Docket #0031 Date Filed: 9/14/2021

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	Chapter 11
Welded Construction, L.P., *et al.*	Case No: 18-12378 (CSS)
Debtors.[1]	(Jointly Administered)
Welded Construction, L.P.,	
Plaintiff,	
vs.	Adversary Proceeding No. 20−50932−CSS
Industrial Fabrics, Inc.,	
Defendant.	

NOTICE OF INTENT TO SERVE A DOCUMENT SUBPOENA

Industrial Fabrics, Inc., the Defendant in the above-referenced adversary proceeding by and through counsel of record, hereby provides notice pursuant to Fed.R.Civ.P Rule 45 and Fed.R.Bankr.P. Rule 9016 of its intent to serve a document subpoena on the following:

TO: President
Columbia Gas Transmission, LLC
700 Louisiana Street, Suite 1300
Houston, Texas 77002-2700

THRU: Corporation Service Company
251 Little Falls Drive,
Wilmington, DE 19808
Registered Agent

A copy of the document subpoena is attached.

Dated: September 14, 2021

Respectfully submitted,

THE LAW OFFICE OF JAMES TOBIA, LLC
James Tobia, Esq. (#3798)
1716 Wawaset Street
Wilmington, DE 19806
Tel. (302) 655-5303
Fax (302) 656-8053
Email: jtobia@tobialaw.com

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Welded Construction, L.P. (5008) and Welded Construction Michigan, LLC (9830)

1812378210914000000000004

and

JONES & ASSOCIATES
By: /s/ Roland Gary Jones
Roland Gary Jones, Esq.
1325 Avenue of the Americas
28th Floor
New York, NY 10019
Tel. (347) 862-9254 Ext. 701
Fax: (212) 202-4416
Email: rgj@rolandjones.com
Admitted pro hac vice

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	Chapter 11
Welded Construction, L.P., *et al.*	Case No: 18-12378 (CSS)
Debtors.[1]	(Jointly Administered)

Welded Construction, L.P.,	
Plaintiff,	
vs.	Adversary Proceeding No. 20−50932−CSS
Industrial Fabrics, Inc.,	
Defendant.	

SUBPOENA IN AN ADVERSARY PROCEEDING

TO: President
Columbia Gas Transmission, LLC
700 Louisiana Street, Suite 1300
Houston, Texas 77002-2700

THRU: Corporation Service Company
251 Little Falls Drive,
Wilmington, DE 19808
Registered Agent

Columbia Gas Transmission, LLC is required to respond to the attached document subpoena. Undersigned counsel will accept electronic production of the documents and information requested via e-mail at the e-mail address indicated below.

PLEASE TAKE NOTICE that that failure to respond to the subpoena is punishable as contempt of court.

Should you have any questions with respect to this subpoena, please contact Roland Gary Jones, Esq. using the telephone number and/or electronic mail address provided below.

Dated: September 14, 2021

Respectfully submitted,

THE LAW OFFICE OF JAMES TOBIA, LLC
James Tobia, Esq. (#3798)
1716 Wawaset Street
Wilmington, DE 19806
Tel. (302) 655-5303
Fax (302) 656-8053
Email: jtobia@tobialaw.com

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Welded Construction, L.P. (5008) and Welded Construction Michigan, LLC (9830)

and

JONES & ASSOCIATES
By: /s/ Roland Gary Jones
Roland Gary Jones, Esq.
1325 Avenue of the Americas
28th Floor
New York, NY 10019
Tel. (347) 862-9254 Ext. 701
Fax: (212) 202-4416
Email: rgj@rolandjones.com
Admitted pro hac vice

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	Chapter 11
Welded Construction, L.P., *et al.*	Case No: 18-12378 (CSS)
Debtors.[1]	(Jointly Administered)
Welded Construction, L.P.,	
Plaintiff,	
vs.	Adversary Proceeding No. 20−50932−CSS
Industrial Fabrics, Inc.,	
Defendant.	

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR ORJECTS OR TO PERMIT INSPECTION OF PREMISES IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

TO: President
Columbia Gas Transmission, LLC
700 Louisiana Street, Suite 1300
Houston, Texas 77002-2700

THRU: Corporation Service Company
251 Little Falls Drive,
Wilmington, DE 19808
Registered Agent

☒ Production – YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

See **Exhibit A**, attached.

PLACE:	DATE AND TIME:
Jones & Associates 1325 Avenues of the Americas 28th Floor New York, NY 10019	September 30, 2021 1:00 PM EST

☐ *Inspection of Premises*: **YOU ARE COMMANDED** to permit entry onto the designated

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Welded Construction, L.P. (5008) and Welded Construction Michigan, LLC (9830)

premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

PLACE:	DATE AND TIME:

The following provisions of Fed. R. Civ. P. 45 made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Dated: September 14, 2021

/s/Roland Gary Jones
Roland Gary Jones, Esq.
Counsel for Industrial Fabrics, Inc.

The name, address, e-mail address, and telephone number of the attorney representing Industrial Fabrics, Inc., the Defendant in this Adversary Proceeding, who issues or requests this subpoena, are:

JONES & ASSOCIATES
By: */s/ Roland Gary Jones*
Roland Gary Jones, Esq.
New York Bar No. RGJ-6902
1325 Avenues of the Americas
28th Floor
New York, NY 10019
Tel: (347)862-9254
Fax: (212) 202-4416
Email: rgj@rolandjones.com

Counsel for Industrial Fabrics, Inc.

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.
(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
(i) is a party or a party's officer; or
(ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:
(A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
(B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.
(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.
(2) Command to Produce Materials or Permit Inspection.
(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to
producing electronically stored information in the form or forms requested.

The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.
(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
(i) fails to allow a reasonable time to comply;
(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
(iv) subjects a person to undue burden.
(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:
(i) disclosing a trade secret or other confidential research, development, or commercial information; or
(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's
study that was not requested by a party.
(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:
(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
(C) Electronically Stored Information Produced in Only One Form. The
person responding need not produce the same electronically stored information in more than one form.
(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.
(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
(i) expressly make the claim; and (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.
(g) Contempt. The court for the district where compliance is required – and
also, after a motion is transferred, the issuing court – may hold in contempt
a person who, having been served, fails without adequate excuse to obey
the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013)

EXHIBIT A TO THE SUBPOENA TO PRODUCE INFORMATION RELATED TO WELDED CONSTRUCTION, L.P. IN THE POSSESSION, CUSTODY OR CONTROL OF COLUMBIA GAS TRANSMISSION, LLC TO BE PRODUCED FOR INSPECTION AND COPYING

INSTRUCTIONS TO THE RECIPIENT OF THIS SUBPOENA:

The Defendant, Industrial Fabrics, Inc., believes that the Columbia Gas Transmission, LLC is in possession, custody, and control of information, which is relevant to the bankruptcy adversary proceeding pursuant to which this subpoena has been issued. ALL DOCUMENT DESTRUCTION OR RETENTION POLICIES AND PRACTICES AND ELECTRONIC FILE DELETION OR DISK MANAGEMENT PRACTICES, POLICIES OR PROTOCOLS (INCLUDING BUT NOT LIMITED TO REFORMATTING OR DEFRAGMENTING PRACTICES) WHICH COULD HAVE THE EFFECT OF ALTERING OR DESTROYING INFORMATION REQUESTED BY THE SUBPOENA WHICH IS ELECTRONICALLY STORED SHOULD BE SUSPENDED UNTIL YOU ARE EXCUSED FROM THIS SUBPOENA.

Failure without adequate excuse to obey this subpoena may be punished as contempt of the United States Bankruptcy Court from which this subpoena is issued.

For purposes of this request, the following definitions apply:

Definitions:

"Agreement" refers to the contract or agreement between Welded Construction and Columbia Gas for the pipeline construction for spread one of the Mountaineer XPress Project. A copy of which is attached as Exhibit B.

"Columbia Gas" refers to Columbia Gas Transmission, LLC, including its affiliates and subsidiaries, successors in interest, agents, assignees, present and former directors, officers, and employees.

"Project" refers to the Mountaineer XPress Project as defined in the Agreement.

"Relate" or "relating to" is defined as showing, reflecting, referring to, constituting, evidencing, or concerning in any way all or any portion of the subject matter of the facts, contentions, or matter referenced in the interrogatory.

"Welded Construction" refers to Welded Construction, L.P., including its affiliates and subsidiaries, predecessors in interest, agents, assignees, present and former directors, officers, and employees.

Request for information:

1. Identify the outstanding debts owed by Columbia Gas to Welded Construction in relation to the Agreement or the Project as of September 10, 2018.

2. Identify the outstanding debts owed by Columbia Gas to Welded Construction in relation to the Agreement or the Project as of September 24, 2018.

Requests for documents:

1. All documents relating to the outstanding debts owed by Columbia Gas to Welded Construction in relation to the Agreement or the Project as of September 10, 2018.

2. All documents relating to the outstanding debts owed by Columbia Gas to Welded Construction in relation to the Agreement or the Project as of September 24, 2018.

Agreement No. 4600008133

between

Columbia Gas Transmission, LLC

and

Welded Construction, L.P.

for

Pipeline Construction for Spread One of the Mountaineer XPress Project

U.S. PIPELINE CONSTRUCTION AGREEMENT

LUMP SUM

ARTICLE 1.	DEFINITIONS AND INTERPRETATION	3
ARTICLE 2.	SCHEDULE AND TERM	10
ARTICLE 3.	PAYMENT	10
ARTICLE 4.	CONTRACT	15
ARTICLE 5.	PERSONNEL	15
ARTICLE 6.	PERFORMANCE	15
ARTICLE 7.	CHANGES	18
ARTICLE 8.	COMPLETION AND ACCEPTANCE	22
ARTICLE 9.	INSPECTION AND TESTING	25
ARTICLE 10.	PERMITS	26
ARTICLE 11.	COMPLIANCE WITH LAW	27
ARTICLE 12.	SAFETY	27
ARTICLE 13.	QUALITY MANAGEMENT SYSTEM REQUIREMENTS	28
ARTICLE 14.	CONDUCT OF CONTRACTOR	29
ARTICLE 15.	STORAGE AND CLEAN UP	29
ARTICLE 16.	TITLE AND RESPONSIBILITY	30
ARTICLE 17.	PATENTS AND LICENSES	31
ARTICLE 18.	PROPRIETARY INFORMATION	31
ARTICLE 19.	CONFIDENTIAL INFORMATION AND PUBLICITY	32
ARTICLE 20.	FORCE MAJEURE	33
ARTICLE 21.	DELAYS CAUSED BY CONTRACTOR	34
ARTICLE 22.	DELAYS NOT CAUSED BY CONTRACTOR	35
ARTICLE 23.	ENVIRONMENTAL PROTECTION	36
ARTICLE 24.	COMPANY'S RIGHT OF SUSPENSION	38
ARTICLE 25.	COMPANY'S RIGHT TO TERMINATE FOR CONVENIENCE	38
ARTICLE 26.	COMPANY'S RIGHT TO TERMINATE FOR CAUSE	40
ARTICLE 27.	CONTRACTOR'S RIGHT TO TERMINATE FOR CAUSE	41
ARTICLE 28.	TAXES	42
ARTICLE 29.	PAYMENT OF ACCOUNTS	43
ARTICLE 30.	LIENS	43
ARTICLE 31.	REPRESENTATIONS AND WARRANTIES	43
ARTICLE 32.	LIABILITY AND INDEMNITY	45
ARTICLE 33.	INSURANCE	47
ARTICLE 34.	INDEPENDENT CONTRACTOR	50
ARTICLE 35.	SUBCONTRACTORS AND ASSIGNMENT OF CONTRACT	51
ARTICLE 36.	DISPUTE RESOLUTION	52
ARTICLE 37.	CONFLICT OF INTEREST	53
ARTICLE 38.	AUDIT	53
ARTICLE 39.	FINANCIAL ASSURANCES	54
ARTICLE 40.	GENERAL	54
ARTICLE 41.	NOTICES	55
ARTICLE 42.	REPRESENTATIVES	56
ARTICLE 43.	ENTIRE CONTRACT	56
ARTICLE 44.	EXECUTION	56

AGREEMENT dated as of November 03, 2017 ("**Effective Date**")

PARTIES:

Columbia Gas Transmission, LLC
(the "**Company**")

- and -

Welded Construction, L.P.
(the "**Contractor**")

(individually, a "**Party**" and collectively, the "**Parties**")

WHEREAS Company requires to be performed the construction of spread one of the Mountaineer XPress project;

AND WHEREAS Contractor has agreed to perform such work in accordance with the terms and conditions of this Agreement;

NOW THEREFORE, in consideration of the premises and mutual covenants and agreement contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. DEFINITIONS AND INTERPRETATION

1.1 The following terms, wherever used in the Agreement or in any amendment thereto, mean:

(A) "**Affiliate**" means at any given time, in relation to a Person, any company, corporation, partnership or other entity which, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person; where "control" means the possession, either directly or indirectly, or the power to direct or cause the direction of the management and policies of the relevant Person whether through the ownership or control of voting interests, by contract, or otherwise;

(B) "**Agreement**" means collectively this construction agreement and all attached Schedules, which incorporate and include Change Orders, Change Directives and all drawings, plans, and specifications listed therein;

(C) "**Business Day**" means any calendar day excluding Saturday, Sunday and all legal holidays observed in the State of West Virginia;

(D) "**Cancellation Fees**" means all direct and verifiable costs, exclusive of profit, reasonably incurred by Contractor as a direct result of the termination of the Agreement, the Work, or any portion thereof, excluding any other costs or damages, loss of profits or any other consequential or special damages;

(E) "**Catastrophic Weather**" means extreme weather conditions which could not have been contemplated by the Parties including earthquake, typhoon, flood, natural disasters, landslides, hurricanes, tornados and tsunamis, which materially and adversely affect the Work Site;

(F) "**Change**" means any change in, addition to, or deletion from the Work, provided that a change in or addition to the Work is limited to those changes or additions that are not reasonably

implied, incidental to or foreseeably required in order to perform the Work as outlined in this Agreement;

(G) "**Change Directive**" means a written instruction from Company directing a Change;

(H) "**Change Order**" means a written order signed by both Contractor and Company authorizing a Change or that changes a Schedule, the Work Schedule or the Project Schedule;

(I) "**Change Order Request Notice**" has the meaning ascribed in Section 7.8;

(J) "**Change Quotation**" means a written quotation from Contractor for an adjustment in the Price, the Work Schedule, or any combination thereof;

(K) "**Check List**" has the meaning ascribed in subsection 8.1(A);

(L) "**Claims**" means liens, actions, causes of action, suits, proceedings, judgments, claims, losses, injuries, costs, damages, fines, penalties and expenses of whatever nature;

(M) "**Commencement Date**" means the date as set out in subsection 2.1(A);

(N) "**Company**" means the entity identified as "Company" in the recitals;

(O) "**Company Indemnified Parties**" has the meaning ascribed in Section 32.2;

(P) "**Company Insurance Policies**" has the meaning ascribed in Section 33.4;

(Q) "**Company Representative**" means that person identified as such in Section 42.1;

(R) "**Company Supplied Materials**" means any materials to be supplied by Company to Contractor, including those materials to be incorporated into the Work;

(S) "**Confidential Information**" has the meaning ascribed in Section 19.1;

(T) "**Construction Period Defect**" has the meaning ascribed in Section 6.16;

(U) "**Contemplated Change Notice**" means a written notice from Company advising Contractor of a contemplated Change;

(V) "**Contractor**" means the entity identified as "Contractor" in the recitals;

(W) "**Contractor Indemnified Parties**" has the meaning ascribed in Section 32.5;

(X) "**Contractor Insurance Policies**" has the meaning ascribed in Section 33.1;

(Y) "**Contractor Prepared Documents**" means all plans, drawings, specifications, calculations, reports, opinions, notes, models, bid documents, software, data and other documents prepared by Contractor in accordance with the Agreement whether written, or stored electronically;

(Z) "**Contractor Representative**" means that person identified as such in Section 42.2;

(AA) "**Contractor Taxes**" has the meaning ascribed in Section 28.1;

(BB) "**Critical Path**" means the essential timeline throughout the Work Schedule wherein a delay or change in duration could reasonably be expected to impact the achievement of Substantial Completion;

(CC) "**Day**" means the twenty-four hour period beginning at 12:00 midnight local time and ending at immediately before 12:00 midnight local time of the next succeeding day and includes all calendar days including Saturday, Sunday and all legal holidays observed in the State of West Virginia;

(DD) "**Dispute**" has the meaning ascribed in Section 36.1;

(EE) "**Dollars"** or "**$**" means United States Dollars;

(FF) "**Effective Date**" means the date set out in the recitals;

(GG) "**Exclusion Area**" means any area identified in the Agreement as a buffer zone, exclusion area or area of environmental control as an area that must be avoided;

(HH) "**Facilities**" or "**Pipeline**" means spread one of the Mountaineer XPress pipeline project in West Virginia to be constructed hereunder at the Work Site as part of the Work, including all the physical facilities to be constructed, procured, assembled or otherwise provided on or to the Work Site by Contractor pursuant to this Agreement;

(II) "**Final Completion**" means final completion of the Work as contemplated in Section 8.3;

(JJ) "**Final Completion Certificate**" means that notice issued pursuant to subsection 8.3(B) certifying completion and acceptance of the Work;

(KK) "**Final Completion Date**" means the date upon which Company issues the Final Completion Certificate pursuant to subsection 8.3(B);

(LL) "**Financial Information**" means sufficient information, supplied by Contractor, of such kind and detail as may be required by Company, to allow Company to assess and determine, or to confirm, credit worthiness;

(MM) "**Force Majeure**" has the meaning ascribed in Section 20.1;

(NN) "**Governmental Authority**" means any federal, state, local, or any foreign, government, political subdivision, governmental, regulatory or administrative authority, instrumentality, agency body or commission, self-regulatory organization, court, tribunal or judicial or arbitral body.

(OO) "**Guaranteed Substantial Completion Date**" means the date set out in subsection 2.1(B);

(PP) "**Hazardous Material**" means any pollutant, contaminant, constituent, chemical, mixture, raw material, intermediate product, finished product or by-product, hydrocarbon or any fraction thereof, asbestos or asbestos-containing material, polychlorinated biphenyls, or industrial, solid, toxic, radioactive, infectious, disease-causing or hazardous substance, material, waste or agent, including all substances, material or wastes which are identified or regulated under any Law or the Policies and Guidelines or which may threaten life or property or adversely affect human, animal or vegetation health or the environment;

(QQ) "**Holdback**" has the meaning ascribed in Section 3.5;

(RR) "**Key Personnel**" means the persons identified as such in Schedule "E";

(SS) "**Landowner**" means the owner of any land or property directly or indirectly affected by the performance of the Work, and any agent, tenant or occupant having use of such land or property;

(TT) **"Law"** means the common law, the law of equity, all federal, state and municipal statutes or by- laws and all regulations, orders, directives, codes, guidelines and Permits thereunder which apply to or otherwise affect Company, Contractor, the Subcontractors, and their respective employees with respect to the Work or the property of Company (including the Facilities), Contractor, a Subcontractor or third parties related thereto, real or personal, or any part thereof and including all environmental and occupational health and safety laws, regulations, orders, directives, codes, guidelines and Permits;

(UU) **"Lien"** means any lien, encumbrance, charge, hypothec or security interest, or encumbrance upon real or personal property, and includes builders' liens, mechanics' liens, materialmens' liens, and suppliers' liens, upon the Facilities, the Work, the Work Site, or any equipment, supplies or materials encompassed therein, or any other property of Company that arises out of the Work or by or through Contractor or its Subcontractors in connection with the Work;

(VV) "**Major Subcontractor**" means any Subcontractor with a contract with a cumulative expected value of more than $500,000;

(WW) "**OHS Legislation**" has the meaning set forth in Section 12.1;

(XX) **"Other Contractors"** means any third party contractors, consultants, or engineers retained by Company to perform any work or services related to the Work, the Facilities or the Work Site;

(YY) **"Party"** means either Company or Contractor and "**Parties**" means Company and Contractor;

(ZZ) **"Permits"** means any and all licenses, franchises, permits, privileges, approvals, orders, consents, exemptions, variances, permissions, occupancy agreements, working space agreements, rights-of-way, easements, registrations and other authorizations or approvals from a Governmental Authority required in connection with the performance of the Work;

(AAA) "**Person**" means any individual; corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, joint venture, or other entity with legal constitution under applicable Laws; or any government or political subdivision or instrumentality or agency thereof;

(BBB) "**Personnel**" has the meaning ascribed to it in Section 19.3;

(CCC) **"Policies and Guidelines"** means Company's rules, regulations, policies, specifications, procedures and guidelines that apply to the provision of the Work and have been communicated to Contractor from time to time, including those set forth in Schedule "M";

(DDD) **"Preliminary Notice of Substantial Completion"** has the meaning ascribed to it in subsection 8.2(A);

(EEE) **"Price"** means the total price for the performance of the Work and all of Contractor's other obligations under this Agreement;

(FFF) **"Prime Contractor"** means the contractor that has been designated as responsible for Work Site safety (this term is meant to be equivalent to alternative terms that may be used in the Safety Legislation in various jurisdictions);

(GGG) **"Prime Rate"** means the per annum rate of interest equal to the prime rate (or an equivalent thereof) in the United States for corporate loans determined as the average of the rates referred to as prime rate, base rate, or the equivalent thereof quoted by J.P. Morgan Chase & Co., or any successor thereof, for short term corporate loans in New York on the applicable date;

(HHH) "**Project Mediator**" has the meaning ascribed in subsection 36.3(A);

(III) "**Project Schedule**" means, as applicable, the schedule for the Work attached hereto or the milestones dates provided in the Agreement;

(JJJ) "**Proprietary Information**" has the meaning ascribed to it in Section 18.1;

(KKK) "**Prudent Industry Practices**" means the professional practices, methods, equipment, specifications and safety and output standards and industry codes of the United States natural gas pipeline industry now in effect and as modified during the performance of Work, for pipelines and facilities of the same type and capacity as the Facilities, all of the above in compliance with the standards of safety, output, dependability, efficiency and economy, including recommended practice, of a good, safe, prudent and workmanlike character and in compliance with the Law. Prudent Industry Practices are not intended to be limited to the optimum or minimum practice or method to the exclusion of all others, but rather to be a spectrum of reasonable and prudent practices and methods.

(LLL) "**Punch List**" has the meaning ascribed to it in subsection 8.1(C);

(MMM) "**Quality Management System**" means the system to be developed by Contractor for Company in accordance with article 13.

(NNN) "**Records**" means all documents of any kind, including paper and electronic records, books, statements, subcontracts and accounts pertaining in any way to the Agreement and the performance of the Work;

(OOO) "**Release and Certificate of Final Payment**" means the form of release and certificate of final payment set forth in Schedule "L";

(PPP) "**Safety Legislation**" means the legislation governing health and safety of the Work or on a Work Site, including all laws, regulations, orders, directives, codes and guidelines;

(QQQ) "**Safety Programs**" has the meaning ascribed in Section 12.2;

(RRR) "**Schedule**" means any schedule set forth in Section 1.3;

(SSS) "**Scope of Work**" means the Scope of Work as set forth in Schedule "A", as such may be modified from time to time by a Change Order;

(TTT) "**Senior Officer's Notice**" has the meaning ascribed in Section 36.2;

(UUU) "**Subcontractor**" means each and every Supplier, subcontractor, or contractor at any tier performing any part of the Work or providing any equipment, supplies or materials in connection with the Work, directly or indirectly, for Contractor;

(VVV) "**Substantial Completion**" has the meaning ascribed in subsection 8.2(A); (WWW)

"**Substantial Completion Certificate**" means the notice issued to Contractor pursuant to subsection 8.2(D) certifying achievement of Substantial Completion;

(XXX) "**Substantial Completion Date**" means the date upon which Company issues the Substantial Completion Certificate pursuant to subsection 8.2(D);

(YYY) "**Supplier**" means any manufacturer, fabricator, supplier, distributor, materialman or vendor of Contractor or a Subcontractor;

(ZZZ) "**Suspended Work**" means any Work, or portion thereof, which Company has suspended pursuant to article 24;

(AAAA) "**Warranty Period**" means (i) with respect to the warranty provided on mechanical aspects of the Work, the period beginning on the Substantial Completion Date (or the date of any termination of the Agreement prior to the issuance of the Substantial Completion Certificate) and ending on the date twenty-four (24) months after the Substantial Completion Date (or twenty-four (24) months after the date of any termination of the Agreement prior to the Substantial Completion Date) (the "Mechanical Warranty Period"); and (ii) with respect to the warranty provided on Site restoration Work (the "Restoration Warranty"), the period beginning on the Final Completion Date (or the date of any termination of the Agreement prior to the issuance of the Final Completion Certificate) and ending on the date eighteen (18) months after the Final Completion Date (or eighteen (18) months after the date of any termination of the Agreement prior to the Final Completion Date). However, if any mechanical aspect of the Work is re-performed, remedied or otherwise corrected pursuant to Section 31.4, the Mechanical Warranty Period for such re-performed, remedied or otherwise corrected mechanical Work shall expire on the later of: (i) the date twenty-four (24) months after the Substantial Completion Date (or twenty-four (24) months after the date of any termination of the Agreement prior to the Substantial Completion Date); or (ii) the date twenty-four (24) months from the date that such re-performance, remedy or correction is completed;

(BBBB) "**Work**" means the total construction and related services required to be performed by Contractor hereunder, either directly or through its Subcontractors, including all labor, supervision, administration, materials, transportation, supplies, tools, equipment, temporary facilities, storage facilities and such other work and materials necessary to be performed for the Work required by the Agreement and including any work which is not expressly described in the Agreement but which is reasonably implied, incidental to or foreseeably required in order to perform the Work or necessary for the proper execution of the Work (for greater certainty, the "Work" includes the services set forth in the Scope of Work, the Agreement and all exhibits, appendices and attachments thereto.);

(CCCC)"**Work Schedule**" means the detailed schedule, including applicable milestone dates, for the performance of the Work provided under the Agreement and which, for greater certainty, includes, incorporates and is consistent with the Guaranteed Substantial Completion Date and the date by which Final Completion is expected to be acheived;

(DDDD)"**Work Site**" means those lands legally and municipally described as such in the Agreement, including fee lands, easements for rights-of-way, ingress and egress and temporary working spaces acquired by Company and provided to Contractor, subject to all restrictions and conditions of use related thereto; and

(EEEE) "**Work Time Extension**" has the meaning ascribed in Section 6.13.

1.2 **Conflicts**

If there is a conflict among the Agreement documents, the order of precedence, from highest to lowest, shall be:

(A) the Agreement; and

(B) other Schedules, and Exhibits thereto, in the order of their occurrence in the Agreement.

1.3 **Schedules**

The following Schedules are attached to and form part of this Agreement:

(A) Schedule "A" - Scope of Work;

(B) Schedule "B" - Price;

(C) Schedule "C" - Project Controls, Reporting and Invoicing;

(D) Schedule "D" - Work Schedule;

(E) Schedule "E" - Key and Other Personnel and Organization Chart;

(F) Schedule "F" - Manpower and Equipment Plans;

(G) Schedule "G" - Pipeline Specific Contractor Plans;

(H) Schedule "H" - Company Supplied Materials;

(I) Schedule "I" - List of Drawings;

(J) Schedule "J" - Pipeline Specific Documents;

(K) Schedule "K" - Line List;

(L) Schedule "L" - Forms;

(M) Schedule "M" - Policies and Guidelines;

(N) Schedule “N” - List of Subcontractors; and

(O) Schedule “O” - Financial Assurances (if required).

1.4 With respect to all Agreement documents:

(A) Where documents have been revised by either Party and approved by Company in writing, the latest approved revisions shall govern;

(B) Figured dimensions on drawings shall govern, even though they may differ from scaled dimensions;

(C) Where drawings have both a large and small scale, the larger scale shall govern over those of smaller scale for drawings of the same date; and

1.5 The intent of the Parties is that the documents comprising the Agreement include all items necessary for the proper execution and completion of the Work by Contractor. The Agreement documents are complementary, and what is required by one shall be as binding as if required by all; all indications or notations which apply to one of a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials and processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Agreement documents. Subject to the foregoing, performance by Contractor shall be required only to the extent consistent with the Agreement documents and reasonably inferable from them as being necessary to produce the indicated results.

1.6 Unless the context otherwise requires, the word “including” (and with the correlative meaning “include”) means (i) including without limiting the generality of any description preceding such term, and (ii), with respect to any description following such term, means “including, without limitation” and “including, but not limited to”.

1.7 Unless the context otherwise requires, words importing the singular shall include the plural and vice-versa and words importing gender shall include the masculine and feminine genders.

1.8 Where reference is made to a "week", "month" or "year", the reference is to a calendar week, month or year, unless the context indicates otherwise.

1.9 Where any requirement in this Agreement requires or contemplates Company's approval or acceptance, or whether Company otherwise provides an approval or acceptance in respect of Contractor supplied documents, plans or other portions of the Work, such approval or acceptance shall not relieve Contractor from its exclusive responsibility for such documents, plans or other portions of the Work, any obligations under this Agreement or estop Company from asserting any non-compliance by Contractor with an obligation hereunder.

1.10 Unless expressly stated otherwise, any reference to the "discretion" of Company shall mean "sole, unfettered and arbitrary discretion" and Company shall have full freedom to take or not take such action or omission without affecting any of its rights hereunder.

ARTICLE 2. SCHEDULE AND TERM

2.1 Contractor shall:

(A) commence the Work on or before January 12, 2018 (the "**Commencement Date**") and perform the Work in accordance with the Work Schedule; and

(B) achieve Substantial Completion by October 1, 2018 (the "**Guaranteed Substantial Completion Date**").

2.2 This Agreement shall commence on the Effective Date and shall terminate on the date that Contractor has satisfied all of its obligations under the Agreement, including Contractor's warranty and indemnity obligations.

2.3 Contractor may, with Company's advance written approval in each instance, commence identified Work activities off of the Work Site between the date of execution of this Agreement and issuance by Company of a notice to proceed.

2.4 Subject to section 2.3, Contractor shall commence Work immediately upon issuance by Company of a written notice to proceed and shall commence Work at the Work Site within ten (10) Days unless regulatory restrictions prevent Contractor from mobilizing, in which case Contractor shall commence Work as soon as is reasonably practicable after issuance of the notice to proceed. Company and Contractor shall communicate with one another concerning the anticipated date of issuance of the notice to proceed so that Contractor can commence Work activities at the Work Site within a target of ten (10) Days of receipt of the notice to proceed.

2.5 Failure of Company to issue a notice to proceed on or before the Commencement Date shall entitle Contractor to schedule relief if such delay impacts the Critical Path of the Work Schedule. Contractor shall provide a Change Order Request Notice in accordance with article 7 if it wishes to claim such relief.

ARTICLE 3. PAYMENT

3.1 As full and complete compensation for performance of the Work and in consideration of the performance of all of Contractor's other obligations under this Agreement, Company shall pay

Contractor the Price calculated and payable in accordance with this Agreement, as set out in Schedule “B”.

3.2 In accordance with Schedule “C”, Contractor shall furnish to Company requests for payment in form and substance satisfactory to Company. Each request for payment shall be calculated in accordance with Schedule “B”. Each request for payment shall be itemized and supported by such data substantiating Contractor's right to payment as required by this Agreement, including:

(a) invoices in form and substance satisfactory to Company;

(b) full back-up information, including invoices, purchase orders and receipts;

(c) any other information as required by Schedule “C”;

(d) signed and notarized unconditional partial Lien waivers and releases from Contractor and each Major Subcontractor applicable to Work completed prior to the date of the request for payment and with respect to which Contractor has already received payment, in the form included in Schedule “L”;

(e) signed and notarized conditional partial Lien waivers and releases from Contractor and each Major Subcontractor that are applicable to Work completed for which Contractor seeks payment in the request for payment, in the form included in Schedule “L”; and

(f) a certification by Contractor in the form included in Schedule “L” stating that:

(i) the Work for which payment is requested has been performed and the quality thereof is in strict accordance with the terms of this Agreement;

(ii) Contractor is entitled to payment of the amount invoiced;

(iii) title to all equipment and materials to be incorporated into the Work or the Facilities for which payment is sought has passed or will pass to Company in accordance with the terms of this Agreement;

(iv) Contractor does not have any claims or demands for payment relating to Work completed up to the date of the invoice (including claims for extras, Changes, impacts and delays), other than claims which have been provided to Company in writing and Contractor waives and releases Company from all such claims or demands for payment for which Contractor has not previously provided Company with notice of; and

(v) upon receipt of the amount invoiced, the Facility will be free from the Liens of its Subcontractors and its Subcontractors’ personnel for the Work invoiced.

3.3 Subject to the other provisions of the Agreement, Company shall pay Contractor within the timelines provided in Schedule “C”. Company shall have no obligation to make a payment pursuant to a request for payment if Contractor has not complied with the request for payment process required pursuant to this article 3.

3.4 Contractor shall, as applicable, provide to Company prior to the first payment:

(A) if required to register, proof of registration pursuant to the Law with respect to retail sales and use tax in force in the states in which the Work is being or will be performed;

(B) proof that Contractor has advised the relevant state retail sales tax departments that the Work is being or will be performed in such states and that Contractor will be requesting a letter of clearance on completion of the Work;

(C) proof of registration pursuant to the Law with respect to construction safety and verification of compliance with employment laws in force in the states in which the Work is being or will be performed; and

(D) proof that Contractor has obtained the applicable Permits to transact business in each state in which the Work is being or will be performed and the appropriate sales construction Permit, and all other applicable Permits required of Contractor to perform the Work, or evidence satisfactory to Company that such Permits are not required by the Law, including valid construction Permits for the Work.

3.5 Company shall retain from all payments otherwise due and payable to Contractor hereunder an amount equal to that which is required to be retained as a holdback pursuant to the applicable Law with respect to Liens or, in any case, an amount equal to ten per cent (10%) of the amount of the payment that is due and payable, collectively a "**Holdback**".

3.6 Company shall withhold and remit any amounts which are required by Law to be held back and remitted or are payable to a third party, including payments pursuant to the provisions of any income tax Law, state sales tax Laws or other tax Laws, any workers' compensation Laws and any other similar requirement imposed by any Governmental Authority. Company shall provide Contractor with official documentation with respect to such deductions in accordance with any applicable statutory filing requirements.

3.7 Notwithstanding anything to the contrary in this Agreement, Company may, without prejudice to any other rights Company may have, withhold all or a portion of any payment, without being subjected to late payment or interest costs as may be necessary in Company's reasonable opinion to protect Company Indemnified Parties from any Claims which may arise and which Contractor would be liable for or otherwise responsible for pursuant to this Agreement including the following:

(A) Contractor has failed to pay any amounts payable by Contractor to Company pursuant to any provision of this Agreement;

(B) there is Work that is not being carried out in strict accordance with the requirements of the Agreement, including the requirements of the Law, Prudent Industry Practices and the Policies and Guidelines;

(C) there is defective Work or disputed Work;

(D) previous overpayment;

(E) Contractor has failed to remedy Construction Period Defects;

(F) Contractor has failed to maintain the insurance required to be maintained by Contractor pursuant to 32.9;

(G) as may be necessary in Company's sole opinion to protect Company from Claims for which Contractor is liable or may be liable due to the presence of Liens or the failure by Contractor to make payments to any Subcontractors when due;

(H) a third party has filed or given notice of a claim against Company or any third party for which Contractor has an indemnity obligation towards Company pursuant to this Agreement;

(I) damages to the property (real, personal or both) of Company caused by Contractor or any Subcontractor;

(J) Contractor has failed to provide or maintain the Financial Assurances in accordance with the requirements of article 39; or

(K) Contractor is in breach of any of its other material obligations or representations under this Agreement.

3.8 When the cause for withholding any payment has been remedied by Contractor and evidence satisfactory to Company of such remedy has been furnished to Company, the payment(s) so withheld shall be made to Contractor within thirty (30) Days thereafter. No interest shall be payable on such payment. If Contractor, after receipt of written notice from Company, fails or refuses to remedy the cause for withholding such payment(s) within fifteen (15) Days thereafter, Company may, without prejudice to any other rights Company may have, remedy the same and deduct the costs thereof from the compensation payable to Contractor, whereupon for the purposes of the Agreement such monies shall be deemed to have been paid to Contractor on the next scheduled payment date. If such costs exceed the balance of the compensation then remaining unpaid, Contractor shall be liable for and shall pay the amount of such excess to Company within thirty (30) Days after receipt of an invoice therefor.

3.9 Contractor shall, by agreement with each direct Subcontractor, require each direct Subcontractor to promptly make payments to, or cause payments to be made to, indirect Subcontractors out of the amount paid to such direct Subcontractors from Contractor on account of such indirect Subcontractors' portion of the Work reflecting the amount to which said indirect Subcontractors are entitled. Notwithstanding the foregoing, Company shall have no obligation to see to the payment of any direct or indirect Subcontractors or to any of Contractor's or any Subcontractors' employees, agents or representatives or to any other person or entity directly or indirectly under their supervision or control.

3.10 Notwithstanding anything to the contrary in this Agreement, in the event that any amount is due to Company or Company's Affiliate by Contractor, Company shall have the right of set-off against Contractor for that amount whether such amount arises pursuant to the Agreement, any other contracts between Contractor and Company, Company's Affiliate or otherwise.

3.11 The following conditions precedent must be met prior to the release of any Holdback to Contractor by Company:

(A) the expiry of any applicable Lien periods provided by applicable Law and confirmation by Company that no Liens have been filed;

(B) the Certificate of Substantial or Final Completion, as the case may be, has been fully signed by Company and Contractor;

(C) delivery by Contractor to Company of signed and notarized unconditional partial Lien waivers and releases from Contractor and each Major Subcontractor applicable to Work completed prior to the date of the request for payment and with respect to which Contractor has already received payment, in the form included in Schedule "L"; and

(D) delivery by Contractor to Company of signed and notarized conditional partial Lien waivers and releases from Contractor and each Major Subcontractor that are applicable to Work completed for which Contractor seeks payment in the request for payment, in the form included in Schedule "L".

Following such conditions being met, payment to Contractor of the Holdback amount may be made subject to Company's rights under the Agreement. For certainty, all Holdback maintained by the Company prior to the Substantial Completion Date will, subject to Company's rights hereunder, be released upon such conditions being met. The Company will then continue to maintain a new Holdback on invoices submitted thereafter, which Holdback will be released on satisfaction of the above conditions in respect of Final Completion.

3.12 As a condition precedent to final payment to Contractor by Company, including payment of any amount retained pursuant to Section 3.5, the following must be satisfied: (i) the expiration of the Lien period provided for in the applicable Law and confirmation by Company that no Liens have been filed; (ii) delivery by Contractor to Company of signed and notarized unconditional partial Lien waivers and releases from Contractor and each Major Subcontractor applicable to Work completed prior to the date of the request for payment and with respect to which Contractor has already received payment, in the form included in Schedule "L"; and (iii) issuance by Company of the Final Completion Certificate. Payment to Contractor of the retained amount shall be made within thirty (30) Days after satisfaction of items (i) and (ii) and (iii) of this Section 3.12.

3.13 Acceptance by Contractor of the final payment will release Company from all Claims for: (i) additional compensation with respect to any Work, except for Claims of which Company has been made aware in writing, or (ii) any act or omission of Company or the Company Indemnified Parties relating to or affecting the Work that are known by Contractor at the time of final payment, except those of which Company has been made aware in writing. In no case will the final payment be made until all items on the applicable Punch List have been fully completed and all items of Work satisfactorily completed.

3.14 Unless otherwise provided by Law, should either Party fail to make payments as they become due under the terms of the Agreement or in an award of judgment of a court, interest at the Prime Rate plus one (1%) percent per annum compounded semi-annually on any unpaid amounts shall also accrue and become due and be payable.

3.15 Payments to Contractor may be made by cheques payable jointly to Contractor and its employees, agents, Subcontractors, or any of them, and when in the sole opinion of Company it is advisable, payments may be made directly to Contractor's Subcontractors and any amount so paid shall be deducted from the amounts owed to Contractor under this Agreement. Contractor shall cooperate to effect any joint cheque payment.

3.16 No payment, use or occupancy of the Facility by Company shall be deemed acceptance or approval of the Work or a waiver of any claims, rights, or remedies of Company.

3.17 To the extent any portion of the Price is payable on a "flow through basis" Contractor shall establish reasonable commercial terms with Subcontractors and adequate provisions to allow Contractor and Company to certify the validity of costs, damages and expenses of Subcontractors and shall manage the costs in accordance with Prudent Industry Practices of a diligent owner.

3.18 No payment, use or occupancy of the Facility by Company and no acceptance by Company of the Work or any part thereof or issuance of a Certificate of Substantial Completion or a Certificate of Final Completion shall be deemed acceptance or approval of the Work or a waiver of any Claims, rights, or remedies of Company and will not relieve Contractor of its obligations or liabilities hereunder.

ARTICLE 4. CONTRACT

4.1 Should Contractor identify what it considers to be a conflict, inconsistency, error or omission among the various Agreement documents, it shall immediately identify such to Company and the Parties shall cooperate and work together to resolve any conflicts, inconsistencies, errors or omissions in a manner satisfactory to Company. Contractor shall be liable to Company for damages resulting from conflicts, inconsistencies, errors or omissions in the Agreement documents or for differences between field measurements or conditions in the Agreement documents if Contractor, with the exercise of reasonable care could have recognized such conflict, inconsistency, error or omission and failed to promptly report it to Company.

4.2 Contractor shall not deviate from the Agreement, unless Company has agreed in writing by way of a Change Order or a Change Directive has been issued.

ARTICLE 5. PERSONNEL

5.1 Contractor shall provide a sufficient number of personnel to enable timely and proper execution and completion of the Work in strict accordance with the Agreement. All such personnel, including Subcontractors' personnel, shall be competent and qualified by education, training, experience and in all other respects capable of carrying out the tasks to which each is assigned. At Company's request, Contractor shall reassign, replace or remove personnel, including Key Personnel, from performing the Work who, in Company's sole discretion, do not meet the above requirements or who have violated the Law or the Policies and Guidelines.

5.2 The Key Personnel shall be literate in the English language, shall perform the Work assigned to them and shall have the responsibilities identified in the Agreement. Contractor shall not change the Key Personnel or their responsibilities without the prior approval of Company, which shall not be unreasonably withheld or delayed.

ARTICLE 6. PERFORMANCE

6.1 Contractor shall perform the Work and its other obligations under the Agreement as described in and in strict compliance with the Agreement. Contractor shall supply or cause to be supplied all services, equipment and materials required for the proper execution of the Work and shall strictly comply with, observe and perform all provisions of the Agreement applicable to Contractor.

6.2 Contractor acknowledges that Company will provide Contractor with Company Supplied Materials, at the time and in the manner contemplated in the Agreement, and Contractor shall utilize and incorporate any such materials into the Work as required by the Scope of Work.

6.3 Contractor accepts the Work Site in the condition existing at the Effective Date, and acknowledges that it has investigated and satisfied itself as to:

(A) the nature of the Work;

(B) the location of and all conditions, limitations, and restrictions on use relating to the Work Site including accessibility, general character, surface conditions, subsurface conditions, location of utilities both above-ground and below, roads, pipelines, uncertainties of seasonal weather and all other physical, topographical, and geological and geographical conditions, including previously completed work that may affect the performance of the Work;

(C) the general character, quality, quantity and availability of equipment and materials required to execute and complete the Work;

(D) all environmental risks, conditions, Laws and restrictions applicable to Contractor or the Work that might affect the Work, other than pre-existing Hazardous Materials except where release or disturbance is caused or exacerbated by Contractor or a Subcontractor;

(E) all conditions affecting labor, including availability and productivity, and all administrative practices, including those relating to safety, prevailing at or applicable to the Work or Work Site;

(F) all conditions affecting accommodation for labor, including availability, cost and location;

(G) the general character and quality of all equipment and materials to be supplied by Company for use in performing the Work or for incorporation into the Facilities; and

(H) the magnitude of the construction work required both on and off the Work Site to execute and complete the Work.

Any failure by Contractor to perform the inspection required by this Section 6.3 or discover matters, which affect or could affect the Work shall not relieve Contractor from its obligations under the Agreement, and shall not form the basis for any change or modification of the Price or the Work Schedule.

6.4 Any information or data, including location of underground utilities or pipeline furnished by Company is not intended as a representation or warranty but is furnished in order that Contractor may have access to the same information available to Company and Company will not be responsible for the validity or accuracy of the information, or for any deduction, interpretation, assumption or conclusions drawn from such information and data by Contractor.

6.5 Company reserves the right to have Other Contractors and its own employees perform work at the Work Site. In such event, Contractor shall co-ordinate and schedule the Work with the work of the Other Contractors and Company's employees, and Contractor shall share access to and use of the Work Site to accommodate the work of Other Contractors and Company's employees.

6.6 Contractor shall co-operate fully with Company and its employees, Other Contractors and all other parties with whom Contractor may be involved during the performance of the Work.

6.7 Contractor shall:

(A) efficiently and expeditiously perform all Work in a good and workmanlike manner in strict accordance with the Agreement and shall ensure that all necessary rights of access and other land rights, drawings and materials necessary for the efficient and expeditious performance of the Work, or any portion thereof, are in its possession prior to commencing the Work or any portion thereof;

(B) exercise, in its performance of the Work, the standard of care and skill normally exercised by leading contractors performing construction work on projects substantially similar to the Work;

(C) perform the Work in a safe and environmentally sound, expeditious and economical manner consistent with Company's interests; and

(D) perform the Work in strict compliance with the Agreement, the Law, Prudent Industry Practices and the Policies and Guidelines.

6.8 Contractor shall supervise its employees and the employees of all Subcontractors and inspect their work to ensure that their work and the Work, and the Facilities constructed pursuant thereto, conforms in each and every respect to the requirements of the Agreement, including the requirements of the Law, Prudent Industry Practices and the Policies and Guidelines.

6.9 None of the following shall relieve Contractor from its duty to satisfy its responsibilities and obligations under the Agreement: (i) acceptance by Company of the Work or any part thereof; (ii) issuance of a Substantial Completion Certificate or a Final Completion Certificate; or (iii) payment from Company to Contractor.

6.10 Contractor shall (i) promptly provide Company with written reports pertaining to the Work upon the request of Company which will contain a reasonable amount of detail, (ii) provide any other reports as may be specified in the Agreement, and (iii) attend meetings as required by the Agreement, or as otherwise requested by Company, acting reasonably.

6.11 Contractor shall ensure that no activities or actions are taken or not taken in the performance of the Work or otherwise by Contractor, which would adversely affect, restrict or limit in any way, the continued operation of Company's facilities which are in operation, unless such disruption is expressly permitted by this Agreement or otherwise authorized in writing in advance by Company.

6.12 Contractor shall within thirty (30) days of the Effective Date prepare and submit for review by Company the level of resource loaded schedule (the "**Work Schedule**") required by Company, which shall be in conformance with the Project Schedule and Schedule "D", TransCanada Standard Progress and Schedule Management System and which shall be in .pdf, native electronic formats and any other format requested by Company. Company may comment on the proposed Work Schedule and Contractor shall incorporate any reasonable changes. Contractor shall control the progress of the Work and comply with the Project Schedule and Work Schedule. Company may withhold payment due to Contractor in any period where Contractor is not in compliance with the Critical Path of the Work Schedule and has either failed to produce a recovery plan as required by Article 21, or where Contractor is failing to comply with the requirements of the recovery plan in accordance with Article 21.

6.13 Contractor shall provide any information as Company may reasonably request to verify actual progress and predict future progress of the Work.

6.14 Should Contractor desire to work beyond the normal hours as set out in the Scope of Work ("**Work Time Extension**"), Contractor shall provide a written request notice to Company for approval no later than 11:00 AM local time at the Work Site on the Day the Work Time Extension is required and Company shall respond no later than 2:00 PM local time in writing. Such extension may be reasonably denied, and shall be at no additional cost to Company, unless such additional cost is authorized pursuant to a Change Order or Change Directive. Where Contractor desires to work on a Day designated as a non-working Day it shall provide a written request to Company no later than 11:00 AM the prior working Day and Company shall respond no later than 2:00 PM local time in writing. Such additional working Day may be reasonably denied and shall be at no additional cost to Company, unless such additional cost is authorized pursuant to a Change Order or Change Directive.

6.15 After commencement, the Work shall be diligently performed by Contractor until Final Completion. If, in the sole opinion of the Company Representative, it appears that Contractor will not meet the dates set forth in the Work Schedule, then upon request from Company Contractor shall work overtime, acquire and utilize necessary additional equipment, hire additional forces or perform other such acts as may be necessary to avoid delay in the completion of the Work, all at no additional cost to Company.

6.16 In addition to Contractor's other obligations and Company's other rights and remedies pursuant to the Agreement, if Contractor discovers, or Company notifies Contractor, prior to Final Completion of the Work that any aspect of the Work has not been or is not being carried out in accordance with the Agreement, (a "**Construction Period Defect**"), Contractor shall, at its sole cost and expense, diligently and promptly take such steps as may be necessary to correct and remedy any such Construction Period Defect and any other defect or deficiency in the Work or the Facilities, including re-performance, repair or replacement (as applicable) of impacted Work or Facilities regardless of the stage of completion of the Work or the time or place of discovery of such Construction Period Defect, and regardless of whether Company has previously accepted such Work through mistake, inadvertence, oversight or otherwise. Contractor shall be solely responsible for all costs and delays resulting from Construction Period Defects, including costs of uncovering, repairing and re-covering any Construction Period Defects, costs of redesigning or re-engineering required as a result of any Construction Period Defects and recovering from any associated Work Schedule impacts.

6.17 If the Work is not being carried out in accordance with the requirements of the Agreement, including the requirements of the Law, Prudent Industry Practices and the Policies and Guidelines, and Contractor fails within a seven (7) Day period after receipt of written notice from Company to commence and continue correction of such deficiencies, including any action undertaken to remedy Construction Period Defects with diligence and promptness, Company may, without prejudice to other remedies Company may have, correct, or cause to be corrected, such deficiencies. In such case Contractor shall be responsible for the cost of correcting such deficiencies, including Company's internal expenses and any compensation paid by Company for additional work or services that, in Company's opinion, are related to or made necessary by such deficiencies. All such expenses and costs shall, at Company's option, be reimbursed by Contractor to Company or applied as a credit to Company against the Price.

6.18 Company shall have the right at any time to cause Contractor to stop any Work that is not being carried out in strict accordance with the requirements of the Agreement, including the requirements of the Law, Prudent Industry Practices and the Policies and Guidelines.

6.19 Company shall not be liable to Contractor for any costs, expenses or damages incurred by Contractor as a result of a stop Work order from Company to Contractor pursuant to Section 6.18 or Company's correction of deficiencies pursuant to Section 6.17.

ARTICLE 7. CHANGES

7.1 Company shall have the right to make Changes at any time.

7.2 When a Change is proposed by Company or is expressly required by the terms of this Agreement, Company shall provide a Contemplated Change Notice to Contractor describing the proposed or required Change.

7.3 Within five (5) Business Days of receipt of a Contemplated Change Notice, Contractor shall promptly provide Company's Representative with a Change Quotation which shall include a proposed method of adjustment or a proposed amount of adjustment to the Price, if any, determined in accordance with Section 7.12, and a proposed adjustment to the Work Schedule, if any, for the proposed Change. Contractor's proposed adjustment to the Work Schedule shall comply with the applicable restrictions or limitations set out in the existing Work Schedule, Project Schedule and the Agreement.

7.4 Within five (5) Business Days of receipt of the Change Quotation, Company shall either agree to the adjustments in the Price or Work Schedule or to the method to be used to determine the adjustments, or give Contractor notice that the Change Quotation is not acceptable. If the

Change Quotation is agreed to, then Company shall as soon as reasonably practicable issue a Change Order recording the Change, which shall be signed by Company and Contractor.

7.5 If Company requires Contractor to proceed with the Change before Company and Contractor agree that an adjustment to the Price or adjustment to the Work Schedule is warranted, or if Company and Contractor have agreed that any such adjustment is warranted but have failed to agree upon the appropriate adjustment, Company shall issue a Change Directive.

7.6 Upon receipt of a Change Directive, Contractor shall proceed promptly with the Change, and:

(A) Contractor shall maintain complete and accurate records of the costs incurred due to the Change (including daily records, to be signed by Company's Representative describing the Work performed, including the time, materials and equipment employed in respect of the Change), and submit on a weekly basis detailed summaries of costs incurred due to the Changes implemented pursuant to the Change Directive;

(B) if applicable, the Price shall be adjusted in accordance with Section 7.12. If: (i) the Parties do not agree that an adjustment to the Price is warranted; or (ii) the Parties have agreed that an adjustment to the Price is warranted and Company has selected subsection 7.12(C)(i) as one of the methods by which the Price is to be adjusted but the Parties are unable to reach agreement on a negotiated lump sum, then such Dispute shall be settled in accordance with article 36; and

(C) if applicable, the Work Schedule shall be equitably adjusted, subject to any applicable restrictions or limitations set forth in this Agreement, by agreement between Company and Contractor. If: (i) the Parties do not agree that an adjustment to the Work Schedule is warranted; or (ii) the Parties have agreed that an adjustment to the Work Schedule is warranted but agreement cannot be reached on such adjustment, then Contractor shall, to the extent reasonably possible, continue to adhere to the Work Schedule and the Dispute shall be settled in accordance with article 36.

7.7 At no time whatsoever shall Contractor allow the failure to agree to a Price adjustment or Work Schedule adjustment to impede or affect, in any manner whatsoever, its performance of the Work.

7.8 If, at any time during the performance of the Work, Contractor is of the opinion that an instruction, interpretation, decision, direction, act or omission of or from Company warrants the issuance and approval of a Change Order by Company, Contractor shall, within five (5) Days from its identification of such issue(s), provide Company with written notice (a "**Change Order Request Notice**") which supports its opinion that a Change Order is required. Such Change Order Request Notice must be supported with sufficient detail, documentation and explanation in order to enable Company to adequately assess the validity of the request. Inadequately supported Change Order Request Notices will be rejected by Company in writing and returned to Contractor for Contractor's withdrawal or for its revision and resubmission. Contractor shall include in its Change Order Request Notice (i) a proposed method of adjustment or a proposed amount of adjustment to the Price, if any, determined in accordance with Section 7.12; and (ii) a proposed adjustment to the Work Schedule, if any, related to such Change Order Request Notice, which proposed adjustment to the Work Schedule shall reflect the actual impact of the Change Order on the Critical Path and shall incorporate any restrictions or limitations set forth in this Agreement. Should Contractor fail to provide a Change Order Request Notice within such five (5) Day period, it expressly waives any rights it has to a Change Order or compensation for Work or revision to the Work Schedule that would have been the subject of a Change Order Request Notice.

7.9 To the extent any portion of a Change Order Request Notice includes Work being performed by a Subcontractor, Contractor shall, to the extent possible within the timeframes permitted in

Section 7.8 and prior to submitting the Change Order Request Notice, fully assess and certify the validity of the Subcontractor's request. Where Contractor has insufficient time to perform such assessment it shall so state in its Change Order Request Notice and shall do such assessment as soon as reasonably practicable.

7.10 Within twenty (20) Days of Company's receipt of Contractor's Change Order Request Notice, Company shall either:

(A) issue a Change Order approving Contractor's Change Order Request Notice in its entirety or any portion thereof, or sign and return the Change Order Request Notice if approved in its entirety;

(B) issue, in writing, to Contractor a notification requesting further information, documentation or explanation to support Contractor's Change Order Request Notice or, if applicable, directing Contractor to use a different method or combination of methods of determining its proposed adjustment to the Price as set forth in subsection 7.12(C)(i), (ii) or (iii) and Contractor shall respond to Company within five (5) Days providing such required information and Company shall respond within twenty (20) Days in accordance with this Section 7.10; or

(C) issue, in writing, a notification to Contractor advising that the Change Order Request Notice has been rejected. If Contractor disputes Company's decision to reject a Change Order Request Notice in its entirety or a portion thereof, Contractor shall, within five (5) Days of its receipt of Company's notice of rejection, provide written notice containing the basis for the dispute to Company disputing Company's decision and such Dispute(s) shall be resolved pursuant to the provisions of article 36. At no time whatsoever shall Contractor allow such Disputes to impede or, in any manner whatsoever, affect its performance of the Work or Work Schedule.

7.11 Company may, at any time, issue a directive to Contractor requiring Contractor to perform any work, Work or Work which is the subject of a rejected or disputed Change Order Request Notice. Where Company does so, Contractor shall:

(A) proceed promptly with such work or Work;

(B) maintain complete and accurate records of any costs incurred with respect thereto (including daily records, to be signed by Company's Representative acknowledging the Work performed, including the time, materials and equipment employed), and submit on a weekly basis detailed summaries of costs incurred due to such directive;

(C) if applicable, the Price shall be adjusted in accordance with Section 7.12. If: (i) the Parties do not agree that an adjustment to the Price is warranted; or (ii) the Parties have agreed that an adjustment to the Price is warranted and Company has selected subsection 7.12(C)(i) as one of the methods by which the Price is to be adjusted but the Parties are unable to reach agreement on a negotiated lump sum, then such Dispute shall be settled in accordance with article 36; and

(D) if applicable, the Work Schedule shall be equitably adjusted, subject to any applicable restrictions or limitations set forth in this Agreement, by agreement between Company and Contractor. If: (i) the Parties do not agree that an adjustment to the Work Schedule is warranted; or (ii) the Parties have agreed that an adjustment to the Work Schedule is warranted but agreement cannot be reached on such adjustment, then Contractor shall, to the extent reasonably possible, continue to adhere to the Work Schedule and the Dispute shall be settled in accordance with article 36.

At no time whatsoever shall Contractor allow the failure to agree to a Change Order Request Notice to impede or, in any manner whatsoever, affect its performance of the Work or the Work Schedule.

7.12 Any adjustment to the Price made pursuant to this article 7 or article 36 shall be calculated in accordance with the following:

(A) with respect to an adjustment arising pursuant to article 22, article 24, or a partial termination pursuant to Section 24.1, such adjustment shall be calculated as set forth in those respective Articles;

(B) any adjustment to the Price shall comply with the applicable restrictions or limitations set out in the existing Work Schedule and the Agreement; and

(C) subject to subsections (a) and (b) of this Section 7.12, if any Change either increases or decreases the cost to Contractor to perform the Work, the Price shall be correspondingly increased or decreased and in each instance the amount of such increase or decrease, as the case may be, shall be calculated and determined by one or more of the following methods specified by Company in its sole discretion, unless otherwise agreed to by the Parties:

(i) a lump sum payment or discount, both to be negotiated; or

(ii) the unit prices, if any, set out in Schedule "B"; or

(iii) the sum of the following:

(A) charges for field labor to be calculated in accordance with the schedule of wage rates, and in the manner set out in Schedule "B";

(B) subsistence and travel allowances, at cost, only if the additional Work is to be performed after Contractor has demobilized from the Work Site;

(C) direct cost of material supplied by Contractor and incorporated into the Work at net (less all discounts and credits) cost to the purchaser (whether Contractor or a Subcontractor) including freight, as substantiated by paid invoices, plus a mark-up of ten percent (10%) which shall cover the total cost of Contractor's and Subcontractor's purchasing, expediting, funding, all other overhead and profit;

(D) charges for the use of equipment (including associated taxes less all trade and cash discounts) to be calculated in accordance with Schedule "B"; and

(E) all direct costs, as supported by invoices, of an approved non-affiliated Subcontractor to perform any additional Work plus ten percent (10%) (calculated on the said costs net of applicable state retail sales and use tax) to cover increased supervision, overhead and profit.

7.13 Company shall have the right to specify whether Contractor's personnel be retained on standby or demobilized from the Work Site pursuant to article 20, article 22 and article 24, and, notwithstanding the provisions of Section 7.12, in the event that Company chooses to demobilize and remobilize personnel Contractor shall be entitled to reimbursement of its reasonable direct costs, exclusive of profit, subject to Contractor providing separate documentation supporting such direct costs.

7.14 No Changes shall be binding on either Party unless set out in a Change Order or a Change Directive. Neither the keeping of daily records in respect of disputed Work nor the signing of those records by Company's Representative shall be considered as an admission of entitlement to payment by Company but shall constitute a record of the time, materials and equipment employed in respect of the Work for which a Change Directive has been issued or Contractor has given notice of a Dispute.

7.15 Contractor shall not make or proceed with any addition, change, alteration or omission to the Work, or perform extra work or supply or use additional materials of any kind unless the same is set out in a Change Order or a Change Directive.

7.16 Except as set forth in this article 7, Contractor is not entitled to payment, damages, or compensation from Company for Changes of any kind whether arising because of hindrance or delay or any other cause. Contractor will be entitled to adjustments in the Work Schedule only as specifically provided in accordance with this article 7. Adjustments to the Price and the Work Schedule as contemplated in this article 7 constitute the sole and exclusive remedy to Contractor for any Changes (whether such Changes arise from a Contemplated Change Notice or a Change Order Request Notice).

7.17 After the Change Order has been signed by both Parties, no additional payment will be made on account of any costs resulting from such Change, including any additional productivity impact costs, and the cumulative effect of all Changes, and no extension, relaxation or change to the Work Schedule will be made in respect of or resulting from such Change.

7.18 Notwithstanding anything else in this Article 7, in any circumstance where the Contractor is entitled to a Work Schedule extension the Company may, in its discretion, require compression of the Work Schedule rather than an extension of time to the extent schedule compression is reasonably practicable. In such case Contractor will be entitled to compensation in accordance with section 7.12 or as otherwise agreed for the additional efforts necessary to meet the compressed Work Schedule.

ARTICLE 8. COMPLETION AND ACCEPTANCE

8.1 Substantial Completion Check List and the Punch List

(A) Contractor shall develop a Substantial Completion check list (the "**Check List**"), to be submitted for approval by Company, which defines the various stages, tests, data collection and analysis, inspections, functions, responsibilities and roles which establish the protocol to achieve Substantial Completion, and subsequently, Final Completion in accordance with the Agreement. Company will review the Check List and notify Contractor of any reasonable revisions thereto.

(B) No later than twenty (20) Days before the scheduled Substantial Completion Date, Contractor will prepare and deliver to Company a draft Punch List setting forth the minor, incomplete, or deficient items of the Work that remain to be completed or are to be repaired or replaced, as the case may be, as part of the Work, setting forth the date by which Contractor must complete, repair or replace each deficient item, as the case may be, and Contractor's plan to complete or repair or replace the items.

(C) Company will review the draft Punch List and notify Contractor within five (5) Days of any reasonable revisions thereto. The Parties will endeavor to agree in good faith upon the definitive, final Punch List and plan, including the approved time limits within which Contractor will perform all remaining Work and the resources to be utilized to complete such Work. The final Punch List and plan as agreed to by Company and Contractor will be the Punch List (the

"**Punch List**"). After Substantial Completion has been achieved, additions may be made to the Punch List or the Punch List may be modified at any time before all of the existing items on the Punch List are completed in connection with Final Completion. For greater certainty, no Punch List item shall remain incomplete beyond Substantial Completion that would necessitate any outage or non-availability of the Pipeline and its related components or the Work, in whole or part, without the prior written approval of Company (which approval is in Company's sole discretion).

8.2 **Substantial Completion**

(A) Notwithstanding anything in the Agreement to the contrary, "Substantial Completion" means that all of the following conditions have been satisfied with respect to the Work:

(i) Contractor has completed the Work in accordance with the Agreement other than minor items that do not materially affect the mechanical, electrical, or structural integrity of the Work or the safe, reliable and efficient operation thereof or items that are expected to be completed after Substantial Completion;

(ii) welds have been non-destructively inspected and passed;

(iii) hydrostatic tests have been successfully performed and passed;

(iv) cleaning and dewatering has been completed;

(v) drying has been completed;

(vi) caliper pigging has been completed and all piping defects have been removed;

(vii) all mainline valves have been installed;

(viii) all Work necessary to be completed by Contractor for Company to perform commissioning has been completed;

(ix) Contractor has made available for inspection by Company all components and systems required by the Check List and as otherwise mutually agreed to at such time by Contractor and Company in accordance with the Agreement;

(x) the Check List has been completed to the satisfaction of Company and any Construction Period Defects have been corrected, or, with the approval of Company, postponed for an agreed period of time;

(xi) the Punch List has been approved by Company;

(xii) rough clean-up grading and restoration is completed to the extent required by any applicable regulatory bodies to obtain approval for Company's placement of the Work into commercial service; and

(xiii) all Work, including environmental controls, has been completed to the extent required by any applicable regulatory bodies to obtain approval for Company's placement of the Work into commercial service.

(B) Upon receipt of all results and reports of caliper pig testing, Company shall have five (5) Days to review, advise of any issues that require correcting, and, subject to the uncertainties inherent in locating such issues at the Work Site, locate and mark any such issues in the right of way or

confirm that there are no issues. If Company takes longer than five (5) Days to perform the activities required of it in the preceding sentence, Contractor will be entitled to a day for day extension of the Guaranteed Substantial Completion Date for each Day Company is late. Contractor acknowledges that while Company will make all reasonable efforts to properly locate issues in the field, the location of indications discovered in caliper pigging is not exact and some refinements of field locations may need to be made as corrective Work is undertaken, including verifying after a dig that the excavated location is the correct location of the corresponding indication in the caliper pigging result.

(C) When Contractor is of the opinion that it has achieved Substantial Completion in accordance with the conditions described in section 8.2(a), Contractor will deliver written notice ("**Preliminary Notice of Substantial Completion**") to Company. The Preliminary Notice of Substantial Completion will contain a report in form and content reasonably acceptable to Company confirming the satisfactory completion of the tests, analysis, inspections and other activities set forth in section 8.2(a). The Preliminary Notice of Substantial Completion cannot be submitted until Company has completed its review and location and marking of issues for correction from the caliper pig testing or has confirmed there are no issues for correction.

(D) Within three (3) Days of receipt of the Preliminary Notice of Substantial Completion, Company shall notify Contractor, in writing, with reasonable details, of any reason(s) it believes that Contractor has not achieved the criteria for Substantial Completion. If Company so notifies Contractor, Contractor shall then promptly take appropriate corrective action and thereafter give another Preliminary Notice of Substantial Completion to Company certifying that the Work has achieved Substantial Completion. Company shall have three (3) Days after receipt of such Preliminary Notice to notify Contractor of any reason(s) why Contractor has not achieved Substantial Completion, and this process shall be repeated as necessary (with the requisite period of three (3) Days) until Company agrees that Substantial Completion has occurred. If Company takes longer than three (3) Days to respond to a Preliminary Notice of Substantial Completion, Contractor will be entitled to a day for day extension of the Guaranteed Substantial Completion Date for each Day Company is late. Once Company determines, acting reasonably, that Substantial Completion has been achieved, then Company shall issue a Substantial Completion Certificate, which event shall constitute Substantial Completion.

(E) In addition to subsections (b) and (c) and in order to facilitate the timely confirmation of Substantial Completion, Contractor may, at any time, provide a Draft Preliminary Notice of Substantial Completion to Company for review. Company shall provide comments within five (5) Days.

(F) Upon achieving Substantial Completion, Company shall take possession and control of the Pipeline and its related components. Upon reasonable notice to Company, Contractor and Subcontractors shall have reasonable access to the Pipeline and its related components following Substantial Completion as may be necessary or desirable to complete Punch List items, to make Company-approved modifications or repairs, to carry out warranty obligations or otherwise to fulfil Contractor's obligations under the Agreement.

8.3 **Final Completion**

(A) Final Completion is conditional upon the Work and all of the Facilities meeting all criteria required by the Agreement. Final Completion shall occur upon the completion and provision of the following:

(i) Substantial Completion has been achieved;

(ii) the completion by Contractor of the Punch List items and the acceptance by Company of such completion;

(iii) all Construction Period defects have been resolved to the satisfaction of Company;

(iv) the satisfaction by Contractor of all of its obligations under the Agreement to date, including the discharge of all Liens;

(v) where required, a letter of clearance confirming compliance with the retail sales tax legislation in force in the states in which the Work is being or was performed;

(vi) valid, unconditional signed and notarized Lien waivers and releases executed by Contractor and by each Major Subcontractor in the form of Schedule “L”;

(vii) the delivery of all intermediate engineering, "as-built" engineering, inspection results, Work product, Contractor Prepared Documents, test results, documents, manuals, records, equipment warranties, and other documents required by the Agreement;

(viii) all other required releases from third parties, including Governmental Authority, Landowners, utilities and the like arising out of, relating to or under the Agreement, the Work or Contractor’s obligations hereunder as reasonably required by Company, including tax releases and Permit releases, in the applicable form attached hereto in Schedule “L”;

(ix) the delivery to Company of the Release and Certificate of Final Payment as required pursuant to Section 3.11;

(x) all environmental, land and Work Site remediation, clean-up and other activities required to finish the Work; and

(xi) the issuance by Company of the Final Completion Certificate pursuant to subsection 8.3(B) herein.

(B) When all items as set out in subsection 8.3(A)(i) - (x) are completed and acceptable to Company, acting reasonably, Contractor shall provide a "**Notice of Final Completion**" to Company. Company shall have thirty (30) Days from the date of receipt of the Notice of Final Completion to accept such notice or to deliver a list of deficiencies to Contractor. Contractor shall promptly correct such deficiencies and perform all requirements for Final Completion and establish a completion schedule for remedial work. The procedure set forth herein shall be repeated as necessary until Company accepts the Work and issues a Final Completion Certificate.

ARTICLE 9. INSPECTION AND TESTING

9.1 At all times during the progress of the Work, Company shall have the right to inspect or witness any part of the Work. No Work shall be covered up or put out of view unless a reasonable opportunity, including notice, is given to Company to examine such Work. If any portion of the Work is closed or covered by Contractor before Company has been given the opportunity to inspect, then, if required by Company, that portion of the Work will be opened or uncovered for inspection and re-closed or re-covered, all at Contractor's expense and without increasing the Price or extending the Work Schedule.

9.2 Contractor shall inspect and be solely responsible for ensuring that all workmanship, materials and equipment furnished by itself or its Subcontractors in respect of the Work, strictly conforms

in each and every respect to the requirements of the Agreement, including the requirements of the Law, Prudent Industry Practices and the Policies and Guidelines and for ensuring that the Work is performed in a safe and environmentally sound manner.

9.3 If the Agreement, the Law or Company requires any test performed to be witnessed by Company, Contractor shall provide Company with at least forty-eight (48) hours advance notice of its readiness for the test. If Company is properly notified of such testing and fails to witness the test when scheduled, any retesting required by Company shall constitute a Change.

9.4 Any inspection, testing or witnessing of any of the Work or tests by Company, or omission or failure on the part of Company to inspect or test any of the Work shall not be construed to be an acceptance of any such Work, nor shall it relieve Contractor of any of its responsibilities pursuant to the Agreement, or otherwise.

9.5 Contractor shall ensure that all tools, equipment, temporary facilities and other items used in accomplishing the Work, whether purchased, rented, manufactured or fabricated by, or under the direction of, Contractor, or otherwise provided by Contractor or Subcontractors, are safe, environmentally sound and in good condition, capable of performing their required functions. Company reserves the right to inspect all tools and equipment brought to the Work Site at any time during the progress of the Work. Company may require Contractor to supply a qualified, independent engineering evaluation or certification stating that any item in question is suitable for its intended purpose, or reject any item and require Contractor to replace it with a proper and suitable item which is satisfactory to Company. If any tool or item of equipment is deemed by Company, in its sole discretion, to be unsafe, environmentally unsound or incapable of doing the Work for which it is intended, then Contractor shall repair or replace it with a safe, environmentally sound and suitable tool or item of equipment at Contractor's expense.

ARTICLE 10. PERMITS

10.1 Contractor will, at its cost, obtain, maintain in effect and comply with all Permits (including any inspections required by any Governmental Authority for the maintenance of such Permits) which may be required to perform all activities that are contemplated by this Agreement, other than those listed in the Schedule “A” as being obtained by the Company. Contractor shall deliver to Company certified copies of all such Permits promptly upon receipt thereof.

10.2 Company has the right (but not the obligation) to review, comment upon and approve the material terms of each Permit that Contractor is responsible for obtaining and maintaining under this Agreement, and any renewal or replacement of any such Permit and any amendment or waiver with respect to any of the material terms or conditions of any such Permit, and any renewal or replacement thereof.

10.3 Contractor will further provide Company with such cooperation, including necessary and timely information, as is reasonably required by Company in order to obtain, pay for, maintain in effect, and comply with the Permits to be obtained by Company under Section 10.4. Likewise, Company will provide Contractor with such cooperation, including necessary and timely information, as is reasonably required by Contractor in order to obtain, maintain in effect, and comply with the Permits to be obtained by Contractor under Section 10.1.

10.4 Company will obtain, pay for, maintain in effect and comply with all Permits from Governmental Authority (including any inspections required by Governmental Authority for the maintenance of such Permits) listed in Schedule “A” as being Company’s responsibility in order to perform all activities that are contemplated by this Agreement. Company shall deliver to Contractor copies of all such Permits promptly upon receipt thereof. Contractor shall, at its cost, comply with all Permits obtained by Company.

ARTICLE 11. COMPLIANCE WITH LAW

11.1 Contractor shall comply with and shall ensure that its employees, agents, representatives and any other person or entity directly or indirectly under their supervision or control comply with and shall ensure that its Subcontractors and their respective employees, agents, representatives and any other person or entity directly or indirectly under their supervision or control comply with the Law in connection with the Work.

11.2 If Contractor discovers that any materials purchased or supplied by Contractor or Subcontractors are not in compliance with the Law, Contractor shall promptly notify Company before proceeding with the part of the Work affected, and shall make the necessary revisions to the materials so as to comply with the Law, at Contractor's expense.

11.3 If Contractor discovers that any Company Supplied Materials are not in compliance with the Law, Contractor shall promptly notify Company before proceeding with the part of the Work affected. Company shall make the necessary revisions to the Company Supplied Materials so as to comply with the Law at its expense and Contractor shall be entitled to a Change Order if such event delays Contractor's Critical Path progress of the Work Schedule or if Contractor suffers any actual direct costs as a result of the non-compliance. Any Change Order provided pursuant to this Section 11.3 shall be dealt with in accordance with the provisions of article 7.

11.4 All Work shall comply with the minimum United States federal safety standards for the design, installation, inspection, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities contained in 49 C.F.R. Part 192. If applicable to the Work, Contractor shall comply with requirements of Company's Operator Qualification Program (as administered by Veriforce L.L.C.) that is outlined in Sub Part N of 49 C.F.R. Part 192 and Sub Part G of C.F.R. Part 195 where applicable, or such other standards as Company may prescribe. The term "pipeline facilities" shall include, without limitation, new and existing pipe, rights-of-way, and any equipment, facility, or building used in the transportation of gas or treatment of gas during the course of transportation. The term "transportation of gas" shall include the gathering, transmission, or distribution of gas by pipeline or the storage of gas. To the extent that is it consistent with the above, all Work performed hereunder shall conform with applicable industry codes, construction specifications, and the applicable A.P.I. and A.S.M.E. Codes.

ARTICLE 12. SAFETY

12.1 Beginning on the Commencement Date and continuing through the Final Completion Date, Contractor will assume direct and complete control and sole responsibility for developing, implementing, and administering the safety requirements for the Work at the Work Site for the purposes of all occupational health and safety laws, regulations, orders, directives, codes, and guidelines ("**OHS Legislation**") and as set forth in the Agreement. During times when Contractor is responsible for safety in accordance with the preceding sentence, but for clarity not with respect to areas of the Work where and when Company is commissioning or starting up the pipeline facilities or other contractors are responsible for performing additional work for Company, Contractor will be responsible for the occupational health and safety of all personnel of Company, Contractor, Subcontractors, Other Contractors and the general public and the protection of Company's property and the property of third parties from loss or damage. During such period, Company has no management or control over the Work Site and is not responsible or liable therefor.

12.2 Contractor represents and warrants that it has an effective health and safety management system that ensures the Work at the Work Site will be carried out safely and in compliance with OHS Legislation and the Agreement. More specifically, Contractor represents and warrants that its health and safety management system includes (i) safe work procedures and policies;

(ii) safety orientation courses; and (iii) any other operational controls (the "**Safety Programs**"), all of which meet or exceed the safety requirements of all OHS Legislation and the specifications provided by Company, outlined in Schedule "M" "Occupational Health and Safety Specifications for Prime/General Contractors".

12.3 Contractor represents and warrants that the Site Specific Safety Plan ("**SSSP**") for the Work Site as provided to Company and revised from time to time meets or exceeds the requirements of the relevant OHS Legislation and the Agreement.

12.4 Company shall be entitled to inspect the Work Site and the performance of the Work at any time to audit Contractor's compliance with the SSSP.

12.5 Notwithstanding that Contractor has been designated the Prime Contractor, Company shall have the right to stop any work at the Work Site, which is thought to be unsafe or not in conformity with OHS Legislation or the SSSP.

12.6 Contractor acknowledges that it will not be reimbursed for any costs, expenses or damages resulting from a stoppage of Work pursuant to Section 12.5.

12.7 Contractor shall immediately notify Company of any safety incident, accident or dangerous occurrence or near miss that may occur in performing the Work at the Work Site and provide Company with all non-privileged information and documents that it may request relating to such safety incident. Contractor is responsible for investigating any safety incident at the Work Site and Company shall cooperate with Contractor to facilitate such investigations. Contractor's responsibility to investigate pursuant to this 11.4 shall not affect Company's right to perform any investigations it deems necessary and Contractor shall cooperate with Company to facilitate such investigations.

12.8 Contractor shall furnish Company with copies of all relevant correspondence.

12.9 Contractor shall provide adequate fire protection and firefighting equipment as required by Governmental Authority and the Law, and take all reasonable precautions to prevent fires.

12.10 Contractor shall provide adequate Work Site security including reasonable precautions to prevent theft, vandalism or trespass.

ARTICLE 13. QUALITY MANAGEMENT SYSTEM REQUIREMENTS

13.1 Contractor shall establish and maintain plans in accordance with Schedule "G". Company may comment on the proposed plans and Contractor shall incorporate any reasonable changes which are consistent with this Agreement. Company's review of or approval, or failure to review or approve, the plans shall not impair Company's rights or remedies, or affect Contractor's obligations or liabilities with respect to the content of or defects in or obligations with respect to such plans; it is understood and agreed that Contractor shall at all times be obligated to complete the Work in accordance with the terms of this Agreement regardless of any such review or lack of review or approval.

13.2 Company may (at its own cost), but shall not be obligated to, monitor, audit, and/or engage the services of third parties to monitor or audit Contractor's compliance with the plans; provided, however, that such monitoring or auditing shall be conducted in such a manner as to not unreasonably interfere with the performance of the Work. Upon notification from Company that any plans are not being complied with, Contractor shall immediately take such actions as are necessary to correct such non-compliance.

13.3 Company shall have the right at any time, without notice, to conduct reviews or audits: (i) with respect to compliance with any applicable Laws or Government Authorizations, as they apply to the Work or Contractor; and (ii) with respect to compliance with this Agreement, including the applicable Project Schedule and Work Schedule. Contractor shall cooperate and assist with any such review or audit.

13.4 All Work is subject to review, inspection and approval by Company, but neither review, inspection, approval nor failure to review, inspect or approve will relieve Contractor of any of its obligations or liabilities under this Agreement. The Contractor Representative shall have the right to be present at any inspection, provided however, that should Contractor, after notification by Company, fail to promptly make the Contractor Representative available, Company may proceed with such inspection despite the absence of the Contractor Representative. No inspection or review of the performance of the Work by Company or its representatives shall constitute an approval of any Work or an acknowledgement by Company that any Work satisfies the requirements of this Agreement.

13.5 In accordance with Schedule C, Contractor shall maintain updated, accurate, and comprehensive documentation and records required for the performance of the Work at the Work Sites.

ARTICLE 14. CONDUCT OF CONTRACTOR

14.1 In its performance of the Work, Contractor shall stay within the boundaries of the Work Site and comply with all conditions and restrictions with respect thereto.

14.2 Prior to entering the Work Site, Contractor shall familiarize itself with, and inform all Subcontractors of, the location of any utility facility either above or below ground, including any pipelines, any special restrictions and conditions contained in any easement agreement, crossing agreement, regulatory board order or any other Permit relating to the Work Site or the performance of the Work.

14.3 Contractor shall carry out and perform the Work in a manner that minimizes any inconvenience, injury or damage to third parties and their property, including Landowners.

ARTICLE 15. STORAGE AND CLEAN UP

15.1 Company may designate space at the Work Site for Contractor's working and storage areas and shall advise Contractor of any restrictions and conditions relating thereto. Contractor shall at all times be responsible for keeping these areas clean, orderly and secure.

15.2 Contractor and all Subcontractors shall at all times keep the Work Site free from waste materials or rubbish, including surplus materials, containers, trash and debris.

15.3 Immediately upon achieving Substantial Completion, Contractor shall, unless otherwise instructed in writing by Company, promptly clean up and remove all equipment, tools and surplus materials from the Work Site and shall leave the Work Site clean, safe and ready for use and occupation of the Facility for commercial operations by Company.

15.4 Contractor shall, at its own risk and expense, restore all land and property within or outside the Work Site that is damaged, occupied or crossed during performance of the Work or any part thereof including buildings, fences, hedges, roads, railroads, bridges, culverts, drainage ditches, irrigation ditches and levees, to substantially the same condition as before Contractor

commenced the Work, normal wear and tear excepted unless otherwise specifically included in the Work.

ARTICLE 16. TITLE AND RESPONSIBILITY

16.1 The title to all Work and Facilities completed or in the course of construction at the Work Site and the title to all materials, equipment and supplies furnished or being fabricated by Contractor or Subcontractors in connection with the Work, except tools and equipment owned or rented by Contractor or Subcontractors and not intended to be incorporated into the Work or the Facilities, shall become the property of Company free and clear of any encumbrance upon the earlier of payment therefor by Company or delivery thereof to the Work Site. Title to any items supplied by Company to Contractor for incorporation into the Facilities or for use in performing the Work shall at all times remain with Company, free and clear of any encumbrance by Contractor or any Subcontractor.

16.2 Contractor shall be responsible for and bear the complete risk of loss, destruction or damage with respect to and be responsible for:

(A) all items supplied by Contractor or any Subcontractor which are to be incorporated into the Facilities or used in performance of the Work;

(B) all items supplied by Company to Contractor for incorporation into the Facilities or for use in performing the Work from the date of delivery;

(C) all temporary structures or facilities used in the performance of the Work; and

(D) any Work or Facilities completed or in progress;

until Company has issued a Substantial Completion Certificate in respect thereof or has taken care, custody and control of the Work or Facilities if prior to issuing a Substantial Completion Certificate, in which case the risk of loss shall pass to Company with respect to the Work and Facilities covered by such certificate or upon such taking of care, custody and control; provided, however, Contractor's responsibility to Company for risk of loss, destruction or damage to the Facilities or to the Work shall be offset by any property insurance proceeds available to Company, subject to the deductible provisions in Section 33.4.

16.3 No materials, supplies or equipment supplied by Contractor or any Subcontractor and incorporated into the Work or the Facilities shall be subject to any security interest or agreement, mortgage, financing contract, lease or other agreement by which title or any interest is retained by the seller or any other party without the prior written consent of Company which may be withheld in its sole discretion.

16.4 The Agreement and Contractor Prepared Documents shall belong to Company, and accordingly, Contractor shall have no proprietary right or interest in the Agreement or Contractor Prepared Documents. Contractor shall not use, copy or disclose the Agreement or Contractor Prepared Documents (or any portions thereof) for any purpose other than performing the Work, or as is required by Law. Subject to the foregoing, Contractor may retain for its own records a copy of the Agreement and Contractor Prepared Documents.

16.5 Notwithstanding Section 16.1, or any other provision of the Agreement, Contractor shall be responsible for possession of all Contractor Prepared Documents completed or in progress until received by Company. If any of Contractor Prepared Documents are lost, damaged or destroyed prior to receipt by Company, then such Contractor Prepared Documents shall be

promptly redone and replaced by Contractor, at its expense unless the loss, damage or destruction was caused by Company.

ARTICLE 17. PATENTS AND LICENSES

17.1 Contractor shall promptly give notice to Company if Contractor has or acquires knowledge of any patent, trademark, copyright or industrial design or similar intellectual property right under which a legal action could reasonably arise because of the use or purchase by Company of equipment, machinery, materials, compositions, processes, methods, designs, or similar intellectual property right incorporated or to be incorporated by Contractor as part of the Work or the Facilities. Following notification to Company, Contractor shall not incorporate any such equipment, machinery, materials, compositions, processes, methods or designs into any plans, drawings, specification or other documents, or use the same in connection with the Work without Company's prior written approval.

17.2 Contractor hereby grants Company a non-exclusive, royalty-free, perpetual, irrevocable and transferable license to use any and all patents, industrial designs, copyrights, technology and other intellectual property incorporated into the Work or the Facilities, that Contractor owns or controls.

ARTICLE 18. PROPRIETARY INFORMATION

18.1 "**Proprietary Information**" means all inventions, discoveries, improvements and technical information not in the public domain, which Contractor or Subcontractors or their respective employees, agents, representatives or any other person or entity directly or indirectly under their supervision or control who are performing the Work, may conceive of, reduce to practice or develop as a result of Confidential Information.

18.2 Contractor shall promptly disclose all Proprietary Information to Company, and shall at Company's option, either (i) assign all of its right, title, and interest in and to the Proprietary Information to Company, waive all moral rights to the Proprietary Information, and execute such documents and take such other actions as Company may consider necessary or desirable with respect to the Proprietary Information; or (ii) grant Company an irrevocable right and fully paid, perpetual license to use the Proprietary Information.

18.3 Contractor shall keep and maintain adequate and current records of all Proprietary Information.

18.4 Contractor shall keep all Proprietary Information in confidence, shall not use it, or any part of it except in the performance of the Work and shall not disclose it to others, without Company's prior written consent, except as required by Law.

18.5 Notwithstanding Section 18.1, or any other provision of the Agreement, where a technology, process or work method has been developed by Contractor or a Subcontractor that is not the result of technical specifications or Confidential Information provided by Company, the proprietary rights to that technology, process or work method shall remain with Contractor or Subcontractor. Where proprietary rights remain with a Party other than Company, then Company shall have, and is hereby granted, the right and non-exclusive, perpetual, irrevocable, royalty-free and transferable license to have, retain and use information in respect thereof, for the purpose of the Work and the operation, repair, maintenance, re-building or renovation of the Facilities or any portion thereof.

ARTICLE 19. CONFIDENTIAL INFORMATION AND PUBLICITY

19.1 "**Confidential Information**" means all information and any process, technology or system relating thereto, the design, construction, operation or maintenance of the Facilities or any other aspect of the Work Site or relating to the nature of Company's business and affairs, which Contractor directly or indirectly receives or acquires from Company, Company Representative or anyone on behalf of Company or Company Representative, whether in writing, verbally, or through observation of the Work Site or the Work or through an audit or review of Records, except information falling into any one or more of the following categories:

(A) information which Contractor can show was in its possession on a non-confidential basis prior to its receipt or acquisition thereof from Company;

(B) information which is lawfully in the public domain at the time of Contractor's receipt or acquisition thereof, other than through the process of tendering for evaluation of tenders or performing the Work;

(C) information which, after Contractor's receipt or acquisition thereof, becomes part of the public domain through no act of Contractor or of any third party under an obligation of confidence with respect to such information, but only after such information becomes part of the public domain; or

(D) information which, after Contractor's receipt or acquisition thereof, is lawfully obtained by Contractor from a third party, but only after such information is so received or acquired, and provided such third party is under no obligation of confidence with respect to such information.

Specific information shall not be considered to be within the scope of any of the exceptions listed above merely because it is included with general information within the scope of the above exceptions.

19.2 Contractor shall keep all Confidential Information in confidence and shall not disclose it to others without the prior written approval of Company, except as required by Law. Contractor shall not use the Confidential Information except in performance of the Work.

19.3 Notwithstanding Section 19.2, Contractor may disclose Confidential Information to those of its Subcontractors and each of their respective employees, agents, representatives, and any other person or entity directly or indirectly under their supervision or control to whom disclosure is required in order for Contractor to perform the Work ("**Personnel**"), provided Contractor shall ensure that its employees, agents and representatives comply with, and shall contractually require its Subcontractors and their respective employees, agents and representatives to comply with Section 19.2.

19.4 In the event that Contractor or any of its Personnel are required by Law to disclose Confidential Information, Contractor shall: (i) immediately provide to Company written notice thereof so that Company may seek a protective order or other appropriate remedy or waive compliance by Contractor with this Article in whole or in part; (ii) furnish only that portion of the Confidential Information that is legally required; and (iii) exercise best efforts to obtain reasonable assurances that confidential treatment will be accorded to such Confidential Information.

19.5 In the event Contractor becomes aware that Confidential Information received by Contractor or any of its Personnel has been disclosed or used, or is intended to be disclosed or used, in a manner that would violate the terms of this Agreement, Contractor shall: (i) immediately notify Company, providing all details available regarding such violation; (ii) immediately take all commercially reasonable steps to prevent, stop and rectify such violation; and (iii) keep Company fully informed of all steps taken by Contractor to prevent, stop and rectify such

violation.

19.6 Contractor acknowledges and agrees that actual or threatened disclosure or use of Confidential Information that does not fully comply with the terms of this Agreement will cause irreparable harm to Company for which an award of damages alone will not be adequate compensation. Accordingly, Contractor agrees that Company may apply to a court of competent jurisdiction for injunctive relief against actual or threatened disclosure or use of Confidential Information that does not fully comply with the terms of this Agreement. Neither the remedies provided for in this Article nor any action commenced under this Article will preclude any other remedies or relief at Law available to Company for breach of this Agreement.

19.7 The confidentiality obligations hereunder shall terminate on the fifth (5^{th}) anniversary of the termination or expiry of this Agreement.

19.8 Contractor shall not use Company's name, or the names of any of its Affiliates and the registered or unregistered trademarks of Company or its affiliates in any slogans or otherwise in any advertising or promotional materials or publicity releases, or otherwise, and shall not take, permit to be taken or use any photographs of the Facilities or the Work Site, without the prior approval of Company.

ARTICLE 20. FORCE MAJEURE

20.1 "**Force Majeure**" means any unforeseeable act or event that: (i) renders it impossible for the affected Party to perform its obligations under this Agreement; (ii) is beyond the reasonable control of the affected Party; (iii) is not due to the fault or negligence of the affected Party; and (iv) could not have been avoided by such Party through the exercise of due diligence, including the expenditure of any reasonable sum of money. Without limiting the generality of the foregoing, Force Majeure may include any of the following events: war, riot, terrorism, act of vandalism, rebellion, epidemic, Catastrophic Weather, general strike, fire, explosion, and also includes any late delivery of Company Supplied Materials where such delay is due to any event of Force Majeure. Notwithstanding the foregoing, Force Majeure shall not include: (a) late delivery of any Contractor supplied or Subcontractor supplied equipment and materials (except to the extent that such delay is due to any event of Force Majeure), (b) delays resulting from the breakdown of any Contractor supplied or Subcontractor supplied equipment and materials, (c) delays caused by inefficiencies on the part of Contractor, (d) Work Site specific labor disruptions, (e) the condition of the Work Site (unless caused by an event of Force Majeure), (f) late performance caused by Contractor's inefficiency in hiring or failure to hire (due to unavailability or otherwise) adequate labor or supervisory personnel, (g) any local, general or seasonal weather conditions or climates except Catastrophic Weather, or (h) financial issues affecting the Party claiming the Force Majeure.

20.2 If any Party cannot comply with any obligation hereunder as a result of Force Majeure, such Party shall notify the other Party in writing as promptly as possible, but in any event within twenty-four (24) hours of such event, giving the reason for the non-compliance, particulars of the Force Majeure and the obligation or condition affected. Subject to Section 20.6, such event of Force Majeure shall constitute a Change, and subject to Section 20.4, any obligation of a Party shall be temporarily suspended during the period in which such Party is unable to perform by reason of Force Majeure, but only to the extent of such inability to perform. The obligations of Contractor to perform as provided by the Agreement through means not affected by the Force Majeure shall continue. The Party affected by the Force Majeure shall promptly notify the other Party as soon as such event no longer prevents it from complying with its obligation, and shall thereafter resume performance of the Work.

20.3 The Party that has given a notice of Force Majeure shall mitigate the effects of such Force Majeure on the performance of its obligations. Where the Parties reasonably believe that the

Force Majeure will continue for more than five (5) Days or where the Force Majeure does continue for more than five (5) Days, the Parties shall meet as soon as practicable to review the situation and its implications on the Work Schedule and to discuss the appropriate course of action in the circumstances.

20.4 No adjustment of the Work Schedule for any event of Force Majeure pursuant to this article 20 shall be made with respect to the first forty-eight (48) hours of direct and actual adverse impact to the milestone dates set forth in the Work Schedule arising out of such event of Force Majeure.

20.5 Subject to Section 20.4, if the performance of the Work is delayed or interrupted as a result of Force Majeure, the Work Schedule, only as it relates to the direct and actual adverse impact to the milestone dates set forth in the Work Schedule, shall be adjusted on an equitable basis in accordance with article 7 and this article 20. Pending such resolution, the Work Schedule adjustment shall be as determined by Company. Any Work Schedule adjustment shall include only that period of time by which the Work Schedule is directly and actually delayed by such Force Majeure.

20.6 An event of Force Majeure shall not give rise to any increase to the Price or claim for delay and no productivity impact costs shall be due or payable by Company as a result of an event of Force Majeure.

20.7 Notwithstanding anything else in this Article, in any circumstance where the Contractor is entitled to a Work Schedule extension the Company may, in its discretion, require compression of the Work Schedule rather than an extension of time to the extent schedule compression is reasonably practicable. In such case Contractor will be entitled to compensation in accordance with section 7.12 or as otherwise agreed for the additional efforts necessary to meet the compressed Work Schedule.

ARTICLE 21. DELAYS CAUSED BY CONTRACTOR

21.1 If Contractor is responsible for a delay in the progress of the Work, or fails to complete any portion of the Work in accordance with the Work Schedule, then Contractor shall, at no additional cost to Company: (a) work overtime, acquire and use any necessary additional labor and equipment and perform whatever other acts are required or requested by Company to make up the lost time and to avoid further or other delay in the performance of the Work; (b) prepare and implement a recovery plan in accordance with Section 21.4 (if applicable);.and (c) work diligently to mitigate all damages incurred as a result of the delay.

21.2 Contractor shall promptly notify Company in writing: (i) of any occurrence that Contractor has reason to believe will materially adversely affect the Project Schedule or the Work Schedule; or (ii) if the performance of the Work is not in compliance with the Project Schedule or the Work Schedule or Contractor's adherence to the Critical Path progress of the Work Schedule and/or the Project Schedule is behind for any reason by more than five (5) Days.

21.3 If at any time, in the reasonable opinion of Company, Contractor is not in compliance with the Project Schedule or the Work Schedule or its adherence to the Critical Path progress of the Work Schedule and/or the Project Schedule is behind for any reason by more than five (5) Days Company may provide notice to Contractor.

21.4 Where Contractor has provided notice in Section 21.2, Contractor will specify in said notice the corrective action recommended by Contractor in the form of a recovery plan. Where Company has provided notice in Section 21.3, Contractor shall prepare and provide to Company a recovery plan within five (5) Days of receipt of the notice. The recovery plan will set forth in

reasonable detail the manner in which Contractor intends to meet the dates set forth in the Work Schedule and the Project Schedule, including the specific steps to be taken, the expected pace of recovery, and the expected recovery date, and shall require Contractor to take such steps as are necessary to make up the lost time and to avoid further or other delays in the performance of the Work including, if necessary, working overtime, increasing the number of working Days or hours per Day, and acquiring and using any necessary additional labor and equipment and whatever other acts are required by Company. If Company has not commented within ten (10) Days, it shall be deemed to have reviewed the plan without comment, provided that in no event shall Company be considered to have approved a recovery plan. Contractor shall, at no cost to Company, promptly implement and thereafter shall diligently continue to adhere to the recovery plan in order to meet the dates set forth in the Work Schedule and Project Schedule. During implementation of the recovery plan Contractor shall provide sufficient information to Company to show its compliance with the recovery plan and indicating the improvements being made to the Work Schedule and Project Schedule. It is a breach of this Agreement if Contractor, in the opinion of Company, is not complying with the recovery plan or fails to provide sufficient detail to show its compliance.

21.5 Contractor acknowledges that the Project Schedule and Work Schedule are vital to Company. In addition to any other rights and remedies of Company hereunder, Contractor further acknowledges that Company may incur additional costs and expenses if the Project Schedule and Work Schedule are not complied with, including costs of Other Contractors, internal personnel, overhead and standby costs of Company and Other Contractors, and that where such costs and expenses are incurred Contractor is liable therefor. In addition to any other remedies Company may have, where Contractor is not in compliance with the Project Schedule and Work Schedule the reasonable and verifiable amount of such costs and expenses may be deducted from any payments due to Contractor and retained by Company on account of such costs and expenses.

21.6 Claims for costs associated with any weather-related delays and the associated productivity impacts shall not be compensated by Company.

ARTICLE 22. DELAYS NOT CAUSED BY CONTRACTOR

22.1 If Contractor is delayed or materially impacted in the performance of the Work by:

(a) an act or omission of Company or Other Contractors, not otherwise contemplated or authorized by the Agreement,

(b) an order issued by a court or other public authority having jurisdiction, provided that such order was not directly or indirectly the result of an act, omission or fault of Contractor, a Subcontractor or any of their respective employees, agents, representatives or any other person or entity directly or indirectly under their supervision or control,

(c) the existence of Hazardous Materials which are not the responsibility of the Contractor under Article 23, or the unanticipated discovery of archaeological or paleontological findings of significance at or near the Work Site which impacts the Work;

(d) deficiencies or defects in Company Supplied Materials, except those caused by Contractor or a Subcontractor or which occurred while Contractor had risk of loss

provided that Contractor shall be responsible for the impact of any unreasonable delay in discovering such defects or deficiencies having regard to Prudent Industry Practices;

(e) any delays in or failure of the Company to acquire Permits which are the responsibility of the Company, except to the extent caused by the Contractor or a Subcontractor or where Contractor has not provided reasonably sufficient time for Company to acquire the applicable Permit; or

(f) civil disobedience or protest action by activists or the public and not directly caused by Contractor;

then Contractor shall give Company written notice within twenty-four (24) hours of such delay, indicating the number and classifications of persons and equipment impacted, and the Work Schedule shall be extended for such reasonable time to allow Contractor to make up the delay. Such event shall constitute a Change and Contractor shall be reimbursed by Company for Contractor's reasonable actual direct costs, exclusive of profits and overhead, incurred as a direct result of such delay pursuant to the provisions of article 7.

22.2 No claim for delay or productivity impact costs, increase to the Price or any other compensation, revision to the Work Schedule and no extension of time on account of delay as contemplated in this article 22 may be made by Contractor unless a Change Order Request Notice is given to Company no later than three (3) Days after the commencement of delay, provided however, that in the case of a continuing cause of delay only one Change Order Request Notice shall be necessary.

22.3 Notwithstanding anything else in this Article, in any circumstance where the Contractor is entitled to a Work Schedule extension the Company may, in its discretion, require compression of the Work Schedule rather than an extension of time to the extent schedule compression is reasonably practicable. In such case Contractor will be entitled to compensation in accordance with section 7.12 or as otherwise agreed for the additional efforts necessary to meet the compressed Work Schedule.

ARTICLE 23. ENVIRONMENTAL PROTECTION

23.1 Contractor acknowledges that performance of the Work may involve a disturbance of the environment and that the Governmental Authority which authorized Company to perform the Work or have the Work performed, as the case may be, require Company to do so with as little disturbance of the environment as is reasonable and possible in the circumstances.

23.2 For purposes of the Agreement, the terms "environment" and "environmental" include the physical environment (air, water, land), the biological environment (birds, fish, reptiles, insects, mammals, man and plants) and the social environment (heritage or historic sites, archaeological, anthropological, cultural) and Company and Contractor accept that these environments interrelate with man-made (anthropogenic) elements (cities, highways, railways, pipelines) to form interrelated "ecosystems" and that a change in one element of the system may result in subtle, moderate or massive alterations (and impacts) to either individual or multiple components. Therefore, with respect to the performance of the Work, Contractor shall ensure that its activities are conducted in a manner that conforms to established environmental standards and practices, Prudent Industry Practices, the Law and with the other requirements of the Agreement.

23.3 Contractor shall, at its own expense, comply and cause its Subcontractors and their respective employees, and agents to comply with all environmental requirements forming part of the Agreement including performing in strict accordance with and complying with Prudent Industry

Practices, the Law, Policies and Guidelines, and those rules or directives or other requirements of all Governmental Authority acting within their powers, whether or not referenced or described herein.

23.4 Contractor shall be held fully responsible for any damage to natural vegetation, wildlife, cultural resources, and all other environmental resources, resulting from Contractor or Subcontractor conduct or prosecution of any of the Work located outside the Work Site permitted in the Agreement, or that is located inside the Work Site, but in an Exclusion Area. The Exclusion Areas are not part of the right-of-way and shall not be disturbed. Contractor shall assume full responsibility for all costs associated with remediation, restoration, re-vegetation, monitoring and for all other measures necessary to repair or compensate for any such damage incurred in the Exclusion Areas and to ensure successful remediation and restoration of damage or disturbance in the Exclusion Areas. Company may deduct from payments to Contractor an amount equal to Company's actual costs for any of Company's involvement required to mitigate and administer such mitigation for disturbances in the Exclusion Area.

23.5 Contractor shall limit the use of Hazardous Materials at the Work Site to the extent possible in accordance with Prudent Industry Practices, and will advise Company of the use of any Hazardous Materials. Contractor, any Subcontractors, and their respective employees, agents, representatives and any other person or entity directly or indirectly under their supervision or control shall not in relation to the Work handle, use, store, transport or dispose or permit the handling, use, storage, transportation or disposal of Hazardous Materials except in strict accordance with the Agreement and the Law.

23.6 Contractor shall take all measures reasonably necessary to prevent the release or threatened release of any Hazardous Materials at the Work Site in violation of Law or the requirements of this Agreement. Contractor will immediately notify Company of: (i) any releases of Hazardous Materials that occur in connection with the performance of the Work; (ii) any and all material violations and any and all investigations, actions, claims, suits, notices of violation, fines, penalties, orders, and other proceedings related to material violations or alleged material violations of Law, that are asserted against Contractor, its Subcontractors or their respective employees, agents or representatives in connection with the performance of the Work or their activities on, along, adjacent to, or near the Work Site; (iii) Contractor's discovery of any releases of Hazardous Materials at the Work Site or adjacent areas; and (iv) all material developments with respect to items described in clauses (i) through (iii) of this Section 23.6.

23.7 Each Party shall give notice to the other Party of any Hazardous Materials, hazardous conditions, property, or equipment at the Work Site immediately after it becomes aware of such hazard.

23.8 If Contractor encounters a Hazardous Material on the Work Site that is not Contractor's or Subcontractor's Hazardous Material, then Contractor will immediately take any reasonable steps necessary for containment of the Hazardous Material and give notice of the condition to Company. Contractor shall have no obligation to perform remediation of such Hazardous Material.

23.9 Failure by Contractor to comply with the environmental requirements of the Agreement shall constitute an event of default and upon the occurrence thereof Company shall have the right to exercise any or all of the remedies available to it under the Agreement, including termination under Section 0.

23.10 Company shall have the right to stop any work at the Work Site, which is thought to be unsafe or not in conformity with the requirements of this 22.3.

23.11 Contractor acknowledges that it will not be reimbursed for any costs, expenses or damages resulting from a stoppage of Work pursuant to Section 23.10.

ARTICLE 24. COMPANY'S RIGHT OF SUSPENSION

24.1 In addition to any other right that Company may have hereunder or in Law, Company may, in the exercise of its sole and arbitrary discretion, at any time or times, by notice to Contractor specifying the effective date of the suspension, require Contractor to suspend the Work or any portion thereof. Upon receiving written notice, Contractor shall discontinue the Suspended Work immediately, place no further purchase orders or subcontracts with respect to the Suspended Work, properly protect and secure the Work in accordance with Prudent Industry Practice, not remove any Work or equipment or tangibles forming part of the Work from the Work Site without written consent of Company, and promptly make reasonable efforts to obtain suspension terms satisfactory to Company with respect to all existing purchase orders, subcontracts, supply contracts and rental agreements related to the Suspended Work. Contractor shall continue to perform all other portions of the Work which have not been suspended by Company.

24.2 Company may at any time authorize resumption of the Suspended Work or any part thereof, by giving Contractor reasonable notice specifying the part of the Suspended Work to be resumed and the effective date of such resumption. Contractor shall resume the Suspended Work on the date and to the extent specified in the notice.

24.3 Contractor shall utilize its employees, equipment and materials in such manner, and take such other steps as may be necessary or desirable to minimize the costs associated with the Suspended Work. During the period of Suspended Work, Contractor shall secure and protect the Suspended Work and the impacted Facilities and all materials and equipment to be used or incorporated therein.

24.4 If there is Suspended Work, such event shall constitute a Change and Company shall reimburse Contractor for those direct costs, exclusive of profit, reasonably incurred by Contractor as a direct result of the suspension of the Work in accordance with article 7 provided that Contractor shall take reasonable measures to minimize any such costs. Company shall not be liable for any other costs or damages, including loss of profits or any other consequential or special damages, on account of the Suspended Work or any part thereof or the deletion of Suspended Work from the Agreement. Contractor shall promptly provide all information and records Company may require to verify claimed costs.

24.5 Contractor acknowledges that it will not be reimbursed for any costs arising from Suspended Work that causes Contractor to cease all or a portion of the Work for a period of time which is less than two (2) hours before the Work can recommence. It is further acknowledged by Contractor that it has made adequate allowance in the Price for delays of less than two (2) hours in duration.

24.6 Notwithstanding anything else in this Article, in any circumstance where the Contractor is entitled to a Work Schedule extension the Company may, in its discretion, require compression of the Work Schedule rather than an extension of time to the extent schedule compression is reasonably practicable. In such case Contractor will be entitled to compensation in accordance with section 7.12 or as otherwise agreed for the additional efforts necessary to meet the compressed Work Schedule.

ARTICLE 25. COMPANY'S RIGHT TO TERMINATE FOR CONVENIENCE

25.1 In addition to any other rights that Company may have hereunder, or in Law, Company may at any time, in the exercise of its sole and arbitrary discretion, terminate the Agreement, the Work or any portion thereof by giving no less than fourteen (14) Days' notice to Contractor specifying the Work or portion thereof to be terminated and the effective date of the termination. Upon

receipt of such notice, Contractor shall continue to perform all other portions of the Work not terminated, if any, in strict accordance with the Agreement. If the Agreement or any portion thereof is terminated in accordance with this Section 25.1, Contractor agrees to waive any claims for damages, including loss of anticipated profits or any other consequential or special damages, arising out of such termination and agrees that the sole and exclusive remedy for such termination shall be to receive from Company payment for all Work performed, including demobilization and any Work required to be performed under section 25.2, and the Cancellation Fees.

25.2 If Contractor has begun Work under this Agreement, it shall, upon receipt of the notice under Section 25.1, unless otherwise directed by such notice:

(A) immediately discontinue the cancelled Work or portion thereof in accordance with the notice;

(B) take whatever steps are necessary or desirable to minimize the costs associated with the termination of the Work;

(C) cease placing orders for materials and equipment in respect of the cancelled Work and exercise reasonable commercial efforts to cancel existing orders or contracts on terms satisfactory to Company;

(D) do only such portion of the Work as may, in the reasonable opinion of Company, be necessary to preserve and protect the portion of the Work performed prior to termination;

(E) protect materials and equipment on or in transit to the Work Site; and

(F) continue to perform all other portions of the Work not terminated, if any, in strict accordance with this Agreement.

25.3 If Contractor has not begun Work under this Agreement, it shall, upon receipt of the notice under Section 25.1, take all commercially reasonable steps to mitigate its losses as a result of the termination by Company and to mitigate or avoid Cancellation Fees.

25.4 If the Agreement or any portion of the Work is terminated pursuant to this Article 25, Company may complete or have others complete the Work. Upon termination of the Agreement or the Work or any part thereof pursuant to this Article 25, Contractor shall discontinue the Work in accordance with the notice and shall take such steps as may be necessary or desirable to protect the Work, the Facilities and the Work Site. In addition Contractor shall execute (where applicable) and shall deliver to Company all Records, Permits that are the responsibility of Contractor, all Work in progress, and all other all documents required by Company, and shall take all steps reasonably required by Company, to fully vest in Company the rights and benefits of Contractor under existing agreements with the Subcontractors, which are related to the Work, and to fully vest in Company all rights and title to any thing or benefit that Company is entitled under the Agreement.

25.5 Company shall not be liable for any damages (consequential, special or otherwise, including loss of profits) as a result of the termination of the Work or any portion thereof by Company pursuant to any provisions of this Article 25. The rights and remedies of Company provided in this Article 25 are in addition to the rights and remedies of Company provided by Law, or under any other provision of the Agreement.

ARTICLE 26. COMPANY'S RIGHT TO TERMINATE FOR CAUSE

26.1 Without limiting the generality of Article 25, Company may, in its sole discretion, immediately terminate the Agreement or any part of the Work by giving written notice to Contractor in any of the following circumstances:

(A) if Contractor becomes insolvent or makes a general assignment for the benefit of its creditors, enters into a plan of arrangement for the benefit of its creditors or otherwise seeks protection from creditors under federal or state Law, or if a bankruptcy petition is filed against Contractor and not dismissed within forty-five (45) Days;

(B) if an order is made or a resolution is passed for the winding up or liquidation of Contractor;

(C) if a custodian, receiver, manager or other officer with similar powers is appointed in respect of Contractor or any of Contractor's property;

(D) if Contractor ceases to carry on in the ordinary course of business;

(E) if a creditor takes possession of any of Contractor's property, or if a distress, execution or any similar process is levied or enforced against such property and remains unsatisfied by Contractor;

(F) if Contractor fails to comply with any requirement of Article 39;

(G) if Contractor breaches its obligations under Section 21.4;

(H) if Contractor repeatedly violates any obligation in 11.4 or, in the reasonable opinion of Company, has failed to meet a material requirement of 11.4; or

(I) if Contractor or Company receives an order from any Governmental Authority for breach of Law that requires an immediate suspension of the Work, including a stop work order related to safety or environmental violations.

Upon receipt of such notice from Company, Contractor shall discontinue the Work in accordance with the notice, and shall (i) cease performance of the Work to the extent directed by Company in the notice; (ii) take all actions that Company may direct, or as may be necessary or expected under Prudent Industry Practices for the protection and preservation of the Facility and all property or other Company Supplied Materials or supplies related thereto (in whatever stage of completion), including return of the Company Supplied Materials (including unloading and stocking for proper storage) as directed by Company; and (iii) at Company's instruction, assign its rights under all Permits, subcontracts, warranties, guarantees, and other agreements or documents pertaining to the Work to Company or its respective designees.

26.2 Contractor shall be liable to Company for all additional direct costs and expenses incurred by Company in completing the Work that would not have been incurred but for the termination hereunder (including any additional direct costs to complete or to have a third party complete the Work), in addition to all other rights and remedies of Company pursuant to the Agreement and at Law.

26.3 In addition to the termination rights set forth in Section 26.1, if Contractor has failed to comply with any of the terms of the Agreement, or is in material breach of any representation, declaration or warranty, including representations and warranties made under 11.4, or any obligation under article 39, Company may, in its sole discretion, give Contractor notice of default. Contractor shall have five (5) Days immediately following receipt of the notice, or such longer time as Company believes to be reasonable and has specified in the notice of default or

has subsequently agreed upon in writing, to remedy or to commence to remedy and diligently continue to remedy such default, failing which, Company may by further notice to Contractor terminate or suspend the whole or any part of the Agreement or the Work; provided that, where Company determines, in its reasonable discretion, that the default is not capable of being remedied or not capable of being remedied within a reasonable amount of time, Company may, by notice to Contractor, immediately terminate or suspend the whole or any part of the Agreement. Upon receipt of such notice from Company, Contractor shall discontinue the Work in accordance with the notice and shall (i) cease performance of the Work to the extent directed by Company in the notice; (ii) take all actions that Company may direct, or as may be necessary or expected under Prudent Industry Practices for the protection and preservation of the Facility and all property or other Company Supplied Materials or supplies related thereto (in whatever stage of completion), including return of the Company Supplied Materials (including unloading and stocking for proper storage) as directed by Company; and (iii) at Company's instruction, assign its rights under all Permits, subcontracts, warranties, guarantees, and other agreements or documents pertaining to the Work to Company or its respective designees. Contractor acknowledges that it will not be reimbursed for any costs arising from a suspension under this Section 26.3.

26.4 Where the whole or any part of the Agreement is suspended under Section 26.3, Company may, at any time, immediately terminate any or all of the suspended portion of the Agreement.

26.5 If the Agreement or any portion of the Work is terminated pursuant to this article 26, Company may complete or have others complete the Work. If the Agreement is terminated pursuant to Section 26.1 or Section 0, Contractor is not entitled to further payment from Company until the Work is complete and Company has fully ascertained all of its costs and damages arising out of or related to the default (including, without limitation, legal, expert, design) (the "**Completion Costs**"). Any amount payable to Contractor for Work satisfactorily performed to the date of termination will be offset by the Completion Costs, the sum of any monies already paid to Contractor and any additional amount Company must pay to obtain satisfactory completion of the Work by others.

26.6 Upon termination of the Agreement or the Work or any part thereof pursuant to this article 26, Contractor shall execute and deliver to Company all documents required by Company, and shall take all steps reasonably required by Company, to fully vest in Company the rights and benefits of Contractor under existing agreements with the Subcontractors, which are related to the Work, and to fully vest in Company all rights and title to any thing or benefit that Company is entitled under the Agreement.

26.7 Company shall not be liable for any damages (consequential, special or otherwise, including loss of profits) as a result of the termination of the Work or any portion thereof by Company pursuant to any provisions of this article 26. The rights and remedies of Company provided in this article 26 are in addition to the rights and remedies of Company provided by Law, or under any other provision of the Agreement. If Company elects to terminate or suspend this Agreement or any part of the Work, and a court or other body of competent jurisdiction finds such termination or suspension was invalid, such termination or suspension shall be considered to be a termination for convenience in accordance with Article 25.

26.8 All rights of Company in this article 26 are without prejudice to any other rights of Company, whether under this Agreement or otherwise.

ARTICLE 27. CONTRACTOR'S RIGHT TO TERMINATE FOR CAUSE

27.1 If at any time Company fails to pay Contractor when due, amounts owing under this Agreement (which are not the subject of a Dispute), net of any holdbacks, set-offs or deductions required or permitted under this Agreement or required by Law, or has otherwise failed to comply with

any obligation of the Agreement, then Contractor may, in its sole discretion, give written notice to Company. Company shall have thirty (30) Days immediately following receipt of the notice, or such longer time as Contractor believes to be reasonable and has specified in the notice of default or has subsequently agreed upon in writing, to either remedy or dispute such default, failing which Contractor may, without prejudice to any other right or remedy available hereunder or at law or in equity, suspend the Work or terminate this Agreement by giving further written notice to Company. Where Company disputes a default and on resolution thereof it is determined that Company is in default, Company shall have thirty (30) Days from the date the dispute is resolved to remedy such default.

27.2 If Contractor terminates the Agreement in accordance with Section 27.1, Contractor agrees to waive any claims for damages, including loss of anticipated profits or any other consequential or special damages, arising out of such termination and agrees that, unless otherwise specifically set forth in this Agreement, the sole and exclusive remedy for such termination shall be to receive from Company the Cancellation Fees.

ARTICLE 28. TAXES

28.1 Contractor will pay all taxes imposed by any taxing authority on Contractor or required to be collected or paid by Contractor, including taxes:

(A) imposed by reason of the performance or completion of the Work, including but not limited to license, permit and registration fees and upon the gross receipts, income, net income, franchise, business personal property taxes;

(B) all employment taxes and contributions imposed by law or required to be paid on behalf of the employees of Contractor, Subcontractors or Suppliers, including but not limited to taxes and contributions for income tax, worker's compensation, employment insurance, old age security benefits, pensions and annuities and disability insurance; and

(C) with respect to any labour, machinery, materials and equipment to be supplied by Contractor, Subcontractor or Suppliers and used in performance of or incorporated into the Work

(collectively, "**Contractor Taxes**").

28.2 For greater certainty, all penalties, fines, additions to and interest upon any taxes related to Contractor Taxes or the acts of omissions of Contractor in the administration or remittances of Contractor Taxes are Contractor's sole responsibility. Contractor hereby agrees to indemnify and save Company harmless against the consequences of any failure by Contractor or any of its Subcontractors to pay or withhold taxes, charges or compensation due.

28.3 Contractor shall comply with all applicable Laws and regulations relating to the collection and remittance of any Sales Taxes and Contractor shall defend, indemnify, and hold harmless Company Indemnified Parties from and against all claims, costs, penalties and interest which may be assessed against the Company Indemnified Parties in respect to Contractor's obligations specified in this Article.

28.4 Any increase in taxes and charges described in Section 28.1 and Section 28.2 shall be the sole responsibility of Contractor.

ARTICLE 29. PAYMENT OF ACCOUNTS

29.1 Contractor shall promptly and satisfactorily pay all accounts and settle all Claims incurred by Contractor in connection with the performance of the Work, and shall also promptly pay and discharge all damage Claims of every kind which Contractor is obligated to pay under the terms of the Agreement or otherwise.

ARTICLE 30. LIENS

30.1 Contractor shall cause any Lien which may be filed or recorded against the Work, the Facility, the Work Site or any lands or property of Company to be released and discharged forthwith at the cost and expense of Contractor. If Contractor fails to release or obtain the release and discharge any such Lien, then Company may, but shall not be obliged to, discharge, release or otherwise deal with the Lien, and Contractor shall pay any and all costs and expenses incurred by Company in so releasing, discharging or otherwise dealing with the Lien, including fees and expenses of legal counsel. Any amounts so paid by Company may be deducted from any amounts due Contractor whether under the Agreement or otherwise. No amounts are payable by Company to Contractor so long as a Lien remains registered against the Work, the Facilities, the Work Site or any lands or property of Company, arising out of the Work.

ARTICLE 31. REPRESENTATIONS AND WARRANTIES

31.1 Contractor shall use its best efforts to obtain for the benefit of Company, the best warranties and guarantees that it is possible to secure from all Subcontractors and, at a minimum, shall provide the warranties required by the Agreement. Contractor shall do all things and provide all assistance reasonably necessary to enable Company to enforce the warranties and guarantees provided by Subcontractors.

31.2 Contractor represents and warrants to Company as of the Effective Date that:

(A) it has substantial experience performing work for construction projects of the size, complexity and nature of the Facilities and is fully qualified, staffed and equipped to perform the Work, in strict accordance with the Agreement, the Law, Prudent Industry Practices and the Work Schedule;

(B) it is duly incorporated and validly existing under the Law and it is registered and qualified to do business and perform the Work in each jurisdiction in which the Work is to be performed;

(C) it has all required Permits necessary to carry on its business and to conduct the performance of the Work in each jurisdiction where the Work is to be performed and where each Work Site is located;

(D) the title to any and all materials, supplies and equipment to be supplied by Contractor or any Subcontractors for incorporation into the Work or the Facilities will be free from any and all encumbrances of any kind whatsoever;

(E) all Work shall, for the duration of the Warranty Period:

(i) comply with the requirements of the Agreement, including the requirements of the Law and Prudent Industry Practices;

(ii) be performed in a safe, efficient, environmentally sound and economical manner consistent with Company's interests, and in compliance with applicable Law;

(iii) be performed in strict accordance with the Work Schedule;

(F) all materials and equipment furnished by Contractor and all Subcontractors to be used in the execution of, or for incorporation into, the Work shall, for the duration of the Warranty Period:

(i) meet the specifications in the Agreement if so specified, and if not specified, then be of the quality best suited for the intended use and purpose of the materials and equipment in accordance with the Agreement and of sufficient size and capacity for the Work;

(ii) be new, of recent manufacture, and of good quality unless otherwise expressly required or permitted by the Agreement;

(iii) be compliant with the Law, including the Law relating to safety and environmental protection; and

(G) it has diligently reviewed the Agreement and all written information provided by Company and identified any conflicts, inconsistencies, errors or omissions therein or between the Agreement, such information and the Law.

31.3 Contractor warrants that, for the duration of the Warranty Period, the Work and the Facilities, and all component systems thereof, shall be in strict accordance with the provisions of the Agreement, maintained in accordance with the Agreement, and shall be free of all defects and deficiencies in workmanship and materials and equipment supplied by Contractor and all Subcontractors will be new, of recent manufacture and of good quality unless otherwise expressly required by the Agreement.

31.4 In addition to Company's other rights under the Agreement and at Law, Contractor shall, at its sole cost and expense, promptly repair and make good all defects in the Work and in the Facilities and correct all deficiencies, errors, omissions and mistakes with respect to the Work and the Facilities (or any component system thereof) that it becomes aware of, or is notified of, prior to the expiry of the Warranty Period by re-performing the Work (including re-performing, repairing or replacing (as applicable) any impacted Work and Facilities (including materials and equipment)) which does not comply with the Agreement or which re-performance, repair or replacement is required as a result of defects in the Work or the Facilities. Contractor will do so in a manner that keeps disruptions to Company's continued operations at a minimum. Notwithstanding the foregoing, Company may at its option make or cause to be made the necessary corrections, re-performance, repairs or replacements (as applicable) to the Work and the Facilities and charge such costs to Contractor.

31.5 Contractor shall immediately advise Company of any defects in workmanship, deficiencies, errors, omissions or mistakes in the Work and the Facilities that it discovers or becomes aware of during the performance of the Work and during the Warranty Period.

31.6 If a portion of the Work is terminated pursuant to article 25 or article 26, then this article 31 shall survive such termination with respect to the portion of such terminated Work performed prior to such termination, and the warranty period with respect to such Work shall commence upon the effective date of termination and end on the date twenty-four (24) months after the effective date of termination. However, if any such Work is re-performed, remedied or otherwise corrected pursuant to Section 31.4, the warranty period for such re-performed, remedied or otherwise corrected Work shall expire on the date twenty-four (24) months from the date that

such re-performance, remedy or correction is completed. The warranty period is separate from, independent of, and in addition to any applicable statutes of limitations or repose that apply to this Agreement.

ARTICLE 32. LIABILITY AND INDEMNITY

32.1 Contractor shall be liable to Company Indemnified Parties for any and all Claims incurred by or suffered by Company Indemnified Parties, to the property of Company Indemnified Parties, the Work or the Facilities, to the extent caused by Contractor's breach or non-compliance with any term or provision of this Agreement, or inaccuracy or incompleteness of any representation or warranty herein, or the fault, negligence or wilful misconduct, whether active or passive, of Contractor or any Subcontractor, or their respective directors, officers, employees, agents, servants, representatives or any other person directly or indirectly acting on their behalf or under their direction or control.

32.2 In addition to Section 32.1, Contractor shall defend, indemnify and hold harmless Company, its Affiliates, and each of their officers, directors, employees, invitees, consultants, contractors, representatives and agents and any other person directly or indirectly acting on any of the foregoing's behalf or under their direction or control (collectively, the "**Company Indemnified Parties**") from and against any and all Claims of whatever nature, including all fees and expenses of legal counsel, legal proceedings, investigations or dispute resolution costs which may be brought against Company Indemnified Parties or which Company Indemnified Parties may incur, suffer, sustain or pay to the extent caused by:

(A) any breach or non-compliance with any term or provisions of this Agreement, or inaccuracy or incompleteness of any representation or warranty, by Contractor;

(B) the fault, negligence, or wilful misconduct, whether active or passive, of Contractor or any Subcontractor, or their respective directors, officers, employees, agents, servants, representatives or any other person directly or indirectly acting on their behalf or under their direction or control (or any acts or omissions of Company, Other Contractors or their respective employees or agents while acting under the direction and control of Contractor or any Subcontractors or their respective employees or agents), related to this Agreement or the performance or non-performance of the Work hereunder;

(C) any taxes or third party obligations, or any related contributions and penalties, imposed on Contractor or Company by any Governmental Authority or other authority, to the extent payable by and the responsibility of Contractor as a result of the Agreement;

(D) the failure of Contractor or any Subcontractors to comply with the Law, including any fine, penalty, sanction imposed or assessed by any Governmental Authority relating to such failure, related to this Agreement or the performance or non-performance of the Work hereunder;

(E) any patent, trademark, copyright, industrial design, or other intellectual property infringement pertaining to any equipment, machinery, materials, compositions, processes, methods or designs, specified for use or used by Contractor in connection with the Work, except for those supplied or specified for use by Company to Contractor;

(F) all Liens and claims made or liability incurred by Company on account of the Work performed or materials supplied by any Subcontractor, including fees and expenses of legal counsel, but only to the extent Contractor has been paid by Company all amounts due under this Agreement; and

(G) any of Contractor Prepared Documents being incorrect or inconsistent with the Agreement or the Law.

32.3 Contractor shall, at its sole cost and expense, if requested by Company, defend any Company Indemnified Party entitled to be indemnified pursuant to Section 32.2. Company shall have the right, if it so elects, to participate in any such defence and Contractor shall have the right to settle claims without first consulting Company, provided that if any settlement of any Claim would lead to liability or create any financial or other obligation on the part of any Company Indemnified Party, Contractor shall not enter into any such settlement without the consent of Company. If Company, acting reasonably, considers that the failure to settle any claim, demand, action or proceeding to which it or others are entitled to be indemnified by Contractor would be detrimental to its interests, it may so notify Contractor, and if, within ten (10) Days thereafter, Contractor fails to conclude a settlement with the claimant, then Company may, in its sole discretion, settle the claim, demand, action or proceeding in such amount as it considers reasonable and Contractor agrees to immediately pay to Company all or such portion of the amount so paid in settlement as Company, in its sole discretion, designates as Contractor's liability.

32.4 The obligations of Contractor under this article 32 shall not be construed to negate, abridge or reduce other rights or remedies of any Company Indemnified Parties which would otherwise exist.

32.5 Company shall indemnify and hold harmless Contractor and its officers, directors, employees, consultants, and agents (collectively, the "**Contractor Indemnified Parties**") from and against any and all Claims which may be brought against Contractor Indemnified Parties or which Contractor Indemnified Parties may incur, suffer, sustain or pay arising out of or in connection with any Claims which arise on account of and are attributable to:

(A) a lack of or defect in title or an alleged lack of or defect in title to the Work Site;

(B) an environmental condition at the Work Site which is the responsibility of Company;

(C) Hazardous Materials supplied by Company in connection with this Agreement and while under Company's care and control;

(D) defective Company Supplied Materials; and

(e) the negligence or wilful misconduct of Company Indemnified Parties.

32.6 If Company accepts the responsibility to indemnify a Contractor Indemnified Party, then it shall be entitled to retain and instruct legal counsel to act for and on behalf of such Contractor Indemnified Party and to settle, compromise and pay any claim, demand, action or proceeding without obtaining prior approval from the Contractor Indemnified Party in whose favor the indemnity has been provided. Contractor shall, and shall cause any other Contractor Indemnified Party to co-operate in all respects in contesting any third party claim for which Company has accepted responsibility.

32.7 The obligations of Company under this article 32 shall not be construed to negate, abridge or reduce any other rights or remedies of any Contractor Indemnified Party which would otherwise exist.

32.8 Notwithstanding anything else in the Agreement, neither Party shall be liable to the other Party for consequential, incidental or indirect damages, except (i) to the extent of amounts recoverable under a policy or policies of insurance required to be maintained pursuant to the provisions of the Agreement, whether required to be maintained by Contractor or Company,

(ii) the obligation to indemnify and defend against third party Claims arising in tort for bodily injury and property damage pursuant to article 32, or (iii) as caused by the applicable Party's wilful misconduct or gross negligence.

32.9 Notwithstanding anything else in this Agreement, the maximum liability of either Party under this Agreement, whether based on tort, strict liability, breach of contract or otherwise, shall be limited to the Price, except: (i) to the extent such liability arises from the Party's fraud, gross negligence or wilful misconduct; (ii) amounts recoverable under a policy or policies of insurance required to be maintained by the indemnifying Party hereunder shall be in addition to the cap on liability in this section; or (iii) pursuant to the obligation to indemnify and defend against third party Claims arising in tort for bodily injury and property damage pursuant to Article 32.

ARTICLE 33. INSURANCE

33.1 Contractor shall, at its sole expense, obtain and maintain in full force and effect, at all times during the performance of the Work and thereafter until the end of the Warranty Period, the insurance coverages mentioned hereafter, with terms, conditions and limits as set forth below and with insurance companies duly licensed for such purpose and rated Best's A- by Best's Insurance Guide and Key Ratings (or if not rated by Best's Insurance Guide and Key Ratings, an equivalent rating from another nationally recognized rating agency of similar standing), such ratings to be maintained throughout the required term of the policy and under forms of policies reasonably satisfactory to Company (the "**Contractor Insurance Policies**"):

(A) "Commercial General Liability Insurance" having an inclusive limit of at least Five Million Dollars ($5,000,000) per occurrence, including personal injury and property damages for Contractor's general activities (not specific to the Work or the Facilities).

(B) Insurance covering loss or damage to equipment, owned by or on bare rental from a third party or parties and used by Contractor for which Contractor is responsible to insure in performing the Work at the Work Site, having coverage in accordance with the replacement value of such equipment.

(C) "Automobile Liability Insurance" on all vehicles used in connection with the Work, whether owned, leased or rented by Contractor, which insurance shall have a limit of at least Two Million Dollars ($2,000,000) in respect of bodily injury (including passenger hazard) and property damage resulting from any one accident.

(D) "Aircraft Liability Insurance", if aircraft are used, with a liability limit of at least Ten Million Dollars ($10,000,000) for bodily injury, property damage and passenger hazard liability on all owned and non-owned aircraft (including helicopters).

(E) "Workers' Compensation Insurance" according to the jurisdictions in which the Work is being performed.

(F) Marine insurance, if watercraft are involved, as follows:

(i) Direct damage Hull and Machinery insurance including Collision Liability subject to Canadian Hulls Pacific Clauses 1974, or equivalent, including coverage against the risks of amount equal to the value of the vessel including all supplies and equipment aboard;

(ii) Protection and Indemnity insurance covering cargo, crew employees of Company, passengers and third parties in an amount equal to the sound value

of the vessel with an inclusive limit of not less than Ten Million Dollars ($10,000,000); and

(iii) Charterer's Liability insurance in respect of liability incurred under Charter Party Agreements with an inclusive limit of not less than Ten Million Dollars ($10,000,000).

(G) Any additional or other insurance that may be required from time to time by Law or which Company may deem necessary, provided that where Company requires additional or other insurance, and Contractor is able to obtain such additional or other insurance, Contractor shall be reimbursed direct costs associated with purchasing such insurance. Insurance limits required from Contractor hereunder may be provided by any combination of primary and excess insurance coverage.

33.2 Contractor Insurance Policies shall be primary as respects Company and any lender (if applicable) and their respective directors, officers, representatives, agents and employees, and any other insurance obtained and maintained by Company or any lender (if applicable) shall be excess of and shall not contribute with such insurance except as specifically stated herein.

33.3 Contractor Insurance Policies shall have reasonable deductibles and Contractor shall be solely responsible for the payment of all such deductible amounts, unless the loss or damage is caused in whole or in part by the fault or negligence of Company, in which case the deductible shall be shared or apportioned as between Contractor and Company in proportion to the degree of fault of each.

33.4 Company Insurance

(A) Company shall, at its sole expense, obtain and maintain or cause to be obtained and maintained in full force and effect, during the performance of the Work until Substantial Completion, the insurance coverages mentioned hereafter, with terms, conditions and limits as set forth below and with insurance companies duly licensed for such purpose and under forms of policies reasonably satisfactory to Contractor (collectively, the **"Company Insurance Policies**").

(i) "Project Specific General Liability Insurance" having a minimum inclusive limit for personal injury and property damage of at least Twenty-Five Million Dollars ($25,000,000) per occurrence and in the aggregate. This insurance shall include but not be limited to the following:

(a) contractual liability;

(b) products/completed operations liability for a period of two years after Substantial Completion);

(c) a cross-liability and severability of interests clause;

(d) primary insurance for all insureds, without any pro-rata consideration from any other similar insurance carried by Contractor or any of the other insureds;

(ii) "Builders' All Risks Physical Damage Insurance" covering breakdown of electrical and mechanical systems, all materials, supplies, equipment, machinery, pipe, appurtenances and other similar property (except for heavy mobile equipment, construction tools and other equipment owned, rented or leased by Contractor, and any of its Subcontractors) that are intended for

installation in the facility and while in the process of construction, assembly, erection, fabrication, commissioning and testing and while located on the Site, in temporary storage offsite, or in the process of being delivered to either the Site or the storage site(s) (i.e., transit coverage from manufacturers or suppliers premises to site), including loading and unloading perils. Such insurance shall cover the aforementioned property on the basis of full replacement cost value without depreciation and limit shall be set in accordance of the maximum foreseeable loss. Such insurance shall have limitations of coverage and sub-limits customary to normal industry practices.

(iii) "Cargo Insurance", inland or marine, may be purchased by Company if there are cargo shipments. Contractor shall notify Company at least thirty (30) Days in advance of such shipments and provide all information reasonably requested. Marine cargo shipments may be subject to the requirement of a full load and stow survey. Such insurance shall have limitations of coverage and sub-limits customary to normal industry practices.

(B) The Company Insurance Policies shall be primary with respect to onsite activities for the Work or the Facilities as respects Contractor, its Subcontractors and their respective directors, officers, representatives, agents and employees, and any other insurance obtained and maintained by Contractor or its Subcontractors shall be excess of and shall not contribute with such insurance.

(C) Contractor shall use all due diligence to ensure that the insurances arranged by Company under this Agreement shall not be invalidated and that the premium for such insurances shall not be increased by any of Contractor's acts or omissions and Contractor shall, other than for the payment of the premiums, and the provisions of Section 33.4(e), be separately subject to the terms and conditions of the insurance policies in the same manner and to a like extent as though separate policies have been issued to Contractor and Company.

(D) The Company Insurance Policies may be achieved through, but not limited to, a combination of primary, excess, or umbrella policies

(E) Prior to Substantial Completion, Contractor shall be responsible, except to the extent of Company's negligence, for all insurance deductibles pursuant to the Company Insurance Policies, but:

(i) to a maximum, in the case of "Project Specific General Liability Insurance," of Two Hundred and Fifty Thousand Dollars ($250,000) per occurrence; and

(ii) to a maximum, in the case of "Builders' All Risks Physical Damage Insurance," of Two Hundred and Fifty Thousand Dollars ($250,000) per occurrence; provided, however, during testing or commissioning, the maximum shall be Five Hundred Thousand Dollars ($500,000) per occurrence.

33.5 Contractor and Company shall, within thirty (30) Days of the receipt of a written request made by the other, acting reasonably, and at the latest on or prior to commencement of activities on the Work Site, deliver to the other Party certificates of insurance evidencing compliance with the requirements of Section 33.1 or Section 33.4, as the case may be. This requirement shall not however relieve either Party of its obligation to obtain the required coverages when such coverages are necessary.

33.6 Should Contractor receive a cancellation or termination notice from its insurer, Contractor shall notify Company within thirty (30) Days of such notice.

33.7 Contractor shall immediately notify Company regarding the occurrence of any of the following events: (a) any significant loss covered by a policy required to be maintained by this Agreement; (b) any significant dispute with an insurer; (c) the early cancellation of any policy; (d) the failure to pay any premium payment; (e) the failure, for any reason, to maintain any policy required to be maintained by this Agreement; and (f) any significant change in any insurance coverage contracted for by Contractor. Contractor shall assist and cooperate in the timely settlement of any claim hereunder.

33.8 All insurance described in Section 33.1 (except for workers' compensation insurance set forth in Section 33.1(e)) and Section 33.4(a) shall include Company or Contractor, as the case may be, as additional insured. Company and Contractor shall cause their respective insurers to provide in each policy that they waive their rights of subrogation against the additional insured.

33.9 Irrespective of the requirements for insurance to be secured and maintained hereunder, the insolvency, bankruptcy or failure of any insurance company carrying insurance of any party or the failure of any insurance company to pay claims accruing, shall not affect, negate or waive any of the provisions of this Agreement, including, without exception, the indemnity obligations of any Party.

33.10 Failure of either Party to comply with the foregoing insurance requirements shall in no way waive its obligations or liabilities under this Agreement or the rights of Company hereunder against Contractor, or the rights of Contractor hereunder against Company. The requirements contained herein as to policy types, limits, terms and conditions, as well as Company's approval of insurance coverage to be maintained by Contractor, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by either Party elsewhere in this Agreement.

33.11 Should either Party fail to provide or maintain any of the insurance coverage required under this Agreement, the other Party shall have the right to provide or maintain such coverage at the failing Party's expense, either by direct charge or set-off.

33.12 Before permitting any Subcontractor to perform any Work, Contractor shall obtain a certificate of insurance from each such Subcontractor evidencing that such Subcontractor has obtained, from insurance companies duly licensed for such purpose and rated Best's A- by Best's Insurance Guide and Key Ratings, such ratings to be maintained throughout the required term of the policies, or with security otherwise reasonably acceptable to Company, insurance in such amounts and against such risks as identified in subsections 33.1(A), (B), (C) and (E), provided however that the policies set forth in subsections 33.1(A) and (C) shall have a limit of at least One Million Dollars ($1,000,000).

ARTICLE 34. INDEPENDENT CONTRACTOR

34.1 For the purposes of the Agreement and all Work to be performed hereunder, Contractor shall be an independent Contractor and not the agent or employee of Company. Accordingly, all persons employed or retained by Contractor in connection with the performance of its obligations hereunder shall be its employees or those of its Subcontractors, as the case may be, and not the employees or agents of Company in any respect. In addition to any other indemnities provided in the Agreement, Contractor shall indemnify and hold harmless Company and each of them, against all claims, demands, losses, damages, expenses, actions and proceedings whatsoever, including fees and expenses of legal counsel, which may be brought against or incurred by Company as a result of any determination by any tribunal or court that any personnel provided by Contractor pursuant to the terms of the Agreement are for any purposes agents or employees of Company.

34.2 Contractor shall have no authority whatsoever to make any statement, representation or commitment of any kind, or to take any action, which may be binding on Company, except as may be expressly provided for herein, or as expressly authorized in advance in writing by Company.

ARTICLE 35. SUBCONTRACTORS AND ASSIGNMENT OF CONTRACT

35.1 Contractor must obtain advance written approval from the Company before engaging any Subcontractor with an expected contract value of more than one million dollars ($1,000,000). Upon execution of the Agreement, Contractor shall provide Company with a list of the names and addresses of all Major Subcontractors who are proposed to perform any of the Work. Contractor shall promptly provide Company with any proposed changes to this list during the performance of the Work.

35.2 Company may for reasonable cause object to the use of a proposed Subcontractor and require Contractor to obtain another Subcontractor. Any reviews or approvals by Company pursuant to this article 35 or elsewhere in the Agreement shall not release or relieve Contractor of any of its obligations under the Agreement or create any contractual relationship between Company and any Subcontractor.

35.3 Contractor shall ensure that each Subcontractor contract is assignable by Contractor to Company on notice to the Subcontractor.

35.4 Except where a Subcontractor contract has been assigned to Company pursuant to this Agreement, Contractor shall be fully responsible for any part of the Work performed by Subcontractors and for the acts or omissions of such Subcontractors and their respective employees, agents, representatives and any other person or entity directly or indirectly under their supervision or control, to the same extent as Contractor is responsible for its own acts or omissions. Without in any way limiting Contractor's obligations pursuant to the provisions of this article 35 or elsewhere under the Agreement, Contractor shall secure compliance with and enforce, at its own expense, for the benefit of Company, each of the contracts concluded by Contractor with Subcontractors.

35.5 Contractor shall not assign the Agreement or any part thereof without the prior written approval of Company, and any such purported assignment shall be null and void, shall transfer no rights to the purported assignee, and shall be a material breach of this Agreement.

35.6 Company may, at its sole discretion and without the prior consent of Contractor, assign all or any of its rights or delegate all or any of its obligations under this Agreement. Company will give Contractor notice of each such assignment or delegation. Upon its receipt of notice of an assignment or delegation of Company’s obligations under this Agreement together with the express written undertaking of all obligations so assigned or delegated by the assignee, Contractor will be deemed to have released Company from any and all obligations so assigned or delegated. If Company so requests, then Contractor will, without delay or conditions, execute a written release that confirms Company’s release from such obligations.

35.7 Contractor shall enforce the warranty obligations of its direct Subcontractors, and upon the request of Company shall assign any such warranty to Company. Each contract between Contractor and its direct Subcontractors shall provide that the warranties given by the direct Subcontractor shall be given to both Contractor and Company, may be enforced by either Contractor or Company, and are assignable to Company.

35.8 Each contract between Contractor and its direct Subcontractors shall require that the Subcontractors agree to perform their obligations in strict accordance with the requirements of

this Agreement and in particular that all Subcontractors and their respective employees, agents, representatives any other person or entity directly or indirectly under their supervision or control comply with the provisions of 11.4, Safety; article 17, Patents and Licenses; article 18, Proprietary Information; article 19, Confidential Information and Publicity; Section 33.12, Insurance; article 37, Conflict of Interest; and article 38, Audit.

ARTICLE 36. DISPUTE RESOLUTION

36.1 Applicability of Dispute Resolution Procedures. Except for matters requiring immediate injunctive or similar equitable relief or matters where the relief is prescribed by Statute, all claims, disputes or other matters in question between the Parties arising out of or relating in any way to this Agreement (hereinafter collectively referred to as a "**Dispute**") will be resolved pursuant to this article 36.

36.2 Senior Officers to Resolve. The Parties shall make all reasonable efforts to resolve Disputes arising out of the performance of the Work by amicable negotiations and agree to provide without prejudice, frank, candid and timely disclosure of relevant facts, information, and documents to facilitate these negotiations. Any Dispute shall initially be submitted to a senior officer from each Party for resolution by mutual agreement between said senior officers. If either Party wishes a Dispute to be submitted to senior officers pursuant to this clause, such Party shall serve upon the other Party a notice in writing (a "**Senior Officer's Notice**") requesting that the Dispute be so referred. Such negotiation shall be on a without prejudice basis. However, should such senior officers fail to arrive at a mutually agreed resolution of the Dispute within thirty (30) Days, or such longer period as may be agreed by such senior officers, after service of the Senior Officer's Notice, the Dispute shall then be referred to mediation in accordance with the terms and provisions set forth in Section 36.3.

36.3 Mediation Proceedings

(A) If the Parties agree to refer a Dispute to mediation the Parties have thirty (30) Days from the Day such agreement is reached to agree on the appointment of a mediator (the "**Project Mediator**"). If the Parties do not agree on the appointment of a Project Mediator, then either Party may request the American Arbitration Association, or any similar body acceptable to the Parties, in the state where the Work Site is located (or such other state as the Parties may agree upon) to appoint a chartered mediator to act as Project Mediator, who, when so appointed, will be deemed acceptable to the Parties and to have been appointed by them. In the event such Project Mediator is unavailable to mediate a particular dispute, then the American Arbitration Association, or any similar body acceptable to the Parties may be asked to appoint a suitable replacement.

(B) The Parties will submit the Dispute in writing to the Project Mediator, and afford to the Project Mediator access to all records, documents and information related to the Dispute that the Project Mediator may request; provided however, no Party will be required to provide anything that would be protected by privilege, including but not limited to lawyer-client communications, work product, and litigation privilege, and any comparable privilege in any court or other adjudicatory body. The Parties shall meet with the Project Mediator at such reasonable times as the Project Mediator may require and shall, throughout the intervention of the Project Mediator, negotiate in good faith to resolve the dispute. All proceedings are agreed to be without prejudice, and the cost of the Project Mediator will be shared equally between the Parties.

(C) If the dispute cannot be resolved within forty-five (45) Days of the Project Mediator being requested to assist, or within such further period agreed to by the Parties, the Project Mediator may terminate the negotiations by giving notice to the Parties. However, the Project Mediator

may declare an impasse and terminate the negotiations at any time during the mediation period.

36.4 Res Judicata and Consolidation of Issues. Any Dispute that is the subject of the dispute resolution procedures under this article 36 will be res judicata between the Parties, and the dispute will not be the subject of the dispute resolution procedures of this article 36 more than once. Without limiting the foregoing, if dispute resolution proceedings have been initiated pursuant to this article 36 and raise issues of fact or law that, in whole or in material part, are substantially the same as issues of fact or law already pending in dispute resolution proceedings, the issues will be consolidated with the issues in the ongoing proceedings; and the same issue will not be subject to more than one (1) dispute resolution proceeding.

36.5 Injunctive Relief. Nothing in this article 36 shall preclude either Party from seeking emergency injunctive relief.

36.6 Agreement in Full Force and Effect. Performance of the Agreement and the Work shall continue during any Dispute, provided that performance of the Work in dispute shall only continue if, and in the manner, Company so directs. Except as otherwise provided in this Agreement, no payments due or payable by Company shall be withheld on account of a Dispute other than payments which are the subject of the Dispute.

ARTICLE 37. CONFLICT OF INTEREST

37.1 Contractor shall exercise reasonable care and diligence to prevent any actions or conditions which could result in a conflict with Company's reasonable interests, and shall in any event provide prompt written notice thereof upon its discovery of any such conflict. This obligation shall apply to the activities of Contractor and Subcontractors and their respective employees and agents, in their relations or dealings with the employees of Company and their successors, and other third parties, arising from the Agreement or the performance of the Work. The efforts made by Contractor in this regard shall include establishing reasonable precautions to prevent Contractor and Subcontractors and their respective employees or agents from offering, or providing entertainment, gifts, loans, payments or other considerations to Company's employees, consultants and agents or their successors.

ARTICLE 38. AUDIT

38.1 Contractor shall preserve the Records in good order until the Final Completion Date (or the date of any termination of the Agreement prior to the Final Completion Date), and for a period of two (2) years thereafter. All Records shall be kept and maintained in accordance with generally accepted accounting principles as applicable in the United States consistently applied.

38.2 For the purposes of determining Contractor's compliance with all of the terms of the Agreement and for verification of all Work performed and all reimbursable costs and other amounts payable under the Agreement, including claims and suspension or termination charges, Contractor shall permit authorized representatives of Company to conduct a review and audit of the Records and Permits at all reasonable times until the Final Completion Date (or the date of any termination of the Agreement prior to the Final Completion Date), and for a period of two (2) years thereafter.

38.3 Company shall have the right at any time upon reasonable notice to Contractor (or immediately in the case of an actual or perceived emergency) to conduct reviews and audits with respect to any aspect of the Agreement, including quality assurance and control, health, safety and

environmental practices and procedures of Contractor and its Subcontractors as they apply to the Work or the Work Site. Contractor shall co-operate and assist and shall so cause its Subcontractors with any such review or audit.

38.4 Any summaries, reports, work papers, or other materials prepared by Company during the course of a review and/or audit under this article 38 are not subject to disclosure to Contractor or any other party, including in any dispute resolution proceeding, and are inadmissible in any dispute resolution proceeding.

ARTICLE 39. FINANCIAL ASSURANCES

39.1 Company may require, and Contractor shall have the obligation to provide, within ten (10) Days of Company's written request, a letter of credit in an amount not to exceed twelve percent (12%) of the Price in a form and from a financial institution acceptable to Company acting reasonably. Failure to provide such letter of credit will be a default under the Agreement. Company shall release any letter of credit provided within five (5) Days of issuance of the Substantial Completion Certificate.

39.2 Company may require, and Contractor shall have the obligation to provide Financial Information respecting Contractor, that Company may reasonably require. Such Financial Information shall be provided within five (5) Days of Company's original request, and thereafter at the intervals and for such time as required by Company.

ARTICLE 40. GENERAL

40.1 Except as may be specifically agreed in writing, the failure or delay of Company or Contractor to insist in any one or more instances upon the strict performance of any one or more of the provisions of this Agreement or to exercise any right herein contained or provided by law or equity, will not be construed as, or constitute in any way, a waiver, modification or relinquishment of the performance of such provision or right(s), or of the right to subsequently demand such strict performance or exercise such right(s), and all such rights will continue unchanged and remain in full force and effect.

40.2 This Agreement has been negotiated and prepared jointly by the Parties, and accordingly any ambiguous provisions shall not be strictly construed in an adverse manner against either Party. This Section shall not affect the application of the general rule of construction that exclusionary limitation provisions are interpreted strictly against the interest of the Party seeking to rely on the exclusion.

40.3 Each Party hereto shall execute such further documents and give such further assurances as are required to give effect to the Agreement.

40.4 If a court of competent jurisdiction determines that any provision of the Agreement is invalid or unenforceable, such determination shall not affect the validity or enforceability of the remaining provisions of the Agreement and the Agreement shall be amended or construed so as to effect the original intent of the Parties as closely as possible and enable fulfilment of the transactions contemplated, in a manner that is satisfactory to Company.

40.5 Time is and shall continue to be of the essence of the Agreement.

40.6 All of the covenants and agreements herein contained on the part of either Party shall apply and enure to the benefit of and be binding upon their respective legal representatives, successors and permitted assigns.

40.7 Each of the Parties hereby represents and warrants that it has the power and authority to carry on its business and to enter into the Agreement and to perform all of its obligations hereunder.

40.8 Any Articles, terms, covenants, provisions or conditions of the Agreement which expressly or by their nature or intent survive the termination or term of the Agreement shall continue in full force and effect subsequent to and notwithstanding such termination or term, and shall not be merged therein or therewith, until such terms, covenants, provisions and conditions are satisfied or by their nature or intent expire.

40.9 The headings and sub-headings of the Agreement contained herein are used for convenience and ease of reference only and in no way define, limit, describe or interpret the scope or intent of the Agreement or any of its provisions.

40.10 Except as expressly set forth in this Agreement, to the fullest extent permitted by applicable Law, remedies provided to Company or Contractor under this Agreement shall be cumulative and in addition to and not in substitution for any rights or remedies provided pursuant to this Agreement, by Law or in equity.

40.11 The Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without giving effect to any choice of law rules thereof which may direct the application of the laws of another jurisdiction, and shall be treated in all respects as a Texas agreement. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods (1980) shall not apply to this Agreement. Subject to article 36, each Party agrees:

(A) to irrevocably submit to and for itself and its property in any legal action or proceeding relating to the Agreement, or for recognition and enforcement of any judgment in respect thereof, to the exclusive jurisdiction of the courts in the State of Texas, in Harris County;

(B) to consent that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(C) that service 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 referred to in Section 41.1 or at such other address of which the Party shall have notified the other Party pursuant thereto; and

(D) that nothing herein shall affect the right to effect service of process in any other manner permitted by Law or shall limit the right to sue in any other jurisdiction.

ARTICLE 41. NOTICES

41.1 All notices permitted or required to be given under this Agreement will be in writing and sent by overnight or international courier service, personal delivery, mail or email to the representative designated in article 42 and at the address for Company or Contractor noted below or to such other address(es) as a Party may designate by prior notice given in accordance with this provision to the other Party. Notices will be deemed duly given: (a) when confirmation of receipt by the recipient is confirmed by such service, if sent by overnight or international courier service; (b) when received by the recipient, if delivered by personal delivery or mail or (c) when sent by email, provided that the sender has received electronic or voice confirmation that the recipient has read such transmission (e.g. a “read receipt”). All notices and any other communication under this Agreement must be in English.

Company:

Columbia Gas Transmission, LLC
700 Louisiana, Suite 700
Houston, Texas 77002
Attention: Paul Rowe
Telephone: (403) 921-7429

E-mail address: paul_rowe@transcanada.com

Contractor:

Welded Construction, L.P.
26933 Eckel Road
Perrysburg, Ohio 43552

Attention: Diane Ingmire
Telephone: (419) 874-9366
E-mail address: dingmire@welded.com

ARTICLE 42. REPRESENTATIVES

42.1 The Company Representative is Paul Rowe. The Company Representative shall have the authority to give the notices, approvals and directions that may be given by Company pursuant to this Agreement.

42.2 The Contractor Representative is Diane Ingmire. Contractor shall not change its representative, except with the prior approval of Company. The Contractor Representative has the authority to bind Contractor on all matters relating to the Work and the Agreement. All communications to or with the Contractor Representative shall be deemed to be communications to or with Contractor.

ARTICLE 43. ENTIRE CONTRACT

43.1 This Contract constitutes the complete agreement between the Parties hereto with respect to the Work and supersedes all prior matters including agreements, proposals, discussions, negotiations and documents written and oral between the Parties, including any basis of estimate, previously negotiated forms of agreement, any exceptions, deviations or qualifications, not expressly included in the Agreement.

ARTICLE 44. EXECUTION

44.1 This Agreement may be signed in two or more counterparts with the same effect as if all parties had signed and delivered the same copy, and when each Party has signed and delivered a counterpart, all counterparts together constitute one Agreement. This Agreement may also be

signed by email or facsimile and delivery of a copy of this Agreement by email or facsimile is good and sufficient delivery.

Executed: jQVUAA?j D , 2017

Columbia Gas Transmission, LLC

Per:

Title Richard Prior
Vice President

Per: C;. Q W -

Title: ....
,,,,

Stanley G. Chapman, IU
liVP Ill Pre51dent

Executed a JJLI 2'J/7 ,2017

Welded Construction, L.P.

Per:

Title: PRESIDENT

Per: _____

Title: _____

Approved as to Form and Content

Initial	ORIGINATOR	CHECKED BY	CLIENT	LEGAL	C. RISK	I. RISK	TAX	QA	QC
Name									

Workflow History

The workflow recorded these events.

D	Date Occurred	Eveot Type	User 10	Description	Outcome
	10/2/2017 3:36 PM	Error	System Account	The workflow could not set content approval status. Enable content moderabn for this list and run the workflow again.	
	10/2/2017 3:36 PM	Workflow Initiated	•Victor Suarez	Approval was started. Participants: Matthew Finnegan;Jacob Frederick;Sharon Burritt;Shannon Onook;Eric Copeland	
	10/2/2017 3:36 PM	Task Created	•Victor Suarez	Task created for Matthew Finnegan. Due by: 10/4/2017 12:00:00 AM	
	10/2/2017 3:43 PM	Task Completed	Matthew Finnegan	Task assigned to Matthew Finnegan was approved by Matthew Finnegan. Comments:	Approved by Matthew Finnegan
	10/2/2017 3:43 PM	Task Created	•Victor Suarez	Task created for Jacob Frederick. Due by: 10/4/2017 12:00:00 AM	
	10/4/2017 7:20 AM	Task Completed	Jacob Frederick	Task assigned to Jacob Frederick was approved by Jacob Frederick. Comments:	Approved by Jacob Frederick
	10/4/2017 7:20 AM	Task Created	•Victor Suarez	Task created for Sharon Burritt. Due by: 10/4/2017 12:00:00 AM	
	10/4/2017 1:28 PM	Task Completed	Sharon Burritt	Task assigned to Sharon Burritt was approved by Sharon Burritt. Comments:	Approved by Sharon Burritt
	10/4/2017 1:28 PM	Task Created	•Victor Suarez	Task created for Shannon Onook. Due by: 10/4/2017 12:00:00 AM	
	10/9/2017 7:36 AM	Task Completed	Shannon Onook	Task assigned to Shannon Oneok was approved by Amber Hoyeck. Comments: This is NOT approved by Shannon, but is approved to move to Jay Wilson's approval	Approved by Amber Hoyeck
	10/9/2017 7:36 AM	Task Created	•Victor Suarez	Task created for Eric Copeland. Due by: 10/4/2017 12:00:00 AM	
	10/9/2017 7:37 AM	Comment	•Amber Hoyeck	Participants for Approval on MXP were updated by Amber Hoyeck. New participants: Jay Wilson	
	10/10/2017 6:43 AM	Task Completed	10/10/2017 6:43 AM	Task Created 10/11/2017 7:14 AM Error	

Case 20-50932-CSS Doc 31-1 Filed 09/14/21 Page 64 of 65

10/11/2017 7:14 AM	Task Completed	• Eric Copeland	Task assigned to Eric Copeland was approved by Eric Copeland. Comments:
10/11/2017 7:14 AM	Workflow Completed	• Victor Suarez	Task created for Jay Wilson. Due by: 10/9/2017 12:00:00 AM
		System Account	The workflow could not set content approval status. Enable content moderation for this list and run the workflow again.
		Jay Wilson	Task assigned to Jay Wilson was approved by Jay Wilson. Comments:
		• Victor Suarez	Approval was completed.

Approved by Eric Copeland
Approval on MXP has successfully completed. All participants have completed their tasks.

Case 20-50932-CSS Doc 31-1 Filed 09/14/21 Page 65 of 65