

**OHIO VALLEY ELECTRIC CORPORATION /  
INDIANA-KENTUCKY ELECTRIC CORPORATION**

**GENERAL TERMS AND CONDITIONS FOR ENGINEERING,  
PROCUREMENT AND CONSTRUCTION WORK**

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AFFIDAVIT OF COMPLETION

Exhibit 1

## **GENERAL TERMS AND CONDITIONS FOR ENGINEERING, PROCUREMENT AND CONSTRUCTION WORK**

### 1.0 DEFINITIONS

Subject to additional definitions contained in subsequent Articles, capitalized terms used in these General Terms and Conditions for Engineering, Procurement and Construction Work have the meanings set forth below:

- 1.1 Business Day: “Business Day” means any calendar day, other than a Saturday or Sunday or a calendar day on which U.S. commercial banking institutions are authorized or required by law to close.
- 1.2 Change Order: “Change Order” means a written order as defined and issued in accordance with Article 14.0.
- 1.3 Contract: “Contract” means collectively the Contracting Instrument and all documents referenced in the Contracting Instrument and any Change Orders, amendments or addenda.
- 1.4 Contract Price: “Contract Price” means the price to be paid to the Contractor for the performance of Work as set forth in the Contracting Instrument.
- 1.5 Contracting Instrument: “Contracting Instrument” means the contractual document that identifies the parties, the nature of the Work, the Contract Price, documents to be included as part of a Contract, and other matters relating to a Contract. The Contracting Instrument may be in the form of a contract letter, blanket purchase order, purchase order or other similar documents.
- 1.6 Contractor: “Contractor” means the entity contracting with Owner for the performance of Work.
- 1.7 Direct Cost: “Direct Cost” means the actual costs and charges incurred and payments made by Contractor, its Subcontractors for Site Equipment, materials, services and labor (including payroll burden and expenses) which are directly attributable to the performance of Contractor’s Work hereunder. Direct Cost includes Contractor’s home office or Site labor to the extent Contractor’s home office or Site labor is directly assignable to the Work which must be demonstrable under the circumstances. Direct Cost shall not include corporate, general and administrative costs including home office functions, sales, marketing, accounting, human resources, information technology, payroll, profit, research, development, quality assurance and control, purchasing, safety, management, administration, warranties, insurances, offsite or other unabsorbed costs.
- 1.8 Equipment: “Equipment” means all goods, materials and accessories to be purchased under the Contract, including all documentation required by the Contract.
- 1.9 Final Acceptance: “Final Acceptance” means Owner’s determination that the Work has been completed in accordance with the Contract requirements.
- 1.10 Initial Acceptance: “Initial Acceptance” means Owner’s determination prior to final inspection and testing that the Work conforms to the Contract requirements for purposes of receipt.
- 1.11 Owner: “Owner” means Ohio Valley Electric Corporation or Indiana-Kentucky Electric Corporation as may be specified in the Contract Instrument.
- 1.12 Site: “Site” means Owner’s property or such other premises (including adjacent bodies of water and property owned or controlled by a third-party) upon which the Work is to be performed.

- 1.13 Subcontractor: “Subcontractor” means vendors, suppliers, consultants, and subcontractors of any tier, materialmen, professionals, laborers, and all other persons providing equipment, materials or services directly or indirectly to Contractor in connection with the Work.
- 1.14 Work: “Work” means all of Contractor's obligations under the Contract.

2.0 CONTRACTOR'S OBLIGATIONS

- 2.1 Contractor shall at its expense provide everything necessary for the complete, proper and timely execution of the Work including, but not limited to, home office support, labor, supervision, and technical field assistance; engineering, design, construction and start-up services; safety equipment, construction equipment, temporary utilities and facilities, equipment to be installed, materials, tools and supplies; fabrication and manufacturing; transportation; drawings and documentation, unless explicitly excluded in the Contract. Contractor’s performance of the Work shall include everything requisite and necessary to comply with prudent electric utility industry standards and to complete the Work, notwithstanding the fact that every item necessarily involved may not be specifically mentioned. Details and items not indicated by the Contract documents shall be adequately and properly performed by Contractor at no extra cost if such details and items are necessary to complete the intent of the Contract or otherwise to complete the Work.
- 2.2 Contractor is responsible for considering the conditions affecting the Work including, but not limited to, conditions affecting the transportation, disposal, handling and storage of materials; the availability and cost of labor, water, electric power, utilities, and roads; the uncertainties of weather, river stages, and similar physical conditions at the Site; the conformation and condition of the ground; and the character of equipment and facilities needed. Contractor shall take into account the character, quality and quantity of surface and subsurface materials or obstacles to be encountered to the extent this information is reasonably ascertainable from the Contract documents or an inspection of the Site.
- 2.3 Contractor shall immediately and before such conditions are disturbed notify Owner of: (a) subsurface or latent physical conditions at the Site which differ materially from those indicated in the Contract; (b) unusual geologic conditions at the Site which differ materially from conditions ordinarily encountered or from conditions addressed in the Contract; or (c) artifacts or articles which appear to have archaeological or historical significance. Owner shall promptly investigate such conditions and, if such conditions do materially differ and cause an increase or decrease in Contractor's cost of, or the time required for, performance of any part of the Work, the parties shall agree to amend the Contract. No claim of Contractor under this clause shall be allowed unless Contractor has given immediate notice as required above and confirmed such notice in writing within ten (10) days of discovery.
- 2.4 Contractor shall have an authorized representative at the Site to whom Owner may give instructions at all times when Work is being performed.
- 2.5 Contractor shall assign qualified and competent supervision and personnel to perform the Work and have qualified and competent supervision at the Site at all times to direct and observe the Work. Key personnel shall not be removed or replaced without prior consent of Owner which shall not be unreasonably withheld. Contractor will investigate and take appropriate action with respect to any personnel problems brought to its attention by Owner.
- 2.6 Contractor shall confine all of its operations and personnel to those areas of the Site to which Owner authorizes access.
- 2.7 Contractor's personnel may not operate Owner's tools, vehicles, materials or equipment (“Owner’s Equipment”) without Owner's prior authorization. If Contractor borrows Owner's Equipment, Contractor (a) agrees that Owner has provided the Owner’s Equipment AS IS, with no representations or warranties; (b) assumes full responsibility for the protection of the borrowed Owner’s Equipment; (c) assumes all liability for injuries or damages resulting from the use of the

borrowed Owner's Equipment; and (d) agrees to return the borrowed Owner's Equipment to Owner in the same condition as when it was borrowed, or, if repairs are necessary, to cause such repairs to be performed promptly at Contractor's expense before the Owner's Equipment is returned to Owner. Owner has no obligation to lend Owner's Equipment to Contractor.

- 2.8 Contractor shall cooperate with Owner and others working at or near the Site. Contractor shall promptly report to Owner any defects in the work of others which affects the Work. Failure to report such defects constitutes acceptance of the conditions by Contractor. Contractor shall properly fit, connect and coordinate its Work with that of Owner and other contractors.
- 2.9 Contractor shall keep all of its work areas free from trash and debris, and keep its work areas "broom clean" on a continuous basis.
- 2.10 Contractor shall secure and protect its materials, tools, equipment and the Work, including Owner's Equipment.
- 2.11 As requested by Owner, Contractor shall provide Owner with periodic reports concerning the progress of the Work.
- 2.12 Contractor is responsible for the proper execution of the Work with respect to any base lines and bench marks established by Owner.
- 2.13 If the Work is subject to prevailing wage requirements, Contractor agrees to comply with such requirements.
- 2.14 Contractor, its Subcontractors, and their respective employees and agents involved in the Work shall adhere to the provisions contained in Owner's Code of Business Conduct which can be found at Owner's website.

3.0 TERM AND EFFECTIVE DATE

- 3.1 The Contract shall commence as of the effective date and, unless earlier terminated as provided in Article 29.0, shall terminate on the termination date set forth in the Contract. Unless specified elsewhere in the Contract, the effective date of the Contract shall be the earlier of the date on which Contractor begins performance hereunder or the date of the latter signature on the Contract.

4.0 RELATIONSHIP OF THE PARTIES

- 4.1 Contractor and all of its employees and Subcontractors are, with respect to Owner, independent contractors. Contractor will be solely responsible for the supervision, direction, and control of its employees and Subcontractors. Contractor is responsible for the payment of all compensation, benefits, and employment taxes with respect to the Contractor's employees.

5.0 ASSIGNMENT AND SUBCONTRACTING

- 5.1 Contractor shall not assign or otherwise dispose of the Contract, or any obligations hereunder, without the written consent of Owner. Any assignment or disposal without the written consent of Owner shall be null and void.
- 5.2 Prior to entering into any subcontract, Contractor shall submit to Owner a subcontractor data sheet that includes the name and address of the Subcontractor and the scope of work proposed to be included under such subcontract. Within five Business Days of receipt of a Subcontractor data sheet, Owner may reject such Subcontractor without cost or contract extension by giving written notice of such rejection to Contractor.

- 5.3 Contractor is responsible for the selection of any Subcontractor and for the Subcontractor's proper performance of the Work assigned to it. If the work of a Subcontractor is not in compliance with the Contract requirements, Contractor shall take immediate steps to bring the Subcontractor's work into compliance and, at Owner's written request, terminate its contractual relationship with the Subcontractor as it relates to the Work at no cost to Owner.

6.0 LABOR RELATIONS

- 6.1 Contractor shall comply with any project, national or local labor agreements that are applicable to the Work or Site. Contractor shall cooperate with Owner and other contractors in establishing and maintaining labor work rules and practices.
- 6.2 When the Work is performed by building and construction trades labor, a pre-job conference shall be held with local labor representatives prior to starting Work. Owner shall be afforded the opportunity to attend and participate in pre-job conferences.
- 6.3 Contractor shall provide immediate notice to Owner of any actual or potential labor dispute that may delay the timely, efficient and productive performance of the Work.
- 6.4 Contractor shall inform and cooperate with Owner on labor matters. Contractor shall consult with Owner prior to rendering its decision(s) on labor matters that may impact the timely, efficient and productive performance of the Work.
- 6.5 Contractor shall exercise its management rights contained in applicable labor agreements to establish, maintain, and enforce work rules conducive to timely, efficient, productive and harmonious work operation. Contractor shall take the necessary steps available to resolve grievances, jurisdictional disputes, or other violations of collective bargaining agreements.

7.0 SAFETY AND SECURITY

- 7.1 Contractor shall perform the Work in a safe and careful manner, provide first aid facilities and transportation, and use such safety devices and methods as are necessary to protect its employees, agents, Subcontractors, Owner's employees and agents, other contractors and the public from bodily injury and property damage.
- 7.2 Contractor shall comply with and enforce all laws, rules and regulations applicable to safety and health standards, including, but not limited to, the Occupational Safety and Health Act of 1970 ("OSHA") and any revisions of OSHA or successor legislation.
- 7.3 Contractor shall comply with project and Site safety and security rules and all procedures issued by Owner, provided that such rules and procedures do not conflict with OSHA or other safety laws, rules or regulations. Contractor shall assign a competent person at all times to manage, coordinate and enforce its safety program during performance of the Work.
- 7.4 Contractor shall provide Owner with Material Safety Data Sheets ("MSDS") for all applicable materials prior to delivery to Owner's Site.
- 7.5 Contractor shall obtain Site permits or approval from Owner for its vehicles, any excavation, use of explosives, access to restricted areas, use of Owner's Equipment, tools and facilities, and other similar activities.
- 7.6 Owner will arrange all necessary clearances on energized equipment, electrical and communications circuits, piping systems or other operational equipment. Contractor shall notify Owner requesting the clearances prior to the scheduling of such Work. Contractor shall comply with Owner's clearance permit system regarding tagout and lockout of electrical and mechanical systems and other equipment.

- 7.7 Contractor shall fully inform Owner in writing regarding the types, quantities and use of any hazardous materials brought on the Site; the types and quantities of hazardous wastes being generated from the Work; and Contractor's program for proper storing, handling and disposal of such materials in a safe and secure manner.
- 7.8 Contractor shall immediately inform Owner of all regulatory, safety, health and environmental inspections, citations and penalties associated with the Work. Contractor shall provide Owner with written reports and copies of all documents submitted to or by regulatory agencies and insurance companies.
- 7.9 Contractor shall promptly inform Owner of any injuries to its employees, agents, Subcontractors, or other persons arising out of the Work that require medical treatment.
- 7.10 Contractor shall obtain, maintain, and properly complete all record keeping required by regulatory agencies. Upon request, Contractor shall provide Owner with copies of all logs, reports and other records.
- 7.11 Contractor shall investigate all accidents resulting in personal injury, property damage, or near misses to determine root cause(s) and corrective action(s). Upon request, Contractor shall provide Owner with a copy of investigative reports, including all documents submitted to insurance companies.
- 7.12 All of Contractor's employees, agents, Subcontractors, vehicles, trailers, etc. entering or leaving the Site are subject to inspection at any time by Owner.
- 7.13 If a safety violation or other unsafe condition causes imminent danger, Owner may immediately shut down the Work involved without advance written notice.
- 7.14 Contractor and all Subcontractors performing Work at the Site must have a substance abuse program. This program must apply to all personnel of Contractor and its Subcontractors. Minimum requirements of this program shall include pre-hire testing, testing for cause and if requested, random testing. Screening substances and their associated cut-off limits are listed below.

Drug Classes	Screening Cut-Off Limit (ng/ml)	Confirmation Cut-Off Limit (ng/ml)
Amphetamines	1,000	500
Benzoyllecgonine	300	150
Cannabinoids	50	15
Opiates	2,000	2,000
Phencyclidine	25	25

Blood & Breath alcohol content: .02% per Department of Transportation.

Testing shall be performed by a testing facility certified by Department of Health & Human Services. Personnel must have evidence of having tested negative within a year prior to employment. Owner will accept conditional employment predicated upon (a) employee(s) furnishing evidence that they have submitted to testing within forty-eight (48) hours of initial employment and (b) employee(s) furnishing evidence of negative test results within five (5) Business Days of initial employment. Contractor shall ensure personnel are "drug free". Owner reserves the right to examine evidence outlined herein. Contractor's program shall incorporate reciprocity on "drug free" employee verification to minimize Owner's economic impact and employee(s) recertification while maintaining the program's intent.

- 7.15 If required by Owner, Contractor must meet certain security criteria set forth herein.

- 7.15.1 Contractor shall submit to Owner a copy of its background investigation process for Owner's review and file. If Owner, in its sole discretion, determines that Contractor's background investigations do not meet certain specific requirements, then Contractor, at its expense, must perform a background investigation that does meet Owner's certain specific requirements on each individual designated by Contractor to perform Work, or is performing Work on behalf of Contractor, for Owner (referred to herein for purposes of this Article, as an "individual"). Notwithstanding anything to the contrary stated herein, Owner reserves the right to conduct a background investigation on each individual at Contractor's expense.
- 7.15.2 Owner's certain specific requirements of background investigations include the following: (i) determination of whether an individual has been convicted of a felony crime in each state where the individual has resided during the past seven years; (ii) performance of the background investigation at the state level (in other words, to only search the records of the county in which the individual has resided during the past seven years is not a sufficient background investigation); and (iii) if the individual is to operate a motor vehicle while performing Work for Owner, then a state operator's license abstract must be completed in the states where the individual has been licensed as a vehicle operator during the past seven years.
- 7.15.3 If any background investigation reveals or indicates that an individual has been convicted of a felony crime, then the Contractor must notify the Owner prior to the individual commencing Work. Owner in its sole discretion shall have the option of barring from any Work Site any individual who has a reported felony conviction. Owner may audit or review specific Contractor screening files to ensure compliance with this Contract.
- 7.15.4 If an individual requires unescorted access to Owner's critical cyber assets, then Owner will conduct its own background investigation, which will include a Social Security Number verification. Additional specific provisions or requirements related to any Owner conducted background investigation pursuant to this Section 7.15.4 will be communicated to Contractor prior to implementation of such background investigation.
- 7.15.5 Contractor shall not perform any screening activities that violate the federal Fair Credit Reporting Act, Title VII of the Civil Rights Act of 1964 or any other applicable law in any circumstances. Contractor shall ensure that the substance and manner of any and all background investigations performed by Contractor conform fully to applicable law.
- 7.16 "Personally Identifiable Information" or "PII" means any information to which Contractor is provided access that could identify an individual either directly or indirectly including, without limitation to, the individual's name, credit card numbers, social security number, biometric, bank account numbers, passport numbers, computer passwords or health, financial or employment information and other individual confidential information.
  - 7.16.1 To the extent that Work under the Contract requires Contractor to be given access to PII gathered and/or maintained by or on behalf of Owner, or in the event Contractor acquires access to or encounters any PII during performance of the Work, Contractor shall after receipt thereof, treat such PII as confidential and safeguard such PII from unauthorized use and disclosure. Upon request of Owner, Contractor shall have its employees execute a confidentiality agreement protecting PII. Contractor agrees not to appropriate such PII for its own use or to disclose such PII to third parties unless specifically authorized by Owner in writing. Contractor shall ensure that its employees will not discuss, divulge or disclose any such PII to any person or entity except those persons directly concerned with and only to the extent necessary to complete the performance of the Work. Contractor shall access, use and process PII and other data on behalf of Owner only for the purposes specified in the Contract.



- 7.16.2 Contractor shall comply with (i) NERC Reliability Standards as applicable, including without limitation, those relating to Critical Infrastructure Protection, (ii) Owner's security standards, and (iii) such further instructions as Owner may provide regarding the processing of such PII. Contractor shall inform Owner promptly if it has reason to believe that applicable law (or changes in applicable law) prevents Contractor from fulfilling the obligations relating to treatment of PII or other data under Owner's security standards and/or the Contract.
- 7.16.3 To the extent permitted by law, Contractor shall notify Owner promptly and act only upon Owner's instruction concerning: (a) any request for disclosure of PII or other data by law enforcement or other governmental authority; (b) any request by law enforcement or other governmental authority for information concerning the processing of PII or other data in connection with the Contract; or (c) any request received directly from an individual concerning his/her PII.
- 7.16.4 Contractor may not store PII, on computers, mobile devices, including but not limited to a cellular telephones and/or personal digital assistants, servers and/or storage devices including removable media (any of which, hereinafter known as a "Computer"), unless required for the performance of Work. Any such information must be deleted from a Computer, in a manner that ensures that it cannot be accessed or read, as soon as such storage is no longer required for the performance of Work.
- 7.16.5 Upon termination of the Contract or upon Owner's request, Contractor must promptly (a) return all PII in written form to Owner, and (b) delete all PII in Contractor's possession or control (on computer or in whatever other form or media) in a manner that ensures that this information cannot be accessed or read.
- 7.16.6 Contractor shall administer a monitoring process to ensure compliance with Section 7.16 and the related subsections hereof, promptly report any breaches to Owner, and implement immediate, appropriate corrective actions to contain and prevent recurrence. Contractor shall report to Owner immediately upon discovery of a real or suspected loss of PII. In the event of a breach of this provision or the occurrence of any other event regarding PII that requires notification under applicable law, Contractor agrees to assume responsibility for informing all such individuals in accordance with applicable law.
- 7.16.7 In addition to any remedy available to Owner under the Contract, Contractor acknowledges that any breach of Section 7.16 or the related subsections hereof by Contractor or its Subcontractors may subject Contractor to civil and criminal penalties. Contractor shall include the full text of Section 7.16 and the related subsections 7.16.1 through 7.16.7 in all appropriate subcontracts. However, including such provision in the subcontracts shall not relieve Contractor of its obligation to ensure compliance with the provisions of Section 7.16 and the related subsections 7.16.1 through 7.16.7.

## 8.0 EQUIPMENT

- 8.1 All Equipment shall be new and meet the requirements of all applicable codes. Equipment which will not become a part of the permanent installation is not required to be new. Owner reserves the right to reject Equipment which has not been previously used but which has been in storage for an unreasonable period of time. Title to the Equipment shall be free and clear of all liens and encumbrances.
- 8.2 Contractor shall not substitute Equipment specified in the Contract unless authorized by Owner in writing. Unless substitution has been so authorized, Contractor shall, at its expense, remove and replace any improperly substituted Equipment.

- 8.3 Upon Owner's request, Contractor shall, at its expense, submit to Owner samples of Contractor-furnished Equipment. Contractor must obtain Owner's written approval before performing Work involving the use of Equipment for which samples have been requested. Approval by Owner shall not relieve Contractor from responsibility for complying with the requirements of the Contract and all applicable codes. Equipment used shall conform to the approved samples. Contractor shall remove and replace nonconforming Equipment at its expense.

9.0 INSPECTION AND ACCEPTANCE

- 9.1 Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the Work performed conforms to the Contract requirements. Owner reserves the right to review and approve the adequacy of Contractor's inspection system. Contractor shall provide all quality control and quality assurance program information requested by Owner.
- 9.2 Owner shall have free access to the Work for inspection purposes. Owner's inspectors and expeditors shall be admitted at all reasonable times to the shops of Contractor, its Subcontractors for inspection purposes. Owner's inspection, receipt or Initial Acceptance of the Work shall not relieve Contractor of its obligation to comply with the terms of the Contract.
- 9.3 Each party shall bear its own expenses in performing inspections, except that (a) Owner may use Contractor's facilities, ladders and scaffolds to perform inspections of the Work; (b) Contractor shall pay Owner's expenses in re-inspecting Work which was rejected as non-conforming to the Contract requirements in an earlier inspection; (c) Contractor shall pay the costs of uncovering and re-covering Work for Owner's inspection if Contractor failed to give Owner reasonable notice that the Work was ready to be covered; and (d) prior to Final Acceptance, if Owner requests an inspection of Work already completed which requires removing and tearing out Work, and the Work is found to be materially defective, Contractor shall pay the expenses of inspection and reconstruction, but if the Work is found to be in conformance with the Contract requirements, Owner shall pay the expenses of inspection and reconstruction.
- 9.4 Owner will not pay for defective work. Contractor shall repair or replace all defective work at its expense. Contractor shall promptly remove from the Site any Equipment that does not comply with the requirements of the Contract. If Owner's Equipment has been used in any defective work, the cost of such Owner's Equipment shall be backcharged to Contractor.
- 9.5 Contractor shall, at its expense, furnish to Owner certificates of shop inspection as required by laws or regulations, or by the National Board of Fire Underwriters, or by any company insuring the Equipment for the benefit of Owner.
- 9.6 Owner shall have the right to take possession of or use any part of the Work. Owner's possession or use shall not constitute Initial Acceptance or Final Acceptance of the Work.
- 9.7 Contractor shall make all production and shop tests at its expense. Owner shall have the right to have a representative present at such tests, including those at Contractor's suppliers' shops, and notice shall be given to Owner at least two weeks prior to any scheduled test. Contractor shall give Owner copies of certified test results promptly upon request.
- 9.8 Unless otherwise provided in the Contract, Final Acceptance by Owner shall be made as soon as practicable after all Work has been completed and inspected. Any part of the Work not rejected by Owner following Final Inspection shall be deemed to have achieved Final Acceptance.

10.0 SHIPMENT AND DELIVERY

- 10.1 Contractor shall coordinate shipment so that Equipment arrives at the Site on schedule and during Site receiving hours. Contractor shall provide shipping notices to Owner prior to shipment of the Equipment. Owner's storeroom at the Site where the Equipment is to be delivered shall be notified at least 48 hours in advance of the arrival of the Equipment, or as required by the Contract. Notification to Owner's storeroom and all shipping notices shall include special unloading and storage directions and a list of equipment required to unload the Equipment.
- 10.2 Contractor shall provide a complete bill of materials for each separate shipment. Every part that is not preassembled shall be identified on the bill of materials.
- 10.3 Contractor must attach metal tags with corrosion resistant tie wire, and waterproof markings and labels, to each piece and package, making reference to the bill of materials and Contract number.
- 10.4 Owner reserves the right to refuse shipments that do not contain proper markings, bills of materials, or for which proper shipping notices were not received. The return and redelivery will be at Contractor's expense.
- 10.5 Contractor shall deliver all Equipment F.O.B. Site, with freight prepaid and included in the Contract price.

11.0 TITLE AND RISK OF LOSS

- 11.1 Title and risk of loss shall pass to Owner upon Final Acceptance of the Work. Contractor agrees that title shall vest in Owner free and clear of all liens and encumbrances. If the Work is rejected as non-conforming, title and risk of loss shall remain with Contractor.
- 11.2 If the Work requires warranty work, title shall remain at all times with Owner, except that if the Work is replaced rather than repaired, Owner's title shall vest in the replacement Work.
- 11.3 If any part of the Work requires warranty work at Contractor's facility or any other off-Site location, risk of loss to that part of the Work shall pass to Contractor upon delivery by Owner of that part of the Work to a common carrier. Risk of loss to that part of the Work shall pass back to Owner upon delivery to Owner, installation at the Site and successful acceptance testing of the repaired or replaced Work.

12.0 SCHEDULE

- 12.1 Contractor shall perform the Work to meet the schedule date(s) set forth in the Contract documents. Contractor shall not commence Work until authorized by Owner to do so.
- 12.2 In a format acceptable to Owner, Contractor shall develop, update, maintain and provide to Owner a written schedule for execution of the Work. The schedule shall be time scaled, complete, and accurate in detail depicting Contract milestone dates, work activities and durations. Upon review and approval by Owner, this schedule shall become the Contract schedule. Updates to the Contract schedule shall be provided to Owner on at least a monthly basis. Updates shall depict actual progress measured against planned progress.
- 12.3 Contractor shall notify Owner within 24 hours of the first knowledge that any completion date(s) will not be met and shall, within five (5) Business Days thereafter, submit a detailed program depicting the plans and actions being taken to regain the lost time. The notice shall not limit any other rights or remedies afforded Owner under the Contract or by law.

13.0 TERMS OF PAYMENT

13.1 Except as otherwise provided in the Contract, the following terms of payment shall apply:

- 13.1.1 The Contract Price set forth in the Contract shall constitute full and complete payment for all Work.
- 13.1.2 Contractor shall submit invoices with proper documentation to Owner for the Work completed or for milestones achieved during the prior month. Owner may withhold all or any part of payment in an amount necessary to protect Owner from loss due to the occurrence, or imminent occurrence, of (i) Contractor's breach or failure to perform in accordance with the Contract, (ii) defective Work, (iii) Contractor's failure to pay any Subcontractor, (iv) other claims by Owner against Contractor, including indemnity claims, and (v) damages for delay or any agreed upon liquidated damages.
- 13.1.3 Owner shall pay 90% of each properly submitted and accepted invoice within thirty (30) days of receipt. The release of retention shall become due and payable thirty (30) days after the date of Final Acceptance of the Work.
- 13.1.4 Each invoice shall contain a statement that all bills for material and labor relating to the Work have been paid in full by Contractor, and there are no unpaid bills for which a lien could be filed. If requested by Owner, Contractor shall provide evidence of such payments. The final invoice for the Work shall be accompanied by a satisfactorily completed Affidavit of Completion in the form attached as Exhibit 1. Payment of the final invoice and retention constitutes a full and final release of Owner from all claims, damages, liabilities and obligations under the Contract.

13.2 Contractor shall promptly pay all of its Subcontractors.

14.0 CHANGES IN WORK AND EXTRA WORK

14.1 Change in Work

- 14.1.1 "Change Order" means a written order issued in accordance with this Article 14.0 documenting an addition to, deletion from, or other modification to the Work, including a change in the scope of Work, the Contract Price, the payment schedule, the completion dates, or the schedule for the Work.
- 14.1.2 Owner may issue a Change Order: (i) at Owner's option, or (ii) if requested by Contractor due to the occurrence of an event that entitles Contractor to a Change Order as determined by Owner.
- 14.1.3 If Owner issues a Change Order, Contractor shall perform the changed Work in accordance with the terms of the Contract and the issued Change Order.
- 14.1.4 No order, statement or other conduct of Owner shall be treated as a change in Work until such change is authorized in writing by Owner.
- 14.1.5 Contractor shall not be entitled to a Change Order for conditions such as, but not limited to, (i) work which is of such a nature as to be normally included in the Work or is reasonably inferable from the Contract; (ii) any errors, omissions, non-performance, negligence, deficiencies or improper or defective work on the part of Contractor (including miscalculations, incorrect estimates, or other errors in Contractor's proposal for the Work); (iii) changes relating to refinement, minor correction and detailing of the Work or

any part of the Contract; or (iv) other unallowable claims such as cost impacts not due to Owner and cumulative impact claims.

- 14.1.6 With respect to Contractor claims for additional compensation, Owner shall pay only incremental Direct Costs associated with the proposed changes and only to the extent that Contractor can demonstrate that the changes actually increased its costs of performance. Any claims for additional compensation based on a change to the Work or extra work must be material in nature, and Contractor must provide full documentation supporting all elements of such claims. For a reduction in the scope of Work or a change which reduces Contractor's costs, the Contract Price shall be adjusted downward. The payment for changes to the Work shall be complete compensation to Contractor for performing such changes, including any schedule or cost impacts on the Work.
- 14.1.7 If Owner requests in writing that Contractor furnish materials or Equipment to be permanently incorporated in changed work, extra work or cost-plus work, Owner shall reimburse Contractor for such materials or Equipment at its incremental Direct Cost plus a percentage mark-up to be agreed upon by the parties. Requests for payment for materials and equipment shall be accompanied by copies of receipted invoices. Owner has the right to audit Contractor's requests for changes and the financial basis therefor.
- 14.1.8 If Contractor and Owner disagree on whether any particular work is within the scope of Work and such work must be completed to insure timely progress, Owner will issue a disputed Change Order to cover the disputed work. Contractor shall diligently proceed with the disputed work. By noon on the work day following performance of the disputed work, Contractor shall submit to Owner for review timesheets itemizing all labor and equipment hours expended on the disputed work and an itemized listing of Contractor furnished materials. Such review is not an admission of liability by Owner. Prior to Final Acceptance, each disputed Change Order will be resolved to the mutual agreement of the parties.

#### 14.2 Extra Work

- 14.2.1 "Extra work" is work which is beyond Contractor's scope of Work. At Owner's request, Contractor shall perform extra work at the applicable prices set forth in the Contract. If the Contract prices are not applicable to the type of extra work to be performed, Contractor shall promptly submit a proposal to perform the extra work, which proposal shall become an amendment to the Contract upon acceptance by Owner. If Owner directs Contractor to perform extra work on an overtime basis, Owner shall reimburse Contractor the actual payroll cost of premium time for direct job labor. Contractor shall invoice and maintain separate cost records for each extra work authorization issued by Owner.
- 14.2.2 If Owner elects, Contractor shall perform extra work on a cost-plus basis. Cost-plus extra work shall be paid in accordance with Article 15.0.

- 14.3 Contractor waives all claims for additional compensation for changes in work and extra work not made strictly in accordance with the terms of this Article 14.0.

#### 15.0 REIMBURSEMENT FOR COST-PLUS WORK

- 15.1 Direct labor costs will be reimbursed at the actual payroll costs of direct labor wages, fringe benefits, payroll taxes and insurance required by collective bargaining agreements or by law, plus an agreed wage mark-up. Copies of certified payrolls and time sheets shall be provided to Owner for review and approval. Contractor shall not invoice Owner for social security, unemployment, workers' compensation, or other federal, state or local taxes or insurance at rates which exceed Contractor's actual costs.

- 15.2 Owner will pay Contractor actual invoice costs for subcontracted work, provided Owner has approved payment terms in advance of performing the work plus an agreed mark-up.
- 15.3 Contractor-furnished Equipment costs will be reimbursed at actual invoice costs plus an agreed mark-up.
- 15.4 Construction equipment costs will be reimbursed based on actual usage time during the performance of Work and established rental rates not to exceed monthly rates set forth in the "Rental Rate Blue Book for Construction Equipment" adjusted for geographical region as published by Dataquest or other basis acceptable to Owner. Hourly rates shall be established by taking the monthly rate divided by 176 hours per month.
- 15.5 Small tools and consumables costs will be reimbursed based on agreed rates.
- 15.6 Field supervision, clerical, safety and other non-direct labor costs will be reimbursed at agreed billing rates, except that reimbursement for these costs for cost plus extra work shall require the prior review and approval of Owner.
- 15.7 Project management, engineering, design, procurement, and other home office services will be reimbursed at billing rates contained in the Contract.

16.0 BACKCHARGES

- 16.1 Owner may impose backcharges against Contractor or deduct backcharges from monies owed to Contractor for performance or reperformance by Owner or others of Work, including but not limited to, costs associated with defective work, nonperformance by Contractor, termination for cause, clean-up and disposal of debris, damages to Owner's tools and equipment and warranty repairs. Contractor will be responsible for the cost of such performance or reperformance plus a fifteen percent (15%) administrative charge.

17.0 TAXES

- 17.1 The Contract Price shall include, and Contractor shall pay, all taxes and assessments for unemployment insurance, workers' compensation, social security and disability benefits, and other taxes which are based upon the compensation paid to persons employed by Contractor or its Subcontractors for the performance of any Work under the Contract.
- 17.2 Except as provided below, the Contract Price shall include all applicable foreign, federal, state and local taxes payable by Contractor with respect to the Contract.
  - 17.2.1 Contractor Purchases. If Owner specifies that tangible personal property to be incorporated into real property as defined for sales and use tax purposes or taxable services to be purchased by Contractor from Subcontractors qualify for exemption from sales or use taxes, Contractor shall not include sales or use taxes on such exempt tangible personal property or services in the Contract Price. Unless otherwise specified: a) consumable materials and supplies or Contractor's tools and equipment that are not incorporated into the Work or the overall project are not eligible for exemption and the Contract Price shall include, and Contractor shall pay, any sales or use taxes on such items; and b) Contractor will use its own properly-executed exemption or resale certificate, and not Owner's direct pay permit, to make exempt purchases of tangible personal property or services from Subcontractors.
  - 17.2.2 Owner Purchases from Contractor. With respect to any Owner purchases from Contractor of tangible personal property not incorporated into real property as defined for sales and use tax purposes or taxable services, Owner shall provide to Contractor its

direct pay permit (if Owner has been issued a direct pay permit) or an appropriate exemption certificate required to relieve the Contractor of its responsibility to collect sales or use tax from the Owner. If Owner provides Contractor such direct pay permit or exemption certificate, sales or use taxes on Owner purchases from Contractor of tangible personal property or taxable services shall not be collected from Owner or included in the Contract Price. Unless otherwise approved or directed by Owner in writing, Contractor shall not use Owner's direct pay permit to make exempt purchases of tangible personal property or taxable services from Subcontractors.

- 17.2.3 Contractor Cooperation. Contractor shall take all steps reasonably necessary to ensure that Contractor's purchases from Subcontractors of items of tangible personal property or services are exempt from sales and use tax pursuant to any applicable exemption pursuant to the law of any U.S. jurisdiction or its political subdivisions.

18.0 INSURANCE

- 18.1 Contractor shall, at its sole expense, procure and maintain, and shall cause its Subcontractors to procure and maintain, throughout the term of this Contract except as set forth in Section 18.5, the following types of insurance with the following, minimum limits:

18.1.1 Workers' compensation insurance limits in accordance with all jurisdictions where Contractor has operations including where the Work is to be performed. If Contractor is a non-subscriber to workers' compensation, evidence of insurance equivalent to workers' compensation must be provided.

18.1.2 Employer's liability in an amount not less than \$1,000,000.

18.1.3 Business automobile insurance covering all owned, non-owned and hired autos in an amount not less than \$5,000,000 per occurrence.

18.1.4 Commercial general liability insurance covering claims of bodily injury and property damage in an amount not less than \$5,000,000 per occurrence.

18.1.5 Aircraft liability insurance with a combined limit of not less than \$10,000,000. Such insurance shall be required only if the Contractor or its Subcontractors shall utilize an aircraft in the performance of the Work.

18.1.6 If Contractor (or any of its Subcontractors) are engaged in operations which use marine vessels or floating equipment, or which are subject to maritime jurisdiction, the following insurance shall be required: Marine Liability insurance (including Jones Act and maritime employer's liability if operations are subject to federal jurisdiction) and pollution liability (under terms equivalent to current W.Q.I.S. policy provisions if operations are subject to federal jurisdiction) in amounts not less than \$10,000,000 per occurrence.

18.1.7 Professional liability insurance and/or errors and omissions insurance in an amount not less than \$5,000,000. Such insurance shall be required only if the Work includes professional liability exposures.

18.1.8 "All risk" property insurance covering the full replacement cost of Contractor's personal property.

- 18.2 To the extent permitted by law, Contractor shall waive, and shall cause each of its insurers to waive, any and all rights of recovery, by subrogation or otherwise, against Owner and its affiliates,

officers, directors, employees, agents and assigns of any type. Each of Contractor's insurance policies shall be primary to and non-contributory with any insurance or self-insurance of Owner.

- 18.3 The commercial general liability, the business automobile, and (if applicable) the aircraft liability and Marine Liability insurance shall include Owner as an additional insured with respect to Owner's liability arising out of the operations of Contractor. Such coverage shall also include blanket contractual coverage and contain no exclusion for explosion, collapse, or underground property damage (XCU coverage).
- 18.4 The insurance required by this Article 18.0 is in addition to and separate from any other obligations contained in the Contract.
- 18.5 Products and/or completed operations coverage shall be maintained for a period of five (5) years after the completion of the Work. If any of the policies indicated above are placed on a "claims-made" basis, such coverage shall be maintained for a period of not less than five (5) years following the completion of the Work.
- 18.6 Any deductibles or retentions on any of the policies required herein shall be the sole responsibility of the Contractor.
- 18.7 The above referenced limit requirements may be met by any combination of umbrella or excess and primary policies so long as the total limit of insurance requirement is met. The required coverages referred to herein shall in no way affect, nor are they intended as a limitation of, Contractor's liability with respect to its performance of the Work. The limits of insurance indicated herein are minimum requirements and are in no way intended to limit Contractor's liability.
- 18.8 In all cases where Contractor's employees (defined to include Contractor's direct, borrowed, special, or statutory employees) are covered by the Louisiana Worker's Compensation Act, La. Rev. Stat. Ann. 23:1021 et seq., Owner and Contractor agree that pursuant to Section 23:1061 (A) (1) all Work performed by Contractor and its employees under the terms and conditions of the Contract is an integral part of Owner's operations and is essential to Owner's ability to generate its goods, products and services. Additionally, Owner and Contractor agree that for purposes of Section 23:1061 (A) (3) Owner is the principal or statutory employer of Contractor's employees. Irrespective of Owner's status as the statutory employer or special employer of Contractor's employees, pursuant to Section 23:1031 (C), Contractor shall remain primarily responsible for the payment of Louisiana Worker's Compensation benefits to its employees, shall indemnify Owner from any and all claims of Contractor's employees or its Subcontractor's employees and shall not be entitled to seek contribution for any such payments from Owner.
- 18.9 Upon inception of the Contract and prior to the commencement of Work, Contractor shall provide Owner with an acceptable certificate of insurance evidencing the insurance required under Article 18. Contractor will not be permitted to bring its employees, materials or equipment onto the Site until Owner receives such evidence of insurance. Contractor also must provide an updated certificate of insurance at any time during the Contract term upon Owner's request. Contractor shall immediately notify Owner of cancellation or any material changes in the insurance policies required herein. If such insurance policies are subject to any exceptions to the terms specified herein, such exceptions shall be explained in full in such certificates. Owner may, at its discretion, require Contractor to obtain insurance policies that are not subject to non-standard exceptions.
- 18.10 In lieu of Sections 18.1 thru 18.9, the Owner may elect to implement an Owner Controlled Insurance Program ("OCIP"). If an OCIP is implemented, all Contractor(s) and Subcontractor(s) of any tier and such other persons or entities as the Owner may designate as enrolled parties, may, at Owner's option, be required to enroll and participate. Owner shall procure and maintain at its own expense during the performance of this Contract and a stipulated completed operations period, such



insurance coverage as Owner deems appropriate on behalf of enrolled parties. Eligible Contractor(s) and Subcontractor(s) must submit all necessary enrollment forms for acceptance into the OCIP, and agree to the terms of the Owner's project safety standards. Owner and Contractor agree that the terms of the OCIP as contained in amendments to this Contract and the OCIP Contractor Manual shall control. The OCIP does not relieve any Contractor or Subcontractor from its obligations to procure coverage for offsite operations or coverages not included in the OCIP. In the event an OCIP is implemented, amended insurance requirements for enrolled parties will be provided.

- 18.11 The furnishing of insurance by Owner through an OCIP will in no way relieve or limit any enrolled party of any responsibility, liability, or obligation imposed by the contract documents or by law, including without limitation any indemnification obligations which any enrolled party has to the Owner thereunder.

19.0 INDEMNIFICATION

- 19.1 The laws of the state where the Work giving rise to the claim is performed shall apply to this Article 19.0.

19.2 **TO THE EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND AT ITS EXPENSE, AND SAVE OWNER HARMLESS FROM, ANY LIABILITIES, COSTS AND CLAIMS, INCLUDING JUDGMENTS RENDERED AGAINST, AND FINES AND PENALTIES IMPOSED UPON, OWNER AND REASONABLE ATTORNEYS' FEES AND ALL OTHER COSTS OF LITIGATION (COLLECTIVELY, "LIABILITIES"), ARISING OUT OF THE CONTRACT, INCLUDING INJURIES, DISEASE OR DEATH TO PERSONS, OR DAMAGE TO PROPERTY, AND ENVIRONMENTAL CLAIMS AND LIABILITIES, CAUSED BY CONTRACTOR, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS, OR IN ANY WAY ATTRIBUTABLE TO THE PERFORMANCE OF THE CONTRACT, EXCEPT THAT CONTRACTOR'S OBLIGATION TO INDEMNIFY OWNER SHALL NOT APPLY TO ANY LIABILITIES ARISING FROM OWNER'S SOLE NEGLIGENCE. TO THE EXTENT PROVIDED IN THIS SECTION, IN STATES OTHER THAN OHIO, MICHIGAN, KENTUCKY, TENNESSEE, MISSOURI, OKLAHOMA, VIRGINIA, AND WEST VIRGINIA, CONTRACTOR AGREES TO INDEMNIFY OWNER FOR LIABILITIES ARISING FROM OWNER'S ACTS AND OMISSIONS, NEGLIGENT OR OTHERWISE. OWNER SHALL HAVE THE RIGHT TO SELECT ITS OWN COUNSEL AND TO HAVE COUNSEL SEPARATE FROM CONTRACTOR, ALL AT CONTRACTOR'S EXPENSE.**

19.3 **WITH RESPECT TO CLAIMS AGAINST OWNER BY CONTRACTOR'S EMPLOYEES, CONTRACTOR UNDERSTANDS AND AGREES THAT THIS INDEMNIFICATION OBLIGATION SHALL NOT BE LIMITED IN ANY WAY BY, AND CONTRACTOR EXPRESSLY WAIVES, ITS IMMUNITY AS A COMPLYING EMPLOYER UNDER ANY APPLICABLE WORKERS' COMPENSATION LAW, BUT ONLY TO THE EXTENT THAT SUCH IMMUNITY WOULD BAR OR AFFECT RECOVERY UNDER OR ENFORCEMENT OF THIS INDEMNIFICATION OBLIGATION.** With respect to the State of Ohio, this waiver applies to Section 35, Article II of the Ohio Constitution and Ohio Rev. Code Section 4123.74.

19.4 **CONTRACTOR SHALL BE LIABLE FOR REASONABLE ATTORNEYS' FEES AND ALL COSTS OF LITIGATION ASSOCIATED WITH ENFORCEMENT OF ALL INDEMNITY OBLIGATIONS SET FORTH IN THE CONTRACT.**

20.0 LIMITATION OF LIABILITY

20.1 Except as expressly provided herein, neither party shall be liable to the other for any incidental, indirect, special, punitive or consequential damages. Contractor must bring any cause of action arising under the Contract within one year from the time the cause of action accrues.

21.0 LIENS

21.1 To the extent permitted by law, Contractor shall not file or permit to be filed any lien with respect to the Work and hereby expressly waives any right to file or cause to be filed a lien. Contractor, in its subcontracts, shall require all Subcontractors to expressly waive the right to file any liens against Owner's property, and, if requested, provide Owner with copies of such waivers.

21.2 In the event any claim is asserted or any lien filed against Owner or its property, or notice of lien is provided to Owner in violation of this provision, further payment to Contractor shall not become due under the Contract until the claim is satisfied or the lien released without cost to Owner and Contractor shall provide Owner with evidence of payment relating to such claim or lien. If Contractor fails to settle any claim or secure the release of any lien, Owner may take whatever steps it deems necessary to settle the claim or release the lien, including bonding off the lien. Owner may deduct its costs and expenses for settling any claim or securing the release of any lien filed by Contractor or its Subcontractors from any money due or to become due to Contractor under the Contract. If final payment has been made, Contractor shall reimburse to Owner its costs to settle any claim or secure the release of any lien arising out of the Contract.

22.0 INTELLECTUAL PROPERTY

22.1 Contractor warrants that its performance of the Work will not infringe upon or violate any trademarks, patents, copyrights, trade secrets or other third party property rights. If the performance of Work is held in any action to constitute infringement, or the use of the Work is enjoined, Contractor, at its expense, shall procure for Owner the right to continue use of the Work, or replace the Work with non-infringing materials or methods satisfactory to Owner, or modify the Work in a manner satisfactory to Owner so that the Work becomes non-infringing. Contractor agrees to indemnify and save Owner harmless from and against any liability or damages, including attorneys' fees, arising out of any alleged infringement or violation.

22.2 All inventions, discoveries, documents, works of authorship, methods, and the derivative works thereof, resulting from the Work, including patents, patent applications, copyrights, trade secrets and other intellectual property (collectively "Intellectual Property"), shall be the sole and exclusive property of Owner. Contractor shall promptly inform Owner of the development of any such Intellectual Property and does hereby assign and transfer the entire right, title and interest, together with all rights of priority, in and to such Intellectual Property to Owner. Contractor shall promptly cooperate with Owner in signing any additional documentation necessary to assign and perfect ownership of such Intellectual Property in Owner or to allow Owner to register its property rights therein. Contractor warrants that it has obtained written agreements from its employees and agents as necessary to effectuate the purpose of this Section. The Intellectual Property assigned and transferred to Owner shall be the Confidential Information of Owner.

22.3 Contractor grants Owner a nonexclusive, nonrevocable, perpetual, fully paid license to utilize Contractor's intellectual property existing separate from the Contract, including inventions, discoveries, works or authorship, methods, and trade secrets, regardless of whether such are the subject of patents, copyrights or other intellectual property protection, to the extent necessary for Owner to achieve the full benefit of the Work.

22.4 Contractor shall not use Owner's name or logo in marketing, endorsements, or other business purposes without prior written consent from Owner.

23.0 DRAWINGS AND DATA

- 23.1 Contractor shall furnish for Owner's review, prior to commencement of Equipment manufacture or fabrication, general and detailed drawings of the Equipment in the format requested. Such drawings shall be certified as to accuracy and completeness and shall show information adequate to enable Owner to design and provide suitable clearances. If required by the Contract or any code, law or agency, Contractor will provide professional engineer or architect sealed drawings and reports for the state where the Equipment is to be finally installed. Figures shall take precedence in all cases over scaled measurements on drawings. Where obvious discrepancies exist, Contractor shall consult with and follow the instructions of Owner. Owner's approval of Contractor's drawings shall not relieve Contractor of its obligation to comply with the contract requirements.
- 23.2 All written data, such as drawings, plans, reports, designs and specifications, prepared by Contractor for Owner during the performance of Work shall become the property of Owner. Such data, together with all data furnished by Owner and lent to Contractor for return, shall be delivered to Owner upon request, or upon completion of the Work or termination of the Contract. For clarification purposes, Owner shall have the unrestricted right to use, release, disclose, copy and reproduce such data for purposes of operation, maintenance, analysis, testing, cleaning, erection, improvement or modification of any facilities owned or operated by Owner. Contractor shall cooperate with Owner by executing such documents as are necessary to assign and perfect ownership in Contractor provided data to Owner.

24.0 CONFIDENTIALITY

- 24.1 "Confidential Information" means any confidential or proprietary information, whether written, oral, or visual, whether or not it constitutes a trade secret under applicable law. "Confidential Information" includes, but is not limited to, business plans and methods; customer information; engineering, operating and technical data; and the dates of Owner's outage schedule, information concerning the Work, and Owner's activities. "Confidential Information" does not include information that (a) has become part of the public domain other than by acts or omissions of the recipient; (b) has been furnished or made known to the recipient by a third person as a matter of legal right and without restriction on use; (c) was in the recipient's possession prior to disclosure by the disclosing party without restriction on use; or (d) is independently developed by the recipient without access to the Confidential Information.
- 24.2 Subject to Section 24.5, each party agrees (a) to protect the Confidential Information of the other with at least the same degree of care used to protect its own Confidential Information; (b) not to use (except for the purpose described herein), publish or disclose to third parties such Confidential Information; and (c) upon the request of the disclosing party, to promptly deliver to the disclosing party all written copies of its Confidential Information. Notwithstanding the foregoing, a recipient shall be entitled to disclose Confidential Information to its officers, employees, affiliates (including any joint ventures of which Owner or any of its affiliates are a member and the other members of such joint ventures), agents, lenders, attorneys and other advisors (collectively, "Representatives"), provided that the Representatives shall be informed of the confidentiality obligations provided herein.
- 24.3 If either party is required pursuant to applicable law or otherwise becomes legally compelled to disclose any of the Confidential Information, such party shall promptly advise the disclosing party in order that the disclosing party may seek a protective order or such other remedy as the disclosing party may consider appropriate in the circumstances. In any event, the compelled party may disclose only that portion of the Confidential Information which such party is legally required to disclose in the judgment of the party's legal counsel without any liability to the disclosing party hereunder and such disclosure shall not be a breach of this Section.

24.4 Contractor shall require its Subcontractors, if any, to expressly comply with the confidentiality provisions as set forth herein.

24.5 All documents prepared by Contractor for Owner during the performance of Work that incorporate, in whole or in part, information owned or provided by Owner shall not be marked or designated in any way as the confidential or proprietary information of Contractor without also stating that Owner has rights in such documents. Owner shall have the right to question the designation of Confidential Information by Contractor and Contractor agrees to provide Owner with reasonable cooperation in explaining such designation. Contractor agrees that Owner's acceptance of documents containing the Confidential Information of Contractor shall not be construed as a restriction on Owner's rights to use, release, disclose, distribute, copy or reproduce the documents.

25.0 DEFAULT

25.1 The occurrence of any of the following shall constitute an "Event of Default":

25.1.1 Contractor files a petition in bankruptcy, or if its creditors file an involuntary petition in bankruptcy, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency.

25.1.2 Contractor (a) fails to maintain the schedule set forth in the Contract, or (b) fails to promptly pay Subcontractors for material or labor, or (c) commits repeated or substantial violations of laws, rules, regulations or policies, or (d) fails to perform in accordance with the Contract, and Contractor fails to take corrective action or submit an acceptable plan within two (2) Business Days after the receipt of a notice of non-conformance from Owner.

25.2 Upon an Event of Default, Owner may take any or all of the following actions without affecting the Contract Price or schedule:

(a) Owner may direct Contractor to cease performance on all or part of the Contract until satisfactory corrective action has been taken;

(b) Owner may have others take corrective action necessary to achieve compliance with the Contract. Owner may deduct the cost of such corrective action by others from any monies due to Contractor. Corrective action by others shall be taken when, in the judgment of Owner, the noncompliance threatens safety, unreasonably interferes with or delays the work of others, or otherwise creates a situation the resolution of which cannot be delayed without adversely impacting quality, cost or timely completion;

(c) Owner may pursue damages for delay under the terms of Article 26.0;

(d) Owner may suspend the Contract under Article 28.0; and/or

(d) Owner may terminate the Contract under the terms of Section 29.1

25.3 Each of Owner's rights set forth above shall be cumulative and additional to any other rights or remedies provide in law or equity or otherwise.

26.0 DAMAGES FOR DELAY

26.1 Contractor shall be liable for any direct damages incurred by Owner arising out of Contractor's failure to perform on time.

- 26.2 In lieu of Section 26.1, if the parties have agreed to liquidate the amount of direct damages resulting from Contractor's delay, the parties agree that such damages which might be incurred by Owner as a result of Contractor's delay in performance are uncertain and would be difficult to calculate. The parties agree that the liquidated damages contained in the Contract would be reasonable and fair compensation for late performance. Contractor commits to pay and Owner agrees to accept such sum as liquidated damages and not as a penalty in the event of late performance.

27.0 FORCE MAJEURE

- 27.1 Neither party shall be in breach of the Contract to the extent that any delay or default in performance is due to a Force Majeure Event. The term, "Force Majeure Event" shall mean any cause beyond the reasonable control of the delayed or defaulting party, including, but not limited to, acts of God including unusually adverse weather, fire, and epidemic; acts of public enemy including war, acts of terrorism, riot, and civil disturbance; and national labor strikes, which by exercise of due foresight such party could not have been expected to avoid or overcome. Contractor's inability to obtain adequate and sufficient labor in order to maintain progress of the Work shall not constitute a Force Majeure Event. No delay in performance resulting from a Force Majeure Event shall result in any liability on the part of Owner. Notwithstanding the preceding sentence, in the event of a delay caused by any act or failure to act on the part of Owner, Contractor's sole remedy shall be as set forth in Article 14.0.
- 27.2 The delaying party shall immediately notify the other party of the beginning of a delaying event, and shall confirm the notice in writing within ten (10) Business Days of the beginning of the event. The notice shall contain a detailed account of the delay, including the cause of the delay, an estimate of the duration of the delay, an estimate of the delay's impact to the schedule, and the plan to mitigate the effects of the delay.
- 27.3 If Contractor is the delaying party, and the delay is a Force Majeure Event as defined in Section 27.1, Owner shall grant Contractor an extension of the time for performance, to be mutually agreed upon by Contractor and Owner. The extension of time granted as a result of a Force Majeure Event shall in no case exceed the length of the delay and such extension may be withheld or reduced to the extent Contractor does not provide notice in accordance with Section 27.2. If Owner so requests, Contractor shall expedite its schedule to mitigate the effects of the excusable delay. Owner shall pay incremental, Direct Costs incurred by Contractor for expediting at Owner's request.

28.0 SUSPENSION

- 28.1 Owner may at any time suspend all or any part of the Work. Owner shall provide Contractor written notice verifying the suspension date. Immediately upon receipt of the suspension notice, Contractor shall take the necessary actions to comply with the suspension notice.
- 28.2 Owner shall pay Contractor in accordance with the terms of payment set forth in the Contract for the Work completed prior to the time of suspension and for the incremental, Direct Costs that result from Contractor's compliance with the suspension notice.
- 28.3 Owner may, at any time during the suspension period, either terminate the Contract in accordance with Section 29.2, or authorize the Work or any portion thereof to be restarted. Owner shall pay Contractor the incremental, Direct Costs associated with the restart of the Work and shall resume payments to Contractor in accordance with the terms of payment under the Contract thirty (30) days after the restart of Work.
- 28.4 The schedule shall be adjusted to provide for a reasonable extension of time for Contractor's performance.

29.0 TERMINATION

29.1 Termination for Cause

- 29.1.1 Upon an Event of Default, Owner may terminate the Contract upon written notice to Contractor.
- 29.1.2 In the event of such termination, Contractor shall immediately prepare and submit to Owner an itemization of the Work completed by Contractor. Owner may require Contractor to leave the Site. Owner may take over such Work and complete it, or have the Work completed by others. Owner may take possession of and utilize in completing the Work Contractor's materials, Equipment to be installed, supplies, tools and equipment at the Site.
- 29.1.3 Contractor shall not be entitled to further payment until all of the Work is completed in its entirety and Final Acceptance has been achieved. If the cost of completion exceeds the unpaid balance under the Contract, Contractor shall pay the difference to Owner within thirty (30) calendar days of demand.
- 29.1.4 In the event that a court determines that the termination was not properly a termination for cause, pursuant to Section 29.1.1, Contractor's remedy shall be limited to the payments permitted in accordance with Section 29.2.

29.2 Termination for Convenience

- 29.2.1 Owner may terminate this Contract, in whole or in part, for its convenience. Owner will give Contractor written notice of termination specifying the extent to which the Contract is terminated and the date, immediately or otherwise, on which termination becomes effective.
- 29.2.2 Upon termination for convenience, Contractor will comply with instructions in the notice of termination regarding delivery to Owner of all Work in progress and all completed Work, which shall become the property of Owner upon delivery.
- 29.2.3 In the event of such termination, Contractor shall receive payment, including the retained percentage, for the Work satisfactorily performed up to the time of such termination. In addition, Owner shall reimburse Contractor for incremental, Direct Costs resulting from the termination, provided that compensation was not otherwise made for such costs. Final payment shall be made upon the parties' agreement of the amount of the final invoice and Owner's receipt of an Affidavit of Completion in the form of Exhibit 1. Owner shall not be responsible for Contractor's lost profit on the terminated portion of the Contract.

30.0 EQUIPMENT AND WORKMANSHIP WARRANTY

- 30.1 Beginning upon Final Acceptance and for a period of one year thereafter, or for such period as may be specified elsewhere in the Contract, Contractor warrants that (a) it will perform the Work in accordance with the accepted standards of care and competence found in the engineering or other applicable profession as such standards relate to and are commonly used in the electric utility industry, and (b) all Equipment and workmanship shall be free of any and all defects and shall be in conformity with the requirements of the Contract.
- 30.2 Subject to the provisions of Section 30.3, in the event that the Equipment or workmanship does not comply with the warranty, Contractor shall, at no cost to Owner, promptly repair or replace such nonconforming Equipment or workmanship with as little disruption to Owner's operations as

practicable. Contractor shall be responsible for the total cost of correcting any defects, including but not limited to, the costs of engineering, design, materials, labor, any necessary equipment removal, disassembly, shipping, reinstallation and retesting of the installation. Owner shall give Contractor notice of observed defects with reasonable promptness. If nonconforming Equipment or workmanship causes an outage or other delay of operations, Contractor shall make the repair or replacement on an overtime, maximum effort basis, at Contractor's expense.

- 30.3 If Owner directs Contractor to repair or replace any defect and Contractor fails to do so within a reasonable time, or if an emergency exists rendering it impracticable for Contractor to perform the repair or replacement, Owner may make or cause to be made such repair or replacement without affecting the validity of the warranty. Owner's cost for making the repair or replacement shall be deducted from the Contract Price or any unpaid portion thereof. If the unpaid portion of the Contract Price is insufficient to cover such cost, Contractor shall reimburse Owner.
- 30.4 Owner will not pay for any defective portion of the Equipment or workmanship until remedied by Contractor at Contractor's expense in accordance with the Contract requirements.
- 30.5 Owner must approve any proposed correction or alteration by Contractor of the Equipment or workmanship, or parts thereof, made at any time or at any location, before such correction or alteration is undertaken. Approval by Owner shall not relieve Contractor from responsibility for complying with the requirements of the Contract and all applicable codes.
- 30.6 Any Equipment or workmanship which are repaired or replaced pursuant to this Article 30.0 shall be warranted for a period of one year from the date of completion and acceptance of such repair or replacement, or for the remainder of the original warranty period, whichever is longer.
- 30.7 Contractor shall obtain, for the benefit of Owner, all available warranties from Subcontractors of Contractor. Such warranties shall be in addition to the warranties set forth in this Article. If such warranties are in written form, Contractor shall provide Owner with the original warranties.

31.0 REPORTING OF COMPLAINTS

- 31.1 Contractor shall immediately report to Owner, in accordance with Article 35.0, the complete details of all complaints, including any OSHA violations and complaints received from governmental authorities, Subcontractors, laborers, other third parties or members of the public relating to the Work.

32.0 RETENTION AND EXAMINATION OF INFORMATION, BOOKS AND RECORDS

- 32.1 Owner reserves the right to audit records necessary to permit evaluation and verification of (i) claims submitted, (ii) Change Orders, and related overhead and general and administrative costs, and (iii) Contractor's compliance, in the performance of the Contract and its dealings with Owner with (a) the Contract requirements; and (b) Owner's Code of Business Conduct governing business ethics. Owner's right to audit shall not extend to fixed, lump-sum or unit pricing.
- 32.2 Contractor shall cooperate with Owner and provide Owner with information and records ("information") pertaining to the Work as requested by governmental agencies, Owner, or courts of law.
- 32.3 Contractor shall retain for a period of three years after Contract termination or expiration all information relating to the Work. Owner may audit and copy such information at Contractor's premises during regular business hours. If requested by Owner, Contractor shall submit to Owner a copy of each of its subcontracts. Contractor shall include in its subcontracts a provision granting Owner the rights against Subcontractors contained in this Article 32.0.

33.0 COMPLIANCE WITH LAWS

- 33.1 Contractor warrants that all materials and Equipment supplied and all Work performed will comply with, and be manufactured, priced, sold and labeled in compliance with all applicable federal, state and local laws, rules, regulations, orders and ordinances, including, without limitation, environmental protection, energy, safety and health, and labor laws and regulations and applicable industry codes and standards.
- 33.2 Unless exempted, Contractor shall comply with the equal employment opportunity clause in Section 202 of Executive Order 11246, as amended, and all applicable rules, regulations, and relevant orders pertaining to Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, Section 4212 of the Vietnam Era Readjustment Assistance Act of 1974, as amended, the Veteran's Employment Opportunities Act of 1998, as amended, and Executive Order 13201. Contractor represents that it does not, and shall not for the term of the Contract, provide or maintain for its employees facilities that are segregated on the basis of race, color, religion, sex or national origin. Contractor represents that it will not assign its employees to perform any work related to the Contract at a location where facilities are segregated on the basis of race, color, religion, sex or national origin. Contractor agrees that it will not enter into any agreement to obtain goods or services relating to the Contract with any entity that provides, maintains or assigns its employees to work at locations where facilities are segregated on the basis of race, color, religion, sex or national origin. As used herein, "facility" means waiting rooms; work areas; restaurants and other eating areas; time clocks; locker rooms and other storage or sleeping areas, except as necessary to ensure privacy between male and female employees; parking lots, drinking fountains; recreation or entertainment areas; and transportation. If not otherwise exempted by Title 48 and to the extent applicable, Contractor will comply with 48 CFR §52.219-8, Utilization of Small, Small Disadvantaged, and Women-Owned Small Business Concerns, and 48 CFR §52.219-9, Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan. If not otherwise exempted by 41 CFR §60-1.5, Contractor represents that it will file all reports or other required information specified in 41 CFR §60-1.7.
- 33.3 Contractor shall indemnify and save Owner harmless from any and all costs or expenses arising out of any violations of such laws, ordinances and regulations.

34.0 PERMITS AND LICENSES

- 34.1 Contractor shall obtain all permits and licenses required by any regulatory authority for the performance of any portion of the Work, except that Owner shall obtain permits and licenses for all structures which are to become a permanent part of the Site. Before starting Work, Contractor shall submit to Owner a copy of all permits and licenses required by any such regulatory authority.
- 34.2 Contractor shall obtain and maintain all professional licenses necessary to perform the Work.
- 34.3 Contractor shall indemnify and save Owner harmless from any and all costs or expenses arising out of the failure of Contractor to obtain such permits and licenses.

35.0 NOTICES

- 35.1 Each party shall designate in writing a representative to receive any and all notices required under the Contract. Notices shall be in writing and shall be given to the representative designated to receive them, either by personal delivery, certified mail, facsimile, e-mail (with confirmation of receipt) or any similar means, properly addressed to such representative. All notices shall be effective upon receipt, or upon such later date following receipt as set forth in the notice. Either party may, by written notice to the other, change the representative or the address to which such notices are to be sent.



36.0 SEVERABILITY

32.1 In the event that any of the provisions, or portions thereof, of the Contract are held to be unenforceable or invalid by any court, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected.

37.0 WAIVER

37.1 Either party's waiver of any breach of the Contract shall not be deemed to be a waiver of any other breach of the same or a different term of the Contract.

38.0 NON-DISCLOSURE

38.1 Except as required by law, regulation, or judicial or administrative order, neither party shall disclose the terms of the Contract without the consent of the other party. Notwithstanding the foregoing, Owner may disclose the terms of the Contract without the consent of Contractor (a) to any of its affiliated companies (including any joint ventures of which Owner or any of its affiliates are a member and the other members of such joint ventures); and (b) to any prospective transferee or purchaser of assets of Owner or any of affiliates.

39.0 HEADINGS

39.1 Headings are provided for the convenience of the parties, and shall not affect the interpretation of any provision.

40.0 AFFILIATED COMPANIES

40.1 Any indemnification of Owner or any limitation of Owner's or Contractor's liability under this Contract shall to the same extent apply to Owner's or Contractor's directors, officers, employees, agents, and affiliated companies (including any joint ventures of which Owner or any of its affiliates are a member and the other members of such joint ventures), including any directors, officers, employees and agents thereof.

41.0 APPLICABLE LAWS AND JURISDICTION

41.1 Except for Article 19.0, the rights and obligations of the parties arising out of the Contract shall be governed in all respects by the laws of the State of Ohio, excluding any conflict-of-law rules. Any reference herein to the laws of other states is made only to the extent that the laws of that state might apply, notwithstanding the intent of the parties that the laws of the State of Ohio should apply.

41.2 Contractor agrees that all actions and proceedings brought by Owner against Contractor may be litigated in courts located in the State of Ohio or the state where work was performed. Contractor agrees that such courts are convenient forums and irrevocably submits to the personal jurisdiction of such courts. Contractor waives personal service of process and consents to service of process by certified or registered mail at the address designated for receiving notices under this Contract.

42.0 ENTIRE AGREEMENT

42.1 The Contract constitutes the entire agreement between the parties and supersedes all previous and collateral agreements or understandings with respect to the subject matter of the Contract. No waiver, alteration, amendment or modification of any of the provisions of the Contract shall be binding unless in writing and signed by duly authorized representatives of the parties.

43.0 BINDING EFFECT; NO THIRD-PARTY BENEFICIARIES

43.1 Subject to the restrictions on assignment in Section 5.1, this Contract shall be binding upon and shall inure to the benefit of the parties of their respective successors and permitted assigns.

43.2 No provision of the Contract is intended or shall be construed to be for the benefit of third party other than as set forth in Article 38.0.

44.0 EXECUTION; COUNTERPARTS

44.1 The Contract shall not be binding or effective until properly executed by each of the parties hereto. The Contract may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute but one and the same Contract, which may be sufficiently evidenced by one counterpart.

45.0 SURVIVAL

45.1 All of the terms of the Contract which by their nature extend beyond the expiration or termination of the Contract, including indemnification obligations, confidentiality obligations, limitations of liability, shall survive expiration or termination of the Contract and remain in full force and effect.

AFFIDAVIT OF COMPLETION

State of \_\_\_\_\_

County of \_\_\_\_\_

\_\_\_\_\_, being duly sworn, states that:  
(Name of Affiant)

1. S/He is the \_\_\_\_\_ of  
(Office held by Affiant)

\_\_\_\_\_  
(Legal Name of Contractor) (Contractor)

that has a contract with \_\_\_\_\_  
(Legal Name of Owner)

(Owner) dated \_\_\_\_\_ (Owner's Contract No. \_\_\_\_\_)  
(Contract Date) (Contract No.)

involving work on the Owner's property at \_\_\_\_\_  
(Project Name)

located near \_\_\_\_\_  
(City, State)

2. All of the Work required to be performed by the Contractor under said Contract has been performed. All bills and claims for material, labor and services to employees and Subcontractors covering the Work required to be performed under the Contract, have been paid in full by the Contractor. There are no unpaid amounts on the basis of which a lien has been filed, or can be filed, in connection with the Work performed under the Contract.

\_\_\_\_\_  
Signature of Affiant

Sworn to before me and subscribed in my presence this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary