

**CENTRAL HUDSON GAS & ELECTRIC CORPORATION
284 SOUTH AVENUE
POUGHKEEPSIE, NEW YORK 12601-4879**

THIS CONTRACT is made as of this day Thursday, October 28, 2021

BETWEEN

CENTRAL HUDSON GAS & ELECTRIC CORPORATION, a New York corporation having a principal office at 284 South Avenue, Poughkeepsie, New York 12601-4879 ("Owner"),

AND

USIC LOCATING SERVICES LLC, a IN Limited Liability Company, having a principal office at 9045 N River Rd, Suite 300, Indianapolis, IN 46240 ("Contractor"), for the services or work described in Article 2 hereof.

For and in consideration of the mutual covenants and agreements herein contained, Contractor and Owner agree as follows:

Article 1. Interpretation

1.1 Defined Terms. Capitalized terms used in this Contract shall, except where otherwise specifically stated, have the meanings ascribed to them in the General Conditions of Contract, provided, however, that the term "Contract" shall include all of the following: (i) this written Contract (and any and all amendments and change orders thereto); (ii) the General Conditions of Contract attached hereto; (iii) any Special Conditions which may be attached hereto; (iv) any of Owner's maps, drawings, bidding schedules and/or specifications which may be listed or described below; (v) any other documents referred to herein (except for any Contractor's Proposal or Contractor's unit price or rate schedule). These Contract documents form the whole Contract and are as fully a part of this Contract as if attached to this Contract or set forth in full herein. Unless specifically referenced in this Contract, the Contract documents do not include any other documents such as bidding documents or any Contractor's proposal.

1.2 Attachments Incorporated By Reference. The below listed documents are incorporated by reference into, and are made an integral part of, this Contract:

Title

- General Conditions of Contract
- Scope of Work Schedule
- Equal Opportunity Statement
- Code of Business Conduct & Ethics
- Anti-Corruption Policy
- Operator Qualification Program
- Non – Disclosure Agreement
- Dutchess County Right of Way Procedure
- Contractor Safety Plan
- Anti – Drug Program
- Contractors Rate sheet
- Specifications of RFP 21-00338

- Appendix A: RFP 21-00338, Standard Specification for Vendors Performing Code 753 Functions

By executing this Contract, Contractor acknowledges and agrees that Contractor has been provided with copies of each of the incorporated documents and shall be bound by such documents.

1.3 Conflicts. In the event of any conflict between the terms and conditions of any Contract document and those of any other Contract document, that conflict shall be resolved by having the provision in the Contract document corresponding to the earlier letter in the alphabet set forth below in this Section 1.3 take priority and govern the rights of the parties:

- (a) This Contract;
- (b) The General Conditions of Contract;
- (c) The [() Scope of Work, (X) Rate Sheet or () pricing terms of Contractor's proposal]
- (d) Any other schedule attached hereto and identified herein.

Article 2. General Description of Project

2.1 Nature of Contract. This is a contract for a specified scope of work as described herein

2.2 Description of Work. Under the terms of this Contract, the Contractor shall, either directly or through approved Subcontractors, perform the following services or work: Provide labor, supervision, materials, supplies, tools and equipment PERFORM GAS AND ELECTRIC LOCATE FUNCTIONS THROUGHOUT CENTRAL HUDSON SERVICE TERRITORY PER THE ATTACHED MARKOUT SPECIFICATION AS PER RFP 21-00338, and such other work as identified in section 2.5 hereof and/or in the Scope of Work entered into by Owner and the Contractor (all such work and services constituting the "Work," as defined in and governed by the General Conditions of Contract).

2.3 Location of Work. The Work shall be performed at such location or locations specified in the Scope of Work, and/or such other location or locations as identified by Owner.

2.4 Performance of Work. The Contractor shall furnish all labor, supervision, transportation, materials, tools, services and permits (other than those specifically required by the Contract Documents to be provided by the Owner). All Work under this Contract shall be performed in an expeditious, safe and workmanlike manner and in accordance with the plans, schedules and specifications set forth in, attached to and/or incorporated into this Contract (including the plans and specifications that may be furnished by Owner to Contractor from time to time pursuant to section 2.5 hereof). The Owner shall have the right to change the plans and specifications at any time upon written notice to Contractor, subject to section 2.6 hereof.

2.5 Term Contracts. If this Contract is described as a term contract in section 2.1 hereof, Owner and Contractor acknowledge and agree that Owner may, from time to time, order the performance of Work under this Contract either by delivering any such order orally or by means of one or more "Work and Billing Authorizations" or similar document signed by the Owner's authorized representative; any such Work shall be subject to the terms and conditions of this Contract unless specifically stated to the contrary on the Work and Billing Authorization or such other document.

2.6 Option for Additions/Deletions. Owner and Contractor acknowledge and agree that, at Owner's option, materials and services related to the Work may be added to or deleted from the Work, in which event the Owner and Contractor shall agree on an adjustment to the Contract Price to be paid in connection with the Contract provided, however, that if the Contractor and Owner cannot agree on such an adjustment, the Contract Price shall be adjusted by such reasonable amount as determined by the Owner in its sole discretion.

Article 3. Time for Performance of the Work

3.1 Performance. The Contractor acknowledges and agrees that timely performance of the Work, including but not limited to the completion of the deliveries of the Data and Work at the times specified in the Scope of Work or elsewhere in the Contract, is the essence of this Contract. Accordingly, the Contractor agrees to:

- (a) commence performance of the Work upon execution of this Contract and upon satisfaction of the conditions specified herein and in the General Conditions of Contract (such as delivery of required insurance certificates) and to perform the Work diligently in accordance with any milestones set forth in the Scope of Work or elsewhere in this Contract; and
- (b) complete the Work, including deliveries of the Data and other information as contemplated by and not later than the dates specified in the Scope of Work or elsewhere in this Contract.

Article 4. Contract Price and Payment

4.1 Contract Price. Subject to the terms and conditions of the Contract, including the General Conditions of Contract, Owner agrees to pay to the Contractor the Contract Price as specified in the attached [() Scope of Work, (x) Rate Sheet or () pricing terms of Contractor's proposal].

Article 5. Contract Term

5.1 Contract Term. This Contract shall become effective November 1, 2021 and shall remain in full force and effect until May 31, 2025 or such other date in accordance with the General Conditions of Contract, including section 10 thereof, provided, however, that the covenants and obligation which, by their nature and/or as specified in the General Conditions of Contract, survive the termination of this Contract shall survive.

Article 6. Insurance

6.1 Contractor's Responsibility. Without limiting any of its obligations or liabilities herein, Contractor shall (and shall be responsible for requiring each Subcontractor to) maintain and keep in force during the term of this contract at its expense the following insurance with limits specified below:

- (a) Commercial General Liability insurance written on a form at least as broad as ISO CG 00 01 04 13 or its equivalent covering all operations by or on behalf of the Contractor against claims for personal injury (including bodily injury and death), property damage (including loss of use thereof) contractual liability, acts of independent contractors and subcontractors, and, if applicable, Advertising Injury. The Contractor's Commercial General Liability policy limits shall apply on a per project or per contract basis, and shall not contain professional services exclusion, or in the alternative professional liability insurance shall include coverage for bodily injury and property damage claims arising out of the provision of professional services. If the commercial general liability policy does contain professional services exclusion and there is no coverage for bodily injury or property damage under the professional errors and omissions policy, then the policy must include ISO Endorsement CG 22-79 or CG 22-80. Further, there shall be no exclusion or sublimit arising from the use of cranes, if applicable, or wildfire. **Minimum Limits of \$3,000,000 per Occurrence**
- (b) Property insurance, as applicable (as determined by Owner), covering the risk of physical loss to any equipment, machinery, tools, inputs or other property supplied by the Owner or any Contractor Responsible Party in connection with the performance of the Services on a replacement cost basis. **Minimum Limits of \$3,000,000 per Occurrence**
- (c) Professional Liability insurance, as applicable (as determined by Owner), covering bodily injury, property damage and financial loss arising out of Contractor's performance of the Services (such insurance shall be maintained for 3 years beyond Owner's acceptance of all services under this Agreement). Should bodily injury or property damage not be covered by the professional liability policy, then such coverage shall be

included within the commercial general liability insurance described above.
of \$1,000,000 per Occurrence

Minimum Limits

- (d) Automobile Liability, as applicable (as determined by Owner), providing liability coverage for bodily injury, property damage, and contractual liability arising from the ownership, operation, loading or unloading maintenance or use of a motor vehicle, including owned, hired, leased, borrowed, and non-owned automobiles. Contractors transporting hazardous waste are required to provide a copy of their MCS-90 endorsement. **Minimum Combined Single Limits of \$3,000,000 per Occurrence**
- (e) Workers' Compensation and Employer's Liability insurance providing statutory coverage for the State of New York with Employer's Liability limits of: \$1,000,000 bodily injury by accident, \$1,000,000 bodily injury by disease (Each Employee) and \$1,000,000 bodily injury by disease (Policy Limit). If leased employees are used, Contractor's insurance policy must include an Alternate Employer's Endorsement and Owner must be included and named on that Endorsement. Longshoremen's and Harbor Workers Act coverage is required for any work on or near navigable waters. If Contractor does not have workers compensation insurance as described above, Contractor hereby attests to the following: (1) Contractor confirms that they are not required by law to obtain New York State Workers' Compensation Insurance and the Contractor has no employees, day labor, leased employees, borrowed employees, part-time employees, unpaid volunteers (including family members) or Subcontractors; (2) Contractor is an independent contractor providing services to the Owner and not an employee of the Owner, free of control and direction by Owner over the means and method of performing work; (3) Contractor is customarily engaged in an independent trade, occupation, profession or business related to the work being done; (4) Contractor understands that it is their responsibility to obtain medical and disability insurance to protect themselves while performing the work.
- (f) Asbestos - as applicable to locating work, for all Contracts involving the removal or encapsulation of asbestos, Pollution Liability Insurance is required. If coverage is provided under a Commercial General Liability policy, the policy shall not contain professional services exclusion. If the policy contains professional services exclusion then the policy must include ISO Endorsement CG 22 79 or CG 22 80. Coverage provided through a separate Contractors Pollution Liability policy shall not include professional services exclusion. **Minimum Limits of \$5,000,000 per occurrence.**
- (g) Hazardous and Non-Hazardous Waste - as applicable to locating work, for all Contracts that involve the handling, removal, transportation or disposal of hazardous or non-hazardous waste, Pollution Liability Insurance is required. Coverage shall include onsite and offsite remediation as well as coverage for bodily injury and property damage claims. If coverage is provided under a Commercial General Liability policy, the policy shall not contain professional services exclusion. If the policy contains professional services exclusion then the policy must include ISO Endorsement CG 22 79 or CG 22 80. Coverage provided through a separate Contractors Pollution Liability policy shall not include professional services exclusion. **All Contractors transporting hazardous waste are required to provide a copy of their MCS-90 endorsement. Minimum limits of \$5,000,000 per occurrence.**
- (h) Railroad - as applicable to locating work, for all Contracts that involve accessing property owned or maintained by Metro North Commuter Railroad or any of its subsidiaries or work within 50 feet of any railroad right of way, the Contractor's commercial general liability policy cannot contain any exclusionary language for work performed in proximity to railroads. Metro North Commuter Railroad and the following companies and any other railroads as required by the Owner must be included as Additional Insureds on the Contractor's General Liability policy:

Metropolitan Transportation Authority
 National Railroad Passenger Corp. (AMTRAK)
 CSX Transportation, Inc. & New York Central Lines LLC
 Delaware & Hudson Railway Company, Inc.
 Housatonic Railroad Company
 Providence & Worcester Railroad Company
 Connecticut Department of Transportation

Consolidated Rail Corporation
 Midtown TDR Ventures, LLC
 Midtown Trackage Ventures, LLC

- (i) Technology Errors and Omissions / Cyber Insurance - as applicable, for all Contracts that involve the supply of or provision of information technology services, including cloud services, or if Contractor has access to any Confidential Information of Owner, Contractor shall secure, provide and maintain an insurance policy (in addition to any other insurance policy required by this Contract) that provides coverage for any and all liabilities, damages, claims, losses, costs and expenses, of any kind, including but not limited to data restoration that may be incurred by Owner resulting from or related to:
- (1) any act, error, willful act, or omission or negligence related to Contractor's technology, information technology services, technology development, technology products and/or professional services;
 - (2) Intellectual property infringement arising out of software and/or content;
 - (3) Breaches of security, systems, denial or loss of services;
 - (4) Violation or infringement of any right to privacy, or any breach of federal, state, local or foreign security and/or privacy laws or regulations;
 - (5) Theft, damage, destruction, or corruption of any data of Owner or any employee, or customer of Owner, including without limitation, unauthorized access, unauthorized use, identity theft, theft of personally identifiable information or confidential corporate information;
 - (6) Participation, including a denial of service attack on a third party.
 - (7) Introduction, implantation or spread of malicious software code; and
 - (8) Cyber extortion: Such insurance must cover all of the foregoing without limitation if caused by a Contractor Responsible Party, including an independent contractor working on behalf of the Contractor, in performing Services under this Contract. The policy must be kept in force by Contractor during the term of this Contract and for six (6) years (either as a policy in force or extended reporting period) after this Contract is terminated or after completion of the Work provided for herein, whichever is later. **Minimum Limits of \$5,000,000 per Occurrence.**
- (j) Any other insurance which the Contractor is required by law to provide.

6.2 Terms of Insurance. The insurance obtained by the Contractor pursuant to section 6.1 of these General Conditions of Contract shall, unless otherwise stated above or unless otherwise expressly provided in the Contract Documents, be provided in accordance with the following terms and conditions:

- (a) The Contractor shall provide Owner with satisfactory proof of insurance coverage, such as a certificate of insurance and supporting additional insured and waiver of subrogation endorsements, required by this Article 6 prior to the Contractor entering upon the Plant Site and thereafter when requested by Owner. The Contractor will provide certified copies of actual insurance documents if requested by Owner. In the event that any insurance required by this Article 6 expires, is cancelled or otherwise lapses during the term of this Contract, Work under the Contract shall immediately cease and shall resume only after satisfactory proof of insurance in compliance with Article 6 is provided to Owner.
- (b) Owner and its parent, affiliate and subsidiary companies shall be included as additional insureds, by endorsement, on a primary basis for liability arising out of or in relation to the Contractor's work or operations performed under or incidental to this Contract, except for the coverage required in Article 6.1(c), (e) and (i) of these General Conditions of Contract. The Additional Insured endorsement applicable to the Contractor's commercial general liability insurance **MUST** be attached to the Certificate of Insurance and must show coverage for both ongoing and completed operations. Coverage provided must be at least as broad as would be provided by ISO forms **CG 2010 (0413)** in combination with **CG 2037 (0413)**.

- (c) Each insurance policy shall provide that 30 days' prior written notice (sent by certified mail, return receipt requested) shall be given to Owner of any cancellation of any such policy or policies or of any change material to the interest of Owner.
- (d) All insurance maintained by the Contractor will be primary insurance and non-contributing with any insurance or self-insurance program maintained by Owner provided however, that Contractor and each Subcontractor's insurance and self-insurance shall not be primary to or contributory with any insurance and/or self-insurance maintained by Owner, for that part of any claim and/or loss resulting from the Owner's comparative active negligence.
- (e) To the extent permitted by applicable law, each insurance policy maintained by the Contractor related to the operations under this Contract shall include an endorsement providing that the underwriters will waive all rights of recovery, under subrogation or otherwise, against Owner Indemnified Parties.
- (f) All policies shall be written by responsible insurance companies with a Best's rating of A- VIII.
- (g) Coverage is to be written on an "Occurrence" form. If coverage is written on a "Claims Made" or "Claims First Made" form, coverage must be maintained for a period of not less than thirty six (36) months, or longer as specified elsewhere in this contract, after the completion and acceptance of the Work and expiration of any applicable warranties.
- (h) Contractor shall not do anything to cause any of the insurance required to be provided to be invalidated in whole or in part.
- (i) All subcontractors shall maintain the same types and amounts of insurance and be subject to the same requirements as the Contractor including the terms, provisions, conditions and limits as set forth in (a) – (h) above. The Contractor shall provide the Owner with satisfactory proof of the Subcontractor's insurance as required by this Article 6 prior to the Subcontractor entering upon the Plant Site and thereafter when requested by the Owner. The Subcontractor's Additional Insured endorsement applicable to their commercial general liability insurance must show that coverage is extended to the Owner. Coverage provided must be at least as broad as would be provided by ISO form **CG 2038 (0413)**.
- (j) The insurance requirements set forth herein shall in no way limit Contractor's or any Subcontractor's liability arising out of work performed under this Contract, or any liability under the indemnification provisions set forth in any other contract entered into with Owner or any other provisions contained in the Contract Documents. The inclusions, coverage and limits set forth herein are the minimum inclusions, coverage and limits required by the Owner and should not be construed as a limitation of Owner's rights under any policy with higher limits.
- (k) Umbrella/Excess Coverage - The required limits specified may be met through a combination of primary and umbrella/excess insurance. The umbrella/excess coverage policy terms will be on a follow-form basis, including drop down coverage in the event the underlying limits are eroded. Such coverage shall be excess of the Contractor's commercial general liability, business automobile liability and employers' liability coverage required herein.

6.3 Non-Waiver. None of the providing of insurance by the Contractor in accordance with the requirements of this Contract, the insolvency or bankruptcy of any insurance company, or failure of any insurance company to pay any claim accruing, shall be held to waive or limit any other provisions of this Contract.

6.4 Contractor Equipment. The Contractor agrees that in no event shall Owner be liable to the Contractor for any physical loss or damage to any equipment, machinery, tools, materials or other property of any Contractor Responsible Party used in the performance of the Services and operations contemplated

pursuant to this Contract, whether or not such loss or damage results from any fault, negligence, act or omission of Owner Indemnified Parties.

Article 7. Headings and Notice

7.1 Heading. Headings in this Contract are for convenience only and shall not be used to interpret or construe its provisions.

7.2 Notices. Any notice or communication to be given under this Contract shall be given in accordance with section 12.7 of the General Conditions of Contract to the following physical and electronic addresses and facsimile numbers (or such other addresses or facsimile numbers provided by one party to the other party pursuant to section 12.7 of the General Conditions of Contract): (a) if to Owner: Central Hudson Gas & Electric Corporation, 284 South Avenue, Poughkeepsie, New York 12601, Attention: Contracts Administrator; Telephone: (845) 486-5333; Facsimile: (845) 486-5746; Email: Contracts@CenHud.com; and (b) if to Contractor: Attention: _____; Telephone: (____) ____ - ____; Email: _____.

Article 8. Non-Solicitation

8.1 Non-Solicitation. During the term of the Contract and for a period of one (1) year thereafter, neither party shall directly or indirectly solicit, hire or otherwise pursue as an employee of the other party that is or has performed Services pursuant to this Contract.

Article 9. Counterpart Originals and Facsimile Signatures

9.1 Originals; Execution. This Contract may be executed in one or more counterparts, each of which will be deemed an original copy of this Contract and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Contract and of signature pages by facsimile transmission or electronic mail shall be deemed original signatures, shall constitute effective execution and delivery of this Contract as to the parties and may be used in lieu of the original Contract for all purposes. In proving this Contract, it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought.

IN WITNESS WHEREOF, Owner and Contractor have caused this Contract to be signed by their duly authorized representatives and entered into as of the day herein above provided.

CENTRAL HUDSON GAS & ELECTRIC CORPORATION

DocuSigned by:
Andrew Conti 11/1/2021
604DA68C85F54B3...
Requested by (Date)

DocuSigned by:
Anthony Campajorn 10/31/2021
9EA8D3A84B984A4...
Approved by (Date)

DocuSigned by:
Charles A Freni 11/1/2021
0B24474868164DE...
Approved by (Date)

THE ABOVE CONTRACT IS HEREBY ACCEPTED

CONTRACTOR: USIC LOCATING SERVICES LLC

DocuSigned by:
Darin J. Stalbaum 10/31/2021
20AG70A0A4514B3...
Accepted By (Date)

GENERAL CONDITIONS OF CONTRACT

SECTION 1: INTERPRETATION

1.1 **Definitions.** In this Contract, unless specifically indicated otherwise:

- (1) “Agreement”, “Contract” and “Contract Documents” each mean, collectively, the contract and all of the schedules or other documents attached thereto or otherwise incorporated by reference from time to time (including this Schedule). The expressions “herein”, “hereto”, “hereof”, “hereby”, “hereunder” and similar expressions refer to this Contract as so defined and not to any particular article, section, subsection or other subdivision hereof.
- (2) “Confidential Information” has the meaning set forth in section 12.5 of these General Conditions of Contract.
- (3) “Contaminant” means any waste, pollutant, effluent, hazardous substance, toxic substance, hazardous waste, special waste, petroleum or petroleum-derived substance or waste, asbestos, polychlorinated biphenyls, or any constituent of any such substance or waste, and includes but is not limited to any substance within the scope of any one or more of these terms as defined in applicable federal, state, provincial or local laws, regulations, ordinances or rules.
- (4) “Contract Price” means the amounts payable to the Contractor for performance of the Work, as set forth in this Contract.
- (5) “Contractor” means the party identified as such in the Contract.
- (6) “Contractor Responsible Parties” means collectively, the Contractor; any of the Contractor’s Subcontractors, suppliers, agents, successors and assigns; the directors, officers and employees of any of the foregoing; and any person for whose acts or omissions any of the foregoing are liable at law.
- (7) “Data” means all: (i) drawings, plans, maps, diagrams, charts, calculations, sketches, illustrations, designs and design layouts (collectively the “Drawings”), (ii) written technical specifications, design criteria, engineering data and all other information and data relating to the Services and/or Inputs, (iii) computer programs, software and source codes, (iv) operating and maintenance manuals with respect to the Services and/or Inputs, and (v) any other written or otherwise recorded data and information relating to the Services and/or Inputs; which are either annexed to or referred to in the Contract Documents or required to be supplied by the Contractor pursuant to the terms of the Contract Documents or which Owner may reasonably require in connection with the construction, installation, use, operation, maintenance, repair, replacement or upgrading of the Services and/or Inputs.
- (8) “Environmental Law” means any federal, state, provincial, local or other law, ordinance, rule, regulation, permit, license, authorization or approval, or other binding determination of any court of competent jurisdiction, government or governmental authority relating to, imposing liability or standards of conduct concerning, or otherwise addressing any Contaminant, Release, or the environment.
- (9) “Event of Force Majeure” has the meaning given in section 12.9(1) of these General Conditions of Contract.
- (10) “Event of Force Majeure Period” has the meaning given in section 12.9(3) of these General Conditions of Contract.
- (11) “Excused Party” has the meaning given in section 12.9(2) of these General Conditions of Contract.
- (12) “General Conditions of Contract” means the representations, warranties, covenants, indemnities, terms and conditions set forth in this Schedule.
- (13) “Inputs” means all materials, machinery, equipment, systems, improvements, technology, software, licenses, processes, tools, accessories, supplies and parts necessary for the proper execution of the Work.
- (14) “Intellectual Property Right” means any patent, patent pending, trademark, copyright, industrial design protection or any other intellectual property right, whether or not capable of protection under applicable legislation.

- (15) “Inventions” has the meaning set forth in section 9.3 of these General Conditions of Contract.
- (16) “Laws” has the meaning given in section 2.5 of these General Conditions of Contract.
- (17) “Occupational Safety and Health Laws” means any federal, state, provincial, local or other law, ordinance, rule, regulation or standard or other binding determination of any court of competent jurisdiction, government or governmental authority relating to, or otherwise addressing the health or safety of employees or workers.
- (18) “Owner” means Central Hudson Gas & Electric Corporation, its successors and assigns.
- (19) “Owner Indemnified Parties” means collectively: Owner; its direct and indirect corporate parent, affiliate and subsidiary companies; the successors and assigns of each of the foregoing; and their respective directors, officers, employees and agents.
- (20) “Owner’s Systems” means the Owner’s computer systems, other equipment or personal property as referred to in section 12.5(6) of these General Conditions of Contract.
- (21) “PII” means personally identifiable information as referred to in section 12.5(10) of these General Conditions of Contract.
- (22) “Plant Site” means the premises or location that is owned, leased, licensed/permitted, occupied, managed or operated by Owner where the Work is to be provided or performed.
- (23) “Release” means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration of any Contaminant (whether intentional, incidental, accidental or otherwise) into the indoor or outdoor environment or into or out of the Plant Site, including the movement or migration of Contaminants through or in the air, soil, surface water or groundwater.
- (24) “Safety and Health Programs” has the meaning set forth in section 5.1(1) of these General Conditions of Contract.
- (25) “Services” or “Work” means, interchangeably, the carrying out and doing of all things, whether of a temporary or permanent nature, that are to be done or supplied by the Contractor pursuant to the Contract Documents (including these General Conditions of Contract) and the end products of such activities including, without limitation (except as otherwise expressly provided elsewhere in the Contract Documents), (i) the provision of any Inputs contemplated by the Contract Documents, (ii) the satisfaction of any performance tests set forth in the Contract Documents, (iii) the supply of all labor and services necessary for the foregoing, and (iv) any part, component or portion of the foregoing.
- (26) “Subcontractor” means any individual, firm or corporation engaged directly or indirectly by the Contractor in performance of any part of the Work, including any individual, firm or corporation furnishing Inputs.

Other defined terms shall have the meaning ascribed to them elsewhere in the Contract Documents.

- 1.2 **Severability.** Each of the articles, sections, subsections or portions thereof of this Contract is severable from this Contract and the invalidity or unenforceability of any one or more of the articles, sections, subsections or portions thereof of this Contract shall not affect the validity or enforceability of the remaining articles, sections, subsections or portions thereof.
- 1.3 **Governing Law, Exclusive Jurisdiction and Venue.** This Contract is being made and delivered entirely within the State of New York and the laws of the State of New York (without regard to its conflict of laws rules) shall govern the interpretation, validity and enforceability of this Contract. For the limited purposes of the interpretation and/or enforcement of this Contract and any other dispute between the Parties, the Parties irrevocably (i) agree that any action or proceeding arising out of or in connection with this Contract shall be brought exclusively in the Supreme Court of the State of New York, Dutchess County (the “Court”), unless otherwise directed by the Court; (ii) agree and consent to the venue and personal jurisdiction of the Court; and (iii) waive any objection to, and shall not challenge, the personal and subject matter jurisdiction of the Court or the laying of venue with the Court based upon the grounds of forum non-convenience.
- 1.4 **Waiver of Jury Trial.** The Parties hereby agree that any court proceedings, actions or suits which may be brought under, related to or by virtue of this Contract or the business relationship between the Parties shall

be determined by a court sitting without a jury. THE PARTIES HEREBY WAIVE ANY RIGHT TO A JURY TRIAL.

- 1.5 **Governing Terms and Conditions.** The terms and conditions set forth in this Contract shall constitute the sole and exclusive agreement between Owner and the Contractor and this Contract shall supersede all prior agreements or commitments, whether oral or written, with respect to the Services and/or Inputs, except express warranties of the Contractor. No representation, inducement, promise, understanding, condition or warranty not set forth herein has been made or relied upon by either party, except express warranties of the Contractor. Acceptance of this Contract is expressly limited to acceptance on the terms and conditions set forth in this Contract. Owner hereby gives notice that it objects to and rejects any terms or conditions contained in any document which has been or may in the future be supplied by the Contractor to Owner which are in addition to, different from, inconsistent with or attempt to vary any of the terms or conditions of this Contract whether such terms or conditions are set forth in the Contractor's tender, proposal, order acknowledgement, invoice or otherwise. Owner's acceptance of the Services and/or Inputs shall not be construed as an acceptance of any terms or conditions contained in any such document supplied by the Contractor to Owner. If this Contract is deemed to be an acceptance of a prior offer by the Contractor, such acceptance is conditional on the Contractor's assent to all the terms and conditions set forth in this Contract. No agreement or understanding modifying the terms of this Contract shall be binding on Owner or the Contractor unless made in writing and signed on behalf of Owner and the Contractor.
- 1.6 **Acceptance.** This Contract shall be deemed to be accepted and shall be a binding contract for the provision of the Services and Inputs upon the Owner and Contractor executing and delivering this Contract.

SECTION 2: SERVICES

- 2.1 **Control of the Services.** The Contractor shall have control of the Services and shall effectively direct and supervise the Services using industry standard skill and attention. The Contractor shall supervise and direct the Services and all persons involved in the Services, including any Subcontractors. The Contractor shall be entirely responsible for compliance with the provisions of the Contract Documents by all Contractor Responsible Parties. The Contractor shall pay and satisfy all invoices, claims and accounts of any Subcontractor.
- 2.2 **Subcontracts.** Notwithstanding any other provision of this Contract, no part of the supply of the Services or Inputs may be subcontracted by the Contractor without the prior written consent of Owner. No subcontract by the Contractor, nor the granting of any approval or consent to subcontract by Owner, shall relieve the Contractor of any of liabilities or obligations under this Contract, including but not limited to the Contractor's responsibility for any liability arising from any and all acts of any of its Subcontractors and/or any failure of any of its Subcontractor to comply with the terms of the Contract.
- 2.3 **Additional Instructions.** Owner may furnish additional instructions as necessary for the performance of the Services. The Services shall be executed in conformity with such additional instructions. In giving such additional instructions, Owner shall have authority to make minor changes in the Services, not inconsistent with the general scope and intent of the Contract Documents.
- 2.4 **Compliance with Owner Rules and Regulations and Owner Corporate Social Responsibility Program.** The Contractor shall, and shall cause the Contractor Responsible Parties to, comply with Owner's security, safety, environmental, sustainability, ethic, administrative and plant operational rules, regulations, policies and guidelines, as they may be amended, replaced or substituted from time to time; copies of the rules, regulations, policies and guidelines that the Contracting Responsible Parties shall comply with in connection with the Service are set forth on the Owner's website at www.cenhud.com, "Working With Us", and each is incorporated herein by reference. Without limiting the general obligation set forth in the preceding sentence, the Contractor specifically agrees that the Contractor Responsible Parties will perform the Work under this Contract in conformity with Owner's Code of Business Conduct & Ethics and such other policies that are identified in section 12.5(11).
- 2.5 **Compliance with Laws and Codes.** The Contractor shall, and shall require each Contractor Responsible Party to, keep itself fully informed of, observe, comply with and perform all existing and future federal, state,

provincial, local or other laws (including but not limited to Equal Opportunity Laws, Environmental Laws, New York State Labor Laws, and Occupational Safety and Health Laws), ordinances, rules, codes, regulations and permits of any government or governmental authority which affect the Services, the Inputs or the performance of the Contract Documents, all industry codes and standards customarily applicable to the Services or Inputs and all orders and decrees of bodies, tribunals or agencies having jurisdiction over the foregoing (collectively the “Laws”). Without limiting the general obligation set forth in the preceding sentence, Contractor specifically agrees that the Contractor Responsible Parties will comply with the **Equal Opportunity Clause set forth in 41 CFR 60-1.4(a) is hereby incorporated by reference. This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans. This contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.** The Executive Order 13496 Employee Notice Clause set forth in 29 CFR Part 471, Appendix A to Subpart A is hereby incorporated by reference. Evidence of compliance with such Laws will be furnished by the Contractor to Owner within ten (10) days of a written request by Owner.

- 2.6 **Permits and Licenses.** Except as otherwise specified elsewhere in the Contract Documents, the Contractor shall obtain and comply with all necessary permits, licenses, certificates, clearances, approvals, authorizations, variances or consents required by any relevant government or governmental authority for the performance of the Services. The Contractor shall give all necessary notices and pay all fees in respect of the foregoing for the proper performance of the Services.
- 2.7 **Time for Performance.** The Contractor acknowledges that TIME IS OF THE ESSENCE with respect to the performance of the Services and the giving of notices contemplated by the Contract Documents. The Contractor agrees to prosecute the Services diligently and to complete the Services in their entirety and to give any such notices, within any time specified in the Contract Documents. The Contractor agrees to provide the Services for as many hours per day and as many days per week as may be necessary to ensure that the operation and production of Owner’s facilities at the Plant Site are not interrupted, delayed or varied from Owner’s production schedule by reason of any delay in the performance of the Services.
- 2.8 **Protection of Inputs, Property and Persons.** Notwithstanding the passage of title to any Inputs to Owner, the Contractor shall have the risk of loss for all Inputs and shall be solely responsible for the protection of all Inputs supplied in the course of providing the Services from damage due to any cause whatsoever including, without limitation, actions of the elements, negligence or willful act of others, or fire, until such time as the Inputs are completely installed at the Plant Site and the Contractor no longer exercises any care, custody or control over such Inputs. The Contractor shall promptly at its own expense repair any damage to the Inputs, except any damage caused by the acts or omissions of Owner, its employees or agents. The Contractor shall take all necessary precautions to guard against any person or persons being injured by the performance of the Services. The Contractor shall take all necessary precautions to protect Owner’s property and the property of any other person (including, without limitation, overhead lines, pipelines and railways) located in, upon or about the Plant Site from damage due to any cause related to performance of the Services.
- 2.9 **Supply of Inputs and Utilities.** Unless otherwise specified in this Contract, the Contractor shall (a) provide and pay for all Inputs, labor, services, utilities, consumables, transportation and other facilities necessary for the performance of the Services and (b) furnish all necessary rights-of-way and city and highway permits for construction or opening of streets and highways unless otherwise specified in the Contract Documents. Unless otherwise specified in this Contract, all Inputs shall be new. Furthermore, all workmanship and Inputs shall be of the quality specified in the Contract Documents. Copies of any necessary right-of-way agreements, licenses, and other forms of contracts or permits shall be located at the Owner’s office and may be inspected by the Contractor before undertaking the performance of the Contract. Upon request, copies of such permits will be furnished to the Contractor before starting Work. Any omission or failure by the

Contractor to inspect the documents referenced in this paragraph shall not relieve the Contractor of its obligations hereunder.

- 2.10 **Temporary Structures.** The Contractor shall have the sole responsibility for the design, erection, operation, maintenance and removal of temporary structures or facilities which may be required in the performance of the Services. The Contractor shall engage the appropriate registered professional engineering personnel where such temporary structures or facilities are of such a nature that professional engineering skill is required to produce safe and satisfactory results.
- 2.11 **Site Housekeeping and Waste Disposal.** Contractor shall at all times keep the Plant Site free of rubbish and surplus material, shall remove all rubbish and waste material caused by the Work, and shall leave the Plant Site each day in a clean condition. Should Contractor claim that rubbish and scrap materials have not resulted from the Work, the Owner's determination as to the Contractor's responsibility shall be final and binding on Contractor. Should Contractor refuse to comply with Owner's request to clean the Plant Site, Owner may opt to have the work done by others and charge the Contractor.
- 2.12 **Delivery of Data.** The Contractor shall deliver the Data to Owner, for Owner's use, as and when required by the Contract Documents or if not specified, as and when requested by Owner. The Contractor shall deliver both a hard copy and an electronic version of any Data which exists in an electronic format. Without limiting the generality of the foregoing, the Contractor shall provide to Owner a complete set of Drawings depicting any equipment or other facilities in their "as-built" or "as-installed" state, as the case may be. All Drawings provided by the Contractor shall be reproducible by Owner in the manner requested by Owner. Furthermore, the Contractor shall maintain at the Plant Site throughout the performance of the Services for Owner, one copy of any Drawings, specifications, addenda and other instructions in good order and marked to record all changes made during the performance of the Services.
- 2.13 **Conduct of Operations / Noise / Explosives.** The Contractor shall so conduct its operations as to preserve good relations of both Owner and Contractor with the public and shall remove from the Work any employees causing breaches of the peace or other disturbances of said relations. Contractor shall properly maintain and operate its construction equipment as shall be necessary to minimize to the extent possible noise emissions therefrom. In any event, noise levels emitted in the performance of the Work shall not exceed those prescribed by applicable law. Such explosives as may be required for any Work hereunder shall be stored, handled, transported and used as required by local, state and federal regulatory bodies. Primacord shall be used for exploding dynamite. Any employee of Contractor or other person handling explosives must be licensed, as required by applicable statutes and regulations, and must produce evidence thereof to the satisfaction of the Owner, if requested, before performing such Work. The Contractor shall be responsible for all damages caused by the handling and use of explosives.
- 2.14 **Line and Right-of-Way Clearing.** Trimming and clearing of vegetation shall be performed in accordance with Owner's work drawings and specifications (including the "Central Hudson Distribution Line Clearance Program") and in strict conforming with any special provisions appearing in Owner's applicable right-of-way agreements. All Work performed along state highways shall conform to the conditions and regulations of a State Highway Permit to be applied for by the Owner. **Live Line Work.** Contractor shall perform Work on or adjacent to energized conductors or equipment as may be required in the plans or specifications covering the Work. Contractor shall perform such Work while electric lines are energized and operating at voltages up to and including 115,000 volts. Contractor shall comply with Owner's standards for live line work, applicable safety practices, and applicable laws and regulations for conducting live line work, and shall have available an adequate supply of protective equipment for the safe performance of such Work.
- 2.15 **Return of Owner Property.** Within ten (10) days of a written demand by Owner, the Contractor shall, and shall require each Contractor Responsible Party to, deliver to Owner all equipment and other personal property provided by Owner to any Contractor Responsible Party in connection with this Contract. Notwithstanding any provision in this Contract to the contrary, including section 6, and without limiting the preceding sentence or any other right of Owner under the Contract, Owner shall have the right to retain

payment in an amount equal to \$150.00 for each security badge issued by Owner to a Contractor Responsible Party that is not returned within five (5) days of a written demand for such return by Owner.

SECTION 3: OBLIGATIONS OF OWNER

3.1 Owner-Furnished Data.

Owner shall provide or make available to Contractor such data in Owner's possession that is reasonably necessary for Contractor's performance of the Work. Contractor shall be entitled to reasonably rely upon the accuracy, timeliness, and completeness of the information provided by Owner.

3.2 Access to Facilities and Property.

Owner shall make Owner's facilities accessible to Contractor as reasonably required for Contractor's performance of the Work.

3.3 Notice.

Owner shall give notice to Contractor whenever Owner observes or becomes aware of any development that affects the scope or timing of the Work, or of any defect in the work of Contractor or others working under the supervision of Contractor; provided, however, that the failure of Owner to provide any such notice shall not be deemed a default by Owner hereunder nor subject Owner to any liability whatsoever.

SECTION 4: ENVIRONMENTAL MATTERS

4.1 General Environmental Matters.

(1) The Contractor agrees that it shall not cause, allow, suffer, authorize or permit:

- (a) any Contaminants, chemicals or other materials subject to any "Community Right to Know" law or other public disclosure requirement to be brought onto the Plant Site by any Contractor Responsible Party without Owner's prior written consent and without first complying with any applicable statute, ordinance, rule, regulation, reporting or notification requirements;
- (b) any Release or threatened Release which arises or results from or relates to or is attributable to or in any way connected with the provision of the Services or any act or omission of any Contractor Responsible Party, except as authorized by an Environmental Law and as authorized in writing by Owner; or
- (c) any Contractor Responsible Party to conduct any act at the Plant Site in violation of any Environmental Laws.

(2) The Contractor agrees that it shall:

- (a) conduct and shall ensure that each of the Contractor Responsible Parties shall conduct its operations in a manner so as to minimize the potential for or risk of a Release;
- (b) promptly notify Owner and provide details upon it becoming aware of a Release or threatened Release which arises or results from, or relates to, or is attributable to or in any way connected with the provision of the Services or an act or omission of any Contractor Responsible Party; and
- (c) take immediate measures to contain, prevent the migration of and, if possible, clean up, remove or otherwise treat any Release referred to in section 4.1(2)(b) above and co-operate fully with Owner, including taking all actions reasonably requested by Owner in the clean-up or other response action with respect to any such Release.

4.2 Waste Material. The Contractor shall, in compliance with all applicable Laws, collect, handle and dispose of all hazardous and non-hazardous substances and other waste materials generated directly or indirectly in the performance of the Services.

SECTION 5: OCCUPATIONAL SAFETY AND CONTRACTOR EMPLOYEES

5.1 Occupational Safety and Health.

(1) The Contractor acknowledges that the safety and health of all persons at or near the Plant Site is a matter of paramount importance. Accordingly, the Contractor shall develop and implement programs, policies and

procedures pertaining to occupational safety and health matters (including, without limitation, on-site safety, safety orientation, hazard communication, substance abuse and fire prevention) applicable to the provision of the Services (the “Safety and Health Programs”) which are consistent with customary practice and standards in Owner’s industry and which are in compliance with Occupational Safety and Health Laws. The Contractor shall, and shall cause the Contractor Responsible Parties to, comply with all of its Safety and Health Programs and Occupational Safety and Health Laws, including but not limited to obtaining, maintaining and distributing any “Material Safety Data Sheets” for any materials that are used or held at the Plant Site.

- (2) The Contractor shall promptly advise Owner of and provide copies of any Safety and Health Programs or any new, amended or revised Safety and Health Programs which are required by Owner in order to safely and properly co-ordinate the activities of Owner’s employees and any other person, firm or corporation employed by Owner with the activities of the Contractor Responsible Parties or where Owner otherwise requires knowledge of such Safety and Health Programs in order to fulfill its legal obligations. Furthermore, the Contractor shall promptly provide to Owner details of any recordable injury, illness or death at the Plant Site pursuant to Occupational Safety and Health Laws.
- (3) Owner shall have the right but not the obligation, from time to time, to establish reasonable rules and regulations with respect to the performance of the Services or the presence of the Contractor Responsible Parties at the Plant Site, including rules and regulations with respect to occupational safety and health programs or matters, environmental management, emergency response and evacuation, fire prevention, occupational safety and health audits, site security or any Community Right to Know law or other public disclosure requirement under applicable law. The Contractor agrees to comply and to cause the Contractor Responsible Parties to comply with all such rules and regulations.
- (4) The Contractor shall have complete control and responsibility for the safety and health of its employees and all Contractor Responsible Parties while engaged in the performance of the Services at the Plant Site. The Contractor warrants that, in connection with the performance of its obligations under this Contract, the Contractor Responsible Parties have the training, expertise, capability, experience, and means required to provide the Services in compliance with Occupational Safety and Health Laws and its Safety and Health Programs. The Contractor warrants that it is familiar with and understands the Occupational Safety and Health Laws and hazards and potential hazards associated with the performance of the Services at the Plant Site. The Contractor shall be responsible for informing the Contractor Responsible Parties of such Occupational Safety and Health Laws or hazards and notifying Contractor Responsible Parties of any additional Laws or hazards or potential hazards that arise during the performance of the Services.
- (5) The Contractor shall immediately notify Owner in writing and provide reasonable details upon Contractor being served with notice of any investigation, complaint, or inquiry pursuant to Occupational Safety and Health Laws which relates to the provision of the Services.
- (6) The Contractor agrees to immediately correct any condition or circumstance that creates or may create a safety or health hazard to any individual at the Plant Site that was caused or created by and/or is or was within the control of Contractor. The Contractor shall immediately notify Owner in writing of any condition or circumstance which the Contractor believes presents a safety or health hazard either (i) to the employees of any Contractor Responsible Party that Contractor believes it does not have the authority to control or correct, or (ii) to any person and which one or more Contractor Responsible Parties caused or contributed to.
- (7) Nothing in this Contract including, without limitation, the delivery to Owner of the Safety and Health Programs, the making of any site rule or regulation by Owner, the requirement to take any remedial measures or make amendments to the Safety and Health Programs at the request of Owner, the requiring or providing of training hereunder by Owner, or the use by the Contractor of Owner’s site safety training programs, shall:
 - (a) lessen, alter, affect or derogate from the Contractor’s complete control of and the entire responsibility for the safety and health of all the Contractor Responsible Parties and the Contractor’s obligation to comply with all Occupational Safety and Health Laws, which concern, affect or apply to the performance of the Services or the presence of the Contractor Responsible Parties at the Plant Site;

- (b) be deemed to be an assumption by Owner of control over or any responsibility or liability for the Contractor's Safety and Health Programs or for the safety or health of any of the Contractor Responsible Parties; or
- (c) be deemed to create a joint venture, partnership and/or employment relationship between Owner and any of the Contractor Responsible Parties.

5.2 **Contractor's Employees.** The Parties acknowledge and agree that (i) Owner is not a joint or co-employer of any of the Contractor's employees; (ii) the Contractor shall pay and provide all wages, salaries, bonuses, incentive payments, commissions, benefits and all other compensation due to the Contractor's employees and withhold and pay all employment taxes, source deductions and employment insurances (including but not limited to workers' compensation insurance) related to the Contractor's employees; and (iii) the Contractor has the sole authority to interview, test, hire, fire, lay off, train, promote, discipline, direct, manage, schedule, supervise, counsel, govern and assign the Contractor's employees. Notwithstanding the foregoing, the Contractor shall at all times enforce strict discipline and good order amongst its employees and shall not employ any person lacking skill and experience to perform the work assigned.

SECTION 6: INVOICES AND PAYMENTS

- 6.1 **Invoices.** The Contractor shall, no more often than once per week, deliver an invoice to Owner for the Services performed during the previous month. The Contractor shall furnish such additional or supporting documentation including partial and final lien waivers as appropriate) as Owner may request with respect to any invoice. In connection therewith, Contractor shall submit to Owner for Owner's approval (in addition to other submissions required herein), timesheets on a daily basis for all employees performing work, including a detailed list of expenses, as it applies to hourly pricing. All invoices shall be submitted to: Central Hudson Gas & Electric Corporation, 284 South Avenue, Poughkeepsie, New York 12601, Attention: Accounts Payable (with any electronic invoices being sent to AP@cenhud.com).
- 6.2 **Payments.** Payment of each invoice (less any applicable lien or performance holdback prescribed by law or otherwise agreed to and less any amount which Owner is contesting in good faith) shall be due within 30 days of receipt and approval of such invoice by Owner. In the case of the final payment on account of the Contract Price, such payment shall not be due and payable until the expiration of any applicable construction, mechanics' or materialmen's lien periods (or the receipt by Owner from the Contractor Responsible Parties of duly executed and final releases and waivers of all such liens) receipt by Owner of all necessary clearance certificates from any applicable government agency.
- 6.3 **Full Compensation.** Except as otherwise expressly provided in the Contract Documents, the Contract Price shall be the sole payment due from Owner to the Contractor for the performance of the Services and all of the Contractor's obligations under the Contract Documents.
- 6.4 **Responsibility for Taxes.** The Contract Price includes, and Contractor shall have the full and exclusive liability for, the payment of any and all taxes and impositions including, but not limited to, and the Contractor hereby agrees to indemnify and hold the Owner harmless from and against:
- (a) all taxes and assessments which may now or hereafter be imposed by any taxing authority including, without limitation, all sales, consumer use, gross receipts, or other taxes levied with respect to the Work, and
 - (b) taxes and assessments for unemployment insurance, old age benefits, annuities, social security, disability benefits or other purposes which are in whole or in part, measured by and/or based upon the wages, salaries, or other remuneration paid to persons employed by Contractor on Work under the Contract.

The Contractor represents that it has registered or has applied for registration as an employer under federal and state unemployment and social security laws.

- 6.5 **Set off.** Owner may withhold, set-off or deduct from any undisputed amount otherwise payable to the Contractor under this Contract, such amount as Owner deems necessary to reimburse, indemnify or protect Owner from any amount owing by the Contractor to Owner pursuant to this Contract, or for any loss or

damage that may be due to the breach of this Contract by the Contractor in any obligation hereunder or from claims by third parties against Owner in respect of the Services or Inputs. Notwithstanding anything in this Contract to the contrary and without limiting the preceding sentence in any way, Owner reserves the right to retain up to fifteen percent (15%) of any payment due to the Contractor, which shall be paid to the Contractor (subject to any withholding, set-offs or other deductions) only upon the occurrence of all of the following: (i) the Owner has accepted all Work, where “accepted” means Owner’s inspection of the Work within fifteen (15) days after Owner receives written notice of Work completion from Contractor and provides Contractor with a written notice of acceptance (ii) the Contractor has returned and/or accounting for all materials and all equipment of Owner, if any was supplied to Contractor, and (iii) Contractor has met the requirements of these General Conditions.

- 6.6 **Access to Records.** Contractor shall maintain true and correct books, records and accounts with respect to the Services provided under this Contract, along with invoices and monthly summaries, for a period of seven (7) years after Contractor’s final invoice in connection with this Contract is paid. Contractor shall, upon Owner’s request and thirty (30) day’s written notice, make available and permit Owner or its agent to inspect, make copies of, and audit such records for the purposes of confirming the Contractor’s compliance with this Contract, including for the purpose of verifying invoices provided. Contractor shall maintain all such accounting records in accordance with generally accepted accounting principles. The provisions of this Section shall survive the termination of this Contract.

SECTION 7: PASSAGE OF TITLE AND LIENS

- 7.1 **Title and Risk.** The Contractor hereby warrants and agrees that Owner shall obtain good title to any Inputs supplied in the course of performing the Services, free and clear of all liens, charges or encumbrances whatsoever, upon payment for such Inputs less any amounts that Owner is entitled to set-off from such payments under the provisions of this Contract. However, in all cases the Inputs shall remain at the risk of the Contractor in accordance with the provisions of section 2.8 of these General Conditions of Contract. Delivery of all Inputs to Owner shall take place at the Plant Site unless otherwise expressly provided in the Contract Documents.
- 7.2 **Liens.** If Owner should receive written notice of any claim of lien or charge, or if any claim of lien should be recorded, by any Subcontractor, workman or materialman against the estate or interest in any real or personal property of Owner (including the Plant Site), any Inputs, or against any monies then due or to become due to the Contractor under this Contract, the Contractor shall promptly cause such written notice of claim or charge or claim of lien to be discharged and removed or make such other financial arrangements acceptable to Owner so as to fully protect the interest of Owner as Owner may require. Owner shall, after giving at least 5 day’s advance notice to the Contractor of its intention to do so, be entitled to employ any monies then due or to become due to the Contractor under this Contract in order to discharge every such lien, claim or charge by bond or posting of other security (including security for costs), or by paying the amount claimed into court or directly to the lien or charge claimant. Employment of monies to discharge any such lien or charge shall be deemed to be a discharge of Owner’s liability to pay the Contractor the Contract Price, to the extent of the monies so employed.

SECTION 8: WARRANTIES OF THE CONTRACTOR

- 8.1 **Warranties.** In addition to any other warranty or guarantee of the Services or Inputs made or extended by the Contractor elsewhere in the Contract Documents, the Contractor warrants and guarantees to Owner that:
- (a) the Services and Inputs shall be of the quality and shall have the performance capabilities set out in the Contract Documents and will in every other manner meet the requirements of the Contract Documents and shall be fit and suitable for any intended purpose and use expressly set forth in the Contract Documents;
 - (b) the Services and all Inputs and workmanship shall be in accordance with contemporary industry standards and proven technology for use in Owner’s industry;

- (c) if and to the extent the Services are comprised of engineering and design services, all such Services shall be performed in a professional manner and in accordance with first-class contemporary industry standards for the engineering and design of work of a similar nature for use in Owner's industry;
- (d) unless a longer period is specified elsewhere in the Contract Documents and without limiting the generality of any other warranty or guarantee, all Inputs furnished shall be free from defects in material, design or workmanship however caused or arising for a period of 12 months from the completion of the Services or Work and first beneficial use of the Input in question by Owner, excluding normal wear and tear; and
- (e) all computer hardware and software provided as a part of the Services shall at the time of delivery and in all subsequent updates or revisions, (i) be free of any harmful programs or data incorporated into such hardware, firmware or software that disrupts the proper operation thereof or any associated computer hardware, firmware or software, (ii) accurately record, sort, calculate, store, present and process dates and date-related data between the 20th and 21st centuries, in either direction, including leap year calculations when used in its original and unmodified condition, and (iii) perform the functions and meet or exceed the performance criteria for such hardware, firmware or software expressly set forth elsewhere in the Contract Documents.

8.2 Remedy of Defects. Without limiting any other rights or remedies of Owner, the Contractor shall promptly reperform any Services or Inputs found to be in breach of any condition, warranty or guarantee and shall otherwise take such corrective measures as may be required to the end that the said breach of condition, warranty or guarantee shall be promptly rectified, all without charge to Owner. Notwithstanding the expiration of the warranty period described above, the Contractor's warranty obligations shall extend to any defective Services or Inputs of which notice has been given to the Contractor within one month after the expiration of such warranty period. All such remedial, replaced or corrected Services or Inputs provided by the Contractor shall then be warranted for the same period as the original installation. Should the Contractor within 3 days of receipt of written notice of such breach fail to actively and in good faith begin to remedy such non-conformance or fail to diligently thereafter continue to remedy such non-conformance, Owner may at its option and without further notice to the Contractor, in addition to any other remedy available and not in substitution or limitation thereof, perform such work; provided that if it is not commercially prudent to delay remedial measures pending notice to the Contractor, Owner may remedy or commence remedial measures immediately and provide notice to the Contractor as soon as reasonably possible. All remedial work performed by Owner shall be back charged to the Contractor according to Owner's standard cost accounting practices at cost plus 20% for technical supervision and administration.

SECTION 9: INTELLECTUAL PROPERTY

- 9.1 Intellectual Property License.** Subject to the provisions of section 9.3 of these General Conditions of Contract, the Contractor hereby grants to Owner and its affiliates the irrevocable, permanent, royalty-free, non-exclusive license and right of use of all Intellectual Property Rights (including without limitation in any Data) owned or under the control of the Contractor or for which the Contractor has the right to grant such right of use (or where such Intellectual Property Rights are held by a third party, the Contractor undertakes at its expense to obtain and then grant the foregoing license and right of use) necessary or desirable to manufacture, construct, install, use, operate, maintain, repair, replace, upgrade or exploit the Services or Inputs or duplicate any components of the Services or Inputs for use as replacement or spare parts at the Plant Site. Such license or right of use granted to Owner and its affiliates includes the right of Owner to retain third parties (under such obligations of confidentiality as Owner, acting reasonably, deems necessary in order to maintain the confidential nature of any Intellectual Property Right) to employ such rights of use in order to enable Owner to exploit to full advantage the license or right of use granted to Owner pursuant to this section.
- 9.2 No Infringement.** The Contractor shall ensure that neither the performance, supply, use or operation of the Services or Inputs in the manner contemplated in the Contract Documents (nor the maintenance, repair, replacement or upgrading of such Services or Inputs) shall constitute or result in an infringement or violation of any Intellectual Property Right including any law relating thereto. Any royalty, license fee or other charge

arising from or in connection with the performance, supply, use, operation, maintenance, repair, replacement, upgrading or other exploitation of the Services or Inputs or the incorporation or use therein of any article, device, or process which is the subject of any Intellectual Property Right shall be for the account of the Contractor, and the Contractor shall promptly obtain any necessary license and pay all such royalties, license fees and other charges. If Owner is required to pay any such royalty, license fee or other charge, the Contractor shall promptly reimburse Owner therefor.

- 9.3 **Inventions Assigned to Owner.** The Contractor hereby agrees that all right, title and interest in any inventions, discoveries, improvements, computer programs, source codes, software, technologies, designs, innovations, concepts and other improvements (the "Inventions"), and all Data and Intellectual Property Rights in respect of such Inventions, which are developed or are conceived by any Contractor Responsible Party in the course of or in connection with the performance of the Services or Work shall be the sole and absolute property of Owner, unless otherwise agreed to in writing by Owner prior to the development or conceiving of such Invention. The Contractor agrees to inform Owner promptly of all such Inventions. The Contractor agrees that, upon the request of Owner, it shall execute all documents and do all other acts and things necessary or desirable to properly evidence Owner's Ownership in respect of any such Inventions and to protect such Ownership, under applicable legislation.
- 9.4 **No Re-use.** Any Drawings, specifications or other information furnished by Owner shall not be reused by the Contractor, and with the exception of the executed Contract Documents, shall be returned to Owner at the completion of the Services.
- 9.5 **Property of Owner.** Any and all patents, copyrights, mask works, trade secrets, trademarks and other proprietary rights in or related to any property, product, software, programs, hardware or deliverable provided by Owner or made accessible by Owner to Contractor in connection with this Contract are and will remain the exclusive property of the Owner. Any modification or improvement to Owner's product, software, programs, hardware, or deliverable that is based on this Contract shall be the exclusive property of the Owner. Contractor shall not take any action that jeopardizes Owner's proprietary rights nor shall Contractor acquire any right in any such product, software, program, hardware or deliverable or the Owner's other confidential information.

SECTION 10: TERMINATION

- 10.1 **Owner May Cure Contractor's Breach.** If the Contractor is in breach of this Contract in the performance of any of its obligations under this Contract, Owner may perform or cause to be performed such obligations or any part thereof. All expenses incurred and expenditures paid by Owner in this regard, including reasonable attorneys' fees, shall be paid by the Contractor to Owner upon demand.
- 10.2 **Termination by Either Party for Breach.** In addition to any other rights and remedies which it may have, either party may terminate this Contract with thirty (30) days' written notice and the performance of the Services or any part thereof because of the breaching party's failure to comply with any of the terms or conditions of this Contract (including but not limited to late delivery of Inputs, late performance of Services, delivery of Inputs which are defective or which do not conform with this Contract, and failure to provide Owner, upon request, with reasonable assurances of future performance, non-payment after 10 days' written notice and demand).
- 10.3 **Termination by Either Party for Convenience.** Either party may, at any time, terminate this Contract and the performance of the Services without cause at its sole option by giving sixty (60) days' written notice to the other party to that effect. Upon termination of this Contract by Owner without cause, Owner shall reimburse the Contractor for any portion of the Contract Price earned prior to the effective date of the notice of termination together with any actual direct costs resulting from such cancellation, less the reasonable recoverable value in respect of any Inputs or partially completed Inputs which the Contractor could reasonably obtain from a third party. Upon termination of this Contract by Contractor, Contractor shall provide reasonable transition services for up to ninety (90) days at the rates designated on the rate schedule.
- 10.4 **Limitation of Owner's Liability.** Except as otherwise expressly set forth in this Contract, in no event shall Owner be liable to the Contractor for any loss or damages related to, occasioned by, arising out of, resulting

from or attributable to any termination of this Contract or any termination by Owner of the employment of the Contractor as to all or any portion of the Services in whole or in part (including, without limitation, loss of profit, loss of revenue or loss of anticipated business or consequential, exemplary or punitive damages). Additionally, in no event shall Owner be liable for any penalties or fines in any amount or of any nature or description.

SECTION 11: INDEMNIFICATION

11.1 Contractor Indemnity. To the fullest extent permitted by law, the Contractor assumes liability for and agrees to indemnify, defend (at option of Owner) and hold harmless the Owner Indemnified Parties from and against any claims, liabilities, damages, fines, penalties, losses, judgments, charges, costs, expenses (including reasonable attorneys' fees), assessments, and causes of action, of every kind or character (whether just or unjust), including but not limited to claims involving personal injury (including death to any employee or other person), or damage to property (either real, personal or otherwise), or otherwise, that either directly or indirectly arise out of or relate to the performance by the Contractor Responsible Parties of this Contract, the Work or Services, the use by the Contractor Responsible Parties of the Owner's property (both real and personal), any labor, materials, Inputs and equipment furnished by Contractor Responsible Parties, or any representation or warranty made by Contractor in any Contract Document. Additionally, the Contractor agrees to assume all liabilities, attorneys' fees and other costs incurred by Owner Indemnified Parties arising out of their efforts to enforce the indemnification provisions of this Section.

The indemnification obligations of Contractor provided for herein shall apply irrespective of any partial or contributed negligence or alleged partial or contributed negligence of Owner, except to the extent, if any, that the provisions of Section 5-322.1 of the New York General Obligations Law require otherwise. Contractor shall nevertheless remain liable hereunder on account of the negligence of a party other than Owner whether or not Owner is partially negligent.

The indemnification obligations of Contractor provided for herein shall in all events survive performance of the other obligations of Contractor under this Contract and shall survive termination of this Contract for any reason for a period of one (1) year or until an Order issued by a Court of Regulator of competent jurisdiction. Such indemnification shall also include any claims arising under right-of-way agreements, licenses or any other forms of contracts or permits which Owner has relating to the property upon which the Work or Services to be done hereunder are performed.

11.2 Notwithstanding any term or provision in the Contract Documents to the contrary, including but not limited to this Section 11, the Parties acknowledge and agree that, prior to entering into and/or performing any work within or adjacent to a Dutchess County right of way, each Contractor Responsible Party shall comply with all of the terms and provisions set forth in the Attachment "Dutchess County ROW Requirements" dated August 8, 2016 (DCROW). The Parties also acknowledged and agree that, immediately upon a written request from Owner, each Contractor Responsible Party shall provide proof, in form acceptable to Owner that each Contractor Responsible Party is in compliance with the terms and provisions of DCROW Attachment. The determination of whether or not a Contractor Responsible Party is performing work within a Dutchess County right of way and/or if a Contractor Responsible Party is in compliance with DCROW Attachment shall be at the sole discretion of Owner. This section 11.2 is not intended to, and shall not be deemed to, relieve or excuse any Contractor Responsible Party from any obligation under any other term or provision in the Contract Documents.

11.3 Owner Indemnity. To the fullest extent permitted by law, Owner assumes all liability for and agrees to indemnify, defend (at option of Contractor) and hold harmless the Contractor Indemnified Parties from and against any and all claims, liabilities, damages, fines, penalties, losses, judgments, charges, costs, expenses (including reasonable attorneys' fees), assessments, and causes of action, of every kind or character (whether just or unjust), including but not limited to third party non-governmental claims involving personal injury (including death to any employee or other person), or damage to property (either real, personal or otherwise),

or otherwise, that either directly or indirectly arise out of or relate to the performance by the Owner Responsible Parties of this Contract, the Work or Services, the use by the Owner Responsible Parties of the Owner's property (both real and personal), any labor, materials, Inputs and equipment furnished by Owner Responsible Parties, or any representation or warranty made by Owner in any Contract Document. Additionally, the Owner agrees to assume all liabilities, attorneys' fees and other costs incurred by Contractor Indemnified Parties arising out of their efforts to enforce the indemnification provisions of this Section.

SECTION 12: GENERAL PROVISIONS

12.1 Rights and Remedies. Except as otherwise expressly provided in this Contract, the rights and remedies of the parties specified in this Contract are cumulative and are not exclusive of any other rights or remedies which the parties would otherwise have.

12.2 Independent Contractor. The Contractor shall be an independent contractor and not an agent, employee, partner, or representative of Owner. Nothing contained in this Contract shall create any partnership, association, special employment relationship or joint venture between Owner and the Contractor or any Contractor Subcontractor, or any contractual relationship between Owner and any Contractor Subcontractor, nor an employment relationship, general, special or otherwise, between Owner and any employee of a Contractor Responsible Party.

12.3 Survival of Covenants, Representations and Warranties. The warranties and guarantees contained in Section 8 hereof, the indemnification provisions contained in Section 11 hereof, the insurance provisions, coverage and requirements set forth in Article 6 of the Contract, and all other covenants, agreements, indemnities, conditions, representations and warranties of the Contractor contained in this Contract which by their nature, impliedly or expressly, involve performance or survival in any particular after completion of the Services or after payment in full of all amounts due under this Contract shall, subject to any express limitation set forth in the Contract Documents, survive consummation for a period of one (1) year or until an Order issued by a Court of Regulator of competent jurisdiction (i) all the transactions constituting completion of the Services, (ii) payment in full of all amounts due under this Contract, and (iii) any investigation, approval or consent at any time made by or on behalf of Owner. The foregoing shall also survive any termination, expiration or cancellation of this Contract in accordance with the terms hereof.

12.4 Waiver by Owner.

- (1) Owner may waive in whole or in part satisfaction by the Contractor of any of Contractor's obligations, undertakings, covenants, representations or warranties made in favor of Owner. No waiver by Owner of any provision of this Contract, nor consent by Owner to any departure therefrom, shall in any event be effective unless and until it is signed by an officer of Owner, and then shall be effective only in the specific instance and for the purpose for which it is given. No failure or delay on the part of either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or exercise of any other right, power or privilege.
- (2) No (i) review and approval made or given by Owner hereunder; (ii) order, instruction, representation, extension, advice given, comment, interpretation, determination, decision, review or check by Owner; (iii) payment by Owner; or (iv) inspection, rejection, examination or test conducted by Owner; shall operate as an acceptance of the Services or Inputs or any part thereof or operate as a waiver of any right, remedy, power or privilege of Owner hereunder or relieve the Contractor from any of its obligations under the Contract Documents or in any way or to any extent modify, derogate from, release, waive, terminate or otherwise affect the warranties or obligations or any other covenant or undertaking of the Contractor whether in contract or in tort.

12.5 Confidentiality.

- (1) **Obligation to Maintain Information as Confidential.** The Contractor agrees that it shall strictly maintain the confidentiality of all information and data disclosed hereunder or in the performance of this Contract, or

such other information and data so designated by the Owner as Confidential Information. It is understood and agreed by the Contractor that information relating to the Owner's business, operations, customers, employees or any assets is considered to be Confidential Information and shall not be disclosed to third parties under this Contract. The Contractor agrees that the terms and conditions of this Contract in its entirety shall be considered Confidential Information.

- (2) **Limited Use.** The Contractor agrees that all access to the Owner's Information Technology assets are solely provided to the Contractor for use in performance of Work performed under this Contract. Any other use is strictly prohibited and shall be cause for termination and applicable penalty as stated in this Contract. The Contractor shall not permit use of any such access capability by anyone other than those authorized in advance by Owner. Furthermore, the Contractor agrees to abide by all other Owner computer usage and security guidelines that are provided at the time the Contractor is provided access or otherwise.
- (3) **Confidential Documents and Software.** Contractor acknowledges that the Contractor Responsible Parties may, in the course of performing their responsibilities under this Contract, discover, encounter, have access to or otherwise acquire information that is confidential to Owner, its employees or customers. Any and all information by Owner that is provided by Owner or on Owner's behalf to the any Contractor Responsible Party in the connection with this Contract shall be deemed to be "Confidential Information." Any reports or other documents or items (including but not limited to software) that contain or are based, in whole or in part, upon Confidential Information shall be treated in the same manner as the Confidential Information. Confidential Information shall not include information that (a) is or becomes publicly known (other than by disclosure by Contractor); (b) is furnished by Owner to third parties without restrictions similar to those imposed by this Contract; (c) was rightfully and properly in Contractor's possession, without Contractor being subject to covenants of confidentiality and nondisclosure, prior to the time of its disclosure by the Contractor; (d) is obtained by the Contractor from a source other than Owner, without the Contractor being subject to covenants of confidentiality and nondisclosure; or (e) is independently developed by a Contractor Responsible Party without any independent access to any Confidential Information.
- (4) **Return or Destruction of Confidential Information.** Contractor shall securely store and maintain the Owner's Confidential Information until such Confidential Information is returned to Owner or destroyed as described in this Section. Except as otherwise specified herein, Contractor shall destroy all documentation in any medium that contains or refers to the Owner's Confidential Information (or the portion of such Confidential Information specified by the Owner) or shall return such documentation to the Owner or its designee, in the format and on the media maintained by Contractor or as requested by Owner or as specified in this Contract (i) within thirty (30) days of the expiration or termination of this Contract and/or completion of Contractor's obligations hereunder; or (ii) within ten (10) days of Owner's request to return to Owner or destroy such Confidential Information; or (iii) within thirty (30) days of the date on which such Confidential Information is no longer required by Contractor to perform its obligations under this Contract. Owner shall determine in Owner's sole and absolute discretion regarding whether or which Confidential Information shall be returned to Owner or destroyed by Contractor. Within ten (10) days of a written demand from Owner, Contractor shall provide to Owner a written certification, signed by an authorized representative of Contractor and in a form acceptable to Owner, confirming that Contractor complied with written instructions of Owner with respect to the return or destruction of the Confidential Information which is identified in the Owner's written demand.
- (5) **Non-Disclosure.** Contractor agrees to hold Confidential Information in strict confidence, and Contractor shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties, or use Confidential Information for any purposes whatsoever other than in the normal and customary course of undertaking the Work or Services provided for in this Contract, and Contractor shall advise each Contractor Responsible Party of the obligations to keep Confidential Information confidential. Contractor shall use its best efforts to assist Owner in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Owner immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms

of this Contract and Contractor shall at its expense cooperate with Owner in seeking injunctive or other equitable relief in the name of Owner, or Contractor against such person. Contractor agrees that, except as directed by Owner, Contractor shall not at any time during or after the term of this Contract disclose, directly or indirectly, any Confidential Information to any person, except in accordance with the express terms and provisions of this Contract, and that upon termination of this Contract or at any other time at Owner's request, Contractor will deliver or turn over to Owner all documents, papers, and other matter in Contractor's possession that constitutes Confidential Information. The above obligation shall not extend to Confidential Information which is required to be disclosed by court order or subpoena, provided the Contractor first gives Owner at least five (5) business days prior notification of such disclosure so that Owner has an opportunity to make a timely objection to the validity of the court order/subpoena.

- (6) **Equipment and Network Security.** If access to Owner's computer systems, other equipment or personal property ("Owner's Systems") is required in order for Contractor to fulfill its obligations to Owner pursuant to this Contract, then Owner shall determine the nature and extent of such access. If Owner provides Contractor with remote access to Owner's Systems, then any and all information generated by or relating to such remote access shall be considered Owner's Confidential Information and shall be subject to the obligations of confidentiality set forth in Sections 12.5(1) through (5) above. In addition, any and all access to and use of Owner's Systems shall be subject to the following:
- Owner's Systems shall be used solely to perform the Services for Owner, and such Systems shall not be used for any purpose other than as provided for in this Contract.
 - Access to Owner's Systems shall be restricted to Contractor's employees who need access in order for Contractor to fulfill its Services and obligations under this Contract; which employees shall be identified to and approved by Owner prior to such access; and no access rights will be granted or transferred to any other individuals without the prior written consent of Owner.
 - Contractor will ensure that its employees do not attempt to decode, break, bypass or otherwise circumvent Owner's or an Owner's affiliate's security system, or attempt to obtain access to any programs or data beyond the scope of the access granted by Owner in writing.
 - Contractor will ensure that it maintains, during the term of the Contract, current versions of anti-virus/malware software.
 - Without limiting any of its other rights, Owner reserves the right to restrict and monitor the use of Owner's Systems, and Owner shall have the right to access, seize, modify, copy and disclose any information, data or files developed, processed, transmitted, displayed, reproduced or otherwise accessed in conjunction with such use. Owner may exercise its rights reserved hereunder: (i) to verify the performance of Services or the quality of deliverables provided for in this Contract; (ii) to assure compliance by any and all Contractor Responsible Parties with Owner's policies and procedures; (iii) to investigate conduct that may be illegal or may adversely affect Owner, any company affiliated with Owner or its or their employees; or (iv) to prevent inappropriate or excessive personal use of Owner's Systems. Contractor will advise its Contractor Responsible Parties concerning the Owner's rights reserved hereunder.
- (7) **Contractor's Personnel.** Contractor shall (if requested by Owner at any time before or during the term of this Contract) furnish to Owner information providing or substantiating the qualifications of any individual who Contractor intends to assign, or has assigned, to work pursuant to this Contract. Owner shall be entitled to review such information in order to confirm the qualifications. After an individual has been assigned to work pursuant to this Contract, Contractor will not reassign such individual in connection with any assignment other than pursuant to this Contract without the prior written consent of Owner, which shall not be unreasonably withheld. In addition, Contractor shall assign its employees or agents to projects pursuant to this Contract in a manner that minimizes disruptions caused by the need for reorientation. Contractor further warrants and represents that Contractor's employees or agents will not hold themselves out as employees or agents of Owner, nor seek to be treated as employees of Owner for any purpose, including claims of entitlement to fringe benefits provided by Owner, or for disability income, social security taxes or benefits, Federal unemployment compensation taxes, State unemployment insurance benefits or Federal

income tax withholding at source. Contractor shall file all applicable tax returns for all of its employees and other personnel assigned hereunder in a manner consistent with its status as an independent contractor of services; and Contractor will make all required payments and deposits of taxes in a timely manner. **To the fullest extent permitted by law, Contractor agrees to indemnify, defend and hold Owner Indemnified Parties harmless from and against any claims, damages, liabilities, penalties, judgments, costs or expenses (including but not limited to attorneys' fees and disbursements) arising directly or indirectly from any breach of or noncompliance with any representation, covenants or provision contained in this paragraph by any Contractor Responsible Party.**

- (8) **Criminal and Credit Check Option.** Based on the nature or scope of the Services, Owner may require Contractor to conduct a criminal background check (at Contractor's expense) of one or more Contractor Responsible Parties as a condition for performing Services. If requested by Owner, Contractor shall provide a copy of such pre-employment criminal background check to Owner for any such employee. At a minimum, the background check shall include a seven (7) year criminal history check for all Contractor's employees. Be conducted in accordance with 49 CFR Part 199, Subpart B and CFR 40 regulations. All results from background checks, finger printing and drug testing and any other similar procedures applicable to Contractor employees and agents shall be deemed the confidential information of Contractor. Contractor represents and warrants that it will not assign any Contractor Responsible Party to perform Services who it knows or who the background check reveals to have been convicted of (1) any felony (or comparable offense if convicted in a foreign country), (2) any misdemeanor involving a controlled substance or a violent act or an act of dishonesty for which the record has not been sealed or expunged (or comparable offense in any foreign country) or (3) any illegal drug use. If Owner, in its sole and absolute discretion, objects to the assignment of any Contractor Responsible Party on the basis of the employee's criminal history record information, Contractor agrees to discontinue using that Contractor Responsible Party to provide Services for Owner.

Any background check shall be conducted at the Contractor's expense.

- (9) **Code of Conduct.** The Contractor shall, and shall cause the Contractor Responsible Parties to, perform the Services in an ethical manner, which shall, at a minimum, require compliance by the Contractor Responsible Parties with the following (the "Code of Conduct"):

- (a) Contractors are required to disclose to Owner any situation that is or may appear to be a conflict of interest in connection with the execution and performance of this Contract, including any pending or potential litigation.
- (b) Contractors shall not give to Owner or any of Owner's employees nor accept from Owner or any of Owner's employees any personal fees, gifts, favors, other personal compensation or business courtesies that are intended to influence, or appear to influence any decisions related to their Contract with Owner (this provision does not include any consideration expressly stated in this Contract for Work or Services provided by Contractor to Owner under this Contract).
- (c) Contractor's financial books, records and accounts shall accurately reflect and represent the performance of this Contract, payments provided for herein, and underlying activities and shall conform to generally accepted and industry recognized accounting principles and internal controls.
- (d) Contractor shall treat its employees as well as Owner's employees fairly and with respect. Contractor shall provide a safe and healthy working environment. Contractor shall comply with all applicable employment, labor and human rights laws including, but not limited to, those associated with Equal Opportunity and Non-Discrimination, Child Labor, Forced or Compulsory Labor, Working Hours, Wages and Benefits, Freedom of Association, Health & Safety, and Harassment-Free Work Environment.
- (e) Contractor Responsible Parties shall comply with all applicable industry recognized safety and occupational health laws and standards and practices in the performance of their work.

Notwithstanding anything in the Contract Documents to the contrary, to the fullest extent permitted by law, Contractor shall indemnify, defend and hold Owner Indemnified Parties harmless from and against any and claims, liabilities, damages, fines, penalties, losses, judgments, charges, costs, expenses

(including reasonable attorneys' fees), assessments, and causes of action arising either directly or indirectly from an alleged and/or actual failure by any Contractor Responsible Parties to comply with the requirements set forth in this Code of Conduct.

- (10) **Clean Desk Policy.** Contractor shall maintain and enforce a "Clean Desk" policy, the purpose of which is to avoid the inadvertent disclosure of any Confidential Information, including the personally identifiable information (the "PII") of any customer or employee of the Owner. At a minimum the following guidelines shall be met by the Contractor Responsible Parties:

- (a) At the end of each work day and at any time during the workday when an employee is not at his or her desk, each employee of Contractor Responsible Parties shall remove all PII and Confidential Information from their desk tops and/or any other area in which any PII and Confidential Information may be at risk of disclosure.
- (b) All PII and Confidential Information shall be maintained and stored in a secure location that is not readily accessible to third parties, including employees of Contractor Responsible Parties who are not authorized to access such Confidential Information or PII. Confidential Information and PII shall be locked securely in desks, filing cabinets or designated secure rooms at all times, other than when such information is being properly used for the purposes of this Contract.
- (c) Computer workstations shall be locked when any such workstation is unoccupied.
- (d) Computer workstations shall be shut completely down at the end of each work day.
- (e) Keys used for access to PII and Confidential Information shall not be kept or left in or on an unattended desk.
- (f) Unattended laptops that contain PII and Confidential Information shall either be locked with a locking cable or locked away in a drawer.
- (g) Passwords to computers that contain PII and Confidential Information shall be stored in a secure location and disclosure of such passwords shall be limited to only those employees of Contractor that are authorized to access PII and Confidential Information.
- (h) Printouts or faxes containing any PII and Confidential Information shall be immediately removed from the printer.
- (i) No PII and Confidential Information shall be disposed of other than pursuant to section 12.5 (4) hereof.

- (11) **Contractor Responsible Parties' Obligation to be Aware of and Comply with Certain Owner Policies.** From time to time, Owner adopts or amends its policies relating to Confidential Information, Confidential Documents and Software, Return or Destruction of Confidential Information, Non-Disclosure, Equipment and Network Security, Contractor's Personnel, Criminal and Credit Check Option, Code of Business Conduct and Ethics, Clean Desk Policy, and Physical Security; copies of such policies are available at Owner's website at: www.cenhud.com, "Working with Us", and are incorporated herein by reference, in such forms as are effective from time to time. During the term of the Contract, the Contractor shall, and shall cause the Contractor Responsible Parties to, maintain current knowledge of the terms of each such policy and to comply with each such policy. Without limiting the obligation set forth in the preceding sentence, Contractors shall, and shall cause the Contractor Responsible Parties to, provide privacy and cyber security awareness training (which shall include topics relating to cyber security contained in any Owner policy) to each of its employees who are involved in any way with performing Services under with Contract prior to performing such Services, and shall furnish to Owner evidence of having provided such training within ten (10) days of a written request by Owner.

- 12.6 **Successors and Assigns.** This Contract shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns, as the case may be. The Contractor shall not assign this Contract or any part hereof or any benefit or interest in this Contract without the prior written consent of the Owner except that assignment without Owner's consent may occur for a substantial change in ownership of Contractor where Contractor notifies Owner within ninety (90) days if there is any substantial change in its

ownership. Any attempted assignment in violation of this provision shall be null and void. For the purposes of this Contract, “assign” means any transfer by any means whatsoever of all or any part of or interest in this Contract including, without limitation, transfer by assignment, mortgage, pledge, encumbrance, or subcontract, sale, merger, consolidation or substantial change in Ownership of the Contractor’s business (whether voluntary or involuntary).

12.7 **Notices.** Any notice or communication under this Contract will be effective only if it is in writing and delivered in person, by overnight courier service, or by email confirmed by the addressee, or by facsimile transmission, or mailed by registered or certified mail (return receipt requested, postage prepaid) to the addressee’s address set forth in this Contract or to such other address as the addressee may designate to the sender from time to time. All notices and communications will be deemed given when delivered in person or by overnight courier service, three (3) days (excluding Saturday, Sunday, federal holidays) after mailing if mailed, or one (1) day (excluding Saturday, Sunday, federal holidays) after sending by facsimile transmission or by email if confirmation is received by the addressee. Any Notice to Owner shall be directed to the Attention of Contracts Administrator of Central Hudson Gas & Electric Corporation, 284 South Avenue, Poughkeepsie, New York 12601.

12.8 **Legal Costs.** If a legal action, suit, proceeding or arbitration is brought by either party against the other or by any third-party against either party hereto for liability, indemnification or claims for damages, default, injunction or otherwise, then the successful party shall be entitled to recover, as part of its damages, its reasonable attorneys’ fees, legal costs and expenses (including court costs) for bringing, maintaining or defending any such action, suit or arbitration.

12.9 **Force Majeure.**

- (1) Neither party hereto shall be liable to the other for a failure or delay in the performance of any of its obligations hereunder due to an Event of Force Majeure, if such performance would become commercially impractical due to such Event of Force Majeure. For the purposes of this section “Event of Force Majeure” means fire, flood or other unusually severe weather conditions, insurrection, riots, strikes, an act of an enemy, an act of God, pandemics or epidemics, an act of a regulatory or governmental authority that has jurisdiction over the Excused Party or any other similar cause reasonably beyond the control of such party.
- (2) If a party (in this section called the “Excused Party”) fails to fulfill its obligations under any section of this Contract because of an Event of Force Majeure, the Excused Party shall (i) immediately give notice to the other party of the occurrence of such Event of Force Majeure; (ii) use its best efforts to eliminate such Event of Force Majeure; (iii) immediately give notice to the other party when such Event of Force Majeure has been eliminated or has ceased to prevent the Excused Party from fulfilling such obligations; (iv) proceed to fulfill such obligations as soon as reasonably practicable after such Event of Force Majeure has been eliminated or has ceased to prevent the Excused Party from fulfilling such obligations; and (v) use its best efforts to fulfill its obligations to the extent that it is possible to do so notwithstanding the existence of such Event of Force Majeure.
- (3) During any period that the Contractor’s ability to supply the Services or Inputs is interrupted or reduced due to an Event of Force Majeure in accordance with this section 12.9 (the “Event of Force Majeure Period”), Owner shall not be required to pay any portion of the Contract Price. If, during any such Event of Force Majeure Period, the Contractor is able to provide partial Services or Inputs to Owner, the Parties shall mutually agree on an equitable method of compensating the Contractor for such partial Services or Inputs. If, however, the Parties are unable to reach an agreement, the method of compensating the Contractor shall be such reasonable amount and terms as determined by Owner.

12.10 **No Third-Party Beneficiaries.**

This Contract gives no rights or benefits to anyone other than Owner and Contractor. There are no third-party beneficiaries.

12.11 No Presumption.

This Contract was mutually negotiated by the Parties and reflects their individual input and agreement. As a consequence, there shall be no inference or presumption raised regarding the interpretation of any provision or provisions contained herein against the drafter of this Contract.

12.12 Insurance.

Contractor shall at all times procure, maintain and comply with all insurance coverage requirements as set forth in the Contract.