Contractor's Indemnity. [REDACTED]



**20.2 Owner's Indemnity**



**20.3 Defense of Claims or Actions.**

20.3.1 Notice. If any Claim is made or brought by any third party with respect to which an Owner Indemnitee or a Contractor Indemnitee entitled to indemnity under any indemnification provision of this Agreement, (individually, an “**Indemnified Party**” and collectively, the “**Indemnified Parties**”) believes it is entitled to indemnification, the Indemnified Party shall give written notice of such Claim (a “**Claim Notice**”) and a copy of the Claim, process and any legal pleading with respect thereto (if and to the extent available to the Indemnified Party) to the party that is required to provide indemnification under this Agreement (individually, an “**Indemnifying Party**” and collectively, the “**Indemnifying Parties**”) promptly, but in each case within [REDACTED] Days of being served or otherwise informed of such Claim, process or legal pleading. Failure to give such notice in a timely manner will not diminish the indemnification obligations of the Indemnifying Parties under this Agreement except to the extent the failure or delay in giving such notice results in actual and material prejudice to the Indemnifying Party. Any Party seeking indemnification hereunder shall deliver to the Party from which indemnification is sought a detailed description (including the nature of the Claim and the amount thereof) of each Claim.

20.3.2 Assumption of Defense. The Indemnifying Parties shall have the right to assume the defense of any such Claim. If the Indemnifying Parties wish to assume the defense of such Claim, such assumption shall be evidenced by written notice to the Indemnified Parties. After such notice, the Indemnifying Parties shall engage independent legal counsel of reputable standing selected by such Indemnifying Parties and reasonably acceptable to the Indemnified Parties, to assume the defense and may contest, pay, or, subject to **Section 20.3.5**, settle or compromise any such Claim on such terms and conditions as the Indemnifying Parties may determine. If the Indemnifying Parties assume the defense of any such Claim, the Indemnified Parties shall have the right to employ their own counsel, at their own expense; **provided, however**, if the Indemnified Parties have reasonably concluded and specifically notified the Indemnifying Parties that there may be specific defenses available to the Indemnified Parties which are different from or in conflict with those available to the Indemnifying Parties, then the Indemnified Parties will be entitled to retain independent counsel at the Indemnifying Party’s expense to assume the defense of the Indemnified Parties.

20.3.3 Independent Counsel. If the Indemnifying Parties do not agree in writing to assume the defense of such Claim, the Indemnified Parties may engage independent counsel of reputable standing selected by them to assume the defense and may contest, pay, settle or compromise any such Claim on such terms and conditions as the Indemnified Parties may determine; **provided, however**, that the Indemnified Parties shall not settle or compromise any Claim without the prior consent of the Indemnifying Parties if such Indemnifying Parties acknowledge in writing their liability for any Liabilities incurred or required to be paid in respect of such Claim and provide adequate assurances of their ability to satisfy any such Liabilities.

20.3.4 Cooperation. The Indemnified Parties and the Indemnifying Parties shall cooperate in good faith in connection with any common defense.



20.3.5 Settlement. The Indemnifying Parties shall not, except with the consent of the Indemnified Parties, enter into any settlement or consent to entry of any judgment that: (i) does not include as an unconditional term thereof the giving by the Person or Persons asserting such Claim to all Indemnified Parties of an unconditional release from all liability with respect to such Claim; (ii) includes a statement as to an admission of fault, culpability or failure to act by or on behalf of any Indemnified Party; or (iii) imposes any conditions, future obligations or limitations on any of the Indemnified Parties; **provided, however**, that consent by the Indemnified Parties may be withheld at the Indemnified Parties' sole discretion except with respect to settlements with any Governmental Authority, for which the consent of the Indemnified Parties shall not be unreasonably withheld or delayed and in making such determination, the Indemnified Parties 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.

**20.4 Liens.** Without in any way limiting Contractor's right to pursue any claim for non-payment of amounts due from Owner hereunder, Contractor hereby releases, disclaims and waives and will cause its Major Subcontractors, pursuant to exemptions of the "Kentucky Fairness in Construction Act" (K.R.S. 371.400 to 371.425), to release, disclaim, and waive any right under Applicable Law to make, file or pursue any Lien (whether statutory or otherwise) against the Work, the Subproject, Unit 3 or the Brown Generating Station Site (or any portion thereof) for any reason. Contractor shall notify Owner of all substantial claims and promptly settle or pay any undisputed claims of any and all Subcontractors. Contractor shall not suffer to exist and shall promptly discharge and bond over or otherwise obtain release of or from any actual or claimed stop notice, lien (statutory or otherwise), attachment, mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, charge, preference, priority or security agreement, Claim, judgment, levy, security interest or similar interests filed or arising in connection with the Work ("**Liens**"), including liens of its Subcontractors and others for whom Contractor is responsible, and shall indemnify, defend, and hold harmless Owner, its Affiliates, and the Financing Parties (the "**Lien Indemnitees**") from and against all costs, charges and expenses including attorneys' fees and charges, and pre- and post-judgment interest that any Lien Indemnitee may incur resulting from or arising out of any such Liens. Contractor's obligations with respect to Liens covered by this **Section 20.4** are subject to the following terms:

- (i) the provisions of **Section 20.3.1** shall apply as if the Lien Indemnitee is an Indemnified Party and Contractor is an Indemnifying Party thereunder;
- (ii) Contractor is not liable for any additional expenses resulting from the appropriate Lien Indemnitee failing to reasonably cooperate in the defense of any such Liens at Contractor's expense; and
- (iii) Contractor has sole control of the defense and settlement of any such Liens; **provided** that Contractor shall first promptly confirm in writing its obligation to indemnify, defend, and hold Lien Indemnitees harmless from and against all costs and expenses with respect to such Lien. Contractor shall promptly satisfy or otherwise discharge any such Liens filed against any Lien Indemnitee, the Work, the Subproject, the Existing Facilities (or

any portion thereof), or upon any Materials or Equipment or structures encompassed therein, or upon the premises upon which they are located. If Contractor fails to promptly (but in no event later than [REDACTED] Days after the filing or creation of same or such earlier time as may be necessary to prevent the imminent sale, foreclosure, or other title divestiture of any Lien Indemnitee's property), satisfy or otherwise discharge such Liens, Owner may promptly notify Contractor in writing that it is taking any action to satisfy, defend, settle, or otherwise remove such Lien at Contractor's expense, including attorneys' fees and charges. Owner shall have the right but not the obligation to: (x) deduct any such expenses from any payment due, or which may become due, to Contractor or (y) draw upon the Performance Securities therefor and/or (z) collect from Contractor any balance remaining. Contractor shall have the right to contest any such Liens, **provided** that it first provides to Owner (on behalf of the Lien Indemnitees) a bond to assure payment reasonably satisfactory to Owner, in the amount of such Liens.

## **ARTICLE 21**

### **INSURANCE**

Contractor (and its Subcontractors) shall provide and maintain the insurance specified in **Exhibit I** in accordance with the terms and provisions thereof.

## **ARTICLE 22**

### **TITLE & RISK OF LOSS**

**22.1 Transfer of Title.** Transfer of title to the Work (or any portion thereof) will pass to Owner on the earliest of shipment to the Job Site, delivery to Owner, incorporation into the Work or Unit 3, or upon payment of the amount properly due under an Application for Payment covering such Work or identification of the items of Equipment to be provided under the Agreement to Owner; notwithstanding any amount retained and other amounts withheld by Owner in accordance with the terms of this Agreement; provided, that Contractor shall cause title to be transferred to Owner at shipment of the Work to Owner or the Job Site to the extent that Owner reasonably requests. The transfer of title does not relieve Contractor of its obligation to provide and pay for all transportation and storage in connection with the Work. Contractor shall transfer title to Owner to the Work, including Equipment and Materials, free and clear of all Liens except for those Liens that have been created by Owner. Passage of title will not affect the allocation of risk of loss. Title to documents, submittals, reports, Design Documents (whether hard copy, electronic or other medium) shall pass to Owner on receipt.

**22.2 Title Warranty.** Contractor warrants that upon passage of title of the Work in accordance with **Section 22.1**, Owner will have good and indefeasible title to such Work, and not be subject to any Lien or other defect in title. If any Work is replaced under **Article 12, 13, or 16**, Owner's title shall vest in the replacement Work upon the earliest of payment therefor, its arrival at the Job Site or incorporation into the Work or the Existing Facilities. In the event of

any nonconformity with this warranty, Contractor, at its own expense, upon written notice of such failure, shall indemnify and hold Owner harmless from the consequences of and defend the title to such Work and, if necessary, shall promptly replace such Work and any other affected portion of the Work, and such obligation shall survive the expiration, cancellation or termination of this Agreement.

**22.3 Risk of Loss.** Except as otherwise provided herein, care, custody and control of the Work and the risk of loss or damage to the Work with respect to the Subproject will pass to Owner upon achievement of Commercial Operation, and Owner hereby releases Contractor from bearing such risk with respect to such Work after such date. With respect to Work performed or provided from and after Commercial Operation, risk of loss shall pass to Owner on the earliest to occur of delivery, installation or completion. Contractor shall replace, repair, or reconstruct the Work, including Equipment and Materials intended for the use of or necessary to the completion of the Subproject and furnished by Contractor, its Subcontractors or any other Person that is lost, damaged, or destroyed prior to transfer of care, custody, and control and risk of loss of the Work to Owner. Contractor shall be responsible to assure safe delivery of all Equipment, Materials, and other items to the Job Site.

**22.4 Contractor Tools.** Risk of loss or damage to the equipment, tools, and Construction Aids of Contractor, its employees or Subcontractors and their employees will at all times remain with Contractor, Subcontractors and their respective employees. Contractor hereby releases Owner and will require its Subcontractors to release Owner from and against any liability for loss or damage in respect thereof. If any casualty to such equipment, tools, or Construction Aids occurs, the loss as a consequence thereof will not be the responsibility of Owner hereunder. Construction equipment brought to the Brown Generating Station Site or the Job Site or used thereon by Contractor or Subcontractors must be adequately insured against casualty.

## ARTICLE 23

### DISPUTE RESOLUTION

**23.1 Resolution.** An authorized representative of a Party may submit a claim, dispute or other controversy arising out of, or relating to, this Agreement which an authorized representative of a Party does not believe can be resolved by the Parties' authorized representatives (hereinafter collectively referred to as a "**Dispute**") to a Senior Officer from each Party for resolution by mutual agreement between the Senior Officers. Any agreed determination by the Senior Officers shall be final and binding upon the Parties. However, if the Senior Officers do not arrive at a mutual decision as to the Dispute within [REDACTED] Days (or such longer time as the Parties agree) after notice to each Party of the Dispute, either Party may pursue any other available remedy at law or in equity in accordance with **Section 25.1**. For purposes of this Agreement, the term "**Senior Officer**" means the chief executive officer, president or any senior vice president of a Party.

**23.2 Continuation of Work.** Pending final resolution of any Dispute, Contractor shall proceed diligently with the performance of its duties and obligations under this Agreement, and Owner shall continue to make undisputed payments in accordance with this Agreement.

## ARTICLE 24

### TERMINATION

#### 24.1 Termination for Convenience.

24.1.1 Termination. Owner may terminate this Agreement, in whole or in part, without cause upon written notice to Contractor, specifying the extent to which this Agreement is terminated and the date on which such termination is to be effective. If this Agreement is so terminated, Contractor shall cease performance of the Work (or terminated portion thereof) on the date specified in such notice. Upon such termination, Contractor and its Subcontractors shall place no further subcontracts, including lease and rental agreements, or purchase orders, for Equipment, Materials, Consumables, facilities, or services, including craft labor, except as may be necessary for completion of the portion of the Work not terminated by Owner. Upon request by Owner, Contractor shall promptly provide Owner a listing of all subcontracts, including lease and rental agreements, and purchase orders, which pertain to the performance of the terminated Work, and shall furnish Owner with complete copies thereof. Contractor shall, at Owner's request, preserve and protect the Equipment, Materials, and Consumables purchased for or committed to the terminated Work (whether completed or in progress and whether delivered to the Job Site or on order), the facilities on the Job Site, and Work in progress and completed Work (whether at the Job Site or at other locations), pending Owner's instructions. With respect to the terminated Work, Contractor shall promptly make every reasonable effort to cancel associated subcontracts, lease and rental agreements, and purchase orders upon terms satisfactory to Owner, or Contractor shall take such other action with respect to same as may be directed by Owner. If this Agreement is so terminated, Contractor, as its sole and exclusive remedy hereunder, shall be entitled to an amount equal to: (i) the amounts set forth in **Exhibit C** for milestones properly completed by Contractor; (ii) with respect to any partially completed milestone, amounts determined by multiplying the percentage of properly completed Work with respect to such milestone by the respective value of such milestone as set forth in **Exhibit C**; (iii) reimbursement for: (a) all cancellation charges necessarily incurred by Contractor in relation to its Subcontractors; (b) an amount equal to other reasonable termination related actual costs necessarily incurred by Contractor; and (c) any reasonably incurred actual costs of demobilization, less: (1) amounts previously paid to Contractor with respect to the Work and (2) amounts properly withheld under this Agreement. Notwithstanding the foregoing, in no event shall the amount required to be paid to Contractor hereunder as a consequence of termination together with amounts that Owner has previously paid to Contractor under this Agreement exceed the amount shown on the termination payment schedule as set forth in **Exhibit B** (Payment and Termination Schedules) corresponding to the date of termination. Contractor shall calculate amounts due pursuant to this **Section 24.1**, which amounts are subject to audit and confirmation by Owner on a completely open-book basis.

24.1.2 Assumption. Notwithstanding anything to the contrary herein, upon a termination under this **Article 24**, Owner may, upon request, assume all of Contractor's obligations under any purchase order or other agreement with a Subcontractor.

Contractor, upon Owner's request, shall promptly provide Owner with (i) a copy of any purchase order or other agreement with a Subcontractor and (ii) an estoppel certificate stating all known unsatisfied Liabilities under any such purchase order or other agreement. Thereafter, upon Owner's request, Contractor shall assign all of its right, title and interest in any such purchase order or other agreement with a Subcontractor to Owner. Such assignments shall be in form and substance satisfactory to, and at no additional cost to, Owner. Such agreements shall be in full force and effect upon such assignment. Contractor covenants that a provision substantially similar to this **Section 24.1.2** shall be inserted in each agreement with Subcontractors to preserve the rights of Owner under this **Section 24.1.2**. Owner shall not be liable for any cancellation charge pursuant to **Section 24.1.1** with respect to any purchase orders or subcontracts it so assumes.

24.1.3 Mitigation. If any cancellation payment is due to Contractor from Owner, Contractor shall use its reasonable best efforts to minimize the amount of such cancellation payment.

**24.2 Termination by Owner for Cause.**

24.2.1 Default by Contractor. The occurrence of any one or more of the following, and, with respect to **clauses (ii), (iv), (vi) or (vii)**, the continuation of the same for [REDACTED] Days after Contractor's receipt of written notice thereof from Owner, will constitute a default by Contractor under this Agreement (a "**Contractor Default**"); **provided** that with respect to **clauses (ii), (iv), (vi) or (vii)**, if such Contractor Default cannot reasonably be cured within such [REDACTED] Day period, such cure period shall extend for a total of [REDACTED] Days so long as Contractor diligently pursues a cure throughout such period:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

24.2.2 Owner's Remedies. Upon the occurrence of a Contractor Default, Owner may, without prejudice to any other right or remedy Owner may have under this Agreement: (i) terminate this Agreement; (ii) take possession of the Job Site and of all Equipment, Materials, Consumables, Construction Aids, tools, machinery and Information owned or held by Contractor; (iii) finish the Work by whatever method Owner may deem expedient; and (iv) draw on the Performance Securities or withhold amounts due to Contractor to make payments therefor. If the unpaid balance of the Contract Price exceeds the cost of finishing the Work, then Contractor will be paid for all Work properly performed by Contractor to the date of termination (which amount will in no event exceed the difference between the unpaid portion of the Contract Price and Owner's cost of completing the Work). However, if the cost of finishing the Work (including the cost of arranging for completion of the Work and performing such Work on an accelerated basis to preserve as nearly as possible adherence to the Project Schedule) and performing Contractor's other obligations under this Agreement exceeds the unpaid balance of the Contract Price, Contractor shall immediately pay the difference to Owner on demand upon receipt of an invoice from Owner. Owner will be entitled to withhold further payments to Contractor until the Work has been completed and a determination that Contractor is entitled to further payments. Any amounts not paid hereunder when due will bear interest at the Agreed Rate. Owner may in its discretion employ such other Persons to finish the Work by whatever method or means as Owner in its sole discretion may deem expeditious; **provided** that the balance of Work and obligations will be completed utilizing reasonable methods of construction management and construction consistent with the Project Schedule, as adjusted. If this Agreement is terminated pursuant to this **Section 24.2.2** and is later determined that no Contractor Default had occurred, such termination shall be deemed to be a termination pursuant to **Section 24.1.1**.

**24.3 Termination by Contractor for Cause.**

24.3.1 Default by Owner. The occurrence of any one of more of the following matters, and, with respect to **clauses (ii) or (iii)**, the continuation of the same for [REDACTED] Days after Owner's receipt of written notice thereof from Contractor, will constitute a default by Owner under this Agreement (an "**Owner Default**"); **provided** that with respect to **clauses (ii) or (iii)**, if such Owner's Default cannot reasonably be cured within such [REDACTED] Day period, such cure period shall extend for a total of [REDACTED] Days, so long as Owner diligently pursues a cure throughout such period:

- (i) Owner experiences an Insolvency Event.
- (ii) the breach of any material representation or warranty made by Owner herein;
- (iii) Owner fails to observe or perform any material covenant, agreement, obligation, duty or provision of this Agreement, including timely payment, but excluding any such failure that is compensable pursuant to **Article 9** hereof.

24.3.2 Contractor's Remedies. [REDACTED]

**24.4 Suspension of the Work.** Owner may, without cause, order Contractor to suspend the Work or extend the Project Schedule in whole or in part for such period of time as Owner may determine. Any such suspension or extension will commence as soon as reasonably possible, but no later than the [REDACTED] Day after Contractor's receipt of written notice thereof from Owner. Such suspension or extension shall continue for the period specified in Owner's notice to Contractor. Contractor will resume any suspended Work within [REDACTED] Days of Owner's written notice directing the same. Without limiting Owner's rights under **Section 24.1**, should a suspension of the entire Work which is ordered by Owner pursuant to this **Section 24.4** (but excluding any suspension caused by a Force Majeure) continue for [REDACTED] or more consecutive Days, either Party may thereafter terminate this Agreement by written notice to the other Party and the rights and remedies of Contractor will be the same as those which are expressed in **Section 24.1** hereof in the event of termination for convenience by Owner. In the case of any suspension of the entire Work under this **Section 24.4**, except to the extent an acceleration of the Work is authorized by Owner, the Project Schedule will be extended by a period equal to the suspension period, and adjusted by Owner, in consultation with Contractor, to account for same. In the case of any suspension or extension of a portion of the Work under this **Section 24.4**, the Project Schedule shall be extended only to the extent the suspension or extension can be shown on the Project Schedule to affect the critical path. This analysis will be based on the most current Project Schedule in effect on the Day of suspension and take into account the critical path for completing the entire Work and the non-critical path activities suspended or extended. Owner shall pay Contractor in accordance with the terms of payment set forth in this Agreement for the Work completed prior to the time of any

suspension and for the direct reasonable costs that result from Contractor's compliance with the suspension notice. Owner shall pay Contractor the direct reasonable costs associated with the restart of suspended Work under this **Section 24.4** and shall resume payments to Contractor in accordance with the terms of payment under this Agreement [REDACTED] Days after the restart of the Work. It is a precondition to all claims by Contractor for extension or compensation under this **Section 24.4**, that the same be made within [REDACTED] Days after the suspension period has ended, or said claim is barred.

## ARTICLE 25

### MISCELLANEOUS PROVISIONS

**25.1 Governing Law.** This Agreement is governed by, and construed in accordance with, the laws of the Commonwealth of Kentucky without reference to the conflict of laws rules thereof. Each of the Parties hereby agrees that any legal proceedings that may arise under this Agreement shall be brought in the United States District Court for the Western District of Kentucky, located in Louisville (and if such court does not have jurisdiction over a matter at controversy between the Parties, any state court located in Louisville, Kentucky). Accordingly, each of the Parties hereby submits to the jurisdiction of the United States District Court for the Western District of Kentucky, located in Louisville (and if such court does not have jurisdiction over a matter at controversy between the Parties, any state court located in Louisville, Kentucky) for purposes of all legal proceedings that may arise under this Agreement. Each of the Parties irrevocably waives, to the fullest extent permitted by Applicable Law, any objection which it may have or hereafter have to the personal jurisdiction of such court or the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum. Each of the Parties to this Agreement hereby consents to process being served in any such proceeding by the mailing of a copy thereof by certified mail, postage prepaid, to its address specified in **Section 25.5** (as it may be changed or provided herein). EACH OF THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, ANY OF THE TRANSACTION AGREEMENTS OR ANY OTHER DOCUMENTS ENTERED INTO IN CONNECTION THEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OF THE PARTIES THERETO.

**25.2 Entire Agreement.** [REDACTED]



**25.3 Successors and Assigns.** Contractor may not assign, convey, or transfer this Agreement, or any part thereof, without Owner's prior written consent. This Agreement is binding upon, and inures to the benefit of, the successors and permitted assigns of the Parties. Owner may assign, novate or declare any trust of the whole or any part of this Agreement and any benefit, interest, right or cause of action arising under this Agreement to an Affiliate or to a third party with comparable technical and financial abilities.

**25.4 Contractual Relationship.** Nothing contained in this Agreement may be construed as creating a contractual relationship of any kind: (i) between Owner and any Subcontractor (except as provided in **Section 3.6, Section 13.4, and Section 24.1.2** hereof) or (ii) between any Persons other than Owner and Contractor. Contractor is an independent contractor and all of its agents and employees shall be subject solely to the control, supervision, and authority of Contractor. Owner and Contractor disclaim any intention to create a partnership or joint venture. Contractor may not act for or have any power or authority assume any obligation or responsibility on behalf of Owner.

**25.5 Notices.** All notices pertaining to this Agreement ("**Notices**") must be in writing, signed by a duly authorized representative of the Party giving such notice and will be deemed given when received by personal delivery, recognized express courier, or electronic mail (immediately followed by recognized express courier) to the other Party at the address designated below:

If to Owner:

Kentucky Utilities Company  
820 W. Broadway  
Louisville, KY 40202  
Attn: Scott Straight  
Telephone: 502-627-2701  
E-mail: scott.straight@lge-ku.com ; and

820 W. Broadway  
Louisville, KY 40202  
Attn: Tony Ruckriegel  
Telephone: 502-627-4690  
E-mail: Tony.Ruckriegel@lge-ku.com; and

820 W. Broadway  
Louisville, KY 40202  
Attn: Jeff Heun  
Telephone: 502-627-4525  
E-mail: Jeff.Heun@lge-ku.com; and

220 W. Main St.  
Louisville, KY 40232  
Attn: General Counsel

Telephone: 502-627-3297  
E-mail to: Gerald.Reynolds@lge-ku.com

If to Contractor:



Addresses may be changed by a Party effective upon receipt of notice of such address change.

**25.6 Rights Cumulative.** Except as otherwise expressly provided or limited in this Agreement: (i) rights and remedies available to Owner or Contractor as set forth in this Agreement are cumulative with and in addition to, and not in limitation of, any other rights or remedies available to such Parties at law or in equity and (ii) any specific right or remedy conferred upon or reserved to Owner or Contractor in any provision of this Agreement will not preclude the concurrent or consecutive exercise of a right or remedy provided for in any other provision hereof. Notwithstanding the foregoing, the rights and remedies of Owner remain subject to the liability limitations set forth in **Section 7.4**.

**25.7 Incorporation by Reference.** The recitals set forth on the first page of this Agreement are hereby incorporated into this Agreement by this reference and expressly made a part of this Agreement.

**25.8 No Waiver.** No course of dealing or failure of Owner or Contractor to enforce strictly any term, right or condition of this Agreement may be construed as a waiver of such term, right or condition. No express waiver of any term, right or condition of this Agreement will operate as a waiver of any other term, right or condition.

**25.9 Agreed Rate.** Unpaid amounts will bear interest at an annual (365 or 366 Days, as appropriate) rate equal to the lesser of: (i) [REDACTED] in excess of the Prime Rate and (ii) the maximum rate permitted by Applicable Law (the “**Agreed Rate**”).

**25.10 Financing Cooperation.** Contractor shall provide such reasonable assistance and cooperation to Owner as may be necessary for Owner to secure Financing for the Work, including developing and providing information regarding the Work reasonably available to Contractor; making presentations to potential Financing Parties, their consultants and representatives; and responding to any questions or requirements asked or imposed by any Financing Parties. Contractor hereby consents to the collateral assignment of this Agreement to the Financing Parties. All obligations of the Parties are expressly subject to the execution of final agreements required to close the Financing for the Work contemplated by this Agreement. Contractor also agrees to enter into a consent to collateral assignment with the Financing Parties

regarding this Agreement, which consent will contain such provisions as are typically provided to the Financing Parties, including giving the Financing Parties financial information of Contractor reasonably satisfactory to Financing Parties, copies of certain notices delivered to Owner hereunder, and affording the Financing Parties an independent right to cure any Owner's Defaults hereunder. Contractor shall also provide customary inside counsel legal opinions as required by the Financing Parties.

## **25.11 Audit.**

25.11.1 Access to Records. Contractor (and its Subcontractors) shall maintain: (i) complete and accurate financial books and records to allow compliance with **Sections 8.2, Section 20.4**, or which relate to any cost-based (*i.e.*, Work not covered by lump-sum prices), components of the Work billed under this Agreement or relating to the quantity of units billed under any unit pricing agreed to by the Parties; and (ii) complete and accurate books and records relating to Contractor's obligations with respect Hazardous Substances, health and safety, environmental management, emergency response, testing and inspection of Equipment and Materials, NERC Requirements, Performance Guarantee Tests, and the requirements of **Sections 25.23 and 25.24** (all the foregoing hereinafter referred to as "**Records**") for a minimum of five (5) years following Final Completion. All such Records must be open to inspection and subject to audit and reproduction during normal working hours by Owner or its respective authorized representatives to the extent necessary to adequately permit evaluation, including verification of any invoices, payments, time sheets, or claims based on Contractor's actual costs incurred in the performance or delivery of Work under this Agreement. For the purpose of evaluating or verifying such actual or claimed costs, Owner and its respective authorized representatives will have access to Records at any time, including any time after final payment by Owner to Contractor pursuant to this Agreement. Owner and its respective authorized representatives shall have access, during normal working hours, to all necessary Contractor facilities. Contractor shall provide adequate and appropriate work space to conduct audits pursuant to this **Section 25.11.1**. Owner shall give Contractor reasonable notice of the date and time they, any individual Owner or any agent of either of them intend to commence any audit. If the audit should disclose an overbilling, Contractor will pay Owner's invoice rectifying such overbilling within [REDACTED] Days of receipt. The rights of Owner set forth in this **Section 25.11.1** shall survive the termination or expiration of this Agreement.

25.11.2 Unit Prices. When Contractor's Application for Payment includes compensation for Work performed on unit price basis, Contractor shall submit Contractor's determination of units of Work performed determined in accordance with the provisions of this Agreement, and substantiated by documents. Upon verification by Owner of such documents, Owner will advise Contractor in writing of either Owner's acceptance of Contractor's determination of units or Owner's determination of such units. If Contractor believes that Owner has incorrectly determined the units of Work performed, Contractor will comply with the provisions of **Article 23**. All undisputed amounts will be due and payable in accordance with this Agreement.

25.11.3 Time and Materials. When Contractor's Application for Payment includes compensation for Work performed on a time and material basis or similar basis of compensation, Contractor shall submit to Owner on request a detailed breakdown in a form reasonably acceptable to Owner of the actual costs of labor, Equipment, Materials, Consumables, Construction Aids, and markups or fees (if any) due for such Month to Contractor. All costs reflected in such breakdown shall be net of Applicable Credits. The term "**Applicable Credits**" means any and all refunds, rebates, credits, discounts, or similar amounts whether based on quantity, volume, or any other factor, (including any interest thereon) received by Contractor or to which Contractor is or will be entitled in connection with its performance of the Work. Contractor shall pay, and require each of its Subcontractors to pay, all invoices received in connection with performance of the Work as required by the terms of their respective contracts. Upon receipt of such breakdown, Owner shall make the determination of the amount due Contractor, and unit prices (if applicable) shall govern. The determination of Owner shall be final and conclusive, subject to Contractor's right to dispute such determination pursuant to **Article 23**. Each Application for Payment shall be accompanied with partial releases of Liens in form substantially in the form of **Exhibit F-5**.

25.11.4 Lump Sum. In connection with Work priced on a lump-sum basis, Contractor's published price lists, unit rates, markups and multipliers which have been agreed upon and specified herein are not subject to audit; **provided, however**, the determination of costs for all purposes under this Agreement shall be on a completely open-book basis. The determination of costs for time and materials Work performed under this Agreement shall be on a completely open-book basis and, with respect to those items covered by **Exhibit R**, the rates and charges set forth in **Exhibit R** shall be the sole basis for any Contract Price increase related thereto. Contractor agrees to provide any cost information required by NERC, provided that such information shall be used solely for the purpose of fulfilling NERC requirements.

**25.12 Survival.** **Articles 7, 13, 16, 17, 18, 19, 20, 23 and 25 and Sections 4.39, 8.8.2, and 22.2** of this Agreement and all other Articles and Sections thereunder providing for indemnification, or limitation of or protection against liability of either Party, survives the termination, cancellation or expiration of this Agreement.

**25.13 No Third Party Beneficiaries.** The provisions of this Agreement are intended for the sole benefit of Owner and Contractor and, except to the extent specifically identified herein, there are no third party beneficiaries other than assignees contemplated by the terms herein.

**25.14 Non-Recourse.** Anything to the contrary notwithstanding, the obligations of Owner under this Agreement (i) are individual and special obligations of Owner and do not constitute obligations of (and no recourse shall be had with respect thereto to) any shareholder of Owner, any of its Affiliates, or any shareholder, partner, member, officer, director, commissioner or employee of any such Person and (ii) no action shall be brought or maintained against any such partner, Affiliate companies, or any shareholder, partner, member, officer, director, commissioner or employee of any thereof. The Parties acknowledge and agree that any provision of this Agreement that limits, excludes or protects against any liability of Owner,

grants indemnity or confers rights or remedies that are intended to benefit (and be enforceable by) Owner, shall be applicable to Owner whether or not Owner is specifically referenced in such provision.

**25.15 Parent Guarantee.** Owner's obligation to make any payment to Contractor hereunder is subject to the receipt of the Parent Guarantee executed by the Guarantor in the form attached hereto as **Exhibit F-8**, guaranteeing the full and timely payment and performance of all of Contractor's obligations under this Agreement. Contractor covenants that the Parent Guarantee will remain in full force and effect to and until the obligations of Contractor under this Agreement have been fulfilled.

**25.16 Provisions Required by Law.** Any term or condition required to be contained in this Agreement as a matter of Applicable Law that is not so contained herein is deemed to be incorporated in this Agreement as though originally set forth herein.

**25.17 Severability.** If any provision of this Agreement, or the application thereof to any Person or circumstance, is to any extent held invalid or unenforceable by a court of competent jurisdiction or pursuant to arbitration as provided herein, the remainder of this Agreement, and the application of such provision to Persons or circumstances other than those as to which it is specifically held invalid or unenforceable, will not be affected thereby, and each and every remaining provision of this Agreement will be valid and binding to the fullest extent permitted by Applicable Law; **provided, however**, the Parties agree to negotiate in good faith and shall reform this Agreement to as closely as possible resemble the original intent and allocation of risks and benefits.

**25.18 Joint Effort.** Preparation of this Agreement has been a joint effort of the Parties and the resulting document (or any portion) is not to be construed more severely against one of the Parties than against the other.

**25.19 Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which is deemed to be an original, but all of which together shall constitute one and the same instrument.

**25.20 Approvals Not To Relieve Contractor.** No approval, consent or failure to disapprove, inspect or failure to inspect, or comment on, any matter by or the submission of any drawing or document to, or acquiescence on the part of, Owner, including any Turnover Acknowledgment, will relieve Contractor of any liability for any of its obligations under this Agreement or otherwise.

**25.21 Consultants.** At their option, Owner or the Financing Parties may retain the services of others, including engineers and financial consultants, to assist Owner and Financing Parties in monitoring the conduct of the Work by Contractor. All rights of access and protection, including Contractor's obligation to indemnify, defend and hold harmless Owner and Financing Parties, will be afforded equally to any of their agents and consultants.

**25.22 Equal Employment Opportunity.** To the extent applicable, Contractor shall comply with all of the following provisions, which are incorporated herein by reference: (i) Equal Opportunity regulations set forth in 41 CFR § 60-1.4(a) and (c), prohibiting employment

discrimination against any employee or applicant because of race, color, religion, sex, or national origin; (ii) 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 Vietnam era veterans; (iii) 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; (iv) 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 (v) the subcontracting plan requirement set forth in 15 USC § 637(d).

**25.23 Minority, Women, Disadvantaged and Local Business Enterprises.** Owner has a “Supplier Diversity Policy” to provide the maximum opportunity for MBEs, WBEs, DBEs, and LCs to participate as subcontractors for goods and services. As such, every attempt should be made by Contractor to include MBEs, WBEs, DBEs, and LCs, on subcontract bid lists for the Work. To the extent practicable, this requirement shall be passed down to Subcontractors. 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 Work, 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. Contractor shall report to Owner with respect to its compliance with this **Section 25.23** in accordance with **Exhibit F-9**.

#### **25.24 Local Involvement; Reporting.**

25.24.1 Local Workers. Contractor shall make a diligent good faith effort to hire, to the maximum practical extent while otherwise meeting the requirements of this Agreement, qualified Local Hires for and in connection with the performance of the Work in the order of priority in which geographic areas are listed in the definition of Local Hires.

25.24.2 Local Content. Contractor shall make a diligent good faith effort to include, to the maximum practical extent while otherwise meeting the requirements of this Agreement, qualified contractors on subcontract bid lists for portions of the Work that are to be subcontracted by Contractor or its Subcontractors in the order of priority in which geographic areas are listed in the definition of LC.

25.24.3 Reporting. On a Monthly basis commencing on the Effective Date, Contractor shall provide a written report substantially in the form set forth in **Exhibit F-9**, detailing statistical data relating to its workforce and those of its Subcontractors, including information relating to Local Hires, MBEs, WBEs, DBEs, LCs, Local Spend, WBE Spend, DBE Spend and MBE Spend. Contractor will not be obligated to provide confidential individual employee information under this **Section 25.24.3**.

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

Kentucky Utilities Company

By: \_\_\_\_\_  
Title: \_\_\_\_\_

AMEC KAMTECH, INC., as Contractor

By: \_\_\_\_\_  
Title: \_\_\_\_\_