

REMARK D95

REVISION 01/16/2004

REQUIREMENT D95

CONTRACT FOR CONSTRUCTION OR INSTALLATION WORK

THIS CONTRACT IS MADE BETWEEN GENERAL ELECTRIC COMPANY, A NEW YORK CORPORATION, ("OWNER") AND THE UNDERSIGNED CONTRACTOR ("CONTRACTOR").

OWNER AND CONTRACTOR AGREE AS FOLLOWS:

SECTION 1: DEFINITIONS

1.1 The contract documents consist of this contract, including all exhibits hereto, the terms and conditions, the Drawings, the Specifications, all addenda issued prior to and all Modifications and Change Orders issued after execution of this contract. If any provision of any contract document is inconsistent with any other provision, the following priority shall govern:

- (a) this contract,
- (b) the exhibits to this contract,
- (c) the Drawings, and any applicable addenda,
- (d) the Specifications, and any applicable addenda,
- (e) the terms and conditions,
- (f) the other conditions,
- (g) other contract documents. In the event of any conflict with any document which is not a contract document, including without limitation purchase orders, the terms of the contract documents shall govern.

1.2 The Drawings and Specifications are those which are furnished by Owner to Contractor for work.

1.3 A Modification is a written amendment to this contract signed by both Owner and Contractor.

1.4 A Change Order is a written document signed by Owner authorizing a change in the work.

1.5 The Contract Sum is the amount to be paid by Owner to Contractor for the work set forth in section 20.

1.6 The work shall be substantially complete when it is sufficiently complete in accordance with the contract documents so that Owner can safely and lawfully occupy or utilize the work for the uses and purposes for which it is intended.

1.7 The work shall be finally complete when all work required by the contract documents has been fully completed.

1.8 In computing periods of time provided in this contract calendar days shall be used.

1.9 The work includes all labor, materials, tools, equipment, superintendence, services, facilities and other things required by the contract documents for construction.

1.10 Owner is General Electric Company, One Neumann Way, Cincinnati, OH 45215.

1.11 Contractor is the other person or entity named in this contract who is to perform the work pursuant to the contract documents.

1.12 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the work. A Sub-Subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the work at the site.

1.13 Shop Drawings are Drawings, diagrams, schedules and other data specially prepared for the work by Contractor or any Subcontractor, manufacturer, supplier or distributor to illustrate a part of the work.

1.14 Product data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by Contractor to illustrate a material, product or system for some portion of the work.

1.15 Samples are physical examples which illustrate materials, equipment, or workmanship and establish standards by which the work will be judged.

Section 2: COMMENCEMENT AND COMPLETION

2.1 Time is of the essence and the work shall be commenced immediately and shall be substantially complete on or before the date shown in section 21.

2.2 Contractor shall notify Owner in writing when it considers the work to be substantially complete and within fourteen (14) days from the receipt of such notice, Owner shall notify Contractor in writing of the deficiencies, if any, which exist which prevent the work from being substantially complete. Upon completion of such items of the work, the work shall be deemed to be substantially complete.

2.3 If Contractor is delayed at any time in the progress of the work by any act or neglect of Owner or by any separate Contractor employed by Owner, or by changes ordered in the work pursuant to Change Orders, or by labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably foreseeable, unavoidable casualties, or other similar causes beyond the Contractor's control and without its fault or negligence, then the date by which the work shall be substantially complete shall be extended by Modification for a reasonable additional period of time to account for such delay. Contractor recognizes that a delay in any one phase of the work does not necessarily result in a delay in the entire work or in any other phase of the work. In the event of any delay, Contractor shall immediately give Owner written notice of the probable effect thereof, shall prepare and implement a plan to minimize the delay and shall keep Owner advised of the delay.

2.4 Any claim for extension of time shall be made in writing to Owner not more than seven (7) days after the commencement of the cause of the delay. Failure of Contractor to timely submit its claim shall be a waiver thereof. In the case of a continuing delay only one claim is necessary.

2.5 Contractor shall immediately submit a schedule of the work to Owner and such progress reports as Owner may from time to time request.

SECTION 3: INVOICES FOR PAYMENT

3.1 For firm-fixed price contracts, Contractor shall submit invoices for progress payments to Owner for labor and materials incorporated in the site.

3.2 For time and material contracts, Contractor shall submit invoices as work progresses subject to a 10% retainage. Each invoice shall show in detail all items of labor and materials for which payment is then due.

3.3 For work performed on field Change Orders, field releases and supplements, Contractor shall submit invoices when all work has been completed. Each invoice shall show in detail all items of labor and materials for which payment is then due.

3.4 When all of the work is finally complete (including field Change Orders, field releases and supplements), Contractor shall submit an invoice for final payment to Owner. The invoice shall be accompanied by sworn and notarized statements and materialmen's certificates as Owner shall require pursuant to applicable state laws and releases of liens from Contractor, all Subcontractors and materialmen, showing payment in full for all work, labor, material and services furnished by them and such other data substantiating Contractor's right to payment as Owner shall require.

3.5 No claims for payment shall be accepted by Owner unless made within one year from date of completion of the applicable work.

SECTION 4: PAYMENTS TO CONTRACTOR

4.1 Upon determination by Owner that the amount specified in an invoice is due and provided that Contractor is not in default under this contract, Owner shall pay to Contractor, or to others as provided herein, the amount due in accordance with a schedule of values which shall be submitted to Owner by Contractor. Owner may make such payment by Owner's checks made payable to Contractor or by Owner's checks made payable jointly to Contractor and Subcontractors or materialmen.

4.2 Owner shall withhold the retainage set forth in section 22 from all payments except the final payment.

4.3 Contractor shall notify Owner in writing when it considers the work to be finally complete and within forty-five (45) days from the receipt of such notice, Owner shall notify Contractor in writing of the deficiencies, if any, which exist, which prevent the work from being finally complete. Final payment, constituting the unpaid balance of the Contract Sum shall be paid by Owner to Contractor when the work is finally complete and the invoice for final payment has been submitted.

4.4 No payment by Owner for a progress payment or final payment or occupancy or use of the work shall relieve Contractor from its obligation to comply with the contract documents and shall not constitute a waiver by Owner of any of Owner's legal rights or remedies.

4.5 Contractor shall promptly pay each Subcontractor for such Subcontractor's work the amount to which said Subcontractor is entitled, reflecting the percentage actually retained from payments to Contractor on account of such Subcontractor's work. The Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to his Subcontractors in similar manner. Owner may furnish to any Subcontractor information regarding the percentages of completion or the amounts applied for by Contractor and the action taken thereon by Owner on account of work done by such SubContractor. Owner shall not have any obligation to pay or to see to the payment of any moneys to any Subcontractor.

4.6 The acceptance of final payment shall constitute a waiver of all claims for payments due by Contractor except those previously made in writing and identified by Contractor as unsettled at the time of the invoice for final payment.

4.7 Owner shall have the right to withhold payments to Contractor until defective work has been corrected and Owner shall have the right to set off amounts due Contractor from Owner against amounts due Owner from Contractor.

SECTION 5: INSURANCE REQUIREMENTS

Without limiting any other obligations of the Contractor, the Contractor shall provide and maintain, as long as the contract is in effect, minimum coverages as follows (such policies shall provide that thirty (30) days written notice shall be given to Owner prior to cancellation of or material change in the coverages.)

5.1 Contractor shall carry, at its sole expense, comprehensive general liability insurance, including contractual liability insurance and products/completed operations insurance, covering all operations and work hereunder with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death and property damage in any one occurrence. Such insurance shall specifically refer to this contract and shall specifically cover the liability assumed by Contractor under section 6. Contractor agrees to carry, at its sole expense, automobile liability insurance on all automobiles owned, hired, and leased, as well as automobile non-ownership liability insurance with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death and property damage in any one occurrence. In addition all such insurance shall include Owner as an additional insured with respect to all operations and work hereunder and such insurance shall provide that such insurance be applied separately to each insured against whom claim is made or suit is brought. Contractor shall furnish Owner certificates of insurance required under this section 5.1, which shall be with companies and in form satisfactory to Owner. The above insurance requirements are minimum requirements and shall not limit Contractor's liability to Owner in any manner.

5.2 Contractor and all Subcontractors retained by or through Contractor, and all their employees, workmen, servants or agents shall comply with all requirements of the worker's or workmen's compensation laws of the states in which Contractor or any Subcontractor retained by or through Contractor is performing any work hereunder. Contractor shall in addition carry employer's liability insurance covering all operations and work hereunder in an amount not less than

\$1,000,000 per occurrence. The above insurance requirements are minimum requirements and shall not limit Contractor's liability to Owner in any manner.

5.3 Owner, at its option, may purchase and maintain such insurance as will protect it against claims which may arise from operations under the contract.

5.4 Owner shall purchase and maintain property insurance upon the entire work at the site for the full replacement value thereof. This insurance shall include the interests of Owner, Contractor and Subcontractors in the work and shall insure against the perils of fire and extended coverage and shall include "all risk" insurance for physical loss or damage including, without duplication of coverage, theft, vandalism and malicious mischief. Contractor shall effect and maintain similar property insurance on portion of the work stored off the site or in transit when such portions of the work are to be included in an invoice for payment. Any insured loss shall be adjusted with Owner and the Owner shall be named as loss payee. Contractor shall pay each Subcontractor a just share of any insurance moneys received by Contractor. Owner may, at its option, pay amounts due directly to Subcontractors. Owner and Contractor waive all rights against (1) each other and the Subcontractors, agents, and employees of each of the other, and (2) the separate Contractors, if any, and their Subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this paragraph or any other property insurance applicable to the work, except such rights as they may have to the proceeds of such insurance held by Owner as a loss payee. Owner or the Contractor, as appropriate, shall require of Owner, separate Contractors, and Subcontractors by appropriate written agreements similar waivers each in favor of all other parties enumerated. Owner as a loss payee shall have power to adjust and settle any loss with the insurers. At Owner's option, Owner may self insure all risks for which Owner is responsible.

SECTION 6: CONTRACTOR'S WARRANTIES TO OWNER

6.1 Contractor warrants to Owner: That Contractor shall use its best skill and judgment in performing the work; that Contractor shall furnish adequate supervision and an adequate supply of skilled workmen; that all materials shall be new and free from defects and of the highest quality, unless otherwise required by the contract documents; that all labor shall be performed in a workmanlike manner so as to produce results having a high degree of mechanical perfection and conformity; that all defects in labor and materials shall be remedied by Contractor at Contractor's sole cost; that title to all work, materials and equipment covered by an invoice for payment shall pass to Owner either by incorporation in the site or construction or upon the receipt of payment by Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances; that no work, materials or equipment covered by an invoice for payment will have been acquired by Contractor, or by any other person performing work at the site or furnishing materials and equipment for the work, subject to any agreement under which an interest therein or an encumbrance thereon is retained by the Contractor or otherwise imposed by the Contractor or such other person; and that the work will be performed in compliance with all laws. The foregoing warranties are in addition to any other warranties which may be imposed by law. Contractor shall arrange to have all manufacturers' warranties and all other warranties for all equipment and materials to run directly to Owner.

SECTION 7: CONTRACTOR'S INDEMNIFICATION OF OWNER

7.1 Contractor shall protect, indemnify and hold harmless Owner, any of its subsidiaries and affiliates, and any of its or their employees, directors, officers, workmen, servants, representatives or agents ("Covered Parties") of and from any loss, cost, damage (direct and consequential) or expense (including attorneys fees) arising from:

(a) Any and all claims which may be made against Owner, any of its subsidiaries, or any Covered Parties by reason of injury or death to person or damage to property, suffered, or claimed to have been suffered, by any person, firm, corporation, or other entity, caused by, or alleged to have been caused by, any act or omission, negligent or otherwise, of Contractor or any Subcontractor retained by or through Contractor or any of their employees, workmen, servants or agents and Contractor's or any Subcontractor's or any of their employees', workmen's, servants' or agents' failure otherwise to comply with the terms of this contract;

(b) Any and all damage to the property of Owner, any of its subsidiaries, or any covered parties, including but not limited to property occupied or used by or in the care, custody or control of Contractor, caused by, or alleged to have been caused by, any act or omission, negligent or otherwise, of Contractor or any Subcontractor retained by or through Contractor or of any of their employees, workmen, servants or agents;

(c) Any and all claims and demands which may be made against Owner, any of its subsidiaries, or any covered parties by reason of any infringement of any patent rights or copyrights or claims caused or alleged to have been caused by the use of any materials or equipment furnished or used by Contractor or any Subcontractor retained by or through Contractor; and

(d) Any and all penalties imposed on account of the violation of any law or regulation, compliance with which is not expressly left by this contract to Owner.

SECTION 8: EQUAL OPPORTUNITY

8.1 Contractor shall not discriminate against any person because of race, color, religion, sex, age, creed, or national origin. Contractor shall comply with executive order 11246, as amended by order 11375, executive order 11701 (employment of veterans), executive order 11758 (employment of the handicapped) and executive order 11625 (utilization of minority business enterprises) and the provisions of all laws, regulations and orders pertaining to the foregoing are hereby fully incorporated by reference.

SECTION 9: WAIVER OF WORKER'S COMPENSATION IMMUNITY

9.1 The Contractor expressly and specifically waives whatever immunity he might otherwise be entitled to under the Ohio Worker's Compensation Statutes and Ohio Constitution or any other constitution or statute relating to immunity under the worker's compensation system. This waiver is by Contractor to Owner and to no other parties.

SECTION 10: CONTRACT DOCUMENTS

10.1 Site Inspection. By executing the contract, Contractor represents that its representatives have visited the site and are familiar with the local conditions under which the work is to be performed as such relate to the requirements of the contract documents.

10.2 Contract Documents. The intent of the contract documents is to include all items necessary for the proper execution and completion of the work. The contract documents are complementary, and what is required by any one shall be as binding as if required by all. Work not specifically set forth in the contract documents will be required if it is reasonably necessary to produce the intended results. Words and abbreviations which have well-known technical or trade meanings are used in contract documents in accordance with such recognized meanings.

10.3 Drawings and Specifications. All Drawings and Specifications and copies thereof furnished by Owner are and shall remain the property of Owner. They shall be used only in connection with the work and except for one (1) contract set for each Contractor all sets shall, if requested by Owner, be returned to Owner upon completion of the work.

10.4 As Built Drawings. Upon completion of the work, Contractor shall provide Owner with as built Drawings which reflect any and all changes to Owner's Drawings made by Contractor.

SECTION 11: OWNER

11.1 Descriptions. Owner shall furnish all surveys describing the physical characteristics, legal limitations, and utility locations for the site of the work and a legal description of the site as may be required for Contractor to perform the work.

11.2 Permits. Except as provided in section 12.7, Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

11.3 Owner's right to stop work. If the Contractor fails to correct defective work or fails to carry out the work in accordance with the contract documents, Owner by written notice may order Contractor to immediately stop the work, or any portion thereof, until the cause for such order has been eliminated. Owner shall have no duty to exercise this right for the benefit of Contractor or any other person or entity.

11.4 Owner's right to perform work. If Contractor fails to perform the work in accordance with the contract documents and fails within five (5) days after receipt of written notice from Owner to commence and continue to correct

such failures with diligence and promptness, Owner may without prejudice to any other remedy Owner may have, perform the work or correct any deficiencies and Contractor shall pay to Owner the actual cost incurred by Owner of performing the work or correcting such deficiencies.

11.5 Owner's Representative On Site. Neither the presence nor absence of Owner's representatives on the site, nor any failure by Owner's representatives to detect, point out, or object to any defect in the work or any deviation therein from the contract documents nor the acceptance by any such representative of Owner of any such deviations (except as such acceptance shall be ratified in writing by Owner) shall relieve Contractor of its responsibility for the full performance of the work as required by the contract documents.

SECTION 12: CONTRACTOR

12.1 Examination of Contract Documents. Contractor shall carefully study and compare the contract documents and shall at once report to Owner in writing any error, inconsistency or omission Contractor may discover. It is not the responsibility of Contractor to make certain that the contract documents are in accordance with applicable laws, statutes, building codes and regulations, but if the Contractor observes that any of the contract documents are at variance therewith in any respect, it will promptly notify Owner in writing. If Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to Owner and written approval of Owner, Contractor shall be fully responsible therefor and shall bear all costs attributable thereto.

12.2 Supervision of Work. Contractor shall supervise and direct the work, using its best skill, judgment, and attention. Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work under the contract. Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the work site during the progress of all work. The superintendent shall represent Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor.

12.3 Responsibility for employees and Subcontractors. Contractor shall be responsible to Owner for the acts and omissions of its employees, Subcontractors and their agents and employees and Sub-Subcontractors and all other persons performing any of the work for Contractor.

12.4 Labor and Materials. Unless otherwise provided in the contract documents, Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and all other facilities and services necessary for the proper execution and completion of the work, whether temporary or permanent and whether or not incorporated or to be incorporated in the work. Contractor shall cover and protect all portions of the work until the work is finally completed.

12.5 Discipline. Contractor shall at all times enforce strict discipline and good order among its workmen and employees and shall not employ on the work any unfit person or anyone not skilled in the task assigned to him. Owner shall have the right to require Contractor to remove any workmen who are for any reason unfit to perform the work.

12.6 Taxes. Contractor shall pay all sales, consumer, use and other similar taxes for the work or portions thereof provided by the Contractor which are legally enacted at the time bids are received, whether or not yet effective.

12.7 Permits. Unless otherwise provided in the contract documents, Contractor shall secure and pay for the building permit and for all other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the work which are customarily secured after execution of the contract and which are legally required at the time bids are received.

12.8 Compliance with Laws and Rules. Contractor shall give all notices required by and shall comply with all federal, state and local laws, ordinances, rules, regulations and lawful orders of any public authority and all of Owner's landlord's rules and regulations.

12.9 Progress Schedule. Contractor, immediately after execution of the contract, shall prepare and submit to Owner a written progress schedule for the work. The progress schedule shall provide for expeditious execution of the work.

12.10 Documents at Site. Contractor shall maintain for Owner one record copy of all Drawings, Specifications, addenda, Change Orders, Modifications, approved shop Drawings, product data and samples and all other documents for

the work, in good order and marked currently to record all changes made during construction. these shall be available to Owner when the work is finally complete.

12.11 Shop Drawings, Samples and Data. Contractor shall review, approve and submit, with reasonable promptness and in such sequence as to cause no delay in the work or in the work of Owner or any separate Contractor, all shop Drawings, product data and samples required by the contract documents. By approving and submitting shop Drawings, product data and samples, Contractor represents that it has determined and verified all materials, field measurements, and field construction criteria related thereto, and that it has checked and coordinated the information contained within such submittals with the requirements of the work and the contract documents.

12.12 Site Use. Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the contract documents and shall not unreasonably encumber the site with any materials or equipment.

12.13 Cutting and Patching. Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the work or to make its several parts fit together properly. Contractor shall not damage or endanger any portion of the work or the work of Owner or any separate Contractors by cutting, patching, excavation, or otherwise altering any work. Contractor shall not cut or otherwise alter the work of Owner or any separate Contractor except with the written consent of Owner and of such separate Contractor. Contractor shall not unreasonably withhold from Owner or any separate Contractor its consent to cutting or otherwise altering the work.

12.14 Cleanup. Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by its operations. At the completion of the work, it shall remove all waste materials and rubbish from and about the project as well as all tools, construction equipment, machinery and surplus materials. If Contractor fails to keep the site clean or clean up at the completion of the work, Owner may do so and the cost thereof shall be paid by Contractor.

12.15 Patents, Copyrights and Royalties. Contractor shall pay all royalties and license fees and shall defend all suits or claims for infringement of any patent rights or copyrights and shall save Owner harmless from loss on account thereof, except that Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified, but if Contractor has reason to believe that the design, process or product specified is an infringement of a patent or copyright, it shall be responsible for such loss unless it promptly gives written notice of such to Owner.

12.16 Owner's Access to Work. Owner and its representatives shall at all times have access to the work and Contractor shall provide facilities for such access.

12.17 Independent Contractor. Contractor shall be an independent Contractor with respect to the work and not an agent of Owner.

12.18 Liens. Contractor shall keep the work and Owner's premises free and clear of all liens and encumbrances and hereby waives its rights to file and assert mechanics' liens. Contractor shall indemnify Owner against any liens or encumbrances on the work or on Owner's premises which may be filed by Subcontractors or sub-Subcontractors, and Contractor shall promptly take whatever action is necessary to remove any such liens or encumbrances.

12.19 Compliance with Owner's Security and Other Rules. Contractor shall comply with all of Owner's rules and regulations regarding security and with all federal laws and regulations regarding security at the site and all other rules of Owner.

13. 12.20 Work on Premises:

- (a) Contractor shall comply with all of Owner's safety and security procedures and shall take all necessary precautions to prevent the occurrence of any injury to person or property during the progress of such work.
- (b) Contractor agrees that all of its employees whom may require access to Owner's premises to perform work pursuant to this contract shall be tested and certified (in writing) to be free from the following illegal or unauthorized drugs prior to being assigned to perform such work: cannabinoid metabolites (marijuana) opiate derivatives (heroin, morphine, codeine)cocaine metabolites (benzoylecgonine, ecgonine) amphetamines (methamphatimines) phencyclidine.

In addition, such drug tests shall include screening for prescription drug use. In the event Contractor's employee acknowledges use of prescription drugs, or if the drug screening results are positive for prescription drug use, Contractor shall not assign such employee to perform work pursuant to this contract unless, (1) Contractor confirms that there are corresponding documented medical authorizations for use of such prescription drugs; and (2) Contractor determines, using appropriately qualified resources, that the employee is fit to perform the work under any order and free of any impairment that would prevent the employee from performing competent and safe work under any order.

- (c) Contractor's employees shall be retested and recertified to be free of these unauthorized drugs after a six (6) month absence from performing work on Owner's premises.
- (d) Contractor shall comply with any and all federal, state, or local anti-drug, alcohol abuse and /or drug testing statutes or regulations for any of its employees who may be covered by such statutes or regulations. Contractor shall have, retain, and be able to provide to Owner, upon request, an approved drug and alcohol misuse prevention plan.
- (e) Contractor shall conduct a criminal convictions records investigation of its employees before they are assigned to work on Owner's premises (hereinafter collectively "GE Premises"). A Criminal Convictions Records Investigation shall consist of a records search (documented by a written report retained by the Contractor of the results of such search) by the appropriate law enforcement or other local or state agency in each location in which the employee has resided and worked in at least the seven years preceding the date of the criminal conviction records investigation. Owner reserves the right, at its discretion, to request from Contractor documentation of the completion of a criminal convictions records investigation for any employee assigned to work on Owner's premises. Contractor's failure to have completed a criminal convictions investigation of any of its employees in accordance with this clause shall be grounds for immediate expulsion of the Contractor and its employees from Owner's premises and Owner shall have the right to terminate this contract for default.
- (d) Contractor shall not assign any person to perform work on Owner's premises that has been:
 - (i) convicted of murder; manslaughter; kidnapping; rape; sexual battery or gross sexual imposition; domestic violence; assault; arson; robbery; burglary; theft; embezzlement; fraud; drug possession, manufacturing or trafficking.
 - (ii) convicted as an adult of any felony, convicted of more than one misdemeanor in the previous two years, or convicted of more than five misdemeanors in the previous five years.
- (g) Owner may require Contractor's employees, before entering Owner's premises, to complete a criminal convictions questionnaire. In the event that Owner has grounds to believe that an employee of Contractor has falsified the criminal convictions questionnaire in any way, such person shall not perform work on Owner's premises.
- (h) Contractor shall include this Article 12 in any Subcontract placed pursuant to this contract with a Subcontractor who will perform work on Owner's premises.
- (i) Owner reserves the right to deny access to Owner's premises to any person who appears on government-issued lists of terrorists, suspects, etc., such as the Department of State, Arms Export Control Debarment List; Department of State, Proliferation List; Department of Commerce, Denied Parties List; and Department of Treasury, Specially Designated National List.

SECTION 13: SUBCONTRACTORS

13.1 Subcontractors and Sub-Subcontractors. Upon submittal of the bidding documents, Contractor shall furnish to Owner in writing the names of all of its Subcontractors (including those who are to furnish materials or equipment fabricated to a special design) and the names of the Owner(s) and key personnel of each Subcontractor. Owner shall reply to Contractor in writing stating whether or not Owner has objection to any such proposed Subcontractor. Contractor shall not contract with any such proposed Subcontractor to whom Owner has made objection. Contractor shall

not be required to contract with anyone to whom it has a reasonable objection. If Owner has objection to any such proposed Subcontractor, Contractor shall submit a substitute to whom Owner has no objection. Contractor shall make no substitution for any Subcontractor previously selected if Owner makes objection to such substitution. Contractor shall not change any Subcontractor without the written consent of Owner.

13.2 Subcontracts. By an appropriate written contract, Contractor shall require each Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the contract documents, and to have responsibility to Contractor for all the obligations and responsibilities which the Contractor, by the contract documents, has to Owner. Such contract shall preserve and protect the rights of Owner under the contract documents with respect to the work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights and shall allow to the Subcontractor the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the contract documents, has against Owner. Contractor shall require each Subcontractor to enter into similar agreements with all sub-Subcontractors. Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract, copies of the contract documents to which the Subcontractor will be bound. Each Subcontractor shall similarly make copies of such documents available to sub-Subcontractors.

SECTION 14: WORK BY OWNER OR SEPARATE CONTRACTORS

14.1 Work by Owner and/or Separate Contractors. Owner reserves the right to perform other work on the site with its own forces and to award separate contracts with separate Contractors for other work on the site. Owner will provide for the coordination of the work by its own forces and of each separate Contractor with the work of the Contractor, who shall cooperate therewith. The Contractor shall afford Owner and separate Contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate his work with theirs as required by the contract documents. If any part of the Contractor's work depends for proper execution or results upon the work of Owner or any separate Contractor, Contractor shall, prior to proceeding with the work, promptly report to Owner in writing any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of Contractor so to report shall constitute an acceptance of Owner's or separate Contractors' work as fit and proper to receive its work.

SECTION 15: WORK SAFETY

15.1 Contractor Responsible for Safety. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work and shall be responsible for safety in connection with the work.

15.2 Safety Precautions by Contractor. Contractor shall take precautions for the safety of and shall provide protection to prevent damage, injury or loss to:

- (a) All employees on the work and all other persons who may be affected by the work;
- (b) All the work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his Subcontractors or Sub-Subcontractors; and
- (c) Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

15.4 Compliance with Law. Contractor shall comply with all applicable federal, state and local laws, ordinances, rules, regulations and lawful orders of any public authority.

15.5 Safety Warnings and Protection. Contractor shall erect and maintain, as required by law, existing conditions and progress of the work, all safeguards for safety and protection. This includes posting danger signs and other warnings against hazards, erection of guardrails and barriers, promulgating safety regulations and notifying Owners and users of the site and of adjacent utilities.

15.6 Hazardous Materials. When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the work, Contractor shall exercise the utmost care and shall have such activities carried out by and under the supervision of properly qualified personnel. Contractor shall fully comply with Owner's exhibit R, plant engineering standard, incorporated herein by reference.

15.7 Contractor's Representative in Charge of Safety. Contractor shall designate a qualified employee present at the site whose duty shall be jobsite safety and the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to Owner.

15.8 Subcontractor's Safety Program. Contractor shall require each of its Subcontractors and their sub-Subcontractors to initiate, maintain and supervise its own safety program as provided by the contract documents.

15.9 Confined Space. In the event any of Contractor's employees or agents enter an existing or construction created confined space, 29 CFR 1910.146 shall be followed. GE shall provide information concerning confined spaces present within the scope of the project. The Contractor shall be responsible for ensuring that its employees and agents have received proper training, that monitoring, safety and rescue equipment shall be available, and a written program/permit system shall be in place as specified in 29 CFR 1910.146.

15.10 Emergencies. In any emergency affecting the safety of persons or property, Contractor shall act to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in section 16 for changes in the work.

SECTION 16: CHANGES IN THE WORK

16.1 Owner may order changes in the work. Owner without invalidating the contract may order changes in the work within the general scope of the work as set forth in the contract documents. These changes may consist of additions, deletions, or other revisions, and, in such events, the Contract Sum and the time for having the work substantially complete shall be adjusted as necessary. All such changes in the work shall be adjusted as necessary. All such changes in the work shall be authorized only by Change Order, and shall be performed pursuant to the contract documents.

16.2 Costs and Credits. The cost or credit to Owner resulting from a change in the work pursuant to a Change Order shall be determined as follows:

(a) By mutual acceptance of a lump sum proposed by Contractor properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;

(b) By unit prices stated in the contract documents or subsequently agreed upon;

(c) By cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee;

(d) In the event the cost or credit is not determined as provided in (a), (b), or (c) above, it shall be Contractor's actual cost of performing the change in the work plus the percentage thereof shown in section 23 to cover Contractor's reasonable profit and overhead in the case of an addition to the Contract Sum, or in the case of a deletion from the Contract Sum, an amount equal to the actual cost of labor and materials saved by Contractor plus such percentage thereof.

16.3 Concealed Conditions. Should concealed or unknown conditions below the surface of the ground or concealed or unknown conditions in an existing structure, be encountered which are at variance with the conditions indicated by the contract documents, or be of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract, Contractor shall give immediate written notice thereof to Owner and the Contract Sum shall be amended by Change Order.

16.4 Notice of Claim for Increase. If Contractor desires to make a claim for an increase in the Contract Sum, it shall give Owner written notice thereof within seven (7) days after the occurrence of the event giving rise to such claim. This notice shall be given by Contractor and written authorization of Owner obtained before proceeding to execute the work. No such claim shall be valid unless so made and such written authorization is first obtained. Any adjustment in the Contract Sum shall be determined by Change Order as provided in section 16.2.

16.5 Minor Changes in Work. Owner shall have authority to order minor changes in the work not involving an adjustment in the Contract Sum or an extension of the time for having the work substantially complete and not inconsistent

with the contract documents. Such changes shall be effected by Change Order, and shall be binding on the Contractor. The Contractor shall carry out such changes promptly.

SECTION 17: UNCOVERING AND CORRECTION OF WORK

17.1 Uncovering of Work. If any portion of the work should be covered contrary to the request of Owner or to requirements of the contract documents, it must, if required in requirements writing by Owner, be uncovered for observation and shall be replaced at Contractor's expense. If any other portion of the work has been covered which Owner has not specifically requested to observe prior to being covered, Owner may request to see such work and it shall be uncovered by the Contractor. If such work is found to be in accordance with the contract documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to Owner. If such work be found not in accordance with the contract document, Contractor shall pay such costs unless it be found that this condition was caused by Owner or a separate Contractor, in which event Owner shall pay such costs.

17.2 Correction of Work. Contractor shall promptly correct all work which is defective or fails to conform to the contract documents whether observed before or after the date when the work is substantially complete or finally complete and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such work, including compensation for Owner's additional services made necessary thereby. This obligation shall survive termination of the contract. If the Contractor does not promptly correct the defective work, Owner may do so and Contractor shall pay Owner the actual costs thereof.

SECTION 18: TERMINATION

18.1 Contractor's Right to Terminate. If the work is stopped for a period of sixty (60) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the work under a contract with the Contractor, or because Owner has improperly failed to make a payment due and Contractor is not in default under this contract, then Contractor may, upon seven (7) additional days' written notice to Owner, terminate the contract and recover from Owner payment for all work executed and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, including its overhead and profit on the work completed prior to the date of termination, provided that the total amount paid to Contractor shall not exceed the Contract Sum.

18.2 Owner's Right to Terminate. If Contractor is adjudged a bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed for it, or if it refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if it fails to make prompt payment to Subcontractors for materials or labor or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits a substantial violation of the contract documents, or if Owner has reason to believe that Contractor will become in default under this contract, then Owner may, without prejudice to any other right or remedy and after giving the Contractor seven (7) days written notice, terminate the contract and take possession of the site and the work and of all materials, equipment, tools, construction equipment and machinery thereon owned by Contractor and may finish the work by whatever method Owner may deem appropriate. In such event, Contractor shall not be entitled to receive any further payment until the work is finally complete. If the unpaid balance of the Contract Sum exceeds the cost of finishing the work, including compensation for Owner's additional services made necessary thereby, such excess shall be paid to Contractor. If such cost exceeds the unpaid balance, Contractor shall pay the difference to Owner. The amount to be paid to Contractor or to Owner, as the case may be, shall be an obligation which shall survive the termination of the contract.

18.3 Owner, at its option, may terminate this contract at any time without cause and for any reason in Owner's sole and absolute discretion. In such event, Owner shall reimburse Contractor for the actual costs incurred by Contractor for the work and shall assume all outstanding obligations made by Contractor in good faith in connection with performance of the work and shall pay Contractor its anticipated profit for the work completed prior to the date of termination, provided that the total amount paid to Contractor shall not exceed the Contract Sum.

SECTION 19: MISCELLANEOUS PROVISIONS

19.1 Governing Law. The contract shall be governed by the law of the state where the work is performed.

19.2 Contract Binding. The contract documents shall be binding upon Owner and Contractor and their respective partners, successors, assigns and legal representatives. Neither Owner nor Contractor shall assign the contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any moneys due or to become due to it hereunder, without the previous written consent of Owner.

19.3 Notices. Notice shall be deemed to have been given if in writing and duly served if delivered or sent by registered or certified u.s. mail, postage prepaid, return receipt requested, to the respective address set forth for Owner and Contractor in the contract.

19.4 Bonds. Owner shall have the right to require the Contractor to furnish bonds covering the faithful performance of the contract and the payment of all obligations arising thereunder if and as required in the contract documents.

19.5 Rights and Remedies. The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by Owner or Contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be otherwise specifically provided in the contract documents.

19.6 Inspection and Testing. If the contract documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the work to be inspected, tested or approved, the Contractor shall give Owner timely notice of its readiness so Owner may observe such inspection, testing or approval. Contractor shall bear all costs of such inspections, tests or approvals conducted by public authorities. Unless otherwise provided, the Owner shall bear all costs of other inspections, tests or approvals.

19.7 Special Testing. If Owner determines that any work requires special inspection, testing, or approval which subsection 19.6 does not include, it will instruct Contractor to order such special inspection, testing or approval, and Contractor shall give notice as provided in subparagraph 19.6. If such special inspection or testing reveals a failure of the work to comply with the requirements of the contract documents, Contractor shall bear all costs thereof, including compensation for Owner's additional services made necessary by such failure, otherwise, Owner shall bear such costs, and an appropriate Change Order shall be issued.

19.8 Test Reports. Required certificates of inspection, testing or approval shall be secured by the Contractor and promptly delivered to Owner.

19.9 Entire Contract. The contract documents form this contract. This contract represents the entire and integrated agreement between the parties hereto and supercedes all prior negotiations, representations, or agreements, either written or oral. The contract may be amended or modified only by a Modification signed by both Owner and Contractor. Nothing contained in the contract documents shall create any contractual relationship between Owner and any sub-Contractor or Sub-Subcontractor.

19.10 Need for Information. In the event Owner desires to obtain information from or a decision by Contractor or in the event Contractor desires to obtain information from or a decision by Owner, the party desiring the information or decision shall give written notice to the other setting forth in particular the information sought or decision requested and the other party shall respond thereto in writing within five (5) working days from receipt of the notice.

19.11 Contractor's notice to Owner of claimed breach required. Notwithstanding any other provision of this contract or the contract documents, Owner shall have no liability to Contractor for any breach of this contract until Contractor shall have first given Owner written notice of such claimed breach and ten (10) days shall have elapsed from Owner's receipt of such notice and Owner shall not have cured such condition.

19.12 Instruction Manuals and Warranties. Contractor shall furnish to Owner all instruction manuals and other documents and shall furnish all instruction required for Owner's proper use and maintenance of the work and for all items or equipment which are a part of the work. Contractor shall furnish to Owner all documents regarding manufacturing warranties for all items of equipment which are a part of the work.

19.13 Invalid Provisions. If any provision of the contract documents is illegal, invalid or unenforceable, all other provisions shall remain fully valid and enforceable, and the illegal, invalid, or unenforceable provision will be replaced with a legal and enforceable provision which as nearly as possible reflects the original intention of the parties.

19.14 Confidentiality. Contractor acknowledges that the contract documents contain the confidential and proprietary information of Owner. Contractor shall maintain the contract documents and all information contained herein in the strictest confidence and shall not disclose the contract documents or any information contained therein to third parties except as shall be necessary for performance of the work.

19.15 Titles. The paragraph headings are for convenience only and are not a part of the contract documents.