

GENERAL TERMS AND CONDITIONS - PROFESSIONAL SERVICES

1. **Defined Terms.** "Affiliate" means a person or entity directly or indirectly controlling, controlled by or under common control with the party in question. Any person or entity shall be deemed to control any partnership of which, at the time, the person or entity is a general partner, in the case of a limited partnership, or is a partner who has authority to bind the partnership, in all other cases. "Owner Parties" means Owner, Capital Power Corporation, Capital Power Operations (USA) Inc. and their Affiliates. "Owner Related Company" means Capital Power Corporation, Capital Power Operations (USA) Inc. or any of their Affiliates. "Work" means Services. Unless stated otherwise in this Contract or a Purchase Order for specific Services, "Site" means the location listed in Section A-4.1 in Schedule "A".
2. **Changes.** The Contract shall not be altered, modified or varied without the express written authorization of Owner. Owner shall have the right to change, add or delete items from the Services by issuing a properly executed written authorization ("Change Order") and an equitable adjustment shall be made to the Purchase Price or the schedule, or both. Any claim for adjustment under this paragraph shall be deemed waived unless asserted in writing within 30 days of the date upon which the Contractor receives the Change Order. Nothing in this paragraph shall relieve Contractor from the obligation to proceed without delay in the performance of the Services as modified by the Change Order. Except as agreed to in writing by Owner and Contractor, all terms and conditions of the Contract shall apply to all changes involving the addition or deletion of work.
3. **Performance.** Contractor shall diligently and punctually perform the Services in compliance with the terms of this Contract. The Contractor shall perform the Services with the highest standard of professional skill, care, diligence and expertise customarily applied by qualified and experienced professionals performing similar services for similar projects, adhere to all applicable professional standards, and shall only use qualified personnel who shall not be replaced or substituted without the prior written approval of the Owner. If Schedule "A" designates a particular person to provide the Services the Contractor shall ensure that no other person provides the Services unless the prior written consent of the Owner is first obtained. Without limiting any other rights it may have under this Contract, the Owner retains the right to have the Contractor remove any employee, agent or Subcontractor from performing the Services where such individual contravenes any provision of this Contract. Time is of the essence of the Contract.
4. **Compensation and Terms of Payment.** No compensation or reimbursement of expenses shall be paid to the Contractor for performing the Services except as specifically provided for in this Contract. The Owner shall not be required to make payment for any services performed or expenses incurred by the Contractor to remedy errors or omissions for which, in the reasonable opinion of the Owner, the Contractor is responsible. The Contractor shall not be entitled to any compensation for extra services performed unless such services are previously authorized in writing by the Owner. All payments shall be subject, where applicable, to holdbacks in accordance with the builders' lien and workers' compensation legislation in force in the jurisdiction where the Services are performed.
5. **Delivery; Ownership.** Title to Services shall pass to Owner as Services are performed.
6. **Compliance with Laws; Safety.** In performing the Services, Contractor and its employees, agents and Subcontractors shall:
 - (a) Comply with and observe all (i) federal, state, provincial and local laws, (ii) orders, directives and permits that Contractor is or should be aware of and (iii) regulations which apply to or otherwise affect Owner, Contractor or Services (collectively, "Applicable Law");
 - (b) Comply with all rules, policies, procedures, processes and work practices established by the Owner from time to time, including without limitation health, safety, security and environmental policies and procedures (collectively "Owner's Policies and Procedures"); and which are provided by Owner to Supplier in writing and/or through an internet link; and
 - (c) Notify Owner of any chemicals (including, for example cleaning agents) that are brought on site and provide a current Safety Data Sheet (SDS) to Owner;
 - (d) Not enter upon the Site or other property controlled by Owner or its Affiliates, unless Supplier: (i) is a member of ISNetworld; (ii) designates Capital Power Corporation as an "Owner Client" entitled to view Supplier information; (iii) has been assigned an ISN grade for the purposes of evaluating Suppliers Health and Safety program for acceptability to Owner requirements ("ISN Grade"); (iv) have implemented a risk mitigation plan as required by Owner in its sole discretion which shall be maintained for the Term of the Contract. During the performance of Work, Supplier's safety grade shall not drop below the ISN Grade. In addition to the other rights and remedies provided to Owner herein, in the event the Supplier's ISN Grade is lowered during the Term the Supplier shall (i) promptly notify Owner that the ISN Grade has been lowered; and (ii) if it is determined by Owner that the cause of the ISN Grade being lowered could affect the Suppliers' ability to safely perform the Work, Owner may in its sole discretion require Supplier to implement, at no cost to Owner, a risk mitigation plan satisfactory to Owner.

In the event of a difference among Applicable Laws, the stricter or higher standard shall apply. In the event of a difference among Applicable Law, the Owner's Policies and Procedures, and the Contractor's policies and procedures, the stricter or higher standard shall apply unless such would result in a violation of Applicable Law in which case Applicable Law shall apply. Owner may immediately terminate this Contract without prejudice to any of its other rights or remedies if at any time Contractor, in Owner's sole opinion, fails to meet the requirements of this Section 6.

7. **Invoices; Payment.** Unless otherwise stipulated in the Contract, Contractor shall submit an invoice to the notice address designated in the Contract when the performance of all Services is complete. All invoices shall (i) reference the contract number and the purchase order number or other written authorization as applicable, (ii) separately itemize charges for labor and materials, and (iii) include as a separate line item all federal, state, provincial, county and/or city sales and use taxes applicable to the Services, unless otherwise specified. Invoices shall not reference any terms and conditions other than those of this Contract. In no event will Owner be obligated to pay any tax on Contractor's income. Further, for non-Canadian Contractors providing Services to a Canadian entity, in compliance with Canadian Income Tax requirements, the appropriate withholding tax will be withheld if Owner requests, Contractor shall submit with each invoice a lien waiver on behalf of itself and its Subcontractors waiving all lien rights with respect to the Services covered by the invoice, provided that the waiver shall not be effective until Owner's payment of the invoice. Payment of undisputed amounts less any retainage specified in the Contract shall be due 45 days after Owner's receipt of an invoice. Owner shall be entitled at all times to set-off any account owing from Contractor to Owner or to any of its Affiliates companies against any amount due or owing to Contractor.

8. **Audit.** The Contractor shall maintain complete and accurate accounting records using generally accepted accounting principles to substantiate the Contractor's invoices and shall keep those records during the term of the Contract and for two years thereafter. During the term of the Contract and for two years thereafter, Owner's representatives shall have, upon 24 hours notice, access at all reasonable times, to all of Contractor's and its Subcontractors' accounts and records of all description related to the Services or Invoices for the Services. Owner shall have the right, but not the obligation, at all reasonable times to inspect Contractor's work.

9. **Subcontracting.** Contractor shall not subcontract any part of the Services or assign any part of the Contract without the prior written consent of Owner, which consent may be withheld in Owner's sole discretion. In the event such consent is granted, the Contractor shall: (i) remain responsible for the proper performance of any subcontracted/assigned Services as if those Services had been performed by the Contractor; (ii) be responsible for the acts or omissions of any Supplier subcontractor ("Subcontractor") as if the acts or omissions were its own; and (iii) be liable to and indemnify the Owner from any losses, claims, demands, liabilities, damages, pleadings, fines, penalties, judgments and expenses (including, without limitation, legal expenses on a solicitor and his own client basis) resulting from any such subcontract or assignment and the Services performed as a result thereof. Contractor shall enforce the contractual obligations of its Subcontractors. All contracts between Contractor and its Subcontractors shall provide that contractual obligations given by the Subcontractor shall be given to both Contractor and Owner and the contractual obligations may be enforced by either Contractor or Owner. Contractor shall ensure all of its Subcontractors also comply with the requirements of Section 12 ("Insurance"). Contractor shall further ensure that any subcontract contains all reasonable provisions of the Contract that may impact the Services, and that such subcontract may be assigned to Owner at Owner's sole discretion in any circumstance where the Contract is terminated.

10. **Intellectual Property.** All Contract Property is and shall remain the sole property of Owner and shall be delivered to Owner upon termination of this Contract or upon demand by Owner. The Contractor waives all moral rights that it may have in respect of the Contract Property. "Contract Property" means all trade secrets, trademarks, patents, copyrights, and other proprietary rights of Owner, together with all documents, information, data, computer programs, electronic media, know how, knowledge, trade secrets, trademarks, patents, copyrights or products developed, improved or prepared by the Contractor, or its employees, agents or Subcontractors while performing this Contract containing or based upon, in whole or in part, information provided by or in relation to the Owner. Contractor shall:

(a) pay all royalties and patent license fees and related charges payable in respect to the Services and shall indemnify Owner against all such royalties, fees and related charges; and

(b) defend, at its own expense, all suits and proceedings instituted against Owner in connection with any infringement or alleged infringement or unlicensed use of patent, registered design, trademark or copyright pertaining to the Services or the use thereof; and

(c) indemnify Owner against all losses, costs, damages and expenses (including legal fees and costs) which Owner may suffer, sustain or incur in connection with or as a result of any claim, action or proceeding for such infringement, alleged infringement or unlicensed use; and

(d) at Contractor's expense, if any of the Services are enjoined or found to infringe upon any patent, registered design, trademark or copyright, either procure for Owner the right to continue using the Services or replace the

Services with non-infringing Services or modify the Services so as to become non-infringing, provided the quality of the Services is not diminished in any way.

11. **Confidentiality.** For purposes of this Contract “Confidential Information” means all documents, information, data, computer programs, know how, knowledge and any other information provided by the Owner or received by the Contractor in connection with the performance of this Contract and shall include, without limitation, the Contract Property, financial information, business plans, forecasts and market strategy, telecommunication technology and any other information conceived, developed or containing or based upon, in whole or in part, Confidential Information, by the Contractor in the performance of the Services. The Contractor shall (a) keep in strict confidence all Confidential Information which the Contractor may acquire in connection with or as a result of performance of this Contract whether relating to the subject matter of this Contract or the business of the Owner; (b) not publish, communicate, divulge or disclose to any third party or parties during the Term of this Contract or at any time thereafter, any Confidential Information, without the express prior written consent of the Owner; (c) at any time upon request, transfer and deliver to the Owner all documents, notebooks, charts, drawings, files, computer disks, electronic media and all other records of any kind whatsoever in the possession or control of the Contractor pertaining to the Confidential Information. The Contractor shall only use or make use of the Confidential Information for the sole purpose of fulfilling its obligations under this Contract; any other use of the Confidential Information, during or after the Term of this Contract, is expressly prohibited. The Contractor acknowledges that the Contractor’s breach of this Section 11 would cause irreparable harm to the Owner, for which Owner would not be adequately compensated by monetary damages. Accordingly, in the event of such breach or any threatened breach, and in addition to any other rights it may have, the Owner shall be entitled, in its sole discretion, to commence proceedings for injunctive relief and the Contractor hereby consents to any and all injunctions, restraining orders, directives and other equitable orders being issued against it restraining it from any further breach of this Section 11. Depending on the nature of the Services the Owner may require the Contractor to sign a supplemental confidentiality agreement. Contractor’s confidentiality obligations shall not apply to the extent that Confidential Information is within the public domain, was rightfully in the possession of Contractor prior to the date of disclosure of such information to Contractor by Owner, obtained from third parties without violating any confidentiality agreement, required to be produced by Contractor pursuant to any subpoena or court order, or required by Contractor in the defense of any claim under this Contract.

12. **Insurance.** In addition to being responsible for determining the appropriate type and amount of any additional appropriate insurance required as a prudent contractor for performing the Services and without in any way limiting the liability of Contractor or its obligation to indemnify Owner under this Contract, Contractor shall, at its own cost, obtain and maintain in full force and effect during the term of the Contract and for any extended period provided for in the Contract or by law, the insurance coverages as well as the limits and endorsements shown in the “Insurance Requirements for Contractors” attachment to this Contract (“Insurance”), which is incorporated here by this reference. Prior to undertaking performance of the Services, the Contractor shall deliver to the Owner satisfactory evidence of Insurance in the form of Certificates of Insurance executed by an authorized representative of the insurer(s). Said certificates shall state without reservation that all of the required coverages together with any necessary endorsements are in place. Contractor and Contractor’s Insurance Broker shall each promptly notify Owner upon receipt of notice of cancellation of any of the required policies; this notification obligation shall be reflected on said certificate. Contractor shall be responsible for payment of all premiums and deductible amounts relating to the insurance policies. Further, Contractor shall deliver to the Owner, within five days of the Owner’s demand, satisfactory evidence of the Contractor’s compliance with the Workers’ Compensation laws in force in the jurisdiction(s) where the Work is performed. All insurance policies required under this Contract shall be considered primary and not contributory with or in excess to any insurance that may be maintained by the Owner. If the Contractor fails to maintain the Insurance as set forth herein, the Owner shall have the right, but not the obligation, to purchase the Insurance at the Contractor’s expense. Contractor shall reimburse Owner for any insurance deductible that Owner is required to pay for a claim resulting from an act or omission of Contractor. Upon execution of this Contract, Supplier shall attach the said certificate of insurance in ISNetworld as evidence of such coverage. In addition, Supplier shall provide the Owner with satisfactory evidence that the certificate of insurance referenced herein is in place for any and all renewal(s) of the Term (as that term is defined in the Contract) as applicable.

13. **Indemnification.** To the fullest extent permitted by law, Contractor shall be responsible for and shall indemnify, defend and hold harmless Owner Parties and their officers, directors, agents and employees (collectively, “Indemnitees”) from all claims, demands, losses, damages, fines, penalties, judgments and expenses (including legal fees and costs) which result from any willful misconduct or negligent act or omission of Contractor or its employees, agents or Subcontractors in connection with the performance of the Contract. Further, to the fullest extent permitted by law, Contractor shall be responsible for and shall indemnify Indemnitees from all claims, losses, damages and expenses (including attorneys’ fees and costs) of employees or agents of Contractor or its Subcontractors in connection with performance of the Contract. To the fullest extent permitted by law, Contractor expressly waives the benefit, for itself and all Subcontractors, insofar as the indemnification of Indemnitees is concerned, of the provisions of any applicable workers’ compensation law or any court decision interpreting such law limiting the tort or other liability of

any employer on account of injuries to the employer's employees. Notwithstanding anything to the contrary herein, nothing in this paragraph shall be interpreted to require Contractor to indemnify any of the Indemnitees for such Indemnitee's own negligence (other than negligent supervision of Contractor, Subcontractors or their employees) or willful misconduct. As a clarification, in Canada, "legal fees and costs" means "on a solicitor and own client basis."

14. Hazardous Materials. Contractor shall not perform any Services in which it uses or incorporates, in whole or in part, any materials regulated or deemed hazardous by state, provincial, federal, or local environmental requirements ("Hazardous Materials") in violation of any such environmental requirements or in such a manner as to leave any Hazardous Materials which could be hazardous to persons or property or cause liability to Owner. Upon discovery of an existing or suspected release on or at the Site, Contractor shall cease Services in that area, immediately contact Owner's designated representative and on-site coordinator and notify Owner in writing. Contractor shall be responsible for and indemnify Indemnitees for all damages, costs, penalties, liabilities and cleanup arising out of contamination of the Site with, or the handling, storage, generation, management or disposal, release or abandonment of, Hazardous Materials or noncompliance with environmental and safety laws by Contractor or its Subcontractors.

15. Termination. This Contract or any portion of the Services may be terminated by Owner without cause by giving notice to Contractor specifying the portion of the Services to be terminated and the effective date of the termination. In addition, this Contract may be terminated for cause by Owner, without prejudice to any other rights or remedy it may have if Contractor at any time: (a) fails to perform the Services, (b) fails to maintain Insurance, as required under section 12, (c) fails to comply with any terms, conditions or provisions of this Contract or (d) is adjudged bankrupt or makes a general assignment for the benefit of its creditors or if a receiver is appointed with respect to the property of the Contractor or if the Contractor institutes or is the subject of insolvency proceedings under the Bankruptcy or other laws of any jurisdiction. Notwithstanding the foregoing, if the Contractor, in the Owner's sole opinion, is in default of any provision of this Contract, the Owner may, without limiting any other remedy it may have, correct the default and may deduct the cost of correction from any payment then or thereafter due to the Contractor.

Upon termination, Contractor shall submit to Owner for verification and approval an itemized invoice for Services performed up to and including the date of termination. Subject to the foregoing and the provisions of the previous paragraph, if this Contract is terminated by Owner, Owner shall pay Contractor for Services satisfactorily performed to the date of termination, less any back charges or other amounts that may be owing by Contractor to Owner Parties and if the Contract is terminated for cause, the costs the Owner incurs in having the Services completed by third parties to the extent the total cost of third parties and the cost of Services satisfactorily provided by Contractor hereunder exceed the Contract Price.

Upon receipt of a termination notice, Contractor shall discontinue the Services in accordance with the notice, and shall take such steps as may be necessary or desirable to minimize the costs to Owner associated with the termination of the Services. Termination of this Contract by Owner shall not operate to relieve or discharge Contractor from any obligation under this Contract in respect to the Services that have been completed. In no event shall Owner be responsible for termination expenses, overhead costs associated with Services not performed by Contractor or any profits Contractor would have earned if it had completed the Services. In the event this Contract or any portion of the Services is terminated, Owner may complete or have others complete the Services.

16. Disputes. The parties have a duty to negotiate in good faith to resolve any disputes, and shall inform one another promptly following the occurrence or discovery of any item or event that would reasonably be expected to result in a dispute required to be resolved in accordance with this dispute resolution procedure. The contractual representatives of the parties will initially negotiate to resolve any such dispute. If those representatives fail within ten (10) days after being so informed to resolve any such dispute, said dispute shall, at the written request of either party, be referred to senior officers of the parties who are duly authorized to settle the dispute. The senior officers of the parties shall meet and confer as often as they deem reasonably necessary to resolve the dispute amicably within thirty (30) days. Any dispute, claim or controversy arising out of or relating to this Contract or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Section 16 (dispute resolution provision), if not settled by agreement of the parties, shall at the option of either party and, upon written notice to the other party, be settled by non-binding mediation followed by arbitration. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. Each party shall pay its own expenses in connection with the mediation. The arbitrator may, in the Award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable legal fees of the prevailing party.

For U.S. Owners, the arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures; Mediation and/or arbitration shall take place at the JAMS Resolution Center nearest to the Site before one mediator/arbitrator. For non-U.S. Owners, the arbitration shall be administered pursuant to the arbitration rules and procedures in effect in the Province where the Site is located; mediation and/or arbitration shall take place in the Province where the Site is located. Judgment on the Award may be entered in any court having jurisdiction. The arbitration shall be conducted in English. Unless instructed otherwise by the Owner, the Contractor shall continue to

carry out the Services during any arbitration proceedings. The decision of the arbitrator(s) shall be final and binding upon the parties.

17. **Background Checks.** The Owner has in place a procedure governing background screening for all contractors requiring access to the Owner's computer network systems or unescorted access to Owner's facilities, which can be provided by Owner to Contractor in writing or through an internet link at the Contractor's request. Prior to gaining such access to the Owner's facilities or network systems or at any other time during the term of the Contract, Contractor shall provide to the Owner, upon Owner's request and at Contractor's expense, satisfactory evidence of a criminal record check from an accredited law enforcement agency. The Owner, in its sole discretion, may waive or modify the requirements set out in this section.

18. **Privacy.** Contractor acknowledges that the Owner is subject to legislation governing privacy and the collection, use and disclosure of personal information. The Contractor agrees that if, and as applicable, it shall comply with the relevant privacy legislation and the Owner's Privacy Policies in connection with the provision of the Services, which can be provided by Owner to Contractor in writing or through an internet link. Contractor shall be liable for and indemnify and hold the Owner harmless against any and all claims, damages or losses arising from the Contractor's failure to comply with such legislation and policies.

19. **Miscellaneous.**

(a) **Waiver.** Failure by either party to assert any of its rights under the Contract shall not be construed as a waiver thereof. No waiver of any breach or default hereunder shall be considered valid unless in writing, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

(b) **Interpretation/Laws.** Headings are for reference only, do not form any part of this Contract and shall be given no legal effect in the interpretation of this Contract. The singular includes the plural and vice versa, and words importing gender shall include all genders or a body corporate where the context requires. This Contract shall be construed in accordance with the laws of the state or province where the Site is located. No provision of this Contract shall be interpreted more or less favorably towards either party because its counsel drafted all or a portion hereof. If any provision of this Contract is found to be invalid, then so far as is reasonable and effect shall be given to the intent manifested by the portion held invalid or inoperative. This Contract may be executed in counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

(c) **Independent Contractor.** Contractor is an independent contractor and not an employee or agent of Owner. All persons performing Services at the Site shall be employees of Contractor or employees of an authorized Subcontractor of Contractor and not the employees of Owner. While Owner may instruct Contractor as to the objectives, timing and the results required, Contractor shall have full control over how it achieves such objectives, timing or results and has full power and authority to select the means, methods, and manner for performing the Services. Whenever Contractor is performing Services at the Site, Contractor shall designate a site superintendent or other representative in charge of Contractor's Services at the Site.

(d) **Workers' Compensation.** Any persons performing Services at the Site or any location controlled by an Owner Party shall be covered by State or Provincial Workers' Compensation program or by Workers' Compensation insurance, as described in the attached Insurance Requirements for Contractors.

(e) **Force Majeure.** Neither party shall be liable for damages arising or incurred during the time and to the extent that such party is prevented or delayed from complying with its obligations hereunder, by causes beyond the control of the party affected including acts of God, war, laws, orders or regulations of governmental bodies or agencies and unavoidable accidents. Any party failing or delaying in the performance of its obligations hereunder due to any such cause shall, within forty-eight (48) hours of discovering such cause, give the other party notice in writing of such cause and the consequences thereof, including a reasonable estimate of the anticipated delay in performance, and it shall use, to the best of its ability, reasonable diligence to remedy the same. Notwithstanding the foregoing, Owner may terminate this Contract pursuant to Section 15 in the event of such delay or anticipated delay in performance.

(f) **Survival.** The provisions of Sections 1, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 19 shall survive the termination of this Contract.

Insurance Requirements For Contractors

Unless otherwise stated, all limits shown shall be per occurrence limits. Any general aggregate limits shall apply separately to work under this Contract. If any coverage is provided on a claims made basis, the policy (or tail coverage) shall be maintained in force for the longer of the extended period provided in the Contract and the Statute of Limitations for claims covered by the policy.

Required limits for Employer's Liability, General Liability and Automobile coverages may be met through a combination of primary and excess/umbrella coverages.

<u>Coverage</u>	<u>Minimum Limits</u>
Workers' Compensation: Employer's Liability: each accident and disease (each employee)	Statutory \$5,000,000
Commercial General Liability: General Liability coverage shall include: blanket contractual liability (including this Contract), bodily injury and death, broad form property damage including loss of use, excavation, collapse, shoring and pile driving, as applicable (no XCU exclusion), products and broad form completed operations and cross liability endorsements. Non-Owned Automobiles endorsement shall be included in Canada.	\$5,000,000
Excess or Umbrella Liability: any such policy shall "follow form," (i.e., provide coverage and endorsements that are at least as extensive as and no more restrictive than the underlying primary policies).	\$Optional
Automobile Liability: Combined Single Limit (Bodily Injury and Property Damage), Each Accident.	\$5,000,000
Professional Liability:	\$5,000,000

Additional Endorsements Required and to be Stated on Certificates of Insurance:

Owner Parties and Owner Parties' employees, officers and directors shall be included as Additional Insureds for the Work on a primary and non-contributory basis, with respect to General Liability and Excess/Umbrella (if any) coverages.

All policies applicable to the Work shall contain a waiver of any right of subrogation or recourse by Contractor's insurer against Owner Parties and their employees, officers and directors.