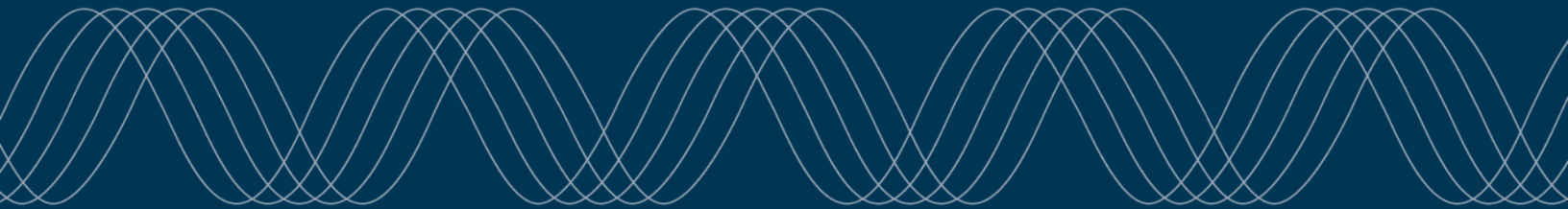


Appendix I

EPC Form Agreement

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2021 All-Source RFP



APPENDIX I

ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

by and between

PORTLAND GENERAL ELECTRIC COMPANY

as Owner

and

as Contractor

dated as of

_____ ,

for the

PROJECT

[Legal Notice: The drawings and specifications of this Agreement will contain the following requisite statutory notices: (i) "Notice of Alternative Billing Cycle" (O.R.S. 701.625(2)) (as applicable to the extent that any payments to Contractor as described in this Agreement are not considered monthly progress payments), (ii) "Notice of Extended Certification Period Provision" (O.R.S. 701.625(6)) (as with respect to Owner's making of progress payments and final payment as described in this Agreement), and (iii) "Notice of Extended Payment Provision" (O.R.S. 701.625(3)(b)) (as regards the timing of Owner's payments to Contractor as described in this Agreement).]

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ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

THIS ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT (this “Agreement”), is made, entered into and is effective as of _____, 2018 (the “Effective Date”), by and between _____ (“Owner”), and _____ (“Contractor”).

RECITALS

Owner is developing a renewable energy generation facility (defined as the Project below) and all services and utilities related thereto, all to be located near the town of _____ in _____ County, _____.

In connection with such Project, Owner desires to obtain and Contractor desires to provide certain work, including, among other things, procurement, installation, construction and related services for the Project, all for the Contract Price (as hereinafter defined).

NOW, THEREFORE, the Parties agree as follows:

ARTICLE I

DEFINITIONS

1.1 Definitions. As used in this Agreement, the following terms have the meanings indicated:

“AAA” means the American Arbitration Association.

“AAA Procedures” has the meaning set forth in Section 14.2.

“Affiliate” means, in relation to any Person, any other Person, who: (a) directly or indirectly controls, or is controlled by, or is under common control with, such Person; or (b) directly or indirectly beneficially owns or holds fifty percent (50%) or more of any class of voting stock or other equity interests of such Person; or (c) has fifty percent (50%) or more of any class of voting stock or other equity interests that is directly or indirectly beneficially owned or held by such Person, or (d) either holds a general partnership interest in such Person or such Person holds a general partnership interest in the other Person. For purposes of this definition, the word “controls” means possession, directly or indirectly of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or otherwise.

“Agreement” has the meaning set forth in the preamble hereto, as the same may be amended, supplemented or modified from time to time in accordance with the terms hereof.

“Applicable Laws” means any act, statute, law, regulation, Permit (including Applicable Permits), ordinance, rule, judgment, order, decree, directive, guideline or policy (to the extent mandatory) or any similar form of decision or determination by, or any interpretation or

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administration of, any of the foregoing by any Government Authority with jurisdiction over Contractor, Owner, the Project, the Project Site, the performance of the Work or other services to be performed under the Agreement, and includes any of the same as they may be amended or imposed from time to time.

“Applicable Permits” means any and all Permits from or required by any Government Authority that are necessary for the performance of the Work or the completion or operation of the Project.

“As-Built Drawings” means final Drawings for the Work, as revised to reflect the changes in the Work during construction, and shall include as-built drawings that show the physical placement and location of all improvements, including the equipment, roads, overhead electric transmission line, underground collection lines, communication lines (both above and below ground), the Transformer Substation, electric one-line drawings, electric schematics and connection diagrams.

“Bankruptcy or Insolvency Event” has the meaning set forth in Section 12.1.(a).

“Builder’s Risk Policy” has the meaning set forth in Exhibit P-1.

“Business Day” means every day other than a Saturday, Sunday or a day which is a legal holiday in the state in which the Project is located.

“Change” has the meaning set forth in Section 9.1.

“Change of Law” means the (a) enactment, adoption, imposition, promulgation, cancellation, modification or repeal, in each case after the Effective Date, of any Applicable Laws of (i) the State in which the Project is located (or any city, county or municipality therein) or (ii) the Federal Government of the United States to the extent such federal law, directly affects the Work to be performed at the Site or (b) the modification after the Effective Date of any Permit procured and held by Owner, and as to both (a) and (b) that establishes requirements that materially and adversely affect Contractor’s costs or schedule for performing the Work at the Site; provided, however, the following shall not constitute a Change of Law for purposes hereof: (x) the enactment, adoption, imposition, promulgation, cancellation, modification or repeal of (1) any Applicable Laws regarding Contractor’s Taxes, or (2) any Applicable Laws affecting the cost of Contractor’s or any of its Subcontractors’ labor, including increases in worker’s compensation rates or prevailing wage rates, (y) any modification to any Permit obtained by Contractor or Owner prior to the Effective Date that results from a change in design of the Project or any component thereof after the Effective Date, where such change in design is suggested or determined by Contractor in connection with its performance of design and engineering Work, including under Section 2.1, or (z) any changes to customs duties, export/import taxes and tariffs occurring after the Effective Date applicable to any Equipment or the Work.

“Change Order” has the meaning set forth in Section 9.1.

“Change Order Request” has the meaning set forth in Section 9.4.

“Commence Construction” has the meaning as such term is defined in the US Tax Code.

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“Commencement of Construction Liquidated Damages” has the meaning set forth in Section 6.1.1.

“Confidential Information” has the meaning set forth in Section 16.1.1.

“Consequential Damages” has the meaning set forth in Section 16.2.

“Construction Documents” has the meaning set forth in Section 2.3.4(b).

“Consumable Parts” has the meaning set forth in Section 2.3.6.

“Contractor” has the meaning set forth in the preamble hereto and includes its legal successors and permitted assignees as may be approved by Owner, in writing, pursuant to the terms of the Agreement.

“Contractor Deliverables” means all Drawings, Job Books, Operating Manuals, all written comments, field changes, and redlined drawings for incorporation into the final As-Built Drawings, and other documents and similar information prepared or modified by Contractor or any of its Subcontractors and delivered or required to be delivered hereunder, including all subcontractor payment records as required by Section 3.3.

“Contractor Event of Default” has the meaning set forth in Section 12.1.1.

“Contractor Permits” means those Permits required to be obtained by Contractor, as set forth in Exhibit H.

“Contractor Termination for Cause” has the meaning set forth in Section 12.2.

“Contractor’s Equipment” means all of the equipment, materials, apparatus, structures, tools, supplies and other goods provided and used by Contractor and its Subcontractors for performance of the Work, but which are not intended to be incorporated into the Project.

“Contractor’s Project Manager” means the Person designated by Contractor as having the responsibility, authority and supervisory power of Contractor for design, construction, procurement, testing and start-up of the Work, as well as all matters relating to the administration of the provisions of the Agreement, and who will be primarily located at the Project Site on a daily basis.

“Contractor’s Taxes” has the meaning set forth in Section 4.2.1(a).

“Contract Price” has the meaning set forth in Section 4.1.

“Day” or “day” means a period of twenty-four (24) consecutive hours from 12:00 midnight, and shall include Saturdays, Sundays and all holidays.

“Defect” or “Defective” means, any condition, characteristic or item of the Work that (a) does not conform to the terms or requirements of the Agreement (including Prudent Industry Practices), (b) is not of uniform good quality, free from defects or deficiencies in design,

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manufacture or workmanship, or (c) would adversely affect (i) the performance of the Project under anticipated operating conditions, (ii) the continuous safe operation of the Project during the Project's design life, or (iii) the structural integrity of the Project.

"Delay Liquidated Damages" has the meaning set forth in Section 6.6.

"Design Development Documents" has the meaning set forth in Section 2.3.4(a).

"Direct Costs" has the meaning set forth in Section 9.5.3(c).

"Dispute" has the meaning set forth in Section 14.1.

"Dollar" or "\$" means a dollar of the currency of the United States of America.

"Drawings" means (a) all specifications, calculations, designs, plans, drawings, engineering and analyses, and other documents which determine, establish, define or otherwise describe the scope, quantity, and relationship of the components of the Project, including the structure and foundation thereof, and (b) all technical drawings, specifications, shop drawings, diagrams, illustrations, schedules and performance charts, calculations, samples, patterns, models, operation and maintenance manuals, piping and instrumentation diagrams, underground structure drawings, conduit and grounding drawings, lighting drawings, conduit and cable drawings, electric one-line's, electric schematics, connection diagrams and technical information of a like nature, prepared or modified by Contractor or any of its Subcontractors all of which are and required to be submitted by Contractor or any Subcontractor, from time to time under the Agreement or at Owner's request which illustrates any of the Equipment or any other portion of the Work, either in components or as completed.

"Effective Date" has the meaning set forth in the preamble to this Agreement.

"Equipment" means all of the equipment, materials, apparatus, structures, tools, supplies, goods and other items required to complete the Project excluding the Contractor's Equipment and Major Equipment. The Parties acknowledge that Contractor will provide, install and incorporate the Equipment into the Project as described in this Agreement.

"Final Completion" has the meaning set forth in Section 6.5.1.

"Final Completion Certificate" means the certificate by this name as described in, and in the form set forth in, Exhibit Q.

"Final Completion Date" means the date on which Final Completion occurs as per Section 6.5.1.

"Final Punch List" has the meaning set forth in Section 6.4.1.

"Force Majeure Event" means any event or circumstance, or combination of events or circumstances, that meets all of the following criteria:

- (a) arises after the Effective Date,

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(b) was not caused by and is unforeseeable and beyond the reasonable control of the Party claiming the Force Majeure Event,

(c) is unavoidable or could not be prevented or overcome by the reasonable efforts and due diligence (including the expenditure of commercially reasonable sums) of the Party claiming the Force Majeure Event, and

(d) either (i) as with respect to Owner as the impacted Party, has an impact which will actually, demonstrably and adversely affect Owner's ability to perform its obligations (other than payment obligations) in accordance with the terms of the Agreement or (ii) as with respect to Contractor as the impacted Party, has an impact which will actually, demonstrably and adversely affect Contractor's ability to perform Work on the Project Site so as to achieve a Key Milestone by the scheduled completion date for such Key Milestone as set forth in the Project Schedule.

Provided they meet all of the criteria described above, Force Majeure Events may include the following: acts of God, natural disasters, wildfires, earthquakes, tornadoes, lightning, floods, civil disturbances, riots, war and military invasion, employees or agents of the impacted Party, national, regional and area-wide strikes and other national, regional and area-wide labor disputes (including collective bargaining disputes and lockouts) involving Contractor or Subcontractors and not directed exclusively at Contractor or such Subcontractor; a severe inclement weather condition not mentioned above, which prevents or substantially hinders the safe performance of the Work at the Project Site; acts of the public enemy; blockade; acts of terrorism; insurrection, riot or revolution; sabotage or vandalism; embargoes, and actions of a Government Authority (other than in respect of or in relation to or resulting from Contractor's compliance or non-compliance with Applicable Laws). Notwithstanding anything in the foregoing to the contrary, in no event shall any of the following constitute a Force Majeure Event: (i) strikes, and other labor disputes (including collective bargaining disputes and lockouts) of the labor force under the control of the Party claiming the Force Majeure Event or its Affiliates or with respect to the Work by a Subcontractor on the Project Site unless the strike is part of a more widespread or general strike extending beyond the Party, Affiliate or Subcontractor; (ii) cost or shortages of labor or manpower; (iii) unavailability, late delivery, failure, breakage or malfunction of equipment or materials unless there is an independent, identifiable Force Majeure Event causing such condition; (iv) events that affect the cost of equipment or materials; (v) economic hardship (including lack of money) of any entity or its Affiliates or their respective Subcontractors or suppliers; (vi) delays in transportation (including delays in clearing customs) other than delays in transportation resulting from accidents or closure of roads or other transportation route by Government Authorities; (vii) any weather conditions which are not defined above as Force Majeure Events; (viii) actions of a Government Authority in respect of or in relation to or resulting from Contractor's compliance or non-compliance with Applicable Laws; (ix) any failure by Contractor to obtain and maintain any Applicable Permit it is required to obtain or maintain hereunder; (x) any other act, omission, delay, default or failure (financial or otherwise) of a Subcontractor or other Personnel of Contractor; (xi) the unavailability of labor and supplies, disruptions of supply chains, limitations imposed by a Government Authority on allowing Personnel on the Site, or other hindrance to the Work caused by the impact of COVID-19, any of its variants or pandemics of a similar nature and intensity, and (xii) reasonably foreseeable inclement weather events, including those caused by, attributable to, or expected to result from climate change.

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“Force Majeure Notice” has the meaning set forth in Section 8.1.1.

“Forced Labor” means the use of physical force, coercion, threats, intimidation, social, legal or financial pressure or other means to force a person to work against his or her own will or freedom.

“Geotechnical Survey” means that certain geotechnical reports referenced in Exhibit F.

“Government Authority” means any and all foreign, national, federal, state, county, city, municipal, local or regional authorities, departments, bodies, commissions, corporations, branches, directorates, agencies, ministries, courts, tribunals, judicial authorities, legislative bodies, administrative bodies, regulatory bodies, autonomous or quasi-autonomous entities or taxing authorities or any department, municipality or other political subdivision thereof.

“Grid” means the interconnected high voltage transmission facilities that are a part of the transmission system to which the Project connects.

“Guaranteed Substantial Completion Date” shall mean _____, as set forth in the Initial Project Schedule.

“Hazardous Material” means any and all chemicals, constituents, contaminants, pollutants, materials, and wastes and any other carcinogenic, corrosive, ignitable, radioactive, reactive, toxic or otherwise hazardous substances or mixtures (whether solids, liquids, gases), or any similar substances now or at any time subject to regulation, control, remediation or otherwise addressed under Applicable Laws, including those laws, regulations and policies relating to the discharge, emission, spill, release, or threatened release into the environment or relating to the disposal (or arranging for the disposal), distribution, manufacture, processing, storage, treatment, transport, or other use of such substances.

“Indemnified Person” has the meaning set forth in Section 10.2.1.

“Indemnifying Party” has the meaning set forth in Section 10.2.1.

“Initial Project Schedule” means the “Level 2” (as defined by the Association for the Advancement of Cost Engineering International) Gantt Chart that sets forth the schedule of dates and milestones (including Key Milestones) for timely completion of the Work as set forth in Exhibit C-1 with specific start and end dates for each activity comprising (or relating to) the Work.

“Intellectual Property Rights” has the meaning set forth in Section 2.11.

“Interconnect Switchyard” means the Utility-owned electric transmission switchyard to be located at the end of the Transmission Corridor, immediately adjacent to the connection to the Grid, including all necessary breakers, protection equipment, metering and associated control buildings and other infrastructure associated therewith.

“Job Book” means all documentation specified in the Scope of Work, which shall include all engineering, design, purchasing and other information relating to the Project, including: (a) a drawing index formatted in accordance with Exhibit E containing the Design Drawing Documents

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and Construction Documents; (b) a reference index; (c) copies of Contractor's and Subcontractors' Permits; (d) copies of all contracts and purchase orders for Major Subcontractor's equipment (non-priced); (e) Subcontractor information for equipment purchased (as received from Subcontractors) including instruction and maintenance manuals from Subcontractors; (f) one copy of the As-Built Drawings and documentation; (g) training manuals; (h) the Operating Manuals; (i) electrical one-line diagrams for the Project; (j) a cable and raceway schedule for the Project; (k) connection report/loop diagrams for the Project; and (l) a final list and summary of the work performed by all Subcontractors.

“Key Milestones” means the milestones identified as such in the Initial Project Schedule (Exhibit C-1).

“Key Personnel” means the persons designated as “Key Personnel” in Exhibit I-2.

“Labor” means the workforce of the relevant Person, including its staff and employee and non-employee and skilled and unskilled workers (and including those provided by Subcontractors).

“Letter of Credit” means a letter of credit in substantially the form set forth in Exhibit P-5 issued by a United States bank (with a branch office in Portland, Oregon) rated at least ‘A’ by Standard & Poor's Rating Services or ‘A2’ by Moody's Investor Service.

“Lien” means any lien, security interest, mortgage, hypothecation, encumbrance or other restriction on title or property interest.

“Lien Waiver and Release” means waivers to lien rights and may be conditional or unconditional. Lien Waiver and Releases will follow the form as set forth in Exhibit O-1, Exhibit O-2, Exhibit O-3, and Exhibit O-4, as required.

“Limited Notice to Proceed” or “LNTTP” means a written notice, substantially in form as shown in Exhibit S-1, issued by Owner on or after the Effective Date to Contractor in accordance with this Agreement that is signed by both Parties and directing Contractor to commence the Work set forth in the LNTTP in accordance with the terms of this Agreement in advance of the Notice to Proceed.

“Major Equipment” shall be as defined in the Scope of Work (Exhibit A).

“Major Equipment Warranties” shall be as defined in Section 7.4.

“Major Subcontract” means (i) (a) any single agreement or purchase order with a Subcontractor or (b) multiple agreements or purchase orders with a single Subcontractor, for performance of any part of the Work that, in each case, has an aggregate value in excess of _____ Dollars (\$_____), or (ii) any agreement for the provision or supply of Major Equipment.

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“Major Subcontractor” means, any Subcontractor with whom Contractor will enter (or has entered) into a Major Subcontract. ¹

“Material ESG Incident” means any event or condition, for which Contractor has actual knowledge, relating to environmental, social, or governance factors that could reasonably be expected to have a material adverse impact on the Work, the Project or Owner, including, but not limited to: (i) any incident or accident that could reasonably be expected to have a material adverse impact on health, safety, or the environment, (ii) any accident resulting in death or serious or multiple injury (including amputations), (iii) any material community or worker related grievance or protest, including instances of Forced Labor, (iv) any failure to materially comply with Applicable Laws, including any such material failure to comply that is required to be disclosed to a Government Authority, (v) the receipt of any formal complaints of discrimination or harassment in the past year that were repeated, substantiated, involved a member of management, or were otherwise significant, (vi) any incidents of fraud, corporate misconduct, bribery, corruption, or ethics violations, including violations of any applicable anti-corruption laws, (vii) any material data breaches or privacy incidents, including any such breaches or incidents that resulted in the disclosure of Owner’s Confidential Information, and (viii) any instances of Subcontractors of Contractor alleging or being involved in any of the foregoing.

“Mechanical Completion” has the meaning set forth in Section 6.2.

[“Mechanical Completion Certificate” means the certificate by this name as described in, and in the form set forth in, Exhibit Q.]

[“Mechanical Completion Checklist” means the checklist by this name as described in Exhibit Q.]

“Monthly Progress Report” means a monthly written report that complies with the requirements of Exhibit C-2 and includes a description of the progress and status of the Work compared to the Project Schedule, the Subcontractors’ activities, engineering and design progress, a summary of any Change Orders executed by the Parties as of the date of such report and a summary of any events that may affect the Project Schedule (including, without limitation, any Force Majeure Events, Owner-Caused Delays, Liens on the Project Site, or the Project, and any asserted violations of Applicable Laws).

“Notice to Proceed” means a written notice issued by Owner to Contractor pursuant to Section 2.1, and substantially in form as shown in Exhibit S-2, that is signed by both Parties directing Contractor to commence the Work in accordance with the terms of this Agreement.

“Notice to Proceed Date” or “LNTP Date” means the date on which Notice to Proceed occurs as per Section 2.1.

“O&M Personnel” has the meaning set forth in Section 2.3.12.

“Operating Manual” means the complete system instructions and procedures for the operation and maintenance of the Work, which shall comply with the requirements of the Scope

¹ Note to Draft: “Major Equipment” manufacturers must be PGE preferred suppliers to be set out in Exhibit I-1.

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of Work, including Contractor's manufacturers', vendors', suppliers' and Subcontractors' recommended list of Spare Parts, all safety information, equipment and maintenance manuals and any precautionary measures therefor.

"Other Owner Contractors" means those Persons, other than Contractor, with whom Owner contracts or subcontracts to perform work in connection with the Project, including the Equipment Provider and the Owner Engineer. Owner Contractors may also include Owner in the event Owner elects to perform any work in connection with the Project.

"Owner" has the meaning set forth in the preamble hereto.

"Owner-Caused Delay" means a delay in Contractor's or a Subcontractor's performance of the Work or an increase in Contractor's or a Subcontractor's costs that has been demonstrably caused by the failure of Owner, Other Owner Contractors (other than Equipment Provider) to perform any material obligation of Owner under this Agreement (other than by exercise of rights under this Agreement, including the exercise by Owner of the right to have Defective or nonconforming Work corrected or re-executed) or by the acts or omissions of Owner, Other Owner Contractors (other than Equipment Provider). Any delay that is due in part to Contractor's or any of its Subcontractors' actions or inactions shall not be an Owner-Caused Delay.

"Owner Engineer" means _____.

"Owner Event of Default" has the meaning set forth in Section 12.2.

"Owner Indemnified Party" has the meaning set forth in Section 10.1.1.

"Owner Permits" means those Permits required to be obtained by Owner, as set forth on Exhibit H.

"Owner's Project Manager" means the individual appointed by Owner to act on its behalf in connection with this Agreement.

"Owner's Taxes" has the meaning set forth in Section 4.2.2(b).

"Party" or "Parties" means, respectively, a party or both parties to this Agreement.

"Payment and Performance Bond" has the meaning set forth in Section 2.12.1.

"Payment Schedule" means the milestone payment schedule attached as Exhibit B-2, which sets forth an allocation of the Contract Price to the milestones described therein.

"Performance Tests" has the meaning set forth in Section 2.13.3.

"Permit" means permits, licenses, approvals, consents, orders, registrations, privileges, franchises, memberships, certificates, entitlements variances, waivers, certificates of occupancy and other authorizations issued by any Governmental Authorities, and any siting, zoning and land use approvals required under Applicable Laws in connection with the development, construction,

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operation, use and/or maintenance of the Project, and all amendments, modifications, supplements, general conditions and addenda thereto.

“Person” means any individual, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, joint venture, or Government Authority or other entity of whatever nature.

“Personnel” means, with respect to a Party or entity, such Party’s or entity’s employees, agents, personnel, representatives, invitees, subcontractors, vendors and any other third party independent contractors with whom such Party or entity has contracted, and its agents’, personnel’s, representatives’, invitees’, subcontractors’, vendors’ or third party independent contractors’ respective employees, agents, personnel, representatives, invitees, subcontractors, vendors or third party independent contractors.

“Pre-Existing Hazardous Material” means any Hazardous Material (a) that existed on or in the Project Site prior to the date when Contractor or any of its Subcontractors or other representatives is present thereon following the Effective Date or (b) brought to the Project Site by Owner, any Other Owner Contractor or any third party other than Contractor or its Personnel after the Effective Date.

“Prime Rate” means _____.

“Project” means the electric generation project that is the subject of this Agreement, as described in the Scope of Work (Exhibit A).

“Project Schedule” has the meaning set forth in Section 2.5.2.

“Project Site” means all those parcels of land subject to the Real Property Rights in favor of Owner including the Transmission Corridor on which the Work will be located as shown in Exhibit G-1.

“Project Substantial Completion” has the meaning set forth in Section 6.3.1.

“Project Substantial Completion Certificate” means the certificate by this name as described in, and in the form set forth in Exhibit Q.

“Project Substantial Completion Date” means the date on which the Project achieves Project Substantial Completion, per Section 6.3.2.

“Prudent Industry Practices” means, in connection with the design and construction of energy power generation systems of a type and size and having geographical and climatic attributes similar to the Project, those practices, methods, specifications and standards of safety, performance, dependability, efficiency and economy generally recognized by industry members in the United States as good and proper, and such other practices, methods or acts which, in the exercise of reasonable judgment by those reasonably experienced in the industry in light of the facts known at the time a decision is made, would be expected to accomplish the result intended at a reasonable cost and consistent with Applicable Laws, reliability, safety and expedition. Prudent Industry Practices are not intended to be limited to the optimum practices, methods or acts

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to the exclusion of all others, but rather to be a spectrum of good and proper practices, methods and acts.

“Punch List” means any punch list as described in Section 6.4.1, as applicable.

“Quality Assurance Procedures” means the quality assurance and quality control procedures as set forth in Exhibit N.

“Real Property Requirements” means the applicable covenants, agreements, restrictions, limitations, or requirements of the Real Property Rights imposed upon Owner or its assignees, contractors, licensees, or invitees regarding the use and possession of the Project Site, the construction, operation, and maintenance of the Project on the Project Site, and any other activities on or over the Project Site, a summary of which is attached hereto as Exhibit G-2.

“Real Property Rights” means all rights in or to real property (such as leasehold or other rights to use or access the Project Site), leases, agreements, Permits, easements, including licenses, private rights-of-way, and utility and railroad crossing rights required to be obtained or maintained by Owner in connection with construction of the Project on the Project Site, transmission of electricity to the Grid, performance of the Work, or operation of the Project.

“Request for Payment” means the written requests from Contractor to Owner for payment, as described in Exhibit B-2.

“Retainage” has the meaning set forth in Section 4.4.1.

“Safety Plan” has the meaning set forth in Section 2.3.14(a).

“Schedule of Values” means that schedule set forth in Exhibit B-1 which apportions the Contract Price among all cost code divisions or portions of the Work.

“Scope of Work” means the services and work to be provided, or caused to be provided, by or through Contractor under the Agreement, as more particularly described in Exhibit A, and the other obligations of Contractor under the Agreement, as the same may be amended from time to time in accordance with the terms hereof.

“Spare Parts” has the meaning set forth in Section 2.3.10.

“Subcontract” means an agreement between Contractor and any Subcontractor.

“Subcontractor” means any Person other than Contractor performing any portion of the Work, including every tier of subcontractor, vendor or supplier of equipment, materials or services to Contractor or any subcontractor of any Person engaged or employed by Contractor or any subcontractor in connection with the performance of the Work, whether or not incorporated into the Project.

“Substantial Completion of Liquidated Damages” has the meaning set forth in Section 6.1.2.

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“Termination for Cause” has the meaning set forth in Section 12.1.2.

“Termination Payment” has the meaning set forth in Section 12.4.1.

“Termination Without Cause” has the meaning set forth in Section 12.3.

“Transmission Corridor” means, as part of the Project Site, those connected parcels of land subject to the Real Property Rights in favor of Owner on which certain Project, including transmissions lines, electrical works and the Interconnect Switchyard, will be located.

“Equipment Provider” means _____.²

“Unforeseen Subsurface Condition” has the meaning set forth in Section 2.3.1(b).

“Warranty” has the meaning set forth in Section 7.1.1.

“Warranty Period” has the meaning set forth in Section 7.1.2.

“Warranty Service” has the meaning set forth in Section 7.1.3.

“Work” has the meaning set forth in Section 2.1 and includes Contractor Deliverables, the Project, the Equipment, and any other product or result of the Work, and further described in Exhibit A.

“Working Day” means the hours from 7:00 am to 7:00 pm, Monday through Saturday, excluding holidays, at the Project Site.

1.2 Rules of Interpretation. Unless otherwise required by the context in which any term appears: (a) unless otherwise specified, references to “Articles,” “Sections,” or “Exhibits” (if any) shall be to Articles, Sections, or Exhibits (if any) of this Agreement, as the same may be amended, supplemented or replaced from time to time hereunder; (b) all references to a Person shall include a reference to such Person’s successors and permitted assigns; (c) references to any agreement, document or instrument shall mean a reference to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced from time to time; (d) the use of the word “including” or “include” in this Agreement to refer to specific examples shall be construed to mean “including, without limitation” and shall not be construed to mean that the examples given are an exclusive list of the topics covered; and (e) the headings contained herein are used solely for convenience and should not be used to aid in any manner to construe or interpret this Agreement. The Parties collectively have prepared this Agreement, with advice of legal counsel; none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

² Note to Draft: Equipment Provider shall be a third-party supplier of equipment designated or agreed to by Owner.

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1.3 Order of Precedence. In the event of any inconsistencies in this Agreement, the following order of precedence in the interpretation hereof or resolution of such conflict hereunder shall prevail:

1.3.1 Amendments, addenda or other modifications to the Agreement (including Change Orders) duly signed and issued after the signing of this Agreement, with those of a later date having precedence over those of an earlier date;

1.3.2 This Agreement (excepting Exhibits hereto);

1.3.3 Exhibit A through Exhibit S-2;

1.3.4 Drawings produced and delivered pursuant hereto (in respect of which, precedence shall be given to drawings of a larger scale over those of smaller, figured dimensions on the drawings shall control over scaled dimensions, and noted materials shall control over undimensioned graphic indications).

Notwithstanding the foregoing provisions of this Section 1.3, if a conflict exists within a part of the Agreement as listed in a lettered subclause above, or between or among the Agreement and Applicable Laws, the Real Property Requirements, then the more stringent or higher quality requirements shall control. Where a conflict exists among codes and standards applicable to the Project or Contractor's performance of the Work, the most stringent provision of such codes and standards shall govern.

ARTICLE II

RETENTION OF CONTRACTOR; CONTRACTOR RESPONSIBILITIES

2.1 Work to be Performed.³ Commencing on the date specified in the Notice to Proceed, or earlier with respect to Work authorized pursuant to the Limited Notice to Proceed ("LNTP"), and except as otherwise expressly set forth in Article V or elsewhere in this Agreement as being the responsibility of Owner or Equipment Provider, Contractor shall perform or cause to be performed all necessary work and services (the "Work") required, on a turnkey basis through Final Completion in connection with (a) the design, procurement, engineering, specified permitting, construction, assembly, installation and, where applicable, the start-up and testing, of the Project to Final Completion, (b) the provision, management and supervision of all Labor, transportation, administration and other services as required in connection with any of the foregoing, (c) the inspection and furnishing of all materials, equipment, machinery, tools, temporary structures, temporary utilities as required in connection with the foregoing including the performance obligations described in this Article II and the Scope of Work, and (d) the performance of Contractor's warranty obligations hereunder. Owner hereby retains Contractor, and Contractor hereby agrees to be retained by Owner, to perform or cause to be performed the Work in accordance with the terms and

³ Note to Draft: Depending on the technology and economics of the project, additional Work obligations may be required. For instance, BES systems will require recycling provisions, ESG provisions related to battery fires and chemical spills, interconnection provisions (before- or behind-the-meter provisions), and design obligations reflecting the BES system use case.

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conditions of this Agreement. Contractor hereby represents that it has ascertained the nature and location of the Work, the general character and accessibility of the Project Site, the existence of known obstacles to construction, the location and character of existing or adjacent work or structures, and other general and local conditions including Applicable Laws, and the availability and productivity of Labor which might affect its performance of the Work or the cost thereof and that, based upon the same, but subject to Section 9.5.1, commits that it can complete the Work for the Contract Price in accordance with the Initial Project Schedule.

2.2 Project. Contractor shall construct the Project and all other components of the Work that are set forth in Exhibit A as part of Contractor's Scope of Work.

2.2.1 Interconnection to Grid. As further described in the Scope of Work, Contractor shall be responsible for all interconnection up to and including provision of and connection to the Interconnect Switchyard. Contractor shall coordinate with and permit the Utility to install the interconnection works between such point and the Grid.

2.2.2 Start-up and Testing of Project. Contractor shall perform the start-up and testing of the Project, including the calibration and functional testing of all controls and equipment in accordance with Exhibit A. If the Scope of Work requires that any item comprising the Project be tested by Contractor, Contractor shall notify Owner in writing at least ten (10) Business Days prior to the commencement of any such test. Contractor shall coordinate with Owner the scheduling of any test and Owner shall coordinate such test with Equipment Provider, so as not to interfere, in either case, with either Party's obligations with respect thereto. Owner shall witness such tests and will, within three (3) Business Days after receipt of written results of such tests, deliver to Contractor a written notice either (a) accepting such tests as having been passed, or (b) rejecting such tests as having demonstrated that the tested item failed to comply with the performance requirements therefor under this Agreement. Any rejection shall include a detailed description of the basis for rejection.

2.3 Further Work Responsibilities and Commitments.

2.3.1 Site Clearance and Preparation.

(a) Topography. Contractor has visually surveyed the general surface conditions of the Project Site topography and represents that, subject to Unforeseen Subsurface Conditions, the same are sufficient for Contractor to construct the Project and perform the Work. Contractor will be responsible for clearance of the Project Site, including the removal of obstructions. Contractor will be responsible for access road construction as described in the Scope of Work. Contractor shall provide for the procurement of or disposal of, as necessary, all soil, gravel and similar materials required for the performance of or otherwise in connection with the Work. Contractor will provide adequate treatment of and protection against water runoff resulting from Contractor's and its Subcontractor's work. Contractor will provide for the collection, treatment and disposal of groundwater resulting from Contractor's and its Subcontractors' work.

(b) Geotechnical Survey; Subsurface Risk. "Unforeseen Subsurface Conditions" shall mean: (i) subsurface or latent physical conditions at the Project Site, differing materially from those indicated in the Geotechnical Survey, or (ii) previously unknown physical

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conditions at the Project Site of an unusual nature (including unknown and unexpected archaeological, paleontological or religious sites, places, monuments or areas) or conditions that differ materially from those ordinarily encountered and generally recognized as inherent in work similar to the Work, but excluding in all cases conditions that should have been reasonably known, inferable or discoverable by Contractor based upon the information in the Geotechnical Survey, Contractor's survey of the Site prior to the Effective Date, or other Owner-provided information. If Contractor encounters any condition that Contractor believes is or may be an Unforeseen Subsurface Condition, Contractor shall notify Owner of the same promptly, but in any event no later than three (3) days after becoming aware of the condition. If the condition at issue is indeed an Unforeseen Subsurface Condition as defined herein and Contractor has delivered such notice within such time period, then Contractor will be entitled to a Change Order to the extent so provided in Section 9.5.1(d). If Contractor fails to notify Owner of such a condition within such three (3) day period, then Contractor shall not be entitled to and will thereby be deemed to have waived its rights to receive any Change Order as with respect to such condition.

2.3.2 Storage. At all times prior to the date of Project Substantial Completion, Contractor shall provide appropriate storage for the Consumable Parts, Equipment, and all other materials, supplies and other equipment utilized in connection with the Work and all other personal property owned or leased by Contractor or any Subcontractor located at the Project Site. At a minimum, Contractor shall comply with all Equipment manufacturer recommendations and requirements and shall comply with requirements in the Scope of Work.

2.3.3 Transportation and Delivery Specification. *[To Be Discussed as appropriate to equipment.]*

2.3.4 Drawings and Documents.

(a) Design Development Documents. As further described in the Scope of Work, and in any further adjustments in the scope or quality of the Project authorized in writing by Owner, by the date specified in the Project Schedule, Contractor will prepare, for written approval by Owner, design development documents for the Project consisting of drawings, models, specifications, plans and other documents necessary to fix and describe the Project with respect to the civil engineering, structural, instrumentation, control, mechanical, electrical, plumbing, fire protection, acoustical and life safety systems to be incorporated therein (collectively, the "Design Development Documents"). As part of the development of the Design Development Documents, Contractor will propose to Owner, for Owner's review and approval, the list of systems that will be the subject of the as-built drawings submitted to the Owner pursuant to Section 2.3.4(d).

(b) Approved Construction Documents. As further described in the Scope of Work, the approved Design Development Documents, and any further adjustments in the scope or quality of the Project authorized in writing by Owner, Contractor will prepare, for written approval by Owner, by the date specified in the Project Schedule, drawings and specifications setting forth in detail the requirements for the complete construction of the Facility (as approved by Owner, the "Construction Documents"). Following Owner's written approval of the Construction Documents, Contractor will proceed with the remainder of the Work based upon the Scope of Work and Construction Documents.

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(c) Ownership of Drawings. All drawings, specifications and other documents prepared by or for Contractor in respect of the Project and all drawings, specifications, calculations, memoranda, data, notes and other materials containing information supplied by Owner which shall come into Contractor's possession during its performance hereunder, shall be the property of Owner, and such Owner documents and other materials shall be returned to Owner upon the earlier of the Project Substantial Completion Date or termination of this Agreement. Owner shall have the right to retain a reproducible set of all Contractor's proprietary drawings, specifications and other documents for use in respect of the Project. Review (or lack thereof) by Owner or its designees of any Project documents provided by Contractor, and the fact that Owner has not discovered any errors reflected in such Project documents, shall not relieve or release Contractor of any of its duties, obligations or liabilities under the terms of this Agreement.

(d) As-Built Drawings. During construction, Contractor shall keep on file one set of current as-built drawings reflecting all field deviations from the design drawings. As a condition to Final Acceptance, Contractor shall provide to Owner, for Owner's approval, a set of as-built drawings which have been fully conformed to the construction records as of the completion of the Work. Drawings shall be provided in AutoCAD DWG/DWF and Adobe PDF format.

2.3.5 Religious, Archaeological and Paleontological Resources. If any archaeological or religious sites, places, monuments or areas are discovered or identified by Contractor during the performance of Work under the Agreement, Contractor shall leave such sites untouched and protected by fencing and shall immediately stop any Work affecting the area and shall comply with any applicable Real Property Requirements. Contractor shall notify Owner of any such discovery as soon as practicable, and Contractor shall carry out Owner's reasonable instructions for dealing with the same. All fossils, coins, articles of value or antiquity and structures and other remains or things of geological, archaeological, historical, paleontological, religious, cultural or similar interest discovered on the Project Site shall, as between Owner and Contractor, be deemed to be the property of Owner. Contractor shall prevent its and its Subcontractors' Labor from removing or damaging any such article or thing.

2.3.6 Equipment, Consumables, Construction Utilities and Related Services. Except to the extent provided by Owner or Equipment Provider as described in Article V or as part of the Work, Contractor shall procure and supply, at its own expense, all Equipment required to complete the Work, including without limitation all Equipment as necessary for performance and completion of its obligations under this Agreement (whether on or off the Project Site). Contractor shall inspect or cause to be inspected all such Equipment and shall reject those items determined not to be in compliance with the requirements of this Agreement. Contractor shall be responsible, at its sole expense, for furnishing and installation of all temporary utilities, telephone, data lines, cabling and wiring necessary for all activities associated with the completion of the Work. All Equipment provided by Contractor shall be new and of suitable grade for its intended purpose. With the exception of those consumable items expressly stated to be provided by Equipment Provider as described in Exhibit D, Contractor shall supply all consumable parts and supplies required for the Work including, but not limited to, cable ties, cable wraps, splices, wire nuts, lubricants, greases and other consumable materials (collectively, the "Consumable Parts").

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2.3.7 Obtaining, Maintaining and Identifying Permits. Contractor shall timely obtain and maintain all Contractor Permits. In addition, Contractor shall provide all assistance reasonably requested by Owner in connection with Owner's efforts to obtain and maintain the Owner Permits. If any Applicable Permit is required for the Project or to perform the Work that is not identified in Exhibit H, Contractor or Owner, as applicable, shall promptly, after it becomes aware of the need for such Applicable Permit, notify the other Party that such Applicable Permit is required. Contractor shall thereafter, at its sole cost and expense, be obligated to obtain and maintain such Applicable Permit, and Owner shall provide reasonable assistance and cooperation in accordance with Section 5.2, as necessary. If such Applicable Permit is of a nature typically obtained by contractors in similar projects, Contractor shall, at its sole cost and expense, be obligated to obtain and maintain such Applicable Permit. Otherwise, Owner shall obtain and maintain such Applicable Permit. All Applicable Permits (other than any building permits) designated as either "To be issued in the name of Owner" or "To be issued in the name of the Owner and Contractor" on Exhibit H shall be issued in the name of Owner or Owner and Contractor, as required, to the best of Contractor's ability unless otherwise required by Applicable Law or such Applicable Permit. If any Contractor Permit (or application therefor) is in the name of Owner or otherwise requires action by Owner, Owner shall, upon the request of Contractor, sign such application or take such action as reasonably appropriate. Owner reserves the right to review any such application of Contractor; provided, however, that Owner's exercise of such right shall not under any circumstances, be considered an approval of the necessity, effect or contents of such application or related Permit nor shall it be allowed to unreasonably delay the submittal of such application. Contractor shall deliver to Owner true and complete copies of all Permits obtained by Contractor upon its receipt thereof.

2.3.8 Real Property Requirements and Real Property Rights. Contractor shall comply with those Real Property Requirements as summarized in Exhibit G-2. In addition, Contractor shall provide such assistance as may be reasonably requested by Owner in connection with Owner's efforts to observe and maintain the Real Property Requirements, including efforts to obtain any necessary revisions or adjustments thereof. As of the date hereof, subject to Section 2.3.1(b) as regards Unforeseen Subsurface Conditions, Contractor represents and warrants that it has inspected and is fully familiar with the Project Site, including the boundaries thereof, and that (a) they are sufficient for Contractor to undertake and complete that portion of the Work to be located thereon in accordance with the Agreement, the Real Property Requirements and Applicable Laws, and (b) Contractor has not discovered any conditions that in Contractor's reasonable judgment would be a basis for claiming a Change. In the performance of the Work, Contractor and its Subcontractors shall abide by any restrictions in regard to the location of facilities that are part of the Real Property Requirements. Owner shall enforce the Real Property Requirements for the benefit of Contractor and shall indemnify Contractor with respect to any claims by the Owners other than those claims caused by Contractor or its Personnel. Contractor shall indemnify Owner from any claims or expenses arising out of the failure of Contractor or its Subcontractors to comply with the Real Property Requirements. Contractor shall provide all necessary information and documents and use all reasonable efforts to assist Owner in obtaining any Real Property Rights that Owner at any time is seeking within the Project Site. Contractor shall notify Owner upon the occurrence, or likely occurrence, of a dispute, conflict, confrontation, or other similar problem, or potential problem, involving one or more owners or occupiers of land so situated as to potentially

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result in a situation that may have a material adverse effect upon the performance of the Work. Contractor shall, at Owner's expense, cooperate with Owner in resolving all such problems.

2.3.9 Environmental Compliance. Contractor shall comply with all Environmental Assessment requirements applicable to Contractor or the Work as set forth in Exhibit R-1 and the Environmental Permit Matrix as set forth in Exhibit R-2.

2.3.10 Spare Parts. Set forth in Exhibit J-2 is a list of spare parts that are necessary to operate and maintain the Project (the "Spare Parts"). Owner may at any time prior to Project Substantial Completion notify Contractor in writing that Owner wishes to purchase certain Spare Parts, and therein request pricing for the Spare Parts in question and the quantities desired. Contractor will supply the pricing for such identified Spare Parts to Owner as soon as practicable after such request. Owner may thereafter order those of such Spare Parts as Owner desires. Contractor shall thereafter deliver such Spare Parts Duty Paid (DDP) (Incoterms 2000) to Project Site, using commercially reasonable efforts to complete such delivery within two (2) weeks after Owner's placement of such order. Title and risk of loss to such Spare Parts will transfer to Owner upon such delivery. After such delivery is completed, Contractor will invoice Owner for the Spare Parts (based upon the quoted pricing), and the undisputed portions of such invoice shall be payable by Owner within thirty (30) days after Owner's receipt of such invoice. Should a component of the Equipment fail during commissioning, start-up or testing, Contractor may utilize a Spare Part of that component from Owner's inventory in order to return the Equipment to operating condition. Contractor shall at its cost promptly replace any such Spare Parts so utilized.

2.3.11 Operating Manuals and Job Books.

(a) Operating Manuals. Within 30 days after finalizing the equipment selection the Contractor shall prepare and deliver to the Customer the following documents: (i) Operating Manuals in an electronic draft version, (ii) recommended spare parts list, and (iii) lubrication schedule. Prior to commencing commissioning activities, Contractor shall prepare and deliver to Owner the documentation as required in the Scope of Work. In the event of total or partial rejection or revisions of the draft Operating Manuals by Owner, within fifteen (15) days after receipt of notice of such revisions or rejection Contractor shall make appropriate changes to the drafts to respond to Owner's revisions or reasons for rejection and shall resubmit such draft to Owner or shall explain why such revisions are not necessary. Such procedure shall be repeated until receipt of Owner's written approval therefore. Upon the earlier of Final Completion and thirty (30) days after Project Substantial Completion, Contractor shall prepare in individually numbered bound volumes and deliver to Owner two (2) sets of such approved Operating Manuals (which may be combined with the other Operating Manuals) and shall also provide three (3) copies of the Operating Manuals to Owner in electronic format.

(b) Job Books. As a condition to Project Substantial Completion, Contractor shall deliver to Owner two (2) copies of the semi-final draft of the Job Books, either in job book format or in form and format then available as a result of the design and construction process, as appropriate. A semi-final draft shall mean a draft that does not contain final As-Built Drawings and documentation, but is as reasonably complete as available information will allow, containing at a minimum sufficient information to permit the conduct of operator training and operation, repair and modification of the Project by Persons generally familiar with machinery and

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equipment similar to that comprising the same. Upon the earlier of Final Completion and thirty (30) days after Project Substantial Completion, Contractor shall provide two (2) original hard copies and three (3) electronic copies (on CD Roms) of the final and complete Job Books to Owner. Where any of the information in the Job Books was produced by computer-aided design and is available to Contractor or any Subcontractor, Contractor shall provide or cause to be provided to Owner an electronic copy of such information.

2.3.12 Contractor-Provided Training. Commencing at least thirty (30) days prior to the then-scheduled date for achievement of Mechanical Completion, Contractor shall provide, at its own expense, a training program in the operation and maintenance of the Project for Owner's Project Personnel and the operation and maintenance contractor's Project Personnel (collectively, "O&M Personnel"). The training program provided by Contractor shall be as described on Exhibit J-1 and shall (a) include classroom and field training, (b) include all educational materials necessary for such training, and (c) establish quality controls so that O&M Personnel are suitably trained and capable of operating and maintaining the Project after Project Substantial Completion. Contractor shall make every reasonable effort to use the O&M Personnel during start-up and initial operation of the Project; provided, however, Owner shall not be obligated to supply (i) O&M Personnel for the construction of the Project or (ii) provide during Project start-up and initial operation more O&M Personnel than the number of O&M Personnel Owner an Operations and maintenance contractor would use during normal Project operation as determined by Owner. Contractor shall remain solely responsible for performing the Work in accordance with this Agreement, including Contractor's obligation to achieve Project Substantial Completion, and achieve Final Completion, subject to Contractor's right to a Change Order in the event of an Owner-Caused Delay. The cost of the O&M Personnel's salary, travel, lodging, food and other living expenses shall be borne by Owner.

2.3.13 Labor and Personnel.

(a) Engagement of Labor. Contractor shall provide and manage and transport all Labor and Personnel required in connection with the performance of the Work and of its obligations hereunder. Contractor shall retain only such Labor and Personnel that have experience with the equipment and who are competent to perform their assigned duties in a safe and secure manner, including: (i) Contractor's Project Manager; (ii) lead project engineer and field engineers, cost and schedule engineers. Contractor shall not change Contractor's Project Manager or any other member of Contractor's Key Personnel without the prior written consent of Owner, which consent shall not be unreasonably withheld or delayed. Contractor represents that its Labor and Personnel are subject to the requirements of Oregon House Bill 2021 – if applicable – and shall at all times comply with the requirements of House Bill 2021. Contractor shall require its Subcontractors to adhere to the same standard with respect to their Labor. Where required by Applicable Law, Contractor shall employ only licensed Personnel in good standing with their respective trades and licensing authorities to perform engineering, design, architectural and other professional services in the performance of the Work. All such professional services shall be performed with the degree of care, safety, skill and responsibility customary among such licensed Personnel provided such performance is in accordance with Applicable Law and Prudent Industry Practices. To the extent required by Applicable Law and Prudent Industry Practices, all Labor shall have received formal documented training in their area of expertise and certification.

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(b) Owner Review of Labor. Upon Owner's request, Contractor shall provide Owner with the resumes of all management and supervisory Personnel employed in connection with the Work and Owner may require the replacement of any Personnel, at Contractor's sole expense if, in Owner's reasonable opinion, such Person is (i) endangering life or limb on or near the Project Site or violates or breaches the Real Property Requirements, thereby adversely affecting Owner's relationship with the land owners, (ii) incompetent, or (iii) violating or has violated this Agreement, particularly the Safety Plan and Sections 2.3.13(c) through (e). Rejection of Contractor's Personnel by Owner shall not relieve Contractor of any of its obligations hereunder or be construed as a waiver by Owner of any of its rights under the Agreement.

(c) Alcohol and Drugs. Contractor shall comply with Owner's policies and practices regarding alcohol and drugs and shall not possess, consume, import, sell, give, barter or otherwise dispose of any alcoholic beverages or drugs (excluding drugs for proper medical purposes and then only in accordance with Applicable Law) at the Project Site, or permit or suffer any such possession, consumption, importation, sale, gift, barter or disposal by its Subcontractors, agents or Labor. Subject to requirements of Applicable Law, Contractor shall perform random drug and alcohol testing on Persons employed by its Subcontractors and shall perform a drug and alcohol test on any Person employed by a Subcontractor who Owner or Contractor reasonably suspects is in possession of or under the influence of any dangerous or controlled drug, alcohol or other such substance at any time during such Person's performance of any portion of the Work at the Project Site. Subject to requirements of Applicable Law, Contractor shall perform drug and alcohol testing on its Subcontractors, agents and Labor for purposes of such Person's hiring, treatment or annual physical. Additionally, Contractor shall perform, or cause its Subcontractors and agents to perform, a drug and alcohol test on each of their respective employees prior to any such employee first entering the Project Site to perform any Work. Contractor shall immediately identify and remove from its or its Subcontractors' employment at the Project Site any Person (whether in the charge of Contractor or any of its Subcontractors) who is in possession of or under the influence of any dangerous or controlled drug, alcohol or other such substance at any time during such Person's performance of any portion of the Work, excluding any Person using a prescription drug under supervision and approval from a medical doctor, or any other Person who does or whose actions may create any unsafe condition or other situation that may cause damage or harm to any Person or property, including any Person using a prescription drug under supervision and approval from a medical doctor. Contractor's Drug and Alcohol Abuse Policy is attached as Exhibit L. This policy does not apply to Owner and its Personnel. Owner shall enforce its own drug and alcohol policy with respect to its Personnel.

(d) Arms and Ammunition. Contractor and its Personnel, shall not possess, give, barter or otherwise dispose of, to any Person or Persons, any arms or ammunition of any kind at the Project Site, or permit or suffer the same as aforesaid and shall at all times assure that the Project Site is kept free from arms and ammunition. No hunting of any kind by Contractor or its Personnel, or other invitees, shall be permitted on the Project Site. Contractor shall immediately identify and remove from its or its Subcontractors' employment at the Project Site any Person that violates this provision.

(e) Disorderly Conduct. Contractor shall be responsible for the conduct and deeds of its Labor and its Subcontractors' Labor relating to the Agreement and the consequences thereof. Contractor shall at all times take all reasonable precautions to prevent any

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unlawful, riotous or disorderly conduct by or among such Labor and for the preservation of peace, protection and safety of Persons and property in the area of the Project Site against the same. Contractor shall not interfere with any members of any authorized police, military or security force in the execution of their duties.

(f) Labor Disputes. Contractor shall use reasonable efforts to minimize the risk of labor-related delays or disruption of the progress of the Work. Contractor shall promptly take any and all reasonable steps that may be available in connection with the resolution of violations of collective bargaining agreements or labor jurisdictional disputes, including the filing of appropriate processes with any court or administrative agency having jurisdiction to settle, enjoin or award damages resulting from violations of collective bargaining agreements or labor jurisdictional disputes. Contractor shall advise Owner promptly, in writing, of any actual or threatened (in writing) labor dispute, of which Contractor has knowledge, that might materially affect the performance of the Work by Contractor or by any of its Subcontractors. Notwithstanding the foregoing, the settlement of strikes, walkouts, lockouts or other labor disputes shall be at the discretion of the Party having the difficulty.

2.3.14 Safety and Emergencies.

(a) Safety. Contractor shall initiate and maintain safety precautions and programs to conform with Applicable Laws, Applicable Permits, Exhibit A, or other requirements designed to prevent injury to all Persons (including members of the public and the employees, agents, contractors, consultants and representatives of Owner, Contractor and its Subcontractors, and other contractors and subcontractors) and all public and private property (including structures, sewers and service facilities above and below ground, along, beneath, above, across or near the Project Site) that are at or near the Project Site that are in any manner affected by the performance of the Work. Such precautions and programs shall include prevention of damage or injury to local flora and fauna. Contractor shall erect and maintain reasonable safeguards for the protection of Labor and the public. Contractor shall exercise reasonable efforts to eliminate or abate all reasonably foreseeable safety hazards created by or otherwise resulting from performance of the Work. Contractor shall, and shall cause all of its Labor, agents, invitees, and Subcontractors to follow the safety plan set forth in Exhibit L (the “Safety Plan”) and to follow all other reasonable safety measures and procedures implemented by the Owner at the Project Site.

(b) Compliance with Safety Plan. Contractor shall be responsible for and shall notify Owner as soon as Contractor becomes aware of any injury resulting from a failure of its agents, invitees, Labor, or Subcontractors to abide by the requirements of the Safety Plan set forth in Exhibit L, in each case in connection with performance of the Work.

(c) Emergencies. In the event of any emergency endangering Persons or property during performance of the Work, Contractor shall take such action as may be reasonable and necessary to prevent, avoid or mitigate injury, damage or loss and shall, as soon as practicable, report any such incidents, including Contractor’s response thereto, to Owner. Whenever Contractor has not taken reasonable precautions for the safety of the public or the protection of the Work or of structures or property on or adjacent to the Project Site, Owner may, but shall be under no obligation to, upon reasonable advance notice to Contractor and a reasonable opportunity to cure, take such action as is reasonably necessary under the circumstances. The

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taking of such action by Owner or Owner's failure to do so shall not limit Contractor's obligations or liability hereunder. Provided Contractor fails to timely act, Contractor shall reimburse Owner for any reasonable costs incurred by Owner in taking such actions in the event of an emergency.

2.3.15 Security. Contractor shall develop, subject to Owner's reasonable approval, a Project security plan within fifteen (15) days of issuance of the Notice to Proceed, which shall require the taking of reasonable precautions, consistent with Prudent Industry Practices, to provide for the security and protection: (a) of the equipment, machinery and components comprising the Equipment and the Project through the date of Project Substantial Completion, and (b) for the other property owned or leased by Contractor or any Subcontractor located at the Project Site at areas thereon provided by Owner or stored or warehoused off the Project Site through the date of Final Completion. Contractor shall use the same care to protect any of Owner's and Equipment Provider's property at any time in its possession or under its control while performing the Work as it does with its own property and shall be responsible for damage to such property resulting from Contractor's failure to take such precautions or use such care.

2.3.16 Clean-up. Contractor shall at all times keep the Project Site reasonably free from waste materials, rubbish and Hazardous Materials produced by the Work. As part of the Work, Contractor will arrange and pay for disposal of sewage and wastes generated by Contractor or its Personnel as necessary to enable Contractor to perform the Work. Contractor shall maintain the Project Site in a neat and orderly condition throughout the performance of the Work. Prior to the Final Completion Date or as soon as practicable after the termination of this Agreement by Owner in accordance with the provisions of Article XII, Contractor shall (i) remove all Contractor equipment from the Project Site, (b) tear down and remove all temporary structures on the Project Site built by it or its Subcontractors and restore such areas to a condition consistent with that of a newly constructed plant (including the re-grading and re-seeding of disturbed areas, which re-seeding may occur after Final Completion if Owner reasonably approves), (c) reclaim, in accordance with the applicable Real Property Requirements, laydown areas, and other construction areas as required by the applicable Real Property Requirements, and (d) remove and dispose of all waste and rubbish generated by Contractor and its Subcontractors from and around the Project Site. Contractor shall provide to Owner all legally required waste disposal manifests, if any, upon request.

2.3.17 Damage to Roads. Contractor shall abide by the maintenance provisions set forth in the Site Control Agreement (Exhibit K) and shall be responsible for (i) all damage it and its Subcontractors cause to state roads and highways (other than township roads) in violation of Applicable Law, (ii) all damage Contractor or its Subcontractors cause to County roads, (iii) all damage caused by it and its Subcontractors to private roads or property of third parties, in each case in connection with performance of the Work.

2.3.18 Fire Prevention. Contractor shall be responsible for providing adequate fire prevention and protection at the Project Site and shall take all reasonable precautions to minimize the risk of fire at the Project Site. Contractor shall provide instruction to the Labor in fire prevention control. Contractor shall provide appropriate fire-fighting and fire protection equipment and systems at the Project Site in a manner consistent with those as would be provided by a prudent contractor constructing a comparable project in comparable terrain and climate to that of the Project. Notwithstanding the foregoing sentence, this Agreement shall not, and does not

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obligate Contractor's or any of its Subcontractors' employees to fight any fires. In the event of a fire, Contractor's or any of its Subcontractors' employees shall immediately take steps to ensure the safety of themselves and others and shall contact the local fire department to report such fire and to determine the appropriate actions. Contractor shall promptly collect and remove combustible debris and waste material from the Project Site and shall not permit such debris and material to accumulate.

2.3.19 Other Work. As part of the Work (and except as otherwise stated in the Scope of Work, Article V or elsewhere in this Agreement as being the responsibility of Owner or Equipment Provider), Contractor shall provide any other services or items not specifically described in this Agreement if providing such additional work or item is necessary to make the Project operable, free from Defects and capable of performing as specified in this Agreement.

2.4 Prudent Industry Practices for the Work/Compliance. Contractor shall perform the Work in a manner that is (a) in conformance with Prudent Industry Practices and the Quality Assurance Procedures; (b) in compliance with the terms of the Agreement, and all interconnection requirements attached hereto; (c) compliant with all Applicable Laws, Applicable Permits; and (d) in compliance with and not in violation of the terms of the Real Property Requirements, including such that Owner would be in violation of the Real Property Requirements. In no event will references in any provision of this Agreement to one or more of the standards, guidelines, practices, regulations, laws, or Permits contained in this Section 2.4 be interpreted to limit the applicability of all such standards, guidelines, practices, regulations, laws, and Permits to such provision.

2.5 Commencement of Work; Project Schedule; Acceleration.

2.5.1 Access to Project Site. Contractor will commence performance of all off-site Work promptly after the Effective Date and upon receipt of an LNTP, including ordering "long lead time" Equipment. Contractor will not perform any clearing Work on the Project Site until Owner issues to Contractor a Notice to Proceed.

2.5.2 Project Schedule; Monthly Progress Reports.

(a) [Within eight (8) weeks after the Effective Date,] Contractor shall prepare and submit to Owner for approval a complete "Level 3" working level critical path based in the Initial Project Schedule in sufficient detail acceptable to Owner, including identification of particular work tasks, durations and logical ties between activities (as further defined in the Scope of Work, the "Project Schedule"). Owner's approval of the Project Schedule, which shall not be unreasonably withheld, conditioned or delayed, shall be a condition precedent to Owner's approval of Contractor's initial Request for Payment. Contractor shall perform the Work in accordance with the Project Schedule.

(b) Contractor shall provide Owner with Monthly Progress Reports as further defined in Exhibit A, which shall include progress reports, as compared to the Project Schedule, including the incorporation of delay and acceleration analyses where appropriate. Such Monthly Progress Reports shall be presented electronically and shall address all material elements of the Work. Contractor shall provide Owner with appropriate work and meeting facilities at the

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Site and shall conduct weekly and monthly project meetings at mutually agreeable locations or by telephone between representatives of Owner, Equipment Provider and Contractor to review the status of the Work. Contractor shall promptly notify Owner in writing at any time that Contractor has reason to believe that there will be a material deviation in the Project Schedule and shall set forth in such notice the corrective action planned by Contractor. Delivery of such notice shall not relieve Contractor of its obligations under Article VI.

2.5.3 Acceleration of Work. If, at any time or from time to time, Contractor fails to achieve or is reasonably likely to fail to achieve a Key Milestone by the date required therefor in the Project Schedule for any reason not otherwise excused under the terms of this Agreement, then, upon written request of Owner, Contractor shall promptly, but in any event within five (5) Business Days of such date, submit a written recovery plan with specific steps, tasks and Contractor and subcontractor actions, including manpower and/or working-hour increases, as applicable, necessary to complete all necessary Work by the dates for the remaining Key Milestones. The recovery schedule shall also contain sufficient detail to demonstrate the feasibility of achieving Project Substantial Completion by the Guaranteed Substantial Completion Date. Owner shall either accept such recovery plan or provide comments to such plan, which such comments shall be implemented to such recovery plan. Contractor shall diligently prosecute the Work in accordance with such recovery plan. Neither approval by Owner of such recovery plan nor Contractor's prosecution of the Work in compliance with such recovery plan shall (i) be deemed in any way to have relieved Contractor of its obligations under the Agreement relating to the failure to timely achieve any Key Milestone by the date required therefor, or (ii) be a basis for a Change Order or any other compensation or an increase in the Contract Price. Contractor shall not be entitled to a Change Order or any other compensation or increase in the Contract Price in connection with the implementation of a recovery plan or any acceleration thereunder.

2.6 Hazardous Materials.

2.6.1 Contractor Duties. Contractor shall, and shall cause its Subcontractors to, comply with all Applicable Laws relating to Hazardous Material. Without limiting the generality of the foregoing: (a) Contractor shall, and shall cause its Subcontractors to, have a release prevention and response plan to contain and clean up any spills or emissions of Hazardous Materials by Contractor or its Personnel (such plan to be made available to Owner upon Owner's request); (b) Contractor shall, and shall cause its Subcontractors to apply for, obtain, comply with, maintain and renew all Applicable Permits required of Contractor by Applicable Laws regarding Hazardous Material that are necessary, customary or advisable for the performance of the Work; (c) Contractor shall, and shall cause its Subcontractors to have an independent Environmental Protection Agency identification number for disposal of Hazardous Material generated by Contractor if and as required under Applicable Laws; (d) Contractor shall conduct its activities under the Agreement, and shall cause each of its Subcontractors to conduct its activities, in a manner designed to prevent pollution of the environment or any other release of any Hazardous Material by Contractor and its Subcontractors in a manner or at a level requiring remediation pursuant to any Applicable Law; (e) neither Contractor nor its Subcontractors shall cause the release or disposal of Hazardous Material at the Project Site, bring Hazardous Material to the Project Site, or transport Hazardous Material from the Project Site, except as required for performance under the Agreement and in accordance with Applicable Law; (f) Contractor shall be responsible for the management of and proper disposal of all Hazardous Material released, brought

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onto or generated at the Project Site by it or its Subcontractors, if any; (g) if any spillage, discharge, emission, or release should occur through Contractor's actions, Contractor shall immediately notify Owner and take all reasonable steps necessary to: (1) stop and contain the spillage, discharge, emission, or release, (2) make any report(s) of the spillage, discharge, emission, or release as required under Applicable Law, and (3) clean-up the spillage, discharge, emission, or release as required by the applicable Government Authority; (h) Contractor shall cause all such Hazardous Material released, brought onto or generated at the Project Site by it or its Subcontractors, if any, (1) to be transported only by carriers maintaining valid Hazardous Materials transportation permits (as required) and operating in compliance with such permits and laws regarding the transportation of Hazardous Material and only pursuant to manifest and shipping documents identifying only Contractor as the generator of waste or Person who arranged for waste disposal, and (2) to be treated and disposed of only at treatment, storage and disposal facilities maintaining valid permits (as required) regarding Hazardous Material; (i) Contractor shall submit to Owner a list of all Hazardous Material to be brought onto or generated at the Project Site prior to bringing or generating such Hazardous Material onto or at the Project Site; and (j) Contractor shall keep Owner informed as to the status of all Hazardous Material on the Project Site and disposal of all Hazardous Material from the Project Site.

2.6.2 Environmental Releases.

(a) If Contractor or any of its Subcontractors releases any Hazardous Material on, at, or from the Project Site, or becomes aware of any Person who has stored, released or disposed of Hazardous Material on, at, or from the Project Site during the Work, Contractor shall notify Owner in writing within one hour of becoming aware of such circumstance. If Contractor's Work is involved in the area where such release occurred, Contractor shall immediately stop any Work affecting the area.

(b) Contractor shall, at its sole cost and expense, diligently proceed to take all necessary and desirable remedial action to clean up and remediate fully and dispose of, in accordance with Applicable Laws and to Owner's reasonable satisfaction, any contamination caused by (i) any negligent release by Contractor or any of its Subcontractors of any Pre-Existing Hazardous Material (the Parties agree that simply discovering any Pre-Existing Hazardous Material or accidentally disturbing previously unknown Pre-Existing Hazardous Material is not a negligent release of such Pre-Existing Hazardous Material, but that Contractor will act reasonably and prudently with respect to same upon discovery), and (ii) any Hazardous Material that was brought onto or generated at the Project Site by Contractor or any of its Subcontractors, whether on or off the Project Site.

(c) If Contractor discovers any Pre-Existing Hazardous Material that has been stored, released or disposed of at the Project Site, Contractor shall immediately notify Owner in writing. If Contractor's Work involves the area where such a discovery was made, Contractor shall immediately stop any Work affecting the area and Owner shall determine a reasonable course of action. Contractor will not thereafter resume performance of the Work in the affected area except with the prior written permission of Owner. If and when Contractor is instructed to resume performance of the Work (after disposal or other decision by Owner regarding treatment of such Hazardous Substance), Contractor will be entitled to a Change Order as set forth

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in Section 9.5.1(e). Contractor shall not, and shall cause its Subcontractors to not, take any action that may exacerbate any such contamination.

(d) In addition to Contractor's obligations as set forth above, if Owner desires Contractor to perform all or part of any clean up or remediation that may become necessary as a result of the discovery of any such Pre-Existing Hazardous Material as described in Section 2.6.2(c) above, the clean up and remediation of which is not the responsibility of Contractor as set forth in Section 2.6.2(b)(i) above, it shall request a Change Order pursuant to Section 9.2. Further, if so requested by Owner, Contractor shall cooperate with and assist Owner in making the Project Site available for taking necessary remedial steps to clean-up/remediate any such contamination at Owner's expense as determined in accordance with Article IX; provided, however, that under no circumstances shall Contractor be required to participate in such clean-up/remediation of a Pre-Existing Hazardous Material if such release is not the responsibility of Contractor as set forth in Section 2.6.2(b)(i) above.

2.6.3 Recordkeeping. Contractor shall minimize the use of Hazardous Materials in performance of the Work and shall not utilize, or permit or cause any Subcontractor to utilize, such Hazardous Materials as are prohibited under Applicable Laws from being imported into or used in the United States. Contractor shall maintain an updated file of all safety data sheets for all Hazardous Materials used in connection with performance of the Work or at or near the Project Site or at any construction area related to the Project and shall update such file at least monthly and make it available on site in accordance with Applicable Law. Contractor shall maintain an accurate record and current inventory of all Hazardous Materials used in performance of the Work on at or near the Project Site or at any construction area related to the Project and the record shall identify quantities, location of storage, use and final disposition of such Hazardous Materials.

2.6.4 Owner's Self-Help Rights. If Contractor fails or refuses to remove from the Project Site (or any areas adjacent thereto or any other areas where Contractor performs the Work) or properly dispose of such Hazardous Materials as required pursuant to Section 2.7, Owner may, after providing Contractor with reasonable notice and opportunity to cure, at its discretion perform such removal or disposal as it may deem to be reasonably necessary or appropriate and charge Contractor with the full cost of performing such work either directly or by offset of such cost from any payment then or thereafter due to Contractor. The taking of any action by Owner in connection with the removal or disposal of such Hazardous Materials shall not relieve Contractor of its obligations under this Agreement and any Applicable Laws or Applicable Permits.

2.7 Owner's Right to Inspect; Correction of Defects.

2.7.1 Right to Inspect. Owner and its representatives shall have the right to inspect the Work and Contractor's records of inspections and quality control/quality assurance and shall have the right to maintain Personnel at the Project Site for such purpose. Owner shall have the right to communicate with any and all Subcontractors in connection with its inspection of the Work. Contractor shall use commercially reasonable efforts to include rights in all Subcontracts to permit Owner and any of their authorized representatives to audit, inspect, test and observe the Equipment at the facilities of any Subcontractor and the manufacturer of Equipment, and, if permitted, Contractor shall ensure reasonable, adequate and safe access to such facilities for such purposes, subject to any reasonable safety rules or restrictions imposed by such Subcontractor. If

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any portion of the Work should be covered contrary to the timely request of Owner or contrary to requirements specifically expressed in the Agreement, such portion of the Work shall, if requested by Owner, be uncovered for observation and shall be replaced at Contractor's expense. If any other portion of the Work has been covered which Owner has not specifically requested to observe prior to being covered, Owner may request to see such Work and Contractor shall uncover it. If such other portion of the Work is found not to be in accordance with the requirements of this Agreement, the cost of uncovering, replacement and re-covering shall be charged to Contractor. If such other portion of the Work is found to be in accordance with the requirements of this Agreement, Owner shall pay such costs pursuant to an appropriate Change Order in accordance with Article IX. Such inspection of any part of the Work shall in no way relieve Contractor of its obligation to perform the Work in accordance with this Agreement. If Contractor covers any portion of the Work after offering Owner the opportunity to inspect, then if Owner later requests Contractor to uncover such Work then Owner shall pay the costs to uncover unless such Work is found to contain a Defect.

2.7.2 Correction of Defects. Contractor shall, at its own cost and expense, correct or replace any Work that contains a Defect, or is not otherwise in compliance with the terms and requirements of the Agreement. Defective Equipment that has been replaced, if situated on the Project Site, shall be removed by Contractor at Contractor's sole cost and expense. If Contractor fails within a reasonable period of time, not to exceed ten (10) Business Days after it knows of such Defect or noncompliance or neglects to commence and continue correction of such Defect or noncompliance with diligence and promptness, Owner may upon notice to Contractor, without prejudice to other remedies Owner may have under the Agreement, correct such Defect or noncompliance. In such event, an appropriate Change Order shall be issued deducting from payments then or thereafter due to Contractor the cost of correcting such Defect or noncompliance, including compensation for the costs to enforce this provision (including attorneys' fees) and any consultant's additional services and expenses made necessary by such neglect or failure. If payments then or thereafter due to Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to Owner within ten (10) Business Days from Owner's request.

2.8 Inspection Not Approval. Owner will not be responsible for and will not have control over or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and Owner will not be responsible for Contractor's failure to carry out the Work in accordance with this Agreement. Owner will not be responsible for or have control or charge over the acts or omissions of Contractor, any Subcontractor, or any of their agents or employees. No inspection made, failure to inspect, acceptance of Work, payment of money or approval given by Owner shall relieve Contractor of its obligations for the proper performance of the Work in accordance with the terms hereof. Owner may reject any Work with Defects or which is not in accordance with the requirements of the Agreement, regardless of the stage of completion, the time or place of discovery of error, and whether Owner previously accepted any or all of such Work through oversight or otherwise, except to the extent such discovery occurs after expiration of the Warranty Period. No approval given by Owner, in and of itself, shall be considered as an assumption of risk or liability by any such Person. Any such approval shall mean that the Person giving the approval has no objection to the adoption or use by Contractor of the matter approved at Contractor's own risk and responsibility. Contractor shall have no claim relating to any such matter approved, including any claims relating to the failure or inefficiency of any method approved.

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2.9 Liens. Provided that Owner has paid Contractor in accordance with the requirements of this Agreement, Contractor shall, at Contractor's sole expense, discharge and cause to be released, whether by payment or posting of an appropriate surety bond in accordance with Applicable Law, within ten (10) days after receipt of a written demand from Owner, any Lien in respect to the Work, the Equipment, the Project Site, or any fixtures or personal property included in the Work (whether or not any such Lien is valid or enforceable) created by, through or under, or as a result of any act or omission (or alleged act or omission) of, Contractor or any Subcontractor, or other Person providing services or materials within the scope of Contractor's Work. Upon the failure of Contractor to promptly discharge or cause to be released any Lien as required by this Section 2.9, within ten (10) days after notice to Contractor, Owner may, but shall not be obligated to, pay, discharge or obtain a surety bond for such Lien and, upon such payment, discharge or posting of surety bond therefore, shall be entitled to immediately recover from Contractor the amount thereof together with all expenses incurred by Owner in connection with such payment, discharge or posting, or set off all such amounts against any sums owed by Owner to Contractor. Contractor shall notify Owner of the filing of any Lien against the Project, the Equipment, the Project Site, or any fixtures or personal property included in the Work promptly upon learning of the existence or filing of such Lien. Acceptance by Contractor of the final payment shall constitute a release by Contractor of Owner, Affiliates and every officer and agent thereof from all Liens (whether statutory or otherwise and including mechanics' or suppliers' Liens), claims and liability hereunder with respect to any Work performed or furnished in connection with this Agreement, or for any act or omission of Owner or of any Person relating to or affecting this Agreement, except claims for which Contractor has delivered a dispute notice to Owner. No payment by Owner shall be deemed a waiver by Owner of any obligation of Contractor under this Agreement.

2.10 Cooperation.

2.10.1 Contractor shall be responsible for coordinating work on the Project Site. Owner shall use commercially reasonable efforts to cause all Other Owner Contractors and Equipment Provider to comply with the reasonable coordination requirements imposed by Contractor, which coordination shall be intended to optimize completion of construction of the Project in a timely manner.

2.10.2 Contractor shall cooperate with Owner in connection with Owner's efforts to obtain the approvals, certificates, financing and Owner Permits for the Project.

2.10.3 Contractor acknowledges that work may be performed by others at the Project Site during the execution of Work. Contractor further acknowledges that Owner, through itself or through its employees, Subcontractors or agents, may continue to work and perform activities in connection therewith at and around the Project Site during the execution of the Work. Contractor shall cooperate and cause its Subcontractors, and Owner shall use commercially reasonable efforts to cause the Other Owner Contractors to cooperate with Contractor, to assure that no Party unreasonably hinders or increases, or makes more difficult than necessary the work being done by the other Parties. Contractor shall perform the Work in full cooperation with such others (provided the Other Owner Contractors reasonably cooperate with Contractor) and to

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permit, without charge, reasonable access to, and use of, the Project Site, by others or by Owner, when such access or use is necessary for the performance and completion of the work of others.

2.10.4 All material and labor shall be furnished, and the Work performed, will be properly coordinated and completed in accordance with the applicable schedules and the times of completion required by the Agreement with priority given in all instances to activities necessary to achieve Key Milestones in accordance with the Project Schedule, subject to Contractor's right to a Change Order in the event of a Force Majeure Event or Owner-Caused Delay.

2.10.5 Contractor shall use reasonable efforts, and cause its Subcontractors to use their reasonable efforts, to assist Owner in creating, assessing and carrying out programs which shall, during all phases of the Work, minimize the impacts upon the Project Site caused by the Work. To the extent they do not materially adversely affect costs or the achievement of Key Milestones on or prior to the scheduled completion dates for such Key Milestones, as set forth in the Project Schedule, such programs shall include: (i) minimizing the impacts of noise and dust at and around the Project Site; and (ii) using local Labor and other resources whenever possible, to the extent such Labor is qualified and cost competitive.

2.11 Intellectual Property Rights. Contractor shall obtain and, to the extent described below, maintain all trade secrets, patents, copyrights, trademarks, proprietary rights or information, licenses or other intellectual property rights (collectively, the "Intellectual Property Rights") necessary for performance of the Work and the operation and maintenance of the Project. Contractor hereby grants to Owner an irrevocable, non-exclusive, perpetual, royalty-free license under all Intellectual Property Rights whether now existing or developed for the Work, now or hereafter owned, licensed to or controlled by Contractor or any of its Affiliates, to use the same to the extent necessary for the ownership, completion, operation, maintenance, repair, rebuilding, alteration and expansion of the Work (provided such alteration or expansion is within the Scope of Work for this Project) and all subsystems and components thereof. To the extent that the license granted to Owner above is predicated upon Intellectual Property Rights held by Contractor, Contractor will maintain those Intellectual Property Rights throughout the life of the Project.

2.12 Credit Support.

2.12.1 Within thirty (30) Days following the Effective Date, but in any case no later than the date on which Notice to Proceed is issued and as a condition on Owner's obligation to make any payment hereunder, Contractor shall furnish to Owner the following forms of credit support to secure its obligations hereunder:

(a) Cash or a Letter of Credit with a total drawable amount ("face amount") equal to _____ Dollars (\$_____) [*\$100/kW of nameplate capacity*];

(b) a Payment and Performance Bond with a penal sum not less than one-hundred percent (100%) of the Contract Price in substantially in the form set forth in Exhibit P-3 (the "Payment and Performance Bond").

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If the issuing bank for a Letter of Credit issued pursuant to this Section 2.12.1 fails to maintain the minimum credit rating required pursuant to the definition of Letter of Credit set forth in this Agreement, Contractor shall within five (5) days thereafter substitute such Letter of Credit for a new one whose issuing bank meets such credit rating. The Payment and Performance Bond may be issued by one or more sureties, provided that each one is jointly and severally liable under the Payment and Performance Bond. Each such surety must be an admitted insurer in the State of Oregon, have a rating of no less than [A- according to A.M. Best's Financial Strength Rating and Financial Size Category] and be duly licensed or authorized in Oregon to issue bonds for the limits so required.⁴ If a surety on the Payment and Performance Bond is declared bankrupt or becomes insolvent, fails to meet the minimum rating standard set forth in the preceding sentence, or its right to do business is terminated in the State of Oregon, Contractor shall within five (5) days thereafter substitute another surety (and new Payment and Performance Bond, if requested by Owner), which must be acceptable to Owner and meet the requirements of this Section 2.12. Contractor shall not be entitled to any increase in the Contract Price for the provision of the Letter of Credit or the Payment and Performance Bond.

2.13 Financial Reports. If Contractor is not legally required to file quarterly and annual financial reports with the Securities and Exchange Commission, then Contractor shall furnish to Owner:

2.13.1 as soon as available, but in any event within 45 days after the end of each calendar quarter, a consolidated and consolidating balance sheet and income statement covering its operations during such period, in a form reasonably acceptable to Owner and certified by its chief executive officer, chief financial officer, or treasurer; and

2.13.2 within 120 days after the end of each fiscal year, audited financial statements, together with an opinion that is unqualified on such financial statements of an independent certified public accounting firm of national standing.

All such financial statements shall be complete and correct in all material respects, shall include accompanying notes and schedules, and shall be prepared in reasonable detail and in accordance with generally accepted accounting principles applied consistently throughout the periods reflected therein and with prior periods.

2.13.3 EPC Contractor shall conduct the performance testing requirements as set forth in Exhibit C-3 (the "Performance Tests"). EPC Contractor shall provide Owner Notice of commencement of the Performance Tests in accordance with Exhibit C-3. EPC Contractor shall report and certify the results of the Performance Tests to Owner within five (5) Days after completion thereof. All Performance Tests specified in Exhibit C-3 shall be conducted at EPC Contractor's sole cost and expense.

ARTICLE III

SUBCONTRACTORS

⁴ Note to Draft: Sureties to be subject to minimum credit threshold.

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3.1 Subcontractors. Owner acknowledges that Contractor intends to have portions of the Work accomplished by Subcontractors qualified to perform such Work pursuant to written subcontracts between Contractor and such Subcontractors. Exhibit I-1 sets forth a list of approved Major Subcontractors. Owner agrees to Contractor's use and engagement of Subcontractors; provided Contractor may not enter into any Major Subcontract with any Person not listed in Exhibit I-1 or approved by Owner in writing (which approval shall not be unreasonably conditioned, withheld or delayed). Except as otherwise expressly provided in the Agreement, Contractor shall be solely responsible for engaging, managing, supervising and paying all Subcontractors and Persons directly or indirectly employed by them; provided, however, that Owner shall have the right to communicate with Subcontractors and their personnel in connection with the Work and Owner's rights and obligations under this Agreement. Contractor shall require that all Work performed and all Equipment provided by Subcontractors be received, inspected and otherwise furnished in accordance with the Agreement. Contractor shall be solely liable for all acts, omissions, liabilities and Work (including Defects therein) of its Subcontractors and whenever this Agreement refers to the negligence, fault or omission of Contractor, it shall include the negligence, fault or omission of Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with Contractor.

3.2 Subcontracts. All contracts with Subcontractors shall be consistent with the terms and provisions of the Agreement. Contractor will provide Owner with copies of all subcontracts as requested by Owner (with redacted pricing, in Contractor's discretion). At a minimum, all subcontracts shall require the Subcontractors to comply with Applicable Laws, and shall provide that Owner has the right of inspection and communication with Subcontractors as provided hereunder and require such Subcontractors to (a) be subject to the Labor obligations hereunder as well as the safety and security provisions of the Agreement, (b) provide guarantees and warranties with respect to its portion of the Work and the Equipment and (c) obtain, maintain and keep in force throughout the time during which they are engaged by Contractor such insurance coverages as are required of Contractor under this Agreement. All subcontracts shall preserve and protect the rights of Owner, shall not prejudice such rights and shall require each Subcontractor to use reasonable efforts to enter into similar agreements with other Subcontractors. All subcontracts shall require payment to Subcontractors within no less than thirty (30) calendar days of submission of a valid invoice and associated lien waivers for work performed or materials or equipment supplied in accordance with the terms of the subcontract. Contractor shall require and shall cause all Subcontractors to perform their portions of the Work in accordance with the requirements of this Agreement. Contractor shall ensure that Contractor's rights and obligations under each Subcontract may be, without requiring the prior consent of the relevant Subcontractor, in whole or in part, assigned and delegated by Contractor to Owner. Each Subcontract shall provide that upon notification to the Subcontractor from Owner, that: (a) the Agreement has been terminated; (b) Contractor's right to proceed with the Work has been terminated; and (c) Owner will thereafter be assuming Contractor's obligations under such Subcontract, then such Subcontractor shall continue to perform its responsibilities under such Subcontract for the benefit of Owner and shall recognize Owner as being vested with all the rights and responsibilities of Contractor under such Subcontract (other than obligations, including payment obligations, arising or relating to prior to the date of the notice, which shall remain

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the responsibility of the Contractor). Notwithstanding the foregoing, it is specifically understood and agreed (and each Subcontract shall clarify) that no such assignment shall release Contractor from any liability hereunder, and no Subcontractor shall have any right to look to Owner for the performance of Contractor's obligations under any Subcontract unless and until such Subcontractor has received such notice from Owner. Each Major Subcontract shall require the Subcontractor to execute an acknowledgment of, and agreement to, the provisions of this Section 3.2. Contractor will deliver to Owner a copy of each such executed acknowledgment and agreement within forty-eight (48) hours after each Subcontractor's execution of its Subcontract.

3.3 Owner as Third Party Beneficiary. No Subcontractor is intended to be nor shall it be deemed a third party beneficiary of this Agreement. Nothing contained herein shall obligate Owner to pay any Subcontractor and Contractor shall be solely responsible for paying each Subcontractor in accordance with the applicable Subcontract or purchase order between Contractor and the Subcontractor; provided, however, each agreement between Contractor and a Subcontractor with respect to the Work shall name Owner as an intended third party beneficiary.

3.4 Subcontractor Payments. Contractor shall pay all Subcontractors in accordance with the requirements of the applicable subcontracts, provided that in all cases, Contractor shall pay Subcontractors within thirty (30) days after Subcontractor has completed its work on the Project. On a no less than monthly basis, Contractor shall provide Owner with all reasonably requested documentation to evidence its compliance with the preceding sentence.

3.5 Subcontractor Warranties. Without in any way derogating Contractor's representations and warranties and other testing requirements and guarantees set forth herein with respect to all of the Work, Contractor will require all Subcontractors to provide product and service warranties at a minimum equal to the Warranties in Article VII. Contractor shall use reasonable efforts to obtain from all Subcontractors any representations, warranties, guarantees, and obligations offered by such Subcontractors and to negotiate the longest reasonably practicable warranty periods at no additional cost with respect to design, materials, workmanship, Equipment, tools, supplies, and other items furnished by such Subcontractors. Contractor shall assign all representations, warranties, guarantees, and obligations of all Subcontractors at the request and direction of Owner, and without recourse to Contractor, to Owner upon default by Contractor or termination or expiration of this Agreement; provided, however, that, notwithstanding such assignment, Contractor shall be entitled to enforce each such representation, warranty, guaranty, and obligation so long as Contractor has any liability under this Agreement. To the extent assignable, Contractor hereby assigns to Owner, effective as of the end of the Warranty Period for the Project, all representations, warranties, guaranties and obligations of all Subcontractors.

ARTICLE IV

CONTRACT PRICE

4.1 Contract Price. As full consideration to Contractor for the complete performance of the Work and Contractor's other covenants in this Agreement, Owner will,

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subject to the provisions of this Article IV and the Schedule of Values attached hereto as Exhibit B-1, pay Contractor [_____] Dollars (\$ _____) (the “Contract Price”). The Contract Price may be adjusted only pursuant to a Change Order issued in accordance with the provisions of Article IX. Subject to the terms and conditions of this Article IV, the Contract Price shall be paid by Owner to Contractor, in accordance with the requirements set forth in the Agreement, by way of the milestone payments set forth in the Payment Schedule attached hereto as Exhibit B-2.

4.2 Taxes.

4.2.1 Contractor’s Taxes.

(a) Contractor shall be responsible for all taxes, transportation fees, freight, packing costs, custom duties, export/import tariffs, personnel fees and all other costs associated with the performance of the Work and any other of its duties and responsibilities under this Agreement, unless otherwise stated in this Agreement (collectively “Contractor’s Taxes”). The Parties agree that the Contract Price, as stated in Section 4.1, includes all Contractor’s Taxes, excluding materials that are tax exempt under Applicable Law.

(b) To the extent Owner indicates to Contractor that it will obtain an exemption which is thereby factored into the original Contract Price and Contractor complies with Owner’s reasonable instructions for implementing such exemption for purposes of avoiding payment of sales and use taxes to Subcontractors or Suppliers for goods and services subject to such exemption, then Owner shall reimburse Contractor for the amount of any sales or use taxes that Contractor is required to pay, to the extent excluded from the original Contract Price, notwithstanding the applicability of such exemption; provided, however, Contractor shall procure and provide to Owner such documents evidencing payment of such taxes as Owner may be reasonably required to enable Owner to obtain a refund of such paid taxes.

(c) At any time and from time to time upon Owner’s reasonable request, Contractor will allow Owner and its designees the opportunity to review all purchases by Contractor and its Subcontractors (and will in this regard provide all relevant information regarding the same (including separate break-out pricing for goods and services, if reasonably available)) for the purpose of determining whether such exemptions or rebates apply and have been or should have been granted.

(i) If Owner directs Contractor to seek an exemption or rebate and Contractor fails to seek such exemption or rebate for an item, Owner will be relieved of its obligation under Section 4.2.2(a) to reimburse Contractor for the taxes on such item.

(ii) If Contractor seeks exemption or rebate on an item in accordance with the foregoing, but the same is not granted, Owner shall reimburse Contractor for the disallowed amount, and Contractor will assign to Owner its right to seek a refund of, or rebate in connection with, the amount in question and will reasonably cooperate with Owner to seek such refund or rebate. If such assignment is not allowed under Applicable Law, then Contractor will, at Owner’s direction and expense, seek such refund and, if received, pay over such refund to Owner,

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and all costs of seeking a refund or appealing the denial of an exemption, refund or rebate shall be borne by Owner.

(iii) Any rebates received by Contractor or its Subcontractors in connection with any Contractor's Taxes reimbursed by Owner under Section 4.2.2 from the purchase of any materials, supplies or equipment in connection with the Work shall be immediately paid over to Owner.

(d) Contractor shall promptly provide Owner with notice of any audits, assessments or challenges by any Government Authority with respect to Contractor's Taxes, which are to be reimbursed by Owner. In the event of any such audit, assessment or challenge, Owner shall have the right to receive copies of all correspondence and documents relating thereto, to attend and participate in all meetings with the Government Authority and to participate in and control all mediation, and litigation related thereto, provided the cost thereof is borne by Owner and Owner indemnifies, defends and holds Contractor harmless with respect thereto.

(e) To the extent Owner is obligated under Applicable Laws to pay any of Contractor's Taxes, Contractor shall: (i) furnish to Owner all information and reports required to be furnished to the appropriate taxing authorities in connection with all such Contractor's Taxes; and (ii) reimburse Owner for the full amount of such Contractor's Taxes paid by Owner that are not otherwise required to be reimbursed by Owner to Contractor under Section 4.2.2. Contractor will have no responsibility for property taxes assessed on the Work or the Project Site.

4.2.2 Owner Taxes.

(a) If Contractor is assessed any taxes, for tangible personal property and services purchased for the purpose of and in conjunction with constructing of the Project despite having complied with the requirements of Section 4.2.1, Contractor will invoice Owner for reimbursement of such assessment as part of each applicable Request for Payment, and shall include therewith all documentation necessary to evidence Contractor's and Subcontractor's payment of such taxes. For the avoidance of doubt, Owner will not be responsible: (i) to reimburse Contractor for those Contractor's Taxes as described in Section 4.2.1(a); or (ii) for any penalties or interest related to non-payment or late payment of any required Contractor's Taxes, unless such non-payment or late payment is due to or caused by the instruction of Owner to Contractor, as provided in Section 4.2.1(c)(ii).

(b) Owner shall administer and pay all sales, use, gross receipts, income, value-added and withholding taxes and duties, and any other similar taxes or contributions (including penalties and interest related to such taxes), imposed by any taxing authority: (i) that are measured by Owner's sale of electricity from the Project; and (ii) upon services or labor provided by Owner or any Other Owner Contractors in connection with the Project (collectively "Owner's Taxes"). Owner shall furnish to the appropriate taxing authorities all required information and reports in connection with all such Owner's Taxes.

(c) To the extent Contractor is legally obligated to pay any of Owner's Taxes, Owner shall: (i) furnish to Contractor all information and reports required to be furnished

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to the appropriate taxing authorities in connection with all such Owner's Taxes; and (ii) reimburse Contractor for the full amount of such Owner's Taxes paid by Contractor.

4.3 Requests for Payment. Contractor shall, on or before then tenth (10th) Business Day of each calendar month, prepare and submit to Owner an application for payment substantially in the form of Exhibit B-3 (each, a "Request for Payment") for the milestone(s) achieved during the prior month, in accordance with the Payment Schedule.

4.4 Retainage.

4.4.1 Retainage. Owner shall withhold, as retainage (the "Retainage") an amount equal to ten percent (10%) of all payments made to Contractor under this Agreement. To the extent it is determined by any Government Authority that the Retainage exceeds limits set by Applicable Laws, such Retainage shall be reduced to the maximum percentage of all payments made to Contractor so permitted by Applicable Laws.

4.4.2 Use of Retainage. The Retainage shall be held by Owner as security for the performance of Contractor's obligations hereunder and any interest thereon shall accrue for the account of Owner and not Contractor. The Parties acknowledge that because the Retainage shall constitute security, Owner may utilize the same to, among other things, cure any Contractor Event of Default, offset Delay Liquidated Damages, pay unpaid Contractor suppliers, remove Liens filed by Subcontractors and cover any expenses associated therewith, or offset against any other amounts payable by Contractor to Owner under this Agreement.

4.4.3 Release of Retainage. Within fifteen (15) days after the Project Substantial Completion Date, subject to Section 4.5 Owner shall release to Contractor all cash Retainage, except for a cash amount equal to two hundred percent (200%) of the projected costs to complete any remaining items on the Punch Lists, as such cost is reasonably estimated by Owner. Within fifteen (15) days after the Final Completion Date, Owner shall release the remaining cash Retainage (less any amount utilized by Owner to perform any Punch List items).

4.5 Conditions of Payment. Owner's obligation to make any payment hereunder is conditioned upon the following:

4.5.1 Contractor shall have submitted a Request for Payment to Owner in the form set forth as Exhibit B-3, together with all required documents referenced therein, including, without limitation the following:

(a) written waivers and releases in the form of Exhibit O-1, Exhibit O-2, Exhibit O-3 and Exhibit O-4 (as applicable), duly executed by Contractor and all Major Subcontractors; and

(b) a written certification of an officer of Contractor that (i) the requirements of Sections 4.5.2 through 4.5.5 have been satisfied and (ii) there are no known mechanics' or materialmen's liens or other such claims or encumbrances outstanding from Subcontractors at the date of the Request for Payment, all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the Request for Payment,

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and, except for such bills not paid but so included, there is no known basis for the filing of any mechanics' or materialmen's liens on any portion of the Project or the Work, and releases from all Subcontractors have been obtained in such form as to constitute an effective release of lien (corresponding to payments received by them) under the laws of the State of Oregon.

4.5.2 Contractor shall have completed the Work for which payment is sought and have submitted evidence reasonably acceptable to Owner that demonstrates the completion of such Work.

4.5.3 The representations and warranties made by Contractor in this Agreement shall be true and accurate in all respects, both before and after giving effect to the making of the requested payment.

4.5.4 All Contractor Permits required by Applicable Law and this Agreement shall have been obtained and shall be in full force and effect on the requested payment date.

4.5.5 No uncured Contractor Event of Default shall then exist and no material breach, violation or default shall have occurred and be continuing under the Payment and Performance Bond or any Letter of Credit issued in accordance with this Agreement.

Within forty five (45) Days after its receipt of a Request for Payment, provided Contractor has satisfied the foregoing conditions, Owner shall pay to Contractor the amount that remains after the deduction from the amount requested in the applicable Request for Payment of the following amounts: (a) any portion thereof that Owner in good faith disputes as not being due and owing, (b) any overpayment made by Owner for any previous period, (c) any Delay Liquidated Damages payable by Contractor, (d) any amounts withheld pursuant to Sections 4.6 and 4.8 and (e) any costs incurred by Owner in enforcing any provision hereof (including attorneys' and other consultants' fees) regardless of whether such provisions expressly provide for withholding or set-off. Contractor may only submit one (1) Request for Payment per calendar month.

4.6 Deductions from Payments. Notwithstanding any other provision to the contrary contained herein, Owner may withhold and shall have no obligation to make payments to Contractor hereunder and Owner may decide not to certify payment or may nullify the whole or a part of a certification for payment made pursuant to a previous Request for Payment to such extent as may be reasonably necessary to protect Owner from loss because of (a) Defects in the Work not timely remedied; (b) third-party claims filed against Owner, (c) Liens filed (that have not been bonded off as described in Section 2.9 or are not covered by insurance maintained hereunder); (d) failure of Contractor to make undisputed payments when due to Subcontractors; (e) damage to Owner or another contractor, including damage to the property of Owner or any of its Affiliates, to the extent the costs of such damages are not covered by insurance maintained hereunder; (f) damages caused by Contractor or its Personnel; (g) Contractor's failure to deliver a recovery plan as set forth in Section 2.5.3 or the failure of Contractor to diligently proceed with the recovery plan; or (h) Contractor's failure to provide information requested by Owner to ensure conformance of the Work to the requirements of this Agreement and Applicable Law or to measure the progress of the Work, as necessary to conform Contractor's entitlement to payment. Contractor shall not have any rights of termination or suspension hereunder as a result of Owner's exercise or attempted exercise of

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its rights under this Section 4.6. Owner shall release payments withheld pursuant to this Section 4.6 within thirty (30) days from the date when Contractor cures all such events or breaches to the reasonable satisfaction of Owner. If there is any dispute about any amount invoiced by Contractor, the amount not in dispute shall be promptly paid.

4.7 Effect of Payment. Payment of the Contract Price shall not constitute Owner's approval of any portion of the Project or the Work which has been determined not to be, or subsequently is determined not to have been, performed in accordance with the requirements of this Agreement.

4.8 Set off. Owner may deduct and set off against any part of the balance due or to become due to Contractor under this Agreement or against any Retainage (a) any Delay Liquidated Damages due or accrued but not paid from Contractor to Owner hereunder that are not then the subject of dispute resolution under Section 14.2, or (b) any other amounts that are due from Contractor to Owner under or in connection with this Agreement.

4.9 No Payment if Default. Notwithstanding any other provision to the contrary contained herein, Owner shall have no obligation to make any payment to Contractor at any time when a Contractor Event of Default has occurred and is continuing.

4.10 Interest. Any sums not timely paid shall accrue interest at Prime Rate plus two percent (2%) from the date due until paid.

ARTICLE V

OWNER RESPONSIBILITIES

In addition to Owner's other duties and responsibilities under and pursuant to this Agreement, Owner shall have the following general obligations and responsibilities:

5.1 Project Site Access. As required by Project Schedule, Owner shall provide access to the Project Site to Contractor, Subcontractors and their Personnel as necessary to perform the Work.

5.2 Permits. Owner shall, with Contractor's reasonable assistance, timely obtain and maintain, at its own cost and expense, all Owner Permits, copies of which shall be delivered to Contractor upon its request. In addition, Owner shall provide reasonable assistance and cooperation, and execute such applications as Contractor may reasonably request, in connection with obtaining any of Contractor Permits.

ARTICLE VI

STAGES OF COMPLETION OF THE WORK

6.1 Work Completion. Contractor shall complete the Work in strict compliance with the Project Schedule and shall certify completion of such portions of the work in accordance with the process required in Exhibit Q (Form of Work Completion Certificates).

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6.1.1 Commencement of Construction Liquidated Damages. Owner and Contractor acknowledge and agree that any failure of Contractor to Commence Construction (as such term is defined in the US Tax Code) to occur on or before _____ will directly cause substantial damage to Owner, which damage cannot be ascertained with reasonable certainty. Thus, if such failure occurs, Contractor shall pay to Owner, as liquidated and agreed damages and not as a penalty, the following amounts (collectively, “Commencement of Construction Liquidated Damages”). *[To be discussed depending on technology and Bidder’s tax credit assumptions.]*

6.1.2 Substantial Completion Delay Liquidated Damages.⁵ Owner and Contractor acknowledge and agree that any failure of Contractor to cause Project Substantial Completion to occur by the applicable Guaranteed Substantial Completion Date will directly cause substantial damage to Owner, which damage cannot be ascertained with reasonable certainty. Thus, if such failure occurs, Contractor shall pay to Owner, as liquidated and agreed damages and not as a penalty, the following amount (collectively, “Substantial Completion Liquidated Damages”): \$_____ per Day that Project Substantial Completion is delayed beyond the Guaranteed Substantial completion Date.⁶

6.1.3 Contractor shall not be relieved from the obligation to meet the Guaranteed Substantial Completion Dates except to the extent any such date is extended pursuant to a Change Order or a written notice from Owner.

6.2 Project Mechanical Completion. *[Definition to be determined by Bidder’s technology, Certificate of Mechanical Completion and Mechanical Completion Checklist in Exhibits.]*

6.3 Project Substantial Completion.

6.3.1 Conditions of Project Substantial Completion. “Project Substantial Completion” shall be achieved when each of the following conditions has been satisfied:

- (a) all Equipment comprising the Project has been installed as required;
- (b) the Project has been connected to and synchronized with the Grid, and is capable of operating as a fully-integrated electricity generating plant that safely and continuously generates electric power in accordance with the requirements of all Applicable Laws and this Agreement;
- (c) Contractor and Owner have agreed upon the Final Punch List for all Work, as described in Section 6.4.1;

⁵ Note to Draft: Guaranteed Mechanical Completion, and other guaranteed milestones to be added, as required in accordance with downstream liabilities and overall economics of the project.

⁶ Note to Draft: Increase in daily amount of Substantial Completion Delay LDs after an initial period to be established depending upon downstream liabilities and overall economics of the Project.

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(d) Contractor has fully completed all Work (including all Work on or comprising all remaining Project for the Project), except those items on the agreed upon the Final Punch List;

(e) any Defects found have been corrected;

(f) Contractor has completed all Performance Tests and (i) has demonstrated through Performance Testing in accordance with Exhibit C-3 that the Project has achieved the Performance Guarantee in accordance with Exhibit C-4, or (ii) has demonstrated through Performance Testing results in accordance with Exhibit C-3 that the Project has not achieved the Performance Guarantee and that Contractor has paid all applicable Performance Liquidated Damages in accordance with Exhibit C-4.⁷

(g) Contractor has provided Owner with copies of all Contractor Permits;

(h) all Spare Parts requested by Owner under Section 2.3.10 have been delivered by Contractor to the Project Site in accordance with Section 2.3.10; provided that any Spare Parts requested by Owner within two (2) weeks prior to the date of submittal of the Project Substantial Completion Certificate which have not been delivered by such date will be added to the Final Punch List;

(i) Contractor has paid all Delay Liquidated Damages due under this Agreement, if any;

(j) Contractor has delivered to Owner copies of all test reports and electrical schematics related to the Work;

(k) Contractor has delivered draft copies of the Operating Manual and Job Books in accordance with Sections 2.3.11(a) and (b);

(l) Contractor has delivered to Owner all interim progress payments or final, as the case may be, waivers of mechanic's and materialman's Liens from all Subcontractors for Work completed through such date, and Contractor has certified that there are no Liens threatened, pending or existing on the Project; and

(m) Owner has confirmed or is deemed to have confirmed in writing that the conditions set forth hereinabove have occurred, pursuant to Section 6.3.2.

6.3.2 Confirmation of Project Substantial Completion. When Contractor believes it has satisfied all of the requirements for Project Substantial Completion, Contractor shall notify Owner in writing. Within five (5) Business Days of receipt of such notice, Owner shall notify Contractor in writing whether Owner agrees that Contractor has fulfilled the requirements of Project Substantial Completion. If Owner believes Contractor has not fulfilled such requirements,

⁷ Note to Draft: Performance Testing provisions to be inserted depending upon Bidder's technology, overall project economics, and related downstream obligations. Significant, enhanced testing and warranty provisions to be developed for BESS construction.

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Owner shall specify in such notice to Contractor in reasonable detail the reasons that such requirements have not been met. Contractor shall promptly act to correct such deficiencies so as to achieve Project Substantial Completion as soon as practicable. Following any such remedial action, Contractor shall deliver to Owner a new notice and the provisions of this Section 6.3.2 shall apply with respect to such new notice in the same manner as they applied to the original notice. If Owner fails to respond within seven (7) Business Days to the Project Substantial Completion Certificate provided by Contractor, Project Substantial Completion shall be deemed to have been achieved; provided, however, such deemed Project Substantial Completion shall not relieve Contractor from any of its obligations hereunder, including Contractor's obligations to achieve Project Substantial Completion. For all purposes of this Agreement, Project Substantial Completion Date shall be the date the Project Substantial Certificate is ultimately accepted by Owner or, if applicable, deemed accepted by Owner.

6.4 Punch List for Project.

6.4.1 Development of Punch List. Prior to submittal of the initial Project Substantial Completion Certificate, Contractor will prepare and deliver to Owner a written list setting forth all of the items that remain to be performed in order to complete the Work, provided such items of Work on such list shall only be items that are (i) minor in nature, (ii) not related to the functionality, utility, operation or restoration of Work, (iii) not related to the compliance of any such Work with any Applicable Laws or Applicable Permits, and (iv) not related to the correction of Defects. Such list shall also state the proposed time limits within which Contractor will complete each of such remaining Work items. Upon its receipt of such list, Owner will reasonably review the same and notify Contractor of any proposed revisions thereto. Owner's Project Manager and Contractor's Project Manager will then meet and consult in good faith to agree upon the definitive, final version of such list (including the approved time limits within which Contractor will perform such remaining Work items) (such final list, as agreed to by Owner, the "Final Punch List").

6.4.2 Completion of Punch List Items. Once any Punch List hereunder is agreed upon, Contractor will promptly begin the items thereon. Contractor's Work on such Punch Lists shall be performed in a manner that does not unreasonably interfere with the commercial operation of the Project. Owner will provide Contractor with reasonable access to the Project Site so that Contractor may perform the Work on the Punch Lists.

6.5 Final Completion.

6.5.1 Conditions of Final Completion. "Final Completion" will be achieved when each of the following conditions has been met:⁸

- (a) Project Substantial Completion has occurred;

⁸ Note to Draft: For certain projects, certain performance guarantees may be required for Final Completion, such as a multi-day, or multi-week availability or project energy test. These performance guarantees may be accompanied by buy-down liquidated damages.

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(b) Contractor has completed performance of all of the Work, including all Punch List items, except for those items that Owner and Contractor agree are to be completed by Owner (and Contractor has paid all amounts due Owner in connection therewith);

(c) Owner has received a final list and summary of the work performed by all Subcontractors and verification of the payment thereof;

(d) Contractor has provided to Owner all Lien releases as required under Section 4.5 (provided that Contractor's Final Lien Waiver and Release, in substantially the form of Exhibit O-3 attached hereto from Contractor and Subcontractor's Final Lien Waiver and Release in the form of Exhibit O-4 attached hereto from each Major Subcontractor, shall be given concurrently with Final Completion and payment of amounts due by Owner in connection therewith);

(e) all documentation, including data points and redlines, as necessary to accurately reflect the Project as constructed in the As-Built Drawings shall have been delivered to, and accepted by, Owner;

(f) all sets of the final Operating Manuals and final Job Books have been delivered to Owner as required under Section 2.3.11; and

(g) Owner has confirmed or is deemed to have confirmed in writing that the conditions set forth hereinabove have occurred, pursuant to Section 6.5.2.

6.5.2 Confirmation of Final Completion. When Contractor believes that it has satisfied all of the requirements for Final Completion, Contractor shall notify Owner in writing. Within five (5) Business Days of receipt of such notice, Owner shall notify Contractor in writing whether Owner agrees Contractor has fulfilled the requirements of Final Completion. If Owner believes Contractor has not fulfilled such requirements, Owner shall specify in such notice to Contractor in reasonable detail the reasons that such requirements have not been met. Contractor shall promptly act to correct such deficiencies so as to achieve Final Completion as soon as practicable. Following any such remedial action, Contractor shall deliver to Owner a new notice and the provisions of this Section 6.5.2 shall apply with respect to such new notice in the same manner as they applied to the original notice. If Owner fails to respond within five (5) Business Days to the Final Completion Certificate provided by Contractor, Contractor shall provide a second Final Completion Certificate, which will include a reference to the previously provided certificate and a statement to the effect that failure to respond to such second certificate shall result in Final Completion being deemed to have been achieved. If Owner fails to respond to the second Final Completion Certificate within seven (7) Business Days following receipt of such second certificate, Final Completion shall be deemed to have been achieved; provided, however, such deemed Final Completion shall not relieve Contractor from any of its obligations hereunder, including Contractor's obligations to achieve Final Completion. For all purposes of this Agreement, the date of achievement of Final Completion shall be the date on which the relevant completion notice accepted by Owner or, if applicable, deemed accepted by Owner.

6.6 Reasonable Amount; Exclusive Remedy. The Parties agree that the sum of the amounts fixed as Construction Commencement Liquidated Damages and Substantial

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Completion Liquidated Damages (“Delay Liquidated Damages”) are fair and reasonable, considering the damages that Owner would sustain in the described event, and that these amounts are agreed upon and fixed as liquidated damages because of the difficulty of ascertaining the exact amount of damages that would be sustained. Except as set forth in Article XII, collection of Delay Liquidated Damages shall constitute Owner’s exclusive remedy and Contractor’s exclusive liability for Contractor’s failure to cause, as applicable, Project Substantial Completion to occur by the Guaranteed Substantial Completion Date, as such date may be extended by any executed Change Order. The foregoing sentence shall not relieve Contractor from its obligations (nor limit Owner’s ability to seek other available remedies in connection with Contractor’s failure to comply with its obligations) to perform the Work in accordance with this Agreement or from its Warranty or other obligations under this Agreement.

6.6.1 Limitation of Liability for Delay Liquidated Damages. Contractor’s aggregate liability for Delay Liquidated Damages shall not exceed an amount equal to ____percent (___ %) of the Contract Price.

6.6.2 Offset Rights; Security for Obligations. Owner shall have the right to offset any amounts owing to Owner under this Article VI against payments or other amounts owing to Contractor and to exercise its rights against any security provided by or for the benefit of Contractor, in such order as Owner may elect in its sole discretion.

ARTICLE VII

WARRANTIES

7.1 Warranty Provisions.

7.1.1 Warranty. As the “Warranty,” Contractor warrants to Owner that: (a) all Equipment and Spare Parts shall be new, unused and undamaged when installed, (b) all such Equipment, Spare Parts and all Work shall (i) be free from Defects, (ii) conform to all applicable requirements of all Applicable Laws, Applicable Standards, the Construction Documents and the Agreement and (iii) be in strict compliance with the Scope of Work; (c) the services comprising the Work will be performed with Contractor’s best skill and judgment in a good and workmanlike manner; (d) the Work will conform to, and be performed in accordance with, all Applicable Laws, Prudent Industry Practices, and the other terms and requirements of the Agreement; and (e) none of the Work and other services rendered by or through Contractor hereunder, nor the use of the Work by Owner, nor any license granted hereunder, infringes, violates or constitutes a misappropriation of any Intellectual Property Rights.

7.1.2 Warranty Period; Extensions. The Warranty shall commence on the Project Substantial Completion Date and shall continue for a period of ____ (___) years after Project Substantial Completion Date (the “Warranty Period”); *provided, however*, that if any component of the Work is repaired or replaced pursuant to the Warranty Service, then the Warranty Period with respect to such component shall be continued for a period that is the longer of (a) the remainder of the original Warranty Period, or (b) one (1) year from the date of completion of the repair or replacement or re-performance thereupon, *provided, further*, that if fifteen percent (15%)

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or more of any type of component of the Work requires repair or replacement within the Warranty Period, then the Warranty Period for that type of component shall be automatically extended for all such components of that type for an additional one (1) year from the later of (i) the date of expiration of the Warranty Period or (ii) the date of the completion of Warranty Service to correct the failure that caused the percentage of failures to reach fifteen percent (15%). At expiration of the Warranty Period, any unexpired warranties relating to the Work shall be assigned to Owner (and Contractor will promptly execute such documents as may be necessary to cause such assignment to occur).

7.1.3 Correction of Deficiencies. If the Work or Equipment or Spare Part is in breach of any Warranty set forth in this Section 7.1, Contractor shall, subject to Section 7.2, cure such breach as promptly as practicable upon being given written notice thereof (“Warranty Service”). Owner shall provide Contractor with reasonable access to the Project in order to perform its obligation under this Article VII and the Parties shall schedule such work as necessary so as to minimize disruptions to the operation of the Project. Owner shall have the right to operate and otherwise use the Equipment until such time as Owner deems prudent to suspend such operation or use in order to accommodate Contractor’s Warranty Services. If Equipment has been placed in service, Contractor shall perform such Warranty Service as soon as Owner deems it prudent to remove the same from service for any Warranty Service by Contractor; provided that the Warranty Period will continue until Contractor has completed such Warranty Service. Neither payment by Owner, nor any other provision of this Agreement, nor partial or entire use or possession of the Work by Owner shall relieve Contractor of liability with respect to the Warranty contained in this Article VII. Contractor shall bear all costs and expenses directly associated with the Warranty Services, including, all costs of services and equipment and of any necessary disassembly, removal, replacement, transportation, reassembly, reinstallation, and retesting, as well as reworking, repair or replacement of such Work, and reassembly of structures, electrical work, machinery, Equipment, or any other obstruction as necessary to give access to the non-conforming item for correction, and for removal, repair or replacement of any damage to other work or property that arises from the breach of Warranty and any applicable insurance deductibles. Upon completion of Warranty Service, all Equipment shall be returned or restored to its proper condition (subject to normal wear and tear), including but not limited to fit alignment, adjustment, operability and finish. If Contractor is obligated to repair, replace or renew any Equipment, item or portion of the Work hereunder, Contractor will undertake a technical analysis of the problem and correct the “root cause” unless Contractor can demonstrate to Owner’s reasonable satisfaction that there is no material risk of the reoccurrence of such problem. Contractor’s obligations under this Section 7.1 shall not be impaired or otherwise adversely affected by any actual or possible legal obligation or duty of any vendor or Subcontractor to Contractor or Owner. No correction or cure shall be considered complete until Owner has reviewed and accepted such remedial work. So long as Contractor has been notified of a breach of Warranty prior to the end of the Warranty Period, the obligation of Contractor to provide Warranty Service to correct such noncompliance, Defect or breach of Warranty shall survive the expiration of the Warranty Period.

7.1.4 Conformance of Warranty Service to Warranty. Contractor warrants that all materials incorporated into the Work as part of repairs to and replacements of the Work by Contractor or any Subcontractor, and repairs to and replacements of the Work pursuant to the Warranty Service shall conform to the requirements of this Agreement and the Warranty. Contractor shall perform, at its cost and expense, such tests as Owner may reasonably request to

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verify that any correction, repair, replacement or re-performance of the Work pursuant to the Warranty Service complies with the requirements of the Warranty.

7.2 Delay. Contractor shall perform the Warranty Service as promptly as reasonably possible after being notified of the noncompliance by Owner, and in any event shall commence performance of the Warranty Service no later than two (2) Business Days after such notice. If, after notification of a Defect or breach of Warranty, Contractor delays past such date in commencing, or shall fail to continue performing or completing, Warranty Service with respect to such Defect or breach of Warranty, Owner may correct such breach of Warranty so that the Work and Equipment comply with the Warranty after giving Contractor three (3) Business Days written notice, and Contractor shall be liable for all reasonable direct costs, charges and expenses incurred by Owner in connection with the same and shall pay the same to Owner upon receipt of invoices with supporting documentation from Owner. Such correction of a breach of Warranty condition shall be deemed to be Warranty Service performed by Contractor and the Warranty Period for such corrected Work shall be extended in accordance with Section 7.1.2. No correction of a Defect or breach of Warranty pursuant to this Section 7.2 shall void the Warranty.

7.3 Subcontractor Warranties. Contractor shall be responsible for enforcing the warranties of all Subcontractors through the Warranty Period unless Owner requests that any such warranties be assigned to it at an earlier date. At the end of the Warranty Period, Contractor will assign to Owner its rights under any and all such Subcontractor warranties that continue past the end of the Warranty Period, including the Major Equipment Warranties. Contractor will secure such assignment from each Subcontractor, and Contractor will deliver to Owner copies of all Subcontracts providing for warranties enforceable by Owner. Contractor will not, and Contractor will ensure that Contractor's Personnel do not, take any action which could release, void, impair or waive any Subcontractor warranties. Contractor shall provide reasonable assistance to Owner without cost to Contractor in connection with the enforcement by Owner of any Subcontractor warranty after such assignment provided those warranties are in are excess of those set forth in Section 7.1.

7.4 Major Equipment Warranties. The following components of the Project have Equipment warranties from manufacturers or suppliers (the "Major Equipment Warranties"):

7.4.1 [_____], Appendix D-1;

7.4.2 [_____], Appendix D-2;

7.4.3 [_____], Appendix D-3;

7.4.4 [_____], Appendix D-4; and

7.4.5 [_____], Appendix D-5.

7.5 Proprietary Rights. Without limiting any of the provisions of the Agreement and notwithstanding any provision herein to the contrary, if Owner or Contractor is prevented from completing the Work (or any part thereof) in accordance with the Agreement or from the use, operation, repair, maintenance, alteration, expansion, rebuilding or enjoyment of the Work

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(or any part thereof) as a result of a claim, action or proceeding by any Person for unauthorized disclosure, infringement or use of Intellectual Property Rights arising from Contractor's performance (or that of its Subcontractors) under the Agreement or any Intellectual Property Right or Contractor Deliverable transferred or licensed to Owner hereunder, Contractor shall promptly, but in no event later than thirty (30) days from the date of any action or proceeding, take all actions necessary to remove such impediment, including (a) secure termination of the injunction and procure for Owner or its assigns, as applicable, the right to use such materials, Equipment or Contractor Deliverable in connection with the completion, repair, operation, maintenance, alteration, rebuilding or expansion of the Work without obligation or liability; or (b) replace such materials, Equipment, or Contractor Deliverable, with a non-infringing equivalent, or modify same to become non-infringing, all at Contractor's sole expense, but subject to all the requirements of the Agreement.

7.6 NO IMPLIED WARRANTIES. THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. THERE ARE NO OTHER WARRANTIES, AGREEMENTS, ORAL OR WRITTEN, OR UNDERSTANDINGS WHICH EXTEND BEYOND THOSE SET FORTH IN THIS AGREEMENT WITH RESPECT TO THE WARRANTED WORK, MATERIALS AND EQUIPMENT. The foregoing sentence is not intended to disclaim any other obligations of Contractor set forth herein.

7.7 Survival of Warranties. The provisions of this Article VII shall survive the expiration or termination of this Agreement.

ARTICLE VIII

FORCE MAJEURE; OWNER-CAUSED DELAYS

8.1 Force Majeure.

8.1.1 Notice. If a Party believes that an event constituting a Force Majeure Event has occurred that has or will prevent or delay the performance of its obligations under this Contract, then such Party shall give the other Party written or electronic notice within ten (10) days after the Party became aware of such event (the "Force Majeure Notice"). The Force Majeure Notice need only be given to the other Party's on-site manager or supervisor (Owner's Project Manager), but shall be in writing or via email. Within thirty (30) Days after the Force Majeure Notice, the Party claiming a Force Majeure Event shall, to the extent practicable; (i) specify the length of the delay occasioned by, and additional costs incurred by reason of such Force Majeure Event; (ii) describe the particulars of the cause and nature of the Force Majeure Event; and (iii) provide evidence of the occurrence of such Force Majeure Event. At all times after the Force Majeure Notice, the affected Party shall continue to furnish timely regular reports with respect thereto during the continuation of the Force Majeure Event.

8.1.2 Excuse of Non-Performance. So long as the conditions set forth in this Section 8.1.2 are satisfied, except with regard to payment obligations, neither Party shall be responsible or liable for or deemed in breach of this Agreement because of any failure or delay in complying with its obligations under or pursuant to the Agreement to the extent that such failure

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has been caused, or contributed to, by one or more Force Majeure Events or its effects or by any combination thereof; provided that in such event:

(a) any liability of either Party which arose before the occurrence of the Force Majeure Event causing the suspension of performance shall not be excused as a result of the occurrence;

(b) the affected Party shall continually exercise all commercially reasonable efforts to alleviate and mitigate the cause and effect of such Force Majeure Event, remedy its inability to perform, and limit damages to the other Party;

(c) the affected Party shall use all reasonable efforts to continue to perform its obligations hereunder and to correct or cure the event or condition excusing performance; and

(d) when the affected Party is able to resume performance of the affected obligations under the Agreement, that Party shall give the other Party written notice to that effect, and the affected Party promptly shall resume performance under the Agreement, provided that in the event that a Force Majeure Event causes a prolonged delay to the Project, Owner may elect to terminate this Agreement pursuant to Section 12.3.

8.1.3 Change Order Rights. If Contractor desires a Change Order for a Force Majeure Event, Contractor shall comply with the Force Majeure Notice requirements contained in Section 8.1.1. If Contractor does so, it will be entitled to a Change Order to the extent so provided in Section 9.5.1(a). If Contractor fails to comply with such notice requirements, then Contractor will be deemed to have waived its right to receive a Change Order for the subject Force Majeure Event.

8.1.4 Burden of Proof. The burden of proof as to whether a Force Majeure Event has occurred and whether the Force Majeure Event excuses a Party from performance under this Section 8.1 shall be upon the Party claiming such Force Majeure Event.

8.2 Owner-Caused Delay.

8.2.1 Without limiting the definition of Owner-Caused Delays, notwithstanding anything in this Agreement to the contrary, in any case where this Agreement states that Owner “shall cause” the Other Owner Contractors to take or not to take a certain action, the Parties agree that if the Owner fails to meet that obligation, such failure shall exclusively constitute an Owner-Caused Delay and shall not constitute an Owner Event of Default, and Contractor’s sole and exclusive remedies as a result thereof will be as set forth in this Section 8.2 and Section 9.5.1(c).

8.2.2 Notice. If Contractor believes an Owner-Caused Delay has occurred, then Contractor shall give Owner’s Project Manager written or electronic notice describing the alleged Owner-Caused Delay within ten (10) days following the date on which Contractor became aware of the occurrence of an event Contractor believes is or may be an Owner-Caused Delay and Contractor’s notice shall describe the details of the Owner-Caused Delay and any effects on Contractor’s performance of its obligations under this Agreement.

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8.2.3 Excuse of Non-Performance. So long as the conditions set forth in this Section 8.2 are satisfied, Contractor shall not be responsible or liable for or deemed in breach of the Agreement because of any failure or delay in completing the Work in accordance with the Project Schedule or achieving any Key Milestone to the extent that such failure has been caused by one or more Owner-Caused Delays, provided that: (a) such suspension of performance and extension of time shall be of no greater scope and of no longer duration than is required by the effects of the Owner-Caused Delay; (b) Contractor provides timely notice of the Owner-Caused Delay, and (c) Contractor provides all assistance reasonably requested by Owner, at Owner's cost, for the elimination or mitigation of the Owner-Caused Delay.

8.2.4 Change Order Rights. If Contractor desires a Change Order for an Owner-Caused Delay, Contractor shall comply with the notice requirements contained in Section 8.2.2. If Contractor does so, it will be entitled to a Change Order to the extent so provided in Section 9.5.1(c). If Contractor fails to comply with such notification requirements, Contractor will be deemed to have waived its right to receive a Change Order for the subject Owner-Caused Delay.

8.3 No Effect on Obligation to Pay Delay Liquidated Damages. Adjustments to the Project Schedule (including the Guaranteed Substantial Completion Date) may occur as a result of any of the events described in this Article VIII. Unless dates for performance are adjusted by an executed Change Order, the obligation to pay Delay Liquidated Damages on the Guaranteed Substantial Completion Date shall not be affected.

ARTICLE IX

CHANGES

9.1 Changes. Except to the extent expressly provided in this Article IX, there shall be no change to the Work, the Contract Price or the Project Schedule except to the extent provided in a written instrument signed by Owner and Contractor in substantially the form attached to this Agreement as Exhibit M (a "Change Order") stating their mutual agreement upon all of the following: (a) a change in the Work, if any; (b) the amount of the adjustment in the Contract Price, if any; and (c) the extent of the adjustment in the Project Schedule, if any (any of the foregoing, a "Change").

9.2 Changes at Owner's Request. Owner may, from time to time, without invalidating this Agreement, order or approve by notification in writing to Contractor (a) Changes in all or a portion of the Work or (b) acceleration of the Work, including to recover from delays caused by an Owner-Caused Delay, a Force Majeure Event or suspension of the Work by Owner in accordance with Section 12.6. Contractor shall review and consider any request from Owner for such a Change and shall make a written response thereto within seven (7) days after receiving such request. If giving effect to any Change so requested by Owner will increase or decrease its cost of performing the Work, shorten or lengthen the time needed for completion of the Work, require modification of its warranties in Article VII or require a modification of any other provisions of the Agreement, the Parties shall agree to issue Change Order adjusting the Contract Price upwards or downwards and the Project Schedule accordingly (including any amendments to the Agreement). Each Change Order shall

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constitute a final settlement of all items covered therein, including any compensation for impact on, or delay or acceleration in, performing the Work.

9.3 No Unapproved Changes. Contractor shall not perform any Changes to the Work until Owner has approved in writing the proposed adjustments or has expressly authorized Contractor in writing to perform the Change prior to such approval. If Owner does not approve the proposed adjustments and Contractor and Owner are unable mutually to agree upon alternative adjustments, Owner may by written notice to Contractor cancel the Change. Upon receiving from Owner a written approval or written authorization to perform, Contractor shall diligently perform the Change in accordance with and subject to all of the terms of this Agreement. Contractor shall not suspend, in whole or in part, performance of this Agreement during any Dispute over any Change Order unless directed to do so by Owner, and if directed to proceed with a Change or disputed item pending review and agreement upon adjustments, Contractor shall (without waiving any rights with respect to such Change or disputed item) do so.

9.4 Changes Initiated by Contractor. Promptly after Contractor becomes aware of any circumstances which Contractor has reason to believe may necessitate a Change, Contractor will issue to Owner a “Change Order Request”. All Change Order Requests shall include documentation sufficient to enable Owner to determine: (a) the factors necessitating the possibility of a Change; (b) the impact which the Change is likely to have on the Contract Price; (c) the impact which the Change is likely to have on the timely achievement of the activities set forth in the Project Schedule (including the Guaranteed Substantial Completion Dates); and (d) such other information which Owner may request in connection with such Change. Owner may, but except as provided in Section 9.5 below, shall not be obligated to, issue a Change Order pursuant to a Change Order Request.

9.5 Permitted Change Orders.

9.5.1 Provided that Contractor has notified Owner as required and has used all reasonable efforts to avoid and mitigate any potential delays to the Project Schedule or increased Direct Costs resulting from such events, Contractor will, to the extent described in Sections 9.5.2 and 9.5.3, be entitled to receive Change Orders as and for the events described in this Section 9.5.1.

(a) Change Order Due to Force Majeure Event. Subject to Sections 8.1, and 9.5.1, if and to the extent that a Force Majeure Event causes Contractor to suffer a delay in achieving any Key Milestone, Owner will issue a Change Order extending the Project Schedule to the extent required under Section 9.5.2. Subject to Sections 9.5.1, 8.1, and 13.3, in the event one or more Force Majeure Events occurring at the Project Site, directly cause delays in the Work exceeding thirty (30) days in the aggregate, Owner will, via Change Order, increase the Contract Price to the extent required under Section 9.5.3. Such Change Orders shall be Contractor’s sole and exclusive remedy for any increased costs associated with delays caused by any Force Majeure Events, and Contractor will not be entitled to any additional payment, damages and costs or other compensation in connection with any such delays.

(b) Change Order Due to Suspension of Work by Owner. Subject to Section 9.5.1, if after the Effective Date Owner suspends the Work pursuant to the provisions of

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Section 12.6, then: (A) Owner shall issue a Change Order extending the Project Schedule to the extent required under Section 9.5.2; and (B) to the extent that such suspension increases Contractor's Direct Costs in performing the Work, Owner will, via Change Order, increase the Contract Price to the extent required under Section 9.5.3. Such Change Order shall be Contractor's sole and exclusive remedy for any increased costs and delays resulting from such suspension of Work by Owner, and Contractor will not be entitled to any additional payment, damages or other compensation in connection with any such delays.

(c) Change Order Due to Owner-Caused Delay. Subject to Section 9.5.1 and Section 8.2, (i) if and to the extent that an Owner-Caused Delay causes Contractor to suffer a delay in the performance of the Work, Owner will issue a Change Order extending the Project Schedule to the extent required under Section 9.5.2, and (ii) if and to the extent that such Owner-Caused Delay increases Contractor's Direct Costs in performing the Work, Owner will, via Change Order, increase the Contract Price to the extent required under Section 9.5.3. Such Change Order(s) shall be Contractor's sole and exclusive remedy for any delays and increased costs resulting from an Owner-Caused Delay, and Contractor will not be entitled to any payment, damages or other compensation in connection with any such delays or increased costs.

(d) Change Order Due to Unforeseen Subsurface Condition. Subject to Section 9.5.1 and Section 2.3.1(b), (i) if and to the extent that an Unforeseen Subsurface Condition causes Contractor to suffer a delay in the performance of the Work, Owner will issue a Change Order extending the Project Schedule to the extent required under Section 9.5.2, and (ii) if and to the extent that such Unforeseen Subsurface Condition increases Contractor's Direct Costs in performing the Work, Owner shall, via Change Order, increase the Contract Price to the extent required under Section 9.5.3. Such Change Order(s) shall be Contractor's sole and exclusive remedy for any delays and increased costs resulting from an Unforeseen Subsurface Condition, and Contractor will not be entitled to any payment, damages or other compensation in connection with any such delays or increased costs.

(e) Change Order Due to Pre-Existing Hazardous Materials. Subject to Section 9.5.1, if and to the extent that Contractor discovers any Pre-Existing Hazardous Material that has been stored, released or disposed of at the Project Site, and, as required under Section 2.6, Contractor stops performance of the Work in that area, then, once such Work is re-commenced, Owner will issue a Change Order extending the Project Schedule to the extent required under Section 9.5.2. Subject to Section 9.5.1, if and to the extent that such cessation of Work increases Contractor's Direct Costs in performing the Work, Owner shall, via Change Order, increase the Contract Price to the extent required under Section 9.5.3. Such Change Order(s) shall be Contractor's sole and exclusive remedy for any delays and increased costs resulting from any such cessation of the Work, and Contractor will not be entitled to any payment, damages or other compensation in connection with any such delays or increased costs.

(f) Change Order Due to Change of Law. Subject to Section 9.5.1, if and to the extent that a Change of Law occurs that (a) directly delays Contractor in its ability to achieve any Key Milestone, then Owner will, via Change Order, extend the Project Schedule as described in Section 9.5.2, and/or (b) directly increases Contractor's Direct Costs of performing the Work by more than \$[____], then Owner will, via Change Order, increase the Contract Price as described in Section 9.5.3. Change Order(s) issued under this Section 9.5.1(f) shall be

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Contractor's sole and exclusive remedy and compensation for any additional costs and/or delays resulting from any Change of Law, and Contractor will not be entitled to any additional payment, damages or other compensation in connection therewith.

9.5.2 Changes Involving Schedule Extensions. To the extent that Contractor demonstrates that an event for which it is entitled to a Change as described in Section 9.5.1 is the sole cause of critical path delay to Contractor's ability to perform the Work despite Contractor's use of commercially reasonable efforts to mitigate and avoid any such delay, Owner shall issue a Change Order to extend the dates in the Project Schedule as necessary to accommodate such delay. Contractor's demonstration of the impact on the critical path of the Work must be made on a basis that analyzes the actual impacts of the given event on the then-current schedule for completion of the Work. In no event will Contractor be entitled to an extension of time under this Section 9.5.2 to the extent that the performance of the Work for which the extension is sought would have been suspended, delayed or interrupted by the concurrent fault, actions or omissions of Contractor.

9.5.3 Changes to the Contract Price.

(a) Except as set forth in Section 9.5.3(b), with respect to any Change Order required to be issued to increase the Contract Price as a result of an event described in Section 9.5.1, unless the Parties agree otherwise in writing, such Change Order will, on a retrospective basis, increase the Contract Price by an amount equal to the Direct Costs incurred by Contractor solely in connection with such event, plus a mark-up. The mark-up is not to exceed _____ percent (___%) in the aggregate, including all Subcontractor and Contractor mark-ups solely in connection with such Change.

(b) In no event will Contractor be entitled to payment for Direct Costs hereunder to the extent that such costs would have occurred notwithstanding such event, due to the concurrent fault, actions or omissions of Contractor or its Subcontractors.

(c) For purposes hereof, "Direct Costs" shall mean only the actual, documented costs that are directly incurred by Contractor as a result of the event giving rise to the Change Order for the following items: (i) compensation for labor utilized and in the direct employ of Contractor at the Project Site, at the rates as set forth in Exhibit B-4; (ii) cost of materials and permanent equipment; (iii) payments properly made by Contractor to Subcontractors; (iv) rental charges of necessary machinery and equipment (but excluding hand tools) used at the Project Site; (v) Permit fees; (vi) compensation of engineers or other design professionals employed directly by Contractor; and (vii) reasonable costs of mobilization and demobilization. Notwithstanding the foregoing, "Direct Costs" shall not include (t) salaries or other compensation (including costs of contributions, assessments, fringe benefits or taxes based on salaries or compensation) of Contractor's Personnel at Contractor's principal office and branch offices (except as provided in the previous sentence); (u) expenses of Contractor's principal and branch offices; (v) Contractor's profit, overhead or general expenses of any kind; (w) any replacement, repair or other costs or liabilities arising from any loss of or damage to any equipment, tools or other property owned or used by Contractor or its Subcontractors; (x) costs to correct or reperform any components of such Work as a result of the acts or omissions of Contractor or its Personnel; (y) any fines or penalties assessed against Contractor or its Personnel in connection with such Work that were assessed due

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to the fault of Contractor or its Personnel; (z) any Builder's All Risk deductibles; or (aa) any costs or expenses other than those specifically set forth above as Direct Costs.

9.5.4 Taxes. The Parties acknowledge that the provisions of Section 4.2 will apply to any additional Work covered by any Change Order.

9.5.5 Offsets. If Owner so requests, Contractor will in good faith work with Owner to enable a reduction in any required schedule extension hereunder via a Change Order directing and paying for achievable acceleration.

ARTICLE X

INDEMNIFICATION

10.1 Indemnities.

10.1.1 Contractor's General Indemnity. Contractor shall defend, indemnify, reimburse and hold harmless, Owner, Other Owner Contractor, the financing parties and each of their subsidiaries and Affiliates, and the directors, officers, agents, employees, successors and assigns of each of them, and the owners of the real property comprising the Project Site (each of the foregoing, an "Owner Indemnified Party") from and against any and all losses, costs, damages, injuries, liabilities, claims, demands, penalties, assessments, interest and causes of action, expenses, including reasonable attorney's fees, incurred by or asserted against any Owner Indemnified Party, including third-party claims, as a result of any and all of the following:

(a) any bodily injury, death or damage to property caused by any negligent act or omission (including strict liability) or willful misconduct relating to or arising out of the performance of the Work or any curative action under any warranty related to the Work, following performance of the Work by Contractor or any Affiliate thereof, any Subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts such Person may be liable;

(b) any claims resulting from bodily injury, death or property damage arising out of Defects or breach of Warranty;

(c) claims by any Government Authority for any Contractor's Taxes;

(d) any pollution or contamination that may originate from sources in Contractor's or its Subcontractors' possession, use and control or caused by the negligence of Contractor, any Subcontractor or anyone directly or indirectly employed by any of them, or anyone for whose acts such Person may be liable (including as a result of the negligent release of Pre-Existing Hazardous Materials, the negligent exacerbation of Pre-Existing Hazardous Materials or negligent rendering of removal or remediation of Pre-Existing Hazardous Material more costly), including from Hazardous Material, industrial hazards, bilge and garbage;

(e) any Lien on the Work, Equipment, the Project, the Project Site, or any fixtures or personal property included in the Work (whether or not any such Lien is valid or enforceable) to the extent Owner has paid all amounts due relating to the Work that is the subject

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of such Lien, created by, through or under, or as a result of any act or omission (or alleged act or omission) of, Contractor or any Subcontractor or other Person providing services, equipment or materials in connection with the Work;

(f) any claim, action or proceeding by any Person for unauthorized disclosure, infringement or use of any Intellectual Property Right arising from or related to (i) Contractor's performance (or that of its Affiliates, Subcontractors) under the Agreement, (ii) the design, construction, use, operation or ownership of the Work (including the Equipment, Contractor Deliverables or any portion of any of them), or (iii) Owner's use of any license granted hereunder. Without limiting Contractor's other obligations under this Agreement, if Owner is enjoined from completing the Project or any part thereof, or from the use, operation or enjoyment of the Project or any part thereof, as a result of such claim or legal action or any litigation based thereon, Contractor shall, in addition to its indemnification obligations hereunder, promptly use commercially reasonable efforts to have such injunction removed at no cost to Owner. Contractor shall timely notify Owner in writing of any claims which Contractor may receive alleging infringement of patents or other proprietary rights that may affect Contractor's performance of the Work, provided that in the event that such efforts are not effective within a period of sixty (60) days after the imposition of such injunction, Owner may take such steps as may be necessary to remove the injunction, including obtaining any necessary license, at Contractor's sole expense;

(g) any cancellation or invalidation of any insurance policy or part thereof procured under Article XI as a result of Contractor's failure to comply with any of the requirements set forth in such policy or any other act by Contractor or any Subcontractor (but only to the extent Contractor knows the requirements and they are attached hereto);

(h) any failure of Contractor to comply with, or failure of the Work to comply with, or be capable of operating in compliance with, Applicable Laws, the conditions or provisions of Applicable Permits, Prudent Industry Practices, any applicable Real Property Requirements; or

(i) any claims with respect to employer's liability or worker's compensation filed by any employee of Contractor or any of its Subcontractors, except to the extent caused by the negligent acts or omissions of Owner, Equipment Provider or Other Owner Contractors.

10.1.2 Owner's Indemnity. Owner shall defend, indemnify and hold harmless, Contractor and its directors, officers, agents, employees, successors and assigns from and against any and all losses, costs, damages, injuries, liabilities, claims, demands, penalties, assessments, interest and causes of action, expenses, including reasonable attorney's fees, incurred by or asserted against any such Person (a) as a result of the injury or death of any Person, including employees of Owner, Contractor or any Person employed by any of them for whose acts any of them may be liable, but only to the extent caused by Owner's negligent acts or omissions, (b) as a result of any loss of or damage to property, but only to the extent caused by from Owner's negligent acts or omissions, (c) any claims by any Government Authority for any Owner Taxes or for any claims directly arising from following Owner's direction to seek exemptions or rebates for certain taxes as described in Section 4.2.1(b); or (d) as a result of any release of a Pre-Existing Hazardous

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Material, except to the extent Contractor has an indemnification obligation with respect thereto pursuant to Section 10.1.1.

10.2 Indemnification Procedure.

10.2.1 Notice of Proceedings. The Person claiming to be indemnified under the terms of this Article X (the “Indemnified Person”) shall give the Party from which indemnification is sought (the “Indemnifying Party”) written notice of commencement of any legal action or of any claims against such Indemnified Person in respect of which indemnification will be sought, together with a copy of such claim, process or other legal pleading. Failure of the Indemnified Person to give such notice will not reduce or relieve the Indemnifying Party of liability hereunder unless and to the extent that the Indemnifying Party was precluded from defending such claim, action, suit or proceeding as a result of the failure of the Indemnified Person to give such notice. In any event, the failure to so notify shall not relieve the Indemnifying Party from any liability that it may have to the Indemnified Person otherwise than under this Article X.

10.2.2 Conduct of Proceedings. Each Party and each other Indemnified Person shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against it arising out of any matter in respect of which it is entitled to be indemnified hereunder and the reasonable costs and expenses thereof (including reasonable attorneys’ fees and expert witness fees) shall be subject to the said indemnity; provided that the Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding at its expense upon its giving written notice thereof to the Indemnified Person, and such Indemnifying Party shall conduct with due diligence and in good faith the defense of any claim against such party, whether or not the Indemnifying Party shall be joined therein, and the Indemnified Person shall cooperate with the Indemnifying Party in such defense. The Indemnified Person may elect to participate through separate counsel in the defense of any such claim, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person unless (a) there exists a material conflict of interest between the Indemnifying Party and such Indemnified Person in the conduct of the defense of such claim or (b) the Indemnifying Party did not employ counsel to assume the defense of such claim within a reasonable time after notice of the commencement thereof or (c) the Indemnified Person reasonably concludes and specifically notifies the Indemnifying Party that there may be specific defenses available to it which are different from or additional to those available to the Indemnifying Party. In each of such cases the Indemnifying Party shall not have the right to control the defense or settlement of such claim and the reasonable fees and expenses of counsel engaged by the Indemnified Person shall be at the expense of the Indemnifying Party. Indemnifying Party shall give prompt written notice to Indemnified Person of any proposed settlement of an indemnified claim. Indemnifying Party may not, without Indemnified Person's prior written consent, settle or compromise any claim or consent to the entry of any judgment regarding which indemnification is being sought hereunder unless such settlement, compromise or consent (i) includes an unconditional release of Indemnified Person from all liability arising out of such claim, (ii) does not contain any admission or statement suggesting any wrongdoing or liability on behalf of Indemnified Person, and (iii) does not contain any equitable order, judgment or term (other than the fact of payment or the amount of such payment) that in any manner affects, restrains or interferes with the business of Indemnified Person or any of its Affiliates.

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10.2.3 Contributory Negligence. If the joint, concurring, comparative or contributory fault or negligence of the Parties gives rise to damages for which the Parties are entitled to indemnification under this Article X, then such damages shall be allocated between the Parties in proportion to their respective degrees of fault or negligence contributing to such damages.

10.2.4 Survival of Indemnities. The indemnities set forth in this Article X shall survive the termination or expiration of this Agreement.

ARTICLE XI

INSURANCE

From the first to occur of the LNTP Date or the Notice to Proceed Date through and including the Final Completion Date, except as otherwise specified, Owner and Contractor shall procure and maintain, or cause to be procured and maintained, the insurance coverages set forth in Exhibit P-1 and identified therein as Owner's or Contractor's responsibility with one or more duly licensed insurance carrier(s).⁹

ARTICLE XII

DEFAULT, TERMINATION AND SUSPENSION

12.1 Contractor Default.

12.1.1 Contractor Events of Default. The occurrence of any one or more of the following events shall constitute an event of default by Contractor hereunder ("Contractor Event of Default"):

(a) any of the following (each a "Bankruptcy or Insolvency Event") occurs (i) Contractor consents to the appointment of or taking possession by, a receiver, a trustee, custodian, or liquidator of itself or of a substantial part of its assets, or fails or admits in writing its inability to pay its debts as they become due, or makes a general assignment for the benefit of creditors; (ii) Contractor files a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any applicable bankruptcy or insolvency laws of any jurisdiction, whether now or hereafter in effect, or files an answer admitting the material allegations of a petition filed against it in any such proceeding, or seeks relief by voluntary petition, answer or consent, under the provisions of any now existing or future bankruptcy, insolvency or other similar law of any jurisdiction, whether now or hereafter in effect, providing for the liquidation, reorganization, or winding up of corporations, or providing for an agreement, composition, extension, or adjustment with creditors; (iii) a substantial part of Contractor's assets is subject to the appointment of a receiver, trustee, liquidator, or custodian by court order and such order shall remain in effect for more than thirty (30) days; or (iv) Contractor is adjudged bankrupt or insolvent, has any property sequestered by court order and such order shall remain in effect for

⁹ Note to Draft: Insurance Exhibit to include (i) coverage requirements and limits, (ii) mutual waivers of subrogation (iii) naming the other party as an additional insured and (iv) provide that it may not be canceled or materially changed without giving Owner 60 days prior written notice thereof.

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more than thirty (30) days, or has filed against it a petition under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and such petition shall not be dismissed within sixty (60) days of such filing;

(b) Contractor fails, for any reason, (i) to pay when due Delay Liquidated Damages as required herein or (ii) to make any other payment or payments required to be made to Owner under the Agreement within ten (10) Business Days after receipt of written notice from Owner of Contractor's failure to make such other payment or payments (except to the extent Contractor disputes such other payment or payments in good faith and in accordance with the terms of this Agreement);

(c) Contractor fails to comply with any material provision of any Applicable Law, Applicable Permit, or applicable Real Property Requirement, the effects of which have not been cured to Owner's reasonable satisfaction within ten (10) Business Days after notice from Owner, provided, if such failure to comply is not capable of being cured within ten (10) Business Days, Contractor shall not be in default so long as Contractor commences to cure within ten (10) Business Days and thereafter diligently proceeds to cure such breach in a manner reasonable satisfactory to Owner;

(d) either of the following occurs: (i) Contractor fails to make payments when due to Subcontractor for services, materials or equipment beyond applicable notice and cure periods, unless such payments are reasonably disputed by Contractor and any Liens relating to such disputed payments are satisfied or bonded off by Contractor; or (ii) Contractor suspends performance of a material portion of the Work resulting in the Work not progressing substantially in accordance with the Project Schedule (other than as permitted under Article VIII or pursuant to a Change Order); and in each instance as described in each of sub-clauses (i) and (ii) of this Section 12.1.1(d), the impacts of such condition remain un-remedied for five calendar days following written notice thereof to Contractor;

(e) any material breach by Contractor of any representation or warranty contained in Article XV, the impacts of which have not been cured to Owner's reasonable satisfaction within ten (10) Business Days after notice from Owner;

(f) Contractor fails to: (i) provide a written recovery plan within the time provided for in Section 2.5.3 and satisfying the requirements of Section 2.5.3; or (ii) implement the recovery plan in a diligent and timely manner and, in any case, within the schedule provided for in such recovery plan.

(g) Contractor reaches the limitations of Delay Liquidated Damages set forth in Section 6.6.1 before Contractor achieves all of the Key Milestones;

(h) the transfer by Contractor of (i) all or a substantial portion of the rights or obligations of Contractor hereunder, except for an assignment permitted hereunder, or (ii) all or a substantial portion of the assets or obligations of Contractor;

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(i) any failure by Contractor to maintain the insurance coverages required of it in accordance with Article XI, the impacts of which have not been cured to Owner's reasonable satisfaction within ten (10) Business Days after notice from Owner;

(j) Contractor fails to provide or maintain in effect each Letter of Credit or the Payment and Performance Bond ;

(k) Contractor is in breach of any provision of this Agreement or has failed to perform its obligations under the Agreement (other than those breaches specified in this Section 12.1.1 (a) through (l)) and (i) such breach is not cured by Contractor within fifteen (15) days after notice thereof from Owner, or (ii) if such breach is not capable of being cured within such fifteen (15) day period, Contractor (A) fails to commence to cure such breach within such fifteen (15) day period, or (B) fails to thereafter diligently proceed to cure such breach in a manner reasonably satisfactory to Owner in its sole discretion; or

(l) Contractor fails to achieve [Mechanical Completion] or Project Substantial Completion within [____] days after the guaranteed date therefor.

12.1.2 Termination for Cause. Upon the occurrence and during the continuation of any Contractor Event of Default hereunder, Owner, in addition to its right to pursue any other remedy given under this Agreement or now or hereafter existing at law or in equity or otherwise, shall have the right to terminate this Agreement by written notice to Contractor (a "Termination for Cause"). A Termination for Cause shall be effective upon delivery of Owner's notice with respect thereto. In the event of a termination by Owner under this Article XII, Owner shall have the right to take possession of and use all Contractor Deliverables and all of the equipment owned by Contractor or an Affiliate and located at the Project Site on the date of such termination for the purpose of completing the Work (provided that Owner will bear the risk of loss or damage to the same thereafter, until turnover back to Contractor or the Affiliate) and may employ any other Person to complete the Work by whatever method that Owner may deem necessary. In addition, Owner may make such expenditures as in Owner's sole judgment will accomplish the timely completion of the Work in accordance with the terms hereof. Owner shall, within a reasonable period of time after the Work is finally completed by the work of one or more replacement contractors, determine the total cost to Owner for completing the Work in accordance with the Scope of Work, and the other requirements of this Agreement, including all sums previously paid or then owed to Contractor pursuant to this Agreement. In contracting with such replacement contractors, Owner shall, to the extent practicable, cause the Work to be completed in accordance with the Agreement and shall employ reasonable efforts to mitigate the costs incurred in connection with completion of the Work. If the Contract Price is less than the sum of (i) all costs and expenses incurred by Owner to engage a substitute contractor to complete (or cure deficiencies in) the Work, including overhead and legal, engineering and other professional expenses, (ii) all other costs, expenses and damages suffered by Owner as a result of a default or breach by Contractor of the requirements of this Agreement and the termination of the of the Agreement as a result thereof, (iii) the amount of Delay Liquidated Damages that would be due and owing to Owner in accordance with this Agreement (and subject to the aggregate cap on Delay Liquidated Damages set forth in Section 6.6.1) if no such Termination for Cause had occurred and Contractor had achieved Substantial Completion of the Project at the date that Owner ultimately so achieved Substantial Completion, and (iv) all amounts previously paid to Contractor pursuant to this

APPENDIX I

Agreement, Contractor shall pay to Owner on demand the amount of such difference. Any amount owed by Owner to Contractor for the completion of the Work shall be retained by Owner until after completion of the Work and applied by Owner to pay any amounts and damages owed by Contractor pursuant to this Section 12.1.2 or otherwise. Any excess of the amount retained over the amount due under this Section 12.1.2 shall be remitted to Contractor within sixty (60) days after the Final Completion Date.

12.1.3 Other Owner Remedies. Upon the occurrence and during the continuance of a Contractor Event of Default but prior to termination of this Agreement by Owner, Owner may, without prejudice to any of its other rights or remedies, (a) seek performance by any surety of Contractor's obligations hereunder, (b) seek equitable relief to cause Contractor to take action or to refrain from taking action pursuant to this Agreement, or to make restitution of amounts improperly received under this Agreement, (c) make such payments or perform such obligations as are required to cure such Contractor Event of Default, make a claim against any security provided pursuant to this Agreement and offset the cost of such payment or performance against payments otherwise due to Contractor under this Agreement, provided that Owner shall be under no obligation to cure any such Contractor Event of Default, or (d) otherwise seek damages, including proceeding against any bond, guarantee, letter of credit, or other security given by or for the benefit of Contractor for its performance under this Agreement.

12.2 Owner Default. Owner's failure to pay to Contractor any required payment that is not in dispute, which failure continues for thirty (30) Days after written notice of failure has been received by Owner from Contractor, shall constitute an event of default by Owner hereunder (an "Owner Event of Default"). Upon any Owner Event of Default, Contractor may terminate this Agreement thirty (30) days after giving written notice thereof to Owner so long as the amount owed by Owner (other than any amount disputed in accordance with the terms of this Agreement) is not paid within such thirty (30)-day period (a "Contractor Termination for Cause"). In the event of a Contractor Termination for Cause, Contractor shall be entitled to recover an amount equal to the Termination Payment. Unless Contractor terminates this Agreement pursuant to the foregoing provisions, Contractor shall not suspend or delay performance of the Work because of any Owner Event of Default. Contractor shall continue performance of the Work during any dispute over payment, so long as Owner continues to pay all undisputed amounts. Other than as stated above, Contractor will have no right to terminate this Agreement, and Contractor acknowledges that its sole and exclusive remedies for any failure of Owner to comply with its obligations under this Agreement (other than nonpayment as described above) are limited to receipt of a Change Order as described in Section 9.5.

12.3 Termination Without Cause. Owner may for its convenience terminate this Agreement after giving notice to Contractor in which event Contractor shall be entitled to be paid the Termination Payment under Section 12.4. As a condition to any termination by Owner pursuant to this Section 12.3 (a "Termination Without Cause"), Owner must provide written notice to Contractor of the Termination Without Cause at least three (3) Business Days prior to the effective date of such termination. If, at the date of termination under this Section 12.3, Contractor has properly performed services or purchased, prepared or fabricated off the Project Site any materials or Equipment for subsequent incorporation at the Project Site, Owner shall have the option of having such materials or Equipment delivered to the Project Site or to such other place as Owner shall reasonably direct.

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12.4 Termination Payment.

12.4.1 Termination Payments Due to Contractor. Upon a termination of this Agreement pursuant to Section 12.2 or Section 12.3 and subject to Owner's rights under Sections 4.6 and 4.8 Contractor shall be entitled to a payment (the "Termination Payment"), which shall equal the sum of the following, without duplication: (a) that portion of the Contract Price that is applicable to Work completed up to the date of termination that has not previously been paid to Contractor (as determined below); (b) the expenses reasonably incurred by Contractor in withdrawing Contractor's Equipment and Personnel from the Project Site and in otherwise demobilizing; and (c) the expenses reasonably incurred by Contractor in terminating contracts with Subcontractors pertaining to the Work (excluding fees of any Affiliates of Contractor), except to the extent Owner has instructed Contractor not to terminate such contracts, in which event such contract will be assigned to Owner, subject to Owner's assumption of same and, if required, Owner's adequate assurance to such Subcontractors regarding Owner's ability to pay. The Termination Payment shall not include any costs incurred by Contractor after the date of the event giving rise to such termination that Contractor reasonably could have mitigated. Contractor shall use all reasonable, diligent efforts to mitigate the costs associated with termination of this Agreement, including identifying and pursuing other uses for Equipment or supplies manufactured or obtained pursuant to this Agreement.

12.4.2 Payment of Termination Payment. Contractor shall submit an invoice to Owner for the Termination Payment with the supporting information and documentation of any fees or expenses claimed by Contractor pursuant to Section 12.4.1. Upon review and agreement that such invoice is proper, Owner shall pay such invoice within thirty (30) days after its receipt of same unless it disputes in good faith certain elements thereof, in which event only the undisputed portion of the Termination Payment need be made within such thirty (30) day period; provided, that payments for termination under Section 12.3 shall be due Contractor within thirty (30) days after receipt of a substantiated invoice and Owner's receipt of any and all Equipment and Work under Sections 12.3 and 12.5. As a condition precedent to receiving any Termination Payment, Contractor shall comply with Section 12.5 in its entirety.

12.4.3 Termination Payment Contractor's Sole Remedy. 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 this Agreement under Section 12.2 or Section 12.3, and in such event Owner shall have no further liability to Contractor notwithstanding the actual amount of damages that Contractor may have sustained in connection with such termination. Calculation of the Termination Payment has been agreed upon and fixed hereunder because of the difficulty of ascertaining the exact amount of such damages Contractor will actually sustain in the event of a termination of this Agreement pursuant to Section 12.2 or Section 12.3, and Owner and Contractor agree that the calculation of the Termination Payment is reasonable.

12.5 Actions Required Following Termination.

12.5.1 Discontinuation of Work. Upon termination of this Agreement under Sections 12.1 or 12.3, Owner shall be immediately released from any and all obligations to Contractor (except for Owner's obligation to pay any amount specified in Section 12.4, if applicable), Contractor shall follow Owner's directions for the orderly turnover of the Project Site

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and the Work, and except as directed by Owner, Contractor shall remove from the Project Site its Personnel, all Contractor's Equipment, waste, rubbish and Hazardous Material brought onto the Project Site by Contractor or its Subcontractors or for which Contractor is otherwise responsible, and Owner shall be entitled to take exclusive possession of the Work, the Project Site, and any and all Equipment (including materials delivered or en route to the Project Site). Contractor immediately shall take such steps as are reasonably necessary to preserve and protect Work completed and in progress and to protect materials, equipment and supplies at the Project Site, stored off-site, or in transit.

12.5.2 Cancellation and Transfer of Subcontracts and Other Rights. If requested by Owner in the event of termination of this Agreement, Contractor will cancel existing contracts with Subcontractors upon terms as directed by Owner. Any payments to be made to a Subcontractor as a result of any such termination shall be paid by Contractor (subject to Section 12.4, in the event of a termination under Section 12.3). In the event of termination of this Agreement, Contractor shall also, as and to the extent requested by Owner, (a) irrevocably assign and deliver to Owner such Subcontracts, purchase orders, bonds, warranties and options made by Contractor in performance of the Work (but in no event shall Owner be liable for any action or default of Contractor occurring prior to such delivery and assignment), (b) provide to Owner without charge a license to use all rights to patented copyrighted, licensed or proprietary materials of Contractor and Subcontractors in connection with the Work, except as otherwise restricted herein, and (c) deliver to Owner originals of the Agreement, originals of all Drawings, to the extent available, Contractor Deliverables in process (except that Contractor may keep for its records copies, and, if sufficient originals exist, an original set, of the Agreement executed by Owner), all other materials relating to the Work, and all papers and documents relating to Applicable Permits, orders placed, bills and invoices, Lien releases and financial management under this Agreement. All deliveries hereunder shall be made free and clear of any Liens, security interests or encumbrances, except such as may be created by Owner. Except as provided herein, no action taken by Owner or Contractor after the termination of this Agreement shall prejudice any other rights or remedies of Owner or Contractor provided by Applicable Laws, the Agreement or otherwise upon such termination. In addition, Contractor shall assist Owner in preparing an inventory of all Equipment in use or in storage at the Project Site, and Contractor shall take such other action as required hereunder upon termination of this Agreement.

12.5.3 Surviving Obligations. This Article XII shall survive the termination or expiration of this Agreement.

12.6 Suspension by Owner for Convenience. Owner may suspend all or a portion of the Work to be performed under the Agreement at any time for any reason in its sole discretion by giving written notice thereof to Contractor. Such suspension shall continue for the period specified in the notice of suspension; provided that Contractor agrees to resume performance of the Work promptly upon receipt of notice from Owner. Upon receiving any such notice of suspension, unless the notice requires otherwise, Contractor shall: (a) immediately discontinue the Work on the date and to the extent specified in the notice; (b) place no further orders or subcontracts for Equipment, services or materials with respect to suspended Work, other than to the extent required in the notice; (c) promptly make every reasonable effort to obtain suspension, with terms satisfactory to Owner, of all orders, subcontracts and rental agreements to the extent they relate to performance of suspended Work; (d) continue to protect and

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maintain the Work performed, including those portions on which Work has been suspended; and (e) take any other reasonable steps to minimize costs and expenses associated with such suspension. Contractor shall use reasonable commercial efforts to include a suspension for convenience provision with terms similar to the foregoing in all subcontracts. After the conclusion of any suspension hereunder, Contractor will be entitled to a Change Order to the extent described in Section 9.5.1(b). If a suspension of Work continues for more than one hundred and eighty (180) days in the aggregate, Contractor may terminate this Agreement, which termination shall be deemed a Termination Without Cause.

ARTICLE XIII

TITLE AND RISK OF LOSS

13.1 Title to Project and the Work. Contractor warrants and guarantees that legal title to and ownership of the Work (including all Equipment) shall pass to Owner, free and clear of any and all Liens upon the earlier of (a) payment to Contractor of the portion of the Contract Price attributable to such Work and Equipment, and (b) in the case of Equipment, the delivery of such Equipment to the Project Site.

13.2 Title to Contractor Deliverables. Except as otherwise provided in this Article XIII, title to Contractor Deliverables, specifications and like materials (including the Job Books contents) which are owned by Contractor shall be transferred to Owner upon creation and delivered to Owner upon Project Substantial Completion (or otherwise as required in accordance with this Agreement). In addition, Contractor grants to Owner an irrevocable, royalty free, non-exclusive license to use and reproduce such Contractor Deliverables, specifications and other design documentation to which Contractor does not have title but has the right to grant sub-licenses for the purpose of completing, repairing, operating, maintaining, rebuilding and expanding the Project. Owner shall have the right to assign the benefit of such license to any financing parties in connection with granting a security interest in the Project, to a purchaser in connection with a transfer of the Project, or to any subsequent purchaser or assignee of same. Any such purchaser or assignee shall acquire such license subject to the same terms and restrictions as stated in this Section 13.2. Owner may retain the necessary number of copies of all such documents for purposes of construction, operation, maintenance and repair of the Project. Any costs to register such licenses in the United States shall be paid by Owner.

13.3 Risk of Loss. Notwithstanding passage of title as provided in Section 13.1, from the date hereof until the Project Substantial Completion Date, Contractor hereby assumes the risk of loss for all Equipment upon Delivery and the Work, including: (a) all Work completed on or off the Project Site and (b) all Work in progress. If any loss, damage, theft or destruction occurs to the Work or other items, on or off the Project Site, for which Contractor has so assumed the risk of loss hereunder, Contractor shall, at the option of Owner and at Contractor's cost, promptly repair or replace the property affected thereby. In such event, Contractor shall have access to [Owner's Builder's All Risk Policy]¹⁰, provided that in the event of a covered loss, Contractor shall pay any applicable deductible amount. Risk of loss for the Project and the Work shall pass to Owner (excluding Contractor's Equipment and other items to be

¹⁰ Note to Draft: Party responsible for procuring BAR policy subject to further review.

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removed by Contractor, which shall remain the responsibility of Contractor) on the Project Substantial Completion Date, provided, however, Contractor shall continue to be responsible for claims, physical loss or damage to the Work to the extent resulting from Contractor's or its Personnel's negligent acts or omissions, and failure to comply with the requirements of the Agreement. Notwithstanding the foregoing, if Contractor is obligated by the terms of this Agreement to perform additional Work subsequent to the date of completion for such Work, Contractor shall bear the risk of loss and damage with respect to such Work until such additional Work is complete.

ARTICLE XIV

DISPUTE RESOLUTION

14.1 Referral to Senior Management. In the event of any controversy, claim or dispute between the Parties arising out of or related to this Agreement ("Dispute"), the Parties' Project representatives will first attempt to resolve the Dispute informally through negotiation and consultation. If they are unable to do so, then within three (3) Business Days following the date of delivery of a written request by either Party, (i) each Party shall appoint as its representative a senior officer, and (ii) such senior officers shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively.

14.2 Mediation. Any Dispute that is not resolved pursuant to Section 14.1 may be submitted for mediation before a single mediator in accordance with the provisions contained herein and in accordance with the Commercial Mediation Procedures of the AAA in effect at the time of the mediation ("AAA Procedures"); provided, however, that in the event of any conflict between the procedures herein and the AAA Procedures the procedures herein shall control. The mediator will be named by mutual agreement of the Parties or by obtaining a list of five (5) qualified Persons from the Parties and alternately striking names. All mediation shall be administered by the AAA. All mediation shall take place in the City of Portland, Oregon, unless otherwise agreed to by the Parties. Each Party shall be required to exchange documents to be used in the mediation not less than five (5) Business Days prior to the mediation. The Parties shall use all commercially reasonable efforts to conclude the mediation as soon as practicable. All aspects of the mediation shall be treated as confidential. Neither the Parties nor any mediator may disclose the content or results of the mediation, except as necessary to comply with legal, audit or regulatory requirements. Before making any such disclosure, a Party shall give written notice to the other Party and shall afford such Party a reasonable opportunity to protect its interests. Each Party shall be responsible for its own expenses and one-half of any mediation expenses incurred to resolve the dispute. The mediator will provide the Parties with a fee and expense schedule in advance of mediation. Mediation will terminate by: (a) written agreement signed by both Parties, (b) determination by the mediator that the Parties are at an unresolvable impasse, or (c) two unexcused absences by either Party from the mediation sessions. The mediator will never participate in any claim or controversy covered by this Article XIV as a witness, collateral contract, or attorney and may not be called as a witness to testify in any proceeding involving the subject matter of mediation. O.R.S. §§ 36.100 to 36.238 will apply to the entire process of mediation.

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14.3 Legal Action. If the Parties are still unable to resolve their differences after good faith consideration of a resolution through mediation pursuant to Section 14.2, then each of the Parties hereby irrevocably consents and agrees that any legal action or proceedings with respect to this Agreement may be brought in the United States District Court for the District of Oregon or, if such court lacks subject matter jurisdiction, the courts of the State of Oregon located in the City of Portland, and any appellate court from any thereof. By execution and delivery of this Agreement and such other documents executed in connection herewith, each Party hereby irrevocably and unconditionally (a) consents to the personal and exclusive jurisdiction of the aforesaid courts, and agrees that it will not commence or consent to participate in any action, litigation or proceeding of any kind whatsoever against the other Party in any way related to such documents in any forum other than such courts, (b) agrees to be bound by any final judgment (after any and all appeals) of any such court with respect to such documents, (c) waives, to the fullest extent permitted by law, any objection it may now or hereafter have to the laying of venue of any action or proceeding with respect to such documents brought in any such court, and further waives, to the fullest extent permitted by law, any claim that any such action or proceeding brought in any such court has been brought in any inconvenient forum, (d) agrees that services of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Party at its address set forth in Section 16.4, or at such other address of which the Parties have been notified, and (e) acknowledges that there is no agreement between the Parties to arbitrate any dispute that may arise between them related to the subject matter of this Agreement.

14.4 WAIVER OF JURY TRIAL. EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

14.5 Attorneys' Fees. If either Party institutes any legal suit, action or proceeding against the other party arising out of or relating to this Agreement, including, but not limited to, contract, equity, tort, fraud and statutory claims, the prevailing party in the suit, action or proceeding will be entitled to receive, in addition to all other remedies to which the prevailing party may be entitled, the costs and expenses incurred by the prevailing party in conducting the suit, action or proceeding, whether incurred before suit, during suit, or at the appellate level, including reasonable attorneys' fees and expenses, court costs and other legal expenses such as expert witness fees, and all fees, taxes, costs and expenses incident to appellate, bankruptcy and post-judgment proceedings.

14.6 Survival. The provisions set forth in this Article XIV shall survive the termination or expiration of this Agreement.

ARTICLE XV

REPRESENTATIONS AND WARRANTIES

15.1 Contractor Representations. Contractor represents and warrants the following:

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15.1.1 Organization. It is a corporation duly organized, validly existing and in good standing under the laws of the state of its organization, and is duly authorized and qualified to do business in the State where the Project is located, and all other jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure to so qualify would have a material adverse effect on its ability to perform any of its obligations under this Agreement.

15.1.2 No Violation of Law; Litigation. It is not in violation of any Applicable Laws or Applicable Permits or judgments entered by any Government Authority which violations, individually or in the aggregate, would affect its performance of any of its obligations under this Agreement. Except as Contractor has disclosed in writing to the Owner prior to the Effective Date, there are no legal, administrative or arbitration proceedings or actions, controversies, investigations, actions or other proceedings, now pending or (to the best knowledge of Contractor) threatened against Contractor which, if adversely determined, could reasonably be expected to effect on the ability of Contractor to perform any of its obligations under this Agreement. Contractor does not know of any basis for any such proceedings, controversies, actions or investigations.

15.1.3 Licenses. It is the holder of all governmental consents, licenses, permissions and other authorizations and Permits required to operate and conduct its business now and as contemplated by this Agreement.

15.1.4 No Breach. None of the execution, delivery and performance of this Agreement, the consummation of the transactions herein contemplated, or compliance with the terms and provisions hereof, shall conflict with or result in a violation or breach of the terms, conditions or provisions of, or require any consent under, the charter or by-laws of Contractor, or any Applicable Law or regulation, order, writ, injunction, award, judgment or decree of any court, or any agreement, contract, indenture or other instrument to which Contractor is a party or by which it or its assets is bound or to which it or its assets is subject, or constitute a default under any such agreement or instrument.

15.1.5 Corporate Action. It has all necessary power and authority to conduct its business, own its properties and to execute, deliver and perform its obligations under this Agreement; the execution, delivery and performance by Contractor of this Agreement have been duly authorized by all requisite corporate action; and this Agreement has been duly and validly executed and delivered by Contractor and constitutes the legal, valid and binding obligation of Contractor enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

15.1.6 Experience. It has by itself and through its Subcontractors, full experience and proper qualifications to perform the Work, including to construct the Project and to erect and install the equipment.

15.1.7 Intellectual Property. It owns or has the right to use all Intellectual Property Rights necessary to perform the Work without conflict with the rights of others.

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15.1.8 Solvency. It is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete its obligations under this Agreement.

15.1.9 Certifications. All Persons who will perform any portion of the Work have and will have all business and professional certifications required by Applicable Law to perform their respective services under this Agreement.

15.1.10 Site Access. The access rights granted to or obtained by Contractor to the Project Site are adequate for the performance of the Work and operation of the Project.

15.2 Owner Representations. Owner represents and warrants that:

15.2.1 Organization. It is a _____ company duly formed, validly existing and in good standing under the laws of the State of _____, and is duly authorized and qualified to do business in the State where the Project is located and all other jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure to so qualify would have a material adverse effect on its ability to perform this Agreement.

15.2.2 No Breach. None of the execution and delivery of this Agreement, the consummation of the transactions herein contemplated, or compliance with the terms and provisions hereof and thereof, conflicts with or will result in a breach of, or require any consent under, the limited liability company agreement of Owner, or any Applicable Law or regulation, order, writ, injunction or decree of any court, or any agreement or instrument to which Owner is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument.

15.2.3 Corporate Action. It has all necessary power and authority to conduct its business, own its properties and to execute, deliver and perform its obligations under this Agreement; the execution, delivery and performance by Owner of this Agreement have been duly authorized by all requisite limited liability company action; and this Agreement has been duly and validly executed and delivered by Owner and constitutes the legal, valid and binding obligation of Owner enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

15.3 Survival of Representations and Warranties. The representations and warranties of Contractor herein shall survive execution and termination of this Agreement.

ARTICLE XVI

MISCELLANEOUS PROVISIONS

16.1 Confidentiality and Publicity.

16.1.1 Confidential Information and Permitted Disclosures. Each Party shall hold in confidence (a) any information provided or supplied by the other Party or its Personnel that is marked to be confidential, including such information as may have been provided or supplied prior to the Effective Date, (b) the commercial terms of any leases or other documents related to the

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Real Property Rights, and (c) the contents of this Agreement (collectively, “Confidential Information”). Both Parties shall inform their Affiliates, Subcontractors, suppliers and Personnel of their obligations under this Section 16.1 and require such Persons to adhere to the provisions hereof. Notwithstanding the foregoing, the following categories of information will not constitute Confidential Information.

(a) information that was in the public domain prior to receipt thereof by such Party or which subsequently becomes part of the public domain by publication or otherwise except by a wrongful act of such Party or its Affiliates, Subcontractors, employees, directors, officers, agents, advisers or representatives;

(b) information that such Party can show was lawfully in its possession prior to receipt thereof from the other Party through no breach of any confidentiality obligation;

(c) information received by such Party from a third party having no obligation of confidentiality with respect thereto;

(d) information at any time developed independently by such Party provided it is not developed from otherwise Confidential Information.

16.1.2 Permitted Disclosures. Notwithstanding anything herein to the contrary, a Party may disclose Confidential Information as follows:

(a) Confidential Information may be disclosed pursuant to and in conformity with Applicable Law or in connection with any legal proceedings described in Article XVI, or by Owner to the Oregon Public Utility Commission or the independent evaluator retained by Owner and approved by the Oregon Public Utility Commission in connection with the Project, provided that the Party required to disclose such information shall give prior notice to the other Party of such required disclosure and, if so requested by the other Party, shall use all reasonable efforts to oppose the requested disclosure as appropriate under the circumstances or to seek, through a protective order or other appropriate mechanism, to maintain the confidentiality of the Confidential Information;

(b) Confidential Information may be disclosed as required to be disclosed under securities laws applicable to publicly traded companies and their subsidiaries;

(c) Confidential Information may be disclosed to Affiliates, Subcontractors, employees, directors, officers, agents, advisers or representatives of such Party as necessary in connection with the Project; provided that such Persons are informed of the confidential nature of the Confidential Information, and such Party shall be liable to the other for any disclosure by such Person in violation of the terms of this Section 16.1; and

(d) Owner may disclose a copy of this Agreement to any actual or potential financing parties or insurers.

16.1.3 Consent. Notwithstanding the foregoing, either Party may disclose Confidential Information with the express written consent of the other Party, which consent shall not be unreasonably conditioned, withheld, or delayed.

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16.1.4 Publicity. Until expiration of the Warranty Period, neither Party shall issue any press or publicity release or otherwise release, distribute or disseminate any Confidential Information for publication concerning this Agreement or the participation of the other Party in the transactions contemplated hereby without the prior written consent of the other Party; provided, however, that such limitation on disclosure shall not apply to disclosures or reporting required by a Government Authority if the Party seeking disclosure informs the other Party of the need for such disclosure and, if reasonably requested by the other Party, seeks, through a protective order or other appropriate mechanism, to maintain the confidentiality of Confidential Information.

16.1.5 Right to Relief. It is agreed that each Party shall be entitled to relief both at law and in equity, including injunctive relief and specific performance, in the event of any breach or anticipated breach of this Section 16.1, without proof of any actual or special damages.

16.1.6 Ownership of Confidential Information. All right and title to, and interest in, a Party's Confidential Information shall remain with such Party. All Confidential Information obtained, developed or created by or for Contractor exclusively for the Project, including copies thereof, is the exclusive property of Owner whether delivered to Owner or not. No right or license is granted to Contractor or any third party respecting the use of Confidential Information by virtue of this Agreement, except to the extent required for Contractor's performance of its obligations hereunder. Contractor shall deliver the Confidential Information, including all copies thereof, to Owner upon request.

16.1.7 Survival. The Parties' obligations under this Article XVI shall remain in force during the term of this Agreement and for a period of five (5) years after Final Completion.

16.2 Consequential Damages. In no circumstances shall either Party (or the parent companies and Affiliates of each, and their respective members, shareholders, officers, directors, agents and employees) be liable to the other Party (or its parent companies and Affiliates, and their respective members, shareholders, officers, directors, agents and employees) for any consequential, incidental, indirect, special, exemplary or punitive damages (including loss of power, loss of production, loss of actual or anticipated profits, revenues or product; increased expense of borrowing or financing, claims of Owner's customers and damage to property or equipment, and increased cost of capital) (collectively, "Consequential Damages") arising out of this Agreement; and, regardless of whether any such claim arises out of breach of contract, guarantee or warranty, tort, (including negligence and strict liability), product liability, indemnity, contribution, strict liability or any other legal or equitable theory; *provided* that, any liquidated damages as set forth in this Agreement and any third party indemnification claims for loss of actual or anticipated profits, revenues or product shall not constitute Consequential Damages under this Agreement. Increased expense of borrowing or financing, and increased cost of capital arising by virtue of a contractual obligation owed to an off-taker or purchaser of electricity generated by the Work are agreed for the purposes of this Agreement to be Consequential Damages.

16.3 Limitation on Liability. Notwithstanding anything to the contrary contained in this Agreement, in no event shall Contractor be liable to Owner for any damages, claims, demands, suits, causes of action, losses, costs, expenses or liabilities in excess of an amount equal to one hundred percent (100%) of the Contract Price, as adjusted for Change Orders

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(other than those which reduce the Contract Price related to damages of Owner hereunder), regardless of whether such liability arises out of breach of contract, tort, product liability, contribution, strict liability or any other legal theory; *provided, however*, that the preceding limitation of liability shall not apply to, and no liability amounts shall be apply against such limitation of liability for (a) liabilities resulting from the negligence, fraud, willful misconduct or illegal or unlawful acts of Contractor or its Personnel (including their Subcontractors), (b) liabilities arising out of Contractor's obligations to indemnify Owner or other indemnitees for third party claims under this Agreement, or (c) costs incurred by Contractor (and, in the event Contractor fails to perform, Owner) in performing Warranty Service, or (d) any taxes payable by Contractor; (e) damages for risks required to be insured by Contractor under this Agreement, or (f) costs incurred by Contractor (and in the event of Contractor Default, Owner) in completing the Work.

16.4 Notice. All notices and other communications required or permitted by this Agreement or by law to be served upon or given to a Party by any the other Party shall be in writing signed by the Party giving such notice and shall be deemed duly served, given and received (i) when actually received by the Party to whom it is sent, if served personally or if delivered by nationally recognized courier service to the Party to whom notice is to be given, (ii) when received by the Party to whom it is sent, if sent in the form of a signed letter on the sending Party's letterhead, transmitted by email in Portable Document Format (pdf) or similar format; (iii) when received (with confirmation of receipt) if delivered by facsimile or email, or (iv) at the end of the first Business Day following actual delivery, if mailed by first class registered or certified mail, return receipt requested, postage prepaid, addressed to the appropriate Party, at the address or facsimile numbers of such Party set forth below (or at such other address as such Party may designate by written notice to the other Party in accordance with the Section):

If to Owner:

If to Contractor:

with a copy to :

with a copy to :

16.5 Time of the Essence. Time is of the essence in the performance of the Work in accordance with the requirements of this Agreement.

16.6 No Rights in Third Parties. Except as otherwise set forth herein including in Section 3.2, hereof, with respect to the rights of permitted successors and assigns, and the rights of indemnitees under Article X, (a) nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any Person that is not a Party, (b) no Person that is not a Party shall have any rights or interest, direct or indirect, in

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this Agreement or the services to be provided hereunder and (c) this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services to be provided hereunder.

16.7 Entire Agreement. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, arrangements, discussions, undertakings and commitments (whether written or oral) with respect thereto. All the Exhibits (Exhibit A through Exhibit S-2) attached hereto are incorporated into and made a part of this Agreement. There are no other oral understandings, terms or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement.

16.8 Amendments. No amendment or modification of this Agreement shall be valid or binding upon the Parties unless such amendment or modification shall be in writing and duly executed by authorized officers of both Parties. For the avoidance of doubt, emails between the Parties shall not be considered a writing for purposes of this Section 16.8.

16.9 GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OREGON, WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES.

16.10 Right of Waiver. No delay, failure or refusal on the part of any Party to exercise or enforce any right under this Agreement shall impair such right or be construed as a waiver of such right or any obligation of another Party, nor shall any single or partial exercise of any right hereunder preclude other or future exercise of any right. The failure of a Party to give notice to the other Party of a breach of this Agreement shall not constitute a waiver thereof. Any waiver of any obligation or right hereunder shall not constitute a waiver of any other obligation or right, then existing or arising in the future. Each Party shall have the right to waive any of the terms and conditions of this Agreement that are for its benefit. To be effective, a waiver of any obligation or right must be in writing and signed by the Party waiving such obligation or right.

16.11 Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of the this Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

16.12 Successors and Assigns; Assignment. Subject to the following, this Agreement shall be binding upon the Parties, their successors and permitted assigns. Except as set forth herein, this Agreement and all of Contractor's rights, duties and obligations under this Agreement are personal in nature and shall not be assigned, delegated or otherwise disposed

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of by Contractor without the prior written consent of Owner. Owner may assign this Agreement in whole or in part; provided that Contractor is provided written notice as soon as reasonably possible following such assignment. Contractor agrees and acknowledges that any third party receiving such an assignment provided it assumes all obligations hereunder, in writing, shall be entitled to exercise any and all rights of Owner under this Agreement in accordance with the terms hereof (in its own name or in the name of Owner) and Contractor shall comply in all respects with such exercise. Provided the assignee assumes, in a writing reasonably satisfactory to Contractor, all obligations of Owner hereunder, Owner shall be released upon assignment. Nothing in this Section 16.12 shall affect Owner's ability to collaterally assign this Agreement to any financing parties.

16.13 Survival. All provisions of the Agreement that are expressly or by implication to come into or continue in force and effect after the expiration or termination of this Agreement, including Articles VII, X and XIII, shall remain in effect and be enforceable following such expiration or termination. The representations and warranties of Contractor contained herein shall survive the execution and delivery hereof and thereof.

16.14 Expenses and Further Assurances. Each Party shall pay its own costs and expenses in relation to the negotiation, preparation execution and carrying into effect this Agreement. Contractor and Owner agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party (at the cost and expense of the other Party) in order to give full effect to this Agreement and to carry out the intent of this Agreement.

16.15 Counterparts. This Agreement may be executed in any number of counterparts and each counterpart shall represent a fully executed original as if executed by both Parties, with all such counterparts together constituting but one and the same instrument.

16.16 Status of Contractor; No Partnership; No Agency. Contractor shall be an independent contractor with respect to any and all Work performed and to be performed under the Agreement. The Agreement shall not be interpreted or construed to create an association, joint venture or partnership relationship among or between the Parties or any similar relationship, obligations or liabilities. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, act on behalf of, or to act as or be an agent or representative of, or to otherwise bind or obligate the other Party.

16.17 Compliance with Applicable Laws. Contractor and its Subcontractors are familiar with and shall comply with and observe, all Applicable Laws, including but not limited to the federal Foreign Corrupt Practices Act (15 U.S.C.S. §§ 78a and 78m et seq.) ordinances, rules, regulations, executive orders, all applicable safety orders and all orders or decrees of administrative agencies, courts or other legally constituted authorities having jurisdiction or authority over Contractor and its Subcontractors, Owner or the Equipment which may now or hereafter exist.

16.18 Compliance with Supply-Chain Ethics.

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16.18.1 Contractor shall, and shall use commercially reasonable efforts to require its Subcontractors to (i) implement and/or comply with such environmental, safety and governance (“ESG”) policies and procedures as directed by Owner; (ii) report any Material ESG Incident occurring at the Site or in relation to the Work promptly to Owner, or, in the case of a Subcontractor, to Contractor, who shall, promptly convey such information to Owner after obtaining actual knowledge of such Material ESG Incident; (iii) take such action as is reasonably necessary to resolve, and mitigate against the recurrence of, such Material ESG Incident; (iv) collect and provide any ESG data reasonably specified by Owner; and (iv) prohibit and refrain from use of Forced Labor in performance of the Work.

16.18.2 Contractor represents and warrants that, as of the Effective Date: (a) there is no unresolved Material ESG Incident relating to the Work involving EPC Contractor that could materially and adversely impact the Project, the Work or the Owner; and (b) neither Contractor nor, to Contractor’s actual knowledge (after reasonable inquiry), its Subcontractors currently uses or has in the past used Forced Labor in the conduct of its operations.

[Signatures on following page]

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date and year first above written.

Owner:

By: _____
Name: _____
Title: _____

Contractor:

By: _____
Name: _____
Title: _____