



APPENDIX D
GENERAL PROVISIONS FOR TECHNICAL & CONSULTING SERVICES
COLUMBIA GENERATING STATION

| | | |
|-------|--|----|
| GP-1 | DEFINITIONS..... | 2 |
| GP-2 | ORDER OF PRECEDENCE..... | 2 |
| GP-3 | EXECUTION AND INTENT..... | 3 |
| GP-4 | INDEPENDENT CONTRACTOR..... | 4 |
| GP-5 | TIME AND SCHEDULE..... | 4 |
| GP-6 | KEY PERSONNEL..... | 5 |
| GP-7 | LABOR AND PERSONNEL..... | 5 |
| GP-8 | ROYALTIES, PATENTS, AND LICENSES..... | 6 |
| GP-9 | OVERTIME CONTROL..... | 6 |
| GP-10 | APPROVAL OF CONTRACTOR PROCEDURES..... | 7 |
| GP-11 | COMPLIANCE WITH PROCEDURES..... | 7 |
| GP-12 | INDEMNIFICATION..... | 7 |
| GP-13 | INSURANCE PROVIDED BY THE CONTRACTOR..... | 9 |
| GP-14 | DISCOVERY OF CONFLICTS, ERRORS, OMISSIONS OR DISCREPANCIES..... | 10 |
| GP-15 | SUBCONTRACTS..... | 10 |
| GP-16 | LAWS AND REGULATIONS..... | 11 |
| GP-17 | TERMINATION BY ENERGY NORTHWEST FOR CAUSE..... | 11 |
| GP-18 | TERMINATION BY ENERGY NORTHWEST FOR CONVENIENCE..... | 12 |
| GP-19 | ASSIGNMENT OF SUBCONTRACTS..... | 13 |
| GP-20 | TECHNICAL REPRESENTATIVE..... | 13 |
| GP-21 | CHANGES..... | 13 |
| GP-22 | CLAIMS PROCEDURE..... | 14 |
| GP-23 | APPLICABLE LAW AND DISPUTES..... | 15 |
| GP-24 | AUDITS..... | 15 |
| GP-25 | COMPLETION AND ACCEPTANCE..... | 15 |
| GP-26 | PAYMENTS..... | 16 |
| GP-27 | TAXES..... | 17 |
| GP-28 | TITLE AND RISK OF LOSS..... | 18 |
| GP-29 | TESTS AND INSPECTION..... | 18 |
| GP-30 | WARRANTIES..... | 19 |
| GP-31 | PAYMENTS WITHHELD, BACKCHARGE, AND SET-OFF..... | 21 |
| GP-32 | LIMITATION OF DAMAGES..... | 22 |
| GP-33 | SAFETY, HEALTH AND FIRE PROTECTION..... | 22 |
| GP-34 | RADIATION PROTECTION..... | 23 |
| GP-35 | FITNESS FOR DUTY..... | 23 |
| GP-36 | SECURITY..... | 26 |
| GP-37 | ACCESS AUTHORIZATION..... | 26 |
| GP-38 | INSURANCE PROVIDED BY ENERGY NORTHWEST..... | 27 |
| GP-39 | PARTS, MATERIALS, AND EQUIPMENT..... | 28 |
| GP-40 | TOBACCO CONSUMPTION/USE..... | 29 |
| GP-41 | PROJECT MANAGEMENT STATUS AND COST REPORTING..... | 29 |
| GP-42 | ENVIRONMENTAL PROGRAM REQUIREMENTS..... | 29 |
| GP-43 | RESTRICTIONS ON THE USE OF FORMER ENERGY NORTHWEST EMPLOYEES AND NON-SOLICITATION..... | 30 |
| GP-44 | EMPLOYEE CONCERNS PROGRAM..... | 31 |
| GP-45 | NOTICES..... | 32 |
| GP-46 | RESTRICTIONS ON THE USE OF ENERGY NORTHWEST NAME, LOGO OR SERVICE MARKS..... | 32 |
| GP-47 | PUBLIC DISCLOSURE..... | 32 |
| GP-48 | NONDISCLOSURE..... | 32 |
| GP-49 | ENTIRE AGREEMENT..... | 33 |
| GP-50 | ASSIGNMENT..... | 33 |
| GP-51 | SUCCESSORS AND ASSIGNS..... | 33 |
| GP-52 | SEVERABILITY..... | 33 |
| GP-53 | WAIVER..... | 33 |
| GP-54 | SURVIVAL..... | 33 |
| GP-55 | CONSTRUCTION..... | 34 |
| GP-56 | HEADINGS AND CAPTIONS..... | 34 |
| GP-57 | COUNTERPART ORIGINALS; FAXED OR EMAILED SIGNATURES..... | 34 |
| GP-58 | EXPORT CONTROL CLAUSE..... | 34 |

GP-1 DEFINITIONS

In addition to those terms that are defined or described in the applicable, specific General Provisions or elsewhere in the Contract Documents, the following terms, when used with initial or complete capitalization, whether in singular or in plural, have the following defined meanings.

- 1.1 "Amendment or Change Order" means a written instrument signed by Energy Northwest and Contractor stating their agreement upon all of the following: (1) a change in the Work; (2) the amount of the adjustment in the Contract Sum, if any, and (3) the extent of the adjustment in the Contract Time, if any.
- 1.2 "Claim" means Contractor's exclusive remedy for resolving disputes with Energy Northwest regarding the terms of a Modification or a request for equitable adjustment.
- 1.3 "Contract" or "Contract Documents" may include Technical & Consulting Services Contract, Basic Ordering Agreement, Amendments, Appendices, Technical Specifications, Releases, Drawings, Instructions for Bidders or Offerors, completed Bid Form, technical and other data furnished with RFP or bid, and other special forms.
- 1.4 "Contract or Release Sum" is the total amount payable by Energy Northwest to Contractor, for performance of the Work in accordance with the Contract Documents, including all taxes imposed by law and properly chargeable to the Work, except Washington State sales tax.
- 1.5 "Contract or Release Time" is the number of calendar days allotted or the specified term set forth in the Contract Documents for performing and completing the Work.
- 1.6 "Owner" is Energy Northwest, a municipal corporation and joint operating agency of the State of Washington.
- 1.7 "Owner's Equipment" means equipment, materials, components and items of any kind owned by Energy Northwest for which Contractor is to provide Work under this Contract or Release.
- 1.8 "Protected Area" means an area encompassed by physical barriers at the Columbia Generating Station and to which access is controlled in accordance with 10 CFR 73.55.
- 1.9 "Release or Work Release Order" means an additional executed bilateral agreement that may be included as part of the Contract Documents. Releases shall be valid only to specify the scope of the Work, compensation method, price, time of performance and other details necessary to describe the scope of Work, but shall in no way change, amend, supersede or supplement the other terms and conditions of the Contract.
- 1.10 "Subcontract" means a contract entered into by a Subcontractor of any tier for the purpose of obtaining supplies, materials, equipment, or services of any kind for or in connection with the Work.
- 1.11 "Subcontractor" means any individual, firm, corporation or other business entity having a contract with the Contractor, or with a subcontractor of any tier, for the performance of any part of the Work.
- 1.12 Technical Representative means the employee designated by Energy Northwest as its representative during the progress of the Work.
- 1.13 "Work" means the performance of any and all obligations, duties and responsibilities specified in the Contract Documents including the furnishing of all technical direction, labor, materials, equipment, or other goods or services and other items required by the Contract Documents.
- 1.14 "Work Site" or "Site" means the location at which the Work, equipment or services furnished by the Contractor will be completed or delivered.

GP-2 ORDER OF PRECEDENCE

Any conflict or inconsistency in the Contract Documents shall be resolved by giving the documents precedence in the following order:

- 2.1 Contract Amendment(s), if applicable;
- 2.2 Contract Release(s), if applicable;
- 2.3 Contract and any appendices;
- 2.4 Statement of Work;

- 2.5 Special Provisions;
- 2.6 General Provisions;
- 2.7 Technical Specifications;
- 2.8 Contract Drawings, if applicable;
- 2.9 Instructions to Bidders or Offerors as provided in the procurement request; and,
- 2.10 Technical and Other Data furnished with the procurement request.

GP-3 EXECUTION AND INTENT

Contractor makes the following representations to Energy Northwest:

- 3.1 **Organization and Qualification.** Contractor is duly organized, validly existing, and is in good standing under the laws of the State of Washington, and any other jurisdiction wherein the failure to be in good standing could have a material adverse effect, directly or indirectly, on its financial conditions or on its ability to perform the Work or its obligations under this Contract, and has the lawful power to engage in the business it presently conducts and contemplates conducting. It is duly licensed or qualified in each jurisdiction necessary for the performance of the Work or its obligations under this Contract and each other jurisdiction wherein the failure to be licensed or qualified could have a material adverse effect on it or the performance of the Work or its obligations under this Contract;
- 3.2 **Power and Authority.** Contractor has full power and authority to execute and deliver this Contract and to perform its obligations hereunder and all such actions have been duly authorized by all necessary proceedings on its part;
- 3.3 **Professional Skills.** Contractor has thoroughly familiarized itself with all requirements of this Contract regarding the Work and has all the required authority, ability, skills, experience and capacity necessary to perform, or cause to be performed, and shall diligently perform, or cause to be performed, all aspects of the Work in a timely and professional manner, and as necessary, utilizing sound project management procedures and supervisory procedures, all in accordance with this Contract;
- 3.4 **Enforceable Contract.** Contractor has duly and validly executed and delivered this Contract, which constitutes a legal, valid and binding obligation of Contractor, enforceable in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity;
- 3.5 **No Conflict.** The execution, delivery and performance by Contractor of this Contract will not conflict with or cause any default under: (a) its organizational documents; (b) any indenture, mortgage, chattel mortgage, deed of trust, lease, conditional sales contract, loan or credit arrangement or other agreement or instrument to which Contractor is a party or by which it or its properties may be bound or affected; or (c) any applicable laws; and will not subject Energy Northwest to any lien other than as contemplated or permitted by this Contract;
- 3.6 **Legal Requirements.** Contractor has knowledge of all of the applicable laws that must be followed in performing the Work and Contractor's obligations herein;
- 3.7 **The Contract Sum is reasonable compensation for the Work and the Contract Time is adequate for the performance of the Work including all key milestones, inspection, testing, and Final Acceptance by Energy Northwest, as set forth in the Contract;**
- 3.8 **Contractor has examined the Work Site, become familiar with the local conditions in which the Work is to be performed, and satisfied itself as to the nature, location, character, quality and quantity of the Work, the labor, materials, equipment, goods, supplies, work, services and other items to be furnished and all other requirements of the Contract Documents, as well as other matters that may be encountered at the Work Site or affect performance of the Work or the cost or difficulty thereof;**
- 3.9 **Contractor is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete the Work and perform Contractor's obligations required by the Contract Documents; and**
- 3.10 **Contractor is able to furnish the tools, materials; supplies, equipment and labor required to complete the Work and perform the obligations required by the Contract Documents and have sufficient experience and competence to do so.**

GP-4 INDEPENDENT CONTRACTOR

Contractor is at all times and shall remain an independent contractor and not an agent or employee of Energy Northwest, solely responsible for completing its Work under the Contract with full power and authority to select the methods, means and manner of performing such Work, so long as such methods, means and manner conform to all Contract requirements, specifications and drawings or authorized changes thereto and do not adversely affect the completed improvements or efforts of other suppliers and contractors in the execution of their Work. Energy Northwest retains no control or direction over Contractor, its employees or subcontractors or over the detail, manner or methods of performance of the Work by Contractor, its employees and subcontractors.

GP-5 TIME AND SCHEDULE

- 5.1 Progress and Completion: The Contractor shall be solely responsible to complete the Work within the time specified in the Contract Documents.
- 5.2 Contractor to notify Energy Northwest of delays: Contractor shall notify Energy Northwest in writing of any actual or anticipated event which is delaying or could delay achievement of any milestone or performance of any critical path activity of the Work within one (1) day of when the Contractor knows or should know of any reasons that may cause a delay. Contractor shall indicate the expected duration of the delay, the anticipated effect of the delay on the Progress Schedule, and the action being or to be taken to correct the problem. Provision of such notice does not relieve Contractor of its obligation to complete the Work within the Contract Time.
- 5.3 Suspension of Work
- a) Energy Northwest may order the Contractor in writing to suspend, delay or interrupt all or any part of the Work for such period of time as Energy Northwest may direct. This order may be a "Suspension Order," "Stop Work Order," or designated in any way to clearly order the Contractor to suspend, delay or interrupt all or any part of the Work.
 - b) If the performance of all or any of the Work is for an unreasonable period of time suspended, delayed or interrupted by an act of Energy Northwest in the administration of this Contract, or by the failure of Energy Northwest to act within the time specified in the Contract (or if no time is specified, within reasonable time), an equitable adjustment shall be made to the schedule and for any increase in the cost of performance of this Contract caused by such unreasonable suspension, delay or interruption. Such adjustment shall be made in accordance with the Contract provision entitled "Changes," and the Contract shall be modified in writing accordingly. Any costs claimed under this provision shall be subject to the "Audits" provision of this Contract.
 - c) However, no adjustment to Contract Sum or Contract Time shall be made under this or any other provision of the Contract for any suspension, delay or interruption caused by (i) the fault or negligence of the Contractor, or (ii) Contractor's failure to perform in accordance with the Contract Documents.
- 5.4 Delay
- a. Any delay in or failure of performance by Energy Northwest or Contractor, other than the payment of money, shall not constitute a default hereunder if and to the extent the cause for such delay or failure of performance was unforeseeable and beyond the control of the party ("Force Majeure"). Acts of Force Majeure include, but are not limited to:
 1. Acts of God or the public enemy;
 2. Acts or omissions of any government entity (other than Energy Northwest);
 3. Fire or other casualty for which Contractor or Energy Northwest is not responsible;
 4. Quarantine or epidemic;
 5. Strike or defensive lockout; and
 6. Unusually severe weather conditions which could not have been reasonably anticipated.
 - b. Contractor shall be entitled to an adjustment in the Contract Time for changes in the time of performance directly attributable to an act of Force Majeure, provided it makes a request for an adjustment in accordance with the Contract Documents. Contractor shall not be entitled to an adjustment in the Contract Sum resulting from an act of Force Majeure.
 - c. Contractor shall be entitled to an adjustment in Contract Time, and may be entitled to an adjustment in Contract Sum, if the cost or time of Contractor's performance is changed due to the fault or negligence

of Energy Northwest, provided the Contractor makes a request in accordance with the “Changes” provision.

- d. Contractor shall not be entitled to an adjustment in Contract Time or in the Contract Sum for any delay or failure of performance to the extent such delay or failure was caused by Contractor or for anyone for whom the Contractor is responsible.
- e. To the extent any delay or failure of performance was concurrently caused by Energy Northwest and Contractor, Contractor shall be entitled to an adjustment in the Contract Time for that portion of the delay or failure of performance that was concurrently caused, provided it makes a request for an adjustment in accordance with the “Changes” provision, but shall not be entitled to an adjustment in Contract Sum.
- f. Contractor and Energy Northwest shall make all reasonable efforts to prevent and mitigate the effects of any delay, whether occasioned by an act of Force Majeure or otherwise.

5.5 Damages for Failure to Achieve Timely Completion

Liquidated Damages

- (1) Timely performance and completion of the Work is essential to Energy Northwest and time limits stated in the Contract Documents are of the essence. Energy Northwest will incur serious and substantial damages if the Work is not completed within the Contract Time. However, it would be difficult if not impossible to determine the exact amount of such damages. Consequently, provisions for Liquidated Damages may be included in the Contract Documents.
- (2) Any Liquidated Damage amounts set forth in the Contract Documents will be assessed not as a penalty, but as Liquidated Damages for breach of the Contract. This amount is fixed and agreed upon by and between the Contractor and Energy Northwest because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages Energy Northwest would in such event sustain. This amount shall be construed as the actual amount of damages sustained by Energy Northwest, and may be retained by Energy Northwest and deducted from periodic payments to the Contractor.
- (3) Assessment of Liquidated Damages shall not release Contractor from any further obligations or liabilities pursuant to the Contract Documents. Further, Energy Northwest retains the option in its sole discretion to enforce any other rights it has under the Contract or as otherwise provided by law.

GP-6 KEY PERSONNEL

Contractor Key Personnel (“Key Personnel”) assigned by Contractor to perform Work under this Contract are listed in the Special Provisions and shall not be reassigned without the prior written approval of Energy Northwest. Whenever, for any reason, one or more of these individuals are unavailable for assignment under this Contract the Contractor, with the approval of Energy Northwest, shall replace such Key Personnel with personnel of substantially equal abilities or qualifications. The Contractor will notify Energy Northwest immediately of any potential and/or pending changes to the Key Personnel along with providing sufficient information for Energy Northwest to evaluate and make a determination as to approval or disapproval of the re-assignment or replacement being proposed. Approval of Energy Northwest shall not be unreasonably withheld. The Contractor shall include this Key Personnel provision in its Subcontracts of any tier.

GP-7 LABOR AND PERSONNEL

- 7.1 Contractor shall furnish competent and appropriately skilled personnel to perform the Work under this Contract. If Work is to be performed at Energy Northwest facilities or on Energy Northwest property, Contractor shall comply with and cooperate in enforcement of Energy Northwest’s policies and procedures including Energy Northwest’s non-harassment policies and procedures.
- 7.2 Contractor shall at all times provide adequate supervision of its personnel at the Work Site. If, in Energy Northwest’s reasonable determination, Contractor is providing inadequate supervision, Contractor shall increase this ratio at Contractor’s expense. Unless the Contract Documents provide otherwise, Contractor shall be solely responsible for and have control over the means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work.
- 7.3 Contractor shall ensure all labor and personnel furnished to Energy Northwest to perform Work or services are eligible for employment in compliance with state and federal laws and regulations.

- 7.4 Contractor shall plan and conduct its operations so that its employees and Subcontractors of any tier will work harmoniously with Energy Northwest employees and others in order to assure that there will be no delays, work stoppages, excessive labor costs or other labor difficulties.
- 7.5 If requested to do so by the Contracting Officer, Contractor shall remove from the Site, or if deemed necessary by Energy Northwest at its sole discretion, Energy Northwest may remove from the Site, any employee of Contractor that Energy Northwest determines to be unacceptable for any reason. Removed personnel may not perform any work at the Site without Energy Northwest's express written acknowledgement of their return.

GP-8 ROYALTIES, PATENTS, AND LICENSES

- 8.1 Unless Contractor is required to provide software in the scope of Work, this "Royalties, Patents, and Licenses" provision shall apply. If the Contractor is required to provide software, a separate Software License Agreement shall be attached to these General Provisions as Appendix D-1 and the terms of that Software License Agreement shall apply for purposes of royalties, patents, and licenses.
- 8.2 Energy Northwest shall have a permanent, assignable, nonexclusive, royalty-free license to use any concept, discovery, development, improvement, product or process, patentable or otherwise, conceived and/or developed by Contractor that is required to be furnished or supplied to Energy Northwest as part of this Contract. If requested by Energy Northwest, Contractor agrees to do all things necessary, at Energy Northwest's sole cost and expenses, to obtain patents or copyrights of any processes, products or writings conceived, developed, and/or produced by Contractor in the performance of this Contract, to the extent the same may be patented or copyrighted, and further agrees to execute such documents as may be necessary to implement and carry out this provision. All materials prepared or developed by Contractor hereunder, including documents, calculations, maps, sketches, notes, reports, data, models, and samples, shall become the property of Energy Northwest when prepared, whether delivered to Energy Northwest or not, and shall together with any materials furnished to Contractor by Energy Northwest hereunder, be delivered to Energy Northwest upon request and, in any event, upon termination of this Contract.
- 8.3 Except as provided in Section 8.4, Contractor warrants that any invention, design, process, device, material or equipment which the Contractor provides hereunder will not infringe on any patent held by others and Contractor shall indemnify Energy Northwest as set forth in the "Indemnification" provision. . Further, Contractor warrants that all digital components, software, and firmware provided by Contractor will be free of known malicious software.
- 8.4 Contractor certifies that it has an internal cyber security program that complies with a U.S. Federal Government or International Standards Organization cyber security standard.
- 8.5 If a particular design, process, device or product of a particular manufacturer or manufacturers is specified by Energy Northwest, Contractor shall not have any liability under this provision with respect to alleged patent infringement thereof unless Contract documents state that the particular design, process, device or product is patented or believed to be patented and that the Contractor is responsible for the payment of royalty and license fees attendant thereto. If no such statement has been made by Energy Northwest, and Contractor has reason to believe the design, process, device or product specified is an infringement of a patent, Contractor shall be responsible for such loss as set forth in the "Indemnification" provision unless it promptly gives such information to Energy Northwest.

GP-9 OVERTIME CONTROL

- 9.1 All workers performing Work shall comply with Columbia Generating Station Procedure(s). Prior to commencing Work at Columbia Generating Station, Contractor must notify Columbia Generating Station supervisor of hours worked during the previous nine days.
- 9.2 In the event a critical situation requires a deviation from the work hour limits established by Columbia Generating Station, an approved waiver must be obtained prior to commencement of Work exceeding the work hour limits.
- 9.3 Contractor is specifically advised that failure to comply with Columbia Generating Station Procedures may result in the individual's termination at the discretion of Columbia Generating Station management.

GP-10 APPROVAL OF CONTRACTOR PROCEDURES

If Work performed by Contractor under the terms of the Contract requires use of Contractor safety-related procedures, Contractor shall not proceed with the Work until Contractor safety-related procedures have been approved in writing by Energy Northwest.

GP-11 COMPLIANCE WITH PROCEDURES

Contractor and Subcontractor employees at any tier are required to follow established processes, procedures, instructions and policies for controlling work at Columbia Generating Station. Contractor is advised that failure to comply with established processes, procedures, instructions and policies may result in suspension of Work and monetary fines. Monetary fines assessed to Energy Northwest by the Nuclear Regulatory Commission or other state, federal or local regulatory agencies as a result of Contractor's failure to comply with Columbia Generating Station established processes, procedures, instructions and policies shall be charged to the Contractor's account in accordance with GP -12, Indemnification.

GP-12 INDEMNIFICATION

12.1 Contractor shall defend, indemnify, and hold Energy Northwest harmless from and against the following:

All Losses (non-nuclear) arising directly or indirectly out of or relating in any way to the following:

- (1) Personal Injury or Death. Claims for injury to or death of any person, including employees or personnel of Contractor or any subcontractor and employees or personnel of Energy Northwest, arising out of or relating to Contractor's negligence or willful or intentional misconduct, or the negligence or willful or intentional misconduct of subcontractors or other persons for whose actions Contractor is liable in the performance (or non-performance) of the Work or its obligations under this Contract.
- (2) Contractor Property. Any loss or damage to the property of Contractor or any Subcontractor, except to the extent caused by Energy Northwest.
- (3) Property of Energy Northwest and Others. Any loss or damage to the property of Energy Northwest or third parties arising out of or relating to Contractor's performance (or non-performance) of the Work or its obligations under this Contract.
- (4) Laws and regulations. Fines, judgments, settlement costs, defense costs including but not limited to legal costs and attorneys' fees, costs of internal or external investigations including but not limited to third party costs, legal costs and attorneys' fees conducted by Energy Northwest, and penalties arising from Contractor's or any Subcontractor's failure to perform the Work in compliance with all applicable laws.
- (5) Liens. Subject to payment of all amounts properly payable under this Contract, any Contractor liens.
- (6) Pollution. The (a) release, discharge or presence of any hazardous materials arising out of or relating to Contractor's negligence or willful or intentional misconduct, or the negligence or willful or intentional misconduct of Subcontractors or other persons for whose actions Contractor is liable in the performance (or non-performance) of the Work or its obligations under this Contract, (b) other pollution or contamination of any kind (excluding pollution or contamination related to Energy Northwest hazardous materials) whatsoever that originates from any property used, leased, rented, owned or otherwise in the control of Contractor or any Subcontractor.
- (7) Taxes. The failure of Contractor to pay, as and when due, all taxes, duties, levies, assessments, tariffs, imposts, fees or charges of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any governmental authority and that are not Energy Northwest's responsibility pursuant to the terms of this Contract, or result from any failure by Contractor to perform its obligations herein relating to taxes.
- (8) Subcontractors. Amounts alleged to be owed by Contractor to Subcontractors or others, provided Energy Northwest shall have paid Contractor all undisputed amounts properly due and payable under this Contract, and excluding Claims or liens for or based on amounts properly withheld, whether or not reduced to a Contractor lien, including reasonable attorneys' fees and expenses incurred by any Energy Northwest Indemnity in discharging any Contractor lien.
- (9) Insurance Voided. Any insurance policy procured under this Contract being vitiated as a result of Contractor's failure to comply with any of the requirements set forth in such policy or any other act by Contractor or any Subcontractor.

12.2 Intellectual Property Infringement and Other Indemnification Rights.

To the extent related to Contractor or its Subcontractors, Contractor shall defend, indemnify, and hold harmless Energy Northwest against all Losses arising from any claim of infringement of intellectual property rights including but not limited to claims under patents, trademarks, trade secrets, copyrights, mask works and all other forms of intellectual property recognized by law by any third party ("Intellectual Property Claim"). Without limiting the foregoing, Contractor shall, at its own expense, settle or defend any such Intellectual Property Claim and pay all damages and costs awarded in such Intellectual Property Claim against Energy Northwest and either: (a) procure for Energy Northwest, or reimburse Energy Northwest for procuring, the right to continue using the infringing Work, as the case may be; (b) modify the infringing Work so that the same becomes non-infringing; or (c) replace the Work with non-infringing Work. If Energy Northwest or Contractor is temporarily or permanently enjoined from completing the Work or any part thereof, or from the use, operation, or enjoyment of the Work or any part thereof, as a result of such Intellectual Property Claim or legal action or any litigation based thereon, then Contractor shall promptly use all reasonable efforts to have such injunction removed and to take one or more of the actions under the preceding clauses (a), (b) or (c), provided, that in no case shall Contractor take any action that adversely affects Energy Northwest's continued use and enjoyment of the applicable Work without the prior written consent of Energy Northwest. Notwithstanding any provision of this Contract to the contrary, no schedule shall be extended due to any injunction described in this paragraph.

12.3 To the extent any requirement of this provision is not enforceable, such requirement shall be deemed to have been rewritten so that such requirement is enforceable and is consistent with the Parties original intent to the maximum extent possible.

12.4 For the purposes of fulfilling the indemnification obligations herein, the Contractor shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by Contractor to Energy Northwest by any workers compensation and industrial insurance acts, disability benefit acts, or other employee benefits acts including the Washington State Industrial Insurance Act, RCW Title 51 (collectively, the "Employee Benefits Acts").

CONTRACTOR HEREBY SPECIFICALLY AND EXPRESSLY WAIVES ANY AND ALL IMMUNITY TO WHICH INDEMNIFYING PARTY MAY BE ENTITLED UNDER SUCH EMPLOYEE BENEFITS ACTS (INCLUDING INDEMNIFYING PARTY'S IMMUNITY UNDER THE INDUSTRIAL INSURANCE ACT (RCW TITLE 51) AND ANY EQUIVALENT LAWS), TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, INCLUDING RCW SECTION 4.24.115, AND EXPRESSLY AGREES TO ASSUME POTENTIAL LIABILITY, EXPENSES AND DAMAGES (INCLUDING ATTORNEYS' FEES AND COSTS) FOR ACTIONS BROUGHT AGAINST ENERGY NORTHWEST BY THE EMPLOYEES CONTRACTOR OR ITS SUBCONTRACTORS; PROVIDED, HOWEVER, THAT CONTRACTOR'S WAIVER OF IMMUNITY BY THE PROVISIONS OF THIS SECTION EXTENDS ONLY TO CLAIMS AGAINST ENERGY NORTHWEST UNDER OR PURSUANT TO THIS CONTRACT, AND DOES NOT INCLUDE ANY CLAIMS MADE BY ENERGY NORTHWEST EMPLOYEES DIRECTLY AGAINST ENERGY NORTHWEST. CONTRACTOR ACKNOWLEDGES AND AGREES THAT THE FOREGOING WAIVER HAS BEEN SPECIFICALLY AND MUTUALLY NEGOTIATED BY CONTRACTOR AND IT HAS HAD THE OPPORTUNITY, AND HAS BEEN ENCOURAGED, TO CONSULT WITH INDEPENDENT COUNSEL REGARDING THIS WAIVER.

Notwithstanding the foregoing or anything to the contrary set forth in this Contract, Contractor and Energy Northwest agree that if the provisions of RCW 4.24.115 are deemed to apply to any claim for indemnity under this Agreement (i) in no event shall Contractor be obligated to indemnify Energy Northwest for claims or damages arising out of bodily injury to persons or damage to property resulting from the sole negligence of the Energy Northwest or its representatives, and (ii) if indemnification is sought for claims or damages arising out of bodily injury to persons or damage to property resulting from the concurrent negligence of Contractor or Subcontractor (and their respective representatives) and Energy Northwest, Contractor hereby agrees to indemnify Energy Northwest for such damages to the extent of Contractor's or its Subcontractor's negligence or the negligence of their respective representatives .

12.5 As used in this provision, "Contractor" and "Subcontractors" include all agents, representatives or employees of the Contractor and any Subcontractor of any tier. "Losses" shall mean any and all liabilities (including but not limited to liabilities arising out of the application of the doctrine of strict liability), obligations, losses, damages, penalties, injuries, Claims, demands interest and causes of action, suits, judgments, costs, expenses and disbursements, whether arising in equity, at common law, or by statute, or under the law of contract, tort or property, of whatsoever kind and nature, whether founded or unfounded (including legal fees and expenses and costs of investigation).

GP-13 INSURANCE PROVIDED BY THE CONTRACTOR

- 13.1 Contractor shall maintain in force the types of insurance in amounts no less than the limits required herein. Insurers shall have a Best rating of no less than A-: VI. Such insurance shall be approved by Energy Northwest as to form, sufficiency and manner of execution. Failure of Energy Northwest to demand such certificates or to identify any deficiency in the insurance provided shall not be construed as or deemed to be a waiver of Contractor's or its Subcontractors' obligations to maintain the required insurance coverage. The insurance requirements contained herein shall not in any manner be deemed to limit or qualify the liabilities or obligations assumed by Contractor under this Contract.
- 13.2 Copies of Certificates of Insurance shall be furnished to the responsible Energy Northwest Contracting Officer prior to the commencement of Work. It shall be the responsibility of the Contractor to assure itself that its Subcontractors have complied with this provision prior to the commencement of Work by the Subcontractor.
- 13.3 Insurance Requirements

| Type of Insurance | Limits of Coverage | Contract Amount |
|---|--|--|
| <u>Worker's Compensation</u> | <u>Coverage A:</u> Statutory <u>Coverage B:</u> See Commercial General Liability (CGL) | All Contracts |
| <u>Automobile Liability</u> | \$1,000,000 combined single limit for bodily injury or property damage | All Contracts If operating on Energy Northwest property (Includes coverage for owned, and hired vehicles) |
| <u>Property Damage</u> - value of property at replacement cost including loss of use, as applicable. Coverage shall be in the form of all risks of direct physical loss or damage including Earthquake and Flood coverage and may be provided through an Installation Floater/Builder's Risk/or endorsement for a property policy for the duration of the Contract. | \$1 Million \$5 Million \$20 Million | All Contracts (if performing Work on Energy Northwest property) Less than \$5 Million \$5 to \$20 Million Over \$20 Million |
| <u>Commercial General Liability</u> including coverage for: Ongoing Operations, Premises, Products, Completed Operations, Blanket Contractual, Broad Form Property, Personal Injury Liability, Advertising Injury, "XCU" Hazards, Employer's Liability (Stop Gap) | \$1 Million \$5 Million \$20 Million | All Contracts (if performing Work on Energy Northwest property) Less than \$5 Million \$5 to \$20 Million Over \$20 Million |
| <u>Professional Liability/Error & Omissions</u> | A minimum of \$1 Million | Technical and Consulting Services Contracts |

- 13.4 Additional Requirements
- a) Commercial General Liability policies shall name Energy Northwest as an additional insured with respect to liability arising out of the Contractor's performance of the Work on the appropriate endorsement form(s). Automobile Liability policies shall not exclude coverage for Energy Northwest as an additional insured.
 - b) Commercial General Liability policies will be written on an "Occurrence" form and the policies will be endorsed to provide that the general aggregate limit will apply separately to each of the Contractor's projects.
 - c) Professional Liability insurance shall cover any and all errors, omissions or negligent acts in the delivery or performance of products, services and/or licensed programs under this agreement. Such Professional Liability insurance shall include coverage for claims and losses with respect to network risks (such as data breaches, unauthorized access/use, identity theft, invasion of privacy,

damage/loss/theft of or to data, degradation, downtime, etc.) and intellectual property infringement, such as copyrights, trademarks, service marks and trade dress. The Professional Liability Insurance retroactive coverage date shall be no later than the effective date of this agreement. Contractor shall continuously maintain such insurance or purchase an extended reporting period providing that claims first made and reported to the insurance company within three (3) years after termination of the agreement will be deemed to have been made during the policy period.

- d) All policies shall carry a provision that such insurance shall not be canceled except upon thirty (30) days written notice to Energy Northwest.
- e) To the extent of Contractor's negligent acts or omissions, all policies required by this Contract shall include provisions that such insurance is primary insurance with respect to the interests of Energy Northwest and that any other insurance maintained by Energy Northwest is excess and not contributory with the insurance required hereunder, as well as provisions that the policy contain a cross liability or severability of interest clause or endorsement.

13.5 Waiver of Subrogation

The Contractor, on behalf of itself, its Subcontractors, and all their insurance carriers hereby waive any right of recovery or of subrogation against Energy Northwest or their representatives and all other Contractors, and agrees to have such waiver included in all Contractor's and Subcontractor's insurance contracts.

13.6 Contractor's Loss Insurance

Energy Northwest assumes no liability for loss of or damage to Contractor's and/or its Subcontractor's sheds, tools, equipment, and/or material, or to any property of their employees, it being understood that any insurance carried by the Contractor to provide protection against such loss or damage shall contain a waiver of any right of subrogation against Energy Northwest.

13.7 Self-Insured Contractors-Energy Northwest Approval

Following financial review and authorization by Energy Northwest, a Contractor may self-insure the first one million dollars (\$1 Million) of liability coverage. If such self-insurance is expressly approved in writing by Energy Northwest, the Contractor agrees to hold Energy Northwest harmless from any losses arising out of the performance of Work under the Contract to the extent that such losses would be covered under a Commercial General Liability policy required herein.

13.8 Contractor's Duty to Report Occupational and Tort Claims

The Contractor shall promptly inform Energy Northwest in writing of every employee's workers compensation claim or of any tort liability claim for bodily injury allegedly caused by a nuclear energy hazard arising out of Columbia Generating Station, or in the course of transporting nuclear material to or from the Columbia Generating Station.

GP-14 DISCOVERY OF CONFLICTS, ERRORS, OMISSIONS OR DISCREPANCIES

In case of discovery of conflicts, discrepancies, errors or omissions among various parts of the Contract, the matter shall be submitted immediately upon discovery by the Contractor to the Contracting Officer for clarification. Any Work affected by such conflicts, errors, omissions or discrepancies performed by the Contractor prior to clarification shall be at the Contractor's risk.

GP-15 SUBCONTRACTS

- 15.1 Any Contract to be entered into by the Contractor with any Subcontractor for the performance of Work pursuant to the Contract or any fraction thereof exceeding \$5,000 shall be submitted to the Contracting Officer for prior written acknowledgement.
- 15.2 The Contracting Officer's acknowledgement of such Subcontractors shall not be construed to relieve the Contractor or its surety of their responsibilities under this Contract.
- 15.3 The Contractor shall require in such Subcontracts that the Subcontractor be subject to the provision of this Contract entitled "Audits."

GP-16 LAWS AND REGULATIONS

- 16.1 Contractor shall comply with all applicable local, State of Washington, and Federal laws, rules and regulations, and shall obtain all permits required for any of the Work to be performed. Contractor shall procure and pay for all permits and inspections required for any of the Work performed and shall furnish any bonds, security or deposits required to permit performance of the Work.
- 16.2 Contractors and Subcontractors performing Work for Columbia Generating Station are subject to the jurisdiction of the Nuclear Regulatory Commission (NRC). NRC actions may temporarily or permanently impair, prevent or preclude Contractor's performance of this Contract for acts of deliberate misconduct directly or indirectly causing Energy Northwest to be in violation of an NRC requirement (56 Federal Register 40664, August 15, 1991).
- 16.3 Contractors and Subcontractors performing Work for Columbia Generating Station are subject to provisions of 10 CFR Part 21 relative to reporting of failures to comply with applicable requirements "relating to substantial safety hazards" or to any identified "defect which could create a substantial safety hazard".
- 16.4 Contractors and Subcontractors performing Work for Columbia Generating Station are subject to provisions of 10 CFR Part 50.7 and Section 211 of the Energy Reorganization Act of 1974 prohibiting discrimination against an employee for "protected activities." Applicable Contractors and Subcontractors shall:
- a) Notify Energy Northwest promptly of every claim filed against them under Section 211, and advise Energy Northwest of any changes in the status of such claims; and
 - b) Provide Energy Northwest (within thirty (30) days of its request) with a description of their procedures and provisions to assure that their supervisory personnel are aware of Section 211 and will conduct their activities in accordance with Section 211; and
 - c) Include these reporting provisions into any Subcontracts with applicable Subcontractors entered into as a part of this Contract.
- 16.5 While performing Work on an Energy Northwest Site, the Contractor shall comply with Energy Northwest's project site safety, health, security and other procedures and regulations. Further, the Work may be subject to Energy Northwest's quality assurance program.
- 16.6 Where applicable, Contractor shall comply with the National Occupational Safety and Health Act (OSHA) and the Washington Industrial Safety and Health Act (WISHA).
- a) In addition to the above requirements, the following laws and executive orders establish minimum requirements for affirmative action and fair employment practices that the Contractor must meet: Title VII of the Civil Rights Act of 1964, the Vietnam Era Veterans Readjustment Assistance Act of 1974, the Vocational Rehabilitation Act of 1973, the Equal Employment Act of 1972, the Age Discrimination Act of 1967, the Americans with Disabilities Act of 1990, Americans with Disability Act Amendment Act of 2008, the Civil Rights Act of 1991, Executive Order 11246, and Executive Order 11375 Executive Order 13465 (Employment Eligibility Verification); and
 - b) Contractor and subcontractor shall abide by the requirements of 41 CFR 60.741.5(a) and 41 CFR 60-300.5(a). These regulations prohibit discrimination against qualified individuals on the basis of disability, protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities and protected veterans.

GP-17 TERMINATION BY ENERGY NORTHWEST FOR CAUSE

- 17.1 Energy Northwest shall have the right to terminate this Contract in whole or in part upon seven (7) days written notice to Contractor and its surety. During this seven (7) day cure period (or such other cure period as Energy Northwest may permit based upon Contractor's progress in curing the default) the Contractor shall use its best efforts to cure its default. If Contractor fails to cure its default, or fails to make adequate progress toward curing its default in the sole judgment of Energy Northwest, Energy Northwest may terminate this Contract (without prejudice to any right or remedy of Energy Northwest) or any part of it, for cause upon the occurrence of any one or more of the following events:
- a) Contractor fails to prosecute the Work or any portion thereof with sufficient diligence to ensure completion of the Work within the Contract Time;

- b) Contractor is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency;
 - c) Contractor fails to replace or correct Work not in conformance with the Contract Documents;
 - d) Contractor fails to supply skilled workers or proper materials or equipment;
 - e) Contractor fails to make prompt payment due to Subcontractors or for labor;
 - f) Contractor disregards or fails to comply with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction; or
 - g) Contractor is otherwise in breach of any provision of the Contract Documents.
- 17.2 Upon termination of the Contract, Energy Northwest may at its option:
- a) Take possession of the Work Site and take possession of or use all materials, equipment, tools, and machinery thereon owned by Contractor to maintain the orderly progress, and to finish, the Work;
 - b) Accept assignment of Subcontracts in accordance with the Contract Documents; or
 - c) Finish the Work by whatever other reasonable method it deems expedient.
- 17.3 Energy Northwest's rights and duties upon termination are subject to the prior rights and duties of the surety, if any, obligated under any bond provided in accordance with the Contract Documents.
- 17.4 When Energy Northwest terminates the Work in accordance with this provision and unless Energy Northwest directs otherwise, Contractor shall promptly take the following actions, directly below. Contractor shall not be entitled to receive further payment until the Work is accepted.
- a) Stop performing Work on the date specified in the notice of termination;
 - b) Place no further orders or Subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work as is not terminated;
 - c) If requested by Energy Northwest in writing, cancel all orders and Subcontracts, upon terms acceptable to Energy Northwest, to the extent that they relate to the performance of Work terminated;
 - d) Assign to Energy Northwest all of the right, title, and interest of Contractor in all orders and Subcontracts;
 - e) Take such action as may be necessary or as directed by Energy Northwest to preserve and protect the Work, Work Site, and any other property related to the Work in the possession of Contractor in which Energy Northwest has an interest; and
 - f) Continue performance only to the extent not terminated.
- 17.5 If the unpaid balance of the Contract Sum is less than the cost of finishing the Work, including compensation for design services and expenses made necessary thereby and any other extra costs or damages incurred by Energy Northwest in completing the Work, or as a result of Contractor's actions (collectively referred to as "Costs"), Contractor shall pay such difference in Costs over the Contract Sum to Energy Northwest. If the unpaid balance of the Contract exceeds the Costs, such excess shall be paid to the Contractor. These obligations for payment shall survive termination.
- 17.6 Termination of the Contract in accordance with this provision shall not relieve Contractor or its surety of any responsibilities for Work performed.
- 17.7 If Energy Northwest terminates the Contractor for cause and it is later determined that none of the circumstances set forth above exist, then such termination shall be deemed a Termination for Convenience pursuant to that provision.
- 17.8 Liquidated Damages Preserved. In the event of Termination for Cause, Energy Northwest may collect Liquidated Damages due to the date of termination, and as set forth in the Special Provisions, in addition to any other remedies available pursuant to these General Provisions.

GP-18 TERMINATION BY ENERGY NORTHWEST FOR CONVENIENCE

- 18.1 Energy Northwest may, upon written notice, terminate (without prejudice to any right or remedy of Energy Northwest) the Contract, or any part of it, for the convenience of Energy Northwest.

- 18.2 Unless Energy Northwest directs otherwise, after receipt of a written notice of termination for convenience, Contractor shall promptly:
- a) Stop performing Work on the date specified in the notice of termination;
 - b) Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work as is not terminated;
 - c) If requested by Energy Northwest in writing, cancel all orders and Subcontracts, upon terms acceptable to Energy Northwest, to the extent that they relate to the performance of Work terminated;
 - d) Assign to Energy Northwest all of the right, title, and interest of Contractor in all orders and Subcontracts;
 - e) Take such action as may be necessary or as directed by Energy Northwest to preserve and protect the Work, Work Site, and any other property related to this Project in the possession of Contractor in which Energy Northwest has an interest; and
 - f) Continue performance only to the extent not terminated.
- 18.3 If Energy Northwest terminates the Work or any portion thereof for convenience, Contractor shall be entitled to make a request for an equitable adjustment for its reasonable direct costs incurred prior to the effective date of the termination, plus reasonable allowance for overhead and profit on Work performed prior to termination, plus the reasonable administrative costs of the termination, but shall not be entitled to any other costs or damages, whatsoever, including anticipatory profits. Under no circumstances, however, shall the total sum payable upon termination exceed the Contract Sum reduced by prior payments and the reasonable direct costs incurred for the performance of the Work prior to termination shall not exceed that portion of the Contract Sum allocable to such Work. Contractor shall be required to make its request in accordance with the Contract Documents. All such requests for equitable adjustment shall be subject to the provisions entitled "Changes" and "Audits" of this Contract.
- 18.4 If Energy Northwest terminates the Contract or any portion thereof for convenience, the Contract Time shall be adjusted as determined by Energy Northwest.

GP-19 ASSIGNMENT OF SUBCONTRACTS

- 19.1 In the event of a termination by Energy Northwest for cause, pursuant to these General Provisions, and if Energy Northwest notifies the Subcontractor in writing, there shall be an automatic assignment of Subcontracts. After the assignment is effective, Energy Northwest will assume all future duties and obligations toward the Subcontractor which Contract assumed in the Subcontract.
- 19.2 The assignment is subject to the prior rights of the surety, if any, obligated under any bond provided in accordance with the Contract Documents.

GP-20 TECHNICAL REPRESENTATIVE

The Energy Northwest Technical Representative (TR) is responsible for monitoring and providing technical guidance during the performance of this Contract and should be contacted regarding questions or problems of a technical nature. The TR is also responsible for appropriate monitoring of the Contractor's representatives while on the Site. In no event, however, will an understanding or agreement, modification, or any deviation from the terms of the Contract be effective or binding upon Energy Northwest unless formalized by the Energy Northwest Contracting Officer (CO) prior to any deviation from the terms of the Contract. On all matters that pertain to Contract terms, the Contractor shall contact the CO specified in the Contract Documents. When in the opinion of the Contractor, the TR requests or directs efforts outside the existing scope of the Contract Documents; the Contractor shall promptly notify the CO. **The TR does not possess any explicit, apparent, or implied authority to modify the Contract Documents.**

GP-21 CHANGES

- 21.1 Energy Northwest may, at any time and without notice to Contractor's surety (if any), order additions, deletions, revisions, or other changes in the Work. If any such change will cause an increase or decrease in cost or the time required for Contractor's performance of the Work, an equitable adjustment in the Contract Sum or the Contract Time, or both, shall be agreed to by Energy Northwest and such adjustment(s) shall be incorporated into the Contract Documents by a Modification. If Contractor has not obtained a signed Modification from Energy Northwest's authorized representative, no claim for additional compensation shall be allowed except as provided for under the "Claims Procedure" provision.

- 21.2 If Energy Northwest desires to order a change in the Work, it may request a written Proposed Modification. Contractor shall submit a Proposed Modification within seven (7) days of the request from Energy Northwest, or within such other period as mutually agreed. Contractor's Proposed Modification shall set forth the full compensation for implementing the proposed change in the Work, including any adjustment in the Contract Sum or Contract Time, and including compensation for all delays in connection with such change in the Work and for any expense or inconvenience, disruption of schedule, or loss of efficiency or productivity occasioned by the change in the Work. All Proposed Modifications submitted by Contractor shall be subject to the right of Energy Northwest to audit Contractor's books and records, and those of its Subcontractors as further provided in these General Provisions. Upon receipt of the Proposed Modification, or a request for equitable adjustment in the Contract Sum or Contract Time, or both, as provided in this "Changes" provision, Energy Northwest may accept or reject the Proposed Modification, request further documentation, or negotiate acceptable terms with Contractor. Pending agreement on the terms of the Modification, Energy Northwest may direct Contractor to proceed immediately with the Modified Work scope. Contractor shall not proceed with any change in the Work until it has obtained Energy Northwest's approval.
- 21.3 If Energy Northwest and Contractor reach agreement on the terms of any change in the Work, including any adjustment in the Contract Sum or Contract Time, such agreement shall be documented in a Contract Modification. The Modification shall constitute final settlement of all Claims for time and for direct, indirect, and consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity, related to any Work either covered or affected by the Modification, or related to the events giving rise to the request for equitable adjustment.
- 21.4 If Energy Northwest and Contractor are unable to reach agreement on the terms of any change in the Work, including any adjustment in the Contract Sum or Contract Time, Contractor may at any time in writing, request a final offer from Energy Northwest. Energy Northwest shall provide Contractor with its written response within thirty (30) days of Contractor's request. Energy Northwest may also provide Contractor with a final offer at any time. If Contractor rejects Energy Northwest's final offer, or the parties are otherwise unable to reach agreement, Contractor's only remedy shall be to file a Claim as provided for in the "Claims Procedure" provision.
- 21.5 Energy Northwest may direct the Contractor to proceed with a change in the Work through a written notification when the time required to price and execute a Modification would impact the Work. The notification should describe and include the following:
- a) The scope of Work;
 - b) An agreed upon maximum not-to-exceed amount;
 - c) Any estimated change to the Contract Time;
 - d) The method of final cost determination; and
 - e) The supporting cost data to be submitted.
- 21.6 Energy Northwest will not make payment to the Contractor for Modified Work scope until that work has been incorporated into the Contract Documents by Modification.

GP-22 CLAIMS PROCEDURE

- 22.1 Contractor shall submit any Claims for recovery of costs or additional time to perform the Work which are not clearly set forth herein or allowed by issuance of a Modification, as applicable, within thirty (30) days after the cause of such Claim has occurred as Contractor's sole and exclusive remedy.. To assist in the review of Contractor's Claim, Energy Northwest may request additional information, in order to fully evaluate the issues raised by the Claim. Contractor shall proceed with performance of the Work pending final resolution of any Claim. Energy Northwest's written decision as set forth above shall be final and conclusive as to all matters set forth in the Claim, unless Contractor follows the procedure set forth under the "Applicable Law and Disputes" provision.
- 22.2 THE CONTRACTOR'S FAILURE TO GIVE NOTICE OF CLAIM AND CLAIM SUBSTANTIATION WITHIN THE DESIGNATED TIME PERIOD AND IN STRICT COMPLIANCE WITH THE OTHER REEQUIREMENTS SET FORTH HEREIN SHALL CONSTITUTE AN ABSOLUTE AND COMPLETE WAIVER, RELEASE AND BAR OF SUCH CLAIM UNLESS ENERGY NORTHWEST HAS AUTHORIZED IN WRITING AN EXTENSION OR MODIFICAITON TO THE GENERAL PROCEDURE FOR GIVING NOTICE AND SUBSTANTIATION OF CLAIMS AS STATED HEREIN.

GP-23 APPLICABLE LAW AND DISPUTES

- 23.1 The rights and obligations of the parties and the terms of this Contract shall be construed and interpreted under the laws of the State of Washington without application of any conflict of law provision that would apply the laws of another jurisdiction.
- 23.2 Informal Dispute Resolution
- a) Contractor and Energy Northwest desire that the Contract operate between them fairly and reasonably. If any disputes or differences arise between the Parties in respect of the Contract or the subject matter hereof (a "Dispute"), representatives of the Parties shall cooperate, in good faith, to attempt to amicably resolve the Dispute. If any Party believes that such representatives will not be able to resolve the Dispute, such Party may invoke the further dispute resolution procedures of this section.
 - b) If representatives of the Parties cannot resolve a Dispute within fifteen (15) days, each Party shall prepare a written statement of its position and deliver it to the other Party within ten (10) days after the expiry of the initial fifteen (15) day period, and one or more senior officers from each Party shall meet in person within fifteen (15) days in an effort to resolve the Dispute. If the senior officers of either Party determine at any time that the Dispute cannot be resolved without referral of the Dispute to an independent third party, such Party shall notify the other Party that it wants to submit the Dispute to litigation as provided herein; provided, however, no Party shall seek to litigate any Dispute until a period of at least twenty (20) days has elapsed since the Dispute was referred to such senior officers pursuant to the written statement described in the immediately preceding sentence.
- 23.3 Litigation
- If a Dispute remains between the Parties, resolution of such dispute shall be by litigation. The Contractor hereby consents to and stipulates to the personal jurisdiction and venue of the appropriate courts in the State of Washington in any litigation brought under this provision. EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS CONTRACT. FURTHER CONTRACTOR KNOWINGLY WAIVES THE RIGHT TO SEEK RECORDS OF ENERGY NORTHWEST THROUGH A PUBLIC RECORDS ACT (RCW 42.56) REQUEST DURING THE PENDANCY OF ANY DISPUTE OR LITIGATION.
- 23.4 Notwithstanding any dispute or litigation between the Contractor and Energy Northwest, the Contractor shall proceed diligently with the performance of the Work required by the Contract as directed by Energy Northwest.

GP-24 AUDITS

The Contractor shall during the life of this Contract and for a period of three (3) years from the last day of the Contract term, and at its sole expense, retain accurate books, records and original documentation (or to the extent approved by Energy Northwest, photographs, microphotographs, or other authentic reproductions) which shall be freely disclosed to Energy Northwest, its representatives, the Washington State Auditor, and the Bonneville Power Administration to permit verification of performance and entitlement to any payments under this Contract. Without limiting the foregoing, Energy Northwest shall have the right to examine, copy and audit Contractor's books, records and original documentation (or to the extent approved by Energy Northwest, photographs, microphotographs, or other authentic reproductions) upon reasonable notice to Contractor, any time the Contract Documents are amended by a Modification, Contractor submits a Claim under the "Claims Procedure" provision or any other proposal for equitable or other adjustment is submitted under the terms of this Contract. Contractor shall incorporate the substance of this provision in every Subcontract over \$5,000.

GP-25 COMPLETION AND ACCEPTANCE

25.1 Completion and Final Acceptance Defined

Completion shall be defined to occur on the date on which the Work has met all of the criteria of the Contract Documents as determined by Energy Northwest and the Work is ready for Final Acceptance. Contractor shall provide to Energy Northwest written notice of completion of the Work. Prior to Final Acceptance by Energy Northwest and as part of Contractor's notice of completion, the Contractor shall comply with the following general requirements and any other specific requirements that may be contained elsewhere in the Contract Documents:

- a) All Work (including punch list items, if applicable) and other obligations (except obligations requiring future performance, e.g., Warranty Work) shall be complete;
- b) Drawings and documentation as required by Contract including final "as-built" condition have been delivered, and the applicable deliverables as required (including descriptions and as-built drawings) shall have been delivered;
- c) All specifications, test data and information specified in the Contract Documents shall have been delivered to Energy Northwest;
- d) Contractor shall have furnished Energy Northwest with: (i) a release of Contractor's and any Subcontractor's lien rights, subject to such exceptions or reservations as may be reasonably acceptable to Energy Northwest; and (ii) Contractor's certification that all valid claims for payment for labor and materials for which Contractor is responsible in connection with the Work have been paid or satisfied, subject to such exceptions or reservations as may be reasonably acceptable to Energy Northwest;
- e) Any special tools purchased by Contractor for Energy Northwest have been delivered to Energy Northwest in acceptable condition;
- f) All Contractor's personnel have left the Work site and Contractor's supplies, equipment, waste materials, rubbish, and temporary facilities have been removed from the Work Site and properly disposed of in accordance with the Contract Documents, except as Energy Northwest agrees may be needed for the ongoing obligations of Contractor;
- g) Energy Northwest has received from Contractor all other information required to be provided pursuant to the Contract Documents including reports, warranty administration program documents, and other technical information;
- h) All inspections have been completed satisfactory to Energy Northwest in accordance with the Contract Documents;
- i) All tests including performance tests scheduled to be performed shall have been completed and either (i) such performance tests satisfactorily demonstrated achievement of all of the performance guarantees, or (ii) Contractor has paid all Liquidated Damages and performance Liquidated Damages (if any); or (iii) Contractor has repeated the test(s) satisfactorily; or (iv) Contractor has repeated the test(s) satisfactorily and has paid all Liquidated Damages and performance Liquidated Damages (if any);
- j) Contractor has delivered all operations, maintenance, and manufacturer recommended spare parts lists and pricing if included as part of the Work and all instruction manuals in accordance with the requirements of the Contract Documents; and
- k) Contractor has paid any and all other amounts due to Energy Northwest hereunder.

25.2 Process

Within fifteen (15) days after Energy Northwest's receipt of written notice of completion from the Contractor, Energy Northwest shall deliver either its written notice of Final Acceptance of the Work or written notice identifying the reasons that Final Acceptance of the Work has not been achieved, in which latter event Contractor shall expeditiously remedy the identified failure(s) and re-perform such activities which may be required to achieve completion and repeat this notice process. Upon acceptance by Energy Northwest, the date of Final Acceptance of the Work shall be the date that the notice of Final Acceptance of the Work is signed by Energy Northwest.

25.3 Failure to Achieve Completion

If the Contractor fails to achieve completion by the scheduled completion date as a result of Contractor's nonperformance, Contractor shall be considered to be in default of its obligations, and shall pay to Energy Northwest such Liquidated Damages as may be provided for under the Contract Documents and in addition, Energy Northwest may exercise any or all rights provided under this Contract or at law.

GP-26 PAYMENTS

- 26.1 Subject to the "Payments Withheld, Backcharge, and Set-Off" provision and requirements set forth in this provision, the Contractor shall be paid undisputed portions of its invoice, upon the satisfactory performance of the Work, or a portion thereof, provided Contractor submits a proper invoice and supporting documentation as specified in the Contract Documents less deductions if any as provided in the Contract Documents.

- 26.2 The Contractor warrants that it has good and sufficient title to all Work, materials, free and clear of all liens, claims, security interests and encumbrances, upon application for payment or payment by Energy Northwest, whether such are incorporated into the Work or not.
- 26.3 The Contractor's invoice shall reference the Contract number and Releases, if any. The invoice shall be itemized and supported by proper documentation in accordance with the Contract provisions. Invoices are to be e-mailed directly to accountspayable@energy-northwest.com and Contracting Officer.

Incomplete or improper invoices will be returned to the Contractor.

NOTE: In lieu of sending by e-mail, an invoice may be submitted by mail to:

Energy Northwest
Attention: Accounts Payable M/D PE55
PO Box 968
Richland, WA 99352

- 26.4 Payments will be made by Energy Northwest within thirty (30) days after receipt of proper invoices and adequate supporting documentation.
- 26.5 Contractor must enroll online at www.paymode.com/energynorthwest to be paid by electronic payment with Paymode-X through Bank of America Merrill Lynch. Otherwise payment will be made by check and sent via United States Postal Service.
- 26.6 The Contractor shall immediately pay and discharge, or shall provide security sufficient and satisfactory in itself to pay and discharge any obligation or alleged obligation that it or any of its employees, Subcontractors, suppliers or others may have with respect to which a lien or right of any kind is established, or is attempted to be established, upon or against Work or real property of Energy Northwest upon which the Work is situated.
- 26.7 Contractor shall notify Energy Northwest if Contractor has reason to believe the amounts that will accrue in performing the Work in the next succeeding 30 days, if added to all other payments and costs previously paid and/or accrued under the Contract, will exceed 80 percent of the Contract Sum.
- 26.8 Energy Northwest shall not be obligated to pay the Contractor any amount in excess of the Contract Sum and Contractor shall stop Work if to continue performance would cause the Contractor to exceed the Contract Sum, unless and until the Energy Northwest Contracting Officer notifies the Contractor in writing that the Contract Sum has been increased and specifies in the notice a revised Contract Sum.
- 26.9 Final payment under this Contract shall not be due and payable until the Contractor has delivered to Energy Northwest:
- a) A complete release of all liens arising out of this Contract, or
 - b) Certified copies of receipts in full covering all labor and materials for which a lien could be filed.
- 26.10 Acceptance of final payment by Contractor, or any Subcontractor, shall constitute a waiver and release to Energy Northwest of all Claims by Contractor, or any such subcontractor, for an increase in the Contract Sum or the Contract Time, and for every act or omission of Energy Northwest relating to or arising out of the Work, except for those Claims made in accordance with the procedures, including the time limits, set forth in the "Claims Procedure" provision.
- 26.11 Contractor shall submit all invoices, including the invoice for final payment, within ninety (90) days of the later of: (i) the last day of the Contract term; or (ii) the date that Energy Northwest provides its written notice of Final Acceptance of the Work. **CONTRACTOR ACKNOWLEDGES AND AGREES THAT FAILURE TO TIMELY SUBMIT INVOICES IS UNDULY BURDENSOME TO ENERGY NORTHWEST AND THAT ENERGY NORTHWEST SHALL, THEREFORE, HAVE NO LIABILITY TO MAKE PAYMENT FOR ANY AMOUNT INVOICED BY CONTRACTOR AFTER THE TIME FRAME SET FORTH IN THIS PROVISION.**

GP-27 TAXES

- 27.1 Except for the Washington State Retail Sales Tax as may be levied upon the Contract Sum, the Contract Sum includes and the Contractor shall have the full exclusive liability for the payment of:
- 27.2 All taxes and assessments imposed by or required under any taxing authority including, without limitation, Washington Business and Occupation Taxes, all gross receipts or other taxes levied with respect to materials or items furnished or work performed by the Contractor and its Subcontractors and

- 27.3 Taxes and assessments for unemployment insurance, old age benefits, annuities, social security, disability benefits, or other taxes which are in whole or in part measured by or based upon the wages, salaries or other remuneration paid to persons employed by the Contractor or its Subcontractors on work under this contract.
- 27.4 If a Washington State Retail Sales Tax is imposed on this Contract, and the Contractor obtains a Certificate of Registration from the Washington State Department of Revenue, the Contractor shall provide evidence of such registration to Energy Northwest prior to receipt of any payments under the Contract. The Contractor shall then invoice and collect from Energy Northwest the applicable tax, and shall remit the same to the Washington State Department of Revenue.

GP-28 TITLE AND RISK OF LOSS

- 28.1 Unless this Contract specifically provides otherwise, title to all or any part of the Work, materials, equipment and supplies covered by this Contract shall pass to Energy Northwest upon its Final Acceptance thereof, regardless of when or where Energy Northwest takes physical possession.
- 28.2 Unless this Contract specifically provides otherwise, risk of loss for materials, equipment, and supplies shall remain with the Contractor until delivery at the destination specified in this Contract and acceptance by Energy Northwest.
- 28.3 The risk of loss of or damage to the Work which does not conform to the specifications in the Contract Documents shall remain with the Contractor.

GP-29 TESTS AND INSPECTION

- 29.1 Contractor shall maintain an adequate testing and inspection program and perform such tests and inspections as are necessary or required to ensure that the Work conforms to the requirements of the Contract Documents. Contractor shall be responsible for inspection and quality surveillance of all its Work and all Work performed by any Subcontractor. Unless otherwise, provided, Contractor shall make any arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to Energy Northwest, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. Contractor shall give Energy Northwest timely notice of when and where tests and inspections are to be made. Contractor shall maintain complete inspection records and make them available to Energy Northwest.
- 29.2 Energy Northwest may, at any reasonable time, conduct such inspections and tests as it deems necessary to ensure that the Work is in accordance with the Contract Documents. Energy Northwest shall promptly notify Contractor if an inspection or test reveals that the Work is not in accordance with the Contract Documents. Unless the subject items are expressly accepted by Energy Northwest, such Energy Northwest inspection and tests are for the sole benefit of Energy Northwest and do not:
- a) Constitute or imply acceptance;
 - b) Relieve Contractor of responsibility for providing adequate quality control measures;
 - c) Relieve Contractor of responsibility for risk of loss or damage to the Work, materials, or equipment;
 - d) Relieve Contractor of its responsibility to comply with the requirements of the Contract Documents; or
 - e) Impair Energy Northwest's rights to reject defective or nonconforming items, or to avail itself of any other remedy to which it may be entitled.
- 29.3 Neither observations by an inspector retained by Energy Northwest, the presence or absence of such inspector on the Site, nor inspections, tests, or approvals by others, shall relieve Contractor from any requirement of the Contract Documents, nor is any such inspector authorized to change any term or condition of the Contract Documents.
- 29.4 Contractor shall promptly furnish, at Contractor's expense, all facilities, labor, material and equipment reasonably needed for performing such safe and convenient inspections and tests as may be required by Energy Northwest. Energy Northwest may charge Contractor any additional cost of inspection or testing when Work is not ready at the time specified by Contractor for inspection or testing, or when prior rejection makes re-inspection or re-test necessary. Energy Northwest shall perform its inspections and tests in a manner that will cause no undue delay in the Work.

GP-30 WARRANTIES

30.1 General

- a) Contractor warrants that (i) the Work conforms in all respects to the terms and conditions of the Contract, including all technical, operational and other requirements, standards and specifications; (ii) the Work shall be free from defects in and/or workmanship, including but not limited to any latent defects that may not be readily evident; and that this warranty applies regardless of whether the Work was approved, reviewed, or based upon information or data supplied by Energy Northwest; (iii) the Work is fit for the purposes intended by Energy Northwest; and (iv) the Work shall conform to all applicable laws. Any Work supplied by Contractor that does not meet the standards set forth in this section is "Defective" and contains a "Defect". For the purposes of the Contract, the term "Defect" or the related term "Defective" includes, without limitation, any services, equipment, materials, system, component or installation or part of the Work that:
- (1) does not conform to the requirements of the Contract or the drawings and specifications;
 - (2) is of improper or inferior workmanship or material, as reasonably determined by Energy Northwest;
 - (3) does not conform to highest industry standards; or
 - (4) repeatedly exhibits (a "chronic failure") of one or more of the characteristics described in clauses (1) through (3).
- b) Contractor shall furnish satisfactory evidence as to the type, quality and quantity of all Work. Without prior written approval by Energy Northwest that specifically waives the requirements of the Contract, Contractor shall not supply any Work other than as specified in the Contract.
- c) Contractor's obligations under this provision shall survive termination or expiration of the Contract. Contractor shall, in accordance with this provision promptly repair or replace, and properly re-install any replacements for Defective Work, and any part of the Work or other property that is damaged or affected by Defective Work, if the Defect appears or occurs prior to the end of the Warranty Period. Contractor shall be responsible for all disassembly, and reassembly costs necessary to determine the need for, and to secure access to and perform, remedial Work, including the cost of parts, consumable materials, equipment and labor including all reasonable costs incidental to taking any corrective action incurred by Energy Northwest or Contractor, including the engineering, design, repair, replacement (including installation), transportation to and from the Site, shop retesting, and reinspection as may be necessary to correct Warranty Defect or to demonstrate that previously defective or nonconforming Work conforms to the requirements of the Contract. Additionally, Contractor shall be responsible for and reimburse Energy Northwest for Energy Northwest's reasonable additional costs associated with the investigation of the Warranty Defect and the necessary corrective action, including costs of reviewing and inspecting Contractor's remedial Work and otherwise administering and enforcing the requirements of this provision, and the disposal of any contaminated materials including but not limited to equipment, tools and related items. Contractor shall pay or reimburse Energy Northwest for any customs duties or clearance fees payable on parts or components replaced during the Warranty Period.
- d) Without limiting Contractor's warranty obligations hereunder with respect to the Work, upon the earlier of termination of the Contract and the end of the Warranty Period, Contractor shall assign to Energy Northwest all rights under any warranties it may receive or be entitled to from subcontractors to the extent such warranties extend beyond the period of Contractor's warranty obligations hereunder. Contractor shall execute such additional documents as Energy Northwest may require to evidence that assignment to Energy Northwest.
- e) In any case where the repair, replacement, removal or reinstallation of any replacements for Defective Work or any part of the work or other property damaged by Defective Work or work requires any re-design or re-engineering, Contractor shall facilitate, coordinate implement and pay for such re-design or re-engineering through Energy Northwest.

30.2 Warranty Period. For all Work except as otherwise specifically provided herein, Contractor shall have no liability under this provision after the end of the period commencing on the date of Final Acceptance and ending on the first anniversary thereof (as such period may be extended in accordance with the terms hereof, the "Warranty Period"); provided, however, that the Warranty Period for any Work required to be re-performed, repaired, corrected or replaced following discovery of a Defect during the original Warranty Period shall be extended from the time of such re-performance, repair, correction or replacement for a period ending on the earlier of the first anniversary of the date of such re-performance, repair, correction or replacement was completed or the second anniversary of the date of Final Acceptance.

30.3 Exclusions: Contractor's warranty set forth in this provision shall not apply to:

Damage to any Work to the extent such damage is caused by:

- a) a failure to properly operate and maintain such Work in accordance with the recommendations set forth in the applicable operating and maintenance manuals ("Required Manuals"), but only if such failure occurs after Final Acceptance;
- b) operation of such Work outside of operating specifications for such Work as set forth in the Required Manuals or as recommended in writing by the Contractor, or after a Defect has been discovered to the extent continued operation is not permitted by the Required Manuals or the Contractor's written recommendations (with any resultant exacerbation not subject to the warranty provisions hereof), but only if such operation occurs after Final Acceptance;
- c) the use of spare parts and normal consumables in the repair or maintenance of such Work that are not in accordance with specifications and recommendations set forth in the Required Manuals or the Contractor's written recommendations, but only if after Final Acceptance;
- d) abrasion, corrosion, erosion or chemical attack resulting from exposure to conditions after Final Acceptance that are not contemplated by the scope of work, or normal wear and tear; or
- e) Consumables or items that require replacement due to normal wear and tear or casualty.

30.4 Contractor's Primary Liability With Respect to Subcontractor Warranties

Contractor has the primary liability to Energy Northwest with respect to the warranties set forth in this provision during the Warranty Period, whether or not any Defect or other matter is or was also covered by a warranty of a subcontractor, and Energy Northwest need only look to Contractor for corrective action. The refusal of a Subcontractor to correct Defective Work will not excuse Contractor from its liability as to the warranties provided herein.

30.5 Correction of Defects.

- a) Generally: Energy Northwest shall provide written notice to Contractor as soon as reasonably practicable (in no event more than thirty (30) Days after the expiration of the Warranty Period) after discovery that any of the Work fails to satisfy the Contractor's warranty, and Contractor's representatives shall have access to the Defective Work, to the extent providing such access does not interfere with, and does not require a material change to, Energy Northwest's operations, and to test and operating records and other information that Contractor reasonably deems necessary to verify the validity of any Claim hereunder. Within ten (10) business days after receipt by Contractor of a notice from Energy Northwest specifying a failure of any of the Work to satisfy Contractor's warranty and requesting Contractor to correct the failure, Contractor shall submit a corrective action plan for Energy Northwest's written approval and thereafter re-perform any necessary purchasing relating to such Work, and shall commence and continue to prosecute diligently the repair or replacement of such Work and any other portions of the Work damaged or affected by such Work, all in accordance with such corrective action plan. Any such remediation or repair shall be subject to Energy Northwest's approval, which shall be based on the requirements of the Contract. When requested by Energy Northwest, corrective Work required to satisfy this warranty shall be performed on an accelerated basis, such as the use of overtime or shift work basis and obtaining and shipping Work using the fastest means available in order to minimize Energy Northwest's loss of operating time at no cost to Energy Northwest. Energy Northwest shall provide Contractor with access to the Work sufficient to perform its warranty obligations under the Contract, so long as such access does not unreasonably interfere with operation of the Work and subject to any reasonable security or safety requirements of Energy Northwest. Any change to parts of the Work that would alter the requirements of the Contract may be made only with prior written approval of Energy Northwest. No such remediation or repair shall be considered complete until Energy Northwest shall have reviewed and approved such remedial work; provided that Energy Northwest shall complete its review and notify Contractor whether it has approved such remedial Work within five (5) days of such remediation or repair.
- b) Energy Northwest Performance: Contractor shall be given a reasonable opportunity to perform any Work under its warranty under this section. If Contractor does not commence such warranty Work approved by Energy Northwest pursuant to this section within a reasonable period of time not to exceed one (1) week, or if, after having commenced such repair or replacement, the Contractor fails diligently to prosecute the repair or replacement to completion, then Energy Northwest shall have the right to perform the necessary remedy, or have third parties perform the necessary remedy, and all costs, charges and expenses incurred by Energy Northwest in effecting such repair or shall be paid by Contractor. In the event any of the Work fails to satisfy the warranty during the applicable Warranty

Period and (i) any such failure occurs under circumstances in which there is an immediate need for repairs or (ii) Energy Northwest elects, after consultation with Contractor or in the event Contractor shall fail to satisfy any of its warranty obligations, to effect the necessary repairs, then Energy Northwest may with notice to Contractor perform such warranty Work and Contractor shall be responsible to Energy Northwest for the costs of repair.

- 30.6 Chronic Failures: If a chronic failure of, or Defect in, any component or item of Work occurs during the Warranty Period, Contractor will, as part of its warranty obligations and at its own cost and expense, investigate the root cause of the chronic failure or Defect and repair, replace or adjust to correct the root cause of the chronic failure or Defect. For the purpose of this section, chronic failure or Defect shall mean a substantially similar failure or Defect of any component or item of Work occurring two (2) or more times within a twelve (12) month period. A copy of the root cause analysis together with all attachments, notes and supporting documents shall be submitted to Energy Northwest. At its option, Energy Northwest may conduct its own root cause investigation, participate in Contractor's root cause investigation or both. Energy Northwest shall not be obligated to provide Contractor with a copy of its root cause investigation report.

GP-31 PAYMENTS WITHHELD, BACKCHARGE, AND SET-OFF

31.1 Right to Withhold Payment

Energy Northwest shall notify Contractor after receipt of an invoice of its intention to withhold payment and a statement of the reason for such withholding. Energy Northwest may withhold any payment or portion thereof to protect it from loss on account of Contractor's failure to comply with the provisions of the Contract, including but not limited to:

- a) Contractor is in default;
- b) Defective Work not remedied;
- c) Work by Energy Northwest to correct Defective Work;
- d) Claims or liens filed or reasonable evidence indicating probable filing of claims by any third party against Energy Northwest;
- e) Reasonable doubt as to the ability of Contractor to make payments properly and immediately to Subcontractors for material or labor;
- f) Reasonable evidence that the Work required by the Contract Documents cannot be completed for the unpaid balance of the Contract Sum;
- g) Contractor's failure to perform in accordance with the Contract Documents;
- h) Damage to Energy Northwest provided equipment, materials and tools;
- i) Cost or liability that may occur to Energy Northwest as the result of Contractor's fault or negligent acts or omissions; or
- j) Failure to provide a timely response to a reasonable request for supporting data regarding invoiced amount.

After Contractor remedies the cause of withholding pursuant to this provision to Energy Northwest's satisfaction, payment shall be made for the amount withheld, subject to Energy Northwest's right to Backcharge the Contractor.

31.2 Right to Backcharge

Contractor shall remain responsible and promptly correct any defect and deficiency in the Work when Energy Northwest notifies Contractor that such corrective action is required under the Contract. Energy Northwest shall have the right to Backcharge the Contractor and the Contractor shall reimburse Energy Northwest for the costs incurred by Energy Northwest for correcting Defective or non-conforming Work or when Contractor fails to perform the Work.

- a) Energy Northwest's Right to Perform Corrective Work

If, upon being notified by Energy Northwest in writing of non-conforming or Defective Work, and having been requested to correct the Work in an expeditious manner, Contractor states or by its actions indicates its inability or unwillingness to comply within a reasonable time, then Energy Northwest shall be entitled to proceed to accomplish the corrective Work by the most expeditious means available to it and Backcharge Contractor for the reasonable cost of the Backcharge Work as set forth in this provision.

b) Cost of Backcharge Work

The cost of such Backcharge Work provided for herein or elsewhere in the Contract shall be computed as follows:

- (1) Engineering and manual and non-manual labor that is directly involved to accomplish the corrective Work;
- (2) Material and Subcontractor costs shall be charged at net delivered cost;
- (3) Equipment and tool rentals shall be charged at net delivered cost; and
- (4) Energy Northwest's current indirect costs, overhead and administration shall be added to items (1) through (3).

c) Furnishing of Written Estimate of Backcharge Work

Provided the schedule permits, before proceeding with Backcharge Work, Energy Northwest shall furnish to Contractor a written estimate of the cost of performing the Work, and solicit Contractor's signed authorization to proceed. Regardless of Contractor's willingness to provide such written authorization, Energy Northwest shall proceed with the Work and upon completion of the Backcharge Work will invoice Contractor for the costs thereof, computed as shown above. Energy Northwest shall have the right to withhold such invoiced amount from funds due Contractor under the Contract. Contractor shall have the right to contest the validity and invoiced cost of any Backcharge Work undertaken by Energy Northwest in accordance with the "Applicable Law and Disputes" provision of these General Provisions.

d) Invoices for Backcharges

Energy Northwest shall submit a supplemental invoice for such costs and such invoices shall be due and payable monthly in arrears.

31.3 Right to Set-Off

In addition to the foregoing, Energy Northwest shall be entitled at all times to set-off any amount due from Contractor or its affiliates to Energy Northwest against any amount payable by Energy Northwest to Contractor.

GP-32 LIMITATION OF DAMAGES

Except for the indemnifications set forth in the "Indemnification" provision and the "Employee Concerns Program" provision, neither Party shall be liable to the other, whether in contract, in tort (including negligence), strict liability, under any warranty, or under any other legal or equitable theory of law, for any special, indirect, incidental, or consequential loss or damage whatsoever. The foregoing waiver shall include specifically, but without limitation, cost of capital, loss of profits or revenues or the loss of use thereof, losses by Energy Northwest, its Participants, or the Bonneville Power Administration that result from the loss of power production at the Site, cost of purchased or replacement power (including additional expenses incurred in using existing power facilities) or claims of any customers of Energy Northwest.

GP-33 SAFETY, HEALTH AND FIRE PROTECTION

- 33.1 While performing Work on an Energy Northwest Site, the Contractor shall take all reasonable precautions in the performance of Work under this Contract to protect the health and safety of employees and members of the public, and to minimize danger from all hazards to life and property, and shall comply with all Site regulations of Energy Northwest.
- 33.2 Contractor is an independent contractor, and is solely and completely responsible for conditions on the Work Site, including safety of all persons and property during the performance of the Work. This requirement applies continuously and is not confined to normal working hours. This includes responsibility for safety precautions for the benefit of its own employees and employees of its Subcontractors and representatives and for safety precautions for the benefit of other Site contractor employees in common work areas, where applicable. The Contractor is solely responsible for complete, sufficient and competent supervision of its employees.
- 33.3 Visits to the Work Site and observations by Energy Northwest shall not relieve the Contractor of its obligation to conduct comprehensive inspections of the Work sufficient to ensure conformance with the intent of the Contract, and shall not relieve the Contractor of its full responsibility for all Work means,

methods, techniques, sequences and procedures necessary for coordinating and completing all portions of the Work and for all safety precautions incidental thereto.

- 33.4 The required and/or implied duty of Energy Northwest to conduct any review of the Contractor's performance does not, and is not intended to, include review of the adequacy of the Contractor's safety measures in, on or near the Work Site.
- 33.5 In the event Contractor employees are injured while performing Work at an Energy Northwest Site, Contractor shall promptly report all such injuries to the Energy Northwest Technical Representative. All reported injuries are subject to review by Energy Northwest senior management.

GP-34 RADIATION PROTECTION

- 34.1 Occupational Exposer for Adults: Energy Northwest Administrative Exposure Hold Point is 2 rem/year. Contractor personnel who perform Work at the Columbia Generating Station under the terms of this Contract must have the available exposure to complete assigned Work without exceeding the Administrative Exposure Hold Point. Energy Northwest is firmly committed to the Administrative Exposure Hold Point and will not grant extensions to the Hold Points except in extreme circumstances.
- 34.2 Minors: Minors under age 18 will be limited to the Federal exposure limits of 10 percent of the occupational limits for adults. Minors will not be working routinely in Radiological Controlled Areas (RCA), and entry into an RCA will require the approval of the Radiation Protection Manager. Authorized minors will be allowed to routinely work in Energy Northwest Controlled Area and Restricted Areas.
- 34.3 Declared Pregnant Women (DPW) The definition of a DPW per 10CFR20 is a woman who has voluntarily informed her employer, in writing, of her pregnancy and the estimated date of conception. When a Contractor's employee declares her pregnancy, Contractor shall do the following:
- a) Request the DPW to immediately (voluntarily) inform the licensee (Energy Northwest) of her status;
 - b) Request a release from the individual allowing the employer (Contractor) to immediately provide the licensee with a copy of her declaration of pregnancy; and
 - c) Once notified of the declaration, Energy Northwest will reduce the allowable exposure for that individual to meet the administrative hold points established by Columbia Generating Station for a DPW.
- 34.4 Training: In accordance with 10CFR20, radiation dose received within Restricted Areas is considered occupational dose. Per 10CFR19.12, individuals working in or frequenting a Restricted Area shall receive instructions (10CFR19.12 identifies minimum instruction) commensurate with potential radiological health protection problems in the Restricted areas.

NOTE: Columbia Generating Station Restricted Areas include the Columbia Generating Station Protected Area and other areas outside of that area as identified by Health Physics. Examples of other Restricted Areas presently include Warehouse 5 and the decontamination laundry facility. Areas may be added to or deleted from the list of Restricted Areas, dependent upon current radiological conditions.

GP-35 FITNESS FOR DUTY

CONTRACTOR/VENDOR HEREBY ACKNOWLEDGES THAT IT ACCEPTS THE REQUIREMENTS OF THIS FITNESS FOR DUTY PROGRAM AND THAT CONTRACTOR/VENDOR EMPLOYEES HAVE BEEN INFORMED OF ENERGY NORTHWEST'S POLICIES AND REGULATIONS.

- 35.1 Contractor/Vendor employees are expected to:
- a) Report for work and at all times while they are on the job be fit for duty;
 - b) Not be under the influence of any alcoholic beverage;
 - c) Not be under the influence of any controlled substance, except as prescribed by a physician so long as the performance or safety of the Work is not affected thereby.

Such employees who are found to be unfit for duty shall be removed from Energy Northwest facilities and their security (green) badge retrieved.

Persons having been denied access or removed from activities at any nuclear power plant for violations of a Fitness for Duty policy will not be assigned to work at Energy Northwest facilities without the knowledge and consent of Energy Northwest.

- 35.2 In order to ensure that Energy Northwest facilities remain free from the effects of alcohol or drug use, access shall be denied to any agency, contractor, vendor or their employee who, while on Energy Northwest facilities:
- a) Unlawfully possesses/uses or is under the influence of drugs or alcohol; (Any individual in possession of drugs and or alcohol within the Energy Northwest Security Defined Owner Controlled Area (SDOCA) is in violation of the law and is subject to arrest by local law enforcement.)
 - b) Is determined, as a result of observations and/or chemical testing, to be unfit for duty;
 - c) Is determined, as a result of chemical testing, to have a confirmed level of drugs or alcohol in their systems; or
 - d) Refuses to submit to any test required herein that is utilized to determine the presence of drugs or alcohol in their systems.
- 35.3 In accordance with 10 CFR Part 26, Fitness-for-Duty Programs, Contractors/Vendors whose employees have unescorted access to Energy Northwest Columbia Generating Station protected areas, or are assigned to the Technical Support Center, or the Emergency Operations Facility, shall establish as policy that their employees are subject to:
- a) Chemical testing, to include a breath test for alcohol, conducted by Energy Northwest as a condition of assignment within 30 days prior to granting of the unescorted access. Positive results shall be grounds for disqualification from employment/access on Energy Northwest facilities as specified in 10 CFR Part 26. Medical certification shall be required before reconsideration for employment/access on Energy Northwest property; and
 - b) Chemical testing for cause following any observed behavior indicating possible drug/substance or alcohol abuse. Examples of reasonable cause may include, but are not limited to the following:
 - (1) Documentation of unsatisfactory performance;
 - (2) Sleeping or appearing to sleep on the job;
 - (3) Fights (meaning physical contact) or assaults;
 - (4) Flagrant violations of established safety, security or other operating procedures;
 - (5) Physical symptoms consistent with substance abuse;
 - (6) Evidence of illegal substance use, possession, sale or delivery;
 - (7) Credible information that an individual is abusing drugs or alcohol;
 - (8) Displays of aberrant behavior, or if a person is reasonably believed to be a risk to health, safety or Energy Northwest operations; and
 - (9) Unannounced chemical tests imposed in a random manner.
- 35.4 Contractors/Vendors whose employees are assigned to other Energy Northwest facilities for a 5 day or longer period and/or issued resident visitor badges to such other Energy Northwest facilities shall be initially drug/alcohol tested.
- 35.5 Energy Northwest is responsible to the Nuclear Regulatory Commission for maintaining an effective Fitness for Duty Program in accordance with 10 CFR Part 26.
- 35.6 Contractors/Vendors shall comply with Energy Northwest rules, regulations, and policies regarding Fitness for Duty, to include supervisory and employee training on Fitness for Duty requirements. Contractors/Vendors shall take appropriate action, to include removal of employees from Energy Northwest facilities, in those cases where employees are found to be in violation of the Fitness for Duty policy.
- 35.7 Employees on Energy Northwest facilities are required to report to their supervisor when they are taking any prescription, over-the-counter, or other medication or substances which may impair their abilities to function safely on the job.
- 35.8 Employees are prohibited from consumption of alcohol within a minimum abstinence period of five hours preceding any scheduled work tour on Energy Northwest facilities, however must report for work "fit for duty."
- 35.9 Employees called in to perform an unscheduled work tour must inform their supervisor if alcohol has been consumed within the preceding five hours. If alcohol was consumed, a determination must be made by the

supervisor as to the employee's fitness for duty. Consumption of alcohol during the abstinence period does not by itself preclude use of individuals needed to respond to an emergency.

- 35.10 No alcohol or controlled substances are permitted within the Energy Northwest SDOCA, to include employees' vehicles. Employees found to be in possession of illegal drugs or alcohol within the Energy Northwest SDOCA shall be subject to arrest by local law enforcement authorities and/or disciplinary action up to and including removal from the facilities.
- 35.11 Employees found intoxicated or under the influence of a drug/substance by a confirmed positive test shall be removed from the facilities for the time period specified in 10 CFR Part 26. Contractors/Vendors shall provide medical certification prior to requesting reinstatement of an employee's access to Energy Northwest facilities. Any reinstated employee shall be subject to follow-up chemical testing. Any subsequent confirmed positive test shall result in removal for a minimum of five years.
- 35.12 Employees found to be involved in the sale, use, or possession of illegal drugs/substances or alcohol within the protected area of Columbia Generating Station shall be subject to arrest and removed and not granted unescorted access for a minimum of five years from the date of removal.
- 35.13 Refusal to provide a specimen for testing as required herein, sample tampering and substitution, and resignation prior to removal for violation of the Fitness For Duty (FFD) policy shall result in permanent denial of unescorted access.
- 35.14 Employees shall be notified of any disciplinary actions taken as a result of this policy, and the basis for such actions. Any employee appeal shall be handled in accordance with Energy Northwest's FFD policy.
- 35.15 Supervisors/Managers who knowingly disregard the requirements of the FFD policy shall be permanently denied unescorted access.
- 35.16 Duly authorized representatives of the Nuclear Regulatory Commission may inspect, copy, or take away copies of Contractor's or Vendor's documents, records, and reports related to implementation of the Contractor's or Vendor's Fitness for Duty program under the scope of the contracted activities.
- 35.17 The definition of Fitness for Duty in 10 CFR 26, Subpart 1 also includes being rested enough to perform work safely and competently. All workers with unescorted access to the protected area must comply with Columbia Generating Station Procedure SWP-FFD-03 (Fatigue Management). All workers will be subject to Fatigue Assessments, conducted by Columbia Generating Station personnel who are trained and qualified as Fatigue Assessors. The following conditions require a Fatigue Assessment:
 - a) For Cause – A fatigue assessment must be conducted in response to an observed condition of impaired individual alertness creating a reasonable suspicion that an individual is not fit to safely and competently perform their duties.
 - b) Self-declaration – A fatigue assessment must be conducted in response to an individual's self-declaration to his or her supervisor that they are not fit to safely and competently perform their duties.
 - c) Post-event – A fatigue assessment must be conducted in response to events requiring post-event drug and alcohol testing and the event resulted in one of the following:
 - (1) A recordable injury;
 - (2) A radiation exposure or release of radioactivity in excess of regulatory limits; or
 - (3) Actual or potential substantial degradations of the level of safety of Columbia Generating Station.
 - d) Follow-up – Individual returns to work within 10 hours of a for-cause fatigue assessment, or sent home after self-declaring.
- 35.18 Contractor/Vendor understands that failure to provide the personnel required by this Contract adversely impacts Energy Northwest. Therefore, in the event that a Contractor/Vendor employee(s) is denied access to Energy Northwest facilities for failure to pass chemical testing, or is otherwise found to be in violation of the Fitness for Duty Policy set forth herein, Contractor/Vendor agrees that Energy Northwest may assess, not as a penalty, and in addition to any other remedies provided by law, liquidated damages against the Contractor/Vendor in an amount of \$100 per day for each employee that is denied access and is thereafter not replaced by an equally qualified employee. Energy Northwest may, in its sole determination, waive the foregoing liquidated damages requirement.

GP-36 SECURITY

The Contractor or Subcontractors, and their employees shall comply with Energy Northwest security requirements for Columbia Generating Station and other Energy Northwest property and facilities. THE FOLLOWING ITEMS ARE STRICTLY PROHIBITED ON ENERGY NORTHWEST PROPERTY: ALCOHOLIC SUBSTANCES, NON-PRESCRIPTIVE CONTROLLED DRUGS, FIREARMS, EXPLOSIVES OR INCENDIARY DEVICES, AMMUNITION, CHEMICAL AGENTS/SELF-DEFENSE SPRAYS, OR OTHER ITEMS SIMILAR IN EFFECT OR PURPOSE. If an employee, contractor, or visitor arrives at the Energy Northwest Security Checkpoint with declared or undeclared prohibited item(s), Security will contact the Benton County Sheriff's office; notification will be made to the supervisor for the employee/contractor or visitor's contact; and the employee, contractor, or visitor will not be allowed to enter the SDOCA the day of the incident. Prior to future admittance into the SDOCA, the supervisor or visitor contact will meet with Security management to determine if access to the SDOCA will be approved. FAILURE TO OBSERVE THESE RESTRICTIONS AT COLUMBIA GENERATING STATION IS A VIOLATION OF BENTON COUNTY CODE AND MAY ALSO BE CAUSE FOR ARREST AND/OR CIVIL PENALTY. In addition, the following general security requirements shall apply to all contractors whose personnel will require unescorted access to Columbia Generating Station or access to Safeguards Information. Personally owned vehicles are not permitted in the Columbia Generating Station Protected Area.

GP-37 ACCESS AUTHORIZATION

- 37.1 Unless specified elsewhere, Energy Northwest, at its own cost, will conduct a complete background investigation (in accordance with Title 10 of the Code of Federal Regulations, 10CFR 73.56, NEI 03-01, Nuclear Power Plant Access Authorization Program) covering the latest three (3) year period for each employee. The Contractor or Subcontractor employee shall be required to complete a Personal History Questionnaire. When applicable, the investigation shall include:
- a) Verification of true identity,
 - b) Past employment (includes Fitness for Duty suitable inquiries and employment/unemployment for the past three (3) years),
 - c) Periods of unemployment 30 days or over,
 - d) Criminal history record (accomplished by sending fingerprint information to the NRC/FBI),
 - e) Credit history,
 - f) Verify education in lieu of employment in the last five (5) years,
 - g) Verify military history as employment for the last three (3) years,
 - h) A psychological evaluation.
- 37.2 Energy Northwest may provide background screening for Contractor or Subcontractor personnel, at its sole discretion, depending upon the nature and duration of the contract and number of persons assigned.
- 37.3 Contractor or Subcontractor employees requiring unescorted access to Columbia Generating Station shall complete all Plant Access Training requirements.
- 37.4 Unescorted access authorization will not be certified and unescorted access will not be granted until applicable elements of the Access Authorization Program have been successfully completed and the completed file has been reviewed and approved by an Energy Northwest Reviewing Official.
- 37.5 All persons granted unescorted access to Columbia Generating Station shall be issued photo identification security (green) badge as part of the Columbia Generating Station Access Control System. The security (green) badge shall be worn visibly at all times within the Columbia Generating Station.
- 37.6 Contractor or Subcontractor employees found to be unreliable or untrustworthy by the Reviewing Official will have their unescorted access request denied.
- 37.7 Contractor or Subcontractor employees who are granted unescorted access to Columbia Generating Station shall be subject to Energy Northwest's Behavior Observation Program. The Behavioral Observation Program provides for management/supervisory personnel responsibility for observing personnel for behavioral traits and patterns that may reflect adversely on their trustworthiness or reliability and reporting those observations to Energy Northwest management. Individuals applying for or maintaining unescorted access authorization will be notified by Energy Northwest of their responsibility to report legal action to their

supervisor and the Energy Northwest Technical Representative or designee by their next scheduled work day following the incident.

- 37.8 All persons requiring unescorted access to Columbia Generating Station shall be required to adhere to the Fitness for Duty program and shall submit to chemical testing in the form of breath alcohol testing and urine analysis prior to assignment, if applicable. A positive test result for drugs/controlled substances or alcohol shall result in denial of access to Energy Northwest facilities.
- 37.9 Contractor or Subcontractors who are granted unescorted access to Columbia Generating Station are subject to the re-investigation process.
- 37.10 Contractor or Subcontractor employees who no longer require unescorted access to Columbia Generating Station shall have their unescorted access terminated. The Contractor shall notify the Energy Northwest Technical Representative of any employees granted unescorted access who are terminated or no longer require access by the employee's last scheduled workday. Notifications of "For Cause" and impromptu employment terminations shall be made to a Reviewing Official on the same day in which it occurs and in no case longer than 24 hours after the employment termination.
- 37.11 **This section applies to Contractors and Subcontractors who have approved audit programs only.** Contractor or Subcontractor shall establish, implement, and maintain written procedures to meet the general performance objectives and applicable requirements for conducting 5-Year Expanded, Initial, Update and Reinstatement background investigations in accordance with 10CFR73.56, NEI 03-01, and 10CFR26.
- 37.12 **This section applies to Contractors and Subcontractors who have approved audit programs only.** Energy Northwest reserves the right to audit the contractor/vendor access authorization program or background screening program and the contractor/vendors subcontractors providing access authorization program services at any time, including at unannounced times, as well as to review all information and documentation that is reasonably relevant to the performance of the program.
- 37.13 Contractor or Subcontractor shall establish, use, and maintain a system of files and procedures for the protection of the personal information including personal information stored in electronic format and for the secure storage and handling of the information collected.
- 37.14 Personal information collected and maintained by the supplier on behalf of Energy Northwest must not be disclosed to unauthorized persons. Information must be held in confidence in accordance with the protection of personal information requirements outlined in 10CFR73.56, NEI 03-01, 10CFR26 and any applicable NEI Administrator Bulletins.

GP-38 INSURANCE PROVIDED BY ENERGY NORTHWEST

- 38.1 Energy Northwest, at its own expense, will procure and shall maintain in effect policies of insurance as follows:
- a) Nuclear Liability
- (1) An agreement of indemnification as contemplated by Section 170 of the Atomic Energy Act of 1954, as amended; and
 - (2) Nuclear liability insurance from ANI or such protection including posting of bonds or self-insurance in such form and amount as will meet the financial protection requirements of the Atomic Energy Act of 1954, as amended.
 - (3) In the event that the nuclear liability protection system contemplated by Section 170 of the Atomic Energy Act of 1954, as amended, is replaced or is changed, Energy Northwest will maintain in effect during the period of operation of the project, to the extent available, liability protection through government indemnity, limitation of liability and/or liability insurance.
- b) Nuclear Property Damage
- Energy Northwest agrees to secure and maintain in force, at its own cost, property damage insurance coverage from the Nuclear Property Insurance Pools, or equivalent, consistent with prudent utility practice, covering all reactor site property at the Site. Said property damage insurance shall be maintained in effect until all the Contractor's obligations under this Contract shall have ceased. The term "reactor site property" as used herein, shall mean all property which is located at the Site as described in the Nuclear Property Insurance, or equivalent policy, including materials and equipment at the Site furnished by or on behalf of the Contractor pursuant to this Contract, subject to the policy conditions.
- c) Other Provisions of Insurance Provided by Energy Northwest

Energy Northwest agrees not to assert any claim against the Contractor or any of its Subcontractors, whether in contract or tort for loss of, damage to, or loss of use of any reactor site property owned by Energy Northwest to the extent that such loss, damage, or loss of use is caused by or results from a nuclear occurrence.

GP-39 PARTS, MATERIALS, AND EQUIPMENT

39.1 The Contractor shall furnish and shall pay in full for all Work prior to Final Acceptance by Energy Northwest. All materials and equipment furnished shall be new and not previously used. If requested by Energy Northwest, the Contractor shall provide satisfactory evidence of the kind and quality of equipment and materials to be furnished by submission of any required samples at the Contractor's cost. Contractor shall furnish Energy Northwest with maintenance manuals and operating instructions for all equipment.

39.2 Delivery of Suspect/Counterfeit Items

- a) Contractor is hereby notified that the delivery of suspect/counterfeit items is of special concern to Energy Northwest. If any items specified in this Contract are described using a part or model number, a product description, and/or industry standard referenced in the Contract, Contractor shall assure that the items supplied by Contractor meet all requirements of the latest version of the applicable manufacturer data sheet, description, and/or industry standard unless otherwise specified. If the Contractor is not the manufacturer of the goods, the Contractor shall make reasonable efforts to assure that the items supplied under this Contract are made by the original manufacturer and meet the applicable manufacturer data sheet or industry standard. Should Contractor desire to supply an alternate item that may not meet the requirements of this paragraph, Contractor shall notify Energy Northwest of any exceptions and receive Energy Northwest's written approval prior to shipment of the alternate items to Energy Northwest.
- b) If suspect/counterfeit items are furnished under this Contract or are found in any of the goods delivered hereunder, such items will be dispositioned by Energy Northwest and/or the original manufacturer, and may be returned to the Contractor in accordance with the warranty provisions applicable to the Contract. The Contractor shall promptly replace such suspect/counterfeit items with items meeting the requirements of the Contract. In the event the Contractor knowingly supplied suspect/counterfeit items, the Contractor shall be liable for reasonable costs incurred by the Energy Northwest for the removal, replacement and reinstallation of said goods in accordance with the warranty provisions applicable to the Contract.

39.3 Cleanliness Control/Foreign Material Exclusion

- a) The goods or services to be supplied by Contractor under this Contract that are subject to this Section are important to the operation of a power plant facility. The Contractor shall establish Cleanliness Control/Foreign Material Exclusion practices to ensure that new, repaired or refurbished parts and equipment delivered under this Contract are free from oil or grease (not being used as a preservative or protective coating), machine tailings, dirt, mill scale, weld splatter, residue, broken or loose parts, contaminants, or other foreign material that may adversely affect the operation of the item(s) provided or may be introduced into interfacing equipment and systems of the Energy Northwest. Other examples of foreign material include loose fasteners, debris resulting from machining or other manufacturing processes, and tags or labels used in the manufacturing process that are not permanently affixed to internals.
- b) The Contractor is responsible for ensuring items provided are free from foreign material (as defined above).
- c) Contractor is responsible for ensuring through inspection or other means that no foreign material or contaminants are present, including internal surfaces and cavities of the equipment.
- d) Additional measures shall be taken by the Contractor to prevent foreign material from entering the equipment, including protective devices such as caps, plugs, or covers. Protective devices shall be validated for material compatibility to guarantee no impact to the goods provided (for example, protective devices containing halogens or heavy metals should not be used on stainless steel items).
- e) Protective devices such as caps and plugs shall be clearly visible. Protective devices that have been painted over during production processes shall be replaced or otherwise be made clearly visible.
- f) Precautions shall also be taken to ensure foreign material is not introduced during packaging and shipping. If the equipment is shipped with other parts (such as seals, gaskets, lubricants, mounting hardware), precautions should be taken to ensure smaller items cannot be introduced into openings or

cavities of larger parts and equipment. Where appropriate, every item included with shipment should be identified in the packing list or by other means. If desiccants or other preservatives are used to protect the item(s), the affected part or equipment shall be clearly labeled or tagged with information including the type of preservative, its location, and any special instructions pertaining to its removal prior to installation or other applicable information such as quantity of desiccant packages.

GP-40 TOBACCO CONSUMPTION/USE

- 40.1 Tobacco use (the definition of which includes the use of electronic cigarettes or “e-cigarettes”) is not permitted in Energy Northwest owned or leased buildings, Energy Northwest vehicles, equipment or machinery. Tobacco use is only permitted in designated tobacco use areas. Tobacco use is not allowed in other outdoor areas, including but not limited to, entryways, parking lots and pathways.
- 40.2 Tobacco use is not permitted in a personal vehicle unless it is exiting the site at the conclusion of the occupant’s work shift.

GP-41 PROJECT MANAGEMENT STATUS AND COST REPORTING

Contractor shall be required to submit project status and cost reports and/or enter project cost information directly into Energy Northwest databases as specified by Energy Northwest. The format and frequency of such cost reports shall be as specified by Energy Northwest and may include labor hours and labor costs, material costs, travel and living costs and other costs as required.

GP-42 ENVIRONMENTAL PROGRAM REQUIREMENTS

- 42.1 Energy Northwest has an Environmental Stewardship Policy that states Energy Northwest will be a responsible steward of the environment, protecting it for current and future generations. In support of this commitment, Energy Northwest expects its contractors and vendors to fully comply with all applicable Federal, State and local laws and conform with Energy Northwest environmental requirements. In performing Work under this Contract, the Contractor shall perform Work in a manner that ensures adequate protection for Energy Northwest, Contractor and Subcontractor employees, the public, and the environment. The Contractor shall exercise a degree of care commensurate with the Work and associated hazards. The Contractor shall ensure that environmental, safety, and health functions are an integral part of the Contractor’s work planning and execution processes. Emphasis should be on designing the Work and/or controls to reduce or eliminate hazards and to prevent accidents and unplanned releases or exposures. In the performance of the Work, the Contractor shall ensure that:
- a) Personnel possess the experience, knowledge, skills, and abilities necessary to discharge their responsibilities.
 - b) Before Work is performed, associated hazards are evaluated and administrative and engineering controls are prepared to prevent and mitigate potential hazards.
- 42.2 Spill Prevention: Contractor is responsible for ensuring that best management practices and the highest standards of good housekeeping that will prevent and or minimize the risk of upsets and spills are followed at all times. If the Contractor causes or is responsible in any way for a spill or release of hazardous materials or petroleum products on Energy Northwest property, Contractor shall take appropriate and timely corrective action as directed by Energy Northwest. If the Contractor fails or refuses to correct the spill or release of hazardous materials or petroleum products on Energy Northwest property, Energy Northwest may perform, or cause to be performed, the necessary corrective work and unilaterally charge the Contractor for the cost thereof. Such charges shall be deducted from payments otherwise due the Contractor under this Contract. The Contractor shall not be entitled to an extension of time, or additional cost or fee, or damages by reason of, or in connection with, any corrective action or any work stoppage caused by a spill or release of hazardous materials or petroleum products on Energy Northwest property. The Contractor is responsible for Subcontractor compliance with the environmental requirements of this Contract. The Contractor shall include a clause substantially the same as this clause in lower-tier Subcontracts involving complex or hazardous work (including work that can potentially impact the environment). Such Subcontracts shall provide for the right to stop work.

The Contractor shall develop measures to prevent spills of pollutants and respond appropriately if a spill occurs. A pollutant includes any hazardous or non-hazardous substance (e.g. fuel, hydraulic oil, engine coolants) that when spilled, will contaminate soil, surface water, or ground water. Mobile equipment such as cranes, generators or vehicles can become a source for leaks to the environment. Spill kits which may

include absorbent pads or drip pans must be available to capture leaking or dripping fluids. Efforts shall be made to stage mobile equipment on impermeable surfaces, such as concrete or asphalt. In the event of a spill, notify your Technical Representative for evaluation of the spill and direction for cleanup and disposal.

- 42.3 Regulated Waste Management: Regulated Waste generated as a result of Contractor activity becomes the sole responsibility of EN for acceptance, packaging, and disposal. Regulated Wastes include, but are not limited to, contaminated fuel, spent solvents or grease, or spill cleanup debris. A Regulated Waste may be generated from processes such as tank cleaning, parts degreasing, or asbestos and lead based paint removal. Contact your Technical Representative for disposal assistance prior to initiating an activity that may generate Regulated Waste.
- 42.4 Chemical Management: For each chemical brought on to EN property, Contractor shall submit a copy of the Material Safety Data Sheet (MSDS) or Safety Data Sheet (SDS) to the EN Technical Representative for evaluation and approval prior to arrival on site. Contractors are responsible for working with the EN Technical Representative to ensure chemicals brought on site are properly labeled and stored in accordance with EN policies and procedures. If chemical materials are transferred from one container to another, Contractor shall ensure that the receiving container is properly labeled to indicate its contents.
- (For work at CGS only)* A Request for Chemical Approval Form 26087 shall be approved before the chemical material is brought on site. Each chemical material shall have a CGS chemical material container label attached. Exemptions exist for small quantities of chemicals typically maintained in a vehicle. This is applicable to vehicles temporarily (less than 12 hours) within the site boundaries while under Security control or locked up. These chemicals are not to be used on CGS systems, structures or components, and are not to be disposed of on EN property. Use chemical materials only in those areas for which they are approved.
- 42.5 Excavation (For work at CGS only): In the event that unidentified objects are encountered during excavation, work should be stopped, and the EN Technical Representative notified. It becomes the responsibility of the EN Technical Representative to contact the E&RP Cultural Resource Representative immediately and to determine the proper course of action. Unidentified objects include, but are not limited to, the presence of bones or remains or items that have been modified by humans such as stone tools, stone flakes, arrowheads, cobble tools, glass, ceramics, nails, brick, wood, piled rocks, a fire hearth, a lens of shell, or metal.
- 42.6 Air Emissions: Non-road engines which are temporarily installed and operated at EN sites may be subject to Washington State notification and approval requirements. Non-road engines include, but are not limited to, portable generators, compressors, pumps, and light plants. The Contractor shall provide the following information to the EN Technical Representative for each non-road engine prior to arrival on site: estimated date of arrival and departure; rated brake horse power; function (e.g., generator); and fuel type.
- 42.7 Liquid Effluents: Wastewater generated as a result of a Contractor activity may not be discharged to ground or any surface water except as authorized by permit or authorization from EN. Contractors are responsible for working with the EN Technical Representative to assure activities are protective of groundwater and when necessary measures are implemented to prevent and control stormwater contamination.

GP-43 RESTRICTIONS ON THE USE OF FORMER ENERGY NORTHWEST EMPLOYEES AND NON-SOLICITATION

- 43.1 The Contractor agrees not to utilize former Energy Northwest employees in the performance of Work under this Contract. Any exception to this provision must be approved in writing by the Contracting Officer. This provision does not apply to work supporting Columbia Generating Station scheduled or forced outages.
- 43.2 During the term of this Contract and for one year from the last day of the Contract term, Contractor shall not without prior consent directly solicit for employment (whether as an employee, contractor, or agent) any employee of Energy Northwest who is involved in the Work under this Contract or with the administration of this Contract. In the event of a breach of this provision, Contractor's damages shall be limited to an amount equal to six (6) months of the affected employee's salary from Energy Northwest just prior to the employee's termination from Energy Northwest. It shall not be a breach of this provision for Contractor to (i) make employment solicitations to the general public or groups that may include employees of Energy Northwest or (ii) respond to, act upon, or accept unsolicited employment inquiries or applications from Energy Northwest employees.

GP-44 EMPLOYEE CONCERNS PROGRAM

- 44.1 Energy Northwest has implemented an Employee Concerns Program (ECP) and procedure for reporting and resolving Energy Northwest and Contractor employee concerns, including, but not limited to, nuclear safety issues. This ECP is consistent with and expands the NRC regulation that prohibits Energy Northwest or a Contractor or Subcontractor of Energy Northwest from discriminating against any employee who raises a nuclear safety issue under Section 211 of the Energy Reorganization Act of 1974, as amended, 42 USC 5851 (Section 211), and NRC Regulation, Title 10, Code of Federal Regulations (CFR), Subsection 50.7.
- 44.2 The ECP applies to and may be used by any and all Energy Northwest, Contractor and Subcontractor personnel performing Work at an Energy Northwest Site and may be used to report any concern including, but not limited to, concerns regarding nuclear safety, industrial safety, radiological safety, quality, environmental safety, personnel, legal, financial, security and fitness-for-duty.
- 44.3 A nuclear safety or quality concern is a concern that alleges a problem with the design, operation, safety, maintenance, and/or construction of Energy Northwest projects and plants that could adversely affect the safe operation of the plants, or the ability of their systems, structures or components to perform required safety functions or concerns associated with harassment, intimidation, retaliation or discrimination based on engaging in activities protected by laws and regulations. Examples of such concerns include actual or perceived:
- a) Failure, malfunction, deficiency, or deviation in material or equipment;
 - b) Error in design, construction, analysis or fabrication;
 - c) Lacking or deficient programs that may result in nonconformance or a condition that is adverse to quality;
 - d) Policies that may result in nonconformance or a condition that is adverse to quality;
 - e) Actions that may result in nonconformance or a condition that is adverse to quality, negatively impact a safety conscious work environment (SCWE) in the workplace or emphasize production over quality and safety;
 - f) Harassment, intimidation, retaliation or discrimination based on participation in an activity protected by laws and regulations.
- 44.4 ECP training of Contractor and Subcontractor personnel who are badged and performing Work at an Energy Northwest Site will be conducted by Energy Northwest as part of the General Employee Training. Contractor and Subcontractor personnel who wish to contact Energy Northwest's Employee Concerns Program directly shall be provided the opportunity to do so. Personnel may call Energy Northwest at (800) 468-6883, extensions 8377 or 8159, or send information via facsimile to (509) 377-8786.
- 44.5 Contractor shall comply with and shall require that its Subcontractor(s) comply with the requirements of this article, Section 211 and the NRC or Department of Labor (DOL) regulations implementing Section 211. Contractor, and its Subcontractors, with personnel performing Work at an Energy Northwest Site must notify Energy Northwest within twenty four (24) hours after learning of the nuclear safety or quality concerns raised by their personnel related to Work covered by this Contract. In the event such a concern is raised, Contractor, or its Subcontractor, is required to conduct a thorough and prompt investigation of the concern and advise Energy Northwest of the findings, conclusions, and actions planned to resolve the matter within two (2) days of making its findings, conclusions, and action plans; provided that such information is not considered by Contractor/Subcontractor as subject to an employee's privacy rights or the attorney-client privilege or attorney work product. Energy Northwest may elect to perform an independent investigation and/or review. Contractor and its Subcontractors shall cooperate fully in any investigation, whether by Energy Northwest or a regulatory or enforcement agency, providing timely and unfettered access to requested records and personnel. Failure of the Contractor or Subcontractor to provide full cooperation in any such investigation conducted by Energy Northwest shall be the basis for a termination of this Contract for cause as provided elsewhere in these General Provisions.
- 44.6 Contractor shall (i) notify Energy Northwest of any allegation or concern filed with DOL or the NRC and (ii) keep EN informed of the status of any such allegation or concern. Further, notwithstanding any other provision of this Contract, Contractor shall indemnify Energy Northwest against any and all costs, losses, claims, damages, liabilities, civil penalties and expenses, including reasonable attorneys' fees, imposed upon or incurred by Energy Northwest in connection with (a) any DOL proceeding including an investigation brought against Energy Northwest by an employee or former employee of the Contractor or any Subcontractor, (b) any investigation or enforcement action by the NRC based upon such an actual or

alleged violation of Section 211 or applicable regulations (10 CFR section 50.7); (c) any civil action brought against Energy Northwest based upon the Contractor's or Subcontractor's actual or alleged violation of Section 211; and (d) any cost or expense incurred by Energy Northwest in conducting an internal or external investigation in any allegation or concern subject to this Article, including but not limited to legal costs and attorneys' fees.

- 44.7 The Contractor and its Subcontractors shall notify all of their personnel completing their Work performed at an Energy Northwest Site of the opportunity for an exit interview with an ECP representative prior to departure from the Work Site. The interview may be conducted in-person or via mail.
- 44.8 The provisions of this article shall be included in all of Contractor's subcontracts where Subcontractor will be performing Work at an Energy Northwest Site.

GP-45 NOTICES

Any notice required to be given by either Party under this Contract shall be in writing and be delivered in person, or sent by first class mail, or transmitted by facsimile or other electronic means to the appropriate addresses of Energy Northwest and Contractor, respectively. The notice shall be effective on the date received if delivered in person, the date of mailing as shown by the postmark if sent by mail, or the date transmitted if sent by facsimile or other electronic means.

GP-46 RESTRICTIONS ON THE USE OF ENERGY NORTHWEST NAME, LOGO OR SERVICE MARKS

The Contractor is strictly prohibited from using the name, logo or any service marks of Energy Northwest in any advertising or any communication in any medium whatsoever or in any other manner without the prior express written consent of Energy Northwest. Such requests shall be submitted to the Contracting Officer and shall be granted, if at all, at the sole discretion of Energy Northwest.

GP-47 PUBLIC DISCLOSURE

- 47.1 Contractor understands that information relating to price and Contract terms and conditions cannot be regarded as proprietary under applicable Washington State statutes relating to public disclosure.
- 47.2 Contractor further understands that other information submitted to Energy Northwest may become a public record in accordance with Washington law and may not be exempt from disclosure under the Washington State Public Records Act. In the event that any request for disclosure to the public is made for information or data related to this Contract, Energy Northwest shall give the Contractor notice of the request. In the event the Contractor wants to contest the disclosure, the Contractor shall assume the defense of any such action, at its sole cost and expense and shall hold Energy Northwest harmless for any costs, including attorney's fees and statutory awards, imposed by any court or regulatory authority upon Energy Northwest for denial of any right to inspect or copy such information or documents as public records. If, as a result of any such judicial proceeding, a court or regulatory authority should order the disclosure of information or documents received by Energy Northwest from the Contractor, all parties shall agree to be bound by such order. Energy Northwest shall not be liable for any inadvertent public disclosure of information despite the exercise of reasonable care.

GP-48 NONDISCLOSURE

- 48.1 Notwithstanding the requirements for disclosure under the Public Records Act as stated in the "Public Disclosure" provision, it is the intent of the Parties to maintain this Contract in a confidential manner. Therefore, unless the requirements set forth in the "Public Disclosure" provision apply, the Parties agree not to divulge to third parties, without the written consent of the other Party, any information which relates to the technical or business activities of the disclosing Party in connection with the performance of this Contract unless:
- a) The information was known to the receiving Party prior to obtaining the same from the disclosing Party;
 - b) The information is at the time of disclosure then in the public domain; or
 - c) The information is obtained by the receiving Party from a third party who did not receive the same, directly or indirectly, from the other Party and who has no obligation of nondisclosure with respect thereto.

- 48.2 The Parties further agrees that they will not, without the prior written consent of the other Party, disclose to any third party any information developed or obtained in the performance of this Contract except to the extent that such information falls within one of the categories described in a, b, or c, above.
- 48.3 One Party shall not release any information concerning the Work under this Contract or any part thereof in the form of advertising or publication, including news releases or professional articles, without agreement of both Parties.

GP-49 ENTIRE AGREEMENT

The Contract Documents embody the entire agreement between Energy Northwest and Contractor. All prior proposals, communications, negotiations, understandings and representations relating to the subject matter of this Contract, whether verbal or written are hereby superseded. Energy Northwest and Contractor agree that parole or extrinsic evidence may not be used to vary or contradict the express terms of this Contract and that recourse may not be had to alleged prior dealings, or course of performance to explain or supplement the express terms of this Contract. This Contract shall not be amended or modified unless set forth in a written instrument signed by Energy Northwest and Contractor.

GP-50 ASSIGNMENT

- 50.1 Notwithstanding anything to the contrary in this Contract, Contractor shall not assign this Contract, or any part thereof, without prior written consent of Energy Northwest. The assignment by the Contractor of this Contract or any interest therein, or of any monies due or by reason of the terms hereof, without written consent of Energy Northwest, shall be void.
- 50.2 This Contract may be assigned by Energy Northwest in its entirety to another organization for project management purposes. All rights and responsibilities of Energy Northwest shall then vest in the organization to which this Contract is assigned. The Contractor shall perform the Work as set forth herein without additional compensation or change to the period of performance as a result of this assignment. Any such assignment shall be evidenced by a unilateral modification to this Contract.

GP-51 SUCCESSORS AND ASSIGNS

This Contract shall be binding upon each of the Parties and their respective successors, representatives and assigns.

GP-52 SEVERABILITY

If any provision of this Contract is held by a court of competent jurisdiction to be invalid or unenforceable, the Parties shall negotiate an equitable adjustment to the affected provisions of the Contract with a view toward effecting the purpose of the Contract and the validity and enforceability of the remaining provisions, portions or applications thereof, shall continue in full force and effect.

GP-53 WAIVER

The delay or failure of either Party to exercise any right, power or privilege under this Contract, or its failure to strictly enforce any breach or default, shall not constitute a waiver with respect thereto, and no waiver of any such right, power, privilege, breach or default on any one occasion shall constitute a waiver thereof on any subsequent occasion unless clear and express written notice thereof is provided.

GP-54 SURVIVAL

- 54.1 The obligations of the Parties hereunder which by their nature survive the termination of the Contract or the completion of the Work shall survive and inure to the benefit of the Parties.
- 54.2 Those provisions of the Contract which provide for the limitation of or protection against liability shall apply to the full extent permitted by law and shall survive termination of the Contract and completion of the Work.

GP-55 CONSTRUCTION

The Parties acknowledge and agree that each Party has carefully reviewed the provisions of the Contract and that any presumption or rule of construction resolving ambiguities against the drafting Party shall not be employed in interpreting such provisions.

GP-56 HEADINGS AND CAPTIONS

All headings and captions used in these General Provisions are only for convenience of reference, and shall not be used in any way in connection with the meaning, effect, interpretation, construction, or enforcement of these General Provisions, and do not define the limit or describe the scope or intent of any General Provision.

GP-57 COUNTERPART ORIGINALS; FAXED OR EMAILED SIGNATURES

This Contract and any written Contract Modification may be executed in counterparts and may be delivered by facsimile or an attachment to email.

GP-58 EXPORT CONTROL CLAUSE

The Parties agree not to disclose, transfer, export, or re-export, directly or indirectly, any and all products, materials or information resulting from the performance of this contract, including but not limited to proprietary information, technology, materials, equipment, spare parts, services, deliverables, training, training materials, software and other export controlled items furnished hereunder, or any direct products or technology resulting therefrom ("Items") to any country, natural person or entity, except in accordance with applicable United States (U.S.) export control laws and regulations (Applicable Export Laws). To assure compliance with the Applicable Export Laws of the U.S. Government, including but not limited to the Export Control Act, and the Atomic Energy Act of 1954 (as amended), 10 C.F.R Part 810 (U.S Code of Federal Regulations), 10 C.F.R. Part 110, 15 C.F.R. 30 et seq., and the U.S. Department of Treasury's sanctions programs and sanctions lists, the Parties shall not disclose, transfer, export, or re-export, directly or indirectly, any Item it receives hereunder without the prior written permission of the other Party, which may be contingent on additional U.S. Government and other applicable government approvals. The Parties shall fully comply with all such Applicable Export Laws with regards to the Items it receives hereunder and shall cooperate in good faith with the reasonable requests of the other Party made for purposes of its compliance with such laws and regulations. Notwithstanding any other provisions in this Agreement, the obligations set forth in this GP-58 shall survive so long as the relevant Applicable Export Laws are in effect.