

Powertech Terms and Conditions

DEFINITIONS: For the purposes of these Powertech Terms and Conditions, “Powertech” means Powertech Labs Inc.; “Client” means the person or entity that enters into an Agreement with Powertech; “Agreement” means a contract for Services entered into between Powertech and the Client incorporating these Terms and Conditions; “Services” means the services to be performed by Powertech pursuant to the Agreement.

JOINT AND SEVERAL LIABILITY: If the Client consists of more than one party, then each such party shall be jointly and severally liable to Powertech with respect to payment of invoices and with respect to the terms and conditions of the Agreement.

STANDARD OF PERFORMANCE: Powertech 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.

ADDITIONAL WORK: If the Client requires Powertech to perform additional work under the Agreement, not within the scope of the Services, the Client shall advise Powertech in writing, and unless otherwise agreed in writing, the Client shall pay to Powertech the actual cost of performing the additional work calculated on a time and expense basis.

INDEPENDENT CONTRACTOR: During the term of the Agreement, Powertech shall act as an independent contractor and shall have the right to substitute personnel from time to time or to subcontract any part of the Services to a competent and qualified person or company without prior approval from the Client. In such case, Powertech agrees that it will remain responsible for the quality and completion of the Services.

TIMELINESS: Powertech shall use its reasonable efforts to perform the Services within the time specified in the Agreement. The period of time specified in the Agreement for the performance of the Services shall be extended by an amount at least equal to any delays in performance of the Services caused by the Client (including any employee, agent, representative or other contractor of the Client) or Force Majeure (as defined below).

The Client shall perform all of its obligations under the Agreement in a timely manner and in accordance with the requirements of the Agreement and, without limitation, shall ensure that Powertech receives any and all data and/or information, and access to Client personnel, facilities, equipment or other property, required by it to perform the Services on or before any deadlines specified in the Agreement or otherwise reasonably indicated in writing by Powertech. If compensation under the Agreement is on a fixed price or time and expense with an upper limit basis, Powertech 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).

CLIENT ACCESS: The Client may, at its own risk and expense and after reasonable written notice and in the presence of an employee of Powertech, visit Powertech’s premises where the Services are being performed so long as such visit does not unreasonably interfere with the activities of Powertech. During such visit, the Client shall comply with Powertech’s safety rules and procedures. The Client shall indemnify Powertech, its employees and agents against any claim brought against Powertech as a result of any Client visit to its premises.

PROPERTY RIGHTS: Any and all work of whatever kind or nature performed or created in connection with the Agreement by Powertech (collectively, the “Work Product”), including, but not limited to, working papers, photographs, computer programs and apparatus, and any and all intellectual property therein, shall remain the property of Powertech, unless otherwise expressly agreed by the parties. This does not apply to any materials, equipment, computer programs or other information or data or property supplied to Powertech by the Client at no cost. Powertech retains ownership of the Work Product, but grants to the Client a perpetual, royalty free right to use the Work Product for the project for which the Services are being performed. The Client shall not disclose any invention or discovery made by Powertech in relation to the Agreement to any third party for a period of five (5) years from the date of completion or termination of the Services, except with the prior written approval of Powertech, unless (a) such invention or discovery is now or becomes public through no fault of Client, or (b) Client already had knowledge of the invention or discovery from Client’s own work prior to the date of the Agreement, or (c) Client received the invention or discovery from a third party on a non-confidential basis and not derived from Powertech, or (d) the disclosure is in compliance with a court order or order of an administrative agency having jurisdiction over Client and, to the extent reasonably possible under the circumstances, Powertech has first been given an opportunity to defend against or limit the scope of such order. The Client shall not use the name of Powertech, or any Powertech affiliate, or extract and publish, or otherwise use, any portion of the Work Product in isolation, to promote or market its products without the prior written consent of Powertech. The Client shall also not, under any circumstances, remove or obliterate any disclaimer or copyright notice contained in or on any reports contained in the Work Product.

DISPOSITION OF CLIENT PROPERTY: Subject to any applicable statutory requirements, Powertech shall have no obligation to keep any documents or data (including any research notes, photographs, computer programs etc.), or any equipment, materials or other property, provided to it by the Client in connection with the Agreement, or otherwise owned by the Client, for longer than thirty (30) days after the completion or termination of the Services. During this thirty (30) day period, the Client shall either:

i) remove from Powertech's premises, care or custody all such documents, data, equipment, materials and other property; ii) direct Powertech to return any and all such documents, data, equipment, materials and other property to the Client, at the Client's cost; iii) direct Powertech to destroy any and all such documents, data, equipment, materials and other property, at the Client's cost; or iv) request that Powertech to store any and all such documents, data, equipment, materials and other property, at the Client's cost and on terms acceptable to Powertech. In no event shall Powertech be responsible or liable for any documents, data, equipment, materials or other property of the Client after the completion or termination of the Services. In the event that the Client fails to claim any and all such documents, data, equipment, materials or other property, or provide instructions to Powertech with respect to the disposition of same, in accordance with this provision, Powertech shall be entitled to use or dispose of the said documents, data, equipment, materials and other property as it sees fit in such circumstances. The Client hereby agrees to indemnify Powertech for all cost and/or liability arising out of the return, storage or disposition of any property referred to in this clause. The Client hereby also agrees to indemnify Powertech, its employees or agents from all loss, damage and costs suffered by Powertech, its employees or agents as a result of any claim brought against Powertech, its employees or agents as a result of Powertech performing the Services, carrying out research or study, or performing any other work as required by the Agreement, on any property of the Client or supplied by the Client to Powertech.

CONFIDENTIALITY: Without limiting any other provision of the Agreement, Powertech and the Client shall each, for the term hereof, and for a period of five (5) years thereafter, keep confidential and not disclose to any third party any information, material, or results of the work, of whatever nature, owned by the other and related to the other's business or the design and implementation of the project deliverables unless prior written approval for the release, thereof has been obtained from that 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 information, material, or result which:

- a) is now or becomes public through no fault of that party,
- b) that party already had knowledge of from its own work prior to the date of the Agreement,
- c) that party received from a third party on a non-confidential basis and not derived from the other party to the Agreement, or
- d) that party is required to disclose pursuant to a court order or order of an administrative agency having jurisdiction over such party, 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.

LIMITS ON LIABILITY: The total aggregate claim which the Client may have against Powertech arising out of the Agreement, whether in contract or tort, shall be limited to the total consideration paid to Powertech by the Client for Services performed under the Agreement. Powertech's liability for all claims by the Client arising out of the Agreement, whether in contract or tort shall cease to exist one year after the earlier of the completion of Services or termination of the Agreement and be limited to direct damages caused by the negligence, wilful misconduct or breach of the Agreement by Powertech. Without limitation, under no circumstances shall Powertech be liable to the Client for any indirect or consequential damages or losses, including without limitation, loss of use of any equipment, material or other property of the Client, loss of opportunity, loss of revenue or loss of profit.

PAYMENT: The Client shall pay Powertech the amounts as set out in the Agreement. Powertech shall invoice the Client monthly for amounts owing unless other payment provisions are specified in the Agreement. Invoices are due and payable when rendered. If the Client fails to pay an invoice within thirty (30) days after it is due, interest is payable on the overdue amount at a rate calculated at the prime rate of interest charged, from time to time, by the Bank of Montreal plus two (2) percent. If the Client fails to pay an invoice within forty-five (45) days, Powertech may, without notice and without prejudice to any other rights it has at law or under the Agreement, suspend performance of the Services.

FOREIGN TAXES: Unless otherwise expressly specified in this Agreement, payment of fees or other amounts payable to Powertech hereunder shall be made net and free of, and is not subject to, any sales, use, commodity, income, capital, withholding, or other tax or charge levied or imposed upon such amounts, the Services, Powertech or Powertech personnel by the laws of any jurisdiction outside of British Columbia (collectively a "Tax"). If any such Tax is levied or imposed requiring a withholding from the amounts payable hereunder, then the amount of the fees or other amounts payable to Powertech under this Agreement shall be automatically increased by an amount sufficient to ensure that Powertech shall receive net payments, after applying the Tax, in the total aggregate amount of compensation stipulated under this Agreement.

ENUREMENT: The Agreement shall enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors and permitted assigns, as applicable.

ASSIGNMENT RESTRICTED: The Client shall not be entitled to assign any of its rights, covenants, agreements, obligations, duties or liabilities under the Agreement without the express written consent of Powertech.

FORCE MAJEURE: Neither party shall be liable or responsible for any failure, impairment, delay or interruption to the extent such failure, impairment, delay or interruption is due to acts of God, strikes or threats thereof, civil unrest or other causes beyond that party's reasonable control ("Force Majeure"). A Force Majeure event does not include a negligent act or omission, intentional wrongdoing, or lack of creditor economic hardship.

TERMINATION: (a) Either party hereto may immediately terminate the Agreement if the other party becomes insolvent, commits an act of bankruptcy, has a receiver or liquidator appointed or breaches a material term of the Agreement, including failure to make payment as required. (b) Without limiting the foregoing, either party may terminate the Agreement for any other reason by giving the other party sixty (60) days' written notice of the termination. On termination of the Agreement, the Client shall immediately pay Powertech for all Services performed, and reimburse Powertech for all expenses and costs incurred, up to the effective date of termination of the Agreement. Upon termination of the Agreement under this provision, the Client shall also be responsible for the payment of all Powertech's costs associated with early termination of the Agreement, except that Powertech shall not be entitled to any such wind-up costs if the termination is by the Client under (a) above, or by Powertech under (b).

NON-WAIVER: The failure of either party to object to or to take affirmative action with respect to any conduct of the other respective party which is in violation of the terms of the Agreement shall not be construed as a waiver of those terms or of any future breach.

NOTICES: Any notice or invoice required or permitted to be given to any of the parties to the Agreement shall be in writing and may be given by prepaid registered post, facsimile, or personal delivery to the address of such party stated on the Agreement, or such other address as any party may specify by notice in writing to the other parties and any such notice or invoice shall be deemed to have been given and received by the party to whom it was addressed if mailed, on the third day following the mailing thereof, if faxed, on successful transmission, or, if delivered, on delivery; but if at the time of mailing or between the time of mailing and the third business day thereafter there is a strike, lock out, or other labour disturbance affecting postal service, then the notice or invoice shall not be effectively given until actually delivered.

PROPER LAW: The Agreement shall be governed by, and interpreted in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in British Columbia.

DISPUTE RESOLUTION: The Client and Powertech agree that they shall make sincere efforts to resolve any dispute arising between them under or in connection with the Agreement by amicable negotiations. Any unresolved disputes shall be referred to and finally resolved by arbitration, in the English language, and before a single arbitrator under the applicable rules of the British Columbia International Arbitration Centre or any similar arbitration centre agreed to by the parties. No legal action will be brought by either party under or in connection with the Agreement unless and until the dispute resolution process provided for in this provision is first exhausted.

LEGAL ACTIONS: Subject to the preceding clause, unless otherwise agreed in writing between the parties, all legal actions brought under or in connection with the Agreement shall be commenced in a court of competent jurisdiction in Vancouver in the Province of British Columbia, Canada, and the Client hereby irrevocably submits to the exclusive jurisdiction of the courts of British Columbia for that purpose irrespective of any conflict of law principles to the contrary.

ENTIRE AGREEMENT: The Agreement constitutes the entire agreement between the parties on the subject matter of the Agreement and, except as expressly provided in the Agreement, supersedes and replaces any prior agreements, negotiations or representations between the parties with respect to such subject matter.

MODIFICATIONS OR AMENDMENTS: The Agreement shall not be modified or amended except by written agreement of the parties signed by an authorized signatory of each of the parties.

SEVERABILITY: If any provision of the Agreement is held to be illegal, invalid or unenforceable, it shall be deemed to be severed from the Agreement and the remaining provisions shall not be affected and shall remain in full force and effect unless the original intent of the parties is materially altered or affected thereby, in which case the parties will use reasonable efforts to reach agreement on such amendments to the Agreement as may be reasonably necessary to give effect to the original intent of the parties.

SURVIVAL OF RIGHTS AND OBLIGATIONS: Any rights, obligations and remedies of the parties which accrued prior to the time of completion of the Services or termination of the Agreement, or which are by their nature continuing, shall survive the completion of Services or termination of the Agreement.

HEADINGS: The insertion of headings into the Agreement is for convenience of reference only and such headings shall not in any way be used in the construction or interpretation of the Agreement.