

AGREEMENT FOR HVAC COMMISSIONING SERVICES

This Agreement for the Commissioning is made as of the [REDACTED] day of [REDACTED], 200[REDACTED], by and between Owner Name ("Owner") and Facility Commissioning Group ("Consultant").

Recitals

- A. Owner has entered into a Commissioning Agreement with Facility Commissioning Group ("Commissioning Agent") for the commissioning of [REDACTED] (the "Project"). A general description of the Project is attached as [REDACTED]. The Owner will select the mechanical contractor ("Contractor"), which will install the heating, ventilation and air conditioning equipment and related controls for the Project.
- B. Owner desires to engage Consultant to provide commissioning services relating to the installation, construction, integration, commissioning and start up of the equipment to be supplied, delivered and tested by Contractor, and Consultant desires to accept such engagement and perform such services for Owner.

Agreement

NOW, THEREFORE, Owner and Consultant agree as follows:

1. DEFINITIONS

The following terms when used in this Agreement shall have the meanings herein assigned to them unless the context of their use in this Agreement is inconsistent with such meanings:

- 1.1 **AGREEMENT** means this Agreement for Commissioning between Owner and Consultant including the Construction Schedule, and other documents included as addenda or exhibits hereto, and all other documents to which reference is made within this Agreement.
- 1.2 **COMMISSION OR COMMISSIONING** means the process of inspecting, verifying, documenting start up, testing performance and training of the Supply Package that meets the design intent and Owner's operational needs.
- 1.3 **COMMISSIONING PLAN** means the plan for commissioning of the Project to be created by the Consultant as required by Section 2.6(a) hereof.
- 1.4 **COMMISSIONING SPECIFICATIONS** means the commissioning specifications for the Project to be created by the Consultant as required by Section 2.6(b) hereof.
- 1.5 **COMMISSIONING TEAM**. The Commissioning Team (the "CT") shall consist of key parties involved in design, construction, and testing of this facility. It is necessary for each agency to appoint team members that will have long-term commitments to the Project. Switching team members during the Project will

reduce the ability of the CT to provide continuity and acceptable results to Owner. Team members must maintain an ongoing supervisory position on the Project. One team member shall be provided by each of the parties listed below:

- a. Owner
- b. Architect/Engineer (“AE”)
- c. Construction Manager (“CM”)
- d. Mechanical Contractor (“MC”)
- e. Temperature Controls Contractor (“TCC”)
- f. Test and Balance Contractor (“TABC”)
- g. Electrical Contractor (“EC”)
- h. Commissioning Agent (“CA”)

- 1.6 **CONSTRUCTION SCHEDULE** means the Schedule and Budget
- 1.7 **CONTRACT** means the Agreement between Owner and Consultant, including the Drawings and Specifications, Project Schedule, and other documents included as addenda thereto, the General Conditions of the Contract for Construction as amended by Owner's Supplementary Conditions, and all other documents to which reference is made within the Contract to ascertain the rights and obligations of the parties under the Contract, as amended from time to time as provided for therein.
- 1.8 **CONTRACT SPECIFICATIONS** means the HVAC Specifications incorporated in the Contract and any amendments thereto.
- 1.9 **FINAL ACCEPTANCE** means the issuance by Owner of a written certificate (the "Final Acceptance Certificate") confirming Owner's approval of a written report to be prepared by Consultant (the “Commissioning Report”) documenting the results of the execution of each of the Performance Tests and demonstrating compliance of the Supply Package with the requirements of the Contract.
- 1.10 **FORCE MAJEURE** shall have the meaning ascribed to that term in Section 7.1 of this Agreement.
- 1.11 **INTEGRATE OR INTEGRATION** means that the equipment in the Supply Package effectively connects to and interfaces and communicates with each other, operationally and mechanically, as a single unit and effectively connects to and interfaces and communicates with the other components of the Project.
- 1.12 **PERFORMANCE GUARANTEES** means the minimum acceptable standards for operating performance of the Supply Package as required by the Contract.
- 1.13 **PERFORMANCE TESTS** means the various testing procedures to be developed in accordance with Section 2.2(i) hereof, satisfactory completion of which are required to demonstrate compliance with the Performance Guarantees.
- 1.14 **SUPPLY PACKAGE** means the heating, ventilation and air conditioning equipment and controls to be supplied, installed and placed into operation

pursuant to the Contract. The Supply Package will be integrated into the Project as part of the Contract and this Agreement.

- 1.15 **PRECONSTRUCTION PHASE** means the activities that will occur from the start of the Project through the Award of Bids to Contractors for construction of the Work.
- 1.16 **CONSTRUCTION ACCEPTANCE PHASE** means the activities that will occur from the Award of Bid to Contractors for Construction of the Work through the completion of construction and Acceptance of Final Pay Application.

2.0 SCOPE OF AGREEMENT

- 2.1 Consultant shall provide all services necessary to perform and complete, in a professional manner and in accordance with the Construction Schedule, verification and documentation that the performance of the Supply Package meets the Performance Guarantees and the Contract Specification. The Work shall include:
 - a. Providing details of the Commissioning process and coordinating with the CT to implement Commissioning requirements.
 - b. Preparing the Commissioning Plan, test plans, and final report.
 - c. Preparing Commissioning Specifications.
 - d. Performing and documenting system verification and functional performance tests.
 - e. Submitting resolution tracking forms at regular intervals to Construction Manager, Owner, and Architect on the status, integration, and performance of the Supply Package within the facility.
 - f. Reviewing submittals and operation and maintenance ("O & M") manuals for completeness as related to the Commissioning plan.
 - g. Coordinating and facilitating on-site Owner orientation and user training for Owner's personnel engaged in the operation, maintenance and routine service of the Supply Package. Review of all operational, maintenance and service instructions relating to the Supply Package necessary to operate, maintain and service the Supply Package, including, without limitation, all technical data and information, engineering data and information, production data and information, specifications, technical literature, special knowledge and other know-how and information described in the Contract Specifications.
 - h. Recommending acceptance of the Supply Package system.
 - i. Maintaining throughout the Project, Resolution Tracking Forms, as required by 2.6(c).
 - j. The work of the Consultant shall be performed in phases as indicated below which shall correspond to phases in the Architect and Construction Manager contracts.

- k. Consultant to utilize Owner's web-based project management system or by email and other conventional methods if no web-based project management system is available. Training for the system will be provided by the Owner.

2.2 Pre-construction Phase. Consultant shall perform the following during the Pre-Construction Phase:

- a. At each of the Design Development and Construction Documents phases, provide a focused design review in writing, including the following design areas identified in 2.2(b) through (f) below. Participate in a minimum of two design review meetings, one at Design Development and one at Construction Document Phase.
- b. Commissioning facilitation: Provide input to make the Supply Package easier to commission.
- c. Energy Efficiency: Provide input on general efficiency of building shell, building layout, HVAC system types, etc.
- d. Operation and Maintenance: Provide input on how O & M of the Supply Package can be made easier (accessibility and system control).
- e. Functional Performance: Provide input on how the design can be changed to improve performance of the Supply Package for the occupants.
- f. Facility Performance and Design Intent: Identify flaws, oversights, or insufficient detail in the design, relevant to the Supply Package being able to meet the Performance Guarantees.
- g. Work with Architect and Construction Manager to provide that the following shall be adequately addressed in the Plans and Specifications:
 - (1) Clear and rigorous design documentation, including detailed and complete sequences of operation.
 - (2) Access for reading gauges, entering doors and panels, observing and replacing filters, coils, etc.
 - (3) Required isolation valves, dampers, interlocks, piping, etc., to allow for manual overrides, simulating failures, seasons and other testing conditions.
 - (4) Sufficient monitoring points in the automatic temperature control ("ATC") system, even beyond those necessary to control the systems, to facilitate performance verification and O&M.
 - (5) Pressure and temperature plugs close to controlling sensors for verifying their calibration.
 - (6) Pressure gauges, thermometers and flow meters in strategic areas to facilitate verifying system performance and ongoing O&M.

- (7) Adequate balancing valves/circuit setters and dampers, flow metering, and control stations and control system functions to facilitate and verify reliable test and balance.
- h. Create the Commissioning Plan, in accordance with Section 2.6(a) hereof.
- i. Establish the system verification process and specific Performance Tests, including testing conditions and acceptance criteria for each system or piece of equipment being commissioned. Provide reporting and documentation requirements, including formats, testing requirements, and deficiency resolution.
- j. Develop Commissioning Specifications, in accordance with Section 2.6(b) hereof, for all Commissioned systems. The Commissioning Specifications will be inserted into the contract documents for use in bidding and construction.
- k. Provide a Preconstruction Commissioning Report for the Owners approval.
- l. At the end of the Pre-Construction Phase, provide Owner with an evaluation of the other members of the CT as to the items identified in the attached Exhibit C (the "Evaluation").

2.3 Construction Phase. Consultant shall perform the following during the Construction Phase:

- a. Host a kick-off meeting of the CT early in the construction schedule to focus on scheduling issues and reviewing each CT members' responsibilities. Coordinate Commissioning work with Construction Manager and Owner to ensure that Commissioning activities are included in the master schedule.
- b. Attend selected planning and job-site meetings to obtain information on construction progress. Perform site visits, as necessary, to observe component, system installations, and project conditions.
- c. Review Contractor's and/or subcontractors' submittals applicable to systems being Commissioned for compliance with Commissioning needs and Performance Guarantees, concurrent with Architect's reviews.
- d. Review construction phase documentation, e.g., Requests for Information, Change Orders, meeting minutes, other correspondence, etc., required to plan and perform Commissioning tasks.
- e. As necessary, review construction meeting minutes and other construction phase documentation for revisions/substitutions relating to the Commissioning process. Identify problems and assist in resolving any discrepancies.
- f. Provide a Construction Phase Commissioning Report for the Owner's approval.

lammersvl 3/7/2006 2:42 PM
Formatted: Bullets and Numbering

g. At the end of the Construction Phase, provide a second Evaluation (reference Exhibit C).

2.4 Acceptance Phase. Consultant shall perform the following responsibilities after substantial completion of the Project:

- a. Coordinate and direct the Commissioning activities in a logical, sequential, and efficient manner using standardized protocols and forms, centralized documentation, clear and regular communications and consultations with all necessary parties, frequently updated timelines and schedules, and technical expertise.
- b. Plan and conduct Commissioning planning meetings.
- c. Observe and document start-up of major Supply Package systems. Review completeness of installation and SVC's in conjunction with progress meetings prior to starting HVAC equipment.
- d. Due to the importance of the controls systems to the proper operation of the mechanical and electrical systems, control submittals should be carefully reviewed to ensure that they include all of the information required by the operations and maintenance staff. Review Project Record Documents and point-to-point documentation.
- e. Prepare Functional Performance Tests ("FPT"), in accordance with Section 2.6(c) hereof. Test each major system through FPT's. A random sample of each subsystem will also be tested. The testing will be coordinated and witnessed by the Consultant's representative and Owner's maintenance staff. Witnessing the FPT's will constitute part of the O&M Training. Review preliminary Testing and Balancing ("TAB") and System Verification Checklist ("SVC") reports prior to HVAC equipment start-up to ensure that the SVC has been completed and the final TAB report format and content is acceptable. No FPT's will be performed until the system and related subsystems have been started, TAB work has been completed, and the TAB report has been submitted and reviewed.
- f. Analyze verification test trend logs and monitoring data to verify performance.
- g. Witness selected pressure tests of the piping and duct systems and observe major start-up testing, adjusting and balancing, and calibration activities.
- h. Maintain a test deficiency and resolution log and an FPT log, including failures and corrective action.. Provide to Owner's Program Manager written progress reports and test results with recommended actions.
- i. Coordinate, oversee, and facilitate the training of Owner's O&M staff. Visit the site during the Turn - Over and Training Period to ensure that any on-going Supply Package related problems are being addressed and corrected in a timely and efficient manner. Review the preparation of the O&M manuals prior to scheduling training.

- j. Compile and maintain organized and completed final Commissioning report.
- k. Submit a Final Commissioning Report to Owner, in accordance with the requirements of Section 2.6(d) hereof.
- l. Review and verify Project Record Documents.
- m. Review and verify the completion of the following items that must be included in the O&M manuals for this Project:
 - (1) Design Intent
 - (2) Variances from Design Intent
 - (3) Equipment ID
 - (4) Manufacturer Performance Data sheets
 - (5) Preventive maintenance information
 - (6) Repair and service information
 - (7) Automatic Temperature Controls, submittals, drawings and Project Record Documents
 - (8) Control system schematics
 - (9) Sequences of operation
 - (10) Manufacturer's test reports
 - (11) Test results required by specification
 - (12) Point-to-point documentation

2.5 Post Acceptance Phase Responsibilities: Consultant shall perform the following responsibilities after final completion of the Project:

- a. Track HVAC Warranty issues
- b. Enforce off-season mode testing per construction specifications.
- c. Document corrections
- d. 11th month warranty walk-through
- e. Testing in all seasons must be accommodated to ensure performance guarantees.
- f. O&M Staff review of usage changes, set point changes, operational concerns, maintenance and service issues, nuisance complaints and chronic problems.
- g. Review of maintenance practices
- h. Evaluate system conditions and operation
- i. Evaluate system performance and energy usage based on Design criteria

- j. Sample readings for comparison with TAB report
 - k. Update commissioning reports by adding supplements
 - l. Specific tasks should include
 - (1) O&M Staff review of usage changes, set point changes, operational concerns, maintenance and service issues, nuisance complaints and chronic problems
 - (2) Review of maintenance practices
 - (3) Evaluate system conditions and operation
 - (4) Evaluate system performance and energy usage based on design criteria
 - (5) Compare system performance with 11th month data
 - (6) Sample readings for comparison with TAB report
 - (7) Update commissioning reports by adding supplements
- 2.6 Documentation Consultant shall prepare the following documentation as part of this Project:
- a. Commissioning Plan, containing the following information
 - b. Commissioning objective
 - c. Roles and responsibilities of all participants
 - d. Commissioning Schedule coordinated with the design and construction schedule
 - e. Communication and reporting protocols
 - f. Documentation requirements and responsibilities
 - g. Identify required construction permitting and associated fees relating to commissioning services
 - h. Level of testing and verification procedures
 - i. Outline of the commissioning events
- 2.7 Commissioning Specifications, containing the following information:
- a. Coordinate the section requirements with the Architect's general and technical specification sections, and include in construction document package
 - b. A detailed description of the responsibilities of all parties included in the Commissioning process
 - c. Details of the Commissioning process
 - d. List of equipment to be commissioned and sampling strategies
 - e. Reporting and documentation requirements, including formats, deficiency resolution, and startup requirements

- f. SVC's, FPT's, and RTF's
 - g. Coordinate that O&M documentation and manufacturer start-up requirements and test and balance provisions are in the specifications
- 2.8 Verification checks, performance tests, and resolution logs:
- a. System Verification Checklists (SVC) / Manufacturer's Checklists: Consultant will write SVC's based on the DID. These checklists will be created for HVAC systems and subsystems. This includes, but is not limited to, Air Handling Units, Variable Air Volume Boxes, Unit/Cabinet Heaters, Exhaust Fans, HVAC Pumps, Chillers, and Boilers. Draft copies will be submitted to Architect and Construction Manager for review and comments before placement on the job site. These SVC's will be placed on the job site and completed by the installing contractors. No system will be started until the appropriate SVC's have been completed.
 - b. FPT: Consultant will write FPT's based on the Design Intent Documents ("DID"). These tests will be created for HVAC systems and subsystems. This includes, but is not limited to, Air Handling Units, Variable Air Volume Boxes, Unit/Cabinet Heaters, Exhaust Fans, HVAC Pumps, Chillers, and Boilers.
 - c. Resolution Tracking Forms (RTF): Resolution tracking is a method to monitor and record problems, their causes, and solutions. The use of these lists prevents problems uncovered during commissioning from being forgotten, and expedites their resolution. The use of RTF's helps ensure that problems or questions will be resolved in a timely manner.
- 2.9 Commissioning Report, containing the following information:
- a. Project name
 - b. Name, address, firm, and phone number of Consultant
 - c. Executive summary of HVAC system and commissioning strategy
 - (1) Recommendations for system recommissioning and final acceptance
 - (2) Recommendations for monitoring the ongoing performance of the systems
 - (3) Recommendations for system improvements
 - (4) Summary of Commissioning findings
 - d. Detail list of installing contractors and vendors with contact names, addresses, email and phone numbers
 - e. Description of the building (size, location, use, construction envelope, HVAC and other installed system)
 - f. Summary of commissioning tasks
 - g. Commissioning plan

- h. Resolution tracking forms
 - i. Completed manufacturer checklists
 - j. Completed SVC checklists
 - k. Completed functional performance tests
- 2.10 Consultant and Owner will each take all actions reasonably requested by the other to facilitate coordination of the activities of Consultant under this Agreement with the activities of the Team. Consultant will also notify Owner in writing of any action, inaction or other circumstances promptly after Consultant becomes aware thereof that could reasonably be expected to cause (i) any Final Acceptance to be delayed for any reason, (ii) the Supply Package, or any part thereof, to fail to satisfy any Performance Test or Final Acceptance, (iii) the Supply Package, or any part thereof, to fail to meet any Performance Guarantees, (iv) the Supply Package, or any part thereof, to fail to be covered by a warranty during the Warranty Period (as defined in the Contract), or (v) any delay, shortfall or failure of performance by Consultant under this Agreement.

3.0 PAYMENT

- 3.1 Owner shall pay Consultant in current funds, as compensation for the performance of the Work and its services under this Agreement, the amount of \$ _____.
- 3.2 Payment shall be due and payable five (5) business days after approval thereof by the Owner. Owner will make payments only once per month. Submission of requests for payment shall be made in accordance with a schedule of Board meetings to be provided by Owner.
- 3.3 Payments may be withheld by Owner in the event of (i) filing or threatened filing of a mechanic's lien, (ii) failure of Consultant to make payments properly to Subcontractors or for labor, materials, supplies, appliances, fixtures or equipment, (iii) failure of Consultant to carry out the Work in accordance with the requirements of this Agreement, (iv) Owner's determination that the Work covered by the Consultant's application for payment has not been performed, or (v) damage to Owner or any person performing any part of the construction of the Project.
- 3.4 Payments due and unpaid under this Agreement and costs incurred by Owner as a result of Consultant's failure to fulfill its obligations under this Agreement shall bear interest from the date payment is due at the Prime Rate as established from time to time by the Owners bank, however, interest payable by Owner shall not exceed that permitted by law.

4.0 ERECTION AND COMMISSIONING WORK AT SITE

- 4.1 Consultant shall coordinate with the CT and the other Project participants to ensure efficient implementation and Integration of the Supply Package.
- 4.2 Consultant shall provide the services of a competent site manager to advise in connection with the following matters:

- a. Advise the owner if improper unpacking and storing of the Supply Package at the Site is observed.
 - b. Completion of the Performance Tests of the Supply Package under the Contract.
 - c. Consultant's site manager shall be subject to Owner's reasonable approval.
- 4.3 Consultant shall provide documentation and information relating to the Construction Schedule as shall be reasonably requested by Owner from time to time. Consultant shall provide project site status updates to Owner on a regular basis.
- 4.4 Owner shall provide, at its cost and expense, such supervisors and personnel as are required, in accordance with applicable industry standards, to assist Consultant in performing its obligations under this Agreement

5.0 INSURANCE

- 5.1 During the Commissioning, the Consultant will provide certain insurance coverage. These include in part:) amounts satisfactory to the Owner, Comprehensive General Liability, Auto Liability, and Worker's Compensation.
- 5.1.1 General Liability – \$1,000,000
 - 5.1.2 Auto Liability - \$300,000 / \$1,000,000
 - 5.1.3 Personal Injury / \$500,000 /\$1,000,000
 - 5.1.4 Workers Comp - \$100,000
 - 5.1.5 Professional Liability/E & O - \$1,000,000 / \$1,000,000

6.0 ASSIGNMENT AND SUBCONTRACTING

- 6.1 Except as otherwise provided herein, neither party shall, without the consent in writing of the other party, assign or transfer the Agreement or the benefits or obligations thereof or any part thereof to any other person. Any placing of sub-orders shall not relieve the Consultant from its obligations under this Agreement.

7.0 FORCE MAJEURE.

- 7.1 If the progress of the Work or the Project is delayed as the result of the occurrence of any event in the following list, Owner may, upon Consultant's written request, extend the time of completion of the portion of the Work directly affected by such delay: adverse weather conditions not reasonably anticipatable, flood, cyclone, hurricane, tornado, earthquake, or other similar catastrophe; acts of a public enemy or the Government; fires, epidemics, quarantine restrictions, or other casualty for which Consultant is not responsible; or any act of omission of Owner. No other extensions of time shall be granted for labor disputes or delays resulting from normal weather conditions or interruptions of Consultant's work to permit performance by other Consultants. No extension shall be granted for delays which could have been avoided by Consultant by the exercise of diligence or which resulted, in whole or in part, from the fault or negligence of Consultant.

Adverse weather conditions shall provide a basis for extension only if such conditions are beyond normal weather conditions for the time during which the Work is being performed and cause an actual delay in the progress of the Work. Consultant shall only be allowed to claim weather delay days for weather delay days each month in excess of the days for each month set forth on the attached Exhibit F. If the Work has progressed to the point that inclement weather does not effect the progress of Consultant, no delay can be claimed. No delay is allowed for the effect of inclement weather. Consultant shall make provisions to overcome the effect of inclement weather (i.e. mud, snow, etc.).

- 7.2 Consultant shall include in its bid a sufficient amount of money to cover the required manpower, equipment, protection, etc. to complete its Work in accordance with the Project Schedule, accounting for inclement weather. It is Consultant's obligation to provide a copy of the "National Climatic Center" report with any weather delay filed. Construction Manager shall document weather conditions on a daily basis throughout the period of construction.
- 7.3 As to a specific occurrence which caused delay, Consultant shall notify Owner within forty-eight (48) hours of its discovery of the occurrence, and any request for an extension under Section 7.1 shall be made within seven (7) days of the time Consultant learns of the occurrence. As to a condition or continuing occurrence which causes delay, Consultant shall notify Owner within forty-eight (48) hours of determining that a delay is likely, and any request for an extension under Section 7.1 shall be made within seven (7) days of the time Consultant determines that a delay is likely to occur. Such request shall (a) state the cause for the delay; (b) describe the portion of the Work affected thereby; (c) estimate the duration of the delay; and (d) provide all details pertinent thereto. Failure to provide timely notice shall be deemed a waiver of any claim for an extension. Notice shall be provided by Consultant to Owner within forty-eight (48) hours after the cause for the delay has ceased to exist.
- 7.4 The right to request an extension shall be Consultant's only remedy against Owner, and Consultant shall have no claim against Owner for an increase in Consultant's Compensation hereunder or for damage, loss, or expense resulting from delays, nor a claim against Owner for a payment or allowance of any kind of damage, loss, or expense resulting from delays, nor shall Consultant have any claim for damage, loss, or expense resulting from interruptions or suspension of his work to enable other consultants or contractors to perform their work. Consultant shall indemnify Owner for all loss, damage and expense caused by or resulting from a delay of any other Consultant that is caused by or results from any act or omission of Consultant, including failure to meet schedules and completion dates under this Agreement.
- 7.5 In the event the project is suspended for a period of ninety (90) consecutive days due to an event of Force Majeure, either party may terminate this agreement by written notice to the other.

8.0 GOVERNING LAW

8.1 This Agreement shall be interpreted in accordance with the laws of the State of Indiana without regard to the conflicts of law principles thereof.

9.0 TERMINATION

9.1 If Consultant should become insolvent, commence an action under Title 11 of the United States Code, be the subject of an involuntary petition under Title 11 of the United States Code that is not dismissed within ninety (90) days of its filing, make a proposal to creditors or a general assignment for the benefit of creditors or if a receiver is appointed on account of Consultant's insolvency, or Consultant is or becomes a debtor under any federal or state insolvency laws, Owner may, at its option, forthwith terminate this Agreement.

9.2 If Consultant:

- a. fails to prosecute or fails to prosecute in good faith any portion of the Work, or delays such prosecution or fails to timely perform diligently any provisions hereof consistent and in compliance with the Construction Schedule; or
- b. is otherwise in breach of any of its obligations under this Agreement.

Consultant shall, within seven (7) days of receipt from Owner of notice of default, correct or cause to be corrected such default or make or cause to be made provision satisfactory to Owner for correcting such default within a reasonable time thereafter, failing which Owner may at its option terminate this Agreement without prejudice to any of its rights hereunder.

9.3 If Consultant is impeded from fulfilling any of its obligations under this Agreement for reasons of Force Majeure for a period of more than thirty (30) days in the aggregate, then Owner may, at its option, terminate this Agreement without prejudice to any of its rights hereunder.

9.4 Upon termination pursuant to Sections 9(a) or 9(b) Owner may, without prejudice to any other right or remedy it may have, but shall not be obligated to:

- a. Complete the Work by whatever method it may deem expedient
- b. Owner may, at its option, terminate this Agreement, without cause, upon three (3) days prior written notice, in which case Consultant shall be paid for all work performed through the date of termination.

9.5 Owner shall be entitled to damages equal to the cost to complete the Work in excess of the amount that would have been payable to Consultant if Consultant had completed the Work.

- a. If Owner is in breach of any of its obligations under this Agreement, Owner shall, within thirty (30) days of receipt from Consultant of notice of default under this Section 9(e), correct or cause to be corrected such default or make or cause to be made provision satisfactory to Consultant for correcting such default within a reasonable time thereafter, failing

which Consultant may at its option terminate this Agreement without prejudice to any of its rights hereunder.

- b. Owner may, at its option, terminate this Agreement, without cause, upon three (3) days prior written notice.
- c. The representations, warranties, and indemnity obligations of the parties (and the parties' remedies with respect to any breach of the foregoing) made, created, or arising under this Agreement shall survive the termination or expiration of this Agreement for an indefinite period of time.

10.0 CONFIDENTIALITY

10.1 Owner and Consultant shall treat all documents, data, materials and information supplied by one to the other confidentially and shall not disclose the above to any third party and shall not use the above for any other purpose than for the performance of this Agreement or for the operation and maintenance of the system, without prior consent in writing from the other party, except as required by law or in connection with any litigation. The provisions of this Article 10 shall survive the expiration or earlier termination of this Agreement.

11.0 LOCAL LAW COMPLIANCE

11.1 Consultant shall comply and secure compliance by its employees and subcontractors with all laws applicable to this Agreement and the performance of this Agreement by Consultant.

12.0 NOTICE

12.1 Notices by either party required or permitted to be given hereunder shall be given by certified mail, return receipt requested, overnight courier by a nationally recognized courier service, or confirmed telefax. Any such notices shall be deemed to have been given upon their documented date of receipt, or in the case of telefax, upon the date of confirmation of the transmission.

- a. Any party may change its address by giving prior notice to the other party in the manner provided for herein.

Owner's address: Owner Name
 Street Address
 City, State Zip

Consultant's address: Facility Commissioning Group
 109 Springdale Drive, Suite 7
 Nicholasville, KY 40356

13.0 ADDITION AND AMENDMENT

13.1 No prior agreement or communication by either party shall alter the meaning or interpretation of this Agreement. No modification, alteration, addition or change in the terms hereof shall be binding on the parties unless it is expressed in writing and duly executed by the parties in the same manner as the execution of this

Agreement and subject to such government approval as may be required under the applicable laws and regulations of the countries concerned.

14.0 INDEMNIFICATION AND LIMITATIONS ON SELLER'S LIABILITIES

14.1 Consultant agrees to indemnify and save Owner, its officers, directors, agents and employees, harmless from all liability, claims, losses, damages and costs (including reasonable attorneys' fees and court costs) (collectively, a "Loss"), however arising, for injury to or death of any person or damage to any property (including that of Owner) that is due to or arises out of any negligent or improper act or acts, whether of omission or commission, of Consultant or any of its officers, directors, agents or employees. This indemnity shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Section 14(a). In any and all claims against Owner or any of its officers, directors, agents or employees by any employee of Consultant, the indemnification obligation of Consultant under this Section 14(a) shall not be limited in any way by limitation on the amount or type of damages, compensation or benefits payable by Consultant under workmen's compensation, disability benefit or other employee benefit acts. Owner agrees that if it asserts an indemnification claim against Consultant pursuant to this Section 14(a), it shall (without relieving Consultant of liability for such claim) use commercially reasonable efforts to satisfy all or part of such claim under any insurance maintained pursuant to this Agreement. In the event Owner obtains insurance funds in partial satisfaction of its indemnification claim against Consultant, Consultant shall remain liable for the balance of such claim. Consultant shall pay or reimburse to Owner any "deductible" and other administrative expenses incurred by Owner in pursuing such insurance claim.

- a. In any and all claims against Owner or any of its officers, directors, agents or employees by any employee of Consultant, the indemnification obligation of Consultant under this Section 14(b) shall not be limited in any way by limitation on the amount or type of damages, compensation or benefits payable by Consultant under workmen's compensation, disability benefit or other employee benefit acts.
- b. The indemnity contained in this Article shall continue notwithstanding the expiration or early termination of this Agreement or final payment.

15.0 MISCELLANEOUS

15.1 Consultant shall not discriminate against any qualified employee or qualified applicant available for employment to be employed in the performance of this Agreement with respect to employment, tenure or terms, conditions and privileges of employment because of race, color, religion, national origin, sex or ancestry.

15.2 If Consultant employs any person, firm or corporation to perform any of the services described in this Agreement, payment for such services or performance shall be the sole responsibility of Consultant.

15.3 In the event Owner shall have the right to withhold payments to Consultant under this Agreement, Owner may withhold such payments from any other amounts

lammersvl 3/7/2006 2:42 PM
Formatted: Bullets and Numbering

which might be owed to Consultant by Owner and provide notice thereof to Consultant.

15.4 No failure on the part of Owner or Consultant to insist upon the strict performance of any term or condition of this Agreement or to exercise any right, remedy, power or privilege provided for therein or afforded by law shall operate as a waiver or release thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege by Owner or Consultant preclude any other or further exercise thereof.

FACILITY COMMISSIONING GROUP

OWNER NAME

By: _____
Printed: _____
Title: _____

By: _____
Printed: _____
Title: _____