

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

**GENERAL TERMS AND CONDITIONS
FOR
EQUIPMENT**

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GENERAL TERMS AND CONDITIONS FOR EQUIPMENT

1.0 DEFINITIONS

Subject to additional definitions contained in subsequent Articles, capitalized terms used in these General Terms and Conditions for Equipment 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 13.0.
- 1.3 Contract: “Contract” means the Contract Letter signed by the parties and all documents referenced in the Contract Letter.
- 1.4 Contract Price: “Contract Price” means the price to be paid to the Seller 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 Direct Cost: “Direct Cost” means the actual costs and charges incurred and payments made by Seller, its Subcontractors for Site Equipment, materials, services and labor (including payroll burden and expenses) which are directly attributable to the performance of Seller’s Work hereunder. Direct Cost includes Seller’s home office or Site labor to the extent Seller’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, off-Site or other unabsorbed costs.
- 1.7 Equipment: “Equipment” means all goods, materials and accessories to be purchased under the Contract, including all documentation required by the Contract.
- 1.8 Final Acceptance: “Final Acceptance” means Owner’s determination that the Work has been completed in accordance with the Contract requirements.
- 1.9 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.
- 1.10 Owner: “Owner” means Ohio Valley Electric Corporation or Indiana-Kentucky Electric Corporation as may be specified in the Contract Letter.
- 1.11 Seller: “Seller” means the entity providing Equipment and performing Work under the Contract. In performing Work under the Contract, Seller shall be an independent contractor.
- 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 Seller in connection with the Work.

1.14 Work: “Work” means all of Seller’s obligations under the Contract.

2.0 SELLER'S OBLIGATIONS

2.1 Seller 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, engineering, design, fabrication, materials, supplies, manufacturing, transportation, technical field assistance, drawings and documentation, unless explicitly excluded in the Contract documents.

2.2 Seller is responsible for considering the conditions affecting the Work including, but not limited to, conditions affecting the transportation, handling and storage of materials; the availability and cost of labor and materials; and the uncertainties of weather, river stages, and similar physical conditions affecting delivery of the Equipment.

2.3 Seller shall properly connect and coordinate its Work with Owner and others, and shall notify Owner if problems with the work of others hinders Seller in the performance of its Work.

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 27.0, 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 Seller begins performance hereunder or the date of the latter signature on the Contract.

4.0 RELATIONSHIP OF THE PARTIES

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

5.0 ASSIGNMENT AND SUBCONTRACTING

5.1 Seller 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, Seller 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 working 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 Seller.

5.3 Seller is responsible for the selection of a Subcontractor and for such Subcontractor's proper performance of the Work assigned to it. If the work of a Subcontractor is not in compliance with the Contract requirements, Seller 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 ON-SITE ACTIVITIES (APPLICABLE WHEN SELLER IS ON OWNER'S SITE)

- 6.1 Seller shall have an authorized representative at the Site to whom Owner may give instructions at all times when Work is being performed.
- 6.2 Seller shall have competent supervision at the Site at all times to direct and observe the Work performed. Seller will investigate and take appropriate action with respect to any personnel problems brought to its attention by Owner.
- 6.3 Seller shall confine all of its operations and personnel to those areas of the Site to which Owner authorizes access.
- 6.4 Seller's personnel may not operate Owner's tools, vehicles, materials or equipment ("Owner's Equipment") without Owner's prior authorization. If Seller borrows Owner's Equipment, Seller (a) agrees that Owner has provided the 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 Seller's expense before the Owner's Equipment is returned to Owner. Owner has no obligation to lend equipment to Seller.
- 6.5 Seller shall cooperate with Owner and others working at or near the Site. Seller shall promptly report to Owner any defects in the work of others which impacts on the Work. Failure to report such defects constitutes acceptance of the conditions by Seller.
- 6.6 Seller shall keep all of its work areas free from trash and debris, and keep its work areas "broom clean" on a continuous basis.
- 6.7 Seller shall secure and protect its own materials, tools, equipment and the Work, including Owner-provided materials and equipment.
- 6.8 Seller shall comply with any project, national or local labor agreements that are applicable to the Work or Site. Seller shall cooperate with Owner and others in establishing and maintaining work rules and practices.
- 6.9 Seller shall perform the Work in a safe and careful manner and use such safety devices and methods as are necessary to protect its employees, agents, Subcontractors, Owner's employees and agents, other contractors and sellers, and the public from bodily injury and property damage.
- 6.10 Seller 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.
- 6.11 Seller shall comply with all 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. Seller shall assign a competent person at all times to manage, coordinate and enforce its safety program during performance of the Work.

- 6.12 Seller and all Subcontractors performing Work at Site must have a substance abuse program. This program must apply to all personnel. 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. Seller shall ensure personnel are “drug free”. Owner reserves the right to examine evidence outlined herein. Seller’s program shall incorporate reciprocity on “drug free” employee verification to minimize Owner’s economic impact, and employees’ recertification while maintaining the program’s intent.

- 6.13 If required by Owner, Seller must meet certain security criteria set forth herein.
- 6.13.1 Seller 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 Seller’s background investigations do not meet certain specific requirements, then Seller, at its expense, must perform a background investigation that does meet Owner’s certain specific requirements on each individual designated by Seller to perform Work, or is performing Work on behalf of Seller, 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 Seller’s expense.
- 6.13.2 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.
- 6.13.3 If any background investigation reveals or indicates that an individual has been convicted of a felony crime, then the Seller 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 Seller screening files to ensure compliance with the Contract.

- 6.13.4 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 6.13.4 will be communicated to Seller prior to implementation of such background investigation.
- 6.13.5 Seller 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. Seller shall ensure that the substance and manner of any and all background investigations performed by Seller conform fully to applicable law.
- 6.14 "Personally Identifiable Information" or "PII" means any information to which Seller 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.
- 6.14.1 To the extent that Work under the Contract requires Seller to be given access to PII gathered and/or maintained by or on behalf of Owner, or in the event Seller acquires access to or encounters any PII during performance of the Work, Seller shall after receipt thereof, treat such PII as confidential and safeguard such PII from unauthorized use and disclosure. Upon request of Owner, Seller shall have its employees execute a confidentiality agreement protecting PII. Seller 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. Seller 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. Seller shall access, use and process PII and other data on behalf of Owner only for the purposes specified in the Contract.
- 6.14.2 Seller 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. Seller shall inform Owner promptly if it has reason to believe that applicable law (or changes in applicable law) prevents Seller from fulfilling the obligations relating to treatment of PII or other data under Owner's security standards and/or the Contract.
- 6.14.3 To the extent permitted by law, Seller 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.
- 6.14.4 Seller may not store PII, on computers, mobile devices, including but not limited to 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.
- 6.14.5 Upon termination of the Contract or upon Owner's request, Seller must promptly (a) return all PII in written form to Owner, and (b) delete all PII in Seller'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.

6.14.6 Seller shall administer a monitoring process to ensure compliance with Section 6.14 and the related subsections hereof, promptly report any breaches to Owner, and implement immediate, appropriate corrective actions to contain and prevent recurrence. Seller 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, Seller agrees to assume responsibility for informing all such individuals in accordance with applicable law.

6.14.7 In addition to any remedy available to Owner under the Contract, Seller acknowledges that any breach of Section 6.14 or the related subsections hereof by Seller or its Subcontractors may subject Seller to civil and criminal penalties. Seller shall include the full text of Sections 6.14 and the related subsections 6.14.1 through 6.14.7 in all appropriate subcontracts. However, including such provision in the subcontracts shall not relieve Seller of its obligation to ensure compliance with the provisions of this Sections 6.14 and the related subsections 6.14.1 through 6.14.7.

7.0 EQUIPMENT

7.1 All Seller-furnished Equipment which is to be installed shall be new and meet the requirements of all applicable codes. Equipment that will not become a part of the permanent installation is not required to be new.

7.2 Seller shall not substitute Equipment specified in the Contract unless authorized by Owner in writing. Unless substitution has been so authorized, Seller shall, at its expense, remove and replace any improperly substituted Equipment.

7.3 Upon Owner's request, Seller shall, at its expense, submit to Owner samples of Seller-furnished Equipment. Seller 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 Seller from responsibility for complying with the requirements of the Contract and all applicable codes. Equipment used shall conform to the approved samples. Seller shall remove and replace nonconforming Equipment at its expense.

8.0 INSPECTION AND ACCEPTANCE

8.1 Seller 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 Seller's inspection system. Seller shall provide all quality control and quality assurance program information requested by Owner.

8.2 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 Seller, its Subcontractors for inspection purposes. Owner's inspection, receipt or Initial Acceptance of the Work shall not relieve Seller of its obligation to comply with the terms of the Contract.

8.3 Each party shall bear its own expenses in performing inspections, except that (a) Owner may use Seller's facilities, ladders and scaffolds to perform inspections of the Work; (b) Seller shall pay Owner's expenses in re-inspecting Work which was rejected as non-conforming to the Contract requirements in an earlier inspection; (c) Seller shall pay the costs of uncovering and re-covering Work for Owner's inspection if Seller 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, Seller 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.

- 8.4 Owner will not pay for defective work. Seller shall repair or replace all defective work at its expense. Seller 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 Seller.
- 8.5 Seller 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.
- 8.6 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.
- 8.6 Seller 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 Seller's suppliers' shops, and notice shall be given to Owner at least two weeks prior to any scheduled test. Seller shall give Owner copies of certified test results promptly upon request.
- 8.7 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.

9.0 SCHEDULE

- 9.1 Seller shall perform the Work to meet the milestone date(s) set forth in the Contract documents. Seller shall not commence Work until authorized by Owner to do so.
- 9.2 In a format acceptable to Owner, Seller shall develop, update, maintain and provide to Owner a written schedule for execution of the Work. 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.
- 9.3 Seller shall notify Owner within 24 hours of the first knowledge that any milestone 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.

10.0 SHIPMENT AND DELIVERY

- 10.1 Seller shall coordinate shipment so that Equipment arrives at the Site on schedule and during Site receiving hours. Seller 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 Seller 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 Seller 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 Seller's expense.
- 10.5 Seller 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. Seller 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 Seller.
- 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 Seller's facility or any other off-Site location, risk of loss to that part of the Work shall pass to Seller 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 TERMS OF PAYMENT

- 12.1 Except as otherwise provided in the Contract, the following terms of payment shall apply:
 - 12.1.1 The Contract Price set forth in the Contract shall constitute full and complete payment for all Work.
 - 12.1.2 Seller 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) Seller's breach or failure to perform in accordance with the Contract, (ii) defective Work, (iii) Seller's failure to pay any Subcontractor, (iv) other claims by Owner against Seller, including indemnity claims, and (v) damages for delay or any agreed upon liquidated damages.
 - 12.1.3 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.
 - 12.1.3 Each invoice shall contain a statement that all bills for material and labor relating to the Work have been paid in full by Seller, and there are no unpaid bills for which a lien could be filed. If requested by Owner, Seller 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.
- 12.2 Seller shall promptly pay all of its Subcontractors.

13.0 CHANGES IN WORK

- 13.1 “Change Order” means a written order issued in accordance with this Article 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.
- 13.2 Owner may issue a Change Order: (i) at Owner’s option, or (ii) if requested by Seller due to the occurrence of an event that entitles Seller to a Change Order as determined by Owner.
- 13.3 If Owner issues a Change Order, Seller shall perform the changed Work in accordance with the terms of the Contract and the issued Change Order.
- 13.4 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.
- 13.5 Seller 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 Seller (including miscalculations, incorrect estimates, or other errors in Seller’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.
- 13.6 With respect to Seller claims for additional compensation, Owner shall pay only incremental Direct Costs associated with the proposed changes and only to the extent that Seller can demonstrate that the changes actually increased its costs of performance. Any claims for additional compensation based on a change to the Work must be material in nature, and Seller must provide full documentation supporting all elements of such claims. For a reduction in the scope of Work or a change which reduces Seller’s costs, the Contract Price shall be adjusted downward. The payment for changes to the Work shall be complete compensation to Seller for performing such changes, including any schedule or cost impacts on the Work.
- 13.1. If Seller 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. Seller shall diligently proceed with the disputed work. By noon on the work day following performance of the disputed work, Seller shall submit to Owner for review timesheets itemizing all labor and equipment hours expended on the disputed work and an itemized listing of Seller 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.

14.0 BACKCHARGES

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

15.0 TAXES

- 15.1 The Contract Price shall include, and Seller 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 Seller or its Subcontractors for the performance of any Work under the Contract.
- 15.2 Except as provided below, the Contract Price shall include all applicable foreign, federal, state and local taxes payable by Seller with respect to the Contract.
- 15.2.1 Seller 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 Seller from Subcontractors qualify for exemption from sales or use taxes, Seller 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 Seller'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 Seller shall pay, any sales or use taxes on such items; and b) Seller 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.
- 15.2.2 Owner Purchases from Seller. With respect to any Owner purchases from Seller of tangible personal property not incorporated into real property as defined for sales and use tax purposes or taxable services, Owner shall provide to Seller its direct pay permit (if Owner has been issued a direct pay permit) or an appropriate exemption certificate required to relieve the Seller of its responsibility to collect sales or use tax from the Owner. If Owner provides Seller such direct pay permit or exemption certificate, sales or use taxes on Owner purchases from Seller 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, Seller shall not use Owner's direct pay permit to make exempt purchases of tangible personal property or taxable services from Subcontractors.
- 15.2.3 Seller Cooperation. Seller shall take all steps reasonably necessary to ensure that Seller'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.

16.0 INSURANCE

- 16.1 Seller shall, at its sole expense, procure and maintain, and shall cause its Subcontractors to procure and maintain, throughout the term of the Contract except as set forth in Section 16.5, the following types of insurance with the following, minimum limits:
- 16.1.1 Workers' compensation insurance in accordance with all jurisdictions where Seller has operations including where the Work is to be performed. If Seller is a non-subscriber to workers' compensation evidence of coverage equivalent to workers' compensation must be provided.
- 16.1.2 Employer's liability in an amount not less than \$1,000,000.
- 16.1.3 Business automobile insurance covering all owned, non-owned and hired autos in an amount not less than \$5,000,000 per occurrence.

- 16.1.4 Commercial general liability insurance covering claims of bodily injury and property damage in an amount not less than \$5,000,000 per occurrence.
- 16.1.5 Aircraft liability insurance with a combined limit of not less than \$10,000,000. Such insurance shall be required only if the Seller or its Subcontractors shall utilize an aircraft in the performance of the Work.
- 16.1.6 If Seller (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.
- 16.1.7 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.
- 16.1.8 "All risk" property insurance covering the full replacement cost of Seller's personal property.
- 16.2 To the extent permitted by law, Seller 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 Seller's insurance policies shall be primary to and non-contributory with any insurance or self-insurance of Owner.
- 16.3 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 Seller. Such coverage shall also include blanket contractual coverage and contain no exclusion for explosion, collapse, or underground property damage (XCU coverage).
- 16.4 The insurance required by this Article is in addition to and separate from any other obligations contained in the Contract.
- 16.5 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.
- 16.6 Any deductibles or retentions on any of the policies required herein shall be the sole responsibility of the Seller.
- 16.7 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, Seller'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 Seller's liability.
- 16.8 In all cases where Seller's employees (defined to include Seller'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 Seller agree that pursuant to Section 23:1061 (A) (1) all Work performed by Seller 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 Seller agree that for purposes of Section 23:1061 (A) (3) Owner is the principal or statutory employer of Seller's employees. Irrespective of Owner's status as the statutory employer or special employer of Seller's employees, pursuant to Section 23:1031 (C), Seller 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 Seller's employees or its Subcontractor's employees and shall not be entitled to seek contribution for any such payments from Owner.

- 16.9 Upon inception of the Contract and prior to the commencement of Work, Seller shall provide Owner with an acceptable certificate of insurance evidencing the insurance required under Article 16. Seller will not be permitted to bring its employees, materials or equipment onto the Site until Owner receives such evidence of insurance. Seller also must provide an updated certificate of insurance at any time during the contract term upon Owner's request. Seller 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 Consultant to obtain insurance policies that are not subject to non-standard exceptions.

17.0 **INDEMNIFICATION**

- 17.1 The laws of the state where the Work giving rise to the claim is performed shall apply to this Article 17.0.

- 17.2 **TO THE EXTENT PERMITTED BY LAW, SELLER 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 SELLER, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS, OR IN ANY WAY ATTRIBUTABLE TO THE PERFORMANCE OF THE CONTRACT, EXCEPT THAT SELLER'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, SELLER 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 SELLER, ALL AT SELLER'S EXPENSE.**

- 17.3 **WITH RESPECT TO CLAIMS AGAINST OWNER BY SELLER'S EMPLOYEES, SELLER UNDERSTANDS AND AGREES THAT THIS INDEMNIFICATION OBLIGATION SHALL NOT BE LIMITED IN ANY WAY BY, AND SELLER 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.

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

18.0 LIMITATION OF LIABILITY

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

19.0 LIENS

19.1 To the extent permitted by law, Seller 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. Seller, 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.

19.2 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 Seller shall not become due under the Contract until the claim is satisfied or the lien released without cost to Owner and Seller shall provide Owner with evidence of payment relating to such claim or lien. If Seller 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 Seller or its Subcontractors from any money due or to become due to Seller under the Contract. If final payment has been made, Seller shall reimburse to Owner its costs to settle any claim or secure the release of any lien arising out of the Contract.

20.0 INTELLECTUAL PROPERTY

20.1 Seller 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, Seller, 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. Seller 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.

20.2 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. Seller 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. Seller 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. Seller 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.

- 20.3 Seller grants Owner a nonexclusive, nonrevocable, perpetual, fully paid license to utilize Seller'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.
- 20.4 Seller shall not use Owner's name or logo in marketing, endorsements, or other business purposes without prior written consent from Owner.

21.0 DRAWINGS AND DATA

- 21.1 Seller 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, Seller 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, Seller shall consult with and follow the instructions of Owner. Owner's approval of Seller's drawings shall not relieve Seller of its obligation to comply with the Contract requirements.
- 21.2 All written data, such as drawings, plans, reports, designs and specifications, prepared by Seller 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 Seller 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. Seller shall cooperate with Owner by executing such documents as are necessary to assign and perfect ownership in Seller provided data to Owner.

22.0 CONFIDENTIALITY

- 22.1 "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.
- 22.2 Subject to Section 22.5, 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) (collectively, "Representatives"), agents, lenders, attorneys and

other advisors, provided that the Representatives shall be informed of the confidentiality obligations provided herein.

- 22.3 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.
- 22.4 Seller shall require its Subcontractors, if any, to expressly comply with the confidentiality provisions as set forth herein.
- 22.5 All documents prepared by Seller 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 Seller without also stating that Owner has rights in such documents. Owner shall have the right to question the designation of Confidential Information by Seller and Seller agrees to provide Owner with reasonable cooperation in explaining such designation. Seller agrees that Owner's acceptance of documents containing the Confidential Information of Seller shall not be construed as a restriction on Owner's rights to use, release, disclose, distribute, copy or reproduce the documents.

23.0 DEFAULT

- 23.1 The occurrence of any of the following shall constitute an "Event of Default":
- 23.1.1 Seller 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.
- 23.1.2 Seller (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 Seller 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.
- 23.2 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 Seller 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 Seller. 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 24.0;
 - (d) Owner may suspend the Contract under Article 26.0; and/or

(d) Owner may terminate the Contract under the terms of Section 27.1

23.3 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.

24.0 DAMAGES FOR DELAY

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

24.2 In lieu of Section 24.1, if the parties have agreed to liquidate the amount of direct damages resulting from Seller's delay, the parties agree that such damages which might be incurred by Owner as a result of Seller'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. Seller commits to pay and Owner agrees to accept such sum as liquidated damages and not as a penalty in the event of late performance.

25.0 FORCE MAJEURE

25.1 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. Seller'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, Seller's sole remedy shall be as set forth in Article 13.0.

25.2 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.

25.3 If Seller is the delaying party, and the delay is a Force Majeure Event as defined in Section 25.1, Owner shall grant Seller an extension of the time for performance, to be mutually agreed upon by Seller 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 Seller does not provide notice in accordance with Section 25.2. If Owner so requests, Seller shall expedite its schedule to mitigate the effects of the excusable delay. Owner shall pay incremental, Direct Costs incurred by Seller for expediting at Owner's request.

26.0 SUSPENSION

26.1 Owner may at any time suspend all or any part of the Work. Owner shall provide Seller written notice verifying the suspension date. Immediately upon receipt of the suspension notice, Seller shall take the necessary actions to comply with the suspension notice.

- 26.2 Owner shall pay Seller 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 direct, reasonable costs that result from Seller's compliance with the suspension notice.
- 26.3 Owner may, at any time during the suspension period, either terminate the Contract in accordance with Section 27.2, or authorize the Work or any portion thereof to be restarted. Owner shall pay Seller the direct, reasonable costs associated with the restart of the Work and shall resume payments to Seller in accordance with the terms of payment under the Contract thirty (30) days after the restart of Work.
- 26.4 The schedule shall be adjusted to provide for a reasonable extension of time for Seller's performance.

27.0 TERMINATION

27.1 Termination for Cause

- 27.1.1 Upon an Event of Default, Owner may terminate the Contract upon written notice to Seller.
- 27.1.2 In the event of such termination, Seller shall immediately prepare and submit to Owner an itemization of the Work completed by Seller. Owner may require Seller 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 Seller's materials, Equipment to be installed, supplies, tools and equipment at the Site.
- 27.1.3 Seller 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, Seller shall pay the difference to Owner within thirty (30) calendar days of demand.
- 27.1.4 In the event that a court determines that the termination was not properly a termination for cause, pursuant to Section 27.1.1, Seller's remedy shall be limited to the payments permitted in accordance with Section 27.2.

27.2 Termination for Convenience

- 27.2.1 Owner may terminate the Contract, in whole or in part, for its convenience. Owner will give Seller written notice of termination specifying the extent to which the Contract is terminated and the date, immediately or otherwise, on which termination becomes effective.
- 27.2.2 Upon termination for convenience, Seller 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.
- 27.2.3 In the event of such termination, Seller shall receive payment, including the retained percentage, for the Work satisfactorily performed up to the time of such termination. In addition, Owner shall reimburse Seller 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 Seller's lost profit on the terminated portion of the Contract.

28.0 MATERIALS AND WORKMANSHIP WARRANTY

- 28.1 Beginning upon Final Acceptance and for a period of one year thereafter, or for such period as may be specified elsewhere in the Contract, Seller warrants that all Seller-furnished materials and workmanship shall be free of any and all defects and shall be in conformity with the requirements of the Contract.
- 28.2 Subject to the provisions of Section 28.3, in the event that the material or workmanship does not comply with the warranty, Seller shall, at no cost to Owner, promptly repair or replace such nonconforming material or workmanship with as little disruption to Owner's operations as practicable. Seller shall be responsible for the total cost of correcting any defects, including but not limited to, the costs of materials, labor, any necessary equipment removal, disassembly, shipping, reinstallation and retesting of the installation. Owner shall give Seller notice of observed defects with reasonable promptness. If nonconforming material or workmanship causes an outage or other delay of operations, Seller shall make the repair or replacement on an overtime, maximum effort basis, at Seller's expense.
- 28.3 If Owner directs Seller to repair or replace any defect and Seller fails to do so within a reasonable time, or if an emergency exists rendering it impracticable for Seller 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, Seller shall reimburse Owner.
- 28.4 Owner must approve any proposed correction or alteration by Seller of the materials 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 Seller from responsibility for complying with the requirements of the Contract and all applicable codes.
- 28.5 Any materials or workmanship which are repaired or replaced pursuant to this Article shall be warranted for a period of one year from the date of Final Acceptance of such repair or replacement, or for the remainder of the original warranty period, whichever is longer.
- 28.6 Seller shall obtain, for the benefit of Owner, all available warranties from Subcontractors, suppliers and vendors of Seller. Such warranties shall be in addition to the warranties set forth in this Article. If such warranties are in written form, Seller shall provide Owner with the original warranties.

29.0 REPORTING OF COMPLAINTS

- 29.1 Seller shall immediately report to Owner, in accordance with Article 33.0, the complete details of all complaints, including complaints received from governmental authorities, Subcontractors, laborers, other third parties or members of the public.

30.0 RETENTION AND EXAMINATION OF INFORMATION, BOOKS AND RECORDS

- 30.1 Owner reserves the right to audit records necessary to permit evaluation and verification of claims submitted, and Seller's compliance, in the performance of the Contract and its dealings with Owner, with (a) the Contract requirements and (b) Owner's Corporate Code of Conduct governing business ethics.
- 30.2 Seller 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.

- 30.3 Seller shall retain for a period of three (3) years after Contract termination or expiration all information relating to the Work. Owner may audit and copy such information at Seller's premises during regular business hours. If requested by Owner, Seller shall submit to Owner a copy of each of its subcontracts. Seller shall include in its subcontracts a provision granting Owner the rights against Subcontractors contained in this Article 30.0.

31.0 COMPLIANCE WITH LAWS

- 31.1 Seller 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.

- 31.2 Unless exempted, Seller shall comply with the equal employment opportunity clause in Section 202 of Executive Order 11246 and all applicable rules, regulations, and relevant orders pertaining to Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and Section 4212 of the Vietnam Era Readjustment Assistance Act of 1974, as amended. Seller 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. Seller 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. Seller 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 assure 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, Seller 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, Seller represents that it will file all reports or other required information specified in 41 CFR §60-1.7.

- 31.3 Seller shall indemnify and save Owner harmless from any and all costs or expenses arising out of any violations of such laws, ordinances and regulations.

32.0 PERMITS AND LICENSES

- 32.1 Seller 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, Seller shall submit to Owner a copy of all permits and licenses required by any such regulatory authority.

- 32.2 Seller shall indemnify and save Owner harmless from any and all costs or expenses arising out of the failure of Seller to obtain such permits and licenses.

33.0 NOTICES

- 33.1 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.

34.0 SEVERABILITY

34.1 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.

35.0 WAIVER

35.1 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.

36.0 NON-DISCLOSURE

36.1 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 Seller (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.

37.0 HEADINGS

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

38.0 AFFILIATED COMPANIES

38.1 Any indemnification of Owner or any limitation of Owner's or Seller's liability under the Contract shall to the same extent apply to Owner's or Seller'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.

39.0 APPLICABLE LAWS AND JURISDICTION

39.1 Except for Article 17.0, 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.

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

40.0 ENTIRE AGREEMENT

40.1 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.

41.0 BINDING EFFECT; NO THIRD-PARTY BENEFICIARIES

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

41.2 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 36.0.

42.0 EXECUTION; COUNTERPARTS

42.1 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.

43.0 SURVIVAL

43.1 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.

END OF DOCUMENT

AFFIDAVIT OF COMPLETION

State of _____

County of _____

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

1. S/He is the _____ of
(Office held by Seller)

(Legal Name of Seller) (Seller)

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 Seller under said Contract has been performed. All bills and claims for material, labor and services to employees, Subcontractors, material suppliers, and others, covering the work required to be performed under the Contract, have been paid in full by the Seller. 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