

AGREEMENT FOR COMMISSIONING SERVICES

This Agreement for Commissioning Services is made as of the _____ day of _____, 200_, by and between _____ ("Owner") and Facility Commissioning Group ("Commissioning Authority").

Recitals

- A. Owner enters into this Agreement with Facility Commissioning Group ("Commissioning Authority") for the commissioning of _____ (the "Project") located _____. A general description of the Project is attached as _____.
- B. Owner desires to engage the Commissioning Authority to provide commissioning services relating to the installation, construction, integration, commissioning and start up of the equipment to be supplied, delivered and tested by installing contractors, and Commissioning Authority desires to accept such engagement and perform such services for Owner, in accordance with the United States Green Building Council LEED Green Building Rating System for New Construction (LEED-NC version 2.2), EA Prerequisite 1: Fundamental Commissioning of the Building Energy Systems and EA Credit 3: Enhanced Commissioning.

Agreement

NOW, THEREFORE, Owner and the Commissioning Authority 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 Services between Owner and the Commissioning Authority.
- 1.2 **COMMISSION OR COMMISSIONING** means the process of observing, verifying, documenting start up, testing performance and training 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 Commissioning Authority as required by Section 2.6(a) hereof.
- 1.4 **COMMISSIONING SPECIFICATIONS** means the commissioning specifications for the Project to be created by the Commissioning Authority 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 Authority ("CxA")
- 1.6 **CONSTRUCTION SCHEDULE** means the Project schedule established and maintained by the Construction Manager.
- 1.7 **CONTRACT** means agreements between Owner and AE, CM and the various contractors associated with the Project, 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 any of these agreements to ascertain the rights and obligations of the parties under these agreements as amended from time to time as provided for therein.
- 1.8 **CONSTRUCTION CONTRACT SPECIFICATIONS** means the construction documents specifications incorporated in any of the construction contracts associated with the Project 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 (the "Commissioning Report") to be prepared by CxA documenting the results of the execution of each of the Functional 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 7.0 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 **FUNCTIONAL PERFORMANCE TESTS** means the various testing procedures to be developed to evaluate conformance with design intent and Owner's Project Requirements, satisfactory completion of which are required to demonstrate compliance with the installation acceptance criteria.
- 1.14 **SUPPLY PACKAGE** means the HVAC, HVAC Controls, Lighting, Lighting Controls, Domestic Hot Water, and Renewable Energy Systems to be supplied, installed and placed into operation by the installing contractors for this project..
- 1.15 **PRECONSTRUCTION PHASE** means the activities that occur from the start of the Project through the award of bids to contractors for construction of the work.
- 1.16 **CONSTRUCTION THROUGH ACCEPTANCE PHASE** means the activities that occur from the award of bids to contractors for construction of the work through the completion of construction and acceptance of final pay application.
- 1.17 **OWNER'S PROJECT REQUIREMENTS** is a written document that details the functional requirements of a project and the expectations of how it will be used and operated. This includes project goals, measurable performance criteria, cost considerations, benchmarks, success criteria, and supporting information.

2.0 SCOPE OF AGREEMENT

- 2.1 CxA shall provide all services necessary to perform and complete, in a professional manner and in accordance with the construction schedule, verification and documentation of the performance of the Supply Package in achieving the Owner's Project Requirements, design intent, and the construction contracts specifications. 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 as needed to the Construction Manager, Owner, and Architect on the status, integration, and performance of the Supply Package for the Project.
 - 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 Construction Contracts' Specifications.
- h. Recommending acceptance of the Supply Package system to the Owner.
- i. Maintaining Resolution Tracking Forms through the duration of the project for inclusion in the Final Commissioning Report.
- j. Work of the CxA shall be performed in phases as indicated below which shall correspond to phases in the Architect and Construction Manager contracts.
- k. CxA utilization of email and other conventional communication methods to expedite execution of commissioning services under this Agreement.

2.2 Design Phase. CxA shall perform the following during the Pre-Construction Phase:

- a. Provide a focused design review in writing, including the design areas identified in 2.2(b) through 2.2(f) below.
 - 1. Commissioning facilitation: Provide input to make the Supply Package easier to commission.
 - 2. Energy Efficiency: Provide input on general efficiency of systems to be commissioned.
 - 3. Operation and Maintenance: Provide input on how O & M of the Supply Package can be made easier (accessibility and system control).
 - 4. Functional Performance: Provide input on how the design can be applied to improve performance of the Supply Package for the occupants.
 - 5. Facility Performance and Design Intent: Identify flaws, oversights, or insufficient detail in the design, relevant to the Supply Package being able to meet the Owner's Project Requirements.
- b. Work with Architect and Construction Manager to determine 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.
- c. Write the Commissioning Plan and submit it to the Owner, CM and Architect for review, comment, and Owner's approval.
 - d. Establish the system verification process and specific Functional Performance Tests, including testing conditions and acceptance criteria for each system or piece of equipment being commissioned based on design intent documents.
 - e. Provide reporting and documentation requirements, including formats, testing requirements, and deficiency resolution.
 - f. Review Project specifications for opportunities to incorporate the Commissioning Plan objectives with specified contractor roles and responsibilities.
 - g. Conduct a pre-commissioning meeting with the Owner to discuss Commissioning management strategies and protocols.

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

- a. Host a kick-off meeting of the CT with the CM early in the construction schedule to focus on scheduling issues and reviewing each CT members' responsibilities.
- b. Coordinate Commissioning work with Construction Manager and Owner to ensure that Commissioning activities are included in the project schedule.
- c. Plan and conduct Commissioning Meetings.

- d. Attend selected planning and job-site meetings to obtain information on construction progress.
- e. Perform site visits, as necessary, to observe component, system installations, and project conditions.
- f. Review Contractors' and/or subcontractors' submittals applicable to systems being commissioned for compliance with commissioning needs and Owner's Project Requirements.
- g. Prepare System Verification Checklists for contractor use.
- h. Review construction phase documentation, such as, Requests for Information (RFI's), RFI responses, change orders, supplementary instructions, meeting minutes, and other correspondence required to plan and perform Commissioning tasks.
- i. As necessary, review construction meeting minutes and other Construction Phase documentation for revisions/substitutions relating to the Commissioning process.
- j. Identify problems and assist in resolving any discrepancies.
- k. Provide a Construction Phase Commissioning Report for the Owner's approval.

2.4 Acceptance Phase. CxA shall perform the following responsibilities prior to and 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 update timelines and schedules, and provide technical expertise.
- b. Plan and conduct Commissioning Meetings.
- c. Observe and document start-up of major Supply Package systems. Review completeness of installation, manufacturer start-up checklists, and System Verification Checklists in conjunction with progress meetings prior to starting equipment.
- d. Due to the importance of the controls systems to the proper operation of the mechanical and electrical systems, control submittals will be carefully reviewed to ensure that they include the information required by the operations and maintenance staff.
- e. Review Project record documents and point-to-point documentation.
- f. Prepare Functional Performance Tests (FPT's) for systems and equipment being Commissioned.

- g. Implement FPT's for each major system being Commissioned. A targeted percentage sample of each subsystem will also be tested. The testing will be coordinated and witnessed by the CxA and Owner's maintenance staff. Witnessing the FPT's will constitute part of the O&M Training.
- h. Review preliminary Testing and Balancing (TAB) and System Verification Checklist (SVC's) reports prior to equipment start-up to ensure that the installation 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.
- i. Analyze verification test trend logs and monitoring data to verify performance.
- j. Witness selected pressure tests of the piping and duct systems and observe major start-up testing, adjusting and balancing, and controls programming and calibration activities.
- k. Maintain a test deficiency and resolution log for FPT's, including failures and corrective actions.
- l. Provide written progress reports and test results with recommended actions to the Owner's O & M staff.
- m. Coordinate and facilitate the training of Owner's O&M staff.
- n. Visit the site during the time of project acceptance by the Owner and during the time of Owner's operation & maintenance staff training to ensure that any on-going Supply Package related problems are being addressed and corrected in a timely and efficient manner.
- o. Review the preparation of the O&M manuals prior to scheduling training.
- p. Compile and maintain an organized and completed Final Commissioning Report.
- q. Submit a Final Commissioning Report to the Owner at substantial completion of the project, if possible, or as soon thereafter as final testing of systems can be completed.
- r. Review and verify Project Record Documents.
- s. Prepare a Systems Manual.

2.5 Post Acceptance Phase. CxA shall perform the following responsibilities after final completion of the Project:

- a. Track Warranty issues pertaining to commissioned equipment and systems.
- b. Enforce off-season mode testing per construction specifications, if applicable.

- c. Provide documentation on project corrections relating to systems being commissioned.
- d. Conduct a 10th month, prior to end of warranty, walk-through.
- e. Testing in all seasons must be accommodated according to prevailing warranty provisions.
- f. Conduct an 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

2.6 Documentation. CxA shall prepare the following documentation as part of this Project Agreement:

- a. Commissioning Plan, containing the following information:
 - 1. Commissioning Team roster with contact information
 - 2. Roles and responsibilities of CT members
 - 3. Commissioning Schedule coordinated with the Project Schedule
 - 4. Communication and reporting protocols
 - 5. Documentation requirements and responsibilities
- b. Resolution Tracking Forms: 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.
- c. System Verification Checklists: CxA will write SVC's based on the design intent using construction documents. These checklists will be created for systems and subsystems. This includes HVAC, HVAC Controls, Lighting, Lighting Controls, Domestic Hot Water, and Renewable Energy Systems. 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.

- d. Functional Performance Tests: CxA will write FPT's based on the design intent depicted on construction documents. These tests will be created for 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.
- e. Functional Performance Test Summaries: CxA will provide a narrative describing each Functional Performance Test of systems being commissioned.
- f. Final Commissioning Report, containing the following information:
 - 1. Project name
 - 2. Name, address, firm, and phone number of CxA
 - 3. Executive summary of systems and commissioning strategy
 - i. Recommendations for system re-commissioning and final acceptance
 - ii. Recommendations for monitoring the ongoing performance of the systems
 - iii. Recommendations for system improvements
 - iv. Summary of commissioning findings
 - 4. Detail list of installing contractors and vendors with contact names, addresses, email and phone numbers
 - 5. Description of the building (size, location, use, construction envelope, HVAC and other installed systems)
 - 6. Summary of commissioning tasks
 - 7. Commissioning Plan
 - 8. Resolution Tracking Forms
 - 9. Completed manufacturer checklists
 - 10. Completed System Verification Checklists
 - 11. Completed Functional Performance Tests

2.7 CxA and Owner will each take all actions reasonably requested by the other to facilitate coordination of the activities of CxA under this Agreement with the activities of other members of the CT. CxA will also notify Owner in writing of any action, inaction or other circumstances promptly after CxA 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 Functional Performance Tests 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 CxA under this Agreement.

3.0 PAYMENT

- 3.1 Owner shall pay CxA as compensation for the performance of the Commissioning Services under this Agreement, the amount of \$ [REDACTED].
- 3.2 Payment shall be due and payable five (5) business days after approval by the Owner of submitted progress invoices from CxA. Owner will make payments only once per month. Submission dates for CxA requests for payment shall be made in accordance with a schedule provided by the Owner.
- 3.3 Payments may be withheld by Owner in the event of (i) filing or threatened filing of a lien, (ii) failure of CxA to make payments properly to Subcontractors or for labor, materials, supplies, appliances, fixtures or equipment, (iii) failure of CxA to carry out the work in accordance with the requirements of this Agreement, (iv) Owner's determination that the work covered by the CxA's application for payment has not been performed, or (v) damage caused by CxA to Owner.
- 3.4 Payments due and unpaid to the CxA by the Owner under this Agreement, as well as costs incurred by Owner as a result of CxA's failure, if any, to fulfill its obligations under this Agreement, shall bear interest from the date payment is due or costs are incurred, respectively, at the 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 COMMISSIONING WORK AT SITE

- 4.1 CxA shall coordinate with the CT and the other Project participants to ensure efficient implementation and integration of the Supply Package.
- 4.2 CxA 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 Functional Performance Tests of the Supply Package under the Contract.
 - c. CxA's site manager shall be subject to Owner's reasonable approval.
- 4.3 CxA shall provide documentation and information relating to the Construction Schedule as shall be reasonably requested by Owner from time to time. CxA shall provide project site status updates to Owner in conjunction with project meetings scheduled by the CM.

- 4.4 Owner shall provide, at its cost and expense, such supervisors and personnel as are required by the Commissioning Plan to participate with CxA in performing its obligations under this Agreement

5.0 INSURANCE

- 5.1 During the Commissioning, the CxA will provide certain insurance coverage. These include amounts satisfactory to the Owner as follows:

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 Professional Liability (E & O) – \$1,000,000 / \$3,000,000

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 CxA 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 CxA'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 CxA 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 CxA's work to permit performance by other CxAs. No extension shall be granted for delays which could have been avoided by CxA by the exercise of diligence or which resulted, in whole or in part, from the fault or negligence of CxA. 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.
- 7.2 CxA shall include in its fee 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 CxA'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, CxA 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 CxA learns of the occurrence. As to a condition or continuing occurrence which causes delay, CxA 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 CxA 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 CxA 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 CxA's only remedy against Owner, and CxA shall have no claim against Owner for an increase in CxA'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 CxA have any claim for damage, loss, or expense resulting from interruptions or suspension of his work to enable other CxAs or contractors to perform their work. CxA shall indemnify Owner for all loss, damage and expense caused by or resulting from a delay of any other CxA that is caused by or results from any act or omission of CxA, 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 [REDACTED] without regard to the conflicts of law principles thereof.

9.0 TERMINATION

9.1 If CxA 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 CxA's insolvency, or CxA is or becomes a debtor under any federal or state insolvency laws, Owner may, at its option, forthwith terminate this Agreement.

9.2 If CxA:

- 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.

CxA 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 immediately with written notice to the CxA terminate this Agreement without prejudice to any of its rights hereunder.

- 9.3 If CxA 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, immediately with written notice to the CxA terminate this Agreement without prejudice to any of its rights hereunder.
- 9.4 Upon termination pursuant to Sections 9.2(a) or 9.2(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, immediately with written notice to the CxA, in which case CxA shall be paid for all work performed and invoiced 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 CxA if CxA had completed the Work.
- 9.6 If Owner is in breach of any of its obligations under this Agreement, Owner shall, within thirty (30) days of receipt from CxA of notice of default, correct or cause to be corrected such default or make or cause to be made provision satisfactory to CxA for correcting such default within a reasonable time thereafter, failing which CxA may at its option terminate this Agreement without prejudice to any of its rights hereunder.
- 9.7 Owner may, at its option, terminate this Agreement, without cause, upon three (3) days prior written notice.
- 9.8 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 CxA 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 CxA shall comply and secure compliance by its employees and subcontractors with all laws applicable to this Agreement and the performance of this Agreement by CxA.

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: 

Commissioning Authority's address: Facility Commissioning Group
158 Burt Road
Lexington, KY 40515

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.

14.0 INDEMNIFICATION AND LIMITATIONS ON SELLER'S LIABILITIES

14.1 CxA 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 CxA 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 Agreement. In any and all claims against Owner or any of its officers, directors, agents or employees by any employee of CxA, the indemnification obligation of CxA under this Agreement shall not be limited in any way by limitation on the amount or type of damages, compensation or benefits payable by CxA under workmen's compensation, disability benefit or other employee benefit acts. Owner agrees that if it asserts an indemnification claim against CxA pursuant to this Agreement, it shall (without relieving CxA 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 CxA, CxA shall remain liable for the balance of such claim. CxA 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 CxA, the indemnification obligation of CxA under this Agreement shall not be limited in any way by limitation on the amount or type of damages, compensation or benefits payable by CxA 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 CxA 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 CxA 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 CxA.
- 15.3 In the event Owner shall have the right to withhold payments to CxA under this Agreement, Owner may withhold such payments from any other amounts which might be owed to CxA by Owner and provide notice thereof to CxA.
- 15.4 No failure on the part of Owner or CxA 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 CxA preclude any other or further exercise thereof.

FACILITY COMMISSIONING GROUP

[Redacted]

By: _____

By: [Redacted]

Printed: _____

Printed: [Redacted]

Title: _____

Title: [Redacted]