**Exhibit A**

**GENERAL CONDITIONS**

**FOR**

**MAJOR SUPPLY AGREEMENT  
(NO INSTALLATION SERVICES)**

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GENERAL CONDITIONS  
FOR  
MAJOR SUPPLY AGREEMENT  
(NO INSTALLATION SERVICES)

1. **DEFINITIONS AND RULES OF CONSTRUCTION**.
   1. Capitalized words, phrases and other expressions used herein that are not otherwise defined are defined in the Agreement. The capitalized words, phrases or other expressions used herein shall have the following meanings:

"**Agreement**" shall mean the Major Supply Agreement between the Parties hereto, and all documents and instruments thereto or arising therefrom, including the Contract Documents, (Purchase Order(s)/Work Order(s) if applicable) and these General Conditions.

"**Applicable Law**" or "**Applicable Laws**" shall mean any and all laws (including all statutory enactments and common law), ordinances, constitutions, regulations, statutes, treaties, rules, codes, standards, licenses, certificates, franchises, permits, requirements and injunctions that (i) have been adopted, enacted, implemented, promulgated, ordered, issued, entered or deemed applicable by or under the authority of any Governmental Body having jurisdiction over a specified person or entity (or the properties or assets of such person or entity), and (ii) are applicable to the Work.

"**Applicable Utility Rules**" means the rules, orders, regulations, practices, procedures and protocols established by regional transmission organizations (such as the Midcontinent Independent System Operator, Inc.), electric reliability organizations (such as the North American Electric Reliability Corporation and the Midwest Reliability Organization) and comparable Persons that are applicable to the Project and/or its operation by force of Applicable Law or Good Utility Practice.

"**Change Order**" shall mean a document issued by Owner and agreed to in writing by Supplier to amend the Agreement and/or the Purchase Order/Work Order.

"**Claim**" or "**Claims**" shall have the meaning set forth in Section 27.1 of these General Conditions.

"**Critical Energy Infrastructure Information**" shall have the meaning set forth in Section 25.4.4 of these General Conditions.

"**Critical Infrastructure**" shall have the meaning set forth in Section 25.4.4 of these General Conditions.

"**Design(s)**" shall have the meaning set forth in Section 28.1 of these General Conditions.

"**Documents**" shall have the meaning set forth in Section 6.1 of these General Conditions.

"**Drawings**" shall mean all (i) drawings or supplementary drawings furnished by Owner as a basis for soliciting proposals, (ii) drawings, if any, submitted by Supplier with its proposal which are included in the Agreement, (iii) drawings furnished by Owner to Supplier during the progress of the Work, and (iv) engineering data and drawings submitted by Supplier, if any, during the progress of the Work, provided such drawings are acceptable to Owner.

"**Final Acceptance**" shall occur when Owner has made its reasonable commercial determination that all Work is complete in accordance with the requirements of the Agreement, including these General Conditions.

"**Force Majeure**" shall have the meaning set forth in Section 9.6 of these General Conditions.

"**General Conditions**" shall mean this document and the terms and conditions contained or referred to herein.

"**Good Utility Practice**" means any of the practices, methods or acts engaged in or approved by a significant portion of the electric utility industry in the region during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition in a manner that: (i) is consistent with Applicable Law and Applicable Utility Rules, (ii) makes due consideration for reliability, safety and protection of equipment and the Project, and (iii) is consistent with manufacturer's recommendations and warranties. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a range of acceptable practices, methods or acts generally accepted in the region.

"**Goods**" shall mean the personal property to be supplied under the Agreement, including but not limited to parts, Drawings, items of merchandise, supplies, raw materials, components, intermediate assemblies, finished products and equipment.

"**Governmental Body**" shall mean any:

* + - 1. nation, state, county, city, town, village, district or other jurisdiction of any nature;
      2. federal, state, local, municipal, foreign or other government; or
      3. governmental or quasi governmental authority of any nature (including any governmental agency, branch, board, commission, department, instrumentality, office or other entity, and any court), in any such case exercising, or entitled to exercise, administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature over the Agreement, the performance of the Work or the Parties.

"**Owner Indemnitees**" shall have the meaning set forth in Section 27.1 of these General Conditions.

"**Owner**" shall mean the name of the entity or entities set forth as the Owner in the Agreement. With respect to actions, directives or decisions of Owner, "Owner" will also mean Owner' construction manager or its designee.

"**Party**" or "**Parties**" shall mean Owner and Supplier.

"**Project**" shall mean the entirety, or a portion of, the Work being provided by Supplier and its Subcontractors under the Agreement.

"**Project Schedule**" shall have the meaning set forth in Section 9.2 of these General Conditions.

"**Purchase Order/Work Order**" shall mean the specific authorizing document, including all documents attached thereto or referenced therein.

"**Sanctions**" shall have the meaning set forth in Section 4.3 of these General Conditions.

"**Site**" shall mean the location(s) of the Project and may be defined in the Purchase Order/Work Order.

"**Subcontractor**" shall mean any person, firm, or corporation that performs work for or provides labor, equipment, supplies and/or Goods to Supplier in connection with the Work.

"**Supplier**" shall mean the "Supplier" as set forth in the Agreement.

"**Work**" shall mean the Goods Supplier has agreed to furnish pursuant to the Agreement. This may include, but is not limited to, the equipment, supplies, Goods (including raw materials, components, intermediate assemblies and end products) and related ancillary labor and other work to be furnished under the Agreement, including without limitation, design, inspection, testing, expediting and delivery.

* 1. The Parties further agree that the following rules of construction shall apply in the interpretation of the Agreement, including these General Conditions:
     + 1. whenever the words "as ordered," "as directed," "as required," "as permitted," "as allowed," or similar words or phrases are used in the Agreement, they shall mean that the order, direction, requirement, permission or allowance of Owner is intended only to the extent of compliance with the terms of the Agreement;
       2. whenever the expression "it is understood and agreed" or a similar expression is used in the Agreement, such expression shall mean the mutual agreement of the Parties;
       3. Reference in these General Conditions, the Agreement or any exhibit or Purchase Order/Work Order to the standards of any technical society, organization or association, or to any national, state or local codes or standards (including those of any Governmental Body), shall mean the latest standard or code adopted, as amended from time to time, unless specifically stated otherwise; and
       4. The specifications, codes, and standards referenced in the Agreement (including addenda, and amendments) shall govern in all cases where references thereto are made. In case of conflict between the referenced specifications, codes, or standards and the Agreement, the most stringent requirements shall apply to the extent of such differences except in the case where the Agreement acknowledges an exception to a referenced specification, code, or standard. In all but the latter cases, Supplier shall notify the Owner’s engineer of conflicts between referenced specifications, codes, or standards and the Agreement.

1. **AGREEMENT DOCUMENTS**.
   1. The Work shall be performed in accordance with the Agreement. Any additional terms proposed or exceptions taken by Supplier to any provision of the Agreement shall become part of the Agreement only if accepted by Owner in writing. In the event of a conflict between the Agreement and other Documents, the Agreement shall govern.
   2. Owner may scan, and preserve electronically, the Agreement and other Documents related to the Agreement. Once scanned, and electronically preserved, Owner may destroy the paper originals of these Documents. All such Documents scanned and electronically preserved by Owner, may be treated as original Documents for all purposes, at the discretion of Owner.
2. **OTHER CONTRACTS**.
   1. Owner reserves the right to award other contracts in connection with the Project. Supplier shall cooperate, schedule and coordinate performance of its Work with the work of any other suppliers, contractors and consultants so as not to delay or interfere with their work, or with the timely completion of the Project. Owner also reserves the right to contract with others for the same type of work as is the subject of the Agreement or to employ Owner’s own personnel in the work.
3. **APPLICABLE LAW**.
   1. Supplier and its Subcontractors, and their employees, agents and representatives shall at all times perform the Work in a safe and professional manner and comply with Applicable Laws, Applicable Utility Rules and other legal requirements, as such are amended from time to time. Supplier shall be responsible for the acts and omissions of its Subcontractors in connection with the Agreement.
   2. Supplier and its Subcontractors will conduct all Work under the Agreement in an economically, socially and environmentally responsible manner. Supplier and its Subcontractors further agree to ensure that their employees, agents and representatives perform the Work in accordance with the Contractor Safety Policy and the Contractor Code of Business Ethics located at [Contractors | Otter Tail Power Company (otpco.com)](https://www.otpco.com/contractors).
   3. Supplier shall promptly notify Owner if Supplier becomes aware that its Work supplied pursuant to the Agreement is not in compliance with Applicable Laws ("**Sanctions**"). Supplier shall provide copies of any documents evidencing such Sanctions. Supplier will keep Owner informed on a regular basis of the progress made and resolution of such Sanctions, whether resulting in a requirement by Supplier or its Subcontractors to pay fines, modify operations, or comply with said Sanctions in any other manner.
   4. If Owner determines that Supplier is failing to comply with any Applicable Laws and other legal requirements under the Agreement, or observe unsafe work practices and/or conditions on the part of Supplier, Supplier's Subcontractor’s, or Subcontractors' employees or agents, Owner may (i) advise Supplier of such and direct Supplier to stop the Work, and (ii) Supplier shall cause all such Work to stop. Supplier shall bear all additional costs including those that affect the Project Schedule which may result from Work stopped in accordance with this Section 4.4. In the event that such work stoppage is ultimately deemed by Owner to have been unnecessary, Owner shall bear the additional cost of such work stoppage and shall afford Supplier a reasonable extension in the Project Schedule for completion of the Work.
   5. Supplier warrants that neither it nor any of its Subcontractors have transferred, nor will it or they, transfer anything of value to any employee, agent or other representative of Owner, where such was or is made with the intent and/or understanding of obtaining favorable treatment with respect to the Agreement and/or the Work.
   6. Any material changes in Applicable Laws or Applicable Utility Rules or Owner’s standard specifications after the date of execution of the Agreement, which have more than a deminimus effect on the cost or schedule of Supplier's Work, may be the subject of a request for a Change Order, subject to Article 13.
4. **SECURITY**.
   1. Owner requires security screening of all personnel of Supplier and/or its Subcontractors working in security sensitive positions. Security sensitive positions include those that require or involve unescorted or unsupervised access to Owner’s computer systems, Site, equipment, material, customer property or issuance of an access card or keys to Owner’s facilities or as required by regulation.
   2. Owner’s security clearance process for Supplier and/or Subcontractor personnel may include but is not limited to a criminal history check, Social Security number verification and drug testing.
   3. Detailed results of the background screening will only be discussed with the individual screened. Supplier/Subcontractor will be notified only that the individual has been granted or denied a security clearance. Those denied a security clearance may not work in a security sensitive position at any of the Owner.
5. **OWNERSHIP AND LICENSING OF WORK**.
   1. All Drawings, Designs, plans, specifications, calculations, reports and other documents ("**Documents**"), whether in hard copy or electronic media, prepared as work-made-for-hire pursuant to the Agreement shall become the sole and exclusive property of Owner and title thereto shall pass to Owner upon transmittal to Owner. For the purpose of these General Conditions, work-made-for-hire shall mean any Document or other Drawings prepared by Supplierwithin the scope of the Agreement. Rights to Suppliers intellectual property if any, developed, utilized or modified in the performance of the Work shall remain the property of Supplier, but is hereby irrevocably and perpetually licensed to Owner on a royalty-free basis.
   2. Owner reserves the right to reproduce, modify and use in any manner, any and all Documents. Nothing contained in this Article 6 shall be construed as limiting or depriving Supplier of its right to use its basic knowledge and skill to design or carry out other projects or work for itself or others, whether or not such projects are similar to the Work to be performed under the Agreement. Any reuse of the Documents or Drawings by Owner without prior written verification or adaptation by Supplier for the specific purpose intended will be at Owner’s sole risk and without liability or legal exposure to Supplier.
   3. Supplier shall, and shall cause its employees, representatives, agents and Subcontractors to execute and deliver any and all forms and instruments necessary or desirable to transfer the Documents such that Owner shall have of record of their, as applicable, rights, interests, title and ownership in and to the Documents, free and clear of all third party encumbrances and interests.
6. **CERTIFICATION OF DOCUMENTS**.
   1. Any and all Documents and contract documents (as defined in the Agreement) shall be certified by Supplier if required by Applicable Law or Applicable Utility Rules.
7. **SUPPLIER'S RESPONSIBILITIES**.
   1. Supplier shall be responsible for and shall bear any and all risk of loss or damages to the Work in progress and finished Goods until the finished and conforming Goods are delivered to the Site and received and accepted by Owner as conforming Goods subject to rejection or revocation as described in Section 8.3 below.
   2. Supplier shall adequately wrap, pack, crate, load, enclose and brace Goods to be furnished under the Agreement in a good and workmanlike manner.
   3. Supplier shall bear all risks as to rejected Goods after notice of rejection or revocation of acceptance except that Owner shall be responsible for the loss, or destruction of, or damage to the rejected Goods in Owner’s possession only if such loss, destruction or damage results from the gross negligence of Owner or its employees and agents acting within the scope of their employment.
   4. Supplier shall provide as a part of its services adequate testing and inspection to ensure complete compliance with the specifications. Such testing and inspection shall not imply acceptance of Work by Owner. Supplier shall provide adequate and competent supervisory personnel to ensure compliance with the specifications. All costs for such testing and inspection shall be paid for by Supplier. In addition to the above testing and inspection, Owner may provide independent testing as specified in the technical sections of the Agreement, at Owner’s expense.
8. **SCHEDULING**.
   1. Supplier agrees that time is a significant factor in Owner’s decision to engage Supplier to perform the Work, including Supplier's agreement to adhere to the Project Schedule.
   2. Owner and Supplier shall agree on a schedule of the Work (the "**Project Schedule**") indicating the dates for the start and completion of the various stages of the Work. Owner may, in its discretion, prepare a Project Schedule or delegate the Project Schedule to Supplier. Supplier shall strictly adhere to the Project Schedule. Supplier shall make no shipments in advance of an Owner specified shipping date without the prior written approval of Owner. Owner reserves the right to direct Supplier to reschedule the order and rate of progress of performance of the Work so as not to interfere with the performance of work by Owner and/or other suppliers.
   3. If requested by Owner, Supplier shall promptly submit regular progress data as to the Work that shall include the (i) start date, (ii) percentage of completion for each stage of Work, (iii) the anticipated or actual finish date for all Project activities of Supplier during the period, and (iv) a comparison of exceptions and deviations from the Project Schedule. Other information, such as actual hours expended, shall be furnished monthly or as requested by Owner. If requested by Owner, Supplier shall participate in the Project Schedule update meetings.
   4. If at any time during the performance of the Work Supplier's progress does not keep pace with the requirements of the Project Schedule, Owner may order Supplier to take steps to improve its progress without additional cost to Owner; provided, however, that Supplier shall have five (5) days to develop and implement its recovery plan for the Project Schedule (in consultation with Owner) from and after the date notified by Owner. Supplier's recovery plan will be diligently and continuously pursued by Supplier. Neither such notice by Owner, nor Owner’s failure to issue such notice, shall relieve Supplier of its obligation to perform in accordance with the Agreement, including completion of quality Work in the timeframe required by the Project Schedule. Failure of Supplier to comply with the notice of Owner may be grounds for determination by Owner that Supplier is not pursuing the Work with such diligence as shall assure completion within the times specified. The failure of Owner’s furnished materials to arrive as scheduled, or the failure of other construction contractors or suppliers to meet the Project Schedule, shall not be justification for an extension of time, except where such failure causes, in the reasonable determination of Owner, an actual delay in Supplier's Work. Upon such determination, Owner may terminate for default pursuant to Article 24 of these General Conditions.
   5. Should the actions of Owner cause a significant delay of the Work, Supplier shall notify Owner in writing within five (5) business days from the beginning of such delay. If Owner and Supplier determine the facts justify an extension of time and/or additional compensation and no remaining float time exists in the Project Schedule, the Agreement will be modified in writing as appropriate. Owner may, in Owner’s sole discretion and in lieu of granting an extension of time, require Supplier to regain the Project Schedule, and Owner shall compensate Supplier for any required additional charges; provided, however, that no adjustment shall be made for any delay to the extent that performance would have otherwise been delayed by any other cause, including the fault or negligence of Supplier.
   6. With respect to events of "**Force** **Majeure**": Owner and Supplier shall be excused from performing in accordance with the Project Schedule in the event of an occurrence of Force Majeure. Force Majeure is defined as fire, floods, earthquake, hurricane, tornado, explosion, catastrophe, accident, war or war-like operations (whether or not a state of war is declared), riot, acts of God, acts of terrorism, insurrection, orders of a Governmental Body and Applicable Laws and Applicable Utility Rules that prevent performance, to the extent (i) such event of Force Majeure is beyond the reasonable control of the Party claiming Force Majeure, and (ii) the Party claiming Force Majeure gives prompt written notice of the same to the other Party. Labor strikes are not Force Majeure events.
      1. In the event of any such delay, Supplier's sole remedy shall be a time extension for the completion dates required by the Project Schedule, which extension shall be the time period lost by reason of the Force Majeure.
      2. Delays caused by unfavorable weather (that is not abnormal for the season and geographic area), unsuitable ground conditions, inadequate construction force, strikes or labordisturbances involving the personnel of Supplier or any of its Subcontractors on the Project,market conditions, or the failure of either Party to place orders for equipment or materials sufficiently in advance to ensure delivery when needed shall not be considered a Force Majeure.
9. **FAMILIARITY WITH THE WORK**.
   1. By executing the Agreement, Supplier represents that it understands the scope of work under which the Agreement is to be performed and has correlated its understanding with the requirements of the Work and Project Schedule.
   2. No pleas of ignorance of scope of work that exist or hereafter may exist, or of conditions or difficulties that may be encountered in the execution of the Work will be accepted as an excuse for failure or omission on the part of Supplier to fulfill in every detail all requirements of the Agreement, nor will they be a basis for any Claim whatsoever for extra compensation or time.
10. **RESPONSIBILITY AS TO OTHER SUPPLIERS**.
    1. Any costs to Owner or Owner’s other suppliers caused by defective or ill-timed performance of Work by Supplier shall be borne by Supplier.
11. **INSPECTION**.
    1. The Work and all portions thereof shall be subject to inspection by Owner or Owner’s designee at all times. Any such inspection shall not relieve Supplier of the responsibility to strictly comply with its performance requirements and other obligations under the Agreement, it being understood that any such inspection by Owner shall in no way (i) be construed as constituting or implying either a waiver or acceptance of the work, or (ii) affect any of Owner’s rights or remedies under the Agreement.
    2. Supplier shall furnish promptly, without additional charge, all facilities, labor and material reasonably needed for performing such safe and convenient inspection as may be desired by Owner. Owner reserves the right to charge to Supplier any additional cost of inspection when material or workmanship is not ready at the time specified by Supplier for inspection or when re-inspection is necessitated by prior rejection. If required by Owner, Work must be uncovered for observation and replaced at Supplier's expense.
    3. Supplier shall make available to Owner any and all data, including but not limited to, test results, welding information, and radiographic, ultrasonic and non-destructive examination reports, related to performance of the Work. Owner’s review of any such data shall in no way relieve Supplier of its responsibility for the professional quality, technical accuracy and completeness of such data.
12. **WORK CHANGES**.
    1. Owner, without invalidating the Agreement, may at any time make changes to or deviations from the scope of the Work with a Change Order issued by an authorized representative of Owner to Supplier.
    2. If Supplier claims that the Change Order causes an increase or decrease in the cost of or the time required for performance of the Work, Supplier shall give Owner written notice of such increase or decrease within ten (10) business days following the receipt of such a request. Supplier shall also provide sufficient documentation to Owner to justify the increase or decrease in the cost of or the time required for performance of the Work
    3. If accepted in writing by Owner, an equitable adjustment may be made in the price or Project Schedule, or both, and the Change Order shall be deemed to modify the Agreement.
    4. Supplier's failure to comply with Section 13.2 of these General Conditions shall constitute Supplier's agreement to perform any such Change Order in accordance with the price and schedule specified in the original order and/or subsequent revisions thereto.
    5. All changes and extras must follow these guidelines:
       * 1. Supplier must not perform any work it sees as changes or extras without Owner’s prior written approval.
         2. Supplier shall not be reimbursed for work it performed as extra or change without prior approval of Owner.
         3. Supplier must inform Owner in writing that a particular phase of the Work is an extra or change. The reason Supplier is claiming an extra or change shall be clearly stated. Supplier shall include the cost of performing such extra or change with a breakdown of labor, material, equipment, overhead and profit.
         4. The total cost of change and extra unless otherwise specifically agreed upon and stated shall be lump sum.
         5. For payment of changes and extras Supplier shall submit all applicable invoices for materials and equipment rental to Owner.
13. **SUSPENSION OF WORK**.
    1. Owner may, by notice to Supplier, suspend at any time the performance of all or any portion of the Work. During the period of suspension, Supplier shall use its commercially reasonable efforts to minimize costs associated with suspension.
    2. Upon receipt of any such written notice, Supplier shall, unless such notice requires otherwise:
       1. Immediately discontinue the Work on the date and to the extent specified in the notice;
       2. Place no further orders or subcontracts for materials, work or the like with respect to suspended Work other than to the extent required in the notice;
       3. Promptly make every reasonable effort to obtain suspension upon terms satisfactory to Owner of all orders, subcontracts, rental agreements and the like to the extent they relate to performance of the Work suspended; and
       4. Promptly make every reasonable effort upon terms satisfactory to Owner to protect or maintain the Work.
    3. As full compensation for such suspension, Supplier shall be reimbursed for the following costs, to the extent reasonable and if such costs directly result from the suspension of the Work:
       1. A standby charge based upon the period of suspension of the Work, which standby charge shall be sufficient to reimburse Supplier for its actual costs of keeping its organization and equipment committed to the Work in a standby status;
       2. The actual costs associated with actual mobilization and demobilization of Supplier's forces and equipment; and
       3. Any actual increased cost of the Work incurred by Supplier.

All costs to be reimbursed must be requested within forty-five (45) days following termination of the suspension. Any such costs shall be documented and evidenced by all supporting documentation requested by Owner and shall be subject to the audit rights of Owner as set forth in these General Conditions.

* 1. Upon receipt of notice to resume suspended Work, Supplier shall promptly resume performance of the suspended Work to the extent required in the notice. Supplier hereby expressly waives any claim it may have for additional time or extra compensation because of any suspension of the Work unless such claim along with a revised Project Schedule (with respect to the Work suspended) is presented to Owner in writing within ten (10) calendar days after Supplier's receipt of notice to resume the Work. No compensation or extension of time shall be granted if the suspension results from Supplier's noncompliance with the requirements of the Agreement or from any cause other than Owner’s suspension order pursuant to this Article 14 of these General Conditions.

1. **SUPPLIER WARRANTIES**.
   1. All Goods incorporated into the Work shall be new and of the most suitable grade given the intended use by Owner.
   2. Supplier warrants that all Work, including without limitation, the Goods, will conform to the kind, quality and capability designated or described by the Agreement. Supplier shall perform the Work with due care, skill and diligence, in accordance with Applicable Law and applicable professional standards, industry procedures and construction practices. Unless a greater period of time is specified in the Agreement, Supplier shall warrant the Work and all Goods, including parts, equipment, materials and labor furnished under the Agreement to be as specified herein and free from defects in (i) title (including any liens, encumbrances or other third party interests) at all times after passage to Owner, and (ii) Design, material, workmanship, for the longer period of (A) twelve (12) months after Final Acceptance or the period of any manufacturer's warranty, and (B) with respect to warranty work performed by Supplier, for an additional period of one (1) year following such warranty work. Any and all manufacturer warranties shall be and hereby are transferred to Owner and the third party beneficiaries to the Agreement pursuant to the provisions and operation of the Agreement. After delivery of conforming Goods to the Site, Owner shall store, maintain and install the Goods consistent with Supplier’s written instructions or, in the absence of such instructions, in accordance with prudent industry practices.
   3. Supplier is not responsible for repairs or alterations made by others without mutual written agreement between Supplier and Owner. Supplier does not warrant the Goods or any repair/replacement part against the effects of erosion, corrosion, or normal wear and tear due to operation or the environment. The warranty and remedies set forth herein are conditioned upon proper storage, installation, use and maintenance of the Goods in all material respects, and in accordance with Supplier’s written recommendations. Replacement parts or repairs furnished under this warranty shall be subject to the warranty for the longer period of (A) twelve (12) months after Final Acceptance or the period of any manufacturer's warranty after date of delivery by Supplier, whichever is longer.
   4. Upon receipt of notice from Owner of any failure to comply with the terms of the Agreement including these General Conditions, without limitation, any defect with respect to the Work, either prior to or after Final Acceptance, Supplier shall without additional compensation correct any such defects within a time acceptable to Owner and reimburse Owner for any resulting costs, expenses or damages suffered by Owner, including but not limited to costs of removal, reinstallation, re-procurement and any other third party costs, damages and losses incurred by Owner. If Supplier fails to timely replace any such defective Work, Owner may cause such defective Work to be replaced by another and the direct and indirect expense thereof shall be the responsibility of Supplier. Owner shall be entitled to deduct this expense and the resulting damages from amounts otherwise due to Supplier. Notwithstanding the foregoing, it is understood and agreed that Supplier will not be responsible for on-Site installation, but shall provide technical field service personnel on-Site to supervise with respect to such remedial efforts.
   5. The rights and remedies of Owner provided in this Article 15 shall not be exclusive and shall be in addition to all other rights and remedies of Owner (i) as set forth in these General Conditions, (ii) under Applicable Law, or (iii) in an equitable proceeding. No failure on the part of Owner in the exercise of any right or remedy shall operate as a waiver of or by Owner of Owner’s right to exercise any other right or remedy.
   6. In the event of an emergency where in the judgment of Owner the delay resulting from giving formal notice would cause serious loss or damage which could be prevented by immediate action, defects may be corrected by Owner, or a third party chosen by Owner, without giving prior notice to Supplier, and the cost of the corrections shall be paid by Supplier. In the event such action is taken by Owner, Supplier will be notified promptly and shall assist wherever possible in making the necessary corrections.
   7. In the event that Owner and Supplier have agreed to certain liquidated damages with respect to guaranteed completion dates or certain performance guarantees, the receipt of liquidated damages by Owner shall not affect Owner’s rights to (i) warranties under this Article 15, or (ii) indemnification under Articles 27 and 28, or (iii) other unrelated breaches of the Agreement. The Parties acknowledge and agree that liquidated damages, if any, that are accrued and/or paid by Supplier are meant to compensate Owner solely for the effects of Supplier completion delays and the failure of Supplier to meet specified performance guarantees.
   8. Inspection, test, acceptance, or use by Owner of the Goods shall not affect Supplier's obligations under Supplier's warranty, and such warranty shall survive inspection, test, acceptance and use when used in accordance with written directions of Supplier (or any third party manufacturer supplying any part of the Goods). All guarantees and warranties shall be transferred to Owner upon Final Acceptance.
   9. NO OTHER REPRESENTATION, GUARANTEE, OR WARRANTY WITH RESPECT TO THE QUALITY AND CONFORMITY OF THE WORK, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, IS INTENDED IN OR BY THE AGREEMENT.
2. **INSURANCE**.
   1. Supplier and its Subcontractors shall comply with the insurance provisions of Exhibit C.
3. **FINAL ACCEPTANCE**.
   1. Supplier shall notify Owner in writing when it believes the conditions of Final Acceptance are deemed achieved by Supplier.
   2. After receipt of Supplier's notification pursuant to Section 17.1 above, Owner shall be deemed to have determined its Final Acceptance of the Work performed by Supplier by Owner’s payment of the final invoice submitted by Supplier for the Project. Payments made hereunder do not excuse non-conforming Work under the Agreement.
4. **PRICE AND PAYMENT TERMS**.
   1. Payments shall be made as stated in the Agreement. Unless a different term is agreed to between the Parties, payments will be made thirty (30) days after receipt of an invoice approved by Owner in accordance with the payment terms herein, of the Agreement and Owner’s then-current policies and procedures. If Owner objects to all or any portion of an invoice, Owner shall notify Supplier within fifteen (15) business days of invoice date, identify the cause of disagreement, and pay when due that portion of the invoice not in dispute so long as Owner’s invoice procedures are met.
   2. Payments otherwise due may be withheld on account of defective Work not remedied, Claims made or liens filed, damage by Supplier to Owner or others not adjusted, failure to make payments to Subcontractors, or for any other failure to perform in accordance with the Agreement; provided, however, that the amount of payments withheld shall not exceed the reasonably estimated amount of the matter in dispute. No payment for any Goods purchased hereunder will be made prior to the earlier of shipment or delivery of such Goods. Services under the Agreement must be performed prior to payment by Owner, other than customary mobilization costs.
   3. All Supplier invoices shall reference (i) the Agreement, (ii) the Purchase Order/Work Order, and (iii) any other applicable reference numbers. Such invoices shall also contain a complete description of all charges submitted in the format requested by Owner. Each invoice or other application for payment must be accompanied by a lien waiver for the Work for which payment is to be made. All lien waivers shall be in the form attached as Exhibit D. Supplier shall provide Owner a final invoice within sixty (60) days of Final Acceptance.
   4. In making payments hereunder, Owner shall be entitled to conclusively presume that payment information furnished by Supplier is accurate, including account number(s) and name of payee. In no event shall Owner make a subsequent payment where the first payment is made in accordance with such information, unless the first payment has been returned in full to Owner. All payments shall be in U.S. dollars.
   5. When requested, Supplier shall provide to Owner an itemized schedule of quantities and values of the various functions necessary to perform the Work. Supplier shall use Owner’s system of accounts to submit any itemized cost breakdown requested by Owner.
   6. Supplier irrevocably agrees that acceptance by Supplier of final payment shall fully and completely release Owner from all Claims and demands that Supplier may have or has against Owner and/or Owner’s corporate affiliates and their respective officers, directors, employees, agents, representatives and customers arising out of, resulting from, or in any way connected with the Work performed by Supplier pursuant to the Agreement, including any Purchase Order(s)/Work Order(s). Supplier further acknowledges and agrees that such final payment, together with all payments made prior to the final payment, constitutes full payment of all amounts due Supplier under the Agreement, including under any Purchase Order(s)/Work Order(s) and all amounts due for all Claims of any type and all extra Work. In accepting the final payment, Supplier further warrants and represents that all Claims, bills, payrolls, expenses, costs, taxes, and other indebtedness incurred in connection with the Work performed pursuant to the Agreement, including Purchase Order(s)/Work Order(s) have been paid in full.
5. **RIGHT TO AUDIT**.
   1. Supplier shall maintain during the course of the Work, and retain not less than seven (7) years after completion thereof, complete and accurate records of all Supplier's records arising from, in connection with or incident to the Work and the Project, including without limitation, all (i) costs which are chargeable to Owner under the Agreement, and (ii) Documents, granted authority, permits and other evidentiary data that evidences compliance with the Agreement (including these General Conditions) and all Applicable Laws and Applicable Utility Rules. Owner shall have the right, during normal working hours, to inspect, reproduce, and audit such records of Supplier by authorized representatives of Owner own or any third party contract compliance-auditing firm selected by Owner. The records to be thus maintained and retained by Supplier must provide sufficient detail to evidence the propriety of all such chargeable costs and compliance with the Agreement (including these General Conditions) and all Applicable Laws and Applicable Utility Rules. Such records shall include (without limitation):
      1. Payroll records (hours, employee name, employee classification, multiplier breakdown etc.) that account for total time worked under such contract.
      2. Invoices (including all back-up details) for purchases, receiving and issuing documents, and all inventory records for Supplier's stock or capital items.
      3. Paid invoices and canceled checks for purchased materials, Subcontractors and third party charges.
      4. Records relating to airfreight and ground transportation, including but not limited to handling, hauling, and disposing of materials/equipment.
      5. Accurate, auditable records of gifts, entertainment, and gratuities to individual Owner’s personnel.

In addition, Supplier shall cause all of its Subcontractors to adhere to and comply with the requirements set forth above.

* 1. In conducting any audit, Owner requires that Supplier provide electronic data files containing all required information for all Owner activity for the entire audit period. The data files shall be in a file format compatible with industry accepted financial and other applicable software applications, and contain data elements of all items invoiced or processed by Supplier. As it is not administratively feasible for either Party to conduct an audit of the entire population of invoices and/or documentary information, both Parties agree that statistical sampling and extrapolation techniques premised upon proven scientific principles and analyses may be used. The foregoing shall not preclude, and Owner shall have the right to audit any original Supplier documentation, whether or not contained in the statistical or other sample.
  2. Each of the Parties understands and agrees that in the event that payment errors have occurred in connection with the Project, payment of a Party shall be made in accordance with the following terms. For all errors found in Owner’s favor, such errors shall be offset by the errors in favor of Supplier. More specifically, if the total aggregate errors found demonstrate underpayments to Supplier, Owner shall reimburse Supplier for the corresponding underpayments. Conversely, should the total aggregate errors found demonstrate overpayments to Supplier, and then Owner shall be reimbursed for the corresponding overpayments made. Both Parties agree that any undercharges or overpayments, once identified and agreed upon, shall be paid within thirty (30) days of notice to the other Party.
  3. The foregoing shall not be applicable to the fixed-price portion of the Work, but shall include all Work performed pursuant to a Change Order or on a time-and-material basis. Notwithstanding the foregoing, Supplier shall cooperate with and provide documents in connection with any inquiry, audit or other investigation by or pursuant to the authority of a Governmental Body.

1. **TAXES**.
   1. Unless otherwise specified in these General Conditions or in the Agreement, Supplier shall process and pay all sales, use and other taxes that are lawfully assessed in connection with the Work. The actual amount of sales, use and other taxes paid by Supplier shall be shown as separate items on all invoices.
2. **BONDS/LETTERS OF CREDIT AND SUPPLIER FINANCIAL STATEMENTS.**
   1. Where required in the Purchase Order(s)/Work Order(s) or elsewhere in the Agreement or these General Conditions, Supplier shall furnish bond(s) and/or an irrevocable letter(s) of credit, as applicable, securing the performance of the Agreement, with such surety(ies) and/or financial institution(s) acceptable to Owner in its sole discretion. Supplier shall deliver the bond(s) and/or letter(s) of credit to Owner no later than the date of commencement of the Work or as otherwise specified by Owner.
   2. Owner shall have the right to request of and receive from Supplier the annual and most recent financial statements of Supplier for the purpose of determining Supplier's continuing financial ability to perform the Work in accordance with these General Conditions and as otherwise required by the Agreement. The financial statements required to be produced shall include, at a minimum, the balance sheet, income statement, statement of cash flows and, if available, footnotes to the financial statements and any written transmittal (such as an opinion or statement of review) by Supplier's independent accountants. Supplier represents and warrants that all such financial statements as provided to Owner shall (i) be true, correct and complete, (ii) fairly state the financial condition of Supplier, and (iii) be presented in accordance with generally accepted accounting principles, consistently applied. Such financial statements shall be delivered to Owner, to the attention of the Owner’s representative from whom Owner’s request was received, within five (5) business days after Supplier's receipt of Owner’s request.
3. **TRAVEL EXPENSES**.
   1. For agreed to reimbursable travel, Supplier shall make its own travel arrangements and must utilize the lowest cost airfare available taking into account the exigencies of the Work and the circumstances requiring such travel. Supplier's invoice must provide documentation to substantiate all charges. Owner will pay no additional amounts for travel related expenses in connection with firm price agreements.
4. **TERMINATION FOR CONVENIENCE**.
   1. Owner may, at its option, terminate the Agreement in whole or in part at any time by written notice thereof to Supplier, whether or not Supplier is in default.
   2. Upon any such termination, Owner shall pay for all Work completed and the reasonable cost of demobilization to the reasonable satisfaction of Owner, not to exceed the total price of the Agreement, as amended by Change Orders. No amount shall be allowed for anticipated profit on unperformed Work or overhead. Upon receipt of any such notice and unless the notice requires otherwise, Supplier shall forthwith:
      1. Discontinue the Work (including the removal of workers and all other agents of Supplier from the Project Site);
      2. Place no further orders or subcontracts as to the Work other than as may be necessary for completion of any such portion of the Work under the Agreement that is not terminated;
      3. Make best efforts to obtain cancellation upon terms satisfactory to Owner of all orders and subcontracts to the extent they relate to the performance of the Work terminated;
      4. As directed by Owner, assist in the maintenance, protection and disposition of materials, supplies or property acquired pursuant to the Agreement (Owner shall have the right, at its sole option, to purchase and take possession of any unused materials, supplies, or property acquired by Supplier pursuant to the Agreement at the price paid by Supplier); and
      5. Deliver to Owner all Documents, Drawings, plans, reports, specifications, data, estimates, summaries or other material and information, whether or not complete, related to the Work.
5. **TERMINATION FOR DEFAULT**.
   1. Owner may, by written notice of default to Supplier terminate the whole or any part of the Agreement if:
      1. Supplier or its Subcontractors fail to perform any of their material obligations under the Agreement or fail to make progress so as to endanger timely completion of the Work, and Supplier does not cure such failure within five (5) business days after receipt of notice by Owner, or provide a plan that is acceptable to Owner, in the sole discretion of Owner, to commence a cure within five (5) business days after receipt of notice and diligently and continuously pursue a cure thereafter; or
      2. Supplier is generally unable to pay its debts as they come due, or makes an assignment for the benefit of creditors; or Supplier applies for or consents to the appointment of any receiver, trustee or similar officer for it or for all or any substantial part of its property, or such a receiver, trustee or similar officer is appointed without the application or consent of Supplier, and such appointment continues undischarged for a period of thirty (30) days; or Supplier institutes (by petition, application, answer or otherwise) any bankruptcy, insolvency, reorganization, readjustment of debt, dissolution, liquidation or similar proceeding under the Applicable Law of any jurisdiction, or any such proceeding is instituted against Supplier.
   2. In the event Owner terminates the Agreement as provided in this Article 24, Owner may at its option arrange for completion of the Work. Supplier shall be liable to Owner for all direct costs incurred by Owner to cure Supplier’s default, as well as indemnification of Owner for any third party costs, expenses and other damages of any kind or nature incurred by Owner as a consequence of default by Supplier or its Subcontractors.
   3. Unless otherwise stated in the notice, upon receipt of notice of termination for default, Supplier shall:
      1. Immediately discontinue the Work on the date and to the extent specified in the notice;
      2. Place no further orders or subcontracts as to the Work, other than as may be necessary for completion of any such portion of the Work that is not terminated;
      3. Make every reasonable effort to obtain cancellation upon terms satisfactory to Owner of all orders and subcontracts to the extent they relate to the performance of the Work terminated;
      4. As directed by Owner, assist Owner in the maintenance, protection and disposition of materials, supplies, property or the like acquired pursuant to the Agreement (Owner shall have the right, at its sole option, to purchase and take possession of any unused materials, supplies, or property acquired by Supplier pursuant to the Agreement at the price paid by Supplier); and
      5. Deliver to Owner all Documents, Drawings, plans, reports, specifications, data, estimates, summaries or other material and information whether completed or in process related to the Work.
   4. If it is determined for any reason that Supplier was not in default or that there has been a wrongful termination, Supplier's sole and exclusive remedy shall be the same as if Owner had terminated the Agreement for convenience pursuant to Article 23 of these General Conditions.
   5. The rights and remedies of Owner provided in this Article 24 shall be in addition to the rights and remedies provided at law or equity or otherwise under the Agreement. No failure or delay on the part of Owner in exercising any right shall operate as a waiver thereof.

24.6 Each subcontract agreement between Supplier and its Subcontractors for the Work is hereby assigned by Supplier to the Owner, provided that such assignment is effective only after termination of the Agreement for any reason and only for those subcontract agreements that Owner accepts by notifying the Subcontractor and Supplier in writing. Supplier shall include a provision in all of its subcontracts providing that such subcontracts are assigned to Owner in accordance with these General Conditions. Supplier shall provide and sign such documents as may be required by the Owner to effect or evidence any such assignment.

1. **CONFIDENTIAL INFORMATION.**
   1. The Parties shall maintain the confidentiality of all information secured from the other Party in connection with the Agreement. Such confidential information of the other Party, which includes but is not limited to records, books, financial data, projections, and customer, employee and vendor information furnished to or by a Party, together with any analyses, compilations, studies, reports or other documents based in whole or in part upon such information, shall not be divulged to any third party and shall not otherwise be exploited commercially by the non-disclosing Party, except with prior written consent of the disclosing Party or as compelled by Applicable Law. If either Party is or could be legally compelled to make disclosure of confidential information, the non-disclosing Party will notify the disclosing Party prior to making such disclosure and take all reasonably available steps to limit the effects of such disclosure and if possible, require the Parties to whom the information is disclosed to maintain the confidentiality of such information.
   2. This Article 25 and the restrictions contained herein shall not apply to any data and documentation:
      1. Which is in the public domain at the time it was disclosed or at any time thereafter;
      2. Which was already known to the non-disclosing Party at the time of disclosure;
      3. After three (3) years from the date of execution of the Agreement unless (i) the restriction applies to a trade secret, in which case the restriction shall not expire, and/or (ii) is subject to a longer restriction by a third party;
      4. Which is independently developed by the non-disclosing Party; or
      5. Which becomes known to the Party from an independent source, where such source has not violated an agreement of confidentiality.
   3. Notwithstanding the preceding, Owner may disclose or otherwise make available such Supplier proprietary data (i) to Owner’s attorneys, employees, agents and representatives, (ii) pursuant to Applicable Law, including, without limitation, court order, subpoena and regulatory rules or advice, and (iii) to a third party with whom Owner contracts for maintenance, operation, training, modification, construction, repair or consultation, provided that said third party agrees to be bound in writing by similar limitations on use and disclosure of such data as contained herein. Owner agrees to take all reasonable action by instruction to Owner’s employees who are permitted access to Supplier proprietary data to satisfy Owner’s obligations under this Article 25.
   4. In addition to the requirements of Section 25.1 regarding Supplier's treatment of confidential information of Owner, Supplier agrees that:
      1. Owner is a public utility subject to Federal Energy Regulatory Commission (FERC) standards of conduct rules regarding non-public disclosure of transmission function information to marketing function or wholesale function personnel (18 C.F.R. Part 358 effective October 27, 2008, and as may be amended from time to time).
      2. If the Work involves the transmission assets of Owner, Supplier will not reveal any non-public transmission information to any person employed by Owner in a sales or marketing function of any of the Owner or by an energy affiliate (as those terms are defined in 18 C.F.R. Part 358). Supplier shall strictly comply with any communication protocols established by Owner to prevent the disclosure of non-public transmission information with respect to the performance of Work; and
      3. Supplier certifies on behalf of itself and its employees, agents and representatives that it and they are aware of the requirements of 18 C.F.R. Part 388.113. Supplier further certifies that after diligent review of 18 C.F.R. Part 388.113, it has no reason to believe that it or any of its employees, agents or representatives who may be granted access to confidential information that is also Critical Energy Infrastructure Information would be restricted from access to such Critical Energy Infrastructure Information pursuant to 18 C.F.R. Part 388.113.
      4. "**Critical Energy Infrastructure Information**" (CEII) as used in these General Conditions means information that has been previously designated as CEII when filed with the FERC, or all information disclosed to Supplier or its representatives, by Owner in connection with the Work, including information about proposed or existing Critical Infrastructure that: (i) relates to the production, generation, transportation, transmission, or distribution of energy, (ii) could be useful to a person in planning an attack on Critical Infrastructure, (iii) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552, and (iv) does not simply give the location of the Critical Infrastructure. "**Critical** I**nfrastructure**" as used in these General Conditions means systems and assets, whether physical or virtual, that is so vital to the United States that the incapacity or destruction of such systems or assets would have a debilitating impact on the security, national economic security, national public health or safety, or any combination of those matters. Supplier agrees not to use CEII that is confidential information for purposes other than in connection with the Work.
2. **NOTICE OF CLAIMS AND LIENS**.
   1. Supplier agrees not to assert or pursue any Claim against Owner for damages of any kind or nature unless written notice thereof shall have been given to Owner within ten (10) days after the occurrence giving rise to such damages.
   2. The Work performed by Supplier shall pass to Owner and be free and clear of all liens, encumbrances and third party interests (other than a Claim made by Supplier pursuant to Section 26.1). In the event Owner is notified in writing of a third party Claim or Claims arising from the Work performed by Supplier, Owner shall notify Supplier of such Claim or Claims and Supplier shall appoint a representative who will have the authority to settle any Claims, subject to the prior approval of any settlement terms by Owner. If Supplier fails to appoint a representative to settle such Claims, Owner shall have the right to make settlement thereof and charge the same to Supplier.
   3. Supplier shall not allow lien Claims, third party interests or any encumbrances to be (i) filed against Owner, or (ii) placed upon the Work and/or Owner’s property. Supplier further agrees to defend, indemnify, save and hold harmless Owner from and against all such Claims, damages and expenses (including attorneys’ fees), including liens of Subcontractors, laborers, equipment suppliers, service providers and other persons or entities arising out of, resulting from or in any way connected with the Work performed (or omitted to be performed) under or pursuant to the Agreement, including these General Conditions and any Purchase Order(s)/Work Order(s). If a lien or encumbrance has been filed or noticed, Supplier shall bond-over the lien or encumbrances not later than the earlier of five (5) days after the lien or encumbrance has been filed or notice has been received and shall remove the lien of record within one hundred and twenty (120) days. If Supplier chooses to bond-over the lien or encumbrance, the amount of the bond shall not be less than one hundred fifty percent (150%) of the Claim. Any such bond shall survive the termination or expiration of the Agreement. Supplier will furnish, when requested by Owner, written evidence that all Claims, bills, payrolls, costs, taxes and other indebtedness, incurred in connection with the Work, have either been paid in full or bonded-over and releases and waivers of all liens and Claims of Supplier, its Subcontractors and laborers in a form reasonably acceptable to Owner. If any liens, Claims or other encumbrances are outstanding against Supplier or Owner as a consequence of the Work, Owner may retain from money due Supplier sufficient amounts to indemnify and hold Owner harmless.
3. **INDEMNITY**.
   1. Supplier agrees to defend, indemnify and hold harmless Owner and its shareholders, members, partners, affiliates, employees, representatives and agents (including Owner’s third party beneficiaries and Owner’s construction manager and engineer) (collectively, the "**Owner Indemnitees**") from and against all liability (including any strict liability) arising from a third party claim, including claims, suits, actions, costs (including reasonable attorneys fees and costs of investigation), expenses, damages, losses, fines, interest, penalties, assessments, judgments, demands, causes of action and litigation/arbitration of any kind or character (individually, a "**Claim**" and collectively, "**Claims**") arising from Supplier's (A) willful or negligent acts or omissions or those of Supplier's officers, employees, representatives, agents, affiliates or Subcontractors, or (B) breach of the Agreement, including passage of good and marketable title to the Work, that may be imposed on, incurred by or asserted by a third party against any Owner Indemnitee. Supplier shall have the sole authority to direct the defense or settle any Claim indemnified by Supplier; provided, that Owner may monitor such matters through counsel of its choice and at its own cost; and provided, further, that Supplier may not settle any indemnified Claim unless such settlement includes a release of, and the consent of (not to be unreasonably withheld) Owner and the other Owner Indemnitees. The foregoing indemnity will be applicable whether or not materials, equipment or property were or are owned by Owner. The indemnification obligations hereunder are not limited by insurance coverage.
   2. With respect to third party Claims of negligence, (i) Supplier shall be responsible for that portion of any award by way of judgment in which it is determined that Supplier was negligent, but only to the amount represented by the percentage of such negligence so determined against Supplier and any joint tortfeasor in the action (other than Owner and the other Owner Indemnitees), and (ii) if Owner or any of the other Owner Indemnitees are determined in such judgment award to have been negligent and any have a percentage of such negligence allocated to them, Owner and the other Owner Indemnitees shall be responsible solely for the amount represented by the percentage of their respective negligence so determined; provided, however, the foregoing shall not be deemed to relieve Supplier of its obligation to (A) defend Owner and the other Owner Indemnitees in any such third party Claim, and (B) indemnify and hold Owner and the other Owner Indemnitees harmless from and against (1) all legal and associated fees arising from, in connection with or incident to the third party Claim, and (2) the allocated negligence liability of Supplier and any other person or entity for their negligent and other acts or omissions. No matter the outcome of the third party Claim, Supplier shall not have the right to seek payment of (and Owner and the other Owner Indemnitees shall not have any obligation to pay) the legal and other defense fees and costs of Owner and the other Owner Indemnitees which arise in connection with any such third party Claim. No settlement of any such third party Claim against Owner or any of the other Owner Indemnitees shall be made unless consented to in writing in advance by Owner, which consent shall not be unreasonably withheld.
4. **INFRINGEMENT**.
   1. Royalties and fees for patents, trademarks, copyrights or trade secrets related to designs, materials, parts, articles, apparatus, devices, equipment or processes and the like ("**Design(s)**") used in or created pursuant to the Agreement, are included in the Agreement price. Supplier shall, at its own expense, hold harmless and defend Owner against any Claim, suit or proceeding brought against Owner which is based upon any Claim that manufacture, sale or use of any such Design, material, article, apparatus, device, equipment or process, or any part thereof, constitutes an infringement of any patent, trademark, copyright or trade secret, or any other proprietary right of a third party, and Supplier shall pay all defense costs and damages and costs awarded against Owner, including attorneys' fees resulting therefrom.
   2. If any Design(s), or any part thereof, is found to constitute infringement and/or its use is enjoined, Supplier shall, at its own expense, subject to the following provisions, either: (i) procure for Owner an irrevocable, royalty-free license to continue Owner’s use of the Design(s), (ii) with Owner’s prior written approval, replace the same with equal but noninfringing Design(s), or (iii) with Owner’s prior written approval modify the Design(s) so it becomes noninfringing, provided that no such replacement or modification shall in any way amend or relieve Supplier of its obligations set forth in the Agreement, including these General Conditions.
   3. Notwithstanding any proprietary legends or claims of copyright, Owner may copy or reproduce Documents and information furnished by Supplier and distributes such copies or reproduction to others in connection with the Project. Supplier is responsible for obtaining necessary permission and releases from any third parties and shall, at its own expense, hold harmless and defend Owner against any and all Claims, suits or proceedings based upon any Claim that a proprietary right or copyright has been infringed.
5. **LIMITATION OF LIABILITY**.
   1. In no event shall Owner or any third party beneficiary to the Agreement be liable to Supplier for any special, incidental, indirect, punitive or consequential loss or damage whether or not such loss or damage is caused by the fault or negligence of Owner, Owner's employees, or agents. This exclusion of liability for special incidental, indirect, punitive or consequential loss or damage includes, but is not limited to, loss of profits or revenue, cost of capital, loss of use of equipment or facilities, loss of financing, business or reputation. Owner’s liability on any Claim of any kind for any loss or damage arising out of or in connection with or resulting from the Agreement or from performance or breach thereof shall in no case exceed the contract price of the Work, as adjusted by any applicable Change Orders.
   2. In no event shall Supplier be liable to Owner or any third party beneficiary to the Agreement for any special, incidental, indirect, punitive or consequential loss or damage whether or not such loss or damage is caused by the fault or negligence of Supplier, its employees, agents or Subcontractors. This exclusion of liability for special, incidental, indirect, punitive or consequential loss or damage applies to loss of profits or revenue, cost of capital, loss of use of equipment or facilities, cost of purchased or replacement power or Claims of customers due to loss of service. This exclusion does not apply to third party Claims requiring indemnification under Articles 27 and 28 of these General Conditions or if the Agreement is terminated by Owner for default pursuant to the Agreement, including Article 24 of these General Conditions.
6. **DISPUTES**.
   1. The Parties agree that all disputes arising out of the Agreement shall be subject to this Article 30.
   2. In the event of a dispute, authorized representatives from each Party familiar with the Work will meet to resolve the dispute. If these representatives fail to resolve the dispute within seven (7) days, senior representatives from each Party will meet to resolve the dispute. If the senior representatives are unable to resolve the dispute in seven (7) days, such dispute shall be subject to the remaining provisions below.
   3. Any disputes under the Agreement will be governed by the internal laws of the State Minnesota, without regard to conflict of laws provisions, and any action brought with respect to the Agreement shall be venued in State Court, Otter Tail County, Minnesota.
7. **INDEPENDENT CONTRACTOR**.
   1. The Parties expressly agree that Supplier is an independent contractor and is not an employee, partner or joint venturer of Owner. Supplier shall (i) exercise its independent professional judgment in the performance of the Agreement, and (ii) supply the manner and means of performance of the Work hereunder. Supplier, its Subcontractors and their respective employees, agents and other representatives shall not have the right to represent or bind Owner in any manner.
   2. Supplier and its Subcontractors are directly and solely responsible for the safety of their respective agents, employees and other representatives. Owner in no way assume any of the duties, obligations or liabilities attributed to Supplier under the Agreement. Supplier shall immediately report via telephone and in writing to an Owner’s representative all accidents in connection with the Work that result in death, personal injury, or property damage.
   3. Any and all agents, employees and Subcontractors of Supplier provided to perform the Work shall be the agent, employee or Subcontractor of Supplier. Supplier shall be solely responsible for the wages, salary, overtime, taxes, benefits (if any) and any and all other payments or benefits owed to an agent, employee or Subcontractor of Supplier for Work provided under or pursuant to the Agreement. No Supplier's employee shall be entitled to any retirement, welfare, fringe or other benefit provided by Owner to Owner’s employees.
   4. If for any reason an investigation is conducted or a proceeding commenced by any Governmental Body, the purpose of which is to determine whether for any reason a Supplier's employee is an employee of Owner, Supplier shall assist and cooperate with Owner in preparing a response to or defending against, as the case may be, any such investigation or proceeding or the appeal of any such investigation or proceeding. Supplier shall reimburse Owner for any and all reasonable costs Owner incur in the preparation and presentation of Owner’s response to any such investigation or proceeding; provided, however, that Supplier shall not be responsible for such costs to the extent such costs are caused by a breach by Owner of the Agreement.
   5. If it is determined by a Governmental Body, that a Supplier's employee is an employee of any of the Owner and Owner elects not to appeal such determination or such determination shall not be appealable, Supplier shall reimburse Owner for any damages or costs or penalties of any kind which Owner is ordered to pay by the Governmental Body. The Parties further agree that if a Governmental Body determines that a Supplier's employee is an employee of any of the Owner; such Supplier's employee shall be considered to be an employee of such Owner or Owner’s only and solely to the extent set forth in the determination of the Governmental Body and for no other purpose.
8. **ASSIGNMENT AND SUBCONTRACTING**.
   1. Supplier shall not assign the Agreement, or any part thereof, nor delegate in whole or in part, its responsibilities hereunder, without the prior written consent of Owner. Unless otherwise agreed to in writing by Owner, no assignment will release or discharge Supplier from any obligations under the Agreement.
   2. Supplier may not subcontract its responsibilities under the Agreement without the prior written permission of Owner. To the extent Owner agrees to allow Supplier to subcontract any portion of the Work, Supplier shall ensure that all Subcontractors are bound by the terms of the Agreement, including these General Conditions, in a writing executed by Supplier and Subcontractor. Furthermore, the agreement between the Supplier and Supplier’s Subcontractor shall be subject to the review and approval by the Owner. Owner shall be and are intended third party beneficiaries of any Subcontractor agreement. Any delegation of the Work through subcontracting shall not relieve Supplier of its responsibilities under the Agreement nor result in extra cost or liability to Owner.
   3. It is the intent of these General Conditions that Supplier shall perform the majority of the Work with its own forces and under the management of its own organization. Specific portions of the Work may be subcontracted only to Subcontractors who have been listed in the proposal data and who are accepted by Owner.
9. **EQUAL EMPLOYMENT OPPORTUNITY**.

33.1 As part of Owner’s compliance with federal Equal Employment Opportunity and Affirmative Action regulations, we hereby notify Consultant that Owner is an equal opportunity employer that makes employment decisions without regard to race, national origin, religion, age, color, sex, sexual orientation, gender identity, disability, or protected veteran status, or any other characteristic protected by local, state, or federal laws, rules, or regulations.  Owner takes affirmative steps to employ and advance in employment qualified individuals without regard to race, national origin, religion, age, color, sex, sexual orientation, gender identity, disability, or protected veteran status, or any other characteristic protected by local, state, or federal laws, rules, or regulations.  Owner further notifies Consultant that as an entity supplying goods or services to Owner, your organization may be subject and required to take action pursuant to the following laws and accompanying regulations:

Executive Order 11246 (and its implementing regulations at 41 C.F.R. part 60-1.4(a)); and

The Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended (and its implementing regulations at 41 C.F.R. 60-300.5(a)); and

Section 503 of the Rehabilitation Act of 1973, as amended (and its implementing regulations at 41 C.F.R 60-741.5(a)); and

Executive Order 13496 (and its implementing regulations at 29 C.F.R. part 471, Appendix A to Subpart A).

1. **THIRD PARTY BENEFICIARIES**.
   1. Except for the third parties described or named in the Agreement, including these General Conditions, no provision of the Agreement shall in any way inure to the benefit of any third person so as to make any such person a third party beneficiary of the Agreement or of any one or more of the terms of these General Conditions.
2. **PUBLICITY**.
   1. Supplier shall not make any announcement or release any information, publicity or photographs concerning the Agreement or the Project or any part thereof to any member of the public, press or any official body, unless prior written consent is obtained from Owner.
3. **HEADINGS**.
   1. Article headings and titles are included for the convenience of the Parties and shall not affect the meanings of the terms or conditions hereof.
4. **SEVERABILITY**.
   1. In the event any words, phrases, clauses, sentences or other provisions hereof are invalid or violate any Applicable Law, such offending provision(s) shall be ineffective to the extent of such violation without invalidating the remainder of the Agreement, and the remaining provisions of the Agreement shall be construed consistent with the intent of the Parties hereto as closely as possible, and the Agreement, as reformed, shall be valid, enforceable and in full force and effect.
5. **ENTIRE AGREEMENT AND WAIVER; JOINT EFFORT**.
   1. The Agreement constitutes the entire and sole agreement between the Parties concerning the subject matter of the Agreement and all prior negotiations, representations, understandings or agreements are not part of the Agreement and shall have no force or effect. Any waiver by either Party of any provision or condition of the Agreement must be in writing and signed by the Party to be bound. No such waiver shall be construed or deemed to be a waiver of any other provision or condition of the Agreement, nor a waiver of subsequent breach of the same provision or condition. Preparation of this Agreement has been a joint effort of the Parties and the resulting document (or any portion) is not to be construed more severely against one of the Parties than against the other.
6. **AUTHORITY OF OWNER AND OWNER’S REPRESENTATIVES.**
   1. Owner’s construction manager and its other designated representative(s) will direct and coordinate all Project contracts except those activities specified elsewhere in the Contract Documents to be directed and coordinated by a representative designated by Owner. Owner and its construction manager or such designated representative(s) at all times shall have reasonable access to the Work or the shops of Supplier for inspection of the Work or any part thereof. Except as otherwise specified in the Contract Documents, such representative shall make all explanations and directions which shall be necessary to the performance of the Work required, including interpretation of the Contract Documents; however, Supplier's right of dispute resolution shall apply to all decisions and directions of such representative.
7. **SURVIVAL**.
   1. In the event of termination or expiration of the Agreement, the following sections (in their entirety) and subsections of these General Conditions shall survive any such termination or expiration: Articles 15 (Supplier Warranties), 16 (Insurance), 19 (Right to Audit), 20 (Taxes), 21.1 (Bonds/Letters of Credit), 25 (Confidential Information), 27 (Indemnity), 28 (Infringement), 29 (Limitation of Liability), 30 (Disputes), 34 (Third Party Beneficiaries), 35 (Publicity), 36 (Headings), 37 (Severability), 38 (Entire Agreement and Waiver), 39 (Authority of Owner and Owner’s Representatives) and 40 (Survival).

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