

JOHN HART PROJECT AGREEMENT

for the John Hart Generating Station Replacement Project

**British Columbia Hydro and Power Authority
("BC Hydro")**

and

**InPower BC General Partnership
("Project Co")**

Dated: February 25, 2014

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JOHN HART PROJECT AGREEMENT

THIS AGREEMENT dated as of February 25, 2014 (“**Effective Date**”) is entered into:

BETWEEN:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

(“**BC Hydro**”)

AND:

INPOWER BC GENERAL PARTNERSHIP

(“**Project Co**”)

WHEREAS:

A. pursuant to a request for proposals dated June 27, 2012 and the Competitive Selection Process provided for therein, BC Hydro has selected Project Co to design, build, construct, finance and provide services in respect of the Facility and to de-commission certain portions of the Existing Facility; and

B. the rights and obligations between the parties will be governed by the terms and conditions set out in this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged by each of the parties hereto, the parties hereto agree as follows:

1. INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires, capitalized terms will have the meanings set out in Schedule 1 [Definitions and Interpretation]. Certain words and expressions are defined within the Schedules and such definitions will apply, unless otherwise specified in this Agreement or unless the context otherwise requires, in all other parts of this Agreement, whether or not Schedule 1 [*Definitions and Interpretation*] contains a cross-reference to such definitions.

1.2 Interpretation

This Agreement will be interpreted and construed in accordance with the provisions set out in Schedule 1 [*Definitions and Interpretation*].

1.3 Schedules

The Schedules, including any Appendices or Exhibits forming part of a Schedule, are fully a part of this Agreement.

2. GENERAL PROJECT TERMS

2.1 Term and Termination

The term (the "**Term**") of this Agreement commences on the Effective Date and continues to the Expiry Date unless terminated earlier as follows:

- (a) by BC Hydro at any time in its discretion, and at the convenience of BC Hydro, by notice stating that termination is for convenience pursuant to this Section 2.1(a) [Term and Termination];
- (b) by BC Hydro pursuant to Section 6.6 [BC Hydro Election Not to Reinstate] if BC Hydro elects not to re-instate the Project after receipt of a Reinstatement Plan;
- (c) by either party pursuant to Section 6.7 [Insufficient Insurance] in connection with insufficient insurance;
- (d) by Project Co pursuant to Section 6.8 [Economic Reinstatement Test During Construction] in connection with the economic reinstatement test during construction;
- (e) by either party pursuant to Section 6.9 [Uncollectible Insurance Receivables] in connection with uncollectible Insurance Receivables;
- (f) by BC Hydro pursuant to Section 6.15(a) or 6.15(c)(2) [Consequences of Risks Becoming Uninsurable] in connection with a Principal Insured Risk becoming Uninsurable;
- (g) by either party pursuant to Section 8.4(c) or 8.4(e) [Project Co's Entitlements Upon Occurrence of a Relief Event] in connection with a Relief Event;
- (h) by either party pursuant to Section 8.6(c) or 8.6(d) [Parties' Entitlements Upon Occurrence of a Force Majeure Event] in connection with a Force Majeure Event;
- (i) by BC Hydro pursuant to Section 12.4 [BC Hydro Termination Right] in connection with a Project Co Event of Default; or
- (j) by Project Co pursuant to Section 13.3 [Project Co's Options] in connection with a BC Hydro Event of Default.

Unless otherwise specified in this Agreement, the Termination Date for any such earlier termination will be the date notice of termination is given by one party to the other party in accordance with this

Agreement. Except as referred to in this Section 2.1 [Term and Termination], neither party will have the right to terminate this Agreement.

2.2 Document Deliveries

Concurrently with the execution and delivery of this Agreement:

- (a) Project Co has delivered to BC Hydro the documents described in Section 2 [Documents to be Delivered by Project Co] of Schedule 21 [Completion Documents]; and
- (b) BC Hydro has delivered to Project Co the documents described in Section 3 [Documents to be Delivered by BC Hydro] of Schedule 21 [Completion Documents].

2.3 Assumption of Risk

Except to the extent expressly allocated to BC Hydro or otherwise expressly provided for under this Agreement, all risks, costs and expenses in relation to the Project Work and the performance by Project Co of its obligations, and the discharge when due of its liabilities, under this Agreement are allocated to, and accepted by, Project Co as its entire and exclusive responsibility.

2.4 Opportunities

Except as expressly provided in this Agreement, or as may be specifically agreed in writing between BC Hydro and Project Co during the Term, BC Hydro reserves the right to all commercial and other opportunities for, or related to, the Project and the Site. For clarity, pursuant to the terms of Schedule 10 [Lands], and subject to the terms of Schedule 24 [First Nations], Project Co has the right to dispose of surplus Site Materials (or Waste Material) for commercial gain, provided however, this commercial opportunity shall not extend to the Mineral Rights of the Province or other persons who may have acquired such interests or rights from the Province.

2.5 General Duty of Project Co to Mitigate

In all cases under this Agreement where Project Co is entitled to receive from BC Hydro any compensation in addition to the payments described in Section 3.1(a) [Payments], costs, damages or extensions of time, Project Co will use all reasonable efforts to mitigate such amount required to be paid by BC Hydro to Project Co and/or the length of the extension of time. Upon request from BC Hydro, Project Co will promptly submit a detailed description, supported by all such documentation as BC Hydro may reasonably require, of the measures and steps taken, and intended to be taken, by Project Co to mitigate and meet its obligations under this Section 2.5 [General Duty of Project Co to Mitigate].

2.6 General Duty of BC Hydro to Mitigate

In all cases under this Agreement where BC Hydro is entitled to receive from Project Co any compensation, costs or damages, but not in any other case, and in accordance with Section 3(v) of Schedule 1 [Definitions and Interpretation] BC Hydro will use all reasonable efforts to mitigate such amount required to be paid by Project Co to BC Hydro under this Agreement.

BC Hydro will have no obligation to mitigate, implied or otherwise under Laws, except as set out in this Section 2.6 [General Duty of BC Hydro to Mitigate] or as otherwise expressly set out in this Agreement. Upon request from Project Co, BC Hydro will promptly submit a detailed description, supported by all such documentation as Project Co may reasonably require, of the measures and steps taken, by BC Hydro to mitigate and meet its obligations under this Section 2.6 [General Duty of BC Hydro to Mitigate].

2.7 Representatives

Project Co and BC Hydro will each have a Representative, appointed in accordance with, and having the rights and responsibilities set out in, Schedule 3 [Roles and Representatives].

2.8 Key Individuals

Project Co shall comply with its obligations in respect of the retention and engagement of Key Individuals as set out in Schedule 3 [Roles and Representatives].

2.9 Naming

BC Hydro will have the exclusive right to name the Project and any parts thereof. Unless otherwise determined and directed by BC Hydro the name of the Project is the *“John Hart Generating Station Replacement Project.”*

2.10 Signs

Subject to Section 7.8 [Signage] of Schedule 5 [Design and Construction Protocols] and the provisions of Schedule 23 [Public Safety and Public Use], Project Co will not erect or maintain any signs anywhere at or near the Site or outside of the offices of Project Co or Project Co Persons in respect of the Project without the written consent of BC Hydro. Project Co acknowledges that BC Hydro will generally require that signage on the Site and the Facility after Service Commencement display only the name and logo of BC Hydro, and such other information as BC Hydro, in its discretion, may determine, and that it is unlikely that BC Hydro will consent to any signage containing the name of Project Co, any Project Contractor or any Sub-Contractor after Service Commencement.

3. BC HYDRO'S GENERAL OBLIGATIONS

3.1 Payments

Subject to Project Co meeting the requirements for payment set out in this Agreement, BC Hydro will pay Project Co amounts BC Hydro is expressly obligated to pay under the Agreement, including:

- (a) the Progress Payments, the Availability Payments and any other payments as set out in Schedule 13 [Performance and Payment Mechanism];
- (b) the Termination Payments as set out in Schedule 16 [Compensation on Termination];
- (c) amounts owing under Section 6 [Insurance, Damage and Destruction];

- (d) amounts owing under Section 7 [Changes, Minor Works and Innovation Proposals];
- (e) amounts owing under Section 8 [Supervening Events];
- (f) amounts owing under Section 9 [Indemnities and Limits on Liabilities and Remedies];
- (g) amounts owing under Schedule 28 [Differing Site Conditions]; and
- (h) amounts owing under Schedule 19 [Dispute Resolution Procedure] and Schedule 29 [Independent Certifier Agreement]

in accordance with the provisions of this Agreement.

3.2 Limitation on Payments

Other than the payments expressly provided for in this Agreement or under any Early Works Agreement that may have been entered into, Project Co will have no right to any further payment from BC Hydro in connection with the performance and completion of all or any portion of the Project Work or otherwise under or in relation to this Agreement or the Project.

3.3 Provision of Lands

BC Hydro hereby makes the Lands and the lands related to the Land Rights available to Project Co and BC Hydro hereby grants to Project Co the non-exclusive right and license (for Project Co and Project Co Persons authorized by Project Co), to enter onto and use the Site for the purposes of performing the Project Work in accordance with this Agreement and with Schedule 10 [Lands]. Project Co agrees that its right to occupy the Site is a personal property right and not a real property right and shall not create any rights as a tenant and that BC Hydro shall have no obligations as a landlord by virtue of this Land License.

3.4 Representations and Warranties

BC Hydro represents and warrants to Project Co, as of the Effective Date, that:

- (a) BC Hydro has full legal power and capacity to enter into, carry out the transactions contemplated by and duly observe and perform all its obligations contained in this Agreement and all other documents, instruments and agreements required to be executed and delivered by BC Hydro pursuant to this Agreement;
- (b) the execution and delivery of this Agreement and all documents, instruments and agreements required to be executed and delivered by BC Hydro pursuant to this Agreement, and the completion of the transactions contemplated by this Agreement, have been duly authorized by all necessary corporate action on the part of BC Hydro, and this Agreement has been duly executed and delivered by BC Hydro and constitutes a legal, valid and binding obligation of BC Hydro enforceable in accordance with its terms, subject to (i) limitations by bankruptcy, insolvency, liquidation, reorganization,

reconstruction and other similar laws of general application affecting the enforceability of remedies and rights of creditors, and (ii) the availability of equitable remedies such as specific performance and injunctive relief that are in the discretion of a court;

- (c) except for the Outstanding BCH Permits that are to be obtained during the Term as provided for in this Agreement, all third party consents and approvals, including the BC Hydro Permits, required for the execution by BC Hydro of, and the performance of its obligations under, this Agreement have been received;
- (d) it has rights and interests in and to the Lands, in each case free and clear of all Encumbrances, except the Project Site Encumbrances;
- (e) BC Hydro has the power, right and authority to grant to Project Co the Land License; and
- (f) to the extent BC Hydro's Representative Has Knowledge, having made reasonable internal enquiries and investigations of such matters, there are no facts or information relating to the Project or Disclosed Data which BC Hydro has intentionally not disclosed to Project Co and which, if learned by Project Co, would reasonably be expected to materially affect Project Co's evaluation of the risks Project Co is assuming pursuant to this Agreement.

3.5 BC Hydro Labour Pool

BC Hydro shall comply with its obligations with respect to the BC Hydro Labour Pool as set out in Schedule 7 [Services].

3.6 Taxes

Taxes that are payable according to applicable Law on payments to be made by BC Hydro or Project Co under this Agreement shall be paid as provided for in Section 14.5 [Collection and Remittance of Taxes] of Schedule 13 [Performance and Payment Mechanisms].

4. PROJECT CO'S GENERAL OBLIGATIONS

4.1 General Project Obligations

Subject to and in accordance with the provisions of this Agreement, Project Co shall:

- (a) perform all Project Work;
- (b) perform and observe all of its other obligations under this Agreement; and
- (c) obtain sufficient financing to enable Project Co to perform and observe its obligations under this Agreement,

at its own cost and risk and without recourse to BC Hydro, the Province, public funds, or guarantees by the Province or any other Governmental Authority, except as expressly provided otherwise in this Agreement, or to the extent that Project Co otherwise has rights arising out of or in respect of this Agreement, and in accordance with all applicable Laws, Permits, Legal Obligations and BC Hydro Policies.

For greater certainty, and subject to Section 4.19 [Regulatory Approvals and Permits], any changes or additions to Laws, Permits, Legal Obligations, and BC Hydro Policies that apply to the Project and the Project Work will become binding on Project Co and Project Co Persons:

- (i) in the case of Laws, when enacted or when otherwise coming into force;
- (ii) in the case of Permits, when Project Co is made aware by the relevant Governmental Authority, by BC Hydro, in each case in writing, or when Project Co otherwise actually becomes aware;
- (iii) in the case of Legal Obligations, when Project Co is made aware by the relevant Governmental Authority, by BC Hydro, in each case in writing, or when Project Co otherwise actually becomes aware; and
- (iv) in the case of BC Hydro Policies, when Project Co is made aware by BC Hydro in writing or when Project Co otherwise actually becomes aware.

4.2 Records and Reports

Project Co will at its own cost and expense retain and maintain the records and reports referred to in Schedule 20 [Records and Reports] in accordance with such Schedule and in a form that is capable of audit by BC Hydro.

Project Co will prepare, retain, maintain and make available in accordance with Schedule 20 all:

- (a) records and reports for inspection and copying (at BC Hydro's expense) during normal business hours upon reasonable notice; and
- (b) upon request from BC Hydro provide BC Hydro with electronic copies of any such records and reports as soon as reasonably practicable.

4.3 No Other Business

Project Co will not engage in any business or activity, other than the business or activities conducted for the purpose of the Project or otherwise expressly permitted hereunder.

4.4 Contractor Code of Conduct

Project Co shall comply and shall ensure that all Project Co Persons comply with the BC Hydro Contractor Code of Conduct, which is a BC Hydro Policy. Any change to a BC Hydro Policy made after

the Financial Submission Date that applies to Project Co shall constitute a Change in accordance with Section 7.1 [Changes Required by BC Hydro] and Schedule 14 [Changes].

4.5 Project Co Persons

Project Co will, as between itself and BC Hydro, be responsible and liable to BC Hydro for, and not relieved of its obligations hereunder by, the acts, omissions, breaches, defaults, non-compliance, negligence, wilful misconduct and other legal fault of each Project Co Person and all references in this Agreement to any act, omission, breach, default, non-compliance, negligence, wilful misconduct or other legal fault of Project Co will be construed accordingly to include any such act, omission, breach, default, non-compliance, negligence, wilful misconduct or other legal fault committed or caused by a Project Co Person.

For greater certainty, employees of BC Hydro who are utilized by Project Co in connection with the performance of the Services, shall not be considered Project Co Persons for the purposes of the foregoing allocation of risk and responsibility as between BC Hydro and Project Co. Provided, however, that nothing in the foregoing statement shall limit, qualify or alter in any way the allocation of responsibility as between BC Hydro and Project Co for the deployment and utilization of the BC Hydro Labour Pool personnel in accordance with Schedule 7 [Services].

4.6 Use of Sub-Contractors

Without limiting Section 4.5 [Project Co Persons], BC Hydro acknowledges that Project Co may carry out the Project Work by contracting such obligations to Project Contractors who in turn may contract all or part of their obligations under any Project Contract to one or more Sub-Contractors. In respect of the Project, Project Co will not contract with, or allow any of its Project Contractors, Contracting Affiliates or any Sub-Contractors to contract with, any Person that is a Restricted Person. Project Co shall provide BC Hydro with timely notice of and updates regarding changes to the engagement of Material Contract Parties. A notice to BC Hydro of a Material Contract or Sub-Contract creates no privity of contract between BC Hydro and the Material Contract Party or Sub-Contractor and no right of recourse by a Material Contract Party or a Sub-Contractor against BC Hydro, except to the extent and in the circumstances expressly provided in this Agreement (including the Dispute Resolution Procedures set out in Schedule 19 [*Dispute Resolution Procedure*]), any Collateral Agreement or any other agreement between BC Hydro and a Material Contract Party or Sub-Contractor. Project Co:

- (a) will not be relieved or excused from the due performance of any of its covenants or obligations, or the due observance of any terms or conditions, under this Agreement as a result of Project Co's obligations being contracted to any Project Contractor, Contracting Affiliate or any Sub-Contractor; and
- (b) will remain primarily (and not secondarily only) liable to BC Hydro for the due performance of all its covenants, and obligations, and the due observance of all the terms and conditions of this Agreement.

Project Co shall enter into, and shall cause each Material Contract Party to enter into and sign a Collateral Agreement in the form attached as Schedule 22 [Collateral Agreements] and deliver the same to BC Hydro concurrent with the signing and delivery of this Agreement.

4.7 Material Contracts

Project Co will not:

- (a) terminate, or accept or consent or agree to or permit, the termination of, all or any material part of, any Material Contract except:
 - (1) as required or permitted to do so by BC Hydro pursuant to the provisions of this Agreement; or
 - (2) if there is an event of default under a Project Contract and Project Co terminates the Project Contract in order to prevent or cure a Project Co Event of Default;
- (b) make, or consent or agree to or permit, the making of:
 - (1) any material amendment of any Material Contract, other than amendments, whether made by Change Certificate or otherwise, that are the direct and reasonable consequence of a Change; or
 - (2) a waiver, release, or suspension by any party from the performance of any material provision by another party of any Material Contract;
- (c) consent or agree to, or permit, any Material Contract Party to assign or transfer to any Person any of such Material Contract Party's rights or obligations under a Material Contract, other than by way of a Sub-Contract that is not a subcontract of all or substantially all of the obligations under the Material Contract or by way of assignment by way of security by a Material Contract Party; or
- (d) enter into, or consent or agree to, or permit, the entering into of, any Material Contract, other than those entered into on or before the Effective Date,

unless Project Co has, at its earliest practicable opportunity, submitted to BC Hydro notice of the proposed course of action and any relevant documentation and BC Hydro has consented to such course of action, such consent not to be unreasonably withheld or delayed. BC Hydro will give or deny such consent within: (i) 10 Business Days after receipt of such notice and all relevant documentation, if Project Co is seeking to terminate a Material Contract and such Material Contract may, in accordance with its terms, be terminated immediately; and (ii) 30 Business Days after receipt of such notice and all relevant documentation in all other cases, and if BC Hydro fails to give or deny its consent within such time periods it will be deemed to have given its consent.

4.8 Costs of Request for Consent

If Project Co requests consent to a proposed course of action pursuant to Section 4.7 [Material Contracts], Project Co will pay, without duplication, BC Hydro's reasonable internal administrative and personnel costs and all reasonable out-of-pocket costs in connection with considering any such request. At the time of such request, Project Co will make a payment to BC Hydro in the amount of \$ [REDACTED] against its obligations under this Section 4.8 [Costs of Request for Consent]. After BC Hydro renders its decision, BC Hydro will either refund any overpayment or invoice Project Co for any additional amounts owing under this Section 4.8 [Costs of Request for Consent] and Project Co will promptly pay such amount to BC Hydro.

4.9 Replacement Material Contract

If any Material Contract at any time lapses, terminates, or otherwise ceases to be in full force and effect (whether by reason of expiry or otherwise), unless the goods, services or rights which were the subject matter of such Material Contract are no longer reasonably required for the Project, or have been fully delivered or performed and all liabilities and obligations thereunder fully discharged:

- (a) Project Co will forthwith enter into, or cause to be entered into, a replacement Material Contract or contracts upon the same or substantially similar terms as the contract so replaced (to the extent reasonably practicable); and
- (b) if BC Hydro and the relevant Material Contract Party had entered into a Collateral Agreement with respect to the replaced Material Contract, Project Co will forthwith enter into, or cause the replacement Material Contract Party to enter into, a Collateral Agreement.

4.10 Delivery of Material Contracts

Project Co shall deliver to BC Hydro on Financial Close, a true, complete and accurate copy of all Material Contracts, certified as such by an officer of Project Co. If at any time any amendment, whether made by change order or otherwise, is made to any Material Contract, or a replacement Material Contract (or any agreement which materially affects the interpretation or application of any Material Contract), is entered into, Project Co will deliver to BC Hydro a copy of each such amendment or agreement within 10 Business Days of the date after it is made, certified as a true copy by an officer of Project Co.

4.11 Project Co's Representations and Warranties

Project Co represents and warrants to BC Hydro that as of the Effective Date:

- (a) Project Co is a general partnership, duly created and validly existing under the *Partnership Act* (Alberta) and extra-provincially registered in British Columbia and has full power and capacity to enter into, carry out the transactions contemplated by, and duly observe and perform all its obligations contained in this Agreement and all other documents, instruments and agreements required to be executed and delivered by Project Co pursuant to this Agreement;

- (b) the Partners are duly incorporated and validly existing corporations under the *Business Corporations Act* (Alberta) and extra-provincially registered in British Columbia and have full power and capacity to enter into, carry out the transactions contemplated by and duly observe and perform all of Project Co's obligations contained in this Agreement and all other documents, instruments and agreements required to be executed and delivered by Project Co pursuant to this Agreement;
- (c) the information set out in Schedule 27 [Project Co's Ownership Information] is true and correct and, except as set out in that Schedule 27 [Project Co's Ownership Information], there is as at the date of this Agreement no outstanding offer, agreement or other arrangement pursuant to which:
 - (1) any Person is obligated to subscribe for, or take by means of transfer or by conversion, any form of investment, security or voting rights in Project Co or the Partners; or
 - (2) the partnership agreement governing Project Co will be amended or otherwise altered;
- (d) the execution and delivery of this Agreement and all other documents, instruments and agreements required to be executed and delivered by Project Co pursuant to this Agreement, and the completion of the transactions contemplated by this Agreement, have been duly authorized by all necessary partnership action on the part of Project Co and corporate action on the part of the Partners, and this Agreement has been duly executed and delivered by the Partners on behalf of Project Co and constitutes a legal, valid and binding obligation of Project Co enforceable in accordance with its terms, subject to (i) limitations by bankruptcy, insolvency, liquidation, reorganization, reconstruction and other similar laws of general application affecting the enforceability of remedies and rights of creditors and (ii) the availability of equitable remedies such as specific performance and injunction that are in the discretion of a court;
- (e) all required third party consents to the execution by Project Co of, and performance of its obligations under, this Agreement have been received, other than the Permits and other approvals contemplated herein to be obtained after the Effective Date in connection with the Project; and
- (f) it has carefully reviewed the whole of this Agreement, including all Schedules and has taken all steps it considers necessary to satisfy itself that nothing contained herein inhibits or prevents Project Co from performing the Project Work in accordance with this Agreement.

The representation and warranty of Project Co in Section 4.11(f) [Project Co's Representations and Warranties] is included only for the purpose of allowing BC Hydro to rely on it for the purpose of defending or contesting any action brought against BC Hydro pursuant to this Agreement or any claim by Project Co for damages, extensions of time, additional compensation or any other relief arising pursuant

to this Agreement and BC Hydro may not rely on such representation and warranty for the purpose of bringing any action (except by way of counterclaim as part of a defence by BC Hydro of a claim initiated by Project Co or a Project Co Person) against Project Co or for the purposes of terminating this Agreement.

4.12 Disclosed Data and Investigations

- (a) It is Project Co's responsibility to have conducted its own investigations, analysis and review of the Project, the Site, the Existing Facility, the requirements of any Governmental Authority, and the BCH Works, and before the execution of this Agreement, to have taken all steps it considers necessary to satisfy itself as to the accuracy, completeness, sufficiency and applicability of any Disclosed Data upon which it places reliance and to assess all risks related to the Project and Project Work. Provided, however, that in respect of the Disclosed Data described in subparagraph (d) of this Section 4.12 [Disclosed Data and Investigations], BC Hydro acknowledges that Project Co is relying on BC Hydro's representation and warranty and may therefore limit the scope or nature of its independent investigations or validations of this data.

- (b) Unless, and to the extent only, BC Hydro has expressly represented or warranted any Disclosed Data in specified reports or documents in this Agreement, or as otherwise expressly provided in this Agreement, Project Co will not be entitled to, and will not make, and will ensure that no Project Co Person makes, any claim against BC Hydro or any BC Hydro Indemnified Persons, whether in contract, tort or otherwise, including any claim for compensation, damages, extensions of time or for additional payments under this Agreement on the grounds:
 - (i) of any misunderstanding or misapprehension in respect of the Disclosed Data;
 - (ii) that the Disclosed Data was inaccurate, incomplete, insufficient or inapplicable; or
 - (iii) that incorrect or insufficient information relating to the Disclosed Data given to it by any Person other than BC Hydro was inaccurate, incomplete, insufficient or inapplicable,

nor will Project Co be relieved from any liability or obligation imposed on or undertaken by it under this Agreement on any such ground.

- (c) To the extent BC Hydro expressly provides a representation and warranty in respect of specified Disclosed Data, BC Hydro acknowledges that Project Co may in the course of performing the Project Work and its obligations under this Agreement rely upon the accuracy of such data (but not the interpretation or application of such data), provided however, that Project Co's only recourse or remedy for any inaccuracy in this specified Disclosed Data shall be limited to claiming a Compensation Event pursuant to

Section 8.3 [Project Co's Entitlements Upon the Occurrence of a Compensation Event] and provided Project Co shall have no such recourse or remedy in respect of:

- (1) errors and omissions that a reasonable and prudent professional (of the relevant discipline) would detect on a careful examination and proper interpretation of the report but without carrying out any independent investigation or other validation of the data;
 - (2) errors and omissions notified to Project Co by BC Hydro before reliance is placed on the report;
 - (3) reports that expressly disclaim reliance by the reader and to the extent of the disclaimer; provided that Project Co shall be permitted to place the same reliance upon the accuracy of the data as BC Hydro, notwithstanding a general disclaimer of reliance by persons other than BC Hydro, and provided further any general disclaimer regarding the accuracy of data, or the right of the reader (even if BC Hydro) to rely on the same, that BC Hydro is specifically providing a warranty in respect of in subparagraph (d) below, shall not apply to Project Co for the purposes of this Section 4.12 [Disclosed Data and Investigations]; and
 - (4) reliance on a report if this Agreement (including the Design and Construction Procedure) expressly requires Project Co to verify the content of the document, to the extent so required.
- (d) For greater certainty, the only Disclosed Data for which BC Hydro has provided any representation or warranty in respect of, or for which BC Hydro acknowledges that Project Co may be placing reliance in the determination of rights and obligations under this Agreement, is in respect of the reports and information described in subparagraphs (A) to (H) below. BC Hydro hereby represents and warrants the accuracy of the information or data contained in the following:
- (A) the Disclosed Data, if any, contained within the specific representations and warranties of BC Hydro set out in Section 3.4 [Representations and Warranties];
 - (B) the bore hole log data contained in the following reports, for the sole purpose of assisting Project Co in performing its Design and Construction obligations:
 - (i) "Geotechnical Data Report version 2" dated September 11, 2012;
 - (ii) "A Compilation of Borehole Data at the John Hart Site from 1980 to 1987";
 - (iii) "BH 12-12 Geotechnical Data Report" dated October 23, 2012; and
 - (iv) "John Hart Dam Seismic Upgrade Project, 2011 Marine Field and Laboratory Investigation" dated August, 2011;

- (C) the data contained in the environmental reports specifically listed in Section 4.1(a) [Responsibility for Contamination] of Schedule 8 [Environmental Obligations] for the sole purpose of resolving a potential Dispute over whether or not BC Hydro disclosed to Project Co the existence of certain Contamination at the Site;
- (D) the survey control points set out in Drawing Number 502-S11-00010-001, "Survey Control Overview Map" dated 2011-10-20, for the sole purpose of assisting Project Co in identifying boundary locations to assist Project Co in performing its Design and Construction obligations;
- (E) the data contained in the "John Hart Generating Station – Blocks 5-7 Underwater Investigation" dated May 2012 for the sole purpose of assisting Project Co in performing its Design and Construction obligations;
- (F) the data contained in the "Inspection of John Hart Surge Tank #1 & #3 Lining/Coating; Inspection of John Hart Penstock #3 Lining" dated 25 October 2008, and "Inspection of John Hart Surge Tank #2 Lining/Coating; Inspection of John Hart Penstock #2 Lining" dated 25 August 2009, but only as these two reports refer to surge tank data, for the sole purpose of assisting Project Co in performing its Design and Construction obligations;
- (G) "John Hart Replacement Project – Soil Investigation Results of Storage Shed (APEC 12) & for Herbicides along Steel Penstock (AEC 8)" dated October 2012; and
- (H) the laboratory test data contained in "Assessment of Cores and John Hart Dam" dated February 27, 2013, for the sole purpose of assisting Project Co in performing its Design and Construction obligations.

4.13 Responses to BC Hydro Inquiries

Unless otherwise specified in this Agreement, Project Co will respond in writing to all written inquiries received from BC Hydro as soon as reasonably practicable and in any event within 10 Business Days after receipt of such inquiry or such longer period as the circumstances and content of the inquiry may reasonably require. If an inquiry reasonably requires more than 10 Business Days for a response, Project Co, within such 10 Business Days, will inform BC Hydro and advise when a response will be given.

4.14 Supplied Goods

Project Co shall be fully responsible for the procurement, ordering, transit, delivery, storage, installation and commissioning of all Supplied Goods in accordance with the requirements and terms of the Agreement. For greater certainty:

- (a) Project Co shall be responsible for making all necessary arrangements for, and assume all risk associated with, the procurement, ordering, packaging, shipment, transit,

importation and delivery of the Supplied Goods to the Site or other locations specified in Schedule 6 [Design and Construction Specifications];

- (b) Project Co shall be responsible for taking receipt of all deliveries of Supplied Goods and shall inspect, test, investigate, and confirm acceptance or rejection of all deliveries of Supplied Goods;
- (c) Project Co shall be responsible for the preparation and assembly and the incorporation of the Supplied Goods into the Project Work, and where applicable their installation into the Facility, including their Commissioning in accordance with Schedule 5 [Design and Construction Protocols];
- (d) title to a Supplied Good shall transfer from Project Co to BC Hydro concurrent with the installation of the Supplied Good into the Facility; and
- (e) Project Co shall retain all risk of loss, damage, liability, defects and deficiencies, associated with the Supplied Goods for the entire Term, except only to the extent any portion of these risks has been expressly transferred to or assumed by BC Hydro under this Agreement.

4.15 Intellectual Property and IP Rights

- (a) **Ownership of IP Rights:** As between the parties, and except as expressly set forth in this Agreement or otherwise expressly agreed in writing by the parties, Project Co will retain ownership of all Project Intellectual Property and related IP Rights. For greater certainty and notwithstanding this retention of ownership by Project Co: (i) nothing in this subparagraph is intended to be a transfer, assignment or license of any Intellectual Property or IP Rights by or on behalf of BC Hydro to Project Co; and (ii) BC Hydro will own the physical embodiments of Project Intellectual Property, including reports and related documentation comprising the Design Data, Design Drawings, records, reports and other written documents, required to be produced, delivered and made available by Project Co to BC Hydro as part of the Project Work.
- (b) **Licence to Project Co:** Subject to the provisions of this Agreement, BC Hydro hereby grants and agrees to grant to Project Co a non-exclusive, irrevocable, fully paid-up and royalty and compensation free licence during the Term to use, and for authorized Project Co Persons to use, the BC Hydro IP for the sole and exclusive purpose of performing the Project Work and subject to such additional restrictions and requirements as BC Hydro may request by way of a Change.
- (c) **Licence to BC Hydro:** Subject to the provisions of this Agreement (including all applicable confidentiality and security restrictions and requirements and subsection (g) in relation to Third Party Technology), Project Co hereby grants and agrees to grant to BC Hydro and its successors, assigns and licensees (including BC Hydro Persons) a

non-exclusive, perpetual, irrevocable, fully transferable, fully paid-up, royalty and compensation free, right and license in perpetuity to:

- (1) **Use of IP:** use and authorize other Persons to use, the Project Intellectual Property and all related IP Rights for BCH IP Purposes only and, for the purposes of interfacing with and connecting to other BC Hydro operating systems for normal course use and operation in support of the Project and the Facility without restriction or limitation as to the number, identity or kind of locations, sites, systems, installations, copies, users, platforms, interfacing software, equipment, hardware or otherwise. This licence does not grant to BC Hydro or any BC Hydro Person and their respective successors, assigns and licensees any right to commercially exploit, or authorize any other Person to commercially exploit, the Project Intellectual Property or related IP Rights or the right to use the same to provide to any Person commercial services that are unrelated to the BCH IP Purposes. Provided however, for clarity, pursuant to this license BC Hydro may grant to another Person the right to use the Project Intellectual Property and related IP Rights to provide commercial services to BC Hydro and its Affiliates but only to support the BCH IP Purposes;
- (2) **Reverse Engineer:** without limiting any of BC Hydro's rights pursuant to this Agreement, at law or in equity, but subject to subparagraphs (d) and (e) below, reverse engineer any or all of the Project Work and the Facility where Project Co has failed to provide documents or information required under this Agreement or where the Design Data, Design Drawings or any other documents and information supplied by Project Co is incomplete or otherwise insufficient to permit BC Hydro to install, operate, maintain, repair, upgrade, modify or replace any or all of the Project Work and the Facility, provided that the reverse engineering and the results therefrom shall be used for the BCH IP Purposes only;
- (3) **Restricted Authorization for Employees and Contractors:** allow BC Hydro's Affiliates and other Persons employed or engaged by BC Hydro or its Affiliates to have access to and use the Project Intellectual Property and all related IP Rights for any and all purposes whatsoever relating to the BCH IP Purposes provided that: (A) the scope of access to and use of such Project Intellectual Property and related IP Rights by Persons employed or engaged by BC Hydro or its Affiliates shall be restricted to that portion only of the Project Intellectual Property and related IP Rights that is strictly required to perform the particular work or services for which the applicable Person is employed or engaged by BC Hydro; and (B) any such Persons employed or engaged by BC Hydro or its Affiliates first be notified by BC Hydro in writing (I): not to use any of the Project Intellectual Property or related IP Rights for any other purpose; (II) to otherwise comply with BC Hydro's confidentiality obligations under Section 17.1 [Confidentiality] with respect to the Project Intellectual Property; and (III) to not commercially exploit, or authorize any Person to commercially exploit, the Project Intellectual Property

or related IP Rights or use the same to provide to any Person commercial services that are unrelated to the BCH IP Purposes. Provided however, for clarity, pursuant to this licence BC Hydro may grant to another Person the right to use the Project Intellectual Property and related IP Rights to provide commercial services to BC Hydro and its Affiliates but only to support the BCH IP Purposes.

- (4) **Acknowledgment:** BC Hydro acknowledges that any use of the Project Intellectual Property and related IP Rights for the purpose of modification, upgrading and/or replacement of the Project Work as set forth in subparagraph (a) of the definition of BCH IP Purposes shall be at the user's sole risk and liability, and Project Co, Project Co Persons and the Major Equipment Supplier (as applicable) make no representations or warranties relating thereto and in no event shall Project Co, Project Co Persons, and/or the Major Equipment Supplier (as applicable) have any responsibility or liability thereof.
- (d) **Notice of Reverse Engineering:** BC Hydro shall not exercise its right to reverse engineer any or all of the Project Work and the Facility under subparagraph (c) above for the purposes of installing, operating, maintaining, repairing, modifying or upgrading any or all of the Project Work and the Facility, unless BC Hydro shall have first given notice to Project Co stipulating the documents and information which BC Hydro requires in order to install, operate, maintain, repair, modify, upgrade, or replace any or all of the Project Work or the Facility, and Project Co shall have failed to deliver or otherwise make such documents and information available within 7 Business Days after receipt of such notice.
- (e) **Use for Replacement:** BC Hydro shall not exercise its rights under subparagraph (c) for the purposes of the replacement or rectification (including a Rectification) of any or all of the Project Work and the Facility (hereinafter referred to as "**Replacement Work**"), unless:
- (1) BC Hydro shall have first given notice to Project Co of any Replacement Work required to be performed and:
- (i) the Term has not expired and Project Co shall have failed to perform the Replacement Work in accordance with the terms of this Agreement; or
 - (ii) if the Term has expired, BC Hydro gives Project Co, or the applicable Material Contract Party, a reasonable opportunity to submit pricing, terms and conditions, and a schedule for performance of the Replacement Work, and BC Hydro and Project Co are then, within a reasonable time thereafter and following negotiations between the parties, unable to reach a mutually satisfactory agreement for the performance of the Replacement Work by Project Co, or the applicable Material Contract Party; or

- (2) at the time BC Hydro requires any Replacement Work to be performed, Project Co, or the applicable Material Contract Party, is then insolvent, bankrupt, or has ceased supplying the types of equipment, or parts or components needed for the Replacement Work, or is otherwise unable to manufacture, or otherwise procure, and supply the equipment, or parts or components needed for the Replacement Work within a reasonable time; and
- (3) for clarity, the parties agree that for the purpose of this Section 4.15(e) [Intellectual Property and IP Rights]: (i) contract terms and conditions substantially in accordance with the terms and conditions of this Agreement, and pricing for the equipment, or parts or components to be supplied, which is representative of prices then being generally charged by Project Co, or the applicable Material Contract Party, to similarly situated customers, shall be deemed to be mutually satisfactory to the parties; and (ii) a "reasonable opportunity" and a "reasonable time" shall be interpreted in the context of the circumstances giving rise to the required Replacement Work, including the existence of any safety or environmental hazards, the requirements of the power system and the commercial interests of BC Hydro.
- (f) ***IP Licences and Systems Support:*** For greater certainty, this Section 4.15 [Intellectual Property and IP Rights], including the licence set forth in subparagraph (c) above, shall apply to the IT Support Systems, except and to the extent that the IT Support Systems are comprised of Third Party Technology, in which case subparagraph (g) below shall apply. Schedule 21 [Completion Documents] sets out a list of the IP Licences being granted or provided by Project Co pursuant to this Section 4.15 [Intellectual Property and IP Rights], including the identification of the owner of the underlying Intellectual Property, related IP Rights comprising the Project Intellectual Property and the Third Party Technology listed as follows:
- (1) IP Licences in relation to Project Intellectual Property developed and owned by Project Co, including the identification of the related IP Rights and any applicable IT Support Systems;
- (2) IP Licences in relation to Project Intellectual Property developed and owned by a Material Contract Party, including the identification of the related IP Rights and any applicable IT Support Systems; and
- (3) IP Licences in relation to the Intellectual Property and related IP Rights that comprises the Third Party Technology to which BC Hydro is obtaining a sub-licence pursuant to subparagraph (g) below, and any applicable IT Support Systems.
- (g) ***Third Party Technology:***

- (1) **BCH Consent:** Project Co will ensure that Third Party Technology is not incorporated, embedded or otherwise included in the Project Work, the Facility, or the Services without BC Hydro's express prior written consent in each instance pursuant to this Section 4.15(g) [Intellectual Property and IP Rights], such consent not be unreasonably withheld or delayed. If Project Co wishes to request BC Hydro's consent to the incorporation, embedding or inclusion of Third Party Technology in the Project Work or the Facility, Project Co will make the request in writing and will expressly identify the Third Party Technology and explain its intended use, provide to BC Hydro copies of the Third Party License Agreement applicable to the Third Party Technology, and expressly confirm in writing to BC Hydro that the intended use of the Third Party Technology by Project Co, BC Hydro and its successors, assigns and licensees as contemplated by this Agreement is authorized under the Third Party License Agreement.
- (2) **Notices:** If Third Party Technology is incorporated, embedded or otherwise included in an item of Project Work or the Facility, Project Co will: (1) concurrently with delivery or completion of the item of Project Work or the Facility deliver to BC Hydro a notice identifying the Third Party Technology and its use and providing a copy of the applicable Third Party License Agreement; and (2) if practicable, include in or on the item of Project Work a prominent and express notice that the item includes Third Party Technology.
- (3) **Third Party License Agreements:** If Third Party Technology is incorporated, embedded or included in the Project Work or the Facility or otherwise used by Project Co or a Project Co Person in connection with the Project Work or the Facility, Project Co and all Project Co Persons will strictly comply with the applicable Third Party License Agreement relating to the Third Party Technology, and will not use the Third Party Technology, or authorize BC Hydro or any other Person to use the Third Party Technology, in contravention of the applicable Third Party License Agreement.
- (4) **Authorization to Use:** Subject to the express provisions of the applicable Third Party License Agreements, Project Co hereby grants and agrees to grant to BC Hydro and its successors, assigns and licensees (including BC Hydro Persons) a non-exclusive, irrevocable, perpetual, fully transferable, royalty and compensation free, fully paid-up, right and license in perpetuity to use, and to authorize other Persons to use, all Third Party Technology and related IP Rights incorporated, embedded or otherwise included in any item of Project Work, the Facility or the Services for BCH IP Purposes only. This authorization does not grant to BC Hydro or any BC Hydro Person and their respective successors, assigns any right to commercially exploit, or authorize any other Person to commercially exploit, the Third Party Technology or to use the same to provide to any Person commercial services that are unrelated to the BCH IP Purposes. Provided however, for clarity, pursuant to these licences BC Hydro may grant to

another Person the right to use the Project Intellectual Property and related IP Rights to provide commercial services to BC Hydro and its Affiliates but only to support the BCH IP Purposes.

(h) **Open Source Software:**

- (1) **Definition:** In this Agreement, “**Open Source Software**” means open source code, free code, community source code or any other computer software or code (including libraries or other software components): (i) for which the source code (human-readable code) is made generally distributed or made available (whether under a license agreement or otherwise) to the public; or (ii) that is distributed, made available or used pursuant to a license agreement or other terms and conditions (such as the GNU *General Public License* or the GNU *Lesser General Public License*) that requires Project Co, BC Hydro or any other Person to make available or disclose any Intellectual Property, including computer software or code or derivative works, whether in source code or object code format, to any other Person or to license or waive any rights (including IP Rights) in, to or associated with the computer software or any other Intellectual Property, computer software or code or any derivative work, or any related IP rights.
- (2) **Prohibition:** Notwithstanding any other provision of this Agreement, and unless expressly consented to by BC Hydro in each instance (such consent not to be unreasonably withheld or delayed), Project Co will ensure that Open Source Software is not incorporated, embedded or otherwise included in any Project Work or the Facility or the Services and will ensure that no aspect of the Project Work or the Facility or the Services or any other item to be provided by Project Co under this Agreement requires the use of Open Source Software to function, operate or perform in its intended fashion.
- (3) **Consent Procedure:** If Project Co wishes to request BC Hydro’s consent to the use of Open Source Software, Project Co will make the request in writing and will expressly identify the Open Source Software and describe the intended use of the Open Source Software, and will provide to BC Hydro such documents and information as may be reasonably requested by BC Hydro to enable BC Hydro to assess the potential security and other risks associated with the proposed use of the Open Source Software.
- (4) **Additional Requirements:** For greater certainty, and in addition to this Section 4.15(h) [Intellectual Property and IP Rights], if Open Source Software is Third Party Technology then all aspects of Section 4.15(g) [Intellectual Property and IP Rights] will also apply to the Open Source Software.

(i) **Source Code and Explanatory Materials:**

- (1) **Definition:** In this Agreement: (i) “**Source Code**” means complete copies of the source code (human-readable code) programming language version of the computer software and a configuration file defining the location of the source files, how they are to be compiled and linked to create a fully functional, machine executable (object) form of the computer software, and which automatically performs tasks necessary to rebuild the computer software when a competent computer programmer modifies code, all on a storage medium suitable for long term archival storage and copies of all other related documentation; and (ii) “**Explanatory Materials**” means documentation and other materials (instructions, specifications, programmer’s notes, data dictionaries, file layouts, and software or developer’s tools and utilities) in the English language intended or reasonably required to assist a computer programmer to understand and use the Source Code to maintain, modify and operate the computer software and compile and generate a fully functional, machine executable (object) form of the computer software from the Source Code.
- (2) **Delivery:** Unless the parties expressly agree in writing otherwise, if and to the extent that any Project Work is or includes computer software in relation to the Key Systems Assets, then: (1) the Source Code and Explanatory Materials for the computer software will be deemed to be items required to be delivered by Project Co as part of the Project Work and will be subject to the same transfers, assignments, waivers and licenses as are applicable to the computer software and related Intellectual Property and related IP Rights under this Agreement; and (2) Project Co will deliver to BC Hydro the Source Code and Explanatory Materials for the computer software at the same time that Project Co delivers the computer software to or to the benefit of BC Hydro either directly or indirectly by way of a Source Code escrow agreement on commercially reasonable and industry standard terms acceptable to BC Hydro, acting reasonably. Nothing in this Section 4.15(i) [Intellectual Property and IP Rights] obligates Project Co to create Explanatory Materials in addition to those that Project Co or Project Co Persons or their respective Affiliates and Sub-Contractors create in the ordinary course for their own internal purposes, and unless otherwise expressly agreed in writing by the parties references to Explanatory Materials in this Section 4.15(i) [Intellectual Property and IP Rights] are limited to the Explanatory Materials that Project Co or Project Co Persons or their respective Affiliates create in the ordinary course for their own internal purposes.
- (3) **Third Party Technology:** Unless the parties expressly agree in writing otherwise, if and to the extent that any Project Work is or includes computer software that is or includes Third Party Technology that is not a Key System Asset, then upon request by BC Hydro Project Co will use commercially reasonable efforts to obtain and deliver to BC Hydro, directly or if necessary subject to commercially reasonable and standard escrow terms, the Source

Code and Explanatory Materials for the Third Party Technology at the same time that Project Co delivers the computer software to or to the benefit of BC Hydro, and to obtain for BC Hydro a commercially reasonable and standard license to use the Source Code and Explanatory Materials for the Third Party Technology. For greater certainty, BC Hydro's consent to the proposed use of Third Party Technology pursuant to Section 4.15(g)(1) [Intellectual Property and IP Rights] may be conditional upon BC Hydro making satisfactory arrangements regarding the Source Code and Explanatory Materials for the Third Party Technology.

(j) **Knowledge Capital:**

- (1) **Project Co:** Nothing in this Agreement will preclude Project Co or Project Co Persons from marketing, developing or using for itself or others, any services or products that are the same as or similar to those provided to BC Hydro by Project Co pursuant to this Agreement. Furthermore, Project Co will continue to be free to use for any and all purposes Project Co's general knowledge, skills and experience acquired or developed in connection with the completion of Project, including all Project Intellectual Property. This Section 4.15(j)(1) [Intellectual Property and IP Rights] does not diminish Project Co's obligations regarding BC Hydro's Confidential Information and BC Hydro IP under this Agreement or constitute a license to use any Intellectual Property or related IP Rights owned or licensed by BC Hydro or its Affiliates.
- (2) **BC Hydro:** Nothing in this Agreement will preclude BC Hydro or its Affiliates or BC Hydro Persons from marketing, developing or using for itself or others, any services or products that are the same as or similar to those provided to BC Hydro or BC Hydro Persons by Project Co pursuant to this Agreement. Furthermore, BC Hydro and its Affiliates and BC Hydro Persons will continue to be free to use their respective general knowledge, skills and experience and any Intellectual Property and related IP rights that are acquired or used in the course of receiving or using the Project Work or the Facility. This Section 4.15(j)(2) [Intellectual Property and IP Rights] does not diminish BC Hydro's obligations regarding Project Co's Confidential Information or Project Intellectual Property under this Agreement, or constitute a license to use any Intellectual Property or related IP Rights owned by Project Co or Project Co Persons.

(k) **Software:**

- (1) **Scope of License:** Except as expressly set forth in this Agreement or a Third Party License Agreement, a license to use computer software and other computer code (including Source Code) granted to BC Hydro as set forth or referenced in this Agreement includes the right to use the software or code and related documentation (including Explanatory Materials) for operational, training, development, testing and enhancement purposes, including copying, reproducing, loading, installing, accessing, configuring, implementing, executing,

running, operating, hosting, supporting, maintaining, modifying, enhancing, translating, adapting, storing, backing-up, archiving, and creating derivative works from the software or code and related documentation, for BCH IP Purposes only and without any restriction or limitation as to the number, identity or kind of locations, sites, systems, installations, copies, users, platforms, interfacing software, equipment, hardware or otherwise, except that BC Hydro and its Affiliates and their respective successors, assigns and licensees will not commercially exploit, or authorize any other Person to commercially exploit, the computer software and other computer code (including Source Code) to provide to any Person other than BC Hydro or its Affiliates commercial services that are unrelated to the BCH IP Purposes.

(2) **No Locks:** Project Co will ensure that computer software provided to BC Hydro under this Agreement does not contain any “time bomb”, “logic bomb”, “back door”, “drop-dead device” or any other disabling or limiting code, design or routine that may be used to interrupt, lock, disable, erase, limit the functionality or use of, or otherwise adversely affect, or facilitate unauthorized access to, the software or any computer system, hardware, software, equipment, or services on or in connection with which the software may be installed, operated or used or any related data.

(l) **Perpetual Licenses:** Except as expressly set forth in this Agreement, a Third Party License Agreement or otherwise expressly agreed in writing by BC Hydro: (i) the licenses regarding Intellectual Property and related IP Rights granted to BC Hydro as set forth or referenced in this Agreement are and shall remain perpetual and irrevocable and shall survive indefinitely after the expiration or termination of this Agreement, and neither Project Co nor any other person may terminate, revoke or rescind any of those licenses for any reason or cause whatsoever; and (ii) no breach of this Agreement by BC Hydro will constitute a repudiation of this Agreement by BC Hydro, and if BC Hydro commits any breach (whether fundamental or not) of this Agreement, and whether the breach is or is not capable of being remedied, Project Co’s sole rights and remedies in respect of the breach are limited to Project Co’s rights and remedies other than termination, revocation or rescission of the licenses. For greater certainty, nothing in this section 4.15(l) [Intellectual Property and IP Rights] restricts or limits Project Co’s remedies of damages and injunctive relief to restrain any use of Intellectual Property or IP Rights in breach of this Agreement.

(m) **Licenses from Project Co Persons:** Project Co will obtain from each applicable Project Co Person an express written agreement assigning, licensing or otherwise granting to Project Co the rights and licenses necessary for Project Co to grant to BC Hydro the rights and licenses regarding Intellectual Property and related IP Rights as set forth in this Agreement, and containing appropriate representations and warranties regarding the validity and enforceability of those rights and licenses. Upon request by BC Hydro, Project Co will provide to BC Hydro copies of each of those written

agreements, which may be redacted to delete parts that are unrelated to the rights and licenses regarding Intellectual Property and related IP Rights.

Except as otherwise expressly provided for in this Agreement or in a Material Contract, any performance or product related warranties or guarantees being provided by Project Co or Project Co Persons to BC Hydro in relation to the Project Intellectual Property shall only apply to its use or application by BC Hydro Persons in relation to the Project and the Facility.

4.16 Corporate Social Responsibility

Project Co shall, in the performance of the Project Work and its obligations under this Agreement comply, and shall cause all Project Contractors and Sub-Contractors to comply, with the following: (a) BC Hydro's Contractor Code of Conduct; (b) the occupational health and safety requirements applicable to the Site referred to in Schedules 6 [Design and Construction Specifications], 7 [Services] and 12 [Safety and Security]; (c) the requirements of Schedule 8 [Environmental Obligations] relating to the protection of the environment; (d) all labour and employment standards (including minimum and fair wage laws and occupational health and safety laws) in all jurisdictions applicable to the performance of all Project Work and the supply of products and services comprising such work and adopt and maintain in place policies that protect against discrimination, harassment and other mistreatment of employees in all workplaces relevant to the performance of Project Work; and (e) the requirements of Schedule 24 [First Nations] relating to the participation or interests of First Nations in the Project.

4.17 Compliance with Laws

Project Co acknowledges that BC Hydro is not bound by certain statutes, or statutory provisions, of the Province or Municipalities, as provided under section 32 of the *Hydro and Power Authority Act* (British Columbia).

Project Co shall, in the performance of the Project Work and its obligations under this Agreement, comply, and cause all Project Contractors and Sub-Contractors to comply, with all applicable Laws, subject to the following understandings, acknowledgments and qualifications:

- (a) Project Co acknowledges that any immunity or exemption BC Hydro may have from the application of certain Laws by reason of the *Hydro and Power Authority Act* (British Columbia), its status as an agent of the Province or otherwise will not apply to Project Co, Project Contractors or Sub-Contractors or other Project Co Persons for the purposes of this Project and this Agreement unless otherwise directed by BC Hydro pursuant to subparagraph (b) below;
- (b) BC Hydro may, in its sole and absolute discretion, determine that its immunity or exemption from certain Laws can and should extend and apply to Project Co, Project Contractors or Sub-Contractors or other Project Co Persons in relation to all or specified parts of the Project Work, and BC Hydro may provide a written direction to Project Co confirming this determination (the "**Immunity Direction**");

- (c) upon receipt of an Immunity Direction, but subject to subparagraph (e) below, Project Co and the affected Project Contractors and Sub-Contractors or other Project Co Persons, shall complete the specified Project Work and perform their related obligations pursuant to this Agreement (and the applicable Material Contracts or Sub-Contracts) on the basis that the Laws specifically described by BC Hydro in the Immunity Direction shall be deemed to not apply to this Project Work, and to Project Co, Project Contractors and Sub-Contractors or other Project Co Persons, as applicable;
- (d) if after receiving an Immunity Direction from BC Hydro a court or Governmental Authority should make an order or direction that is lawfully binding on the affected parties that the Laws described in the Immunity Direction do apply to the affected part of the Project, the Project Work or to Project Co, Project Contractors or Sub-Contractors or other Project Co Persons contrary to the BC Hydro Immunity Direction, such event shall be treated as a Compensation Event; and
- (e) notwithstanding the foregoing, if within 10 days following receipt of the Immunity Direction, Project Co can demonstrate to BC Hydro, acting reasonably, that compliance with the Immunity Direction creates a reasonably foreseeable risk that Project Co might suffer material damages or losses that are not capable of being adequately compensated for, or damage to Project Co's or a Project Co Person's reputation, then Project Co may refuse to comply with the Immunity Direction.

4.18 Ownership of Energy

The sole and exclusive use and ownership to all energy produced by the Generating Units and the Facility, including all energy and capacity produced or available therefrom, shall accrue solely to BC Hydro. All revenue earned from the sale, disposition or transfer of all energy and capacity produced or available from Generating Units and the Facility shall at all times accrue solely to BC Hydro.

4.19 Regulatory Approvals and Permits

- (a) **BC Hydro Permits:** BC Hydro is responsible for obtaining, or confirming on the Effective Date that it has obtained, the following Permits (the "**BC Hydro Permits**"): (i) the CPCN; (ii) the Water Licence; (iii) the WA Change Approval; (iv) the Park Boundary Adjustment; (v) the New Park Use Permits; (vi) the Crown Land Grant; and (vii) the BC Hydro Fisheries Authorization.
- (b) **Outstanding BCH Permits:** For those BC Hydro Permits that have not been obtained and which are still outstanding as of the Effective Date (the "**Outstanding BCH Permits**"), BC Hydro will diligently use reasonable commercial efforts to obtain these Permits in a timely manner. BC Hydro will notify Project Co in writing when each of the Outstanding BCH Permits is obtained.

Project Co will be entitled to claim a Compensation Event if the Outstanding BCH Permits are not obtained by BC Hydro, or are otherwise not valid and in effect, by or on

the following dates: (i) the CPCN – Effective Date; (ii) Water Licence – Effective Date; (iii) WA Change Approval – 120 days after the Effective Date; (iv) the Park Boundary Adjustment Effective Date; (v) New Park Use Permits – 60 days after the Effective Date; (vi) the Crown Land Grant – 60 days after the Effective Date; and (vii) the BC Hydro Fisheries Authorization – Effective Date.

- (c) **Project Co Permits:** Except for the BC Hydro Permits, Project Co is responsible for and shall obtain all other Permits, including the Tailrace PUP, to perform the Project Work, including any Permits that Project Co may require to perform Project Co's environmental obligations.
- (d) **Risk and Responsibility for Permits:** Except as set out in sub-paragraphs (e) and (f) below, or as otherwise expressly provided for by other terms of this Agreement, BC Hydro assumes all risk, cost, liability and responsibility for obtaining and maintaining in effect the BC Hydro Permits and Project Co assumes all risk, cost, liability and responsibility for obtaining and maintaining in effect all other Permits, including any changes or modifications that may occur to any of these other Permits during the Term.
- (e) **Changes to Permits:** Any changes or modifications arising after the Financial Submission Date to the BC Hydro Permits or the Hydro Facility Permits during the Term that occur or arise other than as a result of an act, omission or activity of a Project Co or Project Co Person shall be treated as a Change in Law and sub-paragraph (c) of this defined term shall not apply when used in this context. Project Co shall assume the risk and responsibility of any change or modifications arising after the Financial Submission Date in respect of all other Permits, except to the extent the change or modification arose as a consequence of a Supervening Event, a change to applicable BC Hydro Policies, a change to Legal Obligations or a Change required by BC Hydro pursuant to Section 7.1 [Changes Required by BC Hydro] of this Agreement.
- (f) **Delays in Obtaining Permits:** Project Co shall assume all risk, cost, liability and responsibility for any delays that may occur with a Permit being granted, issued or obtained except as follows:
 - (1) Project Co shall not have such risk or responsibility in respect of the BC Hydro Permits, unless and only to the extent a delay with an Outstanding BCH Permit is caused by or contributed to by the acts or omissions of Project Co;
 - (2) Project Co shall not have such risk and responsibility in respect of a delay with the Fisheries Authorizations or the Tailrace PUP if the delay extends beyond 6 months from the date Project Co timely submits a Proper Application; at which point Project Co shall be entitled to claim a Compensation Event;
 - (3) Project Co shall not have such risk and responsibility in respect of a delay with any Leave to Commence if the delay extends beyond 3 months from the date

Project Co timely submits a Proper Application; at which point Project Co shall be entitled to claim a Compensation Event;

- (4) Project Co shall not have such risk and responsibility in respect of a delay with the Advisory Opinion if the delay extends beyond 6 months from the date Project Co timely submits a Proper Application; at which point Project Co shall be entitled to claim a Compensation Event; and
- (5) Project Co shall not have such risk or responsibility in respect of any Permits to the extent the delay is caused or contributed to by a Supervening Event, including but not limited to events based on BC Hydro or BC Hydro Person breaches, negligence, or misconduct, a Protest Action, aboriginal rights infringement claims, or a failure by BC Hydro to provide a written notice confirming satisfaction of First Nation consultation obligations as required by the terms of Schedule 8 [Environmental Obligations].
- (g) **Proper Applications:** For the purposes of this Section 4.19 [Regulatory Approvals and Permits], a “**Proper Application**” means Project Co has: (i) prepared the application, submission or request in form and content that is customary for the Permit in question having regard to the relevant published forms, guidelines, policies and other instructions available from the applicable Governmental Authority and to general industry practice; (ii) prepared the application, submission or request in a manner substantially consistent with, as applicable, the Design Data for which BC Hydro has no objection to in accordance with the Review Procedure, the Works Schedule; and the applicable Construction Environmental Management Plan or CEMP in accordance with Section 2.5 [Construction Environmental Management Plan] of Schedule 8 [Environmental Obligations]; (iii) obtained any required input or approval from the Independent Engineer in the case of the Leaves to Commence; and (iv) proceeded diligently with the application, submission or request in a timely manner, meaning as early in the Works Schedule as is reasonably possible and appropriate having regard to the Design, the organization and sequencing of Project Work according to the Works Schedule and the customary or normal course requirements of the applicable Governmental Authorities.
- (h) **Entitlement to Relief:** Without limiting the general requirements of Section 8.2 [Procedures Upon the Occurrence of a Supervening Event], for Project Co to make a claim for relief based on a Compensation Event by reason of changes to a Permit as provided for in subparagraph (e) above, or for delays in obtaining a Permit as provided for in subparagraph (f) above, Project Co must demonstrate that it made a Proper Application, it acted diligently in taking reasonable commercial steps to mitigate or avoid the change or the delay, including by pro-actively coordinating the approval process, and by actively interacting and cooperating, with the applicable Governmental Authorities and with BC Hydro according to the protocols and requirements set out in subparagraphs (i) and (j) below.

- (i) **Cooperation and Coordination:** Project Co and BC Hydro shall work cooperatively together in the timely coordination and management of the preparation and submission of all required applications, requests or submissions for all Permits, including any modifications or renewals, including through: (i) the inclusion of these items as a regular agenda topic for the meetings of the Construction Period Joint Committee and the BC Hydro Project Meetings (Sections 2 [Construction Period Joint Committee] and 7.9 [BC Hydro Project Meetings] of Schedule 5) [Design and Construction Protocols]; (ii) the submission and reporting requirements of Project Co as set out in Schedule 5 [Design and Construction Protocols] and Schedule 8 [Environmental Obligations]; (iii) adherence to the protocol requirements relating to the Leaves to Commence as set out in Section 6 [Leaves to Commence] of Schedule 5 [Design and Construction Protocols]; (iv) Project Co providing timely notices, invitations, and reports to BC Hydro in respect of all meetings, discussions, negotiations and other material communications with applicable Governmental Authorities as required by the Project Agreement, including subparagraph (j) below; and (v) each Party providing information, records and other material to the other, as may be reasonably required by the Project Agreement, including subparagraph (k) below.
- (j) **Meetings and Discussions with Governmental Authorities:** Project Co shall keep the BC Hydro Representative fully informed of the relevant details of all discussions and negotiations with all Governmental Authorities relating to all Permits including the following document submission and notification requirements:
- (1) **Submission of Documentation** – Except in the case of any emergency, at least five (5) days prior to submission to a Governmental Authority, Project Co shall provide to BC Hydro, for information only, copies of all documentation proposed to be submitted to the applicable Governmental Authority, together with all pertinent correspondence and supporting documentation, provided that where such documentation has already been submitted to BC Hydro pursuant to Schedule 2 [Review Procedure, Consent Procedure, and Other Submittals] Project Co shall not be required to provide such documentation pursuant to this Section 4.19(j)(1);
 - (2) **Notice of Meetings** – Except in the case of an emergency, or other unscheduled meeting, Project Co shall provide reasonable advance notice to BC Hydro of any meetings with Governmental Authorities and a representative of BC Hydro shall be permitted to attend any such meetings;
 - (3) **Potential Commitments** – Except in the case of an emergency, or other unscheduled meeting, at least seven (7) days prior to entering into any scheduled discussions with representatives of the applicable Governmental Authority where such discussions may result in a binding commitment, Project Co shall submit to BC Hydro's Representative a written notice setting out: (1) the date, time and location of the proposed discussions; (2) the subject matter of the proposed discussions, including details of all commitments under consideration;

- (3) Project Co's proposed position with respect to each commitment under consideration; and (4) a copy of all documentation to be submitted to the applicable Governmental Authority together with all pertinent correspondence and supporting documentation;
- (4) **Submittal and Review** – Project Co's submittal requirements pursuant to subparagraph (3) of this Section 4.19(j) [Regulatory Approvals and Permits] shall be subject to the Review Procedure, provided that the time for BC Hydro's review under Schedule 2 [Review Procedure, Consent Procedure and Other Submittals] shall be five (5) days;
- (5) **Commencement of Activities** – Without limiting the preceding paragraphs of this Section 4.19 [Regulatory Approvals and Permits], not less than 75 days prior to the date on which Project Co proposes to commence any activity for which a Hydro Facility Permit or any amendment to a Hydro Facility Permit, is required from an applicable Governmental Authority, Project Co shall submit to BC Hydro's Representative a copy of the proposed application for a Hydro Facility Permit or amendment to a Hydro Facility Permit. Project Co shall not submit any application that is subject to this paragraph to a Governmental Authority unless BC Hydro has no objection to such application pursuant to the Review Procedure;
- (6) **Leaves to Commence** – The foregoing provisions of this subsection 4.19(j) [Regulatory Approvals and Permits] shall also apply to meetings or communications with, or applications to, the Independent Engineer or the Comptroller of Water Rights in connection with the Leaves to Commence, in addition and subject to the protocol requirements of Section 6 [Leaves to Commence] of Schedule 5 [Design and Construction Protocols];
- (7) **Procedure in an Emergency or Unscheduled Meeting** – In the case of an emergency, or other unscheduled meeting with a Governmental Authority, Project Co shall provide to BC Hydro's Representative, for information only: (1) as much advance notice of the proposed meeting or discussion as practicable in the circumstances; and (2) copies of all documentation provided, or to be provided, to the applicable Governmental Authority, together with all pertinent correspondence and supporting documentation, as soon as applicable after the occurrence of the emergency, or becoming aware of the applicable meeting; and
- (8) **BCH Waiver** BC Hydro may at any time and from time to time determine that all or some of the protocol requirements set out in subparagraphs (i) and (j) do not have to be complied with by Project Co with respect to certain specified Permits that may be considered by BC Hydro to be of a minor or routine nature and in such circumstance provide Project Co with written notice that BC Hydro is waiving compliance with specific provisions of this Section 4.19(i) and (j) [Regulatory Approvals and Permits] as may be set out in this BC Hydro notice.

- (k) **Supporting Information:** BC Hydro will provide Project Co with such information within BC Hydro's possession, and co-operate with Project Co, as Project Co may reasonably require in relation to all Permits for which Project Co is responsible. Project Co shall provide, and shall cause Project Co Persons to provide, BC Hydro with such information within their possession and cooperate with BC Hydro, as BC Hydro may reasonably require in relation to the BC Hydro Permits.
- (l) **First Nation Consultation:** Recognizing that as between the Parties BC Hydro has primary responsibility for satisfying any applicable First Nation consultation and accommodation obligations and that BC Hydro has negotiated and signed impact benefit agreements with the Identified First Nations, Project Co will not engage in consultation with the Identified First Nations or other aboriginal groups with respect to the application or request for Permits without first: (i) notifying BC Hydro of its intention to do so, together with a supporting rationale and proposed scope of consultation; and (ii) obtaining BC Hydro's written approval to proceed with the consultation, with or without BC Hydro participation as BC Hydro may decide in its discretion. Nothing in the foregoing shall limit the obligations of Project Co as set out in Section 1.7(d) [Communication with Environmental Authorities] of Schedule 8 [Environmental Obligations] regarding possible protected nest destruction.

4.20 Change in Laws, Permits, Legal Obligations and BC Hydro Policies

- (a) **General:** The purpose of this Section 4.20 [Change in Laws, Permits, Legal Obligations and BC Hydro Policies] is to clarify and confirm the allocation of risk and responsibility between Project Co and BC Hydro with respect to changes that may occur during the Term regarding Laws, Permits, Legal Obligations and BC Hydro Policies;
- (b) **Changes in Hydro Facility Laws:** A Change in Hydro Facility Law shall constitute a Change in Law and a Relief Event (or Excusing Event, as applicable). BC Hydro shall assume the following risks and benefits of proven negative or positive impacts of a Change in Hydro Facility Law:
- (1) Impacts on the Project Schedule, in accordance with Section 8.4 [Project Co's Entitlements Upon Occurrence of a Relief Event];
 - (2) Impacts on Project Co's costs in relation to the Design, Construction and/or Services, in accordance with Section 8.7(d) [Parties' Entitlements Upon Occurrence of an Eligible Change in Law Event] as either an adjustment to the Availability Payments or a lump sum payment in relation to Allowable Capital Expenditure;
 - (3) Impacts on Project Co's ability to perform its obligations under the Agreement, including the application of applicable NPE Points or Default Points in accordance with Section 8.4 [Project Co's Entitlements Upon Occurrence of a

Relief Event] or Section 8.5 [Project Co's Entitlements Upon Occurrence of an Excusing Event], as applicable);

- (c) **Changes in Tax Laws:** A Change in Tax Laws shall constitute a Change in Law and a Tax Recoverability Change in Law;
- (d) **Relevant Works Changes in Law:** For Relevant Works Changes in Law (other than Change in Hydro Facility Laws), Project Co shall assume the risk and benefit of such Relevant Works Changes in Law for the first three years of the Term, provided that such Relevant Works Change in Law shall constitute a Relief Event during the Construction Period (or an Excusing Event during the Services Period) and Project Co shall be entitled to claim relief pursuant to Section 8.4 [Project Co's Entitlements Upon Occurrence of a Relief Event] or Section 8.5 [Project Co's Entitlements Upon Occurrence of an Excusing Event];
- (e) **Discriminatory Changes:** The allocation of risk and responsibility for any Relevant Change of Law arising after the Financial Submission Date shall be as set out in Section 8.7(a) [Parties' Entitlements Upon Occurrence of an Eligible Change in Law Event] and for Discriminatory Change in Tax Laws as set out in Section 8.7(b) [Parties' Entitlements Upon Occurrence of an Eligible Change in Law Event];
- (f) **Transitional Tax Changes:** The allocation of risk and responsibility for any Changes in Law arising after the Financial Submission Date resulting from the PST/GST regime in effect on the Effective Date transitioning to a harmonized HST regime during the Term shall be as set out in Section 8.7(e) [Parties' Entitlements Upon Occurrence of an Eligible Change in Law Event];
- (g) **Changes to Permits:** The allocation of risk and responsibility between Project Co and BC Hydro for changes to or delays in the issuance of Permits is as set out in Section 4.19 [Regulatory Approvals and Permits];
- (h) **Changes to Legal Obligations:** A Change in Legal Obligations that occurs or arises other than as a result of an act or omission of Project Co or a Project Co Person shall constitute a Change in Law and a Relief Event (or an Excusing Event as applicable), unless the Change in Legal Obligation arises or occurs solely as a consequence of a BC Hydro decision, directive or action, in which case such Change in Legal Obligations shall be treated as a Change pursuant to Section 7.1 [Changes Required by BC Hydro]. For the purposes of this Section 4.20(h) [Change in Laws, Permits, Legal Obligations and BC Hydro Policies] the defined term Legal Obligations shall be deemed to not include Permits, since the allocation of risk and responsibility for Permits (and those Legal Obligations directly related thereto) is dealt with separately in this Section 4.20 [Change in Laws, Permits, Legal Obligations and BC Hydro Policies];
- (i) **Changes to BC Hydro Policies:** Any changes to any BC Hydro Policy arising after the Financial Submission Date during the Term that Project Co is required to comply with

shall be treated as a Change pursuant to Section 7.1 [Changes Required by BC Hydro]; and

- (j) **Changes in Environmental Reference Documents:** Any change or modification made to an Environmental Reference Document after the Financial Submission Date: (1) by a Governmental Authority, other than as a result of an act or omission of a Project Co Person, shall constitute a Change in Law; and (2) by BC Hydro, shall be treated as if it is a change to a BC Hydro Policy and a Change pursuant to Section 7.1 [Changes Required by BC Hydro] and Schedule 14 [Changes].

4.21 Watermain Work and ST Roadwork

- (a) **General:** Subject to the terms of this Section 4.21 [Watermain Work and ST Roadwork], Project Co shall procure, install, test and commission the ST Waterpipe at and along the Surge Tower Road (the “**Watermain Work**”). Project Co acknowledges that BC Hydro is completing the ST Roadwork as part of the BCH Works in support of the Watermain Work and according to the plans included in Disclosed Data and filed in the data room prior to Financial Submission Date. Project Co shall be fully responsible for any additional widening or other work that may need to be completed in relation to the Surge Tower Road to support the Project Work as per Section 1.2 – 4.5 and Section 3.6-3 of Schedule 6 [Design & Construction Specifications]. Concurrent with the execution of this Agreement, BC Hydro has issued a Change according to the terms and for the scope of work described in this Section 4.21 [Watermain Work and ST Roadwork] which includes an attached concept drawing that sets out certain adjustments to the ST Waterpipe alignment drawings included in the materials described in subparagraph (b) below.
- (b) **Scope and Timing:** Project Co shall proceed with the Watermain Work, provided, BC Hydro has delivered in writing to Project Co not later than 5 days following the Effective Date with final: (i) ST Design Specifications; (ii) ST Roadwork Location Drawings, to the extent these are relevant to the Watermain Work (iii) ST Waterpipe Location Drawings; (iv) a copy of the required ST Park Use Permits, copies of Construction Permits already obtained by BC Hydro and/or the prepared applications for any outstanding Construction Permits as of the Effective Date that BC Hydro has prepared in draft; and (v) an outline of a draft Construction Environmental Management Plan (CEMP) based on BC Hydro standard practices; (vi) an outline of a draft Safety Management Plan (SMP) based on BC Hydro standard practices; (vii) Cathodic Protection Drawings; and (viii) Watermain Design Report.

BC Hydro will also make available from time to time such other information and drawings that may be reasonably required by Project Co in a timely manner to undertake this scope of construction work.

- (c) Project Co acknowledges that as of the Effective Date it is in receipt of sufficient information to be able to complete the Watermain Work according to the terms of this Section 4.21 [Watermain Work and ST Roadwork]. Project Co acknowledges that

updated information in respect of Watermain Work has been filed in the data room as part of Disclosed Data by BC Hydro as follows:

- (i) during the week of August 23, 2013 in the Schedule 10 and BCH Works folders, the ST Design Specifications; the ST Roadwork Location Drawings (IFC Drawings); ST Waterpipe Location Drawings (alignment drawings); two of the 3 Fortis Permits; the EMP outline; and the SMP outline; and
 - (ii) during the week of January 6, 2014 in the same folders as above; with updates to the ST Waterpipe Location Drawings; the 90% complete Watermain Design Report; and the draft Cathodic Protection Drawings.
- (d) **Performance Standards:** Project Co shall perform and complete the Watermain Work in accordance with the information and material described in sub-paragraph (b) above and all applicable Laws and Permits and in a good and proficient manner and with no less than the standard of professional skill, care and diligence customarily applied by qualified and experienced professional contractors performing substantially similar work under substantially similar conditions.

Project Co is not providing and has no obligation to provide to BC Hydro or to the City any warranties, express or implied, written or unwritten, including as to design, quality of construction, labour and materials, fitness for purpose, or otherwise in connection with the performance and completion of the Watermain Work and the only quality of performance obligations or liability that Project Co will have or assume for such work shall be limited to the obligations expressly set out in this Section 4.21 [Watermain Work and ST Roadwork].

- (e) **Permits and Approvals:** (i) Project Co shall be responsible for obtaining and maintaining in good standing all outstanding Construction Permits except to the extent BC Hydro may have already obtained a Construction Permit; and (ii) BC Hydro shall be responsible for obtaining and maintaining in good standing ST Park Use Permits that are required for the ST Roadwork and the Watermain Work.

The City is responsible for obtaining any required park use permits for that portion of the Watermain Work or any City Works constructed on Surge Tower Road, and for greater clarification, and by cross reference to Appendix 10A of Schedule 10 [Lands]:

- (i) the existing Park Use Permit #106559 issued to BC Hydro includes the necessary rights to complete the ST Road Work and the Watermain Work; and

- (ii) Park Use Permit #102236 issued to the City supports the construction and installation of that portion of the City Works being constructed through the park.

No other Park Use Permits are required to support the completion of the Watermain Work.

In applying for and obtaining these permits and approvals Project Co and BC Hydro will work cooperatively together in the timely coordination of the preparation, submission and management of all permit applications and other requests for authorizations or approvals required from Governmental Authorities in respect of the ST Roadwork and the Watermain Work.

- (f) **Applicable Schedules:** The terms of the following Schedules to the Project Agreement will apply to performance and completion of the Watermain Work but only to the extent relevant and applicable and as may be further confirmed in this Section 4.21 [Watermain Work and ST Roadwork]: (1) Schedule 1 [Definitions]; (2) Schedule 2 [Review Procedure, Consent Procedure and Other Submittals]; for BC Hydro review and comment on submitted construction plans pursuant to subparagraph (g) of this Section 4.21 [Watermain Work and ST Roadwork]; (3) Schedule 8 [Environmental Obligations] – as set out in subparagraph (g) of this Section 4.21 [Watermain Work and ST Roadwork]; (4) Schedule 10 [Lands] – to confirm that the Land License applies for the purposes of this Section 4.21 [Watermain Work and ST Roadwork]; (5) Schedule 11 [Communication and Consultation] to the extent public communications or consultations are separately required in respect of the Watermain Work; (6) Schedule 12 [Safety and Security]; (7) Schedule 14 [Changes]; (8) Schedule 18 [Insurance Requirements]; (9) Schedule 19 [Dispute Resolution Procedure]; (10) Schedule 23 [Public Safety and Public Use]; (11) Schedule 24 [First Nations]; and (12) Schedule 29 [Independent Certifier]. All other Schedules of the Project Agreement will not apply to the subject matter of this Section 4.21 [Watermain Work and ST Roadwork].
- (g) **Submittals and Review:** BC Hydro will provide Project Co with the final ST Design Specifications, ST Waterpipe Location Drawings, the EMP outline, the SMP outline, by not later than 5 days following the Effective Date for review and comment, which will be updated versions of these documents filed by BC Hydro in the data room before Financial Submission Date. BC Hydro has provided drafts of the final versions of the Watermain Design Report and the final Cathodic Protection Drawings. At least 30 days prior to the commencement of construction Project Co shall submit to BC Hydro for review and comment in accordance with Section 4 of Schedule 2 [Review Procedure, Consent Procedure and Other Submittals] the following: (i) final plans, locations, drawings for the Watermain Work; and (ii) the construction schedule provided for in subparagraph(i) below; (iii) the completed EMP; (iv) the completed SMP; and (v) copies of all Construction Permits not previously obtained by BC Hydro.

- (h) **Environmental Obligations:** In performing and completing the Watermain Work, Project Co shall comply with its obligations under Sections 1 [General]; Section 7 [Environmental Incident Reporting and Response]; Section 8 [Rehabilitation and Vegetation Management]; and Section 11 [Waste Management] of Schedule 8 [Environmental Obligations];

To the extent any Contamination is encountered at the Surge Tower Road in the course of completing the Watermain Work, Project Co shall be responsible for the physical remediation in accordance with the EMP and applicable Environmental Laws and BC Hydro will be responsible for the cost of this remediation work which will be included in the overall ST Price.

- (i) **Construction Schedule, Windows and Priorities:** Provided: (1) Project Co delivers written notice to BC Hydro 90 days in advance of the commencement of the Watermain Work confirming that Project Co plans to commence and complete the Watermain Work within the ST Window; and (2) actually commences this work within the ST Window and, subject only to Supervening Events, at all times diligently uses reasonable commercial efforts to complete the work within the ST Window and according to ST Work Schedule then Project Co shall have the right to organize and schedule its work activities, contractors, equipment, inspections and testing activities in priority to any concurrent work activities the City may be undertaking by itself or through its contractors with respect to the City Works.

Project Co shall at all times use reasonable commercial efforts to coordinate its ST Work Schedule, the Watermain Work and Project Work activities with the work activities of the City in connection with the City Works and to accommodate City access to and use of the Surge Tower Road and other applicable parts of the Site for the purposes of the City completing the City Works. Project Co shall be responsible for coordinating the foregoing directly with the City and in establishing with the City appropriate work program governance and communication protocols for this purpose.

If Project Co is not able to commence and complete the Watermain Work within the ST Window then the City Works and related construction program and schedule will take priority over the Watermain Work and Project Work to the extent Project Co and the City have a conflict in the scheduling and performance of their respective work activities that they cannot otherwise resolve. Any conflict or dispute regarding the coordination of work schedules shall be referred to Project Co Representative and City manager for resolution.

- (j) **Completion and Ownership of Work:** Within 15 days of the completion by Project Co of the Watermain Work Project Co shall provide written notice (the “**Notice of Completion**”) to BC Hydro of such completion and concurrently confirm its request that the Independent Certifier be available to witness the inspection and testing of the completed work by Project Co. Representatives of BC Hydro and the City shall be entitled to witness the inspection by the Independent Certifier of the completed work.

Together with Notice of Completion, Project Co shall submit to BC Hydro and to Independent Certifier the Completion Report prepared and certified by Project Co.

Title and ownership to the Watermain Work will transfer to the City on completion of the work as certified by the Independent Certifier.

- (k) **Deficiency Reports:** The Independent Certifier shall review the inspection, including the Completion Report, and identify any defects or deficiencies in the performance of the Watermain Work at three points in time; (i) within 30 days of the completion of the work as per Project Co's Notice of Completion as provided for in subparagraph (j) above; (ii) 12 months following completion of the Watermain Work; and (iii) within 30 days of the City providing written notice ("**Notice of Testing**") to BC Hydro and Project Co that it will be completing the connection of the Watermain Work to the City Works and the commissioning and testing of the combined City Works and Watermain Works and provided the City provides this notice by not later than December 1, 2016.

Project Co shall, at its own cost, rectify all defects and deficiencies identified by the Independent Certifier at either or both of the points of inspection described above, within 90 days of receipt of the applicable reports of the Independent Certifier.

Project Co shall have the right to object to and contest the findings of the Independent Certifier by referring the dispute to the Construction Referee pursuant to Schedule 19 [Dispute Resolution Procedure].

- (l) **Pricing and Compensation:** Not less than 60 (sixty) days prior to commencing the Watermain Work, Project Co shall submit to BC Hydro a proposal (the "**Pricing Proposal**") that: (i) may include a lump sum fixed price for completion of the Watermain Work; and (ii) shall include an estimated time and materials price calculated in accordance with the principles and terms contained in Schedule 14 [Changes], (in either case the "ST Price") that will apply to the performance and completion of the Watermain Work by Project Co. Project Co may require that BC Hydro issue a Change in respect of the Watermain Work in the event there are further modifications to the ST Design Specifications; ST Waterpipe Location Drawings; Cathodic Protection Drawings; or Watermain Design Report or to the scope of work or proposed timing of the completion of the Watermain Work required by BC Hydro.

BC Hydro will have the right to audit, at its expense, the determination, calculation and basis for the ST Price submitted by Project Co pursuant to item (ii) above and for any Change and as invoiced by Project Co pursuant to Section 14 [Due Dates for Payments] of Schedule 13 [Performance and Payment Mechanisms]. Project Co acknowledges that a Change is not required unless modifications are made or required by BC Hydro to any of the specifications, drawings or reports described in the preceding paragraph after January 15, 2014. Any disputes regarding the determination, calculation or basis for the ST Price shall be referred to the Construction Referee pursuant to Schedule 19 [Dispute Resolution Procedure].

Within 15 (fifteen) days of receiving the Pricing Proposal, BC Hydro will provide Project Co with written notice of its decision, to be made at its sole discretion, whether to proceed with the Watermain Work by Project Co on the basis of a proposed fixed price that Project Co may have included in the Pricing Proposal or the estimated time and materials price.

- (m) **Use of Subcontractors:** Project Co may engage and utilize the Design Builder or use another contractor or contractors to perform and complete the ST Roadwork and the Watermain Work.
- (n) **Payment Terms:** Upon receipt of the Independent Certifier's written confirmation that Project Co has substantially completed the Watermain Work substantially in accordance with the ST Design Specifications, ST Waterpipe Location Drawings and Watermain Design Report, BC Hydro shall pay Project Co the ST Price determined in accordance with subparagraph (l) less an amount (plus 50%) the Independent Certifier has determined is necessary to cover the cost of rectifying any defects or deficiencies identified at the time the Notice of Completion is delivered and the first inspection of the Watermain Works is carried out.

As security for Project Co's obligation to rectify any deficiencies or defects that may be identified at that time of the Notice of Testing is delivered and the second inspection of the Watermain Works is carried out pursuant to subparagraph (k) above, BC Hydro may withhold from the next Availability Payment that falls due following the date that either: (i) Project Co acknowledges in writing that it has an obligation to rectify deficiencies or defects and its agreement with the estimated cost of that work; or (ii) the amount the Independent Certifier confirms it will cost Project Co to rectify such defects or deficiencies.

- (o) **BC Hydro Cooperation and Support:** BC Hydro will provide all necessary cooperation and information as Project Co may reasonably require to facilitate and support the completion by Project Co of the Watermain Work, including: (1) facilitating the supply of all ST Design Specifications, ST Waterpipe Location Drawings, Watermain Design Report and all related data; City Works designs, drawings, plans, data; City Work schedule and related information; (2) supporting information, letters of support in respect of any permits or approvals required by Project Co; (3) liaison with City officials/representatives; (4) any required First Nations consultation; (5) other public, community and other stakeholder communications; and (6) obtaining any relevant and further ST Park Use Permits that may be required and in accordance with Section 4.19 [Regulatory Approvals and Permits].
- (p) **Limits and Exclusion of Liability:** Project Co and Project Co Person liability for the performance or non-performance of their work in relation to the Watermain Work shall be limited or restricted as follows: (1) BC Hydro shall have no right to make any claim or recover from Project Co any Indirect Losses; (2) the Project Co indemnity under Section 9.1 [Project Co's Obligation to Indemnify] shall exclude any third party claims by the City

or by City residents; and (3) in no circumstance shall Project Co shall be liable to BC Hydro in an amount in aggregate that is greater than the ST Price.

5. FINANCING OF THE PROJECT

5.1 Compliance with Senior Financing Agreements

Project Co will keep the Senior Financing Agreements in good standing and will ensure that none of the terms and conditions of the Senior Financing Agreements will prevent Project Co from performing its obligations under this Agreement. If at any time Project Co receives a notice that an "event of default", any event entitling the Senior Creditors to enforce any security or any other similar event has occurred under the Senior Financing Agreements, Project Co will forthwith deliver to BC Hydro a copy of such notice.

5.2 Changes to Senior Financing Agreements

Project Co will not without the written consent of BC Hydro, not to be unreasonably withheld, or delayed, terminate, amend, assign or otherwise modify the Senior Financing Agreements, or waive or exercise any of its rights under the Senior Financing Agreements or enter into any replacement Senior Financing Agreement or any agreement which affects the interpretation or application of any Senior Financing Agreements if such action would:

- (a) adversely affect Project Co's ability to perform its obligations under this Agreement; or
- (b) have the effect of increasing any liability or potential liability of BC Hydro other than as contemplated in the Financial Model.

If at any time any amendment is made to any Senior Financing Agreement or Project Co enters into any replacement Senior Financing Agreement (or any agreement which affects the interpretation or application of any Senior Financing Agreement), Project Co will deliver to BC Hydro a copy of each such amendment or agreement within 10 Business Days of the date of its execution or creation, certified as a true copy by an officer of Project Co.

5.3 Consent Required for Refinancing

Except for, and provided that in the case of an Exempt Refinancing that falls within subparagraphs (d), (e) or (f) of the definition of Exempt Refinancing, Project Co provides BC Hydro with written notice of the event except that such notice shall not be required for a disposition by a Senior Creditor of its rights or participation in the Senior Financing Agreements where such disposition is a trade of bonds issued as provided for under a book-based system of a depository and pursuant to a trust indenture that constitutes a Senior Financing Agreement, an Exempt Refinancing, Project Co will not enter into any Refinancing without the consent of BC Hydro, not to be unreasonably withheld or delayed. Without limitation, it will be reasonable for BC Hydro to withhold consent if such Refinancing (i) occurs before Service Commencement, (ii) has a materially adverse effect on Project Co's ability to perform its obligations under this Agreement, (iii) increases any liability or potential liability of BC Hydro, unless BC Hydro is specifically compensated for such liability or potential liability, other than by way of adjustment to any regulated rates

charged by BC Hydro to its customers, (iv) or the effect of BC Hydro giving consent would be contrary to, or inconsistent with, Law, or (v) is with a Restricted Person.

5.4 Refinancing Process

If Project Co intends to undertake a Qualifying Refinancing, Project Co will notify BC Hydro of such intention at least 120 days, or such later date agreed by BC Hydro, acting reasonably, before the anticipated completion date of such Refinancing and will include with such notice all applicable information then available to Project Co, including any of the information set out below in this Section 5.4 [Refinancing Process] if and to the extent available to Project Co at that time. Project Co will keep BC Hydro informed of the progress of the proposed Refinancing, will provide BC Hydro with additional information as it is available, and will consult with, and reasonably take into account the views of, BC Hydro during the Refinancing process. Without limiting the foregoing, as soon as reasonably available, and in any event no later than 30 days, or such later date agreed by BC Hydro, acting reasonably, before the anticipated completion date of such Refinancing, Project Co will provide to BC Hydro (not necessarily all at the same time):

- (a) all proposed revisions to the Senior Financing Agreements;
- (b) a copy of the proposed updated Financial Model both before and after the Refinancing;
- (c) the basis for the assumptions and calculations used in the proposed updated Financial Model;
- (d) particulars of:
 - (1) any increase in the principal amount of all funding for the Project committed under the Senior Financing Agreements that will result from the proposed Refinancing;
 - (2) the nature, and estimated amount if reasonably capable of being calculated or estimated, of any other potential increase in the liability of BC Hydro, including on early termination of this Agreement, that would be reasonably likely to arise from the proposed Refinancing;
 - (3) any effect on Project Co's ability to perform its obligations under this Agreement;
 - (4) the terms of the proposed Refinancing;
 - (5) the lenders and other parties proposed to be involved in the proposed Refinancing; and
 - (6) the financing instruments to be used to carry out the proposed Refinancing and their key attributes, including those attributes that would or could affect the liability of BC Hydro on any early termination of this Agreement);

- (e) a statement setting out Project Co's estimate of the resulting Refinancing Gain, including BC Hydro's share thereof expressed in terms of:
 - (1) the payment described in Section 5.6(a) [Payment to BC Hydro], including the estimated timing of receipt thereof by BC Hydro; and
 - (2) the reduction of Availability Payments described in Section 5.6(b) [Payment to BC Hydro];
- (f) a schedule for implementation of the proposed Refinancing, including the principal milestones and proposed dates for the achievement of such milestones, including the estimated date for closing of the proposed Refinancing; and
- (g) a description of any effect on Project Co's ability to perform its obligations under this Agreement or any increase in any liability or potential liability of BC Hydro.

Project Co will promptly provide all other documents and information related to the proposed Refinancing as BC Hydro may reasonably request. If any change is proposed to the information provided to BC Hydro pursuant to the above, including information referred to in Sections 5.4(a) to 5.4(g) [Refinancing Process], Project Co will promptly, and in any event not less than 5 Business Days before the completion date of the proposed Refinancing, provide BC Hydro with full details of the change. Project Co will only proceed with a Qualifying Refinancing in accordance with the information provided to BC Hydro in accordance with this Section 5.4 [Refinancing Process] and in compliance with the other applicable provisions of this Section 5 [Financing of the Project].

5.5 BC Hydro's Share of Refinancing Gain

BC Hydro will be entitled to receive a 50% share of any Refinancing Gain arising from a Qualifying Refinancing. BC Hydro's share will be calculated as at the time of each Qualifying Refinancing as the case may be.

5.6 Payment to BC Hydro

BC Hydro may elect to receive its share of any Refinancing Gain as:

- (a) a single payment, in accordance with Section 10.1 [Lump Sum Payments], in an amount no greater than any Distribution made by Project Co arising as a result of the Refinancing;
- (b) a reduction, in accordance with Section 10.3 [Adjustments to Availability Payments], in the Availability Payments over the remainder of the Term; or
- (c) a combination of Sections 5.6(a) and 5.6(b) [Payment to BC Hydro].

5.7 Calculation of Refinancing Gain

BC Hydro and Project Co will negotiate in good faith the basis and method of calculation of the Refinancing Gain and payment of BC Hydro's share of the Refinancing Gain, taking into account how BC Hydro has elected to receive its share of the Refinancing Gain pursuant to Section 5.6 [Payment to BC Hydro] and the profile of the Refinancing Gain. The Refinancing Gain will be calculated after taking into account the reasonable and proper professional costs that Project Co directly incurs in relation to the Refinancing and, if applicable, BC Hydro's costs that Project Co pays pursuant to Section 5.8 [BC Hydro's Expenses]. If BC Hydro and Project Co are unable to agree on the basis and method of calculation of the Refinancing Gain or the payment of BC Hydro's share, the Dispute will be determined in accordance with the Dispute Resolution Procedure.

5.8 BC Hydro's Expenses

Project Co will pay BC Hydro's reasonable internal administrative and personnel costs and all reasonable out-of-pocket costs in connection with a consent under Section 5.2 [Changes to Senior Financing Agreements] or 5.3 [Consent Required for Refinancing]. At the time of the request for such consent, Project Co will make a payment to BC Hydro in the amount of \$ [REDACTED] (Index Linked) against its obligations under this Section 5.8 [BC Hydro's Expenses]. After BC Hydro renders its decision, BC Hydro will either refund any overpayment or invoice Project Co for any additional amounts owing under this Section 5.8 [BC Hydro's Expenses] and Project Co will promptly pay such amount to BC Hydro. The amounts payable under this Section 5 [Financing of the Project] are payable even if the Refinancing Gain is determined to be zero.

5.9 Audit Rights

BC Hydro will have unrestricted rights of audit at any time, whether before or after the applicable event, over any proposed Financial Model, books, records and other documentation, including any aspect of the calculation of any Refinancing Gain, used in connection with any Refinancing or any other matter for which Project Co requires consent from BC Hydro under this Section 5 [Financing of the Project].

6. INSURANCE, DAMAGE AND DESTRUCTION

6.1 Insurance Coverage

Subject to Section 6.15(b) [Consequences of Risks Becoming Uninsurable], each of Project Co and BC Hydro will take out, maintain in force, pay for and renew, or cause to be taken out, maintained in force, paid for and renewed, insurance for the Project as set out in Schedule 18 [Insurance Requirements].

6.2 Agreement Not Affected by Damage or Destruction

Except as otherwise expressly provided, the partial destruction or damage or complete destruction by fire or other casualty of the Facility will not permit either party to terminate this Agreement or entitle Project Co to surrender possession of the Facility or to demand any increase in any amounts payable to Project Co under this Agreement and all of the provisions of this Agreement, including Section 8 [Supervening Events] will continue to apply.

6.3 Project Co's Obligations - Damage or Destruction

Subject to Section 6.4 [Project Co's Obligations – Material Damage or Destruction], and without prejudice to Section 8 [Supervening Events], if all or any part of the Facility is damaged or destroyed, Project Co will repair, replace or restore the part of the Facility so damaged or destroyed in accordance with the Design and Construction Specifications subject only to:

- (a) applicable Laws; and
- (b) BC Hydro agreeing to pay to Project Co:
 - (1) the amount, if any, by which the cost of such repair, replacement or restoration exceeds \$ [REDACTED] in respect of damage or destruction during the Construction Period; or
 - (2) the amount, if any by which the cost of such repair, replacement, or restoration exceeds the limits of BC Hydro's Operating Property Policy in respect of damage or destruction during the Services Period, or
 - (3) if no insurance coverage is required under this Agreement for such risk, an amount equal to the total costs of such repair, replacement or restoration.

BC Hydro will pay such amounts promptly upon receipt of one or more invoices from Project Co indicating that such amounts are due and payable by Project Co in connection with such repair, replacement or restoration.

6.4 Project Co's Obligations - Material Damage or Destruction

If the Facility suffers damage or destruction that is likely to cost more than \$5 Million (Index Linked) to repair, replace and restore:

- (a) Project Co will, as soon as practicable and in any event within 30 Business Days of such damage or destruction, and before undertaking any material remedial work (other than any emergency work required to stabilize other parts of the Facility or to facilitate the continued provision of the Services to other parts of the Facility), provide BC Hydro with a draft plan (the "**Draft Reinstatement Plan**") for the carrying out of the works necessary (the "**Reinstatement Works**") to repair, replace and restore the damaged or destroyed portions of the Facility and related assets, and containing to the extent possible the details required to be included in the Reinstatement Plan under (d) below;
- (b) as soon as reasonably practicable and in any event within 21 Business Days after the delivery of the Draft Reinstatement Plan, BC Hydro:
 - (1) will provide Project Co with any comments it may have on the Draft Reinstatement Plan; and

- (2) if it has decided that the Facility is not required to be reinstated in the same form as prior to the damage or destruction, will issue a Preliminary Change Instruction to that effect;
- (c) as soon as reasonably practicable and in any event within 14 Business Days after receipt of BC Hydro's comments pursuant to Section 6.4(b)(1) [Project Co's Obligations – Material Damage or Destruction], Project Co will deliver to BC Hydro a revised plan (the "**Reinstatement Plan**") amending the Draft Reinstatement Plan to reasonably take into account the comments received from BC Hydro and those changes to the Draft Reinstatement Plan necessary to reflect the contractual terms agreed (as negotiated and finalised) with the person effecting the Reinstatement Works; and
- (d) the Reinstatement Plan will set out in as much detail as is reasonable in the circumstances:
 - (1) the identity of the person, or (if Project Co is seeking competitive tenders) persons intended, to effect the Reinstatement Works;
 - (2) the terms and timetable or (if not then established) the reasonably anticipated terms and timetable upon which the Reinstatement Works are to be effected (including the date upon which the Facility is reasonably expected to become fully operational again and the Services to be fully provided);
 - (3) the impact that implementation of the Reinstatement Plan will have on the revenues of Project Co under this Agreement and on the payment obligations of Project Co under the Project Contracts, including in respect of the Services requirements;
 - (4) the total cost or (if not then established) the reasonably anticipated total cost of the Reinstatement Works; and
 - (5) the impact of any Change requested by BC Hydro as part of the reinstatement.

Thereafter, unless a party elects to terminate this Agreement (in accordance with the provisions of Section 6.6 [BC Hydro's Election Not to Reinstatement], 6.7 [Insufficient Insurance], 6.8 [Economic Reinstatement Test During Construction] or 6.9 [Uncollectible Insurance Receivables] or otherwise), Project Co will repair, replace or restore the Facility, subject to applicable Laws.

6.5 Financial Model Update

Upon delivery of the Reinstatement Plan, Project Co will amend the Financial Model based on the following assumptions:

- (a) that the Reinstatement Plan will be effected in accordance with its terms;

- (b) that the payments under the Senior Financing Agreements (including any amendments agreed between Project Co and the Senior Creditors in connection with the Reinstatement Plan in respect of which a consent request has been submitted to BC Hydro) to be paid during the period of the Reinstatement Plan will be met without any rescheduling; and
- (c) that payments in respect of any Change comprised in the Reinstatement Plan will be determined in accordance with Schedule 14 [Changes],

and will deliver the updated Financial Model to BC Hydro for its approval, not to be unreasonably withheld or delayed.

6.6 BC Hydro's Election Not to Reinstale

BC Hydro may, by notice to Project Co within 30 Business Days after receipt of the Reinstatement Plan, terminate this Agreement and pay compensation to Project Co in accordance with Section 1 [Termination for BC Hydro Event of Default or at BC Hydro's Option] of Schedule 16 [Compensation on Termination].

6.7 Insufficient Insurance

If:

- (a) the Facility is completely or substantially destroyed;
- (b) the cost to repair, replace or restore the Facility exceeds the maximum amount of insurance coverage required under this Agreement for the risk that caused the destruction; and
- (c) neither BC Hydro nor Project Co has agreed to pay the amount by which the cost to repair, replace or restore the Facility exceeds the Insurance Proceeds and Insurance Receivables with respect to such destruction,

at any time on or after 30 Business Days after delivery of the Reinstatement Plan to BC Hydro, either party may, by notice to the other party, terminate this Agreement, in which case:

- (d) if:
 - (1) BC Hydro has failed to obtain insurance coverage in accordance with Schedule 18 [Insurance Requirements] and Sections 6.14 [Risks Becoming Uninsurable] and 6.15 [Consequences of Risks Becoming Uninsurable] do not apply;
 - (2) BC Hydro has not deposited an amount equal to the insurance proceeds that would have been payable with the Insurance Trustee in accordance with Section 6.7(g)(2) [Insufficient Insurance], and

- (3) the amount of such insurance proceeds would have been sufficient to repair, replace or restore the Facility,

BC Hydro will pay compensation to Project Co in accordance with Section 1 [Termination for BC Hydro Event of Default or at BC Hydro's Option] of Schedule 16 [Compensation on Termination]; or

- (e) in any other case:
 - (1) BC Hydro will pay compensation to Project Co in accordance with Section 4 [No Fault Termination] of Schedule 16 [Compensation on Termination]; and
 - (2) if BC Hydro is required to obtain insurance coverage in accordance with Schedule 18 [Insurance Requirements] and BC Hydro has failed to obtain such insurance and Sections 6.14 [Risks Becoming Uninsurable] and 6.15 [Consequences of Risks Becoming Uninsurable] do not apply, BC Hydro will also, but without duplicating payment of any item payable in accordance with Section 4 [No Fault Termination] of Schedule 16 [Compensation on Termination], pay Project Co an amount equal to the insurance proceeds that would have been payable under the relevant policies in respect of such insurance had such insurance been obtained.

For the purpose of this Section 6.7 [Insufficient Insurance], the reference to the maximum amount of insurance coverage is:

- (f) in respect of insurance required to be obtained by Project Co, the full amount of coverage prior to any deductibles for which Project Co is responsible pursuant to Schedule 18 [Insurance Requirements]; and
- (g) in respect of insurance required to be obtained by BC Hydro,
 - (1) the full amount of applicable Insurance Proceeds and applicable Insurance Receivables plus any deductibles for which Project Co is responsible pursuant to Schedule 18 [Insurance Requirements], plus
 - (2) in the event and to the extent that BC Hydro has failed to obtain such insurance in accordance with Schedule 18 [Insurance Requirements] and Sections 6.14 [Risks Becoming Uninsurable] and 6.15 [Consequences of Risks Becoming Uninsurable] do not apply, an amount equal to the insurance proceeds that would have been payable under the relevant policies in respect of such insurance had such insurance been obtained in accordance with Schedule 18 [Insurance Requirements], provided BC Hydro deposits with the Insurance Trustee an amount equal to such insurance proceeds for application of such amount for the same purposes as the insurance.

6.8 Economic Reinstatement Test During Construction

If prior to the Service Commencement Date the Facility suffers damage or destruction that is likely to cost more than \$ [REDACTED] of costs and expenses that are not covered by Insurance Proceeds, Index Linked, to repair, replace and restore, and on the forecast Service Commencement Date following such reinstatement the Loan Life Cover Ratio contained in cell D76 of the 'Summary output' sheet of the Financial Model is less than 1.05, Project Co may, by notice to BC Hydro, terminate this Agreement in which case BC Hydro will pay compensation to Project Co in accordance with Section 4 [No Fault Termination] of Schedule 16 [Compensation on Termination].

For the purpose of this Section 6.8, the expression "Loan Life Cover Ratio" shall mean the ratio of A divided by B at the end of any monthly period, where:

A = the sum of:

- (i) The present value of the free cash flow during the life of the Senior Bonds (column FA of the 'Financing Calculation' sheet in the Financial Model), calculating by discounting the free cash flow during the Senior Bonds with the annual Bond Interest Rate (as defined in the Bond Indenture);
- (ii) The Bond DSRA (as defined in the Common Terms and Intercreditor Agreement) balance (column AQ of the 'Financing Calculation' sheet in the Financial Model); and
- (iii) The Bond Payment Account (as defined in the Common Terms and Intercreditor Agreement) (column R of the 'Financing Calculation' sheet in the Financial Model) balance, at the beginning of the period.

B = the total balance outstanding on the Senior Bonds at such time (column FB of the 'Financing Calculation' sheet in the Financial Model).

6.9 Uncollectible Insurance Receivables

If at any time while Project Co is relieved of its obligations under Sections 6.3 [Project Co's Obligations – Damage or Destruction] or 6.4 [Project Co's Obligations – Material Damage or Destruction] by reason of the Relief Event described in Section (f) of the definition of Relief Event of Schedule 1 [Definitions and Interpretation] and:

- (a) Project Co has complied with its obligations hereunder with respect to such Relief Event; and
- (b) notwithstanding such compliance by Project Co collection of the applicable Insurance Receivables is not possible using all reasonable efforts,

either party may, by notice to the other party, terminate this Agreement, in which case BC Hydro will pay compensation to Project Co in accordance with Section 4 [No Fault Termination] of Schedule 16 [Compensation on Termination].

6.10 Application of Insurance Proceeds If No Termination

Unless a party has terminated this Agreement (including pursuant to Section 6.6 [BC Hydro Election Not to Reinstate], 6.7 [Insufficient Insurance], 6.8 [Economic Reinstatement Test During Construction] or 6.9 [Uncollectible Insurance Receivables], BC Hydro and Project Co will cause all:

- (a) applicable Insurance Proceeds which either has received;
- (b) applicable Insurance Proceeds which either is entitled to receive;
- (c) amounts which BC Hydro has agreed to pay as contemplated in Section 6.3(b) [Project Co's Obligations – Damage or Destruction]; and
- (d) amounts which BC Hydro or Project Co has agreed to pay to cover the amount by which the cost to repair, replace or restore the Facility exceeds the Insurance Proceeds and Insurance Receivables with respect to complete or substantial destruction,

to be applied to the reinstatement of the Facility in accordance with the terms of this Agreement and the terms of the Insurance Trust Agreement to the extent applicable.

6.11 Application of Insurance Proceeds In Case of Termination

If a party has terminated this Agreement pursuant to Section 6.6 [BC Hydro Election Not to Reinstate], 6.7 [Insufficient Insurance] or 6.8 [Economic Reinstatement Test During Construction]:

- (a) any Insurance Proceeds received prior to the Termination Payment Date by either Project Co or BC Hydro in respect of damage to the Facility and not already applied to the repair of such damage will first be applied towards the Termination Payment and any Insurance Proceeds remaining after such application will be paid to BC Hydro; and
- (b) on the Termination Payment Date, Project Co will assign to BC Hydro the benefit of all Insurance Receivables which have been taken into account in calculating the Termination Payment.

6.12 Standards of Replacement, Repair or Reconstruction

Any replacement, repair, or reconstruction of the Facility or any part thereof pursuant to the provisions of Sections 6.3 [Project Co's Obligations – Damage or Destruction] or 6.4 [Project Co's Obligations – Material Damage or Destruction] will be made or done in compliance with Schedule 5 [Design and Construction Protocols] and/or the Design and Construction Specifications to the extent specified in Section 6.3 [Project Co's Obligations – Damage or Destruction] or Section 6.4 [Project Co's Obligations – Material Damage or Destruction], subject to any agreement made between BC Hydro and Project Co to

revise the Design and Construction Protocols or the Design and Construction Specifications as they pertain to any replacement, repaired or reconstructed Facility.

6.13 Mitigation

Project Co and BC Hydro will take all reasonable steps to mitigate the effects of any risks or claims covered by this Section 6 [Insurance, Damage and Destruction] (including minimizing the amount of any costs and expenses which might result).

6.14 Risks Becoming Uninsurable

Each party will, forthwith upon Having Knowledge, notify the other if a Principal Insured Risk becomes or is expected to become Uninsurable. If both parties agree or it is determined in accordance with the Dispute Resolution Procedure that the relevant Principal Insured Risk is or is about to become Uninsurable and that the Principal Insured Risk being Uninsurable is not and will not be caused by the actions or omissions of Project Co or any Project Co Person or BC Hydro or any BC Hydro Person contrary to Section 3.11 [Compliance] of Schedule 18 [Insurance Requirements], then the parties together with their respective insurance advisors will meet to discuss the means by which such Principal Insured Risk should be managed (including considering the feasibility of self-insurance by either or all parties).

6.15 Consequences of Risks Becoming Uninsurable

If the requirements of Section 6.14 [Risks Becoming Uninsurable] are satisfied but the parties cannot agree within 20 Business Days on how to manage a Principal Insured Risk that becomes Uninsurable (the "**Uninsurable Risk**"):

- (a) if the Uninsurable Risk is third party liability, if and for so long as the Uninsurable Risk is Uninsurable, BC Hydro may by notice to Project Co terminate this Agreement whereupon Project Co will be entitled to compensation on termination as provided in Section 4 [No Fault Termination] of Schedule 16 [Compensation on Termination];
- (b) if the Uninsurable Risk is not third party liability or if (and for as long as) BC Hydro has not terminated this Agreement under Section 6.15(a) [Consequences of Risks Becoming Uninsurable], then this Agreement will continue, but neither Project Co nor BC Hydro will be obligated by this Agreement to maintain insurance in respect of the Uninsurable Risk and references in this Agreement to the insurance required by this Section 6 [Insurance, Damage and Destruction] or Schedule 18 [Insurance Requirements] will be construed accordingly. In such event the Availability Payments will thereafter be adjusted in accordance with Section 10.3 [Adjustments to Availability Payments] by agreement of the parties acting reasonably or, failing such agreement, by the Dispute Resolution Procedure, from the date upon which the Uninsurable Risk became Uninsurable, to reflect any savings in Project Co's insurance cost as a result of Project Co not having to insure against the Uninsurable Risk; and
- (c) subject to Section 6.16 [Third Party Liability Insurance as an Uninsurable Risk], on the occurrence of the Uninsurable Risk BC Hydro will either:

- (1) pay to Project Co an amount equal to the insurance proceeds that would have been payable directly to Project Co under the relevant policies in respect of the Uninsurable Risk had the relevant insurance continued to be available and in effect, and this Agreement will continue; or
- (2) by notice to Project Co, terminate this Agreement whereupon Project Co will be entitled to compensation on termination as provided in Section 4 [No Fault Termination] of Schedule 16 [Compensation on Termination],

except that BC Hydro may not in any such case terminate this Agreement pursuant to Section 6.15(c)(2) [Consequences of Risks Becoming Uninsurable] if Project Co releases BC Hydro from all obligations under Section 6.15(c)(1) [Consequences of Risks Becoming Uninsurable] and deposits with the Insurance Trustee an amount equal, in the reasonable opinion of BC Hydro, to the insurance proceeds, and all amounts in respect of deductibles and waiting periods that would have been the responsibility of Project Co under Section 3.8 of Schedule 18 [Insurance Requirements], that would have been payable in respect of the Uninsurable Risk that occurred had the relevant insurance continued to be available and in effect.

6.16 Third Person Liability Insurance as an Uninsurable Risk

If this Agreement is terminated pursuant to Sections 6.15(a) or 6.15(c)(2) [Consequences of Risks Becoming Uninsurable] and at the date of such termination third party liability is an Uninsurable Risk, and if:

- (a) there is an outstanding third party claim against Project Co at the Termination Date; or
- (b) following the Termination Date a third party claim is subsequently made against Project Co in respect of an event or circumstance that occurred before the Termination Date,

which in either case would have been covered by the third party liability insurance that either BC Hydro or Project Co would have been required to carry had that risk not been an Uninsurable Risk, then BC Hydro will pay to Project Co the amount for which Project Co becomes liable in respect of such claim in addition to the compensation payable pursuant to Sections 6.15(a) or 6.15(c)(2) [Consequences of Risks Becoming Uninsurable], including reasonably incurred defence fees and costs that would have normally been covered by the aforesaid insurance policy.

6.17 Subrogation

If BC Hydro makes any payment to Project Co pursuant to Section 6.15(c)(1) [Consequences of Risks Becoming Uninsurable] or Section 6.16 [Third Party Liability Insurance as an Uninsurable Risk], then BC Hydro, to the extent of the amount paid, will be subrogated to Project Co's rights against any third party in respect of the occurrence or claim as a result of which the payment was made, other than any third party that was an insured under the last policy of insurance to cover the Uninsurable Risk before it became Uninsurable, to the extent the insurers did not have a right of subrogation against such third party.

6.18 Continuing Attempts to Insure Uninsurable Risks

When there is an Uninsurable Risk for which Project Co or BC Hydro, as applicable is responsible to obtain insurance under Schedule 18 [Insurance Requirements] Project Co or BC Hydro, as applicable, will approach the insurance market on a regular basis and in any event at regular intervals of no longer than six months to establish whether the Uninsurable Risks remain Uninsurable.

6.19 Uninsurable Risks Becoming Insurable

Where a risk that was previously an Uninsurable Risk ceases to be so and either party becomes aware or is informed by the other party that this is the case, the party responsible for obtaining the insurance under Schedule 18 [Insurance Requirements], will forthwith take out, maintain and pay for or cause to be taken out, maintained and paid for insurance in accordance with the requirements of this Agreement in respect of the risk, and in any case:

- (a) Sections 6.14 [Risks Becoming Uninsurable], 6.15 [Consequences of Risks Becoming Uninsurable], 6.16 [Third Party Liability Insurance as an Uninsurable Risk] and 6.18 [Continuing Attempts to Insure Uninsurable Risks] will no longer apply to the risk so long as it is not an Uninsurable Risk; and
- (b) the Availability Payments will be adjusted pursuant to Section 10.3 [Adjustments to Availability Payments] by agreement of the parties acting reasonably or, failing such agreement, by the Dispute Resolution Procedure, from the date upon which the Uninsurable Risk became insurable, to reflect any increase in Project Co's insurance cost as a result of having to insure the risk that ceased to be an Uninsurable Risk.

7. CHANGES, MINOR WORKS AND INNOVATION PROPOSALS

7.1 Changes Required by BC Hydro

BC Hydro may require Changes in accordance with Schedule 14 [Changes].

Project Co may submit an Innovation Proposal for consideration by BC Hydro in accordance with Schedule 14 [Changes].

7.2 Minor Works

BC Hydro may require Minor Works in accordance with Schedule 14 [Changes].

8. SUPERVENING EVENTS

8.1 Supervening Events

If:

- (a) a Compensation Event, Relief Event or Excusing Event occurs, Project Co may; or

(b) a Force Majeure Event or Eligible Change in Law Event occurs, either party may, apply for relief from its obligations, extensions of time, claim compensation or claim a termination right under this Agreement to the extent provided in this Section 8 [Supervening Events]. The “**Applicant**” means the party making such application.

8.2 Procedures Upon the Occurrence of a Supervening Event

The following procedure will apply if a Supervening Event occurs:

- (a) as soon as practicable, and in any event within ten (10) Business Days after the Applicant Has Knowledge that the Supervening Event has caused, or is reasonably likely to cause, an entitlement under this Section 8 [Supervening Events], the Applicant will give to the other party a notice ("**Supervening Event Notice**") identifying the particular Supervening Event and summarizing, to the extent the Applicant Has Knowledge, the consequences and the nature of the Applicant's claim;
- (b) within 10 Business Days after delivery by the Applicant of a Supervening Event Notice, to the extent the Applicant Has Knowledge, the Applicant will give to the other party:
 - (1) additional details, including available supporting documentation, in support of its claim; and
 - (2) if applicable, a detailed breakdown of all Direct Losses incurred or which will be incurred or other compensation or relief sought by Project Co, if it is the Applicant, as a result of the Supervening Event;
- (c) from time to time thereafter the Applicant will notify the other party if at any time it receives or becomes aware of any further information relating to the Supervening Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading. In particular, a party claiming relief as a result of a Force Majeure Event will notify the other as soon as the Force Majeure Event has ceased and of the time when performance of its affected obligations can be resumed;
- (d) a party may make multiple, but not duplicative, claims in respect of a Supervening Event and both parties may make claims in respect of the same Supervening Event;
- (e) where BC Hydro is claiming the benefit of an Eligible Change in Law Event, Project Co will provide BC Hydro information reasonably requested in order to make its claim;
- (f) the Applicant must demonstrate:
 - (1) it could not have avoided such occurrence or the consequences of the Supervening Event by (a) complying with the requirements of this Agreement; and (b) taking steps which it might reasonably have taken provided that, in the

case of BC Hydro, BC Hydro is not required to take any steps that are referred to in Section 3(v)(1) and (2) [Interpretation] inclusive of Schedule 1 [Definitions and Interpretation];

- (2) if applicable, the Supervening Event caused or will cause the Applicant to incur a Direct Loss, a delay in the Project Schedule or the need for relief from other obligations under this Agreement; and
- (3) in the case of Project Co, it has complied with its mitigation obligations pursuant to Section 2.5 [General Duty of Project Co to Mitigate] and in the case of BC Hydro, it has complied with its mitigation obligations pursuant to Section 2.6 [General Duty of BC Hydro to Mitigate];
- (g) the Applicant will advise whether, in the Applicant's opinion, any amendments should be considered to this Agreement, any Material Contract or any Senior Financing Agreement as a result of the Supervening Event; and
- (h) the parties will meet within 15 Business Days of delivery of the Supervening Event Notice to consult and seek to agree to the effect of the Supervening Event and if the parties, within 10 Business Days following the meeting, have not agreed to the occurrence or the effect of the Supervening Event, either party may refer the question of whether a Supervening Event has occurred, whether the conditions in Section 8.2(f) [Procedures Upon the Occurrence of a Supervening Event] above have been satisfied or the extent of relief or compensation to which the affected party is entitled, for resolution in accordance with the Dispute Resolution Procedure.

8.3 Project Co's Entitlements Upon Occurrence of a Compensation Event

Subject to Section 8.12 [Delay in Notification], if at any time a Compensation Event has occurred and Project Co has given BC Hydro a Supervening Event Notice related thereto, then to the extent that Project Co incurs a Direct Loss, or for so long as Project Co is delayed or prevented by the Compensation Event from performing any obligation under this Agreement (other than those obligations arising as a result of the Compensation Event):

- (a) Project Co is relieved from any liability or consequence, including termination by BC Hydro or the awarding of NPE Points or Default Points, under this Agreement arising from such delay or failure in performing any of Project Co's obligations (other than its mitigation obligations) under or in connection with this Agreement;
- (b) the Availability Payments will be calculated as if the Compensation Event had not occurred based on the reasonably expected performance of Project Co, except that Avoidable Costs and applicable Insurance Proceeds and insurance proceeds which Project Co would have recovered as a result of the Compensation Event if it had complied with the requirements of this Agreement or any policy of insurance maintained or required to be maintained under this Agreement will be deducted therefrom;

- (c) BC Hydro will pay to Project Co compensation in respect of a Compensation Event calculated on the basis that Project Co will be placed in no better or worse position than it would have been in had a Compensation Event not occurred and taking into consideration the following, without duplication:
- (1) any Direct Losses, including the amount of any applicable insurance deductibles and calculated without netting out Insurance Receivables, resulting from the Compensation Event;
 - (2) any net increase or decrease in the costs of Project Co performing its obligations under this Agreement resulting from the Compensation Event;
 - (3) the Availability Payments payable to Project Co, taking into account the deductions pursuant to Section 8.3(b) [Project Co's Entitlements Upon the Occurrence of a Compensation Event] above; and
 - (4) Avoidable Costs,
- except that:
- (5) applicable Insurance Proceeds and insurance proceeds which Project Co would have recovered as a result of the Compensation Event if it had complied with the requirements of this Agreement or any policy of insurance maintained or required to be maintained under this Agreement will be deducted therefrom; and
 - (6) no Indirect Losses will be taken into consideration;
- (d) concurrent with the first payment of any compensation by BC Hydro under Section 8.3(c) [Project Co's Entitlements Upon the Occurrence of a Compensation Event], Project Co will assign to BC Hydro its rights to all applicable Insurance Receivables, whether or not Project Co has made a claim;
- (e) if the Compensation Event occurs prior to the Total Completion Date, the Project Schedule will be amended and the Target Service Commencement Date, the Service Commencement Longstop Date each Target Commercial Operation Date, the Target Bypass System Completion Date, the date for completion of the Performance Verification Tests, the Target Total Completion Date and the Total Completion Longstop Date will be postponed by such time as is reasonable in the circumstances to take account of the effect of the delay caused by the Compensation Event, but the Expiry Date will not be extended; and
- (f) Forced Outages arising from such delay or failure in performing any of its obligations under this Agreement shall not be counted for the purposes of Sections 11.1(c) or (d) [BC Hydro's Step-in Rights] or Sections 12.1(j) or (k) [Project Co Events of Default].

8.4 Project Co's Entitlements Upon Occurrence of a Relief Event

Subject to Section 8.12 [Delay in Notification], if at any time a Relief Event has occurred and Project Co has given BC Hydro a Supervening Event Notice related thereto, then to the extent that, and for so long as, Project Co is delayed or prevented by the Relief Event from performing any obligation under this Agreement (other than those obligations arising as a result of the Relief Event):

- (a) Project Co is relieved from any liability or consequence, including termination by BC Hydro or the awarding of NPE Points or Default Points, except as provided for in this Section 8.4 [Project Co's Entitlements Upon the Occurrence of a Relief Event]), under this Agreement arising from such delay or failure in performing any of its obligations under this Agreement, except that, with respect to a Relief Event occurring after Service Commencement, nothing will affect any entitlement of BC Hydro to award NPE Points and Default Points in respect of other concurrent events or circumstances that are unrelated to the said Relief Event and BC Hydro will only be obligated to make Availability Payments to the extent that the performance or other criteria for Availability Payments are met in accordance with the applicable provisions of this Agreement notwithstanding the Relief Event;
- (b) if the Relief Event occurs prior to the Total Completion Date:
 - (1) the Project Schedule will be amended and the Target Service Commencement Date, the Service Commencement Longstop Date, each Target Commercial Operation Date, the Target Bypass System Completion Date, the date for completion of the Performance Verification Tests, the Target Total Completion Date and the Total Completion Longstop Date will be postponed by such time as is reasonable in the circumstances to take account of the effect of the delay caused by the Relief Event, but the Expiry Date will not be extended;
 - (2) for the period that Service Commencement is delayed to a date after the Target Service Commencement Date (as it was prior to having been postponed pursuant to Section 8.4(b)(1) [Project Co's Entitlements Upon Occurrence of a Relief Event], above) as a result of one or more of the Relief Events described in (b), (c), (h) or (j) of the definition of Relief Event, BC Hydro will pay to Project Co an amount equal to the Senior Debt Service Amount for such period less the aggregate of: (i) Avoidable Costs; and (ii) applicable Insurance Proceeds and insurance proceeds which Project Co would have recovered as a result of the Relief Event if it had complied with the requirements of this Agreement or any policy of insurance maintained or required to be maintained under this Agreement; and
 - (3) concurrent with the first payment of any amount by BC Hydro pursuant to Section 8.4(b)(2) [Project Co's Entitlements Upon the Occurrence of a Relief Event], Project Co will assign to BC Hydro its rights to all applicable Insurance Receivables, whether or not Project Co has made a claim;

- (c) if the Relief Event, or its effects, persists or is likely to persist, for more than 180 days after the date a Supervening Event Notice is delivered by the Applicant, either party may at any time so long as such Relief Event is, or such effect is, continuing and subject to Section 14.2 [Transfer to BC Hydro of Assets, Contracts, etc.], terminate this Agreement by notice to the other party;
- (d) if BC Hydro gives notice to Project Co under Section 8.4(c) [Project Co's Entitlements Upon the Occurrence of a Relief Event] terminating this Agreement, Project Co will have the option either to accept such notice or to respond in writing on or before the date falling 10 Business Days after the date of receipt of such notice stating that it requires this Agreement to continue, in which case Project Co's rights to relief under this Section 8.4 [Project Co's Entitlements Upon the Occurrence of a Relief Event] in respect of the Relief Event will cease and BC Hydro's termination notice will be deemed null and void;
- (e) if Project Co gives notice to BC Hydro under Section 8.4(c) [Project Co's Entitlements Upon the Occurrence of a Relief Event] terminating this Agreement, BC Hydro will have the option either to accept such notice or to respond in writing on or before the date falling 10 Business Days after the date of receipt of such notice stating that it requires this Agreement to continue. If BC Hydro gives Project Co notice that it requires this Agreement to continue, then:
 - (1) Project Co's termination notice will be deemed null and void and Project Co, insofar as it is able to do so, will continue to perform its obligations in accordance with the provisions of this Agreement;
 - (2) the Relief Event will be deemed to constitute a Compensation Event occurring as of the date on which the Relief Event first occurred;
 - (3) at any time so long as the Supervening Event referred to in Section 8.4(e)(2) [Project Co's Entitlements Upon the Occurrence of a Relief Event] is continuing, BC Hydro may terminate this Agreement by notice to Project Co; and
 - (4) Project Co may at any time so long as the Supervening Event referred to in Section 8.4(e)(2) [Project Co's Entitlements Upon the Occurrence of a Relief Event] is continuing after a further period of 180 days after the date on which Project Co delivered the termination notice pursuant to Section 8.4(c) [Project Co's Entitlements Upon the Occurrence of a Relief Event] terminate this Agreement by notice to BC Hydro;
- (f) if this Agreement is terminated pursuant to this Section 8.4 [Project Co's Entitlements Upon the Occurrence of a Relief Event], Project Co will be entitled to compensation on such termination in accordance with Section 4 [No Fault Termination] of Schedule 16 [Compensation on Termination]; and

- (g) Forced Outages arising from such delay or failure in performing any of its obligations under this Agreement shall not be counted for the purposes of Sections 11.1(c) or (d) [BC Hydro's Step-in Rights] or Sections 12.1(j) or (k) [Project Co Events of Default].

8.5 Project Co's Entitlements Upon Occurrence of an Excusing Event

Subject to Section 8.12 [Delay in Notification], if during the Services Period or the Bridging Period an Excusing Event has occurred and Project Co has given BC Hydro a Supervening Event Notice related thereto, then to the extent that, and for so long as, Project Co is delayed or prevented by the Excusing Event from performing any obligation under this Agreement (other than those obligations arising as a result of the Excusing Event):

- (a) Project Co is relieved from any liability or consequence, including termination by BC Hydro, or the awarding of NPE Points or Default Points under this Agreement arising from such delay or failure in performing any of its obligations;
- (b) the Availability Payments will be calculated as if the Excusing Event had not occurred based on the reasonably expected performance of Project Co, except that Avoidable Costs and applicable Insurance Proceeds and Insurance Receivables and insurance proceeds which Project Co would have recovered if it had complied with the requirements of this Agreement or any policy of insurance maintained or required to be maintained under this Agreement will be deducted therefrom;
- (c) if the Excusing Event occurs prior to the Total Completion Date, the Project Schedule will be amended and the Target Service Commencement Date, the Service Commencement Longstop Date each Target Commercial Operation Date, the Target Bypass System Completion Date, the date for completion of the Performance Verification Tests, the Target Total Completion Date and the Total Completion Longstop Date will each be postponed by such time as is reasonable in the circumstances to take account of the effect of the delay caused by the Excusing Event, but the Expiry Date will not be extended; and
- (d) Forced Outages arising from such delay or failure in performing any of its obligations under this Agreement shall not be counted for the purposes of Sections 11.1(c) or (d) [BC Hydro's Step-in Rights] or Sections 12.1(j) or (k) [Project Co Events of Default].

8.6 Parties' Entitlements Upon Occurrence of a Force Majeure Event

Subject to Section 8.12 [Delay in Notification], if at any time a Force Majeure Event has occurred and the Applicant has given the other party a Supervening Event Notice related thereto, then to the extent that, and for so long as, Project Co is delayed or prevented by the Force Majeure Event from performing any obligation under this Agreement (other than those obligations arising as a result of the Force Majeure Event):

- (a) the Applicant is relieved from any liability or consequence, including termination by BC Hydro, or the awarding of NPE Points or Default Points, except as provided for in this

Section 8.6 [Parties' Entitlements Upon the Occurrence of a Force Majeure Event]), under this Agreement arising from such delay or failure in performing any of its obligations under this Agreement, except that nothing will affect any entitlement of BC Hydro to award NPE Points and Default Points in respect of other concurrent events or circumstances that are unrelated to the said Force Majeure Event and BC Hydro will only be obligated to make Availability Payments to the extent that the performance or other criteria for Availability Payments are met notwithstanding the Force Majeure Event;

- (b) if the Applicant is Project Co and the Force Majeure Event occurs prior to the Total Completion Date, the Project Schedule will be amended and the Target Service Commencement Date, the Service Commencement Longstop Date each Target Commercial Operation Date, the Target Bypass System Completion Date, the date for completion of the Performance Verification Tests, the Target Total Completion Date and the Total Completion Longstop Date will be postponed by such time as is reasonable in the circumstances to take account of the effect of the delay caused by the Force Majeure Event, but the Expiry Date will not be extended;
- (c) if a Force Majeure Event occurs and it, or its effects, persists or is likely to persist for more than 180 days after the date a Supervening Event Notice is delivered by the Applicant, either party may at any time so long as such Force Majeure Event is, or such effect is, continuing, terminate this Agreement by notice to the other party;
- (d) if Project Co gives notice to BC Hydro under Section 8.6(c) [Parties' Entitlements Upon the Occurrence of a Force Majeure Event] terminating this Agreement, BC Hydro will have the option either to accept such notice or to respond in writing on or before the date falling 10 Business Days after the date of receipt of such notice stating that it requires this Agreement to continue. If BC Hydro gives Project Co such response then:
 - (1) Project Co's termination notice will be deemed null and void and Project Co, insofar as it is able to do so, will continue to perform its obligations in accordance with the provisions of this Agreement;
 - (2) the Force Majeure Event will be deemed to constitute a Compensation Event occurring as of the date the Force Majeure Event first occurred;
 - (3) at any time so long as the Compensation Event referred to in Section 8.6(d)(2) [Parties' Entitlements Upon the Occurrence of a Force Majeure Event] is continuing, BC Hydro may terminate this Agreement by notice to Project Co; and
 - (4) Project Co may at any time so long as the Compensation Event referred to in Section 8.6(d)(2) [Parties' Entitlements Upon the Occurrence of a Force Majeure Event] is continuing after a further period of 180 days after the date on which Project Co delivered the termination notice pursuant to Section 8.6(c) [Parties' Entitlements Upon the Occurrence of a Force Majeure Event], terminate this Agreement by notice to BC Hydro;

- (e) if this Agreement is terminated pursuant to Section 8.6(c) or Sections 8.6(d)(3) or 8.6(d)(4) [Parties' Entitlements Upon the Occurrence of a Force Majeure Event], Project Co will be entitled to compensation on such termination in accordance with Section 4 [No Fault Termination] of Schedule 16 [Compensation on Termination]; and
- (f) Forced Outages arising from such delay or failure in performing any of its obligations under this Agreement shall not be counted for the purposes of Sections 11.1(c) or (d) [BC Hydro's Step-in Rights] or Sections 12.1(j) or (k) [Project Co Events of Default].

8.7 Parties' Entitlements Upon Occurrence of an Eligible Change in Law Event

Subject to Section 8.12 [Delay in Notification], if at any time an Eligible Change in Law Event has occurred and the Applicant has given the other party a Supervening Event Notice related thereto:

- (a) in the case of a Relevant Change in Law:
 - (1) Project Co will be entitled to compensation, without duplication, for Direct Losses and for increases, if any, to Allowable Capital Expenditures resulting from the Relevant Change in Law;
 - (2) BC Hydro will be entitled to compensation, without duplication, for decreases, if any, to Allowable Capital Expenditures resulting from the Relevant Change in Law;
 - (3) Project Co will be entitled to compensation, without duplication, for any increase in the net cost to Project Co of performing the Services resulting from the Relevant Change in Law through an increase in the Availability Payments;
 - (4) BC Hydro will be entitled to compensation, without duplication, for any decrease in the net cost to Project Co of performing the Services resulting from the Relevant Change in Law through a decrease in the Availability Payments; and
 - (5) the method of payment for any amounts owing to Project Co or BC Hydro pursuant to Sections 8.7(a)(1) through (4) [Parties' Entitlements Upon Occurrence of an Eligible Change in Law Event] shall be as set out in Section 8.7(c) [Parties' Entitlements Upon Occurrence of an Eligible Change in Law Event];
- (b) in the case of a Discriminatory Change in Tax Law:
 - (1) Project Co will be entitled to compensation, without duplication, for any revenue loss for Project Co and any Partner, as the case may be, resulting from the Discriminatory Change in Tax Law;

- (2) BC Hydro will be entitled to compensation, without duplication, for any revenue gain for Project Co and any Partner, as the case may be, resulting from the Discriminatory Change in Tax Law;
 - (3) Project Co will be entitled to compensation, without duplication, for any increase in the net cost to Project Co of performing the Services resulting from the Discriminatory Change in Tax Law through an increase in the Availability Payments;
 - (4) BC Hydro will be entitled to compensation, without duplication, for any decrease in the net cost to Project Co of performing the Services resulting from the Discriminatory Change in Tax Law through a decrease in the Availability Payments; and
 - (5) the method of payment for any amounts owing to Project Co or BC Hydro pursuant to Sections 8.7(b)(1) through (4) [Parties' Entitlements Upon Occurrence of an Eligible Change in Law Event] shall be as set out in Section 8.7(c) [Parties' Entitlements Upon Occurrence of an Eligible Change in Law Event];
- (c) subject to Section 8.7(d) [Parties' Entitlements Upon Occurrence of an Eligible Change in Law Event] with respect to Allowable Capital Expenditures, in respect of any compensation payable in relation to an Eligible Change in Law Event;
- (1) during the period from the Effective Date until the Total Completion Date and in relation to any Allowable Capital Expenditure related to the performance of the Design, Construction, Commissioning Work or Decommissioning Work, such Allowable Capital Expenditure shall be payable by way of a lump sum payment (or offset to Progress Payments) pursuant to section 10.1 [Lump Sum Payments]; and
 - (2) during the Services Period and in relation to a change to the net cost to Project Co of performing the Services, an increase or decrease in the Availability Payments will be made,

and the amounts in (1) or (2) will be calculated on the basis that Project Co will be placed in no better or worse position than it would have been in had such Eligible Change in Law Event not occurred and taking into consideration, as applicable, the following, without duplication:

- (i) any Direct Losses, calculated without netting out Insurance Receivables, resulting from the Eligible Change in Law Event;
- (ii) any net increase or decrease in the costs of Project Co performing the Services resulting from the Eligible Change in Law Event; and

- (iii) any lump sum payment pursuant to Section 10.1 [Lump Sum Payments] and the Availability Payments payable to Project Co,

except that:

- (iv) Avoidable Costs and applicable Insurance Proceeds and insurance proceeds which Project Co would have recovered if it had complied with the requirements of this Agreement or any policy of insurance maintained or required to be maintained under this Agreement will be deducted therefrom; and
- (v) no Indirect Losses will be taken into consideration other than as set out in Section 8.7(b) [Parties' Entitlements Upon Occurrence of an Eligible Change in Law Event] above,

and concurrent with the first payment of any compensation by BC Hydro under this Section, Project Co will assign to BC Hydro its rights to all applicable Insurance Receivables, whether or not Project Co has made a claim;

(d) in the case of:

- (1) a Relevant Works Change in Law, other than a Change in Hydro Facility Law, arising on or after the commencement of the fourth year of the Term;
- (2) a Change in Hydro Facility Law; or
- (3) a Change in Legal Obligations (excluding such changes which occur or arise as a result of an act or omission of Project Co or a Project Co Person,

the parties hereby agree that:

- (i) subject to Section 8.7(c) [Parties' Entitlements Upon Occurrence of an Eligible Change in Law Event], the Availability Payments will be increased or decreased to compensate for any increase or decrease, as the case may be, in the net costs to Project Co of performing the Services as a direct result of the Allowable Capital Expenditure resulting from such Relevant Works Change in Law, Change in Hydro Facility Law, or Change to Legal Obligations, as applicable; and
- (ii) Project Co will be entitled to compensation in an amount calculated by reference to the table set forth below as BC Hydro's share of the Allowable Capital Expenditure resulting from such Relevant Works Change in Law, Change in Hydro Facility Law, or Change to Legal Obligations, as applicable, taking into account the different applicable amounts of BC Hydro's share when the aggregate amount of such Allowable Capital Expenditures causes the Cumulative Allowable

Capital Expenditure to be in more than one of the applicable provisions of such table (for greater certainty, the amounts listed below represent cumulative totals for the entire Term and are not annual amounts):

Column 1	Column 2	Column 3	Column 4
Cumulative Allowable Capital Expenditure	Project Co share of Allowable Capital Expenditure (as a % of the incremental change in Allowable Capital Expenditure)	BC Hydro's share of Allowable Capital Expenditure (as a % of the incremental change in Allowable Capital Expenditure)	Maximum cumulative Project Co share of the Cumulative Allowable Capital Expenditure
Applicable to the first \$ [REDACTED]	[REDACTED] %	[REDACTED] %	\$ [REDACTED]
Applicable to amounts between \$ [REDACTED] and \$ [REDACTED]	[REDACTED] %	[REDACTED] %	\$ [REDACTED]
Applicable to amounts greater than \$ [REDACTED]	[REDACTED] %	[REDACTED] %	\$ [REDACTED]

(e) in the case of a Tax Recoverability Change in Law:

- (1) BC Hydro will pay Project Co, and Project Co will be entitled to, any Additional Irrecoverable Tax resulting from the Tax Recoverability Change in Law; and
- (2) Project Co will pay BC Hydro, and BC Hydro will be entitled to, any Additional Recoverable Tax resulting from the Tax Recoverability Change in Law;

but in each case only to the extent necessary to leave Project Co in no better or worse position than before the Tax Recoverability Change in Law.

(f) **PST Baseline Adjustment:** Project Co shall be entitled to compensation for changes to Tax Laws that affect the Project that come into effect after the Financial Submission Date and on or before the Effective Date through adjustment made pursuant to Section 14.6 [PST Baseline Adjustments] of Schedule 13 [Performance and Payment Mechanism]. For greater clarity, any changes to Tax Laws after the Effective Date shall be dealt with in accordance with Section 8.7(e) [Parties' Entitlements Upon Occurrence of an Eligible Change in Law Event].

8.8 Parties' Entitlements Upon Occurrence of a Change in Law

Without limiting Section 8.7 [Parties' Entitlements Upon the Occurrence of an Eligible Change in Law Event]:

- (a) if compliance by Project Co with a Change in Law is outside the scope of, or inconsistent with, Project Co's obligations under this Agreement, or would mean a change in Project Co's obligations under this Agreement or a change in the scope or manner of carrying out the Project, such Change in Law will be deemed to constitute a Change having effect from the time of such event, except that Project Co will not be entitled to any payment or other compensation other than as set out, as applicable, in Section 8.4 [Project Co's Entitlements Upon Occurrence of a Relief Event], in Section 8.5 [Project Co's Entitlements Upon the Occurrence of an Excusing Event] or Section 8.7 [Parties' Entitlements Upon the Occurrence of an Eligible Change in Law Event];
- (b) except as otherwise provided in this Agreement, including, as applicable, in Section 8.4 [Project Co's Entitlements Upon Occurrence of a Relief Event], in Section 8.5 [Project Co's Entitlements Upon the Occurrence of an Excusing Event] and Section 8.7 [Parties' Entitlements Upon the Occurrence of an Eligible Change in Law Event], Project Co will not be entitled to any other payment or compensation or relief in respect of any Change in Law or the consequences thereof; and
- (c) nothing in Section 8.7 [Parties' Entitlements Upon the Occurrence of an Eligible Change in Law Event] will be interpreted as relieving Project Co of its obligation, following any and all Changes in Law, to perform its obligations under this Agreement in compliance with all Laws.

8.9 Labour Disputes

If Project Co Has Knowledge of an actual or potential labour dispute that may affect any part of the Project Work or the Facility, Project Co will promptly:

- (a) give notice thereof to BC Hydro, including all relevant information related to the dispute of which Project Co Has Knowledge;
- (b) take all reasonable steps to mitigate the effects of such labour dispute on the performance of any of the Design, the Construction or the Services including by applying for relief to appropriate tribunals or courts to the extent the labour dispute relates to the employees of Project Co or any Project Co Person; and
- (c) if not already received, apply for an essential services designation pursuant to Part 6 of the *Labour Relations Code* (British Columbia) for the facilities, productions and services that will be affected by the labour dispute to the extent the labour dispute relates to the employees of Project Co or any Project Co Person.

Project Co acknowledges that if the labour dispute involves workers of a Project Contractor or Sub-Contractor, or of anyone employed by or through them, but not any member of the BC Hydro Labour Pool, BC Hydro will not be required to provide any facilities, space or assistance in the Facility or on the Site for the purposes of such workers or any applicable union.

8.10 Payments in Respect of Supervening Events

Payments between the parties and any adjustments to Availability Payments in respect of Supervening Events will be made in accordance with Section 10 [Lump Sum Payments and Service Payment Adjustments].

8.11 Supervening Events Mitigated by Change

Nothing in this Agreement will limit the right of BC Hydro to perform or mitigate its obligations in respect of Supervening Events by requiring a Change or Changes.

8.12 Delay in Notification

If the Supervening Event Notice or any required information is provided by an Applicant to the other party after the dates referred to in Section 8.2 [Procedures Upon the Occurrence of a Supervening Event], then without prejudice to any other rights or remedies of the other party under this Agreement:

- (a) the Applicant will not be entitled to any compensation, extension of time or relief from its obligations under this Agreement to the extent that the amount thereof was increased or the ability to mitigate was adversely affected as a result of such delay in providing such notice or information; and
- (b) if the period of delay is 6 months or more, the rights of the Applicant with respect to the applicable Supervening Event will be of no further force or effect.

8.13 Equivalent Project Relief

The parties acknowledge that Project Co will share with the Project Contractors, who will in turn share with Sub-Contractors, in accordance with the Project Contracts, certain benefits to Project Co derived from the rights of Project Co under, and subject to the obligations and limitations under, this Agreement including rights of Project Co under Section 8 [Supervening Events] (such rights, as qualified by such obligations and limitations, are in this Section collectively "**Project Co's Rights**"). Accordingly:

- (a) any circumstance affecting a Project Contractor or a Sub-Contractor which, if such circumstance had affected Project Co directly would have given rise to a claim by Project Co pursuant to Project Co's Rights will, for the purpose of this Agreement, be deemed to be a circumstance affecting Project Co in respect of which Project Co may claim under and subject to Project Co's Rights; and
- (b) amounts claimed by the Project Contractor or Sub-Contractor against Project Co in respect of any circumstance referred to in Section 8.13(a) [Equivalent Project Relief]

above may be claimed by Project Co against BC Hydro under and subject to Project Co's Rights, but whether or not BC Hydro is liable for such amounts will be determined under this Agreement as if the circumstance had affected Project Co directly,

provided that:

- (c) all such claims will be made and administered by Project Co and no Project Contractor or Sub-Contractor will have any rights against BC Hydro under this Section 8.13 [Equivalent Project Relief];
- (d) in no event will the liability of BC Hydro under this Section 8.13 [Equivalent Project Relief] be greater than it would have been if Project Co had been directly affected by the circumstance referred to in Section 8.13(a) [Equivalent Project Relief] above; and
- (e) in no event will BC Hydro be liable under this Section 8.13 [Equivalent Project Relief] for any Direct Losses or other compensation that BC Hydro would not have been liable for if Project Co had been directly affected by the circumstance referred to in Section 8.13(a) [Equivalent Project Relief] above.

9. INDEMNITIES AND LIMITS ON LIABILITIES AND REMEDIES

9.1 Project Co's Obligation to Indemnify

Project Co will indemnify and keep BC Hydro and each BC Hydro Indemnified Person indemnified at all times from and against all Direct Losses that any such Person may sustain in connection with:

- (a) any loss of or physical damage to property or assets of BC Hydro or any BC Hydro Indemnified Person, or any claim made by one or more third parties, including for loss of or physical damage to property or assets, or any claim for, or in respect of, the death, personal injury, disease or illness of any Person, including any BC Hydro Indemnified Person, arising by reason of any:
 - (1) negligent act or omission of Project Co;
 - (2) wilful misconduct of Project Co; or
 - (3) non-compliance by Project Co with any of the provisions of this Agreement or any document, instrument or agreement delivered to BC Hydro as required under this Agreement;
- (b) breach of any representation or warranty by Project Co under this Agreement;
- (c) any Project Co Contamination and Project Co Hazardous Substances to the extent Project Co fails to comply with its obligations under Schedule 8 [Environmental Obligations];

- (d) breach by Project Co of, or non-compliance by Project Co with, Permits or Laws (subject to Section 4.17 [Compliance with Laws]), or the failure of Project Co to obtain all Permits for which it is responsible in accordance with this Agreement;
- (e) any infringement, misappropriation or violation of any Intellectual Property or IP Rights of any Person caused or resulting from: (i) any act or omission by or on behalf of Project Co or any Project Co Person; or (ii) the use of any Project Intellectual Property or related IP Rights or Third Party Technology by or on behalf of BC Hydro or its successors, assigns and licensees in accordance with the applicable licenses granted pursuant to this Agreement,

except to the extent caused, or contributed to, by non-compliance by BC Hydro with any provision of this Agreement or any document, instrument or agreement delivered to Project Co as required under this Agreement or any negligent act or omission, or any wilful misconduct, of BC Hydro or any BC Hydro Person. For greater certainty, Section 4.5 [Project Co Persons] applies to this Section 9.1 [Project Co's Obligation to Indemnify]. This Section 9.1 [Project Co's Obligation to Indemnify] may be relied upon by BC Hydro Indemnified Persons and may be enforced directly by any of them against Project Co in the same manner and for the same purpose as if pursuant to a contractual indemnity directly between them and Project Co.

Section 9.1(a) and 9.1(e) [Project Co's Obligation to Indemnify] shall not apply to any loss of or physical damage to property or assets of BC Hydro or any BC Hydro Indemnified Person, or any claim made by one or more third parties, including for loss of or physical damage to property or assets, or any claim for, or in respect of, the death, personal injury, disease or illness of any Person, including any BC Hydro Indemnified Person, arising by reason of the use by BC Hydro, its successors, assigns or licensees of the Project Intellectual Property or the related IP Rights on a project or facility other than the Project or the Facility.

This Section 9.1 [Project Co's Obligation to Indemnify] shall not apply to any claim made by one or more third parties against BC Hydro or a BC Hydro Indemnified Person based on the failure of BC Hydro to supply power to the third party by reason of an Outage or other failure of the Facility for any reason.

9.2 Conduct of Third Person Claims

This Section 9.2 [Conduct of Third Person Claims] will apply to the conduct of claims made by a third Person against a party having, or claiming to have, with respect to such third Person claim, the benefit of an indemnity or a right to compensation under this Agreement. The party having, or claiming to have, the benefit of the indemnity or right to compensation is referred to as the "**Beneficiary**" and the party from whom the indemnity or compensation is sought is referred to as the "**Indemnifier**". Accordingly, subject to the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Agreement:

- (a) if the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification or compensation under this Agreement in respect of the entire claim, the

Beneficiary will give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Business Days of receipt thereof;

- (b) the Indemnifier will be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations; the Beneficiary will give the Indemnifier all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim;
- (c) in defending any claim described in Section 9.2(b) [Conduct of Third Person Claims] in which there is a conflict of interest between the Indemnifier and the Beneficiary, the Beneficiary may appoint independent legal counsel in respect of such claim and, if it is determined that the Beneficiary is entitled to indemnification by, or compensation from, the Indemnifier, all reasonable costs and expenses incurred by the Beneficiary in so doing will be included in the indemnity or compensation from the Indemnifier;
- (d) with respect to any claim conducted by the Indemnifier pursuant to Section 9.2(b) [Conduct of Third Person Claims] the Indemnifier will:
 - (1) keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
 - (2) demonstrate to the Beneficiary, at the reasonable request of the Beneficiary, that the Indemnifier has sufficient means to pay all costs and expenses that it may incur by reason of conducting the claim; and
 - (3) not pay or settle such claims without the consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
- (e) the Beneficiary may take conduct of any defence, dispute, compromise or appeal of the claim and of any incidental negotiations if:
 - (1) the Indemnifier is not entitled to take conduct of the claim in accordance with Section 9.2(b) [Conduct of Third Person Claims]; or
 - (2) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within 10 Business Days of the notice from the Beneficiary under Section 9.2(a) [Conduct of Third Person Claims] or notifies the Beneficiary that it does not intend to take conduct of the claim; or
 - (3) the Indemnifier fails to comply in any material respect with Section 9.2(d) [Conduct of Third Person Claims] above.

In the case of Section 9.2(e)(3) [Conduct of Third Person Claims] above, the Beneficiary may pay or settle any claim on such terms as it thinks fit, provided such settlement is in monetary terms only, and without prejudice to its rights and remedies under this

Agreement. Otherwise the Beneficiary will not pay or settle such claims without the consent of the Indemnifier, such consent not to be unreasonably withheld or delayed;

- (f) the Beneficiary may at any time give notice to the Indemnifier that it is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise, settlement or appeal of any claim, or of any incidental negotiations, to which Section 9.2(b) [Conduct of Third Person Claims] above applies. On receipt of such notice the Indemnifier will promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and will provide to the Beneficiary all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section 9.2(f) [Conduct of Third Person Claims] for reasons other than as provided in Sections 9.2(e)(2) or 9.2(e)(3) [Conduct of Third Person Claims]), then the Indemnifier will be released from any liability under its indemnity under Section 9.1 [Project Co's Obligation to Indemnify] or its obligation to provide compensation, as the case may be; and
- (g) in response to any claim regarding an item or service which, if proven, would give rise to an indemnity benefit pursuant to section 9.1(e) [Project Co's Obligation to Indemnify] (an "**Infringement Claim**"), then Project Co will promptly, and without any cost or expense to BC Hydro, either (i) obtain for BC Hydro and its successors, assigns and licensees the right to use and continue using the impugned item or service in accordance with this Agreement without risk of the Infringement Claim; or (ii) replace or modify the impugned item or service so that it is no longer subject to the Infringement Claim without any loss of functionality, performance, operation, quality or results of the impugned item or service or any other item or service.

9.3 General Obligation to Pursue Third Person Recovery

If a party (the "**Paying Party**") has paid to the other party (the "**Receiving Party**") an amount in respect of any indemnity, Supervening Event or other liability hereunder (a "**Liability Payment**"), and the Receiving Party has a *bona fide* claim for recovery of any such Liability Payment from a third Person or under any insurance required pursuant to this Agreement, the Receiving Party will:

- (a) as directed by, and at the cost of, the Paying Party either:
 - (1) promptly make all reasonable efforts to pursue and recover such claim and provide evidence of such efforts to the Paying Party; or
 - (2) assign to the Paying Party the right to pursue and recover such claim and, at the Paying Party's cost, provide reasonable cooperation in connection with the pursuit and recovery of such claim; and
- (b) if it subsequently recovers, or the Paying Party makes recovery on its behalf, whether by payment, discount, credit, saving, relief or other benefit or otherwise, an amount which is directly referable to the fact, matter, event or circumstances giving rise to the payment of

the Liability Payment, forthwith repay to the Paying Party an amount equal to the lesser of:

- (1) an amount equal to the sum recovered, or of the value of the recovery whether by discount, credit, saving, relief or otherwise, less any out of pocket costs and expenses properly incurred by the Receiving Party in recovering such sum; and
- (2) the Liability Payment,

provided that the Paying Party will be repaid only to the extent that the amount of such recovery plus the Liability Payment exceeds the total loss or liability of the Receiving Party in respect of the fact, matter or circumstance giving rise to the Liability Payment.

For greater certainty, the above reference to a "third Person" will not include, in the case where BC Hydro is the Paying Party, Project Co and Project Co Persons and their respective employees, directors, officers and agents and will not include, in the case where Project Co is the Paying Party, BC Hydro and BC Hydro Indemnified Persons.

9.4 Waiver of Rights and Remedies

No failure to exercise, and no delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

9.5 Remedies Cumulative

Subject to Sections 9.6 [Limitation on BC Hydro's Remedies], 9.7 [Limitation on Project Co's Remedies] and 9.8 [Limits on Monetary Compensation], and unless otherwise expressly provided for in this Agreement:

- (a) the rights and remedies of the parties under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise;
- (b) a party will not be prevented from enforcing a right or remedy under this Agreement on the basis that another right or remedy hereunder deals with the same or similar subject matter; and
- (c) no single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

9.6 Limitation on BC Hydro's Remedies

BC Hydro's remedies in respect of any failure by Project Co:

- (a) to achieve Service Commencement by the Target Service Commencement Date or the Service Commencement Longstop Date, or to achieve Total Completion by the Target Completion Date or the Total Completion Longstop Date will be limited to BC Hydro's rights pursuant to Section 12.4 [BC Hydro's Termination Right]; and
- (b) to perform the Services in accordance with this Agreement will be limited to Deductions in accordance with Schedule 13 [Performance and Payment Mechanisms],

provided that nothing in this Section 9.6 [Limitation on BC Hydro's Remedies] will limit BC Hydro's right to:

- (c) claim, on or after a termination of this Agreement, costs, losses, damages and expenses suffered or incurred by BC Hydro as a result of rectifying or mitigating the effects of any breach of this Agreement by Project Co, except to the extent recovered by BC Hydro under this Agreement or taken into account to reduce any compensation payable by BC Hydro pursuant to Schedule 16 [Compensation on Termination];
- (d) make a claim pursuant to Section 9.1 [Project Co's Obligation to Indemnify] or Project Co's obligations under Section 9.1 [Project Co's Obligation to Indemnify] or Section 9.2 [Conduct of Third Person Claims];
- (e) deliver to Project Co a Dispute Notice or a notice of default or termination pursuant to Section 12 [Project Co Events of Default] and pursue all remedies in respect thereof; or
- (f) pursue any other express remedy available to BC Hydro under this Agreement or any equitable remedy, including injunctive relief and specific performance.

9.7 Limitation on Project Co's Remedies

To the extent Project Co has claimed for relief or compensation for a Supervening Event, pursuant to Section 8 [Supervening Events], Project Co may not make any further claim against BC Hydro for costs, losses, damages or expenses incurred by Project Co, or for any other relief, in respect of any such events provided that nothing in this Section 9.7 [Limitation on Project Co's Remedies] will limit Project Co's right to:

- (a) deliver to BC Hydro a Dispute Notice or a notice of default or termination pursuant to Section 13 [BC Hydro Events of Default] and pursue all remedies in respect thereof; or
- (b) pursue any other express remedy available to Project Co under this Agreement or any equitable remedy, including injunctive relief and specific performance.

Project Co acknowledges and agrees that, notwithstanding that BC Hydro is an agent of the Province pursuant to the *Hydro and Power Authority Act* (British Columbia), Project Co's rights of recourse under or in relation to this Agreement, and any other agreement delivered concurrently herewith, are limited to recourse against BC Hydro, and Project Co expressly and irrevocably waives all rights of recourse under or in relation to such agreements against the Province, whether as principal or otherwise.

9.8 Limits on Monetary Compensation

Every right to claim compensation or indemnification or reimbursement under this Agreement will be construed so that recovery is without duplication to any other amount recoverable under this Agreement, whether or not so stated in the relevant section or sections of this Agreement.

Neither party will be entitled to make any claim against the other party for compensation, indemnification or reimbursement other than as provided under this Agreement.

9.9 No Liability for Indirect Losses

Unless specifically allowed in this Agreement, neither party to this Agreement will be liable to the other party, whether in contract or in tort or on any other basis whatsoever, for any Indirect Losses suffered or incurred by that other party.

9.10 BC Hydro's Right of Set Off

BC Hydro may set off any amounts owing by Project Co to BC Hydro under this Agreement against payments due by BC Hydro to Project Co under this Agreement, provided that in respect of Termination Payments payable under Section 1 [Termination for BC Hydro Event of Default or at BC Hydro's Option] or 4 [No-Fault Termination] of Schedule 16 [Compensation on Termination] such set off will be only to the extent that after any such amount has been set off, such Termination Payment made would be an amount not less than the Senior Debt.

9.11 Project Co's Right of Set Off

Except for Remittance Payments payable by Project Co pursuant to Section 4.5 [*Remittance Payment Obligation Cumulative*] of Schedule 13 [*Performance and Payment Mechanism*], Project Co may set off any other amounts owing by BC Hydro to Project Co under this Agreement against any payments due by Project Co to BC Hydro under this Agreement.

9.12 Undisputed Amounts and Interest on Disputed Amounts

A party will pay any undisputed portion of any disputed amount payable to the other party in accordance with this Agreement but any disputed portion or amount will not be payable until the Dispute is resolved in accordance with the Dispute Resolution Procedure.

If payment of any amount payable under this Agreement is delayed while the matter is in Dispute, upon resolution of the Dispute, interest will be payable on any amount determined payable pursuant to the Dispute Resolution Procedure and will be calculated at the Prime Rate compounded monthly from the time such amount became payable under this Agreement until paid.

9.13 Interest on Overdue Amounts

If payment of any amount payable under this Agreement is not made when due, including Termination Payments payable pursuant to Schedule 16 [Compensation on Termination], interest will be payable on

such amount at the Default Rate and will be calculated from the date due under this Agreement until paid, compounded monthly. The party to whom payment is owed and overdue will notify the other party at least monthly of the overdue amount and the accrued interest on that amount.

10. LUMP SUM PAYMENTS AND AVAILABILITY PAYMENT ADJUSTMENTS

10.1 Lump Sum Payments

To the extent a party:

- (a) is entitled to payment from the other party under this Agreement, including in respect of a Change under Section 7 [Changes, Minor Works and Innovation Proposals], a Supervening Event under Section 8 [Supervening Events] or an indemnification claim under Section 9 [Indemnities and Limits on Liabilities and Remedies]; or
- (b) is entitled to share in a benefit and to receive payment from the other party under this Agreement, including in respect of a Refinancing Gain under Section 5 [Financing of the Project], Innovation Proposal under Section 7 [Changes, Minor Works and Innovation Proposals] or Eligible Change in Law Event under Section 8 [Supervening Events],

subject to Section 10.3 [Adjustments to Availability Payments], the affected or entitled party may make written demand for such payments from time to time after being entitled to payment, and in respect of any Direct Losses, after such Direct Losses have been incurred, and in respect of any shared benefit, after receipt by the other party of the shared benefit, and such payments will be due and payable within 30 days after delivery of written demand supported by all relevant information.

During the Construction Period, unless otherwise agreed by the parties, BC Hydro will not make any payment to Project Co that is contemplated by this Section 10.1 [Lump Sum Payments] by any means other than a lump sum payment.

10.2 Financing of Lump Sum Payment Amounts

If by the terms of this Agreement BC Hydro is obligated to compensate, reimburse or otherwise pay Project Co in a lump sum payment, at BC Hydro's request Project Co will use all reasonable efforts to obtain the financing required to fund such payment amount on the best terms reasonably available and, to the extent that Project Co is able to obtain such financing, there will be a corresponding increase made to the Availability Payments in accordance with Section 10.3 [Adjustments to Availability Payments]. BC Hydro will:

- (a) promptly pay to Project Co an amount equal to the reasonable out-of-pocket expenses incurred by Project Co in seeking such financing provided that BC Hydro approved such expenses prior to Project Co incurring them; and
- (b) provide concurrent interim financing of any expenditures and costs to be incurred by Project Co until the earlier of the date on which such financing is obtained or payment is made pursuant to Section 10.1 [Lump Sum Payments].

BC Hydro acknowledges that the Senior Creditors have no obligation to provide the financing referred to in this Section 10.2 [Financing of Lump Sum Payment Amounts] or to subordinate or share their security.

10.3 Adjustments to Availability Payments

If either party gives notice to the other party that it wishes the parties to consider whether an entitlement to payment under this Agreement is more efficiently effected by adjustments (both increases and decreases) to Availability Payments, or if this Agreement requires that an entitlement be effected by such adjustments:

- (a) within 10 Business Days after such notice or after the determination that Availability Payments are required to be adjusted, Project Co will give notice to BC Hydro of the proposed adjustments to be made to the Availability Payments to achieve the objectives and outputs set out in Section 10.3(b) [Adjustments to Availability Payments]. Such proposed adjustments will be ascertained by entering the relevant cost adjustments and losses into the Financial Model with effect from the relevant date determined in accordance with Section 10.3(c) [Adjustments to Availability Payments];
- (b) the adjustments to the calculation of the Availability Payments will be determined so that upon comparing the output of the Financial Model as at the adjustment date (after updating the Financial Model to reflect actual performance to date) before and after the proposed adjustments to Availability Payments, and taking into account the impact of such adjustments on the economics of the Project as reflected in the Financial Model, the timing of liability for taxation and the time when the adjustments to the Availability Payments will take effect, such comparison of the output from such Financial Model shows that:
 - (1) the Equity IRR in respect of equity subscribed in and Junior Debt advanced to Project Co in accordance with the Financial Model prior to the Availability Payment adjustment will be unchanged, except to the extent required to reflect:
 - (i) any material change in the risk profile of the Project arising in connection with the circumstance giving rise to the adjustment; or
 - (ii) any benefit to the parties, including in connection with a Refinancing Gain or Innovation Proposal; and
 - (2) Project Co would not, by reason of the effect of the occurrence of the adjustment or the consequential change in cash flow during the Term as shown in the Financial Model (as adjusted), be placed, in respect of any of the Senior Financing Agreements, in a position worse than it would have been in if the change had not occurred;
- (c) the relevant date for adjustments to the Availability Payments is:

- (1) in the case of an adjustment occurring before the Service Commencement Date, the Service Commencement Date, unless otherwise agreed or specified in Schedule 14 [Changes]; or
 - (2) in the case of an adjustment occurring after the Service Commencement Date, the start of the next Payment Period in the Financial Model falling after the completion or implementation of the adjustments is achieved;
- (d) if within 10 Business Days after Project Co gives notice of the proposed adjustments the parties agree that the entitlement to payment should be effected by adjustments to the Availability Payments, or if this Agreement requires that the entitlement be effected by such adjustments, the parties will implement such adjustments and update the Financial Model accordingly; and
- (e) if completion or implementation of the adjustments is delayed beyond the scheduled date for completion or implementation by reference to which the Financial Model has been re-run in accordance with this Section 10.3 [Adjustments to Availability Payments] other than delay resulting from an audit under Section 10.4 [Audit of Financial Model], the date of adjustment to the Availability Payments payable by BC Hydro will be delayed by a period equal to the delay in the completion or implementation of the required adjustments.

10.4 Audit of Financial Model

Prior to implementing any adjustments to the Availability Payments contemplated in Section 10.3 [Adjustments to Availability Payments], BC Hydro may, at its own expense, review and audit the revised Financial Model prepared by Project Co and Project Co will provide such information as is reasonably required by BC Hydro to conduct such audit.

11. BC HYDRO'S STEP-IN RIGHTS

11.1 BC Hydro's Step-in Rights

If:

- (a) BC Hydro reasonably considers that a breach by Project Co of any obligation under this Agreement or any event or circumstance:
 - (1) is likely to create an immediate and serious threat to the health or safety of any Person, any property, the environment or the reputation, integrity of, or public confidence in, BC Hydro, the Project, the Facility or any operations related to the Project; or
 - (2) is prejudicial to the ability to carry on BC Hydro Activities, including the intended uses of the Facility to a material degree;

- (b) Project Co has subsisting thirty five (35) or more Default Points at any time during the Term;
- (c) where Project Co accumulates greater than nine hundred and sixty (960) hours of Forced Outages on Generating Units in any rolling twelve (12) month period within any period commencing in the first thirty six (36) months following Service Commencement or seven hundred and sixty (760) hours of Forced Outages on Generating Units in any rolling twelve (12) month period commencing after this initial thirty six (36) month period; or
- (d) where Project Co accumulates greater than five hundred and seventy six (576) hours of the Bypass System Non-Availability Event in any rolling twelve (12) month period.

then BC Hydro, acting reasonably may either:

- (e) if it considers that there is sufficient time and that it is likely that Project Co will be willing and able to provide assistance, require Project Co by notice to take such steps as are necessary or expedient to mitigate, rectify or protect against the breach, event, circumstance of other matter described in Section 11.1(a) and (b) [BC Hydro's Step-in Rights] inclusive, including if applicable due to breach of any Material Contract, Project Contract or Sub-Contract, suspension of the Project Contractor or Sub-Contractor, and Project Co will use all reasonable efforts to comply with BC Hydro's requirements as soon as reasonably practicable; or
- (f) if it considers there is not sufficient time, or that Project Co is not likely to be willing and able to take the necessary steps, take such steps as it considers are appropriate, either itself or by engaging others, to mitigate, rectify or protect against the breach, event, circumstance of other matter described in Section 11.1(a) and (b) [BC Hydro's Step-in Rights] inclusive, and to ensure performance of the relevant Project Work to the standards required by this Agreement, or as close as possible to those standards as the circumstances permit. BC Hydro will carry out such steps as quickly as is practicable, and in such manner as will minimize interference with Project Co's performance of its obligations under this Agreement.

If BC Hydro's exercise of its rights under this Section 11 [BC Hydro's Step-in Rights] was caused directly or indirectly by a failure of Project Co to fulfill its obligations under this Agreement and results in a "Non-Availability Event", the Non-Availability Event will continue until the breach, event or circumstance has been rectified. Where and for as long BC Hydro, acting reasonably, determines that Project Co is diligently pursuing rectification of an Outage, the accumulation of Forced Outage hours for the purpose of Section 11.1(c), [BC Hydro's Step-in Rights] shall be limited to two hundred forty (240) hours per Generating Unit per Outage.

Project Co will ensure that the provisions contained in all applicable Project Contracts, Sub-Contracts and other Material Contracts will not prevent or inhibit BC Hydro from exercising its rights under this Section 11 [BC Hydro's Step-in Rights].

11.2 BC Hydro's Rectification Rights

If BC Hydro gives notice to Project Co under Section 11.1(e) [BC Hydro's Step-in Rights] and Project Co either:

- (a) does not confirm, within five Business Days of such notice, or such shorter period as is appropriate in the case of an emergency, that it is willing to take such steps as are required in such notice or present an alternative plan to BC Hydro to mitigate, rectify and protect against the breach, event, circumstance of other matter described in Section 11.1(a) and (b) [BC Hydro Step-in Rights] inclusive that BC Hydro may, within a further five Business Days, accept or reject, acting reasonably; or
- (b) fails to take the steps as are referred to or required in such notice or accepted alternate plan within such time as set out in such notice or accepted alternate plan or within such time as BC Hydro, acting reasonably, will stipulate,

then BC Hydro may take such steps as it considers necessary or expedient to mitigate, rectify or protect against such circumstances either itself or by engaging others to take any such steps. Such steps may include the partial or total suspension of the right and obligation of Project Co to provide the relevant Project Work, but only for so long as the circumstances referred to in Section 11.1(a) [BC Hydro's Step-in Rights] subsist. If the circumstances referred to in Section 11.1(a) [BC Hydro's Step-in Rights] no longer subsist or Project Co has proposed a plan acceptable to BC Hydro, acting reasonably, for mitigating, rectifying and protecting against the circumstances that caused the Default Points threshold set out in Section 11.1(b) [BC Hydro's Step-in Rights] to have been reached, any suspension of the right and obligation of Project Co to provide any Project Work will cease and such right and obligation will once again be in full force and effect.

11.3 Notice of Change

BC Hydro will notify Project Co of any Change which BC Hydro intends to make pursuant to the exercise of BC Hydro's rights under Section 11.1(f) [BC Hydro's Step-in Rights] or Section 11.2 [BC Hydro's Rectification Rights] and provide Project Co a reasonable opportunity, taking into account all the circumstances, to comment on the proposed Change. In making such Change, BC Hydro will reasonably consider comments received in a timely manner from Project Co on the proposed Change.

11.4 No Effect on Project Co's Design and Construction Responsibility

The exercise by BC Hydro of any of its rights under this Section 11 [BC Hydro's Step-in Rights] will not reduce or affect in any way Project Co's responsibility under Section 3.1 [Design-Build Responsibility] of Schedule 5 [Design and Construction Protocols].

11.5 Allocation of Costs for BC Hydro Actions

To the extent that any of the circumstances set out in Section 11.1 [BC Hydro's Step-in Rights] arise as a result of any breach by Project Co of its obligations under this Agreement, then Project Co will pay BC Hydro the amount of all direct costs and expenses reasonably incurred by BC Hydro in exercising its

rights under Section 11.1 [BC Hydro's Step-in Rights] or Section 11.2 [BC Hydro's Rectification Rights] and an additional mark-up of 20% of such costs and expenses in respect of indirect costs and overhead not otherwise directly attributable to the exercise of such rights. In all other cases, any actions of BC Hydro under Sections 11.1 [BC Hydro's Step-in Rights] and 11.2 [BC Hydro's Rectification Rights] will constitute a Compensation Event.

12. PROJECT CO EVENTS OF DEFAULT

12.1 Project Co Events of Default

For the purposes of this Agreement, "**Project Co Event of Default**" means any of the following events or circumstances:

- (a) the occurrence of a Project Co Material Breach that is not remedied in accordance with Section 12.3 [Project Co Material Breach Cure and Remedial Program], including in accordance with the program for remediation under that Section, or the occurrence of a Project Co Material Breach for which a program for remediation has not been produced by Project Co in accordance with Section 12.3 [Project Co Material Breach Cure and Remedial Program];
- (b) the occurrence of a Project Co Insolvency Event;
- (c) Project Co abandons the Project or any material part thereof, other than pursuant to its right to suspend performance under Section 13.3 [Project Co's Options] or due to a Supervening Event;
- (d) Service Commencement does not occur on or before the Service Commencement Longstop Date;
- (e) Total Completion does not occur on or before the Total Completion Longstop Date;
- (f) Project Co breaches Section 16.1 [Limitations on Assignment of Project by Project Co] or a Change in Control occurs which is prohibited by Section 16.2 [Limitations on Change in Control];
- (g) at any time after the Service Commencement Date Project Co breaches its obligations under this Agreement which results in the criminal conviction or a conviction under the *Workers Compensation Act* (British Columbia) against Project Co or any Project Co Person or BC Hydro (an "**H&S Conviction**"), except that:
 - (1) an H&S Conviction of Project Co, a Project Co Person or BC Hydro will not constitute a Project Co Event of Default if, within 90 Business Days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Project of each relevant Project Co Person is terminated or Project Co takes such other action against

each such Project Co Person as is acceptable to BC Hydro acting reasonably;
and

- (2) in determining whether to exercise any right of termination for a Project Co Event of Default pursuant to this Section 12.1(g) [Project Co Events of Default] BC Hydro will:
- (i) act in a reasonable and proportionate manner having regard to such matters as the gravity of the offence and the identity of the person committing the act leading to the H&S Conviction; and
 - (ii) give all due consideration, where appropriate, to action other than termination of this Agreement;
- (h) if consent is required under Section 5.3 [Consent Required for Refinancing], Project Co carries out a Refinancing without BC Hydro's consent;
- (i) Project Co has subsisting forty five (45) or more Default Points at any time during the Term;
- (j) where Project Co accumulates greater than fourteen hundred and forty (1440) hours of Forced Outages on Generating Units in any rolling twelve (12) month period within any period commencing in the first thirty six (36) months following Service Commencement or nine hundred and sixty (960) hours of Forced Outages on Generating Units in any rolling twelve (12) month period commencing after this initial thirty six (36) month period;
or
- (k) where Project Co accumulates greater than eight hundred and forty (840) hours of the Bypass System Non-Availability Event in any rolling twelve (12) month period,

unless caused by non-compliance by BC Hydro with any provision of this Agreement or any document, instrument or agreement delivered to or by Project Co as required under this Agreement or by any negligent act or omission, or any wilful misconduct, of BC Hydro or any BC Hydro Person.

Where and for as long as BC Hydro, acting reasonably, determines that Project Co is diligently pursuing rectification of an Outage, the accumulation of Forced Outage hours for the purpose of Section 12.1(j), shall be limited to two hundred and forty (240) hours per Generating Unit per Outage.

12.2 Notification

Project Co will notify BC Hydro of the occurrence, and details, of any Project Co Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a Project Co Event of Default, in either case promptly when Project Co Has Knowledge of its occurrence.

12.3 Project Co Material Breach Cure and Remedial Program

After the occurrence of a Project Co Material Breach and while it is subsisting, BC Hydro may serve a notice on Project Co specifying in reasonable detail the type and nature of the Project Co Material Breach and:

- (a) Project Co will remedy such Project Co Material Breach referred to in such notice, if it is continuing, within 20 Business Days after such notice; or
- (b) if either BC Hydro, as set out in its notice, or Project Co reasonably considers that a Project Co Material Breach cannot reasonably be remedied within 20 Business Days after such notice, Project Co will deliver to BC Hydro within 10 Business Days after such notice a reasonable program (set out, if appropriate, in stages) for remedying the Project Co Material Breach. The program will specify in reasonable detail the manner in, and the latest date by, which the Project Co Material Breach is proposed to be remedied.

If Project Co puts forward a program in accordance with Section 12.3(b) [Project Co Material Breach Cure and Remedial Program], BC Hydro will have 10 Business Days after receipt of the program within which to notify Project Co that BC Hydro, acting reasonably, does not accept the program, failing which BC Hydro will be deemed to have accepted the program. If BC Hydro notifies Project Co that it does not accept the program as being reasonable, the parties will use all reasonable efforts within the following five Business Days to agree to any necessary amendments to the program put forward. In the absence of an agreement within such five Business Days, the question of whether the program (as it may have been amended by agreement) will remedy such Project Co Material Breach in a reasonable manner and within a reasonable time period, and, if not, what would be a reasonable program, may be referred by either party for resolution in accordance with the Dispute Resolution Procedure.

12.4 BC Hydro's Termination Right

If:

- (a) a Project Co Material Breach is not remedied before the expiry of the period referred to in Section 12.3(a) [Project Co Material Breach Cure and Remedial Program] and no program has been put forward by Project Co under Section 12.3(b) [Project Co Material Breach Cure and Remedial Program];
- (b) Project Co puts forward a program pursuant to Section 12.3(b) [Project Co Material Breach Cure and Remedial Program] which has been accepted by BC Hydro, including after agreement under Section 12.3 [Project Co Material Breach Cure and Remedial Program] to amendments to the program, or has been determined to be reasonable pursuant to the Dispute Resolution Procedure and Project Co fails to achieve any material element of the program or the end date for the program, as the case may be;
- (c) any program put forward by Project Co pursuant to Section 12.3(b) [Project Co Material Breach Cure and Remedial Program] is rejected by BC Hydro as not being reasonable,

and, if such rejection is disputed by Project Co, the Dispute Resolution Procedure does not find against that rejection; or

- (d) any Project Co Event of Default other than a Project Co Material Breach occurs,

then BC Hydro may, (if the Project Co Event of Default continues unwaived and unremedied), subject to the terms of the Lenders' Remedies Agreement, terminate this Agreement by notice to Project Co. The right of BC Hydro to terminate this Agreement under this Section 12.4 [BC Hydro's Termination Right] is in addition, and without prejudice, to any other right which BC Hydro may have in connection with Project Co's defaults hereunder.

For the purposes of Section 12.4(b) [BC Hydro's Termination Right], if Project Co's performance of the program is adversely affected by the occurrence of a Supervening Event or a breach by BC Hydro of its obligations under this Agreement, then, subject to Project Co complying with the mitigation and other requirements in this Agreement concerning such events, the time for performance of the program or any relevant element of it will be deemed to be extended by a period equal to the delay caused by such events which is agreed by the parties or determined in accordance with the Dispute Resolution Procedure.

12.5 BC Hydro's Costs

Project Co will reimburse BC Hydro for all reasonable costs incurred by BC Hydro in exercising any of its rights, including any relevant increased administrative expenses and actual legal expenses, under this Section 12 [Project Co Events of Default].

13. BC HYDRO EVENTS OF DEFAULT

13.1 BC Hydro Events of Default

For the purposes of this Agreement, "**BC Hydro Event of Default**" means any of the following events or circumstances:

- (a) a failure by BC Hydro to pay any amount due and owing to Project Co under this Agreement on the due date, which amount is not being disputed in good faith, and BC Hydro has not remedied such failure to pay within 10 Business Days' of notice from Project Co;
- (b) except as provided for in Section 13.1(a) [BC Hydro Events of Default], a breach, or series of breaches, by BC Hydro of any term, covenant or undertaking to Project Co, or any representation or warranty made by BC Hydro to Project Co in this Agreement is incorrect when made, the consequence of which:
 - (1) has an adverse effect on the performance of the Design, the Construction or the Services; or

- (2) results in any provision of this Agreement being unenforceable against BC Hydro,

and as a result thereof Project Co is reasonably likely to be materially deprived of the benefit of this Agreement;

- (c) if any material part of the Project, the portion of the Lands on which the Project is situated, or any interest in Project Co or any Partner is expropriated by any Governmental Authority or BC Hydro and as result thereof Project Co is reasonably likely to be materially deprived of the benefit of this Agreement; or
- (d) BC Hydro breaches Section 16.4 [Limitations on Assignment of Project by BC Hydro].

13.2 Notification

BC Hydro will notify Project Co of the occurrence, and details, of any BC Hydro Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a BC Hydro Event of Default, in either case promptly on BC Hydro Having Knowledge of its occurrence.

13.3 Project Co's Options

After the occurrence of a BC Hydro Event of Default and while a BC Hydro Event of Default is continuing, Project Co may, at its option exercise one or more of the following, as applicable:

- (a) in respect of the Project Work required to be performed prior to the Total Completion Date, suspend performance by it of its obligations under this Agreement until such time as BC Hydro has demonstrated to the reasonable satisfaction of Project Co that it will perform and is capable of performing its obligations under this Agreement and the Target Service Commencement Date, the Service Commencement Longstop Date each Target Commercial Operation Date, the Target Bypass System Completion Date, the date for completion of the Performance Verification Tests, the Target Total Completion Date and the Total Completion Longstop Date will be extended by the time such suspension is in effect;
- (b) in the case of a BC Hydro Event of Default under Section 13.1(a) [BC Hydro Events of Default], suspend performance by it of its obligations under this Agreement until BC Hydro has remedied such BC Hydro Event of Default and the Target Service Commencement Date, the Service Commencement Longstop Date each Target Commercial Operation Date, the Target Bypass System Completion Date, the date for completion of the Performance Verification Tests, the Target Total Completion Date and the Total Completion Longstop Date will be extended by the time such suspension is in effect and such additional time as may be reasonably required to return to normal operations following such suspension;

- (c) in the case of a BC Hydro Event of Default under Sections 13.1(a), 13.1(b) or 13.1(c) [BC Hydro Events of Default], serve notice on BC Hydro of the occurrence specifying details of such BC Hydro Event of Default and if the relevant matter or circumstance has not been rectified or remedied by BC Hydro or otherwise within 20 Business Days after such notice, or in the case of a BC Hydro Event of Default under Section 13.1(b) or 13.1(c) [BC Hydro Events of Default] such longer period as is reasonably required for BC Hydro to rectify or remedy such BC Hydro Event of Default as long as BC Hydro is diligently pursuing such rectification or remedy, Project Co may serve a further notice on BC Hydro terminating this Agreement with immediate effect; or
- (d) in the case of a BC Hydro Event of Default under Section 13.1(d) [BC Hydro Events of Default], terminate this Agreement by notice to BC Hydro.

13.4 Project Co's Costs

BC Hydro will reimburse Project Co for all reasonable costs incurred by Project Co in exercising any of its rights, including any relevant increased administrative expenses, interest expenses during construction and actual legal and other expenses, under this Section 13 [BC Hydro Events of Default].

14. PROCEDURE ON TERMINATION

14.1 Compensation on Termination

If this Agreement is terminated pursuant to its terms, BC Hydro will pay compensation to Project Co in accordance with Schedule 16 [Compensation on Termination].

14.2 Transfer to BC Hydro of Assets, Contracts, etc.

On or promptly after the Termination Date:

- (a) if prior to the Service Commencement Date:
 - (1) in so far as any transfer will be necessary to fully and effectively transfer property to BC Hydro, Project Co will transfer to, and there will vest in, BC Hydro (or any New Project Co as may be appointed by BC Hydro) free from all Encumbrances, except the Project Site Encumbrances:
 - (i) such part of the Facility as has been constructed on or has become affixed to the Site; and
 - (ii) all construction materials on-hand to be affixed to the Site or otherwise used in the Facility; and

- (2) if BC Hydro so elects:
 - (i) the construction plant and equipment will remain available to BC Hydro or the New Project Co for the purposes of completing the Design and Construction; and
 - (ii) all other Project-related plant and all materials on or near the Site will remain available to BC Hydro or the New Project Co for the purposes of completing the Design and Construction,

subject to payment by BC Hydro of the Design-Builder's reasonable charges, and
- (b) if BC Hydro so elects, Project Co will cause any or all of the Project Contracts to be novated or assigned to BC Hydro, provided that:
 - (1) Project Co will not be obligated to assign to BC Hydro any of Project Co's rights to claim against the applicable Project Contractor that arose under such Project Contract prior to the date of such novation or assignment; and
 - (2) if termination occurs under Section 13.3 [Project Co's Options] the consent of the applicable Project Contractor will be required;
- (c) Project Co will, or will cause any Material Contract Party to, offer to sell to BC Hydro at Fair Market Value free from any security interest all or any part of the stocks of material and other assets, road vehicles, spare parts and other moveable property owned by Project Co or any Material Contract Party and reasonably required by BC Hydro in connection with the operation of the Facility or the provision of the Services, Project Co shall grant or cause to be granted licenses to BC Hydro to use for BCH IP Purposes only all Project Intellectual Property and related IP Rights licensed by the Material Contract Party to Project Co or a Project Co Person for this Project that is reasonably required by BC Hydro in connection with the operation of the Facility or the provision of the Services to the extent Project Co or Project Co Persons have not already granted a licence to BC Hydro pursuant to Section 4.15 [Intellectual Property and IP Rights] and subject to the terms of Section 4.15 [Intellectual Property and IP Rights];
- (d) Project Co will deliver to BC Hydro, to the extent not already delivered to BC Hydro:
 - (1) all Design Data, Design Drawings, other existing designs, plans and other documents produced in connection with the Facility and in the control of Project Co;
 - (2) one complete set of existing "as built drawings" showing all alterations made to the Facility since the commencement of operation of the Facility;
 - (3) one complete set of existing up to date maintenance, operation and training manuals for the Facility; and

- (4) all models and model test reports

subject to reasonable generally applicable third party licensing terms;

- (e) in addition to the novation or assignment of the IP Licences pursuant to Section 14.2(b) [Transfer to BC Hydro of Assets, Contracts, etc.], and subject to terms of Section 4.15 [Intellectual Property and IP Rights], Project Co will use all reasonable efforts to ensure that the benefit of existing Project Intellectual Property and Third Party Technology and all warranties in respect of mechanical and electrical plant and equipment used or made available by Project Co under this Agreement and included in the Facility but not previously assigned or licensed to BC Hydro are assigned, licensed or otherwise transferred to BC Hydro;
- (f) to the extent permitted by Law, Project Co will assign to BC Hydro, or any New Project Co as may be appointed by BC Hydro, all Permits;
- (g) Project Co will deliver to BC Hydro all records required to be kept by Project Co hereunder (Project Co having the right to retain copies thereof), unless such documents are:
- (1) required by Law to be retained by Project Co or a Project Contractor or Sub-Contractor, in which case complete copies will be delivered to BC Hydro; or
 - (2) privileged from production pending resolution of any outstanding Dispute, in which case such records will be delivered forthwith upon resolution of such Dispute, provided that any records that are necessary for the performance of the Design, the Construction or the Services will be delivered to BC Hydro no later than the Termination Payment Date; and
- (h) return to BC Hydro all Confidential Information of BC Hydro within the possession or control of Project Co or any Project Contractor or Sub-Contractor, except in the case of electronically archived data that cannot reasonably be destroyed which may be retained by Project Co, any Project Contractor or Sub-Contractor, any Senior Creditor and any Person to whom any Senior Creditor has disclosed such information under customary confidentiality obligations in the context of marketing the Senior Debt, provided the confidentiality obligations in respect of such Confidential Information shall continue to apply following the expiry of the Term.

Project Co will ensure that provision is made in all applicable contracts to ensure that BC Hydro will be in a position to exercise its rights, and Project Co will be in a position to comply with its obligations, under this Section 14.2 [Transfer to BC Hydro of Assets, Contracts, etc.] without additional payment or compensation to any Person.

14.3 Transitional Arrangements

Project Co will:

- (a) on request by BC Hydro, for a period not to exceed three months after the Termination Date:
 - (1) co-operate fully with BC Hydro and any successor providing to BC Hydro services in the nature of any of the Services or any part of the Services to achieve a smooth transfer of the manner in which BC Hydro obtains services in the nature of the Services and to avoid or mitigate in so far as reasonably practicable any inconvenience or any risk to the health and safety of Persons; and
 - (2) continue to provide the Services or any part of the Services required by BC Hydro and BC Hydro will pay to Project Co a reasonable price for such services determined with reference to Project Co's price for such Services prior to the Termination Date;
- (b) subject to Section 14.3(a) [Transitional Arrangements], as soon as practicable following the Termination Date remove from the Site all property of Project Co or any Project Co Person that is not acquired by BC Hydro pursuant to Section 14.2 [Transfer to BC Hydro of Assets, Contracts, etc.], or not belonging to BC Hydro, and if it has not done so within 60 Business Days after any notice from BC Hydro requiring it to do so BC Hydro may, without being responsible for any loss, damage, costs or expenses, remove and sell any such property and will hold any proceeds less all costs incurred to the credit and direction of Project Co;
- (c) subject to Section 14.3(a) [Transitional Arrangements], on the Termination Date deliver to BC Hydro:
 - (1) all keys, access codes or other devices required to operate the Facility in the control of Project Co; and
 - (2) any Project Intellectual Property and Third Party Technology required to be delivered by Project Co pursuant to Sections 14.2(b) and 14.2(e) [Transfer to BC Hydro of Assets, Contracts, etc.];
- (d) subject to Section 14.3(a) [Transitional Arrangements], as soon as practicable after the Termination Date, vacate, and cause the Project Co Persons to vacate, those parts of the Facility and of the Site over which Project Co has control and occupation and will leave such parts of the Site and the Facility in a safe, clean and orderly condition;
- (e) comply with all Handback Requirements; and
- (f) Project Co shall not be responsible for any environmental issues or environmental incidents caused, directly or indirectly, by a Facility User or other third party, provided that such issues or incidents have not resulted from Project Co's failure to perform the Services or its other obligations in accordance with the Project Agreement.

14.4 Project Co to Cooperate

If BC Hydro wishes to conduct a competition prior to the Expiry Date with a view to entering into an agreement for the provision of services, which may or may not be the same as, or similar to, the Services or any of them, following the expiry of this Agreement, Project Co will prior to the Expiry Date co-operate with BC Hydro fully in such competition process including by:

- (a) providing any information in Project Co's control or possession which BC Hydro may reasonably require to conduct such competition except that information which is commercially sensitive to Project Co or a Project Co Person, and for such purpose commercially sensitive means information which would if disclosed to a competitor of Project Co or a Project Co Person give that competitor a competitive advantage over Project Co or the Project Co Person and thereby prejudice the business of Project Co or the Project Co Person; and
- (b) assisting BC Hydro by providing any participants in such competition process with access to the Site, and the Facility provided such access does not affect the Services in a way that results in any reduction in Availability Payments.

Project Co will be entitled to reimbursement for all reasonable out of pocket expenses and internal costs incurred in connection with the foregoing services.

14.5 Ongoing Obligations

Subject to any exercise by BC Hydro of its rights under Section 11.1 [BC Hydro's Step-In Rights], the parties shall continue to perform their respective obligations under this Agreement, notwithstanding the giving of any notice of default or notice of termination until the termination of this Agreement becomes effective in accordance with Section 12.4 [BC Hydro's Termination Right], Section 13.3 [Project Co's Options] or other sections of this Agreement expressly confirming the effective date of a termination.

15. DISPUTE RESOLUTION

15.1 Procedure

Except as otherwise provided in this Agreement, any Dispute will be resolved in accordance with, and the parties will comply with, the Dispute Resolution Procedure set out in Schedule 19 [Dispute Resolution Procedure].

15.2 Undisputed Amounts

A party will pay any undisputed portion of any disputed amount to the other party in accordance with this Agreement but any disputed portion or amount will not be payable until the Dispute is resolved as aforesaid.

16. ASSIGNMENT/CHANGE IN CONTROL

16.1 Limitations on Assignment of Project by Project Co

Project Co will not assign, transfer or otherwise dispose of any interest in this Agreement or a Material Contract, except:

- (a) as security, substantially in a form approved by BC Hydro, acting reasonably, prior to its grant for any loan made to Project Co under any Senior Financing Agreement and provided the Senior Creditors enter into the Lenders' Remedies Agreement;
- (b) in connection with the exercise of rights of the Senior Creditor under the Senior Financing Agreements in accordance with the Lenders' Remedies Agreement; or
- (c) otherwise:
 - (1) prior to the day (the "**Transfer Restriction Date**") that is 365 Business Days after the Service Commencement Date, with the written consent of BC Hydro, which may be given or withheld in BC Hydro's discretion, and
 - (2) after the Transfer Restriction Date, with the written consent of BC Hydro, which will not be unreasonably withheld or delayed,

provided that in the case of an assignment under 16.1(b), or 16.1(c) [Limitations on Assignment of Project by Project Co] above the assignee assumes all the obligations of Project Co under this Agreement.

16.2 Limitations on Change in Control

No Change in Control of Project Co will be permitted (whether by Project Co or otherwise) to occur, except:

- (a) in connection with the exercise of rights of the Senior Creditors under the Senior Financing Agreements in accordance with the Lenders' Remedies Agreement;
- (b) arising from any bona fide open market transaction in any shares or other securities of Project Co or of any Partner or of any Holding Company of a Partner effected on a recognized public stock exchange;
- (c) in connection with respect to the Partners and their Affiliates, any direct or indirect change in the ownership or control of any legal, beneficial or equitable interest in any or all of the shares, units or equity, to a member of SNC-Lavalin Group Inc. and any body corporate, partnership, Affiliate, or other entity controlled (as defined in the *Business Corporations Act* (British Columbia)) by SNC-Lavalin Group Inc. or its Affiliates controlled or managed by SNC-Lavalin Group Inc. or its Affiliates; or
- (d) otherwise:

- (1) prior to the Transfer Restriction Date, with the written consent of BC Hydro, which may be given or withheld in BC Hydro's discretion; and
- (2) after the Transfer Restriction Date, with the written consent of BC Hydro, which will not be unreasonably withheld or delayed.

16.3 Factors BC Hydro May Consider

In determining whether to provide its consent under Section 16.1(c)(2) [Limitations on Assignment of Project by Project Co] or 16.2(d)(2) [Limitations on Change in Control], and without limiting BC Hydro's discretion thereunder, it will be reasonable for BC Hydro to refuse its consent if:

- (a) the proposed assignee or the new party in control of Project Co, as the case may be, or any of their Affiliates, is a Restricted Person;
- (b) the proposed assignee or the new party in control of Project Co, as the case may be, is, in the reasonable opinion of BC Hydro, not sufficiently creditworthy taking into account the nature of the obligations under this Agreement;
- (c) the assignment or Change in Control could, in the reasonable opinion of BC Hydro, have a material adverse effect on BC Hydro, the Project or the Facility; or
- (d) the proposed assignee or the new party in control of Project Co, as the case may be, is, in the reasonable opinion of BC Hydro, not reasonably capable of performing its obligations under this Agreement.

16.4 Limitations on Assignment of Project by BC Hydro

- (a) BC Hydro may, without the consent of Project Co, assign or transfer any of its interests in and under this Agreement to a Qualified Governmental Entity that executes and delivers to Project Co an agreement in form and substance satisfactory to Project Co, acting reasonably, whereby such assignee or transferee assumes and agrees to observe, perform and be bound by, all the obligations of BC Hydro under this Agreement.
- (b) Except as provided in Section 16.4(a) [Limitations on Assignment of Project by BC Hydro], BC Hydro shall not, without the prior consent of Project Co, which may be withheld in Project Co's discretion, assign or otherwise transfer any of its interest in or under this Agreement.

16.5 Costs of Request for Consent

If Project Co requests consent to an assignment, transfer or disposition pursuant to Section 16.1 [Limitations on Assignment of Project by Project Co] or to a Change in Control pursuant to Section 16.2 [Limitations on Change in Control], Project Co will pay BC Hydro's reasonable internal administrative and personnel costs and all reasonable out-of-pocket costs in connection with considering any such request.

At the time of such request, Project Co will make a payment to BC Hydro in the amount of \$ [REDACTED] (Index Linked) against its obligation under this Section 16.5 [Costs of Request for Consent]. After BC Hydro renders its decision, BC Hydro will either refund any over payment or invoice Project Co for any additional amounts owing under this Section 16.5 [Costs of Request for Consent] and Project Co will promptly pay such amount to BC Hydro.

17. GENERAL

17.1 Confidentiality

- (a) Subject to Section 17.1(b) [Confidentiality], each party will hold in confidence any Confidential Information received from the other party, except that this Section 17.1 [Confidentiality] will not restrict:
 - (1) Project Co and BC Hydro from disclosing or granting access to such information to its professional advisers and consultants, to the extent necessary, to enable it to perform, or to cause to be performed, or to enforce its rights or obligations under this Agreement, and provided further that Project Co may, subject to obtaining confidentiality restrictions similar to those set out in this Agreement:
 - (i) provide to the Senior Creditors and other potential lenders, equity providers, underwriters, arrangers, investment dealers, monoline insurers and their respective advisors such documents and other information as are reasonably required by them in connection with raising financing for the Project or complying with the terms of the Senior Financing Agreements or related agreements; and
 - (ii) provide to a Project Contractor and its advisors, or provide or cause to be provided to other third parties, Confidential Information which is necessary to enable Project Co to perform, or to cause to be performed, its obligations under this Agreement;
 - (2) BC Hydro disclosing Confidential Information in any regulatory proceeding, whether in respect of this Agreement or other matters, to the extent that, BC Hydro is legally compelled to disclose, or BC Hydro considers disclosure necessary or desirable to support its position in any such proceeding or otherwise fulfill its duties to any Governmental Authority or its customers, provided that BC Hydro makes and reasonably pursues a request, that is reasonable and customary in the circumstances for confidential treatment of the information disclosed. BC Hydro's failure to obtain a commitment regarding such confidential treatment, however, shall not preclude BC Hydro's disclosure of such Confidential Information;
 - (3) BC Hydro from disclosing or granting access to such information to any provincial ministry, Partnerships British Columbia Inc. and any other Governmental

Authority which requires the information in relation to the Project, provided BC Hydro makes reasonable efforts to obtain commitments from those parties to preserve the confidentiality of such Confidential Information in accordance with this Section 17.1 [Confidentiality]. Under no circumstances shall BC Hydro be liable for any disclosure of any Confidential Information by, on behalf of, or through the Government of British Columbia, any provincial ministry, Partnerships British Columbia Inc. or any other Governmental Authority; and

- (4) BC Hydro from authorizing other Persons to access and use Project Intellectual Property and related IP Rights in accordance with this Agreement.
- (b) Subject to any restrictions on the Confidential Information which are imposed by a third Person that may own any Confidential Information, the obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:
- (1) which the party that disclosed the Confidential Information confirms in writing is not required to be treated as Confidential Information;
 - (2) which is in, or comes into, the public domain otherwise than through any disclosure prohibited by this Agreement;
 - (3) which is known to the recipient of the Confidential Information before disclosure to it by the other party, or the recipient thereafter by way of disclosure to the recipient by any other Person, who to the knowledge of the recipient is not under any obligation of confidentiality with respect thereto;
 - (4) to the extent any Person is required to disclose such Confidential Information by Law, including without limitation, a disclosure required under the *Freedom of Information and Protection of Privacy Act* (British Columbia);
 - (5) to the extent consistent with any BC Hydro policy concerning BC Hydro's Confidential Information, the details of which have been provided to Project Co in writing prior to the disclosure; or
 - (6) that BC Hydro may be entitled to receive from Project Co pursuant to this Agreement for the operation, maintenance or improvement of the Project in the event of, or following, termination of this Agreement.
- (c) Without prejudice to any other rights and remedies that the other party may have, each of the parties agrees that damages may not be an adequate remedy for a breach of Section 17.1(a) [Confidentiality] and that the other party will, in such case, be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of Section 17.1(a) [Confidentiality], subject, in the case of a claim for any such remedy against BC Hydro, to the provisions of the *Crown Proceeding Act* (British Columbia).

17.2 Personal Information

Project Co will, and will require Project Contractors and Sub-Contractors to comply with Schedule 25 [Privacy Protection] in respect of the collection, holding, processing, use, storage and disclosure of Project PI.

17.3 Security Sensitive Work

Project Co shall comply with the requirements regarding Security Sensitive Work set out in Section 11 [Security Sensitive Work] of Schedule 12 [Safety and Security].

17.4 Public Communications

Unless expressly provided in this Agreement or otherwise required by any Law (but only to that extent), neither party will make or permit to be made any public announcement or disclosure whether for publication in the press, radio, television or any other medium of any Confidential Information or any matters relating thereto, without the consent of the other party (which will not be unreasonably withheld or delayed). The parties will comply with Schedule 11 [Communication and Consultation].

17.5 Law of Agreement

This Agreement is made pursuant to the laws of the Province of British Columbia and the laws of Canada applicable therein and is governed by and construed in accordance with such laws.

17.6 Attornment

Subject to 15.1 [Procedure], for the purposes of any legal actions or proceedings brought by any party hereto against the other party, the parties hereby irrevocably submit to the exclusive jurisdiction of the courts of the Province of British Columbia and acknowledge the competence and the convenience of those courts and the propriety of the venue. The parties will be bound by any judgment of those courts, and will not to seek, and hereby waive, review on the merits of any judgement, order or declaration of such courts by the courts of any other jurisdiction.

17.7 Entire Agreement, Waivers and Consents in Writing

This Agreement and the instruments and documents to be executed and delivered pursuant to it constitute the entire agreement between the parties, expressly superseding all prior agreements and communications (both oral and written) between any of the parties hereto with respect to all matters contained herein or therein, and except as stated herein or the instruments and documents to be executed and delivered pursuant hereto, contains all the representations and warranties of the respective parties. In addition:

- (a) no waiver of any provision of this Agreement; and
- (b) no consent or approval required pursuant to the terms of this Agreement,

is binding or effective unless it is in writing and signed by the party providing such waiver, consent or approval. Without limiting the generality of the foregoing, and except as expressly provided for in Section 4.15(g) [Third Party Technology], 4.15(i) [Source Code and Explanatory Materials] and 4.15(k) [Software] of this Agreement, end user license agreements and other agreements, terms and conditions that are included with any item provided as part of the Project Work are of no force or effect and do not in any way amend this Agreement, even if they are accepted or agreed to (whether by signing or by other form of acceptance) before, during or after the delivery, acceptance or use of the item.

17.8 Notices

Any notice or communication required or permitted to be given under this Agreement will be in writing and will be considered to have been sufficiently given if delivered by hand or transmitted by electronic transmission or facsimile to the address or electronic mail address or fax number of each party set out below:

if to BC Hydro:

BC Hydro
6940 – 14th Avenue
Burnaby, B.C. V3N 1Y9

Attention: [REDACTED]

Fax: [REDACTED]

E-mail: [REDACTED]

if to Project Co:

InPower BC General Partnership
1500 – 1075 West Georgia Street
Vancouver, BC V6E 3C9

[REDACTED]

[REDACTED]

[REDACTED]

or to such other address or electronic mail address or fax number as any party may, from time to time, designate in the manner set out above. Any such notice or communication will be considered to have been received:

- (a) if delivered by hand during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and
- (b) if delivered by electronic mail or facsimile during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day provided that:
 - (1) the receiving party has, by electronic mail or facsimile or by hand delivery, acknowledged to the notifying party that it has received such notice; or
 - (2) within 24 hours after sending the notice, the notifying party has also delivered a copy of such notice to the receiving party by hand delivery.

17.9 Further Assurances

The parties will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as the other may reasonably request for the purpose of giving effect to this Agreement or for the purpose of

establishing compliance with the representations, warranties and obligations of this Agreement. Without limiting the generality of the foregoing, at any time upon request by BC Hydro, but subject to the terms of Section 4.15 [Intellectual Property and IP Rights], Project Co will promptly execute and deliver, and cause all relevant Project Co Persons to execute and deliver, to BC Hydro a written agreement (in form prescribed by BC Hydro acting reasonably) confirming BC Hydro' ownership of, or license to use, Intellectual Property and related IP Rights as contemplated by this Agreement.

17.10 Counterparts

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement so that it will not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

17.11 No Partnership, etc.

Nothing contained in this Agreement nor any action taken pursuant hereto or thereto will be deemed to constitute BC Hydro and Project Co a partnership, joint venture or any other similar such entity.

17.12 Survival


Notwithstanding any other provision of this Agreement, the provisions of Section 6.16 [Third Person Liability Insurance as an Uninsurable Risk], Section 8 [Supervening Events] (if and to the extent a Compensation Event relates to a claim made by a third Person against Project Co after the Termination Date), Section 9 [Indemnities and Limits on Liabilities and Remedies], Section 14 [Procedure on Termination], Section 15 [Dispute Resolution], Section 17.1 [Confidentiality], Section 17.2 [Personal Information], Appendix 7E [Condition Assessment Requirements] to Schedule 7 [Services], Schedule 16 [Compensation on Termination] and Schedule 19 [Dispute Resolution Procedure], and all other provisions necessary for the interpretation and enforcement of the foregoing provisions, will survive the expiry or any earlier termination of this Agreement.

[Remainder of this page left intentionally blank]

[Signature pages to follow]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

Per: _____ 

INPOWER BC GENERAL PARTNERSHIP, by its partners:

[REDACTED]

Per: _____ [REDACTED]

Per: _____ [REDACTED]

[REDACTED]

Per: _____ [REDACTED]

Per: _____ [REDACTED]