

NORTH ATTLEBOROUGH ELECTRIC DEPARTMENT

**[]kW CONTINUOUS RATED NATURAL GAS FIRED RECIPROCATING
COMBUSTION ENGINE ENCLOSED
GENERATOR SET**

SECTION H

**PROCUREMENT AGREEMENT
INCLUDING ALL GENERATOR SET SPECIFICATIONS**

IFP# 903829-01

PROCUREMENT AGREEMENT

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THIS PROCUREMENT AGREEMENT (hereinafter referred to as “Agreement”) is entered into as of this [redacted] day of [redacted], 20[redacted] (the “Effective Date”), by and between North Attleborough Electric Department (“NAED”), a Massachusetts municipal light department, having its principal place of business at 275 Landry Avenue, North Attleborough, Massachusetts NAED, and Supplier, [redacted], a [redacted] corporation having its principal place of business at [redacted] (“Supplier”) (collectively, the “Parties”).

Whereas, NAED desires to have the Supplier provide and deliver at a fixed price, to NAED’s site at E.D. Sherman Substation, North Attleborough, Massachusetts, an enclosed natural gas-fueled reciprocating combustion engine generator set with all necessary auxiliary and associated equipment, emission control equipment, interior piping and wiring as more fully described herein (“Facility”), together with documentation Commissioning, testing, and technical assistance to NAED to train NAED’s personnel in the use and operation of the Facility, and to provide repair and warranty work as set forth herein;

Whereas, the Supplier represents that it is knowledgeable, experienced, and skilled in manufacturing and/or procuring of such equipment in accordance with the specifications, and in delivery, Commissioning, starting up, testing, and training of operators in the operation and maintenance of reciprocating combustion engine generator sets similar to the Facility and has the financial, technical, labor and equipment resources to perform its obligations hereunder;

Whereas, NAED desires to engage the Supplier to provide, and the Supplier desires and is able to deliver and provide the Facility, operator training, Commissioning, start-up and testing of the Facility, all on a date certain, fixed price, lump sum, turnkey basis as described herein;

Whereas, the Contractor will be responsible for all Subcontractors necessary to enclose the reciprocating internal combustion engine generator set with required connections and required emissions controls, as required herein; and

Now, therefore, in accordance with the foregoing and in consideration of the mutual promises and agreements set forth herein, NAED and the Supplier agree as follows.

ARTICLE 1 DEFINITIONS

1.1 “Business Day” shall mean every Day other than a Saturday, a Sunday or a legal holiday recognized by the Commonwealth of Massachusetts.

1.2 “Change” shall have the meaning set forth in Section 7.1.

1.3 “Change Order” shall have the meaning set forth in Section 7.3.6.

1.4 “Change Order Request” shall have the meaning set forth in Section 7.3.4.

1.5 “Claims” shall have the meaning set forth in Section 12.1.1.

1.6 “Commissioning” shall mean all activities required to be conducted by the Supplier pursuant to the terms of this Agreement in order to bring the Facility from an inactive condition

to a state where the Facility is ready for the commencement of commercial operation. This includes filling of all fluids, testing for leaks, electrical circuit checks, test running, placing into operation, testing all operational modes and functions, completion of contractual required Acceptance Tests and operator training.

1.7 “Constructive Change” shall have the meaning set forth in Section 7.4.

1.8 “Contract Price” shall have the meaning set forth in Section 6.1.

1.9 “Contract Schedule” shall mean the schedule prepared by the Supplier that represents the plan for accomplishing the Work by the Guaranteed Final Completion Date, as updated from time to time as required.

1.10 “Day” shall mean a calendar day, including Saturdays, Sundays, and legal holidays recognized by the Commonwealth of Massachusetts.

1.11 “Delay Liquidated Damages” shall mean one of the following:

- Delay Liquidated Damages shall consist of an Interim Portable Generator until such time as the Guaranteed Final Completion is attained at no additional cost to NAED. In addition, NAED shall recover the lost opportunity cost which is equal to the difference in capacity charges and transmission charges if the portable generators provided have a lesser power output than that of the permanent installation output;
- Delay Liquidated Damages shall be one thousand dollars (\$1,000) for each Day beginning on the first day after the Guaranteed Final Completion Date.

1.12 “Delay Liquidated Damages Cap” shall mean an amount equal to ten percent (10%) of the Contract Price.

1.13 “Deliver” and/or “Set-up”. Whenever the terms deliver and/or setup or some variation thereof are used with respect to the Facility, such terms shall include (A) delivering, lifting, setting down, and affixing the Facility to NAED’s concrete pad in compliance with the Facility manufacturers’ written installation and alignment instructions and with NFPA-37 and in a manner to provide access, without removing connections or accessories, for periodic maintenance; (B) installing electrical devices furnished by equipment manufacturers but not specified to be factory mounted; and (C) erecting the Facility on the concrete pad provided by NAED.

1.14 “Dispute” shall have the meaning set forth in Section 21.1.

1.15 “Documentation” shall mean all engineering change notices (ECNs), as-built drawings, isometrics, specifications, design basis documents, studies, system descriptions, lists, diagrams, procedures, instructions, reports, test results, calculations, manuals, project schedules, software and the like required by this Agreement, including all electronically originated and stored information and other data and information originated by the Supplier or any Subcontractor for the Facility (other than proprietary information of the Supplier or any Subcontractor not required

for the operation or maintenance of the Facility) in connection with the Supplier's obligations under this Agreement.

1.16 "Enclosure" is the container for the Facility, which shall have the meaning, specifications and characteristics set forth in EXHIBIT B.

1.17 "Environmental Controls" shall have the meaning, specifications and characteristics set forth in EXHIBIT C.

1.18 "Emissions Guarantee" shall mean that all that all air emissions shall be in compliance with the emission limitations established in 310 CMR 7.26(43), Tables 2 and 4. Furthermore, the Supplier shall complete and certify the "Supplier Certification of Emission Performance" form found at: <http://www.mass.gov/eea/agencies/massdep/air/approvals/stationary-engines-and-turbines.html>.

1.19 "Facility" shall mean the Generator Set, the Enclosure and the Environmental Controls, all of which shall meet the requirements of the National Electric Code ("NEC") and all applicable local codes and regulations, and all of which shall be of new and current production. It shall be the responsibility of the Supplier to ensure the integration of the Generator Set, the Enclosure, SCR and the Environmental Controls.

1.20 "Final Completion" shall have the meaning set forth in Section 9.7.

1.21 "Facility Net Electrical Output" shall mean the Facility quoted gross kW output minus the load of all auxiliaries including HT and LT radiator fans, enclosure ventilating fans, HT and LT water pumps and any other auxiliary equipment necessary for continuous Facility operation. The Gross Output is measured at 13.8 kV at the point of interconnection between the Supplier supplied equipment and the NAED supplied 13.8 kV connection cables, using Supplier supplied CT and VT equipment located within the Supplier supplied 15 kV switchgear. The auxiliary power will be measured at 480 volts at the 480V entrance to the enclosure and deducted from the measured Gross Output to determine the Net Electrical Output. The Gross Output shall be tested pursuant to Article 9. For purposes of the prior sentence, the five (5%) percent tolerance specified in ISO 3046/1 shall not apply. [NOTE: The Supplier to provide prior to contract execution; NAED to review]

1.22 "Facility Net Heat Rate" shall mean the measured fuel consumption in BTUs (LHV), used by the Facility for a period of time during the Facility Performance Verification Test divided by the Facility Net Electrical Output over the same period of time. All fuel consumption calculations will be done in lower heating value (LHV). When tested pursuant to Article 9, the Facility Net Heat Rate shall not exceed [REDACTED] BTU per kWh.

1.23 "Force Majeure" shall mean the occurrence of any event beyond the reasonable control of a Party seeking relief based on Force Majeure that (i) is not the result of the willful misconduct or negligent act or omission of such Party (or any Person over whom that Party has control); (ii) results in the failure or delay by such Party of some performance under this Agreement, in full or part; and (iii) by the exercise of due diligence, such Party is unable to cure, overcome or avoid, or cause to be avoided: including, to the extent it meets the above criteria,

- (a) acts of God, war, public disorders, insurrection, rebellion, floods, hurricanes, tornadoes, earthquakes, lightning, and other natural calamities;
- (b) acts or inaction of any Government Authority or judicial body;
- (c) explosions or fires unrelated to acts or omissions of either Party;
- (d) strikes, jurisdictional labor disputes, boycotts and lockouts, except as set forth below;
- (e) Change in Laws;

Force Majeure shall not include any natural, physical condition of the surface or subsurface of the Delivery Site that is reasonably ascertainable from a visual inspection of the site. Force Majeure shall not include (i) equipment failures or delays, except to the extent resulting from any cause described in (a) through (f) above, (ii) financial problems of the Party claiming the Force Majeure or acts, events or conditions to the extent arising therefrom, and (iii) strikes directed solely against the Supplier or any Subcontractor at the Facility Delivery Site.

1.24 “Generator Set” shall have the meaning set forth in EXHIBIT A.

1.25 “Government” shall mean any Federal, state, city, county, local, municipal, or foreign government, agency, or body.

1.26 “Governmental Authority” shall mean any federal, state, provincial, county, regional, city, local, or municipal government or any agency, department, commission, board, bureau, regulatory authority, or instrumentality thereof, or any judicial, executive, legislative or administrative body, provided, that for the purposes of this Agreement, NAED shall not be deemed a Governmental Authority.

1.27 “Guaranteed Final Completion Date” shall mean **June 1, 2020**.

1.28 “Guaranteed Substantial Completion Date” shall mean **May 1, 2020**.

1.29 “Hazardous Materials” shall mean any hazardous, toxic or polluting substance, material, chemical, waste or contaminant, or residues thereof, as defined or regulated pursuant to all applicable Laws as may be amended from time to time.

1.30 “Late Payment Rate” shall mean, in relation to any Day for which a late payment charge is incurred under this Agreement, the lower of the following: (i) two percent (2%) over the average of the prime rate(s) for commercial banks as published in The Wall Street Journal in its New York, New York edition during that Day, or if there is no publication on a Day, the last preceding Day on which such rate is published; or (ii) the highest rate allowed by applicable law. (See Section 6.5)

1.31 “Laws” shall mean all Government statutes, laws, regulations, codes, municipal by-laws and ordinances, orders, judgments, decrees, injunctions, licenses, rules, permits, approvals, and regulations applicable to the Parties, the Facility and the Work.

- 1.32 “Liens” shall have the meaning set forth in Section 12.2.
- 1.33 “Major Subcontract” shall have the meaning set forth in Section 2.4.1.
- 1.34 “Manufacturing Aids” shall include all materials, supplies, equipment, tools, utilities, support services and other items that are required for the manufacturing and assembly of the Facility, but which are not intended to become a permanent part of the Facility, whether or not owned by the Supplier.
- 1.35 “NEC” shall mean the National Electric Code, NFPA-70 published by the National Fire Protection Association, Quincy, MA (current edition).
- 1.36 “NFPA-37” shall mean “Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines” 2015 edition.
- 1.37 “Noise Guarantee” shall mean that the noise emissions of the Facility shall meet both of 310 CMR 7.10, the Town of North Attleborough Board of Health Noise Regulations and the noise specification set forth in EXHIBIT B, Section 1.7. Noise emissions and this Noise Guarantee shall be evaluated with all of the Facility’s fans running at high speed. In addition, no pure tones are allowed. A pure-tone exists if the sound pressure level impacts off the site, in any given whole octave band center frequency, exceeds the levels of the two adjacent octave bands by three (3) or more decibels.
- 1.38 “Notice to Proceed (NTP)” shall mean the written notice NAED gives the Supplier authorizing Supplier to proceed with the Work in accordance with Section 5.1.
- 1.39 “NTP Date” shall mean the date specified in the Notice to Proceed from NAED to the Supplier pursuant to Section 5.1.
- 1.40 “NAED-Directed Change” shall have the meaning set forth in Section 7.3.1.
- 1.41 “NAED Indemnitees” shall have the meaning set forth in Section 12.1.1.
- 1.42 “NAED’s Representative” shall have the meaning set forth in Section 4.1.
- 1.43 “NAED Hazardous Materials” shall mean (a) any Hazardous Materials existing on or under the Site on or before the NTP Date that are not the Supplier Hazardous Materials, (b) any Hazardous Materials that migrate onto or under the Site through no fault of the Supplier, any Subcontractor, or any Person for whom or which Supplier is legally responsible, (c) any Hazardous Materials (that are not Supplier Hazardous Materials) that are brought onto or spilled or otherwise introduced into or on any portion of the Site, or are generated or produced at any portion of the Site after care, custody, and control of such portion of the Site passes from the Supplier to NAED and (d) any Hazardous Materials that are brought onto or released, or otherwise introduced into or on any portion of the Site, through no fault of the Supplier, any Subcontractor or any Person for whom or which the Supplier is legally responsible.

1.44 “Performance and Payment Bonds” shall mean performance and payment bonds in a form and from an insurance company, bank or financial institution reasonably acceptable to NAED that are required to be delivered by the Supplier to NAED pursuant to Section 22.1.

1.45 “Performance Guarantees” shall mean (a) the Facility Net Heat Rate, (b) the Facility Net Electrical Output, the Noise Guaranty and the Emissions Guaranty.

1.46 “Performance Verification Tests” shall mean the tests set forth in Sections 9.1 through 9.6.

1.47 “Person” shall mean any individual, company, corporation, partnership, joint venture, association, joint stock company, limited liability company, trust, estate, unincorporated organization, Governmental Authority or other entity having legal capacity.

1.48 “Prudent Industry Practice” shall mean those practices, methods, equipment, materials, specifications, and standards of safety and performance as the same may be changed from time to time, as are commonly used in the manufacture or operation of electric power generation facilities similar to the Facility, which in the exercise of professional judgment and in light of the facts known at the time the decision was made are considered good, safe, and prudent in connection with the manufacture, operation or maintenance of facilities similar to the Facility commensurate standards of safety, performance dependability, efficiency, and economy, and as are in accordance with generally accepted standards of professional care, skill diligence, and competence applicable to operation, maintenance, and manufacturing practices in the United States.

1.49 “Qualified Institution” means a U.S. commercial bank or a U.S. branch of a foreign bank (which is not an affiliate of either Party) with such bank having a credit rating of at least A- from S&P and A3 from Moody’s, having \$10,000,000,000 in assets.

1.50 “Quality Control Plan” shall have the meaning set forth in Section 3.3.

1.51 “Site” shall mean NAED’s site for the location and operation of the Facility at E.D. Sherman Substation, North Attleborough, Massachusetts. A site layout diagram is attached at EXHIBIT F.

1.52 “Subcontract” means any contract, subcontract, purchase order, or other agreement whereby a Subcontractor undertakes to perform or provide any portion of the Work.

1.53 “Subcontractor” shall mean (a) any Person other than the Supplier performing or providing any portion of the Work, whether hired directly by the Supplier or by a Person hired by the Supplier and including every tier of subcontractors, sub-subcontractors and so forth, and (b) any Person providing or supplying all or a portion of the equipment or Manufacturing Aids required by any Person performing or providing any portion of the Work to perform or provide the Work, whether or not incorporated into the Facility.

1.54 “Substantial Completion” shall have the meaning set forth in Section 9.6.

1.55 “Supplier Hazardous Materials” shall mean any Hazardous Materials (i) that are brought onto the Site or released or otherwise introduced into or on the Site by the Supplier, any Subcontract or any Person for whom or which the Supplier is legally responsible, or (ii) furnished, used, applied or stored at the Site by the Supplier, any Subcontractor or any Person for whom or which the Supplier is legally responsible that are released at the Site by the Supplier, any Subcontractor or any Person for whom or which the Supplier is legally responsible, including used oils, greases, and solvents from flushing and cleaning processes performed under this Agreement, but excluding Hazardous Materials that are properly incorporated into the Facility in accordance with Laws and this Agreement.

1.56 “Supplier's Project Manager” shall mean the Person Supplier appoints who is authorized to issue and receive communications on Supplier's behalf under the Agreement, as defined in Section 3.21.

1.57 “Supplier-Requested Change” shall have the meaning set forth in Section 7.3.2.

1.58 “Taxes” shall mean all present and future use and similar taxes imposed on the sale of any materials from the Supplier to NAED, or the performance of the Work by the Supplier, license, documentation, recording and registration fees, all taxes (including income, gross receipts, unincorporated business income, payroll, personal property (tangible and intangible), real estate, excise and stamp taxes), levies, imports, duties, assessments, fees, charges and withholdings of any nature whatsoever; and all penalties, fines, additions to tax, and interest imposed by any government (Federal, State, Local).

1.59 “Technical Dispute” shall mean a Dispute regarding (i) the interpretation of any requirement in this Agreement regarding engineering, manufacturing or technical specifications for the Facility, or whether any Party used Prudent Industry Practices in the performance of any obligation hereunder, (ii) any adjustment to be made in respect of a proposed Change Order pursuant to Article 7, (iii) technical issues relating to testing and Performance Verification, or (iv) any other Dispute that the Parties agree in writing is a Technical Dispute suitable for determination by an Expert Arbitrator. Notwithstanding anything to the contrary, no dispute that requires (i) a conclusion of law or (ii) contract interpretation shall be a Technical Dispute.

1.60 “Warranty Period” shall mean with respect to the Facility and the Work, the period ending 24 months after Final Completion.

1.61 “Work” shall mean the procuring, delivering (including lifting, aligning, attaching and anchoring the Facility to site pad), start-up, commissioning and testing of the Facility. The Work shall also include all other acts required to procure, construct, startup, commission, and test a fully operational Facility in accordance with the requirements of this Agreement.

1.62 “Written Notice” shall mean a written notice on the letterhead of the Party giving the notice and from NAED’s Representative or the Supplier’s Project Manager, as the case may be, or an officer of such Party, and delivered in accordance with Section 25.14.

ARTICLE 2 GENERAL PROVISIONS

2.1 Intent of Contract Documents. It is the intent of the Parties that the Agreement be a turnkey contract with a fixed price, i.e., completion of all Work and achievement of Final Completion, which shall not be increased, except in accordance with Article 7.

2.2 Independent Supplier. Supplier shall perform and execute the provisions of the Agreement as an independent Supplier to NAED and shall not in any respect be deemed or act as an agent of NAED for any purpose or reason whatsoever. The Supplier is an independent Supplier and all of its agents and employees shall be subject solely to the control, supervision, and authority of the Supplier. NAED and the Supplier disclaim any intention to create a partnership or joint venture. The Supplier shall not be entitled to act for, or have any power or authority to assume any obligation or responsibility on behalf of, NAED.

2.3 Subcontracting. Supplier shall have the right to have any portion of the Work performed by qualified Subcontractors, including Persons related to or affiliated with the Supplier. The Supplier shall deliver to NAED for NAED's review and approval, which approval shall not be unreasonably withheld, delayed or conditioned, a written list of the Subcontractors with whom the Supplier proposes to enter into a Major Subcontract before the Supplier enters any Major Subcontract. Such list shall also describe what the Subcontractor is responsible to the Supplier for. If the Supplier proposes to enter into any Major Subcontract with any person not already identified as an NAED-approved Subcontractor, the Supplier shall obtain NAED's prior approval, which approval shall not be unreasonably withheld, delayed or conditioned. If NAED does not approve any proposed subcontractor and, as a result, the Supplier's cost to perform the Work is materially increased, the Supplier shall be entitled to a Change Order increasing the Contract Price therefor. No contractual relationship shall exist between NAED and any Subcontractor with respect to the Work. The Supplier shall be fully responsible for all acts, omissions, failures and faults of all Subcontractors as fully as if they were the acts, omissions, failures and faults of the Supplier. The exercise of the right by the Supplier to sub-contract shall not entitle the Supplier to any change in the Contract Schedule or in any way increase the cost, expenses, or liabilities of NAED. Upon NAED's request, the Supplier shall provide to NAED, for NAED's review, unpriced copies of any Subcontract entered into in connection with the Work.

2.4 Subcontract Provisions.

2.4.1 Supplier shall promptly notify NAED as to whether any Subcontract has a contract price or anticipated value in an amount that is greater than \$10,000 (each, a "Major Subcontract"). Supplier shall provide NAED with a list of all Major Subcontracts within ninety (90) Days after the NTP Date, and shall update such list on a monthly basis thereafter.

2.4.2 Supplier shall ensure that each Major Subcontract contains equivalent accounting record audit provisions required by Section 20.2 hereof.

2.5 Assignment of Subcontracts. Supplier shall comply with any request by NAED after the termination of this Agreement pursuant to Article 18 or the expiration of the Warranty Period to assign the benefit of any Subcontractor warranty to NAED.

2.6 Conflicts, Errors, Ambiguity, or Discrepancies. If, during the performance of the Work, the Supplier discovers any conflict, error, ambiguity or discrepancy: (i) among the Articles or any EXHIBIT; (ii) between the aforementioned items and any provision of any Laws applicable to the performance of the Work; (iii) between the aforementioned items and any standard, specification, manual, or code applicable to the Work; or (iv) between the aforementioned items and any instruction of any Subcontractor supplying any equipment for the Facility, Supplier shall promptly report such conflict, error, ambiguity or discrepancy to NAED in writing. Thereafter Supplier shall proceed with the Work affected thereby as directed by NAED, subject to Supplier's right to a Change Order if such direction constitutes an NAED-Directed Change or Constructive Change.

2.7 Days. If a payment obligation falls due on a Day other than a Business Day, the obligation shall be deemed to be due on the next Business Day.

2.8 Inclusion; Order of Precedence. The Agreement and all EXHIBITS shall be considered complementary. However, in the event of irreconcilable conflict between the Agreement and the EXHIBITS, the Agreement shall govern and the conflicting provisions shall be interpreted in a manner consistent with the provisions of the Agreement. An Amendment or Change Order shall control that part of the Agreement which it supersedes.

ARTICLE 3 SUPPLIER RESPONSIBILITIES

3.1 Performance of the Work. Supplier shall diligently, duly and properly perform and complete the Work and its other obligations in accordance with the Agreement, and shall provide and pay for all items and services necessary for the proper execution and completion of the Work. The Supplier shall perform and provide all Work for which standards of performance are not specifically delineated in the Agreement, to the extent necessary to complete the Work, in accordance with the Agreement and Prudent Industry Practices. The Supplier shall be solely responsible for all means, methods, techniques, sequences, procedures, safety and quality assurance, and quality control programs in connection with the performance of the Work, and deliver the equipment to NAED at the Site free of any Liens, to achieve Substantial Completion. Supplier shall achieve Substantial Completion by the Guaranteed Substantial Completion Date and Final Completion by the Guaranteed Final Completion Date, and shall execute the entire Work and its obligations under the Agreement including Work not specifically delineated in this Section 3 or elsewhere in this Agreement, in a manner that will enable the Supplier to achieve such dates.

3.2 Professional Standards. Supplier shall perform and complete the Work and its other obligations under this Agreement in accordance with all the terms of this Agreement, and all Laws and Prudent Industry Practices, and shall use its reasonable efforts to cause all Subcontractors and their agents to comply with the same.

3.21 Permits. Supplier is responsible for obtaining an operating permit issued under Title V of the Clean Air Act and for all required local and state permits and inspections for all activities Supplier performs at the Site. The Supplier is also responsible for obtaining all permits, approvals and any other necessary items for the shipping of the Facility to the Site. All

such permits shall be obtained in NAED's name. Supplier is not responsible for any permits concerning electrical, fuel delivery, zoning, planning, or any other local land use requirements to site the Facility.

3.2.2 Massachusetts Approvals for Gas. Supplier shall provide documentation that the natural gas piping and controls required to operate the Facility that are part of the Facility meet Massachusetts Fuel code requirements, if applicable. The Supplier shall only provide equipment listed on "Accepted Plumbing Products System" as published by the "Massachusetts Board of Registration of Plumbers and Gas Fitters", and all equipment that is provided by Supplier to NAED shall be listed prior to delivery of the Facility to the Site by Supplier.

3.3 Quality Control. Supplier shall develop, implement and maintain a written plan for the Work which shall include: Work safety; security at the Site for Delivery, start-up, and other activities at the Site; quality assurance; prevention of discharges or releases of Hazardous Materials to the Site; management and control of the Work; and management and control of Subcontractors and their subcontracts (the "Quality Control Plan"). That plan shall, at a minimum, meet the requirements of all Laws. The Supplier shall deliver a draft of the Quality Control Plan to NAED for review and comment no later than thirty (30) Days after the NTP Date as mutually agreed. NAED shall have ten (10) Days to review and provide to the Supplier its comments on the draft Quality Control Plan and Supplier shall thereafter incorporate NAED's comments therein and issue the final Quality Control Plan within sixty (60) Days after the NTP Date. The Supplier shall not commence any Site work prior to 5 Days after submittal of the final Quality Control Plan. The Supplier shall also require all Subcontractors to establish, implement and maintain such quality control and safety programs for their portions of the Work.

3.4 Subcontractor Presence. Supplier shall be responsible for notifying and paying, at no additional charge to NAED, any Subcontractor representative that the Supplier deems necessary to be present for technical assistance at any training session, Commissioning, or Performance Verification, or portion of the Work.

3.5 Documentation. Supplier shall maintain in good order and make available to NAED, for inspection and copying at least one record copy of all Documentation. Such Documentation shall be maintained at a location designated by NAED. Before, and as a condition to Substantial Completion of the Facility, the Supplier shall have delivered to NAED a complete set of Documentation.

3.6 Transportation Costs. Supplier shall transport, unload, set and affix the Facility at the Site, including such services as required to connect the Facility to the interface points listed in Article 4 "NAED Responsibilities". The Supplier shall arrange and pay for all transportation, storage and transfer costs incurred in connection with the Work, and incurred in transporting the Facility to the Site, including customs or import duties or fees.

3.7 Manuals

Except as set forth below, no later than the delivery of the Facility, the Supplier shall provide three (3) hardcopy sets plus PDF format filed on portable digital media of operation and maintenance manuals covering the generator, switchgear, and auxiliary components. The

Supplier shall also provide all final as-built drawings including wiring interconnect diagrams and recommended preventative maintenance schedules within 60 days of Substantial Completion. The Supplier shall provide a full set of the interconnecting wiring and structural design diagrams in electronic format. Drawings shall be provided in both AutoCAD (latest revision) and PDF format.

The Supplier shall also provide three (3) sets of the following no later than sixty (60) days after execution of this Agreement:

1. Factory published specification sheets including electrical design ratings and emissions. The emissions data should reflect the not to exceed value for the scheduled fully loaded operational value of the generator.
2. Manufacturer's catalog cut sheets of all auxiliary components such as battery charger, control panel, enclosure, etc. The Supplier shall provide operating limits for the design application.
3. All dimensional elevation and layout drawings of the generator set, enclosure and switchgear and related accessories.
4. The full weight loading of all equipment with and without fuel and design vibration data including 3-axis deflection and frequency data.
5. Concrete pad recommendation, layout and stub-up locations of electrical and gas connections.
6. Interconnect wiring diagram of complete generator system, including generator, switchgear, battery charger, control panel, and remote alarm indications. Interconnection drawings shall be provided in both electronic (AutoCAD latest revision) and hard copy.
7. Engine mechanical data, including heat rejection, exhaust gas flows, combustion air and ventilation air flows, fuel consumption, etc.
8. Generator electrical data including temperature and insulation data, cooling requirements, excitation ratings, voltage regulation, voltage regulator, efficiencies, waveform distortion and RFI influence factor.
9. Generator resistances, reactance and time constants.
10. Generator locked rotor motor starting curves.
11. Manufacturer's documentation showing maximum expected transient voltage and frequency dips, and recovery time during operation of the generator set at the specified site conditions with the specified loads.
12. A listing of hazardous materials and related MSDS sheets.

3.8 Control of Work

3.8.1 Supplier shall be solely responsible for all means, methods, techniques, sequences and procedures, and all safety, quality assurance and quality control programs, in connection with the performance of the Work.

3.8.2 As the Supplier deems necessary, the Supplier shall, at its expense, provide all necessary security for its equipment. 3.8.3 The Supplier shall be liable for any damages, including but not limited to damages to the Site, caused by the negligent or willful acts or omissions of the Supplier or any Subcontractor or the failure to perform any of their obligations under the Agreement.

3.9 Emergencies. In the event of any emergency endangering life or property, the Supplier shall take all actions as may be necessary to prevent, avoid or mitigate injury, damage or loss and shall promptly report each of any such incidents, and the Supplier's responses thereto, to NAED.

3.10 Site Review; Local Conditions. Supplier represents and warrants that it has taken all steps necessary to ascertain the nature and location for the Delivery of the Facility, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Facility, the Site or the performance of the Work, including: (a) conditions bearing on access, egress, transportation, waste disposal, handling, and other conditions that may affect Supplier's obligations under the Agreement; (b) observable physical conditions at the Site; (c) the character of Manufacturing Aids needed before and during the performance of the Work. The Supplier acknowledges that it has had adequate access to Site, and has reviewed all environmental reports for verification of matters related to the foregoing items and acknowledges that the Site is sufficient for the performance of the Work. Any failure by the Supplier to take the actions described in this Section will not relieve the Supplier from any responsibility for properly estimating the difficulty and cost of successfully performing the Work in a timely manner, or from proceeding to perform the Work pursuant to the terms of this Agreement, without any increase in the Contract Price or adjustment of the Guaranteed Substantial Completion Date or additional time to perform hereunder.

3.11 Access and Inspections; Correction of Defects

3.11.1. Supplier shall provide NAED and its employees, agents, representatives, and invitees with reasonable access to the Work for observation and inspection including, but not limited to, auditing of all activities for conformance with the requirements of this Agreement. In the event that environmental, safety or health issues require access control, personal protective equipment or specialized training, the Supplier shall provide, and NAED and its employees, agents, representatives and invitees shall accept an escort or other safety measures as may be reasonably necessary to ensure the safety of such Persons at the Site. Notwithstanding the foregoing, NAED shall have full access to the Site as may be necessary in NAED's sole discretion, and the Supplier shall cooperate in good faith and use its reasonable efforts to coordinate performance of the Work with NAED.

3.11.2 Prior to Final Completion, the Supplier shall promptly correct or cause the correction of any part of the Work that is defective or is otherwise not in accordance with this

Agreement, regardless of the stage of its completion or the time or place of discovery of such errors and regardless of whether NAED has previously reviewed or inspected or otherwise accepted such part of the Work in any way. The Supplier shall bear the cost of re-performing any defective Work. In the event that any part of the Work is discovered to be in a defective condition or not conforming to this Agreement after Final Completion, correction of such defective condition shall be governed by Article 11 (Warranty).

3.12 Use of Site. Supplier shall confine its operations at the Site to areas permitted by Laws and this Agreement.

3.13 Compliance with Laws Relating to Work. Supplier shall comply, and shall cause Subcontractors to comply, with all Laws in effect from time to time relating to the Work or Facility and shall give all applicable notices pertaining to those Laws. The Supplier shall procure / manufacture, assemble, Deliver, and test the Facility so that it complies and when operated in accordance with manufacturer's instructions and operating manuals is capable of complying, with all Laws.

3.14 Signage. Supplier shall not display, install, erect, or maintain any advertising or other signage at the Site without NAED's prior written approval, other than signs and notices required by Laws, related to safety or work rules, or used to solicit employees for the performance of the Work.

3.15 Interference with Traffic. Supplier shall Deliver the Facility so as not to interfere unnecessarily or improperly with access to, use of or occupation of public or private roads, or any other Person. The Supplier shall communicate with, and ascertain the requirements of, all Governmental Authorities in relation to vehicular access to and egress from the Site and shall comply with those requirements. The Supplier shall be deemed to have satisfied itself as to, and shall be fully responsible for, the routing for delivery of heavy or large loads to the Site to satisfy any requirements of Governmental Authorities. Vehicular access to and egress from the Site must comply with all Laws and the Supplier alone shall bear all costs of such compliance.

3.16 Housekeeping. Once the Supplier has delivered the equipment to the Site and through the Guaranteed Final Completion Date, the Supplier shall keep the Site and surrounding streets, properties, sidewalks, and other areas impacted by the Work free from waste materials, equipment, rubbish, debris and other garbage, and liquid and non-liquid materials whether spilled, dropped, discharged, blown out or leaked. The Supplier and all Subcontractors shall handle and dispose of properly all chemicals used in cleaning processes. As a condition of Final Completion, Supplier shall remove from the Site all Manufacturing Aids, materials and rubbish. If Supplier fails to perform such housekeeping services, as provided in this Agreement, NAED may perform such services and shall be entitled to charge all reasonable costs incurred in connection therewith to the Supplier, including by deduction from the Final Payment.

3.17 Regulatory Agencies. Supplier shall promptly provide technical support to NAED when NAED receives requests with respect to the various Federal and Massachusetts regulatory agencies whose approvals may be required in connection with the permitting of the Facility, as well their staff and representatives (collectively, the "Regulatory Agencies"), including, but not limited to the Massachusetts Department of Environmental Protection. Such cooperation shall

include providing information regarding the Facility and this Agreement, and the assistance required to enable NAED to make presentations to the Regulatory Agencies and to respond to any questions or requirements asked or imposed by the Regulatory Agencies.

3.18 Tax Instructions.

3.18.1 Supplier shall pay all Taxes required to be paid by the Supplier in accordance with all applicable Laws in connection with the Work and the Facility, including, but not limited to, those on the Supplier's employees, purchases of goods, tools, equipment, supplies and other consumables which are not permanently incorporated into the Work and which remain the property of the Supplier. Allowance for such Taxes is included in the Contract Price, and the Supplier shall pay those Taxes when assessed, without claim against NAED for reimbursement. The Supplier shall impose a similar obligation on all Subcontractors and shall ensure that no Subcontractor shall have any claim against NAED for reimbursement of those Taxes.

3.18.2 Notwithstanding the above, the Contract Price does not include amounts for taxes that would otherwise be owed by NAED. NAED represents and warrants to the Supplier that NAED is a tax-exempt entity under Massachusetts law and therefore, prior to the commencement of Work, NAED shall provide to the Supplier a certificate of Tax Exemption with NAED's tax exempt identification number.

3.19 Operator Training. Supplier shall provide reasonably detailed training materials to NAED and shall train two of NAED's personnel to operate and maintain the Facility.

3.20 Lift Support. Supplier shall be responsible for all crane lifts performed on the Site. The Supplier must ensure the protection of existing aboveground and underground facilities. The project site is an energized electrical substation. The grounding arrangement during the lift must meet the requirements outlined in a formal safety plan reviewed and approved by NAED prior to scheduled lifts.

3.21 Supplier Project Manager. Supplier shall appoint its project manager ("Supplier's Project Manager") in a Written Notice delivered to NAED within 10 Days of the Notice to Proceed (it being agreed that the Supplier shall have the right to appoint successor or replacement the Supplier's Project Manager(s), at the Supplier's sole discretion.) the Supplier's Project Manager shall have overall day to day responsibility for managing the Supplier's obligations hereunder and shall issue and receive communications on the Supplier's behalf under and regarding this Agreement. NAED may consult with the Supplier's Project Manager at all reasonable times regarding any matter pertaining to this Agreement.

3.22 Facility Gas Interconnection. The Supplier shall install the required above grade natural gas pipeline and associated natural gas equipment from the outlet of NAED's meter and/or regulating equipment to the Facility. Supplier shall install a Commonwealth of Massachusetts approved braided flex connection to prevent vibration and damage to NAED's gas infrastructure, and any required suitable fire protection device at the entrance to the enclosure. A maximum of 25 feet of above grade piping shall be included in this section.

3.23 The Supplier will furnish the engine-generator set in a weatherproof enclosure with emission and noise controls as required to meet the Emission and Noise Guarantees, automatic control system to allow remote monitoring and operation. The Supplier shall be responsible for engineering all the equipment so that it shall function together in a manner allowing the facility to operate as intended and specified in EXHIBIT A.

3.24 Supplier Use of Site:

- a. The project site is an active 115 – 13.8 kV electrical substation that will remain energized during this project. NAED will require access to all substation equipment during the course of this project. In the event of an emergency condition, the NAED may require the Supplier to suspend work and leave the site until the emergency condition is addressed.
- b. There is limited space available at the site for parking and laydown. Supplier shall limit its space requirements, and obtain off-site parking and laydown as required. No Supplier use of the existing switchgear enclosure will be allowed.
- c. Supplier shall arrange for and supply portable sanitation facilities for the duration of its work on the project site.

3.25 Foundation Requirements: The Supplier shall provide to NAED no later than sixty (60) days after execution of this Agreement the information specified in Section 3.7(3), (4) and (5).

**ARTICLE 4
NAED RESPONSIBILITIES**

4.1 NAED's Representative. NAED shall appoint its project representative (“NAED’s Representative”) in its Notice to Proceed (it being agreed that NAED shall have the right to appoint successor or replacement NAED’s Representative(s), at NAED’s sole discretion.) NAED’s Representative shall have overall day to day responsibility for managing NAED’s obligations hereunder and shall issue and receive communications on NAED’s behalf under and regarding this Agreement. The Supplier may consult with NAED’s Representative at all reasonable times regarding any matter pertaining to this Agreement.

4.2 Access to Site. NAED shall designate and furnish the Site and assure all necessary non-exclusive access to and rights of ingress and egress to and from the Site to Supplier and its Subcontractors.

4.2.1 Base Slab. NAED shall secure the services of an engineering and construction firm to engineer and build out the base slab to which the Facility shall be attached and anchored by the Supplier. The Supplier shall inspect and accept the base slab prior to attaching and anchoring the Facility to it.

4.3 Permits. As provided in Section 3.2.1, Supplier shall obtain the emissions-related authorizations necessary to operate the Facility. NAED shall obtain any required land-use and wetlands permits and post-construction certification that the Facility complies with 310 CMR 7.10. The Supplier shall provide assistance to NAED as reasonably requested in connection with NAED’s efforts to obtain such authorizations.

4.4 Utilities and Fuel. NAED shall provide the utilities and fuel, including (a) electricity for delivery, installation, Commissioning and testing of the Facility, (b) natural gas necessary for start-up, Commissioning and Performance Verification of the Facility. NAED will provide a natural gas stub up pipe adjacent to the generator set foundation at a location near the gas inlet point for the Facility as denoted on the approved Supplier drawings.

4.5 Facility Gas and Electric Interconnections. The Supplier shall inspect and accept the connections made by NAED as set forth in EXHIBIT A, Sections E.1 and E.2 prior to start-up, Commissioning and Performance Verification of the Facility.

4.6 Revenue. NAED shall be entitled to all revenue derived from or in connection with the operation of the Facility, whether before or after Substantial Completion of the Facility.

ARTICLE 5 COMMENCEMENT OF THE WORK; SCHEDULE

5.1 Notice to Proceed. The Supplier shall commence the performance of the Work upon receipt of the Notice to Proceed from NAED, and shall continuously and diligently thereafter fulfill its obligations under this Agreement. The Notice to Proceed shall establish the NTP Date for purposes of this Agreement. NAED shall have no obligation to the Supplier under this Agreement until the issuance of the Notice to Proceed.

5.2 Contract Performance Schedules.

5.2.1 Within fifteen (15) Days after the Effective Date, the Supplier shall deliver to NAED the Contract Schedule that meets the Guaranteed Final Completion Date.

5.2.2 The Contract Schedule shall represent a practical plan to achieve Substantial Completion of the Facility on or before the Guaranteed Substantial Completion Dates and to complete the Work by the Guaranteed Final Completion Date. The Guaranteed Substantial Completion Dates, not the Contract Schedule, shall control in the determination of any Delay Liquidated Damages.

5.2.3 The Supplier shall plan, develop, supervise, control, and coordinate the performance of the Work in accordance with the Contract Schedule, including the Guaranteed Substantial Completion Date and Guaranteed Final Completion Date.

ARTICLE 6 COMPENSATION AND PAYMENT

6.1 Contract Price. In consideration of the Supplier's performance of the Work, NAED shall pay the Supplier the lump sum fixed price of [REDACTED]. The lump sum fixed price shall be referred to herein as the "Contract Price". NAED shall pay to the Supplier the Contract Price as follows: thirty five (35%) percent paid to the Supplier on the Effective Date, forty five (45%) percent paid to the Supplier on the date that the Facility is Delivered to the Site and twenty (20%) percent paid when the Facility satisfies the Performance Guaranties.

6.2 Lien Release. If Subcontractors are used by the Supplier, then upon final payment by NAED to the Supplier, Supplier shall deliver a subcontractor lien release to NAED.

6.3 No Acceptance by Payment. No partial payment made under the Agreement shall be construed to be acceptance or approval of any part of the Work or to relieve the Supplier of any of its obligations under the Agreement.

6.4 Set Off. NAED may set off against any amount it owes the Supplier under this Agreement any undisputed amount(s) that the Supplier owes to NAED under this Agreement.

6.5 Late Payments. All amounts either Party owes the other Party under this Agreement, including all amounts withheld and later determined to have been due and which are not paid when due shall bear interest on the unpaid balance at the Late Payment Rate from the due date until they are paid in full.

6.6 Taxes. The Contract Price includes, and the Supplier shall report and/or pay all Taxes measured in whole or in part by the Supplier's net income, gain or net worth, all payroll taxes and business taxes measured by wages paid to the Supplier's employees. The Supplier shall also report and/or pay all Taxes attributable to the Supplier's equipment and other property including, but not limited to, all materials used by the Supplier in its performance of this Agreement and which are not permanently incorporated into the Facility. The Supplier shall report and/or pay all such Taxes when due under Law or otherwise assessed, without any claim against NAED for reimbursement. The Supplier shall impose a similar obligation on all Subcontractors and shall ensure that no Subcontractor or tax authority shall have any claim against NAED for reimbursement of such Taxes and shall indemnify and hold NAED harmless against any and all claims for payment thereof.

ARTICLE 7 CHANGE ORDERS; BACK CHARGES

7.1 General. Subject to the provisions of this Article 7, NAED shall have the right to make changes to the Work and the Supplier may be entitled to request a change to the Contract Price, Contract Schedule, Guaranteed Substantial Completion Dates, Guaranteed Final Completion Date or Performance Guarantees, or to recommend a change in the Work, whether such changes are modifications, alterations, additions or deletions to the Work or the Contract Schedule (each, individually, a "Change").

7.2 Reserved.

7.3 Changes and Change Orders.

7.3.1 In the event that NAED contemplates making a Change (an "NAED-Directed Change"), NAED shall advise the Supplier of same in writing and NAED and Supplier shall then promptly consult concerning the impact on the Contract Price, Contract Schedule, Guaranteed Substantial Completion Date, Guaranteed Final Completion Date or Performance Guarantees of implementing the proposed Change. Following such consultation, NAED may request and the Supplier shall prepare and submit within seven (7) Days, a Change Order Request, notifying NAED in writing of the effect, if any, that the contemplated NAED-Directed Change would

have, in the Supplier's judgment, on the Contract Price, the Guaranteed Substantial Completion Date, the Guaranteed Final Completion Date, and the Performance Guarantees. In the event NAED elects to not implement an NAED-Directed Change after the Supplier prepares the Change Order Request, NAED shall reimburse the Supplier for the reasonable costs incurred by the Supplier in connection therewith.

7.3.2 The Supplier shall be entitled to request a Change (a "Supplier-Requested Change") in the nature of a change in the Contract Schedule, Guaranteed Substantial Completion Date, Guaranteed Final Completion Date, the Performance Guarantees, or an adjustment to the Contract Price, other time limits or dates for performance by the Supplier hereunder, and other affected rights and obligations, but only if, and to the extent, such delay, increase or other impact is caused by any of the following circumstances, without duplication:

7.3.2.1 A suspension of the Work under Section 18;

7.3.2.3 The existence of NAED Hazardous Materials;

7.3.2.4 A Constructive Change;

7.3.2.5 A Force Majeure event, as provided in Article 8;

7.3.2.6 An NAED default pursuant to Section 18.6;

7.3.2.7 Damage to the Work caused by NAED or any Supplier of NAED or any Person for whom NAED is legally responsible (other than Supplier and its Subcontractors);

7.3.2.8 Any event for which this Agreement provides that the Supplier is entitled to a Change Order.

Provided, however, that the Supplier shall be entitled to such Change only in the event that any such matter or matters referred to in this Section 7.3.2 individually or collectively causes an increase in the Contract Price or otherwise affects any provision of this Agreement in a manner that materially increases the Supplier's obligations hereunder; and provided further, that with respect to a Force Majeure event, the Supplier shall be entitled to request a day for day increase in the Contract Schedule and an increase in the Contract Price only to the extent of reasonable and direct out-of-pocket expenses actually incurred by the Supplier as a direct result of such Force Majeure event.

7.3.3 Supplier shall not be entitled to request at the Supplier-Requested Change:

7.3.3.1 In the event that the Supplier has failed to deliver Written Notice to NAED within ten (10) Business Days of the later of (i) date the Supplier became aware, or should have become aware of the act, event or condition giving rise to the delay in or increase in cost of performance or (ii) the date the Supplier became aware, or should have become aware, that such event or condition would affect the Work;

7.3.3.2 To the extent that the event in question is attributable to the Supplier's or its Subcontractor's misconduct, omissions or defaults, or such event is not otherwise allowed to

result in a Change pursuant to this Section 7.3.3 or Sections 3.4, 3.11 and 7.6 of this Agreement;
or

7.3.3.3 To the extent that with respect to a Force Majeure event, the Supplier fails (a) to work diligently to cure, remove or otherwise correct the event or (b) to use its reasonable efforts to minimize and contain all costs and expenses attendant to or arising from such event.

7.3.4 To request a Supplier-Requested Change, or at the direction of NAED in relation to an NAED-Directed Change, the Supplier shall prepare and submit a request (a “Change Order Request”). A Change Order Request for a Supplier-Requested Change shall be submitted to NAED within fifteen (15) Days after the notice delivered in accordance with Section 7.3.3.1. All Change Order Requests shall include, in addition to a detailed statement of the reason for and a description of the Change, (a) for a Supplier-Requested Change, the circumstance(s) set forth in Section 7.3.2 under which such Change is authorized, (b) the estimated price of such proposed Change, including the proposed change in the Contract Price, and financial cost of maintaining the Contract Schedule including meeting the Guaranteed Substantial Completion Date and the Guaranteed Final Completion Date to the extent practical, and any savings, if any, for carrying out the Change, and (c) the effect such proposed Change could be expected to have on the Contract Schedule, the Guaranteed Substantial Completion Date, the Guaranteed Final Completion Date and the Performance Guarantees; provided however, that the Supplier shall use all commercially reasonable efforts to minimize any delay or increase in costs. If the Supplier is unable, at the time the Supplier is required to submit a Change Order Request, to set forth in full detail all of the matters required by the immediately preceding sentence, then the Supplier shall describe such matters in as much detail as possible at the time of submission of the Change Order Request and shall update such Change Order Request with complete information as soon thereafter as possible. Subject to Section 7.3.1, the Supplier shall bear the costs and expenses incurred by the Supplier and its Subcontractors in preparing any Change Order Request.

7.3.5 In addition to the requirements of Section 7.3.4, all Change Order Requests that request an increase or decrease in the Contract Price, whether on a lump sum or time and materials price basis shall set forth in reasonable detail a breakdown of the proposed increase or decrease to the Contract Price and shall also include the following information (whether in the pricing and scope attachment to the Change Order Request or otherwise).

7.3.5.1 All allowable cost components of the additional Work, including: (a) wages for the Supplier’s employees actually directly performing the additional Work at the rates set forth in the Supplier Rate Schedules; (b) cost of materials and consumable items furnished and incorporated into the additional Work and related Subcontracts; and (c) rental charges for necessary equipment used directly in the performance of the additional Work.

7.3.6 Within ten (10) Business Days after receipt of a Change Order Request, NAED shall, by Written Notice to the Supplier, either (i) issue an amendment to this Agreement which reflects the nature of the Change (a “Change Order”), including the agreement of the Parties with respect to an equitable adjustment, as appropriate, in one or more of the Contract Price, the Contract Schedule, the Guaranteed Substantial Completion Date, the Guaranteed Final Completion Date, or the Performance Guarantees, (ii) request reasonable additional information, documentation or cost detail to further assess the Change Order Request, or (iii) reject the

Change Order Request, in which event NAED shall provide the Supplier with appropriate explanation and documentation of the basis of the rejection of the Change Order Request. Increases or decreases in the Contract Price resulting from a Change shall be determined by the Parties agreeing on a mutually acceptable lump sum price or a time and materials price (hourly rate and unit prices). A rejection of a Change Order Request shall be subject to the Supplier's right to dispute such determination pursuant to Article 21.

7.4 Constructive Changes. Supplier shall promptly notify NAED if it believes any written instruction by NAED (a "Constructive Change") entitles the Supplier to an equitable adjustment of the Contract Price, Contract Schedule, Guaranteed Substantial Completion Date, Guaranteed Final Completion Date, or the Performance Guarantees, which notice shall be accompanied by a statement of the basis for its belief and supporting documentation therefore, including a Change Order Request relating to such potential Constructive Change.

7.5 Disputes with Respect to Changes. Increases or decreases in the Contract Price resulting from a Change shall be determined by the Parties agreeing on a mutually acceptable lump sum or unit prices. If the Parties cannot agree on the Contract Price increase or decrease associated with a Change the Parties shall submit the Dispute to the dispute resolution procedures in Article 21. NAED's Representative and Supplier's Project Manager shall have the authority to execute and deliver Change Orders on behalf of NAED and the Supplier, respectively. Any Dispute with regard to a Change, the terms of a Change Order or the rejection of a Change Order Request shall be resolved pursuant to the provisions of Article 21. Notwithstanding the event of a Dispute, NAED shall be entitled to direct the Supplier to proceed with a Change or delay implementing a Change pending resolution of the Dispute. If the Parties agree that a Change is appropriate, but cannot agree on the price increase or decrease associated with a Change, then subject to resolution of the Dispute in accordance with Article 21, the Supplier shall continue the Work as directed by NAED on a time and materials basis, and NAED shall pay the Supplier's undisputed actual direct costs.

7.6 No Change Without Signed Change Order. In no event shall the Supplier undertake or be obliged to undertake a change in the Work until it has received a Change Order signed by NAED or a Dispute has been resolved in such a fashion as to require a Change. No change in the Work, the Contract Price, Contract Schedule, Guaranteed Substantial Completion Date or Guaranteed Final Completion Date shall be made unless specifically agreed to in writing by NAED through a Change Order as set forth in this Article 7 or as determined pursuant to Article 21. No Change shall be implied as a result of any other Change.

7.7 Copies. Supplier shall provide a copy of each Change Order and each Change Order Request to any other Person or entity as requested by NAED.

7.8 Back Charges. If the Supplier fails to perform the Work in accordance with the provisions of this Agreement and, after being provided Written Notice of such failure by NAED, the Supplier does not remedy such failure within the time provided therefor in this Agreement, or if no time is specifically provided, a reasonable time, then NAED may take action to remedy the failure. NAED shall have the right to back charge the Supplier for the actual and reasonable costs it incurs as a result of the failure to the extent that such costs are reasonable under the circumstances. Within twenty (20) Business Days after the amount of such costs are known to

NAED, NAED shall provide Written Notice to the Supplier of the amount of such costs with supporting detail and the reasons such costs were incurred. If the Supplier wishes to contest the validity or amount of such back charge, then the Supplier shall give Written Notice to NAED within twenty (20) Business Days from receipt of NAED's back charge notice along with the reasons the Supplier contests such charge.

ARTICLE 8 FORCE MAJEURE

8.1 Exclusive Remedies. If either Party is prevented from performing an obligation hereunder due to a Force Majeure event, then (i) an equitable extension of time shall be granted to the Parties to the extent the performance of any obligation under this Agreement, the Work, the Contract Schedule, the Guaranteed Substantial Completion Date or the Guaranteed Final Completion Date is actually and necessarily delayed by such event of Force Majeure, and each such affected Party shall be excused from such performance during and only to the extent of such delay, provided that any extension of time shall be limited to that portion of the performance is actually and necessarily affected by the Force Majeure event; (ii) an equitable adjustment of the Contract Price shall be granted to the Supplier in accordance with Article 7 to the extent that the cost of performing the Work is actually and necessarily increased by such event of Force Majeure; and (iii) an equitable adjustment of such other obligations of the Supplier, including the Performance Guarantees, shall be granted to the Supplier in accordance with Article 7 to the extent that such obligations are actually and necessarily affected by such event of Force Majeure. If the Supplier desires to seek relief for any Delay or any increase in the Supplier's cost to perform the Work as a result of Force Majeure, the Supplier shall provide the Written Notice required by Sections 8.3 and 7.3.3.1 and a Change Order Request in accordance with Section 7.3.4.

8.2 Cure. Supplier shall work diligently to cure, remove or otherwise correct, and shall minimize and contain all costs and expenses attendant to or arising from, each Force Majeure event. Provided that the Supplier complies with the requirements of Article 7, NAED shall reimburse the Supplier for all actual reasonable direct costs incurred by the Supplier in connection with the Supplier's mitigation of any such Force Majeure. If the Supplier fails (a) to work diligently to cure, remove, or otherwise correct a Force Majeure event, or (b) to use its reasonable efforts to minimize and contain all costs and expenses attendant to or arising from such Force Majeure event, then the Supplier's recovery for the effects of such Force Majeure event shall be reduced to the extent NAED has suffered additional damages due to such failure.

8.3 Notice. If the Supplier believes that a Force Majeure event may affect the performance of the Work, the Supplier shall notify NAED of the nature and cause of the event in writing as provided in Section 7.3.3.1. NAED shall have the right to dispute the Supplier's claim of a Force Majeure event, and in such event NAED shall provide the Supplier notice thereof within five (5) Business Days after receiving the Supplier's notice, and such dispute shall be resolved by the Parties in accordance with the terms of Article 21 hereof. The Supplier's right to seek relief due to a Force Majeure event is subject to the Supplier's material compliance with the provisions of this Section 8.3.

ARTICLE 9
SUBSTANTIAL COMPLETION, COMMISSIONING,
PERFORMANCE VERIFICATION AND FINAL COMPLETION

9.1 Once the Facility is Delivered to the Site, interconnected with NAED's electric distribution system and connected to a natural gas fuel source (both of which have been inspected and accepted by the Supplier), and the Supplier has completed Commissioning, the Supplier shall:

9.1.1 Perform tests recommended by manufacturer and each electrical test and visual and mechanical inspection [except those indicated to be optional] for "AC Generators and for Emergency Systems" specified by NETA Acceptance Testing Specification. The Supplier shall certify compliance with test parameters.

9.1.2 Perform the following tests:

9.1.2.1. Starting time from cold to breaker closure

9.1.2.2. Grid synchronization

9.1.2.3. Emergency shutdown

9.1.2.4. Load rejection at 25%, 50%, 75% and 100%

9.1.2.5. Air emission measurement to demonstrate compliance with bid specifications with portable instrumentation

9.1.2.6. Demonstrate all protective functions

9.1.3 Equalize charging of battery cells according to manufacturer's written instructions.

9.2 Methodically verify proper installation, connection, and integrity of each element of engine-generator system before and during system operation. Check for air, exhaust, and fluid leaks.

9.3 Verify that exhaust back pressure at full-rated load is within manufacturer's written allowable limits for the engine.

9.4 Use recording oscilloscope to measure voltage and frequency transients for 50 and 100 percent step-load decreases, and verify that performance is as specified.

9.5 Test for compliance with the following Performance Guarantees: the Facility Net Heat Rate, the Facility Net Electrical Output and the Emissions Guaranty. NAED shall test for compliance with the Noise Guaranty. Full load demonstration and fuel consumption verification per ASME PTC 17 "Reciprocating Internal Combustion Engines".

9.6 Once the Supplier has completed the tasks identified in Section 9.1 through 9.5, the Facility shall be deemed to have achieved "Substantial Completion". NAED shall have the right to operate the plant on a commercial basis upon "Substantial Completion".

9.7 If each of the tests performed in Sections 9.1 through 9.5 are satisfactorily performed and the Facility meets all applicable specifications, Performance Guarantees, which includes the Facility Net Heat Rate, the Facility Net Electrical Output, the Noise Guaranty and the Emissions Guaranty and all the “punch list” items have been resolved, then the Work and the Facility shall be deemed to have achieved “Final Completion”. For any test set forth in Sections 9.1 through 9.5 for which the Work or the Facility does not meet all applicable specifications and Performance Guarantees the Supplier shall make adjustments, repairs and/or replacements to the Work and Facility as necessary until all of the tests set forth in Sections 9.1 through 9.5 are satisfied. The Parties recognize that time is of the essence in meeting the Substantial Completion and Final Completion dates so that Supplier needs to complete repairs and re-perform tests as soon as possible. The term “punch list” shall mean the compilation of all discrepancies in the Work remaining after Substantial Completion as identified by NAED, including final clean-up, painting and finishing.

9.8 At any time after the Guaranteed Final Completion Date, NAED may declare "Conditional Acceptance" of the Facility whether or not the terms of Sections 9.1 through 9.5 have been achieved. If Conditional Acceptance is declared by NAED, then NAED will have the unlimited right to operate the Facility for NAED's benefit while the Supplier continues to work to achieve Final Completion, even if such operation interferes with Supplier's ability to achieve Final Completion. Except during potential monthly peak usage periods, NAED agrees to reasonably cooperate with Supplier in making the Facility available for Supplier to achieve Substantial Completion and/or Final Completion.

9.8.1. During "Conditional Acceptance" the warranties shall not run. The Warranty Period begins only upon Final Completion as stated herein. “Conditional Acceptance” also does not affect NAED’s rights to Delay Liquidated Damages as provided in Article 10 or any other rights and remedies available to NAED under the Agreement.

ARTICLE 10 LIQUIDATED DAMAGES; LIMITATION OF LIABILITY

10.1 Delay Liquidated Damages

10.1.1 The Parties agree that it would be extremely difficult and impracticable under presently known and anticipated facts and circumstances to ascertain and fix the actual damages NAED would incur if the Facility does not satisfy the Performance Guarantees on or before the Guaranteed Final Completion Date. Accordingly, if the Facility does not satisfy all of the Performance Guarantees on or before the Guaranteed Final Completion Date, then one of NAED’s remedies for failure of the Supplier to achieve the Performance Guarantees shall be for Supplier to pay to NAED, as liquidated damages and not as a penalty, the applicable Delay Liquidated Damages; provided, however, that the amount of Delay Liquidated Damages paid by the Supplier to NAED shall not exceed the Delay Liquidated Damages Cap.

10.1.2 The Delay Liquidated Damages identified in this Section 10.1 relate solely to the Supplier’s failure to achieve the Performance Guarantees on or before the Guaranteed Final

Completion Date and not to any breaches, actions, or omissions of the Supplier with respect to the Work.

10.2 Payment. The Delay Liquidated Damages specified in Section 10.1 shall be due and payable by the Supplier to NAED within fifteen (15) days of receipt of an invoice from NAED. NAED also reserves the right to set off any Delay Liquidated Damages against any other amounts owed to the Supplier hereunder.

10.3 No Waiver; Exclusive Remedies. This Article shall not constitute a waiver of any rights of NAED to damages or other remedies of NAED under this Agreement.

10.4 Consequential Damages. IN NO EVENT SHALL EITHER PARTY, OR ANY SUBCONTRACTOR, BE LIABLE TO THE OTHER PARTY FOR ANY PUNITIVE, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL LOSS OR DAMAGES, INCLUDING LOSS OF USE, LOST PROFITS OR REVENUES, COST OF CAPITAL, INCREASED OPERATING COSTS, CLAIMS OF CUSTOMERS, OR LOSS OF GOODWILL, EXCEPT TO THE EXTENT LIQUIDATED DAMAGES EXPRESSLY PROVIDED IN THIS ARTICLE 10 OR ANY DAMAGES WITHIN THE SCOPE OF THE INDEMNIFICATIONS SET FORTH IN ARTICLE 12 MAY BE CONSTRUED TO CONSTITUTE SUCH DAMAGES. THE PARTIES FURTHER AGREE THAT THE WAIVERS AND DISCLAIMERS OF LIABILITY, INDEMNITIES, RELEASES FROM LIABILITY, AND LIMITATIONS ON LIABILITY EXPRESSED IN THIS AGREEMENT SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT, AND SHALL APPLY (UNLESS OTHERWISE EXPRESSLY INDICATED), WHETHER IN CONTRACT, EQUITY, TORT OR OTHERWISE, EVEN IN THE EVENT OF THE FAULT, NEGLIGENCE, INCLUDING SOLE NEGLIGENCE, STRICT LIABILITY, OR BREACH OF WARRANTY OF THE PARTY INDEMNIFIED, RELEASED OR WHOSE LIABILITIES ARE LIMITED, AND SHALL EXTEND TO THE PARTNERS, PRINCIPALS, DIRECTORS, OFFICERS AND EMPLOYEES, AGENTS AND RELATED OR AFFILIATED ENTITIES OF SUCH PARTY, AND THEIR PARTNERS, PRINCIPALS, DIRECTORS, OFFICERS AND EMPLOYEES. ALL RELEASES, WAIVERS, OR LIMITATIONS OF LIABILITY GIVEN BY NAED IN FAVOR OF THE SUPPLIER EXPRESSED IN THIS AGREEMENT SHALL APPLY EQUALLY TO SUPPLIER'S SUBCONTRACTORS AND TO ANY AND ALL OF SUPPLIER'S OR IT'S SUBCONTRACTORS' AFFILIATES.

ARTICLE 11 WARRANTY

11.1 Warranty. Supplier represents and warrants that through the end of the Warranty Period the Facility and the Work incorporated therein, will: (i) be free from errors, defects and damage in material and workmanship; (ii) be new when installed unless the Parties agree otherwise in advance and in writing; (iii) be of good quality and good condition; (iv) be delivered, handled, stored (whether onsite or offsite) and installed in accordance with all manufacturer's instructions and in a manner that does not void or impair manufacturer warranties; and (v) conform to the Agreement.

11.2 Breach of Warranty. If, within the Warranty Period, deviations from, breaches of or failures of the warranties set forth in Section 11.1 (“Defects”) in the Work or the Facility are discovered by NAED or Supplier, Supplier shall, at its sole expense, correct, repair, modify, or replace those Defects, including repair disassembly, removal, storage, transportation, reassembly or performance of any affected portion of the Work immediately upon being discovered or upon notice from NAED, and shall demonstrate to NAED’s reasonable satisfaction that the Defects have been properly corrected. Supplier shall use its commercially reasonable efforts to remedy any failure or breach of Warranty so as to minimize revenue loss to NAED and to avoid disruption of NAED’s operations at the Site. Where a Defect is capable of being remedied by more than one method and NAED requests the more costly alternative, the Parties will mutually agree to the compensation to be paid to Supplier, not to exceed the additional cost (plus profit overhead) to Supplier of performing the requested method, and Supplier shall have no obligation to use such more costly method unless and until the parties have so agreed. If Supplier fails to initiate and diligently take steps to pursue corrective action within five (5) Business Days after Supplier receives NAED’s notice and to pursue that Corrective action continuously thereafter, NAED may undertake or arrange corrective action at Supplier’s expense. If NAED makes a good faith determination that corrective action is necessary in a shorter time than that provided in this Section 11.2 because the Defect results in the unavailability of the Facility, NAED shall immediately notify Supplier of such need and, if Supplier fails to immediately initiate and diligently pursue such corrective action, NAED may undertake or arrange corrective action at Supplier’s expense. The correction of a Defect by NAED pursuant to this Section 11.2 shall not limit or void Supplier’s warranty; provided that the correction of the Defect by NAED is in accordance with Supplier’s reasonable recommendations or, in the absence of those recommendations, Prudent Industry Practices.

11.3 Title Warranty. Supplier represents and warrants that it shall provide to NAED, as to all portions of the Work and the Facility for which NAED has paid (excluding any amounts properly withheld or offset by NAED in accordance with the provisions of this Agreement against any payment sought by Supplier), good and marketable title free and clear of all encumbrances, liens, security interests and other defects in title created by or through Supplier or its Subcontractors. In the event of any non-conformity with or breach of this warranty, Supplier, at its own expense, shall, upon receipt of statutory notice of a lien, pay, discharge, or post a bond against any such lien or encumbrance, and this obligation shall survive the expiration, cancellation, or termination of the Work and/or this Agreement.

11.4 Exclusivity of Warranties and Remedies. THE WARRANTIES PROVIDED IN THIS ARTICLE 11 ARE EXCLUSIVE AND NO OTHER WARRANTIES OF ANY KIND, WHETHER STATUTORY, EXPRESS, OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OTHER THAN AS EXPRESSLY SET FORTH IN THE AGREEMENT) SHALL APPLY. THE REMEDIES SET FORTH IN THIS ARTICLE 11 ARE THE EXCLUSIVE REMEDIES OF NAED FOR ANY

FAILURE BY SUPPLIER TO COMPLY WITH ITS WARRANTY OBLIGATIONS AS SET FORTH IN THIS AGREEMENT.

11.5 Effect on Other Provisions. Passage of title under Article 17 shall have no effect on any other terms of this Agreement, or on any rights (express or implied), obligations or duties of the Supplier or NAED under this Article 11 or under any other provision of this Agreement.

ARTICLE 12

INDEMNIFICATION; LIENS

12.1 Indemnities and Indemnity Procedures

12.1.1 Supplier's Indemnity. To the fullest extent permitted by Laws, Supplier shall defend, indemnify and hold harmless NAED, the Town of North Attleborough and their respective officials, commissioners, managers, employees, agents, affiliates and representatives ("NAED Indemnitees") from and against any and all claims, demands, suits, liabilities, causes of action, losses, expenses, damages, fines, penalties, court costs, and reasonable attorneys' fees (collectively, "Claims"), arising out of personal injury, death and third party property damage and any and all fines or penalties imposed by any Governmental Authority, in each case to the extent they arise or result from, or are occasioned by or in connection with: (a) any negligent or intentionally wrongful act or omission to act by Supplier, a Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable; (b) any Taxes for which Supplier or any Subcontractor is liable or responsible under this Agreement; (c) Supplier Hazardous Materials, including the onsite release or offsite disposal of or the exposure of Persons to such Supplier Hazardous Materials; (d) violations of Laws by Supplier or its Subcontractors; (e) Supplier's failure to perform the Work in accordance with applicable Laws; and (f) any material misrepresentation of Supplier under the Agreement; provided, however, that Supplier shall not be required to indemnify NAED for any Claim to the extent such Claim arises from the negligence or intentionally wrongful acts or omissions of any NAED Indemnitee. This indemnification shall apply to any Claim incurred by any NAED Indemnitee by the imposition on NAED Indemnitee of contingent, indirect or vicarious liability arising from those acts or omissions of Supplier described above. Supplier's indemnification, defense and hold harmless obligation shall survive the termination or expiration of this Agreement. In Claims against any NAED Indemnitee by an employee of Supplier, a Subcontractor, anyone employed by any of them or anyone for whose acts they may be liable, the indemnification obligation shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Supplier, a Subcontractor or any other party under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts. The indemnification obligations in this Section 12.1 shall apply without any limitation other than the limitations contained in Section 10.4 hereof.

12.1.2 NAED's Indemnity. To the fullest extent permitted by Laws, NAED shall defend, indemnify and hold harmless Supplier, its Subcontractors and their respective officers, director, members, managers, employees, agents, affiliates and representatives ("Supplier Indemnitees") from and against any and all Claims arising out of personal injury, death and third party property damage and any and all fines or penalties imposed by any Governmental Authority, in each case to the extent they arise or result from, or are occasioned by or in connection with: (a) any negligent or intentionally wrongful act or omission to act by NAED, anyone directly or indirectly employed by it, or anyone for whose acts it may be liable; (b) any NAED Taxes; (c) NAED Hazardous Materials, including the onsite release or offsite disposal of or the exposure of Persons to such NAED Hazardous Materials; (d) violations of Laws by NAED; (e) any material misrepresentation of NAED under the Agreement; provided, however, that NAED shall not be required to indemnify Supplier for any Claim to the extent such Claim arises from the negligence or intentionally wrongful acts or omissions of any Supplier Indemnitee. This indemnification shall apply to any Claim incurred by any Supplier Indemnitee by the imposition on the Supplier Indemnitee of contingent, indirect or vicarious liability arising from those acts or omissions of NAED described above. NAED's indemnification, defense and hold harmless obligation shall survive the termination or expiration of this Agreement. In Claims against any Supplier Indemnitee by an employee of NAED, NAED's Engineer, anyone employed by any of them or anyone for whose acts they may be liable, the indemnification obligation shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Supplier, a Subcontractor or any other party under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts. The indemnification obligations in this Section 12.1 shall apply without any limitation other than the limitations contained in Section 10.4 hereof.

12.1.3 Indemnity Procedures. If any Person entitled to indemnification pursuant to Section 12.1 (each, an "Indemnified Party") receives notice or has knowledge of any loss that may result in a claim for indemnification by such Indemnified Party against the Party that may be liable for indemnification pursuant to this Article 12 (each, the "Indemnifying Party"), such Indemnified Party shall give the Indemnifying Party notice as promptly as possible of such loss including a reasonably detailed description of the facts and circumstances relating to such loss and a complete copy of all notices, pleadings and other papers related thereto, and in reasonable detail the basis for its potential claim for indemnification with respect thereto; provided however, that failure promptly to give such notice or to provide such information and documents shall not relieve the Indemnifying Party from the obligation hereunder to respond to or to defend the Indemnified Party against such loss unless such failure shall materially diminish the ability of the Indemnifying Party to respond to such claim or to defend the Indemnified Party. The Indemnifying Party shall have the right to conduct and control, through counsel of its own choosing, any Claims, provided that, upon acceptance of the indemnity obligations hereunder, the Indemnifying Party shall waive any right to protest or challenge its indemnity obligations. The Indemnified Parties may, at their election, participate in the defense thereof at their sole cost

and expense; provided, however, that if (i) the Indemnifying Party shall fail to defend any Claims, (ii) in the reasonable opinion of legal counsel for the Indemnified Parties, such Claims involve the potential imposition of a criminal liability on the Indemnified Parties, their officials, commissioners, managers, employees or agents, or (iii) in the reasonable opinion of legal counsel for the Indemnified Parties, an actual or potential conflict of interest exists where it is advisable for such Indemnified Parties to be represented by separate counsel, then the Indemnified Parties shall be entitled to control and assume responsibility for the defense of such Claims, at the cost and expense of the Indemnifying Party. The Indemnifying Party may, in any event, participate in such proceedings at its own cost and expense. The Indemnifying Party, in the defense of any such litigation, other proceeding or other claim, shall have the right in its sole discretion to settle such Claims only if (a) settlement involves only the payment of money and execution of appropriate releases of the Indemnified Parties, (b) there is no finding or admission of any violation of Law or violation of the rights of the Indemnified Parties, and (c) the Indemnified Parties will have no liability with respect to such compromise or settlement. Otherwise, no such Claims shall be settled or agreed to without the prior written consent of the Indemnified Parties. The Indemnified Parties and the Indemnifying Party shall fully cooperate in good faith in connection with such defense and shall cause their legal counsel, accountants and Affiliates to do so, and shall make available to the other party all relevant books, records, and information (in such Party's control) during normal business hours, and shall furnish to each other, at the Indemnifying Party's expense, such other assistance as the other party may reasonably require in connection with such defense, including making employees of the Indemnified Parties available to testify and assist others in testifying in any such proceedings.

12.2 Liens. Supplier shall, to the extent NAED makes all payments required to be made hereunder, keep the Facility and the Work free from and indemnify, defend and hold NAED harmless from the existence of all liens, charges, claims and judgments, security interests, and encumbrances ("Liens") arising out of the performance of the Work under this Agreement. If NAED seeks indemnification by Supplier for any Lien, NAED shall (a) give Supplier prompt notice of any Lien of which it has knowledge; (b) cooperate in the defense of the Lien at Supplier's expense and (c) give Supplier control of the defense and settlement, to the extent of Supplier's liability, of the Lien at Supplier's expense; provided that Supplier shall promptly confirm in writing its obligation to indemnify NAED with respect to all costs and expenses with respect to the Lien. So long as NAED has made all payments required to be made under this Agreement, Supplier shall take prompt steps to discharge, or post a bond against any Lien filed against the Facility or the Work by any Subcontractor based on a claim for payment in connection with the Work. If Supplier fails to discharge, or post a bond against, any such Lien within ten (10) Business Days after Written Notice from NAED of such Lien, NAED shall have the right, upon notifying Supplier in writing, to take any reasonable action to satisfy, defend, settle, or otherwise remove the Lien at Supplier's expense, including reasonable attorney's fees, costs, and expenses. NAED shall have the right to deduct and offset any expenses so incurred from any payment due, or which may become due, to Supplier under this Agreement and to

recover those expenses from Supplier. Supplier shall have the right to contest any Lien; provided that it first must provide to the lien holder, a court or other appropriate third Person as applicable, a bond or other assurances of payment necessary to remove the Lien and all other encumbrances related to the Work from the Site and the Facility in accordance with Laws. Supplier's indemnity obligations set forth in this Section 12.2 shall survive the termination of this Agreement.

ARTICLE 13

INSURANCE

13.1 Supplier's Insurance and Responsibilities

13.1.1 Supplier Insurance. Prior to the commencement of Work and until Final Completion, Supplier hereby agrees to purchase at its own expense, without limiting its indemnity under the Agreement, and maintain insurance coverage and limits as required under EXHIBIT D, and shall provide NAED insurance certificates as stipulated in EXHIBIT D, with insurance companies qualified to do business in the Commonwealth of Massachusetts having a Best rating of A- and a financial classification of IX or better. The insurance shall be effective as of date of the Notice to Proceed and maintained until Final Completion, in accordance with the terms of the Agreement, except for Products Liability/Completed Operations coverage, which shall be maintained for two (2) years beyond the Final Completion date. Deductible amounts shall be the responsibility of Supplier. Liability insurance coverage limits set forth in EXHIBIT D shall be dedicated to Work performed for NAED.

13.1.2 Supplier Responsibilities. The provisions of Article 13 do not limit, modify or change any responsibility of Supplier or its Subcontractors as stated elsewhere in the Agreement. NAED assumes no responsibility for the solvency of any insurer to settle any claim. All policies of insurance required hereunder shall be endorsed or shall otherwise provide that Supplier's insurance shall be primary with respect to Supplier's acts or omissions and not be in excess of, or contributing with, any insurance maintained by NAED and its assigns. Such primary stipulation shall be noted on the Certificate of Insurance as specified in EXHIBIT D. NAED shall be named as an additional insured on all policies (except Worker's Compensation and Employee Liability Insurance). The liability policies of insurance shall be endorsed or shall otherwise include a severability of interest or cross-liability clause.

13.2 Certificates. Required insurance (as described herein) shall be provided by companies reasonably acceptable to NAED or that have a Best Rating of A-, and a financial classification of IX or higher. Certificates in form acceptable to NAED showing such coverage in full force and effect shall be delivered to NAED prior to the commencement of the Work (on or before the NTP date) and from time to time as requested. All policies shall include waivers of any right of subrogation of the insurers against NAED and be endorsed or otherwise provide that there will be no recourse against NAED or any of their respective successors and assignees for payment of a premium.

ARTICLE 14

INTELLECTUAL PROPERTY AND PATENTS

14.1 Title to Plans and Specifications.

14.1.1 Copies of all drawings, Documentation, and data prepared by Supplier and its Subcontractors at any time during this Agreement in performing the Work (collectively, the “Work Product”) shall be furnished by Supplier to NAED in connection with the Work and shall remain the property of Supplier or its Subcontractors, respectively; provided, however, Supplier hereby grants to NAED an irrevocable, perpetual, sub-licensable to NAED’s Suppliers and agents, assignable to NAED’s successors in interest, and royalty free license or sublicense, respectively, to retain, use, modify, damage and destroy the Work Product for any purpose in connection with the operation, maintenance, alteration and expansion of the Facility. Supplier shall ensure that all agreements between Supplier and its Subcontractors shall provide Contactor with the power and authority to grant to NAED the aforesaid sublicense with respect to Work Product prepared by Subcontractors in performing the Work. Supplier and its Subcontractors shall retain their rights in the Work Product. Rights to intellectual property developed, utilized, or modified in the performance of the Work shall remain the property of Supplier and/or its Subcontractors.

14.1.2 Supplier shall transfer to NAED such licenses for any software delivered by Supplier, as Supplier receives from the supplier thereof. NAED shall not sell, distribute, or otherwise transfer any software, or any license for any software, except as permitted by such licenses.

14.1.3 NAED’s use of licensed intellectual property (including licensed software pursuant to Section 14.1.2 and generic designs, design concepts, standard drawings, methods and tools, design libraries or models, or technical information) shall be limited to use at the Site and at such other locations as may be necessary in connection with any maintenance, repairs, upgrades, or modifications to the Facility. All documents, including drawings, specifications, and computer software, prepared by Supplier or its Subcontractors pursuant to this Agreement are instruments of service in respect to the Work. They are not intended or represented to be suitable for reuse by NAED or others on any other project, and any such reuse without prior written verification or adaptation by Supplier or its subcontractors for the specific purpose intended will be at NAED’s sole risk and without liability or legal exposure to Supplier or its subcontractors.

14.2 Intellectual Property. Supplier shall include, as a term or condition of each purchase order and Subcontract employed by it in the performance of the Work, an intellectual property indemnification provision (including patents, trademarks, copyrights and trade secrets) extending from the vendor or Subcontractor under the purchase order or Subcontract to NAED and

Supplier substantially in the form of the obligations set forth in Section 14.3. Supplier shall render all assistance NAED may reasonably require on a reimbursable cost basis to enforce the terms of those indemnifications by a vendor or Subcontractors. This obligation shall not reduce or otherwise affect Supplier's obligation to provide all Work to NAED free and clear of all intellectual property infringement or other violation Claims.

14.3 Intellectual Property Infringement/Patents

14.3.1 Supplier shall pay all royalties, license, and other fees payable under or in respect of, and shall defend, indemnify, and hold harmless NAED Indemnitees from and against any loss arising out of, resulting from, or reasonably incurred in contesting any Claim (a) for unauthorized disclosure by Supplier or use of any trade secrets, (b) for any other intellectual property infringement or other violation (including without limitation patent, license, copyright, trademark infringement or other violation) arising from Supplier's performance, or that of its Subcontractors, under this Agreement, or (c) asserted against such NAED Indemnitee that (i) concerns any equipment or material provided by Supplier or any Subcontractor under this Agreement, (ii) is based upon the performance of the Work by Supplier or any Subcontractor, or (iii) is based upon the design or manufacturing of any item or unit specified by Supplier under this Agreement or upon the operation of any item or unit according to directions embodied in Supplier's final process design, or any revision thereof, prepared by Supplier or any Subcontractor. Supplier shall render all assistance NAED may reasonably require on a reimbursable basis, to enforce the terms of that indemnification by vendors. This obligation shall not reduce Supplier's obligation to provide all Work to NAED, free and clear of all patent infringement claims.

14.3.2 If a Claim for infringement or other violation for which Supplier is required to provide indemnification pursuant to Section 14.3.1 (an "Indemnifiable Intellectual Property Claim") results in a suit against an NAED Indemnitee, Supplier shall, at its election and in the absence of a waiver of this indemnity by such NAED Indemnitee, have sole charge and direction of said suit on such NAED Indemnitee's behalf so long as Supplier diligently prosecutes the same. If Supplier has charge of a suit brought against an NAED Indemnitee by a third party, such NAED Indemnitee shall render such assistance at Supplier's expense as Supplier may reasonably require in the defense of such suit except that such NAED Indemnitee shall have the right to be represented therein by counsel of its own choice and at its own expense. If, as a result of such suit, such NAED Indemnitee is enjoined from completion of the Facility or any part thereof, or from the use, operation or enjoyment of the Facility or any part thereof as a result of an Indemnifiable Intellectual Property Claim or any litigation based thereon, Supplier shall promptly arrange to have such injunction removed at no cost to any NAED Indemnitee. If in Indemnifiable Intellectual Property Claim, any device is held to constitute an infringement or other violation and its use is enjoined, Supplier shall, at its expense, either (i) secure for each of NAED Indemnitees the right to continue using such device by suspension of the injunction or by procuring for such NAED Indemnitee a license; or otherwise at Supplier's option and expense,

(ii) replace such device with a non-infringing or violating device of equivalent utility, performance and useful life; or (iii) modify it so that it becomes non-infringing or violating, in either case without impairing its utility, performance, useful life or ability to conform with this Agreement.

ARTICLE 15

CONFIDENTIAL INFORMATION; TRADEMARKS

15.1 Confidential Information

15.1.1 Each of the Parties has a proprietary interest in information that will be furnished to the other pursuant to this Agreement. The Parties shall keep in confidence and shall not disclose any information which in good faith is specifically designated in writing at the time of disclosure as confidential (“Confidential Information”) without the prior written permission of the disclosing party or use any Confidential Information for other than the purposes for which it is supplied except as expressly provided in this Agreement. Each Party agrees that the other Party may disclose any Confidential Information to its consultants, attorneys and representatives and to other Persons as may be necessary to enable that Party to perform its obligations under this Agreement or any document related to the Facility; provided that those Persons are subject to or bound by confidentiality obligations equivalent to those set forth herein or have executed a confidentiality agreement in form and substance satisfactory to the Parties. Each Party agrees to hold the Confidential Information confidential for two (2) years after Final Completion. If a Party is required to disclose the other Party’s Confidential Information by a subpoena, Law, or any Governmental Authority including, with respect to NAED, in any regulatory proceeding, such Party may disclose such Confidential Information, but it shall give the other Party prompt Written Notice thereof. The provisions of this Article 15 shall not apply to information which: (a) was in the possession of the receiving Party at the time it was initially furnished without a breach of this Article 15, (b) is or becomes part of the public domain without breach of this Article 15, (c) is received from a third party who does not thereby breach any restriction regarding disclosure; (d) is developed independently without the use of the Confidential Information; (e) is ordered by a Governmental Authority to be disclosed. The provisions of any written agreement between Supplier and NAED entered into before the Effective Date governing the secrecy or confidentiality of information or exchanged between Supplier and NAED shall apply with respect to information exchanged prior to the Effective Date and are hereby superseded for all information exchanged on or after the Effective Date. Supplier acknowledges that NAED is a public entity subject to the requirements of the public records laws of the Commonwealth of Massachusetts and in the event of any inconsistency of any provision of this Article 15 and such laws, the public records laws shall govern.

15.2 NAED's Trademarks. Supplier shall not use NAED's name, logos, trademarks, service marks, trade names or trade secrets in any way without NAED's prior written consent, and NAED shall not be deemed to have granted Supplier a license of, or granted Supplier any rights in, any of the foregoing by entering into the Agreement.

ARTICLE 16

HAZARDOUS MATERIALS

16.1 Material Safety Data Sheets. Supplier shall provide to NAED all material safety data sheets covering all Hazardous Materials to be furnished, used, applied, or stored by Supplier or any Subcontractor or otherwise associated with the Work ("Material Safety Data Sheets"). Supplier shall provide NAED's Representative with copies of the applicable Material Safety Data Sheets or copies of a document certifying that no Material Safety Data Sheets are required under any Laws and shall determine whether any substance or material furnished, used, applied, or stored by Supplier in connections with the Work is within the provisions of any Laws concerning Hazardous Materials.

16.2 Notice of Presence. Supplier shall provide Written Notice of the presence at the Site of Hazardous Materials which Supplier or its Subcontractors bring onto the Site to local fire, medical, and law enforcement agencies as required by all Laws and shall deliver a copy of each notice promptly to NAED's Representative. Supplier shall obtain NAED's approval to the extent required by NAED's policies that have been provided to Supplier prior to bringing Hazardous Materials onto the Site.

16.3 Labeling; Training. Supplier shall label all containers of Hazardous Materials and train all employees and other Persons as necessary in the safe use of those Hazardous Materials as required under all Laws.

16.4 Handling, Collection, Removal, Transportation and Disposal. Supplier shall be responsible, at its sole cost, for the proper handling, collection, removal, transportation, and disposal of any Supplier Hazardous Materials and Supplier shall be solely responsible for obtaining a disposal site for such Supplier Hazardous Materials. Supplier shall register with the Massachusetts Department of Environmental Protection as a Generator of Hazardous Waste (including waste oil) in accordance with the Massachusetts Hazardous Waste Regulations, 310 C.M.R. 30.000 *et seq.*, and obtain a Supplier Generator Registration Number for Supplier Hazardous Materials. Supplier shall be responsible for compliance with Massachusetts Hazardous Waste Regulations. Prior to Final Completion, Supplier shall remove from the Site all unused or partially used Supplier Hazardous Materials that are not required for the performance of the Work or the operation of the Facility. All activities in connection with the foregoing shall be performed in accordance with the requirements of all Governmental Authorities and Laws. Anything herein to

the contrary notwithstanding, title to, ownership of and legal responsibility and liability for any and all Supplier Hazardous Materials shall at all time remain with Supplier. Supplier shall look to the disposal Supplier and/or transporter for any responsibility or liability arising from improper disposal or transportation of such Supplier Hazardous Materials. Supplier shall indemnify, release and save NAED and the Town of North Attleborough harmless from all damages, liability, expenses or penalties resulting from Supplier Hazardous Materials.

16.5 Costs. Subject to Section 16.54 all costs Supplier incurs in satisfying Supplier's obligations, as set forth in this Article 16, are the responsibility of Supplier and are included in the Contract Price.

16.6 Notice of Discovery. Supplier shall provide notice to NAED of all suspected NAED Hazardous Materials that it finds during performance of the Work. NAED shall be responsible for the prompt determination of the nature of those substances or wastes and to the extent that such Hazardous Materials in, on or under the Site are not Supplier Hazardous Materials, shall proceed with due diligence to resolve the matter.

16.7 Compliance with Laws. Supplier shall not introduce or release or allow to be introduced on or released from the Site or in the Work or handle, collect, remove, transport, or dispose of Hazardous Materials in violation of any Laws, including but not limited to, 42 U.S.C. Section 9601 *et seq.*, "Comprehensive Environmental Response, Compensation and Liability Act of 1980" as amended, 15 U.S.C. Section 2601 *et seq.* "The Toxic Substances Control Act" as amended and 42 U.S.C. Section 6901 *et seq.*, "The Resource Conservation and Recovery Act of 1976" as amended, the "Massachusetts Contingency Plan" at 310 C.M.R 40.000 *et seq.* and the "Massachusetts Hazardous Waste Regulations," at 310 C.M.R. 30.000 *et seq.*

16.8 Asbestos Products. All equipment furnished or delivered by Supplier and all materials and tools used by Supplier on NAED's site to Deliver and Start-up the Facility and otherwise needed for Supplier to perform its obligations under the Agreement shall contain zero percent asbestos or refractory ceramic fibers. Supplier shall indemnify, defend and hold harmless NAED from and against any and all claims, demands and damages incurred from any unauthorized asbestos or refractory ceramic furnished or delivered to or installed at the Site.

ARTICLE 17

TITLE; SECURITY INTEREST; RISK OF LOSS; TAKEOVER

17.1 Transfer of Title; Security Interest. Except as otherwise expressly provided in this Agreement, Supplier shall transfer good, exclusive and marketable title, free and clear of all Liens (other than liens created solely by the actions of NAED), to the Work and the Facility upon Final Completion and payment of the amount then due by NAED for such Work. Until such time, title and risk of loss to the Work and Facility shall remain with Supplier. Upon the passage of title, the Work or constituent parts thereof and the Facility shall be specifically excluded from

the bankruptcy estate of Supplier in the event of any bankruptcy or insolvency proceeding involving Supplier.

17.2 Risk of Loss. Supplier shall have care, custody, and control of the Facility and shall bear the risk of loss with respect to the Facility from and after the NTP Date until Final Completion. Once care, custody and control, and risk of loss, with respect to the Facility transfers from Supplier to NAED, Supplier shall thereafter not be liable for any damage or loss to such portion of the Facility except to the extent such loss or damage is caused by Supplier's fault or negligence.

17.3 Supplier Equipment. Title and risk of loss or damage to the equipment, tools, and Manufacturing Aids of Supplier, all Subcontractors, and their respective employees and agents shall at all times remain with those Persons, and NAED shall have no responsibility therefor.

ARTICLE 18

DEFAULT; TERMINATION; SUSPENSION

18.1 Default by Supplier. Each of the following events is an event of default by Supplier ("Supplier Event of Default") under the Agreement. Except with respect to Section 18.1.5 or 18.1.6, NAED shall give Supplier Written Notice of any alleged breach or default by Supplier as soon as NAED has knowledge of the alleged breach or default, or notice of the facts giving rise to the alleged breach or default:

18.1.1 Supplier shall fail to make any payment due to NAED under the terms of the Agreement within thirty (30) Days after NAED gives Supplier Written Notice that the payment is past due and payable, except with respect to any full or partial payment that Supplier shall be in good faith disputing in writing in accordance with the provisions of the Agreement;

18.1.2 Supplier (a) fails to complete the Work and satisfy the conditions precedent for Final Completion by thirty (30) Days following the Guaranteed Final Completion Date as may be adjusted by the terms and provisions of this agreement;

18.1.3 Supplier defaults in any material respect in obtaining or maintaining the insurance required by the Agreement and fails to cure such default within five (5) Business Days following receipt from NAED of Written Notice of such default;

18.1.4 Supplier assigns, transfers or attempts to assign or transfer this Agreement or any right or interest herein, except as expressly permitted by this Agreement;

18.1.5 Supplier files a petition commencing a voluntary case under the U.S. Bankruptcy Code, or for liquidation, reorganization, or an arrangement pursuant to any other U.S. or state bankruptcy Laws, or shall be adjudicated a debtor or be declared bankrupt or insolvent under the U.S. Bankruptcy Code, or any other U.S. Federal or state Laws relating to bankruptcy,

insolvency, winding-up, or adjustment of debts, or makes a general assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due, or if a petition commencing an involuntary case under the U.S. Bankruptcy Code or an answer proposing the adjudication of Supplier as a debtor or a bankrupt or proposing its liquidation or reorganization pursuant to the Bankruptcy Code or any other U.S. Federal or state bankruptcy Laws is filed in any court and Supplier initiates, consents to or acquiesces in the filing of that pleading or petition or answer and any such petition or answer is not discharged or denied within sixty (60) Days after it is filed;

18.1.6 A custodian, receiver, trustee or liquidator of Supplier, or all, or substantially all of the assets or business of Supplier, or of Supplier's interest in the Work or the Agreement is appointed in any proceeding brought against Supplier and not discharged within sixty (60) Days after that appointment, or if Supplier shall consent to or acquiesces in that appointment;

18.1.7 Supplier fails to deliver or maintain any Performance or Payment Bond required pursuant to this Agreement and fails to cure such default within thirty (30) Days following receipt from NAED of Written Notice of such default; or

18.1.8 Supplier breaches any material covenant, condition, or obligation in this Agreement other than those set forth in Sections 18.1.1 through 18.1.7 above and fails to cure such breach within thirty (30) Days after NAEDs gives Supplier Written Notice specifying the default and demanding that the same be remedied or, if such breach cannot be cured within thirty (30) days, Supplier fails to commence to cure such breach within thirty (30) days after such Written Notice and thereafter diligently pursue such cure to completion.

18.2 NAED's Remedies. Upon the occurrence and continuation of a Supplier Event of Default, NAED has the right to terminate this Agreement upon ten (10) Business Days' Written Notice. Upon the occurrence and continuation of an Event of Default, NAED at its option may take one or more of the following actions: (a) terminate the Agreement by giving Supplier written notice; (b) take control of the Work and the Site; (c) recover from Supplier immediately on a date specified by NAED, as damages for loss of bargain and not as a penalty, and in addition to all other amounts NAED is entitled to recover under the Agreement, including Liquidated Damages, an amount equal to the cost of completing the Work (taking into account the requirements of the Contract Schedule) minus the unpaid portion of the Contract Price; (d) cure the default at Supplier's expense; and (e) recover from Supplier any other damages not prohibited by this Agreement. Subject to the limitations on Supplier's warranties, obligations and liability expressly contained in the Agreement, the remedies in this Article 18 provided in favor of NAED are not exclusive but are cumulative and may be exercised concurrently or consecutively and shall be in addition to all other remedies in NAED's favor under this Agreement and existing at Laws or in equity.

18.3 Effect of NAED Termination.

18.3.1 If Supplier receives a termination notice pursuant to Section 18.2 or, upon payment of all amounts due to Supplier by reason of termination under Section 18.3, Supplier shall immediately:

18.3.1.1 Stop the performance of all Work except as may be necessary to carry out the termination;

18.3.1.2 Enter into no further Subcontracts relating to the Work except with the prior written consent of NAED;

18.3.1.3 Assign to NAED upon request all rights of Supplier under Subcontracts entered into by Supplier in connection with the Agreement;

18.3.1.4 To the extent possible, upon NAED's request, terminate existing Subcontracts entered into by Supplier pursuant to the Agreement; and

18.3.1.5 Take any other action toward termination of the Work which NAED shall direct.

18.3.2 Upon the termination of the Agreement pursuant to Section 18.2:

18.3.2.1 NAED shall be entitled to the ownership of all Work for which NAED has paid Supplier and to all Documentation.

18.4 NAED's Right to Carry Out the Work. If Supplier defaults under any of its material obligations under this Agreement and does not cure that default within the applicable cure period therefor as set forth in Section 18.1, NAED shall have the right, in addition to any other remedy it may have, to cure the default at Supplier's expense; provided however that if Supplier commences and diligently proceeds to cure the default during the applicable cure period and thereafter diligently pursues such cure to completion, NAED shall have no rights under this Section 18.4 as to that default. NAED shall be entitled to charge Supplier for all reasonable expenses NAED incurs in curing the default and/or completing the Work or to deduct those expenses from payments NAED otherwise owes or comes to owe Supplier, including reasonable attorney's fees. NAED's exercising any of its rights under this Section 18.4 shall not relieve Supplier of any of its obligations under this Agreement.

18.5 Termination by Supplier. Each of the following events is an event of default by NAED ("NAED Event of Default") under the Agreement, for which Supplier may terminate the Agreement effective as of any date at least five (5) Business Days after Supplier gives NAED written notice of termination:

18.5.1 NAED shall file a petition commencing a voluntary case under the U.S. Bankruptcy Code, or for liquidation, reorganization, or for an arrangement pursuant to any other

U.S. federal or state bankruptcy Laws, or shall be adjudicated a debtor or be declared bankrupt or insolvent under the U.S. Bankruptcy Code, or any other U.S. Federal or state Laws now or hereafter in effect relating to bankruptcy, insolvency, winding-up or adjustment of debts, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or if a petition commencing an involuntary case under the U.S. Bankruptcy Code or an answer proposing the adjudication of NAED as a debtor or a bankrupt or proposing its liquidation or reorganization pursuant to the U.S. Bankruptcy Code any other U.S. Federal or state bankruptcy Laws shall be filed in any court and NAED shall initiate, consent to or acquiesce in that filing or petition or answer and any such petition or answer shall not be discharged or denied within thirty (30) Days after filing;

18.5.2 A custodian, receiver, trustee or liquidator of NAED or of all or substantially all of the assets of NAED shall be appointed in any proceeding brought by (a) NAED or (b) against NAED and is not discharged within ninety (90) Days after that appointment or NAED consents to or acquiesces in the appointment;

18.5.3 NAED shall fail to make any payment due to Supplier under the terms of the Agreement within thirty (30) Days after Supplier gives NAED written notice that the payment is past due and payable except with respect to any full or partial payment that NAED shall be in good faith disputing in writing in accordance with the provisions of the Agreement; or

18.5.4 NAED assigns transfers or attempts to assign or transfer this Agreement or any right or interest herein, except as expressly permitted by this Agreement.

18.6 Upon a termination by Supplier pursuant to Section 18.5, Supplier shall be entitled to receive from NAED its direct damages calculated in a commercially reasonable manner. Payment of the foregoing amount shall be made by NAED to Supplier within fifteen (15) Days after receipt of Supplier's invoice therefor. Upon such payment by NAED, NAED shall have the right to take possession of and Supplier shall make available to NAED all material and equipment to the extent it is in Supplier's control, and other components of such Work for which payment has been made. In the event of a termination under this Section 18.6, NAED shall be liable for the reasonable attorneys' fees and expenses incurred by Supplier because of the occurrence of any Event of Default or the exercise of Supplier's remedies.

ARTICLE 19

PROTECTION OF PERSONS AND PROPERTY

19.1 Laws. Supplier shall provide all required notices to NAED, the Subcontractors and all other Persons, as applicable, and shall comply with all Laws bearing on the Health and Safety of

Persons or property or their protection from damage, injury or loss, including the Occupational Safety and Health Act and the Americans with Disabilities Act.

19.2 Safety Precautions, Environmental, Health and Safety. Supplier shall comply with all Laws and, to the extent provided to Supplier, all of NAED's environmental, health, safety and security policies and manuals, as amended from time-to-time, provided, that if NAED shall amend any such policy or plan, or deliver a new or additional policy or plan to Supplier, after the Effective Date, then Supplier shall be entitled to a Change Order if adherence to such amended, new or different policy or plan materially increases Supplier's costs or time to perform the Work. In addition to meeting the requirements of the Health and Safety Plan, Supplier shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury, or loss to Persons or property at the Site, and in connection with the Facility including:

19.2.1 Employees, Subcontractors and other Persons performing the Work and all Persons who may be affected by the performance of the Work;

19.2.2 Equipment used by Supplier or to be incorporated into the Work, whether in storage on or off the Site or under the care, custody or control of Supplier or Subcontractors; and

19.2.3 Other property at or adjacent to the Site, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities.

19.3 Safeguards. Supplier shall take all precautions and measures necessary to secure the Site at all hours, including evenings, holidays and non-work hours. Supplier shall erect, maintain or undertake, as required by existing conditions and the performance of the Agreement, all reasonable safeguards for the safety and protection of Persons and property, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying NAEDs and users of adjacent sites and utilities.

19.4 Incident Reporting; Notices to NAED. In addition to reporting to Governmental Authority authorities as required by Laws, Supplier shall promptly report in writing to NAED all accidents or other incidents arising out of or in connection with the Work. Supplier shall supply a copy of any report for NAED within 24 hours for all damage, death, injuries, and "near misses".

19.5 Emergencies. In an emergency affecting the safety of Persons or property Supplier shall act promptly in a manner determined by Supplier, at Supplier's discretion, to prevent any such threatened damages, death, injury or loss.

19.6 Work Stoppage. Upon notice from NAED to Supplier, Supplier shall stop the Work whenever safety violations are observed which, in NAED's determination, could jeopardize the well-being of personnel and equipment or are otherwise in violation of the Health and Safety Plan. Supplier shall bear the expense of any such Work stoppage and resulting standby time. In

an emergency situation, however, NAED's right to stop the Work shall be absolute, and shall not require notice to Supplier, provided, that if NAED's decision to stop the Work is determined to have been unwarranted, then Supplier shall be entitled to a Change Order for any extra costs incurred and delay resulting therefrom.

ARTICLE 20

RECORDS AND AUDIT

20.1 Technical Documentation. Supplier shall maintain and provide five (5) copies to NAED and shall cause its Subcontractors to maintain and provide five (5) copies to NAED of all technical Documentation relating to the Facility and the Work for a period of three (3) years after Supplier receives notice of Final Completion from NAED.

20.2 Accounting Records. Supplier shall maintain and shall cause its Subcontractors to maintain full and detailed accounts with respect to all equipment incorporated into the Work pursuant to generally accepted accounting principles and Massachusetts General Laws. In connection with any audit challenge or other proceeding by any Governmental Authority in respect of Taxes relating to this Agreement or the Work, Supplier shall provide NAED or its legal or accounting representatives such of Supplier's records, books receipts, vouchers, paid invoices and proofs of payment for third party services and purchased materials, memoranda and similar data relating to this Agreement and to equipment and materials incorporated into the Work, and Supplier shall preserve all such records and information for a period of one (1) year or for such longer period as may be required by law, after the final payment is made by NAED.

20.3 NAED's Right to Audit.

20.3.1 For purposes of disputes and for verification of incurred or estimated costs claimed by Supplier for any Work performed under a Change Order performed on a time and material basis, any suspended, terminated, or delayed Work, or for any claim whatsoever for additional costs, NAED or its authorized representative shall have the right and free access at any reasonable time during normal business hours to examine, audit and copy all of Supplier's records and books related to all those costs as reasonably necessary to verify those costs.

20.3.2. Supplier shall provide to NAED all other information and data NAED may from time to time reasonably request and otherwise cooperate with NAED in connection with the reporting of (a) any Taxes payable with respect to the Work (b) any sales relating to Taxes payable with respect to the Work; and/or (c) any assessment, refund claim, or proceeding relating to Taxes payable with respect to the Work. Supplier shall ensure that its Contracts with all Subcontractors effectuate the provision of this Section 20.3.

20.3.3 Supplier's obligations under this Section 20.3 shall survive the termination, cancellation, or expiration of this Agreement for any reason and shall last so long as is necessary to resolve any and all matters regarding disputes or Taxes attributable to the Facility or the Work; provided that if NAED requires Supplier to take action under this Section 20.3 at any time after Final Completion, NAED shall reimburse Supplier for all actual and reasonable expenses Supplier incurs in taking those actions.

ARTICLE 21

DISPUTE RESOLUTION

21.1 Resolution by the Parties. All claims, disputes, and other controversies arising out of or relating to this Agreement or the breach, termination or validity thereof (collectively, "Disputes") shall be submitted by the disputing Party in writing (a "Submission") to the other Party for resolution by mutual agreement of senior officers of each Party. The designated senior officers and their respective representatives shall meet within five (5) Business Days following the Submission unless a later date is specified therein. If the Parties fail to arrive at a resolution of the Dispute within ten (10) Business Days after receipt by a Party of a Submission, then on the request of either Party the Dispute shall be resolved in accordance with Section 21.2 (for Technical Disputes) or Section 21.3 (for all other Disputes).

21.2 Expert Arbitration Regarding Technical Disputes

21.2.1 Technical Disputes. If a Technical Dispute arises between the Parties and such Technical Dispute is not timely resolved in accordance with Section 21.1, then either NAED or Supplier (the "Claimant") may, by Written Notice (a "Demand") to the other Party (the "Respondent"), require such matter to be determined by Expert Arbitration ("Expert Arbitration"). The Expert Arbitration shall be private arbitration but conducted as to procedural matters in accordance with the Construction Industry Arbitration Rules (the "Rules") of the American Arbitration Association ("AAA"). If the Respondent objects in writing within ten (10) Business Days of receipt of a Demand that the Dispute is not a Technical Dispute, then the issue of whether the Dispute is a Technical Dispute shall be resolved by the Expert Arbitrator. Any objection that a Dispute referred to Expert Arbitration is not a Technical Dispute not made within ten (10) Business Days of receipt by Respondent of the Demand, shall be considered waived. Within ten (10) Business Days after receipt by the Respondent of the Demand, a neutral independent expert (the "Expert Arbitrator") shall be appointed to determine the matters set out in the Demand and any denial of the allegations by the other Party (the "Response"). The Parties shall agree on a qualified, neutral independent expert, who has at least ten (10) years' experience that is relevant to the Work and the Facility. If the Parties cannot agree on an Expert Arbitrator, then either Party may ask the AAA to appoint an arbitrator. For all disputes, the Expert

Arbitration proceeding shall be conducted by a single Expert Arbitrator. The Expert Arbitration shall be conducted in accordance with the Rules then in effect, except as modified herein.

21.2.2 Submissions. The Demand shall include a description of the Technical Dispute, the amount sought, if any, or other relief sought and the grounds and documents on which the Claimant relies in seeking to have the Technical Dispute determined in its favor. The Respondent, within fifteen (15) Business Days of receipt of the Demand, shall deliver to the Claimant (and the Expert Arbitrator, if designated) the Response setting forth any additional matters related to the Technical Dispute, the amount sought, if any, and the grounds and documents upon which the Respondent relies in seeking to have the Technical Dispute determined in its favor. The right to conduct discovery shall be granted by the Expert Arbitrator in its sole discretion. Within ten (10) Business Days after all answering statements (including those responding to any counterclaim) have been served, the Parties shall exchange any document requests. Within thirty (30) days after the exchange of document requests, the Parties shall produce to each other (a) all requested non-privileged documents within the scope of discovery permitted by the Expert Arbitrator, except documents objected to and with respect to which a ruling has been sought from the Expert Arbitrator, and (b) a log of documents withheld on a claim of privilege. At least ten (10) Business Days prior to the hearing, each Party shall provide to the other Party and the Expert Arbitrator copies of all other documents and other material on which it proposes to rely in support of its position.

21.2.3 Scheduling. Within five (5) Business Days of his or her designation or as soon thereafter as practicable, the Expert Arbitrator shall designate a time for a hearing of the Parties on the Technical Dispute and shall designate procedures to be utilized at the hearing, which procedures shall provide for the examination and cross examination of witnesses. The hearing shall be held in North Attleborough, Massachusetts and shall commence as soon as reasonably possible but not more than thirty (30) Days after the appointment of the Expert Arbitrator(s) unless the Parties so agree or the Expert Arbitrator(s) agrees to extend such time period to permit the exchange of documents or other discovery permitted by the Expert Arbitrator(s) or for other good cause shown.

21.2.4 Hearing. At the time designated for the hearing, each of NAED and Supplier and/or their legal representatives shall appear before the Expert Arbitrator and present its case. The Parties may be assisted in such hearing by advisors of their choosing. At the time of the hearing, the Expert Arbitrator may also inspect the elements of the Work that are the subject of the Dispute.

21.2.5 Decision. The Expert Arbitrator shall render a detailed written decision on the Technical Dispute as soon as possible (but no later than fifteen (15) Days) after the close of the hearing, unless such time period is extended by the Parties or by the Expert Arbitrator for good cause shown. Such decision shall take into consideration, in addition to the relevant facts, the terms of the Agreement and Prudent Industry Practices. The Expert Arbitrator may not award

damages in excess of the amounts demanded in the Demand or the Response. In deciding the substance of any Technical Dispute, the Expert Arbitrator shall apply the substantive laws of the Commonwealth of Massachusetts; provided, however, that the Expert Arbitrator (or any court in accordance with Section 21.3 hereof) shall have no authority to award punitive damages under any circumstances (whether exemplary damages, treble damages, or any other penalty or punitive type of damages) regardless of whether such damages may be available under Massachusetts law, the Parties hereby waiving their rights, if any, to recover punitive, exemplary, multiple, or any other form of non-compensatory damages in connection with any Technical Dispute. In the absence of gross negligence or willful misconduct by an Expert Arbitrator, the decision and award of the Expert Arbitrator shall be final and binding on the Parties and may be entered and enforced in any court having jurisdiction. The Expert Arbitrator shall provide the Parties with a copy of such decision and award, including a concise written statement of the reasons on which it is based, including separately-numbered paragraphs detailing (a) Findings of Fact and (b) Conclusions of Law.

21.2.6 Failure to Render Decision. If the Expert Arbitrator does not render a decision and award within a period of sixty (60) Days of the close of the hearing or such longer period as the Parties may agree in writing, either Party may, prior to the receipt of the Expert Arbitration decision and award, give Written Notice to the other Party and the Expert Arbitrator of the termination of such designation and to request the designation of replacement Expert Arbitrator.

21.2.7 Fees and Expenses. Any fees or expenses charged by the Expert Arbitrator in connection with their responsibilities under this Section 21.2 shall be shared equally among the Parties unless the Expert Arbitrator shall otherwise determine. In the absence of a finding of fraud, gross negligence or intentional misconduct by a Party, each Party shall be responsible for their own attorney's fees and costs regardless of which Party prevails.

21.3 Litigation; Submission to Jurisdiction. Except for Technical Disputes, which shall be resolved in accordance with Section 21.2 herein, if any Dispute is not resolved in accordance with Section 21.1 herein, or if the Expert Arbitrator makes conclusions of law to which either Party disagrees, either Party may bring an action regarding such Dispute in any court of competent jurisdiction in Bristol County, Massachusetts and in the absence of a written agreement of the Parties for the resolution of such non-technical Disputes by some other means, this shall be the exclusive method of resolving such Disputes. NAED and Supplier each consent to the jurisdiction of and to the laying of venue in such court and waive any defense based on lack of venue, personal jurisdiction or inconvenient forum.

21.4 Continuation of Work. Pending the final resolution of any Dispute, NAED shall continue to make undisputed payments in accordance with this Agreement. Provided that NAED shall continue to make such payments, Supplier shall proceed diligently with the performance of the Work and its other duties and obligations under this Agreement without diminution of effort.

ARTICLE 22

PERFORMANCE AND PAYMENT BONDS

22.1 Payment and Performance Bonds. Supplier shall obtain and deliver to NAED duly executed Performance and Payment Bonds (separate bonds) on the NTP Date each in an amount not less than the Contract Price. NAED's obligation to pay the Contract Price shall be conditioned on the delivery of the Performance and Payment Bonds by Supplier as provided in this Section 22.1 and the continuing effectiveness thereof. The Performance and Payment Bonds furnished by Supplier to secure its performance under the Agreement shall have at term which shall extend for a period of two years from Final Completion.

ARTICLE 23

REPRESENTATIONS AND WARRANTIES

23.1 Supplier's Representations and Warranties. Acknowledging and agreeing that NAED is relying on each and every representation, Supplier represents and warrants to NAED that:

23.1.1 Supplier and its Subcontractors are business entities duly organized, and in good standing and validly existing under the laws of their State of organization. Supplier and its Subcontractors have all necessary power and authority to carry on their business as presently conducted and to enter into and perform its obligations under the agreements to which it is or is to be a party. Supplier and its Subcontractors are duly qualified or licensed to do business in all jurisdictions, including the Commonwealth of Massachusetts, wherein the nature of their business and operations makes such qualification or licensing necessary and where the failure to be so qualified or licensed would materially impair their ability to perform their obligations under this Agreement.

23.1.2 Supplier has all necessary power and authority to execute, deliver, and perform its obligations under this Agreement and each of the execution, delivery and performance by it of this Agreement has been duly authorized by all necessary action on its part, does not require any approvals except as has been heretofore obtained, of its Board of Directors or shareholders any consent of or approval from any trustee or lender or holder of any indebtedness or other obligation of it, except for such as have been duly obtained, and does not contravene or constitute a default under its organizational documents or, to the best of its knowledge, any provision of applicable law or any agreement, judgment, injunction, order, decree or other instrument binding upon it, or subject the Facility or any component part thereof or the Site or any portion thereof to any lien other than as contemplated or permitted by this Agreement; and Supplier is in compliance with all Laws and Government Approvals (i) which govern its ability

to perform its obligations under this Agreement, or (ii) the noncompliance with which would have a material adverse effect on its ability to perform its obligations under this Agreement;

23.1.3 Neither the execution and delivery by Supplier of this Agreement nor the consummation by it of any of the transaction contemplated hereby, requires, with respect to it, the consent or approval of, the giving of notice to, the registration with, the recording or filing of any document with, or the taking of any other action in respect of any Government Authority, except such as are not yet required (as to which it has no reason to believe that the same will not be readily obtainable in the ordinary course of business upon due application therefore) or which have been duly obtained and are in full force and effect;

23.1.4 The undersigned authorized representatives of Supplier have duly and validly executed and delivered this Agreement. With such execution it constitutes the legal, valid and binding obligation of Supplier enforceable against it in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, moratorium or similar laws affecting the rights of creditors or by general equitable principles (whether considered in a proceeding in equity or at law);

23.1.5 Supplier and its Subcontractors are knowledgeable, experienced, and skilled in performing the Work for enclosed reciprocating internal combustion generator sets similar to the Facility, and have all the required skills and capacity necessary to perform or cause to be performed the Work in a proper, timely, and professional manner utilizing Prudent Industry Practices;

23.1.6 Supplier and its Subcontractors are financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete its obligations under this Agreement. They are able to furnish the Facility and perform the Work under the Agreement;

23.1.7 Supplier owns or has the right to use all the intellectual property (including patents, trademarks, service marks, trade names, copyrights, and trade secrets), licenses, franchises, permits or other rights with respect to the foregoing necessary to perform the Work and to carry on its business as presently conducted and presently planned to be conducted without conflict with the rights of others. In addition, it holds or works under the general supervision of a person holding any and all consents, licenses, permits, and other authorization, both manufacturing and design, required by law to perform the services under this Agreement; and

23.1.8 There is no action, suit or proceeding, at law or in equity, or official investigation before or by any Government Authority or to the best of Supplier's knowledge, threatened against or affecting it or any of its Subcontractors or any of their properties, rights or assets, which could reasonably be expected to result in a material adverse effect on their ability to perform their obligations under this Agreement or on the validity or enforceability hereof.

23.2 NAED's Representations and Warranties. Acknowledging and agreeing that Supplier is relying on each and every representation, NAED represents and warrants to Supplier that:

23.2.1 NAED is a municipal light plant formed and operated under the laws of the Commonwealth of Massachusetts. NAED has all necessary power and authority to carry on its business as presently conducted and to enter into and perform its obligations under the agreements to which it is or is to be a Party;

23.2.2 NAED has all necessary power and authority to execute, deliver, and perform its obligations under this Agreement, each of the execution, delivery, and performance by NAED of this Agreement has been duly authorized by all necessary action on the part of NAED, does not require any other consent of or approval, except for such as have been duly obtained and does not contravene or constitute a default, to the best knowledge of NAED, under any provision of applicable law or any agreement, judgment, injunction, order, decree or other instrument binding upon NAED or the Facility or any component part thereof, or the Site or any portion thereof, and NAED is in compliance with all Laws (a) which govern its ability to perform its obligations under this Agreement or (b) the noncompliance with which would have a material adverse effect on its ability to perform its obligations under this Agreement;

23.2.3 Neither the execution and delivery by NAED of this Agreement nor the consummation by NAED of any of the transactions contemplated hereby, requires with respect to NAED, the consent or approval of, the giving of notice to, the registration with, the recording or filing of any document with, or the taking of any other action in respect of any Government Authority, except such as are not yet required (as to which NAED has no reason to believe that the same will not be readily obtainable in the ordinary course of business upon due application therefore) or which have been duly obtained and are in full force and effect;

23.2.4 The undersigned duly authorized representative of NAED has duly and validly executed and delivered this Agreement and with such execution, it constitutes the legal, valid and binding obligation of NAED enforceable against it in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, moratorium or similar laws affecting the rights of creditors or by general equitable principles (where considered in a proceeding in equity or at law);

23.2.5 NAED is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete its obligations under this Agreement; and

23.2.6 There is no action, suit or proceeding, at law or in equity, or official investigation before or by any Government Authority pending or, to the best knowledge of NAED, threatened against or affecting it or any of its properties, rights or assets, which could reasonably be expected to result in a material adverse effect on NAED's ability to perform its obligations under this Agreement or on the validity or enforceability hereof.

ARTICLE 24

SPARE PARTS; SERVICE

24.1 Spare Parts. Prior to Substantial Completion, the Supplier shall provide NAED with a list of spare parts for the Facility for which spare parts are normally recommended. The list shall include vendor part names and numbers, original equipment manufacturer names, part names and numbers, expected usage during a five (5) year period of operation after the date of Commercial Acceptance and typical lead times for delivery. The Supplier will cooperate with NAED and any proposed operator and provide such reasonable information and assistance as NAED may reasonably request to obtain the best pricing for such spare parts. Such provision of information and assistance is expressly included as part of the Work covered by the Contract Price, and shall not be the basis of a Change Order.

24.2 Service Facility. Supplier shall maintain 24-hour parts and service capability. Supplier shall or shall cause parts to be stocked as needed to support the Facility. Supplier must stock sufficient inventory to cover no less than 80% parts service within 24hrs and 95% within 48 hours.

24.3 Service Personnel. Supplier shall maintain qualified factory trained service personnel that will respond to a service request by NAED within 24 hours of such request and will commence corrective action of the problem causing the service request within such 24 hours. The Supplier shall provide the names and employee numbers of qualified service technicians and their facility location.

24.4 Product Support and Preventive Maintenance. Supplier shall provide a preventive maintenance agreement in a form reasonably acceptable to NAED using qualified factory trained service personnel, for a period of 2 years from the date of Final Completion. This maintenance agreement shall include at minimum the first valve adjustment and one oil change. Supplier shall provide genuine OEM parts and filters, shall provide all recommended fluids, labor, travel and travel mileage to complete the suggested preventive maintenance as defined in the manufacturer's operation and maintenance manual. Supplier shall provide a draft agreement to NAED within 30 Days of the Notice to Proceed. NAED shall provide its comments and changes on such Agreement to Supplier within 30 Days of receipt of such agreement from Supplier. This agreement shall be included in the Contract Price.

ARTICLE 25

MISCELLANEOUS PROVISIONS

25.1 Governing Laws. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without reference to its conflict of Laws principles.

25.2 Entire Agreement. This Agreement represents the entire agreement between NAED and Supplier with respect to the subject matter, and supersedes all prior negotiations, binding documents, representations and agreements, whether written or oral, on its subject matter. This Agreement may be amended, supplemented, or modified only by a written instrument duly executed by or on behalf of each Party hereto.

25.3 Successors and Assigns. Neither Party may assign, convey or transfer all or any part of the Agreement, without the other Party's prior written consent, provided, that this Section 25.3 shall not be deemed to prohibit Supplier's subcontracting of portions of the Work in accordance with this Agreement. This Agreement shall be binding on, and inure to the benefit of, the Parties and their successors and permitted assigns.

25.4 Contractual Relationship. Nothing in the Agreement shall be construed as creating a contractual relationship of any kind (a) between NAED and a Subcontractor or (b) between any Persons other than NAED and Supplier. Supplier is an independent Supplier and all of its agents and employees shall be subject solely to the control, supervision, and authority of Supplier. NAED and Supplier disclaim any intention to create a partnership or joint venture. Except as expressly set forth herein, Supplier shall not be entitled to act for or have any power or authority to bind or assume any obligation or responsibility on behalf of NAED.

25.5 Rights and Remedies. Neither Party makes any representations, covenants, warranties or guarantees, express or implied, other than those expressly set forth in this Agreement. NAED and Supplier intend that their respective rights, obligations and liabilities as provided for in this Agreement shall be exhaustive of the rights, obligations and liabilities of each of them to the other arising out of, under or in connection with this Agreement or the Work, whether such rights, obligations and liabilities arise in respect or in consequence of an indemnity or warranty or by reason of contract (or any breach thereof), or of statutory duty or by reason of tort (including negligence and strict or absolute liability) or by reason of any other legal or equitable theory. Accordingly the remedies expressly stated in this Agreement are intended to be and shall constitute the sole and exclusive remedies of the Parties for the liabilities of such Parties arising out of or in connection with the Work or this Agreement, notwithstanding any remedy that might otherwise be available at law or in equity, and the Parties shall be limited to those remedies expressly set forth in this Agreement. Unless otherwise expressly provided herein, any release from or limitation of liability or remedies expressly stated in this Agreement shall apply notwithstanding the default, negligence or strict liability of the Party whose liability is limited and the benefit of the limitation shall extend to the directors, officers, employees, parent corporations and other entities owned by or under common ownership with the Party whose liability is limited. NAED is subject to the provisions of the Massachusetts Tort Claims Act.

25.6 Incorporation by Reference. All EXHIBITS identified herein are incorporated into this Agreement by reference.

25.7 Cooperation of Parties. Each Party shall cooperate in good faith with the other Party in its efforts to fulfill its obligations under this Agreement. To that end, except as expressly provided elsewhere in this Agreement, neither Party shall unreasonably withhold, delay or condition its approval or consent upon the reasonable request for such approval or consent by the other Party.

25.8 No Waiver. No course of dealing or failure of NAED or Supplier to enforce strictly any term, right or condition of the Agreement shall be construed as a waiver of that term, right or condition. No express waiver of any term, right or condition of the Agreement shall operate as a waiver of any other term, right or condition.

25.9 Survival. All sections of the Agreement providing for indemnification or limitation of or protection against liability of either Party, together with the provisions of Article 15, shall survive the termination, cancellation, or expiration of the Agreement.

25.10 No Third-Party Beneficiaries. The provisions of the Agreement are intended for the sole benefit of NAED and Supplier, and there are no third-party beneficiaries other than assignees identified in the Agreement.

25.11 Severability. If any provision of the Agreement is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, the remainder of the Agreement and the application of that provision to Persons or circumstances other than those as to which it is specifically held invalid or unenforceable shall not be affected, and every remaining provision of the Agreement shall be valid and binding to the fullest extent permitted by Laws.

25.12 Joint Effort. The preparation of the Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one of the Parties than against the other.

25.13 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

25.14 Notices. All notices permitted or required under this Agreement shall be deemed given if hand delivered, or sent by registered or certified mail, return receipt requested, or sent by Federal Express or another recognized overnight delivery service, or sent by facsimile or electronic mail and confirmed by first class mail (with the date of receipt of the original by first class mail to be the date of receipt), to the addresses listed below or the subsequent addresses of which the Parties give each other notice. All notices shall be effective upon receipt.

To NAED: North Attleborough Electric Department, 275 Landry Avenue, North Attleborough, MA 02760

Attention: Peter Schiffman, General Manager, NAED

To The Supplier:

Name _____

Address _____

Facsimile No.: _____ E-Mail: _____

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement to be effective as of the day and year first above written.

NAED: NORTH ATTLEBOROUGH ELECTRIC
DEPARTMENT

By:

Name: _____

Title: _____

SUPPLIER:

By:

Name: _____

Title: _____

EXHIBIT A

Generator Set Specifications

A. The generator set shall be manufactured by [REDACTED] and shall be model number [REDACTED]. [NTD: To be completed prior to execution.] The generator set shall be Continuous rated per ISO 8528-5:2013 at between 2,300 and 2,500 kW, year 2020, 0.8 power factor, 13.8 kV, 3-Phase, 60 hertz, including cooling system and all parasitic loads. Generator set shall be sized to operate at the specified load for all normal seasonal weather conditions in Massachusetts.

Emergency standby, island mode operation is a secondary role. The Facility will not be used for isochronous load following operation. NAED intends that the site will be unattended, and that the Facility will be started, stopped and run from a remote site over the existing SCADA RTU. NAED intends to operate the Facility to reduce peak load on a monthly basis and to lower peak energy costs when such energy market prices are significantly higher than the cost of generation from the Facility, but in no event more than 500 hours per year.

In load reducer mode, the generator will automatically synchronize with the utility system and operate at a fixed NAED selectable kW output (“Load Reducer Mode”). NAED intends that the site will be unattended, and that the Facility will be started, stopped, setpoints selected, and run from a remote site over NAED’s existing SCADA system. NAED’s SCADA system can accept a serial connection and communicate via DNP or ModBus.

It is necessary for the Facility to comply with the current emission standards, mainly the requirements of 310 CMR 7.26(40) through (44) which limit NO(x) emissions to 0.15 lb/MWH and CO emissions to 1 lb/MWH. Carbon Dioxide emissions are limited to 1650 lb/MWH. This will require use of a Selective Catalytic Reduction (SCR) system downstream of the engine with associated urea storage, metering and injection equipment. Article (1) specifies emissions guarantee. Supplier shall certify that the Facility will meet the requirements identified in this paragraph for the lesser of 15,000 hours or the first three years of operation. The Facility shall conform to the following EPA standards: 40 CFR 60 (NPS), Subpart JJJJ, §60.4243(b), §60.4233(e) and Table 1 of Subpart JJJJ.

The engine-generator set shall be installed in a noise reducing weatherproof housing containing the generator set and the switchgear. The switchgear and controls shall be installed in a separate space within the enclosure from the engine generator set. The emissions control equipment may be installed in a separate enclosure if required due to space constraints, or may be installed within and on the generator enclosure. The emissions control equipment should include all required equipment, including (if required) urea tank, injection compressor and metering panel. The main generator set enclosure shall include at a minimum the following: Generator set control panel, starting batteries & charger, motor starters, lighting transformer and 480 and 208 volt distribution panels.

The minimum stack height is 1.5 times the height of the highest portion of the structure and/or any components located on the roof of the structure. The stack shall be supported from the roof of the structure.

The Facility shall be designed to be capable of operating in Load Reducer Mode entirely by remote control, and shall be started and stopped remotely. The Facility shall start, come up to speed, synchronize and ramp to full rated load within five (5) minutes. The Facility shall shut down by remote control in the following sequence: Ramp down to minimum load, open circuit breaker, run for cool down time and stop. The Facility shall have all protective devices which prudent industry practice call for to prevent damage to equipment from commonly encountered malfunctions.

B. The generator set should be covered by these specifications and should be designed, tested, rated, assembled and installed in accordance with all applicable standards listed below.

- ASME PTC-17 Reciprocating Internal Combustion Engines
- EN61000-6
- ISO 3046-1:2002
- ISO8528-5:2013 Reciprocating Internal combustion engine drive alternating current generating sets
- IEC61000
- UL508
- OSHA regulations, as applicable

C. The generator set and supplied accessories should meet the requirements of the following standards:

- NEMA MG1-1998 part 32. Alternator shall comply with the requirements of this standard.
- NFPA-37 Standard for the Installation and Use of Combustion Engines and Gas Turbines, 2015 edition.
- UL1236 – Battery Chargers
- UL2200. The generator set shall be listed to UL2200 or submit to an independent third party certification process to verify compliance as installed.

D. The control system for the generator set should comply with the following requirements.

- CSA C22.2, No. 14 – M91 Industrial Control Equipment.
- EN50082-2, Electromagnetic Compatibility – Generic Immunity Requirements, Part 2: Industrial.
- EN55011, Limits and Methods of Measurement of Radio Interference Characteristics of Industrial, Scientific and Medical Equipment.
- FCC Part 15, Subpart B.
- IEC8528 part 4. Control Systems for Generator Sets
- IEC Standard 801.2, 801.3, and 801.5 for susceptibility, conducted, and radiated electromagnetic emissions.

It shall be the generator manufacturer's responsibility to ensure the proper integration of the control systems with the auto synchronization function in the synchronized mode of operation. The generator must be able to operate in parallel operation with multiple generators on site.

E. Customer Interfaces

E.1 Natural gas: The delivery pressure available to the Facility from NAED's gas system is approximately 15 psig at the site. The Supplier shall provide the required gas pressure and volume at the point of connection to the Facility. NAED will be responsible for installation of the underground gas piping from the distribution system to a point adjacent to the Facility, along with any required pressure regulator and meter equipment.

E.1.1 Gas quality: The fuel at the site is pipeline quality natural gas, methane percentage will range from 90 to 98%, BTU content is a minimum of 1,000 BTU/SCF (HHV, average).

E.2 Electrical:

The Supplier's work terminates at the output terminals of the Supplier-provided 13.8 kV generator switchgear. NAED shall provide the 13.8 kV connections from the generator switchgear to the NAED's system. NAED shall supply auxiliary power at 480Y/277 volts three phase, 60 Hz to the location designated by the Supplier for the auxiliary distribution panel.

F. Engine Governor.

The engine governor shall be electronically controlled. Engine data must be available via a DNP3 or Modbus connection. Supplier shall provide a mapping that lists all ID codes available on the DNP3 or Modbus. Speed droop shall be adjustable from 0 (isochronous) to 10%, from no load to full rated load. Steady state frequency regulation shall be +/- 6 RPM. Speed shall be

displayed via DNP3. The control system should be capable to adjust fuel delivery according to exhaust smoke, altitude and cold mode limits.

G. Generator Specifications.

The generator shall be synchronous, three phase, four pole, 2/3 pitch, random wound, 80C rise, double bearing, and IP23 drip proof. Bearing(s) shall be double shielded and maintenance free. The insulation system shall meet NEMA MG 1 and UL1446 standards for Class H insulation. Generator temperature rise shall be limited to NEMA MG1 temperature limit of 80C at a 40C ambient. The Generator shall also be equipped with Neutral Grounding Resistor (NGR) to be furnished by the Supplier and installed by NAED. The NGR shall limit the ground fault current to approximately 50A, with a 10 second rating.

The excitation system shall enable the generator to sustain 300% of rated current for ten seconds at prime rating during a fault condition and shall improve the immunity of the voltage regulator to non-linear distorting loads.

Supplier warrants that the Facility Net Electrical Output de-rating due to temperature will be no more than the following: (1) at 95 degrees F and below there will be no de-rating; and (2) at 100 degrees F there will be a no greater than 8.1% de-rating in the Net Electrical Output.

H. Digital Voltage Regulator.

The digital voltage regulator shall be microprocessor based with fully programmable operating and protection characteristics. The regulator shall maintain generator output voltage within +/- 1% for any constant load between no load and full load. The regulator shall be capable of sensing true RMS in three phases of alternator output voltage, or operating in single phase sensing mode. The voltage regulator shall include a VAR/Pf control feature as standard. The regulator shall provide an adjustable dual slope regulation characteristic in order to optimize voltage and frequency response for site conditions. The voltage regulator shall include standard the capability to provide generator paralleling with reactive droop compensation and reactive differential compensation. A controller should allow for system parameter setup and monitoring, and provide fault alarm and shutdown information via DNP3 or Modbus to NAED's SCADA system.

I. Switchgear/Circuit Breaker

The Facility shall include indoor NEMA 12 15 kV class metalclad switchgear with a draw out 13.8kV, 1200A, 3-cycle circuit breaker with vacuum interruption. The circuit breaker shall be able to withstand and interrupt current up to at least 20k AIC. The generator connections and protection shall be as shown on the One-Line Diagram in Exhibit E.

The generator shall be equipped with current and voltage sensing transformers as shown on the One-Line Diagram. Current transformers shall be T100 class minimum, and shall be the ratios

shown on the One-Line. Voltage transformers shall be fused drawout or tiltout type, with ratios and connections as shown on the One-Line.

NAED will provide settings for the generator protection relays.

J. Controls

Generator Set Mounted - Provide a fully solid-state, microprocessor based, generator set control. The control shall provide all operating, monitoring, data logging and control functions for the generator set. The control panel shall provide real time digital communications to all engine and regulator controls via SAE J1939. The control shall log the following data that shall be accessible to NAED at all times: hourly fuel consumption, hourly generation output and hourly urea usage.

J.1 Environmental

The generator set control shall be tested and certified to the following environmental conditions:

1. -40°C to +70°C Operating Range
2. 0-95% humidity non-condensing, 30°C to 60°C
3. IP22 protection for rear of controller; IP55 when installed in control panel
4. 5% salt spray, 48 hours, +38°C, 36.8V system voltage
5. Sinusoidal vibration 4.3G's RMS, 24-1000Hz
6. Electromagnetic Capability (89/336/EEC, 91/368/EEC, 93/44/EEC, 93/68/EEC, BS EN 50081-2, 50082-2)
7. Shock: withstand 15G

J.2 Functional Requirements

The following functionality shall be integral to the control panel.

1. Supplier to provide a cut sheet describing the display employed by the manufacturer
2. Supplier to provide all software for PLCs employed by the system
3. Audible horn for alarm and shutdown with horn silence switch
4. Standard ISO labeling
5. Multiple language capability
6. Remote start/stop control
7. Local run/off/auto control integral to system microprocessor
8. Cool down timer
9. Speed adjust
10. Lamp test
11. Push button emergency stop button
12. Voltage adjust
13. Voltage regulator V/Hz slope - adjustable

14. Password protected system programming

J.3 Digital Monitoring Capability

The controls shall provide the following digital readouts for the engine and generator. All readings shall be indicated in either metric or English units

A. Engine

1. Engine oil pressure
2. Engine oil temperature
3. Engine coolant temperature
4. Engine RPM
5. Battery volts
6. Engine hours
7. Engine crank attempt counter
8. Engine successful start counter
9. Service maintenance interval
10. Real time clock

AA. Engine – Cylinder Temperature Monitoring and Control (ADDER)

Provide an Engine Cylinder Temperature Monitoring and Control system to display the individual cylinder temperatures with setpoints, alarming and control. Individual cylinder temperature shall be provided locally or remotely via PLC/RTU.

1. Average Cylinder Temperature
2. Alarm Average Cylinder Temperature (HI)
3. Shutdown Average Cylinder Temperature (HIHI)
4. Alarm Differential Cylinder Temperature to Average (DT HI)
5. Shutdown Differential Cylinder Temperature to Average (DT HIHI)

B. Generator

1. Generator AC volts (Line to Line, Line to Neutral and Average)
2. Generator AC current (Avg and Per Phase)
3. Generator AC Frequency
4. Generator kW (Total and Per Phase)
5. Generator kVA (Total and Per Phase)
6. Generator kVAR (Total and Per Phase)
7. Power Factor (Avg and Per Phase)
8. Total kW-hr
9. Total kVAR-hr
10. % kW

11. % kVA
12. % kVAR

C. Voltage Regulation

1. Excitation voltage
2. Excitation current

D. Alarms and Shutdowns

The control shall monitor and provide alarm indication and subsequent shutdown for the following conditions. All alarms and shutdowns are accompanied by a time, date, and engine hour stamp that are stored by the control panel for first and last occurrence.

E. Engine Alarm/Shutdown

1. Low oil pressure alarm/shutdown
2. High coolant temperature alarm/shutdown
3. Loss of coolant shutdown
4. Overspeed shutdown
5. Overcrank shutdown
6. Emergency stop depressed shutdown
7. Low coolant temperature alarm
8. Low battery voltage alarm
9. High battery voltage alarm
10. Control switch not in auto position alarm
11. Battery charger failure alarm

F. Generator Alarm/Shutdown

1. Generator over voltage
2. Generator under voltage
3. Generator over frequency
4. Generator under frequency
5. Generator reverse power
6. Generator overcurrent

G. Voltage Regulator Alarm/Shutdown

1. Loss of excitation alarm/shutdown
2. Instantaneous over excitation alarm/shutdown
3. Time over excitation alarm/shutdown
4. Rotating diode failure

5. Loss of sensing
6. Loss of PMG

H. Remote controls

The control system shall provide manual and automatic control for synchronizing to the electric system and base loading to NAED with soft load and unload features. The system shall be able to be controlled locally at the unit control panel or remotely via communication link. Remote control options shall include complete monitoring of the power plant with the ability to start, stop, synchronize and adjust load level output while connected to NAED's grid. The communication chain shall include the SCR system Multifunction generator protective relay, engine generator control panel and synchronizing and load control unit.

I. Paralleling Switchgear

- Paralleling metal clad switchgear (125 VDC Charge, Close and Trip)
 - Stored Energy Electrically Operated
 - Auxiliary Contacts
 - Shunt Trip Coil
 - Draw Out
- Sync Check Relay
- Automatic Synchronizer
- Speed and Load Share Module
- Var Controller
- Generator Protection Relay(s)
- Lock Out Relay (86)
- Circuit Breaker Close/Trip Switch
- Circuit Breaker Auto/Manual Switch
- Synchroscope Switch
- Sync Lights (2)
- Sync Scope
- Generator Metering
 - Voltage (All Phases)
 - Amps (All Phases)
 - kW
 - kVA
 - kVAr
 - kWh
 - Frequency
 - Power Factor
- Indicating Lights
 - Protective Relay Trip
 - Generator Circuit Breaker Open
 - Generator Circuit Breaker Closed
- Engine Monitor Panel

- Operational Parameters
 - Oil Pressure
 - Coolant Temperature
 - RPM
 - DC Voltage
 - Fuel Consumption
- Operation
 - The unit will be capable of the following manual operation functions
 - Manual Start
 - Manual Stop
 - Manual Synchronizing
 - Manual Load Level Control
 - The unit will be capable of the following automatic operation
 - Automatic Start Local
 - Automatic Start Remote
 - Automatic Synchronizing
 - Automatic Adjustable Level Load Control
 - Provide Monitor and control data map
 - Provide floor mat at switchgear
 - Provide and install fuel meter display.
 - Provide neutral grounding resistor with current transformer.
 - System Voltage L-L 13.8 kV
 - Current – 50A
 - Duty Cycle – 10 Seconds
 - UL Listed
 - NEMA 3R
 - Provide Neutral Ground CT with ratio per the one-line
 - Provide segregated control room with exterior access

J. Maintenance

All engine, voltage regulator, control panel and accessory units should be accessible through an electronic service tool and available to NAED via DNP3 or Modbus. The following maintenance functionality shall be integral to the generator set control.

1. Engine running hours display
2. Service maintenance interval (running hours or calendar days)
3. Engine crank attempt counter
4. Engine successful starts counter
5. 20 events are stored in control panel memory
6. Programmable cycle timer that starts and runs the generator for a predetermined time. The timer shall use 14 user-programmable sequences that are repeated in a 7-day cycle. Each sequence shall have the following programmable set points:

- a. Day of week
- b. Time of day to start
- c. Duration of cycle

J.4 Remote Communications

A. Web access

The system shall provide web-access for control and monitoring of the of the generator unit.

B. RTU Access

The system shall provide for control and monitoring of the generator unit via NAED's SCADA system with DNP3 or Modbus communication interface.

This interface shall provide access to all the generator system monitoring of alarms, analog values and limited control. The limited control shall include:

1. Remote Start/Stop of the generator unit for parallel and emergency mode operation
2. Setpoints to adjust maximum load output during parallel operation
3. Switch operation-mode between parallel and island mode

C. Remote Monitoring Software

The control shall provide monitoring software with the following functionality:

1. Provide access to all Sequence of Event (SOE) data on generator set communications network
2. Provide remote control capability for the generator set
3. Ability to communicate via NAED's SCADA system via DNP3 or Modbus.

J.5 Jacket Water Heater

Jacket water heater shall be provided and shall be sized to insure that gen-set will start at -30 degree Fahrenheit outdoor ambient conditions.

J.6 Batteries

Furnish separate battery systems for generator engine starting/local control and for the switchgear breaker/controls.

Engine/Control Batteries - A lead-acid storage battery set of the heavy-duty diesel starting type shall be provided. Battery voltage shall be 24VDC. Cold cranking amps shall be 2600A minimum.

Switchgear/Controls Batteries – A lead-acid storage battery set for switchgear breaker, communications and protective relay controls shall be provided. The battery voltage shall be 125 VDC. The capacity shall be based on the system loading required by the switchgear system.

J.7 Battery Charger

Separate 24VDC and 125VDC battery chargers shall be provided with both float and bulk charge modes. The charging rate shall be sized to carry continuous electronic loads and the ability to fully recharge the batteries in 24 hours.

J.8 Electronic Service Equipment

Supplier shall provide NAED with one service test set for reading trouble codes in the generator set control unit and a service manual detailing how to read the codes and their meanings. Include the cost of any subscription service if periodic renewal is necessary.

EXHIBIT B

Container Enclosure Specifications

1. Structural Requirements

The Facility shall include a container to enclose each engine/generator and all accessories. Two spaces shall be provided, one for the generator and one for the output switchgear and associated control and auxiliary power equipment. The enclosure is to be in compliance with the National Electrical Code (NEC) and the National Fire Protection Association (NFPA) as applicable.

- 1.1 Rigidity wind set equal to 125 MPH
- 1.2 Top Cover load equal to 50 lbs. per sq. ft.
- 1.4 Base load equal to 200 lbs. per sq. ft.
- 1.5 Rain test equal to 4" per hour
- 1.6 Enclosure will consist of a top cover, side walls, end walls and base.
- 1.7 Maximum sound levels including all noise generating sources inside and outside the enclosure associated with the Generator Set operation (including engine, generator, exhaust ductwork, after treatment equipment, radiators, stack and any openings in the enclosure during Generator Set operation) shall meet all local, state and federal regulations with all fans operating at high speed in accordance with the Noise Guarantee. A Noise Study Report dated May 2019 is included as Exhibit H for reference regarding existing site noise levels. In addition, the equipment provided must comply with 310 CMR 7.10, the MassDEP Noise policy, which regulates sound from mechanical equipment on the site, which limits the increase of the ambient level to no more than 10 dBA at the nearest property lines and residents. The attached sound study identified the lowest Ambient Sound Level during the proposed times of operation to be 39 dBA to 51 dBA at four (4) residential locations when the study was conducted. The equipment provided must also comply with Town of North Attleborough Board of Health Noise Regulations noise limits established under Section 4: Noise Thresholds and Exclusions. The sound level emitted from the Generator Set enclosure shall not exceed 65 dBA at 50 feet. The sound level emitted from the Generator Set radiator shall not exceed 57 dBA at 50 feet. The sound level emitted from the Generator Set exhaust stack shall not exceed 80 dBA at 5 feet.
- 1.8 The system shall include side-mounted or top entrance cooling and combustion air inlet silencer sections, a generator equipment enclosure section, an electrical equipment enclosure section, and a cooling air discharge silencer section all integrated into a single unit. Overall dimensions (including hoods and base) of

the fully assembled unit are [redacted]"L x [redacted]"W x [redacted]"H. [NOTE: This needs to be updated with appropriate information from the Supplier.]

- 1.9 Roof assembly shall be cambered to aid in rain runoff.
- 1.10 Insulation in walls and top cover shall be semi-rigid, thermo-acoustic mineral wool or equivalent with thickness as required to meet the specified noise criteria and with a flame spread of 10, fuel contributed 0 and smoke developed 0. Lining shall be perforated 18 gauge, mill-finish aluminum or equivalent. Self-adhesive foam and loose or bat-type insulating materials may be accepted if with prior approval by NAED.
- 1.11 The base structure shall be rated for a minimum distributed load of 200 lbs/ft and reinforced as required to support prevailing point-loading at vibration isolator locations. The floor and under frame assembly shall consist of steel I welded to form the outer perimeter. The top of the interior base of the enclosure shall be combined with formed or structural steel cross members so as to create a welded steel support structure for the installed power generation equipment. The cross members shall be overlaid with diamond plate for the purpose of load distribution, vibration isolation, and sound attenuation. Entrance openings with suitable cover plates shall be provided for NAED supplied generator load cabling, communications/control cabling, and external auxiliary power connection.
- 1.12 A Minimum of 2" high environmental barrier shall be provided in the generator room on top of the base and surrounding all stub-ups, floor openings and doorways to contain any fluid spills within the generator room.
- 1.13 Eight (8) heavy duty lifting rings (four on each side) shall be provided at the enclosure base, with capacity suitable for rigging the entire assembly.
- 1.14 Single and/or double personnel access doors shall be provided. Exterior doors shall be fully gasketed to form a weather tight perimeter seal. Hinges shall be forged aluminum or stainless steel. Handles shall be stainless steel and lockable, and lock mechanism shall be three-point, with panic hardware to allow opening from inside even when locked. All doors shall be provided with a "hold open" feature that will hold the door in the full open position until manually released to close. A minimum of two doors shall be provided in each room, located to facilitate both personnel egress and maintenance access. One of the switchgear room doors shall be in the wall between the switchgear and generator rooms to allow direct passage between the two rooms. All exterior door openings shall include an overhead rain gutter for channeling rainwater away from the door.
- 1.15 The fluid systems (engine coolant & oil drains and crankcase breather) shall be extended to the exterior of the enclosure.

- 1.16 Air handling shall be as follows: The enclosure shall be designed in a fashion that allows air flow through the enclosure while not allowing rain, snow or other debris or foreign matter to enter the enclosure. Minimum and maximum air flow velocity shall be such to meet all requirements specified by the generator manufacturer. Motor operated dampers shall be provided and wired to open at engine startup. All dampers requiring a motor shall contain a primary and backup motor. Radiator discharge will be through a gravity operated damper and into a vertical discharge plenum through the top of the enclosure as dictated by airflow. The system shall not exceed 0.5" e.g. total external static pressure to ensure adequate airflow for cooling and combustion. Personnel should be able to exit the enclosure during generator operation.
- 1.17 The emissions control equipment shall be mounted on the roof. Support structural steel and piping exposed to weather shall be galvanized, and the roof penetrations shall be flashed to maintain weather integrity. Guardrails and access ladders shall be provided by Supplier, and be galvanized and constructed in accordance with OSHA guidelines. Supplier shall provide access platforms as required to open housing and access the internals.
- 1.18 Exhaust system components exterior to the enclosure (piping, muffler, etc.) shall be stainless steel for corrosion resistance.
- 1.19 Exterior connections will be provided as required for power/ control wiring, heat tracing, compressed air and urea tubing for a roof mounted emissions control/PM Filter System and internal urea storage tank (if required).
- 1.20 All connection points/penetrations within and outside the base and container shall contain a noncorrosive metallic label welded as close as possible to the connection point/penetration. The label shall describe the connection point/penetration function. Supplier shall describe in detail the transition material, installation method and manufacturing quality control taken during enclosure manufacturing to prevent galvanic corrosion between dissimilar metal connections such as aluminum exterior and carbon steel base.
- 1.21 Supplier is responsible for delivery and transportation permits from the manufacturing site to the Site. The enclosure supplier shall provide onsite supervisory or labor to reconnect the enclosure, as necessary.
- 1.22 Leakage detector, gas alarm system for deactivation of the Facility to be included. Emergency stop button to be mounted on the enclosure in accordance with NFPA-37.
- 1.23 Grounding connection points shall be provided to properly ground the equipment, including but not limited to all four corners of the enclosure base, the switchgear ground bus, radiator legs, and all metal structure legs holding equipment. Ground connection points shall consist of two 9/16" holes in a NEMA standard pattern

(1.75" spacing), located such that a terminal lug can be attached with standard bolts/nuts. If necessary, tabs shall be welded on to provide the required attachment points.

- 1.24 The exhaust stack shall have three (3) test ports (two at 4" diameter and one at 2" diameter). Monorail tabs shall be attached above the 4" ports. A detailed drawing shall be provided by Supplier showing the location of the test ports relative to any elbows in the exhaust piping.

2. Enclosure Electrical Requirements

- 2.1 120/208V 3 phase panelboard and 480 – 208Y/120V dry type transformer. The panelboard should be sized to power all electrical equipment located in the enclosure plus urea tank heat trace (if used), urea tank system pump, urea recirculation pump, urea supply /return tubing heat trace, urea tank level/temperature instrumentation equipment, external 208V receptacle for stack testing plus 20% spare capacity and provide spare breaker positions.
- 2.2 480V 3-phase panelboard. Provide all required 480V circuit breakers, plus 20% minimum spare capacity and provide spare breaker positions.
- 2.3 Provide suitable LED type interior lights with globes and guards sized and located to provide sufficient illumination to all areas of the enclosure. Provide (3) 60W DC interior lights with globes and guards for emergency egress. Provide (4) exterior lights, one placed on each side of the enclosure. Each exterior light will have its own switch located inside the enclosure.
- 2.4 Provide 3-way light switches as required to properly switch the interior lights
- 2.5 Provide internal duplex GFI receptacles located as required to facilitate equipment maintenance (minimum of (3) receptacles). Provide (1) exterior stack testing trailer receptacle, single phase, 208V, 50AMP in suitable weatherproof box.
- 2.6 Connection for generator starting batteries and I&C/Switchgear system batteries
- 2.7 Space heaters as required with thermostat control
- 2.8 Wall-mounted exhaust fan as required with thermostat control and gravity damper
- 2.9 Installation and wiring for a generator output electrical meter socket with CTs and PTs, installation and wiring for an auxiliary load electric meter socket with CTs and PTs as required.
- 2.10 Connections for motor operated dampers and ventilation fans.
- 2.11 Battery back-up emergency lights as required

- 2.12 Installation and wiring for one 15kV metalclad generator switchgear/breaker and protection/controls equipment. Switchgear shall be installed with sufficient space to properly operate and maintain all equipment, with a minimum of 72” in front of cubicle for breaker withdrawal and 60” in rear of cubicle for cable termination access. Rear cable access may utilize full width doors to the outside of the enclosure. Switchgear shall be mounted directly on the enclosure floor such that the circuit breaker may be rolled out on the floor without needing a lift device.
- 2.13 Provide DNP3 or Modbus protocol interconnections between the engine control equipment, generator control equipment, breaker control equipment, protective relay control equipment, SCR control equipment and SCADA. Vendor must ensure compatibility of the DNP3 or Modbus connection with NAED’s SCADA.
- 2.14 Provide key locks on all enclosure doors, along with an NAED installed electronic lock system. All door locks shall use a common key. Vendor shall provide five sets of keys per unit. Lock cylinders shall utilize a readily available key type that can be copied at local vendors on standard machines. Manufacturer shall provide and install electrically operated door strikes on each of the exterior doors, and provide conduit/box/wireway system to connect the door strikes and future magnetic card reader locations with NAED’s supervisory cabinet. NAED will install the remainder of the system.
 - 2.14A Provide junction boxes mounted on internal wall adjacent to personnel doors for future connection to NAED supplied card readers. Provide conduit from junction box to wireway. Provide 6” long sections of drip shield for future NAED mounting on exterior wall directly above future card reader location. NAED will drill wall and mount and wire card reader and drip shield at a later date
- 2.15 Provide class ABC Fire extinguishers for both control room and generator area.
- 2.16 Install all required electrical hazard warning and danger signage as required by OSHA and provide MSDS notification receptacle.
- 2.17 Include provisions within the enclosure for removal of the generator by means of an enclosure removable end wall or other suitable means.
- 2.18 Engineer, design and provide detailed construction documentation for installation of the emissions control/Particulate Filter system.
- 2.19 All wiring shall be housed in rigid metallic conduit with flex connection to equipment as required.

- 2.20 Electrical connections for radiators, coolant heaters, alternator heaters, battery charger(s), and all emissions control system components shall be provided as required.
- 2.21 A finished and completely assembled package shall be delivered to the site for final connections in the field by NAED.
- 2.22 Wired and installed exterior strobe light, audible alarm and associated controls. The strobe and audible alarm will operate for fifteen (15) seconds prior to starting engine and shall be wired to the engine manufacturer control system.
- 2.23 Install a Hoffman NEMA 3 or equivalent enclosure of suitable size and arrangement to house NAED's Remote Terminal Unit, analog instrumentation terminal boards and digital contact terminal boards.
- 2.24 Provide the following additional local/remote indication and instrumentation not provided within the engine/container:
- Local exterior temperature indication and 4-20milli amp exterior temperature sensor
 - Local interior temperature indication and 4-20milli amp interior temperature sensor
- (The above remote instrumentation shall be wired to an analog terminal board located inside the RTU enclosure)
- 2.25 Provide the following digital instrumentation:
- Door contact alarms for all enclosure doors
 - Fire heat detection system digital signal
(The above remote digital instrumentation shall be wired to a digital terminal board located inside the RTU enclosure)
 - (if Urea system is required for emissions controls):
 - 500 gallon urea tank and supply and return tubing (tank shall either be double wall construction or located in an area where any spills will be contained)
 - Urea tank level instrumentation (4-20milli amp)
 - Urea tank temperature instrumentation (4-20milli amp)
 - Urea supply/return temperature instrumentation (4-20milli amp)
 - Urea tank heat trace and insulation
 - Urea supply/return line heat trace
 - Urea tank leak detection system (digital contact)

- 2.26 NAED will provide Remote Terminal Unit and connections to adjacent substation.
- 2.27 Wired and installed fire heat detection and annunciation system with remote digital contact. Fire heat remote digital output shall be wired to NAED-provided Remote Terminal Unit.
- 2.28 Provide exterior instrumentation connection box containing terminal board and wiring from the RTU enclosure for the following instrumentation:
 - (1) 4 - 20 milli amp urea tank level instrument,
 - (2) 4 - 20 milli amp urea tank temperature instrument,
 - (3) 4 - 20 milli amp heat trace temperature instrument

3. Physical Requirements

The enclosure and associated cooling/radiator equipment shall be designed to meet the following requirements:

- 3.1 All fluid containing elements of the Facility, including but not limited to the engine/generator package, shall be provided with secondary containment (spill pan) to prevent fluid spills from contaminating the environment. The containment shall be sufficient to hold 110% of the fluid that would spill in a single event (pipe rupture, etc.). The engine generator enclosure, if suitably curbed and sealed, can provide this requirement.
- 3.2 Enclosure Maintenance Provisions: The enclosure shall include provisions to attached lifting tackle to hoist any items required to perform maintenance on the unit, including but not limited to cylinder heads, turbochargers, intercoolers, gearbox, etc. Provisions may include I-Beams for rolling trolleys or fixed attachment points for hoisting gear. Hoisting points shall be of sufficient strength to handle the anticipated loads plus suitable safety factors. All piping, ducting, conduit and auxiliary equipment shall be located so as not to obstruct access to items to be lifted in this manner.

EXHIBIT C

Environmental Controls Specifications

The Emissions Controls shall conform to the following:

1. The SCR shall comply with the emission limitations established in 310 CMR 7.26(43) Tables 2 and 4. Furthermore, Supplier shall complete and certify the “Supplier Certification of Emission Performance” form found at <http://www.mass.gov/eea/agencies/massdep/air/approvals/stationary-engines-and-turbines.html>
2. The SCR shall be designed to operate with an ammonia slip of no more than 5 ppmvd at 15% O₂.
3. If required, a high temperature SCR catalyst formation shall be used. The catalyst shall be guaranteed for a minimum of 16,000 run hours and shall be capable of long term extended operation within the 50% - 100% engine load points. Under no circumstances shall an external blower be utilized to cool and dilute the exhaust.
4. The SCR reactor shall include an oxidation catalyst upstream of the SCR catalyst that is capable of reducing the CO emissions by >93%.
5. The SCR system shall include an optional method/means of silencing the exhaust with a silencer package so that the Generator exhaust sound level shall not exceed 80 dBA measured at 5 feet from the tip of the stack. to the equivalent of a hospital grade silencer. Specifically, there shall be a minimum noise attenuation of 35 – 42 dBA.
6. The silencing method and oxidation catalyst shall be contained within the same physical housing as the SCR to minimize space and installation requirements.
7. Additional Spaces: The SCR housing will be manufactured with room to add one additional row of NO(x) reduction catalyst elements and one additional row of Oxidation elements in the future.
8. Access: The interior of the SCR shall be accessible by removing a side panel, and the panel shall be supported by installed crane, without needing hoisting equipment.
9. Housing integrity: The housing shall be reinforced to withstand all normal conditions of pressure and temperature with reasonable allowance for excursions of pressure and temperature. The Supplier may elect to provide backfire overpressure damage protection through reinforcement of the SCR housing or by rupture discs at the Supplier's discretion.
10. The reactor shall be constructed from stainless steel. In addition, it should be insulated and clad with a minimum of 3” of mineral wool. If installed outdoors, the SCR shall be protected against water intrusion into the insulation or housing.

11. The SCR system components shall be fabricated so that the SCR system can be mounted from the ceiling or can be floor mounted to minimize space and reduce installation costs. It shall be possible to configure the system for bottom entry with top exit or end entry with top exit.
12. All sensors shall be pre-terminated to a single junction box located on the SCR reactor for the purpose of easy wiring. CAT 5 cables shall be used to transfer all sensor signals between this junction box and the SCR control panel.
13. The SCR control system shall utilize solid state NOX sensors both upstream and downstream of the SCR catalyst. Solid state sensors shall be used to ensure fast response times and durability. In addition, the downstream NOX sensor shall be situated in a way that allows the sensor to analyze several sample points (minimum of 5) at different locations in the same plane normal to the exhaust flow.
14. All SCR electronic controls and urea injection equipment shall be housed in a single NEMA 12 panel no larger than 30”H by 30”W by 8.5”D. The control system shall provide a Modbus or DNP3 TCP/IP interface so that emissions data can be transferred to the NAED’s SCADA system.
15. The system shall have the capability to provide remote monitoring and diagnostics through a built in Ethernet port and GSM modem. The remote monitoring capability shall provide the Vendor or facility NAED with access to the system so that any alarms and associated trouble shooting can be done from a central location. The remote monitoring system shall provide real time data and access to historical emissions data. It shall be possible to view the data as trend charts using a normal internet browser.
16. The system controller shall be industrial hardened and capable of operating from 0F – 140F. The controller shall have a minimum of 256 MB of RAM and 1GB of solid state storage available for historical logging. The controller shall utilize a processor with a minimum of 1 GFLOPS of computational power/performance so that catalyst reaction kinetics can be accurately modeled in real time.
17. The SCR shall be designed to operate with commercially available Diesel Emissions Fluid “DEF” as reagent and will meet the Supplier warranted DEF flow rate. DEF flow rate shall not exceed 2.5 gallons per hour with 32.5% (+/- 10%) Urea solution (DEF) at 100% load.
18. The SCR system shall include all components, engineering services, field assembly drawings, on-site technical series as long as required by the Supplier in assembling the system and initial testing, commissioning, training, operating and maintenance manuals as part of the base bid for the Facility.

EXHIBIT D

Insurance

INSURANCE TO BE MAINTAINED BY SUPPLIER AND SUBCONTRACTORS

- 1.1 In accordance with the provisions of Article 13, the Supplier and all Subcontractors shall secure and maintain insurance coverage and limits as specified below:

Type	Coverage Amount
a. Workers' Compensation, including U.S. Longshoremen's and Harbor Workers Act Coverage	Statutory
b. Employees Liability	\$500,000 Each Accident \$500,000 /Disease, policy limit \$500,000 Disease, each employee
c. Commercial General Liability	\$1,000,000 per occurrence \$15,000,000 general aggregate \$2,000,000 products/completed operations \$1,000,000 personal injury

Insurance shall be written ISO occurrence Form (CG 00 01 10 01) or equivalent and must include the following:

Premises – Operations;
Independent Suppliers and Subcontractors Protective;
Broad Form Property Damage; Contractual;
Contractual Liability (Broad Form providing coverage for the indemnity contained in the Agreement), Including Third Party;
Explosion, Collapse and Underground;
Hazard and Personal Injury, with Employee Exclusion and Contractual Exclusion Deleted;
Coverage shall include per Project aggregate

Type	Coverage Amount
d. Business Automobile Liability Insurance on ISO form (CA 00 01) or equivalent must include coverage for: Owned motor vehicles;	\$1,000,000 per accident

Type
Hired motor vehicles; and
Other non-owned vehicles

Coverage Amount

- 1.2 The Supplier shall name NAED as an Additional Insured on all liability policies, except for Worker's Compensation and Professional Liability and so shall be described on the Certificate of Insurance. Additional Insured endorsement MUST be attached to the Certificate of Insurance and shall be ISO forms: CG 2010 1185 or CG 2010 0704 in combination with CG 2037 0704 or the equivalent.
- 1.3 Worker's Compensation policy shall contain a waiver of subrogation in favor of NAED and shall be described as such on Certificate.
- 1.4 All liability policies, except for Professional Liability, shall be written on an occurrence form.
- 1.5 Supplier and/or Subcontractors shall not do anything to cause any of the insurance required to be purchased and maintained under this Agreement to be invalidated in whole or in part.
- 1.6 At NAED's request, duplicate originals or copies of all policies shall be delivered to NAED.
- 1.7 Certificates of each renewal of the insurance shall be delivered to NAED promptly after renewal. The Supplier shall be solely responsible for the timely payment in full of premiums for all insurance required of it hereunder. Should the Supplier fail to provide or maintain any insurance required hereunder, NAED shall have the right, but not the obligation, to provide or maintain any such insurance, and to deduct the cost thereof from any amounts due and payable to the Supplier, or in the event there are no such amounts due and payable, the Supplier shall reimburse NAED for such costs on demand.

EXHIBIT E

One Line Diagram – Generator Installation

(See separate attachment for One Line Diagram – Generator Installation)

EXHIBIT F
Electrical Arrangement Plan

(See separate attachment for Electrical Arrangement Plan)

EXHIBIT G
Interim Portable Generator
(Delay Liquidated Damages Option)

The Interim Portable Generator shall be utilized for load reducing operation in parallel with NAED 13.8 kV system, and shall have electrical ratings in accordance with the specifications for the permanent generator package. The Interim Portable Generator shall meet all required noise and emission regulations for use in load reducing operation during the period specified.

The Interim Portable Generator shall be diesel fueled, with an integral double wall base mounted fuel tank with sufficient capacity for at least 24 hours of full load run time. NAED will supply all required fuel and any required emissions treatment fluid. All other consumables and any required maintenance shall be included within the cost for this option.

The Interim Portable Generator shall be installed at the NAED E.D. Sherman Substation in a location to be specified by NAED that does not conflict with the delivery and operation of the base bid generator and equipment.

The Interim Portable Generator shall be supplied with internal utility tie switchgear (including generator circuit breaker), a transformer if needed to step the output voltage up to NAED's 13,800V phase-phase system voltage, and any cabling required to connect the generator output to the stepup transformer. Relay protection similar to that required under the base bid shall be provided to protect the NAED system during operation. The control system shall be designed to allow for remote start/stop, automatic synchronizing and run up to the set load level, and remote alarming. The Supplier is responsible under this option for furnishing and installing this equipment and cables. NAED will furnish and install the cables and accessories required to connect the utility side of the stepup transformer to an existing 13.8 kV circuit breaker.

EXHIBIT H
Noise Study Report

(See separate attachment for Noise Study Report)