CONTRACT

FOR

ENGINEERING, PROCUREMENT

AND CONSTRUCTION

BETWEEN

PROJECT DEVELOPER

(Owner)

AND

EPC

(Contractor)

\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_

(Date)

**CONTRACT FOR**

**ENGINEERING, PROCUREMENT AND CONSTRUCTION**

This contract effective **[\_\_\_\_\_\_\_\_\_\_]**, 20\_\_, is entered into by and between **[\_\_\_\_\_\_\_\_\_\_\_]**, a company organized and existing under the laws of **[\_\_\_\_\_\_\_\_\_\_\_]** (the “*Owner*”) and **[\_\_\_\_\_\_\_\_\_\_\_]**, a company organized and existing under the laws of **[\_\_\_\_\_\_\_\_\_\_\_]**, (the “*Contractor*”).

**WHEREAS**, Owner desires to proceed with construction of a Single Unit gas fired Simple-cycle power generation facility with a nominal capacity of 75 gross megawatts in conformance with the specifications set forth in the Contract Technical Scope Document (TSD). Once complete, the facility will be expanded under separate contract, to include Phase 2 which includes the installation of a once through steam generator (OTSG) and steam turbine electric generator. Following Phase 2 commercial completion, Phase 3 will commence which includes the installation of the second gas turbine generator with OTSG providing additional steam to the steam turbine generator.

**WHEREAS**, Contractor represents that it possesses the requisite expertise, professional qualifications, skills, personnel, experience and technical and financial resources to design, engineer, construct and commission the desired electric power generation facility in accordance with the terms and conditions specified in the Contract, and has offered to do so;

**NOW THEREFORE,** in reliance on such representation by Contractor, Owner desires that Contractor design, engineer, construct and commission the desired electric power generation facility and Owner accepts such offer by Contractor.

**IT IS AGREED** as follows:

1. **DEFINITIONS AND RULES OF INTERPRETATION**

	1. **Definitions**. As used in the Contract, the following terms shall have the following meanings (such meanings as necessary are equally applicable to both the singular and plural forms of the terms defined):

 “*Acceptance Test Guidelines*” shall have the meaning set forth in Section 6.2.2.

 “*Applicable Laws*” means all laws, ordinances, judgments, decrees, injunctions, writs and orders of any court, or governmental agency or authority and rules, regulations, orders and interpretations of any Governmental Authority, court or other body having jurisdiction over construction of the Facility on the Site, performance of the Work, or operation of the Facility, including Applicable Permits, as may be in effect at the time of Contractor’s performance.

“*Applicable Permits*” means all Permits required to be obtained or maintained in connection with construction of the Facility on the Site or otherwise in connection with the performance of the Work.

“*Commencement Date*” means the date on which the Contractor is to commence performance of the Work, as specified in the Notice to Proceed delivered to Contractor by Owner pursuant to Section 2.2.

“*Completed Performance Test*” means any Performance Test conducted in accordance with the provisions of Section 6.2.2 during which the Facility and the operation thereof comply with all Applicable Laws and which is established as a Completed Performance Test in accordance with the provisions of Section 6.3.

“*Commercial Operability*” means the actual acceptance by Owner of the Project and Project performance by Contractor pursuant to Section 6.7.

“*Contract*” means the text comprising Articles 1 through 24, **Appendices A** through **Q**, which by this reference are incorporated into the Contract, and all Scope Change Orders.

“*Contract Price*” shall have the meaning set forth in Section 4.1.

 “*Contractor Permits*” shall have the meaning set forth in Section 2.1.7.1.

“*Contractor’s Equipment*” means all materials, equipment, tools, appliances and items of whatsoever nature required by Contractor for the purposes of the Project and the performance of the Work, but not including materials, equipment, appliances or items intended to form, or forming, part of the Facility.

“*Contractor’s Representative*” shall have the meaning set forth in Section 2.6.

“*Damages*” shall have the meaning set forth in Section 13.1.

 “*Design Documents*” shall have the meaning set forth in Section 2.1.2.

 “*Dispute*” shall have the meaning set forth in Section 20.2.

“*Electrical Output Guarantee*” shall have the meaning set forth in Section 8.2.2.

“*Electrical Output Guarantee Payment*” shall have the meaning set forth in Section 8.2.2.1.

“*Emissions Compliance Test*” shall have the meaning set forth in Section 6.2.1.

“*Emissions Limits Guarantee for NOx*” shall have the meaning set forth in Section 8.1.2.

*“Environmental Law”* shall mean any applicable code, law, rule or regulation relating to the presence of any chemicals, gases or other materials or substances at the Facility; or relating to the disposal of, or the discharge into the environment of, any such chemicals, gases or other substances or materials; including but not limited to the laws specifically referred to in the definition of Hazardous Materials.

“*Equipment*” shall be the equipment and spare parts procured by Contractor on behalf of Owner, described in **Appendix A** and as otherwise required to complete the Work.

“*Facility*” means the facilities to be designed, constructed and commissioned pursuant to the terms of the Contract at the Site as more fully described in **Appendix A**.

“*Final Performance Acceptance*” means the actual acceptance by Owner of the Project and Project performance by Contractor pursuant to the provisions of Section 6.8.

“*Financial Closing Date*” means the later of (i) the date of the first closing of construction financing of the Facility, and (ii) the date on which Owner has access to construction financing funds.

“*Financing Parties*” means (i) any and all lenders providing the construction, interim or long-term financing (including a leveraged lease or any other refinancing thereof) for the Project, and any trustee or agent acting on their behalf, and (ii) any and all equity investors providing financing or refinancing for the Project, and any trustee or agent acting on their behalf.

“*Force Majeure Event*” shall have the meaning set forth in Section 11.1.

“*Good Practices*” means those practices, methods, acts, techniques and standards as may be followed or employed at the time of performance of the Work, and which (i) are generally accepted in the United States of America for use in the electric power generation industry, in connection with power stations of the same or similar size and type as the Facility, (ii) are commonly used in prudent electric power generation engineering, construction, project management and operations and (iii) would be expected if the Work is to be performed in a manner consistent with Applicable Laws and the objectives of reliability, safety, environmental protection, economy and expediency.

“*Governmental Authority*” shall mean any federal, state, local, or municipal governmental body or department, commission, board, court, instrumentality, agency or subdivision thereof, including, but not limited to, any legislative, judicial or executive body, having appropriate jurisdiction to exercise authority or control over Owner, Contractor, and their respective agents and parent corporations or over any part or all of the Work to be performed under the Contract.

“*Grid Authority*” means the entity or entities who operate the existing substation(s) into which the Facility shall deliver electric power.

“*Guaranteed Ambient Conditions*” shall mean the ambient conditions, as defined in **Appendix M**, at which Contractor guarantees Net Electrical Output and Heat Rate.

“*Guaranteed Completion Date*” shall have the meaning set forth in Section 7.1.

“*Guaranteed Emissions Limits*” means the maximum emissions from the Facility of all gaseous pollutants as set forth in Section 8.1.

“*Guaranteed Emissions Limits (Natural Gas)*” shall have the meaning set forth in Section 6.5.1(a).

 “*Hazardous Materials*” means:

 (b) any substance or materials listed as hazardous or toxic in the United States Department of Transportation Table, by the Environmental Protection Agency or any successor agency or under any Federal, state or local laws or regulations, in each case as the same may now exist and hereafter be amended from time to time;

(c) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, and transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls; any chemicals, materials, or substances which are now or hereafter become defined as or included in the definition of “hazardous substances”, “hazardous wastes”, “hazardous materials”, “extremely hazardous wastes”, “restricted hazardous wastes”, “toxic substances”, “toxic pollutants”, “pollution”, “pollutants”, “regulated substances”, “byproduct material”, “source material”, “special nuclear material” or words of similar import, under Environmental Laws or in the regulations promulgated pursuant to said Environmental Laws; and any asbestos, poly-chlorinated biphenyls, urea formaldehyde foam, explosives or toxic or hazardous wastes, petroleum or petroleum products; and

(d) any other chemical, material or substance which is not classified as hazardous or toxic but exposure to which is prohibited, limited or regulated by, or which gives rise to any liability or damages under, any Environmental Law or otherwise requires clean-up or remediation under any Environmental Law now or in the future.

“*Heat Rate*” means the net heat rate (total fuel use divided by net electrical output over time, *i.e.*, KW/h), expressed in higher heating value (HHV), when corrected to the Guaranteed Ambient Conditions as further described in Section 8.2.3.

“*Heat Rate Guarantee*” shall have the meaning set forth in Section 8.2.3.

“*Heat Rate Guarantee Payment*” shall have the meaning set forth in Section 8.2.3.1.

“*Indemnified Parties*” shall have the meaning set forth in Section 13.1.

*“Initial Synchronization”* shall mean the first synchronization of the Facility with the Grid Authority and transmission of electric power from the Facility to the Grid Authority.

“*Mechanical Completion*” means completion of Contractor’s engineering, design procurement, construction, installation, calibration, commissioning and construction testing Work with respect to all mechanical, electrical, structural, instrumentation and control systems of the Facility.

“*Milestone Payment Schedule*” means the schedule set forth in **Appendix H** of the payments to be made by Owner to Contractor on the payment dates specified therein corresponding to the Project milestones set forth therein.

“*Monthly Progress Report*” means a written report issued monthly by Contractor to Owner containing the following information: (i) a description of the status of supplies and of Contractor’s and Subcontractors’ activities and engineering, procurement, manufacturing and construction progress as compared with the Project Schedule (as updated from time to time), (ii) certification that all amounts due to all Subcontractors prior to the last date covered by the Monthly Progress Report have been paid, (iii) an identification and evaluation of problems and deficiencies in the Work (including but not limited to an evaluation of any factors which are anticipated to have a material effect on the Project Schedule), (iv) a detailed description of the milestones achieved and the Work performed prior to the last date covered by the Monthly Progress Report and the extent to which Scheduled Payments therefor have been received, (v) the status of material and equipment procurement activities and deliveries, (vi) safety statistics required under Applicable Laws by Owner or pursuant to the terms of the Safety Manual and quality assurance reports (A) from the manufacturing and fabrication facilities of all Subcontractors and (B) with respect to all construction activity at the Site, and (vii) such other information as may be reasonably requested by Owner.

*“MWe”* shall mean megawatt (electric).

“*Net Electrical Output*” means the electrical output of the Facility in megawatts, measured at the high voltage bushings of the main step up transformer, when corrected to the Guaranteed Ambient Conditions as further described in Section 8.2.2.

“*Notice of Commercial Operability*” shall have the meaning set forth in Section 6.7.1.

“*Notice of Final Performance Acceptance*” shall have the meaning set forth in Section 6.5.1.1.

“*Notice of Project Completion*” shall have the meaning set forth in Section 6.8.1.

“*Notice of Provisional Performance Acceptance*” shall have the meaning set forth in Section 6.4.1.

 “*Notice to Proceed*” means the written notice substantially in the form attached as **Appendix P**, to be delivered by Owner to Contractor pursuant to Section 2.2 setting forth the Commencement Date.

 “*Operating Manuals*” shall have the meaning set forth in Section 2.1.2.1.

 “*Owner’s Representative*” shall have the meaning set forth in Section 5.1.

“*Owner Permits*” shall have the meaning set forth in Section 5.4.“*Party*” means Owner or Contractor.

“*Performance Guarantee Payments*” shall have the meaning set forth in Section 8.2.

“*Performance Guarantees*” shall have the meaning set forth in Section 8.2.

“*Performance Test*” means the operation of the Facility by Contractor in accordance with the provisions of Section 6.2.2.

“*Permit*” means any valid waiver, exemption, variance, franchise, permit, authorization, license or similar order of or from any Governmental Authority, court or other body having jurisdiction over the matter in question.

“*Person*” means any individual, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, joint venture, government or political subdivision or agency thereof.

“*Procedures Manual*” shall have the meaning set forth in Section 2.1.2.2.

“*Project*” means the Facility and the Work, as an integrated whole, including all Equipment, labor and materials to be furnished to Owner by Contractor hereunder, all as described in greater detail in Article 2 and in **Appendix A**.

“*Project Completion*” means the actual acceptance by Owner of the completed Facility from Contractor in accordance with the provisions of Section 6.8.

“*Project Completion Deadline*” shall have the meaning set forth in Section 6.8.3.

“*Project Construction Plan*” shall have the meaning set forth in Section 2.1.1.2.

“*Project Schedule*” shall have the meaning set forth in Section 2.1.20.

“*Provisional Electrical Output Guarantee*” means a tested Net Electrical Output with the Facility operating at Maximum Continuous Rating (MCR), with the number and configuration of heat recovery steam generators and gas turbine generators operating in accordance with **Appendix M**.

“*Provisional Heat Rate Guarantee*” means a tested Heat Rate with the Facility operating at Maximum Continuous Rating (MCR) with the number and configuration of heat recovery steam generators and gas turbine generators operating in accordance with **Appendix M**.

“*Provisional Performance Acceptance Certificate*” shall have the meaning set forth in Section 6.4.

“*Punch List*” means the list prepared by Owner, with the full cooperation of Contractor, which sets forth those items of Work that remain to be performed in order to ensure that the Project fully complies with all of the standards and requirements set forth herein. The Punch List shall not include any items of Work, alone or in the aggregate, the non-completion of which prevents the Facility from (i) being used for its intended purposes as described in the Contract in accordance with Applicable Laws or (ii) being legally, safely and reliably placed in commercial operation.

“*Quality Control Manual*” shall have the meaning set forth in Section 2.1.2.3.

 “*Safety Manual*” shall have the meaning set forth in Section 2.1.2.4.

“*Schedule Damages*” shall have the meaning set forth in Section 7.2.

“*Scheduled Payments*” shall have the meaning set forth in Section 4.2.

“*Scope Change*” means any addition to, deletion from, suspension of or other modification to the requirements of the Contract which necessitates a change in one or more of the Contract Price, Guaranteed Completion Date, the Milestone Payment Schedule, the Project Schedule, one or more of the Performance Guarantees or the Reliability Guarantee in accordance with the terms of Article 12.

“*Scope Change Order*” means a written order to Contractor issued and signed by Owner after the execution and delivery of the Contract authorizing a Scope Change and, if appropriate, an adjustment in one or more of the Contract Price, the Guaranteed Completion Date, the Milestone Payment Schedule, the Project Schedule, one or more of the Performance Guarantees, the Reliability Guarantee or any other amendment of the terms and conditions of the Contract.

“*Scope Change Order Notice*” means a written notice issued and signed by Owner describing a Scope Change, submitted to Contractor by Owner pursuant to the terms of Section 12.3.

“*Scope Change Order Request*” means a written proposal to Owner issued by Contractor requesting Scope Change Order in connection with the performance of the Work.

“*Site*” means land at Ramos Arizpe, Coahuila Mexico, on which the Facility is located, as more particularly described in **Appendix B**.

“*Startup*” shall mean the first act of Contractor after Mechanical Completion required for startup testing and placement of the Facility into operation.

 “*Subcontractors*” shall have the meaning set forth in Section 3.1.

“*Subcontracts*” shall have the meaning set forth in Section 3.2.

“*Taxes*” shall have the meaning set forth in Section 2.1.23.

“*Termination Payment*” shall have the meaning set forth in Section 15.7.

“*Warranty Period*” shall have the meaning set forth in Section 10.1.5.

“*Work*” shall have the meaning set forth in Section 2.1.

* 1. **Rules of Interpretation**.

 Unless otherwise required by the context in which any term appears:

(a) In the event of a conflict between the text comprising Articles 1 through 24 and any Appendix, the text of the Articles 1 through 24 shall prevail.

(b) The singular shall include the plural and the masculine shall include the feminine and neuter.

(c) References to "Articles," "Sections," "Schedules," “Appendices” or "Exhibits" shall be to articles, sections, schedules, appendices or exhibits hereof unless specified herein to be references to such attachments hereto, and references to paragraphs shall be to separate paragraphs of the Section or subsection in which the reference occurs.

(d) The words "herein," "hereof" and "hereunder" shall refer to this Contract as a whole and not to any particular section or subsection of this document; the words "include," "includes" or "including" shall mean "including, but not limited to;" and the words "best efforts" shall mean a level of effort which, in the exercise of reasonable judgment in the light of facts known at the time a decision is made, can be expected to accomplish the desired result at a reasonable cost.

(d) Except where the context otherwise indicates, the term "day" shall mean a calendar day, and whenever an event is to be performed by a particular date, or a period ends on a particular date, and the date in question falls on a weekend, or a legal holiday in the State of Coahuila, Mexico, the event shall be performed, or the period shall end, on the next succeeding business day.

1. **CONTRACTOR’S WORK AND OTHER OBLIGATIONS**
	1. **Work to be Performed**. Except as otherwise expressly set forth in Article 5, Contractor shall perform or cause to be performed all work and services required in connection with the design, engineering, procurement, construction, Startup, demonstration, commissioning and testing of the Project, and provide or cause to be provided all materials and equipment, machinery, spare parts, tools, labor, transportation, construction fuels, Startup chemicals, administration and other services and items required to construct and complete the Facility so that it shall have a useful life of 20 years, subject to normal wear-and-tear and regular maintenance, all on a firm fixed price, turnkey basis and otherwise in accordance with the Contract (the *“Work”*). Details of the Work are described in this Article 2 and in **Appendix A**.

**Engineering, Design, Construction and Construction Management.**

**Engineering and Design**. Contractor shall provide all engineering and design services necessary for completion of the Facility in conformity with the Contract, including (a) preparation of (i) conceptual design and (ii) the engineering and detailed design necessary to describe the Project, (b) provision of specifications and criteria for the detailed design by suppliers of equipment, materials, software and systems for incorporation into the Facility, (c) preparation of drawings, plans, bills of material, schedules and estimates and (d) a complete set of “as-built” drawings and records. Contractor shall insure the engineering and design services for the construction of the Facility are certifiable, as required, and in accordance with the Applicable Laws.

**Construction and Construction Management.** Contractor shall develop a project construction plan which shall be submitted to Owner for approval no later than thirty (30) days after issuance of the Notice to Proceed, (the “*Project Procedure Plan*”) and oversee, coordinate and ensure the construction of the Project in accordance therewith and with **Appendix A** and the other terms and provisions of the Contract. Contractor shall require the Subcontractors to perform the Subcontracts in accordance with the relevant requirements of the Contract. Contractor shall provide construction management services in accordance with the standards of performance set forth in the Contract. Contractor shall insure that all construction and all construction management services are performed in accordance with the Applicable Laws.

**Documentation and Manuals.** Subject to Article 17, Contractor shall submit to Owner for Owner’s review and approval, as they become available from time to time during their preparation, copies (one of which shall be of reproducible quality), of all design and engineering documents which shall include all specifications, data sheets, plans and drawings, and other information and documents required to be submitted to Owner as listed in **Appendix F** or as requested by Owner from time to time (collectively, the *“Design Documents”*). In addition, Contractor shall provide the following to Owner for Owner’s review and approval:

**Operating Manual.** Contractor shall design a maintenance program and provide operating and maintenance manuals (collectively, *“Operating Manuals”*) to Owner in accordance with the requirements of **Appendix F**.

**Project Procedure Plan.** Contractor shall, within thirty (30) days after receipt of the Notice to Proceed, deliver to Owner a manual that provides the guidelines by which the normal working relationships will be conducted between Owner, the Owner’s Representative and Contractor and the Contractor’s Representative (the *“Project Procedure Plan”*). The Procedures Manual will contain, among other materials, an organizational chart, correspondence procedures, a project filing system, and procedures for the review of the Design Documents and Project progress.

**Quality Control Manual.** Contractor shall, within thirty (30) days after receipt of the Notice to Proceed, deliver to Owner a manual prepared by Contractor conforming to the quality assurance program set forth in **Appendix I**, to which Contractor shall adhere in order to ensure that the construction and engineering methods and standards to be employed by Contractor hereunder are achieved (the *“Quality Control Manual”*).

**Safety Manual.** Contractor shall, within fifteen (15) days after receipt of the Notice to Proceed, deliver to Owner a safety manual conforming to the Contract, Applicable Laws and Good Practices, which Contractor shall adhere to in order to ensure that the Work is performed and the Site is maintained in accordance with all legal requirements addressing health and safety (the “*Safety Manual*”).

**Procurement.** Contractor shall procure and pay for as an independent contractor and not as agent for Owner, the goods and Equipment described in **Appendix A**. Contractor shall also procure and pay for all Contractor and Subcontractor labor, materials, equipment, supplies, manufacturing and related services (whether on or off the Site) for construction of and incorporation into the Project which are required for completion of the Project in accordance with the Contract and are not explicitly specified to be furnished by Owner pursuant to Article 5. With the exception of the GE Frame 7EA Gas Turbine Generator and its associated equipment which are new surplus purchased in as-is condition, all other equipment and material shall be new and free from improper workmanship or defects and properly warranted and guaranteed to the extent required pursuant to Section 3.4.

**Labor and Personnel**. Contractor shall provide, or shall cause the Subcontractors to provide, all labor and personnel required in connection with the Work, including without limitation: (a) professional engineers legally qualified to perform engineering services in the applicable jurisdictions; (b) Project engineer, construction manager and lead structural, mechanical, chemical, electrical, instrumentation and control, civil, cost, schedule, procurement, construction, Startup and training supervisors, all of whom shall have had extensive power plant experience in facilities of similar technology and magnitude; (c) a Project manager or other representative who shall be fully acquainted with the Project and shall have the authority to administer the Contract on behalf of Contractor; and (d) quality control personnel, all of whom shall report directly to Contractor’s home office managers and not to the Project personnel located at the Site. **Personnel Movement Chart.** Contractor shall process and supply, on a monthly basis, a personnel movement chart to the Owner’s Representative indicating personnel and subcontractors who have worked on the Project for the month preceding the month the chart is processed.

**Permitting**.

**Permitting Support**. Contractor shall use its best efforts to provide all necessary information and documents to Owner and to otherwise assist Owner in obtaining all Applicable Permits to be obtained by Owner.

**Inspection and Expediting**. Contractor shall perform all inspection, testing, expediting, quality surveillance and traffic services as are required for performance of the Work. Contractor’s responsibilities under this Section 2.1.8 shall include, without limitation, inspecting and testing of all materials and Equipment both on and off the Site that comprise or will comprise the Project or that are to be used in performance of the Work, including the Startup of the Facility.

**Transportation**. Contractor shall be responsible for the transportation, shipping, receiving and marshaling of all materials, Equipment, supplies and other items required for the Project (including, without limitation, materials, supplies and Equipment required for construction activities).

**Storage and Related Matters**. Contractor shall warehouse or otherwise store (in accordance with manufacturers’ recommendations and all Applicable Laws) all materials, supplies and Equipment required for permanent and temporary construction.

**Interconnection Facilities**. Contractor will review with the Grid Authority the design of the electrical interconnection facilities for the Facility and the construction schedule for such facilities and shall coordinate the Work in order to facilitate the construction of such facilities in accordance with the provisions of **Appendix F**.

**Utilities, Chemicals and Spare Parts**. During construction of the
Facility, Contractor shall arrange and pay for the provision of electricity, water, sewage and waste disposal services, chemicals and consumables (other than the electricity, water, sewage, waste disposal services, chemicals and consumables which are expressly required to be furnished by Owner under Article 5) in sufficient quantities, and for the disposal of sewage and Contractor-generated wastes (including, without limitation, waste water and waste chemicals as necessary to enable Contractor to perform the Work). Contractor shall provide at its own expense spare parts, oils, greases and lubricants required during Startup of the Project and shall replenish the same until Provisional Performance Acceptance is achieved.

**Contractor’s Work Area**. Owner shall designate for Contractor its work and operations areas within the Site for the development of its administrative and operational activities. Contractor shall locate its offices, workshops, warehouses, equipment, assembly areas and parking lots within the limits of the areas designated. When Contractor deems it necessary or convenient to use the premises or land outside the Site for any purpose related to the Work, Contractor, at its own risk and expense, may make the necessary arrangements to do so upon giving prior notice to Owner and without affecting the execution of the Work or the action of other Owner contractors. When the Work is completed, Contractor must remove all its facilities, equipment, materials, waste and debris, and clean the Site to Owner’s satisfaction.

**Co-operation at the Work Site**. Owner, Contractor and other contractors may work simultaneously at the Work Site, and there may be interference of the Contractor’s Work as a result of such simultaneous activities. Owner shall use reasonable efforts to co-ordinate the work of the various contractors in order to minimize interference or delay in the work of the contractors, all within a framework of order and efficiency for the best development and completion of the Project in its entirety. Contractor must cooperate with the other contractors in order to avoid delays and hindrances in the Work. Owner may request that certain facilities or services be used simultaneously by several contractors.

**Emissions Compliance, Performance Testing**. Contractor shall perform, and re-perform if necessary, the Emissions Compliance Tests, Performance Tests in accordance with the provisions of Article 6, in order to demonstrate the level of achievement by the Facility of the Guaranteed Emissions Limits and Performance Guarantees.

**Startup and Initial Operation**. The Work shall include the Startup of components, calibration of controls and Equipment, tuning, initial operation of the Facility and each portion thereof, all function and verification tests, and all other Startup and initial operation functions pertaining to the Facility. Owner or its designee shall provide operators and maintenance personnel to operate the Facility during Startup. Such personnel shall have sufficient experience as is appropriate for the normal, day-to-day, in-service operation and maintenance of power generation facilities similar to the Facility. Such personnel shall perform normal operating and maintenance duties in connection with the Startup of the Facility and the performance of the Performance Tests. Said personnel must be available to Contractor, as needed, until Provisional Performance Acceptance. Contractor shall be responsible for the direct supervision, with respect to operational matters, of the operating and maintenance personnel during the Startup of the Facility.

**Site Access**. Contractor shall provide Owner (and its designees) with access to the Site and arrange for Owner’s (and its designees) access to the engineering, manufacturing and fabricating premises of the Contractor and all Subcontractors sufficient to permit Owner (or its designees) and the Independent Engineer to inspect Work being performed and monitor compliance by Contractor and the Subcontractors with the terms hereof.

**Real Estate**. Contractor has reviewed the Site as set forth in **Appendix B** and acknowledges that it does not require rights to use any real estate, including without limitation any easements or access rights for other property, which are not included in the Site in order to perform the Work. **Clean-up and Waste Disposal**. Contractor shall perform a daily site clean-up and otherwise keep the Site free from accumulation of waste materials, rubbish and other debris resulting from the performance of the Work. Contractor shall, in compliance with Applicable Laws, the AOC and the Environmental Management Plan, remove, transport and dispose of any Hazardous Material, pollution, emissions, discharges and effluenttransported onto the Site by Contractor or on behalf of Contractor or any Subcontractor, or created, used or handled as part of the Work or Contractor’s or any Subcontractor’s construction activities at the Site. Contractor shall notify Owner immediately upon the discovery of the presence of any unknown Hazardous Material on, or the release of Hazardous Material on or from, the Site. Notwithstanding anything to the contrary set forth above, Contractor shall not be responsible for the transportation, handling, storage or removal of any Hazardous Materials which were unknown to Contractor and which existed at, on or in the Site prior to commencement by Contractor of the Work.

**Project Schedule and Progress Reports**. Attached as **Appendix G** is a project summary schedule, indicating the proposed dates for completion of the individual features of the Work (the *“Project Schedule”*). Contractor shall keep and furnish to Owner updated monthly schedules of the Work to be performed, including a critical path schedule, and Monthly Progress Reports of actual progress of the Work performed hereunder. Contractor shall be responsible for ensuring that performance of the Work proceeds in accordance with the Project Schedule (as updated from time to time) and for coordinating the schedules of all Subcontractors. The Project Schedule shall be updated by Contractor and approved by Owner on a monthly basis as the Work progresses and shall include delay and acceleration analyses where appropriate.

**Project Payment Schedule**. Set forth on the Monthly Drawdown Payment Schedule in **Appendix H** .

**Taxes.** Contractor shall pay all taxes measured by wages earned by employees or by the number of employees of Contractor or any Subcontractor (the *“Taxes”*), and shall furnish to the appropriate taxing authorities all required information and reports in connection with such Taxes and promptly furnish copies of all such information and reports to Owner (other than tax returns reporting Contractor’s income taxes).

**Protection of Third Party Property.** Contractor shall do all things necessary to protect any and all third party property including but not limited to parallel, covering and intersecting electric lines and poles, telephone lines and poles, highways, waterways, railroads, sewer lines, natural gas and oil pipelines, drainage ditchers, culverts and any and all property of others from damage as a result of its performance of the Work. In the event that any such property is damaged or destroyed in the course of the performance of the services, Contractor shall at its own expense rebuild, restore or replace such damaged or destroyed property.

**Protection of Property**. Contractor shall provide, and shall ensure that each Subcontractor provides, proper and ample protection from damage or loss to the Project, the Site, materials, construction equipment and tools (whether on or off the Site) during its performance of the Work. In the event that the Facility or materials or tools comprising a part of the Facility or the Work are damaged or destroyed before it is determined that Provisional Performance Acceptance of the Facility has been achieved, Contractor shall at no expense to Owner rebuild, restore or replace the Facility or items so damaged or destroyed, subject to the approval of the Financing Parties (if necessary). If any materials, construction equipment or tools of Contractor are damaged or destroyed, Contractor shall rebuild, replace or restore such items at no cost to Owner.

**Royalties and License Fees**. Contractor shall pay all required royalties and license fees and shall procure, as required, the appropriate proprietary rights, licenses, Contracts and permissions for software, methods, processes and systems incorporated into the Project.

**Further Assurances**. Contractor shall execute and deliver all further instruments and documents, and provide further assistance, including but not limited to assisting Owner in filing a notice of completion with the local lien recording offices, that may be necessary or that Owner may reasonably request in order to enable Contractor to complete performance of the Work or to otherwise effectuate the purposes or intent of the Contract.

* 1. **Commencement of the Work**. Contractor shall commence performance of the Work on the date specified by Owner (the “*Commencement Date*”) in the Notice to Proceed. The Commencement Date shall be contemporaneous with the Financial Closing Date for the Facility.
	2. **Standard of Performance**. Without limiting any other provision of the Contract, (a) Contractor shall perform the Work in accordance with the terms of the Contract, and consistent with Good Practices, all Applicable Laws and Applicable Permits, the real estate rights comprising the Site and the safety precautions set forth in Section 2.5, and (b) the Facility shall be constructed and erected (i) in a good workmanlike manner and (ii) using principles, criteria and standards generally accepted for use by a contractor in connection with power generation facilities of the same or similar size and type as the Facility that are intended to have a 20year useful life (when operated and maintained in accordance with the Operating Manual and manufacturers’ instructions). All engineering Work requiring certification shall be certified by the Independent Engineer.
	3. **Compliance with Applicable Laws**. Contractor shall comply with and shall cause the Project and all components thereof (including, the design, engineering and construction of the Project for which it has control) to comply with all Applicable Laws as they may be in effect at the time of Contractor’s performance hereunder. Without limiting the foregoing, the effect of any change in Applicable Laws (excluding therefrom any change in Applicable Permits resulting directly or indirectly from the acts or omissions of Contractor or any Subcontractor) enacted after the date of execution of the Contract shall be determined under Article 12.
	4. **Safety, Health, and Environmental Protection.**

**Standards**. Contractor undertakes to place the highest importance on safety, health and protection of the environment at all times during the design, execution and other performance and provision of the Work.

**Liability.** The Contractor shall be responsible for the health and safety of any person on or in the vicinity of the Site, or anywhere else where Work is designed, executed or otherwise performed or provided.

**Compliance.** Contractor shall establish and adhere to and cause all Subcontractors to adhere to safety policies and procedures as specified in the Safety Manual (copies of which shall be submitted to Owner’s Representative as specified in Section 2.1.2.4), and which shall include all procedures necessary for dealing with emergencies at the Site which will ensure that the Work is executed and otherwise performed and provided in a manner consistent with world class safety standards and all Applicable Laws including but not limited to safety, health, fire protection, environmental and other such laws. Contractor’s compliance with such policies and procedures shall not relieve it of any risk, obligation or liability under or arising from the Contract at law or otherwise.

**Safety Officer.** The Contractor shall appoint a member of its staff to have the full-time responsibility for maintaining the safety, and protection against accidents, of all persons on or in the vicinity of the Site, and anywhere else where Work is designed, executed or otherwise performed or provided (and for ensuring full compliance at all times with the aforesaid safety policies and procedures referred to in Section 2.5.3 above). This person shall be qualified for his work and shall have the authority to issue instructions and take protective measures to prevent accidents. The Contractor shall send to Owner’s Representative a written report which provides details of any accident or lost-time injury occurring at the Site, or anywhere else where Work is designed, executed or otherwise performed or provided as soon as possible, but in any event not later than **[ 5 ]** days after its occurrence. Such report shall contain details of the measures that the Contractor has taken or plans to take to ensure that accidents or injuries of a similar nature will not reoccur.

**Materials.** If any explosives, Hazardous Materials or polluting materials exist or are used or stored at the Site, Contractor shall exercise and cause the Subcontractors to exercise the utmost care with respect to the same and shall carry on activities concerning the same under the supervision of properly qualified personnel in accordance with Good Practices, all Applicable Laws, the AOC and Applicable Permits, the Safety Manual, and the Environmental Management Plan. Except as expressly required by the Contract, no hazardous, contaminating or polluting item shall be incorporated into any of the Work.

**Environment.** Contractor shall take and shall cause all Subcontractors to take all steps as may be necessary to protect the environment (both on and off the Site) and to prevent damage, injury and nuisance to people and property resulting from pollution, emissions, discharges, effluent, noise and other results of the design, execution or other performance or provision of the Work. **Equipment.** Contractor shall ensure that all Contractor’s Equipment and any of Subcontractor’s equipment shall be safe, properly maintained, subjected to such inspections and certification as may be applicable, and only used for the respective purpose for which it is intended.

**Safety.** Contractor shall ensure the safety of its workers at the Site and areas under Owner’s control by complying with all Applicable Laws regarding health, safety and hygiene, and any other standards regulating such matters.

**Owner Responsibilities.** Owner shall not have any responsibility whatsoever for injuries or damages caused by Contractor’s failure to comply with occupational health, safety, and environmental protection standards established by Owner, Contractor or Applicable Law.

**Fines.** Any fine or indemnity payable by Owner as a result of Contractor’s failure to comply with occupational health, safety, or environmental protection standards, shall be immediately reimbursed to Owner by Contractor. Also, if any environmental authority makes effective the policies signed by Owner in favor of such authority, due to Contractor’s failure to comply with regulations regarding protection and preservation of the environment, Contractor shall pay or reimburse to Owner all resulting costs or liabilities and shall otherwise pay all costs and liabilities resulting from such failure.

**Training.** Pursuant to the terms of the Safety Manual, before entering the Site, each employee of Contractor shall be given a training course by Contractor on safety, recognition of risks and analysis of accidents, industrial hygiene, work medicine, and Applicable Permit terms. A representative of Contractor’s senior management shall participate in such course. Owner may bar any such employee who has not taken such course from the Site.

**Subcontractors.** Contractor shall ensure that the Subcontractors comply with the requirements of Section 2.5.

* 1. **Appointment of Contractor’s Representative.** Contractor shall from time to time appoint a representative whose approval by Owner’s Representative in writing shall not be unreasonably withheld (“*Contractor’s Representative*”). Contractor’s Representative shall be responsible for the supervision of all Work performed and shall be authorized to act on behalf of Contractor. Contractor’s Representative shall be the point of contact for the receipt and management of all notices and other communications with Owner.

**Replacement and Authority.** Contractor shall not revoke the appointment of the Person for the time being appointed as Contractor’s Representative without the prior written approval of Owner’s Representative and Contractor shall not appoint any Person as Contractor’s Representative without the prior written approval of Owner’s Representative. Contractor’s Representative (and any temporary replacement and any delegate) shall have and be deemed to have full authority to bind and to otherwise act on behalf of Contractor and any act, omission, neglect or default of Contractor’s Representative shall be deemed to be Contractor’s own and Contractor shall be fully responsible therefor.

**Availability.** Contractor’s Representative shall be available to Owner and Owner’s Representative at all reasonable times and shall promptly and cooperatively respond to requests, inquiries and other communications by Owner or Owner’s Representative. Whenever the Contractor’s Representative is to be absent from the Site for a period of more than two (2) consecutive days, arrangements for contacting him during such absence shall be made and a competent temporary replacement Person shall be appointed, and Owner’s Representative notified in writing, prior to such absence, of such arrangements and temporary replacement.

1. **Subcontracts**

	1. **Major Specialty Consultants, Subcontractors and Equipment Suppliers**. All vendors, suppliers, materialmen, consultants and subcontractors at any tier providing Equipment, materials or services to Contractor in connection with the Project are herein referred to as “*Subcontractors*.” In connection with the purchase of any items of Equipment or machinery from any Subcontractor, Contractor shall purchase only such Equipment, machinery or materials for incorporation into the Project in accordance with Section 2.1.3. Contractor shall provide to Owner such information concerning the Subcontractors or the Subcontracts as Owner may from time to time request.
	2. **Purchase Orders and Subcontracts.** Contractor’s purchase orders, subcontracts and similar purchase forms in connection with the Project and any Contract with a Subcontractor (collectively, the “*Subcontracts”*) shall include the terms and provisions required to be included pursuant to the Contract
	3. **Payments to Subcontractors.** Contractor shall be solely responsible for paying each Subcontractor and any other Person to whom any amount is due from Contractor for services, Equipment, materials or supplies in connection with the Project. Prior to any such payment, Contractor shall ensure that such Equipment, materials and supplies have been received, inspected and approved and that such services have been properly performed.
	4. **Subcontractor Warranties**. Contractor shall, for the protection of Owner, obtain from all Subcontractors guarantees and warranties on all machinery, Equipment, services, materials, supplies and other items used and installed hereunder, and such guarantees and warranties shall not be amended, modified or otherwise discharged without the prior written consent of Owner. Contractor shall obtain from each Subcontractor guarantees and warranties which shall remain in effect for the maximum practicable period of time Contractor is able to negotiate. Contractor shall enforce such guarantees and warranties to the fullest extent thereof until such time as they are transferred to Owner pursuant to the following sentence. Upon the expiration or termination of any of the guarantees or warranties provided by Contractor pursuant to Article 10 Contractor shall assign, and hereby assigns, effective as of such date, or otherwise make available, to Owner all of Contractor’s rights under all such Subcontractor guarantees and warranties and shall deliver to Owner copies of all contracts providing for such guarantees and warranties
	5. **Subcontractor Insurance.** Contractor, in accordance with Section 14, shall require all Subcontractors to be covered by the insurance specified in the Contract during the time in which they are performing the Work.
	6. **Subcontractors’ Waiver**. Contractor shall require all Subcontractors to release and waive any and all rights of recovery against Owner, , the Financing Parties, the Grid Authority and each of their parent companies (including the directors, officers, shareholders of each such company), affiliates, subsidiaries, employees, agents, successors, permitted assigns, insurers and underwriters, and against Contractor and all other Subcontractors which the releasing Subcontractor may have or acquire in connection with any loss covered by policies of insurance maintained or required to be maintained pursuant to the Contract or which the releasing Subcontractor may have because of deductible clauses in or inadequacy of limits of any such policies of insurance. Contractor shall further require all Subcontractors to include in all policies of insurance maintained by the Subcontractors clauses providing that each underwriter shall release and waive all of its rights of recovery, under subrogation or otherwise, against Owner, the Financing Parties, the Grid Authority, and each of their parent companies (including the directors, officers and shareholders of each such company), affiliates, subsidiaries, employees, agents, successors, permitted assigns, insurers and underwriters, and against Contractor and all other Subcontractors.
	7. **No Privity with Subcontractors**. Owner shall not be deemed by virtue of the Contract to have any contractual obligation to or relationship with any Subcontractor.
	8. **Review and Approval Not Relief of Contractor’s Liability.** The review, approval and consent by Owner as to Contractor’s entering into any Subcontract with any Subcontractor or of any Subcontract shall not relieve Contractor of any of its duties, liabilities or obligations under the Contract, and Contractor shall be liable hereunder to the same extent as if any such Subcontract had not been entered into.
	9. **Owner’s Rights.** Contractor shall supervise and direct the Work of all Subcontractors and shall be responsible for all engineering, procurement and transportation and construction means, methods, techniques, sequences and procedures for coordinating the Work of Subcontractors. If Contractor fails to correct, or fails to commence and prosecute with due diligence, correction of defective Work performed by any Subcontractor within fourteen (14) days after receipt of written notice from Owner, Owner may (but shall not be obligated to), after fourteen (14) days following receipt by Contractor of an additional written notice and without prejudice to any other remedy it may have, take all reasonable steps in order to remedy such defective Work.
2. **Price and Payment**

	1. **Contract Price**. As full consideration to Contractor for the full and complete performance of the Work for Phase 1 of the Project and all costs incurred in connection therewith, Owner shall pay, and Contractor shall accept, the firm fixed sum of Sixty Five Million, Seven Hundred and Thirty Three Hundred Thousand U.S. Dollars (U.S. $65,733,000.00), as such sum may be adjusted pursuant to Article 12 (the “*Contract Price*”). Owner agrees to work with Contractor to reduce the amount of Taxes owed and payable as permitted by Applicable Laws. The Contract Price for Phases 2 & 3 of the Project are included in Appendix H.
	2. **Payment Schedule**. The Contract Price shall be paid by Owner to Contractor in installments in accordance with the Monthly Drawdown Schedule (“*Scheduled Payments*”) attached as **Appendix H**.

**Conditions to Scheduled Payments.** Contractor shall submit in writing each request for payment under the Contract to Owner at least fifteen (15) days prior to each payment date set forth in the Milestone Payment Schedule. Each such request shall be in the form of and shall comply with all of the requirements set forth in **Appendix Q**. Subject to the terms of this Article 4, Owner shall make each applicable Scheduled Payment, within ten (10) days after the applicable payment date set forth in the Milestone Payment Schedule, provided that notwithstanding any other provision herein to the contrary:

(a) Owner shall not be obligated to make any Scheduled Payment hereunder if all milestones set forth on the Milestone Payment Schedule required to be achieved prior to the payment date applicable to such Scheduled Payment have not been achieved.

(b) Owner shall not be obligated to make any Scheduled Payment hereunder unless Contractor has supplied Owner with the certification and documentation, and, if requested by the Owner or the Financing Parties, the releases, assignments and lien waivers, or in lieu thereof bonds, as described in Section 4.4.

(c) Owner shall not be obligated to make any Scheduled Payment if Contractor is in material breach of the Contract.

(d) If the Contract is terminated, Owner shall not be obligated to make further Scheduled Payments or other payments except in accordance with Section 4.3 or Section 15.

**Deferral of Schedule Payments.** Any Scheduled Payment that Owner is not obligated to make under clause (a), (b) or (c) of Section 4.2.1 shall be made, without interest, upon satisfaction of the conditions described in such clauses with respect to such Scheduled Payment.

* 1. **All Payments Subject to Release of Liens.** At the time of each Scheduled Payment (or portion thereof) hereunder, Contractor shall (a) certify to Owner, and provide to Owner sufficient documentation (including, without limitation, an interim lien waiver and release in the form attached as **Appendix O-1**) to establish that the Facility, the Site and any and all interests and estates therein, and all improvements and materials placed on the Site, are free from any and all claims, liens, security interests or encumbrances in the nature of mechanics’, labor or materialmen’s liens or otherwise, arising out of or in connection with performance by Contractor, or any Subcontractor, of the Work, and (b) provide copies of such releases and waivers from Subcontractors under Subcontracts as are necessary to support Contractor’s certificate (including, without limitation, a Subcontractor interim lien waiver and release in the form attached as **Appendix O-2**). Notwithstanding any other provision to the contrary in the Contract, if any claim, lien, security interest or encumbrance is filed or notification of withholding money for labor or material furnished under the Contract is served on Owner or any owner of the Site, Owner may withhold from any Scheduled Payment or other amount payable to Contractor under the Contract or otherwise, an amount sufficient to discharge any or all such liens or claims and, after thirty (30) days from the time a lien is filed or otherwise attaches or a claim is made, may discharge such lien or claim with the moneys withheld, whereupon for purposes of the Contract such moneys shall be deemed to have been paid to Contractor hereunder on account of the next Scheduled Payment(or any subsequent Scheduled Payment, as necessary) to become due and payable. In addition, Contractor shall deliver to Owner a copy of a final release, assignment and waiver of liens, in the form of **Appendix** **O-3**, from each Subcontractor that would otherwise have had the right to place a lien or encumbrance on the Facility, the Site or any interests or estates therein, or any improvements or materials placed on the Site on the payment date next following the date on which final payment to such Subcontractor is made. Furthermore, prior to Provisional Performance Acceptance, Contractor shall provide to Owner a final release, assignment and waiver of liens, in the form of **Appendix** **O-3**, from each Subcontractor who has not previously provided such a final release and Contractor’s final lien waiver in the form of **Appendix** **N**. Notwithstanding anything to the contrary above, if Contractor fails to deliver any required release or waiver of a Subcontractor, Contractor may provide to Owner, in lieu thereof, a bond, in form, and issued by a Person, satisfactory to Owner, to fully indemnify Owner against any loss resulting from claims, liens or other interests of such Subcontractor.
1. **OWNER’S RESPONSIBILITIES**

	1. **Appointment of Owner’s Representative.** Owner shall from time to time designate a representative in writing (“*Owner’s Representative*”) who shall be acquainted with the Project and shall have authority to administer the Contract on behalf of Owner, agree upon procedures for coordinating Owner’s efforts with those of Contractor and furnish information, when appropriate, to Contractor.
	2. **Authority.** Except as expressly stated in the Contract, Owner’s Representative shall have no authority to amend, modify or supplement the Contract or to relieve Contractor of any risk, obligation or liability under or arising from the Contract, at law or otherwise. Except as expressly stated in a written notice from Owner to Contractor, Owner’s Representative shall have no authority to terminate the Contract or Contractor’s employment thereunder or to refer any Dispute to an independent person or to arbitration under Article 20. In addition to instructions which the Contract states he may or shall issue, the authority of Owner’s Representative shall include the authority to issue to Contractor instructions which he considers to be necessary for the execution of the Work in accordance with the Contract. Owner shall notify Contractor in writing of the appointment of Owner’s Representative and of any replacement from time to time. Prior to the appointment of Owner’s Representative, Owner shall fulfill the duties and may exercise the authority of Owner’s Representative.

**Acts or Omissions.** No act or omission by Owner’s Representative or any of his delegates in the performance of his duties or the exercise of his authority under the Contract shall relieve Contractor from any risk, obligation or liability under or arising from the Contract, at law or otherwise.

**Delegation of Duties.** Owner’s Representative may at any time delegate any of his duties or authority to any Person and may at any time revoke any such delegation. Any such delegation shall specify the duties and authority delegated to such delegate. Any delegation or revocation shall be in writing signed by Owner’s Representative and shall only take effect when Owner’s Representative has given a copy of such delegation or revocation to Contractor. Any determination, instruction, inspection, examination, testing, consent, review, approval or similar act by any delegate of the Owner’s Representative in accordance with the delegation to him (but not otherwise) shall have the same effect as though it had been an act of Owner’s Representative provided that:

(a) any failure by a delegate of Owner’s Representative to reject or otherwise disapprove any Work shall not prejudice the right of Owner’s Representative to reject or otherwise disapprove such Work; and

(b) if Contractor questions any act of any delegate of Owner’s Representative, Contractor may refer the matter to Owner’s Representative who shall confirm, nullify or vary such act.

**Instructions.**  All instructions made by Owner’s Representative shall be given in writing to Contractor’s Representative. Any oral instruction given by Owner’s Representative or his delegates must be followed by written confirmation by the Owner’s Representative within in (2) days otherwise the instruction shall not be deemed as an accurate statement of the instruction of the Owner’s Representative.

* 1. **Site**. Owner shall furnish the Site and shall make the Site available to Contractor in connection with Contractor’s performance of the Work.
	2. **Site Security.** Owner shall provide a method of checking the employees of Contractor, its Subcontractors, and third parties in and out of the Site and other areas where Work is to be performed hereunder. Owner shall coordinate the security of the Project and the Site at all times while the Work is being performed.
	3. **Permits, Easements, and Access Rights.** Owner shall secure and maintain at its own expense all Applicable Permits, easements, and access rights as shall be necessary for the performance of its obligations hereunder (“*Owner Permits*”) as set forth in **Appendix F**.

Owner shall obtain and maintain in effect all Applicable Permits pertaining to Contractor’s performance of its obligations under the Contract, including, without limitation, (a) all licenses to permit Contractor to do business in the jurisdictions where the Work is to be performed and the Facility is to be constructed, (b) all Permits necessary to move, transport and deliver construction and other types of equipment and materials to and from the Site and (c) any permits which may be applicable to Contractor.

* 1. **Startup Fuel and Water**. At all times, and from time to time, Owner shall arrange and schedule as necessary:

Prior to Provisional Performance Acceptance, for natural gas and waterto be delivered to the Facility in the quantities specified by Contractor in order to enable Contractor to perform an Emissions Compliance Test meeting the Guaranteed Emissions Limits (Natural Gas) in accordance with the terms of **Appendix L** of the Contract. and

* 1. **Utilities**. Owner shall arrange and pay for all utilities, including electricity, water, sewage and waste disposal services, chemicals and consumables required for operation of the Facility after Provisional Performance Acceptance.
	2. **Taxes.** Owner shall administer and pay on its own account all sales, municipal taxes and other taxes and contributions imposed or measured by any taxing authority upon the sale, purchase or use of materials, supplies, Equipment, services or labor to be incorporated in the Project or necessary for the construction of the Project.
1. **Completion and Acceptance of Project**

	1. **Project Startup**. Startup of the Facility shall occur in accordance with Good Practices on or prior to the date indicated in the Milestone Payment Schedule. Contractor shall provide Owner with at least one (1) month’s prior written notice of the expected date of Initial Synchronization. Contractor shall, in consultation with Owner and its operating personnel, direct the operation of the Facility after Initial Synchronization in such a manner as to maximize the electrical energy output and economic efficiency of the Facility in a manner consistent with Good Practices, the Performance Tests and Reliability Runs being conducted, or other Works being performed, and all Applicable Laws.
	2. **Testing**.

**Emissions Compliance Test**. Once the Facility is sufficiently complete so that all systems are capable of safe operation in accordance with **Appendix L** of the Contract, Applicable Laws, Good Practices, and the Operating Manuals, Contractor shall test the Facility in accordance with the requirements of Applicable Permits and shall complete certification of the Facility systems in accordance with Applicable Permits (the “*Emissions Compliance Test*”). Contractor shall give Owner at least ten (10) days’ (but not more than twenty (20) days) prior written notice of the date on which Contractor intends to commence the Emissions Compliance Test. Should the Facility fail to meet the Guaranteed Emissions Limits, Contractor shall use its best efforts to modify the Facility so that it will comply, subject to approval by Owner, and then perform one additional Emissions Compliance Test, provided that such additional test is to be performed within thirty (30) days of the initial Emissions Compliance Test. If neither Emissions Compliance Test is successful, remedies shall be implemented pursuant to Section 8.1.

**Performance Tests**. Once the Facility is sufficiently complete so that all systems are capable of safe operation in accordance with the Contract, Applicable Laws, and the Operating Manuals and a successful Emissions Compliance Test has been completed, Contractor shall, test the Facility in accordance with accepted ASME standards, Applicable Laws and acceptance test guidelines (the “*Acceptance Test Guidelines*”) set forth in **Appendix M** (collectively the “*Performance Tests*”). Contractor shall give Owner at least ten (10) days’ (but not more than twenty (20) days’) prior written notice of the date on which Contractor intends to commence the initial Performance Test and at least ten (10) days’ prior written notice of the commencement date of any subsequent Performance Tests. Subject to Section 15.1.1, Owner shall have the right to suspend or delay any Performance Test. Each Performance Test shall consist of the operation of the Facility as a whole including, without limitation, the operation of each system concurrently with each of the other systems and the confirmation of electrical system characteristics and stable load, all in accordance with **Appendix M.** Until Provisional Performance Acceptance has occurred, Contractor may perform and re-perform additional Performance Tests until Provisional Performance Acceptance is achieved. Once Provisional Performance Acceptance is achieved, Contractor may perform one additional Performance Test in order to improve the performance results and to reduce Contractor’s liability for amounts payable as Performance Guarantee Payments, provided such additional tests are conducted within thirty (30) days of the Performance Test where Provisional Performance Acceptance is achieved. Contractor shall keep the Owner’s Representative continuously apprised of the specific schedule, and changes therein, for the commencement and re-performance of Performance Tests. Contractor, at its reasonable discretion, may abort any attempted Performance Test.

**Disposition of Output**. At all times when Contractor desires to conduct Startup, testing, Performance Tests or other operations of the Project or Project systems in furtherance of Performance Tests or repair and maintenance, Contractor shall give Owner at least ten (10) days’ (but not more than twenty (20) days’) prior written notice of the date on which Contractor intends to conduct such activity. In such event, Owner shall, at no expense to Contractor arrange for the disposition of the Facility’s output of electricity in such manner as Owner shall determine. Any output of electricity, and all proceeds from the sale thereof, shall be the property of Owner.

**Reconfiguration**. After each Performance Test conducted or attempted by Contractor hereunder, Contractor shall leave the Facility in, or return the Facility to, the operating control setting and configurations in which the Facility will operate on a permanent basis.

* 1. **Completed Performance Tests**. By the declaration and report described in Section 6.3.1, Contractor may elect as a Completed Performance Test a Performance Test complying with Section 6.2 during which the Facility (i) complies with all Applicable Laws and (ii) maintains the Guaranteed Emissions Limits.

**Notice**. Contractor’s election and report of Performance Test results shall be set forth in a format to be agreed upon by the Parties. The performance results shall be calculated in accordance with ASME performance test codes and the procedure mutually agreed upon, and based on criteria set forth in the Contract generally and more specifically in **Appendix M**. Within ten (10) days of Owner’s receipt of said report, Owner shall give written notice to Contractor either acknowledging the completeness and correctness of the report or specifying the items with respect to which the report is incomplete or incorrect, and in the latter instance, the foregoing procedure shall be repeated or the report withdrawn.

* 1. **Provisional Performance Acceptance**. Provisional Performance Acceptance shall be achieved hereunder if and only if:

(a) Contractor has concluded a Completed Performance Test in accordance with **Appendix M** in which (i) the Provisional Electrical Output Guarantee, the Provisional Heat Rate Guarantee; (ii) the Facility has been continuously run for a consecutive 24-hour period.

(b) The Facility has reached Mechanical Completion;

(c) All portions of the Facility can be used for their intended purposes as described in the Contract in accordance with all Applicable Laws and the Facility can legally, safely and reliably be placed in commercial operation;

(d) The Facility is fully and properly interconnected and synchronized with the electrical system of the Grid Authority, and all features and equipment of the Facility have been demonstrated to be capable of delivering electric energy continuously into the Grid Authority’s system;

 (f) The Facility meets all of the requirements set forth in **Appendix A** other than (i) the requirements that the Facility achieve 100% of the Electrical Output Guarantee and 100% of the Heat Rate Guarantee, (ii) any Work which, by the terms of the Contract, are not required to be performed until a later date, and (iii) Punch List items, an enumeration and description of which has been provided to Owner;

 (g) Owner has notified Contractor under Section 6.5.2 that the requirements under clauses (a) through (f) of this Section 6.4 have been satisfied.

**Notice and Report of Provisional Performance Acceptance**. When Contractor believes that it has achieved Provisional Performance Acceptance, it shall deliver to Owner a notice thereof (the “*Notice of Provisional Performance Acceptance*”). The Notice of Provisional Performance Acceptance shall contain a report of results of the Completed Performance Test in a form acceptable to Owner and with sufficient detail to enable Owner to determine whether Provisional Performance Acceptance has been achieved.

**Achievement of Provisional Performance Acceptance**. Owner shall, promptly upon receipt of the Notice of Provisional Performance Acceptance, inspect the Facility and all Works completed by Contractor and review the results of the Completed Performance Test and report submitted by Contractor. Within ten (10) days of Owner’s receipt of the Notice of Provisional Performance Acceptance, Owner shall notify Contractor that, either:

(a) Provisional Performance Acceptance has been achieved, in which case the date of achievement or occurrence of Provisional Performance Acceptance shall be the date on which Owner received the applicable Notice of Provisional Performance Acceptance; or

(b) Provisional Performance Acceptance has not been achieved, stating the reasons therefor, in which case Contractor shall at its expense promptly take such action as will achieve Provisional Performance Acceptance pursuant to Section 6.4. Such procedure shall be repeated as necessary until Provisional Performance Acceptance has been achieved.

**Operation after Provisional Performance Acceptance**. Upon Provisional Performance Acceptance of each individual phase, Owner shall take possession, care, custody and control of the Facility and shall thereafter be solely responsible for the operation and maintenance thereof, except as otherwise set forth herein. Prior to such possession and control by Owner, Contractor shall, in consultation with Owner and its operating personnel, operate the Facility in such a manner as to maximize the electrical energy output and efficiency of the Facility in a manner consistent with Good Practices and the other requirements set forth in the Contract and Applicable Laws.

* + 1. **Access Following Provisional Performance Acceptance**. After Provisional Performance Acceptance, Contractor shall have reasonable access to the Project and the reasonable cooperation of Owner so as to achieve Project Completion and to perform its obligations pursuant to Article 10. Contractor’s achievement of Project Completion and performance of its obligations under Article 10 shall be accomplished with minimal interference to the operations of the Facility.
	1. **Final Performance Acceptance.** Final Performance Acceptance for each individual phase (Phase 1, 2 &3) may be achieved hereunder pursuant to Section 6.5.1 or Section 6.5.2.

**Demonstration of Final Performance Acceptance**. Final Performance Acceptance shall be achieved hereunder if the following conditions have been met:

(a) Contractor has concluded a Completed Performance Test in which the Facility demonstrates a level of achievement of (i) 100% (or higher) of the Electrical Output Guarantee, (ii) 100% (or lower) of the Heat Rate Guarantee and (iii) 100% (or higher) when corrected to the Guaranteed Ambient Conditions and the achievement of the Guaranteed Emissions Limits related to gas-fired operations of the Facility (as set forth in **Appendix D,** the “*Guaranteed Emissions Limits (Natural Gas)*”);

 (c) Provisional Performance Acceptance has occurred or occurs concurrently with Final Performance Acceptance;

 (f) The Facility is free from defects and all quality assurance matters are resolved to Owner’s satisfaction;

(g) Contractor has delivered to Owner the final release, assignment and waiver of liens as contemplated in Section 4.4;

(h) Any and all Schedule Damages and Performance Guarantee Payments payable to Owner shall have been accounted for (payment to be made following Phase 3 performance test);

(i) Owner has delivered to Contractor a notification under Section 6.5.1.2 stating that the requirements under clauses (a) through (h) of this Section 6.5.1 have been satisfied.

* + - 1. **Notice and Report of Final Performance Acceptance**. When Contractor believes that it has achieved Final Performance Acceptance, it shall deliver to Owner a notice thereof (the “*Notice of Final Performance Acceptance*”). The Notice of Final Performance Acceptance shall contain a report in a form acceptable to Owner and with sufficient detail to enable Owner to determine that Contractor has completely performed all of the Work, excluding agreed Punch List items.
			2. **Achievement of Final Performance**. Owner shall, promptly following receipt of the Notice of Final Performance Acceptance, inspect the Facility and all Work with respect thereto and either (a) deliver to Contractor a notification that the requirements under clauses (a) through (e) of Section 6.5.1 have been satisfied and that Final Performance Acceptance has been achieved, or (b) if reasonable cause exists for doing so, promptly after so determining but in any case within fifteen (15) days following receipt of the Notice of Final Performance Acceptance, notify Contractor in writing that Final Performance Acceptance has not been achieved, stating in detail the reasons therefor. In the event Owner determines that Final Performance Acceptance has not been achieved, Contractor shall promptly take such action as will achieve Final Performance Acceptance and shall issue to Owner another Notice of Final Performance Acceptance pursuant to Section 6.5.1.1. Such procedure shall be repeated as necessary until Final Performance Acceptance has been achieved. For all purposes of the Contract, the date of achievement or occurrence of Final Performance Acceptance pursuant to Section 6.5.1 shall be the date on which Owner receives the Notice of Final Performance Acceptance with respect to which Owner delivers a notice that Final Performance Acceptance has been achieved.

**Final Performance Indemnity**. Contractor guarantees that Final Performance Acceptance shall occur not later than a date that is (120) days after the date of Initial Synchronization. If such guarantee is not satisfied, Contractor shall indemnify and hold harmless Owner against any liability incurred as a result of such failure, including the payment of such sums (which Owner may offset with Contractor funds it may then hold) as Owner may be obligated to pay for failure to adhere to Applicable Permits and/or obtain such extensions or variances as may be permissible under Applicable Law.

**Owner’s Election of Final Performance Acceptance**. At any time, by giving notice to Contractor, Owner in its sole discretion may elect to effect Final Performance Acceptance, in which case Final Performance Acceptance shall be deemed effective as of the date of such notice, and Contractor shall have no liability to Owner for any Performance Guarantee Payments for failure of the Facility to achieve any or all of the Performance Guarantees.

**Reconfiguration After Final Performance Acceptance**. As soon as practicable after the occurrence of Final Performance Acceptance, Contractor shall leave the Facility in, or return the Facility to, the operating control settings and configurations established during the Performance Test used to determine Final Performance Acceptance.

* 1. Commercial Operability shall be achieved hereunder if and only if:

(a) Final Performance Acceptance has been achieved;

(b) Contractor has provided and Owner has accepted final as-built drawings in the formats and amounts set forth in Section 17.3 and **Appendix F**;

(c) All Work has been completed, included all Punch List items and excluding only the achievement of the Guaranteed Emissions Limits (Oil);

(d) Owner has inventoried spare parts for the continued operation of the Facility to its satisfaction;

(e) Contractor has, if applicable, undertaken its obligations under Section 6.5.1.3; and

**Notice and Report of Commercial Operability**. When Contractor believes that it has achieved Commercial Operability, it shall deliver to Owner a written notice thereof (the “*Notice of Commercial Operability*”). The Notice of Commercial Operability shall contain a report in a form acceptable to Owner and with sufficient detail to enable Owner to determine the achievement by Contractor of all Work to be performed under the Contract, including the Punch List items, and such other information that Owner may reasonably require to determine whether Commercial Operability has been achieved.

* + 1. **Achievement of Commercial Operability**. Owner shall, within ten (10) days following receipt of the Notice of Commercial Operability, inspect all Work, review the report submitted by Contractor and the results of the Reliability Run and, if applicable, the Performance Tests and either (a) deliver to Contractor a notification stating that clauses (a) through (e) of Section 6.7 have been satisfied, or (b) if reasonable cause exists for doing so, notify Contractor in writing that Commercial Operability has not been achieved, stating in detail the reasons therefor. In the event that Owner determines that Commercial Operability has not been achieved, Contractor shall promptly take such action as will achieve Commercial Operability and shall issue to Owner another Notice of Commercial Operability pursuant to Section 6.7.1. Such procedure shall be repeated as necessary until Commercial Operability is achieved. For purposes of the Contract, the date of achievement or occurrence of Commercial Operability shall be the date on which Owner receives the Notice of Commercial Operability with respect to which Owner delivers the certificate referred to in the first sentence of this Section 6.6.2.
	1. **Project Completion.** Project Completion shall be achieved hereunder if and only if:

(a) Commercial Operability has been achieved;

(b) The requirements Section 6.5.1(f) shall continue to be met;

(c) Contractor has concluded a Completed Performance Test in which the Performance Guarantees are met and the Guaranteed Emissions Limits have simultaneously been;

(d) Contractor has performed all of the Work (other than warranty obligations which arise after Project Completion) required to be performed hereunder; and

(e) Owner has delivered to Contractor a certificate under Section 6.7.2(a) stating that the requirements under clauses (a) through (d) of this Section 6.7 have been satisfied.

**Notice and Report of Project Completion**. When Contractor believes that it has achieved Project Completion, it shall deliver to Owner a written notice thereof (the “*Notice of Project Completion*”). The Notice of Project Completion shall contain a report in a form acceptable to Owner and with sufficient detail to enable Owner to determine the achievement by Contractor of all Work to be performed under the Contract, including the Punch List items, and such other information that Owner may reasonably require to determine whether Project Completion has been achieved.

**Achievement of Project Completion**. Owner shall, within ten (10) days following receipt of the Notice of Project Completion, inspect all Work, review the report submitted by Contractor and, if applicable, the Performance Tests and either (a) deliver to Contractor a certificate stating that clauses (a) through (d) of Section 6.8 have been satisfied, or (b) if reasonable cause exists for doing so, notify Contractor in writing that Project Completion has not been achieved, stating in detail the reasons therefor. In the event that Owner determines that Project Completion has not been achieved, Contractor shall promptly take such action as will achieve Project Completion and shall issue to Owner another Notice of Project Completion pursuant to Section 6.8.1. Such procedure shall be repeated as necessary until Project Completion is achieved. For purposes of the Contract, the date of achievement or occurrence of Project Completion shall be the date on which Owner receives the Notice of Project Completion with respect to which Owner delivers the certificate referred to in the first sentence of this Section 6.7.2.

**Project Completion Deadline**. Contractor shall be obligated hereunder to achieve Project Completion within ninety (90) days after Final Performance Acceptance (the “*Project Completion Deadline*”). If Owner determines that Contractor is not proceeding with all due diligence to complete the Work in order to achieve Project Completion by such date, Owner may retain another contractor to complete such Work and apply the Retainage to pay such other contractor for such Work. In the event that the Retainage held by Owner shall not be sufficient to cover Owner’s costs in bringing the Facility to Project Completion Contractor shall promptly pay to Owner the amount of such deficiency.

1. **Completion Dates**

	1. **Guaranteed Completion Date**. Contractor guarantees that Provisional Performance Acceptance of the Facility will be achieved on or before **[\_\_\_\_\_\_]** (“*Guaranteed Completion Date*”).
	2. **Schedule Damages**. If Provisional Performance Acceptance does not occur on or before the Guaranteed Completion Date, Contractor hereby agrees to pay to Owner, as penalty, an amount of $\_\_\_\_\_\_\_ per calendar day (the “*Schedule Damages*”), for each calendar day by which Provisional Performance Acceptance of the Facility is later than the Guaranteed Completion Date, subject to the limitation set forth in Section 9.1. The payment of any such amounts hereunder shall not affect Owner’s rights to (i) terminate the Contract pursuant to Article 15 for reasons other than a failure to timely achieve Provisional Performance Acceptance or (ii) to receive liquidated damages pursuant to Article 8.
	3. **Payments Reasonable.** Owner and Contractor hereby acknowledge and agree that the terms, conditions and amounts fixed pursuant to this Article 7 are reasonable, considering the actual reduction in the value of the Facility that Owner will sustain in the event of Contractor’s failure to meet the Guaranteed Completion Date. The amounts of these payments are agreed upon and fixed hereunder by the Parties because of the difficulty of ascertaining on the date hereof the exact amount of such reduction in value that will actually be sustained by Owner in the event of any such failure by Contractor, and the Parties hereby agree that the payment amounts specified herein shall be applicable regardless of the amount of such reduction in value actually sustained by Owner. The payment of any such damages hereunder shall not affect Owner’s rights to terminate the Contract pursuant to Article 15.

**Payment**. Contractor shall pay the amounts required under this Section 7.3 monthly in arrears on the tenth (10th) day of each month.

1. **Guarantees and Remedies for Emissions and Performance**

	1. **Guaranteed Emissions Limits.**

**General**. Contractor guarantees that when the Facility is operated at the conditions set forth in **Appendix C**, the NOx, emissions levels for the Facility will not exceed the emissions limits guarantees set forth in **Appendix D**. Contractor understands that these guaranteed emissions levels are critical in that they must be achieved pursuant to Applicable Laws and Applicable Permits to permit the operation of the Facility under Applicable Laws. If the Facility fails the Emissions Compliance Tests performed under Section 6.2.1, remedies shall be as stated in this Section 8.1.

**NOx Guarantee**. Contractor guarantees that, when the Facility is operated at the conditions set forth in **Appendix C**, and the NOx emissions levels will not exceed the maximum levels set forth in **Appendix D**. (These limits constitute the “*Emissions Limits Guarantee for NOx.*”)

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* 1. **Performance Guarantees.** Contractor guarantees that the Facility will be capable of achieving all the performance specifications referred to in this Section 8.2 and **Appendix M** (the “*Performance Guarantees*”) during a Completed Performance Test. Contractor agrees to exhaust every reasonable repair and replacement alternative in order that the Facility might attain the Performance Guarantees. Contractor agrees that, if the Facility fails to achieve the Performance Guarantees referred to in Sections 8.2.2, 8.2.3 and 8.2.4, Contractor shall pay Owner as part of the consideration for awarding the Contract as liquidated damages, and not as penalties, the amounts calculated in accordance with the terms set forth therein (the “*Performance Guarantee Payments*”).

**Net Electrical Output – Final Performance Acceptance.** Contractor guarantees that the Net Electrical Output during the Completed Performance Test used to determine achievement of Final Performance Acceptance of the Facility following Phase 3 completion operated at Maximum Continuous Rating (MCR), combustion turbines operating in accordance with Acceptance Test Guidelines in Appendix M shall not be less than 69.1 MWe, when corrected to ambient conditions recorded during the test (the “*Electrical Output Guarantee*”).

**Remedies.** Should the Facility fail to meet the Electrical Output Guarantee, Contractor shall pay to Owner within thirty (30) days after Owner’s demand liquidated damages in the sum of $10,000.00 per MWe (rounded to the nearest thousandth of a MWe) for every megawatt of shortfall (the “*Electrical Output Guarantee Payment*”).

**Heat Rate – Final Performance Acceptance.** Contractor guarantees that the Heat Rate during the Completed Performance Test used to determine achievement of Final Performance Acceptance, with the Facility operated at Maximum Continuous Rating (MCR), with the combustion turbine operating in accordance with the Acceptance Test Guidelines in **Appendix M**, shall not be more than 12,100 BTU/kWh (HHV) when corrected to ambient conditions ambient conditions recorded during the test (the “*Heat Rate Guarantee*”).

**Remedies**. Should the Facility fail to meet the Heat Rate Guarantee, Contractor shall pay to Owner within thirty (30) days after Owner’s demand liquidated damages in the sum of $1,000.00 per BTU/kWh (HHV) (rounded to the nearest tenth of a BTU/kwh) for every unit of overage (the “*Heat Rate Guarantee Payment*”).

**Guaranteed Emissions Limits - Final Performance Acceptance**. Contractor guarantees to Owner that, for the duration of the Completed Performance Test used to determine the level of achievement of the Performance Guarantees at Final Performance Acceptance, the Facility shall not exceed the Guaranteed Emissions Limits (Natural Gas). During such Completed Performance Test, if Contractor shall reasonably determine that it is necessary to reduce electrical output or increase heat rate of the Facility to achieve the Guaranteed Emissions Limits, Contractor may do so provided Contractor pays to Owner the amounts required to be paid in accordance with Sections 8.2.2.1 and 8.2.3.1.

**Guaranteed Emissions Limits – Project Completion**. Contractor guarantees to Owner that, for the duration of the Completed Performance Test used to determine the level of achievement of the Performance Guarantees at Project Completion, the Facility shall not exceed the Guaranteed Emissions Limits (Natural Gas). During such Completed Performance Test, if Contractor shall reasonably determine that it is necessary to reduce electrical output or increase heat rate of the Facility to achieve the Guaranteed Emissions Limits, Contractor may do so provided Contractor pays to Owner the amounts required to be paid in accordance with Sections 8.2.2.1 and 8.2.3.1.

* 1. **Fuel Use During Startup**. Owner shall ensure that the continued use of Natural Gas shall be available for the operation of the Facility following Startup. Costs of fuel ordered for delivery as necessary to commence operation following Startup shall be paid for by Owner.
	2. **Payments Reasonable**. Owner and Contractor hereby acknowledge and agree that the terms, conditions and amounts fixed pursuant to this Article 8 are reasonable, considering the actual reduction in the value of the Facility that Owner will sustain in the event of Contractor’s failure to achieve the Performance Guarantees. The amounts of these payments are agreed upon and fixed hereunder by the Parties because of the difficulty of ascertaining on the date the exact amount of such reduction in value that will actually be sustained by Owner in the event of any such failure by Contractor, and the Parties hereby agree that the payment amounts specified herein shall be applicable regardless of the amount of such reduction in value actually sustained by Owner. The payment of any such damages hereunder shall not affect Owner’s rights to terminate the Contract pursuant to Article 15 or receive damages as contemplated herein.
	3. **Payment**. Contractor shall pay to Owner all payment amounts required under Article 8, except those required under Sections 8.4 and 8.5 within thirty (30) days after Final Performance Acceptance. Contractor shall pay to Owner all payment amounts required under Section 8.4 within thirty (30) days after Owner’s demand.
	4. **Bank Guarantee.** Contractor shall guarantee to Owner, by means of an *Instrument* in the form of a Bank Guarantee (BG) or Standby Letter of Credit (SBLC) with a renewable 366 day term, 100% of the EPC contract value, which is $\_\_\_\_\_\_\_. Such Instrument shall be issued by an A-rated (Moody’s or S&P) global bank to any party of Owner’s choice (Beneficiary) and confirmed via standard SWIFT Brussels system. Instrument will stay in place until two (2) years from the day of Commercial Operation Date (COD). Contractor shall be entitled to a 10% permanent equity stake in the power plant, as well as a priority return on its \_\_\_% margin posted with its bank to secure Instrument.
1. **Liability and Damages**

	1. **Limitation of Liability for Articles 7 and 8 Payments**. Contractor’s liability under Articles 7 and 8 the Contract shall not be construed to limit Contractor’s other obligations or liabilities arising under or in connection with the Contract (including, without limitation, (a) its obligation to complete the Project for the compensation provided under the Contract, (b) its obligation to achieve Provisional Performance Acceptance, to cause the Facility to meet the Guaranteed Emissions Limits, the Guaranteed Noise Levels, and the Reliability Run Guarantee, (c) its willful misconduct, (d) indemnification of Indemnified Parties to the extent provided in Article 13 and (e) its obligations under Article 10).
	2. **Consequential Damages**. Neither Party shall be liable to the other Party or any of its contractors, subcontractors or agents for consequential loss or damage, including but not limited to loss of use or loss of anticipated profit or loss of use or loss of anticipated revenues, whether in contract, tort (including negligence) warranty, strict liability or any other legal theory, and each Party hereby releases the other Party and its contractors, subcontractors and agents from any such liability. Notwithstanding the foregoing, nothing herein shall excuse any liabilities under Article 7 or Article 8 for Performance Guarantee Payments or Schedule Damages.
	3. **Aggregate Liability of Contractor**. Notwithstanding anything to the contrary herein, Contractor’s aggregate liability under or in connection with the Contract for performance of the Work or breach of the Contract shall not exceed (i) prior to the date on which Provisional Performance Acceptance has been achieved, 100% of the Contract Price, (ii) following the date on which Provisional Performance Acceptance has been achieved, 35% of the Contract Price (which amount shall be exclusive of, and shall not be reduced by, Schedule Damages or Performance Guarantee Payments paid or payable by Contractor); provided, however, that, notwithstanding the foregoing, such limitation of liability shall not apply to (i) liabilities for indemnification of Indemnified Parties to the extent provided in Article 13 and (ii) the obligations of Contractor pursuant to Section 10.2.
2. **Warranties and Guarantees of Contractor**

	1. **Warranties and Guarantees**. The warranties and guarantees in this Article 10 are in addition to the guarantees of Contractor set forth in Articles 7 and 8.

**Materials**. Contractor warrants and guarantees that all machinery, Equipment, materials systems, supplies and other items comprising the Project will be free from defective workmanship and materials. Contractor further warrants and guarantees that spare parts for the Facility shall be available for the periods following Project Completion and at no greater prices than the prices set forth in **Appendix A**.

**Fit for Purpose.** Each item incorporated into the Facility and the Facility as a whole and the Work shall be of the respective character, quality and kind required by the Contract, shall be fit for its respective purpose and (except for natural materials) shall be new when delivered to the Site and shall be maintained by the Contractor in an “as new” condition until risk of loss in such part passes to Owner under the Contract.

**Engineering**. Contractor warrants and guarantees that it will perform all of its design, construction and engineering Work in accordance with the provisions of Section 2.3, and that, when complete, the Project and its components shall (i) be free from all defects caused by errors or omissions in engineering and design Work, (ii) comply in all respects, with all requirements of the Contract and (iii) comply with all Applicable Laws.

**General.** Contractor shall ensure, and warrants and guarantees to Owner, that: (a) the Work shall achieve the levels and standards of performance which, under the Contract, it is required to achieve; (b) the Work shall comply with all Applicable Laws (including Environmental Laws) and all Applicable Permits; (c) the Work shall comply with all technical, building, construction and other standards of the State of Pennsylvania and the United States of America applicable to the Work; (d) the Work shall only comprise, design, workmanship and materials which are well-proven and have manifested a good track-record in operation; (e) the Work shall be such as will ensure that it is safe, efficient and reliable, will require only a reasonable amount of operation and maintenance expense and will have problem durability to withstand all climatic and seismic conditions that are likely to be experienced; and (f) the Work shall provide sufficient access for maintenance equipment necessary for any repairs or replacements and such maintenance equipment may be used without affecting other adjacent in-service equipment and the Facility shall be designed to assure good access to all parts of the Facility to facilitate maintenance and repair work as well as inspection during operation of the Work.

**Corrections**. If Owner notifies Contractor in writing of any defects or deficiencies in the Project discovered during the one-year period following Provisional Performance Acceptance (“*Warranty Period*”), Contractor shall at its expense (a) re-perform any of the Work to correct any such errors, omissions, defects or deficiencies and (b) in the case of any defective machinery, equipment, materials systems, supplies or other items, shall repair or replace the same at Contractor’s option. Owner’s notice of any such defect or deficiency shall be delivered to Contractor as soon as practicable following Owner’s discovery thereof. If any defective equipment or material is replaced during the original warranty period, the warranty for such replaced equipment or materials shall be the balance of the original warranty. The duties, liabilities and obligations of Contractor under this Section 10.1 do not extend to any repairs, adjustments, alterations, replacements or maintenance of materials as a result of the failure of Owner to operate and maintain the Facility in accordance with the Operating Manuals and manufacturers’ instructions, or which are required as a result of normal wear and tear in the operation of the Facility other than as caused by the negligence of Contractor.

* 1. **No Liens or Encumbrances**. Contractor warrants and guarantees that title to the Project and all Work, materials, supplies and Equipment provided hereunder shall pass to Owner free and clear of all liens, claims, security interests and other encumbrances; and that none of such Work, materials, supplies or Equipment shall be acquired by Contractor subject to any Contract under which a security interest or other lien or encumbrance is retained by any Person.
	2. **Limitation of Warranties**. EXCEPT AS EXPRESSLY PROVIDED IN THE CONTRACT, THERE ARE NO WARRANTIES OR GUARANTEES EXPRESS OR IMPLIED RELATING TO THE SERVICES, AND Contractor DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, OTHER THAN WARRANTIES OF TITLE (INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE). NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THIS SECTION 10.3 SHALL IN NO WAY LIMIT CONTRACTOR’S OBLIGATIONS TO COMPLY WITH ARTICLES 7 AND 8, TO COMPLY WITH, AND TO CAUSE THE FACILITY TO COMPLY WITH, ALL APPLICABLE LAWS AND THE ENVIRONMENTAL EMISSION STANDARDS AND TO PERFORM ITS OTHER OBLIGATIONS HEREUNDER.
1. **Force Majeure**

	1. **Force Majeure Event**. As used in the Contract, a “Force Majeure Event” shall mean any act or event that prevents the affected Party from performing its obligations under the Contract or complying with any conditions required by the other Party under the Contract if such act or event is beyond the reasonable control of and could not have been reasonably foreseen by the affected Party, and is not the fault of the affected Party and such Party has been unable to overcome such act or event by the exercise of due diligence, including, without limitation, war, lightning, earthquake, fire, volcanic eruption, landslide, typhoon, tornado, explosion, civil disturbance, act of God or the public enemy, strikes, work-to rule actions, go-slows or similar labor difficulties which affect the power generation industry on an industry-wide, region-wide or nation-wide basis, or action of a court or public authority. The following events are explicitly excluded from Force Majeure Events and are solely the responsibility of the affected Party: (a) any strike, work-to-rule action, go-slow or similar labor difficulty which is not specifically enumerated in the preceding sentence, (b) shortages or late delivery of equipment or materials (unless caused by a Force Majeure Event), (c) economic hardship, (d) surface or subsurface conditions at the Site, and (e) changes in Applicable Law (which shall be governed exclusively by Section 12.5).
	2. **Burden of Proof**. In the event that the Parties are unable in good faith to agree that a Force Majeure Event has occurred, the Parties shall submit the dispute to arbitration pursuant to Article 20, provided that the burden of proof as to whether a Force Majeure Event has occurred shall be upon the Party claiming a Force Majeure Event.
	3. **Excused Performance**. Except for payment obligations accruing in accordance with the Contract, if either Party is rendered wholly or partially unable to perform its obligations under the Contract because of a Force Majeure Event, that Party will be excused from whatever performance is affected by the Force Majeure Even to the extent so affected; provided that:

(a) The non-performing Party, within two (2) working days after becoming aware of the occurrence of a Force Majeure Event, gives the other Party written notice describing the particulars of the occurrence, including an estimation of its expected duration and probable impact on the performance of such Party’s obligations hereunder, and thereafter continues to furnish timely regular reports with respect thereto during the continuation of the Force Majeure Event;

(b) The suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

(c) No liability of either Party for an event which arose before the occurrence of the Force Majeure Event shall be excused as a result of the occurrence;

(d) The non-performing Party shall exercise all reasonable efforts to mitigate or limit damages to the other Party;

(e) The non-performing Party shall use its best efforts to continue to perform its obligations hereunder and to correct or cure the event or condition excusing performance; and

(f) When the non-performing Party is able to resume performance of its obligations under the Contract, that Party shall give the other Party written notice to that effect and shall promptly resume performance hereunder.

* 1. **Effect of Force Majeure Event**. In the event and to the extent that a Force Majeure Event affects Contractor’s ability to meet the Guaranteed Completion Date, the Milestone Payment Schedule or the Project Schedule, an equitable adjustment in one or more of the Guaranteed Completion Date, the Milestone Payment Schedule and the Project Schedule shall be made by Contract of Owner and Contractor. No adjustment to the Guaranteed Emissions Limits, the Performance Guarantees or the Reliability Guarantee shall be made as a result of a Force Majeure Event. No monetary compensation will be available or provided for a Force Majeure Event.
1. **sCOPE CHANGES**

	1. **Further Refinement, Corrections and Detailing not Scope Changes**. It is understood and agreed that the Project shall be subject to further refinement, correction and detailing by Contractor or by Owner from time to time, and that Contractor shall receive no additional compensation for such refinement, correction or detailing (which shall not constitute Scope Changes). A material addition to, deletion from, suspension of or other modification to the requirements or provisions of the Contract shall constitute a Scope Change rather than a refinement, correction or detailing.
	2. **Scope Changes**. Owner, without invalidating the Contract, may order Scope Changes to the Work, in which event one or more of the Contract Price, the Guaranteed Completion Date, the Milestone Payment Schedule, the Project Schedule, the Performance Guarantees or the Reliability Guarantee shall be adjusted as necessary. All Scope Changes shall be authorized by a Scope Change Order and only Owner or Owner’s Representative may issue Scope Change Orders.
	3. **Procedure for Scope Changes**.

(a) As soon as Contractor becomes aware of any circumstances which Contractor has reason to believe may constitute a Scope Change, Contractor shall issue to Owner a Scope Change Order Request at Contractor’s expense. All Scope Change Order Requests shall include preliminary documentation sufficient to enable Owner to determine (i) the factors necessitating the possibility of a Scope Change; (ii) the impact which the Scope Change is likely to have on scheduling and the Guaranteed Completion Date; and (iv) such other information which Owner may request in connection with such Scope Change (including, without limitation, material and labor cost information).

(b) If Owner desires to make a Scope Change in response to a Scope Change Order Request or otherwise, it shall submit a Scope Change Order Notice to Contractor. Contractor shall promptly review the Scope Change Order Notice and notify Owner in writing of the options for implementing the proposed Scope Change (including, if possible, any option that does not involve an extension of time) and the effect, if any, each such option would have on the Contract Price, the Guaranteed Completion Date, the Milestone Payment Schedule, the Project Schedule, any one or more of the Performance Guarantees or the Reliability Guarantee. Such notice shall also describe the cost, schedule and performance level guarantee impacts of Owner’s Scope Change Order Notice and include a detailed breakdown by trades and work classifications.

(c) If Owner agrees that a Scope Change is in order and accepts Contractor’s statement of the effect of such Scope Change on the Contract Price, the Guaranteed Completion Date, the Milestone Payment Schedule, the Project Schedule, the Performance Guarantees or the Reliability Guarantee, Owner shall issue a Scope Change Order, in which event the contents of Contractor’s response to a Scope Change Order Notice pursuant to Section 12.3(b) shall be binding on Contractor. In the event Owner disagrees with Contractor’s statement of the effect of such Scope Change on the Contract Price, the Guaranteed Completion Date, the Milestone Payment Schedule, the Project Schedule, any one or more of the Performance Guarantees or the Reliability Guarantee, Owner may proceed with issuance of the Scope Change Order(and Contractor shall comply with Section 12.8) and the Dispute shall be resolved as provided in Article 20.

* 1. **Scope Changes Due to Contractor Error**. Notwithstanding anything in this Article 12 to the contrary, no Scope Change Order shall be issued and no adjustment of the Contract Price, the Guaranteed Completion Date, the Milestone Payment Schedule, the Project Schedule, any one or more of the Performance Guarantees or the Reliability Guarantee shall be made in connection with any correction of errors, omissions, deficiencies, or improper or defective Work on the part of Contractor or any Subcontractors in the performance of the Work.
	2. **Scope Changes Due to Changes of Law**. Any Scope Change necessitated by any changes in Applicable Laws enacted after the date of the Contract (excluding therefrom any change in Applicable Law relating to taxation of Contractor’s income or any change in Applicable Permits resulting directly or indirectly from the acts or omissions of Contractor or any Subcontractor) shall be treated as a Scope Change under Section 12.2.
	3. **Owner-Caused Changes**. In the event and to the extent a failure of Owner to perform, or cause performance of, its obligations in accordance with the Contract causes a delay in Contractor’s performance of the Work which impairs Contractor’s ability to meet the Guaranteed Completion Date or the Project Completion Deadline or adversely impacts Contractor’s cost of performance of the Work, an equitable adjustment in one or more of the Guaranteed Completion Date, the Milestone Payment Schedule, the Project Schedule or the Contract Price shall be made by Contract of Owner and Contractor pursuant to this Article 12.
	4. **Price Change**. An increase or decrease in Contract Price, if any, resulting from a Scope Change shall be determined by the mutual Contract of the Parties, and shall be paid (or reimbursed) in one or more payments in accordance with the Milestone Payment Schedule, as adjusted in accordance with this Article 12. Such increase or decrease shall be calculated:

(a) As a lump sum, in an amount proposed by Contractor (properly itemized and supported by sufficient substantiating data to permit evaluation) and accepted by Owner; or

(b) By unit pricing; or

(c) By cost and percentage or by cost and fixed fee; or

(d) If none of the methods set forth in Section 12.7(a), 12.7(b) or 12.7(c) is agreed upon after good faith negotiation by the Parties, Contractor shall provide Owner with such purchase orders, invoices and other documents and records as may enable Owner to verify, to its reasonable satisfaction, the Contractor’s costs or savings associated with effecting such Scope Change. All equipment, materials, labor, equipment rental and other items required as a result of such Scope Change shall be purchased by Contractor at competitive market prices. Owner shall, upon verifying the Contractor’s costs or savings associated with such Scope Change, adjust the Contract Price by the amount thereof. Pricing with respect to components shop fabricated by Contractor or for field service engineering shall be set at competitive market rates.

* 1. **Effectiveness; Continued Performance Pending Resolution of Disputes**. If a Scope Change is initiated under this Article 12, then the Scope Change and the modifications made pursuant to such Scope Change shall be effective upon Owner’s issuance of a Scope Change Order with respect thereto. Notwithstanding a dispute regarding any proposed Scope Change or the amount of any adjustment of the Contract Price and the Milestone Payment Schedule with respect to a Scope Change, Contractor shall proceed with the performance of such Scope Change promptly following Owner’s execution of the corresponding Scope Change Order. Pending resolution of such dispute, the Contract Price shall be adjusted by the amount equal to any increase or decrease which is disputed by neither Owner nor Contractor.
	2. **Documentation**. All claims by Contractor for adjustments to one or more of the Contract Price, the Guaranteed Completion Date, the Milestone Payment Schedule, the Project Schedule, the Performance Guarantees or the Reliability Guarantee as a result of Scope Changes under this Article 12 shall be supported by such documentation as is reasonably sufficient for Owner to determine the accuracy thereof, including invoices from Subcontractors and Contractor’s man-hour breakdowns.
1. **Indemnification**

	1. **General Indemnification**. Contractor shall fully indemnify, save harmless and defend Owner, each of their subsidiaries and affiliates, and the directors, officers, agents, employees, successors and assigns of each of them (the “*Indemnified Parties*”), from and against any and all losses, costs, damages, injuries, liabilities, claims, demands, penalties, interest and causes of action, including without limitation reasonable attorneys’ and consultants’ fees (collectively, “*Damages*”), directly or indirectly arising out of, resulting from or related to claims associated with the Contract, the Project or the performance of the Work, including without limitation any damage to or destruction of property or death of or bodily injury to, any Person (whether such Person is another Indemnified Party or a Subcontractor or an employee of an Indemnified Party, Contractor or any Subcontractor, or is a Person unaffiliated with the Project) all regardless of whether such Damages are caused by the joint, concurrent, contributing or comparative (but not sole) negligence or fault of the Indemnified Parties.
	2. **Additional Indemnification**. Without limiting the generality of Section 13.1, Contractor shall fully indemnify, save harmless and defend the Indemnified Parties from and against any and all Damages resulting from (a) a failure of Contractor to comply with Applicable Laws, (b) payments of taxes relating to Contractor’s income or other taxes required to be paid by Contractor without reimbursement hereunder, or (c) non-payment of amounts due as a result of furnishing materials or services to Contractor or any Subcontractor which are payable by Contractor or any Subcontractor in connection with the Work .
	3. **Patent and Copyright Indemnification**. Without limiting the generality of Section 13.1, Contractor shall fully indemnify, save harmless and defend the Indemnified Parties from and against any and all Damages which the Indemnified Parties may hereafter suffer or pay by reason of any claims or suits arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to materials and information designed or used by Contractor or any Subcontractor in performing the Work or in any way incorporated in or related to the Project. If, in any such suit or claim, a temporary restraining order or preliminary injunction is granted, Contractor shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraining order. If, in any such suit or claim, the Project, or any part, combination or process thereof, is held to constitute an infringement and its use is permanently enjoined, Contractor shall promptly make every reasonable effort to secure for Owner a license, at no cost to Owner, authorizing continued use of the infringing Work. If Contractor is unable to secure such license within a reasonable time, Contractor shall, at its own expense and without impairing performance requirements, either replace the affected Work, or part, combination or process thereof with non-infringing components or parts or modify the same so that they become non-infringing.
	4. **Existing Conditions.** Without limiting the generality of Section 13.1, Contractor shall fully indemnify, save harmless and defend the Indemnified Parties from and against all Damages directly or indirectly arising out of, resulting from or related to claims made by employees of Contractor or any Subcontractor as a result of exposure to the Hazardous Materials which currently exist at the Site.
	5. **Hazardous Materials.** Owner shall fully indemnify, save harmless and defend Contractor and each of Contractor’s directors, officers, agents, employees and successors and permitted assigns (the “*Contractor Indemnified Parties*”) from and against all Damages resulting from (a) the presence of any Hazardous Materials on, or the release of any Hazardous Material on or from, the Site prior to the commencement by Contractor of performance of the Work, or (b) the introduction of any Hazardous Material (other than pursuant to the Contract) at, on or into the Site after the commencement of the Work other than due to the acts of Contractor or Subcontractor or of a Person acting on behalf of, or under the direction or supervision of, Contractor or a Subcontractor; and (c) products which are by-products of the normal operation of the Facility; provided, however, that Owner shall not be obligated to provide such indemnification (i) in the event that Contractor knew or should have known that the Hazardous Materials were present at the Faculty Site or Contractor fails to notify Owner immediately upon discovery of the presence of any Hazardous Material on, or the release of any Hazardous Material on or from, the Site, as required pursuant to Section 2.1.19, or (ii) to the extent that the Damages are a result of Contractor’s or a Subcontractor’s aggravation of the condition resulting from the presence of any Hazardous Material on, or the release of any Hazardous Material on or from, the Site. Contractor shall fully indemnify, save harmless and defend the Indemnified Parties against all Damages resulting from (x) any Hazardous Material which has been brought onto the Site by Contractor or any Subcontractor or any Person acting on behalf of, or under the direction or supervision of, Contractor or a Subcontractor, (y) Contractor’s failure to notify Owner immediately of the presence of any Hazardous Material on, or the release of any Hazardous Material on or from, the Site, as required pursuant to Section 2.1.19, or (z) Contractor’s or a Subcontractor’s aggravation of the condition resulting from the presence of any Hazardous Material on, or the release of any Hazardous Material on or from, the Site, but only to the extent of such aggravation.
	6. **Notice and Legal Defense**. Promptly after receipt by an Indemnified Party or a Contractor Indemnified Party of any claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnity provided for in Section 13.1, 13.2, 13.3 or 13.4 applies, such Party shall notify Contractor or Owner, as the case may be, in writing of such fact. Contractor or Owner, as the case may be, shall assume on behalf of such Party and conduct with due diligence and in good faith the defense thereof with counsel reasonably satisfactory to such Party; provided, that such Party shall have the right to be represented therein by advisory council of its own selection and at its own expense; and provided further, that if the defendants in any such action include both the indemnifying and indemnified Parties and the indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the indemnifying Party, the indemnified Party shall have the right to select up to one separate counsel to participate in the defense of such action on its own behalf at the indemnifying Party’s expense. Contractor or Owner (as the case may be) shall provide reasonable support and assistance to the indemnifying Party in connection with the defense of any claim to which an indemnity provided for herein shall apply.
	7. **Failure to Defend Action**. If any claim, action, proceeding or investigation arises as to which the indemnity provided for in Section 13.1, 13.2, 13.3, 13.4 or 13.5 applies, and the indemnifying Party fails to timely assume the defense of such claim, action, proceeding or investigation, then the indemnified Party may at the indemnifying Party’s expense contest (or, with the prior written consent of the indemnifying Party, settle) such claim; provided, that no such contest need be made and settlement or full payment of any such claim, action, proceeding or investigation may be made without indemnifying Party’s consent (with the indemnifying Party remaining obligated to indemnify the indemnified Party under Section 13.1, 13.2, 13.3, 13.4 or 13.5) if, in the written opinion of the indemnified Party’s counsel, such claim is meritorious. All costs and expenses incurred by an indemnified Party in connection with any such contest, settlement or payment shall be paid by the indemnifying Party with interest thereon as provided in Section 24.1, promptly following demand therefor.
	8. **Settlement of Claims**. Any Party entitled to indemnification hereunder may elect to settle a claim against it, notwithstanding the indemnifying Party’s willingness to assume the defense thereof, in which case the indemnified Party shall not be reimbursed for its costs and expenses (including the amount of the settlement Contract) in connection with any settlement paid without the indemnifying Party’s consent.
2. **insurance**

	1. **Insurance of Project.** Contractor shall, in the joint names of Owner, Contractor, the Grid Authority, the Subcontractors and Financing Parties, insure the Project and keep each part thereof, including but not limited to footers and foundations, insured for its full replacement value on an “all risk” basis. Coverages shall include, but not be limited to fire, explosion and extended perils, expediting expense collapse, earthquake, flood and comprehensive boiler and machinery (including electrical injury and mechanical breakdown). Such insurance shall include all property, equipment, materials and machinery intended for inclusion in or construction of the Project and be effected from the Commencement Date, and thereafter shall operate from the time the relevant property leaves the premises of the manufacturers and shall continue during the ordinary course of transit and/or during storage, if any, and until the date on which Owner takes possession and control of the Facility pursuant to Section 6.4.3. There shall be no exclusion for resultant damage caused by facility workmanship, design or materials. Flood and earthquake coverage shall be provided at maximum limits commercially available at reasonable cost. Deductibles shall be for the account of Contractor.
	2. **Contractor’s or Rented Equipment.** All equipment, supplies and materials belonging to Contractor or any Subcontractor used by or on behalf of Contractor or any Subcontractor for its performance hereunder shall be brought to and kept at the Site at the sole cost, risk and expense of Contractor or such Subcontractor and Owner shall not be liable for loss or damage thereto. Any insurance policies carried by Contractor, any Subcontractor or any third party on said equipment, supplies and materials shall provide for a waiver of the underwriters’ right to subrogation against Owner, the Financing Parties, the Grid Authority and all their assignees, subsidiaries, affiliates, employees, insurers and underwriters. Contractor shall obtain adequate insurance to cover any construction tools and equipment leased from third parties.
	3. **Unemployment and Other Insurance Benefits.** Contractor shall maintain in each applicable jurisdiction unemployment and other statutory benefits required by law.

14.5 **CONTRACTOR'S INSURANCE REQUIREMENTS**

 14.5.1 Workers' Compensation, Statutory Limit

Occupational Disease Insurance

and Foreign Workers Compensation

 14.5.2 Employer's Liability $1,000,000 per person

 14.5.3 Foreign Commercial General Liability,
 including:

a. comprehensive form $1,000,000 each occurrence

b. premises – operations $1,000,000 aggregate

c. explosion, collapse, and underground

 hazard

e. products liability/completed operations

f. contractual liability

g. broad form property damage

h. independent contractors

i. personal injury

 14.5.4 Foreign Business Automobile Liability combined single limit

$1,000,000 each occurrence

14.5.5 Excess Liability Umbrella coverage in the amount of Twenty-Five Million Dollars ($25,000,000) following the terms and conditions of all underlying coverages.

 14.5.6 Contractor's Equipment (Property) Policy $250,000 per unit-loaned to

 or borrowed by Insured

$1,000,000 per unit owned,

leased or rented equipment

$2,000,000 per

catastrophe on owned,

leased or rented equipment

14.5.7 Builder’s Risk.

 A blanket builder’s risk insurance policy (a) on an “all risk” basis (which insurance shall include coverage for operational testing, removal of debris, coverage for buildings, structures, boilers, turbines, machinery, equipment, facilities, and other property written on a replacement cost basis and (b) with earthquake and flood insurance coverage.

14.6 **OWNER INSURANCE REQUIREMENTS**

14.6.1 Commercial General Liability, including:

a. comprehensive form $1,000,000 each occurrence

b. premises – operations $1,000,000 aggregate

c. explosion, collapse and underground

 hazard

e. products liability/completed operations

f. contractual liability

g. broad form property damage

h. independent contractors

i. personal injury

 14.6.2. Business Automobile Liability combined single limit

$1,000,000 each occurrence

 Contractor and Owner shall each supply the other with Certificates of Insurance evidencing the fact that (i) all of the above coverages are primary or in excess to the specific primary policy provided for such coverage, and not in excess or contributing as to any other insurance or self –insurance available; (ii) provide that there be no recourse against any additional insured for the payment or premiums or other amounts; (iii) name Contractor and its subcontractors as additional insureds with waiver of subrogation to the Builder’s Risk policy; (iv) name Owner and Contractor as additional insureds to each others’ general, excess, and automobile liability policies but only to the extent of their respective indemnities provided herein; (v) provide for waivers of subrogation in favor or Owner, Contractor, and any subcontractor to the extent of the indemnities provided by Contractor and Owner herein; and (v) Owner and Contractor will each receive at least thirty (30) days advance notice of any change in or cancellation of any coverage. Contractor and Owner agree to provide each other with certified copies of all policies upon request.

* 1. **General Insurance Requirements.** All insurance obtained by Contractor shall be maintained with an insurer or insurers, and on terms, to be approved by Owner. On the Financial Closing Date, Contractor shall furnish to the Financing Parties and Owner certificates of insurance (or if one of the Financing Parties, Owner or Contractor so directs, copies of the actual insurance policies signed by an authorized representative of the insurer) from each insurance carrier showing that the above required insurance is in force, the amount of the carrier’s liability thereunder, and further providing that the insurance will not be canceled, changed or no renewed until the expiration of at least forty-five (45) days (to the extent obtainable under commercially reasonable terms) or ten (10) days in the case of cancellation due to non-payment of premiums after written notice of such cancellation, change or nonrenewal has been received by Owner and the Financing Parties and Contractor. All copies of policies and certificates of insurance submitted under this Section 14.6 shall be in form and content acceptable to Owner and the Financing Parties.
	2. **Remedy on Failure to Insure.** If Contractor shall fail to effect and keep in force the insurance for which it is responsible, or demonstrate to Owner that it has complied in all respects with the requirements of this Article 14, Owner may effect and keep in force any such insurance, and pay such premiums as may be necessary for that purpose, and from time to time deduct the amount so paid by Owner from any amounts due or which may become due under this Contract.
	3. **Waiver of Subrogation.** All insurance policies supplied by Contractor shall include a waiver of any right of subrogation of the insurers thereunder against Owner, Independent Engineer, Statoil, ABB, the Financing Parties, the Grid Authority, and all their assigns, subsidiaries, affiliates, employees, insurers and underwriters and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy.
	4. **Contractor’s Waiver.** Contractor further releases, assigns and waives any and all rights of recovery against Owner, Independent Engineer, the Financing Parties, the Grid Authority, and all their affiliates, subsidiaries, employees, successors, permitted assigns, insurers and underwriters, and against other contractors and Subcontractors which Contractor may otherwise have or acquire in or from or in any way connected with any loss covered by policies of insurance maintained or required to be maintained by Contractor pursuant to the Contract (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.
	5. **Subcontractor Insurance.** Contractor shall require all Subcontractors providing equipment, materials or services directly to Contractor or the Project to obtain, maintain and keep in force during the time in which they are involved in the performance of the Work primary third party liability insurance, automobile liability insurance and workers’ compensation insurance coverages.
	6. **Additional Insureds.** Except to the extent prohibited by Applicable Law and except for the insurance coverages described in Section 14.2, all Contractor-furnished and Subcontractor-furnished insurance coverages referred to in this Article 14 shall name Owner, USX, Independent Engineer, Statoil, ABB, the Financing Parties, the Grid Authority, and all their assignees, subsidiaries and affiliates as additional insureds and loss payees, as their respective interests may appear.
	7. **No Limitation of Liability.** The required coverages referred to and set forth in this Article 14 shall in no way affect, nor are they intended as a limitation of, Contractor’s liability under the Contract with respect to its performance of the Work.
	8. **Descriptions not Limitations.** The coverages referred to above shall be set forth in full in respective policy forms, and foregoing descriptions of such policies are not intended to be complete, nor to alter or amend any provision of the actual policies and in matters, if any, in which the said description may be conflicting with such instruments, the provisions of the policies of the insurance shall govern; provided, however, that neither the content of any insurance policy or certificate nor Owner’s approval thereof shall relieve Contractor of any of its obligations under the Contract.
	9. **Deductibles.** Any and all deductibles in the above-described insurance policies shall be assumed by, for the account of, and be at Contractor’s sole risk.
1. **TERMINATION**

	1. **Termination for Owner’s Convenience**. Owner may for its convenience terminate any part of the Work or any Subcontract or all remaining Work hereunder at any time by delivering written notice to Contractor specifying the part of the Work to be terminated and the effective date of termination. Immediately upon receipt of such notice, Contractor shall stop performance of the terminated Work and shall immediately order and commence demobilization with regard to the terminated Work. In the event of a partial termination, Contractor shall continue to prosecute the part of the Work not terminated. In case of a termination of part of the Work, Owner will authorize a Scope Change Order making required adjustments to one or more of the Guaranteed Completion Date, the Contract Price, Milestone Payment Schedule, the Project Schedule, the Performance Guarantees or the Reliability Guarantee, as appropriate. In the event of termination by Owner under this Section 15.1, Owner shall pay to Contractor such amount as is required pursuant to Section 15.7.

**Owner’s Right to Suspend Completion of the Work**. Owner may elect to suspend completion of all or any part of the Work upon at least ten (10) days’ prior written notice to Contractor (or, in emergency situations, upon such prior notice as circumstances permit) indicating (a) the portion of the Work the completion of which Owner has elected to defer; (b) Owner’s estimate of the duration of such suspension; and (c) the effective date of such suspension of the Work. Upon the effective date of such notice, Contractor shall stop performance of the Work which Owner has elected to defer and shall continue to complete performance of the balance of the Work. In the event of a suspension of the Work pursuant to this Section 15.1.1, Owner will authorize a Scope Change Order making required adjustments to one or more of the Guaranteed Completion Date, the Contract Price, the Milestone Payment Schedule, the Project Schedule, the Performance Guarantees or the Reliability Guarantee, as appropriate. Contractor shall mitigate to the fullest extent reasonably possible any expenses to be borne by Owner as a result of suspension of the Work pursuant to this Section 15.1.1.

* 1. **Termination upon Non-Payment by Owner**. If Owner fails to pay to Contractor any payment as required hereunder and such failure continues for thirty (30) days after written notice thereof has been given to Owner by Contractor, then Contractor may terminate the Contract upon **[forty-five/sixty (45/60)]** days’ prior written notice to Owner. In the event of such a termination by Contractor, Owner shall pay to Contractor such amount as is required pursuant to Section 15.7. Owner shall not be deemed to be in breach, nor shall Contractor be entitled to terminate the Contract, by reason of the withholding of any payment which is the subject of a bona fide dispute.
	2. **Termination upon Contractor’s Material Breach**. In the event (a) Contractor is adjudged a bankrupt or insolvent, or (b) Contractor makes a general assignment for the benefit of its creditors, or (c) a trustee or receiver is appointed for Contractor or for any of its property, or to reorganize under the bankruptcy or similar laws, or (d) Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or (e) Contractor fails to make prompt payments to Subcontractors or for labor, materials or equipment, or (f) if Provisional Performance Acceptance has not been achieved within thirty (30) days following the Guaranteed Completion Date, or (g) Contractor fails to achieve Final Performance Acceptance within [ninety (90)] days after the date of Initial Synchronization, or (h) Contractor commits any other material breach of any of the terms of the Contract which remains unremedied for thirty (30) days after written notice thereof by Owner (or for such longer period, not to exceed ninety (90) days, during which Contractor diligently pursues the cure of such material breach (provided that such material breach is susceptible to cure), Owner may at its option, without prejudice to any other right or remedy Owner may have hereunder or at law or in equity, at any time terminate the Contract immediately upon notice to Contractor. Notwithstanding the foregoing, Owner may terminate the Contract upon thirty (30) days’ notice to Contractor if Contractor disregards any provision of any Applicable Law, provided any such failure is not remedied within such thirty (30)-day period.
	3. **Consequences of Termination**. Upon any termination pursuant to this Article 15, Owner may at its option elect to (a) assume responsibility for and take title to and possession of the Project and any or all Work, materials or Equipment remaining at the Site, and (b) succeed automatically, without the necessity of any further action by Contractor, to the interests of Contractor in any or all Subcontracts entered into by Contractor with respect to the Project, and shall be required to compensate such Subcontractors only for compensation becoming due and payable to such parties under the terms of their Subcontracts with Contractor from and after the date Owner elects to succeed to the interests of Contractor in such Subcontracts. All sums claimed by such Subcontractors to be due and owing for Work performed prior to such date shall constitute debts between Contractor and the affected Subcontractors, and Owner shall in no way be liable for such sums; provided, however, that Owner may, at its election, pay any sums owed to such Subcontractors and Contractor shall reimburse Owner for such sums on demand or Owner may set-off such sums from amounts owing to Contractor. Contractor shall include in all Contracts and contracts entered into with Subcontractors a provision permitting Owner to succeed automatically to the interests of Contractor thereunder pursuant to the terms. In the event of any termination, Owner may, without prejudice to any other right or remedy it may have, at its option, finish the Work by whatever method Owner may deem expedient. To the extent the costs of completing the Work after a termination pursuant to Section 15.3, including without limitation compensation for additional professional services, exceed those amounts that would have been payable to Contractor hereunder to complete the Work if the Contract had been fully performed, Contractor shall pay the difference to Owner upon demand. In addition, Owner shall be entitled to exercise any rights or remedies available to Owner hereunder or at law or in equity. In the case of a termination pursuant to Section 15.3, Contractor shall not be entitled to any further payment hereunder.
	4. **Surviving Obligations**. Termination of the Contract (a) shall not relieve Contractor or Owner of its obligations with respect to the confidentiality as set forth in Article 18, (b) shall not relieve Contractor or Owner of any obligation hereunder which expressly or by implication survives termination, and (c) except as otherwise provided in any provision of the Contract expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination, and shall not relieve Contractor of its obligations as to portions of the Work already performed or of obligations assumed by Contractor prior to the date of termination, except as otherwise agreed by Owner in writing.
	5. **Contract Subject to Financial Closing**. The Contract and any and all obligations of the Parties hereunder are subject to the occurrence of the Financial Closing Date.
	6. **Payment Upon Termination**. Upon termination of all or part of the Work pursuant to Section 15.1, Contractor shall be entitled to be paid (a) Contractor’s actual costs plus markup, reasonably incurred in connection with performance by Contractor of Work prior to the date of termination which have not been previously paid by Owner, provided that all Equipment goods and services procured by Contractor are delivered to Owner at the Site together with all documents necessary to transfer title thereto to Owner, (b) all documented costs reasonably incurred by Contractor to implement the termination, including demobilization and travel costs, (c) Subcontractors’ termination charges and (d) overhead charges (as shown by an audit) (the “*Termination Payment*”). As a condition precedent to receiving the Termination Payment, Contractor shall execute and deliver all such papers and take all such steps, including the legal assignment of Contractor’s contractual rights, as Owner may require for the purpose of fully vesting in Owner all rights, title and interests of Contractor in and to all Subcontracts, purchase orders, warranties, guarantees and other Contracts relating to the Project.

**Verification of the Termination Payment**. Contractor shall, within ninety (90) days of any such termination of all or part of the Work, make available to Owner all invoices and other documentation as is sufficient to enable Owner, through an independent certified public accounting firm, to verify the performance of the Work, Contractor’s costs associated therewith and the costs of termination, and to determine the amount of the Termination Payment. The Termination Payment shall not include the costs of future anticipated profit or restocking charges.

**Termination Payment by Contractor**. Upon a termination pursuant to Section 15.1, 15.2 or 15.3, if it is determined by an independent certified public accounting firm selected by Owner and reasonably acceptable to Contractor that, prior to such termination, Contractor has been paid an amount in excess of the value of the actual costs described in clause (a) of Section 15.7 plus, in the case of a termination pursuant to Section 15.1 or 15.2 only, costs described in clauses (b), (c), (d) and (e) of Section 15.7 reasonably incurred by Contractor, Contractor shall pay to Owner such excess within thirty (30) days following Owner’s demand for payment.

**Payment and Limitation of the Termination Payment**. Owner shall pay the Termination Payment to Contractor within thirty (30) days of Owner’s receipt of the items and documentation required under Section 15.7 and Section 15.7.1.

**Limitation of Liability**. Payment of the Termination Payment shall be the sole and exclusive liability of Owner, and the sole and exclusive remedy of Contractor, with respect to termination of the Contract pursuant to Section 15.1 or 15.2. In no event shall Owner have any further liability to Contractor in any such event for actual, incidental, consequential or other damages, notwithstanding the actual amount of damages that Contractor may have sustained.

1. **assignments**

	1. **Consent Required.** It is expressly understood and agreed that the Contract is personal to Contractor and Owner, and that Contractor and Owner, except as specifically herein, shall have no right, power or authority to assign or delegate any of their respective rights or obligations under the Contract or any portion thereof, either voluntarily or involuntarily, or by operation of law. Notwithstanding the foregoing, Owner may, without Contractor’s approval, (a) assign any or all of its rights under the Contract to the Financing Parties, and such parties may further assign such rights, and (b) assign any or all of its rights and delegate any or all of its obligations under the Contract to any transferee of the Project or a substantial portion thereof. If in connection with any assignment permitted pursuant to clause (a) of the second sentence of this Section 16.1 any Financing Party requests Contractor to consent in writing to such an assignment even though such consent is not required hereunder, Contractor shall do so promptly. In the case of an assignment that does not require Contractor’s consent, Owner’s sole obligation under this Section 16.1 is to provide Contractor with notice of such assignment. The Parties recognize that the Contract is subject to review by financial institutions for purposes of the financing of the Project. At Owner’s request, Contractor shall provide to any Financing Party a certificate and an opinion of counsel both addressed to any such Financing Party and concerning such matters as such Financing Party reasonably requests from Contractor.
	2. **Successors and Assigns**. All of the rights, benefits, duties, liabilities and obligations of the Parties shall inure to the benefit of and be binding upon their respective successors and permitted assigns.
2. **DESIGN DOCUMENTS**

	1. **Owner Review** . Each Design Document submitted to Owner in connection with the Project shall be reviewed and approved by Owner, and Owner shall provide its written comments within ten (10) calendar days after receipt of a Design Document. All other non- proprietary information and results of any supporting design calculations which are prepared in connection with the Project shall be made available to Owner for review and approval.
	2. **Review Not Release of Obligations**. Review approval and comment by Owner or its designees with respect to any of such Design Documents or other information pursuant to the Contract shall not relieve or release Contractor from any of its duties, obligations or liabilities provided for under the terms of the Contract nor shall it create liabilities in Owner.
	3. **As-Built Documents**. As a condition precedent to Commercial Operability, Contractor shall furnish Owner with one (1) physical copy and one (1) electronic copy of “as built” Design Documents reflecting the Facility as actually constructed.
	4. **Ownership**.

**Sole Property of Owner**. Contractor agrees that all Design Documents and other documents required to be delivered by Contractor hereunder or other documents which are transmitted to Owner shall be the sole and exclusive property of Owner. Contractor shall retain title to any equipment drawings and specifications and manufacturing drawings which are not Design Documents that may be provided hereunder, however Owner may use such equipment drawings which Owner in its sole opinion deems to be necessary in connection with the ownership, operation, maintenance, repair or modification of the Facility.

**Owner Documents**. Contractor agrees that all documents (as well as any drawings, tracings, specifications, calculations, memoranda, data, notes and other materials) which are supplied by Owner to Contractor under the Contract shall be returned to Owner at the earlier of Commercial Operability or termination of the Work.

1. **Confidential information**

	1. **Confidentiality**. Each Party agrees to hold in confidence for a period commencing with the date hereof and ending **[2]** years following the date of Project Completion, except as may be necessary to perform the Work, any information supplied to it by the other Party and designated in writing as confidential or which by its nature can reasonably be inferred to be confidential. Each of Contractor and Owner further agrees to require its Subcontractors and employees to enter into appropriate nondisclosure Contracts relative to such confidential information as may be communicated to them by Contractor or Owner. The provisions of this Article 18 shall not apply to information within any one of the following categories: (i) information which was in the public domain prior to a Party’s receipt thereof or which subsequently becomes part of the public domain by publication or otherwise except by the receiving Party’s wrongful act; (ii) information which the receiving Party can show was in the receiving Party’s possession prior to its receipt thereof through no breach of any confidentiality obligation; or (iii) information received by a Party from a third party which did not have a confidentiality obligation with respect thereto. Other than as may be required by a Governmental Authority, and then only to the extent required, neither Party shall publish the terms and conditions of the Contract or project technical information, unless the other Party provides its express prior written consent thereto; provided, however, that Owner shall be permitted to disclose such terms and provisions to the Financing Parties or other parties to the extent required to obtain financing for the Facility or in connection with the operations of the Facility. No Person shall be permitted access to the Facility or the Site, except as provided in the Contract or as otherwise agreed by the Parties.
	2. **Publicity Releases**. Contractor shall not, nor shall it permit any Subcontractor or other Person to, issue any press or publicity release or any advertisement, or publish or otherwise disclose any photograph or other information, concerning the Contract or the Project without the express prior written consent of Owner. Contractor shall give prior notice to Owner of any information contained in documents filed with public authorities or any other public disclosure which would result in the dissemination of confidential information.
2. **INSPECTION**

	1. **Project Inspection**. Contractor acknowledges that prior to the execution of the Contract, Contractor (a) has made a complete and careful examination of the Site and the surrounding areas, drawings and specifications and other information set forth in the Contract, (b) has made a complete and careful examination to determine the difficulties and hazards incident to the performance of the Work, including (i) the location of the Project, (ii) the proximity of the Project to adjacent facilities and structures, (iii) the conditions of the roads, waterways and railroads in the vicinity of the Site, including the conditions affecting shipping and transportation, access, disposal, handling and storage of materials, (iv) the nature and character of the soil, terrain conditions of the Site with the exception of subsurface obstacles or archeological relics, (v) the labor conditions in the region of the Site, (vi) Applicable Laws, Applicable Permits and the rights of Owner regarding the Site, (vii) the terms and conditions of **Appendix F**, (viii) the local weather conditions based upon previous weather data, (ix) existing environmental conditions and Hazardous Materials present at the Site and (x) all other matters that might affect Contractor’s performance hereunder or the construction of the Facility, and (c) has determined to Contractor’s satisfaction the nature and extent of such difficulties and hazards.
3. **Arbitration**

	1. **Settlement**. Any controversy, dispute or claim between the Contractor and Owner which cannot be resolved informally will initially be referred to a meeting between a representative of Contractor’s senior management and a representative of Owner’s senior management. Contractor agrees that it will designate a member of its senior management who will be fully authorized to resolve the disputes. In the event the management representatives are unable to resolve this dispute within a reasonable period, either Party may elect to seek arbitration of the dispute as hereinafter provided.
	2. **Arbitration.** Any controversy, dispute or claim between Contractor and Owner arising out of or relating to this Contract which cannot be amicably settled by the Parties (a “*Dispute*”), shall be decided by arbitration in Oklahoma, in accordance with the Construction Industry Arbitration rules of the American Arbitration Association (AAA) in effect at the time the Dispute arises, unless the Parties mutually agree otherwise. The Parties agree that time is of the essence in resolving any such controversy, dispute or claim, and they shall proceed as expeditiously as possible to obtain a decision. To that end, within fifteen (15) days following submission of a dispute to arbitration hereunder, each Party shall appoint one arbitrator, and the Parties shall instruct the two arbitrators to select a third arbitrator within fifteen (15) days thereafter; three (3) arbitrators shall be used. Any demand for arbitration must be made in writing to the other Party, with a copy of the AAA rules then in effect, within a reasonable time after the Dispute arises.
	3. **Final and Binding**. Unless otherwise agreed by the Parties, no arbitration shall be consolidated with any other proceeding, nor shall it include parties other than Owner, Contractor and any other Persons substantially involved in a common question of fact and whose presence is necessary for resolution of the Dispute. This Contract to arbitrate shall be specifically enforceable and the decision of the arbitrator shall be final and binding and a judgment may be entered upon it in accordance with the law of the governing jurisdiction. Unless otherwise agreed, Contractor will carry on the Work and Owner, subject to the provisions of the Contract, shall continue to make payments during any arbitration proceedings. The Parties may consolidate the proceedings with other similar proceedings only upon mutual consent. In arriving at their decision, the arbitrators shall consider the pertinent facts and circumstances and be guided by the Contract; and, if a solution is not found in the Contract, the arbitrators shall apply the provisions of the law of [the Commonwealth of Pennsylvania] excluding its conflict of laws rules. In addition, the arbitrators are precluded from considering or awarding punitive or exemplary damages to any Party in any arbitration conducted pursuant to the Contract. The arbitrators shall not have the power to: (a) impose obligations involving limitations of liability or applicable remedies other than those set forth in and permitted by the Contract; or (b) award any punitive or consequential damages or any multiple of compensatory damages. Discovery of applicable evidence shall be permitted in accordance with standards generally prevailing in U.S. District Courts at the time such discovery is sought. The Parties shall have the right to present in writing documentary evidence and witnesses. The arbitrators shall present the reasons for arriving at their decision. The decision of the arbitrators shall be final and binding upon the Parties, and no Party shall seek recourse to a law court or other authorities to appeal for revisions of such decision. Reasonable expenses of the arbitration shall be shared equally. On request of either Party, a transcript of the hearings shall be prepared and made available to the Parties.
4. **Cost records**

	1. **GAAP**. Contractor shall maintain fiscal records, books and accounts pertaining to the Project in accordance with generally accepted accounting principles, consistently applied.
	2. **Inspection of Books, Records and Audit Rights.** Without limitation of Section 24.12, Contractor shall keep and maintain full, complete and detailed records of all of its costs and allowances in connection with Scope Changes. Contractor authorizes independent third parties designated by Owner to inspect and audit, during business hours, all of such records relating to any matter in which costs or allowances are subject to dispute. Such records, books and accounts shall be preserved by Contractor for a period of three years after Project Completion, at no additional cost to Owner.
5. **INDEPENDENT CONTRACTOR**

	1. **Contractor as Independent Contractor.** Except as otherwise expressly provided herein, Contractor shall be an independent contractor with respect to the Project, each part thereof, and the Work, and neither Contractor nor its Subcontractors nor the employees of either shall be deemed to be agents, representatives, employees or servants of Owner in the performance of the Work, or any part thereof, or in any manner dealt with herein. Owner shall not have the right to control nor any actual, potential or other control over the methods and means by which Contractor or any of its agents, representatives, Subcontractors or employees conducts its independent business operations. The Parties covenant and agree that in the performance of the Work, Contractor shall not perform any act or make any representation to any Person to the effect that Contractor or any of its agents, representatives or Subcontractors, is an agent of Owner.
6. **REPRESENTATIONS AND WARRANTIES**

	1. **Representations and Warranties**. Contractor represents and warrants to Owner that:

**Organization and Qualification**. It is a corporation duly organized, validly existing and in good standing under the laws of Oklahoma, has the lawful power to engage in the business it presently conducts and contemplates conducting, and is duly licensed or qualified and in good standing as a foreign corporation in each jurisdiction wherein the nature of the business transacted by it makes such licensing or qualification necessary.

**Power and Authority**. It has the power to make and carry out the Contract and to perform its obligations hereunder and all such actions have been duly authorized by all necessary corporate proceedings on its part.

**No Conflict**. The execution, delivery and performance of the Contract will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of its **[certificate of incorporation or by-laws]** or any Applicable Laws or any covenant, Contract, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected.

**Validity and Binding Effect**. The Contract has been duly and validly executed and delivered by Contractor. The Contract constitutes a legal, valid and binding obligation of Contractor, enforceable in accordance with its terms, except as (i) such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium or other Applicable Law relating to creditors’ rights generally and (ii) the remedy of specific performance and injunctive relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought. No material authorization, approval, exemption or consent by any governmental or public body or authority (other than the Applicable Permits) is required to be obtained by Contractor in connection with the authorization, execution, delivery and carrying out of the terms of the Contract.

**Litigation**. There are no actions, suits, proceedings or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any Governmental Authority whether or not covered by insurance which individually or in the aggregate may result in any materially adverse effect on its business, properties or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations under the Contract. Contractor has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any Governmental Authority which may result in any such materially adverse effect or such impairment.

**Patents, Licenses, Franchises**. It owns or possesses all the patents, trademarks, service marks, trade names, copyrights, licenses, franchises, permits and rights with respect to the foregoing necessary to perform the Work and to carry on its business as presently conducted and presently planned to be conducted without conflict with the rights of others.

**Compliance with Laws**. It has complied with all Applicable Laws such that it has not been subject to any fines, penalties, injunctive relief or criminal liabilities which in the aggregate have materially affected or may materially affect its business operations or financial condition or its ability to perform the Work.

**Financial Solvency**. Contractor is financially solvent and able to pay its debts as they mature and possess sufficient working capital to complete its obligations under the Contract.

**Hazardous Materials.** Contractor has fully inspected, examined and verified the Site and all other information furnished to Contractor by Owner as contemplated in Article 19 and has satisfied itself that it has complete knowledge of the Site and the Hazardous Materials that exist at the Site. Contractor has experience and extensive knowledge of working at sites with similar conditions and hazards as are present at the Site and Contractor assumes, without limitation, all the risks associated with performance of the Work at the Site. Contractor shall inform all Subcontractors of its findings with respect to the Site and its knowledge of the Hazardous Materials present at the Site and shall obtain from each Subcontractor evidence in writing that all risks associated with the Site and the Hazardous Materials have been unconditionally assumed by such Subcontractor.

**Disclosure**. No representation or warranty by it contained herein or in any other document furnished by it to Owner contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading in light of the circumstances under which it was made.

1. **MISCELLANEOUS**

	1. **Past Due Amounts**. Any amount owed to either Party hereunder which is not paid by the owing Party within thirty (30) days after the date such amount is due under the Contract shall accrue interest each day such amount is not paid commencing on the due date at the lesser of (a) an annual rate equal to two percentage points above the rate quoted from time to time by the Wall Street Journal as its prime rate, or (b) the maximum rate permitted by Applicable Laws.
	2. **Delay not Waiver**. It is understood and agreed that any delay, waiver or omission by Owner or Contractor to exercise any right or power arising from any breach or default by Contractor or Owner in any of the terms, provisions or covenants of the Contract shall not be construed to be a waiver by Owner or Contractor of any subsequent breach or default of the same or other terms, provisions or covenants on the part of Contractor or Owner.
	3. **Choice of Law**. The Contract shall in all respects be governed by and construed in accordance with the laws of Oklahoma, including with respect to all matters of construction, validity and performance, without giving effect to any choice of law rules thereof.
	4. **Severability**. In the event that any of the provisions, or portions or applications thereof, of the Contract are held to be unenforceable or invalid by any court of competent jurisdiction, Owner and Contractor shall negotiate an equitable adjustment in the provisions of the Contract with a view toward effecting the purpose of the Contract, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.
	5. **Notice**. Any notice required or permitted to be given by Owner to Contractor hereunder shall be in writing and shall be addressed to:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attention: \_\_\_\_\_\_\_\_\_\_\_

with a copy to:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attention: \_\_\_\_\_\_\_\_\_\_\_

and any notice required or permitted to be given by Contractor to Owner hereunder shall be in writing and shall be addressed to:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attention: \_\_\_\_\_\_\_\_\_\_\_

**Delivery**. All notices under Section 24.5 shall be delivered in person to the Party above mentioned or shall be sent via tested facsimile transmission or certified mail with a return receipt requested in a securely sealed envelope and shall be effective when received at the address specified above. The Parties, by like notice in writing, may designate, from time to time, another address or office to which notices may be given pursuant to the Contract.

* 1. **Section Headings** . The Article and Section headings herein have been inserted for convenience of reference only and shall not in any manner affect the construction, meaning or effect of anything herein contained nor govern the rights and liabilities of the Parties.
	2. **Amendments** . No amendments or modifications of the Contract shall be valid unless evidenced in writing and signed by a duly authorized representative of the Party against which enforcement is sought.
	3. **No Third Party Rights**. This Contract and all rights hereunder are intended for the sole benefit of the Parties and, to the extent expressly provided, for the benefit of the Financing Parties the Grid Authority and the other indemnified Parties, and shall not imply or create any rights on the part of, or obligations to, any other Person.
	4. **Survival of Provisions**. All provisions of the Contract, including without limitation Articles 9, 10, 13, 18 and 20 and Sections 8.4, 15.5, 20 and 24.10, which are expressly or by implication to come into or continue in force and effect after the expiration or termination of the Contract shall remain in effect and be enforceable following such expiration or termination.
	5. **Title to the Project**. Title to all materials, supplies, Equipment and machinery supplied by Contractor in connection with the Work and which become a permanent part of the Project shall vest in Owner upon the earliest of (a) the occurrence of any event by which title passes to Owner; (b) payment therefor by Owner; (c) incorporation into the Project at the Site; (d) delivery of Equipment or materials to an Owner-approved on or off-Site location; or (e) in the case of drawings, specifications, calculations and other documents, the making or completion thereof. Title to water, soil, rock, gravel, sand, minerals, timber and any other resources developed or obtained in the excavation or the performance by Contractor of the Work and the right to use said items or dispose of the same is hereby reserved by Owner to the extent such items are not used by Contractor in connection with performance of the Work. Contractor shall not have any right, title or interest in said resources. Care, custody and control of, and risk of loss with respect to, the Project shall remain with Contractor until Provisional Performance Acceptance.
	6. **Conflicts.** Contractor shall exercise due care and diligence and shall make all reasonable arrangements to prevent any actions that could result in conflict with Owner’s interests. This obligation shall also be applicable to the activities of Contractor’s employees and agents in their relations with Owner employees (or their relatives), and with the representatives of Owner, vendors, Subcontractors and third parties, by reason of the Work contracted. To such end, Contractor declares to be fully aware of the instructions given by Owner regarding its policy on business conduct, conflict of interest and relationships between contractors, Owner, and its employees. Under no circumstances may Owner employees request or accept, directly or indirectly, any payment in cash, loans, services, entertainment, trips or gifts from Contractor or subcontractors. Likewise, Owner employees may not offer or give, directly or indirectly, any payment, loan, service, entertainment, trips or gifts to Contractor, its employees, representatives or subcontractors, nor can they contract or subcontract, directly or indirectly, any equipment of their property or provide any service on behalf of such persons or organizations. Contractor, its agents or representatives shall refrain, at all times, from sending, giving or offering any gifts, gratification, entertainment, loans, contracts or subcontracts to Owner employees. Contractor commits to inform Owner of the identity of any of its representatives or employees (or their relatives) of whom it knows has any type of considerable interest in Contractor’s activities or finances.
	7. **Audit.** Contractor, its affiliates, Subcontractors and agents shall maintain true and complete information and records regarding the Work. Such information and records shall be kept for a minimum period of three (3) years after the date of Project Completion for Owner’s inspection and audit. Owner shall give prior notice to Contractor of its intention to conduct the audits contemplated by this Section. Owner shall have the right to audit Contractor during the term of the Contract and during the said three-year term at Contractor’s offices or at the Site. If, during such audit, any mistake is found in the records or invoices submitted by Contractor, Contractor shall make any necessary corrections, modifications, and adjustments. Contractor shall provide adequate personnel and physical resources for any such audit at no cost to Owner. Owner shall have the right to audit the systems, procedures, supporting documents, and accounting records of Subcontractors with regard to the Work. Owner shall be entitled to carry out audits in order to verify compliance by Contractor with all of its obligations hereunder and under any Applicable Laws regarding labor, health, safety and the environment. Audits may be carried out by Owner’s internal or external auditors. Contractor shall include this section in the contracts it enters into with its affiliates and Subcontractors.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused the Contract to be executed by their duly authorized officers as of the date indicated below and to be effective as of the day and year first above written.

|  |  |
| --- | --- |
| [ Owner] | [Contractor] |
| By: |  | By: |  |
| Name: |  | Name: |  |
| Title: |  | Title: |  |
| Date: |  | Date: |  |

**Appendix A

Facility technical requirements**

**TECHNICAL SCOPE DOCUMENT**

**TSD**

1. **Scope of Work**
2. **Technical requirements**

**Appendix B

site report**

(Site Geotech Report)

**Appendix C

design inputs**

Contained in TSD

**APPENDIX D

project statutory/regulatory commitments**

(To be provided Later)

**APPENDIX E

owner permits**

(To be provided Later)

**Appendix G

project schedule**

**Appendix H

Monthly drawdown payment schedule**



**Appendix I

quality assurance program guidelines**

**APPENDIX J

training**

(To be provided Later)

**APPENDIX K

START-UP RESPONSIBILITIES**

(To be provided Later)

**APPENDIX L

emissions testS**

(To be provided Later)

**APPENDIX M

performance tests**

(To be provided Later)

**APPENDIX n

Contractor partial lien waiver**

Milestone Payment No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Invoice Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Pursuant to the Engineering Procurement and Construction Contacted dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ (the “*Contract*”),by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Contractor”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(“Owner”) Contractor has performed labor and/or furnished materials in connection with construction of the electric power generation facility designed, engineered and constructed by Contractor for Owner at the Site.

As a result of subcontractor’s partial performance of the Work required under the Contract, the aggregate sum of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ has been paid to Contractor with respect to Contractor’s milestone payment invoices (“Invoices”) submitted through \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (“Prior Invoice Date”) and $\_\_\_\_\_\_\_\_ is due and payable from Owner to Contractor as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (“Current Invoice Date”) with respect to Contractor’s Completion of the above referenced milestone.

Contractor’s partial waiver contained herein covers all prior Invoices submitted through the Prior Invoice Date and the following additional milestone payment(s):

Contractor acknowledges that it has received all sums due and payable from Owner up to and including the Prior Invoice Date and certifies that it has paid all of its subcontractors, suppliers and vendors for sums due and payable up to and including the Prior Invoice Date, with the following exceptions, if any:

Contractor releases and waives any liens or claims Contractor had, has or may have up to and including the Prior Invoice Date, whether against Owner, the Facility or the equipment, systems, improvements or property comprising the Facility, as a result of performing labor and/or furnishing equipment or material for the Facility.

In exchange for and subject to receipt of the valuable consideration paid by Owner to Contractor with respect to sums due and payable as of the Current Invoice Date, the sufficiency of which Contractor acknowledges, Contractor certifies that up to and including the Current Invoice Date (1) all corresponding costs for the engineering, procurement and for construction of the Facility have been incurred, (2) its has received all sums due and payable from Owner and (3) all of its subcontractors, suppliers and vendors have been paid.

In exchange for and subject to receipt of the valuable consideration paid by Owner to Contractor with respect to amounts due and payable as of the Current Invoice Date, Contractor waives, discharges, relinquishes and releases any and all liens, claims, rights and charges of any nature in connection with the Facility, the equipment, systems, improvements and property comprising the Facility and such release waiver includes any and all mechanic’s and materialmen’s liens and other claims which may arise by operation of law, contract or otherwise. Contractor’s release and waiver shall not extend to any future liens or claims Contractor may have for labor, equipment and/or materials after the Current Invoice Date.

**[CONTRACTOR]**

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

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**APPENDIX O-1**

**Final Release Assignment and Waiver of Liens**

Milestone Payment No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Invoice Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

In exchange for and subject to the receipt of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, which is the final payment due under the Engineering, Procurement and Construction Contract dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ (“Contract”) by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Contractor”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Owner”) for the construction of the electric power generation facility designed, engineered and contracted by Contractor for Owner at the Site (“Facility”), including all required and furnished labor, materials and/or services, Contractor certifies that it (1) completed all Work required under the Contract, (2) incurred all corresponding costs for the engineering, procurement and construction of the Facility, (3) paid all its Subcontractors, suppliers, and vendors all amounts due them (4) has no current claims against Owner, the Facility or its components and (5) waives, discharges, relinquishes, and releases any past, present or future liens, claims, rights and charges of any nature in connection with the Facility and the equipment, systems, improvements and property comprising the Facility. This waiver and release includes any and all mechanic’s and materialmen’s liens and other claims which may arise by operation of law, contract or otherwise and any claims by Contractor for performing labor and/or furnishing equipment or material in connection with the engineering, procurement and construction of the Facility.

In exchange for and subject to the receipt of the final payment from Owner described above, Contractor certifies that Owner has paid for all labor, equipment and materials furnished for the Facility and agrees to indemnify and hold Owner harmless from and against all claims, losses, damages and expenses directly or indirectly connected with claims for unpaid or partially paid labor, equipment and/or materials furnished in connection with the engineering, procurement and construction of the Facility. Contractor warrants and certifies that it has paid all its subcontractors, suppliers and vendors and that there are no outstanding claims against Contractor, Owner, the Facility or the equipment, systems, improvements and property comprising the Facility.

[CONTRACTOR]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**APPENDIX O-2

Interim Lien Waiver and Release**

Drawdown Payment No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Invoice Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Subcontract or Purchase Contract Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Pursuant to the referenced subcontract or purchase contract for **[scope of work]** (“Subcontract”), \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Subcontractor”) has performed labor and/or furnished equipment or materials in connection with construction of the electric power generation facility designed, engineered and constructed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Contractor”) at the Site for \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Owner”)

As a result of subcontractor’s partial performance of the Work required under the Subcontract, the aggregate sum of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ has been paid to Subcontractor by Contractor with respect to Subcontractor’s invoices to Contractor (“Invoices”) submitted through \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Prior Invoice Date”) and $\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is due and payable to Subcontractor from Contractor as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Current Invoice Date”). Subcontractor’s partial waiver covers all prior Invoices and the following additional Invoice number(s):

Subcontractor acknowledges that it has received all sums due and payable from Contractor up to and including the Prior Invoice Date and certifies that it has paid all of its subcontractors, suppliers and vendors for sums due and payable up to and including the Prior Invoice Date. Subcontractor releases and waives any liens or claims Subcontractor had, has or may have up to and including the Prior Invoice Date, whether against Contractor, Owner, the Facility or the equipment, systems, improvements or property comprising the Facility, as a result of performing labor and/or furnishing equipment or material for the Facility.

In exchange for and subject to receipt of the valuable consideration paid by Contractor to Subcontractor with respect to sums due and payable as of the Current Invoice Date, the sufficiency of which Subcontractor acknowledges, Subcontractor certifies that up to and including the Current Invoice Date (1) Contractor has paid or shall pay all amounts due to Subcontractor, (2) Subcontractor has paid or shall pay all its subcontractors, suppliers and vendors, (3) Subcontractor waives, discharges, relinquishes and releases any and all liens, claims, rights and charges of any nature in connection with the Facility and the equipment, systems, improvements and the property comprising the Facility, (4) Subcontractor’s release and waiver includes any and all mechanical liens and other claims which may arise by operation of law, contract or otherwise and (5) all corresponding costs for the engineering, procurement and/or construction of the Facility have been incurred. Subcontractor’s release and waiver shall not extend to any future liens or claims Subcontractor may have for labor, equipment and/or materials supplied after the Current Invoice Date or for any amounts retained by Contractor.

**[Subcontractor]**

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

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**APPENDIX O-3

SUBCONTRACTOR RELEASE, ASSIGNMENT AND WAIVER OF LIENS**

Milestone Payment No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Invoice Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Subcontract or Purchase Contract Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

In exchange for and subject to the receipt of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, which is the final payment due under the above referenced subcontract or purchase contract for [scope of work], including all required and furnished labor, materials and/or services (“Subcontract”), which is a part of the engineering, procurement and construction of the electric power facility designed, engineered and constructed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Contractor”) at the Site (“Facility”) for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Owner”), pursuant to the Engineering, Procurement and Construction Contract dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ by and between Owner and Contractor, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Subcontractor”) certifies that it has: (1) paid all its subcontractors, suppliers and vendors, (2) completed all Work or supplied all equipment and/or materials required under the Subcontract, (3) incurred all corresponding costs for the engineering, procurement and or construction of the Facility, (4) its components, and (5) waives, discharges, relinquishes and releases any past, present or future liens, claims, rights and equipment, systems, improvements and the property comprising the Facility. The foregoing waiver and release includes any and all mechanic’s and materialmen’s liens and other claims which may arise by operation by law, contract or otherwise and any claims against Contractor or Owner for performing labor and/or furnishing equipment or materials for the Facility.

In exchange for and subject to the receipt of the final payment form Contractor described above, Subcontractor certifies that Contractor has paid all labor, equipment and materials and holds Contractor and Owner harmless from and against all losses, for unpaid or partially paid labor, equipment and materials furnished in connection with the engineering, procurement and construction of the Facility pursuant to the Subcontract. Subcontractor warrants and certifies that it has paid all of its subcontractors and suppliers and that there are no outstanding claims against Subcontractor, Contractor, Owner, the Facility or the equipment, systems, improvements and property comprising the Facility with respect to the Subcontract.

**[Subcontractor]**

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

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**APPENDIX P

form of notice to proceed**

**[ Date ]**

**[Contractor]**

RE: Notice to Proceed

Dear Sirs:

This Notice to Proceed is hereby delivered to you pursuant to Section 2.2 of the Contract for Engineering, Procurement and Construction Services between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (the “Owner”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Contractor”) dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Contract”). Owner hereby instructs Contractor to commence performance of the Work under the Contract.

Sincerely,

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

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**APPENDIX q

form of contractor invoice**

Milestone Payment No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Invoice Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Owner]

[address]

Re: Invoice for payment pursuant to the Engineering, Procurement and Construction Contract dated \_\_\_\_\_\_\_\_\_\_, 2000 (the “Contract”) by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Contractor”) and \_\_\_\_\_\_\_\_\_\_\_\_(“Owner”). Capitalized terms used but not defined herein shall have the meanings given such terms in the Contract.

Gentlemen:

Pursuant to the Contract, Contractor hereby submits its invoice for payment of the amount set forth in the Milestone Payment Schedule for Completion of Milestone No. \_\_\_\_\_\_\_.

Contractor hereby represents and warrants that attached hereto are all supporting materials and documentation required pursuant to the Contract for this invoice:

1. Waivers of lien in the appropriate form set forth in Appendix L from Contractor and Subcontractor; and
2. All shipping documents for the shipment of equipment or materials to be used for the construction of or incorporated in the Facility.

Contractor hereby certifies that all conditions precedent set forth in the Contract to the payment requested herein have been satisfied as of the date hereof. In addition, Contractor hereby further certifies that to the best of its knowledge and belief:

1. The proceeds of all payments heretofore made by Owner have been, and the proceeds of the payment hereby requested shall be, disbursed by the Contractor in a timely manner solely in payment of costs for the engineering, procurement and /or construction of the Facility, which costs actually have been incurred by the Contractor;
2. All existing or potential claims for labor, materials and equipment attributable to this milestone payment have been paid or shall be paid upon receipt of the payment requested hereby;
3. The Work for which payment is sought hereby has been completed in accordance with the Contract;
4. There are no defects in the Work or the Facility and any defects or material deviations from the Contract, have been fully corrected except [list any exceptions]; and
5. All materials, equipment and fixtures incorporated in the Facility to date have been purchased so that the absolute ownership thereof has been vested in Owner, free and clear of all encumbrances as specified in the Contract.

Please contact the undersigned at \_\_\_\_\_\_\_\_\_\_\_ if you have any questions or comments regarding this matter.

[Contractor]

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

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_