

## PURCHASE ORDER TERMS AND CONDITIONS - GOODS AND SERVICES

### **Nova Scotia Power Incorporated**

#### **Definitions**

Capitalized terms used in this Contract have the following meanings:

**"Acceptance"** means all Work and any associated documentation have been delivered to Company and is found by Company to comply in all respects with this Contract.

**"Affiliate"** has the meaning given in the *Canada Business Corporations Act* (Canada).

**"Background IP"** means Intellectual Property owned by a Party, or licensed to it by a third party, that existed prior to the date of this Contract or is subsequently created by a Party, alone or in conjunction with a third party, that is outside the scope of this Contract, or which does not result from the performance of this Contract.

**"Company"** means the company specified on the PO and its successors and assigns.

**"Contract"** means the PO and these Standard Terms.

**"Cybersecurity Requirements"** means the Appendix "A" Cybersecurity Requirements, which are hereby incorporated by reference and can be accessed at [www.nspower.ca/ContractorPolicies](http://www.nspower.ca/ContractorPolicies).

**"Foreground IP"** means Intellectual Property that results from the performance of this Contract and that is not otherwise included in the definition of Background IP.

**"Good Practice"** means that degree of care, skill, diligence, prudence, professionalism, workmanship and foresight that a reasonable person would expect from an experienced contractor providing Goods or Services of the same or similar nature as those to be supplied or performed by Seller.

**"Goods"** means any equipment, parts, materials, supplies, or other goods provided by Seller to Company under this Contract.

**"Hazardous Materials"** means any materials

regulated, or deemed hazardous, by state, provincial, federal, or local environmental requirements.

**"Intellectual Property"** means any and all rights conferred by law in or in relation to copyright, trademarks (together with all of the goodwill associated therewith), designs, patents, circuit layouts, business and domain names, inventions, trade secrets, confidential information or otherwise proprietary information, and any and all applications, renewals, extensions and restorations of any of the foregoing rights now or hereafter in force or effect worldwide.

**"Modern Slavery"** means labour practices that involve the use of Forced or Child Labour as defined in the *Fighting Against Forced and Child Labour in Supply Chains Act* (the "Act") and can be accessed at [www.nspower.ca/ContractorPolicies](http://www.nspower.ca/ContractorPolicies).

**"PO"** means the purchase order including any attached ancillary documents.

**"Parties"** mean the parties to this Contract, and "**Party**" means one of them.

**"Seller"** means the entity to which this Contract is addressed and its successors and permitted assigns.

**"Services"** means any services provided by Seller to Company under this Contract.

**"Standard Terms"** means these terms and conditions.

**"Work"** means the Goods and Services, as applicable.

#### **Entire Agreement**

This Contract constitutes the entire agreement between the Parties with reference to its subject matter. No modification or amendment of this Contract shall be binding on the Parties unless made in writing and signed by the Parties' duly authorized representatives. Each Party agrees that it has not relied on any representations of the other Party not contained in this Contract.

## **PURCHASE ORDER TERMS AND CONDITIONS - GOODS AND SERVICES**

In no event shall any Seller terms and conditions (whether submitted with a proposal, an invoice, or any other documentation) form part of or be incorporated into this Contract or be of any force or effect regardless of any language in Seller's terms and conditions purporting to do so.

### **Necessary Information**

Seller acknowledges that it has in its possession all applicable specifications, drawings, and documents necessary to provide the Work at the stated price and schedule.

### **Permits, etc**

Seller has or shall obtain at its cost all required permits, licenses, and authorizations necessary to carry on its business and to provide the Work.

### **Safety and Environment**

At Company's request, Seller shall provide all information related to its safety performance and that of any subcontractors or suppliers. Seller shall ensure that all its employees, subcontractors, suppliers, agents, and representatives comply with all applicable federal, provincial, and municipal health, safety and environmental statutes, regulations, policies, and guidelines. While on any Company site, Seller and all those for whom it is responsible shall comply with all Company health, safety and environmental guidelines, policies, and procedures, including the Emera Alcohol and Drug Statement of Expectations for Contractors, which are hereby incorporated by reference into, and form part of, this Contract and can be accessed at [www.nspower.ca/ContractorPolicies](http://www.nspower.ca/ContractorPolicies) or shall be provided by Company upon Seller's request.

All costs incurred by Seller in relation to such compliance shall be the responsibility of Seller. Seller shall provide the Company, upon request and at Seller's expense, with all records required to verify Seller's compliance during the performance of any Services. If the Company determines that the extent of Seller's compliance with applicable programs and policies is not satisfactory, Company shall have the right, in addition to any other rights or remedies, to require Seller to take such additional steps, at Seller's expense, as are necessary to ensure full compliance.

Seller shall not perform any Services or deliver any Goods in which it uses or incorporates, in whole or in part, Hazardous Materials in violation of any such environmental requirements or in such a manner as to leave any Hazardous Materials which could be hazardous to persons or property or cause liability to the Company. Upon discovery of an existing or suspected release on or at the Company's property, Seller shall cease work under this PO in that area and immediately notify the Company in writing. Seller shall be responsible for and indemnify the Company against all liabilities, including any clean-up costs, arising out of Seller's or its subcontractors' (i) contamination of the Company's or a third party's property with any Hazardous Materials, (ii) improper handling, storage, generation, management or disposal, release or abandonment of, Hazardous Materials or (iii) noncompliance with environmental and safety laws by Seller or its subcontractors.

### **Anti-Modern Slavery Requirements**

Seller represents, warrants and covenants that all Goods or Services provided under this Contract are provided without the use of Modern Slavery and in compliance with Emera's Reducing Risk of Modern Slavery in Emera's Business and Supply Chains Policy, which is incorporated by reference into, and forms part of, this Contract and can be accessed at [www.nspower.ca/ContractorPolicies](http://www.nspower.ca/ContractorPolicies). To the extent any Goods or Services supplied under this Contract, including any components, parts, packaging and other materials incorporated therein or used in the production process thereof, are not entirely produced within Canada, the following provisions shall apply:

- a) In the course of supplying Goods or Services pursuant to this Contract, Seller will use reasonable efforts to take the following steps to reasonably ensure that its obligations under this Contract are fulfilled without the use of Modern Slavery:
  - (i) implement and conduct Modern Slavery risk screening and due diligence procedures in its procurement, sourcing, and supply chain activities;
  - (ii) investigate any allegations, events, or

## PURCHASE ORDER TERMS AND CONDITIONS - GOODS AND SERVICES

reports of Modern Slavery in Seller's supply chain and undertake all reasonable actions necessary to mitigate or remediate discovered Modern Slavery risks accordingly; and

(iii) require each of its subcontractors and/or suppliers to comply with the foregoing, and in any event the Seller is responsible for any breach of the foregoing by its subcontractors and/or suppliers.

b) If Seller is made aware of or suspects the use of Modern Slavery in the fulfilment of its obligations under this Contract, it shall promptly notify Company in writing and the parties shall agree on the commercial and legal actions that are necessary in order to ensure the remainder of its material obligations are met without the use of Modern Slavery.

### **Delivery**

The Seller shall deliver the Work to the delivery location, if applicable, and by no later than the delivery date, both as may be specified on the PO. Should delivery be made prior to the delivery date without the consent of Company, payment shall be based on the delivery date specified and not on the actual date of delivery. Seller is solely responsible for any difference in charges or other costs arising from its failure to follow shipping or furnishing instructions specified in the PO.

### **Inspections and Tests**

Company may at any time inspect or test the Work, including through any third-party service it retains, and Seller agrees to facilitate and cooperate with any such inspections and testing. Company's inspection and testing of Work (or its lack thereof) does not relieve Seller of any of its warranty or other obligations under this Contract or in any way limit or preclude Company's rights and remedies under this Contract or at law.

### **Non-compliant Work**

If in the opinion of Company the Work does not comply with the requirements of this Contract, Company may, at its option:

- a) in the case of Goods, (1) reject only those Goods found not to comply with the Contract and return them to Seller at Seller's expense, (2) cancel any unshipped Goods and return to Seller at Seller's expense any Goods that at the time of cancellation had already been shipped, or (3) return at Seller's expense any quantities received by Company in excess of the quantities specified in the PO; and
- b) in the case of Services, require Seller, at its sole expense, to re-perform the Services.

### **Change Management**

Company shall have the right at any time to order changes to the Work (each a "**Change**"). If Company proposes a Change, Seller shall provide Company an estimate of all additional costs and schedule impacts of the proposed Change within five business days. Upon receipt, Company shall determine in its sole discretion whether to approve and implement the proposed Change.

Seller shall not proceed with or implement a Change unless and until:

- a) the scope, all associated costs, and any schedule impacts of the Change have been approved by Company in writing, or
- b) Company has directed Seller in writing to proceed with the Change absent agreement on one or more of scope, cost, and schedule impact of the Change. If the Parties are subsequently unable to agree, all unresolved matters shall be resolved pursuant to the dispute resolution process specified in this Contract. The Parties shall continue to perform all their respective obligations under this Contract throughout the dispute resolution process.

If the Parties disagree on whether a Company instruction constitutes a Change, Company may direct Seller to comply with the instruction and the Parties shall resolve the matter pursuant to the dispute resolution process specified in this Contract.

### **Transfer of Title and Risk of Loss**

## **PURCHASE ORDER TERMS AND CONDITIONS - GOODS AND SERVICES**

Title to the Work shall vest in Company when delivered or upon and to the extent of any payment for the Work by Company, whichever is earlier.

Seller warrants good title to all Work, free from any third-party liens or encumbrances.

Unless otherwise specified in the PO, risk of loss or damage to the Work remains with Seller until its delivery to and Acceptance by Company. Company's Acceptance of the Work does not relieve Seller of its warranty or any other obligations under this Contract or in any way limit or preclude Company's rights and remedies under this Contract or at law.

### **Price, Payment and Audit**

Unless otherwise stated, all prices are in Canadian dollars and include all costs and expenses relating to packaging, marking, handling, freight, insurance, delivery, licenses and permits, and any other applicable costs and expenses.

Invoices shall be in a format and with content acceptable to Company and accompanied by all supporting documentation reasonably required by Company, which documentation may include timesheets, supplier invoices, receipts, or other such proof of expenditure. Company is not responsible for any interest or carrying charges.

Payment shall be made NET 35 from receipt of an invoice approved by Company.

Payments shall be in accordance with, and subject to, all applicable laws, including holdback requirements under any applicable tax and lien legislation. Company shall have no obligation to pay Seller for defective Work, Work that does not meet its intended purpose, Work not in compliance with Good Practice, or Work not pre-approved in writing by Company.

Seller shall not permit any lien or charge to attach to any of the Work or to any of Company's property. If a lien or charge is attached, Seller shall promptly procure its release and discharge and hold Company harmless from any associated losses, costs, damages, or expenses (including legal costs on a solicitor-client

basis).

Company shall have the right to examine and audit, during normal business hours, any records, data, invoices, and documents, in whatever shape or form, including electronic media, that may contain information relating to Seller's obligations under this Contract and the costs incurred by Seller pursuant hereto. Such records shall be kept by Seller for a period of at least three years after the expiration or termination of this Contract or for such longer periods required by law, in form and content sufficient to permit the aforementioned audit.

### **Taxes and Duties**

Company shall pay all applicable GST, HST, or other goods and services taxes that Seller is required to charge in connection with the Work in accordance with applicable law. Seller shall pay, and indemnify Company against, all other sales and commodities taxes, withholding taxes, customs duties, income taxes, employer levies, excise taxes, export and import tariffs and fees, and any similar taxes, levies, assessments, tariffs, or fees (collectively, "**Taxes**"). For greater certainty, the stated prices payable under this Contract shall be deemed to include all such Taxes.

If required by applicable law, Company shall have the right to withhold amounts, at the withholding rate specified by such applicable law, from any payments under this Contract for the Work, and any such amounts shall be credited against and deducted from amounts otherwise owing to Seller hereunder. Seller shall note on each invoice whether any portion of the Services covered by such invoice was performed inside or outside of Canada for the purposes of Canadian income tax legislation or such other information required by Company to properly assess withholding requirements.

Seller shall defend, indemnify, and hold harmless Company from and against any and all Taxes (including interest and penalties) that may at any time be imposed upon, incurred by, or asserted against Company relating to, resulting from, or arising out of Seller's failure to fulfill its obligations hereunder with

**PURCHASE ORDER TERMS AND CONDITIONS - GOODS AND SERVICES**

respect to Taxes or any withholding requirements.

prior written consent of Company.

**Intellectual Property**

Seller:

- a) assigns to Company, immediately upon its creation, all right, title, and interest in and to all Foreground IP;
- b) irrevocably waives all moral rights arising under the *Copyright Act* (Canada) or any rights to similar effect in any country or at common law that it may have with respect to the Foreground IP to the extent those rights are not assigned herein;
- c) agrees to execute, or cause its employees to execute, any documents that Company considers useful or necessary, and to provide all reasonable assistance to Company, to effect, evidence, record, perfect, and protect the foregoing assignments and waivers in relation to the Foreground IP;
- d) grants to Company a fully paid up, perpetual, royalty-free, irrevocable, transferable (including right to sub-licence), worldwide, nonexclusive, limited licence in respect of all Background IP to exploit, use, maintain, modify, develop, support, adapt, and otherwise utilize the Work for Company's business purposes; and
- e) represents that it has sufficient right, title, and interest in all Foreground IP and Background IP for Company to obtain and exercise all the right, title, and interest granted, assigned, and licenced to Company under this section.

Seller shall defend, indemnify, and hold harmless Company from all damages, liabilities, costs, losses and expenses (including legal fees and settlement costs) arising out of or connected with any claim, suit, cause of action, judgment, demand, or action by a third party based on a claim that Company's use, possession, or ownership of any Work or Foreground IP, as provided under this Contract, infringes any Intellectual Property rights of a third party. No such claim shall be settled or compromised without the

All data that Seller provides to Company shall be provided in native electronic format.

**Default and Termination for Breach**

The following shall constitute a default by Seller under this Contract (each, a "**Default**"):

- a) Seller's filing of a petition in bankruptcy or making of any assignment for the benefit of its creditors;
- b) the commencement of any proceedings against Seller under applicable law relating to insolvency or bankruptcy;
- c) Seller's sale, transfer or assignment of all or substantially all of its assets;
- d) Seller's failure to maintain the insurance required by this Contract;
- e) Seller's failure to pay the undisputed cost of labour, materials or other services provided to Seller by third parties in connection with this Contract; or
- f) Seller is in default or in breach of any other term, condition or obligation under this Contract.

If a Default occurs, then, without limiting any other rights and remedies it may have, Company may:

- a) immediately suspend all payments to Seller;
- b) cure Seller's default and recover any associated costs from Seller;
- c) recover from Seller any damages or expenses that Company suffers or incurs because of Seller's default, including any incremental cost incurred to procure the Goods or Services elsewhere; and
- d) terminate this Contract immediately upon written notice to Seller.

## **PURCHASE ORDER TERMS AND CONDITIONS - GOODS AND SERVICES**

### **Termination for Convenience**

Company may terminate this Contract for any reason by giving Seller 30 days' written notice. If Company terminates the Contract pursuant to this provision, Company shall pay Seller, in full satisfaction of all Claims that Seller may have against Company, for (a) that portion of the Work satisfactorily delivered and accepted as of the date of termination, and (b) any third-party cancellation charges incurred by the Supplier upon termination, in each case, to the extent such Claims are substantiated by documentation satisfactory to and verified by Company. In no event shall such payment exceed the contract value set out on the face of the Contract less any payments made by Company under the Contract prior to the date of termination.

### **Seller Indemnity and Assumption of Risk**

Seller shall assume all risk of loss, damage, or injury, including death, to person or property, caused by its directors, officers, employees, sub-suppliers, agents, or representatives, and agrees not to make or bring any claim, action, or demand against Company or its directors, officers, agents, or employees in respect of such loss, damage, or injury arising out of or in any way attributable to the operation of this Contract except to the proportionate extent such loss, damage, or injury is caused by the negligence or willful misconduct of Company.

Seller agrees to indemnify and save harmless Company, its directors, officers, servants and employees, and their heirs, executors, administrators, successors, and assigns, from and against any liabilities, losses, expenses (including legal costs on a solicitor-client basis), claims, demands, actions, and causes of action whatsoever arising out of Seller's breach of contract, negligence, or wilful misconduct, except to the extent caused by the negligence or willful misconduct of Company.

### **Limitations of Liability**

Each Party's aggregate liability to the other, whether in contract, tort, equity, strict liability, or any other theory of law, shall be limited to, in aggregate, the greater of (i) the agreed contract value for Work procured pursuant to this Contract, as evidenced by

the contract value set out on the face of this Contract, and (ii) the applicable limits of insurance coverage, if any, required under this Contract.

In no event shall either Party be liable for loss of profit, business interruption, loss of use, or any similar indirect or consequential damage or loss.

The limitation of Seller's liability above does not apply to:

- a) losses suffered by Company for which insurance is required to be provided pursuant to this Contract;
- b) Seller's liability for infringement of Intellectual Property rights or royalties;
- c) Seller's liability to indemnify for environmental matters pursuant to this Contract;
- d) death or personal injury caused by Seller's negligence or wilful misconduct;
- e) fraud committed by Seller (including fraudulent misrepresentation);
- f) breach of the Confidentiality provisions; or
- g) any liability of Company to a third party caused by the acts or omissions of Seller or those for whose acts or omissions Seller is responsible at law or pursuant to this Contract and for which Seller is required to indemnify Company pursuant to the terms of this Contract.

### **Warranty**

Seller warrants that all Goods are designed, engineered, manufactured, and assembled in accordance with Good Practice and all other standards, codes, regulations, laws, and requirements applicable to the Goods, fit for the purposes specified, and free from defects. Seller shall assign to Company, or enforce for Company's benefit, any warranties obtained from manufacturers or subcontractors.

If upon receipt or within twelve months thereafter Company determines that any Goods are defective,

## PURCHASE ORDER TERMS AND CONDITIONS - GOODS AND SERVICES

Seller shall promptly repair or replace the defective Goods at its sole cost. If Seller fails or refuses to do so, Company shall be entitled, on reasonable notice to Seller, to take all measures it deems appropriate to repair or replace the defective Goods and to recover from Seller all costs arising therefrom.

Seller warrants that all Services shall be performed in accordance with Good Practice using personnel with the skills and training appropriate for the assigned tasks and using appropriate technology, tools, and equipment. Seller shall promptly rectify or reperform at its sole cost any Services that do not comply with this provision.

The foregoing warranties are not exclusive and are in addition to any applicable manufacturer's warranty and all other warranties and guarantees available to Company, whether written, oral, implied, or statutory.

### **Insurance**

*Commercial General Liability.* Seller shall maintain Commercial General Liability insurance with limits of \$2,000,000 per occurrence for bodily injury, death, and property damage, including loss of use. Coverage must specifically include: Products & Completed Operations and Personal Injury; Broad Form Property Damage; Contingent Employer's Liability; Cross Liability and Severability of Interest; Blanket Contractual Liability; and Non-Owned Automobile Liability; Sudden and Accidental Pollution Liability

*Automobile Liability.* If applicable, Seller shall maintain Automobile Liability insurance with limits of \$2,000,000 per occurrence covering all licensed motor vehicles owned, rented, or leased, bodily injury and property damage liability, and mandatory accident benefits.

*Professional Liability.* If applicable, for the longer of term of the Contract and 24 months following Seller's completion of the Services, Seller shall maintain professional liability insurance with a limit not less than \$2,000,000 per occurrence.

*Marine/Cargo Insurance.* If applicable, Seller shall maintain marine and cargo insurance for damage to

Company's property while in transit, with limits of not less than the replacement value of such property, and shall cause Company to be added as Loss Payee under the relevant policies.

*Contractor's Pollution Liability Insurance.* If applicable, Seller shall maintain contractor's pollution liability insurance covering new pollution incidents and exacerbation of historical pollution conditions arising from Seller's operations including 24 months extended reporting period (if claims made) or 24 months completed operations (if occurrence based) including contingent transportation, non-owned disposal site coverage, and emergency expense.

*Cyber Liability Insurance.* If applicable, Seller shall maintain technology liability insurance covering liabilities for financial loss resulting or arising from negligent acts, errors, or omissions, in connection with the Work which provide for:

- (i) intellectual property infringement arising out of software or content (excluding patent infringement and misappropriation of trade secrets);
- (ii) breaches of security;
- (iii) violation or infringement of any right of privacy, breach of federal, state, or foreign security or privacy laws or regulations, including the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 or successor legislation;
- (iv) data theft, damage, destruction, or corruption, including unauthorized access, unauthorized use, identity theft, theft of personally identifiable information or confidential corporate information, transmission of a computer virus or other type of malicious code, and participation in a denial of service attack on a third party;
- (v) loss of Seller's profits and extra expenses incurred as a result of a network interruption or suspension due to a network security breach;
- (vi) cost to restore, recreate, or recollect data that are corrupted or destroyed due to a network security

## **PURCHASE ORDER TERMS AND CONDITIONS - GOODS AND SERVICES**

breach;

Such insurance must address all the foregoing if caused by an employee of Seller or an independent contractor working on behalf of the Seller in performing Services under this Contract. Policy must provide coverage for wrongful acts, claims, and lawsuits anywhere in the world.

*Workers' Compensation.* Seller shall comply with all applicable workers compensation legislation or similar laws which might impose any charge or liability on Company in connection with this Contract.

*Seller's Certificates of Insurance.* Commercial General Liability policy shall include a waiver of subrogation in favour of Company, its Affiliates as appropriate, and their respective directors, officers, and employees. Commercial General Liability, and Cyber Liability policies shall name the Company, and its Affiliates as appropriate, as additional insured. Except to the extent of the liabilities assumed and the indemnities given by Company hereunder, all of Seller's insurance policies, whether or not specifically required by this Contract, shall operate as primary to any insurance policies maintained by Company, its Affiliates, and their respective directors, officers, and employees.

Seller shall provide Company 30 days' written notice of any cancellation, material change to, or reduction in limits of the required insurances, and immediate notice of any cancellation caused by Seller's non-payment of premiums.

Company may reduce or waive all or any part of these insurance requirements under circumstances where the Work does not or no longer requires the identified insurance coverage. Any reduction or waiver must be in writing and shall in no way reduce or waive Seller's responsibility or liability hereunder.

### **Dispute Resolution**

Within 10 business days of a Party notifying the other Party of a dispute arising from or relating to this Contract, senior officers of Seller and Company shall meet to discuss and resolve the dispute. If the Parties are unable to resolve the dispute within 10 business

days of first meeting or such longer period as the Parties may agree in writing, either Party may provide notice to the other Party that the dispute is to be resolved pursuant to the Nova Scotia *Commercial Arbitration Act* (Nova Scotia).

Unless otherwise requested by the Company, there shall be no stoppage in the provision of Goods or Services during any dispute resolution process.

### **Compliance with Laws**

Seller warrants and acknowledges that it has reviewed, understands, and shall comply with any laws applicable to the performance of this Contract, including the laws of the Provinces of Nova Scotia and the laws of Canada. Without limitation, the Seller shall comply with all applicable laws regarding anti-corruption, anti-trust, anti-bribery, occupational health and safety, the protection of the environment, and human rights.

### **Force Majeure**

Neither Seller nor Company shall be liable for any failure to comply with this Contract to the extent that and for as long as the failure is caused by a Force Majeure Event. "Force Majeure Event" means any event or circumstance that prevents the performance by a Party of its obligations under this Contract that is (i) not reasonably within the control of, (ii) not caused or contributed to by the negligence of, and (iii) not reasonably foreseen by the affected Party.

If Seller is unable to perform its obligations under this Contract as a result of a Force Majeure Event, Company may grant an extension to the delivery of, suspend, reduce, or cancel the Work without any cost or obligation to Company.

Seller waives any claim for additional compensation because of a Force Majeure Event, including for costs incurred to mitigate the effects of such an Event.

The Party claiming a Force Majeure Event must give verbal notice to the other Party within two days of becoming aware of a Force Majeure Event and promptly employ all commercially reasonable efforts to mitigate or recover from the Force Majeure Event.

## **PURCHASE ORDER TERMS AND CONDITIONS - GOODS AND SERVICES**

### **Confidentiality**

The term "Confidential Information" includes all information, documentation, material, and data that Seller directly or indirectly acquires from Company or through the performance of the Work. For greater certainty, "Confidential Information" does not include information that:

- a) is lawfully in the public domain through no fault of Seller;
- b) Seller has in its possession without limitation on disclosure to others;
- c) Seller obtained from a third party who is lawfully in possession of the information and is not subject to a contractual or fiduciary relationship with Company with respect to such information; or
- d) Seller independently develops without the use of Confidential Information.

Seller shall not disclose or use any Confidential Information other than in accordance with the terms of this Contract without the prior written approval of Company. Seller shall adopt and follow precautionary measures to ensure that Confidential Information is not disclosed to third parties without the prior written approval of Company.

Notwithstanding the foregoing, Seller may disclose Confidential Information if required by any applicable law, legally binding order of any court, arbitrator, or administrative body having jurisdiction, or any rule of a recognized stock exchange on which it or any of its Affiliates is listed, provided Seller has provided Company with five business days' prior written notice of the disclosure with full particulars of the Confidential Information to be disclosed. In connection with any compelled disclosure, Seller shall cooperate with Company to preserve the confidential nature and minimize the disclosure of Confidential Information, including to seek a protective order or other remedy. Seller also agrees to make reasonable efforts to obtain the agreement of the party or body to whom disclosure is made to limit further disclosure of the Confidential Information.

If requested by Company, Seller shall promptly, but in any event no later than 15 days after receiving the request, deliver to Company or destroy all Confidential Information in its custody, possession or control and confirmation in writing that it has delivered to Company or destroyed all such Confidential Information, as the case may be.

For the avoidance of any doubt, Company may disclose any information received from Seller to its Affiliates, directors, officers, employees, contractors, subcontractors, counsel, consultants, advisors, and to Company's and its Affiliates' lenders, bankers and financial or insurance institutions.

The terms of this section shall survive the expiration or termination of this Contract.

### **Data Privacy and Security**

- a) Company data, including any data about the Company's or its affiliates' employees, customers, and prospective employees and customers whether an individual is readily identifiable from the data or not ("Company Data") and regardless of whether such Company Data constitutes Confidential information or not, shall not be utilized by the Seller, its affiliates, or their respective employees, agents subcontractors, and representatives (collectively, "Representatives") for any purpose other than performance of this Contract and such Company Data shall not be sold, assigned, leased, or otherwise transferred, disposed of or provided to third parties by Seller or commercially exploited by or on behalf of Seller or any of its Representatives.
- b) Seller and its Representatives shall only be permitted to access the Company Data as permitted by Company, and Seller shall not, and shall not permit its Representatives to access any Company Data outside of the authorized permissions. Seller shall, upon Company's request and at no additional charge to the Company, promptly provide Company with a copy of all Company Data in Seller's possession. Seller shall provide promptly to Company upon Company's request all passwords, equipment

## PURCHASE ORDER TERMS AND CONDITIONS - GOODS AND SERVICES

- configurations, codes, comments, keys, documentation, and the locations of any such files and other materials, including equipment and software keys and such information as to format, encryption (if any), and any other specification or information necessary for Company to retrieve, read, revise, or maintain such files and information. Seller shall not retain copies of Company Data. Upon Company's request, Seller shall promptly return to Company or destroy Company Data and certify the same to Company in writing.
- c) In addition to other safety and security obligations set forth in this Contract, Seller shall maintain physical facility procedures, technical and administrative data security procedures, and other safeguards against the destruction, loss, alteration, or theft of, or unauthorized access to, or unauthorized use of any Confidential Information, Company Intellectual Property, or other Company Data.
- d) Seller shall act upon reasonable requests by Company to require Seller's Representatives to execute written agreements (i) acknowledging Seller's obligations with respect to Company Data, Confidential Information, and Intellectual Property and (ii) undertaking to respect and to otherwise act in adherence with those obligations. Upon request by Company, Seller shall confirm to Company such adherence.
- e) Seller shall promptly inform Company of any breaches in security or conditions potentially leading to breaches in security of which the Seller is aware, including breaches or potential breaches in Seller's supply chain, and including all uncorrected security vulnerabilities in any Goods or Services provided by Seller. Seller shall be responsible for, and shall indemnify and hold harmless Company and its affiliates for any damage, loss, claims, liabilities, and expenses caused by any security breaches involving the Seller, its affiliates or their Representatives, or otherwise involving the Goods or Services, except to the extent such breaches which have been caused by or contributed to any acts or omissions of Company, its affiliates, or their respective Representatives.
- f) Upon written request, Company shall be entitled to audit Seller's compliance with these requirements.
- g) As part of the provision of any Goods or Services that include an information technology product or service (including any hardware, software, firmware, electronic data storage system, voice or data circuit, telephony system, other network components and resources, and other electronic systems), Seller shall maintain and enforce at any location where Goods or Services are provided or performed safety and security procedures and technology that are at least: (i) equal to standards generally used by first-tier information technology service providers; and (ii) as rigorous as those procedures in effect at its premises as of the Effective Date of this Contract. Company shall, from time to time, provide to Seller its safety and security procedures that are then in effect at its premises and Seller shall comply with such procedures at such locations.
- h) Unless otherwise agreed by Company in writing, Seller shall be responsible for the following:
- (i) removing or disabling all software components that are not required for operation or maintenance of the Goods or Services;
- (ii) configuring each component of the Goods or Services to operate using the principle of least privilege;
- (iii) not permitting user credentials to be transmitted or stored in clear text;
- (iv) providing logging capabilities or the ability to support Company's existing logging system;
- (v) if Seller is not providing host-based malware detection as part of the Goods or Services, upon Company's reasonable request providing guidance on malware detection and

## **PURCHASE ORDER TERMS AND CONDITIONS - GOODS AND SERVICES**

- configuration settings that will work with the Goods or Services;
- (vi) verifying and providing documentation certifying that the Goods or Services (including third-party hardware, software, firmware, and Services) have appropriate updates and patches installed prior to delivery and documentation of Seller's patch management program and update process;
  - (vii) establishing, documenting, and implementing risk management practices for information and communications technology supply chain delivery of hardware, software, and firmware, and providing documentation to the Company on Seller's chain-of-custody practices; and
  - (viii) documenting use, capabilities, and limits for any wireless devices.
- NERC CIP-013**
- If applicable, Seller covenants and agrees that it shall maintain a high threshold of cyber security in all Goods and Services provided to Company under this Contract and further covenants to strictly comply with industry standards and the Cybersecurity Requirements.
- General**
- a) This Contract shall be construed in accordance with the laws of the Province where Company is situate and the federal laws of Canada applicable therein. Subject to the dispute resolution provisions of this Contract, the Parties attorn to the exclusive jurisdiction of the courts of said Province. The United Nations Convention on International Sale of Goods shall not apply to this Contract.
  - b) This Contract shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Seller shall not assign or otherwise transfer this Contract or any part hereof without Company's prior written consent, which may be unreasonably withheld by Company. Company may assign this Contract without Seller's consent.
  - c) If any part of this Contract is determined to be illegal or unenforceable, it shall be considered severed from this Contract and the remaining provisions of this Contract shall remain in full force and effect as if the offending part had never been included.
  - d) Section headings are used for convenience only and shall not affect the interpretation or construction of this Contract.
  - e) If there is more than one Seller, all obligations of Seller hereunder are joint and several.
  - f) The remedies of Company provided for in this Contract are neither exhaustive nor mutually exclusive and Company shall be entitled to resort to or seek any other remedies available to it at law or in equity. No delay or failure of Company to exercise any right or remedy shall operate as a waiver thereof.
  - g) All provisions of this Contract which by their express terms or nature are continuing shall survive the expiration or termination of this Contract, including this provision, and any provisions relating to notice, confidentiality, indemnification, termination, intellectual property, dispute resolution, and any provisions required to determine, or that exclude or limit, any liability or that are otherwise required to give effect to or interpret any continuing provisions.
  - h) Seller represents and warrants that it has full and complete authority to enter into and perform this Contract. The person who executes this Contract on behalf of Seller represents and warrants that it has full and complete authority to do so and that Seller shall be bound thereby.