

WORKER ACCOMMODATION PROJECT AGREEMENT

SCHEDULE 11

PRICES, PAYMENT AND SECURITY

TABLE OF CONTENTS

1 INTERPRETATION..... 1

1.1 Definitions ..... 1

1.2 General ..... 4

2 FACILITY CONSTRUCTION PAYMENTS..... 4

[REDACTED]

3 SERVICE PAYMENTS ..... 6

[REDACTED]

4 DECOMMISSIONING PAYMENT ..... 8

4.1 [REDACTED]

5 DEDUCTIONS: UNAVAILABILITY EVENTS AND SERVICE FAILURES..... 10

[REDACTED]

6 DEDUCTIONS IN RESPECT OF UNAVAILABILITY EVENTS ..... 12

[REDACTED]

7 DEDUCTIONS IN RESPECT OF SERVICE FAILURES..... 13

[REDACTED]

8 TEMPORARY REPAIRS ..... 15

8.1 [REDACTED]

**9 TEMPORARY ALTERNATIVE ACCOMMODATION ..... 16**

[REDACTED]

**10 REVIEW OF FUNCTIONAL UNITS, DEDUCTIONS, ETC. .... 17**

10.1 Initiation of Review ..... 17

10.2 Results of Review ..... 18

**11 FAILURE BY PROJECT CO TO MONITOR OR REPORT ..... 18**

11.1 Performance Monitoring Report..... 18

11.2 Failure to Report ..... 18

11.3 Misconduct..... 19

11.4 No Prejudice to Other Rights ..... 19

**12 RESIDUAL VALUE PAYMENT ..... 19**

[REDACTED]

**13 PERFORMANCE SECURITY (TERM) HOLDBACK ..... 22**

13.1 Performance Security (Term) Holdback ..... 22

13.2 Performance Security (Term) Holdback Release ..... 22

13.3 Substitute Security ..... 23

**14 GENERAL PAYMENT PROVISIONS ..... 23**

14.1 Invoicing and Payment Arrangements ..... 23

14.2 Taxes Included..... 25

14.3 GST..... 25

14.4 Input Tax Credits..... 25

14.5 Payment of Taxes..... 25

14.6 Tax Refunds..... 25

14.7 Tax Indemnity ..... 26

14.8 Non-Resident ..... 26

14.9 Non Resident Workers..... 26

14.10 Calculation Relating to Portion of Contract Month..... 26

14.11 Payment Dispute..... 26

**15 INDEXATION ..... 26**

[REDACTED]

**16 PERFORMANCE SECURITY (CONSTRUCTION PERIOD AND OPERATING PERIOD)..... 27**

16.1 Construction Period ..... 27

16.2 Operating Period..... 29

16.3 No Limitation of Remedies..... 30

16.4 Return of Performance Security ..... 30

<b>APPENDIX 11A</b>	<b>FUNCTIONAL UNITS</b>
<b>APPENDIX 11B</b>	<b>FORM OF LETTER OF CREDIT</b>
<b>APPENDIX 11C</b>	<b>NOT USED</b>
<b>APPENDIX 11D</b>	<b>NOT USED</b>
<b>APPENDIX 11E</b>	<b>FORM OF PARENT COMPANY GUARANTEE</b>

WORKER ACCOMMODATION PROJECT AGREEMENT

SCHEDULE 11

PRICES, PAYMENT AND SECURITY

1 INTERPRETATION

1.1 Definitions

In this Schedule 11 [Prices, Payment and Security], in addition to the definitions set out in Schedule 1 [Definitions and Interpretation]:

[REDACTED]

[REDACTED]

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1.2 General

In this Schedule 11 [Prices, Payment and Security]:

- (a) "m" means Contract Months; and
- (b) "y" means Contract Years.

**2 FACILITY CONSTRUCTION PAYMENTS**

2.1 Phased Construction Payments

As described in Schedule 2 [Design and Construction Protocols], Project Co will construct the Facility in Phases.

[REDACTED]

[REDACTED]

[REDACTED]





**3 SERVICE PAYMENTS**

**3.1 [REDACTED]**

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**4 DECOMMISSIONING PAYMENT**

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**5 DEDUCTIONS: UNAVAILABILITY EVENTS AND SERVICE FAILURES**

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**6 DEDUCTIONS IN RESPECT OF UNAVAILABILITY EVENTS**

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**7 DEDUCTIONS IN RESPECT OF SERVICE FAILURES**

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**8 TEMPORARY REPAIRS**

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**9 TEMPORARY ALTERNATIVE ACCOMMODATION**

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**10 REVIEW OF FUNCTIONAL UNITS, DEDUCTIONS, ETC.**

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**11 FAILURE BY PROJECT CO TO MONITOR OR REPORT**

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12 RESIDUAL VALUE PAYMENT

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13 PERFORMANCE SECURITY (TERM) HOLDBACK

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**14 GENERAL PAYMENT PROVISIONS**

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#### 14.2 Taxes Included

All prices and amounts as included in this Agreement include all applicable taxes, PST, duties, levies and charges (excluding only GST) payable in respect of amounts assessed on any of Project Co, Subcontractors, or their employees or other Persons engaged by or through them by any and all Governmental Authorities in connection with carrying out the Design and Construction and performance of the Services. Project Co will be responsible to incur and bear all such taxes on inputs relating to the performance of this work.

Project Co will identify in each invoice submitted in accordance with Section 14.1 all PST, if any, payable by BC Hydro to Project Co and included in any price or amount under this Agreement in accordance with applicable Laws.

#### 14.3 GST

Project Co will be registered for GST pursuant to the *Excise Tax Act* (Canada). GST will be identified as a separate line item on all invoices, and will be payable by BC Hydro to Project Co as a separate item in addition to the price. Project Co will provide to BC Hydro on all invoices Project Co's GST registration number and all other information as may be required pursuant to the *Excise Tax Act* (Canada).

#### 14.4 Input Tax Credits

Project Co will provide BC Hydro with the documentation and information that BC Hydro requires under the *Excise Tax Act* (Canada) and related regulations to claim input tax credits to recover the GST payable relating to the Agreement.

Where applicable, BC Hydro will provide Project Co with the documentation and information required under the *Excise Tax Act* (Canada) and related regulations for Project Co to claim input tax credits to recover the GST payable relating to taxable supplies made by BC Hydro to Project Co and will provide Project Co with the documentation and information required under the *Provincial Sales Tax Act* (British Columbia) and related regulations for Project Co to claim any exemption or refund in respect of PST in respect of inputs relating to the performance of this work.

#### 14.5 Payment of Taxes

Except as expressly set out otherwise in the Agreement, Project Co is solely responsible for and will pay all taxes, duties, levies and charges (excluding only GST) payable in respect of amounts assessed on any of Project Co, Subcontractors, or their employees or other Persons engaged by or through them by any Governmental Authorities in connection with carrying out the Design and Construction and performance of the Services ("**Project Co Taxes**").

Project Co will be solely responsible for and pay all or self-assess all GST, PST and customs duties with respect to all imported equipment and materials regardless of whether such equipment or material is held in the name of Project Co, a Subcontractor or BC Hydro at the time of import ("**Project Co Duties**").

#### 14.6 Tax Refunds

Project Co will, where applicable, use all commercially reasonable efforts to provide to BC Hydro any documentation or information requested by BC Hydro for BC Hydro to obtain all available exemptions, deductions, rebates, remissions and refunds for all Project Co Taxes and Project Co Duties, including any other related charges, including any related interest, fines or penalties.



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**16 PERFORMANCE SECURITY (CONSTRUCTION PERIOD AND OPERATING PERIOD)**

**16.1 Construction Period**

On the Closing Date, or by such later date as Hydro’s Representative may agree to in writing, and, unless otherwise agreed to in writing by Hydro’s Representative, Project Co will deliver to BC Hydro the performance security as specified below:

- (a) Project Co will deliver to BC Hydro a Letter of Credit (CP) (the **Letter of Credit (CP)**) in an amount equal to [REDACTED] executed by a bank acceptable to BC Hydro. The Letter of Credit (CP) will be held by BC Hydro as security for Project Co’s performance of all Design and Construction obligations under this Agreement, including the payment of liquidated damages, if any, as specified in this Agreement.
  - (i) *Letter of Credit (CP) Form* The Letter of Credit (CP) will be irrevocable, unconditional and in the form and contain the content as set out in Appendix 11B [Form of Letter of Credit] unless otherwise agreed in writing by BC Hydro.

The Letter of Credit (CP) will be issued or confirmed by a branch in Vancouver, British Columbia of a domestic Canadian financial institution having a minimum

credit rating not less than Standard & Poor's A-, Moody's A3 or DBRS A (low). If the issuing financial institution is not a domestic Canadian financial institution, the sovereign country's debt rating will be no less than Standard & Poor's AA, Moody's Aa2 or DBRS AA and the financial institution must be acceptable to BC Hydro. BC Hydro, at its discretion, may accept a sovereign debt rating of Standard & Poor's AA-, Moody's Aa3 or DBRS AA (low) if the issuing bank has a rating of not less than Standard & Poor's A, Moody A2 or DBRS A. If such credit rating agencies publish differing credit ratings for the same financial institution, the lowest credit rating of any of the credit rating agencies will apply for the purposes of this Section 16.1(a)(i); and

- (ii) *Letter of Credit (CP) Term* The Letter of Credit (CP) will be maintained by Project Co (including renewal and replacement as necessary), and will remain in full force and effect for the benefit of BC Hydro, until the end of the Construction Period;
- (b) Project Co will deliver to BC Hydro a parent company guarantee (the **Parent Company Guarantee (CP)**) in an amount equal to [REDACTED] executed by ATCO. The Parent Company Guarantee (CP) will be held by BC Hydro as security for Project Co's performance of all Design and Construction obligations under this Agreement, including the payment of liquidated damages, if any, as specified in this Agreement.
- (i) *Parent Company Guarantee (CP) Form* The Parent Company Guarantee (CP) will be in the form and contain the content as set out in Appendix 11E [Form of Parent Company Guarantee] unless otherwise agreed to by BC Hydro in writing; and
  - (ii) *Parent Company Guarantee (CP) Term* The Parent Company Guarantee (CP) will be maintained by Project Co (including renewal and replacement as necessary), and will remain in full force and effect for the benefit of BC Hydro, until the earlier of the end of the Construction Period and the Termination Date;
- (c) Following the Substantial Completion Date for Phase 2 of the Facility, the Letter of Credit (CP) and the Parent Company Guarantee (CP) will each be reduced to [REDACTED] of the amount of the Letter of Credit (CP) and the Parent Company Guarantee (CP), respectively, and will remain in place at the reduced level until the end of the Construction Period;
- (d) If Project Co breaches any term of, or fails to perform any obligation under this Agreement (including failing to pay any amount owing to BC Hydro under this Agreement) and fails to cure such breach or failure to perform within any applicable cure period, BC Hydro will have the immediate and absolute right to pursue its remedies under any and all of the performance securities described in this Section 16.1. For greater certainty, BC Hydro will be entitled to pursue its remedies under any of the performance securities described in this Section 16.1 simultaneously, as long as there is no double recovery, and will not be required to exhaust its recourse under any one performance security under this Section 16.1 before pursuing its remedies under another performance security under this Section 16.1, or any other remedy available to it under this Agreement or at law; and
- (e) If, in accordance with the terms of the Letter of Credit (CP), the issuing bank gives notice to BC Hydro of its determination not to extend the Letter of Credit (CP) and Project Co fails to provide BC Hydro with acceptable replacement security at least 60 days prior to the expiration date of the Letter of Credit (CP), BC Hydro will have the immediate and absolute right to draw upon the Letter of Credit (CP) for the full amount thereof, in which case BC Hydro will hold the proceeds thereof as a cash deposit (without interest) to be drawn on and applied in the same manner as the Letter of Credit (CP). Any unused amount of such cash deposit will be returned to Project Co at the time prescribed in Section 16.4 of this Schedule 11 [Prices, Payment and Security] for the return of any unused performance security.

## 16.2 Operating Period

Not later than 60 days prior to the Target Service Commencement Date, or by such later date as Hydro's Representative may agree to in writing, and, unless otherwise agreed to in writing by Hydro's Representative, Project Co will deliver to BC Hydro the performance security as specified below:

(a) Project Co will deliver to BC Hydro:

(i) a Letter of Credit (OP) (the '**Letter of Credit (OP)**') in an amount equal to [REDACTED], executed by a bank acceptable to BC Hydro. The Letter of Credit (OP) will be held by BC Hydro as security for Project Co's performance of all Services obligations under this Agreement, including the payment of liquidated damages, if any, as specified in this Agreement.

(A) *Letter of Credit (OP) Form.* The Letter of Credit (OP) will be irrevocable, unconditional and in the form and contain the content as set out in Appendix 11B [Form of Letter of Credit] unless otherwise agreed in writing by BC Hydro.

The Letter of Credit (OP) will be issued or confirmed by a branch in Vancouver, British Columbia of a domestic Canadian financial institution having a minimum credit rating not less than Standard & Poor's A-, Moody's A3 or DBRS A (low). If the issuing financial institution is not a domestic Canadian financial institution, the sovereign country's debt rating will be no less than Standard & Poor's AA, Moody's Aa2 or DBRS AA and the financial institution must be acceptable to BC Hydro. BC Hydro, at its discretion, may accept a sovereign debt rating of Standard & Poor's AA-, Moody's Aa3 or DBRS AA (low) if the issuing bank has a rating of not less than Standard & Poor's A, Moody A2 or DBRS A. If such credit rating agencies publish differing credit ratings for the same financial institution, the lowest credit rating of any of the credit rating agencies will apply for the purposes of this Section 16.2(a)(i)(A); and

(B) *Letter of Credit (OP) Term.* The Letter of Credit (OP) will be maintained by Project Co (including renewal and replacement as necessary), and will remain in full force and effect for the benefit of BC Hydro, until the earlier of the Termination Date or the commencement of Decommissioning; and

(ii) a parent company guarantee (the '**Parent Company Guarantee (OP)**') in an amount equal to [REDACTED] executed by ATCO. The Parent Company Guarantee (OP) will be held by BC Hydro as security for Project Co's performance of all Services obligations under this Agreement, including the payment of liquidated damages, if any, as specified in this Agreement.

(A) *Parent Company Guarantee (OP) Form.* The Parent Company Guarantee (OP) will be in the form and contain the content as set out in Appendix 11E [Form of Parent Company Guarantee] unless otherwise agreed to by BC Hydro in writing; and

(B) *Parent Company Guarantee (OP) Term.* The Parent Company Guarantee (OP) will be maintained by Project Co (including renewal and replacement as necessary), and will remain in full force and effect for the benefit of BC Hydro, until the earlier of the Termination Date or the commencement of Decommissioning;

(b) Commencing on the first anniversary of the Service Commencement Date, and on each anniversary thereafter, the Parent Company Guarantee (OP) will be reduced by [REDACTED] and



will remain in place at the reduced level until the earlier of the Termination Date or the commencement of Decommissioning;

- (c) If Project Co breaches any term of, or fails to perform any obligation under this Agreement (including failing to pay any amount owing to BC Hydro under this Agreement) and fails to cure such breach or failure to perform within any applicable cure period, BC Hydro will have the immediate and absolute right to pursue its remedies under any and all of the performance securities described in this Section 16.2. For greater certainty, BC Hydro will be entitled to pursue its remedies under any of the performance securities described in this Section 16.2 simultaneously, as long as there is no double recovery, and will not be required to exhaust its recourse under any one performance security under this Section 16.2 before pursuing its remedies under another performance security under this Section 16.2, or any other remedy available to it under this Agreement or at law; and
- (d) If, in accordance with the terms of the Letter of Credit (OP), the issuing bank gives notice to BC Hydro of its determination not to extend the Letter of Credit (OP) and Project Co fails to provide BC Hydro with acceptable replacement security at least 60 days prior to the expiration date of the Letter of Credit (OP), BC Hydro will have the immediate and absolute right to draw upon the Letter of Credit (OP) for the full amount thereof, in which case BC Hydro will hold the proceeds thereof as a cash deposit (without interest) to be drawn on and applied in the same manner as the Letter of Credit (OP). Any unused amount of such cash deposit will be returned to Project Co at the time prescribed in Section 16.4 of this Schedule 11 [Prices, Payment and Security] for the return of any unused performance security.

#### 16.3 No Limitation of Remedies

The performance security given by Project Co to BC Hydro pursuant to Section 16.1 and Section 16.2 of this Schedule 11 [Prices, Payment and Security] will not in any way limit BC Hydro's other remedies under this Agreement or applicable Laws.

#### 16.4 Return of Performance Security

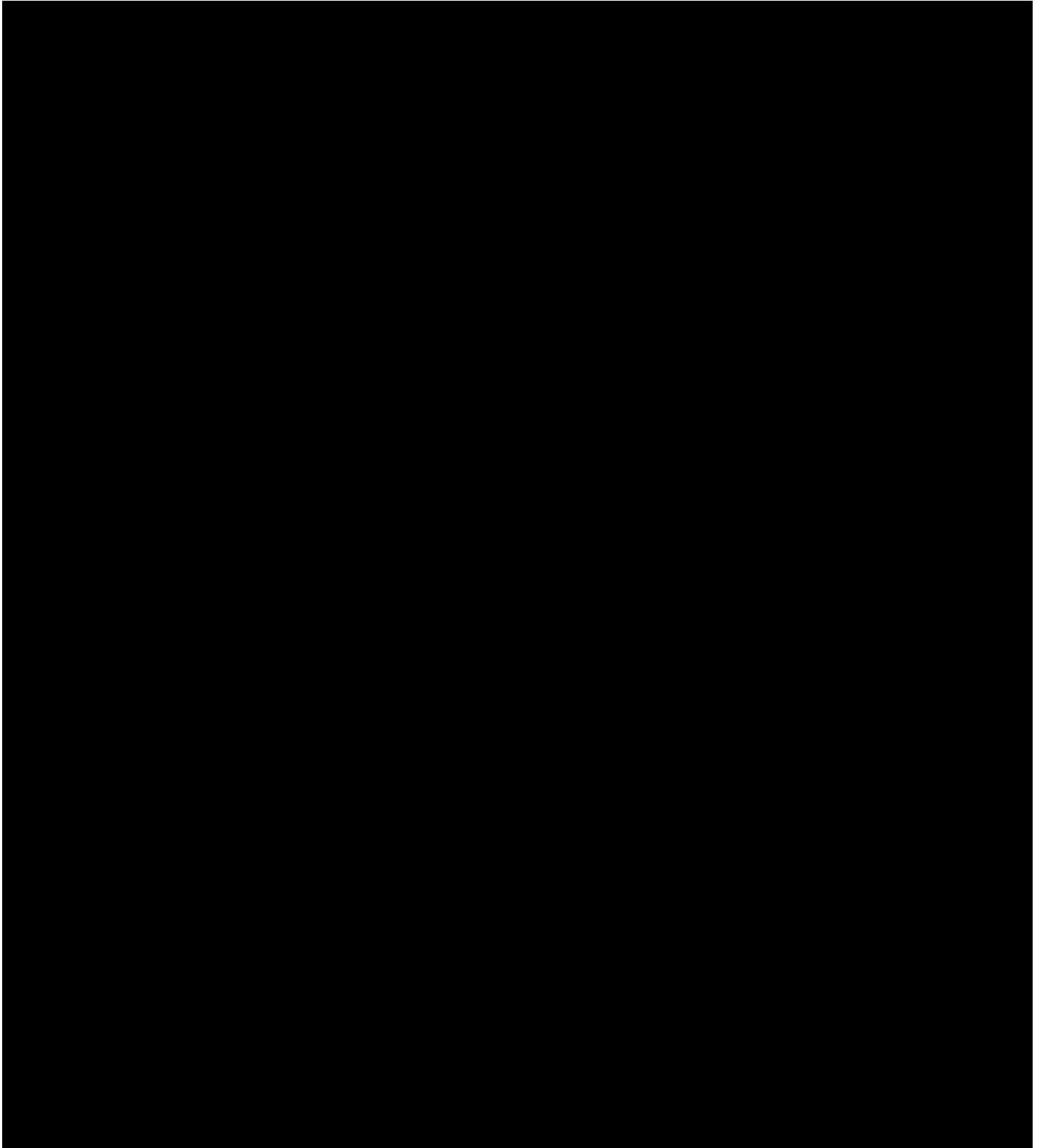
BC Hydro will return to Project Co any unused performance security held by it under Section 16.1 of this Schedule 11 [Prices, Payment and Security], after the Construction Period, or at such earlier time as BC Hydro may, in its sole discretion, consider appropriate.

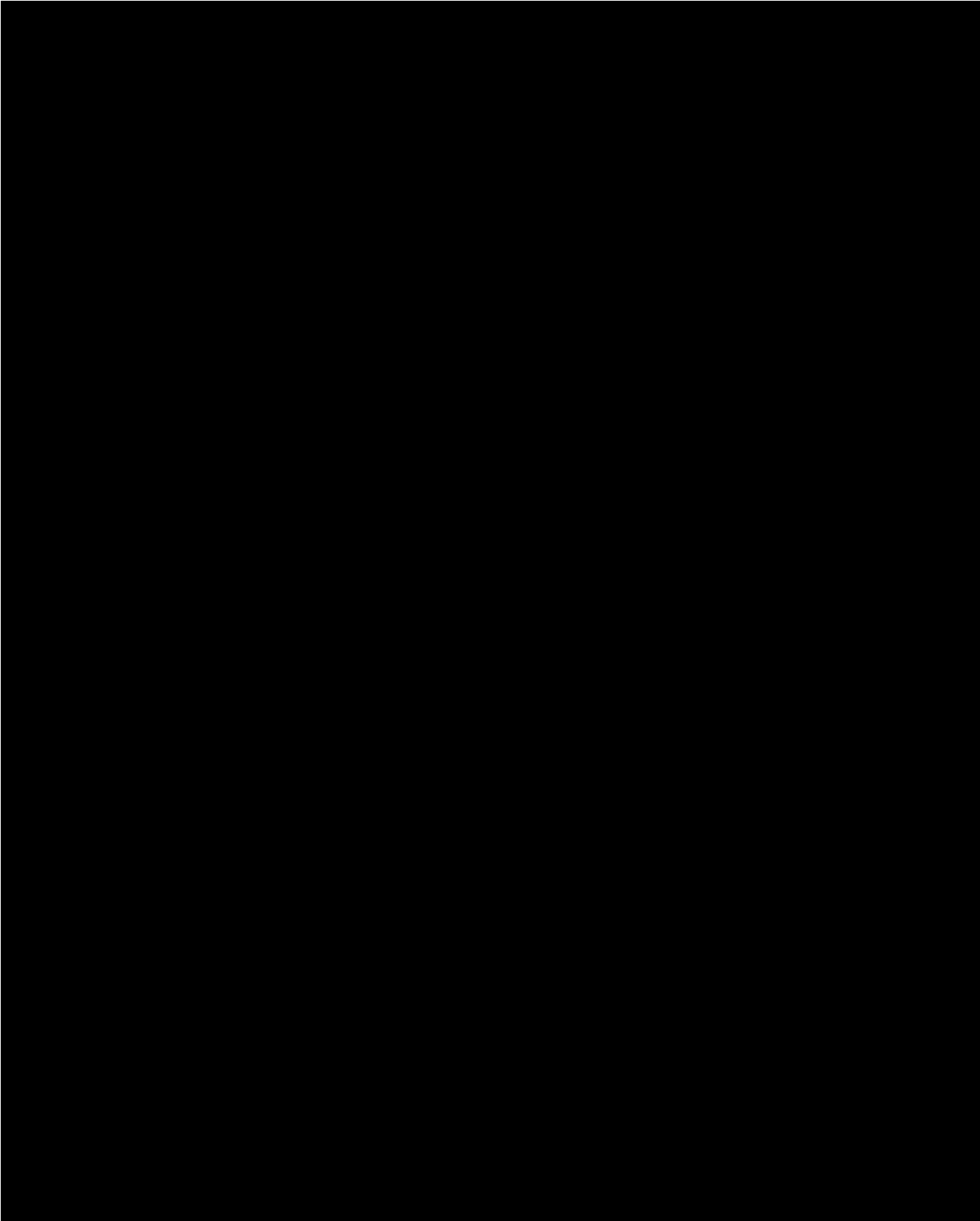
BC Hydro will return to Project Co any unused performance security held by it under Section 16.2 of this Schedule 11 [Prices, Payment and Security], on the earlier of the Termination Date or the commencement of Decommissioning, or at such earlier time as BC Hydro may, in its sole discretion, consider appropriate.

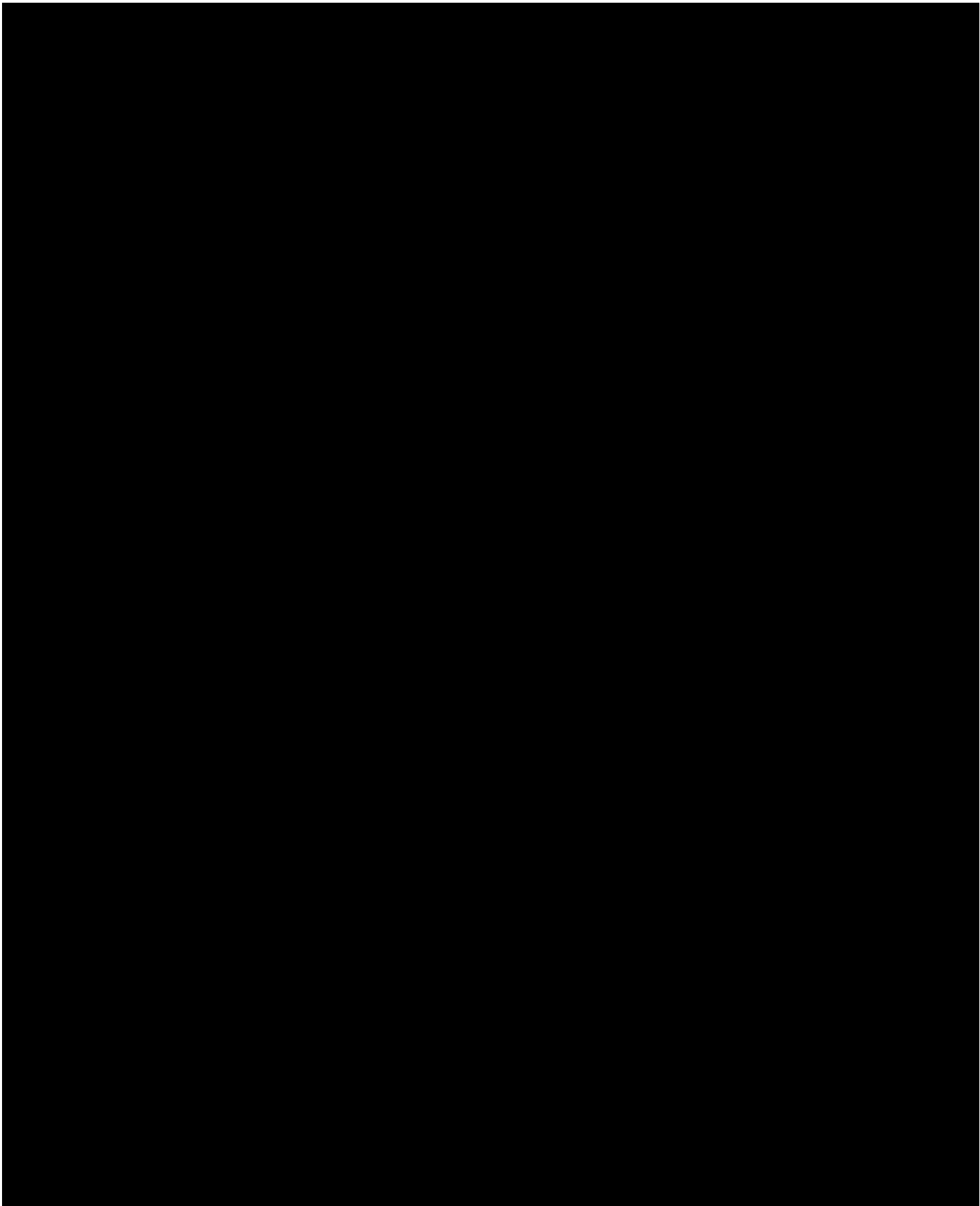
**WORKER ACCOMMODATION PROJECT AGREEMENT**

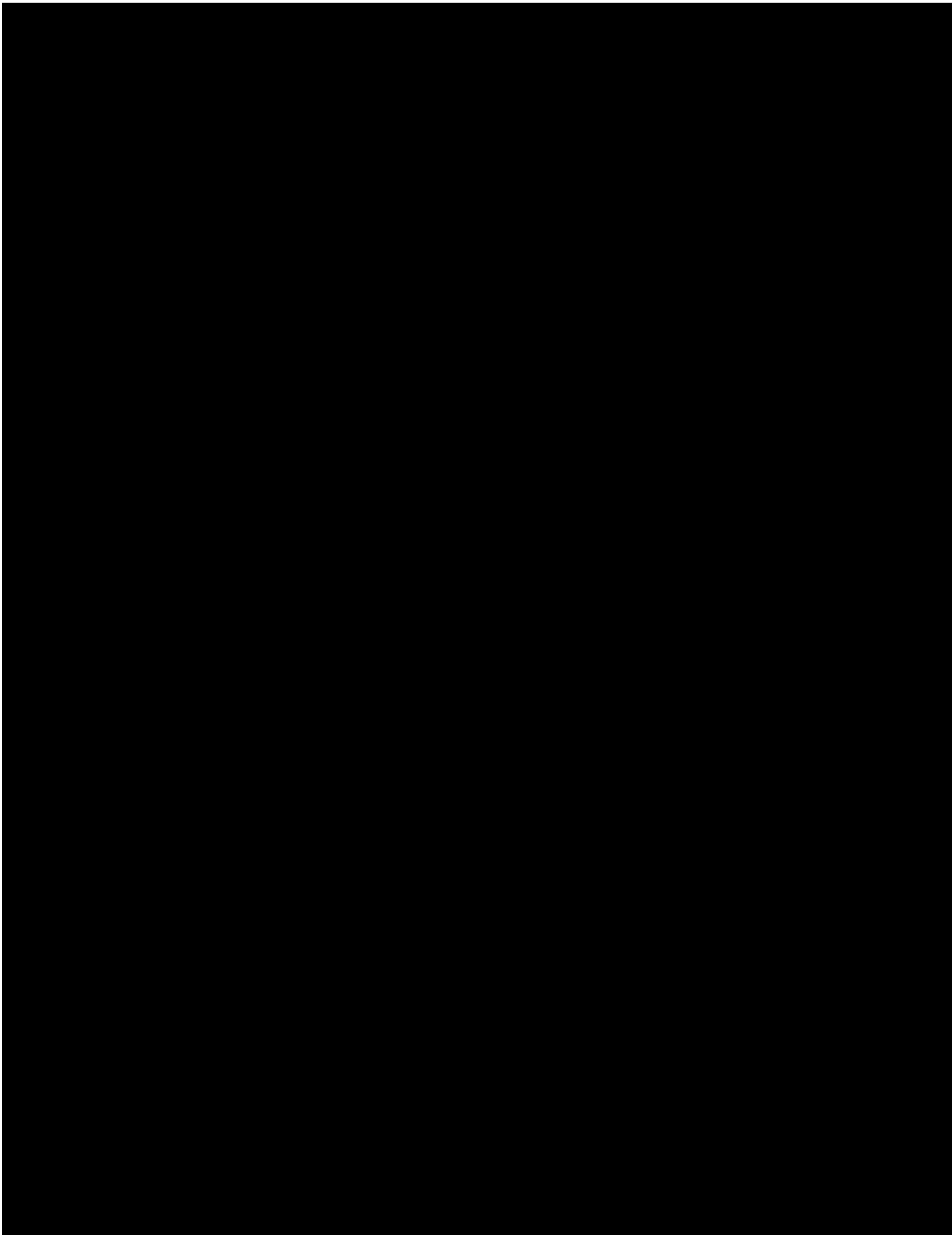
**APPENDIX 11A**

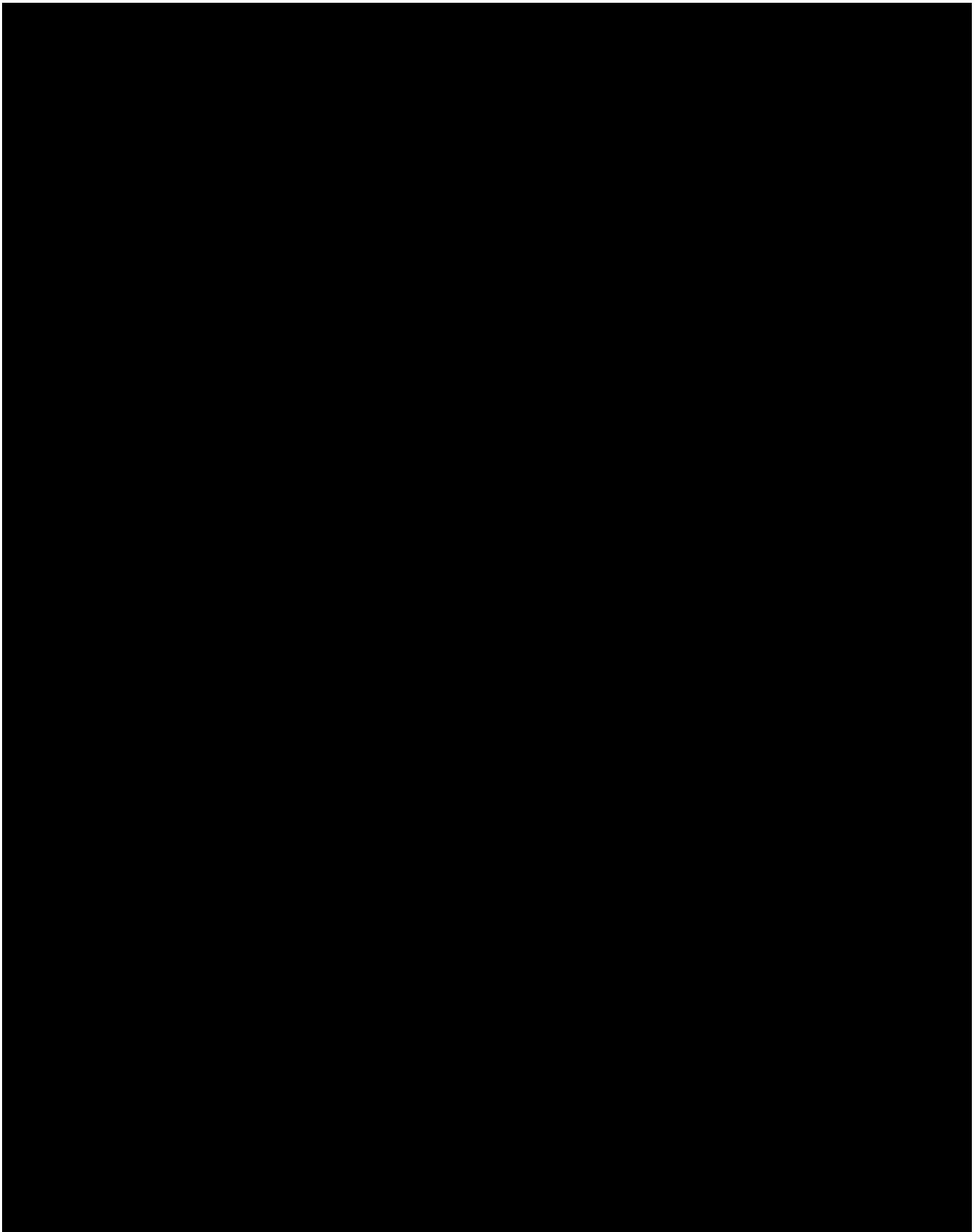
**FUNCTIONAL UNITS**



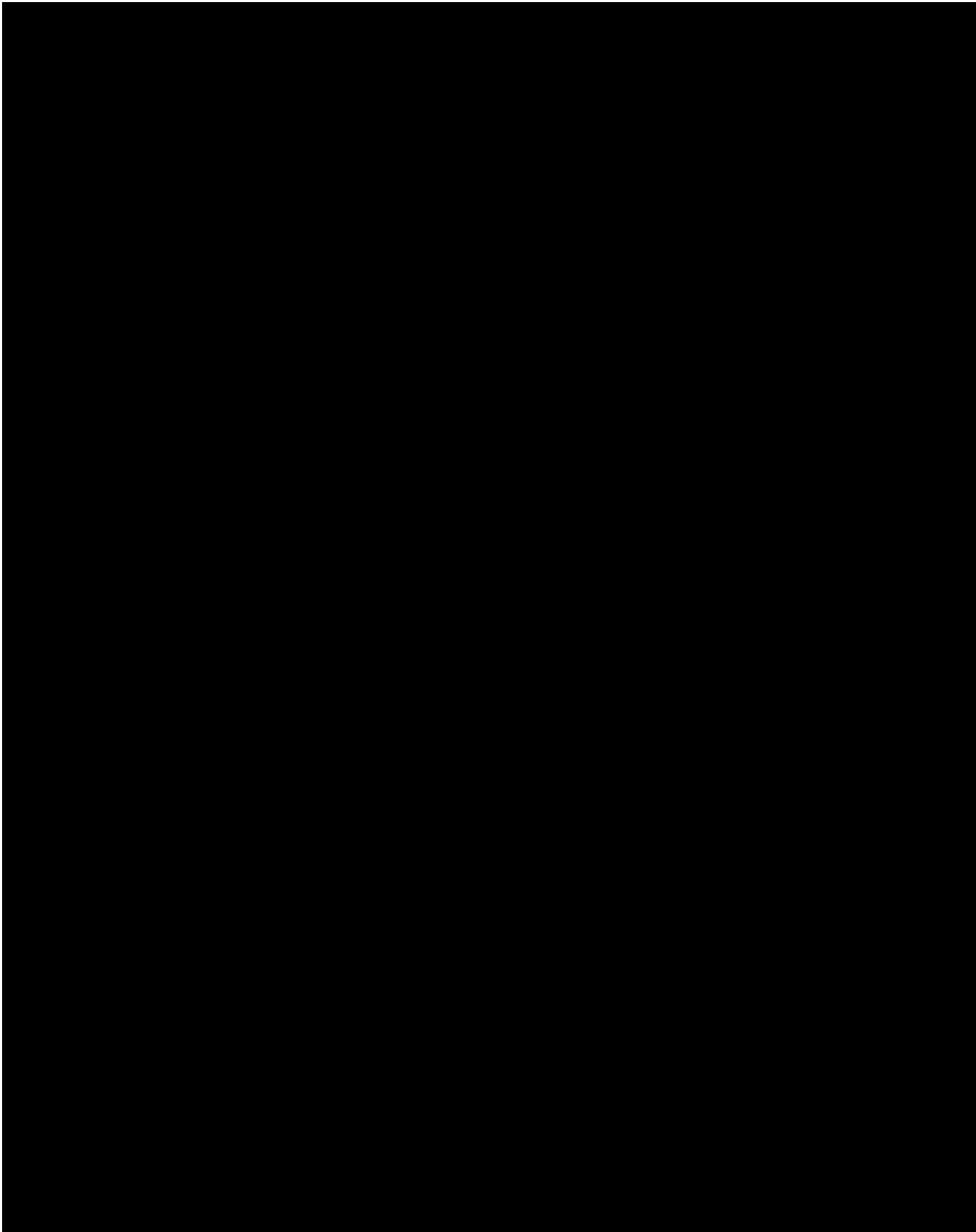




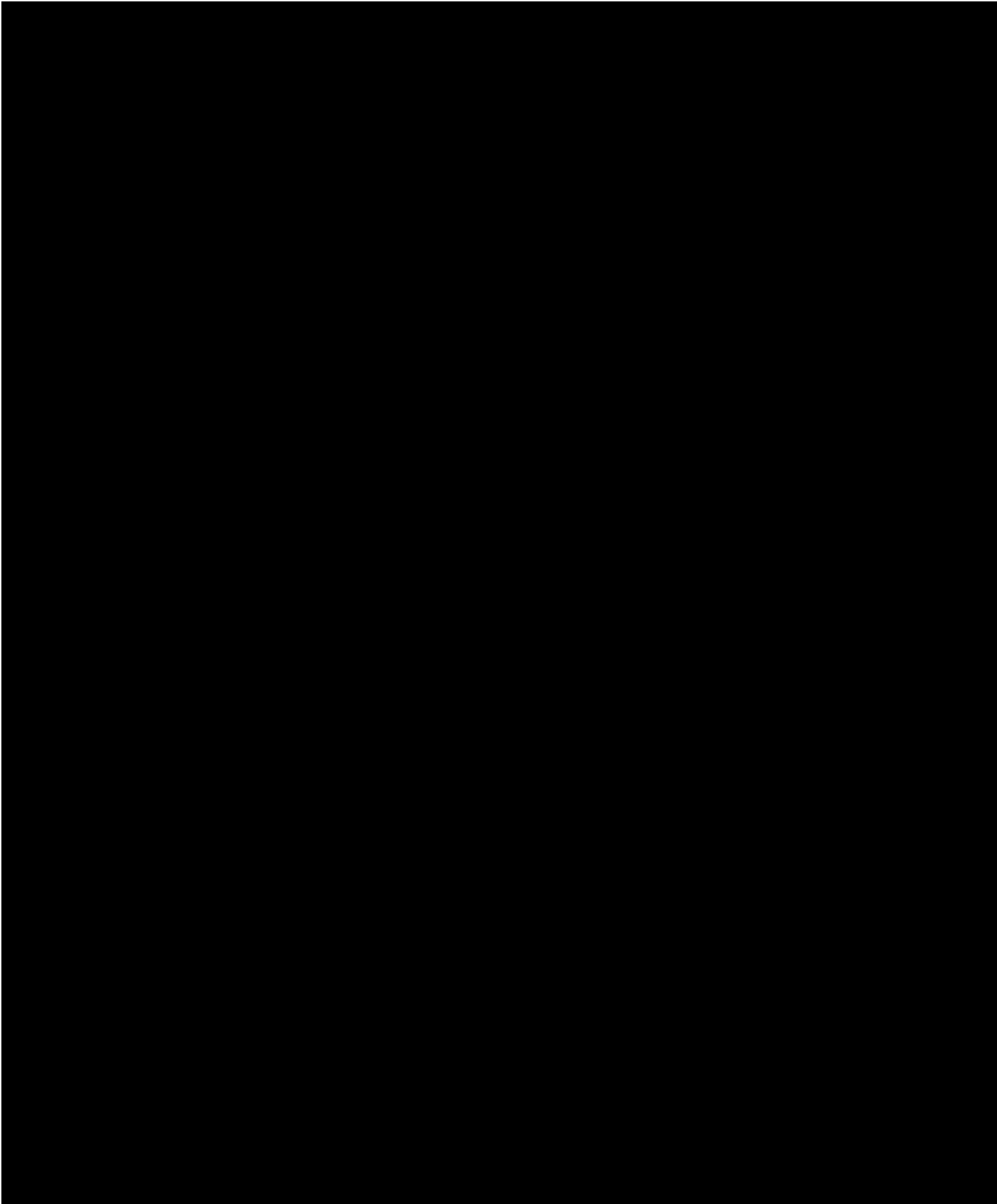












## WORKER ACCOMMODATION PROJECT AGREEMENT

### APPENDIX 11B

#### FORM OF LETTER OF CREDIT

[Issuing Bank Name & Address]

**Date of Issue:** [Date]

Irrevocable Standby Letter of Credit

No. [Number]

**Applicant:**

**Beneficiary:**

[Customer Name and Address]

British Columbia Hydro and Power Authority

[Address]

**Amount:**

[Currency and Amount both in letters and numbers]

At the request of and for the account of the Applicant, we, [Bank Name], hereby establish in favour of the Beneficiary our irrevocable standby Letter Of Credit No. [Number] (hereinafter called the "**Letter of Credit**") for an amount not exceeding [Currency and Amount both in letters and numbers].

We, [Bank Name and Address], hereby unconditionally and irrevocably undertake and bind ourselves, and our successors and assigns, to pay British Columbia Hydro and Power Authority (**you**) immediately, the sum, which you claim upon receipt of the following documents:

- (1) your written demand specifying the amount claimed, the number of this Letter of Credit, and the date of issue of this Letter of Credit; and
- (2) this original Letter of Credit, including any amendments, must be presented with your demand for payment for endorsement purposes.

This Letter of Credit may be presented for payment at the above issuing address or at ~~an~~ *alternate Vancouver (B.C.) branch location if letter of credit is not issued in Vancouver*.

It is understood that we are obligated under this Letter of Credit for the payment of monies only and we hereby agree that we shall honour your demand for payment, on or before the expiry date or any future expiry date, without enquiring whether you have a right as between yourself and the Applicant to make such demand and without recognizing any claim of the Applicant.

Partial drawings and multiple presentations are allowed. The amount of this Letter of Credit shall be automatically reduced by the amount of any drawing paid hereunder.

This Letter of Credit takes effect from the Date of Issue set forth above, and shall remain valid until [Date]. However, it is a condition of this Letter of Credit that it will be automatically extended without notice for a further one year period from the present or any future expiry date unless at least ninety (90) days prior to such expiry date we notify you **[at your address and the Site C department or personnel at the address below]** in writing by courier or registered mail that we elect not to consider this Letter of Credit to be extended for any additional period. If we give you notice of our election not to extend for an additional period, you shall be entitled to immediately demand payment of the full amount of this Letter of Credit.

**[Site C department or personnel:**

**[insert address]]**

This Letter of Credit is subject to the International Standby Practices 1998 (**ISP98**). All matters not covered by ISP98 will be governed by the laws applicable in the Province of British Columbia. The parties hereby irrevocably attorn to the non-exclusive jurisdiction of the courts of British Columbia. The number of this Letter of Credit must be quoted on all documents required hereby.

\_\_\_\_\_  
Authorized Signing Officer

[Bank Name]

\_\_\_\_\_  
Authorized Signing Officer

[Bank Name]

**Letter of Credit Requirements**  
**(wording contained in this box does not form part of the issued LoC)**

- (a) issued or confirmed by a branch of a domestic Canadian financial institution having a minimum credit rating not less than Standard & Poor's A-, Moody's A3 or Dominion Bond Rating Service A (low). If the issuing financial institution is not a domestic Canadian financial institution, the sovereign country's debt rating will not be less than Standard & Poor's AA, Moody's Aa2 or DBRS AA and the financial institution must be acceptable to BC Hydro. BC Hydro, at its discretion, may accept a sovereign debt rating of Standard & Poor's AA-, Moody's Aa3 or DBRS AA (low) if the issuing bank has a rating of not less than Standard & Poor's A, Moody's A2 or DBRS A. If such credit rating agencies publish differing credit ratings for the same financial institution, the lowest credit rating of any of the credit rating agencies will apply for purposes of this section;
- (b) available for presentation in Vancouver (B.C.) Canada; and
- (c) for a term of not less than one year and providing that it is renewed automatically, unless the issuing or confirming financial institution advises otherwise as specified in the letter of credit.

**WORKER ACCOMMODATION PROJECT AGREEMENT**

**APPENDIX 11C**

**NOT USED**

**WORKER ACCOMMODATION PROJECT AGREEMENT**

**APPENDIX 11D**

**NOT USED**

## WORKER ACCOMMODATION PROJECT AGREEMENT

### APPENDIX 11E

#### FORM OF PARENT COMPANY GUARANTEE

**THIS GUARANTEE** is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**BETWEEN:**

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY, having its head office at 333 Dunsmuir Street,  
Vancouver, B.C., V6B 5R3, Canada

(the "**Beneficiary**")

**AND:**

[ ]

(the "**Guarantor**")

**WHEREAS:**

(A) The Beneficiary and [ ] ("**Contractor**") entered into a contract entitled "BC Hydro Site C Clean Energy – Worker Accommodation Project Agreement" (the "**Contract**").

(B) At the request of the Beneficiary, and as a condition of the Contract, the Guarantor has agreed to guarantee the punctual and complete performance of any and all of the present and future obligations and liabilities of Contractor under or arising out of the Contract including, without limitation, the Contractor's obligations to pay liquidated damages, if any, as specified in the Contract (the "**Guaranteed Obligations**").

**THEREFORE IN CONSIDERATION OF THE PAYMENT** of ten (\$10.00) dollars by the Beneficiary to the Guarantor and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed), including the Beneficiary entering into the Contract with Contractor, the parties agree as follows:

(1) The Guarantor absolutely, irrevocably and unconditionally guarantees to the Beneficiary the punctual and complete performance and observance of all of the Guaranteed Obligations whenever, however or wherever incurred. If at any time Contractor defaults in the performance of any of the Guaranteed Obligations in accordance with the Contract, the Guarantor shall, immediately upon the Beneficiary's written demand, remedy the default, including perform (or procure the performance of) Contractor's Guaranteed Obligations and pay any and all sums, including, without limitation, liquidated damages, that may be payable under the Contract in consequence of the non-performance by Contractor of such Guaranteed Obligations.

(2) The Guarantor agrees to pay the Beneficiary, forthwith upon demand, all out of pocket costs and expenses, including, without limitation, legal fees on a solicitor and client basis, incurred by or on behalf of the Beneficiary in connection with the Beneficiary enforcing any of its rights against Contractor or the Guarantor in respect of the Guaranteed Obligations.

(3) Any obligation of the Guarantor hereunder that is not paid when due will bear interest at a rate that is equal to the annual rate of interest declared by the Bank of Montreal from time to time as the rate of interest charged to its most creditworthy commercial borrowers for loans in Canadian dollars payable

on demand and commonly referred to as its “prime rate”, [REDACTED] from the date it becomes due to the date of payment, due and payable on demand.

(4) This Guarantee is a continuing guarantee and shall apply to all of the Guaranteed Obligations and remain in place until [NTD: the earlier of the end of the Construction Period and the Termination Date – in the case of a Parent Company Guarantee (CP); and until the earlier of the Termination Date and the commencement of Decommissioning – in the case of Parent Company Guarantee (OP)].

(5) The Beneficiary shall not be bound to seek or exhaust its recourse against Contractor or any other persons or to realize on any security (including, without limitation, any letters of credit it may hold in respect of the Guaranteed Obligations) before being entitled to exercise its rights under this Guarantee. However, the Beneficiary shall not be entitled to enforce its rights and claims under this Guarantee with respect to a Guaranteed Obligation to the extent such Guaranteed Obligation has already been satisfied through other security held by the Beneficiary in respect of the Guaranteed Obligations.

(6) Subject to clause (2), (3) and (12), nothing herein shall be construed as imposing greater obligations and liabilities on the Guarantor than are imposed on Contractor under the Contract. The Guarantor shall be entitled to all defences, limitations and exclusions available to Contractor under the Contract.

(7) This Guarantee shall extend to any variation of or amendment to the Contract and to any agreement supplemental thereto agreed between the Beneficiary and Contractor.

(8) The Beneficiary may, at its election, exercise or decline to exercise any right or remedy it may have against Contractor or any other person liable on or in respect of the Guaranteed Obligations, or any security held from Contractor or any other person in respect of the Guaranteed Obligations, without affecting or impairing the liability of the Guarantor, and the Guarantor hereby waives any defence arising out of the absence, impairment or loss of any such security or right of reimbursement, contribution or subrogation.

(9) The Beneficiary will have the right, in its discretion, to proceed directly against the Guarantor for any and all remedies provided by law, equity or in the Contract whether by legal proceedings or otherwise, to have the Guarantor fulfil the Guaranteed Obligations.

(10) Until the Guaranteed Obligations have been fully and completely performed, and subject to fulfilment of the requirements of this Guarantee, the Guarantor will not be released or discharged from its obligations hereunder by any matter or thing whatsoever that would otherwise release or discharge a guarantor. Without limiting the generality of the foregoing, the Guarantor expressly agrees that none of the following circumstances or actions, whether taken by or occurring in respect of Contractor, the Beneficiary, the Guarantor or any other person or entity, will in any way release, affect or impair the obligations and liabilities of the Guarantor hereunder:

(a) voluntary or involuntary liquidation, dissolution, consolidation or merger (or the sale or other disposition of all or part of a party or its assets);

(b) bankruptcy, receivership, insolvency, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of debt, or other similar proceeding affecting a party or any of its assets;

(c) the invalidity or unenforceability of the Contract or any security, bond, third party guarantees, or other assurances intended to be granted or provided by Contractor or any other party to the Beneficiary or any other party under the Contract;

(d) the failure of the Beneficiary or any other party to take, protect or preserve any rights, security or similar assurance in relation to the Contract, from Contractor or any other party, or the

loss, diminution or unenforceability or impossibility to realize or abstention from realization of any such right, security or similar assurance, whether or not caused or resulting from any act or omission of the Beneficiary or any person acting for the Beneficiary;

(e) any other occurrence or circumstance whatsoever, whether similar or dissimilar to the foregoing, any other circumstance that might otherwise constitute any legal or equitable defence or discharge of the obligations and/or liabilities of Contractor or the Guarantor or that might otherwise limit recourse against the Guarantor; and

(f) if, with or without the Guarantor's knowledge or consent, any one or more of the following occur:

(1) any modifications of the Contract, made by agreement of Contractor and the Beneficiary;

(2) any waivers by the Beneficiary or Contractor of any terms, provisions, conditions or obligations under the Contract;

(3) any assignment or the making of any assignment of the Contract as may be permitted under the Contract;

(4) any failure by the Beneficiary to enforce any provision of the Contract against Contractor; or

(5) any other granting of extensions or time, renewals, indulgences, waivers, releases or discharges, or the making of any compromises or transactions or arrangements, regarding the Contract.

(11) Until the Guaranteed Obligations have been fully and completely performed, the Guarantor shall not be subrogated in any manner to any right of the Beneficiary.

(12) If the Guarantor or any other person is required by law to make any deduction or withholding on account of any tax or other amount from any sum paid or payable by the Guarantor under this Guarantee, the sum payable by the Guarantor in respect of which the relevant deduction, withholding or payment is required shall (except, in the case of any such payment, to the extent that its amount is not ascertainable when that sum is paid) be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment, the Beneficiary receives on the due date and retains (free from any liability in respect of any such deduction, withholding or payment) a net sum equal to what it would have received and so retained had no such deduction, withholding or payment been required or made.

(13) Neither the Guarantor's obligations under this guarantee nor any right or remedy for the enforcement thereof will be impaired, stayed, modified, changed or released in any manner whatsoever by any order, stay, modification, release or limitation in regard to Contractor or the Guarantor resulting from the operation or effect of any provision of the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada), the *Winding-up and Restructuring Act* (Canada) or other statute, code or laws of any jurisdiction relating to debtor relief or relating to the release of the obligations of the Guarantor hereunder, or from the decision of any court or authority interpreting any of the same, and the Guarantor will be obligated under this guarantee as if no such order, stay, modification, release or limitation had occurred.

(14) This Guarantee constitutes the entire agreement of the Guarantor with the Beneficiary relating to the subject matter hereof and supersedes all prior contracts or agreements, whether oral or written. There are no representations, agreements, arrangements or undertakings, oral or written, between the Guarantor and the Beneficiary relating to the subject matter of this Guarantee which are not fully expressed herein.



(15) No amendment to this Guarantee will be valid or binding unless set forth in writing and duly executed by each of the Beneficiary and the Guarantor. No waiver of any breach by the Guarantor of any provision of this Guarantee will be effective or binding unless made in writing and signed by the Beneficiary and, unless otherwise provided, will be limited to the specific breach waived.

(16) This Guarantee is in addition to and not in substitution for any other undertakings, securities and guarantees held or which may be held by or for the benefit of the Beneficiary, including without limitation any performance bonds, letters of credit, financial holdbacks under the Contract, and guarantees from any other parties.

(17) The Guarantor shall promptly and with all due diligence perform its obligations under this Guarantee.

(18) All notices or other communications in connection with this Guarantee shall be served:

(a) Upon the Beneficiary, at 333 Dunsmuir Street, Vancouver, British Columbia, V6B 5R3. Attention: [\_\_\_\_\_]; and

(b) Upon the Guarantor, at [\_\_\_\_\_] Attention: [\_\_\_\_\_].

Notice given by personal delivery or mail shall be effective upon actual receipt. Notice given by facsimile transmission shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours. All Notices by facsimile transmission shall be confirmed promptly after transmission in writing by certified or registered mail or personal delivery.

(19) The Beneficiary and the Guarantor may change their respective nominated addresses for service of communications to another address but only by prior written notice to each other. All such communications must be in writing.

(20) This Guarantee shall enure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and permitted assigns.

(21) Whenever possible, each provision of this Guarantee shall be interpreted in such manner as to be effective, enforceable and valid under British Columbia law, and Canadian law to the extent applicable, but if any provision of this Guarantee shall be found to be illegal, ineffective, invalid or unenforceable under such law, it shall be deemed severed from this Guarantee to the extent of such illegality, ineffectiveness, invalidity or unenforceability without effect on any of the remaining provisions of this Guarantee.

(22) This Guarantee shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in British Columbia.

(23) Any dispute arising from, connected with, or relating to this Guarantee will be resolved by the courts of British Columbia sitting in the City of Vancouver, and the Guarantor hereby irrevocably submits and attorns to the original and exclusive jurisdiction of the courts of British Columbia sitting in the City of Vancouver for those purposes.

(24) The Guarantor represents and warrants that:

(a) it is duly organized and validly existing under the laws of its jurisdiction of organization;

(b) it has the power, authority and legal right to execute and deliver, and to perform its obligations under, this Guarantee, and has taken all necessary action to authorize its execution, delivery and performance of this Guarantee, and this Guarantee has been duly executed by it;

(c) this Guarantee constitutes a legal, valid and binding obligation of the Guarantor;

(d) the execution, delivery and performance of this Guarantee will not violate or result in default under any applicable law, rule or regulation or any judgement, order, decree, agreement, instrument or undertaking applicable to the Guarantor;

(e) it is related to Contractor and directly or indirectly derives a benefit from the Beneficiary entering into the Contract with Contractor;<sup>1</sup>

(f) it has the financial equity and the ability and capacity as described in (a) and (b) above to carry out its obligations under this Guarantee.

(25) The Beneficiary may at any time during the term of this Guarantee request, by written notice, reasonable financial assurances of the Guarantor’s continued ability to carry out its obligations under this Guarantee and the Guarantor shall provide such reasonable assurances to the Beneficiary in writing within ten (10) Days of the Beneficiary’s notice.

**IN WITNESS WHEREOF** the Guarantor has executed this Guarantee as of the day and year first above written.

**[GUARANTOR]**

By: \_\_\_\_\_

(Signature)

\_\_\_\_\_

(Print Name)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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<sup>1</sup> If the Guarantor is not an affiliate of the Contractor, clause (e) will be deleted from the Guarantee before it is delivered.