

	Document Reference ID: IPS-FIN-POL-PBC-006
	Approver: President

TERMS AND CONDITIONS FOR SUBCONTRACTORS (ONTARIO)

1. TERMS OF AGREEMENT

1.1 These Terms and Conditions together with any other documents incorporated by reference, appended, or marked as attachments, including the Purchase Order, the requirements and description of the Work, and any properly executed Change Orders (collectively the “Contract”), govern the agreement between Iconic Power Systems Inc. (“IPS”) and the party identified as the Vendor in the Purchase Order (hereinafter referred to as the “Subcontractor”) in relation to the performance of the Work. Subcontractor’s commencement of performance of the Work, including shipment, delivery, or provision of any goods or services, following receipt of the Contract constitutes Subcontractor’s acceptance of, and agreement to be bound by, the Contract. The Contract forms the entire agreement between the parties and any terms different from or in addition to the Contract, whether communicated orally or contained in any confirmation, invoice, acknowledgement, release, letter, acceptance or other written correspondence, shall not form a part of the Contract even if Subcontractor purports to condition its acceptance of the Contract on IPS’s agreement to such different or additional terms. IPS’s silence or failure to object shall not be deemed acceptance of any such terms.

1.2 Notwithstanding Section 1.1 of these Terms and Conditions: (i) if a separate written service agreement or master agreement covering performance of the Work described in the Contract exists between Subcontractor and IPS, and has been duly executed by authorized representatives of both parties, the terms of such agreement shall prevail over any inconsistent terms herein; and, (ii) the requirements, terms and conditions of the Prime Contract, including all dispute resolution processes, plans, specifications, general and supplementary conditions and addenda thereto, as far as they are applicable to this Contract and the Work, shall be binding on the Subcontractor, are incorporated by reference and made a part hereof. The Subcontractor agrees that with respect to the Work it assumes toward IPS all of the duties, obligations, responsibilities, covenants, warranties and representations that IPS assumes toward the Owner, or the Prime Contractor where applicable, and IPS shall have the same rights and remedies as against the Subcontractor as the Owner, or Prime Contractor where applicable, has against IPS under the terms and provisions of the Prime Contract with the same force and effect as though every such remedy from the Prime Contract was set forth herein in full.

2. DEFINITIONS

2.1 “Applicable Law” means the common law, laws of equity, and any and all laws, statutes, enactments, by-laws, regulations, rules, orders, directives, policies, permits, licences, codes, standards, and rulings of any government, and any ministries, agencies, board, commission or tribunal of any government applicable at the Site and any other jurisdiction relevant to the performance of the Work.

2.2 “Change” means a change to the Work that IPS directs or causes that requires a material adjustment the Due Date or cost of the Work to be performed and includes any such adjustment regardless of whether IPS considers it material.

2.3 “Change Order” means a written instrument signed by both parties describing a Change and any corresponding adjustment in the cost of the Work or Due Date, or both, and no Change shall be effective unless set out in a Change Order executed by both parties.

2.4 “Claims” means any third-party claim, demand, action, loss, damage, liability, expense, fee, or cost, including legal fees on a solicitor client full indemnity basis.

2.5 “Contract Price” means the total cost to complete the Work.

2.6 “Drawings” means the graphic and pictorial depictions showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, and diagrams.

2.7 “Due Date” means the date or dates specified in the Contract by which the Subcontractor is required to deliver or perform the Work.

2.8 “Intellectual Property Rights” means patent, industrial design, copyright, trademark or trade secret protection and rights, or any other type of intellectual property protection and rights, whether registered or unregistered, and including applications for the same.

2.9 “Key Personnel” means those personnel identified by IPS as critical to the success of the project due to their skills and or knowledge.

2.10 “Owner” means the entity that has title to the site where the Work is to be performed.

2.11 “Prime Contract” means the agreement between IPS and Owner or IPS and Prime Contractor (as applicable).

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- 2.12 “Prime Contractor” means any entity employed by, or contracting with, the Owner who has engaged IPS.
- 2.13 “Record” means information, documents, data and other records.
- 2.14 “Specifications” means the written requirements and standards for materials, systems, workmanship, quality, and the necessary services for the Work.
- 2.15 “Site” means the location of where the work is to be performed, as specified in the Contract.
- 2.16 “Work” means the total products, materials and services specified in the Contract that Subcontractor is to deliver and perform for IPS, including all deliverables reasonably inferable therefrom.

3. PERFORMANCE OF CONTRACT

- 3.1 Time is of the essence in Subcontractor’s performance of its obligations under this Contract.
- 3.2 The Subcontractor agrees to perform the Work in a prompt, continuous, and diligent manner. Unless otherwise provided herein, Subcontractor agrees to furnish all materials, supplies, tools, equipment, supervision, labour, utilities, testing, certifications, shop drawings and other items necessary to fully perform the Work and complete the Work in accordance with the Drawings and Specifications pertaining thereto, including the payment of all insurance, taxes, licences, bond premiums (as applicable), and guarantees or warranties, all at Subcontractor’s sole cost and expense.
- 3.3 Subcontractor shall commence the Work and complete the Work in accordance with the Due Date, as may be amended in accordance with the Contract. Subcontractor is responsible for all costs necessary to keep the Work on schedule. IPS may incur losses as a result of delayed completion and Subcontractor agrees to indemnify IPS against any such loss.
- 3.4 The Subcontractor represents and warrants that it: (i) is duly organized, validly existing, in good standing, and properly registered and licensed to do business in the location(s) where the Work is to be performed; (ii) has the required skills and expertise to perform the Work in a highly professional manner using sound engineering principles, sound construction practices, and sound project management and supervisory procedures, all in accordance with accepted industry practices; (iii) prior to executing this Contract, has investigated and satisfied itself as to all conditions, limitations, and restrictions on use relating to the Site and the Work, including accessibility, general character, surface conditions, location of utilities both above ground and below, roads, pipelines, uncertainties of seasonal weather and all other physical, topographical, geological, and geographical conditions, including previously completed work that may affect the performance of the Work; (iv) prior to undertaking its obligations under this Contract, has investigated and satisfied itself as to the general character, quality, quantity and availability of resources, including labour, transportation, equipment and materials, required to execute and complete the Work; and, (v) understands the geographic, economic, security, political and cultural conditions prevailing in the location(s) where the Work is to be performed.
- 3.5 Any failure by Subcontractor to discover the matters described in Section 3.4 that affect or could affect the performance of the Work shall not relieve Subcontractor from its obligations under this Contract and the Contract Price is deemed to include and reflect consideration of those matters.
- 3.6 Subcontractor shall provide the means for delivery, unloading handling, and storage of equipment and materials required for the Work. All equipment or material previously received and stored on the Site by the Owner or IPS for installation by Subcontractor shall become the responsibility of Subcontractor as soon as Subcontractor arrives on the Site. Subcontractor shall be responsible for proper care, custody, and control of such equipment, which shall remain subject to Subcontractor’s Quality Assurance Program.
- 3.7 Subcontractor acknowledges that it does not require rights to use any real estate, including easements or access rights for other property that is not included in the Site in order to perform the Work, including areas for storage, parking and construction laydown. Subcontractor shall not conduct activities or store equipment or materials unrelated to the Work at the Site.
- 3.8 Before Subcontractor makes any shipment to the Site, Subcontractor shall first communicate with, and receive instruction from IPS. Receiving and storage of equipment and materials shall be in accordance with IPS Field Material/ Receiving. All shipping delivery, and related costs shall be included in the Contract Price and shall be at Subcontractor’s sole expense.
- 3.9 Subcontractor shall at all times comply with Applicable Laws. Subcontractor shall also comply with all applicable labour agreements to the extent legally binding upon it.

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3.10 Subcontractor has full corporate or company power and authority to enter into and perform this Contract, and has taken all actions necessary to authorize its execution of this Contract.

3.11 Subcontractor understands the conditions of the roads, waterways and railroads in the vicinity of the Site, including the conditions affecting shipping and transportation, access, disposal, handling and storage of materials. Subcontractor is responsible for the costs of repairing any damage caused to such roads, waterways and railroads by Subcontractor or Subcontractor's employees or subcontractors.

3.12 When Subcontractor takes delivery of Owner supplied equipment or materials, title shall be and shall remain vested in Owner. Subcontractor agrees not to sell or otherwise dispose of Owner supplied equipment or material and agrees to keep such equipment and material free of any liens, security interests, charges or other encumbrances whatsoever.

3.13 Subject to Subcontractor's rights under Applicable Laws, Subcontractor warrants that Owner shall obtain title to the equipment, materials and all other aspects of the Work, free and clear of all liens, security interests, charges and other encumbrances whatsoever.

3.14 Subcontractor shall make good at its expense any damage or loss to any equipment, materials, Work, or the Site caused in whole or in part by Subcontractor or Subcontractor employees, agents, or sub-subcontractors, regardless of whether such damage or loss is due to negligence.

3.15 In addition to agreeing to provide a sufficient body of competent personnel to comply with its obligations hereunder, Subcontractor shall provide a list of Key Personnel if required by IPS. Subcontractor acknowledges that a fundamental term of this Contract is the performance of the Work by the Key Personnel until the Work is completed. Subcontractor shall not remove or make unavailable any Key Personnel or accomplish assigned tasks, duties or activities of any Key Personnel by utilizing other personnel without IPS's prior written approval, which may be withheld in IPS's discretion, and Subcontractor shall replace each person so removed or made unavailable only with a person of comparable experience and expertise, subject to IPS's prior written approval.

4. INSPECTION OF WORK BY IPS AND OWNER

4.1 All Work shall be subject to inspection and approval, before and after installation, by IPS, Prime Contractor (if applicable), and the Owner. Subcontractor shall notify IPS when portions of the Work are ready for inspection. At their option, IPS, Prime Contractor (if applicable), and Owner may inspect the Work either at Subcontractor's or supplier's shops, or at the Site, or both.

4.2 Subcontractor or Subcontractor's suppliers shall provide access to the Work, reasonable facilities, and assistance for the safety and convenience of IPS, Prime Contractor (if applicable) and Owner's representatives for these activities. If any Applicable Law requires any of the Work to be tested, inspected, or approved, Subcontractor shall give IPS reasonable notice of the time and place for inspection and testing. Inspection or testing shall be included in the Contract Price for performing the Work. If Subcontractor proceeds with Work without providing an opportunity for Owner, Prime Contractor (if applicable), and IPS inspection as required by this Contract, such Work shall be deemed defective until it is uncovered and inspected. Any Work covered by Subcontractor without a required inspection shall be uncovered and replaced at the expense of Subcontractor if such covering interferes with or obstructs such inspection or test as determined by IPS.

4.3 Within a reasonable time after receipt of notice from Subcontractor that the Work is completed and ready for inspection testing, and acceptance, IPS, Prime Contractor (if applicable), or Owner shall make their inspection, and may request any additional test(s).

4.4 Any rights by Owner, Prime Contractor (if applicable), and IPS to witness or to review any tests, detailed drawings or other documents shall not create any obligations for Owner, Prime Contractor (if applicable), and IPS to conduct such inspections or reviews to detect errors, inaccuracies, ambiguities or other potential problems. No inspection or testing of the Work, or acceptance of the Work, or any payment (including final payment), under this Contract shall be construed to be an acceptance of defective Work, nor shall any such act be evidence of Subcontractor's satisfactory performance of the Work, and shall not relieve Subcontractor of its obligations hereunder.

4.5 If IPS requests that Subcontractor dismantle Work which IPS failed to inspect despite receipt of a properly delivered notice from Subcontractor of the availability of such Work for an inspection under this Article 4, then, (i) if such Work is not in conformity, Subcontractor shall pay the expense of dismantling and reassembling such Work, but (ii) if such Work is in conformity, IPS shall pay the expense of dismantling and reassembling such Work.

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5. PRICE, PAYMENT AND TAXES

- 5.1 Subject to the lien legislation applicable at the Site, IPS shall pay Subcontractor in accordance with this Article 5.
- 5.2 Unless otherwise specified in the Contract, Subcontractor shall complete the Work for the Contract Price and the Contract Price includes all taxes and other charges such as shipping and delivery charges, fuel surcharges, administrative charges, duties, customs, tariffs, and government-imposed surcharges. Subcontractor shall, at IPS's request, detail the price of all such taxes and other charges, in its invoices.
- 5.3 Where the Contract Price is based on time and material, Subcontractor shall advise IPS immediately when it reaches 80% of the original estimated Contract Price and again when it is anticipated that the actual costs may exceed the original estimate.
- 5.4 A properly prepared Subcontractor invoice must include the Contract number, the banking details of Subcontractor, all supporting documentation, and, if required in the Contract, Subcontractor's certification of conformance of the Work to the requirements of the Contract. Unless otherwise specified in the Contract: (i) Subcontractor shall submit an invoice for each consignment or Contract to: Accounts Payable, payables@iconicpowersystems.com.
- 5.5 A holdback of 10% of the pre-tax invoice amount shall be deducted from each invoice. Such holdback amounts shall be paid to Subcontractor within 7 days of IPS receiving the corresponding amount held back from its invoices.
- 5.6 Amounts for Subcontractor Work performed and included in an invoice issued to the Owner for payment shall be paid within 7 days of IPS receiving payment for such Work, or such portion thereof.
- 5.7 Subcontractor agrees that IPS's receipt of payment is an express condition precedent to Subcontractor's entitlement to payment under this Contract, including the release of any holdback. Subcontractor assumes the risk of non-payment from IPS if for any reason IPS is not paid for the Work, regardless of the cause of such non-payment, including without limitation Owner insolvency, Owner default, Owner set-off, or Owner disputes unrelated to Subcontractor's Work.
- 5.8 Subcontractor agrees the Goods and Services Tax (GST) applies to the Work in accordance with the Excise Tax Act (Canada) and to include in its invoices a valid business registration number.

6. CHANGES

- 6.1 IPS may make Changes in accordance with this Article 6. When a Change is proposed by IPS, it shall provide Subcontractor with a notice in writing describing the Change.
- 6.2 Subcontractor shall within 5 days of receiving the notice contemplated under Section 6.1, or such shorter time as may be required to satisfy the Prime Contract, submit a detailed estimate of any adjustments to the Work, the Due Date, and the cost of the Work that would be required for Subcontractor to perform the Change.
- 6.3 Following receipt of Subcontractor's estimate contemplated under Section 6.2 or 6.4, as applicable, the parties shall negotiate any required adjustment to the any adjustments to the Work, the Due Date, or the cost of the Work, and where the parties agree to such adjustment(s) they shall record their agreement in a Change Order.
- 6.4 If Subcontractor believes that IPS has directed or caused a Change that materially affects the cost or time for performance of the Work for which IPS has not issued a notice as contemplated under Section 6.1, Subcontractor shall, not later than 5 days from after the commencement of the event or circumstance giving rise to the claim, notify IPS in writing of the Change, and include in such notice: (i) a description of the action or inaction asserted to have caused the Change; and, (ii) a detailed estimate of any adjustments to the Work, the Due Date, and the cost of the Work that would be required for Subcontractor to perform the Change. Upon receipt of such notice, IPS shall evaluate Subcontractor's notice in good faith, and either agree or disagree that a Change is required. If IPS agrees that it has directed or caused a Change to the Work, Section 6.3 shall apply.
- 6.5 If the parties cannot agree on any adjustment to the Work, the Due Date, or the cost of the Work required for Subcontractor to perform a Change, or where under Section 6.4 IPS disagrees that it has directed or caused a Change, the parties may resolve such dispute in accordance with Section 16.6. That notwithstanding, Subcontractor shall continue to fulfill its obligations pursuant to the Contract without interruption. Further, prior to resolution of a dispute, the Owner may in its discretion by notice to Subcontractor, direct Subcontractor to proceed in respect of the matter in dispute and Subcontractor shall comply with and implement the direction. Continuing to fulfill its obligations, or complying with such direction, shall be without prejudice to Subcontractor's rights relating to the dispute, provided that Subcontractor's sole remedy shall be as determined in accordance with Section 16.6.

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6.6 IPS shall not be liable for any Subcontractor costs in respect of Work or work that has been completed unless authorized by way of duly executed Change Order, signed by an authorized IPS representative.

6.7 Subject to Applicable Laws, if Subcontractor fails to satisfy the notice requirement contemplated under Section 6.4, it shall be deemed to have expressly waived and released IPS from any Claims in respect of the particular matter and such notice is a condition precedent to receipt of any relief as may be contemplated under this Contract or at law.

6.8 Notwithstanding anything to the contrary in this Contract, Subcontractor shall not be entitled to greater rights, entitlements or relief against IPS under this Contract than IPS actually obtains from the Owner, or where applicable the Prime Contractor, in relation to the performance of the Work or any claims of Subcontractor relating thereto, and any such relief shall be limited to the amount, if any, IPS recovers from the Owner or Prime Contractor specifically in respect of Subcontractor's claim.

7. REPRESENTATIONS AND WARRANTIES

7.1 Subcontractor represents and warrants that: (i) the Work, and IPS's use of the Work, do not and shall not infringe upon any third party's Intellectual Property Rights, right of publicity or privacy, or any other proprietary rights under any Applicable Law; (ii) Subcontractor shall not disclose to IPS, bring onto IPS's premises, or induce IPS to use any confidential or proprietary information that belongs to anyone other than IPS or Subcontractor which is not covered by a non-disclosure agreement between IPS and Subcontractor; (iii) software supplied by Subcontractor does not contain any harmful code; (iv) Subcontractor's Work conforms to the Contract, the Designs and Specifications, and, if properly incorporated by reference to this Contract, Subcontractor's quotation or proposal, and Subcontractor's brochures or catalogs, and if none of the foregoing is applicable, then such Work is suitable for the intended use; and (v) Subcontractor has all necessary licences, permits, qualifications, and approvals required by Applicable Law to perform the Work.

7.2 Subcontractor warrants that for a period of 12 months from the date of total completion of the Work, or such longer time as may be required by the Prime Contract, the Work shall be free of all faults, defects or nonconformities. If remedial or corrective work is required during the warranty period, it shall be extended by a further 12-month period from the date of rectification.

7.3 Subcontractor shall take all measures necessary to correct any and all faults, defects or nonconformities, or to replace or have replaced faulty, defective or nonconforming Work with the greatest diligence and at Subcontractor's expense, including all costs of removal, reinstallation, access, and incidental damages caused by such defects.

7.4 Subcontractor acknowledges and agrees that all warranties, performance guarantees or similar obligations herein granted by Subcontractor to IPS may be assigned to or exercised by the Owner, and Subcontractor shall execute any documents reasonably required by IPS to evidence or effect such assignment.

8. ASSIGNMENT AND SUBCONTRACTING

8.1 Subcontractor may not assign any of its rights or delegate any of its obligations under the Contract without IPS's prior written consent, and any purported assignment or delegation without such consent shall be null void. IPS may assign this Contract, in whole or in part, to the Owner, Prime Contractor, or any affiliate without Subcontractor's consent.

8.2 Subcontractor may not subcontract any of its rights or obligations under the Contract without IPS's prior written consent. If IPS consents to the use of a Sub-subcontractor, Subcontractor shall: (i) guarantee and shall remain liable for the performance of all subcontracted obligations; (ii) subject to the limitations in section 11, indemnify IPS for all Claims of any kind against IPS and caused by the acts or omissions of Subcontractor's sub-subcontractors; (iii) make all payments to its sub-subcontractors; and, (iv) ensure a formally documented qualification process is in place to ensure such sub-subcontractors are appropriately qualified (as determined by IPS) to undertake the Work. If Subcontractor fails to make timely payment to a Sub-subcontractor for Work performed, IPS shall have the right, but not the obligation, to pay the Sub-subcontractor and set off against any amount due to Subcontractor by the amount paid to the sub-subcontractor.

8.3 To the extent allowed by Applicable Law, no person who is not a party to Contract shall be entitled to enforce or take the benefit of any of its terms whether as a result of applicable legislation, custom or otherwise, provided that IPS, the Prime Contractor, and the Owner shall be deemed intended third-party beneficiaries of Subcontractor's warranties and indemnities.

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9. TERM AND TERMINATION

9.1 The Contract shall remain in effect until the Work is completed and accepted or until terminated in accordance with these terms and conditions.

9.2 Either party may terminate the Contract, or any portion of the Work, immediately by delivering written notice to the other party upon the occurrence of any of the following events: (i) a receiver is appointed for either party or its property; (ii) either makes a general assignment for the benefit of its creditors; (iii) either party commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief law, if such proceedings are not dismissed within 60 days; or, (iv) either party is liquidating, dissolving, or ceasing to do business in the ordinary course. Notwithstanding the foregoing, Subcontractor shall have no right to terminate the Contract for convenience.

9.3 IPS may terminate this Contract, or any portion of the Work, immediately by delivering written notice to Subcontractor for any breach not cured within 10 days of delivering a notice of the breach. In that event, IPS shall be entitled to: (i) take possession of any Work by whatever method IPS considers appropriate, in its discretion; (ii) remedy any fault, defect or nonconformity in the Work, including by engaging others to do so, and charge against Subcontractor all costs and expenses incurred in so doing; and, (iii) withhold further payment to Subcontractor until total completion of the Work, after which time IPS shall pay Subcontractor for all of the Work properly performed to the date of termination, less the sum of all costs IPS incurred pursuant to Sections 9.3(i) and 9.3(ii), all costs in excess of the Contract Price incurred to obtain satisfactory completion of the Work by itself or others, and all losses otherwise sustained on account of Subcontractor's default. In the event the amount owing to Subcontractor is less than the sum of all costs described in Section 9.3(iii) Subcontractor shall be liable to, and shall pay immediately upon demand, IPS for any shortfall.

9.4 IPS may immediately terminate the Contract upon written notice to Subcontractor if there is a change in ownership representing 20 percent or more of the equity ownership of Subcontractor and in that event Section 9.3 shall apply without any cure period.

9.5 Notwithstanding any other provision under this Article 9, IPS may terminate this Contract, or any portion of the Work, for its convenience at any time and without cause upon 10 days written notice to Subcontractor. Upon receipt of notice of such termination, Subcontractor shall inform IPS of the extent to which it has completed the Work as of the date of the notice, and Subcontractor shall immediately collect and deliver to IPS whatever Work then exists. IPS shall pay Subcontractor for all Work performed and accepted up to and including the effective date of the termination, provided that IPS shall not be obligated to accept any Work performed or delivered after Subcontractor has received notice of termination. Under no circumstance shall IPS be obligated to pay any more than the payment that would have become due had Subcontractor completed and IPS had accepted the Work. IPS shall have no further payment obligation in connection with any termination, and Subcontractor shall not be entitled to loss of profits, consequential damages, or any other form of compensation as a result of termination for convenience.

9.6 IPS may, without penalty or payment, suspend performance of this Contract, or any portion of the Work, by written notice to Subcontractor. At the time of a suspension, IPS shall pay Subcontractor in accordance with Article 5 for all Work properly performed to the date of the suspension, but withhold all further payments. Upon further written notice by IPS to Subcontractor, Subcontractor shall promptly resume performance of the Work and the Due Date shall be adjusted to account for the duration of the suspension in accordance with Article 6.

9.7 IPS may pursue other remedies in addition to termination, including but not limited to claims for damages, indemnity, and specific performance.

10. CONFIDENTIALITY AND CYBER SECURITY

10.1 Subcontractor acknowledges that the Freedom of Information and Protection of Privacy Act (FOIP) applies to all Records transferred to it, or collected, created, or stored by it in relation to this Contract. If Subcontractor receives a demand for any of the Records and the disclosure by it of such Records is not expressly authorized under this Contract, Subcontractor shall: (i) immediately notify IPS of the demand and forward a copy of the demand to IPS (unless prohibited by Applicable Law); and (ii) not disclose the Records or part thereof unless directed by IPS to do so, provided, however, that Subcontractor may disclose any information that it is required to disclose pursuant to the order of a court or other authority under Applicable Law. In that case Subcontractor must advise IPS of the disclosure immediately upon receipt of the demand therefor, or as soon thereafter as is reasonably practicable.

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10.2 Subcontractor shall not provide IPS with personal information of any third party or its own employees. Notwithstanding the foregoing, if Subcontractor does provide IPS with any personal information, Subcontractor represents and warrants that it has obtained the necessary consent to provide that personal data to IPS and to allow IPS to use, disclose, and transmit such personal information among IPS and its employees, contractors, affiliates and advisors in connection with this Contract.

10.3 Subcontractor must treat as confidential all Records that have been received by Subcontractor or any Subcontractor personnel as a result of this agreement, including this Contract, and shall use such Records solely for the purpose of performing the Work.

10.4 Subcontractor must obtain IPS's written consent prior to any publication, presentation, public announcement, or press release concerning its relationship as a Subcontractor to IPS, and any breach of this Section shall entitle IPS to injunctive relief in addition to any other remedies available at law or equity.

10.5 **APPLICABLE ONLY TO COMPANIES WORKING ON CIP SITES AND HANDLING BCSI.**

(i) Notwithstanding anything to the contrary in this Contract, all work performed at Critical Infrastructure Protection facility, as defined by the Utility, shall be in compliance with all applicable IESO Ontario Reliability Standards and additional compliance requirement set forth by the Utility. IESO is the Independent Electricity System Operator of Ontario, including any successor organization.

(ii) For all Utility CIP facilities, Subcontractor shall have at a minimum one employee who shall have met the requirements of the Utility to have authorized unescorted physical and/or electronic access. This employee shall need to ensure all non-authorized employees (visitors) are within visual line of site when work is performed within the physical security perimeter at a Utility CIP facility.

(iii) For termination of an employee(s) who have authorized unescorted physical and/or electronic access, and/or has access to approved designated BCSI storage locations, to a Utility CIP Facility, Subcontractor must notify the Utility and IPS within 6 hours of the termination. For employees who no longer require access to a Utility CIP facility, due to job rotation/move, or business need Subcontractor must notify the Utility and IPS within one business day after the effective date of the move and/or rotation, or discontinuation of business need for access.

(iv) For work which contains Bulk Electric System Cyber System Information (BCSI), Subcontractor must have a process to encrypt files containing BCSI or encrypt the devices containing BCSI. At no time should BSCI be in plain text on a laptop device. Employee who require access to BCSI must also be trained on how to store, transport and dispose of BSCI information.

(v) Subcontractor must have a process to either return relays, HMIs and RTUs which contain BCSI to their default factory settings prior to being removed from a Utility CIP facility or use the approved disposal contractor. Subcontractor shall meet all evidentiary requirements set forth by the Utility. Failure to comply with this Section 10.5 shall constitute a material breach of this Contract.

11. INDEMNIFICATION

11.1 Without limiting its obligations under Sections 3.3 or 8.2, Subcontractor shall defend, indemnify and hold harmless IPS, its affiliates, directors, officers, employees, and agents from and against any and all Claims arising out of or in connection with any: (i) personal injury (including death) or property damage resulting from or relating to the performance of the Work to the extent caused by Subcontractor or its personnel, sub-subcontractors, suppliers, or anyone for whom Subcontractor is responsible; (ii) wilful misconduct, fraudulent or negligent act or omission, or other legal fault of Subcontractor or Subcontractor personnel or sub-subcontractors; (iii) any breach by Subcontractor of this Contract; and, (iv) any infringement of a third party's Intellectual Property Rights or any other rights, arising out of or in connection with the performance of the Work.

11.2 IPS shall indemnify and hold Subcontractor harmless from and against any and all Claims for which IPS is legally responsible arising out of or in connection with: (i) Subcontractor's use of IPS's products, services, information, or materials provided to Subcontractor by IPS in connection with the Work, provided that such use is in accordance with the terms of the Contract and is necessary to deliver or perform the Work; or (ii) infringement of a third party's Intellectual Property Rights or any other rights provided that such infringement is a direct result of Subcontractor's adherence to the terms of the Contract and is necessary to deliver or perform the Work.

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11.3 Where any obligation to indemnify, defend or hold harmless arises under this Contract, the indemnified party shall provide the indemnifying party with prompt written notice of any Claims. Where IPS is entitled to be indemnified it may, at its sole discretion, permit the indemnifying party to control the defense, settlement, adjustment, or compromise of any Claim. Alternatively, IPS may employ separate counsel at the expense of the indemnifying party and may control the defense of any Claim.

11.4 If a third party enjoins or interferes with IPS's use of any Work, then in addition to Subcontractor's obligations under section 11.1, it shall use its best efforts to: ((i) obtain any licences necessary to permit IPS to continue to use the Work; (ii) replace or modify the Work as necessary to permit IPS to continue to use the Work; or if (i) and (ii) are not, in IPS's reasonable opinion, commercially reasonable, then, (iii) promptly refund to IPS the amount paid for any Work for which a third party enjoins or interferes with IPS's use of the Work, together with all documented costs of removal, reinstallation, and transition incurred by IPS.

11.5 Nothing in this section 11 shall limit any other remedy of the parties.

12. LIABILITY

12.1 Notwithstanding anything else in the Contract or otherwise, under no circumstances or theory of liability shall IPS be liable to Subcontractor with respect to the subject matter of the Contract for any amounts in excess of the Contract Price.

12.2 In no event shall IPS be liable to Subcontractor for any incidental, indirect, special, consequential damages or loss of profits arising out of, or in connection with, the Contract, whether or not such damages were foreseeable or IPS was advised of the possibility of such damage.

12.3 The limitations in this section 12 shall apply notwithstanding any failure of the essential purpose of any limited remedy provided herein. Nothing in the Contract limits either party's liability for bodily injury of a person, death, or physical damage to property or any liability which cannot be excluded under Applicable Law.

13. INSURANCE

13.1 Subcontractor shall secure and maintain General Liability Insurance, in accordance with the *Insurance Act* (Ontario), in an amount not less than \$5,000,000 inclusive per occurrence, insuring against bodily injury, personal injury and property damage including loss thereof. Such insurance shall include blanket contractual liability, and non-owned automobile liability. Subcontractor shall name IPS, the Owner, and the Prime Contractor (if applicable) as additional insureds.

13.2 If IPS in its absolute discretion deems it necessary, Subcontractor shall secure and maintain: (i) Automobile Liability Insurance in an amount of not less than \$2,000,000 for Subcontractor's vehicles used in the performance or delivery of the Work; and/or (ii) Professional or Errors & Omissions Liability Insurance in an amount not less than \$2,000,000 throughout the term of this agreement and for a period of 12 months following the completion or termination of this agreement insuring its liability resulting from errors or omissions in the performance of its professional services. IPS may deem it necessary for Subcontractor to secure and maintain Cyber Security and Breach Insurance not less than \$5,000,000 throughout the term of this agreement and for a period of 12 months following the completion or termination of this agreement under this Contract.

13.3 All insurance policies shall be provided and maintained by Subcontractor at its own expense. It shall be the sole responsibility of Subcontractor to decide whether or not any insurance coverage, in addition to that required by this agreement, is necessary for its own protection or to fulfill its obligations under this agreement. Subcontractor shall maintain such additional types and limits of insurance as is customary for a company of similar size and similar operations to Subcontractor in the jurisdiction or jurisdictions in which Subcontractor's operations take place. Subcontractor shall provide IPS with certificates of insurance and, upon request, copies of insurance policies, evidencing the coverage required herein prior to commencing Work and upon renewal thereafter. No cancellation or material change shall be effective without at least 30 days' prior written notice to IPS.

14. WORKPLACE SAFETY AND INSURANCE BOARD

14.1 Subcontractor shall comply with all Applicable Laws, which for clarity includes the *Workplace Safety and Insurance Act, 1997* (Ontario), the *Occupational Health and Safety Act* (Ontario), and the *Labour Relations Act, 1995* (Ontario),

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howsoever enacted or imposed, with respect to the obligations hereunder and the liabilities of an employer to its employees for injuries and disease suffered in connection with employment.

14.2 At the discretion of IPS, Subcontractor may be requested to provide a clearance certificate or a Statement Account from the Workplace Safety and Insurance Board (WSIB).

14.3 Subcontractor must maintain an account in good standing with the Workers' Compensation Board. Subcontractor's account must include coverage for all Subcontractor personnel, partners, proprietors or directors of the firm, proprietorship, company or corporation who are present or may have cause to be at the Site. Subcontractor shall provide evidence of such coverage upon request.

14.4 At the discretion of IPS, Subcontractor may require verification from the Workers' Compensation Board that Subcontractor has an account in good standing with the Workers' Compensation Board prior to proceeding with the Work or at anytime during the performance of the Work. IPS, notwithstanding any provision in the Contract Documents, may refuse to make a final payment unless Subcontractor furnishes a letter or other evidence from the Workers' Compensation Board indicating that Subcontractor's account with the Board is in good standing.

14.5 If IPS is required to pay any amount to the WSIB on behalf of Subcontractor by reason of any wrongful act or omission of Subcontractor, IPS may deduct the amount from any amount owing to Subcontractor under the Contract or under any other contract, or may demand a reimbursement by Subcontractor to IPS for the amount so paid by IPS. Subcontractor's obligations under this Article 14 shall survive completion or termination of the Work.

15. GOVERNING LAW

15.1 The Contract shall be construed in accordance with, and all disputes shall be, governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein without regard to its conflict of laws provisions. Subcontractor irrevocably consents to the exclusive jurisdiction and venue of the Courts of the Province of Ontario, and waives any objection on the grounds of inconvenient forum or lack of jurisdiction.

16. GENERAL

16.1 Any notice to be given under the Contract shall be in writing and addressed to the party's addresses listed in the Purchase Order. Notices shall be deemed effective: (a) if personally delivered, upon delivery to the contact person for the receiving party; (b) if sent by an overnight service with tracking capabilities, upon receipt by the receiving party; (c) if sent by fax or electronic mail, at the time of sending provided the sender receives no indication there was error in transmission; or, (i) if sent by certified or registered mail, within five business days of deposit in the mail. Where no contact person has been identified in the Contract, notice shall be deemed effective if provided as described in this provision directly to any officer or director of a party.

16.2 Subcontractor agrees for a period of 12 months after completion of the Work, not to directly or indirectly recruit, solicit, or otherwise induce or attempt to induce any employee of IPS to terminate his or her employment with IPS or otherwise to act contrary to the interests of IPS.

16.3 Subject to Sections 1.1 and 1.2 herein, if there is a conflict between or among the Contract and any documents attached to and incorporated by reference, the conflict shall be resolved as follows: (i) to the extent that there are additional requirements for higher standards of quality or performance or additional requirements for more extensive scope of design, work or services than otherwise required, no such ambiguity, conflict or inconsistency will be deemed to exist and the Subcontractor's obligations hereunder will include compliance with such additional and higher requirements; and, (ii) notwithstanding anything else in the Contract, IPS may resolve such conflict in order to ensure that it has met its obligations to the Owner under the Prime Contract.

16.4 Any obligations or duties which, by their nature, extend beyond the expiration or termination of the Contract shall survive the expiration or termination of the Contract including Articles 1, 10, 11, 12, 15, 16, and Sections 3.5, 5.7, 9.3, and 9.6.

16.5 The terms and conditions the Contract shall be binding upon and enure to the benefit of the parties hereto and their permitted successors, transferees, and assignees.

16.6 With the exception of adjudication under the lien legislation applicable to the Site, which this Section 16.6 shall in no way limit or restrict, in the event of any dispute or difference arising in connection with the Contract, the parties' respective senior representatives shall, within ten (10) days after receipt of a written request from either party to the other,

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enter into good faith discussions and use their best efforts to resolve the dispute without recourse to legal proceedings. If the dispute or difference is not resolved within 30 days after the start of such discussions, any dispute or difference between the parties may be referred to the Alberta courts unless, within that period, they agree to refer the matter to arbitration under the *Arbitration Act, 1991* (Ontario). Nothing in this Section shall restrict IPS's right to seek interim or injunctive relief from a court of competent jurisdiction.

16.7 A waiver of any term of this agreement or of any breach by of this agreement is effective only if it is in writing and signed by the non-breaching party and is not a waiver of any other term or any other breach. No delay or failure by IPS to exercise any right or remedy shall operate as a waiver.

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