

Amended and Restated
Engineering, Procurement and
Construction Agreement

Between
Louisville Gas and Electric Company,
as Owner

and

Zachry Industrial, Inc.,
as Contractor

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EXHIBITS

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Exhibit Z¹	Assignment and Assumption Agreements
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Exhibit AA¹	Component Extended Warranty

¹ These Exhibits are not being amended or restated with this Amendment and Restatement of the Agreement. Each shall remain in full force and effect in the form attached to the Agreement as originally entered into.

**AMENDED AND RESTATED ENGINEERING, PROCUREMENT AND
CONSTRUCTION AGREEMENT**

This agreement (“**Amendment**”) entered into as of [REDACTED] (the “**Amendment Date**”), amends and restates the Engineering, Procurement and Construction Agreement (“**Agreement**”) entered into as of the [REDACTED] (“**Effective Date**”) by and between **Louisville Gas and Electric Company**, a Kentucky corporation (“**Owner**”), and **Zachry Industrial, Inc.**, a Delaware corporation (“**Contractor**”). The Agreement shall remain in full force and effect, but amended as set forth herein commencing from the Amendment Date.

RECITALS

WHEREAS, Owner desires to enter into an agreement with a qualified contractor to design, engineer, procure, construct, start-up, commission, and test the Subprojects comprising the “Mill Creek Environmental Air Compliance Project” as set forth in this Agreement;

WHEREAS, Contractor represents that it is qualified to design, engineer, procure, construct, start-up, commission and test the Subprojects and desires to perform all work and services in connection therewith 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 equipment purchase agreements with respect to the wet flue gas desulfurization and pulse jet fabric filter systems to be used in connection with the Work which are 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 Buyer and Owner, the long term senior debt obligations of which are rated “A-” or better by S&P or “A2” or better by Moody’s (or an equivalent rating from an equivalent rating agency as may be approved by Buyer 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 [REDACTED] 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 Louisville Gas and Electric Company, as Owner and Zachry Industrial, Inc., as Contractor; and (vii) is otherwise in the form set forth in **Exhibit F-10**.

“**Affiliate**” means any Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, Owner or Contractor.

“**Agreed Rate**” means 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.

“**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.

“**Amendment**” has the meaning set forth in the first paragraph hereof.

“**Amendment Date**” has the meaning set forth in the first paragraph hereof.

“**Applicable Credits**” has the meaning set forth in **Section 25.10.3**.

“**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 8.7**.

“**AQCS Equipment Contracts**” means the agreements between Owner and each of the individual AQCS Equipment Supplier as listed on **Exhibit Y**.

“**AQCS Equipment Supplier**” means equipment provider for the following two (2) major equipment packages:

- WFGD
- PJFF

“**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.

“**Auxiliary Power Consumption**” means the number of kilowatts of electrical power consumed by each Subproject as measured in accordance with **Exhibit G**.

“**Auxiliary Power Consumption Tests**” has the meaning set forth in **Exhibit G**.

“**Base Fee**” shall be [REDACTED]

“**Base Fee Adjustment Percentage**” shall be [REDACTED]

“**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 **Exhibit J**.

“**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; or (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) 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 hurricane, tornado, fifty (50) year or greater flood and other climatic conditions (including wind, precipitation (rain, snow, ice, hail), and lightning) to the extent such conditions are similarly unusual and severe.

“**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 be determined on a Subproject by Subproject basis and will have been achieved when all of the following have occurred with respect to that 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 (**provided**, with respect to Subprojects for Units 1 and 2, for the first of these to achieve Mechanical Completion, the Performance Guarantee Tests for the WFGD that require both Subprojects to have achieved Mechanical Completion need not be completed; such Performance Guarantee Tests must instead be successfully completed before the other Subproject can achieve Commercial Operation); (iv) all Performance Guarantees have been simultaneously achieved in a single Performance Guarantee Test (**provided**, with respect to Subprojects for Units 1 and 2, for the first of these to achieve Mechanical Completion, the Performance Guarantees for the WFGD that require both Subprojects to have achieved Mechanical Completion need not be achieved; such Performance Guarantees must instead be simultaneously achieved along with the Performance Guarantees for the other Subproject before the other Subproject can achieve Commercial Operation); (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(s) 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; (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.

“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 a 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 a Subproject at the 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, and other goods and items that are required to construct, clean, commission, or test a 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 Equipment.

“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 Construction Aids” means those Construction Aids used in connection with the Work that are owned by Contractor and/or any of its Affiliates, but not including Construction Aids purchased by Contractor solely for use in connection with the Work.

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

“Contractor Expense” shall mean an expense or cost of Contractor’s performance hereunder that is to be the sole responsibility of Contractor and is not to be reimbursed as a [REDACTED] (Contractor has priced its multipliers and mark-ups set forth in Exhibit R to compensate Contractor for assuming the liability for Contractor Expenses). Contractor Expense shall include, any expense or cost associated with (i) any royalties, license fees, or similar costs associated with any technology owned or licensed by Contractor or any of its Affiliates to be supplied as part of the Work; (ii) any premium for overtime or other premium

time Work that is incurred without Owner's approval confirmed either in writing or by electronic mail; (iii) Contractor's indemnification obligations hereunder; (iv) Contractor's warranty obligations hereunder; (v) Contractor's expenses of negotiating this Agreement or negotiating any Modification; (vi) employee, consultant and Subcontractor expenses and attorneys' fees (whether inside or outside), costs, damages, settlements, and judgments incurred in connection with any Dispute of any nature between Owner and Contractor (including any Affiliate of either Party); (vii) any liquidated damages and any Performance Buydown, (viii) any remedy imposed on Contractor with respect to any breach of this Agreement; (ix) any expense incurred by Contractor or any of its Subcontractors to obtain a performance and/or payment bond with respect to a Subcontract unless Owner consents to such bond (Owner may withhold such consent at its sole and absolute discretion); (x) any expense incurred by Contractor in connection with the Performance Securities (other than the cost of Letters of Credit required under this Agreement); (xi) any finance charge, interest, fee, including late fees, or other similar amounts incurred by Contractor in connection with bank, trade, or any other credit extended to Contractor, (xii) any expense expressly identified as a Contractor Expense in this Agreement; (xiii) Contractor Taxes; (xiv) any and all losses and other costs and expenses incurred with respect to occurrences against which Contractor is required to maintain insurance policies pursuant to **Article 21**, up to the required limits of such policies as set forth in **Exhibit I** (including any deductibles and self-insured retentions under such policies); (xv) the cost to repair or replace damage or other loss to the Work (whether or not fully insured) with respect to which risk of loss has not yet passed to Owner; (xvi) cost of time and disbursements spent by Contractor's senior management; (xvii) curing title warranty defects; (xviii) costs of entertainment, bonuses, gifts, gratuities or charitable contributions; (xix) personal expenses of employees; (xx) airfare differential between economy class and first class or business class travel and any other similarly excessive travel or living expense; (xxi) reimbursement in excess amounts allowed under generally applicable Contractor business policies; (xxii) any cost or expense related to Contractor Construction Aids except to the extent otherwise provided in **Exhibit R**; (xxiii) any and all expenses incurred by Contractor with respect to its warranty obligations under **Article 13**; (xxiv) any late fees or similar charges and any interest imposed by any of the Subcontractors; and (xxv) any other cost or expense designated in this Agreement as a Contractor Expense.

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

"Contractor Labor" means the labor of Contractor's (and its Affiliates') employees properly allocable to the performance of the Work.

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

"Contractor Taxes" has the meaning set forth in **Section 8.3.1**.

"Contractor's Representative" means the individual designated by Contractor pursuant to **Section 4.6**.

"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 Disadvantaged Business Enterprise.

“**Deadband**” [REDACTED]

“**Deadband Exceedance**” [REDACTED]

“**Deadband Low End**” [REDACTED]

“**Deadband Top End**” [REDACTED]

“**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 each Subproject is integrated into the Units).

“**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 public 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 a Subproject including, as applicable, the associated Unit; (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 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]

[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 Mill Creek 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.

“Fee Amount” shall be the amount determined pursuant to **Section 8.2**.

“Fee Amount Cap” shall mean [REDACTED]

“**Fee Amount Reduction**” means [REDACTED]

“[REDACTED]” means [REDACTED]

“**Final Completion**” will be determined on a Subproject by Subproject basis and will have been achieved when all of the following have occurred with respect to that 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 **Article 7** 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); and (vi) 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 or threats of terrorism, industry-wide or national strikes. 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, including the Subprojects, the Units, the Mill Creek 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 Auxiliary Power Consumption Limit” has the meaning set forth in **Exhibit G**.

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

“Guaranteed Final Completion Date” means for each Subproject, one hundred and [REDACTED] Days following the Guaranteed Commercial Operation Date for that Subproject.

“Guarantor” means [REDACTED]

“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-containing materials, mercury, urea formaldehyde insulation, radioactivity, 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.

“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 any 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 any 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 un-dismissed 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 patents, patent applications, copyrights, trade secrets and all other intellectual property rights.

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

"Key Events" has the meaning set forth in **Section 25.24**.

"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 direct craft work force whose primary residences are located within: (i) the Standard Metropolitan Statistical Area (as defined by the U.S. Census Bureau) for Louisville, Kentucky; (ii) the Commonwealth of Kentucky; or (iii) the Standard Metropolitan Statistical Area (as defined by the U.S. Census Bureau) for each of Evansville, Indiana or Cincinnati, Ohio.

"Local Spend" means expenditures with firms whose primary operations are within: (i) the Standard Metropolitan Statistical Area (as defined by the U.S. Census Bureau) for Louisville, Kentucky; (ii) the Commonwealth of Kentucky; or (iii) the Standard Metropolitan Statistical Area (as defined by the U.S. Census Bureau) for each of Evansville, Indiana or Cincinnati, Ohio.

“**Lost Time**” has the meaning set forth in **Section 25.24**.

“**Major Subcontractor**” means a Subcontractor providing labor, materials and/or Equipment and Materials in relation to the Work under this Agreement which has a value [REDACTED] 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 a Subproject or a Unit 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 Minority Business Enterprise.

“**MBE Spend**” means expenditures with MBEs certified by a recognized certification entity, including National Minority Supplier Development Council (“NMSDC”) and their regional affiliates, Louisville Metropolitan Sewer District, Louisville Metro Human Relations Commission, Department of Transportation, Small Business Administration, and other states’ agencies as approved by Owner.

“**Mechanical Completion**” will be determined on a Subproject by Subproject basis and will have been achieved when all of the following have occurred with respect to that Subproject: (i) all Equipment and Materials have 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) the applicable Unit(s) as modified by the Subproject are capable of being safely commissioned, tested and operated in the ordinary course of business; (vii) the Subproject has been properly integrated into individual Units (physically and electronically); (viii) the Subproject is ready to commence commissioning, testing and integrated operations without the use of temporary equipment or installations (except with respect to Subprojects 3 and 4, the temporary Systems for PAC and Sorbent that are to be replaced by permanent Systems in Subproject 5); (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.

“**Mill Creek Generating Station Site**” means the approximately [REDACTED] site in Jefferson County, Kentucky on which all four (4) of the Units are located, including all of the Job Site, and is more particularly described in **Exhibit S**.

“**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**.

“**No Fee** [REDACTED]” means [REDACTED]

“**Notice**” has the meaning set forth in **Section 23.2.1**.

“**Operating and Maintenance Manuals**” has the meaning set forth 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.

“**Payment Schedule**” means the schedule of maximum amounts for which Applications for Payment may be submitted to Owner as set forth in **Exhibit C**, as it may be adjusted in accordance with this Agreement.

“**Performance Buydown**” means for each Subproject, the amount, if any, of liquidated damages payable to Owner hereunder with respect to the failure of Contractor to meet the Buydown Performance Guarantees.

“**Performance Guarantee Test Procedures**” means the final detailed procedures for conducting the Performance Guarantee Tests prepared by Contractor and approved, in writing, by Owner in accordance with **Exhibit G**.

“**Performance Guarantee Tests**” means the Air Emissions Tests, the Sound Emissions Tests, the Pressure Drop Optimization Test, the Consumption Limit Tests, and the Availability Test, in each case, to determine whether the Performance Guarantees have been achieved.

“**Performance Guarantees**” means the Performance Guarantees as set forth in **Exhibit G**.

“**Performance Securities**” means the [REDACTED] Performance Security, the [REDACTED] Performance Security, the [REDACTED] Performance Security, and the [REDACTED] 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 [REDACTED]

“**Phase Two Performance Security**” means [REDACTED]

“**Phase Three Performance Security**” means [REDACTED]

“**Phase Four Performance Security**” means [REDACTED]

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

“**PAC**” means powdered activated carbon.

“**Pre-Existing Hazardous Substance**” means a Hazardous Substance existing on the Mill Creek Generating Station 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. Pre-Existing Hazardous Substance shall also mean any Hazardous Substance not introduced to the site by the Contractor (or its Subcontractors) or any of their Affiliates.

“**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 Mill Creek Generating Station.

“**Project Requirements**” means with respect to the Work, including any 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 project schedule, including key dates (as set forth in **Exhibit D**) and milestones for completion of the Work established in accordance with and as set forth in **Exhibit F-4**, 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 to accomplish the desired result while protecting the Work, the Existing Facilities, the interconnection facilities, individuals, and the environment from damage, loss or injury. 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, safety, or reliability of the Subproject or the associated Unit.

“**Records**” has the meaning set forth in **Section 25.10.1**.

“**Recoverable Time**” has the meaning set forth in **Section 25.24**.

“**Recovery Plan**” has the meaning set forth in **Section 25.24**.

“



” means

“” has the meaning set forth in **Section 8.3.1**.

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

“**Response**” has the meaning set forth in **Section 23.2.2**.

“**Scheduled Mechanical Completion Date**” means the dates for Scheduled Mechanical Completion Date for each Subproject as set forth on **Exhibit D** which dates may be adjusted pursuant to the terms and conditions of this Agreement.

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

“**Sorbent**” means the sorbent material (e.g., hydrated lime) injected into the flue stream to mitigate SO₃.

“**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 competitive vendors that provide maintenance and repair services with respect to all of the Materials and Equipment provided by that Subcontractor.

“**Start-Up**” in connection with an outage (of any kind), means the time that the Unit is scheduled by Owner at the start of the outage to be released to station operations.

“**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 AQCS Equipment Suppliers.

“**Subproject**” means one of the [REDACTED] portions into which all of the Work is divided as follows:

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

“**Supplier Diversity Policy**” has the meaning set forth in **Section 25.22**.

“**System**” means a system or subsystem of a 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**.

“**Target Cost**” Means \$ [REDACTED]

“**Target Cost Basis**” has the meaning [REDACTED].

“**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 Point(s)**” means the specific points of physical connection including the interfaces between each Subproject and the applicable Unit, as specified in the Technical Specification, and as more particularly set forth in **Exhibit T**.

“**Termination Amount**”

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“**Termination Cost**”

A large rectangular area of the document is completely redacted with a solid black fill, covering the definition of "Termination Cost".

“**Termination Fee**”

A large rectangular area of the document is completely redacted with a solid black fill, covering the definition of "Termination Fee".

“**Tie-in**” shall mean when the applicable Subproject is Connected to the Terminal Points of the applicable Unit.

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

“**Tie-in Outage**” shall mean when the applicable Unit outage during which a Subproject is to be Tied-in.

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

“**Unit**” means one of the four existing coal-fired units operating on the Mill Creek Generating Station Site that are commonly identified as Units 1, 2, 3, and 4. Unless the context indicates otherwise, the term “Units” refers to all four Units.

“**Unit Outage Day**” has the meaning set forth in **Exhibit J**.

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

“**WBE**” means Women Business Enterprise.

“**WBE Spend**” means expenditures with WBEs certified by recognized certification entity, including WBENC (and their regional affiliates), Louisville Metropolitan Sewer District, Louisville Metro Human Relations Commission, Department of Transportation, NWBOC (affiliate of NAWBO), and other states’ agencies as approved by Owner.

“**WFGD**” means a wet flue gas desulfurization System.

“**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 Subprojects, effect Tie-in and Connect each Subproject, achieve Final Completion and fulfill Contractor’s obligations during the Warranty Period in accordance with this Agreement. 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 Mill Creek 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; 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 and Contractor's delivery to Owner of the Performance Securities and the Parent Guarantee required pursuant to **Section 15.14**. 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.

2.1.2 Assignment.

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- (i) prior to the Effective Date, there has been no breach or default of any provision of AQCS Equipment Contracts for which it is responsible;
 - (ii) prior to the Effective Date, no amounts have become due under the terms of the AQCS Equipment Contracts that Owner has not paid;
 - (iii) prior to the Effective Date, it has provided Contractor with a true and correct copy of the AQCS Equipment Contracts together with any amendment and any change order to the AQCS Equipment Contracts; and
 - (iv) prior to the Effective Date, it has not received from the counterparty to either Mill Creek Environmental Air Equipment Contract any letter of credit, parent company guarantee or other security instrument required to be provided by such counterparty under the AQCS Equipment Contracts that has not been assigned to Contractor.

From and after the Effective Date, Owner has no authority to authorize the counterparty to the AQCS Equipment Contracts to make a change to or under the AQCS Equipment Contracts. Notwithstanding the foregoing, Contractor will not amend or otherwise restrict any right granted to "Owner" under the AQCS Equipment Contracts 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 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. Contractor agrees that prior to and as a condition to mobilization to the Job Site, Contractor shall:

- (i) provide to Owner, subject to the Reciprocal Confidentiality Agreement between the Parties executed on [REDACTED], copies of project-specific insurance policies and other certificates of other insurance required to be maintained by Contractor in accordance with **Article 21**;
- (ii) 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); and
- (iii) provide Owner with all necessary information to allow Owner to have submitted all necessary filings to Governmental Authorities that are required prior to the commencement of construction.

ARTICLE 3

GENERAL PROVISIONS

3.1 Intent of Contract Documents. It is the intent of the Parties that this Agreement be a contract in which certain of Contractor's expenses will be reimbursed (subject to an overall limit) and in which Contractor may earn a fee depending on and computed from the amount of Contractor's reimbursable expenses relative to a target. The Project Schedule under this Agreement 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; (i) all or substantially all of the Work; (ii) any of the Work except to the extent that Contractor reasonably believes such subcontract is the least cost method of performing the Work on schedule and in accordance with all of the requirements of this Agreement; (iii) any of the Work with an expected cost of [REDACTED] or more without (a) notifying Owner of the intended portion of the Work to be subcontracted; (b) identifying (and obtaining Owner's approval of) a list of at least three of the vendors most likely to meet the criteria in **clause (ii)**, above; (c) putting that portion of the Work out for bid on a commercially reasonable basis to such listed vendors; (d) cooperating generally with Owner in connection with the bidding process, including by disclosing such information as Owner shall request; (e) obtaining the Subcontractor's agreement to terms required to be in subcontracts by this

Agreement; and (f) obtaining Owner's written consent for such subcontract. Contractor will provide Owner with a copy of all Subcontracts and purchase orders as they are issued. The provisions set forth above do not apply to the AQCS Equipment Contracts. 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 AQCS Equipment Contracts 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. The terms (including payment terms) of all contracts with Subcontractors will be commercially reasonable and Contractor shall not pay any Subcontractor any amounts more or earlier than to which the Subcontractor is entitled under such terms. If any Subcontractor makes a claim for compensation, reimbursement and/or other amounts beyond or earlier than that set forth in the Subcontract or there is any dispute with regard to the performance of any Subcontractor (in terms of quality, timeliness, or otherwise), then Contractor shall notify Owner of such and include Owner in any discussions and correspondence regarding such. Before resolving such claim or dispute, Contractor shall provide Owner with all relevant information and give Owner the opportunity to comment. If Contractor desires to resolve such claim or dispute, Contractor shall request Owner's approval of such settlement. If Owner approves such settlement, all amounts paid pursuant to such settlement shall be [REDACTED]. If Owner does not approve such settlement, then, notwithstanding the definition of [REDACTED] contained in this Agreement, all amounts paid by Contractor with respect to such settlement shall only be [REDACTED] to the extent that, prior to such settlement, the Subcontractor was legally entitled, under the Subcontract, to such amount.

3.4 Specified Equipment Subcontractors. For those items of Equipment specified in **Exhibit E**, except with respect to the AQCS Equipment Contracts, Contractor will only use the services of, or procure Equipment from, those Subcontractors listed under the headings specified in **Exhibit E** unless specific written approval for an alternate Supplier is provided by Owner. Except with respect to the AQCS Equipment Contracts, 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 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] 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. When commercially feasible, 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 Mill Creek 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 16.1.3**; (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 use reasonably commercial efforts to 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 Work 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 Mill Creek Generating Station or any Unit thereof.

3.7 Subcontracts. All subcontracts with Major 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 with Major Subcontractors 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 [REDACTED] its estimated aggregate sum of all Contractor [REDACTED] expected to be incurred to complete the Work. 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. Contractor hereby covenants and agrees that it shall continuously and diligently provide, perform, install, and complete the Work and its other obligations hereunder on a least cost basis 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 each applicable Unit with the applicable 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 applicable Subproject be designed, equipped, and integrated into the Units 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 an appropriate number of qualified 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. 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, 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 among its employees and/or those of its Subcontractors on the Job Site and other portions of the Mill Creek 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 by its and its Subcontractors' personnel, when reasonably possible and practical under the circumstances. Contractor shall advise Owner promptly, in writing, of any actual, anticipated, or threatened labor dispute of which it is aware 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 Mill Creek 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 Mill

Creek 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 (not to exceed [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 Subprojects and their integration into the Units 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 in accordance with Exhibit X. 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, removal, usage, and other costs or fees. Contractor shall provide its own information technology and telecommunications, cable, and satellite communications as a Contractor Expense (except for Job Site specific telecommunication services which shall be [REDACTED]). 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 obtaining the presence of any Equipment Subcontractor representatives that are

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 accordance with Exhibit X and in such other format as reasonably 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 for each Subproject.

4.13 Transportation. Contractor shall 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 shall 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 Target Cost shall be decreased by the amount of Owner's reasonable expense incurred in doing so ([REDACTED]).

4.14 Operating and Maintenance Manuals. Contractor shall prepare and provide to Owner the operating and maintenance manuals (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 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 Mill Creek 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; and (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.

4.17 Local Conditions. Information on the Mill Creek 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. Contractor represents that it has taken steps necessary to examine and ascertain the nature and location of and all visible conditions relevant to the Work and its surroundings, and that it has investigated and satisfied itself as to the reasonably observable and accessible general and local conditions that can affect the Work, the Job Site, the Mill Creek Generating Station Site, or the performance of the Work, including: (i) conditions bearing upon access, egress, transportation, waste, and water disposal, handling requirements, laydown, parking, and storage; (ii) the availability, nature, and conditions pertaining to water, electric power, the Internet, other utilities, and roads; (iii) uncertainties of weather or other physical conditions at the Job Site, the Mill Creek Generating Station Site and the proximate area; (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 that were visible and accessible prior to the Effective Date, 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 Mill Creek Generating Station Site and the Job Site. Contractor acknowledges that craft labor and other individuals that are to be present on the Mill Creek 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 Mill Creek Generating Station Site. Contractor shall provide transportation within the Mill Creek Generating Station Site for such individuals as necessary. Contractor assumes the risk of such local conditions and the conditions of the Job Site and other portions of the Mill Creek 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 adjustment to [REDACTED]

4.18 Site Conditions. Contractor has inspected the Job Site, the other portions of the Mill Creek Generating Station Site on which Work is to occur, the Existing Facilities and surrounding locations, has had an opportunity to conduct such tests as it may desire, with the exception of testing for subsurface conditions. Contractor has reviewed the information provided by or on behalf of Owner, copies of which are attached hereto 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 further understands the scope of construction activity that is and will be undertaken on the Mill Creek Generating Station Site during the term of this Agreement and has taken the inherent constraints associated therewith into account in the Project Schedule except as otherwise

provided for below. Information provided to Contractor concerning the Job Site, other portions of the Mill Creek Generating Station Site, the Existing Facilities or surrounding areas, including the information provided in **Exhibit 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 not to be relied upon by Contractor. Geotechnical, topographical, geological, seismic, hydrographical, hydrological, or other natural physical conditions related to the Mill Creek 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 or other conditions not reasonably observable and accessible are encountered by Contractor that materially deviate from the information or descriptions of the Mill Creek Generating Station Site or the Job Site provided by Owner in **Exhibit S and A**, the 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**, and such other events as to which Owner gives Contractor notice. 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 Mill Creek 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 Mill Creek 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. 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 Mill Creek 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 Mill Creek 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 after 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. Owner shall provide written notice to Contractor of any such changes. Material changes that adversely affect Contractor's cost to perform the Work or the critical path of the Work will entitle Contractor to equitable relief pursuant to Article 10 to the extent Contractor cannot reasonably mitigate such adverse impact. Failure to strictly comply with the requirements of **Exhibit H** shall be grounds for removal from the Job Site, the Mill Creek Generating Station Site or the Existing Facilities, at the sole discretion of Owner, and any adverse consequence thereof shall be borne by Contractor as a Contractor Expense. 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, the Job Site, and all Subprojects, 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 Mill Creek 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. 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 Mill Creek 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 Mill Creek 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) 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. Contractor shall implement the provisions of the plan;
- (vii) prior to Contractor’s mobilization to 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 Mill Creek Generating Station Site. Such plan, at a minimum, must incorporate the Mill Creek Generating Station policies and procedures and require Contractor to cooperate and coordinate with Owner. 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. 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 the Units 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 calendar month after the Effective Date, Contractor shall prepare and submit to Owner a status report, covering the previous calendar 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 **Sections 25.22 and 25.23.3**; (vii) a projection of the [REDACTED] that will be subject to Applications for Payment in each of the next [REDACTED] months; (viii) a detailed report reconciling all accrued expenses that are to become [REDACTED] when paid; (ix) a report of the total job hours for the month (detailed as to each subdivision of each of home office, field staff and field craft labor); and (x) such additional information required to be provided under this Agreement or as 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 Mill Creek 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 for each Subproject, 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 as a [REDACTED]. 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 Mill Creek Generating Station Site (and the Job Sites) 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 Mill Creek Generating Station Site or the Job Sites, as appropriate.

4.27 Supplies and Facilities. Upon mobilization to the Job Site, 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 Mill Creek 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 Mill Creek Generating Station Site that are affected by construction activities or traffic, as needed. Hazardous Substances, including chemicals used by Contractor or its Subcontractors, must be properly handled and must be properly disposed of off the Mill Creek Generating Station Site. Prior to Final Completion with respect to each Subproject, Contractor shall clean up and restore the Job Site (including laydown, parking, and construction areas not then being used for any remaining Subprojects), including, the removal 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 Mill Creek Generating Station Site where Work on the Subproject 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 as a Contractor Expense.

4.30 Waste Disposal. Contractor is responsible for disposal of all wastes it or its Subcontractors cause, produce, or create 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 but excluding Pre-Existing Hazardous Substances (except conditions described in **Section 19.1.1(ii)**), waste materials, trash, or rubbish in compliance with Applicable Law. 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 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 or 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 Investigations. Contractor is responsible for making all investigations and determinations reasonably necessary or desirable for it to perform the Work.

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 as required by **Exhibit X**. 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 as a Contractor Expense, 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 a [REDACTED], and, if applicable [REDACTED] and Project Schedule will be equitably adjusted. If such Work is not in accordance with this Agreement, Contractor shall pay all such costs as Contractor Expense and will not be permitted any adjustment to [REDACTED] or Project Schedule.

4.37 Administrative Facilities. Contractor, as a Contractor Expense, shall provide adequate furnished office facilities for Owner's personnel in Contractor's offices in [REDACTED]

[REDACTED] during the Design and procurement phase of the Work. Contractor shall, [REDACTED] provide temporary office facilities for itself and the AQCS Equipment Suppliers on the Mill Creek 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.

Security Management Controls

[REDACTED]

[REDACTED]

[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 with documents contained in **Exhibit X**.

4.41 Target Cost Basis. [REDACTED]

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 at Contractor's sole option, either repaired or replaced with proper equipment. The costs of making such replacement shall be a Contractor Expense.

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 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 A**. 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 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 Mill Creek Generating Station Site, and the Existing Facilities on which Work is to be performed to Contractor and its Subcontractors, subject to Applicable Law, applicable Mill Creek Generating Station Site regulations, the concurrent use by Owner and its contractors to operate, maintain, modify and otherwise utilize the Mill Creek 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 as a Contractor 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 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. If Contractor has achieved Mechanical Completion for a Subproject (except for the Tie-ins), it may commence the Work necessary to achieve Tie-in for that Subproject during the applicable Tie-in Outage. Upon the Tie-in of that Subproject, the commissioning of that Subproject shall commence and shall continue until commissioning is completed. Owner shall operate the applicable Unit (as improved by the Subproject) from and after Mechanical Completion 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 Performance Guarantee Tests (other than the Reliability Test). 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, as a Contractor Expense, (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 Day, if any, in accordance with **Exhibit J**. 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.

5.10 System Needs. Each of the Units is a critical generating resource for Owner and must be continually available for full load operation after Tie-in of each Subproject 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 Mill Creek Generating Station Site. Contractor shall remove such Person from the Job Site or the Mill Creek Generating Station Site, as applicable, upon receipt of Owner's notice. Any cost for replacement Persons will be a Contractor 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 than [REDACTED] Days prior to commencing the turnover process contemplated by this **Article 6** for a Subproject, 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 a Unit, 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.

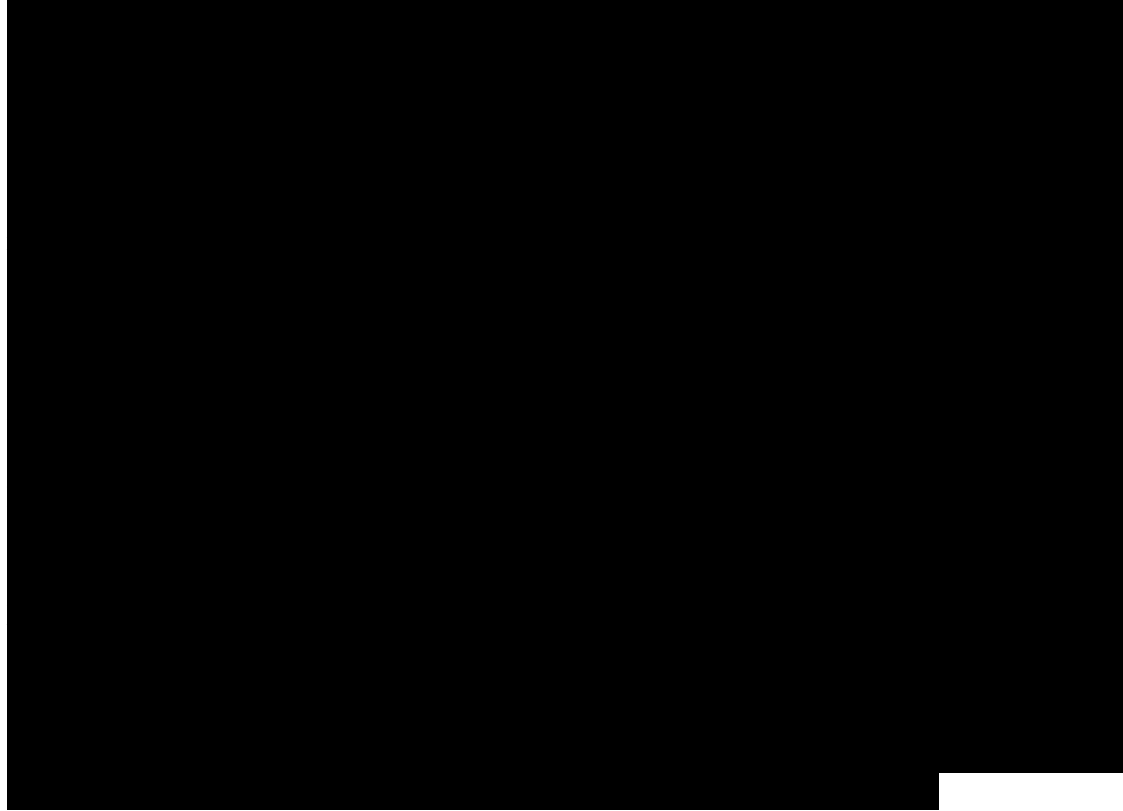
6.3 Tie-in and Mechanical Completion.

6.3.1 Sequence. Contractor shall not Work to achieve any Tie-in of a Subproject until (i) the entire Subproject has achieved Mechanical Completion and is ready to commence commissioning (except for Work required to be performed as part of the Tie-ins), (ii) Contractor has given Owner a certificate to that effect, and (iii) owner has signed a certificate that Tie-ins may commence. Contractor will then perform the Tie-ins of that Subproject.

6.3.2 Achievement. Contractor shall achieve each of the Tie-ins of a Subproject prior to the Start-up.

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 Dates, 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® 5.0 format (fully logic-tied and resource loaded) and meeting the requirements set forth in **Exhibit F-4**, 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. Performance Testing will be performed in accordance with Exhibit G.

6.6 Re-Setting of Subproject. During those periods after Commercial Operation for a Subproject, 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 the Unit 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 for each Subproject. 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 Performance Guarantee Tests required therefor, it shall give written notice of its belief to Owner. Such notice shall be accompanied by a preliminary Performance Guarantee Test report as soon as reasonably practicable but in no event more than [REDACTED] hours after the completion of such Performance Guarantee Tests (or as soon thereafter as such reports are first available to Contractor) providing a summary of the Performance Guarantee Tests on which it is based and including all raw data taken during such Performance Guarantee Tests. A final Performance Guarantee 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 Performance Guarantee Test report to allow Owner to reasonably determine that there is a high probability that the final Performance Guarantee Test results will confirm that the applicable conditions of Commercial Operation have been achieved. As soon as practicable, but in any event within [REDACTED] Business Days after receipt of the final Performance Guarantee 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 Performance Guarantee 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. [REDACTED]



6.9 Final Completion. Contractor shall successfully perform all of the Work and obligations (except obligations requiring future performance, *e.g.*, warranty obligations) and shall achieve Final Completion on or before the Guaranteed Final Completion Date for each Subproject. At such time as Contractor, in good faith, believes that the requirements of Final Completion for a Subproject 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 the Unit. 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 Day of each affected Unit of such extension will constitute a Unit Outage Day and Contractor shall compensate Owner for any such extension at the rate established for liquidated damages pursuant to **Exhibit J**.

6.11 Contractor Requested Outage. In addition to the applicable Tie-in Outage, Contractor may request permission to perform Work during a forced or Owner scheduled outage of the Unit. If the Unit experiences a forced or Owner Scheduled outage (other than the Tie-in Outage), 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 the Unit 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 the Unit 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, as applicable, then, because actual damages would be extremely difficult and impracticable to ascertain and fix, liquidated damages for each Day of each affected Unit of such additional time or delay will be assessed as Outage Days under **Exhibit J**.

ARTICLE 7

LIQUIDATED DAMAGES & LIABILITY LIMITATIONS

7.1 Liquidated Damages.

7.2 Payment.

7.3 Consequential Damages.

[Redacted]

7.4 Limitations of Liability.

7.4.1 Liquidated Damages Limit.

(a)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Overall Limit.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ARTICLE 8

CONTRACTOR'S COMPENSATION

Contract Price

[REDACTED]

[Redacted]

8.2 Fee Amount.

[Redacted]

8.3 Taxes.

8.3.1 Tax Cooperation and Information.

[Redacted]

8.3.2 Subcontractors.

[Redacted]

Taxes Related to Employment of Persons.

[Redacted]

8.3.4 Sales and Use Taxes.

[REDACTED]

8.3.5 Indemnity and Assessment.

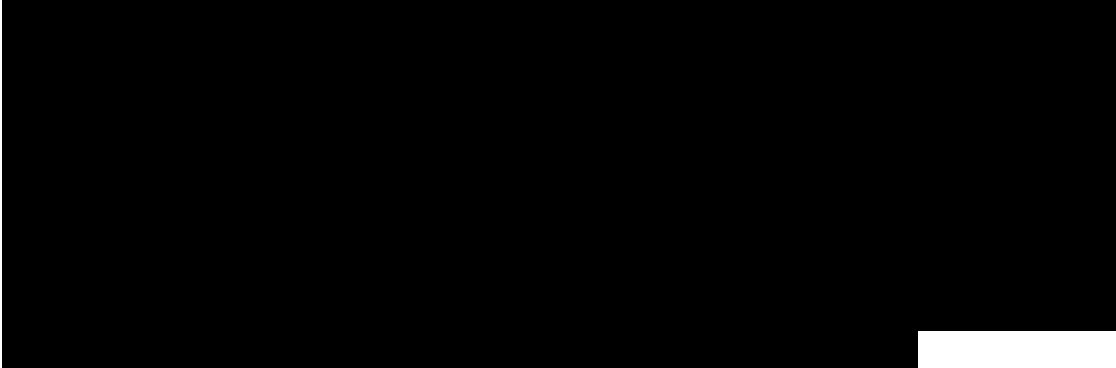
[REDACTED]

8.3.6 Other Taxes.

[REDACTED]

8.3.7 Tax and Accounting Information.

[REDACTED]



Progress Payments.



8.5 Application For Payment.

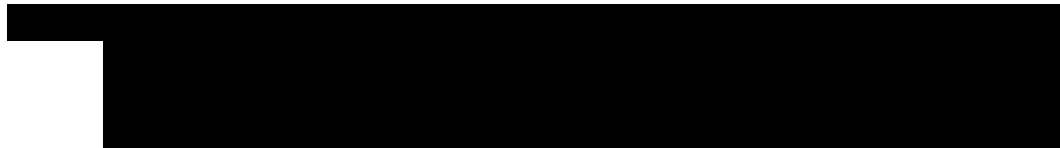


8.6 Payment of Substantiated Amount. Owner shall pay Contractor the amount of each Application For Payment which has been substantiated by Owner, less any amounts properly withheld hereunder. Owner shall make such payment within [REDACTED] Days after receipt of the complete Application For Payment, subject 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 [REDACTED] Days after receipt of the completed Application For Payment. Payments made to Contractor in respect of Work properly performed by Subcontractors constitute trust funds for such Subcontractors and shall not be commingled by Contractor with other funds of Contractor or its Affiliates.

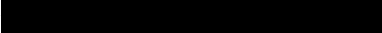
8.7 Supporting Documentation. Each Application For Payment submitted by Contractor must be accompanied by the following, all in form and substance satisfactory to Owner:

- (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 and payment records for which it seeks reimbursement;
- (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 Owner as the owner of the Mill Creek Generating Station Site from Liens or other liabilities; and


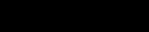
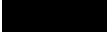




8.8 Withholding to Protect Owner from Loss. Owner may, without prejudice to other rights of Owner hereunder, withhold payment on an Application For Payment or any other amount due to Contractor or a portion thereof (or draw on any of the Performance Securities, if sufficient funds to withhold are not 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 not yet corrected by Contractor whether or not payment for such Work pursuant to **Section 8.6** 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  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.

8.9 Final Payment.

8.9.1 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  Days of the receipt of such statement, Owner shall pay Contractor all remaining amounts due including any  . 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 8.9.2** and **8.9.3** 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 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.

[REDACTED] Release. [REDACTED]

8.9.3 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 of all Subprojects

8.10 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, and 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. Owner will provide notice to Contractor's Representative of the reasons for any dispute under this **Section 8.10**.

8.11 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.

8.12 Performance Securities.

8.12.1 Security. As security for the full and faithful performance of the Work and the other obligations of Contractor under this Agreement, Contractor has delivered the Performance Securities to Owner on the date of this Agreement.

8.12.2 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.

8.13 Release of Performance Securities Arrangements. Unless any of the events described in **Section 24.2.1 clauses (i) through (x)** (regardless of whether any cure period is in effect) has occurred and is continuing, the Performance Securities shall be released and returned to Contractor as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

8.15 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 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 breakdown shall equal the Contract Price. Overhead and profit shall not be listed as separate items.

ARTICLE 9

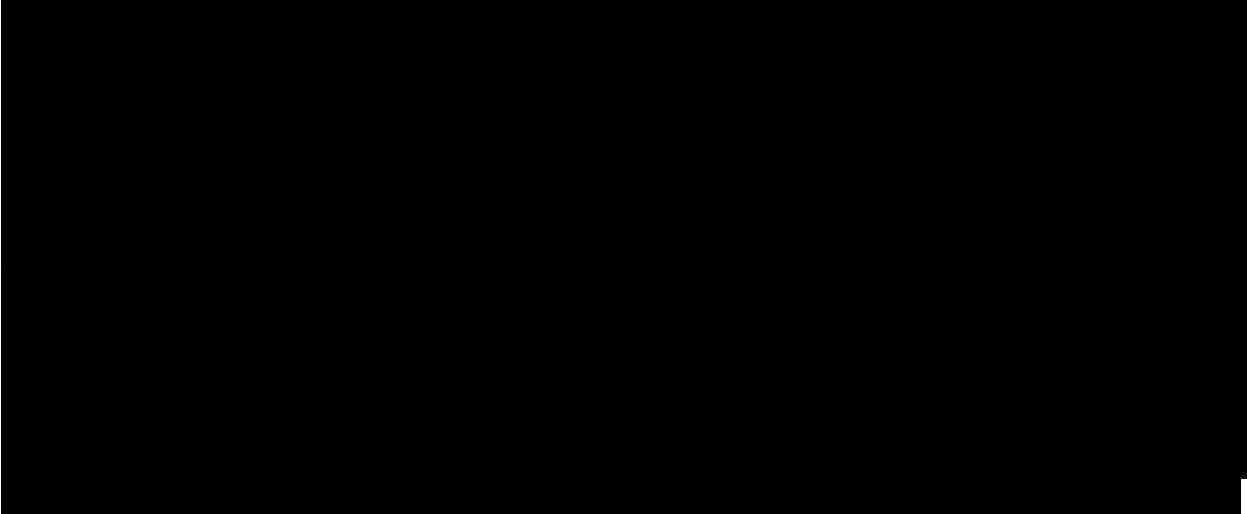
EXCUSABLE EVENTS

Notice.



9.2 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 (such notice, which will be substantially in the form of **Exhibit F-3** hereto, 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 [REDACTED] and **Exhibit R** shall be made to [REDACTED], Project Schedule, or other applicable provision of this Agreement. Each Change Order Request will be accompanied by a description of the Changes requested.

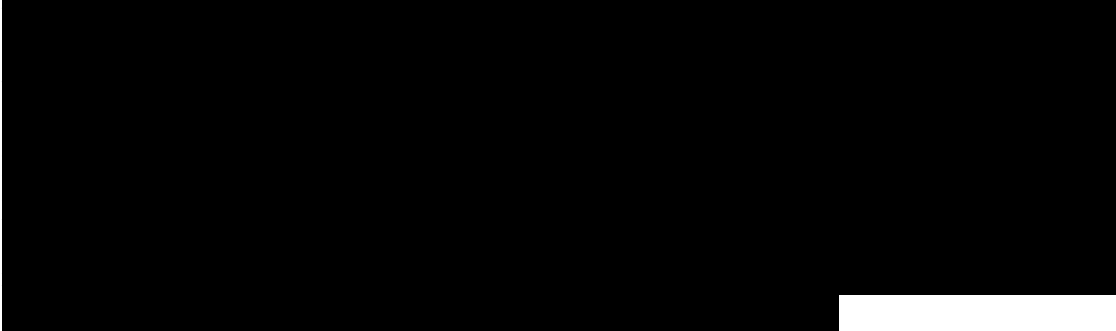
10.1.2 Contractor Response. Contractor shall, within [REDACTED] Days after receipt of a Change Order Request (unless such time period is extended by mutual agreement of Contractor and Owner or as otherwise herein provided), provide Owner for its review and approval, with a written description of any adjustment to [REDACTED], 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 an 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 [REDACTED]) 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; and (v) 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 [REDACTED] for such Change. If Owner and Contractor cannot agree on a lump sum [REDACTED] for such Change, Owner may, at its option, direct Contractor to proceed without agreement in which case [REDACTED] will be adjusted on an open-book time and materials basis with no contingency in a manner consistent with **Exhibit R** and [REDACTED].

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 [REDACTED], Project Schedule, or other applicable provision of this Agreement and (ii) embody the agreed upon changes in the Work, [REDACTED], 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.

10.1.4 Owner Authorization. [REDACTED]



10.2 Contractor Change Notice. If Contractor wishes to make a claim for an adjustment of [REDACTED] 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 related 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 thirty (30) and [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.

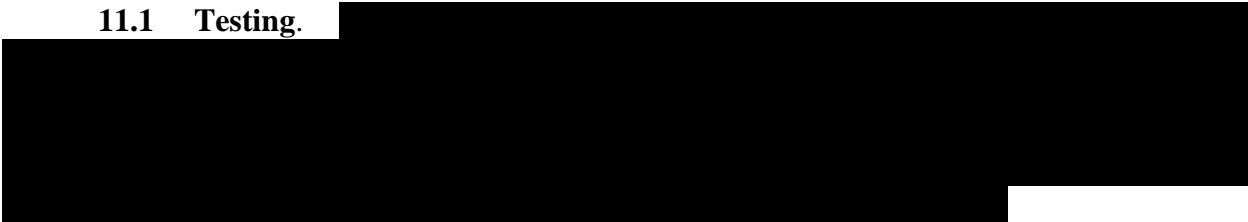
10.4 Resolution. In the event of a failure to agree to any adjustment of this Agreement, including, to [REDACTED] or Project Schedule as required by the terms of this Agreement as a result of a Change Order Request or a Contractor Change Notice, either Party may demand resolution of such issues in accordance 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 [REDACTED], Project Schedule or other provision of this Agreement.

ARTICLE 11

TESTS AND INSPECTIONS

11.1 Testing.



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 (██████████) Days prior to the first expected delivery of Equipment or Materials to the Mill Creek 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 (██████████) 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 re-perform 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 re-perform or re-inspect 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 (██████████) 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 re-inspect.

ARTICLE 12

CORRECTION OF WORK

12.1 Correction of Work. Prior to the Commercial Operation Date of a Subproject, Contractor shall, at the earliest practical opportunity, correct, repair, or replace any portion of the

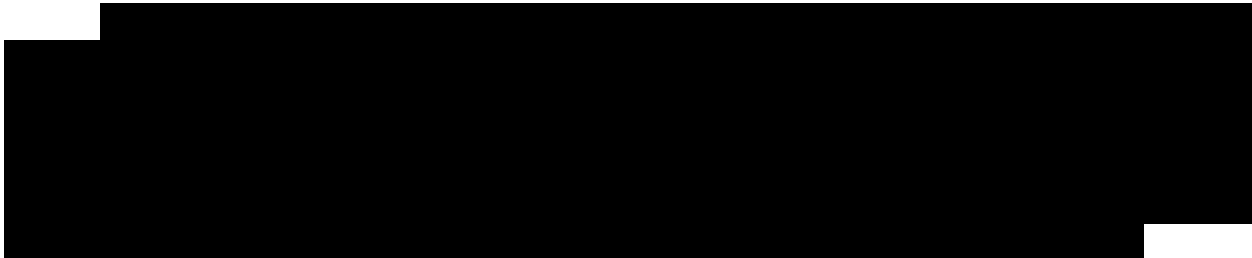
Work that is Defective or does not conform to the requirements of this Agreement, without regard to the stage of completion of the Work or the time or manner of discovery of the defect or nonconformance. If other portions of the Work are adversely affected by or are damaged by such Defective or non-conforming Work, Contractor shall, at its sole cost and expense (as a Contractor Expense) and at the earliest practical opportunity, correct, repair or replace such affected or damaged Work. Contractor shall bear the cost (as a Contractor Expenses) 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 without [REDACTED] under this Agreement, all costs and expenses incurred by Owner in so doing shall reduce [REDACTED]; if [REDACTED] is exceeded, either as a result of such reduction, or otherwise, Contractor shall reimburse Owner for its costs and expenses incurred in such work or repair. 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 in the course of the performance of the Work, 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, as a Contractor Expense, for making payment to Owner for the cost to repair, correct, or replace such loss or damage, not to exceed [REDACTED] per occurrence, 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** and 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]

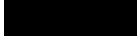
[REDACTED]

[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 Mill Creek Generating Station Site. Within  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 Contractor Expenses. Owner, in its reasonable opinion, may exclude from the Mill Creek 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 Mill Creek 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 Mill Creek 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 (as a Contractor Expense) 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 Mill Creek Generating Station Site to exercise due caution entering and leaving the Mill Creek 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 Mill Creek 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 Mill Creek 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 Mill Creek Generating Station Site, without the prior written consent of Owner.

14.7 Safety Personnel. Contractor shall assign at least one full-time 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 Mill Creek 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 Mill Creek 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 Code of Business Conduct. Contractor hereby acknowledges receipt of the LG&E and KU Services Company 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 visually 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, as a [REDACTED]. 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 Mill Creek 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 Subprojects or any other construction or other work at the Job Site or the Mill Creek 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.

Deficiency in Work of Owner and Separate Contractors.



ARTICLE 16

INTELLECTUAL PROPERTY



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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 [REDACTED];
- (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 has had the opportunity to visually examine the Mill Creek Generating Station Site and has acquainted itself with 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 Mill Creek Generating Station Site during performance of the Work, the condition of Existing Facilities on the Mill Creek 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;
- (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; and

(iv)



ARTICLE 18

CONFIDENTIAL INFORMATION

18.1 Confidential Information. The Parties have an interest in maintaining the confidentiality of proprietary 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 [REDACTED], 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. Each Party agrees with respect to Confidential Information, to hold the same confidential for the longer of a period of five (5) years from receipt or for a period of three (3) years from the earlier to occur of termination of this Agreement or Final Completion of the last Subproject. 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. Contractor agrees 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. 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 Mill Creek 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 the Job Site or the Mill Creek 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) the negligent or intentional spill, leak, release, or threatened release by 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 Subprojects 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 **19.1.3**; or (e) the negligent or intentional exacerbation by Contractor of a Pre-Existing Hazardous Substance, 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 as a Contractor Expense and there shall be no Excusable Event [REDACTED] or schedule adjustment with respect thereto;

- (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 as provided in **clause (ii)** above, then any Environmental Action will be performed by Owner at its expense; and
- (v) except as otherwise required by Applicable Law, any notification and other communication with third parties, including Governmental Authorities, and reports and documentation related to such Environmental Action shall be undertaken by Owner.

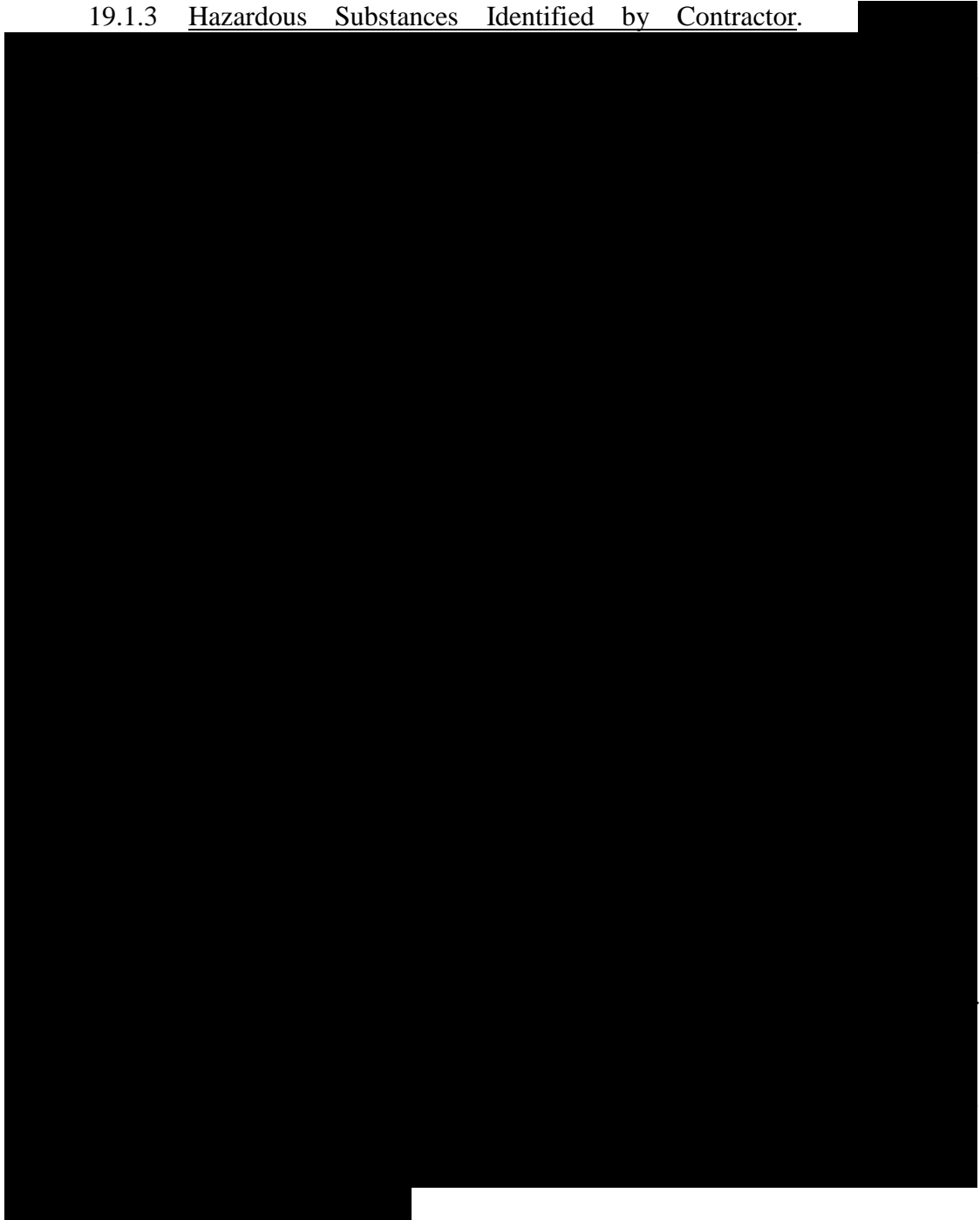
Contractor shall use diligent efforts to avoid any adverse effect on, or impediment to, the efforts undertaken by Owner, its agents, or independent contractors in connection with any Environmental Action or other remedial work Owner deems appropriate at the Job Site or the Mill Creek Generating Station 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 Mill Creek 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 Mill Creek 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 Mill Creek 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 Mill Creek 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 Mill Creek 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 Mill Creek 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 Mill Creek 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 Mill Creek 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.



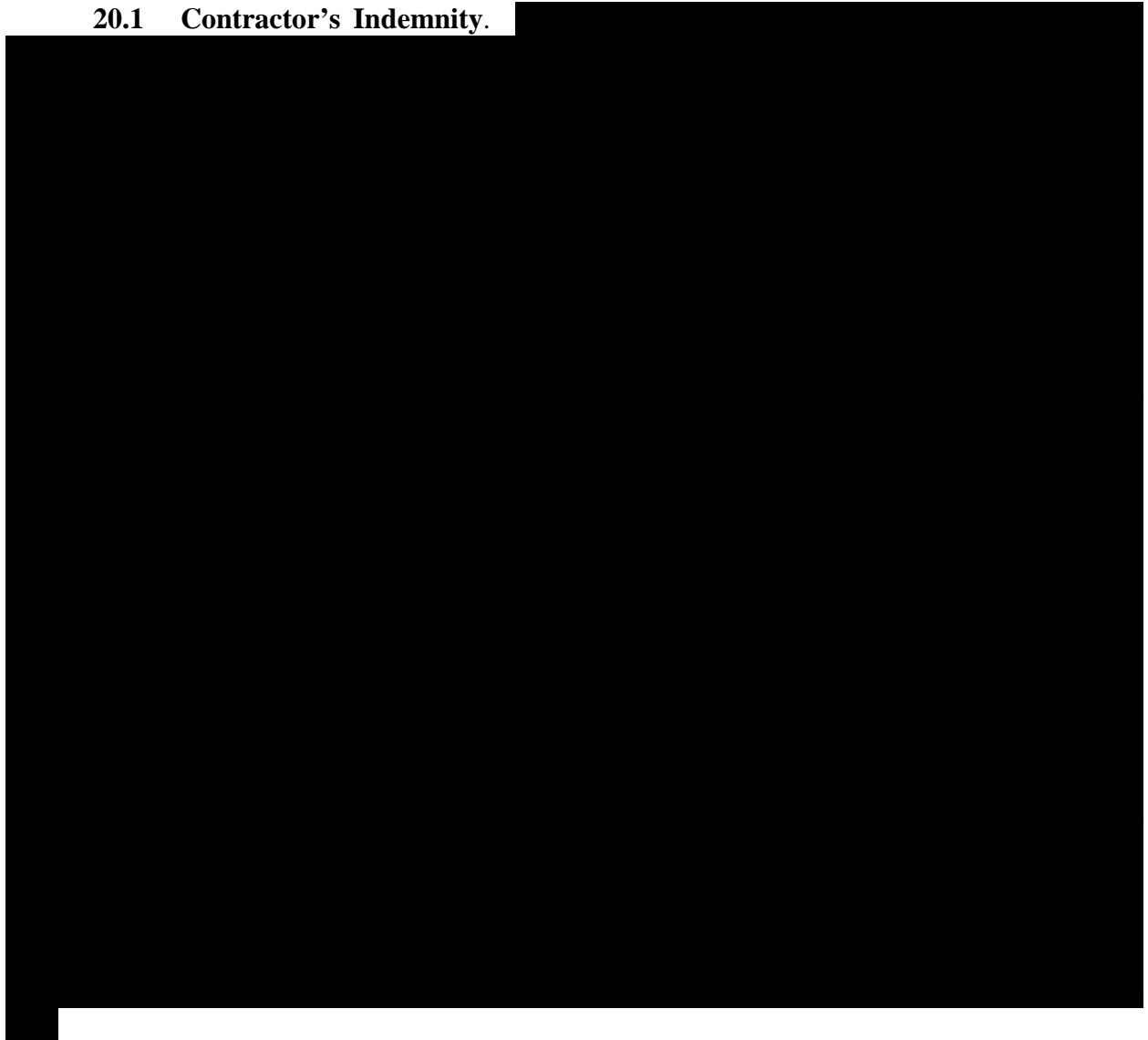
19.1.4 Labeling. Contractor and its Subcontractors shall properly store, label and dispose of Hazardous Substances brought to the Mill Creek Generating Station Site by Contractor, its Subcontractors, and others for whom they are responsible, and train their employees in the safe usage and handling of Hazardous Substances,

including any training that is required either by the Hazardous Substances Management Plan or Applicable Law.

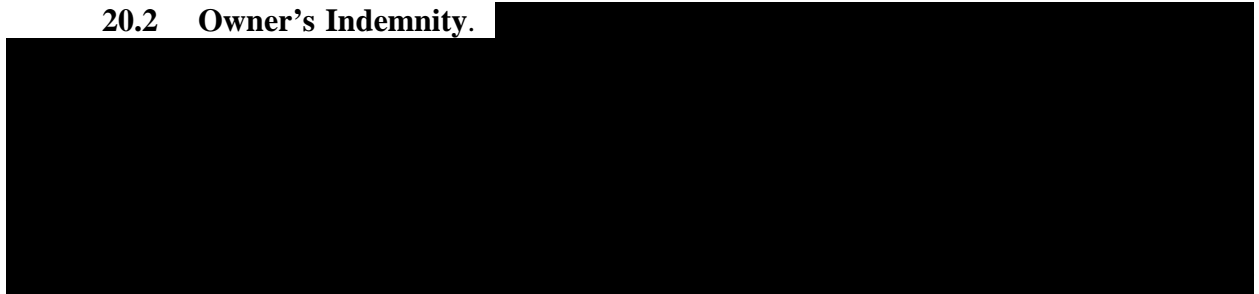
ARTICLE 20

INDEMNIFICATION

20.1 Contractor's Indemnity.



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 Parties. 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 Parties 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, any Subproject, the Unit or the Mill Creek 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 obtain release for 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, any 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 (as a Contractor Expense), including attorneys' fees and charges. Owner shall have the right but not the obligation to: (a) deduct any such expenses from any payment due, or which may become due, to Contractor or (b) draw upon Performance Securities and/or (c) 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






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 upon the earlier of shipment to Owner or the Job Site, incorporation into the Work, or upon payment of the amount properly due under an Application For Payment covering such Work, notwithstanding any amount retained and other amounts withheld by Owner in accordance with the terms of this Agreement. 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 or 13**, 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.

Risk of Loss.



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 and instead will be a Contractor Expense. Construction equipment brought to the Mill Creek 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 a termination payment equal to: (i) [REDACTED] incurred by the Contractor with respect to the terminated Work prior to such termination; (ii) the [REDACTED], and (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 terminated Work and (2) amounts properly withheld under this Agreement. Notwithstanding the foregoing, in no event will the aggregate termination payment due to Contractor pursuant to this **Section 24.1.1** 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 set forth in such notice, less any payments previously made by Owner hereunder. Contractor shall calculate amounts due pursuant to this **Section 24.1**, which amounts are subject to audit and confirmation by Owner on an 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 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.

24.2.2 Owner's Remedies. Upon the occurrence of a Contractor Default, (i) Owner may, without prejudice to any other right or remedy Owner may have under this Agreement: (a) terminate this Agreement in whole or in part; (b) take possession of the Job Site and of all Equipment, Materials, Consumables, Construction Aids (other than computers, cranes, and rental construction equipment), tools, machinery and Information related to terminated Work; (c) finish the Work by whatever method Owner may deem expedient; and (d) draw on the Performance Securities or withhold amounts due to Contractor to make payments for the actual costs therefor, (ii) upon the completion or abandonment of the Work by Owner, Owner shall pay Contractor an amount equal to all [REDACTED] incurred prior to the termination minus the sum of the Termination Amount and any amounts previously paid to Contractor with respect to this Agreement (if the amount so calculated is a negative number, Contractor shall instead immediately pay to Owner the absolute value of such amount). 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]

[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] [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 the direct reasonable costs that result from Contractor's compliance with suspension and resumption notices ([REDACTED]). All suspension and resumption notices shall be treated as Change Order Requests and shall be treated as such under **Article 10**.

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. This Agreement represents the entire agreement between Owner and Contractor with respect to the subject matter hereof, and shall supersede all prior negotiations, binding documents, representations or agreements, whether written or oral. This Agreement may be amended or modified only by a written instrument signed by both Owner and Contractor.

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 of 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 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:

Louisville Gas and Electric 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: Eileen Saunders
Telephone: 502-627-4531
E-mail: eileen.saunders@lge-ku.com

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

220 W. Main St.
Louisville, KY 40232
Attn: General Counsel
Telephone: 502-627-3450
E-mail: gerald.reynolds@lge-ku.com

If to Contractor:



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

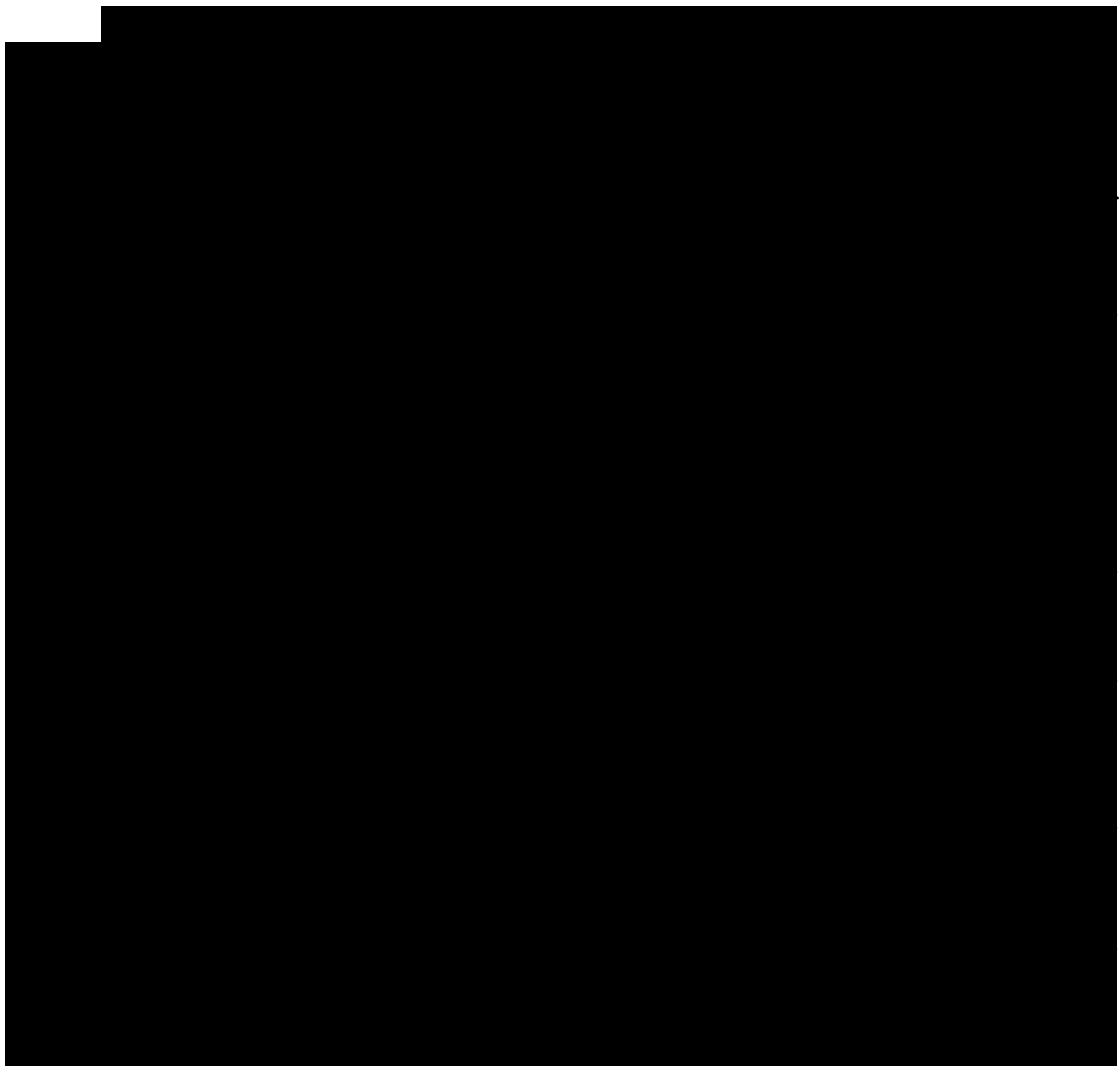
25.6 Rights Cumulative. Except as otherwise expressly provided or limited in this Agreement: (i) rights and remedies available to Owner or Contractor as set forth in this Agreement are cumulative with and in addition to, and not in limitation of, any other rights or remedies available to such Parties 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**.

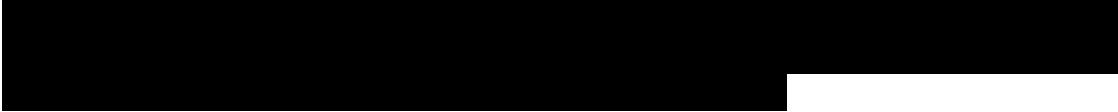
25.7 Incorporation by Reference. The recitals set forth on the first page of this Agreement are hereby incorporated into this Agreement by this reference and expressly made a part of this Agreement.

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 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.

25.10 Audit.





25.10.2 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.

25.10.3 Time and Materials. When Contractor's Application for Payment includes compensation for Work performed on a reimbursable 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. 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**.

25.10.4 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.

25.11 Survival. Articles 7, 13, 16, 17, 18, 19, 20, 21, 22, 23 and 25 and Sections 4.39, and 8.9.2 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.

25.12 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.

25.13 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) Owner or 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.

25.14 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.

25.15 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.

25.16 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.

25.17 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.

25.18 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.

25.19 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.

25.20 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.

25.21 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).

25.22 Minority, Women, Disadvantaged and Local Business Enterprises. Owner has a "Supplier Diversity Policy" to provide the maximum opportunity for Minority Business Enterprises ("MBEs"), Women Business Enterprises ("WBEs"), Disadvantaged Business Enterprises ("DBEs"), and union and non-union local contractors ("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 25.22** in accordance with **Exhibit F-9 (Second Tier Procurement Program)**.

25.23 Local Involvement; Reporting.

25.23.1 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.

25.23.2 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 Local Spend.

25.23.3 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 MBEs, WBEs, DBEs, LCs, Local Spend, WBE Spend and MBE Spend. Contractor will not be obligated to provide confidential individual employee information under this **Section 25.23.3**.

25.24 Subproject 3 Outage .

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Key Event²

Date

General

Start of Subproject 4 Tie-in Outage [A1000]

[REDACTED]

Start demolition activities [A1040]

[REDACTED]

Complete demolition activities [A1050]

[REDACTED]

Begin Piling for Ductwork Supports [A1500]

[REDACTED]

Complete Piling for Ductwork Supports [A1500]

[REDACTED]

²

[REDACTED]

Complete power distribution cable pulls [A1580]	██████████
Complete Ductwork Support Fdns. [A1510]	██████████
Complete Ductwork support steel erection [A1520]	██████████
Complete setting Ductwork [A1540]	██████████
Complete installation of ductwork expansion, dampers, turning vanes [A1550]	██████████

WFGD

Begin WFGD piling [A1090]	██████████
Complete WFGD piling [A1100]	██████████
Begin Absorber Foundation [A1110]	██████████
Release Stebbins on Absorber Vessel Foundation [A1160]	██████████
Final delivery to site of BPEI material for externals	██████████
Release Stebbins Exclusion Zone [A1260]	██████████
Complete setting of Recycle Pumps, Gear Boxes, and Motors	██████████
Complete setting of Oxidation Air Blowers	██████████
Start installation of FRP Header [A1250]	██████████

PJFF

Complete delivery of CBPG hoppers / casings / tube sheets and structural steel [A1390]	██████████
Begin PJFF piling [A1340]	██████████
Complete PJFF piling [A1340]	██████████
Complete PJFF Foundations [A1350]	██████████
Complete PJFF steel erection [A1480]	██████████

Complete Hopper and Casings [A1450]



ID Fans

Begin piling for ID Fan foundations [A1300]



Complete piling for ID Fan foundations [A1300]



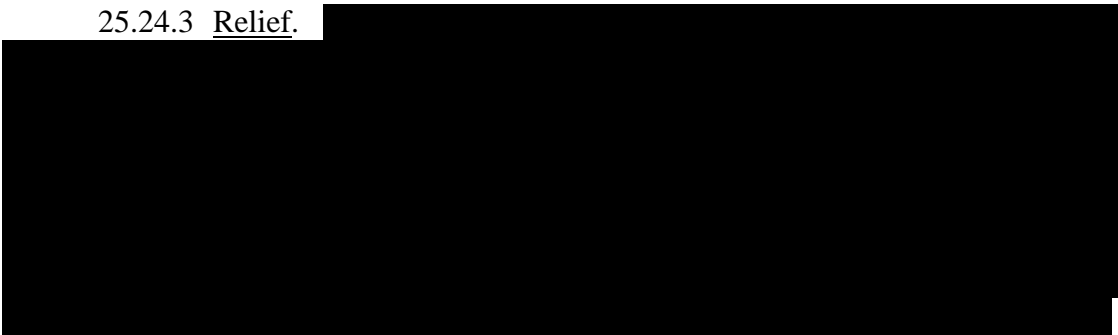
Complete ID Fan Foundations [A1310]



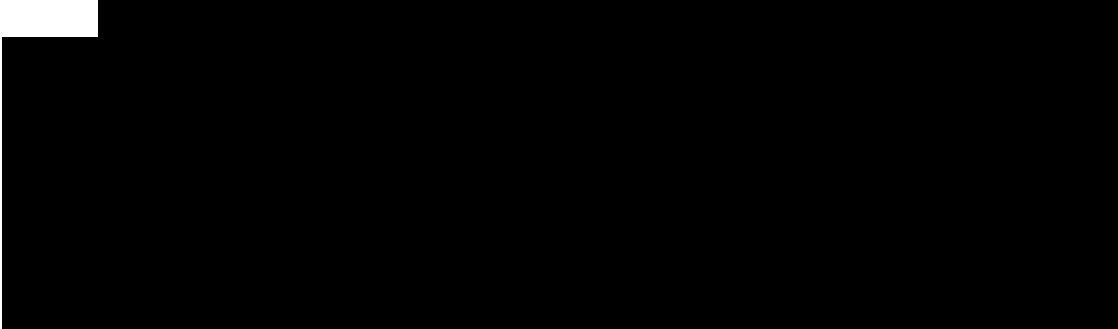
Complete set / align ID Fans [A1320]



25.24.3 Relief.



Limitation of Relief.



[REDACTED]

[REDACTED]

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

Louisville Gas and Electric Company

By: Anthony L. Ruckriegel

Title: Manager Contracts/Major Capital
Projects

and

Zachry Industrial, Inc., as Contractor

By: Buddy Myers

Title: Senior Vice President