

PROPOSAL

Presented To:

Derwick Associates S.A.

for

Operations & Maintenance

By



Proposal No. 110-3194

February 9, 2010

**This document is privileged and contains confidential information intended for use only by
Derwick.**

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1.0 Introduction

ProEnergy Services (“ProEnergy”) is pleased to offer this proposal to Derwick Associates, S.A. (“Derwick”) for Operation and Maintenance (‘O&M’) Services for the CVG sites A and B located in Venezuela for a period of two (2) years.

2.0 Work Scope

ProEnergy’s strategic implementation of O&M contracts is based on two phases: Phase one-Mobilization and Phase two-Operation Period.

2.1 Phase One - Mobilization

ProEnergy shall provide skilled personnel, procedures, training, administrative, management and professional/technical services necessary for the safe and reliable operation and maintenance of the Plant. The implementation team will consist of the Plant Manager, Manager of O&M Services, Mobilization Team and Operation’s Plant Staff for local site implementation. The Mobilization Team will implement the technical aspects of the mobilization plan. This typically takes three months to complete starting two months prior to COD. The corporate office team provides support for accounting and finance, contracts and insurance, procedures, and training

Implementation Plan

Task

- Administer Implementation Plan
- Hire Plant Staff
- Implement Fitness for Duty Program
- Initiate Office Administration
- Review Licenses and Permits
- Verify/Setup Insurance Coverage
- Assess and Implement O&M Programs
- Procure Plant Tooling and Shop Equipment
- Setup Inventory
- Conduct Training
- Support Startup and Commissioning

Mobilization Tasks

Task 1: Administer Implementation Plan

Purpose: Plan the activities required to move from Notice to Proceed, to mobilization, to implementation of ProEnergy Services' policies and procedures at the site. Monitor and manage the time, resources and costs associated with each activity.

Approach: Utilize information available at time of Notice to Proceed to prepare a detailed Implementation Plan.

Meet with the Derwick to review the Plan. Agree upon the recommended approach to the various activities.

Establish the protocols to be used with the Implementation Plan regarding site access, access to on-site documents, etc.

Task 2: Hire Plant Staff

Purpose: To ensure that qualified plant personnel in adequate numbers are hired for plant operation and maintenance.

Approach: ProEnergy will evaluate benefits, salaries and hire the plant personnel. Evaluate staffing structure, prepare job descriptions, duties, authority and prepare wage and benefits packages.

Conduct interviews and testing.

Recruit and hire personnel as required.

Explain ProEnergy Services' philosophy of operation.

Schedule and conduct group presentations for policies and benefits orientation.

Task 3: Implement Fitness for Duty Program

Purpose: To implement ProEnergy Services' Fitness for Duty Program at the plant site during the initial hiring phase.

Approach: Prepare Fitness for Duty program.

Locate and set up accounts at local facilities for physical exams, drug testing and audiograms to personnel offered employment (when applicable).

Perform physical exams, drug testing and audiograms.

Task 4: Initiate Office Administration

Purpose: To train appropriate plant administrative personnel regarding ProEnergy Services' administrative policies and procedures and assure that the plant's accounting and reporting functions meet Derwick's and ProEnergy's requirements.

Approach: Review existing payroll, reporting and accounting functions. Establish Operator programs to assure proper Operator functioning upon Care Custody and Control of the Plant. Determine specific and unique governmental requirements that will impact site administrative requirements. Assess office situation from site visit.

- Prepare for on-site office training.
- Develop Human Resources report requirements.
- Develop Accounting and Budget reporting requirements.
- Develop Plant Operations reporting requirements.
- Conduct training of Plant Manager and Administrative Assistant on reporting requirements.

Task 5: Update Licenses and Permits

Purpose: To revise current licenses and permits to address changes necessitated by the ownership/operating company, as required by law.

Approach: Review and identify licenses and permits for potential revision

Task 6: Verify/Setup Insurance Coverage

Purpose: To ensure that ProEnergy has adequate insurance coverage and that plant personnel understand our insurance requirements and practices.

Approach: Provide required proof of insurance coverage to meet contractual obligations.

- Worker's Compensation Insurance
- Comprehensive Automobile Liability Insurance
- Comprehensive General Liability Insurance
- Employer's Liability
- Umbrella Liability

Arrange for Worker's Compensation package to be sent to site.

Review with plant management the notification procedures to be followed in the event of serious bodily injury or property damage.

Arrange for a site visit by ProEnergy's insurance carrier to review safety practices, inspect the site, and provide training on accident reporting and investigation.

Task 7: Implement O&M Programs

Purpose: To assure that the plant will be operated in accordance with ProEnergy standards in each of the following areas:

- Environmental, Health and Safety
- Administrative
- Operations
- Maintenance
- Chemistry
- Training

Approach: Establish plant environmental reports and reporting functions as well as the safety programs. Establish Operator programs to assure Plant safety and environmental compliance upon Care, Custody and Control of the Plant.

Document Derwick-approved changes in the appropriate plant manuals and issue new/revised Manuals as required.

Implement ProEnergy Services' Safety Program at the plant, including development or revision of the Plant Safety Manual.

Implement the Administrative Program at the plant including development or revision of the plant's Administrative Policies and Procedures.

Task 8: Startup and Commissioning Period

Purpose: To support startup and commissioning activities in each of the following areas:

ProEnergy will review the project reference material. After review, reference material will be organized and catalogued to create a Technical Library for use during start-up and through-out commercial operations.

As the plant moves through the start-up and commissioning process, forms included in each turnover package will be filled in with system data. System punch-lists will be added, along with applicable system records supplied by the construction organization.

After all start-up and commissioning activities are completed, the turnover packages will be finalized and delivered to technical library.

ProEnergy will assume full care, custody, and control of the project equipment on a system by system basis. Once the system turnover process is complete, ProEnergy will operate and maintain the system with prudent utility practice and in accordance with startup and commissioning instructions.

ProEnergy team members will also participate in responding to abnormal operating conditions (alarms, trips, etc.) and will assist in troubleshooting operational problems.

ProEnergy will continue to support integrated plant operation throughout performance and/or reliability tests to achieve commercial operation.

2.2 Phase Two – Operational Period

O&M Strategy

ProEnergy recognizes that a comprehensive, operations-wide maintenance program must be developed and implemented. The O&M program must be tailored to fit the specific process(es) being maintained and integrated into Derwick's facilities plan. The ultimate goal of ProEnergy's O&M program is to safely achieve the highest possible plant/equipment availability while maintaining the lowest possible operations and maintenance costs. With this being said, ProEnergy will operate and maintain the facility to ensure completion of station goals as outlined in Derwick's project business and operating plans.

For continuous processes this entails long run times, short downtimes and ever increasing plant/equipment availability. This is augmented with a proactive budgeting, cost control and reduction management emphasis.

ProEnergy has developed, implemented and managed maintenance programs of this caliber and has the processes and corporate support structure to bring to the facility the right combination of the following:

- An integrated, multi-disciplined maintenance management team.
- Environmental, health and safety corporate and facility programs.
- Computerized Maintenance Management System (CMMS).
- Comprehensive strategic predictive and preventative maintenance program.
- Coordinated facility capital improvements program.
- Implement housekeeping program to improve overall sight appearance.
- Corrective maintenance.
- Budgeting, budgeting reviews, cost reduction programs.

- Materials and spare parts management.
- Human resource development and skills-level training.
- Operator/maintenance qualification and training programs.
- Administrative procedures development and management.
- Quality program for continuous improvement, with continuous plant/equipment performance assessment.

Routine O&M

In order for projects to be accomplished on time, within budget, and in accordance with technical, quality and safety requirements, it is imperative that routine operation and maintenance plans and procedures are implemented, communicated and enforced. Only by working within an established system of procedures can consistent quality and on-time performance be achieved. Therefore, it is critical that ProEnergy use effective plans and procedures developed and in place that are consistent with the goals expressed by Derwick. These procedures will require modification and enhancement in some cases in order to meet the requirements of Derwick. ProEnergy will utilize an integrated operations and maintenance management program for the facility. This program will encompass both centralized and area-dedicated operations and maintenance resources.

During the operations phase, thorough and diligent preventative maintenance is crucial to risk reduction and control. All work will be centrally controlled using CMMS and a formal work management environment that will rely on our early development of work practices, procedures and execution policies with Derwick. Identified work requirements will be entered into CMMS via workstations provided at the facility. All work will be thoroughly planned, estimated and scheduled by the plant management according to pre-established standards.

ProEnergy's corporate and facility management will continuously monitor work execution to ensure continuous improvement performance and mechanical integrity of the processes, practices and procedures utilized. The Manager of O&M Services will make site visits to ensure that the policies and procedures are being utilized. In addition to the site visits, ProEnergy Technical services department will conduct a full plant audit yearly and will share the results with Derwick, Manager of O&M Services and the Plant Manager.

ProEnergy will promptly notify Derwick in writing of any teardowns and overhauls of major equipment or capital improvements that ProEnergy believes are necessary or advisable together with a proposed schedule for completing such repairs or improvements. If the costs of such teardowns, overhauls or capital improvements have been incorporated into an approved annual Approved Operating Budget or if Derwick has otherwise consented in writing to such costs, ProEnergy will schedule, coordinate, contract and oversee the performance of such activities and will be responsible for monitoring and enforcing compliance by the contractor performing such

work, including taking such steps, short of litigation, to enforce any warranties granted to Derwick by such contractor in accordance with the O&M Agreement.

Operations & Maintenance Overview

The plant staff will follow written procedures for operations and maintenance of facilities:

1. Operations Procedures - These procedures are developed and written during the mobilization phase of the project. ProEnergy uses these procedures to understand and operate the equipment in the safest and most effective manner. These procedures include plant start-up, shut-down, turbine operation, etc.
2. Casualty Procedures - As with the Operations Procedures, these procedures are developed and written during the mobilization phase of the project. ProEnergy uses these procedures to operate the equipment during a time of casualty. These procedures include failed start attempt, emergency shutdown, blackstart operation, full plant blackout condition, etc. Both the Casualty and Operations Procedures are reviewed and kept up to date by the plant operations group.
3. Coordinate power delivery - ProEnergy will timely perform all of the obligations and requirements of Derwick which include but not limited to, Power Sales and Transmission, OEM Services Contracts, Natural Gas Acquisition, Transport and Balancing, Environmental Permits, Noise Regulations and all local, state and federal requirement and laws.
4. Preventative and Basic Maintenance - This work will include non-shutdown visual inspections of key operating systems; instrumentation and controls, general housekeeping and the replacement of oil filters, air filter, and igniters.
5. Plant chemistry program - This will include minimizing chemical use and maximizing resin life.
6. Daily logbook - Facility operators will collect data at scheduled times during shift. The times of these readings along with any other issues or concerns will be recorded in the facility logbook. Data from the logbook will be analyzed so that remedial actions can be taken immediately to correct off-standard performance.
7. Daily Reports - As described above, operators will collect readings during shift. These readings will then be entered into a database and daily reports generated. ProEnergy and Derwick will mutually develop.
8. Weekly Reports - The weekly report will include a summary of the Daily reports. ProEnergy and Derwick will mutually develop.
9. Monthly Reports - Within fifteen (15) calendar days after the end of each calendar month, ProEnergy will submit to Derwick a monthly progress report in reasonable detail covering activities conducted during such calendar month with respect to operation and maintenance (including, if applicable, information regarding power generation, fuel consumption, starts, trips, availability factor, capacity factor, and Gross Heat Rate and Net Heat Rate), capital improvements, labor relations and other significant matters. ProEnergy and Derwick will mutually develop the monthly format. As for the

Environmental section of the monthly reporting, the EH&S Manager will visit the sites monthly to ensure that the data gathered is accurate and support the site personnel with any issues that arise.

10. Yearly Reports - The monthly report will include a summary of the Monthly reports. Within forty-five (45) calendar days after the end of each Operating Year, ProEnergy will submit to Derwick for each unit a summary report (in such form and substance and with such back-up as Derwick may reasonably request) covering the performance of the units during the operating year, and the operation and maintenance activities planned or conducted during the previous Operating Year. ProEnergy and Derwick will mutually develop the format for the yearly report.
11. Annual Operating Budgets –ProEnergy will develop yearly operating budgets and submit the budget for review and approval three months prior to operating year's end.
12. Business and Operation Plans - ProEnergy will develop and execute business and operating plans which will be submitted yearly as per part of the operating budgets process. Derwick will work closely with ProEnergy in the development of the plans for the facility. The Annual Facility Operating Plan will detail maintenance, outage, and overhaul schedules, facility staffing, known capital and expense budget items, operating plans, and will provide the underlying assumptions used in developing the proposed budgets and anticipated availability for the period. ProEnergy will provide a high level 5 year outage plan as part of the Annual Facility Operating Plan. Derwick will review and approve the Annual Facility Operating Plan. Such approval will become the basis for the annual Approved Operating Budget.
13. Shut Down Inspections - These are periodic inspections to ensure the integrity of the equipment that are unable to be performed while the equipment is in operation. These inspections are coordinated through the CMMS to ensure the highest availability and reliability is achieved.
14. Testing of meters - ProEnergy will schedule, coordinate and implement, as required, calibration/testing of all gauges, meters and recording devices related to the consumption of fuels and water and to the sale of electricity.
15. Qualification Program – This establishes standards for the qualification of personnel for ProEnergy facilities. In addition, this program provides procedures for implementing the Qualification Standards and guidance for providing Orientation to a facility.
16. Technical Library - Maintain a filing system and update all plant manuals and vendor service manuals and arrange for updating plant facilities/system drawings to reflect the plant's current "as-built" configuration
17. Major Inspections, Refurbishment and Overhaul - These will be determined by operating hours/starts and on-condition monitoring. ProEnergy will perform (as an option) or arrange for scheduled inspections and overhauls on major equipment items in accordance with Derwick's request. All schedule outage plans will be provided to Derwick for review along with parts availability two years prior to the event.

Plant Polices and Programs

ProEnergy's Polices and Program Manuals contains the policies and procedures, including, but not limited to, the following:

- Assuring that operational goals and operating plans are consistent with the Annual Facility Operating Plan.
- Assuring that the plant is operated in accordance with the O&M Agreement and in a safe, reliable, efficient, and prudent manner.
- Assuring that operations and maintenance personnel are trained and qualified for their assigned responsibilities and tasks and that such qualification is maintained.
- Assuring that the plant meets contract, regulatory, and environmental requirements set forth in any or all agreements entered into by Derwick with respect to the plant or otherwise identified by ProEnergy or Derwick.

ProEnergy Services' Environmental, Health and Safety Manual

ProEnergy Services' Environmental, Health and Safety Manual will be implemented and utilized. This will include such programs as Lockout/Tagout, Confined Space Permitting, Spill Prevention Control and Countermeasure Plan, Hotwork Permitting, etc. The manual will also provide guidance in compliance of environmental permitting such as the air permits and wastewater discharge permit.

ProEnergy's Administrative Manual

As required, ProEnergy's Administrative Manual will be implemented and utilized. This manual includes plant's Administrative Policies and Procedures such as recommended plant improvement processes and supervising contractors, subcontractors and suppliers. Also included are accounting procedures for the plant including payroll, cash disbursements and journals, client accounting, accounts payable, recruiting, hiring, transferring, and fixed asset management.

ProEnergy will conduct a community relations program to include activities coordinated with Derwick. An employee relations program will be designed to maintain the positive image of the plant within the community and to maintain good employee relations.

The ProEnergy's Administrative Manual will address the policy for reporting and report formats, including, but not limited to, the following:

- Facility Performance
- Monthly Facility Performance Calculations and Report
- Monthly Fuel Consumption Calculations and Report

- Procedure for preparing supporting documentation, meter readings and information necessary to accurately prepare, justify and support monthly invoices in accordance with the terms and conditions of any and all agreements Derwick has executed with respect to the facility.
- Administrative program for establishing specific operating goals for each functional area, for managing resources to minimize personnel turnover, and for qualifying personnel to operate and maintain the facility (including the basis for qualification of personnel).

ProEnergy's Training Manual

As required, ProEnergy Service's Training Manual will be implemented and utilized. The training manual will include classroom training modules and system descriptions. The manual will be used for initial training and continuing on-site training. ProEnergy believes that training, both initial and continuing, is one of the fundamental building blocks to successful project and plant operation. The training of each staff member will be tracked and recorded through the computer maintenance management system (CMMS). Some of the direct benefits to the project are:

- Establishes baseline understanding in all areas of plant operation
- Permits performance assessment on a continuous basis
- Minimizes lost time accidents
- Minimizes the chance of equipment damage
- Motivates personnel by offering a structured path to career development
- Promotes teamwork so that the combined strength, knowledge, and experience of the team are greater than the sum total of each individual's knowledge and experience

Specialty Training – ProEnergy will send new/replacement operations and maintenance personnel to outside specialty schools to maintain the skill levels required for proper operation and maintenance of the plant. ProEnergy's Technical Services department will conduct technical training on yearly basis to all plant personnel.

ProEnergy's Operations Manual

As required, ProEnergy's Operations Manual will be implemented and utilized. The manual will consist of conduct of operational standards such as logbook protocol, shift turnover procedure, equipment rotation procedures, night orders, etc. Step-by-step operational procedures, casualty control procedures, system alignments, check-off lists, safety precautions, and system limitations will also be included. This manual addresses the procedures for System Operations, including, but not limited to, the following:

- Conduct of Operations
- Shift Routines / Operating Practices
- Operating Procedures used to operate the facility as well as monitoring, evaluating, and proposing revisions to such procedures
- Control of Equipment
- Facility Chemistry Control and Water Treatment
- Performing routine surveillance of all equipment routinely used to communicate with the System Operator
- Notifying the System Operator of any routine maintenance activities which will require clearance from the System Operator
- Providing the System Operator and Derwick's Customers with all required information regarding the Facility's availability
- Responding to dispatch orders from the System Operator, RTO (Regional Transmission Organization) or Derwick's Customers
- Monitoring and adjusting the reactive output of the generators to maintain transmission voltage levels within the capability of the Facility's generators
- Responding to and correcting generator dynamic instability in accordance with instructions from the System Operator

ProEnergy's Maintenance Manual

As required, ProEnergy's Maintenance Manual will be implemented and utilized. The manual will consist of maintenance standards such as precision measurement procedures, bearing handling, alignment procedure, equipment checks, etc. Step-by-step maintenance procedures, safety precautions, tools needed, and outage planning will also be included. This manual addresses the procedures for the maintenance program, including, but not limited to, the following:

- Maintenance Planning
- Maintenance Procedures
- Preventive Maintenance
- Predictive Maintenance
- Maintenance Training

3.0 Pricing

ProEnergy offers a comprehensive O&M program for the following fixed price:

SUMMARY	TOTAL COST
Mobilization (pre-operational charge)	\$1,318,274
Initial Inventory	\$8,699,500
Annual O&M Cost	\$4,211,282

4.0 Assumptions/Clarifications

The following assumptions have been made in the preparation of this proposal:

- Proposal does not include costs associated with fuel, utilities, water, duties, freight and insurance (other than workmen's compensation, auto liability and employer's liability). Costs are subject to change depending on exact location of facility and site conditions.
- Facility
 - Two (2) sites A & B; 400M apart.
 - Site A consists of 1x7FA and 1x7EA
 - Site B consists of 2xLM6000 and 1x7EA
 - Facility is assumed to be designed for local conditions with adequate access and safety systems.
 - Operating hours 8000 per year.
- Equipment
 - 2x7EA; 1x7FA; 2xLM6000.
 - Assume Fin Fan Coolers.
 - No Chilling.
 - Emissions testing is not a requirement.
- Demin/RO system.
- Water treatment costs are subject to change depending on the water quality and process utilized.
- No water source ID.
- All first fills will be charged to the commissioning budget.
- Corrective maintenance is capped at \$25,000 per event.
- Equipment is Dual fuel.
- Fuel is assumed to meet specifications required by the Gas Turbine Manufacturer.
- Shift Supervisors are assumed to work twelve (12) hour shifts.
- Labor for Security is not included.
- Mobilization
 - Includes hiring, relocation and training of facility staffing.
 - Includes purchase of shop equipment, forklift and plant tools.
 - Includes purchase of office furniture, vehicle and computers.
 - Mobilization includes two (2) support technicians for three (3) months.
 - Includes a CMMS database

5.0 Terms & Conditions

This proposal shall be valid for thirty (30) days; provided, however, the obligation to treat this proposal as confidential, and that it cannot be shared with any third party without the prior written consent of ProEnergy, shall survive.

This proposal, and any resulting contract or agreement, shall be subject to the terms and conditions set forth in the attached Supplemental Terms.

6.0 Follow Up

Please contact the following person at ProEnergy for information regarding this proposal:

Joaquin Mavares, Director of International Sales

jmavares@proenergyservices.com

Office: 660-829-5100

Cell: 713-992-1790

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7.0 Conclusion

Why select ProEnergy Services?

ProEnergy Services is the right teaming partner for Derwick! ProEnergy Services has talent, depth of experience and resources unparalleled in the power generation industry. When you succeed, we succeed. Our Service Agreement gives Derwick long-term security and confidence that their assets are well built, managed, operated and maintained. ProEnergy Services will win your confidence and your business one job at a time, starting now!

Attachment A Supplemental Terms

These Supplemental Terms complement and are included as part of ProEnergy's Proposal No. 110-3194 dated February 9, 2010 to Derwick for the Site A & B Operation and Maintenance and would be included in any resulting Contract:

1. Terms obligating ProEnergy to accept pre-existing site conditions and drawing specifications shall only apply in the event ProEnergy has actually been to the sight or inspected the drawings prior to commencement of the work.
2. For invoice payments not received by ProEnergy within 30 days from the date of receipt, a late fee of the lesser of 1 ½ % per month or the highest rate allow by applicable law may be assessed. If Client fails to timely make payment ProEnergy may also suspend or terminate performance of any and all of its work.
3. No retainage will apply in the event ProEnergy is required to post a performance bond. In no event shall retainage exceed 10% of each invoiced amount.
4. Any prohibition on placing a lien on the project by ProEnergy shall be subject to Client fulfilling its payment obligations under the Contract.
5. The parties shall indemnify, defend and hold one other harmless from and against any and all liabilities, claims, demands, suits, losses, damages, costs and expenses (including reasonable attorney fees and court costs) for bodily injury to or death of any third person, or damage to or destruction of any property of third party, caused by any negligent act or omission on the part of the indemnifying party its officers, employees, contractors or agents, except to the extent such liabilities, claims, suits, losses, damages, costs and expenses result from any negligent or willful act or omission on the part of the indemnified party, its officers, employees, contractors or agents.
6. ProEnergy's obligation to indemnify and protect Client against infringement of third party intellectual property rights is subject to: (i) ProEnergy's right to settle or defend such claim or seek the right of continued use or modify or replace the infringing work, (ii) only work which is otherwise not provided according to Client's design or instructions, (iii) the work being used by Client for its intended use under the Contract, and (iv) any work not manufactured or developed directly by ProEnergy will be limited only to the indemnity, if any, of the manufacturer or vendor of said work.
7. ProEnergy shall not be responsible or liable for delays in performance of its obligations under the Contract due to any event of force majeure or any other cause beyond its reasonable control.
8. ProEnergy warrants that its work shall be performed in a competent, diligent and workmanlike manner, of good quality and material, and in compliance with any mutually agreed written instructions or specifications. ProEnergy's work shall be warranted for a period of one (1) year from the date of completing the work. Any repairs or replacements made to ProEnergy's work during the warranty period shall be warranted for the remainder of the original warranty term or 90 days, whichever is longer. This provision sets forth the exclusive remedies for all claims based on failure of or defect in the ProEnergy's work provided under the Contract whether the failure arises before, during or after the warranty period

and whether said claim is based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise. **NO IMPLIED, STATUTORY, OR COMMON LAW WARRANTY OF ANY KIND, INCLUDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SHALL APPLY.** The duties, liabilities and obligations of ProEnergy do not extend to any repairs, adjustments, alterations, replacements or maintenance that may be required as a result of normal wear and tear, normal degradation in the performance of equipment, or as a result of (a) improper repair or alteration by Client or other persons, and (b) misuse, negligence or damage by Client or other persons, (c) excessive operation at peak capacity, frequent starting, type of fuel, detrimental air inlet conditions, or erosion, corrosion or material deposit of fluids. The warranty and remedies are further conditioned upon (i) the proper storage, installation, operation and maintenance of the equipment and conformance with the operation and instruction manuals provided by the suppliers and manufacturers and (ii) repair or modification pursuant to the instructions of the suppliers and manufacturers and as otherwise directed by ProEnergy.

9. Care, custody, control and risk of loss for the work of ProEnergy shall pass to Client upon the earlier of when the work is completed or when it is taken over and used by Client.

10. The total liability of ProEnergy for all claims of any kind, whether based on contract, warranty, tort (including negligence), indemnity, strict liability or otherwise, for any loss or damage arising out of, connected with, or resulting from the Contract or its work shall in no case exceed the total contract price for the work giving rise to such claim plus any insurance proceeds recovered under the coverages furnished by ProEnergy under the Contract. Notwithstanding anything in the Contract or at law to the contrary, ProEnergy shall in no event be liable for exemplary, special, incidental, indirect or consequential damages of any kind including, but not limited to, loss of use, profits or revenue. ProEnergy shall have no liability for its competent performance of instructions given by Client or its personnel or representatives in the event such instructions prove to be defective.

11. ProEnergy will be given at least 10 days advance written notice and an opportunity to cure before Client may terminate the Contract for a breach of any material term of the Contract by ProEnergy.

12. In the event ProEnergy agrees to the payment of liquidated damages (LDs) for unexcused shortfalls in any guaranteed performance or delays in any guaranteed completion date(s) then (i) the payment of LDs shall be Client's exclusive remedy (ii) the total amount of LDs shall not exceed 10% of the total contract price unless otherwise agreed, and (iii) a corresponding bonus shall be paid by Client to ProEnergy in the event of better than guaranteed performance or early completion by ProEnergy.

13. Any dispute which cannot be settled amicably between the parties under the Contract will be submitted to binding and final arbitration under the Rules of the American Arbitration Association and such proceeding will be held in a mutually agreeable location.

14. ProEnergy is not responsible for furnishing any performance bonds and builder's risk or professional liability insurance unless specifically included in its proposal and proposal price.