



GC-P-1200 EXHIBIT A - Standard Form (Std)

TERMS AND CONDITIONS FOR SERVICES

1. SCOPE OF WORK

Contractor agrees to furnish all necessary labor, supervision, technical advisors, services, tools, instruments, materials, equipment, and consumables necessary or required, whether expressly set forth or reasonably implied, in the Scope of Work specified in Exhibit 'E' to this Agreement, in order for the Work to be complete and safely used or operated.

2. COMMUNICATIONS

- (A) All written communications, submittals, invoices or other documentation shall be exchanged between the representatives designated in writing by each of Mitsubishi Power Americas Inc. and the service provider hereunder (the "Contractor"), and shall reference the Agreement number.
- (B) All notices required under this Agreement shall be given by either party hereto (a "Party") by depositing same in the United States mail, certified return receipt requested or by courier provided a receipt signed by the addressee is documented.

3. TERMS OF PAYMENT

- (A) Payment shall only be made in accordance with the applicable provisions of the Order, net sixty (60) days after Mitsubishi Power Americas receipt of an acceptable invoice from Contractor, accompanied by documentation satisfactory to Mitsubishi Power Americas supporting the request for payment. Any such payment(s), including final payment, shall not relieve Contractor of any obligations it may have and/or remedies Mitsubishi Power Americas may have under or in connection with this Agreement.
- (B) As a condition precedent to Mitsubishi Power Americas obligation to make any payment due under this Agreement, Contractor shall furnish with each request for payment an interim waiver and release of liens in a form satisfactory to Mitsubishi Power Americas, that all sums and/or obligations due third parties in the performance of the Work have been paid and satisfied in full, and that there exists no laborers', material men, or mechanics' liens or other liens or rights of any kind, nor any claims for same by any third parties.
- (C) As a condition precedent to Mitsubishi Power Americas making final payment, Contractor shall furnish a final release and affidavit, in a form satisfactory to Mitsubishi Power Americas, that all sums and/or obligations due third parties in the performance of the Work have been paid and satisfied in full, and that there exists no laborers', material men, or mechanics' liens or other liens or rights of any kind, nor any claims for same by any third parties. Further, Contractor shall defend, indemnify and hold Mitsubishi Power Americas and its customer harmless from any and all claims, demands, liability, interest, penalties, damages, losses, costs and/or expenses (including but not limited to reasonable attorney's fees) arising out of, in connection with or as a result of such third party claims.



- (D) To the fullest extent permitted by law, Contractor, on behalf of itself and its subcontractors and vendors, waives and releases any and all liens, claims or rights of lien which it has or may have against Mitsubishi Power Americas, Mitsubishi Power Americas customer, the job site or equipment, material or fixtures on the job site for which the Work hereunder is furnished, on account of labor, services, materials, or equipment furnished pursuant to this Agreement. In the event a lien is filed against the job site or equipment, material or fixtures on the job site by or on behalf of Contractor or any of its subcontractors, Contractor shall arrange for the immediate discharge or cancellation of such lien by payment, bonding or otherwise.

4. EXAMINATION OF BOOKS AND RECORDS

- (A) Contractor shall at its expense maintain and preserve good, accurate and complete accounting and personnel books and records in connection with the services furnished pursuant to Exhibit E (the "Scope of Work" or the "Work") for a period of seven (7) years after the expiration of the Warranty Period defined in Clause 13, Warranty.
- (B) Mitsubishi Power Americas and/or Owner shall have the right to inspect and audit such books and records at all reasonable times to verify compensable costs and time claimed. Such audit may also cover Contractor's procedures and controls on the expenditure of cost and time. Contractor shall assist in making the above audits.
- (C) Copies of documents and records supporting requests for payment or compliance with labor related provisions shall be furnished Mitsubishi Power Americas with such request or at such other times as Mitsubishi Power Americas directs.

5. SCHEDULE/COMPLETION

Contractor shall provide sufficient labor, material, services, management forces, plant and equipment working such hours, including night shift, overtime, weekends and holidays as may be required by Mitsubishi Power Americas to assure compliance with the established schedule and/or completion date.

6. FORCE MAJEURE

- (A) "Force Majeure" means unavoidable causes beyond the control and without fault or negligence of the Contractor and/or the Mitsubishi Power Americas, including but not restricted to acts of God, war (declared or undeclared), acts of any governmental authorities, riot, revolution, civil commotion, fires, or epidemic, but shall not include unforeseen difficulties in manufacture, strikes, difficulty in obtaining supplies, shortage of labor, or non-performance by the Contractor's subcontractors.
- (B) Should Force Majeure prevent the total or partial performance required under the Agreement, the Party claiming Force Majeure shall advise the other Party within thirty-six (36) hours of the beginning and end of such Force Majeure.
- (C) In the event a condition of Force Majeure is declared and substantiated, an equitable adjustment shall be made in the schedule. For delays and/or non-performance of the



obligations due to Force Majeure, neither Party shall be entitled to penalty, interest, damage or any other compensation arising from Force Majeure for such period of Force Majeure.

- (D) In the event that the delay and/or non-performance of the obligations exceeds sixty (60) days due to Force Majeure, the Mitsubishi Power Americas, without any obligation to pay any termination charges, shall be entitled to terminate the Agreement by so notifying the Contractor in writing.

7. SUSPENSION

- (A) Mitsubishi Power Americas may at any time, and from time to time, by written notice to Contractor suspend further performance of all or any portion of the Work. Contractor shall suspend performance of the scope of work specified in Mitsubishi Power Americas notice on the effective date specified therein. Mitsubishi Power Americas may at any time withdraw the suspension of performance of the Work as to all or part of the suspended Work by written, electronic or telegraphic notice to Contractor specifying the effective date and scope of withdrawal, and Contractor shall promptly and with all diligence resume performance of the scope of Work for which the suspension is withdrawn on the specified effective date of withdrawal.
- (B) If Contractor believes that any such suspension or withdrawal of suspension justifies modification to the Contract Price or time of completion, Contractor shall submit a claim therefore. Such claim shall be submitted no later than twenty (20) days from the date of the resumption of the Work. In no event shall Contractor be entitled to any prospective profits or any damages because of such suspensions or withdrawals of suspension.

8. TERMINATION

- (A) Mitsubishi Power Americas may by written notice to Contractor, terminate this Agreement in whole or in part, at any time either for Mitsubishi Power Americas convenience or because of the failure of Contractor to fulfill its contractual obligations. Upon receipt of such notice, Contractor shall; (i) immediately discontinue all services affected (unless the notice directs otherwise), and (ii) deliver to Mitsubishi Power Americas all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by Contractor in performing the Work under this Agreement, whether completed or in process.
- (B) If the termination is for the convenience of Mitsubishi Power Americas an equitable adjustment in the Contract Price shall be made for Work completed in accordance in conformity with the Agreement, but in no event shall Contractor be paid for the loss of profit or contribution to overhead on Work not performed.
- (C) If the termination is due to the negligent or willful failure of Contractor to fulfill its obligations, the Contractor agrees to indemnify and hold Mitsubishi Power Americas harmless from any loss, penalty or damages arising out of, in connection with or resulting from the Contractor's failure to make progress or the Contractor's refusal or failure to comply with any provision in this Agreement. Mitsubishi Power Americas may, in its sole discretion, take over the Work and prosecute the same to completion by contract or



otherwise. Contractor shall not be entitled to any payment under the Agreement and, in addition to any other right or remedy which Mitsubishi Power Americas may have under the Agreement or at law, Contractor shall refund any and all payments made by Mitsubishi Power Americas prior to such termination and shall be liable to Mitsubishi Power Americas for any additional cost incurred by Mitsubishi Power Americas.

9. CHANGES

Mitsubishi Power Americas shall have the right to make changes in the Work, either by altering the nature of the Work or by adding to or deducting from it. All changes shall, except in the case of emergencies endangering the safety of persons or property, be made in writing. The Contractor shall promptly comply with any and all written Change Notices. No such change shall be deemed to invalidate the Agreement. If any Change Order by Mitsubishi Power Americas causes an increase or decrease in the cost or time required for performance of the Work, an equitable adjustment shall be made in the price or time of performance. Any claims of the Contractor for such adjustments shall, except in the case of emergency changes as described herein, be made prior to the Contractor's commencement of performance of the changes on which they are based and shall, if not made prior to such time, be conclusively deemed to have been waived.

In the event that the Parties are unable to agree upon a lump sum price for the change, Mitsubishi Power Americas may in its sole discretion, direct the Contractor to proceed with the changed Work on a cost plus fixed fee basis. Mitsubishi Power Americas or its designated representative shall have reasonably sufficient audit rights with respect to the documentation and information pertaining to such change and shall furnish to Mitsubishi Power Americas, and/or its designated representatives, such records as may be required to enable Mitsubishi Power Americas to verify and evaluate direct and indirect costs, expenses, invoices, payments, or claims based on Contractor's or its subcontractors' actual costs incurred, or number of man hours, or man days claimed in the performance of the Work. For a period of seven (7) years after the expiration of the Warranty Period defined in Clause 12, Contractor shall, at its expense, keep and maintain such records and accounts in connection with the performance of this Agreement, including any change orders, in accordance with generally accepted accounting principles in the United States of America.

10. OWNERSHIP

(A) Documents such as drawings for approval, drawings for installation, drawings showing the finished condition of any goods, instruction books and operation manuals, etc. shall be supplied by the Contractor to Mitsubishi Power Americas in accordance with the submittal schedule and in conformity with any requirements stated in the applicable Scope of Work to this Agreement.

(B) "Intellectual Property" means all inventions, patents, software, copyrights, mask works, industrial property rights, trademarks, trade secrets, know-how, proprietary information and rights and information of a similar nature. Such information includes, without limitation, designs, processes, drawings, prints, specifications, reports, data, technical information, and instructions.



(C) “Background Intellectual Property” means all Intellectual Property other than Foreground Intellectual Property.

(D) “Foreground Intellectual Property” means all Intellectual Property and tangible work product conceived, created, acquired, or first reduced to practice in connection with any Scope of Work to this Agreement.

(E) Each Party retains its existing rights in Background Intellectual Property.

(F) Mitsubishi Power Americas shall own all Foreground Intellectual Property. Contractor shall disclose to Mitsubishi Power Americas all Foreground Intellectual Property. If not expressly required to be delivered in the Scope of Work, Contractor shall deliver to Mitsubishi Power Americas all Foreground Intellectual Property upon written request from Mitsubishi Power Americas. Contractor hereby irrevocably assigns to Mitsubishi Power Americas all right, title and interest to all Foreground Intellectual Property. Contractor agrees to do all things reasonably necessary to enable Mitsubishi Power Americas to secure and perfect Mitsubishi Power Americas’s Foreground Intellectual Property rights, including, without limitation, executing specific assignments of title in Foreground Intellectual Property by Contractor to Mitsubishi Power Americas and cooperating with Mitsubishi Power Americas at Mitsubishi Power Americas’ expense to defend and enforce Mitsubishi Power Americas’ rights in any such Foreground Intellectual Property. All Foreground Intellectual Property assigned to Mitsubishi Power Americas pursuant to any Scope of Work for this Agreement shall be considered Mitsubishi Power Americas’ Confidential Information (as defined in Article 11). Contractor agrees that, for any works of authorship created by Contractor or any employees or any others used by Contractor in the course of the Scope of Work, those works that come under one of the categories of “Works Made for Hire” in 17 U.S.C.§101 shall be considered “Works Made for Hire”. For any works of authorship that do not come under such categories, Contractor, warranting that it has the right to do so, hereby assigns all right, title, and interest to any copyright in such works to Mitsubishi Power Americas and will execute, or cause to be executed at Mitsubishi Power Americas’ expense, any documents required to establish Mitsubishi Power Americas’ ownership of such copyright.

(G) Contractor represents and warrants that Contractor has sufficient rights in all goods, services, and Intellectual Property and other items that Contractor uses or transfers to Mitsubishi Power Americas in connection with the Scope of Work to allow Contractor to lawfully comply with the Scope of Work.

(H) Contractor hereby grants to Mitsubishi Power Americas and Mitsubishi Power Americas’ affiliates a worldwide, non-exclusive, perpetual, fully-paid, irrevocable, transferable license to Background Intellectual Property (i) to use, sell, offer for sale, import, export, copy, adapt, embed, modify, make derivative works, make and have made any goods or services provided under the Scope of Work, and (ii) to enable Mitsubishi Power Americas to practice the Foreground Intellectual Property.

(I) Contractor hereby irrevocably waives all moral rights to the extent permissible by law, all rights of privacy and publicity, and the like, in all goods or services provided to Mitsubishi Power Americas and in all activities in connection with the Scope of Work.



(J) Contractor represents and warrants that Contractor shall not provide, in the performance of the Scope of Work, any software, (including, without limitation, free software, open source software, freeware, general public license-governed software, or the like), in any form that is subject to any obligations or conditions that could reasonably or arguably could provide a legal right to any third party to access such software and/or source code, or that could otherwise impose any limitation or condition on Mitsubishi Power Americas' use, reproduction, modification, distribution or conveyance of such software.

(K) Except as expressly authorized herein, nothing in the Scope of Work shall be construed as Mitsubishi Power Americas granting Contractor a license in or any right to use any of Mitsubishi Power Americas' Intellectual Property.

11. PROPRIETARY INFORMATION

- (A) All of the information, know-how, drawings, designs, specifications, standards, data, dimensions, equipment test results, computer software or programs (including source codes and object codes), business practices, shop procedures, improvements, know-how, inventions, patent applications, reports, financial data, commercial information, business strategies, customer lists, or customer contact information and other documents or information which may be furnished by Mitsubishi Power Americas to Contractor for performance of the Work shall be deemed the proprietary and confidential information of Mitsubishi Power Americas ("Confidential Information").
- (B) Confidential Information shall not be disclosed to any third party, nor used for any purpose other than for the purpose of performing the Work. Confidential Information shall not be reproduced in whole or in part for any purpose and shall be returned to Mitsubishi Power Americas upon completion of the Work or whenever Mitsubishi Power Americas so demands.
- (C) Notwithstanding the foregoing, Contractor may disclose Confidential Information, without Mitsubishi Power Americas's written consent, to Contractor's employees who reasonably need the Confidential Information for the performance of the Work under this Agreement.
- (D) Prior to the release of Confidential Information to Contractor's employees, Contractor shall cause such employees to sign an agreement, unless they have already done so as a condition of their employment, binding such employees to terms and conditions which are substantially the same as those set forth in this Article 10 and which may be enforced by either Contractor or Mitsubishi Power Americas. The Contractor shall be liable for a breach of such agreement by any employee to whom the Contractor has disclosed Mitsubishi Power Americas's Confidential Information.
- (E) At Mitsubishi Power Americas's request, Contractor will return to Mitsubishi Power Americas all Confidential Information, drawings and written materials furnished to Contractor by Mitsubishi Power Americas, including all copies thereof made by Contractor.



- (F) If a specific NDA has been signed, and any conflict, inconsistency or ambiguity is believed to exist between the NDA and this Agreement, the provision to provide greater protection of Mitsubishi Power Americas' Confidential Information or Intellectual Property shall control.

12. PATENTS

Contractor shall defend, indemnify and save Mitsubishi Power Americas and Mitsubishi Power Americas customer harmless from and against any and all claims, demands, causes of action, losses, damages, fines, penalties, interest, costs and/or expenses (including attorney's fees) arising from or in any manner related to infringement or alleged infringement of any patent, trademark, trade name, copyright or similar right arising out of, in connection with or as a result of the use of any items of equipment or materials or services furnished by Contractor hereunder. In the event any part of the Work should in any such suit or proceeding be held to constitute infringement and its use is enjoined, the Contractor shall promptly either (1) secure for the Mitsubishi Power Americas and its customer the perpetual, irrevocable, non-exclusive, royalty free right to continue the use of the Work, or (2) replace or modify the Work so that it becomes noninfringing, provided that the performance, operation, function, or maintenance of the Work is not affected in any adverse manner by the replacement or modification.

13. WARRANTY

Contractor warrants that the Work shall be (i) free from defects or deficiencies of any kind or nature, (ii) of the best quality and (iii) performed (a) by qualified competent engineers, who shall exercise the highest standards of care, skill and diligence, (b) in accordance with the best utility industry standards, and (c) in strict conformity with the requirements of this Contract (collectively, the "Warranty"). If a nonconformity with the Warranty is discovered in the Work within 12 months after the date on which the equipment (for which the Work hereunder is furnished), commences commercial operation, the Contractor shall, at its sole cost and expense, correct the nonconformity and any defect, deficiency and/or damage arising out of, or in connection with such nonconformity, promptly upon receipt of notice from Mitsubishi Power Americas. Contractor shall warrant the repairs or replacements for a period of twelve (12) months after the completion of the corrective work.

Should Contractor fail or refuse to promptly complete such corrective work, Mitsubishi Power Americas shall have the right, in addition to any other rights or remedies it may have at law or under this Contract, to: (i) perform or have performed by third parties the necessary remedial Work, the costs therefore shall be borne by Contractor; or in Mitsubishi Power Americas's sole and absolute discretion, (ii) forego the undertaking of any remedial Work and receive from Contractor a refund of monies previously paid, as well as interest thereon, and any costs, expenses and damages incurred by Mitsubishi Power Americas in connection with the nonconformity.

14. LAWS, REGULATIONS, PERMITS AND LICENSES

Contractor shall comply with, and hereby warrants that all the Work hereunder shall be in strict compliance with all laws, codes, statutes, ordinances, orders, permits, approvals, rules, regulations and the like (collectively "Laws") of any governmental entity having jurisdiction,



and Contractor shall indemnify and hold harmless Mitsubishi Power Americas from any fines, penalties, costs or liability arising out of, in connection with, or as a result of Contractor's failure to comply therewith. The Contractor shall defend, indemnify and hold harmless Mitsubishi Power Americas, its customers, their respective officers, employees, representatives, and agents, from and against all claims, liability, damages, losses, fines, penalties, costs and expenses (including reasonable attorney's fees) arising out of, in connection with or resulting from a violation of any Laws by Contractor and/or the Work.

Contractor shall, at its sole cost and expense, apply for and obtain all licenses, permits or other approvals from any governmental or regulatory body which are necessary to perform the Work.

15. TAXES DUTIES AND FEES

- (A) Contractor shall pay all present and future federal, state, provincial, county, municipal and other local sales, use, excise, property, gross receipts, gross income, value added, and other taxes, duties, imposts, fees, charges, contributions and assessments of whatever kind or nature (collectively "Taxes") arising out of, in connection with, or as a result of this Agreement or the Work furnished hereunder. Notwithstanding anything to the contrary, if Mitsubishi Power Americas is required by applicable law to deduct or withhold any amount from payments due Contractor, such amounts shall be deducted or withheld from amounts payable to Contractor.
- (B) Contractor shall pay or cause to be paid when due, all payroll taxes and contributions which are measured by remuneration paid to persons employed by Contractor or its subcontractors in connection with the Work or which arise by virtue of their employment and which now or hereafter are imposed by any governmental authority.

16. INDEPENDENT CONTRACTOR

Nothing in this Agreement shall be deemed to constitute Contractor, nor any of Contractor's subcontractors, nor their respective employees or agents to be the agent, representative or employee of Mitsubishi Power Americas. Contractor shall at all times be an independent Contractor and shall have sole responsibility for and control over the details and means for performing the Work. Contractor covenants and agrees that in the performance of the Work, neither Contractor nor its subcontractors shall perform any act or make any representation to any person to the effect that Contractor, or any of its agents, representatives or subcontractors, or any of their respective employees, agents or representatives is an employee, agent, or representative of Mitsubishi Power Americas or of its customer.

17. SUBCONTRACTING

- (A) Contractor shall not subcontract performance of any portion of the Work under this Agreement without first notifying Mitsubishi Power Americas of the intended subcontracting (and proposed subcontractors) and obtaining Mitsubishi Power Americas's written notice that it does not object to the Contractor's subcontract with the proposed subcontractor.



- (B) Contractor guarantees that the Work by its subcontractors shall be in strict conformity with the terms of this Agreement.
- (C) Notwithstanding the subcontracting of any portion of the Work by Contractor, Contractor shall remain primarily and fully responsible for the complete, proper and safe performance of the Work in strict conformity with the requirements of this Agreement. Contractor shall be liable for any and all acts and omissions of its subcontractor(s) and their respective employees. Nothing contained in this Agreement may be construed as imposing any obligation or liability on the part of Mitsubishi Power Americas toward the Contractor's subcontractors or suppliers.

18. INDEMNITY

Contractor hereby agrees to defend, indemnify and hold harmless Mitsubishi Power Americas and its customer from and against any and all claims, demands, causes of action, liability, liens, Taxes, penalties, interest, fines, losses, damages, costs and/or expenses of whatever kind or nature (including but not limited to reasonable attorneys' fee) arising out of, in connection with, or resulting from this Agreement or the Work; but Contractor does not assume the responsibility for the sole negligence of Mitsubishi Power Americas.

19. INSURANCE

- (A) During the term of this Agreement, Contractor and any subcontractors shall, at a minimum, maintain or cause to be maintained, at its sole cost, the following insurance coverages from insurers (i) with a Best's Insurance Reports rating of "A-" or better and a financial size category of "VIII" or higher, (ii) or a financial strength rating from Standard & Poor's Ratings Services ("S&P") of "BBB+" or higher.

(1) Workers' Compensation

Worker's Compensation - (including coverage for Occupational Disease)
shall be maintained in the following limits:

	<u>Minimum Limits</u>
Workers' Compensation	Statutory Benefits
Employer's Liability	\$1,000,000 each accident bodily injury by accident
	\$1,000,000 each employee bodily injury by disease
	\$1,000,000 policy limit bodily injury by disease

(2) Commercial General Liability

Commercial General Liability covering all liability arising out of the Work furnished by Contractor, and shall include Broad Form Contractual Liability, Products and Completed Operations Liability, XCU, and Broad Form Property Damage Liability



coverage, including, but not limited to resulting and/or downstream damage caused to equipment and property. Coverage for Products and Completed Operations Hazards shall extend for a minimum of two years beyond completion of all warranty work. The coverage limits shall be no less than:

	<u>Minimum Limits</u>
Bodily Injury	\$1,000,000 per occurrence
Property Damage	\$1,000,000 per occurrence
Annual Aggregate	\$5,000,000

(3) Comprehensive Automobile Liability

Comprehensive Automobile Liability (including coverage for Owned, Hired and Non-owned Automobiles) shall be maintained in the following limits. The coverage limits shall be no less than:

	<u>Minimum Limits</u>
Bodily Injury	\$1,000,000 per occurrence
Property Damage	\$1,000,000 per occurrence
Annual Aggregate	\$5,000,000

- (B) Within five (5) days after the execution of the Agreement, Contractor shall deliver Certificate(s) of Insurance to Mitsubishi Power Americas evidencing the coverage's required hereunder. Said Certificate(s) shall contain endorsements providing that the insurance shall not be canceled or changed for any reasons whatsoever, without the insurer first giving Mitsubishi Power Americas thirty (30) days prior written notice. All the insurance coverage's required herein, with the exception of Worker's Compensation Insurance and Professional Liability Insurance shall be endorsed to include Mitsubishi Power Americas and its customer as additional insured. Additionally, all such policies shall waive all rights of subrogation with respect to the Mitsubishi Power Americas and its customer and include a cross-liability and severability of interest clause. All policies required by this Order shall include provisions that such insurance is primary insurance with respect to the obligations of Contractor to Mitsubishi Power Americas and its customer and that any other insurance maintained by Mitsubishi Power Americas and its customer is excess and not contributory insurance with the insurance required hereunder.

20. ASSIGNMENT

Contractor shall not assign this Agreement nor any rights or obligations hereunder without Mitsubishi Power Americas's prior written consent. Any purported assignment without such prior written consent shall be void.

21. GOVERNING LAW



This Agreement shall be construed in accordance with and governed by the laws of the State of Florida.

22. CONFIDENTIALITY AND CONFLICTS OF INTEREST

(A) Mitsubishi Power Americas and Contractor agree that any disclosure by Mitsubishi Power Americas to Contractor will be made on the following basis:

- (1) Contractor agrees that it shall not, and shall cause its employees not to disclose or make available to any person, firm, or corporation any experience, know-how, ability, or expertise which was acquired from, developed with, or based upon information disclosed by Mitsubishi Power Americas.
- (2) Contractor agrees that if a possibility of conflict arises in which Contractor may wish to commit such employees to perform work for any person, firm, or corporation, which would necessitate the utilization of any experience, know-how, ability or expertise that has been acquired from, developed with or based upon Mitsubishi Power Americas's information, Contractor will inform Mitsubishi Power Americas of all facts and seek Mitsubishi Power Americas's consent prior to entering into any such agreement committing such employees. Mitsubishi Power Americas's decision shall be binding and final.
- (3) Contractor further agrees and expressly covenants that no part of the payments made by Mitsubishi Power Americas hereunder shall be paid or used for the purpose of making any payment, directly or indirectly, to any person, firm, or official as a bribe, secret commission, or otherwise to influence the award of any business or contract to Mitsubishi Power Americas. In the event that Contractor makes any payment(s) in violation of this express covenant, Contractor shall, upon demand by Mitsubishi Power Americas, refund to Mitsubishi Power Americas an amount equal to the aggregate of all payments made under the Agreement, and without prejudice to any other rights or remedies which Mitsubishi Power Americas may have under the Agreement or at law, Mitsubishi Power Americas shall have the right, in its sole and absolute discretion, to terminate this Agreement and all rights of Contractor to compensation hereunder notwithstanding anything to the contrary contained elsewhere in this Agreement or in any applicable laws, rules, and/or regulations.
- (4) Contractor acknowledges and agrees that any information given to Contractor, directly or indirectly, by Mitsubishi Power Americas is Mitsubishi Power Americas's proprietary confidential information which is made available to Contractor only under the following conditions:
 1. Contractor agrees to receive and hold all information disclosed, directly or indirectly, to Contractor by Mitsubishi Power Americas secret and in confidence and (i) not to disclose such information to others, or (ii) use such information for any purpose, other than for the performance of the Work for Mitsubishi Power Americas under this Agreement. The obligations in this paragraph shall not apply to:
 - a. Information which at the time of disclosure is generally available to the public;



- b. Information which after disclosure becomes generally available to the public by publication or otherwise through no fault of Contractor;
- c. Information which Contractor can show was legitimately in Contractor's possession prior to disclosure hereunder and which was not acquired directly or indirectly from Mitsubishi Power Americas; or
- d. Information which Contractor can show was received by Contractor after the time of disclosure hereunder from a third party imposing no obligation of confidentiality and who did not acquire any such information directly or indirectly from Mitsubishi Power Americas.

For purposes of the foregoing exceptions, disclosures made to Contractor which are specific shall not be deemed to be within the foregoing exceptions merely because they are embraced by general disclosures which may fall within said exceptions. In addition, any combination of features shall not be deemed to be within any of the foregoing exceptions merely because the individual features fall within an exception, unless the particular combination of individual features itself and its principle of operation fall within the exception.

- 2. At no time shall Contractor identify Mitsubishi Power Americas as the source of information or disclose that any information is used in Mitsubishi Power Americas designs, whether or not such information is required of Contractor to be kept confidential hereunder.
- 3. No right or license is granted by Mitsubishi Power Americas to Contractor in relation to such information.
- 4. Contractor shall return to Mitsubishi Power Americas, upon demand, any and all written documents entrusted to Contractor by Mitsubishi Power Americas hereunder and Contractor shall not copy or reproduce in whole or in part any such documents without Mitsubishi Power Americas's written permission.
- 5. Contractor agrees that Contractor shall neither identify nor confirm that information which Contractor is otherwise free to disclose under the exclusions set out in a, b, c, and d of the above paragraph was or is the same as that which Contractor receives from Mitsubishi Power Americas.

(B) Contractor represents and certifies that Contractor is not under any existing obligation, contractual or otherwise, to refrain from assisting Mitsubishi Power Americas for the Scope of Work contemplated herein.

(C) Mitsubishi Power Americas does not require and Contractor's payments are not contingent upon Contractor's disclosure to Mitsubishi Power Americas now or at anytime in the future of any confidential information including but not limited to technical data, commercial information, customer lists and price lists, owned by Contractor's present and/or former employer and Contractor is hereby instructed not to so disclose such information.



23. CONTRACTOR CONFLICTS

Contractor shall devote its best efforts to advance the interest of Mitsubishi Power Americas in its performance of said Work, and shall not knowingly or negligently do anything that will compromise, be injurious or detrimental to Mitsubishi Power Americas's reputation or standing in the industry or with Mitsubishi Power Americas's customers, including, without limitation:

- a) Attempt to, or otherwise induce any of Mitsubishi Power Americas's present or prospective customers or other suppliers to withdraw, reduce or divert any of their present or prospective business from Mitsubishi Power Americas;
- b) Directly or indirectly persuade or attempt to persuade any employee of Mitsubishi Power Americas to terminate his or her service with Mitsubishi Power Americas.

Except as contemplated and authorized for the scope of Work in this Agreement, Contractor shall not use the name or any confidential information of Mitsubishi Power Americas in dealing with any other customers, projects, or other third parties, nor shall Contractor use the name of Mitsubishi Power Americas in its advertising or sales promotion, nor advertise or publish the fact that Contractor has an agreement or purchase order to perform services for Mitsubishi Power Americas, without first obtaining the express written consent of Mitsubishi Power Americas.

24. HIRING OF WORKERS

Mitsubishi Power Americas and Contractor agree that Mitsubishi Power Americas shall not employ directly a worker provided by Contractor prior to said worker completing five hundred hours of work under this Agreement. After a worker completes five hundred hours of work for Mitsubishi Power Americas, Mitsubishi Power Americas may hire said worker directly with no additional compensation due Contractor. In the event Mitsubishi Power Americas employs directly a worker provided by Contractor prior to said worker completing five hundred hours of work in accordance with this Agreement then Mitsubishi Power Americas agrees to compensate Contractor 15% of the workers gross annual compensation for the first year of the workers employment.

25. PUBLICITY

The Contractor shall not issue any news release nor permit any publicity or advertisement concerning the Agreement without the Mitsubishi Power Americas's prior written approval.

26. SURVIVAL

Notwithstanding the completion of the Work hereunder, or the earlier termination of this Agreement, the Parties shall continue to be bound by the provisions of this Agreement which by their terms or by their nature shall survive such completion or termination, including but not limited to the provisions of Clause 12, Patents; Clause 13, Warranty; Clause 18, Indemnity; Clause 21, Governing Law; Clause 22, Conflicts Of Interest; Clause 23, Contractor Conflicts.

27. DISPUTE RESOLUTION

- A) The Parties shall exercise their best efforts to resolve any and all disputes, controversies or differences between the Mitsubishi Power Americas and the Contractor arising out of, in connection with, or as a result of the Agreement, or the breach thereof, by negotiation.
- B) All disputes, controversies or differences between the Mitsubishi Power Americas and the Contractor arising out of, in connection with or as a result of the Contract, or the breach thereof, that are not settled by negotiation shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be conducted by three (3) independent and impartial arbitrators, none of whom shall be current or previous officers, directors or employees of either Party or their respective affiliates. The Party who submits the dispute to arbitration shall select and identify the first arbitrator in its notice of arbitration. The other Party shall identify the second arbitrator in a notice to be given not more than 45 days after it receives the notice of arbitration. The first two such arbitrators shall both be persons who are knowledgeable about the subject matter of the dispute and shall have at least five (5) years experience in the electric power industry. Within 30 days of the second arbitrator's selection, the two arbitrators shall select a third arbitrator, who shall serve as chairperson of the arbitrators' panel. If the two selected arbitrators cannot agree on a third arbitrator within 30 days of the second arbitrator's selection, the third arbitrator shall be appointed by the Court of Arbitration of the AAA as provided in the AAA Rules. In that regard, the Parties hereby waive the right to nominate the third arbitrator and hereby accept the appointments by the Court of Arbitration, as it deems best.