

BC HYDRO SITE C CLEAN ENERGY PROJECT

GENERATING STATION AND SPILLWAYS CIVIL WORKS CONTRACT

for the Site C Clean Energy Project

Schedule 12

Changes

GENERATING STATION AND SPILLWAYS CIVIL WORKS CONTRACT

SCHEDULE 12

CHANGES

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GENERATING STATION AND SPILLWAYS CIVIL WORKS CONTRACT

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1 INTERPRETATION

1.1 Definitions

In this Schedule 12 [Changes], in addition to the definitions set out in Schedule 1 [Definitions and Interpretation]:

“**BCH Change Report**” has the meaning set out in Section 3.9(f) of this Schedule 12 [Changes];

“**Change**” means a change, including an addition, deletion, alteration or substitution, to the Work;

“**Change Directive**” has the meaning set out in Section 2.5 of this Schedule 12 [Changes];

“**Change Order**” means an order to implement a Change, issued in accordance with Section 2.4 of this Schedule 12 [Changes], and signed by Hydro’s Representative and the Contractor’s Representative;

“**Change Referee**” has the meaning set out in Section 3.11 of this Schedule 12 [Changes];

“**Change Report**” means a written report prepared by the Contractor in response to a Preliminary Change Instruction or as contemplated at Section 4.1(a)(i) of this Schedule 12 [Changes], containing the information described in Section 3.3 of this Schedule 12 [Changes];

“**Contractor Change Report**” has the meaning set out in Section 3.10 of this Schedule 12 [Changes];

“**Development Change**” has the meaning set out in Section 6.2 of this Schedule 12 [Changes];

“**Development Change Record**” has the meaning set out in Section 6.3 of this Schedule 12 [Changes];

“**Development Change Record Confirmation**” has the meaning set out in Section 6.3 of this Schedule 12 [Changes];

“**Development Change Register**” has the meaning set out in Section 6.6 of this Schedule 12 [Changes];

“**Preliminary Change Instruction**” has the meaning set out in Section 3.1 of this Schedule 12 [Changes]; and

“**Value Engineering Proposal**” has the meaning set out in Section 7.1 of this Schedule 12 [Changes].

2 CHANGES

2.1 BC Hydro’s Right to Require Changes

BC Hydro may require a Change by issuing a written Change Order or a written Change Directive, and except to the extent that a Change Order or Change Directive expressly requires otherwise, the Contractor will comply with all applicable terms of the Contract, including Schedule 2 [General Conditions] and Schedule 6 [Specifications and Drawings] in implementing the Change.

Except as expressly specified herein, the provisions of Schedule 5 [Submittals Procedure] will not apply to BC Hydro's review or consideration of any materials required to be submitted pursuant to this Schedule 12 [Changes].

2.2 Restrictions on Changes

The Contractor may refuse to implement a Change which:

- (a) would be contrary to Laws;
- (b) would render the insurance policies required under this Contract void or voidable and BC Hydro does not agree to replacement security satisfactory to the Contractor acting reasonably;
- (c) would cause the revocation of any Permit required by the Contractor to perform its obligations under this Contract, and such Permit would not, using reasonable efforts, be capable of amendment or renewal;
- (d) would require a new Permit for the Contractor to perform its obligations under this Contract, which Permit would not, using reasonable efforts by the Contractor or BC Hydro, as applicable, be obtainable; or
- (e) would cause the Contractor to be unable to obtain a Permit required by the Contractor to perform its obligations under this Contract, provided that such Permit was previously required but at the time of the Preliminary Change Instruction had not been obtained and such Permit would not, using reasonable efforts by the Contractor or BC Hydro, as applicable, be obtainable.

If the Contractor, acting reasonably, determines that a Change is unacceptable because it contravenes one or more of the above, then the Contractor will promptly deliver written notice to BC Hydro of its objection, with written reasons. If BC Hydro disagrees then it may deliver a Dispute Notice to the Contractor, and the parties will cooperate to have the issue resolved in a timely manner in accordance with the Dispute Resolution Procedure.

2.3 No Change Without Written Direction

Except as expressly set out otherwise in the Contract, the Contractor will not proceed with any Change prior to the receipt of a written Change Order signed by Hydro's Representative and the Contractor's Representative or a Change Directive. No claim for an adjustment to the Contract Price or the time for the performance of the Work may be made without such written direction. The Contractor will not be entitled to, nor will the Contractor rely on, any oral representation (except in an emergency), Site meeting discussion or minutes, or other communication as approval for a Change.

2.4 Change Orders

When the adjustments, or method of adjustment, if any, to the Contract Price or the time for the performance of the Work or both with respect to a Change are agreed by BC Hydro and the Contractor, Hydro's Representative will deliver a draft (unsigned) change order to the Contractor's Representative, setting out the agreed:

- (a) description of the Work covered by the Change;
- (b) price or method of valuation for such Work, including:
 - (i) total adjustment, if any, to the Contract Price (excluding only GST) on account of the Change; or

(ii) the method of adjustment, if any, to the Contract Price on account of the Change,

which, for certainty, will be deemed to include all claims for compensation on account of all related costs, including all direct, indirect or “impact” costs, overheads, and all other costs, and all mark-ups and profits, even if the Change Order does not specifically mention such items; and

(c) net effect on the time for the performance of the Work on account of the Change and, for certainty, will be deemed to include all effects on the time for the performance of the Work, and if there is no mention in the Change Order of a required adjustment to the time for the performance of the Work, then the Change Order will be interpreted to mean that the Contractor will complete the performance of the Work covered by the Change Order without any adjustment to the time for the performance of the Work.

Where the Contractor has performed any Work under a Change Directive, pending agreement on the terms of a Change Order, any payments made to the Contractor pursuant to the Change Directive will be set-off against any amounts owing pursuant to the Change Order.

Upon receipt of the draft (unsigned) change order, the Contractor’s Representative will promptly, and in any event within three Business Days, sign the form of change order, without amendment, and return it to Hydro’s Representative for signature. Upon receipt of the unamended form of change order, signed by the Contractor’s Representative, Hydro’s Representative will sign and deliver a copy of the fully executed Change Order to the Contractor.

Notwithstanding the immediately preceding paragraph, where, in the opinion of Hydro’s Representative, a Change may have an impact on an Other Contractor, including an impact on any of the Interface Milestone Dates, Hydro’s Representative may delay signing the form of change order until such time as BC Hydro has received a signed change order from each impacted Other Contractor with respect to the interface impacts of the Change. If Hydro’s Representative has not signed and delivered a copy of the fully executed Change Order to the Contractor within 14 days after the Contractor returned the form of change order, signed by the Contractor’s Representative, the Contractor may request Hydro’s Representative to provide confirmation of the date on which Hydro’s Representative will either:

- (d) sign and deliver a copy of the fully executed Change Order to the Contractor; or
- (e) confirm its election not to proceed with the Change described in the Preliminary Change Instruction and the draft change order.

Upon receipt of a Change Order, the Contractor will proceed with the applicable Change, without delay.

2.5 Change Directives

Subject to Section 2.2 of this Schedule 12 [Changes], but notwithstanding any other provision of this Schedule 12 [Changes], BC Hydro may at any time issue a written direction, signed by Hydro’s Representative, to the Contractor (a “**Change Directive**”), directing the Contractor to proceed with a Change as described in the Change Directive, and for certainty BC Hydro may issue a Change Directive:

- (a) in the absence of a Preliminary Change Instruction;
- (b) at any time following issuance of a Preliminary Change Instruction, including if the Contractor fails to provide a Change Report;
- (c) if a Change Report or Change Order is not promptly agreed upon by the parties; or
- (d) if there is a Dispute in relation to a Preliminary Change Instruction, Change Report or Change Order.

2.6 Change Directive Process

Upon receipt of a Change Directive, the Contractor will proceed with the Work, including the Change, without delay, without prejudice to the Contractor's and BC Hydro's rights to claim an adjustment to the Contract Price or the time for the performance of the Work or both as a result of the Change, and in the absence of a Preliminary Change Instruction, the Change Directive will be treated as a Preliminary Change Instruction and the parties will follow the process in Section 3 of this Schedule 12 [Changes].

2.7 Work under a Change Directive

Pending a determination of any adjustments to the Contract Price or the time for performance of the Work or both for the Change, or if BC Hydro elects in its discretion to have the Contractor proceed under the Change Directive:

- (a) BC Hydro will make a monthly payment to the Contractor of the Direct Costs (or cost saving) incurred as a result of implementing the Change Directive, calculated subject to the following:
 - (i) the rates and charges applied will be no greater than the market rates and charges prevailing at the time of the implementation of the Change, paid between arms-length contracting parties; and
 - (ii) unless otherwise agreed by BC Hydro in writing, the Contractor will obtain competitive quotations or tenders for all work, equipment and materials required to implement the Change Directive;
- (b) the Contractor will maintain daily field reports (DFR) of the resources used in connection with any Change Directive, claim of delay, Change Order (where Section 2.8(c) of this Schedule 12 [Changes] applies) or, other claimed Change, including labour, equipment and materials, prepared contemporaneously with the performance of the affected Work, and submit such reports to the representative of BC Hydro, designated for such purpose by Hydro's Representative, with a copy to Site C Document Control, on a daily basis, with each submission containing the previous day's reports. All daily field reports must be in a form acceptable to Hydro's Representative, acting reasonably, and must be signed off daily by the Contractor's Representative and the designated representative of BC Hydro, who will be reasonably available at the Site on days when the Contractor is working. The signing of a daily field report by the representative of BC Hydro does not, and will not be deemed to, constitute: (i) BC Hydro's agreement that the work described in the report constitutes a valid Change or event of delay; (ii) a notice of delay pursuant to Section 12.8 of Schedule 2 [General Conditions] or a claim for Change under Section 4.1 of this Schedule 12 [Changes]; (iii) a written direction from BC Hydro to perform a Change; or (iv) BC Hydro's acceptance or agreement of the validity of the information contained in the daily field report. For clarity, the signing of a daily field report by the representative of BC Hydro will not in any way limit BC Hydro's right to review or to dispute the validity of the information contained in the daily field report;
- (c) the Contractor will submit its calculation of the amount claimed for the affected Work, based on the daily field reports prepared and submitted in accordance with Section 2.7(b) of this Schedule 12 [Changes], to Hydro's Representative weekly; and
- (d) the time for the performance of the Work on account of the Change Directive will be adjusted by the net impact of the Work performed under the Change Directive on the critical path, taking account of any impacts that require more time, and any impacts, that result in time savings and any mitigative steps that should have been taken by the Contractor.

For clarity, all such information shall constitute Records and be subject to audit in accordance with Section 4 of Schedule 15 [Records].

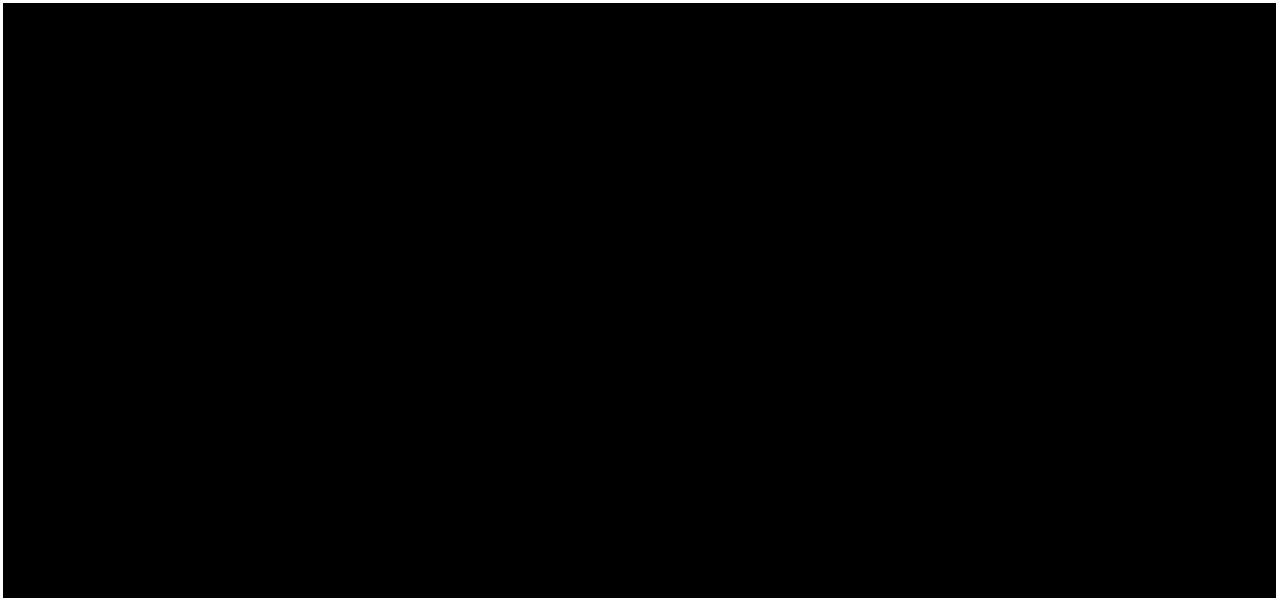
BC Hydro may at any time cancel the Change Directive, in which case:

- (e) the Contract Price will be adjusted by an amount:
 - (i) calculated in accordance with the applicable unit rates, to the extent that the Work performed under the Change Directive, prior to its cancellation, includes Unit Price Items; and
 - (ii) calculated in accordance with Section 2.8(c) of this Schedule 12 [Changes], to the extent that the Work performed under the Change Directive, prior to its cancellation, includes items for which unit rates have not been included in Appendix 11-1 [Schedule of Prices and Estimated Quantities]; and
- (f) an extension of the time for the completion of the Work, or the impacted Interface Milestone(s), equal to the impact of the Work performed pursuant to the Change Directive, prior to its cancellation.

2.8 Valuation of Changes

The value and method of valuation of a Change will be determined, at BC Hydro's discretion, by one or more of the following methods:

- (a) as a fixed cost Change, in accordance with the terms of the applicable Change Report, as the same may have been clarified, modified or amended in accordance with Section 3.8 of this Schedule 12 [Changes];
- (b) as a unit price Change, where the Change includes items for which the unit rates included in Appendix 11-1 [Schedule of Prices and Estimated Quantities] apply; or
- (c) on a cost plus basis, being the Contractor's reasonable and substantiated direct costs arising from the performance of the Change plus markups, limited to the following:



- (ii) with respect to materials, the total of:

3 POTENTIAL CHANGES

3.1 Preliminary Change Instruction

BC Hydro may at any time issue to the Contractor a written instruction (a “**Preliminary Change Instruction**”) describing a contemplated Change that BC Hydro is considering. A Preliminary Change Instruction will include sufficient description of the contemplated Change, including any requirements under Section 3.8(b) of this Schedule 12 [Changes], to permit the Contractor to prepare a Change Report.

3.2 Delivery of Change Report

Subject to Section 2.2 of this Schedule 12 [Changes], as soon as practicable and in any event, to the extent reasonably possible, within 15 days after receipt of a Preliminary Change Instruction, or such other period as the parties may agree in writing acting reasonably, the Contractor will, at no extra cost or expense to BC Hydro, prepare and deliver to BC Hydro a Change Report, signed by the Contractor’s Representative, for the contemplated Change described in the Preliminary Change Instruction.

3.3 Change Report Contents

The Contractor will include in its Change Report the following, as applicable, together with any other information requested by BC Hydro:

- (a) a description of the scope of the contemplated Change;
- (b) a comparison of the scope of Work as a result of the contemplated Change as compared to the scope prior to the Change;
- (c) subject to the Contractor’s duties under Section 30.2 of Schedule 2 [General Conditions], a description of any adjustments to the Work Program and Schedule, including details of the impact to the Interface Milestone Dates, if any, which the Contractor will require as a result of the implementation of the contemplated Change (including details of any corresponding adjustments required by any Subcontractor);
- (d) details of all mitigation measures to be implemented, including any suggested “pacing” of the progress of the Work and any time recovery strategies, together with details of the impacted systems, equipment and personnel, anticipated cost savings or expenditures and the impact of the mitigation measures on the time for completion of the Work;
- (e) details of the net amount of time on the critical path reasonably required by the Contractor to accommodate and perform the Change, taking account of any impacts that require more time, and any impacts, that result in time savings, supported by a critical path schedule update and impact assessment, based on the then current, and most recently updated, Work Program and Schedule that meets the requirements of Schedule 4 [Work Program and Schedule];
- (f) details of all quantities for which the unit rates included in Appendix 11-1 [Schedule of Prices and Estimated Quantities] apply;

- (g) to the extent that the contemplated Change includes items for which unit rates have not been included in Appendix 11-1 [Schedule of Prices and Estimated Quantities], an estimate of the Contractor's reasonable and substantiated direct costs arising from the performance of the Change, calculated in accordance with Section 2.8(c) of this Schedule 12 [Changes], including a detailed breakdown of the estimated costs to be incurred and saved as a result of the Change;
- (h) details of the cost savings, if any, resulting for any reason (including reduction in scope of Work or reduction in the time for the performance of the Work) from the contemplated Change;
- (i) any proposal(s) as to how the contemplated Change could be accomplished at a lower or zero net cost;
- (j) a description of the extent to which the contemplated Change would interfere with the Contractor's ability to comply with any of its obligations under the Contract, any subcontracts, any Laws and any Permits;
- (k) the name of the Subcontractor(s) (if any) which the Contractor intends to engage for the purposes of implementing the contemplated Change together with a description of the qualifications of any such Subcontractor(s) so as to demonstrate the ability of such Subcontractor(s) to implement the contemplated Change;
- (l) a description of any further effects (including benefits and impairments) which, the Contractor foresees as being likely to result from the contemplated Change;
- (m) a description of any actions that would be reasonably required by BC Hydro to implement the contemplated Change; and
- (n) a description of the steps the Contractor will take to implement the contemplated Change, in such detail as is reasonable and appropriate in all the circumstances.

The cost or impact on the Work Program and Schedule of the correction of defects, deficiencies and other Nonconformities will not be included in the valuation of a Change.

All of the costs described in this Section 3.3 will be provided in the dollar amounts applicable as of the date of the Change Report. There will be no indexation of any cost amounts unless specifically agreed to by BC Hydro.

3.4 Change Report to Cover all Cost and Time

Any Change Report submitted by the Contractor will, except as expressly set out otherwise in the Change Report, be interpreted to represent the proposed total adjustment to the Contract Price (excluding only GST) and the net effect on the time for the performance of the Work on account of such contemplated Change, and, for certainty, will be deemed to include:

- (a) all claims for compensation on account of all related costs, including all direct, indirect or "impact" costs, overheads, and all other costs, and all mark-ups and profits, even if the Change Report does not specifically mention such items; and
- (b) all effects on the time for the performance of the Work, and if there is no mention in the Change Report of a required adjustment to the time for the performance of the Work, then the Change Report will be interpreted to mean that the Contractor will complete the performance of the Work as covered by the Change Report without any adjustment to the time for the performance of the Work.

3.5 Third Party Costs to Prepare Change Report

If the Contractor is unable to prepare a Change Report without the assistance of third party professional advisors or subcontractors, and if the Contractor wishes to be paid for the costs of such third parties pursuant to Section 3.7 of this Schedule 12 [Changes], then the Contractor will only be entitled to make a claim for such costs if the Contractor obtains Hydro's Representative's prior written approval to retain such third parties.

3.6 Justification and Supporting Documentation for Change Report

The estimated cost of performing the contemplated Change included in a Change Report will be in sufficient detail to allow evaluation by BC Hydro and will include such supporting information and justification as is necessary to demonstrate that:

- (a) the Contractor has used all reasonable efforts, including utilizing competitive quotes or tenders, to minimize the cost of a contemplated Change and maximize potential related cost savings;
- (b) the Contractor and Subcontractors have calculated the cost of performing the contemplated Change in accordance with the requirements of the Contract and have not included any other costs, expenses, fees, charges, margins or mark-ups;
- (c) the full amount of any and all expenditures that have been reduced or avoided have been fully taken into account;
- (d) the valuation has taken account of any savings to the Contractor resulting from the Change and accordingly the valuation of a Change will be the aggregate of the cost minus the aggregate of the cost savings the Contractor reasonably incurred or resulting from the implementation of the Change. For certainty, a Change may have a net cost, or a net saving, or may result in no net cost or saving;
- (e) the Contractor has mitigated or will mitigate, in accordance with Section 30.2 of Schedule 2 [General Conditions], the impact of the contemplated Change, including on the Work Program and Schedule and any costs to be incurred; and
- (f) the rates and charges included in the calculation of the cost of the contemplated Change are no greater than market rates, prevailing at the time of the implementation of the Change, paid between arm's length contracting parties.

3.7 Contractor's Costs to Prepare Change Report

If, following receipt of a Change Report:

- (a) BC Hydro elects to proceed with the Change, then all costs incurred by the Contractor Persons to prepare the Change Report will be paid by the Contractor, and the Change Order issued with respect to the Change will be deemed to be the entire compensation payable by BC Hydro for such Change; or
- (b) BC Hydro, for any reason, elects not to proceed with the Change, then:
 - (i) if the Contractor retained third parties pursuant to Section 3.5 of this Schedule 12 [Changes], BC Hydro will pay the Contractor the reasonable costs paid to all such third parties who were approved in advance by Hydro's Representative; and
 - (ii) the Contractor will bear all other costs incurred by the Contractor Persons to prepare the Change Report.

Where the Contractor claims that a Change has occurred in accordance with Section 4.1 of this Schedule 12 [Changes], then:

- (c) where BC Hydro issues a Change Order with respect to the claimed Change, all costs incurred by the Contractor Persons to prepare the Change Report will be paid by the Contractor, and the Change Order issued with respect to the claimed Change will be deemed to be the entire compensation payable by BC Hydro for such Change; or
- (d) where BC Hydro refuses the Contractor's request for a Change Order, the Contractor will bear all costs incurred by the Contractor Persons in respect of the claimed Change, including costs incurred to prepare the Change Report.

3.8 Agreement on a Change

Following receipt by BC Hydro of a Change Report prepared in accordance with Section 3.3 of this Schedule 12 [Changes]:

- (a) as soon as practicable, and in any event within 15 Business Days after BC Hydro receives a Change Report, or such longer period as the parties acting reasonably may agree in writing, BC Hydro will deliver to the Contractor any requests for clarifications or amendments, and on request from Hydro's Representative the parties' Representatives will meet without delay and use reasonable efforts to reach agreement on the Change Report;
- (b) if BC Hydro is required by applicable Law or Governmental Authority to require the Contractor to competitively tender any contract in relation to a contemplated Change, the Contractor will, to BC Hydro's satisfaction acting reasonably, obtain and evaluate competitive tenders for the proposed Change; and
- (c) BC Hydro may in writing modify a Preliminary Change Instruction at any time prior to the parties reaching an agreement on the Change Report in which case the Contractor will, as soon as practicable and in any event not more than 10 Business Days after receipt of such modification (or such longer period as the parties acting reasonably may agree in writing), notify BC Hydro of any consequential changes to the Change Report.

If Hydro's Representative accepts the Change Report in response to a contemplated Change, or the parties otherwise agree to proceed with the contemplated Change on terms different from those in the Change Report, then the Change Report or such other agreed to terms will be recorded in a Change Order, signed by the parties and issued pursuant to Section 2.4 of this Schedule 12 [Changes].

3.9 Failure to Provide a Change Report or Disagreement on Change Report

If:

- (a) the Contractor does not provide a Change Report within the time required by Section 3.2 of this Schedule 12 [Changes]; or
- (b) BC Hydro does not agree with any element of a Change Report, including for clarity, a Change Report issued pursuant to Section 4.1 of this Schedule 12 [Changes],

then BC Hydro may:

- (c) elect not to proceed with the Change described in the Preliminary Change Instruction or the applicable direction, instruction or decision from Hydro's Representative;

- (d) issue a Change Directive with respect to some or all of the Change described in the Preliminary Change Instruction or the applicable direction, instruction or decision from Hydro's Representative;
- (e) negotiate a Change Order with the Contractor; or
- (f) issue its own change report (the "**BCH Change Report**").

3.10 The BCH Change Report

If BC Hydro elects to issue a BCH Change Report because:

- (a) the Contractor has failed to provide a Change Report within the time required by Section 3.2 of this Schedule 12 [Changes], the Contractor has five Business Days after receipt of the BCH Change Report to issue its own change report in accordance with the requirements of Section 3.3 of this Schedule 12 [Changes] (the "**Contractor Change Report**").

If the Contractor issues a Contractor Change Report, then BC Hydro may:

- (i) accept the Contractor Change Report and issue a draft (unsigned) change order in accordance with the procedure set out in Section 2.4 of this Schedule 12 [Changes], on the terms of the Contractor Change Report;
- (ii) negotiate the terms of the change order;
- (iii) have any dispute over the differences between the Contractor Change Report and the BCH Change Report determined in accordance with Section 3.11 of this Schedule 12 [Changes]; or
- (iv) elect not to proceed with the Change described in the Preliminary Change Instruction or the applicable direction, instruction or decision from Hydro's Representative (including, if applicable, cancelling any Change Directive in accordance with Section 2.7 of this Schedule 12 [Changes]).

If the Contractor does not issue a Contractor Change Report within the five Business Day period specified in this Section 3.10(a), then BC Hydro may issue a Change Order on the terms of the BCH Change Report and the Contractor is deemed to have signed the Change Order and the Contractor will proceed with the Change without delay; or

- (b) BC Hydro does not agree with any element of the Change Report issued by the Contractor in accordance with Section 3.2 or Section 4.1 of this Schedule 12 [Changes], BC Hydro may:
 - (i) negotiate the terms of the change order; or
 - (ii) have any dispute over the differences between the Change Report and the BCH Change Report determined in accordance with Section 3.11 of this Schedule 12 [Changes].

3.11 Change Report Disputes

BC Hydro may forward: (i) the original Change Report issued by the Contractor in accordance with Section 3.2 or Section 4.1 of this Schedule 12 [Changes] and the BCH Change Report, where Section 3.10(b) of this Schedule 12 [Changes] applies; or (ii) the Contractor Change Report and the BCH Change Report, where Section 3.10(a) of this Schedule 12 [Changes] applies, to a Referee appointed in accordance with the Dispute Resolution Procedure (the "**Change Referee**") for a determination of which of the two reports most closely approximates her or his determination of the correct valuation of the cost

of the Change, calculated in accordance with Sections 2.8(b) and 2.8(c) of this Schedule 12 [Changes], as applicable. The Change Referee will have no right to propose a middle ground or any modification of either of the reports. The Change Referee will conduct the proceedings in the manner which she or he considers appropriate, including:

- (a) considering the two reports, position papers of the parties, and any other written documents submitted by the parties, provided that the parties must provide to each other any reports, papers or other documents that are submitted at the same time as they are submitted;
- (b) informing the parties of any further investigation or inquiry that she or he may consider necessary; and
- (c) making such further investigation or inquiry, and hearing any person she or he chooses in connection with the dispute, either in the presence of the parties or, if they have been duly convened, in their absence. The results of these investigations and inquiries will be communicated to the parties for comment,

provided that neither party can amend or change their original report.

The Change Referee will make and send the ruling within 10 Business Days from the date on which the two reports were sent to her or him.

The Change Referee's ruling is final and binding, provided that BC Hydro may:

- (d) elect not to proceed with the Change described in the Preliminary Change Instruction or the applicable direction, instruction or decision from Hydro's Representative (including, if applicable, cancelling any Change Directive in accordance with Section 2.7 of this Schedule 12 [Changes]);
- (e) elect to proceed with the Change on a cost plus basis in accordance with Section 2.8(c) of this Schedule 12 [Changes]; or
- (f) issue a Change Order on the terms determined by the Change Referee and the Contractor is deemed to have signed the Change Order and the Contractor will proceed with the Change without delay.

4 CLAIM FOR A CHANGE

4.1 Claim for a Change

If the Contractor at any time wishes to claim that a Change has occurred, then:

- (a) if a circumstance, condition or event that would entitle the Contractor to claim a Change pursuant to an express term of the Contract occurs or if the Contractor receives a direction, instruction or decision from Hydro's Representative for which a Change Order or Change Directive was not given, then the Contractor may only claim an adjustment to the Contract Price or an adjustment to the time for the performance of the Work or both as follows:
 - (i) prior to proceeding with such direction, instruction or decision, the Contractor will give written notice to Hydro's Representative of its intention to make such a claim by submitting a Change Report, prepared in accordance with Section 3.3 of this Schedule 12 [Changes]; and
 - (ii) the Contractor will maintain and submit all records and information in accordance with Sections 2.7(b) and 2.7(c) of this Schedule 12 [Changes];

- (b) upon receipt of a Change Report under Section 4.1(a)(i) of this Schedule 12 [Changes] from the Contractor, Hydro's Representative will promptly investigate the conditions giving rise to the claimed Change;
- (c) if the Contractor fails to submit a Change Report as required by Section 4.1(a) of this Schedule 12 [Changes], within seven days of the occurrence of the circumstance, condition or event, including any direction, instruction or decision from Hydro's Representative, that the Contractor claims to entitle it to make a claim under Section 4.1 of this Schedule 12 [Changes], then, to the extent that BC Hydro has been prejudiced in its ability to either assess the Contractor's claim or to mitigate the impact of the claim by reason of the Contractor's failure, the Contractor will not be entitled to, nor will the Contractor make any claim for, an adjustment to the Contract Price or an adjustment of the time for the performance of the Work; and
- (d) in no event will the Contractor be entitled to, nor will the Contractor make any claim for, an adjustment to the Contract Price on account of any circumstance, condition or event, including any direction, instruction or decision from Hydro's Representative, that entitles the Contractor to make a claim under Section 4.1 of this Schedule 12 [Changes] for which the Contractor has not kept, nor made available to Hydro's Representative, the records as required under Section 4.1(a)(ii) of this Schedule 12 [Changes].

If Hydro's Representative refuses the Contractor's request for a Change Order, such refusal will be final and may not be appealed or otherwise disputed unless the Contractor delivers a Dispute Notice with respect to such refusal within 30 days after the Contractor's receipt of notice of Hydro's Representative's refusal.

5 EMERGENCY

5.1 Emergency

Notwithstanding any other provision in the Contract, Hydro's Representative may, in the event of an emergency, issue oral or written orders to the Contractor for any Change required by reason of an emergency. The Contractor will proceed with such Change without delay, without prejudice to the Contractor's right to claim an adjustment to the Contract Price or the time for the performance of the Work or both. Hydro's Representative will confirm such orders in the form of a Change Order or Change Directive as soon as practicable.

6 MODIFICATIONS TO PROCESSES AND PROCEDURES

6.1 Agreement to Modified Process

Nothing in this Schedule 12 [Changes] will limit the ability of the parties to mutually, in writing, modify, simplify or waive some or all of the processes and procedures outlined in this Schedule in respect of Changes.

6.2 Development Changes

Where the parties agree to utilize an alternate procedure for agreeing on and tracking Changes that:

- (a) on an individual basis, have an estimated value of [REDACTED]
- (b) on a cumulative basis, have an estimated value of [REDACTED]

- (c) do not result in a change in the Interface Milestone Dates or the dates for Substantial Completion or Total Completion.

(each a "**Development Change**"),

the parties may, on an individual Change basis, agree to utilize the following process, rather than the processes set out in Section 3 or Section 4 of this Schedule 12 [Changes].

6.3 Development Change Process

Where a party identifies a potential Development Change, that party may present the potential Development Change to the other party in a form, and with such supporting information, as it considers to be appropriate to the nature and complexity of the potential Development Change.

Where a party presents a potential Development Change it will do so as early as practicable and the parties' respective Representatives will meet as soon as practicable to discuss the proposed Development Change and where:

- (a) the proposed Development Change meets the requirements of Section 6.2 of this Schedule 12 [Changes]; and
- (b) the parties reach agreement with respect to the adjustments, if any, to be made to the Contract Price or the time for the performance of the Work or both and anything else required to implement the proposed Development Change,

the Contractor will record the terms of the parties' agreement with respect to the applicable Development Change (a "**Development Change Record**").

Promptly after preparing a Development Change Record, and in any event prior to implementation of the agreed Development Change, the Contractor will deliver a draft for discussion followed by an executed copy of the Development Change Record (a "**Development Change Record Confirmation**") to Hydro's Representative for execution.

6.4 Representatives

Hydro's Representative and the Contractor's Representative will have authority to agree on the adjustments, if any, to be made to the Contract Price or the time for the performance of the Work or both.

6.5 Implementation

Following the issuance of a Development Change Record Confirmation, the parties will promptly proceed with implementation of the applicable Development Change on the terms set out in the applicable Development Change Record Confirmation. A Development Change Record Confirmation will be binding on the parties.

6.6 Reconciliation

No later than the 10th day of each month, the Contractor's Representative will prepare and deliver to Hydro's Representative, For Information Only, a register of all Development Changes agreed during the prior month (the "**Development Change Register**").

6.7 Development Change Register

Within 30 days after Substantial Completion, BC Hydro will prepare and deliver to the Contractor a consolidated Change Order encompassing all of the agreed Development Changes, as set out in the applicable Development Change Registers.

6.8 No Dispute

The parties agree that a failure to reach agreement: (i) to utilize the procedure set out in this Section 6; or (ii) with respect to a proposed Development Change pursuant to the procedure set out in this Section 6, will not constitute a Dispute, and will not be referred for resolution pursuant to the Dispute Resolution Procedure.

7 VALUE ENGINEERING PROPOSALS

7.1 Value Engineering

The Contractor may at any time submit a proposal to BC Hydro (a “**Value Engineering Proposal**”) to implement modifications to the Specifications or Drawings for the purpose of achieving efficiencies and reducing the Contract Price or the overall cost to BC Hydro of the Project. A Value Engineering Proposal must:

- (a) be originated and initiated solely by the Contractor (including by the Contractor bearing all investigation, research and development costs) without the involvement of BC Hydro or any BC Hydro Person; and
- (b) offer savings, innovations, efficiencies or other benefits that are not otherwise called for or provided by this Contract.

7.2 Content of Value Engineering Proposal

A Value Engineering Proposal will:

- (a) set out all the information required in a Change Report as required under Section 3.3 of this Schedule, modified to apply to a Value Engineering Proposal;
- (b) specify the Contractor’s reasons and justification for proposing the Value Engineering Proposal;
- (c) indicate any implications of the Value Engineering Proposal, including any differences between the existing and the proposed requirements of this Contract, and the comparative advantages of each to the Contractor and BC Hydro;
- (d) indicate whether a payment by BC Hydro in respect of Direct Costs or a variation to the Contract Price is proposed (positive or negative) and, if so, give a detailed estimate of such proposed payment or variation;
- (e) indicate if there are any dates by which a decision by BC Hydro must be made; and
- (f) include such other information and documentation as may be reasonably requested by BC Hydro to fully evaluate and consider the Value Engineering Proposal.

7.3 Costs of Developing Value Engineering Proposal

The Contractor may deliver to BC Hydro preliminary information with respect to a proposed Value Engineering Proposal, but unless BC Hydro, in its discretion, agrees to pay or share the costs of

developing a Value Engineering Proposal, the costs of investigating, researching and developing a potential Value Engineering Proposal will be borne entirely by the Contractor.

7.4 Evaluation of Value Engineering Proposal

BC Hydro will evaluate and give consideration to a Value Engineering Proposal taking into account all relevant issues, including whether:

- (a) a change in the Contract Price will occur;
- (b) a change in the overall cost to BC Hydro of the Project will occur;
- (c) the Value Engineering Proposal affects the quality (including the design service life, serviceability of the asset and the maintenance of the facility) or delivery of the Work;
- (d) the Value Engineering Proposal will interfere with the relationship of BC Hydro with any third parties;
- (e) the financial strength of the Contractor is sufficient to deliver the changed Work;
- (f) the residual value of the Project or the Work is affected; and
- (g) the Value Engineering Proposal materially affects the risks or costs to which BC Hydro is exposed.

BC Hydro may request clarification or additional information regarding the Value Engineering Proposal, and may request modifications to the Value Engineering Proposal.

7.5 Sharing Benefits of a Value Engineering Proposal

If the Value Engineering Proposal causes or will cause the costs of the Contractor to decrease, after taking into account the agreed implementation and reasonably allocated development costs (incurred by the Contractor) of the Value Engineering Proposal (taking into account any other uses of the Value Engineering Proposal by the Contractor, and taking into account the positives or negatives to BC Hydro), the net savings in the costs of the Contractor will be shared equally by the Contractor and BC Hydro, and BC Hydro's share of the net savings will be reflected in a reduction to the Contract Price.

7.6 Acceptance and Implementation of Value Engineering Proposal

Notwithstanding any potential cost savings of a Value Engineering Proposal, BC Hydro is under no obligation to accept a Value Engineering Proposal and may, in its discretion, elect not to implement any Value Engineering Proposal. A Value Engineering Proposal that is accepted by BC Hydro will only be implemented as a Change following the issuance of a Change Order.