

**EXHIBIT A**

**PROTOTYPE OF CERTAIN GENERAL CONDITIONS  
FOR EPC CONTRACT**

## **CERTAIN EPC CONTRACT GENERAL CONDITIONS**

### **GC-1. Definitions**

For purposes of this Exhibit A, the capitalized terms below shall have the following meanings:

1.1 "EPC Contract and "Project," shall have their respective meanings specified in the Prototype Ownership Term Sheet.

1.2 "Additional Insureds" means Owner, its respective successors and assigns, and the respective directors, officers, employees, agents and representatives of each of the foregoing.

1.3 "EPC Contractor" means the contractor responsible for the design, engineering, procurement, construction, start-up, testing and commissioning of the Project and the performance of the Work pursuant to the terms and conditions of the EPC Contract.

1.4 "FERC License" means any approval, consent, permission, license or other authorization of the Federal Energy Regulatory Commission related to the construction, operation, maintenance and repair of the Project.

1.5 "Owner" shall mean PSE and Respondent.

1.6 "Site" means the real property on which the Project would be installed, constructed, operated and maintained, which would be described in detail in an exhibit to the EPC Contract.

1.7 "Milestone Schedule" means the timetable for the accomplishment of critical elements of the permitting, design, engineering, procurement, construction, testing, start-up, commissioning and other Work associated with the completion of the Project, which would be set forth in a detailed exhibit to the EPC Contract.

1.8 "Support" means the following: EPC Contractor's directors, officers, employees, agents and representatives; EPC Contractor's suppliers and subcontractors of any tier; the respective directors, officers, employees, agents and representatives of EPC Contractor's suppliers and subcontractors of any tier; and any other person or entity acting under the direction or control or on behalf of EPC Contractor or any of EPC Contractor's suppliers or subcontractors of any tier in connection with or incident to the performance of the Work or the EPC Contract.

1.9 "Work" means all of the following furnished (or to be furnished) and the performance of all other obligations and Services under the EPC Contract by EPC Contractor or its Support: personnel, labor and supervision; technical, professional and other services; equipment,

materials, supplies, tools, goods and other property; transportation; designs, plans, specifications, drawings, and other documents; information, data and other items.

## **GC-2. Authorized Representatives**

2.1 For purposes of administering the EPC Contract, Owner would be represented by the person designated from time to time in writing by Owner as Owner's representative assigned to administer the EPC Contract (the "Owner's Representative") and by such other persons as the Owner's Representative may from time to time authorize in writing to act for him.

2.2 EPC Contractor would designate and have at all times a competent, authorized representative, acceptable to Owner, to represent and act with full authority for EPC Contractor (the "EPC Contractor Representative"). EPC Contractor would give Owner written notice of the name, address and telephone number (day and night) of the EPC Contractor Representative and of any change in such designation. The EPC Contractor Representative would have full authority to act in the name and on behalf of EPC Contractor and to accept all notices and other communications to EPC Contractor under the EPC Contract. The EPC Contractor Representative would be present, or be duly represented by a competent individual acceptable to Owner who would be present, at the Site at all times when Work is actually in progress. During periods when performance of the Work was not actually in progress, arrangements acceptable to Owner would be made for representation of EPC Contractor with respect to any emergency Work which may be required. All notices, requests, approvals, consents, orders, instructions, directions and other communications given to the EPC Contractor Representative by Owner would be as binding as if given to EPC Contractor.

## **GC-3. Status of EPC Contractor**

3.1 EPC Contractor would be and act as an independent contractor (and not as the agent or representative of Owner) with regard to performance of the Work and the EPC Contract. EPC Contractor would not represent that it is, or hold itself out as, an agent or representative of Owner. In no event would EPC Contractor be authorized to enter into any agreements or undertakings for or on behalf of Owner or to act as or be an agent or representative of Owner.

3.2 Subject to compliance with the requirements of the EPC Contract, EPC Contractor would perform the Work in accordance with its own methods.

3.3 EPC Contractor would represent that it is, and that at all times during performance of the Work it would be, fully experienced and properly qualified, licensed, equipped, organized and financed to perform the Work.

#### **GC-4. Performance by EPC Contractor**

4.1 EPC Contractor would efficiently, expeditiously and effectually perform the Work in an orderly and workmanlike manner. EPC Contractor would enforce discipline and order among its Support. EPC Contractor would ensure that all persons performing Work comply with all jobsite work rules. EPC Contractor would ensure that only fully experienced and properly qualified persons perform the Work. EPC Contractor would, if so requested by Owner, remove from performance of the Work any person whom Owner determines to be incompetent, insubordinate, careless, disorderly or otherwise objectionable. EPC Contractor would not thereafter use such person in the performance of the Work without Owner's prior written permission. EPC Contractor would not hire any employee of Owner to perform any of the Work.

4.2 EPC Contractor would confine all operations in the performance of the Work (including, but not limited to, offices, storage, assembly, vehicle and equipment parking, ingress, egress and movement of materials, equipment and workers) to such areas and during such time periods as are specified in the EPC Contract or designated by Owner. Unless otherwise directed by Owner, EPC Contractor would deliver to (or provide for delivery to and receipt at) the site of the Work, unload and store all materials, equipment and other items to be installed, used, consumed or incorporated in the Work or otherwise used in connection with the EPC Contract. Should EPC Contractor find it necessary or advantageous to use any additional land for ingress to, or egress from, or movement of materials, equipment or workers to or from work areas, or for any purpose whatever, EPC Contractor would provide and make its own arrangements for the use of such additional land.

4.3 EPC Contractor would keep its work areas and access to such areas cleared of rubbish, refuse and other debris and in a neat, clean and safe condition. EPC Contractor would clean up garbage, equipment parts, oil filters, fuel and oil spills and similar items on a daily basis. Any disposal of fuel, oil or equipment waste within the confines of the site of the Work would be subject to Owner's prior approval. Upon completion of any portion of any of the Work, EPC Contractor would promptly remove all rubbish, refuse and other debris and all of its equipment, temporary structures and surplus materials not to be used at or near the same location during later stages of the Work.

4.4 If EPC Contractor employed any workers engaged in the construction, alteration, painting or repair of a building, structure or other work at a site owned, possessed or controlled by Owner where other workers covered by a collective bargaining agreement are so engaged, then, to the extent permitted by applicable law, EPC Contractor would ensure that the wages, hours, work assignments and other conditions of such employment are consistent with the provisions of such collective bargaining agreement (other than any provision relating to the recognition of a particular union). Whenever EPC Contractor has knowledge of any actual or potential labor dispute which may in any way affect, delay or arise in connection with or as a result of the performance of the

EPC Contract, EPC Contractor would immediately notify and submit all relevant information to Owner.

#### **GC-5. Compliance with Laws; Permits**

5.1 EPC Contractor would comply, and would ensure that the Work and all of EPC Contractor's Support comply, with all applicable laws, ordinances, rules, regulations, orders, licenses, permits and other requirements, now or hereafter in effect, of any governmental authority (including, but not limited to, the FERC License and any other requirements which are imposed upon Owner and applicable to the Work on the Project). EPC Contractor would execute and deliver to Owner all documents as may be required to effect or to evidence such compliance. All laws, ordinances, rules, regulations, orders, licenses and permits required to be incorporated in agreements of this character would be incorporated in the EPC Contract by reference.

5.2 Unless otherwise specified in the EPC Contract or directed by Owner, EPC Contractor would obtain and pay for all permits, inspections, licenses and fees and would furnish all bonds, security or deposits required to perform the Work in accordance with the EPC Contract, except that Owner would be responsible for obtaining and maintaining the FERC License. EPC Contractor would advise Owner in writing and consult with Owner prior to applying for any permit or other authorization from, or entering into any agreement with, any governmental authority with regard to the Work or the Project.

5.3 EPC Contractor would comply with Executive Order No. 11246, Executive Order No. 11701, the Vietnam Era Veteran's Readjustment Assistance Act of 1972 and the Rehabilitation Act of 1973, and all orders, rules and regulations promulgated thereunder (including, but not limited to, 41 CFR Part 60-1, 41 CFR Part 60-250 and 41 CFR Part 60-741), all as the same may have been or may be amended. The "equal opportunity clause" of 41 CFR Section 60-1.4(b), the "Affirmative Action Obligations for Disabled Veterans and Veterans of the Vietnam Era" clause of 41 CFR Section 60-250.4 and the "Affirmative Action for Handicapped Workers" clause of 41 CFR Section 60-741.4 would be incorporated in the EPC Contract by reference. EPC Contractor would certify that segregated facilities (within the meaning of 41 CFR Section 60-1.8) are not and will not be maintained or provided for EPC Contractor's employees and that EPC Contractor would not permit its employees to perform Work at any location under EPC Contractor's control where segregated facilities are maintained. EPC Contractor would obtain a similar certification from any of its Support as required by 41 CFR Section 60-1.8.

#### **GC-6. Cooperation and Coordination**

6.1 EPC Contractor would acknowledge and anticipate that the Work may be interfered with and delayed from time to time on account of the concurrent performance of work by Owner or others. EPC Contractor would fully cooperate with Owner and others and coordinate

the Work with such other work so as to minimize any delay or hindrance of any work and to assure orderly and expeditious performance and completion of the Project as a whole.

6.2 If any part of the Work depended upon the results of other work by Owner or others, EPC Contractor would, prior to commencing such Work, notify Owner in writing of any actual or apparent deficiencies or defects in such other work that render it unsuitable for performance of the Work in accordance with the EPC Contract. Failure of EPC Contractor to so notify Owner would constitute acceptance by EPC Contractor of such other work as suitable for performance of the Work in accordance with the EPC Contract, except as to latent defects which may subsequently be discovered in such other work.

#### **GC-7. Inspection**

7.1 EPC Contractor would perform such detailed examination, inspection and quality surveillance of the Work as would ensure that the Work is progressing and is being completed in strict accordance with the EPC Contract. Further, EPC Contractor would determine when it is necessary to perform, and would perform, tests (in addition to those requested by Owner or required by the EPC Contract) to verify its inspections and to ensure that the Work is being completed in strict accordance with the EPC Contract. EPC Contractor would give Owner reasonable advance notice of all inspections and tests performed by EPC Contractor. EPC Contractor would reimburse Owner for all costs incurred by or at the request of Owner to perform inspections and tests that reveal or otherwise indicate noncomplying or defective Work.

7.2 All Work would at all times be subject to inspection and testing by Owner. EPC Contractor would furnish Owner sufficient, safe and proper facilities and equipment at all times and at all places where inspections or tests may take place and all samples, drawings, specifications, data, lists, documents and other information for such inspections and tests as may be performed by Owner.

7.3 No acceptance of any Work would be construed to result from any inspections, tests or delays or failures to inspect or test by Owner. No inspection, test, delay or failure to inspect or test, or failure to discover any defect or noncompliance, by Owner would relieve EPC Contractor of any of its obligations under the EPC Contract or impair Owner's right to reject defective or noncomplying items or any other right or remedy afforded to Owner under the EPC Contract or otherwise by law, notwithstanding Owner's knowledge of the defect or noncompliance or the substantiality or ease of its discovery of any defect or noncompliance.

#### **GC-8. Protection of Property and Persons**

8.1 EPC Contractor would take all precautions which are necessary to prevent bodily harm to persons and damage to any property or environment in connection with performance of the Work. Without limiting the generality of the foregoing, EPC Contractor would erect and maintain such fences, barricades, signs, flags, flashers, excavation covers and other safeguards as are

required. EPC Contractor would as necessary inspect all equipment, materials, supplies, tools, goods and other items to discover any conditions which involve a risk of bodily harm to persons or a risk of damage to any property or environment and would be solely responsible for discovery and correction of, and protection against, any such conditions.

8.2 Until completion and acceptance of all of the Work, EPC Contractor would be responsible for and would bear any and all risk of loss, deterioration, theft, vandalism or destruction of or damage to the Work and anything used (or to be used or consumed) in connection with the Work unless such loss, theft, destruction or damage results from the sole negligence of Owner. EPC Contractor would provide storage and comply with all reasonable requests of Owner to enclose or otherwise protect the Work and anything used (or to be used or consumed) in connection with the Work.

8.3 Unless otherwise specified in the EPC Contract or directed in writing by Owner, all existing structures and other improvements damaged, altered or removed by EPC Contractor or any of its Support in connection with the performance of the Work would be repaired, replaced or otherwise restored by EPC Contractor to at least as good quality and condition as existed prior to such damaging, alteration or removal. EPC Contractor would restore the areas affected by performance of the Work to at least the condition as existed prior to such performance. EPC Contractor would protect all land monuments and property marks from disturbance and damage and would not remove the same without the prior written consent of Owner.

8.4 Unless otherwise specified in the EPC Contract or directed in writing by Owner, EPC Contractor would ensure that no utility (including all supply, disposal, distribution and communication systems, and all similar or related facilities, equipment and other property) is damaged, altered, removed or interrupted by EPC Contractor or any of its Support in connection with the performance of the Work. Underground utilities shown in the EPC Contract are shown only in their approximate locations because exact locations are unknown. EPC Contractor would perform all excavation and other Work which may affect any utility with utmost care so as to protect all utilities (whether or not shown in the EPC Contract) from damage, alteration, removal and interruption. If EPC Contractor requires the temporary shutoff of any utility, EPC Contractor would request Owner's approval thereof at least twenty-four (24) hours in advance of the time it requires the shutoff. EPC Contractor would perform the Work requiring the shutoff only after such approval has been obtained and on such days and at such hours as Owner may direct.

8.5 EPC Contractor would ensure that the handling, transporting, storage and use of explosives in connection with the Work or the EPC Contract is done only with the highest degree of care. EPC Contractor would give Owner at least three (3) working days' advance written notice of each delivery, storage and use of explosives.

## **GC-9. Schedule; Progress Reports**

9.1 Upon Owner's request, EPC Contractor would prepare and submit to Owner for approval detailed schedules for the orderly performance and completion of the Work or portions thereof in accordance with the EPC Contract. EPC Contractor would ensure that all schedules submitted by EPC Contractor in accordance with such requirement conform to the Milestone Schedule. EPC Contractor would comply with the Milestone Schedule and all other schedules approved by Owner.

9.2 EPC Contractor would continuously update and keep current all Project schedules and would furnish as requested to Owner periodic progress reports on the actual progress of the Work. Such progress reports would include, but not be limited to, a copy of the updated schedules indicating progress to date and the duration of any delays occurring within the reporting period for which EPC Contractor believes it is entitled under the EPC Contract to an extension of the time for performance of the Work. Notwithstanding any other provision of the EPC Contract to the contrary, the time for performance of the Work would not be extended on account of any delay, nor would the compensation under the EPC Contract be increased on account of any delay, unless EPC Contractor included a timely claim for such extension in the progress report covering the period of such delay. EPC Contractor would in any event promptly notify Owner in writing of any proposed changes in the Milestone Schedule or any other schedules for performance of any Work and of any event which could delay performance of any Work. Such notice would indicate the expected duration of the delay, the anticipated effect of the delay on the Project schedules and the action being taken to overcome or mitigate the delay.

## **GC-10. Warranty**

10.1 EPC Contractor would warrant that: (a) the Work would be performed in a workmanlike and skillful manner; (b) the Work would be of good quality and free from all defects in workmanship, material, design (other than a defect in any design provided by Owner) and title; (c) the Work would be in compliance with the requirements of the EPC Contract; and (d) all materials, equipment and other items incorporated (or to be incorporated) in the Work or consumed (or to be consumed) in the performance of the Work would be new and suitable for the purpose intended. Subject to extension pursuant to the provisions of the EPC Contract addressing the subject matter of paragraph (10.2) below, the warranties provided by EPC Contractor would continue until the expiration of the later of (i) one (1) year after acceptance by Owner of all of the Work; or (ii) such longer period as may be specified elsewhere in the EPC Contract. The period prior to the expiration of the warranties, as it may be from time to time extended in accordance with the provisions of the EPC Contract, is sometimes referred to herein as the "warranty period."

10.2 If at any time during the warranty period EPC Contractor receives from Owner written notice of any failure to comply with the warranty set forth in the provisions of the EPC Contract addressing the subject matter of paragraph (10.1) above, EPC Contractor would



promptly correct such noncompliance and remedy any damage to other parts of the Work or any other property resulting from such noncompliance. The warranty period would then be extended as to any corrected Work until the expiration of the later of: (i) one (1) year after acceptance by Owner of the correction; or (ii) such longer period as may be specified elsewhere in the EPC Contract. All costs incidental to such correction and remedying (including, but not limited to, the removal, replacement and reinstallation of equipment necessary to gain access and all other costs incurred as the result of the defect or noncompliance) would be borne by EPC Contractor.

#### **GC-11. Designs, Plans, Drawings, Specifications and Other Documentation**

11.1 The designs, plans, drawings, specifications, and other documentation included in the EPC Contract involve valuable property rights of Owner, would remain the property of Owner and would not be used or disclosed by EPC Contractor for any purpose other than for performance of the EPC Contract. EPC Contractor would furnish any and all additional designs, plans, drawings (including, but not limited to, shop drawings), specifications and other documentation required for performance of the Work (other than those furnished by Owner).

11.2 Owner's review, notations, comments, changes, directions, approvals or granting or withholding authority to proceed with performance of the Work in connection with any design, plan, drawing, specification or other documentation submitted by EPC Contractor would not in any event: constitute or be construed as acceptance, verification or approval of any Work covered by such documentation; relieve EPC Contractor of any obligations under the EPC Contract; or impair Owner's right to reject defective or noncomplying Work or any right or remedy afforded to Owner under the EPC Contract or otherwise by law, notwithstanding Owner's knowledge of any defect or noncompliance or the substantiality or ease of discovery of any defect or noncompliance.

#### **GC-12. Environmental Control**

EPC Contractor would take suitable measures and provide suitable facilities to prevent pollution, oil and chemical spills, soil erosion and the introduction of any substances or materials into any stream, river, lake or other body of water which may pollute or silt the water or constitute substances or materials deleterious to fish or wildlife. Further, EPC Contractor would use all reasonable efforts to maintain the site of the Work free from fugitive dust (i.e., dust that becomes airborne or visual). EPC Contractor would be responsible for all costs of corrective measures required as a result of any pollution, erosion or siltation, including its effects on adjacent properties. Without limiting the generality of the foregoing, EPC Contractor would comply with the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 6901 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq. and all of the rules, regulations and orders promulgated thereunder, all as the same may have been or may be amended from time to time (e.g., in connection with the handling, processing, storage and disposal of any hazardous or toxic substance).

### **GC-13. Liens**

13.1 EPC Contractor would promptly pay (and secure the discharge of any liens asserted by) all persons and entities (including, but not limited to, EPC Contractor's Support) furnishing labor, equipment, materials or other items in connection with the performance of the Work. EPC Contractor would furnish to Owner such releases of claims and other documents as may be requested by Owner from time to time to evidence such payment (and discharge). Owner may withhold all or any part of the compensation otherwise payable under the EPC Contract to EPC Contractor until such documents are so furnished. If any of such persons or entities are not promptly paid (or if any of such liens are not promptly discharged), Owner may, at its option, make such payments (and secure such discharge) at EPC Contractor's expense.

13.2 Prior to final payment under the EPC Contract, EPC Contractor would furnish Owner with proof satisfactory to Owner that all payments and claims for which EPC Contractor is responsible under the EPC Contract have been made or settled and with a release and waiver by EPC Contractor of all claims against Owner and a release and waiver of all liens and rights of liens, arising out of or in connection with the EPC Contract, the Work or any costs incurred or items furnished in connection therewith.

### **GC-14. Records**

14.1 Until the expiration of three (3) years after final acceptance by Owner of all of the Work, EPC Contractor would keep and maintain complete and accurate records of its costs and expenses related to the Work or the EPC Contract in accordance with sound and generally accepted accounting principles applied on a consistent basis. To the extent the EPC Contract provides for compensation on a cost-reimbursable basis or whenever such records may, in the opinion of Owner, be useful in determining any amounts payable to EPC Contractor or Owner (e.g., in the nature of a refund, credit or otherwise), EPC Contractor would provide Owner access to all such records for examination, copying and audit until the expiration of three (3) years after acceptance by Owner of all of the Work.

14.2 Until the expiration of three (3) years after acceptance by Owner of all of the Work, EPC Contractor would keep and maintain for examination, copying and audit by Owner complete and accurate records with regard to the Work and the EPC Contract, including, but not limited to, (a) records of the shipment, receipt, possession, storage, use, consumption, installation, incorporation or disposition of all equipment, materials, supplies, tools, goods, information, designs, plans, drawings, specifications, data, and other items received, possessed, stored, used, consumed, installed, incorporated or disposed of in connection with the Work or the EPC Contract; and (b) EPC Contractor's agreements with its Support. Until the expiration of three (3) years after acceptance by Owner of all of the Work, EPC Contractor would provide Owner access at all reasonable times to all such records for examination, copying and audit.

## **GC-15. Rights in Property**

15.1 All materials, information, property and other items accumulated or developed in connection with the Work (including, but not limited to, documents, designs, plans, specifications, drawings, calculations, maps, sketches, notes, reports, data, estimates, models, samples, completed Work and Work in progress), together with all copyrights and other rights associated with ownership of such items, would become the property of Owner when so accumulated or developed, whether or not delivered to Owner. EPC Contractor would deliver such items, together with all materials, information, property and other items furnished by Owner or the cost of which is included in the compensation payable under the EPC Contract, to Owner upon request and in any event upon the completion, termination or cancellation of the EPC Contract.

15.2 EPC Contractor would not, without the prior written consent of Owner, disclose to third parties any information accumulated or developed in connection with the Work unless: (i) the information was known to EPC Contractor prior to the date of the EPC Contract; (ii) the information is in the public domain at the time of disclosure by EPC Contractor; or (iii) the information is received by EPC Contractor from a third party who did not receive the same directly or indirectly from Owner or in connection with the Work. If so requested by Owner, EPC Contractor would obtain from its Support nondisclosure agreements in form and content satisfactory to Owner.

## **GC-16. Payments**

16.1 Payments otherwise payable under the EPC Contract may be withheld, in whole or in part, by Owner on account of (a) the failure of EPC Contractor to correct defective or noncomplying Work; (b) the failure of EPC Contractor to cure any noncompliance with any of the provisions of the EPC Contract; (c) the failure of EPC Contractor to pay, satisfy or discharge any claim (or potential claim which reasonable evidence indicates may be filed) of Owner, any of EPC Contractor's Support or any other person against EPC Contractor arising out of or in connection with the EPC Contract or the Work; or (d) a reasonable doubt that the EPC Contract can be completed within the time specified or for the balance of the compensation payable under the EPC Contract. If the foregoing causes are removed to the satisfaction of Owner, the withheld payments would promptly be made. If such causes are not promptly removed after written notice, Owner may (but need not) rectify the same at EPC Contractor's expense and deduct all costs and expenses incurred thereby from such withheld payments. If such withheld payments are insufficient to satisfy the same or if any claim against EPC Contractor would be discharged by Owner after final payment is made, EPC Contractor would promptly reimburse and pay to Owner all costs and expenses incurred thereby (including, but not limited to, reasonable attorneys' fees), regardless of when such claim arose or whether such claim imposed a lien upon the Work or the real property upon which the Work is situated. Owner would not be authorized to withhold under the EPC Contract more than is reasonably estimated to be sufficient to satisfy Owner's claims.

16.2 EPC Contractor would reimburse Owner on demand for all amounts paid and costs incurred by Owner at EPC Contractor's expense under the EPC Contract or otherwise. Owner may, at its option, apply any amounts payable under the EPC Contract against any amounts now or hereafter owing by EPC Contractor to Owner under the EPC Contract or otherwise.

16.3 EPC Contractor would submit to Owner breakdowns of the compensation payable to EPC Contractor under the EPC Contract that segregate such compensation into the dollar amounts corresponding to such categories as Owner may specify as necessary to conform to Owner's accounting requirements or to comply with the accounting requirements of governmental authorities. If requested by Owner, EPC Contractor would submit to Owner for Owner's budgetary purposes an estimated breakdown of the total compensation payable under the EPC Contract segregated according to such categories, together with an estimated schedule of progress payments to EPC Contractor that would result from such breakdown.

#### **GC-17. Taxes**

Except as otherwise required by law, EPC Contractor would be responsible for, bear the expense of and pay all taxes, excises, levies, duties and assessments applicable to or incurred in connection with the Work or the EPC Contract measured by the gross or net receipts or income from any transaction relating to the EPC Contract (such as the Washington State business and occupation tax and Federal income tax) or any allocated portion thereof, or by the gross value of the material, equipment or services covered hereby, or by any other lawfully imposed method.

#### **GC-18. Insurance**

18.1 EPC Contractor would ensure that, with respect to all persons performing the Work, EPC Contractor or its Support maintain in effect at all times during the performance of the Work coverage or insurance in accordance with the applicable laws relating to workers' compensation and employer's liability insurance (including, but not limited to, the Washington Industrial Insurance Act), regardless of whether such coverage or insurance is mandatory or merely elective under the law.

18.2 EPC Contractor would secure and maintain such property and liability insurance as would protect Contract or, the Support and the Additional Insureds from and against any and all claims and liabilities arising out of personal injury (including death) or property damage that may result from performance of the Work, whether such performance is by EPC Contractor or any of its Support.

18.3 Without limiting the generality of the foregoing, prior to commencement of the Work, EPC Contractor would secure insurance with provisions, coverages and limits as specified elsewhere in the EPC Contract. EPC Contractor or its Support would maintain such insurance and coverages in full force and effect at all times (a) until all of EPC Contractor's obligations under the Contract have been fully performed, all of the Work has been accepted by Owner and all

operations of EPC Contractor and its Support (including, but not limited to, removal of equipment and other property) on or about the site of the Work have been concluded and (b) in the case of completed operations and products liability insurance, until the expiration of two (2) years after all of EPC Contractor's obligations under the EPC Contract have been fully performed.

18.4 Prior to commencement of the Work and at such other times as Owner may request, EPC Contractor would deliver to Owner certificates of insurance (with endorsements attached) as evidence that policies providing the insurance required by the EPC Contract are in full force and effect. EPC Contractor would also furnish Owner with such additional assurance and evidence of such insurance (such as copies of all insurance policies, certified by an authorized representative of the insurer) as Owner may from time to time request.

18.5 Within thirty (30) days after any renewal of or any notice of termination, cancellation, expiration or alteration of any policy of insurance required under the EPC Contract, EPC Contractor would deliver to Owner a certificate of insurance with respect to any renewal or replacement policy. Such certificate of insurance with respect to any renewal or replacement policy would be delivered to Owner prior to the effective date of such renewal, termination, cancellation, expiration or alteration, as the case may be.

18.6 All Policies of insurance required under the EPC Contract would: (a) be placed with such insurers and under such forms of policies as may be acceptable to Owner; (b) with the exception of workers' compensation and employers' liability insurance, be endorsed to name the Additional Insureds as additional insureds; (c) be primary insurance with respect to the interests of the Additional Insureds and any insurance or self-insurance maintained by any of the Additional Insureds would be excess and not contributory insurance with respect to the insurance required hereunder; (d) with the exception of workers' compensation and employers' liability insurance, apply severally and not collectively to each insured against whom any claim is made or suit is brought, except that the inclusion of more than one insured would not operate to increase the insurance company's limits of liability as set forth in the insurance policy; and (e) provide that the policies would not be cancelled or their limits or coverage reduced or restricted without giving at least thirty (30) days prior written notice to Owner.

18.7 EPC Contractor would ensure that any policies of insurance that EPC Contractor or any of its Support carry as insurance against loss of or damage to property (including, but not limited to, equipment, tools, vehicles, watercraft and aircraft) or against liability for property damage or bodily injury (including death) would include a waiver of the insurer's right of subrogation against Owner and the Additional Insureds. To the extent permitted by its policies, EPC Contractor hereby waives all rights of subrogation against Owner and the Additional Insureds.

18.8 The requirements of the EPC Contract as to insurance and acceptability to Owner of insurers and insurance to be maintained by EPC Contractor and its Support are not intended to

and would not in any manner limit or qualify the liabilities and obligations assumed by EPC Contractor under the EPC Contract.

#### **GC-19. Surety Bonds**

To the extent requested by Owner, EPC Contractor would furnish to Owner, at such times and in such amount, form and content as Owner may in writing request, surety bonds issued by a surety acceptable to Owner with performance, payment, fidelity and maintenance clauses payable to Owner, in which case the premiums for such bonds would be paid by Owner.

#### **GC-20. Indemnity and Release**

20.1 Subject to the provisions of the EPC Contract addressing the limitations set forth in paragraph 20.2, EPC Contractor would release and would defend, indemnify and hold harmless the Additional Insureds and each of them from and against all claims, losses, harm, costs, liabilities, damages and expenses (including, but not limited to, reasonable attorneys' fees) arising, whether before or after acceptance of the Work and whether suffered by any of the Additional Insureds or any other person or entity, directly or indirectly out of or in connection with: (a) any defect in the Work; (b) any fault, negligence, strict liability or product liability of EPC Contractor or its Support in connection with the Work or the EPC Contract; (c) any lien asserted upon any property of any of the Additional Insureds in connection with the Work or the EPC Contract; (d) any failure of EPC Contractor, any Support or the Work to comply with any applicable law, ordinance, rule, regulation, order, license, permit and other requirement, now or hereafter in effect, of any governmental authority; or (e) any failure of EPC Contractor or any Support to comply with the requirements of the EPC Contract; or (f) any breach of or default under the EPC Contract by EPC Contractor.

20.2 To the fullest extent permitted by applicable law, the provisions of the EPC Contract addressing the subject matter of paragraph 20.1 would apply regardless of any fault, negligence, strict liability or product liability of the Additional Insureds. However, EPC Contractor would not be required to indemnify any Additional Insured against liability for damages arising out of bodily injury or property damage caused by or resulting from the sole negligence of such Additional Insured or its agents or employees. Further, in the case of concurrent negligence of EPC Contractor and/or any Support on the one hand and any of the Additional Insureds on the other hand, EPC Contractor would be required to indemnify the Additional Insureds only to the extent of the negligence of the EPC Contractor and/or the Support.

20.3 In connection with any action to enforce EPC Contractor's obligations under the provisions of the EPC Contract addressing the subject matter of paragraph 20.1, EPC Contractor waives any immunity, defense or protection under any workers' compensation, industrial insurance or similar laws (including, but not limited to, the Washington Industrial Insurance Act, Title 51, of the Revised Code of Washington).

20.4 EPC Contractor releases and would defend, indemnify and hold harmless the Additional Insureds and each of them from and against all claims, losses, harm, costs, liabilities, damages, expenses (including, but not limited to, reasonable attorneys' fees), and royalties based upon any actual or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark or other intellectual property right by any Work. Further, if any Work infringes or misappropriates any patent, copyright, trade secret, trademark or other intellectual property right, EPC Contractor would either: (a) procure for Owner the right to use such Work; (b) replace such Work with substantially equal Work that does not infringe or misappropriate any such right; or (c) modify such Work so that it no longer infringes or misappropriates any such right.

20.5 The provisions of the EPC Contract providing for limitation of or protection against liability of Owner would be deemed to also protect each of the Additional Insureds.

## **GC-21. Changes**

21.1 Owner may, at any time, by written notice thereof to EPC Contractor ("Change Order") make changes in the Work within the general scope of the EPC Contract, including, but not limited to: (a) changes in, substitutions for, additions to or deletions of any Work; (b) changes in the specifications or drawings; (c) changes in schedule or acceleration, deceleration or suspension of performance of any Work; and (d) changes in the location, alignment, dimensions or design of items included in the Work.

21.2 If any change consistent with the provisions of the EPC Contract addressing the subject matter of this GC-21 would cause an increase or decrease in EPC Contractor's cost of, or the time required for, the performance of any part of the Work, an equitable adjustment in the compensation to EPC Contractor and in the schedule for the performance of the Work would be made to reflect such increase or decrease, and the EPC Contract would be modified in writing accordingly. Such equitable adjustment would constitute full compensation to EPC Contractor for such change, and EPC Contractor would not include such change in any other claim for increased compensation or extension of time.

21.3 Notwithstanding any dispute or delay in reaching agreement or arriving at a mutually acceptable equitable adjustment, EPC Contractor would, if so requested by Owner, immediately proceed in accordance with such Change Order. If EPC Contractor intends to assert a claim for an equitable adjustment in schedule or compensation for a change, EPC Contractor must, within ten (10) days after receipt of any Change Order which does not set forth an acceptable adjustment, submit to Owner a written statement setting forth the basis and nature of the adjustment claimed. EPC Contractor would not be entitled to any adjustment unless such statement is submitted by EPC Contractor to Owner within the applicable ten (10) day period.

21.4 If any change results in a decrease in the Work to be performed, EPC Contractor would not be entitled to anticipated profit on work not performed and the loss of anticipated profit

would not reduce the decrease in EPC Contractor's compensation resulting from such change. Further, EPC Contractor would not be entitled to any reallocation of cost, profit or overhead. EPC Contractor would not be entitled under pursuant to the provisions of the EPC Contract addressing the subject matter of this GC-21 to any increase in compensation or extension of schedule to the extent that: (a) any change under such provisions of the EPC Contract would have been made or required due to any cause or requirement for which EPC Contractor is not entitled to such increase or extension; or (b) such increase or extension is provided for or excluded under any provision of the EPC Contract.

## **GC-22. Optional Termination**

22.1 Owner may, at its option, terminate the EPC Contract as to all, or from time to time as to any portion, of the Work not then performed at any time by written notice thereof to EPC Contractor, whether or not EPC Contractor is in default. Upon receipt of any written notice of termination, EPC Contractor would for that Work affected by such termination: (a) discontinue work on the date and to the extent specified in the notice; (b) place or enter into no further agreements with its Support for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work as is not terminated; (c) transfer title and deliver to Owner as directed by Owner all or any part of (i) the materials, Work in process and completed Work and other items produced as a part of, or acquired in connection with, the performance of the Work terminated, and (ii) the completed or partially completed plans, drawings, information and other property which, if the EPC Contract had been completed, would have been required to be furnished to Owner; (d) assist Owner in making an inventory of all materials and equipment at the site of the Work, en route to the site of the Work, in storage or manufactured away from the site of the Work and on order from EPC Contractor's Support; (e) remove from the site of the Work all materials and equipment listed in said inventory which are designated in writing by Owner not to be used by Owner in completing such Work; (f) as directed by Owner, either terminate or assign to Owner all or any part of the right, title and interest of EPC Contractor under EPC Contractor's agreements with its Support to the extent relating to Work as to which the EPC Contract is terminated (EPC Contractor would include the right to make such assignments in all such agreements); (g) settle, with the prior written approval of Owner, all outstanding liabilities and all claims arising out of the termination directed by Owner of agreements with EPC Contractor's Support; (h) use its best efforts to minimize its cost and expenses due to such termination; (i) complete performance of such part of the Work as would not have been terminated; and (j) take such action as may be necessary, or as Owner may direct, for the protection and preservation of the property related to the EPC Contract which is in the possession of EPC Contractor or its Support or is at the site of the Work or in transit thereto, and in which Owner has or may acquire an interest.

22.2 After receipt of any written notice of termination, EPC Contractor would submit to Owner EPC Contractor's termination claim for amounts claimed pursuant to procedure set forth in paragraph 22.3 below, in the form and with the certification prescribed by Owner. Such claim would be submitted promptly but in no event later than two (2) months after the effective date of



termination. If EPC Contractor failed to submit its termination claim within the time allowed, Owner may determine on the basis of information available to it the amount, if any, due EPC Contractor by reason of the termination, and such determination would be final. After Owner has made a determination consistent with the provisions of EPC Contract addressing the subject matter of this paragraph 22.3, Owner would pay or credit to EPC Contractor the amount so determined, which payment or credit would be deemed to satisfy all claims of EPC Contractor against Owner by reason of such termination.

22.3 Upon any termination pursuant to the provisions of the EPC Contract addressing the subject matter of this paragraph GC-22, EPC Contractor would waive any and all claims for additional compensation or damages (including any claim for loss of anticipated profit) on account thereof, and agrees that the sole remedy of EPC Contractor is to receive payment or credit consistent with the terms provided this paragraph. Upon such termination EPC Contractor would be entitled to be paid or credited that portion of the compensation otherwise payable under the EPC Contract which is allocable to all Work satisfactorily performed, together with EPC Contractor's actual reasonable costs occasioned by such termination and not previously paid for, less the aggregate amount of any compensation previously paid to EPC Contractor under the EPC Contract. In no event, however, would EPC Contractor be entitled under the provisions of the EPC Contract addressing the subject matter of this GC-22 to be paid or credited an amount in excess of EPC Contractor's actual reasonable costs occasioned by such termination plus the total compensation otherwise payable under the EPC Contract reduced by the aggregate amounts of all compensation paid to EPC Contractor under the EPC Contract and further reduced by that portion of the total compensation under the EPC Contract which is allocable to Work with regard to which the EPC Contract is not so terminated. In arriving at the amount due EPC Contractor under the provisions of the EPC Contract addressing the subject matter of this paragraph, EPC Contractor would not be entitled to anticipated profit on Work not performed or to any reallocation of cost, profit or overhead. Owner would in no event be liable for any loss of revenue or profit incurred by EPC Contractor or any of the Support as a result of the termination. Further, there would be deducted: (a) all unliquidated advance or other payments on account theretofore made to EPC Contractor applicable to the terminated portion of the EPC Contract, (b) any claim which Owner may have against EPC Contractor in connection with the EPC Contract and (c) the agreed price for, or the proceeds of sale of, any materials, supplies or other things kept by EPC Contractor or sold, pursuant to the provisions of the EPC Contract addressing the subject matter of this GC-22, and not otherwise recovered by or credited to Owner. EPC Contractor would promptly refund to Owner any amounts previously paid to EPC Contractor in excess of the amount due EPC Contractor under such provisions of the EPC Contract.

22.4 In the event of any termination pursuant to the provisions of the EPC Contract addressing the subject matter of GC-22, Owner may at its option take over the Work as to which the EPC Contract is terminated and prosecute the same to completion, by contract or otherwise.

22.5 Exercise or failure of Owner to exercise any of its rights under the provisions of the EPC Contract addressing the subject matter of this GC-22 would not excuse EPC Contractor from compliance with the provisions of the EPC Contract nor prejudice rights of Owner to recover damages for any default by EPC Contractor. Whether or not EPC Contractor's right to proceed with the Work is terminated, EPC Contractor and its sureties would be liable for any costs, expenses or damages to Owner resulting from EPC Contractor's default. The rights and remedies of Owner provided in the EPC Contract addressing the subject matter of this GC-22 are in addition to any other rights and remedies provided by law or under the EPC Contract.

22.6 If Owner purports to terminate or cancel the EPC Contract as to all or any portion of the Work for EPC Contractor's breach or default and it is determined for any reason that EPC Contractor was not in breach or default which would permit such termination or cancellation, such termination or cancellation would be deemed to have been a termination pursuant to the provisions of the EPC Contract addressing the subject matter of this GC-22 and the rights and obligations of the parties would be same as if the notice of termination had been issued pursuant to such provisionj of the EPC Contract.

### **GC-23. Use of Completed Portions of Work**

23.1 Owner may, by written notice thereof to EPC Contractor, take possession of or use of any completed or partially completed portion of the Work at any time prior to acceptance of all of the Work. Immediately prior to Owner's using or taking possession, a joint inspection by representatives of Owner and EPC Contractor would be conducted to determine the condition and state of completion of the Work involved.

23.2 Such possession or use by Owner would not: (a) constitute an acceptance of any part of the Work; (b) relieve EPC Contractor of any risk of loss, deterioration, theft, vandalism, destruction or damage; (c) relieve EPC Contractor of any requirements of the EPC Contract; or (d) act as a waiver by Owner of any of the requirements of the EPC Contract; provided that EPC Contractor would not be liable for the cost of repairs, rework or replacements which may be required due to ordinary wear and tear resulting from such use. However, if such possession or use increases EPC Contractor's cost of, or time required for, completion of the remaining portions of the Work, EPC Contractor would be entitled to an equitable adjustment in the compensation to EPC Contractor and in the schedule for the performance of the Work to reflect such increase, and the EPC Contract would be modified in writing accordingly; provided, that EPC Contractor would not be entitled to any adjustment in compensation or schedule for such possession or use unless EPC Contractor gives Owner prompt written notice that such possession or use would increase EPC Contractor's cost of, or the time required for, performance of the Work. Further, Owner may, by written notice thereof to EPC Contractor, relieve EPC Contractor of the duty of maintaining and protecting certain portions of the Work which have been completed in all respects in accordance with requirements of the EPC Contract.

23.3 Nothing contained in the provisions of the EPC Contract addressing the subject matter of this GC-23 would relieve EPC Contractor of any of its obligations to correct, repair, replace or otherwise be responsible for defective or noncomplying Work.

**GC-24. Owner's Performance of EPC Contractor's Obligations**

24.1 If Owner directed EPC Contractor to correct noncomplying or defective Work or to otherwise comply with the requirements of the EPC Contract and EPC Contractor thereafter failed to comply or indicates its inability or unwillingness to comply, then Owner would have the right to correct (or cause to be corrected) the noncompliance or defect or otherwise achieve compliance by the most expeditious means available to it (by contract or otherwise) and charge to or otherwise recover (for example, by offset against the compensation otherwise payable under the EPC Contract) from EPC Contractor all costs thereof.

24.2 Owner's rights to make corrections, achieve compliance and charge to or otherwise recover from EPC Contractor the costs thereof are in addition to any and all other rights and remedies available to Owner under the EPC Contract or otherwise by law, and would in no event be construed or interpreted as obliging Owner to make any correction of defective or noncomplying Work or to otherwise achieve compliance with the EPC Contract. Further, EPC Contractor's obligations (including warranty) would not be interpreted or construed as being reduced in any way because of any corrections or other work performed or caused to be performed by Owner or Owner's rights to perform the same.

**GC-25. Claims, Questions, Conflicts, Inconsistencies and Ambiguities; Protest; Waiver**

25.1 Any claim of EPC Contractor for damages, additional compensation or extension of time, whether under the EPC Contract or otherwise, against Owner would be conclusively deemed to have been waived by EPC Contractor unless a timely written claim therefor is made pursuant to and in strict accordance with the applicable provisions of the EPC Contract or, if no such provision is applicable, unless such claim is set forth in detail in writing and filed with Owner within thirty (30) days after the facts upon which such claim is based become known or should have become known to EPC Contractor.

25.2 Without limiting the generality of the foregoing and except as otherwise specifically provided for elsewhere in the EPC Contract, any claim of EPC Contractor and any question of EPC Contractor related to or arising in connection with performance of all or any part of the Work or the EPC Contract, coordination of the Work, compensation, schedule or interpretation, construction or clarification of the EPC Contract would be promptly submitted by EPC Contractor in writing to Owner for determination. If EPC Contractor is apprised or otherwise becomes aware of or has reason to know of, any conflict, discrepancy or inconsistency between or among, or any ambiguity, error or omission in any of the requirements of the EPC Contract, EPC Contractor would immediately notify Owner thereof for instruction, direction, resolution or clarification as the

case may be. EPC Contractor would be fully and solely responsible for requesting all directions, instructions, interpretations, constructions, clarifications and resolutions necessary or appropriate to ensure performance of the Work in accordance with the EPC Contract and for any and all claims, losses, harm, costs, damages and expenses resulting from its failure to do so.

25.3 All determinations, interpretations, constructions, clarifications, resolutions, instructions and directions of Owner, whether in response to a question of EPC Contractor or otherwise, would be final unless EPC Contractor would, within fourteen (14) days after Owner gives EPC Contractor notice of any such determination, interpretation, construction, clarification, resolution, instruction or direction, file with Owner a written protest thereto, setting forth in a detailed and clear manner the basis of such protest. Owner would issue a decision, which would be final, upon each such protest. Notwithstanding any protest or disagreement, EPC Contractor would in any event proceed with performance of the Work and the Contract in accordance with the determination, interpretation, construction, clarification, resolution, instruction and direction of Owner.

#### **GC-26. Assignment; Successors**

26.1 EPC Contractor would not (e.g., by contract, operation of law or otherwise) assign all or any part of the EPC Contract or any of its rights hereunder, or subcontract any of the Work, without the prior written consent of Owner, which consent would not be unreasonably withheld. For purposes of the foregoing, any transfer of a controlling interest in EPC Contractor (e.g., by a transfer of securities or otherwise) would be deemed to be an assignment of the EPC Contract. No such assignment or subcontracting would relieve EPC Contractor from its responsibility for performance of the Work in accordance with the EPC Contract or from its responsibility for performance of any of its other obligations under the EPC Contract. EPC Contractor would be fully responsible for the acts, omissions, conduct and performance of its Support.

26.2 If EPC Contractor is composed of more than one person or entity, each such person or entity would be jointly and severally liable under the EPC Contract. The EPC Contract would be fully binding upon EPC Contractor and its successors, assigns and legal representatives.

#### **GC-27. Notices**

Any notice, request, approval, consent, order, instruction, direction or other communication under the EPC Contract given by either party to the other party would be in writing and would be delivered in person or mailed, properly addressed and stamped with the required postage, to the intended recipient at the address and to the attention of the person specified below the parties' respective signatures on the Contract for Work. Either party may from time to time change such address by giving the other party notice of such change in accordance with the provisions of the EPC Contract addressing the subject matter of this GC-27.

## **GC-28. Survival**

The provisions of the EPC Contract addressing the subject matter of GC-10, GC-14, GC-15 and GC-20 (and all provisions of the EPC Contract which may reasonably be interpreted or construed as surviving the completion, cancellation or termination of the EPC Contract) would survive the completion, cancellation or termination of the EPC Contract.

## **GC-29. Examination of Contract and Site**

EPC Contractor would represent and acknowledge that it has carefully examined the EPC Contract and the Site and that it has satisfied itself as to (and the EPC Contractor would have, and would thereby assume, full and sole responsibility for) the nature, location, character, quality and quantity of the Work and all requirements of the EPC Contract, as well as the conditions and other matters that may be encountered at the Site or affect performance of the Work or the cost or difficulty thereof, including, but not limited to, those conditions and matters affecting: transportation; access; handling, storage and disposal of materials, equipment and other items; availability and quality of labor, water, electric power and utilities; availability and condition of roads; climatic conditions and seasons; physical conditions at the site of the Work and the surrounding locality; topography and ground surface conditions; potential water and air pollution conditions; subsurface geology and the nature and quantity of surface and subsurface materials to be encountered; and equipment and facilities needed preliminary to and at all times during the performance of the Work. The failure of EPC Contractor to fully acquaint itself with any applicable condition or matter would not in any way relieve it from the responsibility for performing the Work in accordance with, and for the compensation provided for in, the EPC Contract.

## **GC-30. Nonwaiver**

Owner's failure or delay to insist upon strict performance of any of the provisions of the EPC Contract, to exercise any rights or remedies provided under the EPC Contract or by law, or to notify EPC Contractor in the event of breach or default under the EPC Contract, as well as the making of, or failure or delay to make, any test or inspection of any Work or the making of any acceptance of or payment for any Work, would not release or relieve EPC Contractor from any of its obligations or warranties under the EPC Contract and would not be deemed a waiver of any right of Owner to insist upon strict performance of the EPC Contract or any of the rights or remedies of Owner as to any Work; nor would any purported oral modification or rescission of the EPC Contract by Owner operate as a waiver of any of the provisions of the EPC Contract.

## **GC-31. Entire Agreement**

31.1 The EPC Contract would embody the entire agreement, and would supersede any and all prior agreements, between Owner and EPC Contractor regarding the Work.

31.2 No change, amendment or modification of any of the provisions of the EPC Contract would be valid unless set forth in a written instrument signed by the party to be bound thereby.

31.3 The EPC Contract would be construed as a whole. The misplacement, addition or omission of a word or character would not change the intent of any part of the EPC Contract from that set forth by the EPC Contract as a whole. All provisions and parts of the EPC Contract would be correlative and complementary, and any Work required by one and not mentioned in another would be performed to the same extent and purpose as though required by all. Details of the Work which are necessary to carry out the intent of the EPC Contract, but which are not expressly required, would be performed or furnished by EPC Contractor as part of the Work without any increase in the compensation otherwise payable under the EPC Contract.

### **GC-32. Controlling Law**

32.1 The EPC Contract would be interpreted, construed and enforced in accordance with and governed by the laws of the State of Washington, without reference to its rules relating to choice of law.

32.2 EPC Contractor would not commence or prosecute any suit, proceeding or claim to enforce the provisions of the EPC Contract, to recover damages for breach of or default under the EPC Contract, or otherwise arising under or by reason of the EPC Contract, other than in the courts of the State of Washington or the District Court of the United States, Western Division, State of Washington. EPC Contractor would irrevocably consent to the jurisdiction of the courts of the State of Washington with venue laid in King County and of the District Court of the United States, Western Division, State of Washington.