

# Pineville and Tyrone CCR Impoundment Closure Project

## Procurement and Construction Agreement

Between  
Kentucky Utilities Company,  
as Owner

and

Thalle Construction Co., Inc.  
as Contractor

Contract No. 636307

**TABLE OF CONTENTS**

**ARTICLE 1 DEFINITIONS..... 1**

1.1 Definitions..... 1

1.2 Contract Interpretation..... 15

**ARTICLE 2 EFFECTIVENESS ..... 17**

2.1 Effectiveness ..... 17

2.2 Contractor Commitments and Confirmations..... 18

**ARTICLE 3 GENERAL PROVISIONS..... 18**

3.1 Intent of Contract Documents..... 18

3.2 Independent Contractor..... 19

3.3 Subcontracting ..... 19

3.4 Specified Subcontractors ..... 19

3.5 Certain Provisions in Subcontracts ..... 20

3.6 Assignment of Subcontracts ..... 20

3.7 Subcontracts..... 21

3.8 Inclusion; Order of Precedence..... 21

**ARTICLE 4 CONTRACTOR’S RESPONSIBILITIES ..... 21**

4.1 Performance of the Work..... 21

4.2 Sufficient Personnel ..... 22

4.3 Labor Matters..... 22

4.4 Discipline and Protection..... 22

4.5 Supervision ..... 23

4.6 Contractor’s Key Personnel ..... 23

4.7 Design and Engineering..... 23

4.8 Quality Control ..... 24

4.9 Certain Contractor-Provided Items ..... 24

4.10 Equipment Subcontractor Presence ..... 25

4.11 Current Records; As-Built Survey ..... 25

4.12 Transportation and Storage ..... 25

4.13 Operating and Maintenance Manuals ..... 25

4.14 Control of Work..... 25

4.15 Emergency Response..... 25

4.16 Local Conditions..... 26

4.17 Job Site Conditions ..... 26

4.18 Witnessing and Inspection Rights..... 27

4.19 Use of Site..... 27

4.20 Compliance with Applicable Law ..... 30

4.21 Permits and Approvals..... 30

4.22 Periodic Reports and Meetings ..... 30

4.23 Signage..... 31

4.24 Spare Parts ..... 32

4.25 Interference with Traffic..... 32

4.26 Supply of Water and Facilities..... 32

4.27	Cutting and Patching.....	33
4.28	Cleaning Up .....	33
4.29	Waste Disposal.....	33
4.30	Water Control.....	33
4.31	Permit Assistance.....	34
4.32	Deliveries by Truck.....	34
4.33	Artifacts and Other Valuable Items .....	34
4.34	Release .....	34
4.35	Covering.....	34
4.36	Administrative Facilities.....	35
4.37	No First of a Kind .....	35
4.38	Compliance with Owner Security Controls .....	35
4.39	Documentation Requirements or Standards.....	35
4.40	Basis of Bid.....	35
4.41	Construction Equipment .....	36
<b>ARTICLE 5 OWNER RIGHTS, DUTIES AND OBLIGATIONS .....</b>		<b>36</b>
5.1	Key Personnel .....	36
5.2	Owner’s Review.....	36
5.3	Owner-Provided Items .....	36
5.4	Right to Apply Monies.....	36
5.5	Access and Inspection.....	36
5.6	Owner Permits .....	37
5.7	Right to Carry Out the Work .....	37
5.8	Rights Not Limited .....	37
5.9	Operating Personnel.....	37
5.10	System Needs.....	37
5.11	Contractor’s Personnel.....	37
<b>ARTICLE 6 PROJECT SCHEDULE.....</b>		<b>38</b>
6.1	Commencement .....	38
6.2	Tie-in.....	38
6.3	Project Schedule Update.....	38
6.4	Availability of Information .....	38
6.5	Substantial Completion.....	38
6.6	Possession and Control .....	39
6.7	Final Completion .....	39
6.8	Subprojects.....	39
<b>ARTICLE 7 LIQUIDATED DAMAGES AND LIABILITY LIMITATIONS.....</b>		<b>40</b>
7.1	Liquidated Damages .....	40
7.2	Payment.....	40
7.3	Consequential Damages.....	40
7.4	Limitations of Liability .....	40
<b>ARTICLE 8 CONTRACTOR’S COMPENSATION.....</b>		<b>41</b>
8.1	Contract Price.....	41

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8.2	Taxes.....	44
8.3	Progress Payments .....	46
8.4	Application for Payment .....	46
8.5	Payment of Substantiated Amount.....	46
8.6	Supporting Documentation .....	47
8.7	Accrual Notification.....	48
8.8	Withholding to Protect Owner from Loss.....	48
8.9	Final Payment .....	49
8.10	Disputed Applications for Payment .....	50
8.11	Payment of Subcontractors .....	50
8.12	Security for Contractor’s Obligations.....	51
8.13	Release of Contract Security.....	51
8.14	Overpayment.....	52
8.15	Tax and Accounting Information.....	52
<b>ARTICLE 9 EXCUSABLE EVENTS AND OWNER-INITIATED CHANGES .....</b>		<b>52</b>
9.1	Excusable Events .....	52
9.2	Owner-Initiated Changes .....	54
<b>ARTICLE 10 ADJUSTMENT METHODOLOGY.....</b>		<b>55</b>
10.1	Determination of Adjustments.....	55
10.2	Procedure for Determining Adjustment.....	55
10.3	Basis for Adjustments .....	56
10.4	Non-Lump Sum Fixed Schedule Adjustments .....	56
<b>ARTICLE 11 TEST AND INSPECTIONS .....</b>		<b>57</b>
11.1	Testing.....	57
11.2	Witnessing Tests and Inspection.....	57
11.3	Retests .....	58
<b>ARTICLE 12 CORRECTION OF WORK.....</b>		<b>58</b>
12.1	Correction of Work .....	58
12.2	Urgent Repairs .....	58
12.3	Damage to Existing Facilities .....	58
<b>ARTICLE 13 WARRANTY .....</b>		<b>59</b>
13.1	Work Warranty .....	59
13.2	Warranty Period.....	59
13.3	Breach of Warranty.....	59
13.4	Subcontractor Warranties.....	60
13.5	Primary Liability.....	61
13.6	Defect Limitations .....	61
13.7	Warranty Assistance .....	61
13.8	Reasonable Access.....	61
13.9	Root Cause Repairs.....	61
13.10	Exclusivity of Warranties and Remedies.....	61

**ARTICLE 14 PROTECTION OF PERSONS AND PROPERTY ..... 62**

14.1 Safety Programs ..... 62

14.2 Applicable Law ..... 62

14.3 Safety Precautions..... 62

14.4 Community Relations ..... 63

14.5 Security ..... 63

14.6 Dangerous Materials ..... 63

14.7 Safety Personnel..... 63

14.8 Loading ..... 63

14.9 Notices to Owner ..... 63

14.10 Code of Business Conduct..... 64

14.11 Hazards and Training..... 64

14.12 Drug and Alcohol..... 64

**ARTICLE 15 SEPARATE CONTRACTORS AND ACTIVITIES BY OWNER ..... 65**

15.1 Separate Work..... 65

15.2 Integration ..... 65

15.3 Coordination ..... 65

15.4 Use of Job Site ..... 65

15.5 Deficiency in Work of Owner and Separate Contractors ..... 65

**ARTICLE 16 INTELLECTUAL PROPERTY ..... 66**

16.1 Ownership/License ..... 66

16.2 Indemnity against Intellectual Property Infringement..... 67

16.3 Contractor’s Responsibility for Litigation..... 67

16.4 Assistance ..... 67

16.5 Injunction..... 67

16.6 Contractor’s Continuing Obligation ..... 68

16.7 Limitations and Conditions..... 68

16.8 Availability of Intellectual Property ..... 68

**ARTICLE 17 REPRESENTATIONS AND WARRANTIES..... 69**

17.1 Contractor ..... 69

17.2 Owner..... 70

**ARTICLE 18 CONFIDENTIAL INFORMATION ..... 70**

18.1 Confidential Information ..... 70

18.2 Import or Export of Technical Data..... 71

18.3 Third Party Proprietary Information ..... 72

18.4 Public Relations ..... 72

**ARTICLE 19 HAZARDOUS SUBSTANCES ..... 72**

19.1 Hazardous Substances..... 72

19.2 Odors..... 75

**ARTICLE 20 INDEMNIFICATION ..... 76**

20.1 Contractor’s Indemnity ..... 76

20.2 Owner’s Indemnity ..... 76

*JVO*  
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20.3	Defense of Claims or Actions .....	77
20.4	Liens .....	78
<b>ARTICLE 21 INSURANCE.....</b>		<b>79</b>
<b>ARTICLE 22 TITLE AND RISK OF LOSS.....</b>		<b>80</b>
22.1	Transfer of Title .....	80
22.2	Title Warranty .....	80
22.3	Risk of Loss .....	80
22.4	Contractor Tools .....	80
<b>ARTICLE 23 DISPUTE RESOLUTION .....</b>		<b>81</b>
23.1	Resolution .....	81
23.2	Continuation of Work .....	81
<b>ARTICLE 24 TERMINATION.....</b>		<b>81</b>
24.1	Termination for Convenience .....	81
24.2	Termination by Owner for Cause .....	82
24.3	Termination by Contractor for Cause .....	84
24.4	Suspension of the Work .....	85
<b>ARTICLE 25 MISCELLANEOUS PROVISIONS .....</b>		<b>85</b>
25.1	Governing Law .....	85
25.2	Entire Agreement .....	86
25.3	Successors and Assigns.....	86
25.4	Contractual Relationship.....	86
25.5	Notices .....	87
25.6	Rights Cumulative .....	88
25.7	Incorporation by Reference.....	88
25.8	No Waiver .....	89
25.9	Agreed Rate .....	89
25.10	Financing Cooperation.....	89
25.11	Audit .....	89
25.12	Survival .....	90
25.13	No Third Party Beneficiaries .....	90
25.14	Non-Recourse .....	90
25.15	Parent Guarantee.....	90
25.16	Provisions Required by Law .....	90
25.17	Severability .....	90
25.18	Joint Effort .....	91
25.19	Counterparts .....	91
25.20	Approvals Not To Relieve Contractor .....	91
25.21	Consultants.....	91
25.22	Equal Employment Opportunity .....	91
25.23	Supported Business Enterprises and Local Contractors .....	91
25.24	Local Involvement; Reporting .....	92

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EXHIBITS

Exhibit A	Technical Specification
Exhibit B	Termination Payment Schedule
Exhibit C	Milestone Payment Schedule
Exhibit D	Project Schedule and Key Dates
Exhibit E	Acceptable Equipment and Materials Suppliers
Exhibit F	Forms
	F-1 Application for Payment
	F-2 Certificates: Substantial Completion of Final Completion
	F-3 Form of Change Order
	F-4 NOT USED
	F-5 Lien Waivers and General Release
	F-6 NOT USED
	F-7 Station Forms
	F-8 Parent Guarantee
	F-9 Special Reporting Requirements
	F-10 Form of Acceptable Letter of Credit
Exhibit G	NOT USED
Exhibit H	Health and Safety Documents
Exhibit I	Insurance
Exhibit J	NOT USED
Exhibit K	Key Personnel
Exhibit L	LD Criteria and Liquidated Damages
Exhibit M	Meetings, Coordination, and Progress Reports
Exhibit N	Codes
Exhibit O	NOT USED
Exhibit P	Permits
Exhibit Q	Owner Provided Items
Exhibit R	Rates
Exhibit S	Site
Exhibit T	Terminal Points
Exhibit U	Training
Exhibit V	NOT USED
Exhibit W	Work Breakdown Structure
Exhibit X	Submittals, Reviews, and Hold Points
Exhibit Y	NOT USED
Exhibit Z	NOT USED
Exhibit AA	Extended Warranties
Exhibit BB	NOT USED
Exhibit CC	Security Protocols

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## PROCUREMENT AND CONSTRUCTION AGREEMENT

This Procurement and Construction Agreement (“**Agreement**”) is entered into as of the 7<sup>th</sup> day of December, 2017 (“**Effective Date**”), by and between Kentucky Utilities Company, a Kentucky corporation (“**Owner**”), and Thalle Construction Co., Inc., a New York corporation (“**Contractor**”).

### RECITALS

WHEREAS, Owner desires to enter into an agreement with a qualified contractor to procure and construct the Project (as hereinafter defined) on a lump-sum turnkey basis as set forth in this Agreement;

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

WHEREAS, Contractor agrees to perform the Work as more specifically described in 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 United States based bank, or a bank with a major United States based branch, acceptable to Contractor and Owner, the long term senior debt obligations of which are rated “A-” or better by Standard & Poor’s (S&P) or “A3” or better by Moody’s (or an equivalent rating from an equivalent rating agency as may be approved by Contractor and Owner), or whose obligations are guaranteed, insured, or otherwise credit enhanced by a bank or financial institution, the long term senior unsecured debt obligations of which are so rated and is United States based or has a major United States based branch.

“**Acceptable Letter of Credit**” means an irrevocable, unconditional standby letter of credit issued by an Acceptable Credit Bank to which Owner is the beneficiary (i) having a stated expiration date of not earlier than 364 Days (or such longer term as may be commercially available) after the date of the original issuance or any renewal thereof; (ii) that automatically renews or permits Owner, on the signature of an authorized representative of Owner, to draw on sight all or any portion of the stated amount if not renewed on or prior to the thirtieth (30<sup>th</sup>) Day prior to any



expiration date of the letter of credit, including the final 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 United States 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) that is drawable upon issuance of a drawing certificate signed by an authorized representative of Owner stating that Owner is entitled to be paid under the Agreement; and (vii) that is otherwise in the form set forth in **Exhibit F-10**.

“**Adjustment**” means an equitable adjustment, determined in accordance with the Adjustment Methodology, made to the Contract Price and/or Major Contract Milestones (based on critical path impact), or other applicable provision of this Agreement with respect to a Change Order or an Excusable Event.

“**Adjustment Methodology**” has the meaning specified in **Section 10.1**.

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

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

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

“**Applicable Credits**” has the meaning set forth in **Section 8.3**.

“**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, Codes, and Permits, when issued, enacted, or promulgated by a Governmental Authority and interpretations thereof by a Governmental Authority.

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

“**As-Built Survey**” means an accurate, detailed land survey depicting the Project as built (both surface and subsurface) accompanied by a mark-up of the Design Documents showing all discrepancies therefrom.

“**Basis of Bid**” has the meaning set forth in **Section 4.40**.



“**Body of this Agreement**” means the first paragraph of this Agreement through the execution page.

“**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.

“**CCR**” means coal combustion residuals.

“**Certificate**” means the applicable Substantial Completion, or Final Completion, as the case may be.

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

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

“**Change Determination Request**” has the meaning specified in **Section 9.2.2**.

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

“**Change Order**” has the meaning set forth in **Section 9.2.1**.

“**Change(s)**” has the meaning set forth in **Section 9.2.1**.

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

“**Claims**” means claims, causes of action, proceedings, demands or suits.

“**Climatic Condition**” means a weather condition that is unusually severe and abnormal such as hurricane force winds, tornado force winds, or flooding (at a fifty (50) year or greater recurrence interval level).

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

“**Component**” means any and all of the constituent parts of the Work that are permanently incorporated into the Project or otherwise retained by Owner following Final Completion. Components include systems, subsystems, subassemblies, materials and equipment (including parts, machinery, special tools, instruments, pipes, valves, software, Computer Programs, and

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hardware), spare parts, and every item of whatever nature, including all documentation related thereto.

“**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 Subcontractors under this Agreement.

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

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

“**Construction Aids**” means all equipment (including construction equipment), apparatus, tools, supplies, construction tools, personal protection equipment, safety supplies, support services, field office equipment, supplies, structures, apparatus, form lumber, protective fencing, Computer Programs used in the execution, management, maintenance or completion of the Work and other goods and items that are required to construct, clean, commission, or test the Project, but which are neither incorporated into the Work nor 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 maintenance or operation of the Project or the Work.

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

“**Contract Security**” means the Performance Securities and any amounts then held by Owner as cash security for the performance of Contractor’s obligations.

“**Contract Security Release Conditions**” means (i) the applicable event triggering the release listed in **Section 8.13** has occurred, (ii) no Contractor Default exists or is inchoate, (iii) Contractor is not liable to Owner for unpaid amounts, including liquidated damages, and (iv) no Claim (including a warranty claim) has been made by Owner against Contractor that has not been resolved.

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

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

“**Contractor Design**” means all of the Design (other than the Owner Engineer Design).

“**Contractor Design Documents**” means the Design Documents other than the Owner Engineer Design Documents.

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“**Contractor Hazardous Substances**” means the Hazardous Substances or conditions described in either (i) **clauses (a) through (e) of Section 19.1.1(ii)** and/or (ii) **Section 19.1.3**.

“**Contractor Indemnitees**” means Contractor (and its Affiliates) and their successors, assigns, officers, directors, employees, agents, and representatives.

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

“**Contractor’s Representative**” has the meaning set forth in **Section 4.6**.

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

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

“**Day**” means a calendar day, including Saturdays, Sundays and legal holidays.

“**Defect**” (and derivative forms thereof, *e.g.*, “**Defective**”) means a defect, deficiency, error, omission, nonconformity, needed adjustment in the Work or other deviation from the Project Requirements and deviations from the warranty set forth in **Section 13.1**.

“**Design**” (and derivative forms 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.

“**Design Documents**” means 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 Project in accordance with this Agreement.

“**Differing Conditions**” means Physical Conditions that materially differ from all of the following: (i) conditions stated in **Exhibit S**, (ii) conditions stated in **Exhibit A**, (iii) conditions that are readily observable, and (iv) conditions that a prudent Contractor would reasonably infer from any of the forgoing.

“**Dispute**” means a dispute or other controversy arising out of or otherwise related to this Agreement.

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

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

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

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“**Equipment**” means all of the equipment, materials, items, apparatus, structures, tools, machines, supplies or other goods, including Components, which are installed in the Project or otherwise provided as part of the Work and are to be retained by Owner after Final Completion in accordance with this Agreement.

“**Excusable Event**” means an Excusable Event Basis as to which (a) such Excusable Event Basis, despite the exercise of reasonable diligence, could not be prevented, avoided or removed; (b) Contractor has taken all reasonable precautions, due care, and reasonable alternative measures in order to avoid the impact and to mitigate the consequences of such Excusable Event Basis on the Contractor’s ability to fulfill its obligations under this Agreement; (c) such Excusable Event Basis is not the result of the Culpable Conduct or other failure of Contractor (or a Subcontractor or other Person for whom either Contractor or a Subcontractor may be responsible) to perform any of its obligations under this Agreement; and (d) Contractor has strictly complied with the requirements of **Section 9.1**.

“**Excusable Event Basis**” means any of the following events to the extent that such event materially and adversely (a) results in an actual delay in the performance of the Work, which Contractor demonstrates extends the critical path of the Work; (b) increases Contractor’s cost of performing the Work; or (c) otherwise adversely affects Contractor’s performance hereunder:

- (i) delays that Contractor demonstrates are caused by the failure of Owner to fulfill any of its obligations under this Agreement;
- (ii) events of Force Majeure;
- (iii) modifications to Owners security protocols pursuant to **Section 4.38**;
- (iv) a suspension of the Work pursuant to **Sections 24.3.2** or **24.4** and a partial termination by Owner pursuant to **Section 24.1**;
- (v) the discovery of any (a) Pre-Existing Hazardous Substance (other than a Contractor Hazardous Substance) that requires Environmental Action by Owner or (b) protected or endangered plant or animal species, artifacts, fossils or other items of historical, geological, archeological, or other value in accordance with **Section 4.33**;
- (vi) as provided in the last sentence of **Section 4.35** regarding uncovering of Work; and
- (vii) any other events designated explicitly in this Agreement as being Excusable Event Bases, but only to the extent that such events meet the requirements of clause (a), (b), or (c) of this definition.

“**Excusable Event Notice**” has the meaning specified in **Section 9.1**.

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“**Exhibits**” means all of the exhibits identified in the list of Exhibits following the “Table of Contents” to the Body of this Agreement.

“**Existing Facilities**” means all facilities, structures, installations, roadways, walkways, natural features, parking facilities, the Units, and auxiliary and support facilities thereto (but excluding any facilities built as part of the Work) now or hereafter located on the Generating Station Site, including all existing facilities used in connection with the generation of electricity; the transportation, handling or storage of fuel; or the transmission of electricity.

“**Existing Facility Requirements**” has the meaning set forth in **Section 4.19**.

“**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) Substantial Completion has been achieved; (ii) all items identified on the Punch List have been completed; (iii) all As-Built Surveys, Information, Design Documents, Operating and Maintenance Manuals, submittals and other documents required to be delivered to Owner hereunder have been so delivered; (iv) all liquidated damages for which Contractor is liable pursuant to **Exhibit L** and other amounts owed by Contractor to Owner under this Agreement, if any, have been paid to Owner; (v) all obligations of Contractor expressly required to have been performed prior to Final Completion will have been properly discharged; (vi) all Work has been completed other than Work (and other obligations) that require future performance (*e.g.*, warranty Work and indemnification); and (vii) Owner has issued the Certificate of 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 Owner’s obligations hereunder.

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

“**Force Majeure**” means any condition, event, or circumstance to the extent such condition, event, or circumstance is not within the reasonable control of the Party affected, including war, rebellion, civil strife, insurrection, public disorder, Climatic Condition, earthquake, quarantine, act of terrorism, industry-wide or national strike, and Change in Law. Notwithstanding the foregoing, Force Majeure shall not include the following events, conditions or circumstances:

- (i) late delivery of Equipment, Consumables, or Construction Aids required for the Work however caused, including by congestion at a Subcontractor’s plant or elsewhere, oversold market conditions, inefficiencies, transportation delays or other similar circumstances (except to the extent a transportation delay is caused by the occurrence of an independent condition, event or circumstance described in and meeting the conditions of this definition);
- (ii) shortages of supervisors, labor, Equipment, Consumables, or Construction Aids;

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- (iii) late performance as a consequence of any violation of Applicable Law or decisions of a Governmental Authority related to the conduct of Contractor's or any Subcontractor's business, including insolvency or any delay related to the economic, commercial or labor circumstances of Contractor, any Subcontractor or other business conducted by Contractor or any Subcontractor;
- (iv) breakdown, loss, or damage to or theft of machinery, Equipment, Consumables, or Construction Aids except where such breakdown, loss, or damage is directly due to the occurrence of an independent condition, event, or circumstance described in and meeting the conditions of this definition;
- (v) failure of a Party to pay amounts due and owing under this Agreement;
- (vi) strikes or other labor disturbances affecting Contractor or any of Subcontractors, except as expressly set forth in the examples described in the first full paragraph of this definition;
- (vii) increased costs of the Work, general economic or industry conditions; or
- (viii) weather conditions other than Climatic Conditions.

**"Generating Station"** means the Pineville and/or Tyrone Generating station, as more particularly described in **Exhibit S**.

**"Generating Station Site"** means the site of the Generating Station, as more particularly described in **Exhibit S**.

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

**"Guaranteed Final Completion Date"** means the guaranteed date for achieving Final Completion for each Subproject as set forth in **Exhibit D** (such date may be adjusted only in accordance with **Articles 9 and 10** of this Agreement).

**"Guaranteed Substantial Completion Date"** means the guaranteed date for achieving Substantial Completion for each Subproject as set forth in **Exhibit D** (such date may be adjusted only in accordance with **Articles 9 and 10** of this Agreement).

**"Guarantor"** means The Tully Group.

**"Hazardous Substance"** means: (i) any chemicals, materials, substances, or wastes which are now or hereafter defined as or included in the definition of "hazardous substance," "hazardous material," "hazardous waste," "solid waste," "toxic substance," "extremely hazardous substance,"

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

“**Hazardous Substances Management Plan**” has the meaning set forth in **Section 4.19(vii)**.

“**Hold Point**” means an inspection point with respect to which Contractor or 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 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.

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

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

“**Indemnifying Party**” 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 conveyed in paper or electronic media or format, in performance of this Agreement which would be reasonably useful or necessary in Owner’s operation, maintenance, repair, training, modification, or use of the Project.

“**Insolvency Event**” means, with respect to the Person: (i) the Person’s (a) failure to generally pay its debts as they become due, (b) admission in writing of its inability to pay its debts as they become due or (c) making a general assignment for the benefit of creditors; (ii) any proceeding being instituted by or against the Person seeking: (a) to adjudicate it as bankrupt or insolvent, (b) liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any Applicable Law relating to bankruptcy, insolvency, reorganization or relief of debtors or (c) the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against the Person, either such proceeding remains undismissed for a period of thirty (30) 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.

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

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

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

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

“**Liabilities**” means any and all judgments, liabilities, losses, costs, expenses, damages, fines or penalties, court costs, reasonable attorneys’ fees and costs, and pre- and post-judgment interest.

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

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

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

“**Major Contract Milestones**” means the Guaranteed Substantial Completion Dates, and the Guaranteed Final Completion Dates.

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

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

“**Modification**” means: (i) a written amendment to this Agreement signed by all Parties; (ii) a Change Order; or (iii) an Adjustment on account of an Excusable Event pursuant to **Section 9.1**.

“**Month**” means a calendar month.

“**MSDSs**” means SDSs.

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“**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 4.38**.

“**NERC Standards**” has the meaning set forth in **Section 4.38**.

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

“**Operating and Maintenance Manuals**” means the operating and maintenance manuals referred to in **Section 4.13**.

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

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

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

“**Owner Engineer Design**” means those portions of the Design that are explicitly set forth in the Owner Engineer Design Documents.

“**Owner Engineer Design Documents**” means the drawings that are signed and sealed by Owner Engineer and attached as part of Exhibit A (including any updates to such drawings that are signed and sealed by Owner Engineer).

“**Owner Indemnitees**” means Owner, Owner Engineer, and the Financing Parties (and all of the Affiliates of all of the foregoing) and their respective successors, assigns, officers, directors, members, employees, agents, and representatives.

“**Owner Permits**” means the Permits designated in **Exhibit P** as Owner’s Permits.

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

“**Parent Guarantee**” means the guarantee to be duly executed and delivered by Guarantor, in substantially the form set forth in **Exhibit F-8**.

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

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

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

“**Permits**” means any waiver, exemption, variance, franchise, permit, authorization, approval, identification number, inspection, certification, determination, license, clearance or similar order, filing, registration, application of, from or to any Governmental Authority, including those set forth in **Exhibit P**.

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

“**Phase One Performance Security**” means an Acceptable Letter of Credit to be delivered to Owner in the amount of [REDACTED] of Contract Price (as such Contract Price may be adjusted from time to time), and any replacement letters of credit therefore.

“**Phase Two Performance Security**” means an Acceptable Letter of Credit to be delivered to Owner in the amount of [REDACTED] of Contract Price (as such Contract Price may be adjusted from time to time), and any replacement letters of credit therefore.

“**Phase Three Performance Security**” means an Acceptable Letter of Credit to be delivered to Owner in the amount of [REDACTED] of Contract Price (as such Contract Price may be adjusted from time to time), and any replacement letters of credit therefore.

“**Physical Conditions**” means geotechnical, topographical, geological, seismic, hydrographical, hydrological, or other physical conditions related to the Job Site, the Generating Station Site, and/or the proximate area, including conditions relating to Job Site preparation, construction or any other portion of the Work.

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

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

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

“**Project**” means the Pineville and Tyrone CCR Impoundment Closure Project, as more specifically provided for in this Agreement, including in **Exhibit A**.

“**Project Schedule**” means the total integrated resource-loaded fully logic tied, critical path method project schedule showing procurement and construction for the Project, expressed in

Primavera® format, including Major Contract Milestones as such Project Schedule may be adjusted pursuant to this Agreement; **provided, however**, no adjustment shall be made to the Major Contract Milestones other than in accordance with **Articles 9 and 10** of this Agreement.

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

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

**“Punch List”** or **“Punch List Items”** means and refers to a comprehensive list initially prepared prior to Substantial Completion of a Subproject which may be supplemented thereafter to identify those minor Defects that require repair, completion, correction or re-execution by Contractor, but which in their current state (individually and collectively) do not limit or otherwise interfere with the occupancy, use, operation in automatic mode, safety, legality or reliability of the Subproject or any portion thereof or the associated Yard Systems in the normal course of business.

**“Records”** has the meaning set forth in **Section 25.11**.

**“Required Contract Security”**: means at any time the sum of the amounts set forth in the definitions for the Phase One Performance Security and the Phase Two Performance Security, minus the amounts of any Performance Securities released and returned to Contractor pursuant to **Section 8.13**.

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

**“SDSs”** has the meaning set forth in **Section 19.1.3**.

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

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“**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.

“**Subcontract**” means a contract, agreement, purchase order, lease or rental agreement or other arrangement to perform a portion of the Work, including the supply of services, Equipment, Consumables, or Construction Aids in connection with the Work; **provided, however**, if Contractor enters into a Subcontract with an Affiliate for performance of Work, such Work will be deemed to be Work directly performed by Contractor hereunder without regard to such Subcontract.

“**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, Consumables, or Construction Aids in connection with the Work.

“**Subproject**” means one of the following: Subproject 1 and Subproject 2.

“**Subproject 1**” means that portion of the Project designated in **Exhibit A** as Subproject 1.

“**Subproject 2**” means that portion of the Project designated in **Exhibit A** as Subproject 2.

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

“**Supported Business Enterprises**” means Minority Business Enterprises, Women Business Enterprises, Veteran Owned Business Enterprises, Service-Disabled Veteran-Owned Small Businesses and Disadvantaged Business Enterprises, as defined under federal law and as certified by a certifying agency that Owner recognizes as proper.

“**Substantial Completion**” will have been achieved for a Subproject when all of the following have occurred with respect to that Subproject: (i) the Work is complete (except Punch List Items and Work required during the Warranty Period, as it may be extended); (ii) all obligations of Contractor expressly required to have been performed as of the Substantial Completion Date have been properly discharged; (iii) the Subproject is capable of functioning in the normal course of business in compliance with Prudent Utility Practices and the standard written procedures and requirements of the Subcontractor that manufactured each item of up to the full required capacity of the Subproject; (iv) Owner has received from Contractor all Permits (other than Owner Permits) (including Permits necessary to allow occupancy and transfer of care, custody, and control of the Subproject to Owner), all of which shall be valid and in full force and effect; (v) all liquidated damages incurred pursuant to **Article 7** through the date of Substantial Completion have been paid to Owner; (vi) levels of Consumables associated with the Subproject are fully charged and filled; (vii) final versions (subject to updates for changes to the Work made after Substantial Completion) of the Operating and Maintenance Manuals, approved by Owner, have been delivered; (viii) an As-Built Survey of the Work current as of the Substantial Completion Date has been delivered to Owner; (ix) all Special Tools and spare parts have been delivered to Owner; (x) other submittals required to be submitted prior to or as a condition of

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Substantial Completion have been submitted to Owner; and (xi) Owner has executed the Certificate of Substantial Completion.

“**Substantial Completion Date**” means the date on which Substantial Completion is achieved.

“**Technical Specification**” means and refers to **Exhibit A** attached hereto, and documents specified therein.

“**Terminal Points**” means the specific points of connection including the interfaces and terminal points between the Project and the Existing Facilities specified in **Exhibit T**.

“**Third Party**” means any Person that is neither a Party nor an Affiliate of a Party to this Agreement.

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

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

“**Unit**” means an electrical generating unit operating on the Generating Station Site and all related and unrelated ancillary structures and equipment such as coal yard, pipelines, switching yard, transmission facilities, distribution facilities, etc.

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

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

“**Work Fuel**” has the meaning set forth in **Section 8.1**.

“**Work Fuel Limit**” has the meaning set forth in **Section 8.1**.

“**Yard System**” means a portion of the Existing Facilities that is not specific only to any one Unit.

**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, "furnish" "provide" or words of similar import means to secure, pay for, deliver to the Job Site (or other portions of the 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, "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;
- (xi) each use of the term "Contractor" is deemed to also include each Subcontractor in respect of any Work or other obligations hereunder that Contractor has chosen to have performed by that Subcontractor;

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- (xii) the words “herein,” “hereof,” or “hereunder” or similar terms refer to this Agreement as a whole and not to any specific section or article;
- (xiii) the table of contents and article, section and exhibit titles and similar headings are inserted for convenience only and are not to be used for the purposes of construing or interpreting this Agreement;
- (xiv) 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;
- (xv) 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;
- (xvi) all documentation to be supplied under this Agreement shall be provided in the English language;
- (xvii) all dimensions must be specified in the United States customary system;
- (xviii) this Agreement and all terms hereunder (including terms related to the reasonableness of the Owner’s actions) shall be construed taking into consideration the Existing Facility Requirements;
- (xix) if a payment obligation to be performed under this Agreement falls due on a Day that is not a Business Day, the payment obligation will instead be due on the next Business Day; and
- (xx) 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 it upon its execution and delivery by all Parties. Contractor shall commence the Work immediately upon the effectiveness of this Agreement.



**2.2 Contractor Commitments and Confirmations.**

- (i) Contractor hereby confirms that as of the execution of this Agreement there exist no grounds on which a claim by Contractor pursuant to **Articles 9 or 10** may be based;
- (ii) Simultaneously with the execution of this Agreement, Contractor shall deliver to Owner (a) the Parent Guarantee; and (b) the Project Schedule in no less than a [Primavera® P6.0 Level 2] format without resource loading;
- (iii) On the Effective Date, Contractor shall have delivered to Owner certificates and copies of non-project specific insurance policies applicable to the period commencing on the Effective Date evidencing coverages and terms as required by **Exhibit I**;
- (iv) At least three (3) weeks prior to on-site mobilization, Contractor shall provide to Owner copies of project specific insurance policies and certificates required to be obtained by Contractor in accordance with **Exhibit I**;
- (v) Prior to mobilization to the Job Site, Contractor shall 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;
- (vi) Prior to on-site mobilization, Contractor shall deliver the Project Schedule in no less than a [Level 3 Primavera® P6] format, with a fully logic-tied schedule developed and resource-loaded;
- (vii) Prior to on-site mobilization, Contractor shall 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; and
- (viii) Contractor acknowledges that separate contractors of Owner will have access to the Job Site for work, including work described in **Exhibit A** or **Exhibit S** and Contractor shall cooperate and coordinate with Owner and such separate contractors such that Contractor and Owner's separate contractors can perform their respective scopes of work without delay.

**ARTICLE 3**

**GENERAL PROVISIONS**

**3.1 Intent of Contract Documents.** It is the intent of the Parties that this Agreement be a lump-sum, turnkey contract with a fixed Contract Price and fixed Major Contract Milestones

which, in each case, will not be increased or lengthened (or decreased or shortened) whether under contract or tort law (including with respect to any delay, hindrance, interference, and disruption of the Work), except in accordance with **Articles 9 and 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. References to Contractor in this Agreement in respect of Work are also to be understood as references to any Subcontractor that is performing such Work.

**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**, that (i) Contractor may not Subcontract all or substantially all of the Work and (ii) no Work may be performed by any Subcontractor on or near the Generating Station Site if that Subcontractor does not meet the safety qualifications set forth in **Exhibit H** (unless Contractor first obtains Owner's consent, which may be withheld at Owner's sole discretion). 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**. Notwithstanding whether or not any provision of this Agreement specifically refers to Contractor's Subcontractors or their employees or other invitees, Contractor will be fully responsible for all acts, omissions, failures or faults of any such Persons as fully as if they were the acts, omissions, failures or faults of Contractor and Contractor shall require Subcontractors to provide or perform their portion of the Work in compliance with 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 regarding the Work and direction to Subcontractors necessary for Subcontractors to perform the Work. Contractor shall bind all Major Subcontractors to terms that protect Owner's rights and benefits hereunder and are otherwise not in conflict with the provisions of this Agreement applicable to the subcontracted Work (including the provision of Equipment).

**3.4 Specified Subcontractors.** For those items of Work or Equipment specified in **Exhibit E**, Contractor will only use the services of, and procure Equipment from, those Persons listed under the applicable headings specified in **Exhibit E**. Contractor will be responsible for the negotiation of the terms and conditions of any Subcontracts entered into with such identified Persons (including cost, performance guarantees and equipment warranties), and it will enter into written Subcontracts in its own name directly with such Persons, it being the intent of the Parties that such Persons will be Subcontractors of Contractor and not of Owner. Operability, maintainability, reliability, quality, and compatibility with equipment and consumables utilized

in the Existing Facilities must be material selection factors in Contractor's procurement decisions. Contractor shall undertake to include Supported Business Enterprises (of each type) and Local Contractors to the maximum practicable extent on bid lists for portions of the Work. Contractor agrees that before submitting specifications for bids to Major Subcontractors it will give Owner a reasonable opportunity to comment on such specifications and proposed bid list and Owner agrees that if it wishes to comment, Owner will submit such comments within the time period specified for that item in **Exhibit X** and if not so specified, within fifteen (15) Business Days after delivery of the specifications to Owner. Contractor will cooperate and work in good faith with Owner to accommodate Owner's comments. Notwithstanding Owner's right to review and comment in accordance with this **Section 3.4**, no such review or comment will relieve Contractor or otherwise serve as a defense to Contractor's full performance of its obligations hereunder.

**3.5 Certain Provisions in Subcontracts.** All Subcontracts 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 assignees 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 Generating Station Site to comply with the plan provided for in **Section 14.1** of this Agreement; (v) indemnifying Owner on substantially the terms and conditions set forth in **Section 20.1**; (vi) incorporating **Section 16.3**; (vii) granting a warranty with respect to the portion of Work performed under that Subcontract that, at a minimum, meets the same terms, conditions, and duration as set forth in **Article 13** of this Agreement; (viii) causing Subcontractors of Equipment, upon the request of Owner, to segregate such Equipment 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**. Contractor shall notify Owner when it enters into any Subcontract 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. In no event will Contractor enter into a Subcontract with any Subcontractor that provides for a warranty that has a length or other term that is less than that Subcontractor's standard warranty for the applicable Equipment.

**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 applicable Warranty Period as it may be extended, assign: (i) any Subcontract then remaining (together with any retainage, letter of credit or other security provided by such Subcontractor) and/or (ii) the benefits of any remaining applicable Subcontractor warranty (as it may have been extended) to Owner or a designee of the Owner, which assignment must be binding on the Subcontractor and not require consent of the Subcontractor. Upon assignment, any such warranty must be in full force and effect in accordance with its terms.

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

**3.8 Inclusion; Order of Precedence.** The Body of this Agreement and the Exhibits hereto are to be considered complementary and what is required by one will be binding as if required by all. Contractor has included within the Contract Price the cost to complete the Work in its entirety and to fulfill its other obligations hereunder. In addition, the Work includes all that should be properly included and all that would be customarily included within the general scope and magnitude of the Work in 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 Performance of the Work.** Contractor hereby covenants and agrees to continuously and diligently provide, perform, install, and complete the Work and its other obligations hereunder in accordance with Project Requirements and the Major Contract Milestones. Contractor further covenants and agrees to procure, provide and pay for all Equipment, 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 site preparation, 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 required by **Exhibit I**); Permits, licenses, and inspections (other than those required to be supplied by Owner under this Agreement); and all tools, machinery, storage, and transportation and all other facilities and services necessary to provide and complete the Project and the Work 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 Project be equipped, completed, and integrated into the Yard Systems consistent with Project Requirements. Contractor shall order, expedite, receive, furnish, handle, inspect (and, as appropriate, reject), store, maintain and install

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Equipment and Consumables in accordance with vendor/manufacture requirements and, in the absence thereof, in accordance with Project Requirements. Contractor will perform all managerial, supervisory, and administrative services that may be necessary to ensure the proper and timely completion of all activities which form a part of the Work. As such, Contractor agrees that Contractor shall be ultimately responsible for the proper and timely completion of the entirety of the Work in accordance with this Agreement, whether performed by Contractor or by any Subcontractor.

**4.2 Sufficient Personnel.** Contractor shall, at all times during the term of this Agreement, employ a sufficient number of qualified and competent supervisory personnel, craft persons, and other persons, so that the Work and the other obligations to be performed by Contractor hereunder are completed in an efficient, prompt, economical, and professional manner. Contractor shall be responsible for all overtime or other premium time Work. Without in any way limiting the foregoing, such personnel must include sufficient qualified buyers, inspectors, and expeditors necessary to provide Equipment, Construction Aids, and Consumables in a timely manner consistent with the Project Requirements. The Work shall be performed by properly licensed personnel to the extent required by Applicable Law and Professional Standards.

**4.3 Labor Matters.**

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

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 Generating Station Site and Contractor shall also 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 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, and shall maintain, good relations with the community in which the Generating Station Site is located and shall emphasize the importance of good community relations to its and Subcontractors' 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 and in a manner consistent with Project Requirements. 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 to receive and initiate all communications (other than Notices, which shall be made in accordance with Section 25.5) 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 ten (10) 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 is 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 Owner Engineer Design.**

Owner Engineer has full Design responsibility for the Owner Engineer Design (and Owner Engineer Design Documents). As soon as Contractor knows or reasonably should know that there is a defect, deficiency, or error in the Owner Engineer Design (and/or Owner Engineer Design Documents), Contractor shall immediately give notice thereof to Owner. Contractor shall not be entitled to any Adjustment with respect to any Change made by Owner to correct any such issues in the Design or Design Documents to the extent that the impact of the issues in the Design or Design Documents could have been avoided or mitigated by timely notice as required by this Section 4.7.1.

**4.7.2 Contractor Design.**

**4.7.2.1 Design Requirements.** Contractor has full Design responsibility for the performance of the Work (except for the Owner Engineer Design). Contractor shall engage all supervisors, engineers, designers, draftsmen, Subcontractors, and others necessary for the Contractor Design of the Work (including modification of the drawings of Existing Facilities as appropriate) and the preparation of all Contractor Design Documents. Contractor shall Design the Contractor Design in accordance with Project Requirements. During performance of the Work, Contractor shall upload to and maintain the Contractor 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-

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based database. Contractor will provide hard-copy Design Documents upon request.

**4.7.2.2 Reviews and Holds.** Contractor 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 Contractor 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 Contractor Design Documents or submittals. Contractor shall give due consideration to Owner's comments in the final version of the Contractor Design Documents or submittals. Contractor Design Documents will be deemed final when stamped by Contractor as "issued for permit or for construction," except to the extent such documents are subject to review, comment and approval in accordance with Exhibit X by Owner. Design Documents that are required to be certified or under seal shall be certified or sealed by professional engineers, licensed and qualified to perform engineering services in the applicable jurisdictions. In no event will any review, comment, or approval of 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 Defects, 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 in accordance with the provisions of **Exhibit A** which must include: quality assurance; management and control of the construction, procurement, and supply services; and management and control of Subcontractors and Subcontracts. Such plan must be designed to meet Project Requirements, include procedures for effective implementation, and must be submitted to Owner within thirty (30) Days of the Effective Date for Owner's review and approval. Contractor shall diligently revise the plan as necessary to obtain Owner's approval. Contractor shall also require Major Subcontractors to establish, implement, and maintain comparable quality control and safety programs with respect to their respective portions of the Work. Compliance with the quality assurance plan will not relieve Contractor of any duty, obligation or responsibility under this Agreement.

**4.9 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 in connection with the Work including telephone service, Internet service, Consumables, sanitary facilities, and waste and sewage disposal, including sanitary sewage, and wastewater disposal. Contractor's responsibility for payment shall include all rental, connection, removal, usage, and other costs or fees. Contractor shall provide its own information technology and telecommunications, cable, and satellite communications. Contractor shall be responsible for providing a first fill of all Consumables as well as refills and replacements during the period

prior to Substantial Completion. Contractor shall “top off” Consumables, as appropriate, immediately prior to Substantial Completion. Contractor shall use its best efforts to use the same products for Consumables that are used by Owner in the Existing Facilities.

**4.10 Equipment Subcontractor Presence.** Contractor shall be responsible for arranging and paying for any Equipment Subcontractor representative that it deems necessary to be present: (i) for installation supervision; (ii) for commissioning; or (iii) at any other time.

**4.11 Current Records; As-Built Survey.** Contractor shall maintain at the Job Site and provide to Owner current copies of the As-Built Survey updated as requested by Owner.

**4.12 Transportation and Storage.** Contractor shall arrange and pay for all packing, transportation, freight, unloading, storage, and transfer costs (including duties and other charges) of every kind and nature in connection with the Work. Equipment and other items that are stored at a location other than on the Generating Station Site shall be (i) stored in a manner consistent with the Project Requirements and only at locations that have been identified in writing to Owner and (ii) properly tagged and identified as Owner’s property and segregated from other goods not intended for use in, or in connection with, the Project. Contractor shall arrange for and ensure the security of all such items while in transport or in storage off or on the Job Site. Contractor shall be responsible for arranging all shipments of all Equipment to the Job Site and shall consign such shipments to itself as consignee at the project shipping address, costs 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 Equipment and shall coordinate with Owner the arrival, loading, unloading, and release of carriers’ equipment. If Contractor is unable to promptly unload its shipment, Contractor may notify Owner of such inability at least two (2) 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 Contractor shall reimburse Owner for reasonable expenses (including internal and Affiliate expenses as well as Third Party expenses) incurred in doing so.

**4.13 Operating and Maintenance Manuals.** Not Used.

**4.14 Control of Work.** Contractor shall be solely responsible for all Design and construction means, methods, techniques, sequences, procedures, quality assurance, and quality control programs in connection with the performance of the Work.

**4.15 Emergency Response.** At least forty-five (45) Days prior to Contractor’s mobilization to the Job Site, Contractor shall develop and provide to Owner an emergency response plan for use in connection with emergency situations that may occur on the Generating Station Site and arise out of its performance of (or failure to perform) the Work. Within fifteen (15) Business Days of its receipt of such 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 fifteen (15) Days of receipt of Owner’s comments, but in any event at least fifteen (15) Days prior to mobilization to the Job Site. If such an emergency situation occurs, Contractor may not rely on the services of emergency response teams of Owner and shall put its emergency response plan into effect and take such



other actions as are necessary to stabilize and ameliorate the situation. Immediately upon the occurrence of an emergency endangering human health or safety, including environmental harm, or material damage to property, Contractor shall: (i) implement its emergency response plan; (ii) without limiting its other reporting obligations hereunder, immediately orally notify an individual on the Emergency Notification List; (iii) cooperate with Owner by providing information, documentation, and reports as may be appropriate such that both Parties can (a) fulfill all reporting obligations required by Applicable Law and (b) implement procedures appropriate to avoiding a repetition of such occurrence; and (iv) if Owner's emergency response team is at the location of the emergency and informs Contractor's responding personnel that it is taking control of the response, Contractor shall assist as requested and not interfere with Owner's emergency response team.

**4.16 Local Conditions.** Information on the Generating Station Site, Job Site and the Units and Yard Systems that is 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 conditions relevant to the Work and its surroundings, and that it has investigated and satisfied itself as to the general and local conditions that can affect the Work, the Job Site, the Generating Station Site, the performance of the Work, or the construction, maintenance and operation of the Project, including: (i) conditions bearing upon access, egress, transportation, waste and water disposal, handling, laydown, parking, and storage; (ii) the availability, nature, and conditions of labor, materials, water, electric power, the Internet, other utilities, and roads; (iii) Physical Conditions; (iv) typical uncertainties of weather (*i.e.*, other than weather which constitutes a Force Majeure); (v) the availability and character of Construction Aids, Equipment or other facilities needed preliminary to and during the performance of the Work; (vi) the condition of the Existing Facilities; and (vii) the proximity of the Existing Facilities, local residences and businesses. Contractor has conducted a transportation survey to assess the circumstances affecting delivery of Equipment, Consumables, and Construction Aids to the Job Site and assumes the risks related to such delivery. Contractor acknowledges that craft labor and other individuals that are to be present on the Generating Station Site for the performance of all or any portion of the Work will be required to park at near-by and potentially remote locations on the Generating Station Site. Contractor shall provide transportation within the Generating Station Site for such individuals as necessary. Contractor assumes the risk of such conditions and the conditions of the Job Site and other portions of the Generating Station Site on which Work is to be performed as more particularly described in **Section 4.17**. Any failure by Contractor to take the actions described in this **Section 4.16** or **Section 4.17** will not relieve Contractor from responsibility for estimating properly the difficulty, time and cost of successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to Owner and without impact to the Major Contract Milestones. Contractor shall only be entitled to adjustments to Contract Price and Major Contract Milestones to the extent provided in **Articles 9 and 10**.

**4.17 Job Site Conditions.** Contractor has inspected the Job Site, the other portions of the Generating Station Site on which Work or access is to occur, the Existing Facilities, and surrounding locations and has had an opportunity to conduct such tests as it may desire, and has

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reviewed the information provided by or on behalf of Owner (copies of which are attached or referenced in **Exhibit S** and/or **Exhibit A**) relating to river water conditions and 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 other than the Work that is and will be undertaken on the Generating Station Site during the term of this Agreement and has taken the inherent constraints associated therewith into account in agreeing to the Major Contract Milestones and the Contract Price. Information provided to Contractor concerning the Job Site, other portions of the Generating Station Site, the Existing Facilities or surrounding areas, including the information provided in **Exhibit S** and/or **Exhibit A**, specifications, Design documentation or otherwise is made without representation or warranty of any kind or nature. Such information is not warranted by Owner to be accurate, complete, or otherwise suitable or sufficient for Contractor's purposes and is provided solely as a convenience to Contractor. Any reliance thereon by Contractor is at its sole risk. Contractor shall have a geotechnical investigation of the Job Sites performed within sixty (60) Days of the Effective Date for the first Subproject and within sixty (60) Days of mobilization for the second Subproject and provide a copy of the geotechnical report to Owner promptly when received from its geotechnical Subcontractor. Differing Conditions will neither be deemed nor constitute an Excusable Event Basis except to the extent that such Differing Conditions meet all three of the following criteria: (i) they are underground conditions, (ii) they are detailed in the geotechnical report referred to in the preceding sentence, and (iii) they are detailed in a written notice Contractor gives Owner within ninety (90) Days of the Effective Date for the first Subproject and within ninety (90) Days of mobilization for the second Subproject. Notwithstanding the foregoing, the discovery of Pre-Existing Hazardous Substances at the Job Site will be handled as provided in **Article 19**.

**4.18 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 X** (Submittals Reviews and Hold Points) and such other events as to which Owner gives Contractor notice. Contractor shall provide written notice to Owner of all events Owner is entitled to witness pursuant to the terms of Subcontracts with Major Subcontractors promptly upon execution of such agreements. Contractor shall provide Owner with reasonable notice (but not less than fifteen (15) Days in each instance) of the schedule of the occurrence of all such witness opportunities and with reasonable advance notice of any rescheduling of all such events. Contractor shall cause such events to appear on the Project Schedule.

**4.19 Use of Site.** Contractor's access to the Job Site and other portions of the Generating Station Site provided for in **Section 5.5.1** shall be subject to the restrictions set forth in **Section 5.5.1** and this **Section 4.19**. Access to perform Work on portions of the Generating Station Site outside of the Job Site will be on an as-needed basis as requested by Contractor

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sufficiently in advance of such needs to allow Owner to schedule such activities without adversely impacting the operations of or related to any of the Existing Facilities. Contractor shall be entitled to utilize the internal roadways of the Generating Station Site as indicated in **Exhibit S**. Such use is not exclusive and must not interfere with the ongoing operations of the Existing Facilities or other construction or maintenance activities affecting Existing Facilities. Any use of such roadways that could result in such interference shall be subject to the prior written approval of Owner. The Existing Facility includes electrical generation, switching, transmission, and/or distribution equipment serving the needs of ratepayers and other customers and supporting the electrical transmission grid. It is critical that the operation of the Existing Facility not be interfered with or otherwise impaired or put at risk except to the extent absolutely necessary for the performance of the Work (the preceding two sentences outline the “**Existing Facility Requirements**”). Even if such interference, impairment or risk is absolutely necessary, Contractor shall be required to coordinate its applicable activities with Owner so that Owner can act to anticipate difficulties that may thereby arise (and Contractor shall comply with Owner’s reasonable instruction such as requiring such activities take place at such times and in such a manner so as to reduce any adverse impact on Owner, ratepayers, other customers, and the electrical transmission grid). 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 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 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 forty-five (45) Days prior to Contractor’s mobilization to the Job Site, setting forth the procedures and guidelines to be implemented by Contractor, 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, Subcontractors, and their respective employees and invitees shall be subject to and shall strictly comply with the health, safety, and environmental protection procedures and regulations established by Owner, including the procedures and regulations set forth in **Exhibit H**, as they may be changed from time to time in the sole discretion of Owner. Failure to strictly comply with the requirements of **Exhibit H** shall be grounds for exclusion from the Job Site, the Generating Station Site or the Existing Facilities, at the sole discretion of Owner, and any adverse consequence thereof shall be borne by Contractor. In addition, Contractor shall:

- (i) use, and shall cause all Subcontractors and their respective employees to use, only such gate(s) for access to the Job Site, as identified in **Exhibit S**, except as otherwise designated by Owner. Contractor shall not load, or permit to be loaded, any part of the Work in such fashion that may damage any part of the Work or

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- endanger safety. Equipment, Consumables, and Construction Aids must be received, stored and routed, and all waste and demolition debris shall be routed and stockpiled in strict accordance with the Job Site coordination plan prepared by Contractor and approved by Owner, as described above;
- (ii) be responsible for the security of the Work and the Job Site, it being acknowledged by Contractor that neither Contractor nor Subcontractors are entitled to rely on any security measures or procedures in place at the Generating Station Site for the protection of individuals or property;
  - (iii) at least forty-five (45) Days prior to Contractor's mobilization to the Job Site, Contractor shall develop and provide to Owner a temporary facilities plan. Within fifteen (15) Business Days of its receipt of such 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 at least fifteen (15) Days prior to mobilization to the Job Site. Thereafter, Contractor shall implement the provisions of the plan, confine temporary structures, machinery, and other property of Contractor (and Subcontractors), and the storage of Equipment, 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 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, maintenance, and other 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 or perform any Work that would be considered "heavy construction" except on Business Days between the hours of 6 a.m. to 7 p.m. Contractor shall not schedule deliveries during hours that school bus transportation is scheduled to utilize roads in the general vicinity of the Generating Station Site. Contractor shall strictly comply with all applicable sound regulations or restrictions

imposed by Applicable Law to which the construction activity, the Work, or the Existing Facility is subject;

- (vi) no less than forty-five (45) Days prior to Contractor's mobilization to the Job Site, Contractor shall provide to Owner a construction environmental control plan in connection with the Work for the purpose of properly managing the sediment control, erosion, visible dust, storm water runoff, noise, and other adverse environmental impacts of construction, all in conformance with the Project Requirements. Within fifteen (15) 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 which Contractor shall submit to Owner no less than fifteen (15) Days prior to the date on which Contractor mobilizes to the Job Site. Thereafter, Contractor shall implement the provisions of the plan; and
- (vii) no less than forty-five (45) Days prior to Contractor's mobilization to the Job Site (but in any case at least fifteen (15) Days prior to bringing any Hazardous Substances onto the Job Site), Contractor shall provide to Owner a Hazardous Substances management plan ("**Hazardous Substances Management Plan**") that it will vigilantly implement during performance of the Work on any portion of the Generating Station Site. Such plan, at a minimum, must incorporate the Generating Station policies and procedures and require Contractor to cooperate and coordinate with Owner. Within fifteen (15) 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 which Contractor shall submit to Owner no less than fifteen (15) Days prior to the earlier to occur of bringing any Hazardous Substances onto the Job Site or the date on which Contractor mobilizes to the Job Site. Thereafter, Contractor shall implement the provisions of the plan.

**4.20 Compliance with Applicable Law.** Contractor shall comply, and shall cause Subcontractors to comply, with Applicable Law in effect from time to time relating to the Work and/or the Project, and shall give all applicable notices pertaining thereto. Contractor shall ensure that the Project, as constructed, complies and, when fully integrated into the Units and Yard Systems and operated in accordance with Prudent Utility Practices, will be capable of complying with Applicable Law.

**4.21 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.

**4.22 Periodic Reports and Meetings.**

**4.22.1 Monthly Status Report.** Within ten (10) Days after the end of each Month after the Effective Date, Contractor shall prepare and submit to Owner a status report,

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covering the previous Month, that will be prepared in a manner, level of detail, and format acceptable to Owner and that must include: (i) a detailed description of the progress of the Work and activity status, including a critical path method chart illustrating the progress which has been made during the Month which is the subject of the status report together with an updated Project Schedule pursuant **Section 6.3** and a comparison of the updated Project Schedule with the Project Schedule provided with the immediately previous monthly status report; (ii) a statement of any significant issues and trends, including Adjustments for Change Orders, Change Determination Requests and claims related to Excusable Events 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 thirty (30) Days; (v) a description and status of quality assurance issues identified by Contractor, a Subcontractor or Owner; (vi) status of significant Equipment deliveries; (vii) 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; (viii) the Monthly reports required pursuant to **Section 25.24.3**, (ix) the information required by **Section 11.3**; (x) the report required by **Section 10.4**, and (xi) such additional information reasonably requested by Owner. Contractor shall also comply with the requirements of **Exhibit M**.

**4.22.2 Attendance and Participation.** Until Final Completion of the last Subproject to achieve 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. So long as procurement of Equipment has not been completed, there shall be one meeting at least each Month (with the first meeting occurring within thirty (30) Days of the Effective Date) at which the status and planning of Contractor's procurement effort (including with respect to **Section 25.23**) is discussed with Owner. 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 for Owner's comments, which Contractor shall incorporate into the notes. Publication or distribution of (or Owner's comments on) notes of such meetings shall neither constitute a notice pursuant to **Section 25.5** for any purpose under this Agreement nor a waiver, Modification, or other 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.

**4.23 Signage.** Contractor shall not display, install, erect, or maintain any advertising or other signage at the 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.

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**4.24 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 Substantial Completion 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. Contractor shall deliver spare parts (other than commissioning spares) to storage locations specified by Owner. Contractor shall implement all necessary precautions for proper storage. 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 and expedite an order to replace the spare parts it uses immediately and any such parts shall be replaced DDP (Incoterms 2010) Job Site as soon as possible at Contractor's expense. For each Subproject, Contractor shall provide to Owner a list of strategic and other spare parts that Contractor and Subcontractors recommend be purchased to reliably maintain the Subproject. The spare parts list shall identify for each such part the price (which shall be valid for no less than twelve (12) Months after Substantial Completion), the manufacturer and other vendors, the manufacturer's part name and the manufacturer's part number, expected shelf and useful lives, typical delivery lead times, and such other information reasonably requested by Owner. Such list shall be delivered no later than one hundred eighty (180) Days prior to the scheduled Substantial Completion Date of the applicable Subproject. Contractor agrees to purchase additional spare parts requested by Owner that are not included in the Technical Specification. The actual cost of such spare parts will be charged to Owner. Contractor will cooperate with Owner to determine the best pricing for obtaining spare parts. The decision of whether and what spare or replacement parts Owner is to purchase is Owner's alone.

**4.25 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, docks, waterways, 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 Generating Station Site (and the Job Site) and shall comply with those requirements. Contractor shall be deemed to have satisfied itself as to and shall be fully responsible for the routing for deliveries of Equipment, Consumables, and Construction Aids, including delivery of heavy, large, or oversize loads to the Generating Station Site or the Job Site, as appropriate.

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

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**4.27 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.

**4.28 Cleaning Up.** Contractor shall, at all times during the term of this Agreement, keep the Job Site, other portions of the 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, parking, and borrow areas in a clean and non-hazardous condition free from damage caused by rain water, and shall employ adequate dust control measures to ensure no visible dust results directly or indirectly from the performance of Work. Contractor must provide adequate tire washing facilities for trucks leaving the Job Site and/or the Generating Station Site. Contractor shall properly maintain Equipment 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 Generating Station Site that are adversely affected by Contractor (or Subcontractors) and their employees, agents and representatives' construction activities or traffic, as needed. Hazardous Substances, including chemicals used by Contractor or Subcontractors, must be properly handled and must be properly disposed of off of the Generating Station Site. Prior to Final Completion of the last Subproject to achieve Final Completion, Contractor shall clean up and restore the entire Job Site (including laydown, parking, and construction areas), including, the removal of all tools, trailers, surplus, temporary power cables, laydown gravel, waste materials and rubbish, and cleaning of all glass (inside and out), removal of 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 Generating Station Site where Work was performed or otherwise utilized by Contractor neat and clean. If Contractor fails to take the actions required by this Section 4.28, Owner may do so (or cause it to be done) and the cost thereof will be charged to Contractor.

**4.29 Waste Disposal.** Contractor is responsible for disposal of all wastes generated by it or Subcontractors during the performance of the Work, including Hazardous Substances, waste water, sanitary wastes, demolition debris, construction debris, spoil, surplus excavation material, driven water, office wastes, and wastes related to preparation, commissioning, testing, and start-up of Equipment. Whenever feasible, Contractor shall recycle waste metal (e.g., steel metals, pipe and copper) and all proceeds from such recycling shall be credited to the Owner. All such wastes must be handled, stored, or disposed of in accordance with Applicable Law in a suitable off-site location except to the extent otherwise directed by Owner in writing. All costs related to such waste disposal are the responsibility of Contractor.

**4.30 Water Control.** Contractor shall carry out all dewatering, storm water control drainage, pumping, and disposal required to keep the Work dry during performance of the Work. Contractor shall properly dispose of Hazardous Substances (including site soils or water that may be contaminated), waste materials, trash, or rubbish in compliance with Applicable Law.

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Contractor shall not discharge contaminated water into any area that will pollute a natural stream or body of water. No discharge of contaminated water may be permitted to cause contamination of soil, natural streams or other bodies of water (whether documented or undocumented) in violation of any Applicable Law.

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

**4.32 Deliveries by Truck.** Contractor shall provide Owner with reasonable advance notice of any delivery of Equipment that is to arrive by truck and is oversized or is extraordinary in any other material way.

**4.33 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.

**4.34 Release.** Contractor is responsible for making all investigations and determinations necessary or desirable for it to enter into this Agreement. Contractor hereby releases Owner from any and all Liabilities in any way arising out of any information, document, statement or report related to the Existing Facilities, the Job Site or the Generating Station Site. Contractor expressly disclaims any entitlement to any Modification based on its reliance on information, actions or omissions or Owner with respect to any information, document, statement or report related to the Existing Facilities, the Job Site or the Generating Station Site set forth herein or otherwise provided by or on behalf of Owner.

**4.35 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 (and allowing Owner to conduct any inspection) required pursuant to this Agreement and (ii) allowing Owner to inspect such Work if a Hold Point has been established in relation to such Work. If any Work is covered or made inaccessible for testing or inspection in violation of the previous sentence, Contractor shall uncover (or make accessible) such Work and pay all costs resulting therefrom, including recovering or reinstallation costs. There will be no adjustment to the Contract Price or Major Contract Milestones or other Modification in connection therewith. In addition, if Owner request to inspect any other portion of the Work (including foundations) that have been covered or otherwise made inaccessible, Contractor shall uncover it or otherwise make it accessible for inspection and (i) if such portion of Work is in accordance with the requirements of this Agreement, such uncovering and replacement will constitute an Excusable Event Basis and (ii) if such portion of Work is not in accordance with the requirements of this Agreement, Contractor shall pay all costs related to such uncovering and replacement and there

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will be no adjustment to the Contract Price or Major Contract Milestones or other Modification in connection therewith.

**4.36 Administrative Facilities.** Contractor shall provide adequate furnished office facilities for Owner’s personnel in Contractor’s offices in Hillsborough, North Carolina during the Design and procurement phase of the Work. Contractor shall provide temporary office facilities for itself and the Subcontractors on the Generating Station Site. Such facilities, together with office equipment, sanitary facilities, and communications services are to be provided in accordance with the Technical Specification.

**4.37 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.



**4.39 Documentation Requirements or Standards.** Contractor shall provide the As-Built Survey in accordance with documents contained in Exhibits A and X.

**4.40 Basis of Bid.** On or before the Effective Date, Contractor made available to Owner a detailed line-item estimate of the Work that constitutes the agreed upon basis for the Contract Price and the schedule for the performance of the Work (the “Basis of Bid”). Owner and Contractor have initialed each page thereof for identification. Contractor represents that the Basis of Bid constitutes the most detailed analysis and pricing and schedule build-up used by Contractor for determining its proposed pricing submitted in response to Owner’s request for quotation (updated to reflect any changes from Contractor’s original quotation so that the Basis of Bid reconciles in total to the Contract Price and Major Contract Milestones), including the detail for each and every direct and indirect estimated cost and mark-up (e.g., margin, contingency, etc.). From and after the Effective Date, Contractor shall provide Owner’s personnel (or their designees) with unlimited access to the Basis of Bid, which access, upon

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Contractor's mobilization to the Job Site shall be at the Job Site. Contractor shall supplement the Basis of Bid from time to time to reflect any Modifications.

**4.41 Construction Equipment.** Contractor shall ensure that all construction equipment used in the performance of the Work on the Job Site shall be in first-class operating condition, safe, fit for the uses for which intended and suitable for the safe, legal and efficient performance of the Work and protection of the environment. Any such equipment that is not conforming with the foregoing shall be promptly removed by Contractor, and replaced with proper equipment.

## ARTICLE 5

### OWNER RIGHTS, DUTIES AND 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 shall 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 (other than Notices, which shall be made in accordance with **Section 25.5**) 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 A** and **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 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 shall provide to Contractor the items listed in **Exhibit Q** in the quantities listed in **Exhibit Q**. Additional quantities shall be made available by Owner, subject to availability, at Contractor's expense. There are no other items to be provided by Owner, including items necessary for start-up.

**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 use or draw on any of the Contract Security) any amounts actually due to Owner from Contractor as a result of any Liabilities or unfulfilled obligations 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, other portions of the Generating Station Site, and the Existing Facilities on which Work is to be performed to Contractor and Subcontractors, subject to Applicable Law,

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applicable Generating Station Site regulations, the concurrent use by Owner and its contractors to operate, maintain, modify and otherwise utilize the 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 a portion of the Work is Defective, Contractor defaults under this Agreement, or otherwise neglects to carry out the Work in accordance with this Agreement and fails within a seven (7) Day period after receipt of written notice from Owner to commence and diligently continue curing such Defect, default, or neglect, 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 Defect, default, or neglect at Contractor's expense (including Owner's internal, general, and administrative expenses) and Owner shall have the right to: (i) deduct an amount equal to the amounts incurred by Owner in so doing from amounts due or to become due to Contractor; (ii) use or draw on the Contract Security for such amounts; and/or (iii) obtain reimbursement of such amounts from Contractor. The correction of a Defect, default, or neglect by Owner pursuant to the previous sentence will not limit or void Contractor's warranty; **provided**, the correction of such Defect, default, or neglect by Owner is in accordance with Contractor's reasonable recommendations or, in the absence thereof, Prudent Utility Practices.

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

**5.9 Operating Personnel.** At such time as Contractor has achieved Substantial Completion, Owner shall operate the Project with its normal complement of personnel working normally scheduled shifts. If Contractor desires or needs to have additional technical personnel and/or special monitoring or measuring equipment for any tests, then Contractor shall furnish such personnel or equipment at no cost to Owner.

**5.10 System Needs.** Each of the Units is a critical generating resource for Owner and must be continually available for full operation, including after each Tie-in commences. Thus, Contractor shall plan and implement its Work in such a fashion to ensure that the Units and Yard Systems can be so continually operated and that the Project shall achieve Substantial Completion by the Guaranteed Substantial Completion Date.

**5.11 Contractor's Personnel.** Owner has the right to object to any representative or Person employed or otherwise engaged by Contractor that engages in misconduct, is believed by

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Owner to lack competence for the tasks assigned, or to be disruptive or negligent while on the Job Site or the Generating Station Site. Contractor shall remove such Person from the Job Site or the Generating Station Site, as applicable, upon receipt of Owner's notification to Contractor's Representative. Any cost for replacement Persons will be at Contractor's expense. The rights of Owner under this Section 5.11 are in addition to the rights of Owner with respect to the personnel pursuant to Section 4.6.

**ARTICLE 6**

**PROJECT SCHEDULE**

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**ARTICLE 7**

**LIQUIDATED DAMAGES AND LIABILITY LIMITATIONS**

[REDACTED]

[REDACTED]

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**ARTICLE 8**

**CONTRACTOR'S COMPENSATION**

**8.1 Contract Price.** Owner shall pay Contractor for the due, proper, and complete performance of the Work as required hereunder and for the due performance of all other obligations and duties imposed upon Contractor pursuant to this Agreement a lump sum amount (the "Contract Price") of [REDACTED] Dollars. The Contract Price shall only be adjusted, (i) with respect to Change Orders and Excusable Events pursuant to **Articles 9 or 10**, and (ii) as set forth in Section 8.1.1. Contractor shall receive the Contract Price as full compensation for the performance of the Work and its other obligations hereunder whether or not Contractor has properly estimated or anticipated the costs required to fully perform its obligations under this Agreement.

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**8.2 Taxes.**

8.2.1 Tax Cooperation and Information. Contractor shall pay all payroll and other related employment compensation taxes for Contractor’s employees; federal, state and other taxes that may be assessed on Contractor’s net income, net worth, license, privilege, or gross receipts (other than taxes that are designated as sales or use taxes) arising from this Agreement; taxes, duties, excise fees, and other costs associated with the importation or exportation of Equipment, Consumables, Construction Aids, or services; other fees, royalties and assessments of any nature in connection with the Work, contributions and taxes for which Contractor is liable under **Sections 8.2.3 and 8.2.6**, and engineering and business license costs (collectively, the “**Contractor Taxes**”). Sales or use taxes required under Applicable Laws to be (i) collected by Contractor from Owner, or (ii) paid by Contractor or any Subcontractor (and for which no exemption is available) in connection with purchases or sales of Equipment or Consumables required for performance of the Work, (collectively “**Sales Taxes**”) including sales or use taxes on Equipment and Consumables provided by Contractor, shall be administered by Contractor in accordance with **Sections 8.2.4 and 8.2.6**. The Contract Price includes Contractor Taxes and excludes Sales Taxes (other than those included in Contractor Taxes). Contractor shall be reimbursed for the full amount of Sales Taxes (other than those included in Contractor Taxes) properly paid by Contractor or Subcontractors in accordance with this Agreement on a Monthly basis at the time Contractor receives payments pursuant to **Section 8.5**, subject to the documentation requirements of **Section 8.6**.

8.2.2 Subcontractors. Owner will not have any responsibility whatsoever with respect to taxes assessed against, paid, or deemed to be paid by Subcontractors.

8.2.3 Taxes Related to Employment of Persons. Contractor accepts full and exclusive liability for the payment of any and all contributions, taxes or assessments that are measured by wages, salaries, or other remunerations paid to Persons employed by Contractor or Subcontractors for the Work, or which arise by virtue of their employment,

and which now or hereafter are imposed by any Governmental Authority. Such contributions or taxes shall include those for unemployment insurance, social security insurance, workers' compensation, old age retirement benefits and other payroll taxes of any kind. Contractor shall comply with Applicable Law relating to such subjects and shall fully reimburse Owner for any of such taxes or contributions that Owner may be required to pay.

**8.2.4 Sales and Use Taxes.** Certain items of Equipment and Consumables purchased in the performance of the Work may be exempt from Sales Taxes in accordance with KRS 139.470 and KRS 139.480 and any successor provisions or similar provisions. Owner is responsible for notifying Contractor in a timely manner as to the nature of items that are exempt from Sales Taxes and, upon Contractor's request, Owner will promptly provide Contractor with tax exemption certificates which, when properly utilized by Contractor, will allow Contractor to purchase such items from Subcontractors without payment of Sales Taxes. Contractor shall present such certificate to the Subcontractor on a timely basis as needed to qualify for the applicable exemption.

**8.2.5 Indemnity and Assessment.** Owner shall defend and indemnify and hold Contractor harmless from and against any and all Claims for, and resulting liability for Sales Taxes and related penalties and interest, and any dispute resolution costs and attorneys' fees that may be asserted on all items which Contractor purchased under resale or other exemption certificates provided by Owner and for which Sales Taxes are later assessed by Governmental Authorities; **provided**, that any resulting liability is not caused by the act or omission of Contractor. With Contractor's consent, Owner, at its own expense, will have the right to direct the basis on which any tax assessment will be paid or contested and to control any contest leading to the settlement of assessed taxes. Notwithstanding anything to the contrary herein, Owner retains the right to choose the attorneys who will represent Contractor or Owner's interests regarding any tax assessments and/or litigation. Contractor shall cooperate with Owner in connection with any audit or contest.

**8.2.6 Other Taxes.** Contractor shall be responsible for any taxes on Construction Aids used in the performance of the Work. Owner shall be responsible for property taxes, if any, on Equipment and Consumables purchased by Contractor on behalf of Owner from and after delivery to the Job Site.

**8.2.7 Tax and Accounting Information.** Contractor shall provide assistance as reasonably requested by Owner or its tax consultant(s), in confirming eligibility and qualification for exemptions from Sales Taxes (and any other exemptions, deductions, credits and the like) to the relevant Governmental Authorities. From time to time during the term of this Agreement and within thirty (30) Days of a request therefor, Contractor shall provide Owner with information, including regarding quantities, descriptions, costs, and allocations of property acquired in connection with the Work as reasonably requested by Owner in connection with the preparation of Owner's tax returns, Owner's defense of its tax treatment of such items, for the purpose of satisfying regulatory requirements or as otherwise required in connection with calculating, obtaining exemption from, or rebate of,

Sales Tax. Contractor agrees to participate in any Sales Taxes exemption or other exemption or rebate programs identified by Owner, to complete and deliver the applicable documentation to obtain tax-exemption for purchases made by Contractor, including for Equipment, and to pass any Sales Tax savings or rebates through to Owner.

**8.3 Progress Payments.** Owner shall pay Contractor for the Work in Monthly installments based upon the full and verified completion of milestones in accordance with **Exhibit C**, not to exceed the applicable maximum Monthly amounts set forth in **Exhibit C** for each Month. If there is a change to the Contract Price or Major Contract Milestones pursuant to **Articles 9 and 10**, the Parties will equitably adjust **Exhibit C** as may be appropriate. In addition to milestone payments, Applications for Payment shall include all amounts due Contractor for any Work performed by Contractor for which under this Agreement Contractor is entitled to compensation on a time and material or similar basis of compensation. For purposes of determining Contractor’s compensation for such Work, Contractor’s cost 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.

**8.4 Application for Payment.** On or before the tenth (10th) Day of each Month, Contractor shall furnish Owner with an Application for Payment for (i) amounts that have come due under this Agreement for Work completed through the last Day of the previous Month, accompanied by the items required by **Section 8.6** and (ii) other amounts that have come due under this Agreement, accompanied by substantiating data. Each Application for Payment submitted by Contractor that seeks payment for Work involving the removal, alteration, or destruction of any portion of the Existing Facilities, including any of the Units, must separately identify: (i) Unit involved, (ii) the removal, alteration, or destruction Work performed, and (iii) the portion of the Contract Price associated with such removal, alteration, or destruction. Applications for Payment shall be furnished to Owner as follows (or as Owner otherwise designates from time to time by written notice to Contractor):

Original:



Copy:



**8.5 Payment of Substantiated Amount.** Owner shall pay Contractor the amount of each Application for Payment which has been substantiated by Owner, less amounts properly withheld hereunder. Owner shall make such payment within thirty (30) Days after receipt of the complete Application for Payment, subject to the provisions of this **Article 8**. If Owner fails to

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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 thirty (30) Days after receipt of the completed Application for Payment. Payments made to Contractor in respect of Work performed by Subcontractors constitute trust funds for such Subcontractors and shall not be commingled by Contractor with other funds of Contractor or its Affiliates.

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

- (i) a duly executed or acknowledged Contractor's certification stating that: (a) all Subcontractors have been paid amounts properly due under their respective Subcontracts and identifying all Major Subcontractors with whom Contractor has entered into Subcontracts; (b) the applicable Work has been performed in accordance with and complies with this Agreement; (c) it has reviewed all financial information contained in the Application for Payment and it is true, correct and complete; (d) no Liens or Claims have been filed or commenced in connection with the Work, and (e) no Excusable Event Basis has occurred since the previous Application for Payment;
- (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; for any Work performed by Contractor for which under this Agreement Adjustments to the Contract Price and/or Major Contract Milestones are to be made but Contractor and Owner have not agreed to both a lump sum Contract Price Adjustment and a fixed Major Contract Milestone Adjustment, Contractor shall submit to Owner a detailed breakdown in a form reasonably acceptable to Owner substantiating the (a) Amount of such Adjustments with respect to the applicable Work performed (or eliminated) during the Month and (b) any amount due with respect thereto;
- (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, each in the forms set forth in **Exhibit F-5**;

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- (iv) a copy of the status report pursuant to **Section 4.22.1** for the Month covered by the Application for Payment;
- (v) a copy of all invoices pursuant to which Contractor has paid Sales Taxes for which it seeks reimbursement; and
- (vi) such other information, documents, and other materials: (a) reasonably requested by Owner or required by this Agreement or (b) as may be required by the laws or customs of the jurisdiction in which the Job Site is located in order to protect the owners of the Generating Station Site from Liens or Liabilities.

**8.7 Accrual Notification.** For Owner’s accounting purposes only, by 12:00 PM (Louisville, Kentucky time) on the last Business Day of each Month Contractor shall e-mail Owner (i) a list of all Work (e.g., milestones) that has or will be completed that Month for which Contractor will be entitled to submit an Application for Payment the next Month and the amounts that will become due with respect thereto and (ii) such other information that Owner may reasonably request. The email shall be sent to:

[REDACTED]

with a copy to:

[REDACTED]

**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 use or draw upon the Contract Security) 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 any Defect not yet corrected by Contractor whether or not payment for such Work pursuant to **Section 8.5** has been previously made.

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Contractor may include such amounts withheld in the next regular Application for Payment made after correction or completion of such Work;

- (iv) an amount equal to [REDACTED] of the cost for a Third Party to complete outstanding Punch List Items. Amounts withheld for completion of Punch List Items may be included by Contractor in the Application for Payment immediately following satisfactory completion of such Punch List Items; or
- (v) Liens filed or Claims commenced by any Person that has performed a portion of the Work unless Contractor has furnished an acceptable bond in an amount equal to [REDACTED] of the amount of such Lien or Claim to protect Owner against such Liens and/or Claims; or
- (vi) the failure of Contractor to properly maintain the Performance Securities (see Section 8.12.1).

## 8.9 Final Payment.

8.9.1 Reconciliation. As a condition of final payment hereunder with respect to each Subproject, Contractor shall have submitted a statement summarizing and reconciling with respect to each Subproject all previous Applications for Payment, payments by Owner, and Change Orders, adjustments on account of Excusable Events, and the status of Contract Security. Subject to the provisions of this Agreement, within thirty (30) Days of the receipt of such statement, Owner shall pay Contractor all remaining amounts due with respect to that Subproject. 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 Subcontractor warranties, Operating and Maintenance Manuals, electrical drawings and schematic diagrams, Design Documents, performance testing data, As-Built Surveys and such other items as are required by this Agreement; (iii) all certificates of occupancy, 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, including the Project) not previously made in writing by Contractor. Owner shall make final payment to Contractor within thirty (30) Days after the date that all of the preceding matters have been completed or have otherwise occurred.

8.9.2 Release. As a condition of final payment for each Subproject, Contractor shall submit to Owner a general release and an affidavit, in form and substance satisfactory to Owner, that releases all Claims of Contractor under the Agreement and represents that all indebtedness connected with the Work for which Owner or its property might in any way be responsible has been paid, waived or otherwise satisfied; but if any such indebtedness has not been satisfied, Contractor may satisfy this obligation if it furnishes a bond reasonably satisfactory to Owner to indemnify Owner against any such item of responsibility or obligation.

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**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 for that Subproject.

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

**8.11 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. Owner shall also be entitled to exercise its rights under **Section 5.4** or **Section 8.12.1** on account thereof. Upon reasonable prior notice, Owner reserves the right to make payments due hereunder directly to Subcontractors from and after such time as Contractor (i) fails to make any payment to a Subcontractor that is properly due or (ii) upon Owner's request, fails to provide adequate assurances that Contractor's financial condition is sufficient to continue to pay such amounts as and when they become due without financial risk to Owner. The amount of any such payment made by Owner directly to Subcontractors shall be reimbursed by Contractor or, at Owner's option, it may be credited against any payments otherwise due from Owner to Contractor or deducted from the Contract Security.

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**8.13 Release of Contract Security.** Upon the occurrence of the following events, Contractor may request by written notice that the corresponding Performance Security (and/or the applicable cash Contract Security) be released and returned to Contractor:

- (i) Achievement of Final Completion of Subproject 1: Phase One Performance Security
- (ii) Achievement of Final Completion of Subproject 2: Phase Two Performance Security

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- (iii) Expiration of the final Warranty Period to expire: Phase Three Performance Security.

Each such notice must also certify that the Contract Security Release Conditions have been met. Within ten (10) Days following Contractor's request, Owner shall determine whether the Contract Security Release Conditions have been met, and if so, approve such request. Upon approval, Owner will promptly release and return to Contractor the applicable Contract Security.

**8.14 Overpayment.** Any overpayment by Owner to Contractor shall be deemed to be a mistake of fact and promptly repaid to Owner upon demand within five (5) Days.

**8.15 Tax and Accounting Information.** Contractor shall provide tax and accounting information for each Subproject reasonably requested by Owner with respect to the Work and Equipment, including information required for submission to Governmental Authorities, cost breakdowns of the Contract Price in accordance with **Exhibit W**, and the other systems of accounts provided by Owner.

## ARTICLE 9

### EXCUSABLE EVENTS AND OWNER-INITIATED CHANGES

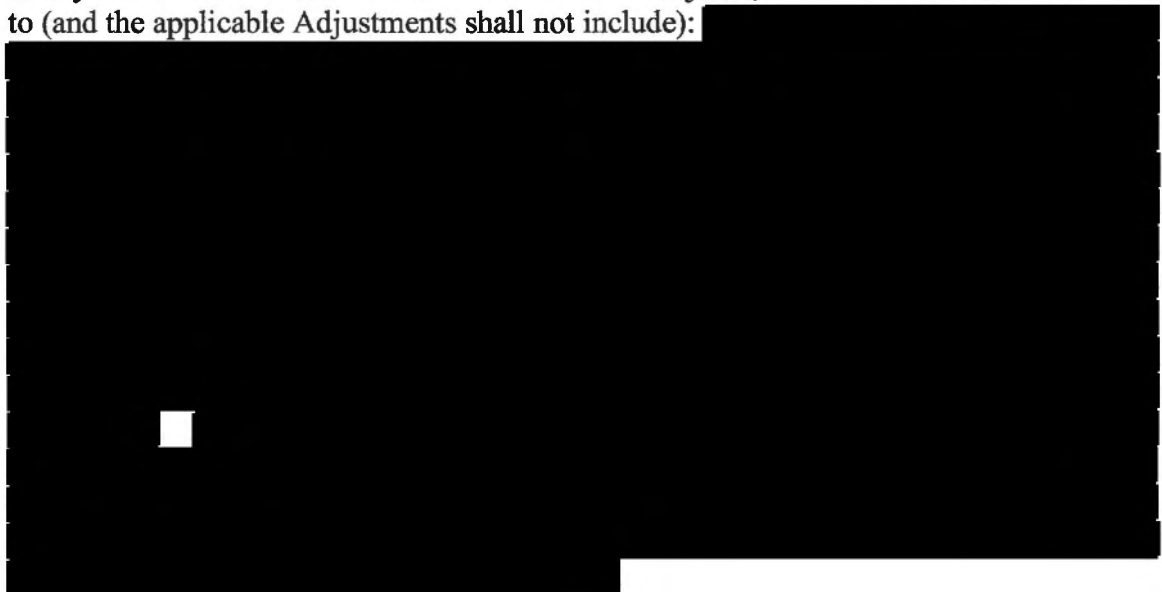
#### 9.1 Excusable Events.

9.1.1 Notice. This **Section 9.1** sets forth the terms and conditions for Contractor to obtain relief with respect to impacts caused by an Excusable Event. Contractor shall give notice ("**Excusable Event Notice**") to Owner not more than five (5) Days after the occurrence of any Excusable Event Basis for which it may be entitled to seek relief. The Excusable Event Notice must be given by Contractor before proceeding to execute any additional Work occasioned by the Excusable Event, except as provided in **Section 9.1.3**. Contractor will not be entitled to reimbursement or other recovery for any additional Work related to the Excusable Event Basis performed prior to the receipt by Owner of the applicable Excusable Event Notice except as provided in **Section 9.1.3**. The Excusable Event Notice will, to the extent practicable include the following analyses: (i) the specific nature of the occurrence and detail of the efforts Contractor has made or is going to make to overcome or remove the Excusable Event Basis and to minimize the potential adverse impact resulting from such Excusable Event Basis; (ii) the specific reasons why Contractor believes it is entitled to any Adjustment; and (iii) an initial assessment of the Adjustments to which Contractor may be entitled by reason of such Excusable Event Basis. Within fifteen (15) Days after the occurrence of any Excusable Event Basis for which it may be entitled to seek relief, Contractor shall provide Owner with a full impact analysis detailing the impact of the occurrence, its recovery plan and a detailed estimate of any Adjustments. If it is not reasonably possible to provide a full impact analysis (including establishing the basis for and the amount of any Adjustment) within such fifteen (15) Day period, Contractor shall provide all information reasonably possible and will have up to but not exceeding thirty (30) additional Days to submit its full impact analysis. Any impact not described with particularity within the periods set forth above is waived. Strict compliance

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with this **Section 9.1** is a condition precedent to the establishment of an Excusable Event. Subject to **Section 9.1.2**, Contractor will be entitled to an Adjustment to the extent that such Excusable Event Basis constitutes an Excusable Event; **provided, however**, that Contractor shall not be entitled to any increase to the Contract Price with respect to any loss or damage to the Work for which Contractor bears the risk of loss pursuant to **Section 22.3** (except for any uninsured delay impact costs). Failure by Contractor to timely give the required Excusable Event Notice and full impact analysis will preclude Contractor's right to invoke the protection of this **Article 9**. If within a reasonable time after an Excusable Event Basis has caused Contractor to suspend or delay performance of the Work, Contractor has failed to take such action as Contractor could lawfully and reasonably initiate to remove or relieve either the Excusable Event Basis, or its direct or indirect effects, Owner may, in its sole discretion and after notice to Contractor, at Contractor's expense, initiate such reasonable measures as will be designed to remove or relieve such Excusable Event Basis, or its direct or indirect effects, and thereafter require Contractor to resume full or partial performance of the Work. If, pursuant to **Article 10**, Owner and Contractor agree to a lump sum, fixed schedule (or any other determination of) the applicable Adjustments for an Excusable Event, such Adjustments shall be set forth in a Change Order signed by the Parties.

9.1.2 Rights Limited. The rights and remedies set forth in this **Section 9.1** and **Article 10** constitute Contractor's sole and exclusive rights and remedies in the event of an occurrence of an Excusable Event, and Contractor hereby waives all other rights and remedies at law and/or in equity that it might otherwise have against Owner on account of an Excusable Event Basis. Notwithstanding anything to the contrary herein, with respect to any Excusable Event that is an event of Force Majeure, Contractor will not be entitled to (and the applicable Adjustments shall not include):



9.1.3 Emergencies. Contractor shall take reasonable actions to prevent, mitigate and otherwise minimize actual or imminently threatened damage, injury and loss to individuals or property during the performance of the Work. If, emergency conditions arise

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and damage, injury and loss to individuals or properties occurs or is imminently threatened, Contractor will not be barred from obtaining relief pursuant to this **Section 9.1** if such reasonable actions were necessary prior to providing the Excusable Event Notice to Owner; **provided**, that Contractor thereafter complies with the requirements of **Section 9.1.1** and Owner is notified of such emergency as soon as possible.

## 9.2 Owner-Initiated Changes.

9.2.1 Changes. Owner may, from time to time, without invalidating this Agreement, order by written notice given to Contractor (a “**Change Order**”) changes in the Work (including additions to or deletions of portions of the Work and changes in the quality of, function of, execution of, time for, or sequence of, all or any portion of the Work) (“**Changes**”). If any such Change causes an increase or decrease in the cost of, or timing required to provide, the Work, an Adjustment shall be made.

9.2.2 Change Determination Requests. Owner may by notification in writing to Contractor initiate the process to determine the applicable Adjustment for Changes that Owner is contemplating ordering (a “**Change Determination Request**”). Each Change Determination Request will be accompanied by a description of the contemplated Changes. By issuing a Change Determination Request, Owner does not obligate itself to order the described Changes, regardless of whether the Parties reach an agreement as to the applicable Adjustments. Owner may issue a Change Order regardless of whether Owner has previously issued a Change Determination Request for some or all of the applicable Changes or whether, having issued a Change Determination Request, the Parties have agreed to any or all of the applicable Adjustments.

9.2.3 Change Order Documentation. Contractor shall not perform any Change until a Change Order has been issued therefor. All Change Orders shall be in the form of **Exhibit F-3** or such other form that states explicitly and prominently that it constitutes a Change Order under this Agreement. Each Change Order shall be effective on the date when signed on behalf of the Owner and given to Contractor pursuant to **Section 25.5**. Contractor will countersign one copy or counterpart of the Change Order and return it to Owner on receipt. Upon the effectiveness of a Change Order, the Work shall be changed as stated therein and Contractor shall perform the Work as so changed in accordance with and subject to all of the terms of this Agreement. If the Parties have not agreed to the applicable Adjustments, the Change Order shall not state any Adjustments and the Adjustments shall be determined thereafter pursuant to the Adjustments Methodology. Once the Parties have agreed to the Adjustments, the Change Order shall be amended to state such Adjustments and Contractor and Owner shall both sign and deliver such amendment to each other. Unless a Change Order explicitly provides to the contrary, the signature and delivery by Contractor and Owner of a Change Order (either the original version or a subsequently amended one) that states any Adjustments shall constitute the legal and binding agreement among them that such stated Adjustments are the sole and exclusive Adjustments and consideration to which any of them are entitled in connection with the Changes described therein. Contractor may not suspend, in whole or in part, performance of the Work with respect to any Dispute over Adjustments or Change Orders

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or the review and negotiation of any Adjustments unless directed to do so by Owner. If there is a Dispute of whether any item is in or out of the scope of Work required of Contractor under this Agreement, Owner may issue a Change Order requiring Contractor to perform such item as part of the Work and Contractor shall (without waiving any rights or remedies with respect to such Change or Dispute) proceed with such Work. If it is determined that such item was not within the scope of the Work, Contractor will be entitled to an Adjustment therefor as set forth in this **Section 9.2**.

## ARTICLE 10

### ADJUSTMENT METHODOLOGY

**10.1 Determination of Adjustments.** The determination of all Adjustments with respect to Change Orders, Change Determination Requests, and Excusable Events shall be made in accordance with the methodology (“**Adjustment Methodology**”) set forth in this **Article 10**.

**10.2 Procedure for Determining Adjustment.** It is the expectation that most Contract Price Adjustments will be determined on a lump sum fixed schedule adjustment basis, provided, that at Owner’s sole option exercised in its sole discretion, Owner may designate certain Contract Price Adjustment to be determined on an open-book time and materials basis, calculated in accordance with **Section 10.3**, with the Adjustments to Major Contract Milestones to be determined based on information developed as the Work proceeds. Except to the extent Owner and Contractor mutually agree otherwise, (a) within fifteen (15) Days after receipt of a Change Determination Request or a Change Order for which Adjustments are not yet agreed and (b) by the due date of the full impact analysis required pursuant to **Section 9.1.1** for an Excusable Event Basis, Contractor shall provide Owner for its review and approval, with a written detailed analysis (the “**Contractor Response**”) setting forth all Adjustments Contractor believes are required under this Agreement with respect to the applicable Changes and Excusable Events, including with respect to Contract Price, Major Contract Milestones, and other applicable provisions of this Agreement. The Contractor Response shall include, among other things, an itemization or estimate (which estimate shall be prepared in a manner and at rates in accordance with **Section 10.3**) 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; (ii) estimated quantities, qualities (as required) and direct costs of Equipment; (iii) estimates of Subcontractor charges and any bids received from Subcontractors and potential Subcontractors contacted by Contractor in connection with the Contractor Response; (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; (v) reasonable contingencies for the foregoing items appropriate and customary for the degree of uncertainty in the estimate; (vi) the impact, if any, on the Major Contract Milestones, and (vii) any other information Owner may reasonably require to determine the appropriate Adjustments. Owner shall, within fifteen (15) Days after receipt of the Contractor Response, notify Contractor as to whether it agrees or disagrees with such the Adjustments set forth in the Contractor Response or has insufficient information to do so. Contractor and Owner will then cooperate (i) to get Owner any information it reasonably require and (ii) to use their respective good faith

efforts to negotiate and agree on the applicable Adjustments (including a lump sum, fixed-price Contract Price Adjustment and a fixed schedule Adjustment). Such negotiations shall be on a completely open-book basis.

**10.3 Basis for Adjustments.** Except to the extent otherwise provided in **Articles 9**, all Contract Price and schedule Adjustments shall be determined by utilizing the methodologies, factors, multipliers, analytics, and other criteria included in the Basis of Bid; provided, that no contingency will be allowed in such Adjustment in any case where the Contract Price Adjustment is not on a lump sum basis. To the extent that the Basis of Bid is not directly applicable to the situation for which an Adjustment (or portion thereof) is being determined or the application of the Basis of Bid yields an inequitable result, the applicable criteria in the Basis of Bid shall be equitably adjusted for that situation. To the extent that for a particular situation the Basis of Bid is not reasonably susceptible to such an equitable adjustment, the applicable Contract Price Adjustment shall be determined in accordance with **Exhibit R**. To the extent that an Adjustment is with respect to a change (including increase, decrease, elimination, replacement, or any other change) to Work performed or expected to be performed by a Subcontractor that is an Affiliate of Contractor, the Adjustment shall be determined as if the Contractor is performing such Work directly (i.e., as if the Affiliate was part of the Contractor and not a separate Subcontractor). All Adjustments of the Major Milestone Dates shall be determined by the reasonable impact of the applicable Change Order or Excusable Event to the Project Schedule on the critical path. Neither Owner nor Contractor shall be entitled to any Adjustment based on its respective time or cost of analyzing, negotiating, or otherwise determining any Adjustments. Contractor shall not be entitled to any recovery for (and there shall be no Contract Price, schedule, or other Adjustment for) any increased adverse impact resulting from (i) unreasonable delays in implementing a Change Order or in overcoming or removing an Excusable Event Basis or (ii) Contractor failing to take all reasonable steps to minimize the potential impact resulting from such Excusable Event Basis or Change Order.

**10.4 Non-Lump Sum Fixed Schedule Adjustments.** Unless and until Contractor and Owner execute a Change Order setting forth a Lump Sum Adjustment and a fixed schedule Adjustment for a Change Order or Excusable Event: (i) Contractor shall submit daily records to Owner by the next Business Day for all craft personnel who performed Work with respect to such Change Order or Excusable Events detailing the hours involved in such Work and the type of Work so performed, (ii) Contractor shall submit weekly records to Owner by the first Day of the succeeding week for all other personnel who performed Work with respect to such Change Order or Excusable Events detailing the hours involved in such Work and the type of Work so performed, (iii) Contractor shall submit Monthly records to Owner along with its Application for Payment for that Month detailing all other costs incurred with respect to such Change Order or Excusable Events, (iv) Contractor shall submit Monthly records to Owner along with its Application for Payment for that Month detailing all schedule impacts (including to Major Contract Milestones with respect to such Change Order or Excusable Events), and (v) Contractor shall, in accordance with the procedures set forth in **Article 8**, include in its Applications for Payment any undisputed portion of Contractor's proposed Adjustment in the Contract Price for Changes that have then been performed by Contractor. Strict Compliance with this **Section 10.4** is a condition precedent for the Contractor's entitlement to the applicable Adjustment.

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## ARTICLE 11

### TEST AND INSPECTIONS

**11.1 Testing.** Contractor shall conduct, arrange, or obtain (at its sole expense) all inspections and tests required to be performed (i) to meet its obligations under this Agreement and (ii) that are necessary for the proper execution and completion of the Work (including all certification testing and associated reports required by Applicable Law or applicable Codes that must be conducted by a qualified independent party). Contractor shall provide for or arrange for all testing personnel. The results of all inspections and tests shall be provided to Owner together with gross and reduced data and other information reasonably requested by Owner.

**11.2 Witnessing Tests and Inspection.** Contractor shall perform all inspection, 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 the Work in progress, (including Equipment) both on and off the Job Site at intervals appropriate to the stage of construction, fabrication, or shipment as is customarily inspected or tested in accordance with Professional Standards, including inspecting Work in progress as necessary to ensure that such Work is proceeding in accordance with this Agreement and the Major Contract Milestones. All Third Party inspections, tests, or approvals must be performed by qualified organizations acceptable to 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 twenty (120) Days prior to the first expected delivery of Equipment to the Generating Station Site, Contractor will supply to Owner a quality surveillance plan for all Equipment that will be inspected by Contractor. A chart, accompanying each Monthly progress report delivered by Contractor shall specify the date, time, and location of Hold Points and other factory tests, inspections, and witness points of which Contractor is then aware and intends to witness with respect to Equipment or other work to be provided or performed by Subcontractors in the sixty (60) Day period following the Month in which each such progress report is delivered to Owner. If and when Contractor obtains new information about such Hold Points and other factory tests, inspections, or witness points or other Hold Points, 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 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 (i) have reviewed the test or inspection results (which are to be provided to Owner within seven (7) Days of such failure or as soon thereafter as test results are available to Contractor) and (ii) have given 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 for failure to give proper notice.

**11.3 Retests.** Prior to any retest, Contractor shall give reasonable notice advising Owner that all Defects have been corrected and all necessary adjustments have been made. Such notice must identify the date upon which the Project will be ready for such retesting. Within five (5) Days, Owner shall review the adjustments or corrections made by Contractor and will determine whether a retest is yet warranted. Following a favorable determination by Owner, Contractor shall promptly re-perform the retest. **Section 11.3** shall apply to all retests.

## ARTICLE 12

### CORRECTION OF WORK

**12.1 Correction of Work.** Prior to the commencement of the Warranty Period, Contractor shall, at the earliest practical opportunity, correct, repair, or replace any portion of the Work that is Defective without regard to the stage of completion of the Work or the time or manner of discovery of the Defect. If other portions of the Work are adversely affected by or are damaged by such Defective Work, Contractor shall, at no additional cost or expense to Owner and at the earliest practical opportunity, correct, repair or replace such affected or damaged Work. Contractor shall bear all costs of correcting such Defective Work, including additional testing and inspections and compensation for any Design or engineering services and expenses made necessary thereby.

**12.2 Urgent Repairs.** If by reason of any accident, failure, or event occurring to, in, or in connection with the Work or any part thereof either during the execution of the Work or during any period of warranty hereunder, any remedial or other work or repair is in the opinion of Owner urgently necessary and Contractor is unable or unwilling at once to do such work or repair, Owner may, with its own forces or other contractors, do such work or repair. If the work or repair so done is Work which Contractor was liable to do at its own expense under this Agreement, all costs and expenses incurred by Owner in so doing as a result of such event shall be paid by Contractor to Owner on demand. Owner, as soon after the occurrence of any such emergency as may be reasonably practicable, shall notify Contractor thereof in writing.

**12.3 Damage to Existing Facilities.** To the extent that Contractor or Subcontractors cause any physical damage or loss to any equipment, structure, or portion of the Work (including Work performed during the Warranty Period) as to which care, custody, and control and risk of loss (without regard to passage of title) has passed to Owner or to the Existing Facilities (but not Work for which care, custody, and control and risk of loss has not yet passed to Owner), Contractor shall be liable for making payment to Owner for the cost to repair, correct, or replace

such loss or damage, not to exceed [REDACTED] 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 shall be made to Owner within fifteen (15) Business Days of Owner's demand therefor.

**ARTICLE 13**

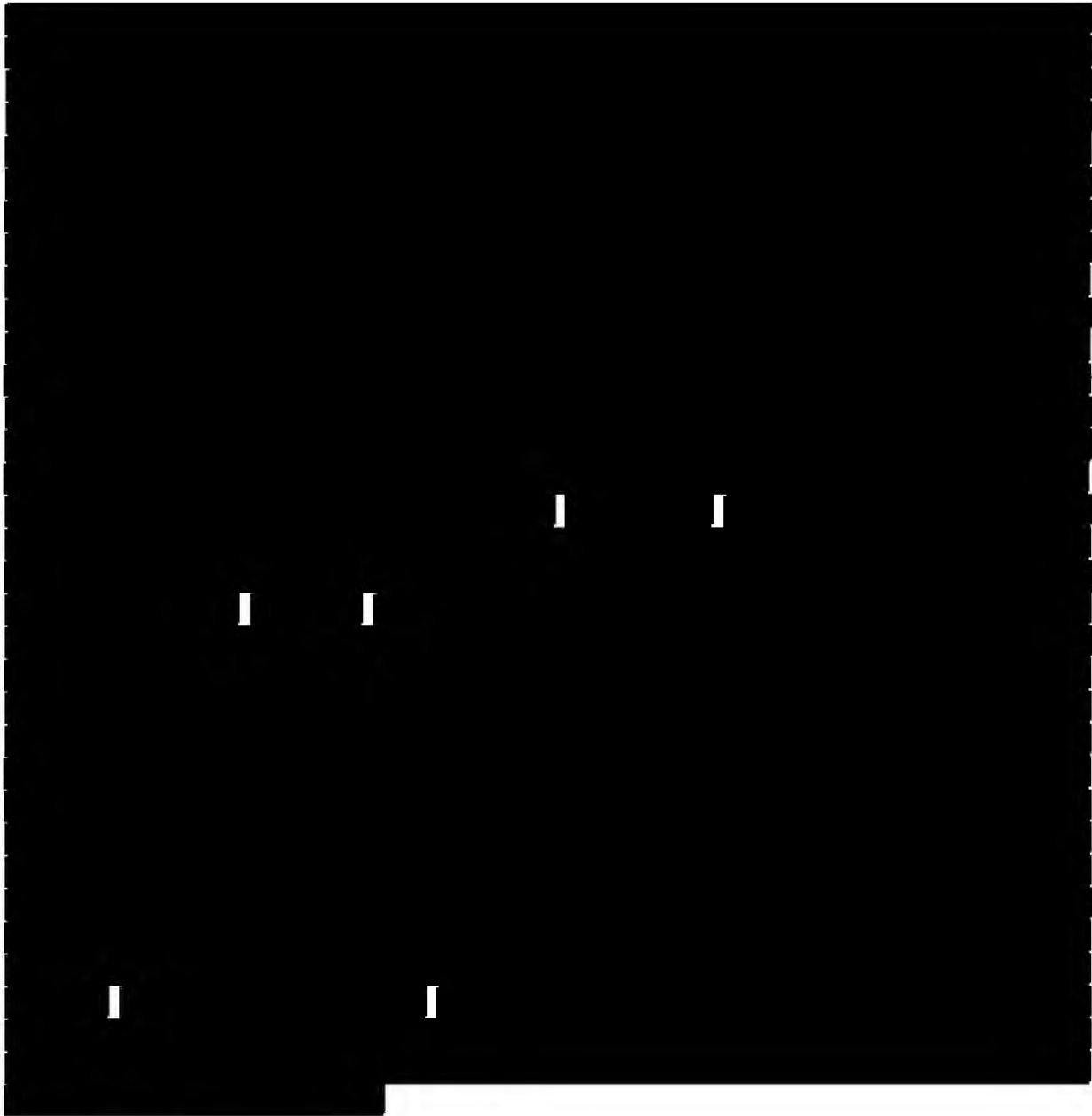
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**ARTICLE 14**

**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 Generating Station Site. Prior to the earlier of one hundred twenty (120) Days after the Effective Date and thirty (30) Days prior to mobilization to the Generating Station Site, 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 cause all Subcontractors to comply, with (i) those rules, regulations and procedures set forth in **Exhibit H**; (ii) Project Requirements; and (iii) applicable rules or requirements of Owner's unions on the Generating Station Site. The efficacy or implementation of such plan shall not relieve Contractor of its obligations under this Agreement. If Owner becomes aware of any Work, or the performance of any Work, that it reasonably believes constitutes a threat to the health or safety of persons, property, or the environment, then, without limiting any other rights of Owner hereunder, Owner may (but will not be obligated to) immediately suspend the performance of the Work and thereafter promptly advise Contractor of the cause therefor. Such suspension may be maintained until such cause is removed. All costs related to such suspension and any other adverse impact on Contractor or the Work attributable thereto shall be the responsibility of Contractor and no relief under this Agreement shall be provided. Owner, in its reasonable opinion, may exclude from the 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 14**, 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 United States 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 of Contractor and Subcontractors or other individuals performing the Work and all other individuals who may be affected thereby, including other individuals on the Generating Station Site;
- (ii) the Work, Equipment, 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

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- (iii) Existing Facilities and other property at the Generating Station Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, waterways, roadways, structures and utilities, it being agreed that Contractor will be liable for the Liabilities incurred by Owner and caused by Contractor or Subcontractors.

**14.4 Community Relations.** Contractor recognizes the introduction of Contractor's workforce (and those of Subcontractors) has the potential to disrupt the local community. Contractor will proactively alert those individuals for whom it is responsible on the Generating Station Site to exercise due caution entering and leaving the 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 Generating Station Site on which Work is being performed at all hours, including evenings, holidays and non-work hours and other portions of the Generating Station Site when Work is being performed on such portion. Contractor is not entitled to rely on security provided by Owner. Contractor shall coordinate its Job Site security functions with Owner's security functions so as not to detract from, or impose upon, Owner's security measures at the Generating Station Site. Contractor shall erect, maintain, or undertake, as required by existing conditions and the performance of this Agreement, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying Owner and users of adjacent sites and utilities. Such precautions may include the provision of security guards and/or fencing.

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

**14.7 Safety Personnel.** Contractor shall assign at least one full-time Job Site safety officer who shall be responsible for introducing, administering, and monitoring procedures to promote safe working conditions on the Job Site (and other areas of the 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 Work, the Job Site or other portions of the 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 an individual on the Emergency Notification List by telephone or in person 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. In addition, if death, serious bodily injury or substantial damage occurs, Contractor shall report the accident immediately by telephone or messenger to Owner.

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

**14.11 Hazards and Training.** Contractor shall furnish adequate numbers of trained, qualified, and experienced personnel and appropriate safety and other equipment in first-class condition, suitable for performance of the Work. Such personnel shall be skilled and properly trained to perform the Work and recognize all hazards associated with the Work. Without limiting the foregoing, Contractor shall participate in any safety orientation of Owner (or any Affiliate of Owner) familiarization initiatives related to safety and shall strictly comply with any monitoring initiatives as determined by Owner. Contractor acknowledges that it has inspected all equipment, structures, and property of Owner to determine the existence of hazards incident to the performance of the Work, 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 at any time during the workday. An individual will be deemed under the influence of alcohol if such individual is found to have a blood alcohol level of .02 percent or greater. In addition to the requirements of the drug and/or alcohol testing program set forth in **Exhibit H**, Contractor shall: (i) institute a random drug and/or alcohol testing program covering all individuals that will perform any of the Work; (ii) promptly, upon the written request of Owner, perform drug and/or alcohol tests on all individuals that will perform any of the Work; and (iii) perform drug and/or alcohol tests on any individual that will perform any of the Work under either of the following circumstances: (a) where the individual's performance either contributed to an accident or dangerous condition or cannot be completely discounted as a contributing factor to an accident or dangerous condition which involves actual or undue risk or 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 may be using drugs or alcohol or may otherwise be unfit for duty. Individuals tested in accordance with **clause (a)** or **(b)** above will not be permitted to perform any Work until the test results are established. Contractor shall be solely responsible for administering and conducting drug and alcohol testing, as set forth herein, at Contractor's sole expense. As applicable and in addition to any other requirements under this Agreement, Contractor shall develop and strictly comply with any and all alcohol and/or drug testing requirements required by Applicable Law. Notwithstanding anything to the contrary herein, if the rules and regulations of Owner pertaining to the Generating Station Site are at any time more stringent than the requirements of this Agreement, Contractor will comply and cause Subcontractors to comply with such more stringent rules and regulations.

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## 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, maintenance, repair, and other operations or other work related to the Project, the Units, the Yard Systems, or any other construction or other work at the Job Site and the 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 Subcontractors' forces with the activities of Owner's forces and each of its separate contractors, as applicable, in accordance with the coordination plan established pursuant to **Section 4.19**.

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

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

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**ARTICLE 16**

**INTELLECTUAL PROPERTY**

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## ARTICLE 17

### REPRESENTATIONS AND WARRANTIES

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

- (i) it is able to furnish the tools, Equipment, 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 New York;
- (iii) it is authorized to do business in the Commonwealth of Kentucky and is properly licensed by all Governmental Authorities having jurisdiction over it, the Work, or the Project;
- (iv) Contractor is well acquainted with the Generating Station Site, including the general and local conditions, as well as other conditions that may influence the performance of the Work, including the requirements of Applicable Law, the other construction activities that will be performed on the Generating Station Site during performance of the Work, the condition of Existing Facilities on the 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 Parent 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.

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

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

## ARTICLE 18

### CONFIDENTIAL INFORMATION

**18.1 Confidential Information.** Each Party has a proprietary interest in certain information that will be disclosed (either directly or through its engineer or others on its behalf) pursuant to this Agreement. Each Party shall keep in confidence any such information it receives that in good faith the disclosing Party believes 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 ten (10) Business Days (“**Confidential Information**”). Each Party agrees not to disclose the other Party’s Confidential Information without the prior written permission of the other Party or use any such information for other than the purpose for which it is supplied, except as provided herein. Information relating to commercial terms of this Agreement shall also be treated as “Confidential Information,” **provided, however,** such restriction is intended only to prevent disclosure of the Contract Price, outage schedules, limits of liability, liquidated damage amounts, warranty provisions, intellectual property provisions, wage rates and unit rates, and information obtained by Contractor subject to NERC Requirements, and is not intended to restrict Owner from use of the form of agreement. Each Party agrees that the other Party may disclose any Confidential Information to its (and its Affiliates’) officers, directors, employees, counsel, engineers, consultants, representatives and to such other persons or entities, including the Financing Parties and their Affiliates and potential Affiliates, as may be necessary to perform its obligations under this Agreement or any document related to the Project or the Financing thereof to which it is a

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Party; **provided**, that it is responsible for requiring any Third Party to whom it wishes to disclose to comply with the terms of this **Section 18.1**. 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 limitation or restriction regarding disclosure; or
  - (4) is independently developed by or for the receiving party and not obtained, in whole or in part, from Confidential Information received from the disclosing party.

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

- (b) to the extent that a receiving Party (a) is required to disclose information pursuant to Applicable Law, (b) discloses the information to the Kentucky Public Service Commission or other Governmental Authority, or (c) 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.

The Parties acknowledges that a violation of provisions of this **Section 18.1** by a Party would cause irreparable harm to the disclosing Party for which no adequate remedy at law exists. Each Party therefore agrees that, in addition to any other remedies available, the disclosing Party shall be entitled to seek injunctive relief to enforce the terms of this **Section 18.1**, including to prevent a breach or contemplated breach hereof, without, in any case, proof of actual damages or the posting of any bond or security, which posting is hereby waived to the fullest extent permitted by Applicable Law.

**18.2 Import or Export of Technical Data.** Contractor shall 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 shall 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 Subcontractors wish to release for publication, which approval may be withheld in Owner's sole discretion.

## ARTICLE 19

### HAZARDOUS SUBSTANCES

#### 19.1 Hazardous Substances.

19.1.1 Encountering Hazardous Substances. In order to give the Owner an opportunity to discover and, as appropriate remediate, any Pre-Existing Hazardous Substances, Contractor shall give Owner at least thirty (30) Days and no more than sixty (60) Days advance written notice before it commences disturbing any areas of the Job Site it has not previously disturbed. If, in the course of performance of the Work, Contractor either spills, leaks, or releases (including threatened releases) Hazardous Substances into the environment or encounters Hazardous Substances (or a substance it reasonably believes is a Hazardous Substance) on the Job Site except as contemplated by **Section 19.1.3**, or any other portion of the Generating Station Site on which Work occurs, 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 brought to or generated on or under the Job Site or the Generating Station Site by Contractor or Subcontractors or any Person for whom either may be responsible; (b) a Hazardous Substance contained in or packed with Equipment; (c) a spill, leak, release, or threatened release caused by Contractor or a Subcontractor or any Person for whom either may be responsible of a Hazardous Substance that is properly contained and labeled

- (or other adequate warning is given of its existence); (d) a Contractor responsibility as provided in **Section 19.1.3**; or (e) the exacerbation of a Pre-Existing Hazardous Substance caused by the Culpable Conduct of Contractor, Subcontractors or any Person for whom either may be responsible, then any investigation, response, removal, cleanup, or other remedial action required (1) to restore the status quo ante and/or (2) by Applicable Law or any Governmental Authorities (collectively, “**Environmental Action**”) shall be performed by Contractor;
- (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 then, except to the extent provided in **clause (ii)** above, any Environmental Action shall be performed by Owner at its expense. Contractor shall handle, remove, dispose of or remediate, as applicable, Contractor Hazardous Substances in compliance with Applicable Law; and
  - (v) except as otherwise required by Applicable Law, any Environmental Action, notification and other communication with Third Parties, including Governmental Authorities, and reports and documentation related to such Environmental Action shall be undertaken by Owner.

**19.1.2 Environmental Action.** 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 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 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 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.

**19.1.3 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 Generating Station Site, and shall not utilize (and shall prevent Subcontractors from utilizing) any

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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 accordance with Professional Standards in or during construction or testing of similar facilities, equipment, and systems. Contractor shall not bring or store any other Hazardous Substances to the Generating Station Site without the specific prior written authorization from Owner. Contractor shall provide Owner with Safety Data Sheets in English, (“SDSs”) properly completed covering any Hazardous Substance brought to the Generating Station Site and furnished by Contractor (or Subcontractors). Contractor shall maintain on the Job Site, at all times, complete records and inventories, including SDSs of materials described in this **Section 19.1.3** that are being used by it or Subcontractors, or any Persons for whose actions it or any Subcontractor is responsible on the 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 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 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 19.1.3**, 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.

19.1.4 Reporting. 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, 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 discharge, spill or release of a Hazardous Substance into the environment at the Job Site or the Generating Station Site that occurs after the Effective Date arising out of performance of the Work.

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**19.1.5 Hazardous Substances Identified by Contractor.** Contractor acknowledges that any Work related to existing structures may require the identification and remediation of asbestos, lead paint, and possibly other Hazardous Substances from the structures that will be affected by the Work. Remediation of such Hazardous Substances will be the responsibility of Owner, but will be subject to the conditions set forth in this **Article 19**. Contractor shall perform such inspections of each of such structures as necessary prior to commencing any Work related to such structures. Contractor shall identify each specific area where Hazardous Substances (i) are or may be present; (ii) would be disturbed by performance of the Work involved; and (iii) that may need to be remediated. Contractor shall carefully outline each specific area where remediation is to occur with brightly-colored spray paint. Contractor shall confine the marking of areas to the minimum area necessary to allow the Work to safely proceed. Such marking must clearly and distinctly identify and define the precise areas to be remediated. Contractor shall give Owner reasonable advance notice that it will be marking such areas and shall deliver a written notice to Owner when it has finished marking and is ready for Owner to commence remediation. Owner will have no less than thirty (30) Days to complete such remediation. Upon completion of such remediation, Owner will notify Contractor that it may proceed with the planned Work for such areas. If, during the course of its Work in such areas, Contractor discovers additional areas where Hazardous Substances require remediation that it did not mark as required hereunder, Contractor shall mark such areas as provided in this **Section 19.1.5** and provide written notice to Owner to remediate Hazardous Substances in such areas. Owner will use commercially reasonable efforts to remediate such additional areas as soon as possible but in any case within a reasonable period of time. The cost of all such remediations will be borne by Owner; **provided, however**, if Owner is requested by Contractor to: (a) accelerate any remediation work to be performed by Owner under this **Section 19.1.5** or (b) remediate additional areas that Contractor did not mark at the time it marked other areas within the same general vicinity, Contractor shall be responsible for any incremental costs incurred on account of such acceleration or having to remobilize a Third Party contractor to perform such additional remediation. Notwithstanding anything in this Agreement to the contrary, Contractor is not entitled to any Adjustment of this Agreement, by Change Order or otherwise, on account of Hazardous Substances (all of which constitute Pre-Existing Hazardous Substances) identified or required to be identified by Contractor in accordance with this **Section 19.1.5**.

**19.1.6 Labeling.** Contractor and Subcontractors shall properly store, label and dispose of Hazardous Substances brought to, or generated at, the Generating Station Site by Contractor or Subcontractors, and others for whom they are responsible, and shall train their respective 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.

**19.2 Odors.** If, in the course of performance of the Work, Contractor encounters or releases odors that are likely to be of sufficient strength to be irritating, offensive or otherwise bothersome to individuals outside of the Generating Station Site, Contractor shall take immediate temporary remedial steps to reduce or eliminate the odor (e.g., if the odor is released as a result

of encountering material while digging on the Job Site, Contractor shall attempt to return the odor causing material into the hole and cover it with dirt), immediately suspend the Work in the area affected, 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. Contractor shall then coordinate with Owner to develop a plan by which the Work can proceed without causing an odor issue. If the release of odor is caused by a pre-existing condition that is disturbed by Contractor while complying with its obligations under this Agreement, Owner shall provide at its expense the materials and equipment for odor control. Otherwise, Contractor shall provide them at its expense. Nothing in this Section 19.2 is intended to address Hazardous Substances, which are instead addressed in Section 19.1.

**ARTICLE 20**

**INDEMNIFICATION**



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**ARTICLE 21**

**INSURANCE**

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## ARTICLE 22

### TITLE AND RISK OF LOSS

**22.1 Transfer of Title.** Transfer of title to the Work (or any portion thereof, including Equipment and Design) will pass to Owner upon the earliest of: shipment to the Job Site; delivery to Owner or the Job Site; incorporation into the Work or the Unit; upon payment of the amount properly due under an Application for Payment covering such Work (less any amount withheld by Owner in accordance with the terms of this Agreement); or identification of the items of Equipment to be provided under the Agreement to Owner; **provided**, that Contractor shall cause title to be transferred to Owner at shipment of the Work to Owner or the Job Site to the extent that Owner reasonably requests. The transfer of title does not relieve Contractor of its obligation to provide and pay for all transportation and storage in connection with the Work. Contractor shall transfer title to Owner to the Work, including Equipment, 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 the earlier of receipt or access to such Information.

**22.2 Title Warranty.** Contractor warrants that upon passage of title to the Work in accordance with **Section 22.1**, Owner will have good and indefeasible title to such Work, free and clear of Liens (other than Liens created by Owner) or other defects in title. If any Work is replaced under **Article 12, 13, or 16**, Owner's title shall vest in the replacement Work upon the earliest of payment therefor, its arrival at the Job Site or incorporation into the Work or the Existing Facilities. In the event of any nonconformity with this warranty, Contractor, at its own expense, upon written notice of such failure, shall indemnify and hold Owner harmless from the consequences of and defend the title to such Work and, if necessary, shall promptly replace such Work and any other affected portion of the Work, and such obligation shall survive the expiration, cancellation or termination of this Agreement.

**22.3 Risk of Loss.** Notwithstanding anything else to the contrary herein, except as otherwise provided herein, care, custody and control of each Subproject and the risk of loss or damage to that Subproject will pass to Owner upon achievement of Substantial Completion for that Subproject, and Owner hereby releases Contractor from bearing such risk with respect to such Work after such date. For Work performed or provided with respect to a Subproject from and after Commercial Operation of that Subproject, risk of loss shall pass to Owner as such Work is, completed. Contractor shall replace, repair, or reconstruct the Work, including Equipment intended for the use of or necessary to the completion of the Work and furnished by Contractor or Subcontractors or any other Person that is lost, damaged, or destroyed prior to transfer of care, custody, and control and risk of loss of such Work to Owner. Contractor shall be responsible to assure safe delivery of all Equipment, Consumables, Construction Aids, and other items to the Job Site.

**22.4 Contractor Tools.** Risk of loss or damage to the equipment, tools, and Construction Aids of Contractor, its employees or Subcontractors and their employees will at all times remain with Contractor, Subcontractors and their respective employees. Contractor hereby

releases Owner and will require all Subcontractors to release Owner from and against any Liabilities for loss or damage in respect thereof. If any loss or casualty to such equipment, tools, or Construction Aids occurs, the loss as a consequence thereof will not be the responsibility of Owner hereunder. Contractor or Subcontractors must adequately insure Construction Aids brought to the Generating Station Site or the Job Site against loss and casualty.

## ARTICLE 23

### DISPUTE RESOLUTION

**23.1 Resolution.** If either Party believes a Dispute cannot be resolved by the Parties' Authorized Representatives, that Party may, by notice to the other escalate the 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 thirty (30) Days (or such longer time as the Parties agree) after notice is given seeking escalation, 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 or executive vice president of a Party; provided, that Senior Officer cannot have been actively involved in discussions with the other Party regarding the Dispute prior to the escalation.

**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 the terminated portion thereof) on the date specified in such notice. Upon such termination, Contractor and Subcontractors shall place no further subcontracts, including lease and rental agreements, or purchase orders, for Equipment, 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 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 and Consumables purchased for or committed to the terminated Work (whether completed or in progress and whether or not 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 mitigate the amount of Owner's liability upon termination, including cancelling associated Subcontracts upon terms satisfactory to Owner and taking such other action with respect to same as may be directed by Owner. If this Agreement is so terminated, Contractor, as its sole and exclusive remedy hereunder, shall be entitled to an amount equal to: (i) the amounts set forth in **Exhibit C** for milestones properly completed by Contractor; (ii) with respect to any partially completed milestone, amounts determined by multiplying the percentage of properly completed Work with respect to such milestone by the respective value of such milestone as set forth in **Exhibit C**; (iii) reimbursement for: (a) all cancellation charges necessarily incurred by Contractor in relation to Subcontractors; (b) an amount equal to other reasonable termination related actual costs necessarily incurred by Contractor; and (c) any reasonably incurred actual costs of Job Site demobilization, less: (1) amounts previously paid to Contractor with respect to the Work, (2) the sale or salvage value of Equipment and Consumables purchased for the Work and sold or retained by Contractor, and (3) amounts properly withheld under this Agreement. Notwithstanding the foregoing, in no event shall the amount required to be paid to Contractor hereunder as a consequence of termination together with amounts that Owner has previously paid to Contractor under this Agreement exceed the amount shown on the termination payment schedule as set forth in **Exhibit B** corresponding to the date of termination. Contractor shall calculate amounts due pursuant to this **Section 24.1**, and shall submit an Application for Payment in accordance with **Article 8**, which amounts are subject to audit and confirmation by Owner on a completely open-book basis.

**24.1.2 Assumption.** Notwithstanding anything to the contrary herein, upon a termination under this **Article 24**, Owner, in lieu of the payment of any Subcontractor's cancellation charge pursuant to **Section 24.1.1**, may, upon request, assume all of Contractor's obligations under such Subcontract. Contractor shall promptly provide Owner with a copy of Subcontract(s) requested by Owner and an estoppel certificate stating all known unsatisfied Liabilities under such Subcontracts. Thereafter, upon Owner's request, Contractor shall assign all of its right, title and interest in any such Subcontract to Owner. Such assignments shall be in form and substance satisfactory to, and at no additional cost to, Owner. Such assignments shall be in full force and effect upon such assignment. Contractor covenants that a provision substantially similar to this **Section 24.1.2** shall be inserted in each agreement with Subcontractors to preserve the rights of Owner under this **Section 24.1.2**.

**24.1.3 Mitigation.** Contractor shall use its reasonable best efforts to minimize the amount of any payment due to Contractor from Owner in accordance with **Section 24.1.1**.

## **24.2 Termination by Owner for Cause.**

**24.2.1 Default by Contractor.** The occurrence of any one or more of the following, and, with respect to **clauses (ii), (iv), or (vi)**, the continuation of the same for thirty (30) Days after Contractor's receipt of written notice thereof from Owner, will constitute a default by Contractor under this Agreement (a "**Contractor Default**"); **provided**, that with

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respect to **clauses (ii), (iv), or (vi)**, if such Contractor Default cannot reasonably be cured within such thirty (30) Day period, such cure period shall extend for a total of sixty (60) Days, so long as Contractor continuously and diligently pursues a cure throughout such period:

- (i) Contractor or Guarantor experiences an Insolvency Event;
- (ii) the material breach of any representation or warranty made by Contractor herein;
- (iii) Contractor attempts to assign, convey or transfer this Agreement or any interest or right herein without Owner's prior written consent, except as otherwise permitted by this Agreement;
- (iv) Contractor fails to materially observe or perform any other covenant, agreement, obligation, duty or provision of this Agreement;
- (v) the interest of Contractor in this Agreement passes to any Person otherwise than as permitted herein;
- (vi) Contractor fails to make prompt payment to Subcontractors of amounts due for labor, Equipment, Consumables, or Construction Aids;
- (vii) Contractor disregards laws or ordinances or the lawful requirements of any competent authority or the instructions of Owner consistent with this Agreement;
- (viii) Contractor abandons the Work or fails, neglects, refuses or is unable at any time during the course of the Work to provide ample Equipment, Consumables, or Construction Aids, or labor to perform Work in accordance with the Major Contract Milestones or to provide a recovery plan to satisfaction of Owner;
- (ix) Contractor fails to comply with **Article 21 (Insurance)** or the Parent Guarantee, for any reason, ceases to be valid or enforceable in any way, the Guarantor experiences an Insolvency Event, or Guarantor fails to perform any material covenant or obligation in the Parent Guarantee;
- (x) Contractor fails to achieve Substantial Completion for a Subproject within ninety (90) Days of the Guaranteed Substantial Completion Date for that Subproject; or
- (xi) Contractor fails to achieve Final Completion for a Subproject on or before the Guaranteed Final Completion Date for that Subproject.

**24.2.2 Owner's Remedies.** Upon the occurrence of a Contractor Default, Owner may, without prejudice to any other right or remedy Owner may have: (i) terminate this



Agreement; (ii) take possession of the Job Site and of all materials, equipment, tools, machinery and Information owned or held by Contractor for purposes of completing the Work; (iii) finish the Work and complete performance of other unperformed obligations by whatever method Owner may deem reasonable and expedient under the circumstances; and (iv) use or draw upon the Contract Security and/or withhold amounts due to Contractor. If the unpaid balance of the Contract Price exceeds Owner's cost of finishing the Work and completing performance of other unperformed obligations, then Contractor will be paid for all Work properly performed by Contractor to the date of termination (which amount will in no event exceed the difference between the unpaid portion of the Contract Price and Owner's cost of completing the Work and other obligations). However, if the cost of finishing the Work (including the cost of arranging for completion of the Work on comparable terms and conditions, including damages and remedies, and performing such Work on an accelerated basis to preserve as nearly as possible adherence to the Major Contract Milestones) and performing Contractor's other obligations under this Agreement exceeds the unpaid balance of the Contract Price, Contractor shall immediately pay the difference to Owner on demand upon receipt of periodic invoices from Owner. Owner will be entitled to withhold further payments to Contractor until the Work and other obligations have 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 Major Contract Milestones. If this Agreement is terminated pursuant to this **Section 24.2.2** and is later determined or adjudged 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 or more of the following matters, and, with respect to **clauses (ii) or (iii)**, the continuation of the same for thirty (30) 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 thirty (30) Day period, such cure period shall extend for a total of sixty (60) Days, so long as Owner continuously and 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; and
- (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 Excusable Event Basis.



24.3.2 **Contractor's Remedies.** During the continuance of an Owner's Default, but subject to **Section 23.2**, Contractor may suspend its performance of the Work or, if the suspension continues for fifteen (15) Days, terminate this Agreement. If this Agreement is so terminated by Contractor for an Owner Default, Contractor, as its sole and exclusive remedy hereunder, shall be entitled to receive an amount calculated in accordance with **Section 24.1**.

**24.4 Suspension of the Work.** Owner may, without cause, order Contractor to suspend the Work or extend the Major Contract Milestones 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 second (2nd) 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, as amended by Owner from time to time. Contractor will resume any suspended Work within three (3) 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 three hundred sixty (360) 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 Major Contract Milestones 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 Major Contract Milestones shall be extended only to the extent the suspension or extension can be shown to affect the critical path. This analysis will be based on the most current Project Schedule in effect on the Day of suspension and take into account the critical path for completing the entire Work and the non-critical path activities suspended or extended. Owner shall pay Contractor in accordance with the terms of payment set forth in this Agreement upon receipt of an Application for Payment for the Work completed prior to the time of any suspension and, during the period of suspension, for the direct reasonable costs that result from Contractor's compliance with the suspension notice. Owner shall pay Contractor the direct reasonable costs associated with the restart of suspended Work under this **Section 24.4** and shall resume payments to Contractor in accordance with the terms of payment under this Agreement thirty (30) Days after the restart of the Work. It is a precondition to all Claims by Contractor for extension or compensation under this **Section 24.4**, that the same be made within thirty (30) Days after the suspension period has ended, or said Claim is forever barred.

## ARTICLE 25

### MISCELLANEOUS PROVISIONS

**25.1 Governing Law.** This Agreement is governed by, and construed in accordance with, the laws of the Commonwealth of Kentucky without reference to the conflict of laws rules thereof. Each of the Parties hereby agrees that any legal proceedings that may arise under or

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related to 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 ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT AND/OR 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.** Notwithstanding any agreement that either Owner or their respective Affiliates have with Contractor or any of its Affiliates to the contrary, 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 other agreements, whether written or oral. This Agreement may be amended or modified only by a written instrument signed by Owner and Contractor as appropriate. Contractor and/or one or more of its Affiliates may now, may have in the past and/or may in the future be a party to a general agreement with Owner and/or one or more of its Affiliates for the purpose of setting forth certain default terms that are intended to form part of most contracts between them. Contractor and Owner hereby acknowledge and explicitly agree that neither such general agreement nor any such default terms shall apply with respect to this Agreement.

**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. The Owner may assign, novate or declare any trust of the whole or any part of its interest in 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,

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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 to assume any obligation or responsibility on behalf of Owner.

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

If to Owner:

[Redacted]

[Redacted]

With required copies to:

[Redacted]

[Redacted]

and;

*JVO*  
*dra*

If to Owner and the notice pertains to indemnification, settlement of Claims, default, termination, Dispute resolution or an Excusable Event Basis and associated documentation under Section 9.1 with a Claim value greater than [REDACTED] or an impact on the Major Contract Milestones of greater than five (5) Days, Contractor shall also provide mandatory copies of Notice to:

[REDACTED]

[REDACTED]

If to Contractor:

[REDACTED]

Addresses for a Party may be changed by that Party effective upon receipt of notice of such address change by the other Parties.

**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.

**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.

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

**25.9 Agreed Rate.** All amounts that become due hereunder but remain unpaid will bear interest at an annual (365 or 366 Days, as appropriate) rate equal to the lesser of: [REDACTED]

**25.10 Financing Cooperation.** Contractor shall provide such reasonable assistance and cooperation to Owner as may be necessary for Owner to secure Financing for the Project, 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. 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 legal opinions, which may be required to be from outside counsel, as required by the Financing Parties.

**25.11 Audit.** Contractor shall maintain (and shall cause Subcontractors to maintain): (i) the Basis of Bid, (ii) complete and accurate financial books and records to allow compliance with **Section 8.2** and **Section 20.4**, or which relate to any cost-based (*i.e.*, Work not covered by lump-sum prices) components of the Work billed under this Agreement or relating to the quantity of units billed under any unit pricing agreed to by the Parties and amounts in respect of a payment made pursuant to **Section 24.1**; and (iii) complete and accurate books and records relating to Contractor's obligations with respect to Hazardous Substances, health and safety, environmental management, emergency response, testing and inspection of Equipment, quality control (including non-conformance reports and disposition reports), violations of Applicable Law, NERC Requirements, and the requirements of **Sections 25.23** and **25.24** (all the foregoing hereinafter referred to as "**Records**") for a minimum of five (5) years following Final Completion of the last Subproject to achieve Final Completion. All such Records must be open to inspection and subject to audit and reproduction during normal working hours by Owner or its respective authorized representatives. For the purpose of evaluating or verifying actual or claimed costs, Owner and its respective authorized representatives will have access to Records at any time, including any time after final payment by Owner to Contractor pursuant to this Agreement. Owner and its respective authorized representatives shall have access, during normal working hours, to all necessary Contractor facilities. Contractor shall provide adequate and appropriate work space to conduct audits pursuant to this **Section 25.11**. Owner shall give Contractor reasonable notice of the date and time it or any of its agents intend to commence any audit. If the audit should disclose an overbilling, Contractor will pay for the cost of the audit

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and the amount of such overbilling within thirty (30) Days of receipt of Owner's invoice. The rights of Owner set forth in this **Section 25.11** shall survive the termination or expiration of this Agreement. Owner's right to audit under this **Section 25.11** does not include the right to audit the initial make-up or components of any agreed multipliers, rates, mark-ups, or fixed percentages, but does include the right to audit subsequent changes to such multipliers, rates, and mark-ups. Owner's rights under this **Section 25.11** include the right to audit the application of such multipliers, rates, mark-ups, or fixed percentages.

**25.12 Survival.** Articles 7, 13, 16, 17, 18, 19, 20, 23 and 25 and Sections 4.39, 8.9.2, and 22.2 of this Agreement and all other Articles and Sections thereunder providing for indemnification, or limitation of or protection against liability of either Party, will survive the termination, cancellation or expiration of this Agreement.

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

**25.14 Non-Recourse.** Anything to the contrary notwithstanding, the obligations of Owner under this Agreement are special obligations of Owner and do not constitute obligations of (and no recourse shall be had with respect thereto to) any shareholder of Owner, any Affiliate of Owner, or any shareholder, partner, member, officer, director, commissioner or employee of any such Person (collectively "Related Persons") and (iii) no action shall be brought or maintained against any such Related Person. The Parties acknowledge and agree that any provision of this Agreement that limits, excludes or protects against any liability of Owner, grants indemnity or confers rights or remedies that are intended to benefit (and be enforceable by) Owner, shall be applicable to Related Persons whether or not specifically referenced in such provision. At such time as an Owner assigns all of its rights under this Agreement to a permitted assignee under **Section 25.3**, Owner will be released from all obligations and liabilities arising thereafter under this Agreement.

**25.15 Parent Guarantee.** Owner's obligation to make any payment to Contractor hereunder is subject to the receipt and ongoing enforceability of the Parent Guarantee. Contractor covenants that the Parent Guarantee will remain in full force and effect to and until the obligations of Contractor under this Agreement have been fulfilled.

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

**25.17 Severability.** If any provision of this Agreement, or the application thereof to any Person or circumstance, is to any extent held invalid or unenforceable by a court of competent jurisdiction, 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;

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**provided, however,** the Parties agree to negotiate in good faith and shall reform this Agreement to the fullest extent permitted by Applicable Law to as closely as possible resemble the original intent and allocation of risks and benefits.

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

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

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

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

**25.22 Equal Employment Opportunity.** To the extent applicable, Contractor shall comply with all of the following provisions, which are incorporated herein by reference: (i) Equal Opportunity regulations set forth in 41 CFR § 60-1.4(a) and (c), prohibiting employment discrimination against any employee or applicant because of race, color, religion, sex, or national origin; (ii) Vietnam Era Veterans Readjustment Assistance Act regulations set forth in 41 CFR Part 60-300 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). Without limiting the foregoing, Contractor and its subcontractors shall abide by the requirements of 41 CFR 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

**25.23 Supported Business Enterprises and Local Contractors.** Owner has a "Supplier Diversity Policy" to provide the maximum opportunity for Supported Business Enterprises and Local Contractors to participate as subcontractors for goods and services. As such, every attempt should be made by Contractor to include Supported Business Enterprises and Local Contractors 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 opportunities for involvement in the Work by Supported Business Enterprises (of each type) and Local Contractors; (ii) an outreach process to identify and attract possible Supported Business Enterprises (of each type) and Local Contractors 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 Supported Business Enterprises (of each type) and Local Contractors; (iv) a bidding process inclusive of suitable Supported Business Enterprises (of each type) and Local Contractors on subcontract bid lists; and (v) a monitoring process to provide statistical reporting on opportunities and utilization. Contractor shall report to Owner with respect to its compliance with this **Section 25.23** in accordance with **Exhibit F-9**.

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

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

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

25.24.3 Reporting. Each Month 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 Subcontractors, including information relating to Local Hires, Supported Business Enterprises (of each type) and Local Contractors, and spend on Supported Business Enterprises (of each type) and Local Contractors. Contractor will not be obligated to provide confidential individual employee information under this **Section 25.24.3**.

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

**Kentucky Utilities Company**

By: [Redacted Signature] \_\_\_\_\_  
Title: [Redacted Title] \_\_\_\_\_  
Date: [Redacted Date] \_\_\_\_\_

**Thalle Construction Co., Inc.**

By: [Redacted Signature] \_\_\_\_\_  
Title: [Redacted Title] \_\_\_\_\_  
Date: [Redacted Date] \_\_\_\_\_

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