

BC HYDRO SITE C CLEAN ENERGY PROJECT

WORKER ACCOMMODATION

PROJECT AGREEMENT

for the Site C Clean Energy Project

British Columbia Hydro and Power Authority

and

ATCO Two Rivers Lodging Group Limited Partnership

Dated: September 28, 2015

WORKER ACCOMMODATION

PROJECT AGREEMENT

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PROJECT AGREEMENT

SITE C CLEAN ENERGY PROJECT

WORKER ACCOMMODATION PROJECT AGREEMENT

THIS PROJECT AGREEMENT (this "**Agreement**") made effective as of the 28th day of September, 2015 (BC Hydro Reference # _____)

BETWEEN:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY, a British Columbia Crown Corporation having its head office at 333 Dunsmuir Street, Vancouver, B.C. V6B 5R3

("BC Hydro")

AND:

ATCO TWO RIVERS LODGING GROUP LIMITED PARTNERSHIP, an Alberta limited partnership, having its head office at Suite 600, 4838 Richards Road SW, Calgary, Alberta T3E 6L1

("Project Co")

WHEREAS:

- A. BC Hydro is currently in the process of developing the Site C Clean Energy Project (the "**Project**") which will be a third dam and hydroelectric generating station on the Peace River in northeast B.C.;
- B. Project Co is the successful proponent under RFP #1807;
- C. BC Hydro and Project Co entered into an Amended and Restated Limited Notice to Proceed effective as of June 5, 2015 (the "**Limited Notice to Proceed**") pursuant to which Project Co proceeded with a portion of the Design and Construction in advance of finalizing the terms of this Agreement; and
- D. The parties wish to enter into a formal contract for the design, build and partial finance of the Facility for the Site C Clean Energy Project Worker Accommodations, to operate and maintain the Facility for approximately eight years, and to decommission the Facility, all in accordance with this Agreement.

NOW THEREFORE in consideration of the mutual covenants and conditions contained in this Agreement, BC Hydro and Project Co agree as follows:

1 INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires, the capitalized terms will have the meanings set out in Schedule 1 [Definitions and Interpretation]. Certain words and expressions are defined within the schedules hereto and such definitions will apply, 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 Schedules

The schedules hereto and the terms set out therein will be deemed fully a part of this Agreement.

2 GENERAL PROJECT TERMS

2.1 Term and Termination

The term of this Agreement (the “**Term**”) will commence on the Effective Date and will continue to the later of:

- (a) the Expiry Date, unless earlier terminated:
 - (i) 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)(i);
 - (ii) by either party in accordance with Section 2.6 of this Agreement;
 - (iii) by BC Hydro pursuant to Section 7.6 of this Agreement if BC Hydro elects not to re-instate the WA Project after receipt of a Reinstatement Plan;
 - (iv) by either party pursuant to Section 7.7 of this Agreement in connection with insufficient insurance;
 - (v) by either party pursuant to Section 7.8 of this Agreement in connection with uncollectible Insurance Receivables;
 - (vi) by BC Hydro pursuant to Section 7.14(a) or 7.14(c)(ii) of this Agreement in connection with a Principal Insured Risk becoming Uninsurable;
 - (vii) by either party pursuant to Section 9.4(c) or 9.4(e) of this Agreement in connection with a Relief Event;
 - (viii) by either party pursuant to Section 9.6(c) or 9.6(d) of this Agreement in connection with a Force Majeure Event;
 - (ix) by BC Hydro pursuant to Section 13.4 of this Agreement in connection with a Project Co Event of Default; or
 - (x) by Project Co pursuant to Section 14.3 of this Agreement in connection with a BC Hydro Event of Default; and
- (b) provided that this Agreement is not earlier terminated pursuant to any of Sections 2.1(a)(i) through (x) inclusive of this Agreement, for the purposes of the Decommissioning only, the completion of all Decommissioning obligations under this Agreement.

Unless otherwise specified, the Termination Date for such earlier terminations 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 of this Agreement, neither party will have the right to terminate this Agreement.

Notwithstanding that the Term commences on the Effective Date, Sections 2.3 to 2.6 of this Agreement inclusive, will take effect and apply from the execution and delivery of this Agreement.

2.2 Extensions

BC Hydro may, at its election, on giving written notice to Project Co at least 12 months prior to the end of the Term, extend the Term for a period of 12 months. BC Hydro may exercise its rights under this Section 2.2 for two 12 month extensions. [REDACTED]

2.3 Document Deliveries

Concurrently with the execution and delivery of this Agreement,

- (a) Project Co will deliver the Project Co Documents described in Section 2.1 of Schedule 27 [Completion Documents]; and
- (b) BC Hydro will deliver the BC Hydro Documents described in Section 3.1 of Schedule 27 [Completion Documents].

2.4 Closing

The Closing will take place in accordance with the provisions of the Closing Protocol at the offices of Dentons Canada LLP on the Closing Date, or at such other place as BC Hydro and Project Co may agree.

2.5 Conditions to Closing

The obligations of Project Co and BC Hydro to complete Closing are subject to fulfilment of the following conditions on or before the last date set out in the Closing Protocol:

- (a) no injunction or restraining order or other decision, ruling or order of a court or administrative tribunal of competent jurisdiction being in effect which prohibits, restrains, limits or imposes conditions on, the transactions contemplated by this Agreement; and
- (b) each of the parties has delivered its Completion Documents,

and each of BC Hydro and Project Co will act in good faith and use reasonable commercial efforts to satisfy or fulfil each of the foregoing conditions that it is reasonably capable of satisfying or fulfilling.

2.6 Failure to Satisfy Conditions

If any of the conditions set out in Section 2.5 of this Agreement are not satisfied or fulfilled, and are not waived by both BC Hydro and Project Co, on or before the date set out therein, either of BC Hydro or Project Co may terminate this Agreement by notice to the other and thereafter the parties will be released from all obligations under this Agreement.

2.7 Limited Notice to Proceed

The following applies with respect to the Limited Notice to Proceed:

- (a) all work, including the Preliminary Services (as defined in the Limited Notice to Proceed) performed by Project Co under the Limited Notice to Proceed is deemed to have been undertaken under this Agreement and all terms and conditions of this Agreement apply to all such work as if such work had been undertaken under this Agreement; and
- (b) the Limited Notice to Proceed is hereby terminated as of the Effective Date provided however that with respect to any time period for a deliverable or a component of either Design or Construction required under this Agreement which was delivered or included in the Preliminary Services under the Limited Notice to Proceed and which is expressed as a number of days, months or years after the Effective Date, the time period for that deliverable or a component of either Design or Construction under this Agreement will be deemed to commence on the earlier of:
 - (i) June 5, 2015;
 - (ii) the date identified in the Limited Notice to Proceed for the commencement of the deliverable or the Preliminary Services; and
 - (iii) the Effective Date.

2.8 Assumption of Risk

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

2.9 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, to the WA Project and the Lands. Notwithstanding the foregoing:

- (a) BC Hydro will not compete with Project Co in respect of the Services to be provided by Project Co under this Agreement; and
- (b) BC Hydro will include a provision in other major contracts related to the Project [REDACTED] to be provided by Project Co under this Agreement.

2.10 General Duty of Project Co to Mitigate

In all cases where Project Co is entitled to receive from BC Hydro any compensation in addition to the payments described in Section 3.1(a) of this Agreement, 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 under this Agreement, 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 by Project Co to mitigate and meet its obligations under this Section 2.10.

2.11 General Duty of BC Hydro to Mitigate

In all cases where BC Hydro is entitled to receive from Project Co any compensation, costs or damages, but not in any other case, BC Hydro will use all reasonable efforts to mitigate such amount required to be paid by Project Co to BC Hydro under this Agreement, provided that such obligation will not require BC Hydro to:

- (a) take any action which is contrary to the public interest, as determined by BC Hydro in its discretion;
- (b) undertake any mitigation measure that might be available arising out of its status as a public body, but which measure would not normally be available to a private commercial party; or
- (c) alter the amount of any Deductions it is entitled to make in accordance with Schedule 11 [Prices, Payment and Security].

BC Hydro will have no obligation to mitigate, implied or otherwise, except as set out in this Section 2.11 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 2.11.

2.12 Representatives

The parties will appoint Representatives in accordance with Schedule 3 [Roles and Representatives].

2.13 Site C Document Control

BC Hydro has established an electronic system (**'Site C Document Control'**) which it intends to use for the storage, cataloguing, retention and retrieval of all Project records, and the following will apply:

- (a) the parties will deliver all documentation of any kind whatsoever that one party delivers to the other party under this Agreement (collectively, the **'Contract Records'**), including:
 - (i) all Submittals; and
 - (ii) all administrative communications, including general requests for information, copies of invoices, meeting minutes, general correspondence and emails (collectively, **"Administrative Correspondence"**),

by way of Site C Document Control, in accordance with Appendix 2I [SharePoint Technical Requirements for Contractors];

- (b) a Contract Record may consist of one or more electronic files (each, a **'Document'**);
- (c) BC Hydro will assign a unique number (each a **'Document Number'**) to each Document that is part of a Submittal, as follows:
 - (i) for a Document that corresponds to a Submittal or Submittal Item that is set out in the Submittal Schedule, BC Hydro will assign that Document a Document Number after the submission of that Submittal Schedule;
 - (ii) for a Document that is not assigned a Document Number pursuant to Section 2.13(c)(i) of this Agreement, Project Co may, prior to delivering the Submittal containing that Document in accordance with Section 2.13(a) of this Agreement, in writing request BC

Hydro to assign a Document Number after which BC Hydro will assign a Document Number to that Document;

- (d) without limiting Appendix 2I [SharePoint Technical Requirements for Contractors], the parties will use reasonable commercial efforts to prepare a Contract Record so that no Contract Record exceeds 50 GB in total and so that no individual Document that is part of a Contract Record exceeds 2 GB;
- (e) a party that delivers a Contract Record in accordance with Section 2.13(a) of this Agreement will deliver with that Contract Record a copy of a summary of documents included in that Contract Record (a “**Transmittal**”) in respect of that Contract Record; and
- (f) at the time that a party delivers any Contract Record in accordance with Section 2.13(a) of this Agreement, that party will deliver a copy of the Transmittal of that Contract Record electronically to the receiving party’s Representative.

2.14 Electronic Data Site

BC Hydro has established an electronic data site to contain information relating to the Design, Construction and Services, which information will not be a Contract Record, and provided BC Hydro provides Project Co with access to such electronic data site, then Project Co will, as part of the performance of the Design, Construction and Services, during the performance of its work under this Agreement monitor the electronic data site so as to obtain current information with respect to the Design, Construction and Services and portions of the Project that interconnect with the Design, Construction and Services.

2.15 Key Individuals

Attached as Appendix 3A [Key Individuals] is a list of persons (the “**Key Individuals**”) that Project Co will utilize in undertaking the Design and the Construction of the Facility in accordance with Schedule 2 [Design and Construction Protocols] and Schedule 29 [BC Hydro Offices – Specifications and Drawings] and in undertaking the Services in accordance with Schedule 21 [Services Protocols and Specifications] and Schedule 30 [BC Hydro Offices – Services Protocols and Specifications]. With respect to each of the Key Individuals, in accordance with Schedule 3 [Roles and Representatives], Project Co will use all reasonable efforts to retain and make available the Key Individuals to perform the tasks as described in Schedule 3 [Roles and Representatives].

Within 30 days of the Closing Date, Project Co will notify BC Hydro of the name and qualifications of the person designated by Project Co to be the “General Manager” or equivalent as of the start of the Operating Period, and such person will from the date of such notice also be a Key Individual for the purposes of this Section 2.15.

2.16 Naming

BC Hydro will have the exclusive right to name the Facility and any parts thereof.

2.17 Signs

Except as may be required by this Agreement, Project Co will not erect or maintain any signs on the Lands or in the Facility without the written consent of BC Hydro. Project Co acknowledges that BC Hydro will generally require that signage on its premises after Service Commencement display only the name and logo of BC Hydro and that it is unlikely that BC Hydro will consent to any signage containing the name of Project Co or any Project Contractor or Subcontractor 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 expressly provided for herein, including:

- (a) the Construction Payments and the Service Payments as set out in Schedule 11 [Prices, Payment and Security];
- (b) the Termination Payments as set out in Schedule 22 [Compensation on Termination];
- (c) amounts owing under Section 7 of this Agreement;
- (d) amounts owing under Section 8 of this Agreement;
- (e) amounts owing under Section 9 of this Agreement;
- (f) amounts owing under Section 10 of this Agreement; and
- (g) amounts agreed to be paid by BC Hydro pursuant to a Settlement Agreement or otherwise owing in accordance with the Dispute Resolution Procedure,

in accordance with the provisions of this Agreement.

3.2 Limitation on Payments

Other than the payments expressly provided for herein, Project Co will have no right to any further payment from BC Hydro in connection with the Design, the Construction, the Services or otherwise in connection with the WA Project.

3.3 Provision of Lands

BC Hydro will make the Lands available for the WA Project in accordance with Schedule 20 [Lands] and the parties' rights and obligations in respect of the Lands are set out in such Schedule.

3.4 Representations and Warranties

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

- (a) BC Hydro is a British Columbia Crown Corporation, and BC Hydro 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 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 limitations by bankruptcy, insolvency, liquidation, reorganization, reconstruction and other similar laws of general application affecting the enforceability of remedies and rights of creditors and subject to availability of equitable remedies such as specific performance and injunction that are in the discretion of a court;

- (c) all required third party consents to the execution by BC Hydro of, and performance of its obligations under, this Agreement have been received;
- (d) BC Hydro has the rights and interest in and to the Lands, in each case free and clear of all encumbrances, restrictions or limitations except the Encumbrances and any encumbrances which do not adversely affect, financially or otherwise, the ability of BC Hydro to grant the Licence or the ability of Project Co to conduct the Design or Construction or provide the Services as contemplated by this Agreement;
- (e) the parcels or interests comprising the Lands permit the grant of the Licence by BC Hydro and the conduct by Project Co of the Design and the Construction and the provision by Project Co of the Services as contemplated by this Agreement; and
- (f) to the extent BC Hydro's chief project officer for the WA Project Has Knowledge, there are no facts or information relating to the WA 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.

4 PROJECT CO'S GENERAL OBLIGATIONS

4.1 General Obligations Re: WA Project

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

- (a) carry out the Design and the Construction;
- (b) perform the Services;
- (c) perform the Decommissioning; and
- (d) comply with all Permits.

4.2 Interpretation of Specifications

The Design, Construction and Services requirements as set out in Schedule 6 [Specifications and Drawings], Schedule 21 [Services Protocols and Specifications], Schedule 29 [BC Hydro Offices – Specifications and Drawings] and Schedule 30 [BC Hydro Offices – Services Protocols and Specifications] (and their respective Appendices, including Appendix 6A [Functional Program] and Appendix 29A [BC Hydro Offices – Functional Program Offices]) will be interpreted as setting the minimum requirements with respect to the applicable Design, Construction or Services, except if and to the extent a provision expressly, or by necessary inference, establishes performance requirements from which Project Co will establish the requirements to meet such defined performance.

4.3 Project Intellectual Property

The following will apply with respect to Project Intellectual Property:

- (a) Grant of License: Project Co hereby grants to BC Hydro an irrevocable, perpetual, nonexclusive, fee-free, royalty-free, assignable license to use, and to permit others on behalf of BC Hydro to use, any Project Intellectual Property rights owned by, controlled by, licensed to or used by Project Co to the extent such Project Intellectual Property rights are incorporated into the Submittals, the Construction, the Facility or the Services, in connection with:

- (i) the construction, operation, maintenance, repair or alteration of the Facility or any part of the Facility;
 - (ii) the performance of the Services or any part of the Services; and
 - (iii) in the circumstances where the Facility or the Services or all of them are incomplete due to the default of Project Co, the completion of the Facility or the Services or all of them.
- (b) Third Party Project Intellectual Property: Project Co will make each third party with whom it deals and who may be affected by Section 4.3(a) of this Agreement aware of Section 4.3(a) of this Agreement and will cause each such third party to comply with such provision so as to enable Project Co to fulfill its obligations under such provision, prior to or upon entering into any contract or agreement with such third party.
- (c) Royalty and Patent Fees: Project Co will be solely responsible for and will pay all royalties, patent fees, license fees and other charges payable on the items or things furnished by or on behalf of Project Co in connection with the Design, the Construction and the Services.
- (d) Moral Rights: Project Co waives in favour of BC Hydro all moral rights, and will cause all of Project Co's personnel, Project Contractors and their personnel, and Subcontractors and their personnel working on the Design, the Construction, and the performance of the Services to waive in favour of BC Hydro all such rights in and to any Project Intellectual Property incorporated into the Design, the Construction and the Services. Project Co will have each of its personnel or any third persons engaged in the Design, the Construction and the performance of the Services do all such other things and execute all such documents as reasonably requested by BC Hydro in writing in order to confirm or give effect to any of the matters described in Section 4.3 of this Agreement.

4.4 Records and Reports

Project Co will, at its own cost and expense, retain and maintain the records and reports referred to in Schedule 15 [Records] in accordance with such Schedule and in a form that is capable of audit by BC Hydro. Project Co will:

- (a) make all such records available to BC Hydro 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 as soon as reasonably practicable.

4.5 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 WA Project or otherwise expressly permitted hereunder.

4.6 Project Co Persons

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

4.7 Use of Subcontractors

Without limiting Section 4.6 of this Agreement, BC Hydro acknowledges that Project Co may carry out the Design, the Construction and the Services 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 Subcontractors. In respect of the WA Project, Project Co will not contract with, or allow any of its Project Contractors or any Subcontractors to contract with, any Person that is a Restricted Person. Notwithstanding the use of Project Contractors or Subcontractors, Project Co:

- (a) will not be relieved or excused from any of its obligations or liabilities under this Agreement; and
- (b) will remain principally liable to BC Hydro for the due observance and performance of all the covenants, obligations, agreements and conditions of this Agreement that are to be observed and performed by Project Co.

4.8 Material Contracts

Project Co will not:

- (a) terminate, or agree to or permit the termination of, all or any material part of any Material Contract except:
 - (i) as required to do so by BC Hydro pursuant to the provisions of this Agreement; or
 - (ii) if there is an event of default under a Project Contract and Project Co terminates it in order to prevent or cure a Project Co Event of Default;
- (b) make, or agree to or permit the making of:
 - (i) any material amendment of any Material Contract, other than amendments (whether made by change order or otherwise) that are the direct and reasonable consequence of a Change; or
 - (ii) any departure by any party from any material provision of any Material Contract;
- (c) 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 Subcontract 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 permit the entering into of, any Material Contract other than those entered into on or before the Closing 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 of 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 of 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. In determining whether to provide such consent and without limiting BC Hydro's discretion, it will be reasonable for BC Hydro to refuse its consent to the proposed course of action if:

- (e) the proposed assignee, transferee or party entering into any Material Contract, or any of its Affiliates, is a Restricted Person;
- (f) the proposed course of action could, in the reasonable opinion of BC Hydro, have a material adverse effect on BC Hydro, the Project or the WA Project; or
- (g) in the case of a proposed course of action under Section 4.8(c) of this Agreement, an interface agreement among Project Co, Design-Builder and Service Provider on terms consistent with industry practice with such modifications as are required to address the WA Project matters set out in this Agreement acceptable to BC Hydro, acting reasonably, has not been entered into by Project Co, Design-Builder and Service Provider.

Project Co will cause the Design-Builder to comply with the requirements of this Section 4.8 with respect to the Subcontract between the Design-Builder and Bird Design-Build Construction Inc. dated on or about the Effective Date.

4.9 [REDACTED]

If Project Co requests consent to a proposed course of action pursuant to Section 4.8 of this Agreement, 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 4.9. 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 4.9 and Project Co will promptly pay such amount to BC Hydro.

4.10 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 WA Project, or have been fully delivered or performed and all liabilities and obligations thereunder have been fully discharged:

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

4.11 Delivery of Amended Material Contracts

If at any time any amendment 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 of its execution or creation, certified as a true copy by an officer of Project Co.

4.12 Project Co's Representations and Warranties

Project Co represents and warrants to BC Hydro that:

- (a) Project Co is a limited partnership duly created and validly existing under the *Partnership Act* (Alberta) and is 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 General Partner is a duly incorporated and validly existing company under the *Business Corporations Act* (Alberta) and is 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;
- (c) the information set out in Schedule 25 [Project Co's Ownership Information] is true and correct and, except as set out in Schedule 25 [Project Co's Ownership Information], there is as at the date of this Agreement no outstanding offer, agreement or other arrangement pursuant to which:
 - (i) 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 General Partner; or
 - (ii) the partnership agreement governing Project Co will be amended or otherwise altered;
- (d) none of Project Co, the General Partner, persons who control Project Co or any Affiliates of those persons, the Project Contractors and Subcontractors is a Restricted Person;
- (e) 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 General Partner, and this Agreement has been duly executed and delivered by the General Partner on behalf of Project Co and constitutes a legal, valid and binding obligation of Project Co enforceable in accordance with its terms, subject to limitations by bankruptcy, insolvency, liquidation, reorganization, reconstruction and other similar laws of general application affecting the enforceability of remedies and rights of creditors and subject to availability of equitable remedies such as specific performance and injunction that are in the discretion of a court;
- (f) 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 WA Project;
- (g) it has carefully reviewed the whole of this Agreement, including the Design and Construction Protocols, the Specifications and Drawings, the Services Protocols and Specifications and all applicable Laws, and has taken all steps it considers necessary to satisfy itself that nothing contained herein inhibits or prevents Project Co from performing and completing the Design, the Construction and the Services in accordance with this Agreement in a good and safe manner in accordance with Good Industry Practice so that Project Co achieves and satisfies the requirements of this Agreement; and
- (h) each Partner and ASL, in its capacity other than as a Partner in Project Co, has taken all corporate steps and actions necessary to authorize, enter into and deliver each of the Completion Documents to which it is a party.

The representation and warranty of Project Co in Section 4.12(g) of this Agreement 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 against Project Co or for the purposes of terminating this Agreement.

4.13 Disclosed Data

It is Project Co's responsibility to have conducted its own analysis and review of the WA Project and, before the execution of this Agreement, to have taken all steps it considers necessary to satisfy itself as to the accuracy, completeness and applicability of any Disclosed Data upon which it places reliance and to assess all risks related to the WA Project. Subject to Section (e) of the definition of Compensation Event and BC Hydro's obligations set out in Schedule 20 [Lands], Project Co will not be entitled to and will not make (and will ensure that no Project Contractor or Subcontractor makes) any claim against BC Hydro or any BC Hydro Indemnified Persons, whether in contract, tort or otherwise including any claim in damages, for extensions of time or for additional payments under this Agreement on the grounds:

- (a) of any misunderstanding or misapprehension in respect of the Disclosed Data;
- (b) that the Disclosed Data was incorrect or insufficient; or
- (c) that incorrect or insufficient information relating to the Disclosed Data was given to it by any Person other than BC Hydro,

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

4.14 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 of receipt of such inquiry or such longer period as the circumstances and content of the inquiry may reasonably require.

4.15 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 will, in the performance of the WA Project work and its obligations under this Agreement, comply, and cause all Project Contractors and Subcontractors 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 Subcontractors or other Project Co Persons for the purposes of the WA Project and this Agreement unless otherwise directed by BC Hydro pursuant to subparagraph (b) below;
- (b) BC Hydro may in circumstances permitted at Law, 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 Subcontractors or other Project Co Persons in relation to all or specified

parts of the WA 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 Subcontractors or other Project Co Persons, will complete the specified WA Project work and perform their related obligations pursuant to this Agreement (and the applicable Material Contracts or Subcontracts) on the basis that the Laws specifically described by BC Hydro in the Immunity Direction will be deemed to not apply to the WA Project work, and to Project Co, Project Contractors and Subcontractors 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 WA Project, the WA Project work or to Project Co, Project Contractors or Subcontractors 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.

4.16 Municipal, Regional District or Provincial Permits

No regional district, municipal or other local government building permits will be required with respect to any structures to be constructed, installed or placed on lands in which BC Hydro has a fee simple, leasehold or other interest and accordingly, no building permit will be required in connection with the Facility or any other structures or improvements constructed, installed or placed on the Worker Accommodation Area. Any structure that is not within the Worker Accommodation Area, the Site or on other lands in which BC Hydro has a fee simple, leasehold or other interest, is constructed, installed or placed by Project Co, will be subject to local government regulation.

Except as may be expressly provided otherwise in this Agreement, Project Co is required to obtain all necessary Permits in order for Project Co to fulfil its obligations under this Agreement. To the extent required, and without assuming any responsibility for or any liability with respect to the Design and Construction, or for the performance of the Services, BC Hydro will cooperate with Project Co in obtaining any required Permit.

Without limiting the foregoing, BC Hydro will not be obligated to issue a building permit or an occupancy permit in respect of the Facility or any portion thereof.

4.17 Potable Water and Wastewater

- (a) Project Co will not, directly or indirectly, use potable water or wastewater services that are provided by a local municipal or regional government except as follows:
 - (i) prior to the commissioning of potable water systems and wastewater systems for the Project, as applicable, at the Site;
 - (ii) during times of peak demand on the Site systems for a period of no more than four months; and
 - (iii) at other times with the prior approval of the local municipal or regional government.

- (b) Project Co will notify BC Hydro in writing if at any time Project Co uses a local municipal or regional government's potable water or wastewater services or both, or enters into an agreement with a local municipal or regional government for such services.

5 LABOUR WORKFORCE

5.1 Inclusive Labour Approach

BC Hydro anticipates implementing an approach for the Project that allows for participation from all labour groups and contractors regardless of union affiliation or union status.

5.2 Skilled Workers

Project Co will employ or engage, and cause the Project Contractors and all Subcontractors to employ or engage, a sufficient number of skilled and qualified workers to perform the Design, Construction and Services in accordance with this Agreement, in accordance and compliance with all applicable Law.

5.3 Cost of Recruiting Labour

Project Co and its Project Contractors and Subcontractors will be responsible for all costs of recruiting and retaining skilled and qualified labour.

5.4 Appropriate Agreements and Waivers

If Project Co is or becomes a party to a collective agreement with a union then Project Co will have agreements with such union(s), and will provide BC Hydro with a copy of such agreement(s), with respect to the performance of the Design, Construction or Services, as applicable, as required to give effect to the following terms:

- (a) any collective agreement between Project Co and a union representing workers performing any Design, Construction or Services at the Worker Accommodation Area or at the Facility will be for a term that is equal to or longer than the Term;
- (b) if strikes, lockouts, slowdowns or any other interference or interruption to the performance of labour productivity, including but not limited to work-to-rule action (each, a **Labour Disruption**) occurs in the construction sector in British Columbia during the Term, and originates off-Site, any Design, Construction and Services performed at the Worker Accommodation Area or at the Facility will not be affected by such Labour Disruption;
- (c) any non-affiliation clause in a collective agreement between Project Co and a union is waived by that union, and accordingly union members will not be precluded from working at the Facility, or in proximity to the Facility on the Worker Accommodation Area, alongside non-union workers or workers of other unions and the union will not interfere in any way with non-union workers or workers of other unions, and no union or worker will refuse to handle or install any material, equipment or components or to honour hot cargo edicts, or otherwise during the Term;
- (d) the union, and any person acting on behalf of the union, will not initiate, pursue or endorse any activity for the purpose of recruitment or representation of employees, contractors or consultants represented by other trade unions, including changes in representation or raids, with respect to any employee, contractor or consultant working on the Project;
- (e) a representative of a union with whom Project Co has a collective agreement will be able to enter the Worker Accommodation Area and attend at the Facility as reasonably required for union business without interfering with the progress of the Design, Construction and Services; and

- (f) if and to the extent Project Co has commitments to engage Aboriginal persons there will be no objection to preferential hiring of such Aboriginal persons.

5.5 Change in Status

If Project Co becomes a signatory to a collective agreement, or ceases to be a signatory to a collective agreement, it will notify BC Hydro in writing.

5.6 Notification of Labour Events

In the event of any labour dispute involving employees of Project Co, a Project Contractor or a Subcontractor, whether at the Site or elsewhere, that will or may delay performance of the Design, Construction or Services, Project Co will provide Hydro's Representative within eight hours after the commencement of such labour dispute, a full report on such dispute including, to the extent known to Project Co, the cause of the dispute, the employer and employees affected or involved, the actions being taken to end the dispute and the known or probable effect on the Work Program and Schedule. Project Co will provide further reports at the request of Hydro's Representative.

Project Co will upon being aware immediately advise Hydro's Representative of any current or pending labour negotiations or actual, pending or threatened labour disputes that could interfere with the progress of the Project or the WA Project. Project Co will take all necessary steps and develop a course of action with Hydro's Representative to ensure that the continuity and timeliness of the WA Project will not be jeopardized, and advise and update Hydro's Representative on all developments in the negotiations or dispute.

5.7 Enjoining Labour Disruption

Without prejudice to Project Co's rights under this Agreement, Project Co will at its cost take such steps before an authority with jurisdiction so as to seek to prevent or terminate any Labour Disruption at the Facility, and Project Co will not be entitled to any payment or time extension on account of a Labour Disruption caused or contributed to by Project Co or a Project Co Person.

Failure to use reasonable commercial efforts to prevent any delay or terminate any Labour Disruption within the Worker Accommodation Area or at the Facility will be deemed to be default under Section 13.1 of this Agreement.

5.8 General Worker Conduct

Project Co will be responsible for its workers' behaviour generally on the Worker Accommodation Area and at the Facility, and with respect to the Worker Accommodation Area and the Facility, and Project Co will require its workers to comply with the then current:

- (a) Fort St. John Shuttle Code of Conduct, as provided by the operator of the shuttle bus between Fort St. John airport, the City of Fort St. John and the Site; and
- (b) Worker Accommodation Facility Code of Conduct when workers are staying at the Facility.

5.9 Respectful Behaviour

Project Co will not permit its workers on the Worker Accommodation Area or at the Facility to engage in any form of violence, harassment, intimidation, bullying, or any other disparaging or demeaning conduct directed by a worker to another worker for any reason including based on any union affiliation or lack of union affiliation, including any verbal communications, written materials, or gestures. Project Co will have

a policy that prevents discrimination on the basis of prohibited grounds as outlined in applicable human rights legislation and the *Workers Compensation Act* (British Columbia).

5.10 Removal of Persons

Hydro's Representative may, by written notice to Project Co's Representative, object to any person engaged by Project Co, any Project Contractor or any Subcontractor for the performance of the Design, Construction or Services who, as determined by Hydro's Representative in its sole discretion, has engaged in misconduct, is incompetent, does not have adequate working knowledge of the safety rules and procedures applicable to the Worker Accommodation Area or otherwise fails to satisfy the applicable access requirements for the Site. Upon receipt of any such notice, Project Co will, subject to Laws, immediately cause such person to be removed from the Worker Accommodation Area and the Project and promptly replaced by a person(s) with suitable qualifications and experience, at no cost or expense to BC Hydro. Notwithstanding any other provision in this Section 5.10, Project Co, the Project Contractors and the Subcontractors will retain all authority and control over their respective employees, agents and Subcontractors.

5.11 No Poaching

Unless Project Co has the prior written agreement of the applicable contractor, Project Co will not invite, hire or attempt in any way to hire workers who are working at the Site for another contractor, and the following will apply with respect to workers who cease working for another contractor:

- (a) if a worker voluntarily ceases employment with a contractor at the Site, then Project Co will not employ that worker for a minimum of 30 calendar days beginning from the time the worker ceases the previous employment; and
- (b) if a worker is terminated for cause, then Project Co will not employ that worker for a minimum of 60 calendar days beginning from the time the worker ceases the previous employment.

BC Hydro will include in any major contract in respect of the construction of the Project, a provision on substantially the same terms and conditions as the foregoing paragraph in this Section 5.11.

Unless BC Hydro has the prior written agreement of Project Co or the applicable Project Contractor or Subcontractor, as the case may be, BC Hydro will not invite, hire or attempt in any way to hire workers who are working at the Site for Project Co, a Project Contractor or a Subcontractor, and the following will apply with respect to workers who cease working for Project Co, a Project Contractor or a Subcontractor:

- (c) if a worker voluntarily ceases employment with Project Co, a Project Contractor or a Subcontractor at the Site, then BC Hydro will not employ that worker for a minimum of 30 calendar days beginning from the time the worker ceases the previous employment; and
- (d) if a worker is terminated for cause, then BC Hydro will not employ that worker for a minimum of 60 calendar days beginning from the time the worker ceases the previous employment.

For certainty, the provisions of this Section 5.11 do not apply to workers who have been laid off.

5.12 No Gate Hires

Project Co will not hire workers directly at the Worker Accommodation Area or at the Facility who have not applied for employment through Project Co's established usual employment application procedures.

5.13 Employment Information and Job Fairs

Project Co will post Project employment opportunities for the Design, the Construction or the Services at Site as may be directed by BC Hydro, acting reasonably, on:

- (a) the BC Hydro Site C website;
- (b) other websites of local employment agencies in the Peace River Region; and
- (c) other publications or websites in British Columbia offering employment opportunities.

Project Co will as requested by BC Hydro acting reasonably, participate in job fairs as may be requested by BC Hydro from time to time.

5.14 Diversity

BC Hydro is committed to developing an inclusive workplace and a diverse workforce that represents the communities BC Hydro serves within British Columbia. Project Co will take into account this commitment in attracting and employing workers for the performance of the Design, Construction and Services at the Facility.

5.15 Site Training and Cultural Awareness

Project Co will implement training and awareness programs for workers at the Facility to increase cultural awareness, including with respect to Aboriginal cultures. Project Co will require all workers performing any of the Construction or Services to participate once in an approximately 30 minute training program either prior to completing their work at the Site or within 45 days of beginning work whichever occurs first, and BC Hydro may provide direction on the content of the program or elements of the program.

5.16 Emergency Medical Coverage

The following minimum emergency medical coverage will be provided to all workers while present in British Columbia in order to work on the Project, and when travelling to and from the Site from outside British Columbia. Project Co will, within 120 days of the Closing Date, provide to Hydro's Representative for Review an "Emergency Medical Services" manual describing how Project Co will provide the following minimum emergency medical coverage:

- (a) emergency medical treatment for accidental injuries or illness requiring immediate medical care; and
- (b) emergency medical transportation and convalescence, including:
 - (i) medical transportation arrangements to transfer the worker to and from the nearest appropriate medical facility in the worker's home province or country of residence;
 - (ii) if medically necessary, round trip transportation for an attendant to accompany and care for the worker;
 - (iii) if the worker is unable to travel due to medical reasons after being discharged from a medical facility, expenses incurred for meals and accommodations until medical transport to the worker's place of permanent residence can take place up to a maximum of [REDACTED] and

- (iv) if a worker dies while travelling to or from the Site for work purposes from outside British Columbia or while living at or near the Site for work purposes, then:
 - (A) provide transportation for one family member of the employee's immediate family to identify the body prior to its release if necessary, including reasonable reimbursement for the cost of accommodation and meals for the family member; and
 - (B) obtain all necessary authorizations and make all necessary arrangements to transport the body to the employee's place of permanent residence, up to a maximum of [REDACTED]

This coverage is in addition to WorkSafeBC regulations from employers regarding injuries or deaths in the workplace.

5.17 Employee Family Assistance Program

Project Co will provide the following minimum level of services:

- (a) on-site trauma counselling in response to accidents or incidents on the Site, including suicide, death of a fellow worker, serious injury to a worker, mass casualty incidents, threats to safety and natural disasters; and
- (b) phone access to counselling for the following:
 - (i) trauma, including suicide, death of a fellow worker or family member, serious injury to a worker, mass casualty incidents, threats to safety and natural disasters;
 - (ii) substance abuse, including alcohol, drugs and smoking;
 - (iii) family problems, including parenting, child and adolescent;
 - (iv) marital and relationship problems, including separation and divorce; and
 - (v) emotional, physical and psychological problems, including anxiety, anger and depression.

5.18 Information for Workers

Project Co will make reasonable efforts to assist BC Hydro in providing the following information to the workers:

- (a) Carpool and Commuter Program;
- (b) Medical Clinic Services;
- (c) Leisure and Airport Shuttle Program;
- (d) Logistical Assistance and Community Services Information Package for New Region Residents Program;
- (e) BC Hydro Fort St. John Housing Project Availability;
- (f) Peace Island Park BC Hydro funded long-stay RV Spaces Availability; and
- (g) BC Hydro funded Daycare Availability.

5.19 Work Force Reports

Project Co will provide a monthly report, in a form satisfactory to Hydro's Representative, acting reasonably, setting out the following information with respect to the preceding month and in respect of Project Co performing its obligations under this Agreement:

- (a) Project Co's daily work force, broken down by:
 - (i) the total number of workers;
 - (ii) the median number of daily workers;
 - (iii) the mean number of daily workers;
 - (iv) the total number of workers who have a primary residence in the Peace River Regional District;
 - (v) the total number of workers by job categories reported according to the National Occupation Code (NOC) 2011;
 - (vi) the total number of temporary workers hired by the Contractor who are not citizens or permanent residents of Canada ("**Temporary Foreign Workers**") by job categories reported according to the National Occupation Code (NOC) 2011;
 - (vii) the total number of 'Red Seal' trades apprentices by job categories reported according to the National Occupation Code (NOC) 2011;
 - (viii) the total number of 'Red Seal' trades apprentices by job categories expected to be employed in the next six months reported according to the National Occupation Code (NOC) 2011;
 - (ix) the highest number of workers in a single 24-hour period;
 - (x) the lowest number of workers in a single 24-hour period; and
 - (xi) the number of workers per shift (daily hours of work) and the workers' rotations (days of work and days off) as of the last Thursday of each month;
- (b) the names and office addresses of local businesses that Project Co has, directly or indirectly, engaged to perform any of the Design, Construction or Services. For the purposes of this Section 5.19(b), a 'local business' is an entity which resources its work with workers whose normal base of operations is in the Peace River Regional District or the Northern Rockies Regional Municipality;
- (c) the number of charter flights used for workforce travel, and the total number of worker trips on charter flights, landing or taking off from the North Peace Regional Airport;
- (d) the job categories reported according to the National Occupation Code (NOC) 2011 and the estimated number of positions that Project Co was unable to fill by hiring from the local community, in sufficient detail to assist planning for training programs; and
- (e) to assist in achieving BC Hydro's Project diversity objective, including ameliorating the conditions of disadvantaged individuals or groups who are disadvantaged because of race, colour, ancestry, place of origin, physical or mental disability, or sex, the total percentage of workers broken down by:

- (i) gender;
- (ii) Aboriginals;
- (iii) visible minorities; and
- (iv) persons with disabilities.

5.20 Temporary Foreign Worker Notification

Project Co will provide a minimum of three month's prior written notice to Hydro's Representative of Project Co's intended use of any Temporary Foreign Workers, including the numbers of and anticipated job categories reported according to the National Occupation Code (NOC) 2011 for such Temporary Foreign Workers. The notification period may be shortened due to extenuating circumstances with the agreement of Hydro's Representative.

5.21 Camp Occupancy Report

Project Co will provide a monthly report, in a form satisfactory to Hydro's Representative, acting reasonably, setting out the following information with respect to the preceding month:

- (a) the number of Guests staying in the Accommodation Complex on a daily basis; and
- (b) the names and office addresses of local businesses that Project Co has, directly or indirectly, engaged to perform any of the Design, Construction or Services. For the purposes of this Section 5.21(b), a 'local business' is an entity which resources its work with workers whose normal base of operations is in the Peace River Regional District or the Northern Rockies Regional Municipality.

5.22 Other Project Co Obligations

Project Co:

- (a) will, prior to starting any Construction, provide BC Hydro with Project Co's anticipated housing strategy for housing accommodation prior to the Accommodation Complex being capable of housing Project Co's workers;
- (b) will, once every six months, provide support to BC Hydro in administering a short housing survey of Project Co's workers, who are living outside the Accommodation Complex;
- (c) may be required, on one year's prior written notice from BC Hydro, to cease renting private apartments, if any, for Project Co's workers located in the City of Fort St. John and relocate, at BC Hydro's cost, to substitute temporary housing;
- (d) will pre-book hotel and motel space if Project Co requires more than 30 rooms for temporary accommodation to house Project Co's workers;
- (e) will ensure that Project Co's workers who are living outside of the Accommodation Complex are living in accommodations that do not breach any applicable Laws; and
- (f) if the Accommodation Complex is available, will not pay any compensation (such as a "living-out allowance", "housing allowance" or "per diem") to any worker if such worker elects not to live at the Accommodation Complex. Notwithstanding the foregoing, Project Co may pay a "living-out allowance", "housing allowance" or "per diem" or other compensation to supervisors or management staff whether such staff are living at the Accommodation Complex or not.

Notwithstanding anything to the contrary contained in Section 5.22(f), Project Co will not pay compensation (such as a “living-out allowance”, “housing allowance” or “per diem”) to any worker if such worker has been evicted from the Accommodation Complex.

5.23 Disclosure of Reports

Notwithstanding anything to the contrary contained in this Agreement, Project Co acknowledges and agrees that BC Hydro may disclose the reports or the information contained in the reports delivered to BC Hydro in accordance with Section 5 of this Agreement to any provincial ministry, other Governmental Authority and educational institutions which requires or requests the information in relation to the Project or the WA Project or to permit BC Hydro to comply with any Permit or applicable Law.

If Project Co includes Personal Information in the reports delivered to BC Hydro in accordance with Section 5 of this Agreement, then by submitting the report Project Co will be deemed to represent to BC Hydro that Project Co has obtained written consent from the applicable individual(s), including the consent to the indirect collection of Personal Information by BC Hydro, and that the Personal Information may be forwarded to BC Hydro, any provincial ministry or other Governmental Authority for the purposes of complying with Project Co’s obligations under this Agreement and may be used by BC Hydro for the purposes set out in this Agreement or any Permit. BC Hydro reserves the right to require proof of such consent.

5.24 Additional Provisions Relating to Workers

Project Co will:

- (a) implement a drug and alcohol policy which, at a minimum, meets the ‘Site C Contractor Drug & Alcohol Policy Requirements’ as established by BC Hydro;
- (b) implement a criminal records check in the employment of workers where relevant to the responsibilities of a worker; and
- (c) be a member of and participate on a committee that includes representatives of other contractors who are working on the Project at the Site for the purpose of consulting, and, as appropriate, reaching agreements, on labour matters that may arise at the Site of interest to Project Co and other contractors. Project Co will adhere to the ‘Terms of Reference’ for the committee as established by BC Hydro and which may be amended, supplemented or restated from time to time in BC Hydro’s sole discretion.

5.25 Application to Project Contractors

Whenever in Section 5 of this Agreement there is an obligation on Project Co such obligation will be read to include the obligation on Project Co to cause the Project Contractors to undertake a substantively similar obligation so as to permit Project Co to comply with its obligations under Section 5 of this Agreement.

6 FINANCING OF THE WA PROJECT

6.1 Assurance of Funding Arrangements

Project Co will, within 10 Business Days after November 30, 2015 and within 10 Business Days after the last day of every second month thereafter until the Expiry Date, deliver to BC Hydro, the Funding Confirmation Assurance.

6.2 Project Finance Conversion

Project Co will not, without the prior written consent of BC Hydro, and which consent may be withheld or delayed or made subject to any conditions as BC Hydro, in its sole discretion, may determine, and without derogating from the restrictions set out in Section 17 of this Agreement, enter into any Project Finance Conversion, and without limiting the discretion of BC Hydro in connection with any request to approve any Project Finance Conversion, a Project Finance Conversion will only be entertained or approved in circumstances where:

- (a) the Project Finance Conversion will not adversely affect Project Co's ability to perform its obligations under this Agreement;
- (b) the Project Finance Conversion will not have the effect of increasing any liability or potential liability of BC Hydro either as of the proposed date of the Project Finance Conversion or at any time thereafter during the Term other than as contemplated in the Financial Model;
- (c) the Project Finance Conversion will not have the effect of reducing the overall funding available to Project Co for the Project as contemplated by the Financial Model;
- (d) the Project Finance Conversion:
 - (i) is undertaken with a Person who is not related to, associated with or affiliated with Project Co or any Project Co related, associated or affiliated Person; or
 - (ii) is undertaken with a Person who is related to, associated with or affiliated with Project Co or any Project Co related, associated or affiliated Person in circumstances where the proposed Project Finance Conversion results in finance agreements between Project Co and the entity providing the financing which are substantially in accordance with the terms of the Corporate Financing Agreements;
- (e) the Project Finance Conversion occurs following the Substantial Completion Date for the completed Facility; and
- (f) the basis and method of calculation of the Project Finance Conversion Gain or the payment of BC Hydro's share resulting from the Project Finance Conversion has been agreed to by BC Hydro and Project Co.

6.3 Project Finance Conversion Process

If Project Co intends to request that BC Hydro approve any Project Finance Conversion, Project Co will notify BC Hydro of such intention at least 180 days before the anticipated completion date of such Project Finance Conversion and will include with such notice all applicable information that is then available to Project Co to enable BC Hydro to consider such request. Project Co will keep BC Hydro informed of the progress of the proposed Project Finance Conversion and will provide BC Hydro with additional information as it is available. Without limiting the foregoing, as soon as reasonably available, and in any event no later than 90 days before the anticipated completion date of such Project Finance Conversion, Project Co will provide to BC Hydro (not necessarily all at the same time):

- (a) all proposed finance agreements and arrangements;
- (b) a copy of the proposed updated Financial Model both before and after the Project Finance Conversion;
- (c) the basis for the assumptions and calculations used in the proposed updated Financial Model;

- (d) particulars of:
- (i) the principal amount of all funding for the Project committed under the proposed Project Finance Conversion;
 - (ii) 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 Project Finance Conversion;
 - (iii) any effect on Project Co's ability to perform its obligations under this Agreement;
 - (iv) the terms of the proposed Project Finance Conversion;
 - (v) the lenders and other parties proposed to be involved in the proposed Project Finance Conversion; and
 - (vi) the financing instruments to be used to carry out the proposed Project Finance Conversion and their key attributes (especially as to 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 Project Finance Conversion Gain, including BC Hydro's share thereof expressed in terms of:
- (i) the payment described in Section 6.5(a) or 6.5(c) of this Agreement (including the estimated timing of receipt thereof by BC Hydro); and
 - (ii) the reduction of Service Payments described in Section 6.5(b) or 6.5(c) of this Agreement; and
- (f) a schedule for implementation of the proposed Project Finance Conversion including the principal milestones and proposed dates for the achievement of such milestones (including the estimated date for closing of the proposed Project Finance Conversion).

Project Co will promptly provide all other documents and information related to the proposed Project Finance Conversion as BC Hydro may request. If any change is proposed to the information provided to BC Hydro pursuant to the above, Project Co will promptly provide BC Hydro with full details of the change. Project Co will only proceed with a Project Finance Conversion that has been approved by BC Hydro pursuant to Section 6.2 of this Agreement.

6.4 BC Hydro's Share of Project Finance Conversion Gain

BC Hydro will be entitled to receive not less than a ████ share of any Project Finance Conversion Gain arising from a Project Finance Conversion.

6.5 Payment to BC Hydro

BC Hydro may elect to receive its share of any Project Finance Conversion Gain as:

- (a) a single payment, in accordance with Section 11.1 of this Agreement, in an amount no greater than any Distribution made by Project Co arising as a result of the Project Finance Conversion;
- (b) a reduction, in accordance with Section 11.3 of this Agreement, in the Service Payments over the remainder of the Term; or

- (c) a combination of (a) and (b).

6.6 Calculation of Project Finance Conversion Gain Not Subject to Dispute

Notwithstanding anything in this Agreement, the basis and method of calculation of the Project Finance Conversion Gain and payment of BC Hydro's share of the Project Finance Conversion Gain shall not be subject to the Dispute Resolution Procedure.

6.7 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 6.2 of this Agreement, including any audit of the Financial Model, books, records and other documentation pursuant to Section 6.8 of this Agreement. At the time of the request for such consent, Project Co will make a payment to BC Hydro [REDACTED] [REDACTED] against its obligations under this Section 6.7. 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 6.7 and Project Co will promptly pay such amount to BC Hydro. The amounts payable under this Section 6.7 are payable even if:

- (a) BC Hydro elects not to provide its consent to the Project Finance Conversion; or
 (b) the Project Finance Conversion Gain is determined to be zero.

6.8 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 Project Finance Conversion Gain) used in connection with any Project Finance Conversion.

7 INSURANCE, DAMAGE AND DESTRUCTION

7.1 Insurance Coverage

Subject to Section 7.14(b) of this Agreement, 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 WA Project as set out in Schedule 13 [Insurance].

7.2 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 9 of this Agreement will continue to apply.

7.3 Project Co's Obligations - Damage or Destruction

Subject to Section 7.4 of this Agreement, and without prejudice to Section 9 of this Agreement, if all or any part of the Facility are damaged or destroyed, Project Co will repair, replace or restore the part of the Facility so damaged or destroyed in accordance with the Specifications and Drawings subject only to:

- (a) applicable Laws; and

- (b) BC Hydro agreeing to pay to Project Co:
- (i) the amount, if any, by which the cost of such repair, replacement or restoration exceeds the maximum amount of insurance coverage required under this Agreement for such risk; or
 - (ii) 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,

and if BC Hydro agrees, 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.

For the purposes of this Section 7.3 of this Agreement, the maximum amount of insurance coverage is:

- (c) in respect of insurance required to be obtained by Project Co, the full amount of coverage required under this Agreement for such risk prior to any deductibles for which Project Co is responsible pursuant to Schedule 13 [Insurance]; or
- (d) in respect of insurance required to be obtained by BC Hydro, the full amount of applicable Insurance Proceeds and applicable Insurance Receivables plus any deductibles for which Project Co is responsible pursuant to Schedule 13 [Insurance].

7.4 Project Co's Obligations - Material Damage or Destruction

If the Facility suffers damage or destruction that is likely to cost more than [REDACTED] to repair, replace and restore:

- (a) Project Co will, as soon as practicable and in any event within 30 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 days after the delivery of the Draft Reinstatement Plan, BC Hydro:
 - (i) will provide Project Co with any comments it may have on the Draft Reinstatement Plan; and
 - (ii) if it has decided that the Facility are 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 days after receipt of BC Hydro's comments pursuant to Section 7.4(b)(i) of this Agreement, 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:
- (i) the identity of the person, or (if Project Co is seeking competitive tenders) persons intended, to effect the Reinstatement Works;
 - (ii) 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 are reasonably expected to become fully operational again and the Services to be fully provided);
 - (iii) 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;
 - (iv) the total cost or (if not then established) the reasonably anticipated total cost of the Reinstatement Works; and
 - (v) the impact of any Change requested by BC Hydro as part of the reinstatement.

Thereafter, following the expiry of the 30-day period referred to in Section 7.6 or the sooner confirmation by BC Hydro that it will not be exercising such election, and unless a party elects to terminate this Agreement (in accordance with the provisions of Section 7.6, 7.7 or 7.8 of this Agreement or otherwise), Project Co will repair, replace or restore the Facility, subject to applicable Laws, and BC Hydro will pay the amounts required and at the time specified in Section 7.3(b).

7.5 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 Corporate Financing Agreements 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 12 [Changes],

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

7.6 BC Hydro Election Not to Reinstatement

BC Hydro may, by notice to Project Co within 30 days after receipt of the Reinstatement Plan, terminate this Agreement and pay compensation to Project Co in accordance with Section 2 of Schedule 22 [Compensation on Termination].

7.7 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 (which for greater certainty is the maximum amount of coverage prior to any

deductibles for which Project Co is responsible pursuant to Schedule 13 [Insurance]) 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 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:
- (i) BC Hydro has failed to obtain insurance coverage in accordance with Schedule 13 [Insurance] and Sections 7.13 and 7.14 of this Agreement do not apply;
 - (ii) 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 7.7(g)(ii) of this Agreement; and
 - (iii) 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 2 of Schedule 22 [Compensation on Termination];

- (e) in any other case:
- (i) BC Hydro will pay compensation to Project Co in accordance with Section 5 of Schedule 22 [Compensation on Termination]; and
 - (ii) if BC Hydro is required to obtain insurance coverage in accordance with Schedule 13 [Insurance] and BC Hydro has failed to obtain such insurance and Sections 7.13 and 7.14 of this Agreement do not apply, BC Hydro will also, but without duplicating payment of any item payable in accordance with Section 5 of Schedule 22 [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 Section 7.7(b) of this Agreement, 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 13 [Insurance]; and
- (g) in respect of insurance required to be obtained by BC Hydro:
- (i) the full amount of applicable Insurance Proceeds and applicable Insurance Receivables plus any deductibles for which Project Co is responsible pursuant to Schedule 13 [Insurance], plus
 - (ii) in the event and to the extent that BC Hydro has failed to obtain such insurance in accordance with Schedule 13 [Insurance] and Sections 7.13 and 7.14 of this Agreement 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 13 [Insurance], 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.

7.8 Uncollectible Insurance Receivables

If at any time while Project Co is relieved of its obligations under Section 7.3 or 7.4 of this Agreement by reason of a Relief Event:

- (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 5 of Schedule 22 [Compensation on Termination].

7.9 Application of Insurance Proceeds If No Termination

Unless a party has terminated this Agreement (including pursuant to Section 7.6, 7.7 or 7.8 of this Agreement), 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 7.3(b) of this Agreement; 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.

7.10 Application of Insurance Proceeds In Case of Termination

If a party has terminated this Agreement pursuant to Section 7.6 or 7.7 of this Agreement:

- (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.

7.11 Standards of Replacement, Repair or Reconstruction

Any replacement, repair, or reconstruction of the Facility or any part thereof pursuant to the provisions of Sections 7.3 or 7.4 of this Agreement will be made or done in compliance with the Design and Construction Protocols and the Specifications and Drawings, subject to any agreement made between BC Hydro and Project Co to revise the Design and Construction Protocols or the Specifications and Drawings as they pertain to any replacement, repaired or reconstructed Facility.

7.12 Mitigation

Project Co and BC Hydro will take all reasonable steps to mitigate the effects of any risks or claims covered by this Section 7 of this Agreement (including minimizing the amount of any costs and expenses which might result).

7.13 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 Schedule 13 [Insurance], 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).

7.14 Consequences of Risks Becoming Uninsurable

If the requirements of Section 7.13 of this Agreement 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 5 of Schedule 22 [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 7.14(a) of this Agreement, 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 Section 7 of this Agreement or Schedule 13 [Insurance] will be construed accordingly. In such event the Service Payments will thereafter be adjusted in accordance with Section 11.3 of this Agreement 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 7.15 of this Agreement, on the occurrence of the Uninsurable Risk BC Hydro will either:
 - (i) 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
 - (ii) by notice to Project Co, terminate this Agreement whereupon Project Co will be entitled to compensation on termination as provided in Section 5 of Schedule 22 [Compensation on Termination],

except that BC Hydro may not in any such case terminate this Agreement pursuant to Section 7.14(c)(ii) of this Agreement if Project Co releases BC Hydro from all obligations under Section 7.14(c)(i) of this Agreement 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 4.8 of Schedule 13 [Insurance], that would have been payable in respect of the Uninsurable Risk that occurred had the relevant insurance continued to be available and in effect.

7.15 Third Party Liability Insurance as an Uninsurable Risk

If this Agreement is terminated pursuant to Section 7.14(c)(ii) of this Agreement 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 Section 7.14(c)(ii) of this Agreement.

7.16 Subrogation

If BC Hydro makes any payment to Project Co pursuant to Section 7.14(c)(i) or 7.15 of this Agreement, 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.

7.17 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 13 [Insurance] 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.

7.18 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 13 [Insurance], 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 7.13, 7.14, 7.15 and 7.17 of this Agreement will no longer apply to the risk so long as it is not an Uninsurable Risk; and
- (b) the Service Payments will be adjusted pursuant to Section 11.3 of this Agreement 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.

8 CHANGES, MINOR WORKS AND INNOVATION PROPOSALS

8.1 Changes Required by BC Hydro

BC Hydro may require Changes in accordance with Schedule 12 [Changes].

8.2 Innovation and Value Engineering

Project Co may submit an Innovation Proposal for consideration by BC Hydro in accordance with Schedule 12 [Changes].

8.3 Minor Works

BC Hydro may require Minor Works in accordance with Schedule 12 [Changes].

9 SUPERVENING EVENTS

9.1 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 9. The **"Applicant"** means the party making such application.

9.2 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 five Business Days after the Applicant Has Knowledge that the Supervening Event has caused, or is reasonably likely to cause, an entitlement under this Section 9, 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:
 - (i) additional details, including available supporting documentation, in support of its claim; and
 - (ii) 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:
 - (i) it could not have avoided such occurrence or the consequences of the Supervening Event by steps which it might reasonably be expected to 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 2.11(a), 2.11(b) or 2.11(c) of this Agreement;
 - (ii) if applicable, the Supervening Event caused or will cause the Applicant to incur a Direct Loss, a delay in the Work Program and Schedule or the need for relief from other obligations under this Agreement; and
 - (iii) in the case of Project Co, it has complied with its mitigation obligations pursuant to Section 2.10 of this Agreement and in the case of BC Hydro, it has complied with its mitigation obligations pursuant to Section 2.11 of this Agreement;
- (g) the Applicant will advise whether, in the Applicant's opinion, any amendments should be considered to this Agreement or any Material Contract or if the continued financing of the Project by Project Co would be materially different or materially more expensive 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 9.2(f) of this Agreement 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.

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

Subject to Section 9.12 of this Agreement, if at any time a Compensation Event has occurred and Project Co has given BC Hydro a Supervening Event Notice related thereto:

- (a) Project Co is relieved from any liability or consequence (including termination by BC Hydro) under this Agreement arising from any delay or failure in performing any of its obligations under or in connection with this Agreement;
- (b) the Service 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):

- (i) any Direct Losses (including the amount of any applicable insurance deductibles and calculated without netting out Insurance Receivables) resulting from the Compensation Event;
- (ii) any net increase or decrease in the costs of Project Co performing its obligations under this Agreement resulting from the Compensation Event; and
- (iii) the Service Payments payable to Project Co, taking into account the deductions pursuant to Section 9.3(b) of this Agreement;

except that:

- (iv) 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, to the extent not already deducted pursuant to Section 9.3(c)(iii), will be deducted therefrom; and
 - (v) no Indirect Losses will be taken into consideration;
- (d) concurrent with the first payment of any compensation by BC Hydro under Section 9.3(c) of this Agreement, 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 Service Commencement Date, the Work Program and Schedule will be amended and the Target Service Commencement Date, the Longstop Date and the dates for the completion of the Phases 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) if the Compensation Event occurs after the Expiry Date, the Decommissioning Long Stop Date will be postponed by such time as is reasonable in the circumstance to take account of the effect of the delay caused by the Compensation Event.

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

Subject to Section 9.12 of this Agreement, if at any time a Relief Event has occurred and Project Co has given BC Hydro a Supervening Event Notice related thereto:

- (a) Project Co is relieved from any liability or consequence (including termination by BC Hydro, except as provided for in this Section 9.4 of this Agreement) under this Agreement arising from any 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 make Deductions and BC Hydro will only be obligated to make Service Payments to the extent that the performance or other criteria for Service 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 Service Commencement Date or, following the Service Commencement Date but prior to the Substantial Completion Date for Phase 2 or prior to the Substantial Completion for the completed Facility:
- (i) the Work Program and Schedule will be amended and the Target Service Commencement Date, the Longstop Date and the dates for the completion of Phase 2 and the completed Facility 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;
 - (ii) 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 9.4(b)(i) of this Agreement as a result of one or more of the Relief Events described in (b), (d), or (i), of the definition of Relief Event in Schedule 1 [Definitions and Interpretation]) BC Hydro will pay to Project Co an amount equal to the Corporate Financing Debt Service Amount less any principal and interest payable under the Corporate Financing Agreements or otherwise that would have been paid in the ordinary course from the Construction Payments as reflected in the Financial Model for the applicable period less 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;
 - (iii) for the period that the Substantial Completion Date for Phase 2 is delayed or for the period that the Substantial Completion for the completed Facility is delayed (as it was prior to having been postponed pursuant to Section 9.4(b)(i) of this Agreement as a result of one or more of the Relief Events described in (b), (d), or (i) of the definition of Relief Event in Schedule 1 [Definitions and Interpretation]) BC Hydro will pay to Project Co an amount equal to the Corporate Financing Debt Service Amount less any principal and interest payable under the Corporate Financing Agreements or otherwise that would have been paid in the ordinary course from the Construction Payments as reflected in the Financial Model less 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
 - (iv) 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 Project Co, either party may at any time so long as such Relief Event is, or such effect is, continuing and subject to Section 14.2, terminate this Agreement by giving 10 Business Days' notice to the other party;
- (d) if BC Hydro gives notice to Project Co under Section 9.4(c) of this Agreement 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 9.4 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 9.4(c) of this Agreement 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:
- (i) 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;
 - (ii) the Relief Event will be deemed to constitute a Compensation Event occurring as of the date on which the Relief Event first occurred;
 - (iii) at any time so long as the Supervening Event referred to in Section 9.4(e)(ii) of this Agreement is continuing, BC Hydro may terminate this Agreement by notice to Project Co; and
 - (iv) Project Co may at any time so long as the Supervening Event referred to in Section 9.4(e)(ii) of this Agreement is continuing after a further period of 180 days after the date on which Project Co delivered the termination notice pursuant to Section 9.4(c) of this Agreement terminate this Agreement by notice to BC Hydro;
- (f) if this Agreement is terminated pursuant to this Section 9.4, Project Co will be entitled to compensation on such termination in accordance with Section 5 of Schedule 22 [Compensation on Termination];
- (g) Deductions made while Project Co is entitled to relief under this Section 9.4 of this Agreement will not be counted for the purposes of Section 12.1(b) or 13.1(h) of this Agreement, Section 6.7 or 6.8 of Schedule 21 [Services Protocols and Specifications] or Section 6.7 or 6.8 of Schedule 30 [BC Hydro Offices – Services Protocols and Specifications]; and
- (h) the Relief Event occurs after the Expiry Date, the Decommissioning Long Stop Date will be postponed by such time as is reasonable in the circumstance to take account of the effect of the delay caused by the Relief Event.

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

Subject to Section 9.12 of this Agreement, if during the Operating Period an Excusing Event has occurred and Project Co has given BC Hydro a Supervening Event Notice related thereto:

- (a) Project Co is relieved from any liability or consequence (including termination by BC Hydro) under this Agreement arising from any delay or failure in performing any of its obligations; and
- (b) the Service 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.

9.6 Parties' Entitlements Upon Occurrence of a Force Majeure Event

Subject to Section 9.12 of this Agreement, if at any time a Force Majeure Event has occurred and the Applicant has given the other party a Supervening Event Notice related thereto:

- (a) the Applicant is relieved from any liability or consequence (including termination by BC Hydro except as provided for in this Section 9.6) under this Agreement arising from any delay or failure in performing any of its obligations under this Agreement, except that nothing will affect any entitlement of BC Hydro to make Deductions and BC Hydro will only be obligated to make Service Payments to the extent that the performance or other criteria for Service Payments are met notwithstanding the Force Majeure Event;
- (b) if the Applicant is Project Co and the Force Majeure Event occurs prior to the Service Commencement Date, the Work Program and Schedule will be amended and the Target Service Commencement Date, the Longstop Date and the dates for the completion of the Phases 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 9.6(c) of this Agreement 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:
 - (i) 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;
 - (ii) the Force Majeure Event will be deemed to constitute a Compensation Event occurring as of the date the Force Majeure Event first occurred;
 - (iii) at any time so long as the Compensation Event referred to in Section 9.6(d)(ii) of this Agreement is continuing, BC Hydro may terminate this Agreement by notice to Project Co; and
 - (iv) Project Co may at any time so long as the Compensation Event referred to in Section 9.6(d)(ii) of this Agreement is continuing after a further period of 180 days after the date on which Project Co delivered the termination notice pursuant to Section 9.6(c) of this Agreement, terminate this Agreement by notice to BC Hydro;
- (e) if this Agreement is terminated pursuant to Section 9.6(c), 9.6(d)(iii) or 9.6(d)(iv) of this Agreement, Project Co will be entitled to compensation on such termination in accordance with Section 5 of Schedule 22 [Compensation on Termination];
- (f) Deductions made while Project Co is entitled to relief under this Section 9.6 will not be counted for the purposes of Section 12.1(b) or 13.1(h) of this Agreement, Sections 6.7 or 6.8 of Schedule 21 [Services Protocols and Specifications] or Section 6.7 or 6.8 of Schedule 30 [BC Hydro Offices – Services Protocols and Specifications]; and

- (g) if the Applicant is Project Co and the Force Majeure Event occurs after the Expiry Date, the Decommissioning Long Stop Date will be postponed by such time as is reasonable in the circumstance to take account of the effect of the delay caused by the Force Majeure Event.

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

Subject to Section 9.12 of this Agreement, 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) subject to Section 9.7(c) of this Agreement, in the case of a Relevant Change in Law, Project Co will be entitled to compensation for Direct Losses and the Service Payments will be increased or decreased to compensate for any increase or decrease (as the case may be) in the net cost to Project Co of performing the Services;
- (b) subject to Section 9.7(c) of this Agreement, in the case of a Discriminatory Change in Tax Law Project Co or BC Hydro will be entitled to compensation for any revenue loss or revenue gain for Project Co and any Partner (as the case may be) and the Service Payments will be increased or decreased to compensate for any increase or decrease (as the case may be) in the net cost to Project Co of performing the Services;
- (c) subject to Section 9.7(d) of this Agreement with respect to Allowable Capital Expenditures and to Section 9.7(e) of this Agreement, any compensation payable or increase or decrease in the Service Payments in respect of an Eligible Change in Law Event 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 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) the Service Payments payable to Project Co,

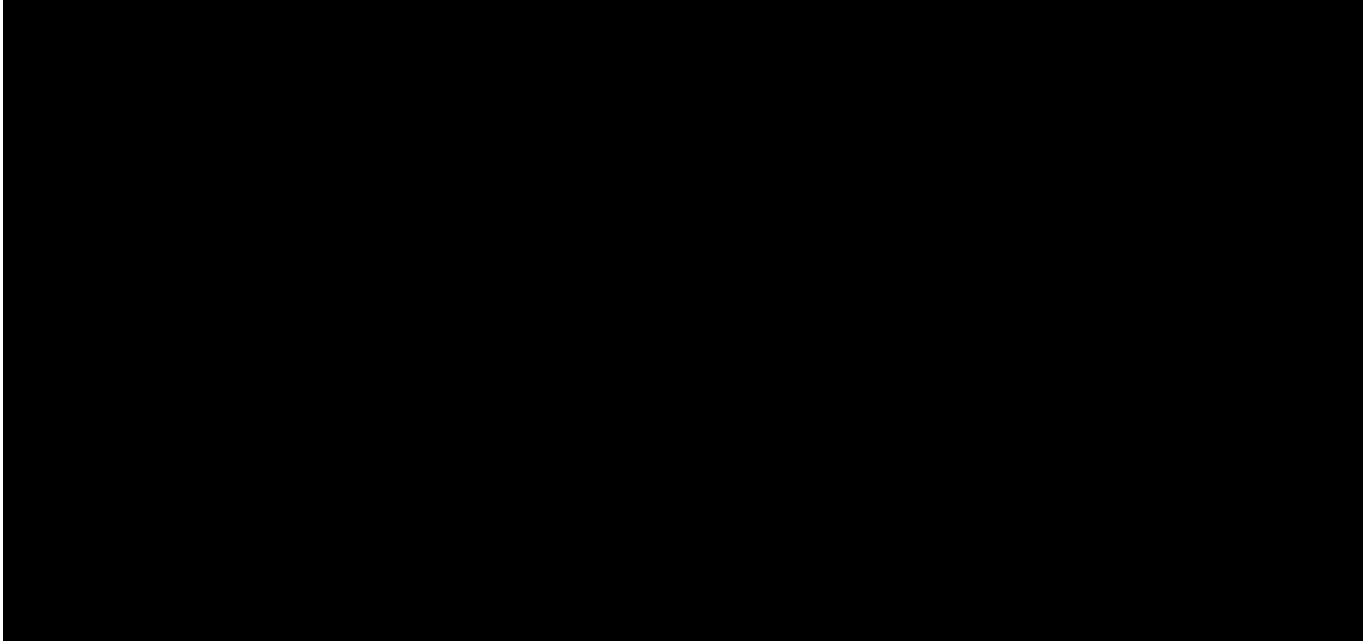
except that:

- (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 9.7(b) of this Agreement,

and concurrent with the first payment of any compensation by BC Hydro under this Section 9.7(c), 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 a Relevant Works Change in Law:
- (i) subject to Section 9.7(c) of this Agreement, the Service Payments will be increased or decreased to compensate for any increase or decrease (as the case may be) in the net cost to Project Co of performing the Services as a direct result of the Allowable Capital Expenditure in respect of such Relevant Works Change in Law; and

- (ii) Project Co will be entitled to compensation from BC Hydro in an amount calculated by reference to the table set forth below as BC Hydro's share of the Allowable Capital Expenditure in respect of such Relevant Works Change in Law, 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 Operating Period and are not annual amounts):



- (e) in the case of an Input Tax Recoverability Change in Law:
 - (i) BC Hydro will pay Project Co, and Project Co will be entitled to, any Additional Irrecoverable Tax resulting from the Input Tax Recoverability Change in Law; and
 - (ii) Project Co will pay BC Hydro, and BC Hydro will be entitled to, any Additional Recoverable Tax resulting from the Input 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 Input Tax Recoverability Change in Law, provided however that Section 9.7(c) of this Agreement will not apply to an Input Tax Recoverability Change in Law.

9.8 Parties' Entitlements Upon Occurrence of a Change in Law

Without limiting Section 9.7 of this Agreement:

- (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 WA Project, such Change in Law will be deemed to constitute a Change having effect from the time that such Change in Law takes effect, except that Project Co will not be entitled to any payment or other compensation other than as set out in Section 9.7 of this Agreement;
- (b) except as otherwise provided in this Agreement, including in Section 9.4 or 9.7 of this Agreement, 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 9.4 or 9.7 of this Agreement 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.

9.9 Labour Disputes

Without limiting Sections 5.6 and 5.7 of this Agreement, if Project Co Has Knowledge of an actual or potential labour dispute that may affect any of the Design, the Construction or the Services, 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; 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.

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

9.10 Payments in Respect of Supervening Events

Payments between the parties and any adjustments to Service Payments in respect of Supervening Events will be made in accordance with Section 11 of this Agreement.

9.11 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 or the consequences of a Supervening Event by requiring a Change or Changes.

9.12 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 9.2 of this Agreement, 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.

9.13 Equivalent Project Relief

The parties acknowledge that Project Co will share with the Project Contractors, who will in turn share with Subcontractors, 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 9 of this Agreement (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 Subcontractor 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 Subcontractor against Project Co in respect of any circumstance referred to in Section 9.13(a) of this Agreement 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 Subcontractor will have any rights against BC Hydro, including under this Section 9.13;
- (d) in no event will the liability of BC Hydro under this Section 9.13 be greater than it would have been if Project Co had been directly affected by the circumstance referred to in Section 9.13(a) of this Agreement; and
- (e) in no event will BC Hydro be liable under this Section 9.13 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 9.13(a) of this Agreement.

10 INDEMNITIES AND LIMITS ON LIABILITIES AND REMEDIES

10.1 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:
 - (i) negligent act or omission of Project Co;
 - (ii) wilful misconduct of Project Co; or
 - (iii) 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 Hazardous Substances;
- (d) breach by Project Co of, or non-compliance by Project Co with, Permits or Laws, or the failure of Project Co to obtain all necessary Permits in accordance with this Agreement; or

(e) any infringement or misappropriation of Intellectual Property rights of any Person by Project Co, 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 4.6 of this Agreement applies to this Section 10.1. This Section 10.1 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.

10.2 Conduct of Third Person Claims

This Section 10.2 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 10.2(b) of this Agreement 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 10.2(b) of this Agreement the Indemnifier will:
 - (i) keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
 - (ii) 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
 - (iii) 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:
- (i) the Indemnifier is not entitled to take conduct of the claim in accordance with Section 10.2(b) of this Agreement; or
 - (ii) 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 10.2(a) of this Agreement or notifies the Beneficiary that it does not intend to take conduct of the claim; or
 - (iii) the Indemnifier fails to comply in any material respect with Section 10.2(d) of this Agreement.
- In the case of 10.2(e)(iii) 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 10.2(b) of this Agreement 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 10.2(f) (for the sake of clarity, for reasons other than as provided in Section 10.2(e)(ii) or 10.2(e)(iii) of this Agreement), then the Indemnifier will be released from any liability under its indemnity under Section 10.1 or its obligation to provide compensation, as the case may be; and
- (g) in response to any claim of infringement or misappropriation or alleged infringement or misappropriation of the Intellectual Property rights of any Person, Project Co may replace such infringing or allegedly infringing item provided that:
- (i) the replacement is performed without additional cost to BC Hydro; and
 - (ii) the replacement has at least equal quality performance capabilities when used in conjunction with the Facility.

10.3 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 the Paying Party either:
- (i) promptly make all reasonable efforts to pursue and recover such claim and provide evidence of such efforts to the Paying Party; or
 - (ii) 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:
- (i) 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
 - (ii) 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.

10.4 Waiver of 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.

10.5 Remedies Cumulative

Subject to Sections 10.6, 10.7 and 10.8 of 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 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.

10.6 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 Longstop Date will be limited to BC Hydro's rights pursuant to Section 13.4 of this Agreement and Sections 11.1 and 11.2 of Schedule 2 [Design and Construction Protocols];
- (b) to achieve Substantial Completion of Phase 2 by the date described in Section 6.7(b) of Schedule 2 [Design and Construction Protocols] will be limited to BC Hydro's rights pursuant to Section 13.4 of this Agreement and Sections 11.1 and 11.2 of Schedule 2 [Design and Construction Protocols];
- (c) to achieve Substantial Completion of the completed Facility by the date described in Section 6.7(c) of Schedule 2 [Design and Construction Protocols] will be limited to BC Hydro's rights

pursuant to Section 13.4 of this Agreement and Sections 11.1 and 11.2 of Schedule 2 [Design and Construction Protocols]; and

- (d) to perform the Services in accordance with this Agreement will be limited to Deductions in accordance with Schedule 11 [Prices, Payment and Security],

provided that nothing in this Section 10.6 will limit BC Hydro's right to:

- (e) 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 22 [Compensation on Termination];
- (f) make a claim for indemnification pursuant to Section 10.1 of this Agreement;
- (g) deliver to Project Co a Dispute Notice or a notice of default or termination pursuant to Section 13 of this Agreement and pursue all remedies in respect thereof; or
- (h) pursue any other express remedy available to BC Hydro under this Agreement or any equitable remedy, including injunctive relief and specific performance.

10.7 Limitation on Project Co's Remedies

To the extent Project Co has claimed for relief or compensation for a Supervening Event, pursuant to Section 9, 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 10.7 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 14 of this Agreement 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.

10.8 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. 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.

10.9 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.

10.10 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.

10.11 Project Co's Right of Set Off

Project Co may set off any amounts owing by BC Hydro to Project Co under this Agreement against any payments due by Project Co to BC Hydro under this Agreement.

10.12 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.

10.13 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 22 [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.

11 LUMP SUM PAYMENTS AND SERVICE PAYMENT ADJUSTMENTS

11.1 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 8 of this Agreement, a Supervening Event under Section 9 of this Agreement or an indemnification claim under Section 10 of this Agreement; or
- (b) is entitled to share in a benefit and to receive payment from the other party under this Agreement, including in respect of any Project Finance Conversion Gain under Section 5 of this Agreement, Innovation Proposal under Section 8 of this Agreement or Eligible Change in Law Event under Section 9 of this Agreement,

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 payment will be made in accordance with this Section 11.

If BC Hydro is obligated to compensate, reimburse or otherwise pay Project Co, BC Hydro may in its discretion make such payment by lump sum payment or by payments that reasonably match the cash outlays of Project Co, including any additional financing costs incurred by Project Co as a direct result of BC Hydro's decision to make payments other than by lump sum.

If Project Co is obligated to compensate, reimburse or otherwise pay BC Hydro, BC Hydro may in its discretion, require Project Co to make such payment:

- (c) by a lump sum payment, up to a maximum lump sum payment [REDACTED] without the consent of Project Co, and any greater amount with the consent of Project Co, acting reasonably; or

(d) by payments that reasonably match the cash inflows to Project Co or the averted cash outlays.

Lump sum payments and payments that reasonably match cash inflows, cash outlays or averted cash outlays will be due and payable within 30 days of delivery of written demand supported by all relevant information.

The parties may agree to any other basis for payment.

11.2 Financing of Lump Sum Payment Amounts

If BC Hydro is obligated to compensate, reimburse or otherwise pay Project Co and exercises its discretion to do so by a lump sum payment in accordance with Section 11.1 of this Agreement, at BC Hydro's request Project Co will use all reasonable efforts to obtain the financing required to make such payment 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 Service Payments in accordance with Section 11.3 of this Agreement. 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 11.1 of this Agreement.

BC Hydro acknowledges that the Corporate Financing Lenders have no obligation to provide the financing referred to in this Section 11.2.

11.3 Adjustments to Service Payments

Subject to BC Hydro's discretion for the basis of payment under Section 11.1 of this Agreement or the parties' agreement to another basis of payment under Section 11.1 of this Agreement, 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 Service 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 Service Payments are required to be adjusted, Project Co will give notice to BC Hydro of the proposed adjustments to be made to the Service Payments to achieve the objectives and outputs set out in Section 11.3(b) of this Agreement. 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 11.3(c) of this Agreement;

- (b) the adjustments to the calculation of the Service 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 Service Payments, and taking into account the impact of such adjustments on the economics of the WA Project as reflected in the Financial Model, the timing of liability for taxation and the time when the adjustments to the Service Payments will take effect, such comparison of the output from such Financial Model shows that:
- (i) the Base Case Project IRR in accordance with the Financial Model prior to the Service Payment adjustment will be unchanged except to the extent required to reflect:
 - (A) any material change in the risk profile of the WA Project arising in connection with the circumstance giving rise to the adjustment; or
 - (B) any benefit to the parties including in connection with an Innovation Proposal; and
 - (ii) 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 Corporate 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 Service Payments is:
- (i) in the case of an adjustment occurring before the Service Commencement Date, the Service Commencement Date, unless otherwise agreed or specified in Schedule 12 [Changes]; or
 - (ii) 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 Service 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 11.3 other than delay resulting from an audit under Section 11.4 of this Agreement, the date of adjustment to the Service Payments payable by BC Hydro will be delayed by a period equal to the delay in the completion or implementation of the required adjustments.

11.4 Audit of Financial Model

Prior to implementing any adjustments to the Service Payments contemplated in Section 11.3 of this Agreement, 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.

12 BC HYDRO'S STEP-IN RIGHTS

12.1 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 an Event:
 - (i) is likely to create an immediate and serious threat to the health or safety of any Facility User, any property, the environment or the reputation, integrity of, or public confidence in, the Facility or any operations related to the Facility; or
 - (ii) is prejudicial to the ability to carry on BC Hydro Activities and the Intended Uses to a material degree; or
- (b) Project Co accumulates Deductions of:
 - (i) ██████████ (██████████ or more in any ██████████ consecutive month period; or
 - (ii) ██████████ ██████████ or more in any ██████████ consecutive month period,

then BC Hydro, acting reasonably may either:

- (c) 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 or rectify such state of affairs including, if applicable due to breach of any Project Contract or Subcontract, suspension of the Project Contractor or Subcontractor, and Project Co will use all reasonable efforts to comply with BC Hydro's requirements as soon as reasonably practicable; or
- (d) 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 or rectify such state of affairs and to ensure performance of the relevant Design, Construction or Services, as the case may be, 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.

Project Co will ensure that the provisions contained in all applicable Subcontracts will not prevent or inhibit BC Hydro from exercising its rights under this Section 12.

12.2 BC Hydro's Rectification Rights

If BC Hydro gives notice to Project Co under Section 12.1(c) of this Agreement 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 such circumstances 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 Design, Construction or Services, as the case may be, but only for so long as the circumstances referred to in Section 12.1(a) of this Agreement subsist. If the circumstances referred to in Section 12.1(a) of this Agreement 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 Deductions thresholds set out in Section 12.1(b) of this Agreement to have been reached, any suspension of the right and obligation of Project Co to provide any Design, Construction or Services, as the case may be, will cease and such right and obligation will once again be in full force and effect.

12.3 Notice of Facility Change

BC Hydro will notify Project Co of any Facility Change which BC Hydro intends to make pursuant to the exercise of BC Hydro's rights under Section 12.1(d) or 12.2 of this Agreement and provide Project Co a reasonable opportunity, taking into account all the circumstances, to comment on the proposed Facility Change. In making such Facility Change, BC Hydro will reasonably consider comments received in a timely manner from Project Co on the proposed Facility Change.

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

The exercise by BC Hydro of any of its rights under this Section 12 will not reduce or affect in any way Project Co's responsibility under Section 4.1 of Schedule 2 [Design and Construction Protocols].

12.5 Allocation of Costs for BC Hydro Actions


To the extent that any of the circumstances set out in Section 12.1 of this Agreement 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 12.1 or 12.2 of this Agreement and an additional mark-up of [REDACTED] 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 12.1 and 12.2 of this Agreement will constitute a Compensation Event.

13 PROJECT CO EVENTS OF DEFAULT

13.1 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 13.3 of this Agreement 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 13.3 of this Agreement;
- (b) the occurrence of a Project Co Insolvency Event;
- (c) Project Co abandons the WA Project, other than pursuant to its right to suspend performance under Section 14.3 of this Agreement or due to a Supervening Event;
- (d) Service Commencement does not occur on or before the Longstop Date;

- (e) at any time after 12 months prior to the Longstop Date it is finally determined pursuant to the Dispute Resolution Procedure that the Service Commencement Date is not reasonably expected to occur on or before the Longstop Date;
- (f) Project Co breaches Section 17.1 of this Agreement or a Change in Control occurs which is prohibited by Section 17.2 of this Agreement;
- (g) at any time after the Service Commencement Date Project Co breaches its obligations under this Agreement (other than as a consequence of a breach by BC Hydro of 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:
 - (i) 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 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 WA 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
 - (ii) in determining whether to exercise any right of termination for a Project Co Event of Default pursuant to this Section 13.1(g) BC Hydro will:
 - (A) 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
 - (B) give all due consideration, where appropriate, to action other than termination of this Agreement;
- (h) 
- (i) Project Co carries out a Project Finance Conversion without BC Hydro's consent in accordance with Section 6.2 of this Agreement; or
- (j) Decommissioning is not complete on or before the Decommissioning Longstop Date,

unless caused 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.

13.2 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.

13.3 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 of 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 of such notice, Project Co will deliver to BC Hydro within 10 Business Days of 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 13.3(b) of this Agreement, BC Hydro will have 10 Business Days from 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.

13.4 BC Hydro Termination Right

If:

- (a) a Project Co Material Breach is not remedied before the expiry of the period referred to in Section 13.3(a) of this Agreement and no program has been put forward by Project Co under Section 13.3(b) of this Agreement;
- (b) Project Co puts forward a program pursuant to Section 13.3(b) of this Agreement which has been accepted by BC Hydro (including after agreement under Section 13.3 of this Agreement 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 13.3(b) of this Agreement 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) terminate this Agreement by notice to Project Co. The right of BC Hydro to terminate this Agreement under this Section 13.4 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 13.4(b) of this Agreement, 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.

13.5 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 Section 13 of this Agreement.

13.6 Suspension of BC Hydro Rights Until Completion of Facility

BC Hydro shall not exercise any rights under Section 13 as a result solely of a Project Co Event of Default referred to in:

- (a) Section 13.1(a), where the Project Co Material Breach is in respect of the performance of the Services and arises from the failure of the Service Provider to perform the obligations of Project Co in respect of the Services; and
- (b) Section 13.1(h),

until the day following Substantial Completion of the completed Facility, provided however, that if BC Hydro is prevented from exercising any rights under Section 13 as a result of the restrictions in this Section 13.6, then notwithstanding the passage of time or any intervening event, on or after the day following Substantial Completion of the completed Facility, BC Hydro may exercise any such rights and further provided that all Deductions incurred prior to Substantial Completion of the completed Facility accumulate as though there was no suspension of BC Hydro's rights under Section 13, for purposes of calculating the Project Co Event of Default set out in Section 13.1(h).

14 BC HYDRO EVENTS OF DEFAULT

14.1 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 14.1(a) of this Agreement, 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:
 - (i) has an adverse effect on the performance of the Design, the Construction or the Services; or
 - (ii) 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 Facility, the portion of the Lands on which the Facility are situated, or any interest in Project Co or any Partner is expropriated by any Governmental Authority 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 17.3 of this Agreement.

14.2 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.

14.3 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 Design and the Construction prior to the Service Commencement 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 Longstop Date and the dates for completion of the Phases will be extended by the time such suspension is in effect;
- (b) in the case of a BC Hydro Event of Default under Section 14.1(a) of this Agreement, 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 Longstop Date and the dates for the completion of the Phases 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 Section 14.1(a), 14.1(b) or 14.1(c) of this Agreement, 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 of such notice (or in the case of a BC Hydro Event of Default under Section 14.1(b) or 14.1(c) of this Agreement 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 14.1(d) of this Agreement, terminate this Agreement by notice to BC Hydro.

14.4 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 14 of this Agreement.

15 PROCEDURE ON TERMINATION

15.1 Compensation on Termination

If this Agreement is terminated pursuant to its terms, BC Hydro will pay compensation to Project Co in accordance with Schedule 22 [Compensation on Termination].

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

On or promptly after the Termination Date:

- (a) if prior to the Service Commencement Date:
 - (i) 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 financial encumbrances:
 - (A) such part of the Facility as has been constructed on or has become affixed to the Lands; and
 - (B) all construction materials on-hand to be affixed to the Lands or otherwise used in the Facility; and
 - (ii) if BC Hydro so elects:
 - (A) 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
 - (B) all other Project related plant and all materials on or near the Lands will remain available to BC Hydro or the New Project Co for the purposes of completing the Design and Construction,

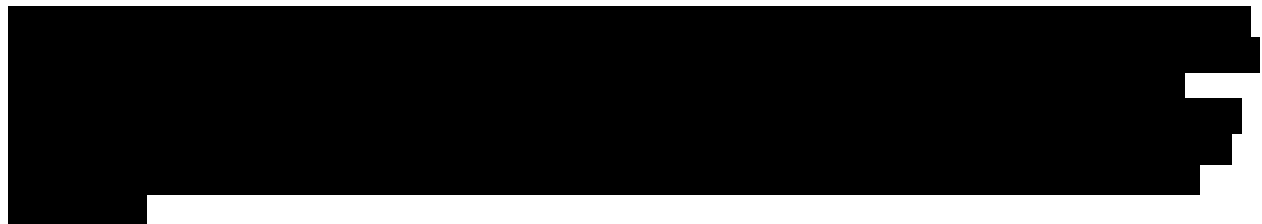
subject to payment by BC Hydro of the Design-Builder's reasonable charges, and
- (b) if BC Hydro so elects, Project Co will cause any or all of the Project Contracts to be novated or assigned to BC Hydro, provided that:
 - (i) Project Co will not be obligated to assign to BC Hydro any of Project Co's rights to claim against the applicable Project Contractor that arose under such Project Contract prior to the date of such novation or assignment; and
 - (ii) if termination occurs under Section 14.3 of this Agreement 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 the 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;
- (d) Project Co will deliver to BC Hydro (to the extent not already delivered to BC Hydro):
 - (i) all existing designs, plans and other documents produced in connection with the Facility and in the control of Project Co;

- (ii) one complete set of existing “as built drawings” showing all alterations made to the Facility since the commencement of operation of the Facility; and
- (iii) one complete set of existing up to date maintenance, operation and training manuals for the Facility,

subject to reasonable generally applicable third party licensing terms;

- (e) Project Co will use all reasonable efforts to ensure that the benefit of existing Project Intellectual Property 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:
 - (i) required by Law to be retained by Project Co or a Project Contractor or Subcontractor, in which case complete copies will be delivered to BC Hydro; or
 - (ii) 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 Subcontractor except in the case of electronically archived data that cannot reasonably be destroyed which may be retained 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 15.2 without additional payment or compensation to any Person.



15.3 Transitional Arrangements

Project Co will:

- (a) on request by BC Hydro, and at BC Hydro’s cost, for a period not to exceed three months after the Termination Date:
 - (i) 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 Facility Users; and

- (ii) 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 15.3(a) of this Agreement, as soon as practicable following the Termination Date remove from the Lands all property of Project Co or any Project Co Person that is not acquired by BC Hydro pursuant to Section 15.2 of this Agreement (or not belonging to BC Hydro) and if it has not done so within 60 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 15.3(a) of this Agreement, on the Termination Date deliver to BC Hydro:
 - (i) all keys, access codes or other devices required to operate the Facility in the control of Project Co; and
 - (ii) any Project Intellectual Property required to be delivered by Project Co pursuant to Section 15.2(e) of this Agreement; and
- (d) subject to Section 15.3(a) of this Agreement, 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 Lands over which Project Co has control and occupation and will leave such parts of the Lands and the Facility in a safe, clean and orderly condition.

15.4 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 Lands and the Facility provided such access does not affect the Services in a way that results in any reduction in Service 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.

15.5 Continued Performance

Subject to Project Co's rights of suspension under Sections 14.3(a) and 14.3(b) of this Agreement and subject to the provisions of this Section 15, the parties will continue to perform their obligations under this Agreement (including BC Hydro continuing to make Service Payments) notwithstanding the giving of any notice of default or notice of termination, until the termination of this Agreement becomes effective.

16 DISPUTE RESOLUTION

16.1 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 14 [Dispute Resolution Procedure].

16.2 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.

17 ASSIGNMENT/CHANGE IN CONTROL

17.1 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 Project Contract.

17.2 Limitations on Change in Control

[REDACTED]

17.3 Limitations on Assignment of Project by BC Hydro

BC Hydro will not assign, transfer or otherwise dispose of any interest in this Agreement unless the assignee is a Qualified Person and assumes all the obligations of BC Hydro under this Agreement.

17.4 Costs of Request for Consent

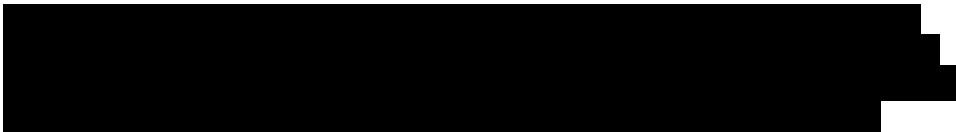
If Project Co requests consent to an assignment, transfer or disposition pursuant to Section 17.1 of this Agreement or to a Change in Control pursuant to Section 17.2 of this Agreement, Project Co will pay BC Hydro's reasonable internal administrative and personnel costs and all reasonable out-of-pocket 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] against its obligation under this Section 17.4. 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 17.4 and Project Co will promptly pay such amount to BC Hydro.

18 GENERAL

18.1 Confidentiality

- (a) Subject to Section 18.1(b) of this Agreement, each party will hold in confidence any Confidential Information received from the other party, except that this Section 18.1 will not restrict:
 - (i) Project Co from disclosing or granting access to such information to its Affiliates, 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:

- (A) 
- (B) 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; and
- (ii) 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 or requests the information in relation to the Project or the WA Project.
- (b) Subject to any restrictions on the Confidential Information which are imposed by a third party that may own any Confidential Information, the obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:
- (i) which the party that disclosed the Confidential Information confirms in writing is not required to be treated as Confidential Information;
- (ii) which is or comes into the public domain otherwise than through any disclosure prohibited by this Agreement;
- (iii) to the extent any Person is required to disclose such Confidential Information by Law, including without limitation, a disclosure required under FOIPPA;
- (iv) 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;
- (v) that BC Hydro may be entitled to receive from Project Co pursuant to this Agreement for the operation, maintenance or improvement of the Facility in the event of, or following, termination of this Agreement; or
- (vi) which was known to the receiving party prior to entering into this Agreement where such information is not bound by a confidentiality agreement or other contractual, legal or fiduciary obligation of confidentiality.
- (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 18.1(a) of this Agreement 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 18.1(a) of this Agreement, subject, in the case of a claim for any such remedy against BC Hydro, to the provisions of the *Crown Proceeding Act* (British Columbia).
- (d) Project Co will be fully liable for any breach of confidentiality by any Person to whom Project Co has disclosed or granted access to Confidential Information under this Section 18.1 to the same extent as if Project Co itself breached confidentiality under this Section 18.1.

18.2 Personal Information

Project Co will, and will require Project Contractors and Subcontractors to comply with Schedule 17 [Privacy Protection] in respect of the collection, holding, processing, use, storage and disclosure of Personal Information.

18.3 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 9 [Communications Roles].

18.4 Law of Agreement

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

18.5 Attornment

Subject to Schedule 14 [Dispute Resolution 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 their competence and the convenience and propriety of the venue and agree to be bound by any judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

18.6 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 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 or consent.

18.7 Notices

Unless expressly required to be given otherwise, 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 to the address or electronic mail address of each party set out below:

if to BC Hydro:

British Columbia Hydro and Power Authority
Suite 600, Four Bentall Centre, 1055 Dunsmuir Street
PO BOX 49260
Vancouver, BC V7X 1V5

Attention:

E-mail:

if to Project Co:

ATCO Two Rivers Lodging Group Limited Partnership
Suite 600, 4838 Richards Road SW
Calgary, AB T3E 6L1

Attention:

E-mail:

or to such other address or electronic mail address 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 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:
 - (i) the receiving party has, by electronic mail or by hand delivery, acknowledged to the notifying party that it has received such notice; or
 - (ii) 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.

18.8 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.

18.9 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.

18.10 No Partnership, etc.

The relationship between BC Hydro and Project Co under this Agreement is that of Project Co being an independent contractor, notwithstanding any other provision in this Agreement or anything arising out of the actions of the parties. BC Hydro and Project Co expressly deny that it is their intention to create any partnership, joint venture, agency, employment or other relationship. Unless otherwise agreed in writing, Project Co is not the agent of BC Hydro in any capacity whatsoever under this Agreement, and has no authority to act as an agent of BC Hydro.

18.11 Survival

Notwithstanding any other provision of this Agreement, the provisions of Section 7.10, Section 7.15, Section 9 (but only if and to the extent a Compensation Event relates to a claim made by a third party against Project Co after the Termination Date), Section 10, Section 15, Section 16, Section 18.1, Section 18.2, Section 18.3, Section 18.4, Section 18.5, Section 18.6, Section 18.10, Section 18.11, Schedule 14 [Dispute Resolution Procedure] and Schedule 22 [Compensation on Termination] will survive the expiry or any earlier termination of this Agreement.

[Signature Page Follows]

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



ATCO TWO RIVERS LODGING GROUP LIMITED PARTNERSHIP,
by its general partner, **ATCO TWO RIVERS LODGING GROUP GP LTD.**



[signature page to Worker Accommodation Project Agreement]