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1.0 INSTRUCTIONS TO TENDERERS

1.1 DESCRIPTION OF THE WORK

The Work covered by this Specification includes all supervision, labour, Plant, Equipment and Materials (except those specifically stated to be supplied by the Owner) required for the design, manufacture, factory assembly and testing, packaging, shipping, delivery, technical support, installation and commissioning instructions, warranty.

1.2 ACCEPTANCE OF A TENDER

- 1.2.1 A Tender may be accepted by email sent by a duly authorized representative of the Owner, which shall be effective as of the time of emailing.
- 1.2.2 A purchase order for the Work may be issued by the Owner. The Contract can be changed or modified by subsequent purchase order changes.

1.3 REJECTION OF A TENDER

- 1.3.1 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.

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

- 1.3.3 **Tenders which contain exceptions to, or otherwise fail to conform to the Tender Document including Contract terms and conditions, may be rejected.** The Owner may waive any minor non-conformance with the Tender Document and may, at its sole discretion consider as compliant, Tenders which are non-conforming 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 1.3.3 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.

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

- 1.3.5 Pursuant to section 116.1 of the Goods and Services Regulation - *Procurement Act*, the Owner may allow a Tenderer whose bid submission would otherwise be rejected for the reasons set out in subsection 115(1) to rectify the bid submission within two (2) working days of receiving a request from the Owner.

1.4 ENQUIRIES

- 1.4.1 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 #.
- 1.4.2 **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.**

1.5 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 1.4, entitled "Enquiries".

1.6 OMISSIONS AND DISCREPANCIES

- 1.6.1 Should the Tenderer find discrepancies in, or omissions from the Tender Documents, or should it be in doubt as to their meaning, the Tenderer should at once make an enquiry in accordance with Section 1.4, entitled "Enquiries".
- 1.6.2 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 Documents. The Tenderer shall obtain all required information and shall not claim at any time after the submission of the Tender or the subsequent award of a Contract that there was any misunderstanding with regard to the conditions imposed by the Contract.
- 1.6.3 Mention within the Tender Document 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.

1.7 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 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 non-compliance with addenda.**

1.8 SITE CONDITIONS AND INVESTIGATIONS

- 1.8.1 a) For Tenders requiring Site service Work, each 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 things which are necessary or desirable to gain a proper understanding of the Work and the conditions under which it shall be performed.
- 1.8.1 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").
- 1.8.2 If a Tenderer requires additional information on, 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 as described in Section 1.4, entitled Enquiries. A 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 award of the Contract that there was any misunderstanding with regard to the conditions imposed by the Contract.
- 1.8.3 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.

1.9 TENDER PRICE(S)

- 1.9.1 Tender Price(s) shall include all labour, Plant, Materials (except as otherwise specified), Equipment, tools, fuel, consumables, indirect costs, insurance, workers' compensation, vacation pay assessments, holiday pay, Canada Pension Plan, Employment Insurance, personal protective equipment and all other payroll burdens, together with all applicable freight and duty, the Contractor's overhead (including Contractor's field and office overhead) and profit and any other costs detailed or implied in these documents including National Maintenance Council related fees, if applicable. Harmonized Sales Tax collectable from the Owner by the Contractor shall not be included in the Tender Price(s). 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.
- 1.9.2 Tender Price(s) shall be firm and in Canadian dollars and not be subject to adjustments due to changes in the cost of labour and Materials or fluctuations in currency exchange rates.
- 1.9.3 Tenderers shall give complete information, separate prices and pertinent data on all services, Materials and/or Equipment offered as outlined in the Tender Submission. If the Tenderer fails to complete the Tender Submission to the satisfaction of the Owner, such Tender may be rejected.
- 1.9.4 When applicable, the Tenderer shall indicate a unit price and a delivery date for each item being tendered. Where the Owner identifies manufacturer(s) and part number(s) as specified for each item, the Tenderer shall indicate the manufacturer(s) and part number(s) applicable to the quoted unit price. To ensure consideration, the sum total price of all items being tendered shall be shown on the Tender Submission Pricing Summary.

1.10 SUBCONTRACTING

Tenderers shall provide 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 and the proposed Subcontractor for each activity.
- (b) A list of all Materials and Equipment which the Tenderer proposes to purchase for the Work and the proposed supplier for each item.

1.11 EQUIPMENT SCHEDULE

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

1.12 JOB SUPERVISORY PERSONNEL

The Tenderer shall submit with its Tender, or within two (2) working days of receiving a request from the Owner, one (1) copy of a resume of experience of its proposed job supervisory personnel.

1.13 TENDERER'S PREVIOUS EXPERIENCE

- 1.13.1 Tenderers are advised that its personnel, or any proposed Subcontractor's personnel, shall have satisfactory experience in work similar to the Work. This experience shall be demonstrated by a suitable experience list enclosed with the Tender, or within two (2) working days of receiving of a request from the Owner, for the Owner's evaluation.
- 1.13.2 The listing shall include the project name, location, contract value, contract date, or date of commencement of work and note as to whether the Contract is complete or in progress.
- 1.13.3 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.
- 1.13.4 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.

1.14 DELETING MATERIALS OR EQUIPMENT FROM TENDER

The Owner reserves the right to delete any Materials, Equipment and/or service(s), or parts of the Equipment or the service(s), in the Tender without having any change in the prices of the remaining items.

1.15 EVALUATION CRITERIA

- 1.15.1 In evaluating compliant Tenders, price with offered discount (Section 1.29) will be the only criterion. 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) Past experience of similar work by the Contractor and proposed Subcontractors (Section 1.13).
 - b) Owner's experience with previous contracts with the Tenderer including safety issues (Section 1.26).
 - c) Acknowledgement and agreement to comply in all respects with standards (Section 2.39).
- 1.15.2 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's experience with the Tenderer including safety issues 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.
- 1.15.3 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.
- 1.15.4 The Owner may, at its sole discretion, give preferential treatment to a New Brunswick supplier or an Atlantic Canadian supplier. (See Section 1.32 – Preferential Treatment.)
- 1.15.5 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.
- 1.15.5.1 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.

1.16 ADDITIONAL INFORMATION REQUESTED WITH TENDER SUBMISSION

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

1.17 TENDER VALIDITY PERIOD

Tenders shall be irrevocable for a period of thirty (30) days from date of closing.

1.18 SAFETY POLICY, PROGRAM AND RECORD

- 1.18.1 The successful Tenderer shall comply, at its own expense, with the *Occupational Health and Safety Act*, R.S.N.B. 1983 Chapter O-0.2, and Regulations of New Brunswick, which pertain to the Work and any other written instructions from the Owner relating to safety.

- 1.18.2 The Tenderer shall submit with its Tender, or within two (2) working days of receiving a request from the Owner, its safety policy, program and documentation verifying successful completion of safety training by employees, and an acceptable safety record from previous contracts.
- 1.18.2.1 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.
- 1.18.2.2 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.
- 1.18.2.3 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 Subcontractor's safety performance within five (5) working days of the request.
- 1.18.3 This Section is not applicable where any of the Work is not being performed at the Site.

1.19 WORKSAFENB

- 1.19.1 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 New Brunswick *Workers' Compensation Act*, R.S.N.B. 1973, c. W-13, and that the Tenderer's account is in good standing.
- 1.19.2 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.

1.20 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.

1.21 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. A waiver by the Owner under this Section 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.

1.22 CONFIDENTIALITY

Tenderers shall keep in strict confidence any information relating to the business of the Owner, which it may acquire during the Tendering process. Tenderers are not to publish, communicate, divulge or disclose such information to any unauthorized third party, without the prior written consent of the Owner.

1.23 PROCUREMENT ACT

The Owner is a Crown corporation and is bound by the provisions of the *Procurement Act* of New Brunswick.

1.24 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.

1.25 NON-NEW BRUNSWICK WORKERS/FOREIGN WORKERS

- 1.25.1 **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 Contractor to ensure that such authorization is obtained prior to its workers arrival at the Canadian border. Otherwise, the foreign workers may be denied entry into Canada, notwithstanding the prior acceptance of the Tender by the Owner.
- 1.25.2 **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.
- 1.25.3 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.

1.26 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.

1.27 SEPARATE CONTRACTS

The Owner reserves the right to award a contract to more than one Contractor for the Work described in this Tender Document.

1.28 NATIONAL MAINTENANCE AGREEMENT (NMA) (FOR GENERATION PLANT MAINTENANCE)

Pursuant to Section 2.20 herein entitled "Labour Requirements" the successful Tenderer must be, or upon Award of Contract must immediately become, signatory to the NMA such that the Work commences on schedule.

1.29 DISCOUNTS

1.29.1 Terms of Payment

- 1.29.1.1 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.
- 1.29.1.2 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.

- 1.29.1.3 Discount offered in this Section will be considered in addition to the Tender Price in evaluating the price referenced in Section 1.15.

1.30 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).

1.31 CONTRACTOR INFORMATION MANAGEMENT SYSTEM

- 1.31.1 In addition to the requirements set out in Section 1.18.2.3, 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 the Award of Contract. (See also Section 3.8 - Safety Procedures.)
- 1.31.2 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 the Award of Contract. (See also Subsection 3.8.2.8.)

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

1.31.4 The Tenderer's bid should be formulated with all associated subscription costs in mind and shall include such costs.

1.32 PREFERENTIAL TREATMENT

1.32.1 The Owner may, at its sole discretion, give preferential treatment to a New Brunswick supplier or an Atlantic Canadian supplier, if its bid, when compared to the lowest acceptable bid, is within the applicable range set out in the *Procurement Act*.

1.32.2 In the application of preferential treatment, the Owner shall observe the following order of priority: firstly, New Brunswick manufacturers if the goods to be procured are manufactured in New Brunswick; secondly, New Brunswick vendors; and thirdly, Atlantic Canadian suppliers.

1.33 ALTERNATIVES TO THE TENDER DOCUMENT

The Tenderer is instructed to Tender in accordance with all technical, quality and commercial requirements of the Tender Documents.

1.34 CYBERSECURITY

1.34.1 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.

1.34.2 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).

1.34.3 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.

1.34.4 Moreover, the Owner reserves the right to inspect and/or audit the 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 the Contractor fail to maintain adequate cybersecurity systems, the Owner retains the right to cancel or suspend the Contract at any time.

2.0 GENERAL CONDITIONS

2.1 DEFINITIONS

2.1.1 In the Documents forming the Contract, unless the context otherwise requires, the following meanings shall apply:

"Accident" - An unplanned event that results in harm to people or damage to property when such damage had the potential to cause harm to people.

"Award of Contract" - The date on which the Tender of the successful Tenderer is accepted or the purchase order for this Contract is formally placed, or, if preceded by a letter of intent to purchase, this earlier date shall apply.

"Commissioning" - Those activities that are required and performed to put a system or piece of Equipment into satisfactory operation after installation, cleaning, testing, inspecting and calibrating have been completed. Minor deficiencies may exist as agreed between the Engineer and Contractor which require correcting prior to Final Acceptance. Following completion of Commissioning, the Engineer and the Contractor will mutually agree and record that the date of completion of Commissioning will be the "Commissioning Date".

"Contract" - The agreement between the Owner and the Contractor for the performance of the Work.

"Contract Documents" - The Tender Documents, Tenderer's Submission, the purchase order, and any purchase order changes.

"Contractor" - The party or parties to whom the Owner has awarded a Contract for the Work to be performed under this Contract Document.

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

"Contract Price" - The total value of all goods and services identified in the Contract and change orders thereto.

"day" - Unless otherwise specified, a day shall mean a calendar day.

"Digital Technology Group" - The collection of technical and human resources that provide the storage, computing, distribution, and communication for the information required by the Owner.

"Engineer" - A person authorized by the Owner to perform on its behalf any function under the Contract.

“Final Acceptance” - Will occur when all deficiencies agreed upon during Commissioning have been corrected to the satisfaction of the Engineer. The date on which this occurs will be mutually agreed and recorded as the date of Final Acceptance.

“Holdback” - Amount withheld to ensure proper performance of the Contract and of payment of the obligations of the Contractor.

“Inspector” - Person or persons duly authorized by the Owner to inspect the Work under the Contract.

“Materials” and “Equipment” - All materials, commodities, articles and things required for incorporation in the Work.

“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.

“Near Miss Event” - An unplanned event that, under slightly different circumstances, could have resulted in an Accident.

“Owner” - New Brunswick Power Corporation, or its legally appointed representatives, successors and assigns, sometimes referred to as “NB Power”.

“Plant” - All tools, implements, machinery, vehicles, buildings, structures, Equipment, articles and things required for the execution of the Work.

“RFQ” - Request for Quotation and is a Tender Document.

“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.

“Specification” or “Tender Document” - This complete document, including all numbered parts thereof, Appendices, drawings and Addendums.

“Subcontractor” - The person, firm or corporation, or any other entity of any tier directly having a contract with the Contractor for the supply and/or performance of any part of the Work.

“Tender” - The binding offer to perform the Work submitted by the Tenderer.

“Tenderer” - Any party or parties tendering on the Work.

“Work” - All labour, Plant, Materials, Equipment, services, supplies and acts required to be done, furnished or performed by the Contractor under the Contract.

2.1.2 Words in the singular include the plural and vice versa. Words implying gender include other genders where the context so requires.

2.2 LAWS, REGULATIONS AND PERMITS

2.2.1 The Contractor shall comply with all laws, by-laws, statutes, codes and regulations of federal, provincial and municipal governments which are applicable to the Work and their performance.

2.2.2 The Contractor shall obtain and pay for all permits that may be required to carry out the Work.

2.2.3 The Contractor shall be in good standing with WorkSafeNB and, prior to starting work on the Site and at such other times as the Owner may require, shall submit a letter from WorkSafeNB as to its status and that of its subcontractors.

2.2.4 The Contractor, including its Subcontractors shall, upon request, provide evidence to the Owner of its compliance with the requirements of the *Employment Standards Act*.

2.3 PERFORMANCE

2.3.1 Insofar as is consistent with the nature of the Work, the results to be attained and the Contract schedules, the order and methods of performance of the Work shall be left to the discretion of the Contractor.

2.3.2 Should the Owner be of the opinion, and so inform the Contractor in writing, that the amount of labour, Material, Equipment or other items is insufficient or that the methods employed are not such as shall ensure the scheduled performance of the Work, then the Contractor shall, forthwith, increase the amount of labour, Material, Equipment or other items, as the case may be, or shall adopt other methods and practices all to the satisfaction of the Owner.

- 2.3.3 No additional cost will be allowed for the fixed price portion of the Work if, in the Owner's opinion, Work performance is not meeting scheduled requirements as per Subsection 2.3.2.
- 2.3.4 The Contractor warrants that, throughout the term of this Contract and any renewal thereof, it will maintain the expertise, facilities, Equipment, financial capabilities and any other resources necessary to deliver the Work to the Owner.
- 2.3.5 Should the Contractor, at any time during the term of this Contract, be unable to deliver the Work upon the terms and conditions of the Contract, then it shall notify the Owner immediately.

2.4 CHANGES IN THE WORK

- 2.4.1 The Owner may, without invalidating the Contract, direct the Contractor to make changes in the Work.
- 2.4.2 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.
- 2.4.3 Changes in the Work shall not proceed without written authorization from the Owner.

2.5 CONTRACTOR'S LIABILITY

2.5.1 General

- 2.5.1.1 The Contractor shall properly protect all Work and Materials during installation/performance of the Work. It shall be responsible for the safety and efficiency of all false work and temporary structures erected by it. It shall make good any damage sustained to the Work from the date of the Award of Contract to the date of Final Acceptance.
- 2.5.1.2 The Contractor shall take every precaution against causing damage to the Work, Plant or property of the Owner or of other contractors.
- 2.5.1.3 The Contractor shall be responsible throughout the duration of the Work for all violations, either on its part or on the part of its employees, of any and all laws and ordinances (provided such violations occur on the Site of the Work) and shall be solely responsible for all loss of life or injury to persons or property caused by the acts or omissions of itself or its employees and shall indemnify the Owner against all claims arising therefrom.
- 2.5.1.4 The Contractor shall be responsible for any and all damages or claims for damages which may be occasioned by the acts or omissions of itself, its servants or its Subcontractors, or by any failure or defect, and the Contractor agrees to make good all such loss or damage and to hold harmless and to indemnify the Owner against all claims in respect thereof.
- 2.5.1.5 The Contractor shall at all times, pay or cause to be paid, assessments or compensation required to be paid pursuant to the *Workers' Compensation Act*, R.S.N.B. 1973, c. W-13, and upon failure to do so, the Owner may pay such assessments or compensation to WorkSafeNB and may deduct or collect such expense from the Contractor. The Contractor shall, at the time of entering into any Contract with the Owner, furnish evidence satisfactory to the Owner showing that all assessments or compensation payable to WorkSafeNB have been paid, and the Owner may, at any time during the performance or upon completion of such Contract, require satisfactory evidence that such assessments or compensation have been paid.
- 2.5.1.6 Acceptance of the Work shall not exempt the Contractor from, or preclude the Owner from bringing action for, damages or indemnity for defective or faulty workmanship appearing within one (1) year of Final Acceptance of the Work.

2.5.2 Consequential Damages

Neither party shall be liable to the other for consequential damages, including damages for loss of use and loss of profit, as a result of delay in completion of the Work.

2.5.3 Limit of Liability

With the exception of claims based on warranties provided by law, and subject to the obligations and liabilities of the Contractor under the insurance provision, the liability of the Contractor to the Owner arising out of the Work, or its use, whether based on contract or negligence, shall not exceed the Contract Price.

2.6 FORCE MAJEURE

- 2.6.1 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.
- 2.6.2 Force majeure includes, but is not limited to acts of God, strikes, lockouts, fires, riots, sabotage, 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).

2.6.3 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 (1) week of the happening of the force majeure event, make a written request to the Owner 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 considers the claim to be valid, it 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 written request within one (1) week of the happening of the event which it is claimed results in the delay.

2.6.4 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.

2.6.5 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.

2.7 SUSPENSION OF WORK

2.7.1 The Owner shall have the right, which may be exercised from time to time, without invalidating the Contract, to suspend performance by the Contractor of any part or the whole of the Work for such reasonable period of time as the Owner may notify the Contractor.

2.7.2 Save to the extent any such suspension arises from default by the Contractor, the Owner shall pay to the Contractor the reasonable extra expenses incurred by the Contractor arising from the suspension, provided that in no event will the Owner be liable to the Contractor for loss of profit, interest loss or any other damages or loss occasioned to the Contractor by reason of any such suspension. Such extra expenses shall be supported by audit, if necessary, carried out by auditors acceptable to the Owner, prior to payment of same.

2.7.3 The resumption and completion of the Work after the suspension shall be governed by the schedule developed by the Owner in consultation with the Contractor.

2.8 DEFAULT BY THE CONTRACTOR

2.8.1 If the Contractor has:

- a) made default or delayed in commencing or diligently performing the Work or any portion thereof to the satisfaction of the Owner;
- b) become insolvent;
- c) committed an act of bankruptcy;
- d) a loss of regulatory authorization;
- e) abandoned the Work;
- f) made an assignment of the Contract without the required consent; or
- g) failed to observe or perform any of the provisions of the Contract, including compliance with applicable safety programs and practices,

the Owner may terminate the Contract.

If the Contractor is in default and the default relates to Section 2.8.1 (a), (b) or (c), written notice to the Contractor is all that is required. If the Contractor is in default and the default relates to Section 2.8.1 (d), (e), (f) or (g) the Owner shall provide ten (10) days written notice to the Contractor to rectify the default after which, if not rectified, the Owner may terminate the Contract.

2.8.2 Any termination of the Contract by the Owner shall be without prejudice to any other rights or remedies the Owner may have.

2.8.3 If the Owner terminates the Contract, it is entitled to complete it by whatever means it may deem appropriate under the circumstances.

2.8.4 The Owner shall be entitled to recover from the Contractor all loss, damage and expense incurred by the Owner by reason of the Contractor's default (which may be deducted from any monies due or becoming due to the Contractor and any balance to be paid by the Contractor to the Owner).

2.8.5 In the event of termination, the Owner shall be obligated to reimburse the Contractor only for Work satisfactorily performed up to the date of termination. In no event shall the Owner be liable to the Contractor for loss of profit, interest loss or any other damages or loss occasioned to the Contractor by reason of such Contract termination.

2.9 UNPAID ACCOUNTS

2.9.1 The Contractor shall indemnify the Owner from all claims arising out of unpaid accounts relating to the Work. The Owner shall have the right, at any time, to require satisfactory evidence that the portions of the Work in respect of which any payment has been made or is to be made by the Owner are free and clear of mechanics or other liens, attachments, claims, demands, charges or other encumbrances.

2.9.2 If such evidence is not submitted upon request therefore, the Owner shall have the right to withhold payments due under the Contract until such submission.

2.10 NOTICES

- 2.10.1 Notices to the Owner by the Contractor shall be served in writing and addressed to:
New Brunswick Power Corporation
PO Box 2000
515 King Street
Fredericton, NB E3B 4X1
Attention: Chief Legal Officer
- 2.10.2 Notices to the Contractor shall be served in writing upon the Contractor or its accredited representatives. Any notice or other communication required under the terms of the Contract shall be deemed to be well and sufficiently given on the part of the Owner if the same is left at the Contractor's office, or is mailed in any post office to the Contractor or its accredited representative to its last known place of residence.
- 2.10.3 Such notices shall be effective upon receipt.
- 2.10.4 In case of misunderstanding or dispute, verbal agreements shall not be accepted as bearing on the terms of settlement and neither party shall advance a claim in such case in the absence of documentary evidence as above provided and shall not attempt to use any conversation with any parties as evidence in prosecuting any claim against the other party.

2.11 INSPECTION BY OWNER

The Owner shall have the right to inspect the Work at all times and may reject any part thereof which is not in accordance with the Contract. Any of the Work so rejected, shall forthwith be re-executed or corrected by the Contractor, at its sole expense and in a manner prescribed by the Contract, but if in the opinion of the Owner it is not feasible to re-execute or correct the rejected Work, the Owner shall be bound to pay to the Contractor only such sums of money as, in the opinion of the Owner, represents the value of the Work to the Owner.

2.12 AUDIT

The Contractor shall keep proper and detailed accounts and records related to the cost of the Work performed hereunder as well as such records, 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 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.

2.13 TERMINATION OF CONTRACT

- 2.13.1 The Owner shall have the right, which may be exercised at any time, to terminate the Contract for any reason. In the event of such termination, the Owner and the Contractor shall negotiate a settlement supported by audit, if required by the Owner, carried out by auditors acceptable to both parties, which shall include: reimbursement at the Contract rate for all completed items; reimbursement for the costs to the Contractor for the Work in progress and expenses incurred in the course of the Work, plus a reasonable return on such costs and expenses; reimbursement for costs and expenses directly caused by the termination.
- 2.13.2 The Owner shall not be liable to the Contractor for loss of anticipated profit on the cancelled portion or portions of the Work.

2.14 PROPER LAW OF THE CONTRACT

- 2.14.1 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 Contractor and Owner arising from such a Contract.
- 2.14.2 The Contractor agrees that this Contract supersedes any custom, usage, contract, agreement or term implied by law to the contrary.

2.15 TIME

Time is of the utmost importance of the Contract.

2.16 INTENT

The Work described herein shall 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 Contract Documents.

2.17 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.

2.18 RIGHTS TO TECHNICAL DATA

Notwithstanding any statement on drawings or other technical data produced by the Contractor, or others on its behalf, to the effect that the information may not be copied or reproduced without the Contractor's permission, the Contractor agrees that the Owner shall have the irrevocable right to produce and use without further compensation all such drawings and data for its own use and for tendering and awarding of contracts and performing Work for the purposes of installation, operation, maintenance and refurbishment of the Equipment and for procurement of related Materials and Equipment.

2.19 CORRECTION OF DEFECTS

- 2.19.1 If, at any time prior to one (1) year after Final Acceptance or two (2) years after delivery, whichever is sooner, any part of the Work becomes defective or fails due to defects in design, Material or workmanship, installation or erection, or otherwise fails to meet the requirements of the Contract, then the Contractor, upon receipt of notification from the Engineer, shall make good every such defect or failure within the period of time specified by the Engineer and without cost to the Owner. The Contractor shall pay all transportation charges both ways between the Contractor's factory or repair depot and the Site.
- 2.19.2 Where the Contractor furnished technical direction of the original installation or erection of the Work, then it shall also be responsible for furnishing technical direction of the removal (including site disassembly if required), reinstallation or re-erection of any of the Work which requires repair or replacement hereunder. Where such repair or replacement results from the negligent act or omission of the Contractor in furnishing technical direction of such original installation or erection, then the Contractor shall also be liable for the removal (including Site disassembly if required), reinstallation or re-erection of the Work which requires repair or replacement hereunder.
- 2.19.3 If the Contractor, after notification of a defect or deficiency should delay or default in proceeding, then the Owner may arrange to remedy the defect or deficiency and the Contractor shall be liable for all costs, charges and expenses incurred in connection therewith, all without prejudice to any other rights or remedies the Owner may have for breach of this Contract.
- 2.19.4 Any certificate, acceptance, approval, payment or any other act, matter or thing done or omitted under the Contract, shall not bar or prejudice the rights of the Owner in this respect.
- 2.19.5 The warranty period shall be extended on each portion of the Work which is made inoperative by the need for repair or replacement of any other portion of the Work by the amount of time it is so inoperative.

2.20 LABOUR REQUIREMENTS

2.20.1 General

- 2.20.1.1 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.
- 2.20.1.2 The Contractor shall be responsible for and shall ensure that its work force is such and is so employed, and that the classification of labourers and skilled journeymen used on the Work is in accordance with the terms of the applicable collective agreements, so that there is no infringement on the jurisdiction of any union in the area, and that no work stoppage or interruption, whether of its own forces or of any other contractor working on the Site, occurs because of any act or omission on its part or on the part of any of its employees or because of its relations with its own employees.

2.20.2 Maintenance Work

- 2.20.2.1 Field Labour Conditions under this Contract will 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 which agreement is known as The National Maintenance Agreement. **The Contractor and any Subcontractor performing any portion of the Work, must be a signatory to this Agreement.** This agreement is not bound herein, but may be viewed at www.nbpower.com/en/about-us/purchasing-tenders.
- 2.20.2.2 The Contractor shall familiarize itself with this Agreement and note that a pre-job conference, prior to the commencement of the Work, may be required with representatives from the Owner and other parties to the National Maintenance Agreement.

2.21 ENVIRONMENTAL PROTECTION

- 2.21.1 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.
- 2.21.2 The Contractor is required to take all practical measures to preserve the quality of the environment affected by the Contractor's operations.
- 2.21.3 As per the ISO 14001:2015 Standard, the Contractor shall provide training or take actions to meet the needs associated with environmental activities or services that have the potential to cause an environmental impact. The Contractor shall retain associated records of their employees noting appropriate education, training or experience. Such records will be made available to the Owner upon request. If the Contractor requires a certificate of approval or license to operate from an environmental regulator, a current copy of the license/approval shall be submitted to the environmental coordinator upon request.

- 2.21.4 The Contractor shall ensure that all vehicles and Equipment used in the execution of the Work are subject to a regular maintenance program and are kept in an efficient state of repair for the duration of the Work. The Contractor shall immediately remove or repair any vehicles or Equipment exhibiting excessive exhaust emissions or petroleum leakages during execution of the Work.
- 2.21.5 The Contractor shall not pump water containing suspended materials into waterways, sewer or drainage systems.
- 2.21.6 The Contractor shall control disposal or runoff of water containing suspended materials or other harmful substances in accordance with local authority requirements.
- 2.21.7 When transporting dangerous products to or from the Site the Contractor shall ensure that such activity is conducted in accordance with the *Transportation of Dangerous Goods Act*.
- 2.21.8 The Contractor will not store diesel or gasoline on the Site. All fueling of Equipment and machinery at the Site must be accomplished through the use of a fuel truck brought to the Site for the purpose, either daily or as needed. The Contractor shall perform all maintenance of Equipment and machinery off the Owner's facility so as to minimize spills.
- 2.21.9 The Contractor shall have, at the Site, appropriate spill kits for any hazardous material that it is transporting to, utilizing, or handling. The Contractor shall immediately report all spills of hazardous materials, regardless of size, to the Owner. The Contractor shall ensure that any soil contaminated by the Contractor due to a spill or leak of a hazardous material is recovered and stored in appropriate containers upon consultation with the Owner's environmental coordinator. The Contractor shall dispose of all such contaminated soil in accordance with the applicable acts and regulations at their own expense.
- 2.21.10 The Contractor shall store all hazardous materials in the construction lay down area. Should it become necessary to store hazardous waste prior to disposal the Contractor shall notify the Owner prior to placing the hazardous waste in the construction lay down area and all containers are to be labelled in accordance with the Owner's labeling programs. The Contractor shall maintain an inventory/reconciliation log for all hazardous wastes. The Contractor shall dispose of all hazardous waste in accordance with all applicable acts and regulations.
- 2.21.11 The Contractor shall not perform Work within thirty (30) metres of a watercourse without a watercourse alteration permit.

2.21.12 **Pollution Control**

- 2.21.12.1 The Contractor shall maintain temporary erosion and pollution control features installed under this Contract.
- 2.21.12.2 The Contractor shall control emissions from Equipment and Plant to local authorities' emission requirements.
- 2.21.12.3 The Contractor shall prevent sandblasting and other extraneous materials from contaminating air beyond application area, by providing temporary enclosures.
- 2.21.12.4 The Contractor shall cover or wet down dry materials and rubbish to prevent blowing dust and debris, and provide dust control for temporary roads.

2.22 **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 without the prior written consent of the Owner.

2.23 **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.

2.24 **REMOVAL OF CONTRACTOR'S EMPLOYEES**

The Contractor shall, at the request of the Owner, remove from the Work and replace any person employed by the Contractor on the Work who, in the opinion of the Owner, acting reasonably, is not performing any part of the Work properly, is incompetent or has been otherwise conducting themselves improperly. The Contractor shall not permit a person so removed to remain on Site.

2.25 **SEVERABILITY**

If any term or portion of the Contract Documents is found to be invalid or unenforceable, the remainder of the Contract Documents shall continue to be valid and enforceable.

2.26 **PROPRIETARY INFORMATION**

- 2.26.1 All tender submissions, plans, drawings, Specifications, technical data, designs, computer programs reports or other information (hereinafter referred to as "Data") produced by the Contractor in tangible form in the performance of the Work to be provided under this Contract, shall be the property of the Owner and the Contractor shall be provided with copies of such Data for its own use as may be required in the ordinary course of its business. Proposals prepared by the Contractor at its expense shall remain the property of the Contractor until such time as they may be accepted by the Owner.

2.26.2 The Contractor and its employees shall consider all Data and information pertaining to the design, construction, operation, inspection and maintenance at the Site to be confidential and the sole property of the Owner. No such information shall be removed from the Site or transmitted in any form unless approved in writing by the Engineer.

2.27 EXCLUSIVITY

Award of a Contract shall not preclude the Owner from purchasing similar services, Materials and/or Equipment from other contractors from time to time during the term of this Contract, at the Owner's sole discretion.

2.28 LIENS

2.28.1 The Contractor covenants that it shall make payments promptly for all labour, Materials, supplies and services required by it for the performance of the Work and the Engineer shall have the right to demand evidence satisfactory to it that all Work done and Materials, services and supplies furnished are being paid for according to their terms of payment and are not subject to any mechanic's or other liens or claims or demands arising from unpaid accounts in connection therewith.

2.28.2 If, during the progress of the Work, the Contractor allows any indebtedness to accrue to Subcontractors or other party, whether the same may or may not become liens upon the said Work or property of the Owner, and shall fail to pay or discharge the same within thirty days after demand by the person or persons furnishing such labour and Material, then the Owner may withhold any money due to the Contractor until such indebtedness is paid or may apply the same towards the discharge thereof.

2.28.3 The Contractor hereby agrees to the immediate repayment to the Owner of all such sums so paid, or to the deduction by the Owner of such sums, with interest at the rate being charged by the Canadian chartered banks in Fredericton, New Brunswick, on prime commercial accounts, from any monies due or to become due to the Contractor.

2.28.4 Before the Contractor receives final payment from the Owner for the completed Work, it shall establish to the satisfaction of the Owner, that all just claims, liens, and demands of its employees, or of parties from whom Materials or Plant used in the manufacturing may have been purchased or procured, have been fully satisfied, and that the Materials furnished, and Work done in the performance of the completed Contract are fully released from all such liens, claims, and demands, and that no causes of action or claims exist or have been made, arising out of the Work.

2.29 ENGINEER'S AUTHORITY

2.29.1 During the execution of the Work, the Engineer shall decide on interpretation of drawings and Specifications, shall judge quality and quantity of Work and Materials and shall make decisions and give instructions and orders, where required, within a reasonable time.

2.29.2 The Contractor shall proceed with the Work in accordance with decisions, instructions, and orders given by the Engineer in accordance with these Specifications, provided always that if the Contractor shall, without undue delay, after being given any decision, instruction, or order otherwise than in writing, require it to be confirmed in writing. Such decision, instruction, or order shall not be effective until written confirmation thereof has been received by the Contractor.

2.29.3 All decisions, instructions and orders of the Engineer shall be final and binding upon the Contractor unless, by written notice to the Engineer given within seven (7) days after the date of receipt of a written confirmation thereof, the Contractor expressly states that it disputes or questions such decision, instruction or order, giving reasons for so doing, but such a notice shall not relieve the Contractor of its obligations to proceed with the Work in accordance with the decisions, instruction, or order in respect of which the notice has been given.

2.29.4 The Contractor, having given notice of a dispute or question in accordance with Subsection 2.29.3 shall have the right to raise the matter in any subsequent proceedings between the parties and to claim in respect thereof, and shall be at liberty in such proceedings to rely on reasons additional to the reasons stated in the said notice.

2.29.5 In case of misunderstanding or dispute, verbal agreements will not be accepted as bearing on the terms of settlement, and the Contractor shall advance no claim in such case in the absence of documentary evidence as above provided, and shall not attempt to use any conversation with any parties as evidence in prosecuting any claim against the Owner.

2.30 CONTRACTOR PERFORMANCE

The Contractor's performance will be evaluated on a continuous basis. Quality of service aspects such as performance of the Work, compliance 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, the Contractor's performance shall be in full compliance with the requirements set out in Section 2.39 - Standards.

2.31 PATENTS

2.31.1 The Contractor shall indemnify the Owner against claims, actions, suits and proceedings for infringement or use of any patent based upon the use of any invention protected by such patent in carrying out the Contract, and for royalties or other payments resulting therefrom, which may be payable in connection with the Contract only; provided, however, that in respect of the Contract only, the Owner shall indemnify the Contractor against all such claims, actions, suits or proceedings in respect of anything the model, plan or design of which shall have been supplied by or on behalf of the Owner to the Contractor. The party required hereunder to indemnify the other party shall be entitled to conduct

the defence of such claims, actions, suits or proceedings, so long as such defence is diligently conducted, and each party shall keep the other party promptly and fully informed of the bringing of such claims, actions, suits or proceedings, and of the steps taken or which ought to be taken in the prosecution or defence thereof accordingly.

- 2.31.2 In case any such apparatus used on or in connection with the Work is in such suit held to constitute an infringement and its use enjoined, the Contractor shall, at its own expense, either secure for the Owner the right to continue using said apparatus, replace such apparatus with non-infringing apparatus or modify it so that it becomes non-infringing.

2.32 DISPUTES

Should any dispute arise between the parties concerning this Contract or its interpretation or in connection with the Work or its execution, then the parties will attempt to resolve such disputes to their mutual satisfaction, and if such disputes cannot be resolved by agreement, then the parties may agree to take the dispute to arbitration under the *Arbitration Act*, R.S.N.B. 2014, c.100.

2.33 OMISSIONS AND DISCREPANCIES

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

- 2.33.2 Mention within the Contract Documents 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.

2.34 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.

2.35 NON-NEW BRUNSWICK WORKERS/FOREIGN WORKERS

- 2.35.1 **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 Contractor to ensure that such authorization is obtained prior to its workers' arrival at the Canadian border. Otherwise, the foreign workers may be denied entry into Canada, notwithstanding the prior acceptance of the Tender by the Owner.

- 2.35.2 **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.

- 2.35.3 The Contract Price has been 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. Further, the Contractor acknowledges and agrees that the aforementioned COVID-19-related rules, regulations, orders, directives or requirements may change owing to the dynamic nature of the COVID-19 pandemic and the Contractor acknowledges and agrees that such changes shall not result in an increase in the Contract Price.

2.36 WAIVER

By mutual written consent of the Owner and Contractor, any part or portion of this Contract can be waived without in any way affecting or prejudicing the remainder of the Contract.

2.37 CLAUSES SURVIVING TERMINATION

Any indemnification, ownership and confidentiality provisions contained in this Agreement shall survive any termination of this Contract.

2.38 REPRESENTATIVE OF THE PARTIES

Any power, authority or discretion required to be executed hereunder by the Contractor may be exercised by such person or persons as may from time to time be authorized by it for such purposes and any power, authority or discretion required to be executed hereunder by the Owner may be exercised by such person or persons as may from time to time be authorized by it for such purposes.

2.39 STANDARDS

- 2.39.1 Services, Materials and/or Equipment provided to the Owner by the Contractor under this Contract shall comply with all government and industry standards and best practices applicable to the Work, and shall comply with the Owner's applicable technical standards. In the event of a conflict in standards, the Contractor shall be responsible for resolving the conflict and for assuring the appropriate standard is implemented.

2.39.2 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, shall comply with all the Owner's applicable standards, codes, directives, policies, procedures guidelines and other governing documents including but not limited to the Owner's 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 the 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.

2.39.3 The Contractor acknowledges that modifications and updates may be made from time to time in relation to the items identified more fully in 2.39.2 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.

2.40 NO CONFLICT

The Contractor represents and warrants that its performance of the Contract will not conflict with any other contract to which it is bound, and while working on this Contract, it will not engage in any such services or enter into any agreement in conflict with this Contract.

2.41 AMENDMENTS

If at any time during the continuance of this Contract the parties shall deem it necessary or expedient to make any alterations or additions to this Contract, they may do so by means of a written agreement between them which shall be supplemental and form part of this Contract.

2.42 WARRANTY

2.42.1 For Performance of Services

The Contractor warrants that during the term hereof, all services and Work provided hereunder will be (a) free from defects and in compliance with this Contract and with the Owner's instruction, (b) true, accurate and correct, (c) in compliance with all applicable laws, regulations, orders, licenses and permits, (d) performed by qualified and professional individuals with a degree of skill and care which shall be, at a minimum, consistent with applicable industry standards. The Contractor will not in any way limit any standard warranties provided by the Contractor to its customers generally. Upon breach of any of these warranties, the Contractor shall promptly replace or re-perform such nonconforming services or refund the entire price paid for such Work, at the Owner's option.

2.42.2 For Supply of Materials

2.42.2.1 The Contractor guarantees that the Work and Equipment will satisfactorily perform the purpose for which it is intended and be free from defects or deficiencies for a period of sixty (60) months from the date of delivery to Site.

2.42.2.2 If, for any reason after the Commissioning Date there is a major interruption in the operation of the unit, attributable to a warranty item, then the end date of the sixty (60) month warranty period shall be extended by the length of the interruption. The Owner considers a major interruption to be when the repair keeps the transformer out of service in excess of six (6) months.

2.42.2.3 If, within the above stated warranty period, a defect or deficiency should appear in the Work or Equipment or any part thereof due to faulty workmanship, Material, or if the Work or Equipment or any part thereof failed to meet the requirements of the Contract, then the Contractor upon notification by the Owner shall forthwith supply replacement Equipment, parts or Material required to restore the Equipment to satisfactory operating conditions without cost to the Owner.

2.42.2.4 If the Contractor, after such notification, should default or delay in diligently supplying replacement Equipment, parts or Material in a manner satisfactory to the Owner, then the Owner may proceed to place the Equipment in successful operating condition in accordance with the Contract, and the Contractor shall be liable for all costs, charges and expenses incurred in connection therewith and shall forthwith pay the same to the Owner upon receipt of invoices therefore certified correct by the Owner's representative.

2.42.2.5 Should there be a significant delay in Commissioning the plant for reasons beyond the Contractor's control, the Owner agrees to compensate the Contractor to maintain its scope of supply in satisfactory condition during the period of delay.

2.42.2.6 With the exception of claims based on warranties provided by law, the liability of the Contractor to the Owner arising out of the supplying of the Equipment, or its use, whether based on contract or negligence, shall not in any case exceed the cost of correcting defects in the Equipment as herein provided.

2.43 DIGITAL TECHNOLOGY REQUIREMENTS

The Contractor shall seek permission from the Owner's Digital Technology Group to install any temporary equipment such as but not limited to Wi-Fi hot spots, routers, switches on the Site. The Contractor shall set up approved equipment as per the networking and information technologies standards from the Owner's Digital Technology Group. The Contractor shall not plug into the Owner's corporate network any equipment such as laptops, servers, etc., without the approval of the Owner's Digital Technology Group.

2.44 DELETING MATERIALS OR EQUIPMENT FROM CONTRACT

The Owner reserves the right to delete any Materials, Equipment and/or service(s), or parts of the Equipment or the service(s), in the Contract without having any change in the prices of the remaining items.

2.45 COUNTERFEIT, FRAUDULENT, AND SUBSTANDARD ITEMS

The Contractor is hereby notified that the delivery or use of suspect and/or counterfeit, fraudulent, and substandard items (CFSIs) is of special concern to the Owner. If any parts covered by the Contract are described using a manufacturer part number or using a product description and/or specified using an industry standard, the Contractor shall be responsible to assure that the replacement parts supplied by the Contractor meet all requirements of the latest version of the applicable manufacturer data sheet, description and/or industry standard. If the Contractor is not the manufacturer of the goods, the Contractor shall make a reasonable effort to assure that the parts and components supplied under the contract or used to manufacture the Equipment covered in this order are made by the Original Equipment Manufacturer (OEM) and meet the applicable manufacturer data sheet or industry standard. Should the Contractor desire to supply or use a part that may not meet the requirements of this paragraph, the Contractor shall notify the Owner of any exceptions and receive the Owner's written approval prior to shipment or use of the replacement parts to the Owner. If suspect and/or CFSI parts are furnished under the Contract or are found in any of the goods delivered hereunder, such items will be dispositioned by the Owner and may be returned to the supplier. The Contractor shall promptly replace such suspect and/or CFSI parts with parts acceptable to the Owner and the Contractor shall be liable for all costs including, but not limited to, the Owner's internal and external costs relating to the removal and replacement of said parts.

2.46 TITLE

The title to the Owner's Equipment and/or Material delivered to the Contractor's premises to have the Work completed on it shall remain with the Owner while it is in the possession of the Contractor.

2.47 TESTING

- 2.47.1 The Contractor's inspection, examination, and test activities shall include those specified by the Owner in the Contract Documents including Specifications, drawings, codes and standards.
- 2.47.2 An inspection and test plan for all Equipment and Material covered under this Contract shall be submitted to the Owner on a timely basis for review prior to start of the Work.
- 2.47.3 The manufacturer's standard factory tests shall be carried out on the Equipment and Material upon completion of the Work regardless of whether such tests are specifically called for in the Contract.
- 2.47.4 Upon completion of the Work, the Contractor shall give the Engineer reasonable notice of its readiness to carry out any final tests described in the Contract.
- 2.47.5 Interim tests may, at the option of the Engineer, be carried out on completion of any portion of the Work.
- 2.47.6 Source inspection may be applied to contracts when deemed necessary by the Owner.

2.48 FAILURE UNDER TEST

- 2.48.1 Should any test or tests prove the existence of any fault or faults in the Work or in any part of it, or any failure to meet the requirements of the Contract, the Engineer may direct the Contractor in writing to remedy the defect or defects, or to repair, reconstruct, or replace the faulty Work, and the Contractor shall without delay, and at its own expense, carry out the orders of the Engineer in that respect, all according to the terms and requirements of the Contract.
- 2.48.2 Complete new tests shall then be carried out by the Contractor and at its own expense to verify that the rework is acceptable.

2.49 FABRICATED MATERIALS

The Contractor shall ensure that all Materials and Equipment which are supplied by it, its suppliers or sub-suppliers, in the form of pre-assembled components or modules and which contain prefabricated piping, fittings, or ductwork are fabricated in shops having industrial collective agreements with the United Association (U.A.) (Pipefitters) and the Sheet Metal Union. All prefabricated piping shall bear a U.A. label.

2.50 SUBCONTRACTING BY CONTRACTOR

- 2.50.1 Neither the whole nor any part of the Work may be subcontracted by the Contractor without the consent of the Owner.
- 2.50.2 It shall be the Contractor's responsibility for each subcontract issued that the Subcontractor comply with all terms and conditions of this Contract.
- 2.50.3 The Contractor shall be held responsible to the Owner for the acts and omissions of its Subcontractors for their portion of the Work and of persons directly or indirectly employed by them, as for the acts and omissions of persons directly employed by them.
- 2.50.4 Nothing contained in the Contract Documents shall create any contractual relation between any Subcontractor and the Owner.

2.51 CONTRACTOR'S EQUIPMENT

Unless otherwise provided in the Contract Documents, the Contractor shall provide and maintain in good working order, adequate Equipment to perform the Work in accordance with the approved schedule. All such Equipment shall be subject to the approval of the Owner, such approval not to be unreasonably withheld.

2.52 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.

2.53 ENTIRE CONTRACT

The entire agreement of the parties consists solely of this Contract, as herein defined. Except as expressly incorporated herein, any and all previous or collateral agreements, negotiations, proposals, promises and conditions relating to the subject matter of this Contract are superseded by this Contract.

2.54 CUSTOMS AND DUTIES

2.54.1 The Contractor shall be the importer of record for all goods provided under this Contract that are not of Canadian origin. The Contractor will be required to pay the Goods and Services Tax (GST) to Canada Customs at the time of entry into Canada.

2.54.2 When requested on the Tender Submission, the Contractor shall quote separately the amount of Canadian Customs Duty and Canada Customs Tariff Schedule number if applicable. Any applicable Canadian Customs Duty is to be paid by the Contractor to Canada Customs.

2.54.3 The Owner reserves the right to review any and all customs documentation respecting imported goods specified in the Tender. The Contractor shall provide all such documentation to the Owner in a timely manner.

2.54.4 Any increased charges for duty due to redetermination or a reappraisal of Materials and Equipment value under provisions of the *Customs Act* or assessment under the provisions of the *Special Import Measures Act*, shall be the responsibility of the Contractor and not chargeable to the Owner.

2.54.5 Applicable taxes on the Contract Price shall be subject to adjustment for any new Canadian federal or provincial sales, use or excise taxes, or for any legislated changes in the rates of such taxes applicable to the Work, which becomes effective subsequent to the Tender closing date and prior to the earlier of the scheduled delivery date or actual delivery date.

2.54.6 All goods must be coded by using the Harmonized Tariff Schedule. For all foreign shipments being imported into Canada the Canadian Customs Tariff Schedule must be used. If the Contractor is uncertain as to the type of description required for the product(s), the Contractor should contact its customs broker or the federal customs office prior to exporting the goods.

2.55 DELIVERY AND SHIPMENT (FOR PERFORMANCE OF CUSTOM WORK)

2.55.1 The Contractor shall use reasonable effort to meet all delivery dates stated herein. Any change to the delivery dates contained in the Contract must be agreed to by the Owner. Upon notification of readiness of Equipment by the Contractor to the Owner, the Owner shall promptly take delivery of the Equipment. Delivery will be deemed to take place at the Contractor's premises unless otherwise stated in the Contract.

2.55.2 The Contractor shall be responsible for properly packing the Equipment and/or Material in such a manner as to protect them from damage or deterioration during shipment to the Owner's premises and shall be responsible for and make good any and all damage due to improper preparation for loading, shipment, and unloading.

2.55.3 The Owner will be responsible for shipment of the Equipment from the Contractor's premises. Therefore, freight and transit insurance charges shall not be included in the Contract Price.

2.56 SHIPPING/PACKING INSTRUCTIONS

2.56.1 The Contractor shall prepare all Materials and Equipment for shipment and storage in such a manner as to protect them from damage or deterioration and shall be responsible for and make good any and all damage due to improper preparation for loading and unloading. Every piece of Materials and Equipment and/or its shipping container shall be marked with a reference number or symbol to agree with the parts numbering system on drawings and parts lists. All shipping packages shall be marked with the Owner's purchase order number and addressed to the Owner's agent at the Site. All field assembly pieces shall be factory preassembled and match marked prior to shipment.

2.56.2 All parts shall be carefully boxed, or otherwise suitably prepared for shipment to ensure no damage shall be caused during shipment. All openings in the Materials and Equipment shall be tightly closed before shipment.

2.56.3 The Contractor shall take appropriate action to protect all parts for outdoor storage at the Site. Small components, if so noted may be marked for indoor heated, or unheated storage, as required.

2.56.4 The Owner shall be notified no less than seven (7) working days in advance of shipment, of the beginning date of shipment, method, dimensions and weights of each shipment and anticipated date of arrival at the Site. Each crate shall be labelled with its contents and any special handling instructions.

- 2.56.5 The Contractor shall deliver all Materials and Equipment to the Site's Stores Receiving Warehouse (unless otherwise stated in the RFQ).
- 2.56.6 All parts shall be tagged with the following information:
- (1) The Owner's purchase order number;
 - (2) The Owner's material number (SCN);
 - (3) Manufacturer's drawing number and reference or mark number;
 - (4) Quantity; and
 - (5) Any required additional information.
- 2.56.7 The Contractor shall supply the appropriate quality assurance records identified in the Contract Documents within each package used for shipment.
- 2.56.8 Any Materials and Equipment which contain a radiation source shall be shipped in accordance with the CNSC Packaging and Transportation of Nuclear Substances Regulations, SOR/2000-208.
- 2.56.9 The Contractor, when shipping to the Owner any product which is categorized as a hazardous material (i.e. compressed gas, flammable or combustible material, oxidizing material, poisonous and infectious material, corrosive material or dangerously reactive material), shall conform with relevant federal and provincial legislation and regulations pertaining to such Materials. The Workplace Hazardous Materials Information System (WHMIS) shall apply and all such Materials shall be properly identified with WHMIS type warning labels. All shipments of such Material to the Site shall include a Safety Data Sheet (SDS) with a copy to: New Brunswick Power Corporation, The SDS Centre, PO Box 2000, 515 King Street NB Canada E3B 4X1.

2.57 DELIVERY SECURITY REQUIREMENTS

- 2.57.1 All Contractors and delivery persons arriving at Site may be required to produce at least one picture ID that contains the person's name and address plus one other piece of supporting ID.
- 2.57.2 All vehicles arriving at the outer gate will be screened before entering the Site. Screening will include an inspection of the contents of the cab and the cargo areas.
- 2.57.3 To facilitate the inspection of goods arriving at the Site, the Owner requests that all suppliers clearly label all boxes and provide detailed bills of lading. Normal delivery hours are between 8:00 am and 3:00 pm.

2.58 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.

2.59 RETURNED GOODS

- 2.59.1 Goods in excess of, or not in compliance with, the Owner's requirements, delivered due to Contractor error, including, without limitation, over-shipment, defective merchandise and unapproved substitution, shall be returned to the Contractor at the Contractor's expense for a full refund of the purchase price.
- 2.59.2 For goods not required by the Owner for reasons other than Contractor error, including without limitation, overstock and obsolescence, the Owner reserves the right to return the goods at the Owner's expense under the terms and conditions of return included with the Contractor's Tender Submission, or if the Tender Submission is silent on the matter, at the original purchase price, less (i) for goods returned within 6 months of receipt, a 10% re-stocking fee; or (ii) for goods returned more than 6 months after receipt a mutually agreed re-stocking fee not to exceed 25%.

3.0 GENERAL REQUIREMENTS

3.1 QUALITY ASSURANCE

The Contractor shall perform the Work in accordance with the quality assurance required as set out in the Tender Documents. All Work and Materials supplied shall be new unless otherwise indicated in the RFQ, of the most suitable quality, and shall comply with the latest edition applicable, at the Tender closing date, of the codes and standards referenced in the RFQ.

3.1.1 Inspection and Expediting

- 3.1.1.1 All Work covered by this Contract shall be subject to inspection and expediting by the Owner or its authorized representative for which purpose the Contractor (or Subcontractors) shall allow access at all reasonable times during manufacture and installation to the premises in

which the Work is being carried out, the drawings and/or tooling involved, gauges, instruments, devices, required for inspecting the Work, the Contractor's drawings, if so requested by the Inspector.

- 3.1.1.2 If the technical Specifications, the Engineer's instructions, laws, ordinances or any public authority require any Work to be specially tested or approved, the Contractor shall give the Engineer timely notice of its readiness for inspection, and if the inspection is by an authority other than the Engineer, the date fixed for such inspection.
- 3.1.1.3 Inspection by the Engineer shall be promptly made and where practicable, at the source of supply. If any Work should be covered up without approval of or consent of the Engineer, it must, if required by the Engineer, be uncovered for examination at the Contractor's expense.
- 3.1.1.4 Re-examination of questioned Work may be ordered by the Engineer and, if so ordered, the Work must be uncovered by the Contractor. If such Work is found in accordance with the Contract, the Owner shall pay the cost of the Work carried out by the Contractor for the re-examination and replacement. If such Work is found not in accordance with the Contract, the Contractor shall pay such costs, unless it shall show that the defect in the Work was caused by another contractor, and in that event, the Owner shall pay such cost.

3.1.2 **Owner's Quality Control and Audit**

- 3.1.2.1 The Owner may provide on Site representatives who shall monitor the Work performed by the Contractor to ensure it meets the quality control requirements of the Contract. This shall not relieve the Contractor of its responsibility to ensure the Work satisfies these same requirements.
- 3.1.2.2 Consultants may be engaged by the Owner for field quality inspection for particular items of the Work. The Contractor is subject to any quality control inspections, instructions, procedures, or other requirements imposed by these representatives of the Owner.
- 3.1.2.3 The Contractor shall make provision for representatives of the Owner to have access to its Work areas and records, as well as those of its Subcontractors, at all times.
- 3.1.2.4 Quality control for this project is the prime responsibility of the Contractor who shall ensure that all Work is performed in accordance with the Specifications. Where applicable, the Contractor shall provide manufacturer's Inspection and Test Certificates for Materials incorporated in the Work.

3.2 **SUBCONTRACTS**

The Contractor shall acquire Subcontractors as required through a competitive process. All rates or charges for a Subcontractor engaged by the Contractor to provide personnel or services shall be approved by the Engineer prior to the Subcontract being put into place.

3.3 **CO-OPERATION WITH OTHER CONTRACTORS AND THE OWNER**

The Contractor shall co-operate with all other contractors and the Owner working in the area so that all Work may be done in an efficient and orderly manner.

3.4 **SITE SECURITY**

3.4.1 **General**

- 3.4.1.1 The Contractor shall take its own precautions against the loss of its Materials, tools and Equipment and be responsible for the safety thereof.
- 3.4.1.2 Procedures for Site security, rules and regulations will be reviewed with the Contractor by the Owner prior to the Contractor's arrival at the Site. The Contractor shall comply with all provisions for the Site security.
- 3.4.1.3 Entrance to and exit from the Site may be through access gates controlled by security guards. All vehicles shall be subject to searches by the Owner's security forces, upon arrival to and departure from the Site.
- 3.4.1.4 Owner issued identification shall be returned at the completion of the Work or termination of employment under this Contract.
- 3.4.1.5 The Contractor's staff shall submit to security checks as requested by the Owner's security forces. All individuals, Materials, supplies and tools shall be subject to searches using screening devices by the Owner's security forces, including screening of all hand carried items brought into the Site, particularly upon entering and exiting the protected areas.

3.4.2 **Visitors**

Personnel of the Contractor's organization, when visiting the Site, shall be required to have the same identification as the Contractor's Site personnel. Other visitors shall be pre-approved and cleared by the Owner for Site access in accordance with Site Security requirements. The Contractor shall be responsible for enforcing all project rules and procedures established by the Owner.

3.5 **INSTRUCTIONS BY CONTRACTOR**

The Contractor shall be responsible for issuing instructions to its personnel prior to their arrival on Site covering such topics as: use of safety equipment and plant safety rules, hours of work, work permits, and vehicle parking areas.

3.6 SITE MEETINGS

As soon as practical after the Award of Contract, meetings will be held at the Site between the Contractor and the Owner to clarify all working details of the Contract. The meeting will deal with such topics as the Contractor's supervision, supply of safety equipment and coveralls, specified jobs, working hours and any other related topics which may require clarification.

3.7 STORAGE FOR HAZARDOUS MATERIALS

- 3.7.1 Storage for hazardous materials must be isolated from the general work area. Only approved safety cans are permitted for the dispensing of flammable liquids. The location of these storage areas shall be approved by the Owner and shall comply with all applicable fire, safety or other codes, standards or regulations, including the requirements specified in the Contract Documents.
- 3.7.2 The Work at the Site shall be carried out under the Workplace Hazardous Materials Information System (WHMIS) guidelines and all materials shall have the Owner's approved labeling as per station procedure SDP-01368-A23 Workplace Hazardous Material Information System. The Contractor shall supply the Owner with copies of Safety Data Sheets (SDS) for all WHMIS products that will be utilized in the Work. The SDS shall be supplied two (2) weeks prior to shipping the products to Site in order to provide the Owner the opportunity to perform a chemistry review. The Owner's labels will be produced for these products.

3.8 SAFETY PROCEDURES

3.8.1 General

- 3.8.1.1 The Contractor shall observe and comply with all requirements of the New Brunswick *Occupational Health and Safety Act*, R.S.N.B. 1983 Chapter O-0.2, and the associated regulations thereunder including but not limited to General Regulation 91-191. 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 NB Department of Justice and Public Safety, as well as all relevant federal and municipal/civic ordinances.
- 3.8.1.2 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.
- 3.8.1.3 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.
- 3.8.1.4 The Owner will 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 Owner's Safety Inspector will advise the Superintendent of the Contractor and the Owner 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.
- 3.8.1.5 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.
- 3.8.1.6 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).
- 3.8.1.7 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.

3.8.2 Health and Safety Management

- 3.8.2.1 The Contractor is responsible for doing the 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.
- 3.8.2.2 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.
- 3.8.2.3 Before the start of the Work at the 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.
- 3.8.2.4 The Contractor shall remove from the Site any of its employees who refuse to conform to the principles outlined in Subsection 3.8.1.1.
- 3.8.2.5 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.

- 3.8.2.6 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.
- 3.8.2.7 The Contractor is required to include all safety provisions of the Contract in any agreement with Subcontractors.
- 3.8.2.8 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 this Section.
- 3.8.2.9 Asbestos and asbestos containing materials will be encountered in some of the Owner's premises. The New Brunswick *Occupational Health and Safety Act*, R.S.N.B. 1983 Chapter O-0.2, and its Regulation 92-106, as well as any Owner specific procedures shall be applicable to the Work and its performance.
- 3.8.3 **Work Refusals**
- 3.8.3.1 The Contractor must inform all of their 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.
- 3.8.3.2 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.
- 3.8.4 **WorkSafeNB Compliance and/or Stop Work Orders**
- 3.8.4.1 WorkSafeNB has the authority to stop work or write compliance orders for all work under their jurisdiction within New Brunswick.
- 3.8.4.2 The Contractor must immediately address all work stoppages and compliance orders written by WorkSafeNB.
- 3.8.4.3 All compliance or stop work orders written by WorkSafeNB to the Contractor must be reported immediately to the Owner.
- 3.8.5 **Inspections**
- 3.8.5.1 General inspections of the Site are required to ensure that unsafe Work practices and unsafe conditions are identified and corrective action taken.
- 3.8.5.2 The Owner's area supervision, Joint Health and Safety Committee representatives and Health and Safety Specialists may carry out inspections as deemed necessary.
- 3.8.5.3 Unsafe acts and conditions identified during any of the inspections will be corrected by the Contractor in a timely manner to maintain safety at the Site.
- 3.8.6 **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.
- 3.8.7 **Accident/Near Miss Reporting and Investigations**
- 3.8.7.1 All Accidents and Near Miss Events must be reported immediately by telephone or messenger to the Engineer and appropriately investigated to identify the causes and prevent a recurrence.
- 3.8.7.2 In addition, the Contractor shall promptly report in writing to the Owner, 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.
- 3.8.7.3 The Owner's incident report form (Form 145) shall be filled out for all Accidents and Near Miss Events. The report shall be provided to the Owner within twenty-four (24) hours of the event.
- 3.8.7.4 Records of all Accidents, Near Miss Events and investigations including the corrective actions shall be maintained for the length of the Contract.
- 3.8.7.5 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 Miss Events.
- 3.8.8 **Skills Training**
- 3.8.8.1 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.
- 3.8.8.2 The Contractor shall be "competent" to perform their assigned task as per Occupational Health and Safety Regulation 91-191.

3.8.8.3 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.

3.8.9 Hazards Training

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

3.8.9.2 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.

3.8.10 Personal Protective Equipment (PPE)

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

3.8.10.2 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.

3.8.10.3 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 to be worn inside at the Site, with the possible exception of a pre-existing medical condition which requires the same. Photochromic lenses will not be permitted to be worn inside at the Site.

3.8.10.4 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).

3.8.10.5 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 shall apply.

3.8.10.6 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.

3.8.11 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.

3.8.12 Orientation

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

3.8.13 Meetings

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

3.9 SITE PROCEDURES

3.9.1 General

3.9.1.1 In order to administer the overall project, certain procedures and regulations may be set up and enforced by the Owner. These will include, but not be limited to such items as safety, security, time checking, parking, hours of work, uniform starting and stopping times, and rest periods.

3.9.1.2 The Contractor shall comply, at its own expense, with the *Occupational Health and Safety Act*, R.S.N.B. 1983 Chapter O-0.2, and Regulations of New Brunswick, which pertain to the Work or any other written instructions from the Owner relating to safety.

3.9.1.3 The Contractor is expected to fully cooperate in complying with and enforcing the regulations and instructions referred to in 3.9.1.2.

3.9.2 Work Authorization and Protection

3.9.2.1 A Work Authorization may be required to perform some portion of the Work under the terms and conditions of the Contract. The Work Authorization will be issued to the Owner's representative. The Owner may elect to train the Contractor to be Work Authorization Permit (WAP) qualified in order for the Contractor to be issued Work Authorizations.

- 3.9.2.2 Prior to the commencement of the Work, the Contractor shall:
- (a) Ensure that all necessary information is provided to the Owner for proper completion of the Work Authorization.
 - (b) Be responsible for becoming familiar with and fully understanding the risks and procedures associated with the Work Authorization.
 - (c) Be in possession of a written Work Authorization with accompanying detail.
- 3.9.2.3 The person who holds the Work Authorization shall be responsible for:
- (a) Understanding the scope of the Work and any associated hazards performed under the Work Authorization.
 - (b) The safety of all personnel working under the Work Authorization.
 - (c) Understanding the limits of the isolation provided under the Work Authorization, explaining limits of isolation to the crew, and ensuring Work is contained within these limits.
 - (d) Inspecting the Work protection prior to the start of Work each day and also at the completion of each shift.
 - (e) Immediately stopping Work and obtaining clarification from the Owner should uncertainty arise as to security or safety of the isolation provided.
 - (f) Ensuring that Site procedures and expectations are carried out by all members of the crew including, but not limited to, the requirements for foreign material exclusion and confined spaces.
 - (g) Ensuring that monitoring of explosive or poisonous gases is carried out in enclosed areas and that adequate breathing apparatus is used by all members of the crew.
- 3.9.2.4 The Contractor shall keep the Owner up to date on all Work, with particular importance placed on Work that might affect personnel, safety or equipment safety and operations.
- 3.9.2.5 In the event that the Contractor's supervisor or lead person holding the Work Authorization document leaves the Site, all Work must come to a stop. Work shall not reconvene unless the supervisor or lead person returns or a new supervisor or lead person has been named and a new document obtained.
- 3.9.2.6 The Contractor's lead person or supervisor shall contact the Owner immediately to discuss the scope of Work for any Work that does not require isolation or for which isolation cannot be provided.

3.9.3 **Certification of Crane Operators**

The Contractor is advised that only approved competent personnel shall be permitted to operate cranes at the Site. The Contractor shall approve operators based upon, as a minimum, appropriate training certification and demonstrated ability to properly operate the designated cranes while possessing knowledge of good rigging practices. Prior to the requirement for crane operation, the Contractor shall provide the Owner with a list of qualified personnel.

3.9.4 **Scaffolding Inspection**

Prior to use, all scaffolding erected by and/or for the Contractor shall be inspected by the Contractor, ensuring it has been tagged, advising that the scaffolding is fit for use. The Owner will be responsible for tagging the scaffolding.

3.9.5 **Hoses**

The Contractor shall submit to the Owner, a copy of the hydrostatic test certificates for all hose products to be used in the execution of the Work. Submittals must accommodate the hose delivery to the Site, and all hoses shall be tagged to certify and verify the test certificates. All hoses shall be tested to the hose Design Working Pressure.

3.10 **CLEAN-UP AND DISPOSAL**

- 3.10.1 The Contractor shall at all times during the course of the Work, prevent the accumulation on the premises of debris caused by the Work. Whenever it is necessary, in the opinion of the Owner and in all events upon completion and prior to Final Acceptance of the Work, the Contractor at its own expense, shall remove from the premises, all temporary buildings and facilities, debris, all Work and Materials condemned by the Owner and also its tools, scaffolding and surplus Materials, and shall leave the premises in good order and condition. The Contractor shall prevent at any time, unnecessary accumulation or scattering of debris, Materials, tools and Equipment around the Site, and shall conduct the Work in an orderly manner. In case the Contractor fails to comply with the above provisions, or in case of dispute, the Owner will have the right to remove debris, tools and Equipment, and to charge the cost of such removal or repairs, or both, to the Contractor, or charge pro rata to the various Contractors engaged in the Work who, in the opinion of the Owner, are responsible for the clean-up cost. Charges for clean-up cost to the Contractor shall be made by backcharge to the Contractor.

There will not be a disposal area available on the Owner's property. All junk, trash and refuse shall be disposed off the job Site by the Contractor in a manner approved by the Owner and the New Brunswick Department of Environment and Local Government (NBDELG).

- 3.10.2 It is the Contractor's responsibility to ensure that all non-hazardous and non-radioactive waste generated from the Contractor's Work on Site is disposed of at the appropriate regional landfill facility.
- 3.10.3 Hazardous waste shall be handled and disposed of in accordance with applicable federal and provincial regulations and is also the Contractor's responsibility.

3.11 STANDING ASIDE

- 3.11.1 In the interest of safety, during construction activities such as, but not limited to, blasting, demolition work, radiography, heavy lifts, and operation of Equipment, personnel shall stand aside for a specified period of time. Contractors shall perform such activities, when possible, during normal break periods or during times that would minimize disruption.
- 3.11.2 At least twenty-four (24) hours' notice to stand aside shall be issued in writing to all Contractors by the Contractor performing the activity. The notice shall be reviewed and initialed by the Owner prior to circulation. The Contractor performing the activity shall be responsible for ensuring that all personnel do stand aside from the affected areas during the activity.

4.0 TERMS OF PAYMENT

4.1 GENERAL

- 4.1.1 The Owner shall pay the Contractor for the Work at the price set out in RFQ in accordance with the terms stated herein, provided that the Contractor is fulfilling its obligations and the Work performed is in accordance with the contract schedule.

4.1.2 Terms of Payment

The Owner shall pay to the Contractor one hundred percent (100%) of the approved invoiced amount net thirty (30) days after receipt of an acceptable invoice unless specified elsewhere and acceptance of the item(s) at the designated delivery location.

4.2 INVOICES

- 4.2.1 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. The Contractor shall submit a progress invoice for the Work performed during that month. Note: There is zero tolerance for alcohol beverages on expense claims.

- 4.2.2 Invoices shall be prepared in a format acceptable to the Owner and shall be submitted in accordance with the Terms of Payment. 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.

- 4.2.3 Invoices shall show:

1. Owner's purchase order 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. Total amount claimed on the invoice;
8. Amount of Holdback where applicable;
9. Amount of Harmonized Sales Tax (HST) on the invoiced amount and HST Number;
10. Total amount to be paid.

- 4.2.4 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*, S.N.B. 1997, c. H-1.01, and regulations thereunder.

- 4.2.5 For the amount of HST included in each invoice which is for reimbursement of HST paid to the Canada Border Services Agency (CBSA), the Contractor must submit with the invoice, a copy of the CBSA Form B3 which is duly stamped by CBSA officials.

- 4.2.6 Subject to any corrections or amendments deemed necessary by the Owner, payment of the invoice will be made within thirty (30) days of its receipt. A copy of any invoice revised by the Owner together with an explanation of the revision shall be sent to the Contractor for its information.

- 4.2.7 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*, R.S.N.B. 1973, c. W-13, and that the Contractor's account is in good standing at the time of billing.
- (b) When requested and with the last invoice, a Statutory Declaration in a form acceptable to the Owner 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 in respect of this Contract, as at a date not greater than forty-five (45) days prior to the date of the invoice, have been fully discharged.

- 4.2.8 The Owner reserves the right, at any time, to request a clearance certificate from WorkSafeNB and/or a statutory declaration verifying the above.

- 4.2.9 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.
- 4.2.10 Should money be owing to WorkSafeNB, the Owner shall withhold monies until confirmation is provided by the Contractor that payment has been made to WorkSafeNB by the Contractor.
- 4.2.11 Invoices shall be emailed to: APElectronicInvoice@nbpower.com.
- 4.2.12 Payments made hereunder, including final payment, shall not relieve the Contractor from any of its obligations or liabilities under the Contract.
- 4.2.13 Acceptance by the Contractor of the final payment shall constitute a waiver of all claims by the Contractor against the Owner except those previously made in writing in accordance with the Contract and still unsettled.

4.2.14 **Change Orders**

- 4.2.14.1 Invoicing for change orders shall be included in the progress claims and invoiced with the appropriate assigned reference number and necessary back-up documentation.
- 4.2.14.2 The amount for change orders shall be added to or deleted from the Contract Price, and the applicable contractual Holdback shall be applied.

4.2.15 **Invoices for Field Change Authorizations**

- 4.2.15.1 Invoices for Field Change Authorizations (FCA) shall not be submitted until the FCA form has been completed and approved by the Owner. Each FCA will be assigned a number by the Owner and this number shall appear on the invoice for FCA work.
- 4.2.15.2 The value of FCA work will 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.
- 4.2.15.3 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.

4.2.16 **Invoice for Holdback**

- 4.2.16.1 The Contractor shall invoice separately for Holdback.
- 4.2.16.2 The Owner reserves the right to request a clearance authorization from the surety company for any release of Holdback.
- 4.2.17 The Owner will not be responsible for any delay in payment of invoices because of difficulties in identifying shipments due to lack of information. Quantities in excess of those shown on the purchase order will not be accepted without the prior approval of the Owner. Discounts will be calculated from the date an acceptable invoice is received or date goods are delivered, whichever is the later date.

4.3 **OWNER'S DELAY IN PAYMENT**

Delay by the Owner in making a payment when it becomes due and is payable shall, if the delay continues for more than fifteen (15) days, entitle the Contractor to interest on the overdue payment and the Owner shall pay to the Contractor interest thereon from the said fifteenth day until paid at the rate being charged by the Royal Bank of Canada in Fredericton, New Brunswick, on prime commercial accounts as of the date from which such interest was payable.

4.4 **PAYMENT NOT FINAL ACCEPTANCE**

A payment by the Owner shall not be construed as evidence that the Work or any part thereof is complete, is satisfactory or is in accordance with the Contract and as such shall not be considered as Final Acceptance.

4.5 **ACCEPTANCE OF FINAL PAYMENT AS RELEASE**

The acceptance by the Contractor of final payment shall be and shall operate as a release to the Owner of all claims and all liabilities to the Contractor for all things done or furnished in connection with the Work and for every act and neglect of the Owner and others relating to or arising out of the Work, other than detailed claims stated in writing prior to such payment. No payment however, final or otherwise, shall operate to release the Contractor from any obligations under this Contract.

4.6 **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, warranty items, and cleanup, the Owner shall backcharge the Contractor \$100.00/hour for labour, as well as Materials and Equipment, including third party costs, plus a mark-up of ten percent (10%). 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.

4.7 WITHHOLDING TAX

The Canadian *Income Tax Act*, Section 153, and Income Tax Regulation 105 require the Owner to withhold fifteen percent (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 Revenue Agency. This amount shall be withheld from every payment made to the Contractor by the Owner for Work performed in Canada.

4.8 TAX LIABILITY AND INDEMNITY

4.8.1 Notwithstanding Section 4.7 above, 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.

4.8.2 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.

4.9 RIGHT OF SET-OFF

Without restricting any right of set-off given or implied by law, the Owner may set-off against any amount payable to the Contractor under this Contract, any amount payable to the Owner by the Contractor under this Contract or under any other contract, and without restricting the generality of the foregoing, the Owner may, when making payment, deduct from the amount payable, any amount which is then payable to the Owner under the Contract or which by virtue of the right of set-off, may be retained by the Owner.

5.0 INSURANCE

5.1 FOR PERFORMANCE OF SERVICES

5.1.1 Contractor's Insurance

5.1.1.1 Comprehensive General Liability Insurance

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.

5.1.1.2 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.

5.1.1.3 Workers Compensation

The Contractor shall procure and maintain, during the course of the Work workers' compensation as required by the *Workplace Health, Safety and Compensation Commission and Workers' Compensation Appeals Tribunal Act* or similar applicable legislation covering all persons employed by the Contractor or its Subcontractors for Work performed under this Contract. For U.S. employees, appropriate state workers' compensation must be carried including Employer's Liability for a minimum limit of \$1,000,000 U.S., with a Foreign Coverage Endorsement and, to the extent applicable, *Jones Act* and U.S. Longshoreman's and Harbor Workers coverage and FELA.

5.1.1.4 Insurance Policy Documentation

Certificates or certified copies of the insurance policies shall be provided by the Contractor upon request by the Owner. This documentation must include reference to the Contract Document Number.

5.1.2 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.

5.1.3 Claims

5.1.3.1 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.

- 5.1.3.2 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.
- 5.1.3.3 The Owner may withhold from any monies due the Contractor, any deductible amounts for which the Contractor 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.

5.1.4 **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.

5.2 FOR SUPPLY OF MATERIALS

- 5.2.1 Up to the time of delivery of the Material and Equipment to the Site's Stores Receiving Warehouse, the Contractor shall fully insure the same against loss or damage from any cause whatsoever, in the names of the Contractor and the Owner, as their interests may appear. When requested, the Contractor shall supply the Owner with certificates or certified copies of such insurance policies.
- 5.2.2 The Owner shall indemnify the Contractor and protect the Contractor's Materials and Equipment, commencing from the time of arrival at the Site's Stores Receiving Warehouse.