

**STANDARD TERMS AND CONDITIONS  
FOR THE PURCHASE OF GOODS**

BP-5-11  
REV (14)

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## 1. Definitions

- 1.1 In addition to terms defined elsewhere in these Terms and Conditions, each of the following terms have the following meanings:
- (a) “Background IP” means Intellectual Property that is owned by or licensed to a Party prior to the Contract Effective Date or during the Term, independently from the Contract.
  - (b) “BPRIA” means the Amended and Restated Bruce Power Refurbishment Implementation Agreement executed by Bruce Power and the IESO on December 3, 2015 as amended, restated, supplemented or replaced from time to time.
  - (c) “Bruce Power” means Bruce Power L.P., a limited partnership existing under the laws of the Province of Ontario.
  - (d) “Bruce Power Collective Agreements” means the labour agreements, as may be amended from time to time, entered into by Bruce Power with each of the Power Workers’ Union, The Society of United Professionals, the International Association of Machinists and Aerospace Workers, the Canadian Union of Skilled Workers, the Brick & Allied Craft Union of Canada, and any other labour agreements applicable to the Work of which Bruce Power notifies Contractor in writing, and the EPSCA Agreement and the Chestnut Park Accord.
  - (e) “Bruce Power Data” means any and all data and information provided by Bruce Power hereunder or otherwise made available to Contractor from Bruce Power, including Confidential Information and Personal Information whether in printed, electronic, magnetic, optical or other form.
  - (f) “Bruce Power Group” means Bruce Power L.P., its general and limited partners and each of their respective (i) officers; (ii) directors; (iii) partners; and (iv) shareholders.
  - (g) “Bruce Power Nuclear Generating Station” means the nuclear power facility operated by Bruce Power and located near Tiverton, Ontario.
  - (h) “Bruce Site” means the leased premises located in Tiverton, Ontario or any other location where Bruce Power carries on its business.
  - (i) “Business Day” means a day other than a Saturday, Sunday, or statutory holiday in the Province of Ontario.
  - (j) “CFSI” means counterfeit, fraudulent, suspect, or substandard products.
  - (k) “Chestnut Park Accord” means the agreement dated November 15, 1994, including the addendum thereto dated March 21, 1995, between Ontario Hydro, the Power Workers’ Union and various building trades unions which describes the historical division of trades work and jurisdictional agreement between the Power Workers’ Union and such building trades unions and provides for a protocol by which trades work is to be assigned and disputes resolved between the Power Workers’ Union and such building trades unions in respect of trades work performed by or for Ontario Hydro on Ontario Hydro property (including the Bruce Power Nuclear Generating Station), which agreement and addendum

are binding on Bruce Power as a successor employer to the primary business operating out of the Bruce Power Nuclear Generating Station.

- (l) “CNSC” means the Canadian Nuclear Safety Commission established pursuant to the NSCA and any successor agency, board or commission thereto.
- (m) “CNSC Licence” means the licence issued by the CNSC to Bruce Power Inc., as general partner of BPLP and its successors and assigns for the operation of the Bruce Site.
- (n) “Commodity Taxes” means all Customs Duties and all other Taxes levied on or measured by, or referred to as HST, value-added, consumption, sales, use, transfer, land transfer, registration charges, gross receipt, turnover, excise or stamp.
- (o) “Confidential Information” means any information relating to or disclosed in the course of a Contract, which is or should be reasonably understood to be confidential or proprietary to the disclosing Party (including third party information provided to the other Party in confidence). Confidential Information will not include information (a) already lawfully known to the receiving Party without obligation of confidentiality, (b) disclosed in published materials without fault of the receiving Party, (c) generally known to the public without fault of the receiving Party, (d) lawfully obtained from a third party not under any obligation to maintain the confidentiality of either Party, (e) required by Laws or regulations to be released, or (f) independently developed by receiving Party, provided the person or persons developing the same have not had access to relevant proprietary information of disclosing Party.
- (p) “Contract” is defined in section 1.7.
- (q) “Contract Effective Date” is defined in section 31.9.
- (r) “Contractor” means the person specified in the Purchase Order as the supplier of the Work.
- (s) “Contract Price” means the price and fees charged to and payable by Bruce Power to Contractor for the Work (including the Goods) as indicated in the Purchase Order, or if not indicated in the Purchase Order, as indicated elsewhere in the Contract.
- (t) “Corrected” means to have a Correction performed.
- (u) “Correction” is defined in section 15.3.
- (v) “Costs” means any out-of-pocket, direct costs or expenses to be paid by one Party pursuant to these Terms and Conditions, including third party costs and fees.
- (w) “CSA N290.7-14” means the Canadian Standards Association cyber security standard for nuclear power plants and small reactor facilities N290.7-14, as same may be succeeded, modified, amended or replaced, from time to time.
- (x) “Customs Duties” means customs duties, countervail, anti-dumping, special import measures, or import or export taxes, plus any interest or penalties, including any administrative monetary penalties or similar penalties imposed by any Governmental Authority.

- (y) “Cyber Asset” means an electronic device which (i) has any of the following attributes, or (ii) contains an electronic devices that has any of the following attributes:
  - (i) communication ports;
  - (ii) programming ports;
  - (iii) wireless capability;
  - (iv) accepts removable media;
  - (v) a human machine interface that can be used to impact availability, integrity, or confidentiality; or
  - (vi) a microprocessor or programmable logic item that can be feasibly reprogrammed.
- (z) “Cyber Essential Asset” or “CEA” means a Cyber Asset that performs or impacts:
  - (i) functions important to nuclear safety;
  - (ii) nuclear security functions;
  - (iii) emergency preparedness functions;
  - (iv) production reliability;
  - (v) safeguard functions; or
  - (vi) auxiliary functions which could adversely impact items i) to v).
- (aa) “Cyber Services” means supplying, or performing any Services in relation to any Cyber Asset.
- (bb) “Defect” or “Defective” means any aspect of the Work that is (i) inoperative, (ii) fails because of any defect in materials or workmanship, or (iii) is non-conforming or does not comply with the applicable Contract, including any failure to comply with any Statement of Work, requirement of any submittal, reference standard, inspection, test, any Law or permits, licences or approvals required for the Bruce Site or otherwise referred to in the Contract.
- (cc) “Deliverable” means any item delivered, or to be delivered, by Contractor to Bruce Power under the Contract. If Deliverables include software, then Deliverables will be deemed to include, in both source code and object code forms, the final version and all preliminary versions of such software and all routines and subroutines, as well as all program material, flowcharts, models, notes, outlines, work papers, descriptions and other documents created or developed in connection therewith, the resulting screen formats and other visual effects of the software, unless otherwise specified in the Contract.
- (dd) “Dispute” is defined in section 31.10.
- (ee) “Environmental Laws” means all Laws concerning pollution or protection of the environment, public health, and safety, including those relating to releases, or threatened

releases of Hazardous Substances into ambient air, surface water, ground water, or lands or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Substances.

- (ff) “EPSCA Agreement” means the labour agreement between the Electrical Power Systems Construction Association and certain trade unions or counsels of trade unions governing construction trade work performed at electrical power generation facilities, including the Bruce Power Nuclear Generating Station, as the same may be amended, restated, supplemented or replaced from time to time.
- (gg) “ETA” means Part IX of the *Excise Tax Act* (Canada).
- (hh) “Event of Default” is defined in section 23.2.
- (ii) “Fixed Price Work” means the portion of the Work for which the fees payable to Contractor are specified in the Purchase Order or elsewhere in the Contract as being fixed, and for greater certainty, “fixed” in relation to the Contract Price means not subject to adjustment on the basis of Contractor’s costs in respect of provision of the Work.
- (jj) “FM Event” means any act, event, cause or condition that is beyond the affected Party’s reasonable control and that results in such Party being unable, wholly or partially, to perform or comply with its obligations (other than a payment obligation) under the Contract or being delayed in its performance of its obligations (other than a payment obligation) under the Contract.
- (kk) “Good Engineering Practices” means any of the practices, methods and activities adopted by a significant portion of the North American electric generating industry as good practices applicable to, as the context in the Contract requires, the refurbishment, asset management, operation, or all of the foregoing, of nuclear generating facilities of similar design, size and capacity as those on the Bruce Site or any of the practices, methods or activities which, in the exercise of skill, diligence, prudence and judgment by a prudent nuclear electric generator in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost.
- (ll) “Goods” means the tools, equipment, machinery, supplies, parts, materials, and all other goods to be supplied, fabricated or erected by Contractor, and includes all inputs, materials, and products that form part of the same, as set out in the Purchase Order.
- (mm) “Governmental Authority” means (i) any federal, provincial, state, local, municipal, regional, territorial, aboriginal, or other government, governmental or public department, branch, ministry, or court, domestic or foreign, including any district, agency, commission, board, arbitration panel or authority and any subdivision of the foregoing exercising or entitled to exercise any contractual, administrative, executive, judicial, ministerial, prerogative, legislative, regulatory or taxing authority or power of any nature; or (ii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing.
- (nn) “Hazardous Substances” means any pollutants, toxic substances, hazardous wastes, hazardous materials, contaminants, and other hazardous substances that are defined to be, that are regulated as, that are listed as or that because of their toxicity, concentration or

quantity have characteristics which are hazardous or toxic or capable of producing an adverse effect under any Environmental Laws.

- (oo) “HST” means the harmonized sales tax and goods and services tax as imposed under the ETA.
- (pp) “IESO” means Bruce Power’s counterparty to the Amended and Restated Bruce Power Refurbishment Implementation Agreement dated as of December 3, 2015, as may be amended or supplemented from time to time, currently being the Independent Electricity System Operator.
- (qq) “includes” or “including” means “includes without limitation” or “including without limitation” respectively.
- (rr) “Inputs” is defined in section 13.1(b)
- (ss) “Intellectual Property” means trade-marks, service marks, certification marks, official marks, trade names, trade dress, distinguishing guises and other distinguishing features used in association with wares or services, whether or not registered or the subject of an application for registration and whether or not registrable, and associated goodwill; inventions, processes, articles of manufacture, compositions of matter, business methods, formulæ, developments and improvements, whether or not patented or the subject of an application for patent and whether or not patentable, methods and processes for making any of them, and related documentation (whether in written or electronic form) and know-how; software in source code or object code form, documentation, literary works, artistic works, pictorial works, graphic works, musical works, dramatic works, audio visual works, performances, sound recordings and signals, including their content, and any compilations of any of them, whether or not registered or the subject of an application for registration and whether or not registrable; domain names, whether registered primary domain names or secondary or other higher level domain names; industrial designs and all variants of industrial designs, whether or not registered or the subject of an application for registration and whether or not registrable; and trade secrets, technical expertise, and research data and other Confidential Information.
- (tt) “IP Rights” means all rights, under statute, regulation, common law or otherwise, in or connected with Intellectual Property.
- (uu) “IP Works” is defined in section 17.2.
- (vv) “ITA” means the *Income Tax Act* (Canada) and the *Income Tax Regulations*, as amended from time to time.
- (ww) “Laws” means all applicable federal, provincial, state and municipal laws, by-laws, codes, rules, regulations and statutes, including Environmental Laws and Nuclear Laws, and all CNSC Licences or orders, all orders, orders-in-council, decisions, injunctions, directives, rulings and writs of any court, tribunal, arbitrator, Governmental Authority or other person having jurisdiction, including legally enforceable policies and guidelines of any Governmental Authority having jurisdiction.
- (xx) “Losses” means any and all claims, demands, losses, liabilities, damages, obligations, payments, fines and penalties, costs and expenses, including accrued interest thereon, and

the costs and expenses of any and all related actions, suits, proceedings, assessments, judgments, settlements and compromises, and reasonable lawyers' fees and disbursements.

- (yy) "NLCA" means the *Nuclear Liability and Compensation Act* (Canada).
- (zz) "NSCA" means the *Nuclear Safety and Control Act* (Canada).
- (aaa) "Nuclear Law" means all Laws relating specifically to the regulation of nuclear power plants and nuclear material, including the *Nuclear Energy Act* (Canada), NLCA, NSCA, *Canadian Environmental Assessment Act* (Canada) and *Transportation of Dangerous Goods Act* (Canada) and the respective regulations thereunder and any legally enforceable regulatory guidance documents, directives, standards and policies issued from time to time by the CNSC or its predecessor, including in respect of the CNSC Licence.
- (bbb) "OHSA" means the *Occupational Health and Safety Act* (Ontario).
- (ccc) "Other Contractor" means any person engaged directly by Bruce Power to perform work or services at the Bruce Site or elsewhere, other than Contractor.
- (ddd) "Party" means Bruce Power or Contractor and "Parties" means Bruce Power and Contractor.
- (eee) "Personal Information" means any information in any form, recorded or not, about an identifiable individual, such as: age, name, ID numbers, income, ethnic origin, blood type, opinions, evaluations, comments, social status, credit records, loan records, medical records, existence of a dispute between a consumer and a merchant and intentions, provided that Personal Information does not include the name, title, business address or telephone number of an employee of an organization.
- (fff) "Personnel" means with respect to Bruce Power or Contractor, their respective employees, directors, officers, representatives and agents.
- (ggg) "Place of the Work" means the location where the Work is performed.
- (hhh) "Prime Rate" means the rate of interest per annum established and reported by the Bank of Nova Scotia to the Bank of Canada from time to time as the reference rate of interest for determination of interest rates that the Bank of Nova Scotia charges to its customers for Canadian dollar commercial loans made in Canada.
- (iii) "Purchase Order" means a purchase order that references these Terms and Conditions and identifies the scope of the Work, and is issued by Bruce Power and executed and delivered by Contractor and Bruce Power, as such purchase order may be amended, restated, supplemented or otherwise modified by written agreement of the Parties.
- (jjj) "REGDOC-2.5.2" means the CNSC's "REGDOC-2.5.2, Design of Reactor Facilities: Nuclear Power Plants", and its successors.
- (kkk) "Security Incident" means any loss, destruction, theft, or unauthorized or unlawful access or modification to or use or disclosure of Bruce Power Data under the direction or control of Contractor.

- (lll) “Services” means all the services to be performed by Contractor under the applicable Contract, as specified in the Statement of Work and/or the Purchase Order; including the delivery to Bruce Power of all Deliverables identified in the Contract.
- (mmm) “Site” means the land or actual place designated by Bruce Power in the Contract for the performance of the Work. If no such place is designated in the Contract, the Site means the Bruce Site.
- (nnn) “Spare Parts” means Goods which do not initially form part of equipment to be provided by Contractor under the Contract, but which are required to be delivered by Contractor to Bruce Power as spare parts, in accordance with the Contract, and which are listed in the same.
- (ooo) “Statement of Work” is defined in section 1.7(c).
- (ppp) “Subcontractor” means an individual, firm, partnership, corporation, joint venture or other entity, however designated or constituted, having a contract with Contractor for provision of any part of the Work.
- (qqq) “Supplier” refers to Contractor.
- (rrr) “Supplier Code of Conduct” means Bruce Power’s code of conduct for its suppliers, a copy of which is available at [www.brucepower.com/resources-and-publications/code-of-conduct/](http://www.brucepower.com/resources-and-publications/code-of-conduct/), as may be amended from time to time.
- (sss) “Taxes” means all taxes, duties, fees, premiums, assessments, imposts, levies, rates, withholdings, dues, government contributions and other charges of any kind whatsoever, whether direct or indirect, together with all interest, penalties, fines, additions to tax or other additional amounts, imposed by any Governmental Authority.
- (ttt) “Term” is defined in section 31.9.
- (uuu) “Terms and Conditions” means these Standard Terms and Conditions for the Purchase of Goods and Services, as amended, restated, supplemented or otherwise modified from time to time by written agreement of the Parties.
- (vvv) “Time and Materials Work” means the portion of the Work for which the fees payable to Contractor are specified in the Purchase Order or elsewhere in the Contract as being charged on a time and materials basis pursuant to rates and adjustments (if any) set forth in the Contract.
- (www) “Warranty” is defined in section 15.1.
- (xxx) “Warranty Period” is defined in section 15.2.
- (yyy) “Withholding Taxes” means Taxes that Bruce Power is required by Laws to deduct, withhold and remit from any fees or other amounts paid or credited or under the Contract or in respect of the Work, including all Taxes required to be withheld and remitted under Part XIII of the ITA, or under section 105 of the Income Tax Regulations, in respect of amounts paid or credited to a non-resident of Canada.



(zzz) “Work” means the supply of Goods and Services and the provision of all supervision, labour, equipment and all other things necessary to complete the work to be performed by Contractor as set out in, required by, reasonably inferable from or described in the Contract.

(aaaa) “Work Schedule” is defined in section 13.1.

1.2 **Headings** – The division of the Contract into sections and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of the Contract.

1.3 **Gender and Number** – Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.4 **Currency** – Except where otherwise expressly provided, all amounts in the Contract are stated and shall be paid in Canadian currency without adjustment for changes in exchange rates.

1.5 **Statutes** – Any reference in the Contract to a statute or a regulation or rule promulgated under a statute or to any provision of a statute, or regulation, is a reference to such statute, regulation, rule or provision, as amended, re-enacted or replaced from time to time.

1.6 **Business Days** – Whenever an action to be taken under the Contract is required to be taken on a day other than a Business Day, such action shall be taken on the next Business Day, save and except with respect to achieving the dates set out in the Work Schedule which dates shall be achieved on the stated dates regardless of whether such dates are non-Business Days.

1.7 **Order of Precedence** – For the purposes of interpretation of the Contract, the following documents have a descending order of precedence:

- (a) the Purchase Order;
- (b) these Terms and Conditions;
- (c) any other document(s) (a “**Statement of Work**”) accepted by both Parties and referenced in the Purchase Order which describe, among other things, the Goods, Services, scope of Work, deadlines, deliverables, assumptions, location of the Work, responsibilities of the Parties, key Personnel, fees/rates, estimates, expenses, technical specifications or any quality assurance/program requirements, other than the RFP; and
- (d) the request for proposal (“**RFP**”) or similar document, if any, provided by Bruce Power to Contractor with respect to the Work;

provided that any document executed after another document may override a prior document, to the extent such subsequently executed document expressly so provides (collectively, a “**Contract**”).

## 2. General Obligations

2.1 Contractor:

- (a) shall perform the Work in accordance with all Laws and requirements of the Contract;
- (b) shall ensure any Personnel performing Work are suitably skilled and qualified in the tasks assigned;
- (c) shall appoint a Contractor employee as a single point of contact for all matters related to the Contract;
- (d) agrees to receive any additional training relevant to the performance of the Contract at the Bruce Site. Where Work is performed away from the Bruce Site, Contractor shall provide a safe and suitable location and permit Bruce Power or its representatives to inspect such location and the progress of the Work;
- (e) agrees that Bruce Power will at all times maintain operational control of the Bruce Site and may remove any individual at its sole and unfettered discretion; and
- (f) applicable Subcontractors will provide Bruce Power with a copy of all accident reports which they are required to submit in connection with the Work and under the OHSA and the *Workplace Safety and Insurance Act, 1997* (Ontario).

2.2 **Immigration Clearance** – Contractor shall be responsible for obtaining, at its sole Cost, all required immigration visas for foreign Contractor or Subcontractor Personnel performing Work at the Bruce Site. Contractor will provide advance written notice to Bruce Power as soon as the need to employ foreign Personnel at the Bruce Site is known to Contractor. Contractor shall promptly comply with all requests for documentation and information related to obtaining immigration work visas as may be made by Bruce Power or its Personnel.

2.3 **Operating Experience** – Contractor shall incorporate into the Work, all project management, engineering and operating experience provided by Bruce Power or that is collected during the performance of the Work or work for third parties (“OPEX”), reasonably available, and reasonably applicable to the Work. Contractor shall record OPEX collected during the performance of the Work and provide to Bruce Power such OPEX and OPEX collected during the performance of work for third parties that is reasonably applicable to Bruce Power. Despite any other provision in the Contract, any document developed in relation to OPEX incorporated into or collected during the course of the Work, may be disclosed by Bruce Power to any person, provided Bruce Power makes commercially reasonable efforts to ensure sensitive commercial information not otherwise owned or licensed by Bruce Power pursuant to the Contract, is removed or redacted prior to disclosure of such OPEX.

2.4 **Human Performance** – If set out in the Contract, Contractor shall create, implement, and administer human performance program elements (the “**HU Program**”), which shall be designed to minimize human error and risk to safety and which shall be based on recognized industry program best practices or materially consistent with Bruce Power’s human performance program. Contractor shall provide Bruce Power with a copy of its HU Program when reasonably requested by Bruce Power. Contractor shall adhere to and comply with, and shall cause the Subcontractors to adhere to and comply with, the HU Program. If Contractor is required to create, implement, and administer an HU Program, Bruce Power may, at its discretion and upon reasonable written notice to Contractor, perform an assessment and evaluation of the HU Program. The assessment and evaluation may take place no more

frequently than annually and may include attendance of a Bruce Power representative at Contractor's site for up to 5 Business Days, subject to Contractor's reasonable site access rules and procedures.

- 2.5 **Notifications** – Contractor will notify Bruce Power immediately upon the occurrence of, or if Contractor becomes aware of:
- (a) an actual or threatened objection, grievance or dispute with respect to a Contract by, to, or on behalf of labour employed to perform the Work or any union;
  - (b) any Defective Work;
  - (c) any environmental or safety incidents at the Site which arise in connection with the performance of the Work;
  - (d) damage to any property owned or leased by Bruce Power occasioned during the performance of the Work; or
  - (e) the availability of any service updates or the issuance of any notice of product defect or recall of any kind, any of which may impact the functionality and/or safety of the Work.
- 2.6 **Labour Requirements** – Contractor will perform, and will cause Subcontractors to perform, all aspects of the Work under or pursuant to the terms of any applicable Bruce Power Collective Agreement, or as otherwise directed, ordered or otherwise required by the Ontario Labour Relations Board or other Governmental Authority. If directed by Bruce Power, or directed, ordered or otherwise required by the Ontario Labour Relations Board or other Governmental Authority, Contractor will execute and be bound by any applicable Bruce Power Collective Agreement in respect of the Work.
- 2.7 **Reporting** - Contractor will provide to Bruce Power progress report(s) in such form and detail as Bruce Power may reasonably request, showing the progress of the Work to the end of the preceding month or week, as determined by Bruce Power, and against the Work Schedule and shall comply with any additional project controls or reporting requirements set out in the Contract. Pursuant to the terms of the BPRIA, Bruce Power is required to deliver to the IESO, on an annual basis, the total number of building trades hours performed on behalf of Bruce Power. Accordingly, on or before the 15th day of each month, provided that in the event the 15th day is a Saturday, Sunday or statutory holiday, the next Business Day, Contractor shall prepare and deliver, in the form reasonably requested by Bruce Power or as set out in the Purchase Order, a summary of all building trades hours performed by Contractor and all Subcontractors on behalf of Bruce Power in the previous month (the "**BTU Report**"). For clarity, Contractor shall not be required to submit directly to Bruce Power, building trades hours performed as a subcontractor to an Other Contractor. The BTU Report shall be submitted by email to [BNPD-BTUReport@brucepower.com](mailto:BNPD-BTUReport@brucepower.com). For clarity, the BTU Report is strictly required in order to comply with Bruce Power's obligations pursuant to the BPRIA. Contractor shall notify Bruce Power if, in respect of a Contract, it is unable to provide the number of building trades hours performed by a Subcontractor. Such notice shall include the applicable Purchase Order number and the name and email of the Subcontractor.

**3. Fees**

- 3.1 Subject to Article 7, Bruce Power will pay Contractor the fees and other amounts payable as set forth in the Contract plus HST, if applicable, in accordance with the following:
- (a) with respect to Fixed Price Work, Bruce Power will make milestone payments to Contractor for amounts undisputed by Bruce Power on account of the Fixed Price Work when due; and
  - (b) with respect to Time and Materials Work, Bruce Power will make progress payments to Contractor for amounts undisputed by Bruce Power on account of the Time and Materials Work when due.
- 3.2 The Contract Price for Fixed Price Work is the fixed amount payable for the entire performance of such Work and any Costs incurred by Contractor in the performance of Fixed Price Work in excess of such Contract Price are born solely by Contractor.
- 3.3 For Time and Materials Work Contractor may invoice Bruce Power for all reasonable and necessary Costs incurred by Contractor directly in the performance of the Work, all in accordance with (as applicable):
- (a) the fully burdened labour rates of Contractor set out in the Purchase Order;
  - (b) the subcontract price invoiced to, and paid by Contractor to Subcontractor(s), provided that Contractor is not entitled to charge Bruce Power for any charges: (i) in excess of what Bruce Power would have been charged under the Contract, had Contractor performed the Work; or (ii) that are not permitted to be charged under the Purchase Order; and
  - (c) any other provisions applicable to the Time and Materials Work as provided for in the Contract.

**4. Taxes**

- 4.1 The fees stated in the Contract are inclusive of all Withholding Taxes and all Commodity Taxes, except applicable HST.
- 4.2 Contractor shall deduct all recoverable HST paid on reimbursable expenses before adding HST to the amounts to be invoiced to Bruce Power.
- 4.3 The fees set out in the Contract are not subject to adjustment for changes in Laws or the rate of Taxes.
- 4.4 Contractor will cooperate with Bruce Power in applying for or obtaining any exemption, rebate, refund, remission or other recovery of Taxes paid or payable by Bruce Power, Contractor or Subcontractors for any portion of the Work. All amounts received by Contractor or Subcontractors by way of a rebate, refund, remission or other recovery of Taxes included in or otherwise in the fees will constitute monies held in trust for Bruce Power to which Bruce Power is exclusively entitled. Upon receipt of such amounts, Contractor or Subcontractor will immediately forward the same to Bruce Power.

**5. Withholding Taxes**

- 5.1 Bruce Power may deduct and withhold applicable Withholding Taxes from amounts paid or credited to Contractor to the extent and at the rate required by Laws, and will remit any such Withholding Taxes so withheld directly to the relevant Governmental Authority. Bruce Power will provide Contractor with the appropriate tax receipt for any such amounts in the first quarter of the year following the end of each calendar year as applicable.
- 5.2 Upon request, Contractor will provide Bruce Power with evidence, satisfactory to Bruce Power, of the country of residence of Contractor (or any Subcontractor) for purposes of determining whether any Withholding Taxes are required to be withheld and remitted.
- 5.3 If Tax is directly assessed against Bruce Power in respect of any Withholding Taxes that have not been deducted or withheld from any amount paid or credited to Contractor or any Subcontractor, Contractor will indemnify Bruce Power for such Taxes.

**6. Submission and Form of Invoices**

- 6.1 Each invoice will:
  - (a) identify the Purchase Order number;
  - (b) specifically itemize the Work, including the Goods, to which the invoice relates;
  - (c) in respect of Time and Materials Work, specify the number of hours or days worked and the applicable rate (including specification of base rate and the mark-up);
  - (d) in respect of Fixed Price Work, specify the milestones accomplished, as applicable;
  - (e) show HST separately, identify Contractor's HST registration number on the invoice and provide such further information as Bruce Power may require to be entitled to claim all input tax credits available under the ETA;
  - (f) in respect of payment for Goods, all invoices must include the release number (if applicable), catalogue ID number (if applicable) and a clearly referenced unique packing slip number for each shipment. Separate invoices should be submitted for each shipment;
  - (g) meet any other format requirements outlined in the applicable Contract; and
  - (h) show charges for Work performed in Canada separately from Work performed outside of Canada, to the extent applicable.
- 6.2 Charges for Work rendered, including Goods delivered and reimbursable expenses incurred, will be invoiced by Contractor monthly unless otherwise specified in the Purchase Order.
- 6.3 Contractor shall electronically deliver each invoice to Bruce Power to the email address(es) identified in the Purchase Order.
- 6.4 The invoice and all backup must be submitted in Excel format or such other electronic format as Bruce Power will require in order to conduct forensic reviews and audits.

- 6.5 Contractor will retain original hard copies of such invoices for subsequent verification by Bruce Power.
- 6.6 Immediately upon request, Contractor will furnish Bruce Power with a further breakdown of amounts charged in each invoice for Bruce Power's accounting or tax compliance purposes and for Bruce Power to remain compliant with its obligations to the IESO, each in a form and manner acceptable to Bruce Power, acting reasonably.
- 6.7 Contractor shall submit all invoices under the Contract to Bruce Power within 90 days of completion of the Work. Bruce Power will be entitled to deduct an administration fee of 5% of the amount invoiced on any invoice submitted thereafter.

## **7. Payment Terms**

- 7.1 Notwithstanding this Article 7, Bruce Power will not issue payment unless Contractor has first provided an executed copy of the applicable Purchase Order.
- 7.2 Subject to Bruce Power's set-off rights and other rights under the Contract, Bruce Power will pay all undisputed invoiced amounts within 30 days of receipt of the invoice and all disputed invoiced amounts within the later of (i) 15 days of the date of resolution of the dispute over the disputed amount and (ii) 30 days of Bruce Power's receipt of the invoice. If Bruce Power disputes any invoiced amount, or any portion of an invoiced amount, Bruce Power will provide Contractor with a written explanation for the disputed amount within 10 days of receipt of the invoice.
- 7.3 Bruce Power will make all payments to Contractor in Canadian dollars either by wire transfer, cheque drawn on a Canadian bank account, or credit card.
- 7.4 If at any time Bruce Power determines that the Work is Defective, Bruce Power will have the right to withhold from payment in respect of any invoice an amount that, in Bruce Power's reasonable opinion, takes into account the Defect. Any amount withheld will be paid 30 days after Bruce Power's receipt of invoice submitted after Bruce Power's approval of the Correction of the Defect.
- 7.5 Bruce Power is entitled to deduct from or set-off against any amount payable by Bruce Power to Contractor: (i) any amount expended by Bruce Power in exercising Bruce Power's rights under the Contract to perform any of Contractor's obligations (including all valid warranty claims against Contractor) under the Contract that Contractor or Subcontractors have failed to perform; (ii) any Losses incurred by Bruce Power as a result of Contractor's failure to perform any of its obligations under the Contract, including in respect of Work performed by Subcontractors; and (iii) any other amount owing from Contractor to Bruce Power.
- 7.6 Should either Party fail to make payments as they become due under the applicable Contract, interest at an annual rate equal to 2% above the Prime Rate on such unpaid amounts will also become due and payable until the subject payment is made. Such interest will be calculated daily from the date on which any payment becomes due and compounded annually.
- 7.7 Contractor is not entitled to suspend deliveries of any Work as a result of any disputed sums being outstanding. Payment for the Work, in whole or in part, does not imply Bruce Power's acceptance of such Work.

**8. Right to Audit**

- 8.1 Contractor will maintain complete, accurate, and current records that clearly identify all Work performed by or on behalf of Contractor under the Contract.
- 8.2 Contractor will allow Bruce Power, Bruce Power's internal and external auditors, and applicable Governmental Authorities the right: (a) of reasonable access to such records and to inspect and take copies of such records; and (b) to carry out forensic review of Contractor and Subcontractors relating to the Contract or Work for the purpose of auditing and reviewing the Work and the performance by Contractor of its obligations under the Contract. To the extent that Fixed Price Work is provided under the Contract, Bruce Power will not exercise such audit rights in respect of inquiry into the composition of the fixed price portion of the Contract Price.
- 8.3 Contractor will preserve and keep such accounts and records available for audit until the expiration of 10 years from the date of the last invoice issued by Contractor under the applicable Contract.

**9. Relationship**

- 9.1 The Contract does not constitute an employer - employee arrangement, a partnership agreement, joint venture or agency relationship between the Parties. Contractor Personnel will not have any rights to participate in any benefit plan or other employment benefits generally enjoyed by Bruce Power employees.
- 9.2 Contractor shall be solely responsible for paying wages and benefits, withholding and remitting applicable Taxes, and payroll deductions, and otherwise complying with its obligations with respect to Contractor and Subcontractor Personnel as set out in Laws.

**10. Security Clearance and Vehicle Checks**

Bruce Power's security staff shall have the right to:

- (a) examine or search vehicles, equipment, tools and materials brought to or removed from the Bruce Site by Contractor or Subcontractor. If requested, Contractor will deposit with the security officer an itemized list of all such equipment, tools, and materials at the time they are brought to the Bruce Site. The list will be used by the security staff when checking such equipment, tools, and materials into and out of the Bruce Site; and
- (b) perform reasonable and customary security/background checks, including security checks on Personnel of Contractor or Subcontractor entering the Bruce Site.

**11. Subcontracting**

Contractor will not, without the prior written consent of Bruce Power, sub-contract the whole or any part of the Work. Contractor shall ensure that all contracts with Subcontractors incorporate all applicable terms and requirements of the Contract and shall ensure that all Subcontractors perform their obligations in respect of the Work in accordance with the requirements of the Contract. Contractor's failure to include any terms and conditions of the Contract in its subcontracts and agreements with Subcontractors shall not limit or reduce the responsibilities and liabilities of Contractor under the Contract.

**12. Qualified Personnel and Control of Site**

- 12.1 Contractor will ensure that any key Personnel named in the applicable Contract are actively involved in the provision of the Work. Contractor shall not, and will require its Subcontractors not to, replace, supplement or reassign such Personnel without Bruce Power's prior written authorization, which will not be unreasonably withheld.
- 12.2 Bruce Power may, by written notice to Contractor, reject or request substitution or supplementation of Personnel engaged to perform the Services (i) on the basis of Bruce Power's assessment, acting reasonably, of such individual's experience or qualifications and/or prior or current performance of the Work, or (ii) if such individual has committed any act of fraud or is otherwise engaged in any fraudulent or corrupt conduct. Contractor will replace the subject Personnel with Personnel acceptable to Bruce Power, acting reasonably. If such Personnel is to be replaced for no fault of Bruce Power, all expenses of such replacement will be borne by Contractor.

**13. Delivery, Risk of Loss and Title Transfer, and CFSI**

- 13.1 **Delivery** – Contractor will deliver Goods or Inputs to, and/or perform the Services at, the premises specified in the Purchase Order in accordance with any schedule outlined in the Contract (the “**Work Schedule**”). Contractor is responsible for ensuring that any of its equipment or materials necessary to perform the Work arrive at the Site in accordance with the applicable schedules, at no extra cost to Bruce Power.
- (a) If Contractor does not deliver the Goods or Inputs and/or perform the Services in accordance with the Work Schedule:
- (i) subject to providing Contractor with 7 calendar days' written notice, Bruce Power is entitled, in its sole discretion, to extend the time period for performance, upon conditions satisfactory to Bruce Power, or cancel the Contract in whole or in part, in accordance with Article 23; and
- (ii) in respect of Goods that are not delivered in accordance with the Work Schedule, Bruce Power will also be entitled to retain or recover from Contractor, as liquidated damages and not as a penalty, a percentage specified in the Purchase Order (if any), of the value of such late Goods for each week such Goods are late. Such liquidated damages are hereby agreed to be reasonable pre-estimates of the damages which Bruce Power would incur as a result of the late delivery of such Goods. Bruce Power may deduct such liquidated damages from any unpaid amounts then or thereafter due to Contractor. Any such liquidated damages not so deducted from any unpaid amounts due to Contractor shall be payable to Bruce Power at the demand of Bruce Power together with interest from the date of the demand at the rate equal to the Prime Rate plus 2% per annum.
- (b) Contractor will act as the importer of record into Canada for Goods and inputs purchased by and consumed pursuant to the Work (the “**Inputs**”) and in respect of any tools, equipment or other goods imported or consumed pursuant to the Work.
- (c) Instructions with respect to the shipping and storing of Goods will be as set out in the Purchase Order.



- (d) Contractor waives all claims against Bruce Power or its Personnel for Losses incurred in relation to Contractor's equipment and materials, notwithstanding that such Losses may arise by reason of negligence or otherwise, and Contractor will indemnify and save harmless Bruce Power and its employees against such Losses by third parties.
- (e) The receipt or taking delivery by Bruce Power of any Work will not be deemed a waiver of any right, claim or remedy of Bruce Power.

### 13.2 Risk of Loss and Title Transfer

- (a) Despite the title provisions in section 13.2(b), Contractor shall be responsible for and shall bear the risk of loss or damage to the Work, regardless of means and method of shipment and delivery, in accordance with the following:
  - (i) for any Goods, until the Goods are accepted by Bruce Power on the Site, and
  - (ii) for any Inputs, until completion of the Services.
- (b) Contractor assigns and conveys good and valid right, title, and interest to the Work and Work-in-process to Bruce Power, without further consideration and free from any encumbrances, liens, Losses, or rights of retention, upon the earlier of:
  - (i) Bruce Power making any payment under the Contract (other than a rental payment) which is attributable, in whole or in part, to the relevant Work;
  - (ii) delivery of the part of the Work to the Bruce Site,
  - (iii) for any document or media in which information is recorded or stored, upon delivery; and
  - (iv) in the case of imported materials and equipment, passage over the ship's rail at the port of embarkation.

For the purposes of paragraph (i), payment includes actual payment and/or partial payment for any Work or Goods.

- (c) If Bruce Power rejects Goods after payment, title to such Goods will only revert to Contractor on receipt by Bruce Power of a full refund of the sum paid for such Goods.

### 13.3 CFSI

- (a) As of the Contract Effective Date, Contractor represents, warrants and covenants that it has no knowledge of: (i) any CFSIs, safety significant non-compliance with Contractor's human performance programs and quality assurance programs on other projects or systemic, latent or repeated defects, material to plant operation, maintenance or reliability or safety significant defects in goods or services supplied or performed by Contractor or its affiliates to or for other customers which are the same or similar to the Work Contractor is obligated to supply to or perform for Bruce Power under the Contract ("**Similar Work**"); or (ii) CFSIs or safety significant defects in Similar Work of which there is a reasonable possibility of also being present in any Work for which Contractor is obligated to supply to or perform for Bruce Power under the Contract.

- (b) Contractor is hereby notified and accepts that the delivery or use of CFSI is of special concern to Bruce Power. If any Goods purchased or used in accordance with the applicable Contract are described using a manufacturer part number or using a product description and/or specified using an industry standard (collectively “**Goods Specifications**”), Contractor is responsible for ensuring that the replacement Goods supplied by Contractor meet all requirements of the latest version of the applicable Goods Specifications. If Contractor is not the manufacturer of the Goods, Contractor will ensure that the Goods are made by the Original Equipment Manufacturer (OEM) and meet the applicable Goods Specifications. Contractor hereby represents and warrants that: (i) the Goods are genuine, new, unused, original OEM-manufactured, unless otherwise permitted pursuant to section 13.3(c) below; and (ii) if Contractor is notified of or otherwise becomes aware of the presence or likelihood of the presence of CFSI in the Goods, Contractor shall immediately notify Bruce Power in writing and shall document such non-conformance, all in accordance with Contractor’s quality assurance program or management system. This representation and warranty extends to labels and/or trademarks affixed or designed to be affixed to Goods supplied or delivered to Bruce Power, and to certifications, affirmations, information, or documentation related to the authenticity of items delivered to Bruce Power under a Contract.
- (c) Should Contractor desire to supply or use a Good that may not meet the requirements of section 13.3, Contractor shall notify Bruce Power of any exceptions and receive Bruce Power’s written approval prior to shipment to Bruce Power of such Goods.
- (d) If Contractor is made aware of or otherwise determines that, pursuant to a Contract, CFSI are furnished, or otherwise included in Goods, Contractor will immediately, and in any event, within 5 Business Days, notify Bruce Power in writing. Contractor shall promptly replace such Goods with Goods acceptable to Bruce Power, and Contractor is liable for all Costs, including but not limited to Bruce Power’s Costs, relating to the removal and replacement of such Goods.
- (e) Contractor shall develop, document and implement a quality assurance program or management system that performs the following functions:
- (i) prevents, detects, and dispositions CFSI;
  - (ii) ensures Goods are genuine, new, and unused and are duly tested and verified to ensure compliance with specified requirements set out in the Contract;
  - (iii) ensures Personnel are sufficiently trained to identify the following CFSI indicators:
    - (A) altered manufacturer’s name, logo, serial number, manufacturing date;
    - (B) items differing in configuration, dimensions, fit, finish, colour;
    - (C) markings on items or documentation are missing, unusual, altered, or inconsistent;
    - (D) markings or documentation from a country other than the country of the Subcontractors;
    - (E) items sold as new, exhibiting evidence of prior use;
    - (F) performance inconsistent with specifications, certification or available test data; and

- (G) documentation that is or appears to be altered, incomplete, or is not traceable or does not include necessary manufacturer's markings;
  - (iv) ensures that Bruce Power is notified of any incidents involving the provision of CFSIs by Contractor or Subcontractors to their customers;
  - (v) identifies CFSI and documents such CFSI in accordance with a documented non-conformance process; and
  - (vi) incorporates all experience and industry best practices into Contractor's performance of services and supply of Goods.
- (f) Contractor shall incorporate into all subcontracts, an obligation on the Subcontractor to materially comply with the obligations set out in this section 13.3.
- (g) This section 13.3 survives termination and is separate and distinct from any claims and remedies available under Article 15.

#### **14. Testing and Inspection and Quality Assurance**

- 14.1 The Purchase Order and Statement(s) of Work will set out the testing and inspection requirements. For all tests carried out by Contractor, Bruce Power is deemed to rely on Contractor's skill and judgment in assessing Contractor's compliance with the Contract and Laws. Contractor shall not permit its Personnel to perform testing and inspection if such Personnel performed all or a portion of the Work.
- 14.2 Contractor shall provide sufficient, safe, and proper facilities at all times for the review of the Work and the inspection of the Work by applicable Governmental Authorities, Bruce Power and/or their respective personnel. Bruce Power and any Person authorized by Bruce Power shall have access to the Place of the Work to inspect any Work being performed there and Contractor shall, and shall cause the Subcontractors to, provide, and cooperate with Bruce Power in providing, such access.
- 14.3 If Work is designated for tests, inspections, or approvals in the Contract, or required by Laws, Contractor shall give Bruce Power reasonable notice of when such Work will be ready for those tests, inspections, or approvals. Contractor shall arrange for and shall give Bruce Power reasonable notice of the date and time of inspections by other authorities.
- 14.4 Contractor shall furnish promptly to Bruce Power two copies of certificates and inspection or test reports, relating to the Work prepared by Contractor, Subcontractors, or any Governmental Authority.
- 14.5 Before the start of the Warranty Period, if the Work (a) fails to pass any inspection or testing, (b) is found not to comply in all respects with the Contract or Laws, (c) does not comply with any sample, or (d) is not suitable for the purposes for which it is intended (which purposes have been communicated by Bruce Power to Contractor), Bruce Power is entitled by notice in writing to Contractor either to: (x) affirm the subject Contract and (i) extend the period for testing and/or inspection to a date specified in the notice or (ii) direct the Contractor to perform a Correction in accordance with Article 15; (y) accept the Work subject to an abatement of total consideration payable in respect of the particular Work, such abatement to be such an amount as, taking into account the circumstances, is reasonable; or

(z) reject the Work to the extent it does not comply in all respects to the Contract, in which case Bruce Power is discharged from payment of any further amounts to Contractor in respect of such Work.

- 14.6 Contractor will maintain, and cause its Subcontractors to maintain, a records system that will assure Bruce Power that each of the quality of design, material, and workmanship of the Work complies with the requirements of the Contract. Contractor will permit, and make the necessary arrangements to facilitate surveillance and examination of the Work, by both Contractor and Bruce Power, at the Place of the Work, including, as applicable, at the Bruce Site, Contractor's premises, and the premises of Subcontractors, and will make available to Bruce Power upon request, all records required to verify compliance with ISO, CSA, and other applicable codes and standards. Contractor will promptly correct all instances of non-conformance in accordance with Contractor's quality assurance program, or as otherwise specified in the Contract, and will report the non-conformance and its corrective action to Bruce Power in writing. Any nonconforming item for which Contractor proposes a disposition to "repair" or "use as is" will be brought to the attention of Bruce Power, in writing, and will clearly describe any effects on safety, interchangeability, performance, reliability, maintainability, or shelf life, as applicable. Bruce Power's approval of such dispositions is required before Contractor may proceed with such disposition.

## 15. Warranties, Correction of Defects and Limited Warranties

### 15.1 **Warranty** – Contractor warrants that:

- (a) all Work will not be Defective;
- (b) all Goods, and all Deliverables provided in relation to, forming part of, or otherwise incorporated in the Work, are free of any liens, and title vests irrevocably, without lien or encumbrance, in Bruce Power; and
- (c) Bruce Power has the benefit and assignment of all warranties provided under all subcontracts executed in relation to the Work,

(collectively, the "**Warranty**"). This Warranty is separate from, and in addition to, the CFSI provisions set out in section 13.3.

### 15.2 **Warranty Period** – The warranty period ("**Warranty Period**") is:

- (a) for Goods: the later of 2 years from (i) first use, and (ii) receipt of the Goods on-Site or at the final delivery destination specified in the Purchase Order;
- (b) for Services: 2 years from completion for original Services; and
- (c) for Work that has been Corrected, the warranty period for any Corrected Work is the later of (i) the Warranty Period, and (ii) 12 months from completion of the Correction.

### 15.3 **Correction of Defects** – Where Defective Work is discovered prior to or during the Warranty Period by Bruce Power or Contractor:

- (a) Bruce Power will notify Contractor, or if Contractor discovers Defective Work, Contractor shall notify Bruce Power in writing (in each case, a "**Warranty Notice**")

and Bruce Power may then issue a Warranty Notice to Contractor. Upon receipt of the Warranty Notice, Contractor will promptly (as applicable to the nature of the work) repair, replace or re-perform the Defective Work (the “**Correction**”). The means of the Correction will be determined between the Parties, acting reasonably, and Contractor shall perform the Correction at its sole cost and expense.

- (b) In connection with Defective Work, Contractor shall also be responsible for, as applicable:
  - (i) the cost, whether incurred by Bruce Power or Contractor, of (A) removing the Defective Work, including costs required to access or uncover the Defective Work, (B) installing Corrected Work, (C) transporting the Defective Work and Corrected Work to and from the location where the Correction is performed; and
  - (ii) Losses to Bruce Power caused by such Defective Work or the Correction;  
  
(collectively, “**Re-Construction Costs**”) up to a maximum of 50% of the Contract Price. For clarity, Re-Construction Costs are separate from the cost to perform the Correction, which will be performed at Contractor’s sole cost and expense.
- (c) If Contractor, its Subcontractor, or any other third party on Contractor’s behalf, furnished technical direction of the installation or erection of Goods, then Contractor will also be responsible for furnishing, at its sole cost, technical direction of the removal (including disassembly if required), re-installation or re-erection thereof as may be required due to the necessity of the Correction of such Goods by Contractor.
- (d) If Contractor has failed to perform the Correction within a reasonable period, Bruce Power may (i) hold back 100% of the amount estimated by Bruce Power to perform the Correction and (ii) perform or engage others to perform the Correction, at Contractor’s cost.

15.4 **Limited Warranty** – The Goods are not warranted against normal wear and tear or damage caused by Bruce Power’s misuse, accident, or use that is not in accordance with Good Engineering Practices. This Article 15 provides the exclusive remedies for breach of the Warranty, whether the Defect arises before or during the applicable Warranty Period. No implied warranty or conditions of merchantability or fitness for a particular purpose applies unless expressly stated in the Contract.

15.5 **Warranty Obligations in the Event of Termination** – If the Contract is terminated in accordance with Articles 22, 23, or 24, with respect to all Work completed on or before the date of termination, the Warranty obligations in this Article 15 shall survive termination and the Warranty Period for such completed Work will commence on the date of termination of the Contract.

15.6 **Re-Work** – Contractor shall track by identification number all Work that is re-worked or Corrected by Contractor or a Subcontractor, including Defective Work, in a re-work log approved by Bruce Power (the “**Re-Work Log**”). Contractor shall provide Bruce Power and IESO and their respective representatives with access to, or copies of, the Re-Work Log upon request by Bruce Power. The Re-Work Log will include:

- (i) the date, time and identification number for such Correction or re-work, including the date and time Contractor became aware of the need for such Correction or re-work;
- (ii) the steps taken to assess the extent of the need for any re-work or Correction of the Work and determine best course of action;
- (iii) the corrective actions and work taken, including any replacements and testing;
- (iv) the results of such re-work or corrective action; and
- (v) such other information as Bruce Power may reasonably request.

## **16. Insurance**

16.1 Contractor agrees to provide and/or cause its Subcontractors to provide and maintain in full force and effect with financially responsible insurance carriers reasonably acceptable to Bruce Power, or with the appropriate government agency, the following insurance which will take effect as of the date of the applicable Contract and will remain in effect during the Term of the subject Contract or any extension thereof or as otherwise specified herein:

- (a) a commercial general liability insurance policy with limits of at least \$5 million inclusive for both bodily injury, including death, personal injury and damage to property, including loss of use thereof, for each occurrence, which policy will specifically include, but not be limited to the following, where applicable:
  - (i) blanket contractual liability;
  - (ii) damage to property on Site including loss of use thereof;
  - (iii) pollution liability coverage on at least a sudden and accidental basis;
  - (iv) blasting, pile driving, caisson work, underground work;
  - (v) products and completed operations including a provision that such coverage to be maintained for a period not less than 24 months post completion of the Work;
  - (vi) errors and omissions integral to the operation of the Insured;
  - (vii) employer's liability;
  - (viii) tenant's legal liability;
  - (ix) non-owned automobile liability; and
  - (x) broad form property damage.
- (b) automobile liability insurance covering all licensed motor vehicles owned, rented or leased and used in connection with the Work, which insurance will cover (A) bodily injury and property damage liability to a combined inclusive minimum limit of \$2 million per incident and (B) mandatory accident benefits;

- (c) Contractor will ensure that any professionals engaged by it or its Subcontractors to provide design, architecture or engineering aspects of the Work each carry errors and omissions insurance with limits of not less than \$1 million per claim and with an aggregate limit of not less than \$2 million within any policy year;
- (d) all premiums as required under the *Workplace Safety and Insurance Act, 1997* (Ontario) or similar applicable legislation covering all persons employed by Contractor or its Subcontractors for Work performed under the applicable Contract. For U.S. employees, appropriate state workers compensation must be carried including employer's liability for a minimum limit of \$1 million U.S., with a foreign coverage endorsement; and
- (e) such other insurance as is mutually agreed upon between Bruce Power and Contractor.

## 16.2 Certificates of Insurance

- (a) Before starting Work, Contractor will supply and cause its Subcontractors to supply to Bruce Power a certificate of insurance completed by a duly authorized representative of their insurer certifying that the minimum coverages required here are in effect and that the coverages will not be cancelled, non-renewed, or materially changed by endorsement or through issuance of other policies of insurance which restricts or reduces coverage, without 30 days advance written notice to [Insurance.Notifications@brucepower.com](mailto:Insurance.Notifications@brucepower.com). Failure of Bruce Power to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Bruce Power to identify a deficiency from evidence provided will not be construed as a waiver of Contractor's obligation to maintain such insurance.
- (b) Bruce Power's receipt of any certificate of insurance evidencing the required coverages and limits does not constitute approval or agreement by Bruce Power that the insurance requirements have been met or that the insurance policies shown in the certificates of insurance are in compliance with the requirements.
- (c) If Contractor or Subcontractor fails to maintain the insurance as set forth above, Bruce Power may purchase said insurance at Contractor's expense. Alternatively, Contractor's or Subcontractor's failure to maintain the required insurance may result in termination of the Contract at Bruce Power's option.
- (d) If any of the coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage will be submitted with Contractor's final invoice.

16.3 All deductibles will be to the account of Contractor and/or the Subcontractor.

16.4 With the exception of automobile liability insurance, all insurance policies noted above will specify that it is primary coverage and not contributory with or in excess of any other insurance that may be maintained by Bruce Power.

16.5 A waiver of subrogation will be provided by the insurers to Bruce Power, Contractor and Subcontractors.

- 16.6 All insurance policies which Contractor and Subcontractors are required to carry will contain a cross liability clause and a severability of interests clause and, with the exception of errors & omissions insurance, will name Bruce Power as an additional insured.
- 16.7 Contractor and Subcontractors will provide Bruce Power with certified copies of insurance policies upon request.
- 16.8 Coverage provided for Bruce Power will not be invalidated or vitiated by actions or inactions of others.
- 16.9 Contractor will indemnify the Bruce Power Group and its employees, directors, officers, agents and assigns from and against any and all Losses which may arise in relation to the insurable events subject to the coverages set out under this Article 16.

## **17. Intellectual Property**

17.1 **Background IP** – Except as set out below, each Party retains its rights to its Background IP. No IP Rights existing prior to the Contract are passed hereunder other than the rights set out in this Article 17. Contractor will not incorporate into the Work any Intellectual Property the use of which by Bruce Power violates the rights of third parties.

### **17.2 New Intellectual Property**

- (a) All IP Rights in any works created by Contractor or any Personnel or Subcontractor of Contractor: (i) in the course of providing Work; or (ii) exclusively for the purpose of performing Work will vest in Bruce Power on creation and Contractor assigns absolutely to Bruce Power all IP Rights in any country of the world in any such works ((i) and (ii) collectively, the “**IP Works**”). Further, Contractor agrees to cooperate with Bruce Power in the development and protection of Bruce Power’s ownership rights to such IP Works, including executing applicable documents, applications and/or certificates in this regard. The IP Works will be deemed to be the Confidential Information of Bruce Power, and not the Confidential Information of Contractor.
- (b) In connection with the provision of Work, all documents and drawings furnished to Bruce Power by Contractor will bear only Bruce Power proprietary mark(s) and copyright notices, and will include the applicable Purchase Order number.
- (c) Contractor waives any moral rights it may have in the IP Works, and, upon Bruce Power’s request, agrees to obtain from its Personnel and deliver to Bruce Power, and cause its Subcontractors to obtain from its Personnel and deliver to Bruce Power, signed waivers of their moral rights in the IP Works in favour of Bruce Power.
- (d) Contractor will provide to Bruce Power such further documents and assurances and do such things as may be reasonably requested by Bruce Power to fully affect Bruce Power’s rights hereunder.

### **17.3 License to Background IP**

- (a) Bruce Power will grant Contractor a non-exclusive, royalty-free, non-transferable, non-exclusive licence to use, for the purpose of performing Work, the IP Works and any Background IP of Bruce Power that Bruce Power contributes to Contractor for Contractor’s



use in performance of the Work. Such license will be effective as of the Contract Effective Date and will terminate upon the earlier of (i) the termination or expiration of the Contract and (ii) completion of the Work.

- (b) Where in connection with the performance of the Work, Contractor provides to Bruce Power or uses any Background IP which is owned or licensed by Contractor or any of its parents, subsidiaries or affiliates or any third party, Contractor will grant to Bruce Power, or will otherwise ensure that Bruce Power is granted (without charge to Bruce Power and for the benefit of Bruce Power and all entities within Bruce Power Group ) a perpetual, non-exclusive, royalty-free licence to use, adapt, maintain, modify, support and make derivative works from such Background IP. Such license will include the right for any person providing services to the Bruce Power Group to use, adapt, maintain, modify, support and make derivative works from such Intellectual Property for the benefit of any of the entities in the Bruce Power Group for the purposes of and to the extent necessary to receive and obtain the full benefit of the Work. Contractor will not do any act which may compromise or diminish Bruce Power's interests in the Work.

#### 17.4 **Intellectual Property Warranty and Indemnity**

- (a) Contractor warrants that: (i) it has the right to pass title in the Work, including IP Works, and that all Work is free from any charge, lien or other right in favour of any third party; and (ii) the provision of the Work and Bruce Power Group's use of the Work will not infringe any IP Rights of any third party.
- (b) Contractor shall indemnify the Bruce Power Group in full against all Losses arising from or incurred as a result or in consequence of the infringement or alleged infringement of any IP Right arising from the provision and/or use of the Work, or arising due to any one of the Bruce Power Group exercising its rights under Article 17, except where Goods are manufactured to a design supplied by Bruce Power and any claim or allegation made results exclusively to that design, and provided that:
  - (i) Bruce Power notifies Contractor in writing within a reasonable time after being informed of such Losses;
  - (ii) Contractor is given control over the defense of such Losses and Bruce Power cooperates in such defense, at Contractor's expense; and
  - (iii) Bruce Power will not agree to the settlement of any such Losses prior to a judgment without the prior written consent of Contractor, and Contractor will not unreasonably withhold such consent.

Contractor will not accept any settlement agreement that incurs binding obligations on Bruce Power without Bruce Power's prior express written consent. Failure to obtain such consent invalidates any obligations on Bruce Power.

- (c) Contractor will pay the royalties and patent licence fees required for the performance of the Contract. Contractor will indemnify Bruce Power from and against Losses arising out of the performance of the applicable Contract which are attributable to an infringement or an alleged infringement of a third party's patent rights by Contractor or anyone for whose acts Contractor may be liable.

(d) If any Work is in any action or proceeding held to constitute an infringement of a third party's IP Rights, Contractor will immediately either (i) secure for Bruce Power the right to continue using such Work, or (ii) at Bruce Power's discretion and at Contractor's sole expense, remove the infringing items (including all associated items identified by Bruce Power as having been made useless or less useful by said removal) and refund all monies paid by Bruce Power to Contractor.

17.5 **Intellectual Property Indemnity Procedures** – Bruce Power will have the right to select its own counsel to participate in any such defence at the expense of Bruce Power. Bruce Power may take all necessary steps, at the expense of Contractor, to defend itself until Contractor, to the reasonable satisfaction of Bruce Power, assigns legal counsel and initiates defence or investigation of any threat, claim or action in a professional manner. For the purposes of this section 17.5, Bruce Power L.P. acts as trustee and agent for its sublicensees, and for the employees, partners, officers and directors of Bruce Power L.P. and its general and limited partners with respect to the benefit of the obligations owed by Contractor to them hereunder.

17.6 This Article 17 supersedes any contrary or limiting language elsewhere including within the IP Works.

## 18. **Confidentiality**

18.1 Each Party agrees to take all reasonable precautions to prevent any unauthorized disclosure or use of Confidential Information, maintain the Confidential Information of the other Party in confidence to at least the same extent that it protects its own similar Confidential Information, and to use such information only as permitted under the Contract.

18.2 Contractor covenants that if it becomes legally compelled by Laws and/or rules of any stock exchange to disclose any Bruce Power Confidential Information, it will provide Bruce Power with immediate notice so that Bruce Power may seek a protective order or other appropriate remedy. If such protective order or other remedy is not obtained, Contractor agrees to furnish only that Confidential Information which is in the reasonable opinion of its counsel legally required and it will co-operate with Bruce Power's counsel to enable Bruce Power to obtain a protective order or other reliable reassurance that confidential treatment will be maintained.

18.3 Bruce Power's Confidential Information may only be used, stored, disclosed to Contractor's Personnel, and copied by Contractor as absolutely necessary so that Contractor may perform the Work.

18.4 Nothing in this Article 18 restricts Bruce Power from exercising its rights in the Deliverables as intended by and pursuant to the other provisions of the Contract.

18.5 Both Parties agree that monetary damages would not be sufficient to remedy a breach by the recipient of Confidential Information under the Contract and agree that the Party that had disclosed the Confidential Information to the other Party will be entitled to permanent injunctive relief to prevent breaches of the Contract and to specifically enforce the provisions hereof in addition to any other remedies available at Law.

18.6 The obligations of the Parties under the Contract will survive until the earlier of all of the disclosed information no longer qualifying as Confidential Information or the disclosing Party sending the receiving Party written notice releasing the receiving Party from this Article in particular, or the Contract in general.

- 18.7 Bruce Power may disclose Confidential Information to (i) any person that is part of the Bruce Power Group, (ii) to the extent necessary, to any person providing services to Bruce Power to enable Bruce Power to perform its obligations or exercise any of its rights under a Contract or as required for Bruce Power to carry on its business, and (iii) to the IESO or any crown corporation, or other corporation or other agency of the Province of Ontario; provided that such persons are advised of the confidential nature of the Confidential Information.

**19. Personal Information**

- 19.1 Each Party will treat all Personal Information collected by or on behalf of the other Party and disclosed to it, with respect to the Contract, in accordance with all Laws. Each Party will comply with all reasonable instructions given by the other Party from time to time in relation to such Personal Information. Such Personal Information disclosed by Bruce Power will not be transferred outside of Ontario without Bruce Power's prior written consent.
- 19.2 Contractor agrees that Personal Information of Contractor and Subcontractor Personnel performing the Work at the Bruce Site, such as photographs and videotape recordings and other recordings of the images of such Personnel by Bruce Power, may be used, stored, and disclosed by Bruce Power for reasonable business and/or security purposes and will obtain all consents from such individuals necessary to permit same prior to permitting them to access the Bruce Site to perform the Work.

**20. Force Majeure**

- 20.1 If, by reason of an FM Event, a Party is unable, wholly or partially, to perform or comply with its obligations under the Contract, then such affected Party shall be excused and relieved from performing or complying with such obligations (other than payment obligations) and shall not be liable for any Losses to, or incurred by, the other Party in respect of or relating to such FM Event and the affected Party's failure to so perform or comply during the continuance of the FM Event to the extent of the inability so caused from and after the invocation of an FM Event in accordance with this section 20.1.
- 20.2 The Parties shall meet and discuss the consequences of the FM Event and how to mitigate and overcome its effects. In the event Contractor is the Party affected by the FM Event, Contractor shall use commercially reasonable efforts in order to (i) to prevent or remedy the situation and remove, so far as possible and with reasonable dispatch, the FM Event and (ii) continue with the performance of its obligations which are not impacted by the FM Event. The Party affected by the FM Event shall resume its affected obligations as soon as the FM Event has been overcome. Contractor shall be entitled to request a change to the Work Schedule to the extent Contractor's performance of the Work is delayed due to an FM Event but Contractor shall not be entitled to a change in the Contract Price or any compensation for its Costs arising from the FM Event.
- 20.3 The Party affected by the FM Event shall provide the other Party written notice of same as soon as reasonably practicable and in any case within 10 days after the commencement of the FM Event.

**21. Suspension of Work**

- 21.1 Bruce Power may from time to time, at its discretion, and upon written notice to Contractor, suspend the Work or any portion of the Work.

- 21.2 Should any such suspension occur, upon resumption of the Work, Contractor will use commercially reasonable efforts to complete the Work in accordance with the Work Schedule, and mitigate the delays to the Work Schedule and Costs resulting from such suspension(s) by adjusting work assignments for the Work or any other commercially reasonable means.
- 21.3 Where delays to the Work Schedule and increased Costs cannot be eliminated, Contractor will advise Bruce Power of the impact of the suspension of Work prior to the impact taking effect.

## **22. Termination for Convenience**

- 22.1 Notwithstanding any other provision in a Contract, Bruce Power may terminate all or a portion of the Contract at any time for convenience, with such termination effective upon Contractor's receipt of the termination notice or as otherwise specified in the notice of termination.
- 22.2 Upon termination under section 22.1, Contractor will cease performing the terminated Work and not undertake any forward commitments in respect of such Work. Any Work performed after the effective date of such termination for convenience is at Contractor's sole risk and expense.

## **23. Termination for Default**

- 23.1 If Contractor commits any act of bankruptcy or makes a general assignment for the benefit of its creditors or if a receiver is appointed on account of its insolvency or in respect of any of its property, then, in any such case, Bruce Power may immediately terminate the applicable Contract, with such termination effective upon Contractor's receipt of the termination notice.
- 23.2 Each of the following constitutes an event of default on the part of Contractor (each an "**Event of Default**"):
- (a) Contractor engages in, or is accused by the federal or provincial Crown of committing any act of fraud or bribery in the course of any business dealings, whether or not in relation to the Work, or
  - (b) Contractor neglects to prosecute the Work properly, or otherwise fails to comply with the requirements of the applicable Contract to a material degree.
- 23.3 **Termination for Event of Default** – Without limitation to Article 22 or section 23.1, if Contractor has committed an Event of Default under a Contract, Bruce Power is entitled to:
- (a) terminate the applicable Contract if such Event of Default has not been remedied within (i) 10 days after the date of Contractor's receipt of the notice of termination or (ii) such other longer period as Bruce Power may specify in the notice of termination; and
  - (b) take possession of all Work then at the Site (at no additional charge for the retention or use of any equipment), eject and exclude from the Site all Personnel of Contractor and any Subcontractor, terminate Bruce Power's utilization of Contractor to perform the Work, finish the Work by whatever means Bruce Power deems appropriate under the

circumstances, and withhold any further payments to Contractor until its liability to Bruce Power is ascertained.

Contractor will cease performing Work and not perform any billable services (unless first authorized by Bruce Power) or undertake any forward commitments after termination of the Contract.

23.4 **Costs and losses** – In the event a Contract is terminated under this Article 23, Contractor is liable to Bruce Power for:

- (a) the extra expense of finishing the Work, including compensation to Bruce Power for additional engineering, managerial and administrative services;
- (b) the cost of correcting any Defects in that portion of the Work performed by Contractor; and
- (c) all other Losses occasioned to Bruce Power by reason of Contractor's default.

#### **24. Termination for Force Majeure Event**

24.1 If, due to the actual or likely occurrence of an FM Event, Contractor is or would be unable to perform all or any portion of the Work for an unreasonable amount of time (as determined by Bruce Power), Bruce Power may terminate the applicable Contract if such FM Event remains ongoing for at least (i) ten (10) days after the date of Contractor's receipt of a notice of termination or (ii) such other longer period as Bruce Power may specify in the notice of termination. Contractor will cease performing Work and not perform any billable services or undertake any forward commitments after the termination date.

#### **25. Payment Upon Termination, Ownership of Deliverables, and Transitional Assistance**

25.1 If a Contract is terminated pursuant to Article 22, 23, or 24 of these Terms and Conditions (but subject to the specific provisions set out in those Articles, as applicable), Bruce Power will pay to Contractor any amount earned for Work completed up to the effective date of termination. For Time and Materials Work, Bruce Power will pay for all hours performed at Contractor's time and material rates contained in the applicable Contract up to termination which Contractor has not yet been paid for. For Fixed Price Work, Bruce Power will pay to Contractor, to the extent it has not yet received payment under the applicable Contract (i) the applicable price under the subject Contract for all milestones achieved (if milestones are applicable) and/or for all other Fixed Price Work and (ii) the fair value of portion of the Work completed prior to the effective date of termination. The fair value will be determined by agreement of the Parties, acting reasonably, provided that if the Parties fail to so agree either Party may refer the matter to dispute resolution under Article 31.10.

25.2 If Bruce Power terminates a Contract under Article 22 or Article 24, it is liable to Contractor for payments under section 25.1 and any reasonable and demonstrable demobilization costs and any other amounts outlined in the Contract to be payable by Bruce Power if it terminates a Contract for convenience. Except as specified in this Article 25, Bruce Power is not liable to pay Contractor any additional compensation in the event of a termination of a Contract.

25.3 Any action by Bruce Power under Article 23 or 24 is without prejudice to Bruce Power's rights or remedies under the applicable Contract, Laws or otherwise.

- 25.4 Bruce Power is the sole and exclusive owner of all Work and Deliverables, whether in completed or partially completed form, and partially completed Deliverables will be promptly delivered to Bruce Power by Contractor upon termination of a Contract. Contractor assigns and conveys good and valid right, title and interest therein to Bruce Power, without further consideration, free from any encumbrances, liens, Losses or rights of retention.
- 25.5 In preparation for and upon termination of a Contract, Bruce Power and Contractor will provide commercially reasonable wind-up assistance to each other. Contractor will provide all reasonable assistance necessary to transition the Work to Bruce Power or to one or more service providers designated by Bruce Power.
- 25.6 Bruce Power may withhold payment to Contractor until Contractor completes satisfactorily all activities reasonably required by it to comply with its obligations under this Article 25.

**26. Limitation of Liability and Indemnity**

- 26.1 Subject to section 26.3 and anything else to the contrary in the Contract, neither Party is liable to the other Party under a Contract for an amount that exceeds, in the aggregate for that Party, 2 times the total of all fees paid by Bruce Power under the Contract.
- 26.2 Contractor will indemnify and defend each person that is part of the Bruce Power Group against all Losses by third parties for loss, damage or injury (including death) to persons or property arising from Contractor's negligent acts or omissions, or intentional misconduct.
- 26.3 Section 26.1 will not apply to limit Contractor's liability for (a) negligence, intentional misconduct, intentional cessation of Work unless allowed hereunder, (b) breach of Articles 15, 17, 18, 19, or sections 26.2 or 13.3, or (c) Losses, including indirect Losses, to the extent that insurance proceeds from the insurance required to be maintained by either Party under the Contract, are available to Contractor (or but for a vitiating act by Contractor, would have been available).
- 26.4 Neither Party is liable for any special, indirect, punitive or consequential damages including the following: loss of profit, use, anticipated savings, business, revenue or goodwill. For certainty, the Parties agree that Losses suffered as a result of a breach of section 13.3, and Articles 17, 18 and 19 are direct damages.

**27. Cyber Security**

- 27.1 Capitalized terms used in this article 27 but not defined in these Terms and Conditions have the meaning set out in Bruce Power technical specification, B-SPEC-01100-00001, Cyber Security Requirements for Contractors, as amended, restated, supplemented or replaced from time to time (the "**Cyber Security Specification**").
- 27.2 To the extent the Work includes the supply of Cyber Essential Assets or Cyber Services, Contractor shall:
- (a) have, maintain, and follow a written cyber security policy and cyber security program that conforms to CSA N290.7-14 and REGDOC-2.5.2 and any other applicable codes and standards, including industry best practices, to prevent, detect, and respond to Cyber Attacks against, or that may impact Bruce Power (the "**Cyber Security Program**");

- (b) comply, to the extent applicable to the Work, with Bruce Power's cyber security requirements set out in section 6 of the Cyber Security Specification;
- (c) ensure the Cyber Security Program:
  - (i) is capable of protecting Cyber Deliverables from all forms of Cyber Attack;
  - (ii) provides for regular testing of Cyber Deliverables and Cyber Services to identify and correct or mitigate cyber security weaknesses and vulnerabilities and to prevent Cyber Attacks; and
  - (iii) complies with the applicable requirements set out in section 6 of the Cyber Security Specification;
- (d) notify Bruce Power as soon as possible, and in any event within 24 hours, after becoming aware of (i) a security breach, incident, vulnerability, or Cyber Attack involving any Cyber Services or Cyber Deliverables (including in the supply chain of any Cyber Deliverables) or (ii) a Security Incident (each, a "**Cyber Incident**"). The notification shall include a description of the Cyber Incident, its potential security impact, Contractor's remediation plan (which shall also be provided for approval by Bruce Power), and recommended mitigating or corrective actions. Contractor shall provide regular updates on the progress of the approved remediation plan, its implementation of any mitigating and/or corrective actions, and such other information as Bruce Power requests. Contractor shall (x) take all actions necessary or reasonably requested by Bruce Power to (A) assist Bruce Power in investigating the Cyber Incident and (B) mitigate the effects and to minimize any damage resulting from the Cyber Incident, (y) promptly cooperate with Bruce Power in providing information to governmental or regulatory authorities or notices regarding the Cyber Incident that Bruce Power deems appropriate, and (z) use all commercially reasonable efforts to prevent a recurrence;
- (e) implement and maintain and review, on an annual basis, the Cyber Security Program and written cyber security policies designed to provide security assurance in relation to Cyber Services and Cyber Deliverables; and
- (f) at the request by Bruce Power at any time or on the termination or expiration of the Contract, promptly return to Bruce Power, in the format(s) and on the media reasonably requested by Bruce Power, all of the Bruce Power Data or such portion of it as has been requested by Bruce Power. Following such return, Contractor shall, and shall cause any Subcontractor to, erase or destroy any Bruce Power Data remaining, unless required by Law to retain, in the possession of Contractor and/or any Subcontractor, or such portion of the Bruce Power Data as Bruce Power may direct.

27.3 If Contractor transports Cyber Essential Assets as part of the Work, Contractor shall comply with Bruce Power document B-STI-60000-00004, as amended, restated, supplemented or replaced from time to time.

## **28. Spare Parts, Operating Instructions & Parts Catalogue & Service Manuals**

28.1 Contractor will provide the Spare Parts specified in a Contract, if any, to Bruce Power. Spare Parts will be identical to the corresponding parts in the applicable Work wherever possible, and if not possible functionality equivalent to the corresponding parts in the applicable

Work. Contractor will provide a complete list of all Spare Parts provided. The Spare Parts, if any, shall be identified by the Contractor's unique drawing number/part number/serial number/reference, catalogue identification number and where applicable, the manufacturer's name and part number of parts sourced from the Contractor's sub-suppliers or Subcontractors. All data provided will be in sufficient detail to allow Bruce Power to purchase the Spare Parts from either Contractor or its sub-supplier(s) or Subcontractors in the future as/if necessary.

- 28.2 Unless otherwise specified in the Contract, Contractor will provide, for all equipment supplied under a Contract at no additional cost to Bruce Power: operating instructions and parts and service manuals in loose-leaf and/or electronic forms containing complete operating instructions, maintenance and servicing instructions (including the names of recommended lubricants and routine lubrication procedures), and parts catalogue(s), together with any drawings in reduced size which are necessary to aid in the understanding of the instructions. The number of copies and/or format will be as agreed by the Parties.
- 28.3 Manuals containing instrumentation and controls ("I&C") will have documentation pertaining to the I&C bound separately for ease of removal.
- 28.4 If agreed by the Parties, Contractor will provide updates to the manuals previously provided incorporating information transmitted to Contractor by Bruce Power regarding operating experience up to acceptance.

## **29. Environmental Compliance**

- 29.1 **Spills** - Contractor will perform all acts required pursuant to Environmental Laws of the owner or controller of contaminants spilled by it or its Subcontractors at the Site or in transit to or from the Site, including immediate notification of the public authorities and the restoration of the environment. Contractor shall be responsible for spills arising directly or indirectly from its or its Subcontractors acts or omissions and will indemnify Bruce Power from any Losses in relation (i) to property or environmental damage, emergency response, spill containment, mitigative measures, risk management measures and clean-up of spilled material, and (ii) Contractor's or Subcontractors' failure to comply with Environmental Laws.
- 29.2 **Hazardous Materials and Combustibles** – Contractor shall:
- (a) obtain Bruce Power's prior written approval before bringing to the Bruce Site any Hazardous Substance, and shall submit to Bruce Power a safety data sheet ("SDS") prepared in accordance with Environmental Laws listing the types and volumes of the Hazardous Substance Contractor intends to bring to the Bruce Site;
  - (b) comply with the Workplace Hazardous Materials Information System Regulations;
  - (c) where Work is performed at the Bruce Site, inform and keep Bruce Power informed on a current basis, of any Hazardous Substances at the Place of the Work, through the issuance of updated SDSs and shall maintain and keep current as required by Laws all SDSs with respect to Hazardous Substances at the Place of the Work;
  - (d) be responsible for the management, care and control of Hazardous Substances that Contractor and/or the Subcontractors have brought to the Site;



- (e) immediately notify Bruce Power if Contractor discovers any Hazardous Substances present at the Bruce Site other than in accordance with the Contract; and
- (f) at all times, minimize the use of combustible materials in connection with the Work to the extent reasonably practicable. If Contractor is entering or otherwise delivering Deliverables to the Bruce Site, Contractor shall minimize the use of combustible materials in its packaging to the extent reasonably practicable or otherwise required in accordance with Laws. If combustible materials must be used in any packaging, Contractor shall provide five days' written notice prior to the date of delivery to Bruce Power, including a list of such combustible materials, and such other particulars as Bruce Power may request, acting reasonably.

### **30. Bruce Power Property**

- 30.1 Upon the earliest of: (i) termination of the Contract, (ii) acceptance of the Work, and (iii) Bruce Power directing Contractor, Contractor will return all data, records, samples, drawings, documentation, equipment/tools/materials, and Confidential Information relating to the performance, which was provided by Bruce Power.
- 30.2 Equipment purchased by Contractor at Bruce Power's expense or supplied to Contractor by Bruce Power, will be used solely in the performance of the Work. Title to such equipment will remain with Bruce Power. Contractor is responsible for safeguarding such equipment while in its custody and control.
- 30.3 Contractor is liable for the repair or replacement of all Bruce Power-owned equipment which becomes damaged or lost while in its custody or control. Contractor will maintain insurance, in which Contractor and Bruce Power will be named jointly as insured, covering the full replacement value of all such equipment against the risk of loss or damage.

### **31. General**

- 31.1 **Entire Agreement** – Each Contract constitutes the only terms governing the contractual relationship between Bruce Power and Contractor in relation to the Work. Any terms or conditions quoted or offered by Contractor, whether before or after the placing of the Purchase Order are void and of no effect whatsoever unless expressly referenced in the Purchase Order.
- 31.2 **Publicity** – Contractor will not, without the prior written consent of Bruce Power, advertise or publicly announce or in any way publicly indicate that Contractor supplies or has supplied goods or services to the Bruce Power Group.
- 31.3 **Amendment and Waiver** – The Contract may not be modified unless agreed to in writing by both Parties. Any consent by a Party to, or waiver of a breach by the other, whether express or implied, will not constitute a consent to or waiver of or excuse for any other different or subsequent breach unless such waiver or consent is in writing and signed by the Party claimed to have waived or consented. Except as otherwise provided, no term or provision of the Contract is deemed waived and no breach is deemed excused.
- 31.4 **Governing Law** – The Contract is governed by the Laws applicable in Ontario (without regard to principles of conflicts of laws) and is treated in all respects as an Ontario contract.

- 31.5 **Severability** – If any part of the Contract is held to be unenforceable or invalid, it will be severed from the rest of the Contract, which will continue in full force and effect.
- 31.6 **Third Party Rights** – Except as expressly outlined in these Terms and Conditions, the Parties do not intend that any provision of the Contract should be enforceable by any person who is not a Party to the Contract other than any member of the Bruce Power Group, which members will be entitled to any actions and rights of Bruce Power.
- 31.7 **Assignment** – Unless Bruce Power has provided its prior written consent, such consent not to be unreasonably withheld, Contractor will not assign or novate its rights and obligations under a given Contract, in whole or in part. Bruce Power is entitled to assign its benefits and obligations under each Contract to: (i) any company within the Bruce Power Group; or (ii) in connection with any merger, amalgamation, reorganisation, outsourcing, divestments, sale of all or substantially all of its assets or any similar transaction.
- 31.8 **Notices** – Each Party will provide all notices in writing by electronic transmission or by hand or courier delivery. If given by electronic transmission, notice is deemed received on the Business Day following the sending, or if delivered by hand or courier, at the time the notice is delivered to the applicable address. Either Party may, by written notice to the other, change its respective representative or the address to which notices are to be sent. Any notice will be addressed to the other Party as follows:

If to Bruce Power:

Bruce Power L.P.  
Bldg. B10, P.O. Box 1540  
177 Tie Road  
Municipality of Kincardine  
R.R. #2  
Tiverton, Ontario N0G 2T0

Attention: Vice President, Supply Chain  
Facsimile: (519) 361-1920

With a copy to:

Attention: General Counsel  
Email: [generalcounsel@brucepower.com](mailto:generalcounsel@brucepower.com)

Notwithstanding the foregoing, Contractor will provide all invoices and day-to-day communications to Bruce Power as set out in the applicable Contract.

- 31.9 **Term and Survival** – The term of each Contract begins on the later of (a) the date of the Purchase Order and (b) the date specified in the Purchase Order to be the effective date of the Contract (the “**Contract Effective Date**”), and continues until the end of the term identified in the Purchase Order (the “**Term**”). If no such Term is specified in a Purchase Order, the Term will terminate on the 45th day after Bruce Power makes its final payment on account of the Contract Price (including, for certainty, any amount held back from payment of the Contract Price pursuant to these Terms and Conditions). All terms and conditions of a Contract which, by their nature, extend beyond termination or expiry of the Contract will survive such termination or expiry in accordance with their terms.

**31.10 Dispute Resolution**

- (a) Any dispute or disagreement (“**Dispute**”) between the Parties relating to the Contract shall be resolved by arbitration, governed by the provisions of the *Arbitrations Act, 1991* (Ontario) and will take place before a single arbitrator in Toronto, Ontario.
- (b) The Parties agree that any Dispute will be conducted in strict confidence and that, subject to the exceptions set out in this section, there will be no disclosure to any person of the existence of the Dispute or any aspect of the Dispute except as is necessary for the resolution of the Dispute or as required by Laws. Despite the foregoing, each Party may disclose such Confidential Information:
  - (i) to its partners and affiliates, and to each of their respective officers, directors and employees, provided that such persons have been informed of the confidentiality obligations under the Contract and have agreed to be bound similarly thereby; and
  - (ii) to the extent necessary, to any financial institution or other person (from whom financing is being sought or has been obtained) or to advisors to any such financial institution or other person, provided that any such financial institution, person or advisor has been informed of the confidentiality obligations under the Contract and has agreed to be bound similarly thereby.

**31.11 Rights and Remedies** – The rights, powers and remedies of the Parties in the Contract are cumulative and in addition to and not in substitute for any right, power or remedy that may be available under Laws.

**31.12 Nuclear Law** – Bruce Power’s general partner, Bruce Power Inc., is an operator under the NLCA and, as such, has absolute and exclusive liability for any damage resulting from a nuclear incident at the Bruce Power Nuclear Generating Station, all in accordance with, and subject to any exceptions set forth in, the NLCA or any successor nuclear liability legislation. Contractor acknowledges that Bruce Power is subject to the NSCA and that consequentially, among other things, certain licences may need to be obtained, including by Contractor, before “controlled nuclear information”, as defined therein, is disseminated outside of Canada in any manner, including, in any manner electronically. Contractor will inform itself and Subcontractors as to the compliance requirements of the NSCA, including the Nuclear Non-Proliferation Import and Export Control Regulations, and will not do or fail to do anything, and will ensure that the Subcontractors not do or fail to do anything, that causes Contractor, any Subcontractor or Bruce Power to be in violation of the NSCA.

**31.13 Language and Measurement** – The Parties agree that communications, submissions and documents relating to a Contract will be drawn-up in English. Quantity measurements will be as indicated in the Purchase Order.

**31.14 Execution by Fax and Email** – Each Contract may be validly executed and delivered by means of transmission of signed facsimile or by email transmission of an electronically scanned original signature (such as in PDF file format).

**31.15 Volume of Work, Non-Exclusivity** – Bruce Power gives no warranty or undertaking as to any future volume of Work to be ordered from Contractor. Contractor acknowledges that

Bruce Power may procure goods and services similar to those available by Contractor from any other person or entity.

31.16 **Performance Representation and Warranty** – Without limiting any other responsibility of Contractor set out in the Contract, Contractor represents and warrants that it will:

- (a) comply with the Supplier Code of Conduct, and in particular, not engage in any criminal or otherwise fraudulent activities, both in relation to the Work and unrelated to the Work;
- (b) in connection with the Work, report any instance of criminal activity and any related ongoing investigations or charges laid against Contractor, including any employees, affiliates, and Subcontractors; and
- (c) when on the Bruce Site, comply with all Bruce Site rules and security procedures governing all activities on the Bruce Site.

Contractor accepts that failure to comply with section 31.16 may, at Bruce Power's option, result in termination of all Contracts, or the applicable Contract, for default in accordance with Article 23. Non-compliance with section 31.16 by individual Personnel may result in immediate suspension of the Work, or portion thereof, removal of the offending individual, or termination of the applicable Contract without prior notice.

31.17 **Binding Authority** – Contractor acknowledges and agrees that no agent, employee or other representative of Bruce Power has authority to make any promise, agreement, or representation not incorporated into a Contract in writing, and no promise, agreement or representation will bind Bruce Power unless so incorporated.