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PROVINCE OF NEW BRUNSWICK STANDARD CONSTRUCTION CONTRACT OR SHORT FORM CONTRACT

NOTE: Following the Award of Contract, the Owner will prepare the Contract documents, which include:

- (a) the Short Form Contract or the Standard Construction Contract, if the value of the Contract does not exceed \$121,199, or
- (b) the Standard Construction Contract if the value of the Contract is greater than \$121,199.

Copies of the Short Form Contract or the Standard Construction Contract may be viewed at www.nbpower.com/en/about-us/purchasing-tenders.

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1.	Insurance
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1. GENERAL

- 1.1 Tenders shall be emailed to: alltenders@nbpower.com.
- 1.1.1 The Tenderer bears all risk of delivering its Tender by electronic submission, including but not limited to delays in transmission between the Tenderer's computer and the Owner's email system.
- 1.1.2 The Tenderer acknowledges that email transmissions may be unreliable. The Tenderer is solely responsible for ensuring that its complete bid submission and all attachments have been received by the stated due date and time ("Closing Time"). If the Owner's email system rejects a bid submission for any reason, the Tenderer must resubmit its bid before Closing Time. Bids received after Closing Time are not eligible for consideration and will not be opened.
- 1.2 To ensure consideration, the Tenders shall be properly completed, scanned, saved as a PDF, and emailed to alltenders@nbpower.com prior to the Closing Time noted on **the New Brunswick Opportunities Network (NBON) website** or in the Letter of Invitation. Any email containing HTML attachments (specifically .html, .htm, and .shtm) will be blocked, quarantined, and not accepted (this includes emails with both PDF and HTML attachments – these will be blocked). The Tender number and name must be in the subject line of the email, and the email size limit is fifteen megabytes (15 MB). The Owner reserves the right to reject Tenders that do not comply with the submission instructions.
- 1.2.1 Attachments to emailed bids must be electronic files that are (i) freely accessible through normal use of applicable software without special measures; (ii) not compressed (e.g. zipped); (iii) free of malicious software such as viruses, ransomware and spyware; and (iv) complete and uncorrupted; ("**Clean Files**"). Tenderers submitting bids by email are solely responsible for ensuring that only Clean Files are included with or in emails. The Owner may reject bid submissions that append or contain attachments that are not Clean Files (e.g. emails containing HTML files).
- 1.3 **It is the responsibility of the Tenderer to ensure that its information is received by the Owner (that is, scanned, saved as a PDF, and emailed to alltenders@nbpower.com) by Closing Time. Tenderers may inquire about the status of their Tender as described in Section 5, entitled "Enquiries", in case remedial action is required to ensure proper bid submission. There will be no public opening of Tenders.**
- 1.4 The signatures of all parties tendering shall be in their respective handwriting or shall be an electronic signature as defined by New Brunswick's *Electronic Transactions Act*, and Tenders submitted by corporations shall be signed by a duly authorized officer of the Corporation.
- 1.5 In the event that the Tenderer is a partnership or joint venture, it shall submit with its Tender, a power of attorney executed by all the general partners or venturers, designating and appointing one of the general partners or venturers as a management sponsor, and authorizing the management sponsor to sign the Tender on behalf of the Tenderer, to act for and bind the Tenderer in all matters relating to the Tender and, in particular, to agree that each partner or venturer shall be jointly and severally liable for any and all of the duties and obligations of the Tenderer assumed under the Tender and the Contract if awarded. The Tender shall be signed on behalf of the partnership or joint venture in its legal name by the management sponsor. A certified copy of a resolution of the sponsor company, indicating the authority of the person or persons signing on behalf of the Tenderer, shall be furnished with the Tender.
- 1.6 The *Construction Remedies Act* (New Brunswick) is now in effect and will apply to this contract.

2. CONSTRUCTION SERVICES REGULATION - *PROCUREMENT ACT*

- 2.1 The provisions of the *Procurement Act* and the Construction Services Regulation made thereunder apply to this Contract, and the attention of prospective Tenderers is expressly called to such provisions, including the various reasons for rejecting Tenders.
- 2.2 The Articles of Agreement, Terms of Payment "A" and General Conditions "B" of the Standard Construction Contract are not bound herein but may be viewed at www.nbpower.com/en/about-us/purchasing-tenders. The signed Contract between the Owner and the successful Tenderer shall be in either the Short Form Contract or the Standard Construction Contract as applicable.
- 2.3 Subsections (1) and (2) of section 92 of the Construction Services Regulation is printed in these instructions for the convenience of Tenderers, but it is the responsibility of Tenderers to acquaint themselves with all provisions of the Act and Regulations.

- 92(1) Subject to section 93, the person designated to open bid submissions shall reject a bid submission for any of the following reasons:
- (a) the bid submission is not signed;
 - (b) the bid submission is not accompanied by a bid bond or a bid security deposit in the form and in the amount required by the solicitation documents;
 - (c) if more than one item is being procured, the bid submission does not contain a total price if one was required by the solicitation documents; or
 - (d) the bid submission is illegible.

92(2) If a prospective contractor submits more than one bid submission and they are not marked as alternative submissions, the last bid submission received prior to closure of the solicitation period shall be accepted, and all other bid submissions from that prospective contractor shall be rejected.

2.4 Pursuant to section 93 of the Construction Services Regulation, the Owner may allow a Tenderer whose bid submission would otherwise be rejected for the reasons set out in subsection 92(1), to rectify the bid submission within two (2) working days of receiving a request from the Owner.

2.5 Copies of the Act and Regulations are available on the Government of New Brunswick website.

3. ACCEPTANCE OF A TENDER

3.1 A Tender may be accepted by an email of acceptance sent by a duly authorized representative of the Owner, which shall be effective as of the time of emailing.

3.2 The acceptance of a Tender shall bind the successful Tenderer to execute a formal contract, a specimen agreement of which is referenced in the Tender Document on Page 1 in the Table of Contents.

3.3 A purchase order for the Work shall be issued by the Owner for accounting purposes only and nothing therein shall have the effect of altering any of the terms of the executed Contract. However, the Contract can be changed or modified upon approval by the Owner's Representative by subsequent Change Orders.

4. REJECTION OF A TENDER

4.1 The Tenderer acknowledges that the Owner shall have the right to reject any, or all Tenderers for any reason, or to accept any Tender which the Owner in its sole unfettered discretion deems most advantageous to itself. The lowest price or any Tender will not necessarily be accepted and the Owner shall have the unfettered right to:

- a) Accept a Tender which is not the lowest price Tender;
- b) Reject a Tender that is the lowest price Tender even if it is the only Tender received; and
- c) Reject a Tender that is the highest price Tender even if it is the only Tender received.

4.2 In no event will the Owner be responsible for the costs of preparation or submission of a Tender.

4.3 **Tenders which contain exceptions to, or otherwise fail to comply to the Tender Document including contract terms and conditions, may be rejected.** Pursuant to section 97 of the Construction Services Regulation - *Procurement Act*, the Owner may waive any minor non-compliance with the Tender Document and may at its sole discretion consider as compliant, Tenders which are non-compliant but substantially contain the content and form required by the Tender Document or substantially comply with the process for submissions of Tenders set out herein. A waiver by the Owner under this Subsection 4.3 shall be final and binding and Tenderers, by submitting Tenders, accept that such determination by the Owner may not be challenged in any judicial forum for any reason whatsoever.

4.4 The Owner has the right to reject a Tenderer's Tender on the basis of a poor safety performance on a previous contract with the Owner.

5. ENQUIRIES

5.1 All enquiries regarding the Tender Document shall be in writing **by email only**, and addressed as indicated in the RFQ and must include the following information: Buyer and RFQ #.

5.2 **Questions or any clarification requests by the Tenderer may be submitted to the Owner, a minimum of seven (7) calendar days prior to the closing date of this Request for Tender document. Questions or clarification requests that are submitted within the six (6) calendar days prior to the closing date may not be considered.**

6. INTERPRETATION

No oral interpretation shall be made to any of the Tender Documents, or be effective to modify any of the provisions of the Tender Documents. Every request for an interpretation shall be made in writing, addressed, and forwarded as described in Section 5 – Enquiries.

7. OMISSIONS AND DISCREPANCIES

7.1 Should the Tenderer find discrepancies in, or omissions from the drawings or other Tender Documents, or should it be in doubt as to their meaning, the Tenderer should at once make an enquiry in accordance with Section 5 - Enquiries.

7.2 The Tenderer shall be solely responsible for any errors, omissions or misunderstandings resulting from the Tenderer's failure to make a thorough examination of the Site. The Tenderer shall obtain all required information and shall not claim at any time after the submission of the Tender or the subsequent execution of a Contract that there was any misunderstanding with regard to the conditions imposed by the Contract.

7.3 Mention within the specification or indication on the drawings, of articles, Materials, operations or methods, requires that the Contractor provide each item mentioned or indicated, perform each operation prescribed and provide all necessary labour, Plant, Materials, equipment and incidentals for the complete and proper installation, and safe operation of the Work, DDP Incoterms 2020 Site.

8. ALTERNATIVES TO THE TENDER DOCUMENT

8.1 The Tenderer is instructed to Tender in accordance with all technical and commercial requirements of the Tender Document to be compliant.

8.2 An alternative Tender Submission may be considered if it is submitted separately and in addition to a Tender submitted in accordance with the Tender Document. Alternative Tender Submissions will not be considered in the evaluation of compliant Tenders.

8.3 If alternatives are offered, the Tenderer shall state clearly wherein the Material and equipment offered is not in accordance with the Tender Document, why such alternatives are offered and how, in the Tenderer's opinion, these alternatives shall benefit the Owner.

8.4 The Owner shall not respond to any request for alternatives prior to the Award of Contract and shall only consider an alternative Tender Submission from the successful Tenderer.

9. ADDENDA

Any interpretation of, or change in the Tender Document prior to the latest date specified for receipt of Tenders, shall be made by addenda issued by the Owner via electronic means of Owner's choosing, and such addenda shall become part of the Tender Document. No other interpretation or explanation shall be valid. **It is the sole responsibility of the Tenderer to receive notifications/addenda from the New Brunswick Opportunities Network (NBON) website. Reasons for not having received a notification/addendum posted on the NBON website shall not be accepted as valid reasons for, or otherwise operate to excuse, non-compliance with addenda.**

10. SITE CONDITIONS AND INVESTIGATIONS

10.1(a) The Tenderer shall have a personal knowledge of the location of the proposed Work and shall be deemed to have made a careful examination of the Site of the Work so as to satisfy itself as to the working conditions, the nature and extent of the Work to be done, the special risks, if any, associated therewith, the obstacles or difficulties likely to be encountered, and any other matters and items which are necessary or desirable to gain a proper understanding of the Work and the conditions under which it shall be performed.

10.1(b) The Tenderer shall familiarize itself with and adhere to any and all applicable COVID-19-related regulations, restrictions, orders, directives and other publicly available information from the Province of New Brunswick as well as any and all of the Owner's applicable corporate policies current as of the date of the Tender Submission respecting COVID-19 (the "COVID-19 Documentation").

10.2 If the Tenderer requires additional information or explanation concerning any apparent or possible conflict, discrepancy or omission in the Tender Documents or any other data furnished by or obtained from the Owner relating to the Work, the Tenderer shall apply for the same as described in Section 5 - Enquiries.

10.3 The Tenderer shall be solely responsible for any errors, omissions or misunderstandings resulting from the Tenderer's failure to make a thorough examination of the Site. The Tenderer shall obtain all required information and shall not claim at any time after the submission of the Tender or the subsequent execution of a Contract that there was any misunderstanding with regard to the conditions imposed by the Contract.

10.4 While attending the Site Conditions and Investigation meeting, Tenderers shall adhere to any and all applicable COVID-19-related regulations, restrictions, orders, directives and other publicly available information from the Province of New Brunswick as well as any and all of the Owner's applicable corporate policies respecting COVID-19.

10.5 The Tenderer shall be aware that the Contractor's employees shall be required to attend orientation meetings conducted by the Owner and shall include in its price for a minimum of four (4) hours for each employee for attendance at such meetings.

11. TENDER PRICE(S)

11.1 General

11.1.1 Tender Prices shall be firm in Canadian funds and shall include all supervision, labour, Plant, Materials (except as otherwise specified), equipment, personal safety equipment, tools, fuel, consumables, indirect costs, insurance, Workers' Compensation, Vacation Pay Assessments, Canada Pension Plan, Employment Insurance, and all other payroll burdens; together with all applicable freight, and duty; the Contractor's overhead and profit; cost of bonds and any other costs detailed or implied in these documents including National Maintenance Council related fees if applicable. HST collectable from the Owner by the Contractor shall not be included in the Tender Price. Tender Prices must, and will be deemed to, include and account for all costs related to or arising from compliance with the COVID-19 Documentation.

11.1.2 Where applicable, withholding taxes may be applied to non-resident Contractors. (Reference Instructions to Tenderers, Section 23.)

11.2 **Fixed Price Breakdown**

11.2.1 The Fixed Price Breakdown for permanent Material shall include, but not be limited to, the supply of all supervision, labour, Plant, equipment and Materials required for the designing, fabricating, manufacturing, painting, shop testing, transporting to the Site and storing of all Material to be permanently installed.

11.2.2 The Fixed Price Breakdown for installation shall include, but not be limited to, the supply of all supervision, labour, Plant, transportation from site storage, consumables, equipment and all Work necessary for the installation and testing of all permanent Material.

11.2.3 The trade labour hours are the on-site hours required for the installation of each breakdown item.

11.3 **Unit Price Items**

The Owner reserves the right to increase or decrease the quantity of unit price items.

12. **BID SECURITY**

12.1 **General**

12.1.1 The Tender shall be accompanied by a scanned copy of a Bid Security Deposit, or an electronic Bid Bond or scanned copy of a Bid Bond, in Canadian funds in an amount equal to or greater than ten percent (10%) of the Total Tender Price.

12.1.2 Where a scanned copy of a Bid Security Deposit is provided, the provisions in Subsections 12.2, 12.3 and 12.7 shall apply.

12.1.3 Where an electronic Bid Bond or a scanned copy of a Bid Bond is provided, the provisions in Subsections 12.4, 12.5 and 12.6 shall apply.

12.2 **Scanned Copy of Bid Security Deposit**

12.2.1 The Bid Security Deposit shall be in the form of a **scanned copy** of a certified cheque or negotiable securities made payable to the New Brunswick Power Corporation. The Owner must receive the original Bid Security Deposit prior to Award of Contract.

12.2.2 The original Bid Security Deposit of the successful Tenderer shall be held by the Owner as security for the due performance of the Work by itself in accordance with the Contract, and may be dealt with by the Owner in its discretion.

12.3 **Forfeiture of Bid Security Deposit**

12.3.1 Any Tenderer whose Tender shall be accepted shall be required to commence the Work on the date specified in the Contract Documents.

12.3.2 Failure to commence Work shall constitute a breach of this Contract. The amount of the original Bid Security Deposit of such Tenderer shall be retained by the Owner as liquidated damages for such breach. In the event any Tenderer whose Tender is accepted shall fail or refuse to commence Work, or fail or refuse to complete the Work as herein provided, the Owner may, at its option, elect to treat the Contract as repudiated and give written notice of such election to the Tenderer and thereupon the Owner shall be entitled to liquidated damages as above provided.

12.4 **Electronic Bid Bond or Scanned Copy of Bid Bond**

12.4.1 The electronic Bid Bond or scanned copy of the Bid Bond shall be submitted with the Tender Submission and shall be executed in favour of New Brunswick Power Corporation. The Owner must receive the original Bid Bond or be able to verify the electronic Bid Bond's authenticity prior to Award of Contract.

12.4.2 All such electronic Bid Bonds shall be deleted after the Tenders are opened, except those which the Owner elects to hold until the successful Tenderer has furnished the required electronic Performance, and electronic Labour and Material Payment Bonds and executed the Articles of Agreement. Thereafter all remaining electronic Bid Bonds, including any received from the successful Tenderer, shall be deleted and any original Bid Bond from the successful Tenderer shall be returned promptly.

12.4.3 A Bid Bond submitted pursuant to this Section shall provide that if the Tenderer is awarded the Contract, an electronic Performance Bond and an electronic Labour and Material Payment Bond shall be supplied to the Owner in accordance with 12.5.

12.5 **Performance Guarantee**

12.5.1 Upon Award of Contract, the successful Tenderer shall, within fourteen (14) calendar days of notification provide an electronic Performance Bond and an electronic Labour and Material Payment Bond each equal to at least fifty percent (50%) of the value of the accepted Tender. The bonds shall be executed in favour of the New Brunswick Power Corporation and the bonds' authenticity shall be verifiable by the Owner. The electronic Performance Bond and the electronic Labour and Material Payment Bond will be required in the forms listed in subsections 12(19) and 12(18) of Regulation 2021-81 under the *Construction Remedies Act*.

12.5.2 The bonds shall be a guarantee of proper performance of the Contract and of payment of the obligations of the Contractor, and shall be worded in a manner that is acceptable to the Owner.

12.5.3 Should the successful Tenderer fail to comply with the provisions of Subsection 12.5.1, the Owner shall consider such action as a refusal to enter into a Contract.

12.6 **Refusal to Perform**

12.6.1 Any Tenderer whose Tender is accepted, shall be required to commence the Work on the date specified in the Contract Documents.

12.6.2 Failure to commence Work shall constitute a breach of this Contract. In the event any Tenderer whose Tender is accepted shall fail or refuse to commence Work, or fail or refuse to complete the Work as herein provided, the Owner may, at its option, elect to treat the Contract as repudiated and give written notice of such election to the Tenderer and thereupon the Owner shall be entitled to notify the Surety Company and to make claim under the terms of the Bid Bond or the Performance Bond.

12.7 **Security Deposit Release**

Upon the expiration of sixty (60) days from the date of issuance of the Final Certificate of Completion or thirty (30) days after the Contractor has delivered to the Owner an invoice, for the balance owing under the Contract, showing the method by which the amount claimed therein was calculated, whichever is the later date, and if the Contractor has made and delivered to the Owner its Statutory Declaration or proof of payment, if required by the Owner, verifying the fact that all its lawful obligations and lawful claims against it, arising out of the Work have been discharged and satisfied and providing that there is no outstanding warranty or maintenance agreement, the Security Deposit shall be released.

13. **SUBCONTRACTING**

The Tenderer shall provide with its Tender, or within two (2) working days of receiving a request from the Owner, the following information in the Tender Submission:

- a) A list of all activities, and the scope of each activity, associated with the Work which the Tenderer proposes to subcontract, the proposed Subcontractor for each activity, and the experience and qualifications of the Subcontractor for the scope of Work.
- b) A list of all Materials and equipment which the Tenderer proposes to purchase for the Work and the proposed supplier for each item.

14. **EQUIPMENT SCHEDULE**

The Tenderer shall submit with its Tender or within two (2) working days upon request from the Owner a comprehensive equipment schedule listing details of all construction equipment which the Tenderer proposes to use to properly execute the Work.

15. **SUMMARY SCHEDULE**

If required by the Owner in the RFQ, the Tenderer shall submit one (1) copy of a Summary Schedule with its Tender or within two (2) working days upon request from the Owner.

16. **JOB SUPERVISORY PERSONNEL**

16.1 The Tenderer shall submit with its Tender or within two (2) working days of receiving a request from the Owner, a copy of a resume of satisfactory experience of its proposed job supervisory personnel.

16.2 If required by the Owner, the Contractor shall appoint a site superintendent and a safety representative for the duration of the project.

17. **TENDERER'S PREVIOUS EXPERIENCE**

17.1 The Tenderer shall submit with the Tender, or within two (2) working days of receiving a request from the Owner, a copy of a list of successful projects contracted by the Tenderer and similar in scope to the Work of this Tender Document.

17.2 The listing shall include the project name, location, contract value, contract date or date of commencement of Work and a note as to whether the contract is complete or in progress.

17.3 Only Tenderers capable of providing adequate proof of ability to provide an acceptable quality assurance program, a safe working environment, appropriate management and supervisory staff, labour, equipment and the financial resources to perform the Work in a timely manner, in the Owner's sole unfettered discretion, will be considered.

17.4 By submitting a Tender, the Tenderer gives the Owner permission to contact any organizations for whom the Tenderer has performed Work, in order to obtain information pertaining to timely completion, quality, methods and other matters relating to Work performed or being performed by the Tenderer.

18. INSURANCE

- 18.1 The Tenderer shall submit with its Tender or within two (2) working days of receiving a request from the Owner, information pertaining to its liability and automobile insurance which shall include the name and address of the insurance agent(s), the amount(s) of insurance, the policy number(s) and the expiry date(s).
- 18.2 Upon Award of Contract, the successful Tenderer shall, within fourteen (14) calendar days of notification, provide proof of insurance coverage for the type of risk and in the amount specified herein.

19. EVALUATION CRITERIA

- 19.1 In evaluating compliant Tenders, price with offered discount (Instructions to Tenderers, Section 33) will be the only criterion. However, the Owner will also consider among other items in this Tender Document the following items in order to determine whether the Tender is compliant:
- a) Safety Policy, Program and Safety Performance (Instructions to Tenderers, Sections 21 and 22).
 - b) Past Experience of Similar Work by the Contractor and Proposed Subcontractors (Instructions to Tenderers, Sections 13, 16 and 17).
 - c) Owner's Experience with previous contracts with the Tenderer including safety issues (Instructions to Tenderers, Section 31).
 - d) Acknowledgement and agreement to comply in all respects with Supplementary General Conditions "C", Section 1 - Safety Regulations.
 - e) Pursuant to section 38 of the Construction Services Regulation - *Procurement Act*, this procurement process shall be limited to New Brunswick contractors ONLY.
- 19.2 By submitting a Tender, the Tenderer acknowledges and accepts that the Owner, using its sole unfettered discretion, will consider non-price criteria first, based upon the Tender requirements, Owner experience and the information submitted with the Tenders. The information submitted by the Tenderers will be considered by the Owner's evaluation team to determine if, in the Owner's opinion, the Tenderer is capable of performing the Work safely and in compliance with the Tender requirements. Only those Tenders considered capable and compliant will be further considered.
- 19.3 All acceptable Tenderers will be evaluated fairly, in the same manner, by the same evaluation team using the same evaluation criteria, on the basis of their submitted Tenders.
- 19.4 In the event the Owner encounters a tie bid from two Tenderers respecting a Tender, the tie shall be broken by conducting a coin toss. The coin toss shall be administered by the Manager of Procurement or their designate using a Canadian coin, with one Tenderer choosing "heads" depicting the face of the monarch and the other side of the coin being "tails". The individual administering the tie-breaker shall show each of the Tenderers the coin to be used in advance of the coin toss should they be present and first choice of "heads" or "tails" shall go to the Tenderer who first submitted their bid respecting the Tender.
- 19.4.1 Once selections have been audibly registered with and verbally confirmed by the individual administering the tie-breaker with each Tenderer present, the coin toss shall ensue and the result shall be announced with the result also being shown to each Tenderer should they be present. Following this process, the individual administering the tie-breaker shall announce the successful Tenderer based on the outcome of the coin toss and neither Tenderer shall have resort to further challenging the outcome of the tie-breaker. Whether the tie-breaker is conducted in person or via electronic or teleconferencing means is a decision that resides in the sole discretion of the individual administering the tie-breaker. Should one Tenderer or both Tenderers decline to participate in and/or decline to attend the tie-breaker, the individual administering the tie-breaker shall assign "heads" to one Tenderer and "tails" to the other, as the context requires, and shall otherwise conduct the coin toss in accordance with the procedure identified above.

20. NON-NEW BRUNSWICK WORKERS/FOREIGN WORKERS

- 20.1 **Foreign Workers:** Only Canadian citizens and legal permanent residents have the right to work in Canada. Contractors or visitors who wish to work in Canada require an employment authorization in the form of a Visa, or authorization from an Immigration Officer with the Canada Employment Centre. It is the responsibility of the Tenderer to ensure that, if awarded the Contract, such authorization is to be obtained prior to its workers' arrival at the Canadian border. Otherwise, the successful Tenderer's foreign workers may be denied entry into Canada notwithstanding the prior acceptance of the Tender by the Owner.
- 20.2 **Non-New Brunswick Workers:** Though Canadian citizens who reside in another province or territory within Canada have the right to work in New Brunswick, certain restrictions may apply respecting the movement of such individuals from one province or territory to another for work purposes.
- 20.3 The Tenderer's bid should be formulated with a full understanding and appreciation of all COVID-19-related rules, regulations, orders, directives or requirements established or amended by the Government of Canada or the Province of New Brunswick which apply to foreign workers or non-New Brunswick workers.

21. WORKSAFENB

- 21.1 The Tenderer shall submit with its Tender, or within two (2) working days of receiving a request from the Owner, a letter from WorkSafeNB stating that it has filed a statement of wages for that year as prescribed by the *Workers' Compensation Act* R.S.N.B. 1973 Chapter W-13 and that its account is in good standing.
- 21.2 The Tenderer shall submit with its Tender, or within two (2) working days of receiving a request from the Owner, a copy of WorkSafeNB Experience Rating Statement and/or the equivalent statement for the jurisdiction in which the Tenderer works.

22. SAFETY POLICY, PROGRAM AND RECORD

- 22.1 The successful Tenderer shall comply, at its own expense, with the *Occupational Health and Safety Act* and Regulations of New Brunswick that pertain to the Work and any other written instructions from the Owner relating to safety.
- 22.2 The Tenderer shall submit with its Tender or within two (2) working days upon request from the Owner its safety policy, program and a satisfactory safety record over the past three (3) years. These documents must also be submitted for all Subcontractors.
- 22.2.1 Every Tenderer with twenty (20) or more employees regularly employed in the province shall establish a written safety policy. The safety policy shall set out the responsibilities of the Tenderer and its employees.
- 22.2.2 Every Tenderer with twenty (20) or more employees regularly employed in the province shall establish a written health and safety program or a valid Certification of Recognition (COR) of its health and safety program that includes provisions with respect to the following matters:
- (a) The training and supervision of its employees in matters necessary to their health and safety;
 - (b) The preparation of written work procedures and codes of practice for the implementation of health and safety work practices, required by the *Occupational Health and Safety Act*, the Regulations or by any order made in accordance with this Act;
 - (c) The identification of the types of work for which the work procedures are required at the places of employment of the Tenderer;
 - (d) A hazard identification system that includes:
 - (i) evaluation of the place of employment to identify potential hazards,
 - (ii) procedures and schedules for inspections, and
 - (iii) procedures for ensuring the reporting of hazards, prompt follow-up and control of the hazards;
 - (e) A system for the prompt investigation of hazardous occurrences to determine their causes and the actions needed to prevent recurrences;
 - (f) A record management system that includes reports of the Tenderer's employee training, accident statistics, work procedures and health and safety inspections, maintenance, follow-up and investigations; and
 - (g) Monitoring the implementation and effectiveness of the program.
- 22.2.3 At the request of the Owner, and for the duration of the Contract, the successful Tenderer shall provide all information related to its safety performance and its proposed Subcontractors' safety performance within five (5) working days of the request.

23. WITHHOLDING TAX

The Canadian *Income Tax Act*, Section 153 and Income Tax Regulation 105 requires the Owner to withhold 15% from a non-resident Contractor invoicing **for work performed in Canada**, unless the Contractor has obtained a waiver of withholding taxes in writing from Canada Customs and Revenue Agency. This amount shall be withheld from every payment made to the Contractor by the Owner for Work performed in Canada.

24. ADDITIONAL INFORMATION REQUESTED WITH TENDER SUBMISSION

The Tenderer shall provide details with its Tender, or within two (2) working days of receiving a request from the Owner all information which may be requested elsewhere in this Tender Document.

25. INTERNATIONAL SALE OF GOODS ACT

The *International Sale of Goods Act*, S.N.B.2011, Chapter 177, shall have no application and shall be of no force and effect with respect to the formation of the contract of sale hereunder, nor shall it apply to the rights and obligations of the seller and buyer arising from such contract.

26. WAIVER

By submitting a Tender, the Tenderer acknowledges the Owner's rights under this Tender and absolutely waives any right, or cause of action against the Owner, its officers, directors, employees and or agents by reason of the Owner's failure to accept the Tender submitted by the Tenderer, whether such right or cause of action arises in contract, negligence, or otherwise. Such a waiver shall be final and binding and Tenderers, by submitting Tenders, accept that such determination by the Owner may not be challenged in any judicial forum for any reason whatsoever.

27. DELAY IN COMPLETION

If the Contractor fails to complete any part of the Work within the time fixed therefore by the Contract, or any extension of time granted under the Contract, there shall be deducted from the Contract Price, a sum equivalent to one (1) percent of the Contract Price per day of delay in completion.

28. SEPARATE CONTRACTS

Tenderers are requested to quote on any one or more of the areas (segments) of Work in accordance with the Tender Submission(s). The Owner reserves the right to award a contract to more than one Contractor for the Work described in this Tender Document.

29. CHANGES IN THE WORK

29.1 The Owner may, without invalidating the Contract, direct the Contractor to make changes in the Work

29.2 When a change causes an increase or decrease in the Work, the Contract Price shall be increased or decreased by the application of unit prices to the quantum of such increase or decrease or, in the absence of applicable unit prices, by an amount to be agreed upon between the Contractor and the Owner.

29.3 Changes in the Work shall not proceed without written authorization from the Owner.

30. NATIONAL MAINTENANCE AGREEMENT (NMA) (FOR GENERATION PLANT MAINTENANCE)

30.1 Field Labour Conditions under this Contract shall be executed pursuant to the Collective Agreement between the National Maintenance Council for Canada and contractors working on maintenance, repair, revamp, renovation and upkeep of all generating stations owned by the New Brunswick Power Corporation, which agreement is known as The National Maintenance Agreement. **The Contractor must be a signatory to this Agreement.** This Agreement is not bound herein, but may be viewed at website: www.nbpower.com/en/about-us/purchasing-tenders.

30.2 The Contractor shall familiarize itself with this Agreement and note that a pre-job conference, prior to the commencement of Work, may be required with representatives from the Owner and other parties signatory to the National Maintenance Agreement.

31. OWNER'S EXPERIENCE

Where the Owner has experienced unsatisfactory performance by the Tenderer in a previous contract, such as the Tenderer not being available when required or otherwise having made default or delayed in commencing or in diligently and safely executing the Work or any portion thereof, whether that previous contract has been terminated for cause or not, the Owner may reject the Tender.

32. ESTIMATED QUANTITIES

The quantities given are estimates only. The Owner makes no guarantee of the accuracy of the estimate, and quantities shall be governed by the Owner's actual requirements. It must be recognized that actual quantities, which shall be the basis of payment, may be less than or may exceed these quantities. The Contractor shall have no entitlement to claim for additional compensation due to variation in actual quantities as compared to estimated quantities.

33. DISCOUNTS

33.1 Terms of Payment

33.1.1 The Owner's standard Terms of Payment require the Owner to pay the successful Tenderer net thirty (30) days after receipt of an acceptable invoice. The Owner is prepared to pay earlier however, if the Tenderer is willing to apply a corresponding discount to its invoiced amounts and submit invoices via e-mail to APElectronicInvoice@nbpower.com as soon as the invoices are issued.

33.1.2 The Tenderer shall indicate which, if any, alternative terms of payment are acceptable, or may propose an alternative term of payment, which the Owner is under no obligation to accept:

Discount 3% net 10 Days yes / no

Discount 2% net 15 Days yes / no

Discount 1% net 20 Days yes / no

PROPOSED: Discount ____% net ____ Days

Payments if not discounted will be made Net 30 Days

33.1.3 Discount offered in this Section will be considered in addition to the Tender Price in evaluating the price referenced in Instructions to Tenderers, Section 19.

34. BANKING INFORMATION

Contractor banking information must be supplied to the Owner in order to receive payment. The Contractor must have a bank account in the same currency as specified in the Contract Documents. Payments will only be made by direct deposit and will be made at the end of each month (unless stated otherwise elsewhere in the Contract Documents).

35. CONTRACTOR INFORMATION MANAGEMENT SYSTEM

35.1 In addition to the requirements set out in Subsection 22.2.3, the successful Tenderer, upon Award of Contract, shall subscribe to the Contractor Information Management System for the duration of this Contract at its sole expense. The Contractor shall provide the necessary information to achieve and maintain for the duration of this Contract a satisfactory rating from the Contractor Information Management System. The successful Contractor shall satisfy this requirement as soon as reasonably possible but no later than thirty (30) days after Award of Contract. (See also Supplementary General Conditions “C”, Section 1 - Safety Regulations.)

35.2 Should this Contract have a duration of less than thirty (30) days, the Contractor shall have subscribed to the Contractor Information Management System prior to tendering on future Tenders issued by the Owner and, if awarded a future contract, shall provide the necessary information to achieve and maintain a satisfactory rating from the Contractor Information Management System no later than one (1) month after Award of Contract. (See also Supplementary General Conditions “C”, Subsection 23.2.8.)

35.3 The Contractor Information Management System is ISNetworld and may be contacted by electronic mail at website: www.isnetworld.com.

35.4 The Tenderer’s bid should be formulated with all associated subscription costs in mind, and shall include such costs.

36. CYBERSECURITY

36.1 The Owner adheres to strict cyber and technological security policies and requirements. To demonstrate this commitment, the Owner regularly updates and monitors its cybersecurity systems. Cybersecurity allows a company to better manage and minimize risks, which include but are not limited to, cyber-attacks, malware, and unauthorized disclosure of confidential information.

36.2 It is essential that providers of goods and services and contractors understand this commitment as they conduct business with the Owner, and that, when necessary, also take all appropriate measures and due diligence to ensure NB Power Information is secure, and that any risk to the Owner is minimized through a contractors’ own cyber/technological security system(s).

36.3 The Owner expects contractors to maintain updated cybersecurity systems and in the event the successful Contractor experiences a Security Incident the successful Contractor must notify the Owner immediately.

36.4 Moreover, the Owner reserves the right to inspect and/or audit a contractor’s cybersecurity system at any point during the contract and to request the contractor make changes to and/or update its protection where and when necessary. Should a contractor fail to maintain adequate cybersecurity systems, the Owner retains the right to cancel or suspend the contract at any time.

37. DEBRIEFING

An unsuccessful Tenderer may request a debriefing on the evaluation of its bid submission with the Owner following execution of a contract with the successful Tenderer.

1. SAFETY REGULATIONS

- 1.1 The Contractor shall comply, at its own expense, with the *Occupational Health and Safety Act* (OHSA) and Regulations of New Brunswick that pertain to the Work and any other written instructions from the Owner relating to safety.
- 1.2 All Contractor staff working at the Site, interfacing with the Owner's customers or working on Owner's property or physical infrastructure, including but not limited to proper and fixed equipment, shall comply with all applicable Owner standards, codes, directives, policies, procedures guidelines and other governing documents including but not limited to Owner safety directives (including COVID-19 related policies and procedures) and the Owner's *Code of Ethics* and *Respectful Workplace Policy*. Moreover, any mandatory requirements issued by the Province of New Brunswick or Government of Canada (or, to the extent applicable, by any regulatory board or agency created by the Province of New Brunswick or Government of Canada) by legislation, regulation, directive or order in respect of Owner's employees or operations, as may be amended from time to time, shall apply with equal effect to all Contractor staff working at the Site, interfacing with the Owner's customers or working on the Owner's property or physical infrastructure, including but not limited to proper and fixed equipment.
- 1.3 Contractor acknowledges that modifications and updates may be made from time to time in relation to the items identified more fully in 1.2 and agrees that it is its responsibility and obligation to remain current respecting those modifications and updates and to remain in full compliance with same at all times.
- 1.4 At the request of the Owner, and for the duration of the Contract, the Contractor shall provide all information related to its safety performance and its Subcontractors safety performance within five (5) working days of the request.
- 1.5 In addition to the requirements set out in Subsection 1.4, the Contractor shall subscribe to the Contractor Information Management System for the duration of this Contract at its sole expense. The Contractor shall provide the necessary information to achieve and maintain for the duration of this Contract a satisfactory rating from the Contractor Information Management System. The Contractor shall satisfy this requirement as soon as reasonably possible but no later than thirty (30) days after Award of Contract. The Contractor Information Management System is ISNetworkworld and may be contacted by electronic mail at website: www.isnetworkworld.com.
- 1.5.1 Should this Contract have a duration of less than thirty (30) days, the Contractor shall have subscribed to the Contractor Information Management System prior to tendering on future Tenders issued by the Owner and, if awarded a future contract, shall provide the necessary information to achieve and maintain a satisfactory rating from the Contractor Information Management System no later than one (1) month after Award of Contract. (See also Supplementary General Conditions "C", Subsection 23.2.8.)
- 1.6 During the performance of the Work if, in the Owner's sole determination, the Contractor's compliance with the applicable safety programs and practices is not satisfactory, or if the Contractor has not complied with Subsection 1.5 or Subsection 1.5.1 as applicable, the Owner may require the Contractor, at its own expense, to take such additional steps as are necessary to ensure compliance including but not limited to the requirements set out in Subsection 1.7 and Subsection 1.8.
- 1.7 The Contractor shall, upon request by the Owner, engage a third party to conduct a safety assessment of the Contractor's activities. The assessment shall be performed by a reputable and experienced safety consultant and will employ standards and methods that are industry best practices. The assessment will include a comprehensive review of the Contractor's current safety practices, identification of any deficiencies, recommendations for improvement and a comprehensive training program to implement all recommendations.
- 1.8 The Contractor shall review the assessment findings with the Owner within five (5) days of receipt of the assessment and come to an agreement with the Owner as to a reasonable timeframe to implement the recommendations. In the event the Contractor fails to implement all the recommendations within the agreed timeframe, the Owner shall be entitled to terminate the Contract for default.

2. PURCHASE ORDER

A purchase order for the Work shall be issued by the Owner for accounting purposes only and nothing therein shall have the effect of altering any of the terms of the Contract.

3. FORCE MAJEURE

- 3.1 Neither party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations is delayed, hindered, or prevented by force majeure. Force majeure shall be any cause beyond the control of the parties hereto which they could not reasonably have foreseen and guarded against.
- 3.2 Force majeure includes, but is not limited to acts of God, strikes, lockouts, fires, riots, floods, incendiarism, epidemics, pandemics, interference by civil or military authorities and compliance with the regulations or order of any government authority, and acts of war (declared or undeclared).
- 3.3 If the Contractor claims that it has been or will be delayed by reason of force majeure in the progress of the Work, the Contractor shall, within one week of the happening of the force majeure event, make a written request to the Owner's Representative for an extension of time within which to complete the Work or any portion of it. The request shall state the reasons for the delay, and the amount of additional time the Contractor considers necessary. If the Owner's Representative considers the claim to be valid, the Owner's Representative may

grant whatever extension of time it considers reasonable, without thereby prejudicing the Owner's rights or in any manner affecting the validity of the Contract. No extension of time shall be granted unless the Contractor makes a written request within one week of the happening of the event which it is claimed results in the delay.

3.4 The Contractor shall not have any further recourse or claim against the Owner, nor shall the Contractor have any right of action against the Owner, for loss or damage suffered by reason of such delay.

3.5 Both the Owner and the Contractor shall be prompt and diligent to remove all causes of interruption or delay in the Work, insofar as each is able so to do.

4. USE OF COMPLETED PORTIONS

The Owner shall have the right to take possession of and use any completed or partially completed portions of the Work, notwithstanding the time for completing the entire Work or such portions may not have expired, but such taking possession and use shall not be deemed an acceptance of any Work not completed in accordance with the Contract Documents. If such prior use increases the cost of, or delays the Work, the Contractor shall be entitled to such extra compensation, or extension of time, or both, as the Owner's Representative may determine.

5. CUTTING AND PATCHING

5.1 All cutting, fitting or patching required under the Contract shall be carried out by the Contractor in order that its several parts are made to fit to receive or to be received by the Work of other contractors as shown in, or reasonably implied by, the Contract Documents.

5.2 Prior to the commencement of Work, the Contractor shall inspect existing conditions, including elements which are subject to damage or movement during cutting and patching. The Contractor shall submit a written request, in advance, of beginning cutting or patching which affects:

- (1) Structural integrity of any element of the project;
- (2) Integrity of weather-exposed or moisture-resistant elements;
- (3) Efficiency, maintenance, or safety of any operational element;
- (4) Visual qualities of sight-exposed elements; and
- (5) Work of Owner or separate Contractor.

5.3 The Contractor shall use only new products as specified herein, and properly prepare surfaces to receive patching and finishing. Rigid materials shall be cut using a power saw or core drill. Pneumatic or impact tools shall not be used.

5.4 The Contractor shall fit work to pipes, sleeves, ducts, conduit, and other penetrations through surfaces. The Contractor shall completely seal voids with materials as specified, through full thickness of construction element, at the penetration of fire rated wall, ceiling, or floor construction.

5.5 The Contractor shall provide openings in non-structural elements of Work for penetrations of mechanical and electrical work.

5.6 The Contractor shall refinish surfaces to match adjacent finishes. For continuous surfaces, the Contractor shall refinish to the nearest intersection, and for assembly, the Contractor shall refinish the entire unit.

6. TRANSPORTATION

6.1 The Contractor shall obtain and pay for all permits from the Provincial Department of Transportation and Infrastructure in advance of moving heavy equipment or hauling heavy or oversized loads over Provincial Highways.

6.2 The Contractor shall be responsible for determining the limitations and regulations applying to the rail, wharf, and highway facilities.

6.3 The Contractor shall be responsible for all transportation, mobilization and demobilization costs associated with this contract. The Owner shall not be asked for payment on any transportation associated costs.

7. INTENT

The intent of this Contract is to provide for the Work described herein to be fully completed in every detail for the purpose designated herein, and it is hereby understood that the Contractor, in accepting this Contract, agrees to furnish any and everything necessary for such purposes, notwithstanding any omission in the drawings or Specifications.

8. JOB SUPERINTENDENT

The job Superintendent shall have the responsibility and authority to administer the Contract on the Site in the interest of the Contractor. The Superintendent shall not have any duties which are not directly related to this Contract. Excepting absences for vacation or for business

reasons connected with the administration of this Contract, the Superintendent shall be in attendance on the Site each day of the basic work week.

9. COMMENCEMENT OF WORK

Unless otherwise directed by the Owner's Representative, the Contractor shall commence the Work upon execution of the Contract. Unless otherwise specified by the Owner's Representative, the Work shall continue without interruption and the Work shall be completed within the time specified, further referenced in the RFQ.

10. COMPLETENESS OF DOCUMENTS

10.1 The Contractor shall ensure that it and its Subcontractors are in possession of all parts of all documents listed or referenced in the Contract Documents as are required for performance of the Work.

10.2 Should the Contractor find discrepancies in, or omissions from the documents, it shall at once advise the Owner's Representative.

11. THIRD PARTIES

Nothing in this Contract is intended for the benefit of third parties and no third party may claim for damages or otherwise to enforce any such benefit.

12. PROPER LAW OF THE CONTRACT

12.1 This document shall be regarded as a New Brunswick contract and the laws of the Province of New Brunswick shall govern its interpretation and effect, except that the *International Sale of Goods Act*, S.N.B.2011, Chapter 177, shall have no application and shall be of no force and effect with respect to the formation of the contract of sale hereunder, nor shall it apply to the rights and obligations of the seller and buyer arising from such a contract.

12.2 The Contractor agrees that this Contract supersedes any custom, usage, contract, agreement or term applied by law to the contrary.

13. CONTRACTOR PERFORMANCE

The Contractor's performance will be evaluated on a continuous basis. Quality of service aspects such as performance of Work, compliancy with safety and environmental requirements, courtesy and helpfulness of staff, accuracy and legibility of invoices, etc. will be monitored. In the event the Contractor is unable to deliver on any of the requirements of the Contract, then the Contractor is required to notify the Owner immediately, outlining the problem and the planned action to be taken to resolve it. Periodic meetings may be scheduled between the Contractor's representative and the Owner to review Contractor performance and outstanding issues. At all times, Contractor's performance shall be in full compliance with the requirements set out in Supplementary General Conditions "C", Section 1 - Safety Regulations.

14. SITE CONDITIONS AND INVESTIGATIONS

14.1(a) The Contractor shall have a personal knowledge of the location of the proposed Work and shall be deemed to have made a careful examination of the Site of the Work so as to satisfy itself as to the working conditions, the nature and extent of the Work to be done, the special risks, if any, associated therewith, the obstacles or difficulties likely to be encountered, and any other matters and items which are necessary or desirable to gain a proper understanding of the Work and the conditions under which it shall be performed.

14.1(b) The Contractor shall familiarize itself with and adhere to any and all applicable COVID-19-related regulations, restrictions, orders, directives and other publicly available information from the Province of New Brunswick as well as any and all of the Owner's applicable corporate policies current as of the date of the Tender Submission respecting COVID-19 (the "COVID-19 Documentation").

14.2 The Contractor shall be solely responsible for any errors, omissions or misunderstandings resulting from its failure to have made a thorough examination of the Site. The Contractor shall have obtained all required information and shall not claim at any time that there was any misunderstanding with regard to the conditions imposed by the Contract.

14.3 The Contractor's employees shall attend orientation meetings conducted by the Owner and Contract Price(s) shall include for a minimum of four (4) hours for each employee for attendance at such meetings.

15. OMISSIONS AND DISCREPANCIES

15.1 The Contractor shall be solely responsible for any errors, omissions or misunderstandings resulting from its' failure to have made a thorough examination of the Specifications. The Contractor shall have obtained all required information and shall not claim at any time there was any misunderstanding with regard to the conditions imposed by the Contract.

15.2 Mention within the specification or indication on the drawings, of articles, Materials, operations or methods, requires that the Contractor provide each item mentioned or indicated, perform each operation prescribed and provide all necessary labour, Plant, Materials, equipment and incidentals for the complete and proper installation, and safe operation of the Work, DDP Incoterms 2020 Site.

16. INVOICES

16.1 General

16.1.1 Contractor banking information must be supplied in order to receive payment. The Contractor must have a bank account in the same currency as specified in this Contract. Payments will only be made by Electronic Funds Transfer (direct deposit) and will be made according to the Terms of Payment. Invoices shall be prepared in a format acceptable to the Owner and shall be submitted in accordance with the Terms of Payment. Note: There is zero tolerance for alcohol beverages on expense claims.

16.1.2 Notwithstanding the requirements of the Terms of Payment, the Owner shall pay to the Contractor the approved invoiced amount less applicable holdback net thirty (30) days after receipt of an acceptable invoice, or according to the alternative payment terms confirmed in the Tenderer's submission. Those invoices that do not provide the required information stated, shall be rejected and returned to the Contractor for correction. Invoices must be sent to the attention of Accounts Payable. Note that for accounting and payment purposes, the invoice date on a rejected invoice must be changed to reflect the date that the revised invoice is sent to the Owner.

16.1.2.1 The Owner shall, within twenty (21) days after receipt of the approved progress claim from the Owner's Representative and receipt of the required statutory declaration or proof of payment, pay to the Contractor an amount equal:

- (a) when a Labour and Material Payment Bond was required of and furnished by the Contractor, to ninety-five percent (95%) of the amount of progress claim, or
- (b) to ninety percent (90%) of the amount of the progress claim.

16.1.3 Invoices shall show:

- (1) Owner's purchase order number, progress claim number and Invoice Approver's Name;
- (2) Owner's Contract Name and Contract Document Number;
- (3) Date of the invoice;
- (4) Period covered by the invoice and invoice number;
- (5) Percent complete or completed quantities, as applicable, for each pay item or fixed price breakdown item;
- (6) Contract Price;
- (7) Percent or quantity previously invoiced for each item;
- (8) Total amount claimed on the invoice;
- (9) Amount of holdback to date;
- (10) Amount of Harmonized Sales Tax (HST) on the invoiced amount and HST Number;
- (11) Total amount to be paid.

16.1.4 The Contractor's invoices shall show separately the applicable HST on the value of Work to be paid. The Contractor shall show its HST registration number on all invoices. The precise procedures shall comply with the *Harmonized Sales Tax Act* and Regulations thereunder.

16.1.5 For the amount of HST included in each invoice which is for reimbursement of HST paid to Canada Customs, the Contractor must submit with the invoice a copy of Canada Customs Form B3 which is duly stamped by Canadian Customs Officials.

16.1.6 Unless otherwise directed, the following information shall accompany invoices:

- (a) With the first invoice, a letter from WorkSafeNB stating that the Contractor has filed a statement of wages for that year as prescribed by the *Workers' Compensation Act* and that the Contractor's account is in good standing at the time of billing.
- (b) With every invoice, a Statutory Declaration deposing, or if required by the Owner, documentary proof verifying the fact that all lawful obligations to Subcontractors, employees and suppliers of equipment and Material, including union benefits, in respect of this Contract as at a date not greater than 45 days prior to the date of the invoice have been fully discharged.

16.1.7 The Owner reserves the right, at any time, to request a clearance certificate from WorkSafeNB and/or a Statutory Declaration verifying the above.

16.1.8 Invoices shall be emailed to: APElectronicInvoice@nbpower.com.

16.2 Change Orders

16.2.1 Invoicing for Change Orders shall be included in the progress claims and invoiced with the appropriate assigned reference number, and necessary back-up documentation.

16.2.2 The amount for Change Orders shall be added to or deleted from the Contract Price, and the applicable contractual holdback shall be applied.

16.3 **Invoices for Field Change Authorizations**

16.3.1 Invoices for Field Change Authorizations (FCA) shall not be submitted until the FCA form has been completed and approved by the Owner. Each FCA shall be assigned a number by the Owner and this number shall appear on the invoice for FCA Work.

16.3.2 The value of FCA Work shall be added to or deducted from the Contract Price, and the applicable contractual holdback shall be applied. Invoices for FCA shall be included in the monthly progress invoice and shall include the applicable FCA number(s), and purchase order number.

16.3.3 Invoices for FCA shall be accompanied by, but not limited to, the approved FCA form and all relevant supporting documentation such as copies of time sheets, Material invoices, and Subcontractors' invoices.

16.4 **Invoice for Holdback**

16.4.1 The Contractor shall invoice separately for holdback.

16.4.2 The Owner reserves the right to request a clearance authorization from the surety company for any release of holdback.

16.4.3 Holdbacks will be administered and applied in accordance with Regulation 2021-81 under the *Construction Remedies Act*.

17. **NEWS RELEASES**

Information for publicity of any nature with respect to any facet of the Owner's business or operations or of the Work being performed on the Site by the Contractor or others shall not be released or disclosed.

18. **RELEASE OF CONTRACTOR'S SUPERVISORY STAFF**

The Contractor shall not release any of its supervisory staff from the Site without having obtained approval from the Owner's Representative.

19. **AUDIT**

In addition to General Conditions "B", Section 47, if applicable, the Contractor shall keep proper and detailed accounts and records related to the Work being performed hereunder, including all safety records, as are necessary to determine the Work was carried out in accordance with the Contract and shall at all reasonable times during business hours and upon reasonable notice, make all such records, accounts and other documents available for inspection and audit by the Owner or any authorized representative of the Owner. The Owner shall be permitted to make copies and take extracts from such Contractor accounts and records as necessary for such audit and verification. All such detailed accounts and records shall be preserved and kept available for a period of three (3) years from the completion date of the Work to which the accounts and records pertain.

20. **DEFINITIONS**

In addition to General Conditions "B", Section 1, if applicable:

"Contractor Information Management System" - Means ISNetworld, any successor thereof or any other entity appointed or designated from time to time by the Owner.

"NB Power Information" - For the purposes of these terms and conditions, any and all confidential information concerning the Owner, its customers, and its business in any form, including, without limitation, the terms of the Contract and/or the services provided under this Contract that is disclosed to or otherwise learned by the Contractor during the tender process and during the performance of this Contract.

"Security Incident" - Means any circumstance when the (i) Contractor knows or reasonably believes that NB Power Information has been disclosed and/or compromised to or by a third party; (ii) Contractor knows or reasonably believes that an act or omission has compromised or may reasonably compromise the cybersecurity of the Contractor, or the physical, technical, administrative, or organizational safeguards protecting the Contractor's or the Owner's systems storing or hosting NB Power Information; or Contractor receives any complaint, notice, or communication involving (A) Contractor's handling of NB Power Information or Contractor's compliance with data safeguards, cybersecurity requirements, or applicable laws, in connection with NB Power Information or (B) the cybersecurity of the Contractor.

"Site" - The place or places or the immediate vicinity of such place or places designated by the Owner for the performance of any part of the Work.

21. CYBERSECURITY

The Contractor will adhere to the Owner's cybersecurity policies and requirements. The Contractor will take all appropriate measures and exercise due diligence to ensure NB Power Information is secure, and that any risk to the Owner is minimized through the Contractor's own cybersecurity measures. The Contractor agrees to:

- (a) maintain an updated cybersecurity system in keeping with industry standards;
- (b) where appropriate, require a Subcontractor to also maintain an updated cybersecurity system in keeping with industry standards;
- (c) notify the Owner if they and/or a Subcontractor experience a Security Incident;
- (d) allow the Owner to inspect and/or audit a Contractor or Subcontractor's cybersecurity program at any point during the duration of the Contract and to request the Contractor make changes to and/or update their protection where and when necessary; and
- (e) a termination and/or suspension of this Contract should the Contractor fail to maintain an adequate cybersecurity system.

22. LABOUR REQUIREMENTS

22.1 The Contractor shall conform to the labour laws of the Province of New Brunswick and the various acts amending and supplementary thereto, and to all other laws, ordinances and legal requirements applicable thereto, and in particular, to the Minimum Wage for Categories of Employees in Crown Construction Work Regulation - *Employment Standards Act* in effect at the time the Work is being performed.

22.2 It should be noted that prevailing rates are usually higher than the minimum rates set down in the aforementioned Act.

22.3 The Contractor shall not cause any strike, work stoppage or interruption of Work due to its actions in violation of any applicable collective agreement.

23. SAFETY

23.1 General

23.1.1 The Contractor shall observe and comply with all requirements of the New Brunswick *Occupational Health and Safety Act*, Chapter O-0.2 and its associated Regulations. The Contractor shall also be familiar with and comply with all requirements of the Owner's Standards and/or Work Methods, Corporate Safety Manual, any written instructions from the Owner pertaining to safety and any safety requirements of the New Brunswick Department of Justice and Public Safety, as well as all relevant federal and municipal/civic ordinances.

23.1.2 The Contractor shall take every reasonable precaution and be responsible for the safety of its employees, its Subcontractors and suppliers associated with the Work and shall provide, at its own expense, its employees, its Subcontractors and suppliers with the necessary personal protective equipment and/or apparel.

23.1.3 The Contractor shall appoint one of its capable field staff to act as Safety Inspector for its own forces. This Safety Inspector shall attend job safety meetings and shall co-operate and work with the Owner's Safety Inspector and the Safety Inspectors of other contractors for the betterment of job working conditions and the prevention of accidents.

23.1.4 The Owner shall direct the safety of its own personnel, and in addition, may from time to time, employ a Safety Inspector to audit whether or not the Contractor is complying with all safety requirements as specified. The Safety Inspector shall advise the Superintendent of the Contractor and the Owner's Representative of any unsafe conditions, unsafe work practices or procedures, or any other work situations that may be potentially hazardous. It is clearly understood that the employment of such Safety Inspector by the Owner in no way relieves the Contractor of its responsibility under the Contract for the safety of its operations.

23.1.5 Notwithstanding anything in this Contract that may appear to the contrary, no provision of this Contract shall be interpreted as an assumption by the Owner of any responsibilities of the Contractor under any municipal, provincial or federal statute, regulation, rule or order.

23.1.6 When the Owner provides safety equipment to the Contractor's personnel to replace lost, broken or defective safety equipment, clothing, etc., that the Contractor failed to supply, the Owner reserves the right to charge the Contractor for this safety equipment, and its maintenance and calibration (including cleaning).

23.1.7 Failure to comply with these rules and regulations or any other written instructions from the Owner relating to safety may result in immediate suspension of the Work, without prior written notice, or termination of the Contract.

23.2 Health and Safety Management

23.2.1 The Contractor is responsible for doing its own work safely. The Owner is responsible for ensuring that the surrounding environment controlled by the Owner is safe. The Owner shall fulfill this responsibility and shall take appropriate actions to support the Contractor's safety efforts. Actions will be scaled according to the degree of hazard involved.

23.2.2 The Contractor has a general responsibility to ensure that during the course of its activities, the health and safety of everyone (e.g. employees of the Owner, the Contractor and any Subcontractors at the Site) is protected.

- 23.2.3 Before the start of Work at Site, the Owner and the Contractor shall discuss and agree on a detailed division of responsibility for the health and safety of everyone at the Site.
- 23.2.4 The Contractor shall remove from the Site any of its employees who refuse to conform to the principles outlined in Subsection 23.1.1.
- 23.2.5 During any period of time in which the Owner directly supervises the Contractor’s Work at the Site, the responsibility for the health and safety of everyone at the Site shall rest with the Owner.
- 23.2.6 The Owner has a responsibility to take corrective action if unsafe work by the Contractor is observed, up to and including contract termination. The Owner’s line management shall decide what corrective action to take on a case by case basis.
- 23.2.7 The Contractor is required to include all safety provisions of the Contract in any agreement with Subcontractors.
- 23.2.8 The Owner has the right to reject the Contractor’s future Tenders on the basis of a poor safety performance on a previous contract with the Owner or for non-compliance with Supplementary General Conditions “C”, Subsection 1.5.1.
- 23.2.9 Asbestos and Asbestos containing materials will be encountered in some of the Owner’s premises. The New Brunswick *Occupational Health and Safety Act* and its Regulation 92-106, as well as any Owner specific procedures shall be applicable to the Work and its performance.

23.3 **Work Refusals**

- 23.3.1 The Contractor must inform all of its employees of their right to refuse work when an employee has reasonable grounds for believing that the act is likely to endanger their health or safety or the health or safety of any other employee as per sections 19-23 of the *Occupational Health & Safety Act*, R.S.N.B. 1983 Chapter O-0.2.
- 23.3.2 All refusals to perform work due to health or safety concerns, and the actions taken as a result of such refusals, must be reported immediately to the Owner.

23.4 **WorkSafeNB Compliance and/or Stop Work Orders**

- 23.4.1 WorkSafeNB has the authority to stop work or write compliance orders for all Work under their jurisdiction within New Brunswick.
- 23.4.2 The Contractor must immediately address all work stoppages and compliance orders written by WorkSafeNB.
- 23.4.3 All compliance or stop work orders written by WorkSafeNB to the Contractor must be reported immediately to the Owner.

23.5 **Inspections**

- 23.5.1 General inspections of the Site are required to ensure that unsafe work practices and unsafe conditions are identified and corrective action taken.
- 23.5.2 The Owner’s area supervision, Joint Health and Safety Committee representatives and Health and Safety Specialists may carry out inspections as deemed necessary.
- 23.5.3 Unsafe acts and conditions identified during any of the inspections will be corrected in a timely manner to maintain safety at Site.

23.6 **Pre-use Inspections**

A pre-use inspection by the Contractor of all tools and equipment is required to ensure they are in safe operating order and that their use will not place any employee and/or personnel in the vicinity at risk.

23.7 **Accident/Near Miss Reporting and Investigations**

- 23.7.1 All accidents and near misses must be reported immediately by telephone or messenger to the Owner’s Representative and appropriately investigated to identify the causes and prevent a recurrence. “An accident is defined as an unplanned event that results in harm to people or damage to property (when such damage had the potential to cause harm to people)”. A near miss is defined as “an unplanned event that under slightly different circumstances could have resulted in an Accident”.
- 23.7.2 In addition, the Contractor shall promptly report in writing to the Owner’s Representative, all Accidents whatsoever arising out of or in connection with the performance of the Work, whether at or travelling to and from the Owner’s facility which cause death, personal injury or property damage, giving full details and statements of witnesses.
- 23.7.3 The Owner’s incident report form (Form 145) shall be filled out for all Accidents and Near Misses. The report shall be provided to the Owner within twenty-four hours of the event.

23.7.4 Records of all Accidents, Near Misses and investigations including the corrective actions shall be maintained for the length of the Contract.

23.7.5 The Owner's area supervision, Joint Health and Safety Committee representatives and Health and Safety Specialists reserve the right to investigate all Contractor Accidents and Near Misses.

23.8 **Skills Training**

23.8.1 The Contractor shall ensure that its employees are trained to perform the Work in a manner that will ensure their safety, the safety of the Owner's employees and the general public.

23.8.2 The Contractor shall be "competent" to perform their assigned task as per Occupational Health and Safety Regulation 91-191.

23.8.3 The Contractor shall maintain and make available upon request by the Owner's area supervision, Joint Health and Safety Committee representatives and Health & Safety specialists, the training records of all contract employees.

23.9 **Hazards Training**

23.9.1 The Contractor shall ensure that its employees are trained on the hazards that they may be exposed to. This includes general WHMIS training.

23.9.2 The Contractor shall maintain and make available upon request by the Owner's area supervision, Joint Health and Safety Committee representatives and Health and Safety Specialists, the training records of all contract employees.

23.10 **Personal Protective Equipment (PPE)**

23.10.1 The Contractor shall supply safety equipment to its employees that meets or exceeds the standards identified in the Owner's Corporate Safety Manual.

23.10.2 All safety headwear must meet or exceed CSA Z94.1-15 Type 1 Class E head protection. The headwear must be in good condition with no conductive attachments or conductive stickers that could reduce the electrical protection of the headwear. The company logo and the employee's name shall be displayed on the safety headwear.

23.10.3 All safety eyewear must meet CSA Standard Z94.3-15 or a standard offering equivalent protection. All safety eyewear must be equipped with fixed side shields. If prescription eyewear does not meet this standard, over-the-glass safety eyewear meeting CSA Standard Z94.3-15 shall be worn over the prescription eyewear. Under no circumstances will tinted safety glasses be permitted inside the station with the possible exception of a pre-existing medical condition which requires the same. Photochromic lenses will not be permitted inside the station.

23.10.4 All safety footwear must meet or exceed CSA Standard Z195-M92 with sole protection and Grade 1 toe protection and electric shock resistant soles. All safety footwear must be in good condition (i.e. soles not excessively worn). Footwear meeting the above requirements is marked with an external green CSA triangle and a rectangular white patch with an orange Greek Omega symbol (Ω).

23.10.5 The Contractor is responsible to ensure that all other necessary safety equipment such as fall protection, face shields, hearing protection, welding clothing, respiratory protection, chainsaw clothing, etc. meets or exceeds the standards identified in the Owner's Corporate Safety Manual, or where a standard is not specified in the Corporate Safety Manual, the standard identified in the Occupational Health & Safety Regulation 91-191.

23.10.6 The Contractor shall supply ice cleats to its employees and its Subcontractor employees and ensure ice cleats are worn by those employees on their footwear when working in winter conditions involving ice or snow.

23.11 **Health & Hygiene Control**

The Contractor is responsible to ensure that all personnel who are required to wear respiratory protective equipment have been fit tested (qualitative or quantitative) within the previous year and documentation kept on file. The test must be specific to the type of respirator worn.

23.12 **Orientation**

The Contractor shall ensure its employees receive an orientation to ensure that the Owner's expectations have been communicated. A record of who has attended an orientation will be maintained for the duration of the Contract.

23.13 **Meetings**

The Contractor shall participate in meetings organized and run by the Owner regarding safety and pre-job briefings.

24. MEASUREMENT OF QUANTITIES

- 24.1 The quantities of Work performed shall be verified by the Owner's Representative on the basis of measurements made by it or its assistants and these measurements shall be final and binding.
- 24.2 Measurement for progress payment for the portion of Work to which the fixed price arrangement (lump sum) is applicable shall be made as a percentage of that Work installed. Where the scope making up a lump sum price, a breakdown item in the lump sum or a lump sum item changes due to an order from the Owner's Representative, the lump sum pricing shall be recomputed by subtracting or adding the cost of the change. Measurement for payment of the portion of Work shall then be made as a percentage of the revised lump sum.
- 24.3 Measurement of quantities of the portion of Work to which the unit price arrangement is applicable, shall be made for the items in the Tender Submission.
- 24.4 Measurement of quantities for monthly progress payments terminate at the end of the last Thursday of each month.

25. PAYMENT

- 25.1 Payment for the Work shall be in accordance with the Terms of Payment and either the prices in the Tender Submission or a schedule of provisional unit prices agreed to by the Contractor and the Owner's Representative.
- 25.2 Payment for each item shall include all costs to complete that item in accordance with the requirements of this Contract Document, complete in every respect and ready to turn over to the Owner.
- 25.3 Progress payment for Work which is payable under the fixed price arrangement (lump sum) shall be made for the percentage of the Work completed.
- 25.4 Payment for items which are payable at unit prices only shall be made for the quantities completed at the unit prices in the Unit Price Table.
- 25.5 Progress payments shall not be made to the Contractor for Materials on Site but not installed. Progress invoices and payments shall be based on Work actually completed and accepted by the Owner's Representative as of the end of the period covered by the progress invoice.
- 25.6 The Owner reserves the right to withhold progress payments until all schedules and the progress reports, in the agreed format, have been received and approved by the Owner's Representative.
- 25.7 Where Shop Drawings are required, the Owner reserves the right to withhold release of final payment until all Shop Drawings and As-Built drawings have been received and accepted by the Owner's Representative.
- 25.8 Upon issuing the final progress claim, the Contractor shall deliver to the Owner a Statutory Declaration verifying the fact that all its lawful obligations and lawful claims arising out of the Work, including WorkSafeNB, have been discharged and satisfied. The approved invoice amount shall then become due and shall be payable by the Owner to the Contractor.
- 25.9 Where the Contractor has not provided the Owner with a Statutory Declaration, the Owner may withhold payment of monies which would otherwise have become due until such time as the Statutory Declaration is provided to the Owner.

26. BACKCHARGES TO THE CONTRACTOR

In the event that the Owner performs Work which is the responsibility of the Contractor including, but not limited to, correction of deficiencies or warranty items or Site clean-up, the Owner shall backcharge the Contractor its direct cost for labour, Materials and equipment, including third party costs, plus a mark-up of 15%. Equipment and vehicles utilized by the Owner shall be charged at the rates established in the Machine Rental Rates policy as set by the Department of Transportation and Infrastructure. The Owner shall deduct from the amount owing to the Contractor, the amount applicable to the Work performed on behalf of the Contractor.

27. WARRANTY

- 27.1 Except where otherwise noted in the Specification, the Contractor shall warrant all Contractor supplied items and the workmanship of all installations for a period of one year from the date of acceptance of the Work by the Owner.
- 27.2 All repairs or replacement due to faulty Materials and/or workmanship within the warranty period, shall be done at no cost to the Owner and to the Owner's satisfaction.

28. ENVIRONMENTAL PROTECTION

- 28.1 The Owner is committed to managing its environmental affairs consistent with the applicable acts, regulations, standards, and guidelines established by the various regulatory authorities. To demonstrate this commitment, the Owner has implemented throughout its divisions, environmental management systems (EMS) consistent with the ISO 14001 standard.

28.2 The Contractor is required to comply with all applicable environmental protection requirements stated above and shall take all practical measures to preserve the quality of the environment affected by the Contractor's operations.

29. CONTRACT BINDING/ASSIGNMENT

The Contract shall enure to the benefit of and be binding upon the parties hereto and their heirs, executors, administrators, successors and assigns. The Contractor may not assign this Contract, nor any of its responsibilities or obligations hereunder without prior written consent from the Owner.

30. TERMINATION

In the event of a default or a failure to perform an obligation under this Contract by the Contractor, the Owner shall notify the Contractor in writing stating the nature of the default or failure to perform. If the Contractor fails to cure such default or failure within 2 days after receipt of such notification, the Owner may terminate this Contract immediately without further liability of any kind. This Section applies only to Short Form Contracts.

31. MATERIAL SUBSTITUTION

31.1 In order to specify the quality and type of Materials required for the Work, trade names, government standards and manufacturer's names may have been used in the Specifications and on the drawings. The Contractor shall not substitute any other materials for any Materials specified without prior written approval of the Owner's Representative.

31.2 If the Contractor wishes to make a substitution for Materials specified it shall submit its request within three (3) weeks prior to use of the Material to the Owner's Representative accompanied by complete information on the physical characteristics, qualities and performance of such Materials to be substituted. If requested by the Owner's Representative, the Contractor at its own expense shall submit to the Owner's Representative for comparison purposes samples of both the specified Materials or equipment and the proposed substitutes.

31.3 The decision of the Owner's Representative shall be final as to the quality or approval of any Materials which the Contractor proposes to substitute. Any cost savings as a result of such substitutions shall be passed on to the Owner.

32. SITE SECURITY

32.1 General security service for the Site may be provided by the Owner's Representative. This shall not relieve the Contractor of its responsibility under this Contract. The Contractor shall take its own precautions against the loss of its Material, tools and equipment and be responsible for the safety thereof.

32.2 Entrance to and exit from the Site may be through the access gates which may be controlled by security guards.

33. TAX LIABILITY AND INDEMNITY

33.1 The Owner shall have no liability or responsibility for the withholding, collection or payment of income taxes, unemployment insurance, statutory or other taxes or payments of any other nature on behalf or in respect of or for the benefit of the Contractor or any other person.

33.2 The Contractor agrees to hold the Owner harmless from and against any order, penalty, interest or tax that may be assessed or levied against the Owner as a result of the failure or delay of the Contractor or its personnel to file any return or information required by any law, ordinance or regulation.

1. INSURANCE

1.1 Contractor's Insurance

1.1.1 Comprehensive General Liability Insurance

1.1.1.1 The Contractor shall procure and maintain, during the course of the Work, a comprehensive policy of third party liability insurance acceptable to the Owner in which the Owner and all Subcontractors are additional insureds and which shall have minimum limits of \$2,000,000 inclusive for both Bodily Injury including death, and Property Damage, with a maximum \$10,000 deductible per occurrence for Property Damage, and which shall embody a cross liability clause.

1.1.2 Automobile Insurance

The Contractor shall procure and maintain, during the course of the Work, Automobile Liability Insurance including coverage for all licensed motor vehicles owned, hired or leased (non-owned) by the Contractor or any of its Subcontractors which shall have minimum limits of \$3,000,000 inclusive for both Bodily Injury including death, and Property Damage. The required limits may be satisfied by a combination of a primary policy and an excess or umbrella policy.

1.1.3 Insurance Policy Documentation

The Contractor shall provide to the Owner insurance certificates for insurance that the Contractor is required to procure and maintain for the duration of the Contract, whenever requested by the Owner. Certificates of insurance must state the name of the Contractor and the Contract number. Insurance renewal certifications shall be sent to the Owner for the duration of the Contract referencing the Contract Document Number.

1.1.4 In any case where the Owner is named as an insured party on a policy, in the event of a claim involving the Owner, the Owner shall be provided a copy of the applicable insurance policy.

1.2 Owner's Insurance

The Owner carries All Risks Property Insurance on all of its property. The insurance policy carries a deductible of \$2,000,000 per occurrence. The Owner hereby waives any and all right of recovery against the Contractor for all loss in excess of \$2,000,000 occurring to the Owner's property on the Site.

1.3 Claims

1.3.1 From the finally determined amount of each and every loss, the deductible amount, if any, as shown in the Contractor's policy, shall be the responsibility of the Contractor.

1.3.2 With respect to the deductible in the Owner's All Risks Property Insurance Policy, each amount so deducted shall be charged to and payable by the party whose fault or neglect resulted in the occurrence.

1.3.3 The Owner may withhold from any monies due the Contractor, any deductible amounts for which it or any of its Subcontractors are liable, and may pay the same to the injured party or the party entitled thereto. Any such payment shall be deemed to be and shall constitute a payment to the Contractor.

1.4 General

The Owner may require other insurance or alterations to any applicable insurance policies in force during the period of the Contract and will give notification of such requirements. Where other insurance or alterations to any applicable policies in force are required by the Owner after the Award of Contract and these requirements result in an increased cost of insurance premiums, such increased cost shall be at the Owner's expense.