

GENERAL TERMS AND CONDITIONS

23/Sept/2022

1. DEFINITIONS

- 1.1. **Defined Terms.** In this **Agreement**, the following terms shall have the following meanings and shall be indicated in bold, italicized text beginning with a capital letter:
- "**Affiliate**" means any company, body or other organization controlling, controlled by, or under common control of **PLI** where control is defined as the holding of a majority of the share capital entitled to vote or to otherwise have the power to appoint and remove the management of the company, body or organization. In particular, BC Hydro is an **Affiliate** of **PLI**.
- "**Agreement**" means collectively, the **Proposal**, as signed by **PLI**, and these Terms and Conditions.
- "**Client**" means the entity so named in the **Proposal**.
- "**Deliverables**" means those reports, documents or other items to be provided by **PLI** to **Client** as part of the **Services** as set out under such heading in the **Proposal**.
- "**Fees**" means those fees and expenses as stipulated in the **Proposal**.
- "**Information**" means all information data, documents, the **Proposal**, and **Deliverables** provided to **PLI** or **Client** or resulting from the performance of the **Services**.
- "**PLI**" means Powertech Labs Inc.
- "**PLI Confidential Information**" means the **Proposal** and any other information provided by **PLI** to **Client** and identified as being confidential.
- "**PLI Intellectual Property**" means all right, title and interest in and to all intellectual property and intellectual property rights, of any form or nature whatsoever, including, without limitation, any and all inventions, discoveries, logos, trade secrets, patents, copyrights, trademarks, products, processes, methodologies, protocols, software, designs, specifications, drawings or models, conceived or reduced to practice by or on behalf of **PLI** or any **Affiliate** before or during the course of performing the **Services**.
- "**Proposal**" means the written proposal issued by **PLI** to **Client** forming part of this **Agreement** which sets out the **Services**, schedule, **Fees** and other technical details of the arrangement between the parties.
- "**Services**" means all of the various work and services to be done, executed, provided, delivered and/or performed by **PLI** as stipulated in the **Proposal**, including all personnel, labour, facilities, equipment, apparatus, machinery, materials, tests and **Deliverables** to be furnished and/or supplied by **PLI** in the performance of all of **PLI**'s obligations under or arising out of this **Agreement**.

2. ACCEPTANCE AND EFFECTIVE DATE

- 2.1. **Acceptance.** Notwithstanding anything to the contrary contained in any other related document, the **Client**, by accepting the **Proposal** and instructing **PLI** to proceed with the **Services**, by way of issuing a purchase order, or otherwise, accepts that **PLI**'s offer to perform the **Services** as set out in its **Proposal** shall be based solely on the terms and conditions contained in this **Agreement** and no additional terms or conditions in any purchase or service order or other similar document issued by **Client** to **PLI** shall apply unless expressly agreed to by **PLI** in a formal amending agreement signed by

both parties, or unless a Master Services Agreement has been agreed between the parties, in which case such Master Services Agreement shall prevail.

- 2.2. **Effective Date.** This **Agreement** shall be effective as of the effective date set out in the **Proposal** and shall continue until the completion of the **Services** subject to extension of the time for performance of the **Services** or termination of this **Agreement** in accordance with these Terms and Conditions. The schedule for **PLI**'s performance of the **Services** shall be as set out in the **Proposal**.

3. SERVICES

- 3.1. **PLI Services.** **PLI** will perform the **Services** as more particularly described in the **Proposal**. **PLI** will only perform those **Services**, and will deliver to **Client** only those **Deliverables** that are expressly set out in the **Proposal**. **PLI** may subcontract any part of the **Services** to a third party, including to any **Affiliate**.
- 3.2. **Standard of Performance.** **PLI** shall perform the **Services** using the degree of skill, care and diligence customarily associated with accepted professional practices for services similar in nature and scope to the **Services** and in accordance with those standards set out in the **Proposal**.
- 3.3. **Schedule, Extensions and Adjustments.** **Services** shall not commence until such time **PLI** has all **Client** equipment, instructions and information as required to perform the **Services**. **PLI** shall use its reasonable efforts to perform the **Services** within the time specified in the **Proposal**. Such time shall be extended by an amount at least equal to any delays in performance of the **Services** caused by any of the reasons set out in **Section 8.1 - Force Majeur** of these Terms and Conditions. If compensation under this **Agreement** is on a fixed price or time and expense with an upper limit basis, **PLI** shall be entitled to an equitable adjustment of such compensation in connection with any delays caused by the **Client** (including any employee, agent, representative or other contractor of the **Client**), or in connection with additional costs or time as may be described in the **Proposal** as potential additions.
- 3.4. **Additional Services.** If **Client** requests **PLI** to perform additional work under this **Agreement**, not within the scope of the **Services** set out in the **Proposal**, **Client** shall advise **PLI** in writing of its requirements and **PLI** shall submit a proposal, or other written document addressing the additional work being requested, to **Client** in response, including a description of the additional work and services proposed to be done, associated fees and schedule and all supporting details of such arrangement. Additional services shall only proceed following agreement of both parties set out in written change order, signed by each of them.

4. CLIENT OBLIGATIONS

- 4.1. **Assistance by Client.** **Client** shall make available to **PLI** on a timely basis:
- (a) such documents and information of **Client** as may be reasonably necessary to assist **PLI** in the performance of the **Services** and in meeting its obligations pursuant to this **Agreement**; and

(b) any materials, equipment or other items specified, explicitly or implicitly, to be provided by **Client** in the **Proposal**. **Client** shall immediately transmit to **PLI** any new information including information relating to changes in plans that becomes available in relation to the **Services**.

Client hereby warrants the accuracy of all information supplied to **PLI** by **Client** unless otherwise set out in the **Proposal**. If the **Fees** under this **Agreement** are on a fixed price or time and expense with an upper limit basis, **PLI** shall be entitled to an equitable adjustment to the **Fees** based upon **PLI**'s standard hourly rates in connection with any delays in the performance of the **Services** caused by **Client** or any of its personnel, representatives or contractors.

- 4.2. **Transportation, Insurance and Hazardous Materials.** Unless otherwise specified in the **Proposal**, **Client** shall be solely responsible for shipping and delivery of its equipment to and from **PLI**'s facilities. **PLI** encourages **Client** to use readily recyclable packaging to reduce the environmental impacts of its activities to the minimum practicable level. **Client** is responsible for securing transportation insurance or any other insurance **Client** deems required to cover loss or damage to its equipment during transportation or in the performance of the **Services**. Under no circumstances shall **PLI** be liable for any damage or loss to **Client**'s equipment, howsoever caused, during shipping and delivery. Except as is clearly disclosed in writing to **PLI**, **Client** represents and warrants that its equipment is free of any hazardous materials (including, without limitation, PCB's or asbestos) or any material which may impede the operation of **PLI**'s or any of its subcontractors' or **Affiliates**' facilities. **Client** shall supply **PLI** with detailed information of all packaged crate contents and all required unpacking, handling and packing instructions required for proper care of its equipment. All dates for acceptance of shipments shall be agreed to in advance by **PLI** and **PLI** shall have no obligation to accept shipments arriving at its facilities in advance of agreed dates. **PLI** may charge **Client** reasonable daily storage fees for **Client** equipment not removed from **PLI**'s facilities within 30 days of completion of **Services**. **PLI** reserves the right to dispose of **Client**'s equipment in any manner it deems advisable in the event **Client** fails to remove its equipment from **PLI**'s facilities within 30 days of termination of this **Agreement**. **PLI** shall not be responsible for any losses, costs, damages or expenses that **Client** may incur or suffer as a result of such disposal and any costs or expenses incurred by **PLI** in such disposal shall become a debt due and payable to **PLI** by **Client** within 30 days of **PLI**'s invoice to **Client** for same.
- 4.3. **Responsibility for Import/Export Requirements.** **Client** shall be responsible for all customs and import/export requirements for its equipment including for all taxes, import fees or other duties or charges resulting from shipment of its equipment to or from **PLI**'s facilities. **PLI** will provide reasonable support and documentation assistance in relation thereto.
- 4.4. **Risk of Loss and Damage.** **Client** recognizes that its equipment may be damaged during or because of testing or while in the care and control of **PLI** or any subcontractor or **Affiliate** (howsoever caused including, without limitation, due to the nature or requirements of tests) and shall indemnify and hold harmless **PLI**, its subcontractors and **Affiliates** against any losses or costs resulting from such damages and agrees that in no event shall **PLI** be liable for any damage or loss which may be caused to **Client**'s equipment during performance of the

Services or while located at **PLI**'s or its subcontractors' or **Affiliates**' facilities.

- 4.5. **Attending at **PLI**'s Facilities.** All authorized representatives of **Client** permitted by **PLI** to attend the testing facilities for the purpose of but not limited to observing, preparing or adjusting **Client**'s equipment for testing or shipping or participating in testing of **Client**'s equipment shall be required to comply with **PLI**'s safety and security requirements as advised. Additionally, **Client** shall participate as set out above at its own risk and waives any right of action against **PLI** in association with and resulting loss or injury. **Client** shall indemnify and hold harmless **PLI**, its directors, officers, employees, agents, subcontractors and **Affiliates** from and against any and all liability for any losses, costs, damages and expenses arising from or related to the acts or omissions of authorized representatives of **Client** or **PLI** while at the testing facilities.

5. **FEES, INVOICING AND PAYMENT**

- 5.1. **Fees.** In respect of the **Services** performed by **PLI**, compensation shall be in accordance with the applicable classification rates, fees, equipment rates, charges and expenses set out in the **Proposal** (collectively the "**Fees**"). In the event **Client** suspends, delays and/or cancels the **Services**, then standby, dead time, demobilization, remobilization, non-cancellable commitments and/or facility charges will be invoiced to **Client** as additional fees and expenses. In the event a **Client**-initiated stoppage extends for a period in excess of 5 days, then **Client** shall also be invoiced for all work performed up to the date of such stoppage, on a time/material basis or as a prorated fixed price whether or not any **Services** or **Deliverables** remain incomplete due to such stoppage.
- 5.2. **Taxes.** All amounts properly invoiced in respect of the **Services** in accordance with this **Agreement** are exclusive of all taxes or other governmental or regulatory duties or other amounts that are applicable on any compensation for the **Services**. If any such taxes or amounts are applicable to amounts payable to **PLI**, they will be added to amounts invoiced to and paid by **Client**. **PLI** reserves the right to increase the **Fees** by a corresponding amount in the event **Client** determines any withholding tax obligation prevents **PLI** from receiving the specified **Fees** for the **Services** set forth in the **Proposal**. For greater certainty, all taxes or levies generally applicable to **PLI**'s operations (e.g. property taxes, payroll taxes and levies, corporate income tax) are included in the **Fees** and any increases or decreases in such taxes or levies will not result in any change to the **Fees**.
- 5.3. **Invoicing.** **PLI** shall provide separate itemized invoices with respect to the **Services** to **Client** on a monthly or performance milestone basis as set out in the **Proposal**. Taxes payable shall be shown as separate line items on each invoice. **PLI** shall provide to **Client** such supporting documents, vouchers, statements and receipts as may reasonably be requested by **Client**.
- 5.4. **Payment.** Subject to performance of the **Services** in accordance with the terms of this **Agreement**, and subject to any other provisions regarding payment in the **Proposal**, **Client** shall pay **PLI** all undisputed compensation due within 30 days after the receipt by **Client** of an invoice from **PLI** and accompanied with all supporting materials required pursuant to **Section 5.3 - Invoicing** of these Terms and Conditions. **Client** shall notify **PLI** of any disputed invoice items not later than 30 days after the invoice date, or such invoice will be presumed to be correct. Any sum not paid by **Client** when due

will bear interest from the due date until paid at a rate equal to the prime rate of interest charged, from time to time, by the Bank of Montreal plus two (2) percent, calculated and payable monthly.

6. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY

6.1. **Intellectual Property and Rights.** *PLI* does and shall own all *PLI Intellectual Property*. Except as expressly provided below, nothing contained in this *Agreement* or otherwise shall be construed to grant to *Client* any right, title, license or other interest in, to or under any *PLI Intellectual Property*.

6.2. **Ownership of Deliverables.** *PLI* agrees that upon payment in full, the *Deliverables* shall be the property of, and ownership thereof shall vest in, *Client* except for *PLI's* Intellectual Property in the *Deliverables* which shall be licensed by *PLI* to *Client* in accordance with *Section 6.3 - Grant of License* of these Terms and Conditions. *Client* may use, publish or distribute the *Deliverables* without restriction provided that *Client* shall indemnify and hold *PLI* harmless from any losses, costs, damages or expenses (including reasonable legal fees) suffered or incurred by *PLI* as a result of *Client's* alteration of a Deliverable without *PLI's* consent or use of a Deliverable for purposes other than those for which the Deliverable was expressly provided having regard to the *Proposal*. *PLI* makes no warranty and accepts no duty of care to third parties using or relying on any Deliverable and *Client* bears the entire risk related to providing any Deliverable to any third party. *PLI* may keep one copy of the *Deliverables* for its files, which copy shall be subject to the confidentiality requirements set out in this *Agreement*.

6.3. **Grant of License.** *PLI* agrees to grant *Client* a non-exclusive, non-transferrable, royalty free, personal license to use, copy, and distribute the *PLI Intellectual Property* only to the extent it is unmodified and contained in a Deliverable as provided by *PLI* and only if it is absolutely required for the function of such *Deliverable*. *Client* shall not otherwise use any *PLI Intellectual Property* for any purpose without the prior written agreement of *PLI*, and shall not, directly or indirectly, de-compile, disassemble, or in any way to attempt to reverse engineer, any *PLI Intellectual Property*, or any *Deliverable* to extract, derive, or otherwise generate, any *PLI Intellectual Property*.

6.4. **Confidentiality.** Except as expressly provided in this *Agreement*, each party and its directors, officers, employees, agents, subcontractors and *Affiliates* shall:

- (a) treat as confidential all *Information* and *PLI Confidential Information* (the "*Confidential Information*") acquired or to which access has been given in the course of, or incidental to, the performance of the *Services* or this *Agreement*; and
- (b) not use (except for the purpose of the *Services*, including disclosure to its personnel, subcontractors and *Affiliates* with a need to know), disclose, or permit to be disclosed, to any person or entity, the *Confidential Information* without the prior written consent of the other party. Notwithstanding the foregoing, this provision shall not be interpreted as prohibiting or in any way restricting the disclosure by either party of any *Confidential Information* which:
 - i) is now or becomes public through no fault of that party;

ii) that party already had knowledge of or has independently developed from its own work prior to the date of this *Agreement*;

iii) that party received from a third party on a non-confidential basis and who had a right to disclose it; or

iv) that party is required to disclose pursuant to a court order or order of an administrative agency having jurisdiction over the Recipient, provided that, to the extent reasonably possible under the circumstances, the other party has first been given an opportunity to defend against or limit the scope of such order.

6.5. **Injunctive Relief.** Each party acknowledges and agrees that unauthorized disclosure of *Information* or other violation or threatened violation of this *Agreement* by such party with respect to this *Article 6 - Intellectual Property Rights and Confidentiality* of these Terms and Conditions will cause irreparable harm to the other party for which damages would not be an adequate remedy. Without prejudice to any other rights or remedies available to a party, each party shall have the right to apply for equitable relief by way of injunction against the anticipated, present or continuing breach by the other party of such provisions of this *Agreement* without the necessity of proving damages or furnishing a bond or other security.

6.6. **Photographs, Videos and Other Recordings.** *Client*, and any of its personnel or representatives attending at the facilities where the *Services* are being performed, shall not, without *PLI's* prior written consent, take any photograph, video or any other visual or audio recording while in attendance at such facilities.

7. WARRANTY, INDEMNITY AND LIABILITY

7.1. **Warranty.** *PLI* warrants the *Services* will be performed in accordance with the specifications set forth in the *Proposal*. Such warranty will be effective for a period of 90 days from the completion of the *Services* evidenced by the delivery of the final report regarding the *Services* by *PLI* to *Client*. *Services* which do not conform to the above-stated warranty obligation will be re-performed by *PLI* at *PLI's* expense, or if reperformance is impracticable or impossible, *PLI* will refund to *Client* the price paid to *PLI* for the non-conforming *Services*. Except as specified in this *Section 7.1 - Warranty* of these Terms and Conditions, *PLI* hereby disclaims and *Client* waives all representations, conditions and warranties (whether express, implied or statutory), including without limitation any warranty or condition:

- (a) of merchantability, fitness for a particular purpose, non-infringement, title, satisfactory quality, or quiet enjoyment, or
- (b) arising from any course of dealing; course of performance, or usage in the industry.

To the extent an implied warranty cannot be disclaimed, such warranty is limited in duration to 90 days from the completion date for the *Services* set forth in the *Proposal* and *Client's* sole and exclusive remedy for breach of any warranty shall be, at *PLI's* option, re-performance of the *Services* or termination of this *Agreement* and return of the portion of the *Fees* paid to *PLI* by *Client* for such non-conforming *Services*. The warranties and remedies set forth herein are exclusive.

7.2. **Indemnity.** Subject to *Section 4.5 of these Terms and Conditions*, and to the limitations and exclusions of liability in

this **Agreement**, each party (the "**Indemnitor**") shall indemnify and save harmless the other party, its directors, officers, employees, agents, subcontractors and **Affiliates** (the "**Indemnitees**") from and against any and all losses, costs, damages and expenses suffered or incurred by the **Indemnitees** or payable to any third party arising from any breach of this **Agreement** by the **Indemnitor**, or the negligent acts or omissions or willful misconduct of the **Indemnitor** and/or its directors, officers, employees, agents, subcontractors or **Affiliates** in connection with the **Services** or this **Agreement** except to the extent that such losses, costs, damages or expenses are caused by the breach of contract, negligent act or omission or willful misconduct of the **Indemnitees**.

7.3. **Limitations on Liability.** Notwithstanding any other provisions of this **Agreement**:

- (a) **PLI**'s (including its directors, officers, employees, agents, subcontractors and **Affiliates**) total aggregate liability to **Client** and to any person or entity claiming through **Client** for any breach of this **Agreement**, claim of infringement of intellectual property rights, negligent act or omission or gross negligence in relation to the **Services** or this **Agreement**, whether based in tort (including without limitation, negligence), breach of contract, statutory or strict liability, equity or otherwise, shall not exceed the total cumulative sum of the **Fees** received by or payable to **PLI** for performance of the **Services**; and
- (b) in no event shall **PLI** (including its directors, officers, employees, agents, subcontractors and **Affiliates**) at any time be liable to the **Client** or to any other person for any special, indirect, incidental damages, consequential damages, loss of revenue, loss of profit, loss of production, loss of use of any equipment, cost of any replacement equipment, cost of capital, claims by or through **Client**'s end-clients, loss of business reputation or opportunity or any other commercial or economic loss which may be sustained by them arising out of or relating to the **Services** or this **Agreement**, whether such liability arises out of contract, tort (including negligence), strict liability, warranty, equity or any other legal theory. **PLI**'s liability shall be limited to specifically identified written claims submitted by **Client** to **PLI** within one (1) year from the completion date of the **Services** specified in the **Proposal**.
- (c) **PLI**'s **Affiliates** shall have the same rights and entitlements as **PLI** pursuant to this **Article 7 - Warranty, Indemnity and Liability** of these Terms and Conditions as if such **Affiliates** were party to this **Agreement** and **Client** agrees that **PLI**'s **Affiliates** shall be entitled to directly rely upon the provisions of this **Article 7 - Warranty, Indemnity and Liability** of these Terms and Conditions and enforce same against **Client**.

7.4. **Assessment of Damages.** **Client** acknowledges and agrees that it is in a better position than **PLI** to foresee and evaluate any potential damage or loss that **Client** may suffer in connection with the **Services** and the **Deliverables** or any other circumstance related to this **Agreement** and the **Fees** **PLI** is charging **Client** for performance of the **Services** have been calculated on the basis that **PLI** will exclude and limit its liability as set out in this **Article 7 - Warranty, Indemnity and Liability** of these Terms and Conditions.

8. **DELAY, SUSPENSION AND TERMINATION**

- 8.1. **Force Majeure.** **PLI** shall not be liable for any expense, loss or damage resulting from delay or prevention of performance of the **Services** caused by fires, floods, acts of God, unusual weather events, public health risks, quarantine, epidemic, pandemic, strikes, labor disputes, labor shortages, inability to secure materials or equipment, fuel or other energy shortages, riots, thefts, accidents, transportation delays, acts or failure to act of **Client**, acts or failure to act of governmental authorities, **Client**'s delay in obtaining licenses, equipment breakdown or provision of information, materials or equipment to **PLI**, or any other cause whatsoever, whether similar or dissimilar to those enumerated above, beyond the reasonable control of **PLI** or any subcontractor or **Affiliate**. In the event of any delay arising by reason of any of the foregoing, the schedule and **Fees** as set out in the **Proposal** shall be equitably adjusted as may be required.
- 8.2. **Suspension.** Subject to any cancellation policy specified in the **Proposal**, **Client** may, for its convenience, delay or suspend **PLI**'s performance of any or all of the **Services**, by giving written notice to **PLI**. **Client** shall compensate **PLI** for direct costs and expenses actually incurred by **PLI** that are directly attributable to a delay or suspension, but not for lost profit. At **Client**'s request, **PLI** shall resume performance of the **Services** as soon as reasonably possible following a delay or suspension. **PLI** may suspend performance of **Services** by giving written notice to **Client** where **Client** has failed to provide any consents, approvals, information, materials, equipment or instructions required by **PLI** to perform the **Services** in a timely and complete manner or when payment for such **Services** is not received by **PLI** within 45 days after the submittal of an undisputed invoice to **Client**.
- 8.3. **Termination for Default by Client.** Without restricting any other rights or remedies that may be available, **Client** may, at its sole option, immediately terminate this **Agreement** with written notice to **PLI** if **PLI** has failed to comply with any material term or condition of this **Agreement**, and **PLI** has failed to rectify, or take adequate steps to rectify, any such default to the satisfaction of **Client**, acting reasonably within 30 days' of receipt of written notice from **Client** setting out the act(s) of **PLI**'s default.
- 8.4. **Termination for Default by PLI.** Without restricting any other rights or remedies that may be available, **PLI** may, at its sole option, immediately terminate this **Agreement** with written notice to **Client** if:
 - (a) **Client** has provided equipment to **PLI** which contains any hazardous material or substance not previously declared to **PLI** and agreed by **PLI** to be acceptable;
 - (b) **Client** has failed to provide any consents, approvals, information, materials, equipment or instructions required by **PLI** to perform the **Services** in a timely and complete manner within 30 days of **PLI**'s reasonable request for same;
 - (c) any undisputed invoice of **PLI** remains unpaid by **Client** for a period of 60 days from the date of invoice; or
 - (d) **Client** fails, within 30 days of receipt of written notice from **PLI**, to have its equipment or materials removed from **PLI** or any **Affiliate**'s facilities following completion of the **Services** with respect to such equipment or materials. In such event, **PLI**, or any **Affiliate**, may dispose of such equipment or materials in any manner it determines advisable and any costs incurred in such disposal shall be to the account of the **Client** and shall be a debt due and payable to **PLI**. **PLI** shall

have no obligation for any losses, costs, damages or expenses suffered or incurred by **Client** as a result of such disposal.

8.5. **Termination for Bankruptcy or Similar Proceedings.** Either party may immediately terminate this **Agreement** by written notice to the other party in the event that the other party commences bankruptcy, receivership, insolvency, reorganization or other similar proceedings. A party shall immediately notify the other party in the event any of the foregoing proceedings are commenced. After receipt of notice of such proceedings, the other party may suspend work or payment under this **Agreement** to the extent necessary to protect that party against loss.

8.6. **Obligations Upon Termination.** Upon termination of this **Agreement**, **PLI** shall cease to perform any further such **Services**, and **Client** shall pay to **PLI** such (a) **Fees** as **PLI** is entitled to receive for the affected **Services** properly performed up to the date of any such termination and (b) demobilization, non-cancellable commitments and/or facility charges, as applicable. Where **Client** has paid **Fees** in advance of the performance of the **Services** which have not and will not be delivered to **Client** following termination, **PLI** shall promptly return such pre-paid **Fees** to **Client**, or, at **PLI's** option, issue to **Client** a credit note to be used against future projects. The amount of the refund or credit note, as applicable, shall be in the amount of the pre-paid **Fees**, less a 10% administration fee.

9. **DISPUTE RESOLUTION**

9.1. **Proceedings.** The parties shall attempt to amicably resolve any dispute. If the parties are unable to resolve such dispute within 30 days after the date the dispute arose, either party may refer the dispute to binding arbitration. Any dispute, controversy or claim arising out of or relating to this **Agreement** including any question regarding its existence, interpretation, validity, breach or termination or the business relationship created by it shall be finally resolved by arbitration under the International Commercial Arbitration Rules by a single arbitrator. The arbitrator must be qualified by education, training and experience to pass judgment upon the particular matter to be decided. The arbitrator must have no relationship, direct or indirect, with either of the parties. The arbitration will be administered by the Vancouver International Arbitration Centre and the location of any arbitration proceeding will be Surrey, British Columbia, Canada, or such other location as the parties may agree. The language shall be English. The parties will share equally in the fees and expenses of the arbitrator and the cost of the arbitration facilities, but will otherwise bear their respective costs incurred in connection with the arbitration. The parties agree to use their best efforts to ensure that the arbitrator is selected promptly and that the arbitration hearing is conducted no later than 3 months after the arbitrator is selected.

9.2. **Determination.** The arbitrator must decide the dispute in accordance with the substantive law specified in *Section 10.13 - Applicable Laws* of these Terms and Conditions. This requirement does not, however, mean that the award is reviewable by a court for errors of law or fact. Following the arbitration hearing, the arbitrator will issue an award and a separate written decision that summarized the reasoning behind the award and the legal basis for the award. The

arbitrator will have the discretion to order one party to pay the other party's costs, attorneys' fees or expenses subject to the limitations and exclusions on liability set out in this **Agreement**. The award of the arbitrator will be binding on each party and not subject to review by any court for any reason. Judgment upon the award may be entered in any court jurisdiction.

9.3. **Injunctive Relief and Continued Performance.** For the avoidance of doubt, it is agreed that nothing in this *Article 9 - Dispute Resolution* of these Terms and Conditions shall prevent a party from seeking equitable relief before any appropriate court, including but not limited to with respect to breach of the confidentiality and intellectual property provisions of this **Agreement**. The commencement of any dispute resolution proceedings shall in no way affect the continual performance of the parties' respective obligations under this **Agreement**.

10. **GENERAL**

10.1. **Communications.** All communications, correspondence and documentation required or provided for in this **Agreement** shall be in the English language.

10.2. **Notices.** Any notices or other communications required or permitted under this **Agreement** shall be in writing and shall be delivered personally, by registered mail or by email to the address for each party set out in the **Proposal**. Notices sent by personal delivery or email shall be deemed received upon successful delivery or transmission. Notices sent by registered mail shall be deemed received 7 days after date of posting. Either party may revise its address for notice by providing written notification to the other party by one of the methods set out in this *Section 10.2 - Notices* of these Terms and Conditions.

10.3. **Further Actions.** The parties undertake to act in good faith with respect to each other's rights under this **Agreement** and to adopt reasonable measures to ensure the realization of the objectives of this **Agreement**. Each party shall, from time to time, take such actions and execute such documents as may be necessary to give effect to this **Agreement**.

10.4. **Corruption/Fraud.** Neither party shall engage in any corrupt, fraudulent, misleading, deceptive, obstructive, coercive, collusive or unethical practices or breach any applicable laws regarding corruption or fraud.

10.5. **No Restriction.** This **Agreement** does not prevent either party from entering into consulting or other contractual arrangements with third parties, including third parties who may be existing clients or competitors of the other party.

10.6. **Independent Contractor.** **PLI** is an independent contractor. This **Agreement** shall not create, nor shall it be deemed to create, the relationship of employer and employee, principal and agent, partnership, or joint venture between **Client** and **PLI** or between **Client** and any directors, officers, employees, agents or subcontractors of **PLI**. **PLI** is responsible for any deductions or remittances which are or may hereafter be, required by law. Neither party has any authority to make any representation, enter any commitment, or incur any expenses, debts or liability on behalf of the other party, except with their prior written consent.

10.7. **Severability.** If any provision of this **Agreement** is for any reason found to be unenforceable at law, it shall be deemed severed from this **Agreement** and the remaining provisions of this **Agreement** shall remain in force and continue to be binding

upon the parties as though the unenforceable provision had never been included in this **Agreement**.

- 10.8. **Waiver.** No waiver of any provision of the **Agreement**, or of a breach hereof, is valid unless it is in writing, signed by the waiving party. A waiver of any right under this **Agreement** on the part of either party shall not be deemed to be a waiver of any other right, and a waiver of any right in any one instance shall not be deemed to be a waiver of that right in any other instance.
- 10.9. **Amendments.** No amendment of this **Agreement** shall be valid unless it is in writing, signed by both parties.
- 10.10. **Assignment.** Neither party may assign or transfer this **Agreement** or any of its rights hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld.
- 10.11. **Survival.** The expiry or termination of this **Agreement** shall not affect or prejudice any rights or obligations that have accrued or arisen under this **Agreement** prior to expiry or termination, and those rights and obligations shall survive such expiry or termination. Any provision contained within this **Agreement** which by its very nature is intended or reasonably intended to survive expiry or termination of this **Agreement** and all other provisions of this **Agreement** necessary to give effect thereto, including but not limited to provisions with respect to payment, liability, indemnity, insurance, confidentiality, intellectual property and dispute resolution, shall survive such expiry or termination.
- 10.12. **Enurement.** This **Agreement** shall enure to the benefit of and be binding upon the administrators, successors and permitted assigns of the parties.
- 10.13. **Applicable Laws.** This **Agreement** shall be subject to, interpreted, performed and enforced in accordance with the laws of British Columbia without regard to British Columbia or Canadian law governing conflicts of law, even if one or more of the parties to this **Agreement** may be resident of or domiciled in any other province or country. Except as set out in *Article 9 - Dispute Resolution* of these Terms and Conditions, the parties irrevocably submit to the exclusive jurisdiction of the Supreme Court of British Columbia.
- 10.14. **Headings.** The division of this **Agreement** into Articles, Sections, Schedules, Appendices or other subdivisions, and the insertion of headings, are for convenience of reference only and do not affect the interpretation of this **Agreement**.
- 10.15. **Entire Agreement.** This **Agreement** is the entire agreement between the parties. There are no other undertakings, representations, warranties or promises between the parties, express or implied with respect to the subject matter of this **Agreement**. All other terms, expressed or implied by statute or otherwise, are excluded to the fullest extent permitted by law.