

MUSKRAT FALLS CORPORATION

and

CAHILL-GANOTEC, A PARTNERSHIP

SUPPLY AND INSTALL AGREEMENT

Supply and Install Mechanical and Electrical Auxiliaries (MF)

Agreement No. CH0031-001

DATED AS OF JUNE 16, 2017



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Exhibit	Description
1	Scope of Work
2	Compensation
3	Coordination Procedures
4	Supplier Document Requirement List
5	Health and Safety Requirements
6	Environmental and Regulatory Compliance Requirements
7	Quality Requirements
8	Subcontractors, Manufacturers and Material Sources
9	Schedule
10	Declaration of Residency
11	Company Supplied Documents
12	Site Conditions
13	Provincial Benefits
14	Performance Security
15	Rules for Arbitration

THIS AGREEMENT MADE as of **June 16, 2017**

BETWEEN:

MUSKRAT FALLS CORPORATION, a body corporate constituted pursuant to the *Corporations Act*, RSNL 1990, c. C-36, as amended, and having its head office at the City of St. John's, Province of Newfoundland and Labrador, Canada (hereinafter referred to as "**Company**")

- and -

Cahill-Ganotec, a Partnership, a partnership between G.J. Cahill & Company (1979) Limited and Ganotec Inc., formed pursuant to the laws of the Province of Newfoundland and Labrador, Canada (hereinafter called "**Contractor**").

WHEREAS, Company desires the performance of certain Work described in this Agreement;

WHEREAS, Contractor is engaged in the business of performing such Work and will provide all expertise, equipment, material and personnel to perform the Work;

WHEREAS Company and Contractor wish to set out the terms and conditions on which Contractor shall carry out the Work;

NOW THEREFORE, the Parties, each in consideration of the promises and agreements of the other, hereby agree as follows:

**ARTICLE 1
INTERPRETATION**

1.1 The following Exhibits are attached hereto and shall form and be read and construed as an integral part of this Agreement:

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1.2 For the purpose of this Agreement, except as is otherwise expressly provided or unless the context otherwise requires, the terms defined in this Article shall have the meanings assigned to them in this Article.

- (a) **"Acceptance"** means express acceptance, concurrence or consent in writing by Engineer and **"Accepted"**, **"Acceptable"** and **"Accept"** shall be construed accordingly.
- (b) **"Aconex"** means a cloud based computer software program for communication that can be accessed via an internet connection and a web browser.
- (c) **"Affiliate"** or **"Affiliate(s)"** has the meaning given to affiliate in the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 and includes any limited partnership whose general partner is an affiliate of Company under that statute.
- (d) **"Affiliate Assignee"** has the meaning ascribed thereto in **Article 30.1**.
- (e) **"Agent Party"** means initially the Security Trustee, and from time to time any agent or other person designated by the Security Trustee to enforce the Security Interests, or any receiver of the Affiliate Assignee or any person appointed as a receiver by the Security Trustee for the assets of the Affiliate Assignee. At any point in time there shall only be one Agent Party and the Security Trustee shall inform Contractor each time there is a change in the designation of the Agent Party.
- (f) **"Agreement"** means this document, including the Exhibits as referenced in **Article 1.1**, originally executed or as they may from time to time be supplemented, amended, revised or otherwise modified in accordance with the applicable provisions of this document and the Exhibits.
- (g) **"Applicable Laws"** means any laws, statutes, regulations, standards, codes, orders, directives or other rules enacted or issued from time to time by any Authority having jurisdiction over Contractor or Company or the activities carried out under this Agreement, including safety, occupational health, customs and excise, taxation, workers compensation, labour and environmental protection laws, statutes, regulations, standards, codes, orders, directives and other rules.

- (h) **"Approval"** means express acceptance, concurrence or consent in writing and **"Approve"** and **"Approved"** shall be construed accordingly.
- (i) **"Authority"** means any:
- (i) government or government department or agency;
 - (ii) municipality, local government authority or council;
 - (iii) other statutory authority;
 - (iv) fiscal or judicial body, commission, board, tribunal or agency; or
 - (v) other regulatory person or body;
- (excluding Company) having jurisdiction or authority in any way over Contractor or Company or the subject matter of the Agreement, including a right to impose a requirement or whose Approval is required with respect to the LCP or the Work.
- (j) **"Billing Information"** has the meaning ascribed thereto in **Article 12.6**.
- (k) **"Breach"** has the meaning ascribed thereto in **Article 30.2**.
- (l) **"Business Day"** means a day that is not a Saturday, Sunday or any other day which is a statutory holiday in the Province of Newfoundland and Labrador.
- (m) **"Change"** means any of the following:
- (i) An addition to the Work;
 - (ii) An increase or decrease in quantities of items forming part or all of the Work;
 - (iii) A deletion of any part of the Work;
 - (iv) A revision or modification to any part of the Work already completed;
 - (v) A variation to the schedule for the completion of a Milestone, including a delay in the completion of such Milestone resulting from an act or omission by Company provided that Contractor shall use reasonable care and diligence to mitigate such delay;
 - (vi) A modification in, variation to or deviation from the requirements set out in Exhibit 1 – Scope of Work;
- but for greater certainty, a Change shall not include:
- (A) modifications, revisions or deviations to the requirements of the Agreement that are necessary to make the Work satisfy the performance requirements set out in Exhibit 1 – Scope of Work;
 - (B) any items that can reasonably be inferred as being included in the Work, including the advancement and development of the design of any element of the Work within the Contactor's responsibility under the Agreement;



- (C) modifications, revisions or deviations to the requirements of Exhibit 1 – Scope of Work or any additional services that are requested by Company that are necessary because of delays attributable to Contractor Group;
 - (D) corrections or additional services that are required because of Contractor's breach of any of its representations, covenants, warranties, guarantees or other obligations under this Agreement, including corrections or additional services made necessary due to noncompliance with the Agreement, Applicable Laws or the requirements of Authorities;
 - (E) the supply of any services, materials or equipment required to rectify any omissions, defects or deficiencies in the Work; or
 - (F) matters that might otherwise be grounds for alteration of a date for a completion of a Milestone but which coincide with any concurrent delay or other matter within Contractor's responsibility under this Agreement.
- (n) **"Change Order"** means an order or directive for a Change issued in the form set out in Exhibit 3 – Coordination Procedures and signed by Company.
 - (o) **"Change Request"** means a request for a Change issued in the form set out in Exhibit 3 – Coordination Procedures.
 - (p) **"Claim"** means damages (including punitive and exemplary damages), expenses, costs, losses, injuries, liabilities, claims, liens, judgments, settlements, awards, remedies, debts, expenses, causes of action, demands, court costs, legal fees or disbursements.
 - (q) **"Commissioning"** means the checks, inspections, activities and tests required by the Technical Specifications to verify that the Work performs in accordance with the requirements of this Agreement and is safe for use and/or occupation.
 - (r) **"Company"** means Muskrat Falls Corporation and its successors and assigns.
 - (s) **"Company Group"** means collectively Company and Company's Other Contractors (including Engineer), and the respective Affiliates and Personnel of each of the foregoing, and any independent engineer, and its Personnel, retained by or on behalf of an entity that provides financing to Company or any of its Affiliates for the LCP or any part thereof.
 - (t) **"Company's Other Contractors"** means all contractors and subcontractors of Company or its Affiliates, including all of their contractors and consultants (including any warranty surveyor or inspector) except Contractor and Subcontractors.
 - (u) **"Company Representative"** means the person designated in accordance with **Article 10.4.**

Handwritten initials in blue ink, possibly "SB", and the number "70" written below them.

- (v) **"Company Supplied Data"** means those documents listed in Exhibit 11 – Company Supplied Documents, together with such other documents to be provided by Company as shall be designated by Company in writing from time to time.
- (w) **"Confidential Information"** has the meaning ascribed thereto in **Article 28.1**.
- (x) **"Contract Price"** means the sum of money specified in the Agreement, as the same may be adjusted from time to time by agreement between the Parties or in accordance with the terms of the Agreement, being the consideration for the satisfactory performance of the Work by Contractor in accordance with the Agreement and as specified in Exhibit 2 - Compensation.
- (y) **"Contractor"** means the Person identified as Contractor on the first page of this Agreement and its successors and permitted assigns.
- (z) **"Contractor Group"** means Contractor and Subcontractors (including Subcontractor's subcontractors of every tier) and their vendors and suppliers and the respective Affiliates and respective Personnel of each of the foregoing.
- (aa) **"Contractor's Items"** means all machinery, systems, fittings, parts, spare parts, apparatus, tools, materials, supplies and any other equipment, material or items which are necessary to be supplied by Contractor Group at their cost to perform the Work.
- (bb) **"Contractor's Personnel"** means the Personnel to be provided by Contractor Group from time to time to perform the Work.
- (cc) **"Contractor's Proprietary Information"** means information of a scientific or technical nature, including inventions, designs or trade secrets which Contractor employs in the course of performing the Work and is not otherwise required to be disclosed or delivered in accordance with other provisions in this Agreement.
- (dd) **"Contractor's Representative"** is the person nominated as such in accordance with **Article 5.5**.
- (ee) **"Court"** means a court of competent jurisdiction and includes the Supreme Court of Canada.
- (ff) **"Cure Period"** has the meaning ascribed thereto in **Article 30.2**.
- (gg) **"Defect"** means any error, omission, deficiency, defect and/or failure in design, materials, engineering, workmanship, manufacture and/or installation, but shall exclude deficiencies caused by:
 - (i) normal wear and tear by Company;



- (ii) alteration of the products of the Work by Company in conflict with Contractor's written instructions delivered to Company prior to the date of the Final Completion Certificate; or
 - (iii) Company's failure to comply with applicable manufacturer's written recommendations, including operations and maintenance manuals, delivered to Company prior to the date of the Final Completion Certificate;
- provided that such normal wear and tear, alteration and/or failure are not contemplated by the Technical Requirements.
- (hh) "**Deliver**", "**Delivered**" or "**Delivery**" means that point in time at which Contractor provides and Company takes physical possession of the Work (or any part), in accordance with **Article 24**.
 - (ii) "**Dispute**" has the meaning ascribed thereto in **Article 39.1**.
 - (jj) "**Drawings**" means the drawings set out in Exhibit 1 - Scope of Work.
 - (kk) "**Effective Date**" means **June 16, 2017**.
 - (ll) "**Engineer**" means Lower Churchill Management Corporation, or such other Person designated by Company in writing from time to time by giving Notice to Contractor, and any successors or assigns.
 - (mm) "**Exhibits**" means the Exhibits forming part of this Agreement and identified in **Article 1.1**.
 - (nn) "**Final Completion**" means that point in time when Contractor has completed all the Work except for Warranty obligations.
 - (oo) "**Final Completion Certificate**" has the meaning ascribed thereto in **Article 25.7**.
 - (pp) "**Force Majeure**" has the meaning ascribed thereto in **Article 31.1**.
 - (qq) "**HST**" means all amounts exigible pursuant to Part IX of the *Excise Tax Act* (Canada), R.S.C. 1985, c. E-15, including, for greater certainty, the taxes commonly referred to as the goods and services tax (GST) and the harmonized sales tax.
 - (rr) "**LCP**" means lower Churchill Projects which include hydroelectric power developments on the lower Churchill River located in the Labrador portion of the Province of Newfoundland and Labrador and associated power transmission facilities.
 - (ss) "**LEG2/96**" means the 1996 "Model 'Consequences' Defects Wording" published by the London Engineering Group.



- (tt) "**Lower Churchill Construction Projects Benefits Strategy**" means the policy, strategy, obligations and procedures set out in the document located at www.NR.Gov.NL.CA/NR/Energy/LCP_Benefits_Strategy.pdf.
- (uu) "**Milestone**" has the meaning ascribed thereto in Exhibit 3 – Coordination Procedures.
- (vv) "**Milestone Schedule**" means the schedule for performance of the Work (or any part) as set out in Exhibit 9 – Schedule, as the same may be amended from time to time by agreement of the Parties or otherwise in accordance with the provisions of the Agreement.
- (ww) "**Notice**" means a written communication that is required to be delivered in accordance with **Article 40**.
- (xx) "**Party**" means Company or Contractor, as the context requires, and "**Parties**" means Company and Contractor collectively, and reference to any Party includes that Party's executors, administrators, substitutes (including persons taking by novation), successors and permitted assigns.
- (yy) "**Payment Certificate**" means the certificate for payment of all or any portion of the Contract Price that is issued by Contractor to Engineer for Approval by Company, all in accordance with **Article 12**.
- (zz) "**Payment Milestone**" means a Milestone identified in Exhibit 2 – Compensation for which payment of a portion of the Contract Price is to be made by Company to Contractor.
- (aaa) "**Person**" means an individual, a partnership, a corporation, a trust, an unincorporated organization, a union, a government or any department or agency thereof and the heirs, executors, administrators, successors, assigns or other legal representatives of an individual, and words importing persons have a similar meaning.
- (bbb) "**Personnel**" means the directors, officers, employees, consultants, non-employed representatives and agents of a Person.
- (ccc) "**Privacy Law**" means the *Access to Information and Protection of Privacy Act, 2015*, S.N.L. 2015, c. A-1.2, and all other applicable federal or provincial laws relating to disclosure of information, and the privacy, confidentiality or use of any information, about individuals and corporations.
- (ddd) "**Punch List**" means a list of Defects and/or items or parts of the Work that are not complete.
- (eee) "**Quality Plan**" means the plan described in Exhibit 7 – Quality Requirements.



- (fff) **"Security Interests"** means the following rights granted by Affiliate Assignee to the Security Trustee: (a) any right of set-off or combination of accounts intended to secure the payment or performance of an obligation; (b) any interest in property securing an obligation owed to, or a claim by, a Person other than the owner (which for the purposes hereof shall include a possessor under a title retention agreement and a lessee under a capital lease or in a sale and leaseback transaction), including by way of mortgage, pledge, charge, lien, assignment by way of security, hypothecation, security interest, hire purchase agreement, conditional sale agreement, deposit arrangement, deemed trust, title retention, capital lease, discount, factoring or securitization arrangement deemed trust, on recourse terms; (c) any preference, priority, adverse claim, levy, execution, seizure, attachment, garnishment or other encumbrance which binds property; and (d) any agreement to grant any of the foregoing rights or interests.
- (ggg) **"Security Trustee"** means the collateral trustee under a deed of trust and mortgage relating to senior secured bonds of the Affiliate Assignee, for and on behalf of the holders of such bonds from time to time, and any successor or assignee thereof.
- (hhh) **"Site"** means the location for the performance of Work as may be further described in Exhibit 1 – Scope of Work, which may include:
- (i) at the power plant, dam and/or immediate vicinity at Muskrat Falls (Labrador);
 - (ii) at any substations, converter stations, condenser stations and transition compounds at Churchill Falls (Labrador), Forteau Point (Labrador), Soldiers Pond (Newfoundland), Shoal Cove (Newfoundland); and/or
 - (iii) at power transmission line routes, including all roads and access routes to Muskrat Falls (Labrador), Churchill Falls (Labrador), Forteau Point (Labrador), Soldiers Pond (Newfoundland), Shoal Cove (Newfoundland) and associated transmission lines.
- (iii) **"Standard of a Prudent Contractor"** means good faith performance of contractual obligations and exercising that degree of care, skill, diligence, prudence, workmanship and foresight expected from a skilled and experienced contractor engaged in the same type of undertaking, in similar circumstances or conditions and in compliance with all Applicable Laws and to the satisfaction of Authorities.
- (jjj) **"Subcontract"** means an agreement (including any supplement or amendment) entered into between Contractor and any Person in the manner and to the extent permitted under the terms of the Agreement by which Contractor engages such Person to perform any part of the Work.
- (kkk) **"Subcontractor"** means any Person engaged by Contractor to perform any part of the Work pursuant to a Subcontract, and shall include the successors and permitted assigns of any such Person.

- (lll) "**Substantial Completion**" means that the Work has been completed to the extent specified in **Article 25.1**.
- (mmm) "**Substantial Completion Certificate**" means the certificate issued by Engineer in accordance with **Article 25.2**.
- (nnn) "**Suspension Expenses**" has the meaning ascribed thereto in **Article 34.2**.
- (ooo) "**Suspension Period**" has the meaning ascribed thereto in **Article 34.1**.
- (ppp) "**Tax**" or "**Taxes**" means any tax, fee, levy, duty (including, for greater certainty, all customs duties, anti-dumping duties and countervailing duties), charge, royalty or similar charge including, for greater certainty, any federal, state, provincial, municipal, local, aboriginal, foreign or any other assessment, governmental charge, imposition or tariff wherever imposed, assessed or collected, and whether based on or measured by gross receipts, income, profits, sales, use and occupation or otherwise, and including any income tax, capital gains tax, fuel tax, capital tax, goods and services tax, harmonized sales tax, value added tax, sales tax, withholding tax, property tax, business tax, ad valorem tax, transfer tax, franchise tax, payroll tax or excise tax, together with all interest, penalties, fines or additions imposed, assessed or collected with respect to any such amounts.
- (qqq) "**Technical Requirements**" means specifications, drawings, plans or other documentation of a technical or scientific nature, and tests, set out or referenced in the Exhibits.
- (rrr) "**Technical Specifications**" or "**Specifications**" means the document entitled "CH0031 Supply and install Mechanical and Electrical Auxiliaries Scope of Work Specification (LCP Document No. MFA-SN-CD-3300-EN-SP-0002-01)" and all other specifications included in Exhibit 1 – Scope of Work.
- (sss) "**Term**" has the meaning ascribed thereto in **Article 1.16**.
- (ttt) "**Warranty**" means Contractor's obligations set out in **Article 17**.
- (uuu) "**Warranty Period**" has the meaning ascribed thereto in **Article 17.1**.
- (vvv) "**Warranty Work**" has the meaning ascribed thereto in **Article 17.6**.
- (www) "**Work**" means all design, engineering, labour, services and obligations to be performed and materials, equipment and products to be supplied by Contractor under the terms of this Agreement, as more particularly described in **Article 3** and Exhibit 1 – Scope of Work, including Changes and the provision of all Personnel, plant, supplies, facilities, documentation, records and other items necessary to the performance of such design, engineering, labour, services and obligations.
- (xxx) "**Worksite**" means any lands, waters and any other places on, under, over, in or through which the Work is to be performed, including design offices, workshops,



onshore facilities, factories, fabrication facilities and places where Contractor Items are obtained, stored or used for the purposes of this Agreement.

- 1.3 The doctrine of *contra proferentem* shall not apply in the interpretation of this Agreement, meaning that if there is any ambiguous language in this Agreement it shall not be interpreted more strongly against the Party who prepared or drafted the ambiguous language.
- 1.4 Where reference is made to a direction, response, act, decision, determination, consent, waiver, approval, notice, request or other communication of Company or to matters which must be satisfactory to Company, then, unless otherwise expressly stated, that matter is to be conducted or carried out at the sole and reasonable discretion of Company.
- 1.5 If the last day of any period of days set out in this Agreement falls on a day which is not a Business Day, such period of days shall be extended to the first Business Day immediately following the last day of such period of days. If anything in this Agreement falls to be done or held on a day which is not a Business Day, the same shall be done or held on the next succeeding Business Day.
- 1.6 Words importing the singular only shall include the plural and vice versa, words importing any gender shall include other genders and words importing persons shall include individuals, partnerships, associations, trusts, unincorporated organizations and corporations and vice versa. Where a word is defined in this Agreement, a derivative of that word shall have a corresponding meaning.
- 1.7 Unless otherwise expressly stated, reference herein to an Exhibit or to an Article, clause, subclause or other subdivision is a reference to such Exhibit to this Agreement or to such Article, clause, subclause or other subdivision within this Agreement. A reference to a Section is a reference to a paragraph, clause, subclause or other subdivision in an Exhibit.
- 1.8 The titles, headings, captions, recitals and the provision of a table of contents shall not be used in any way in construing or interpreting any provisions of this Agreement.
- 1.9 Except as otherwise defined in this Agreement, words and abbreviations which have well known technical or trade meanings are used in the Agreement in accordance with such recognized meanings.
- 1.10 The words "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be construed to be limited by the specific enumeration of items but shall in all cases be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation".
- 1.11 Reference to any Act or legislation, or to a provision of an Act or legislation, is to the Act or legislation as amended and includes any statutory modification or re-enactment of it, a legislative provision substituted for it and any regulation, subordinate legislation or other statutory instrument issued under it.



- 1.12 If any provision in the Exhibits conflicts with a provision in the Articles of this Agreement, the provision in the Articles of this Agreement shall prevail. In the event that any provision in any of the Exhibits conflicts with any other provision in the Exhibits, priority shall be given in the order listed as follows:
- (a) Exhibit 1 - Scope of Work
 - (b) Exhibit 9 – Schedule
 - (c) Exhibit 2 – Compensation
 - (d) Exhibit 7 - Quality Requirements
 - (e) Exhibit 3 - Coordination Procedures
 - (f) Exhibit 11 - Company Supplied Documents
 - (g) the remaining Exhibits in their numerical order by Exhibit number
- except in respect of Technical Requirements, in which case the more stringent provision will prevail.
- 1.13 If the Standard of a Prudent Contractor conflicts with any other provision in this Agreement, the other provision in the Agreement shall prevail. Contractor shall give Notice to Company of any standard or requirement in this Agreement that Contractor considers is less stringent than the Standard of a Prudent Contractor.
- 1.14 The language of this Agreement shall be English and all communications and dealings under and the resolution of any disputes concerning this Agreement shall be conducted in the English language. All information, data or documentation of any nature that Contractor prepares in the performance of the Work, is required to submit to Company or is requested by Company to submit, shall be prepared in English.
- 1.15 Any Approval by Company or Acceptance by Engineer shall not waive Contractor's obligations under Applicable Laws or as outlined in this Agreement.
- 1.16 This Agreement shall be effective from the Effective Date and shall remain in full force and effect until the Work is complete, a Final Completion Certificate issued pursuant to **Article 25.10** and all Warranty obligations have been satisfied (the "**Term**"), unless earlier terminated in accordance with the provisions of this Agreement.
- 1.17 Whenever an amount of money is referred to in this Agreement, such amount shall, unless otherwise expressly stated, be deemed to be Canadian dollars.
- 1.18 The illegality or unenforceability of any provision of this Agreement shall in no way affect the legality or enforceability of any other provision hereof. Any illegal or unenforceable provision shall be deemed severed from this Agreement and the remainder of this Agreement shall be construed and enforced as if this Agreement did not contain such illegal or unenforceable provision.



- 1.19 This Agreement shall be construed and the relations between the Parties determined in accordance with the Applicable Laws of Newfoundland and Labrador and Canada, including any limitation periods, and reference to such Applicable Laws shall not, by application of conflict of laws rules or otherwise, require the application of the Applicable Laws in force in any jurisdiction other than Newfoundland and Labrador. The Parties hereby irrevocably attorn to the exclusive jurisdiction of the Courts of the Province of Newfoundland and Labrador and Canada for the resolution of any dispute arising hereunder.
- 1.20 The rights and recourse of Company and Contractor contained in the Agreement are cumulative and not in the alternative unless otherwise provided. The exercise of any such rights or recourse shall not constitute a waiver or renunciation of any other rights or recourse. Except as expressly provided in the Agreement, the obligations imposed by the Agreement and the rights and remedies available thereunder are in addition to and not a limitation of any obligations, rights and remedies otherwise imposed or available by law.
- 1.21 Company is entering into this Agreement, and Contractor acknowledges that Company is entering into this Agreement, solely in its own right and not on behalf of or as agent of Nalcor Energy or the Crown in right of the Province of Newfoundland and Labrador.
- 1.22 If Contractor is a joint venture or partnership of two or more Persons, all such Persons shall be jointly and severally liable to Company for all liabilities, indemnities and obligations of Contractor under, and relating to, this Agreement. Such Persons shall designate in writing one of them to act as a partner in charge with authority to bind the joint venture or partnership, as the case may be. The composition or the constitution of the joint venture or partnership, as the case may be, shall not be altered without the prior consent of Company. If requested by Company, Contractor shall provide to Company a copy of the joint venture agreement or partnership agreement, as applicable, excluding its financial terms, and such agreement shall be subject to the provisions of **Article 28**.

ARTICLE 2 CONTRACTOR'S STATUS

- 2.1 Contractor shall, for all purposes under this Agreement and in relation to any aspect of the performance of its obligations in respect of the Work, be an independent contractor and shall have responsibility for and control over the details and means of performing such obligations in accordance with the terms and conditions of this Agreement.
- 2.2 Contractor's Personnel shall not be employees of Company. Contractor's Personnel shall be under the direct supervision and control of Contractor and not of Company. Contractor accepts complete responsibility as the principal for Contractor's Personnel.
- 2.3 Nothing in this Agreement, nor the conduct of a Party, shall in any manner whatsoever constitute or be intended to constitute Contractor as the agent or representative or fiduciary of Company or any of its Affiliates, nor constitute or be intended to constitute a partnership or joint venture between Company and Contractor or any other Party, but rather as between Company and Contractor each Party shall be severally responsible, liable



and accountable for its own obligations under this Agreement or otherwise for any conduct arising therefrom and for all Claims, demands, actions and causes of action arising directly or indirectly therefrom.

- 2.4 Neither Party shall have the authority to make nor shall it make any statements, representations or commitments of any kind, or take any action, that will bind the other Party, except as expressly provided in this Agreement or as otherwise authorized in writing by the applicable Party.
- 2.5 Contractor acknowledges that it shall be carrying on business in the Province of Newfoundland and Labrador during the performance of the Work and agrees to comply with the registration and other relevant provisions of the *Corporations Act*, RSNL 1990, c. C-36.

ARTICLE 3 CONTRACTOR'S OBLIGATIONS

- 3.1 Contractor shall carry out all of its obligations under this Agreement and shall perform the Work, including:
- (a) any necessary design or engineering which is the responsibility of Contractor under this Agreement;
 - (b) all work required for the procurement, fabrication, manufacturing, construction, testing, transport, delivery, maintenance, storage, documentation, preservation, installation, commissioning, repair and remediation of the Work;
 - (c) provision of all supervision, services, labour, trades, drafting, accounting, purchasing, expediting, inspection, testing, Personnel, Contractor's Items, transportation, mobilization and demobilization required for the compliance with and fulfillment of all Contractor's obligations under this Agreement;
 - (d) provision and installation of all equipment, products and materials required by this Agreement at the Site;
 - (e) ensuring the Work conforms strictly as to quality and description with the particulars stated in Exhibit 1 - Scope of Work and Company Supplied Data and complies with all Applicable Laws;
 - (f) satisfaction of the performance requirements set out in Exhibit 1 – Scope of Work;
 - (g) provision of all documents as required under, and in accordance with, the terms of this Agreement;
 - (h) provision of any work not expressly detailed in this Agreement or in Contractor's proposal, but which is necessary for the performance of the Work in accordance with this Agreement;
 - (i) rectification of any and all deficiencies as noted by Company, Engineer or any Authority before the start of the Warranty Period and after such date as provided for in accordance with the Warranty;

- (j) completing the Work, and portions thereof, in accordance with Exhibit 9 - Schedule; and
 - (k) preparing and maintaining the schedules for the performance of the Work as set out and/or referenced in Exhibit 3 - Coordination Procedures.
- 3.2 Contractor shall review and verify the details contained in Exhibit 1 - Scope of Work and Exhibit 11 - Company Supplied Documents, and represents that it has a full knowledge and understanding of the nature and the scope of the Work, and including weather and all other conditions at Worksites. Contractor shall advise Company of any errors, omissions and inconsistencies in this Agreement and shall not proceed with any part of the Work affected by such until resolved by Engineer; provided that if such resolution results in a Change as defined by **Article 1.2(m)(v)** and **Articles 1.2(m)(A) to (F)** inclusive, then Contractor may proceed in accordance with **Articles 26.7** or **26.8** to seek an extension of the Milestone Schedule, provided that Contractor shall use reasonable care and diligence to mitigate such Change.
- 3.3 Contractor shall ensure the work it performs is sufficient to encompass all matters necessary for the proper and efficient fulfillment of Contractor's obligations under this Agreement. Without limitation, Contractor shall undertake the Work in accordance with Applicable Laws, this Agreement and as required by any Authority.
- 3.4 Contractor shall perform the Work to the Standard of a Prudent Contractor and shall ensure that Subcontractors shall perform to the same standard. Any material failure or any refusal or inability of Contractor to comply with the foregoing requirements shall constitute a breach of the terms and conditions of this Agreement. Contractor shall be solely responsible for any operations comprising the Work performed by Contractor Group.
- 3.5 Subject to **Article 10.3**, Contractor shall obtain and maintain all directions, guidelines, permits, certificates, authorizations, dispensations and licences of any type whatsoever necessary for the performance of the Work and shall comply with all Applicable Laws and requirements of Authorities. Contractor shall promptly notify Company in writing upon any discovery of a failure to adhere to the foregoing requirements in connection with the performance of the Work hereunder.
- 3.6 Contractor shall assist Company and provide necessary information and documents to support Company fulfilling Company's obligations set out in **Article 10.3**.
- 3.7 Contractor shall comply with all lawful instructions of Company pertaining to the performance of the Work, as communicated through the Company Representative, Engineer or otherwise in accordance with this Agreement; provided that if any such instruction results in a Change as defined by **Article 1.2(m)(v)** and **Articles 1.2(m)(A) to (F)** inclusive, then Contractor may proceed in accordance with **Articles 26.7** or **26.8** to seek an extension of the Milestone Schedule, provided that Contractor shall use reasonable care and diligence to mitigate such Change. The absence of instructions from Company shall not permit Contractor to avoid its duty to perform its obligations under this Agreement. If Contractor fails to comply with a lawful instruction, then Company may at Contractor's sole



- risk and cost take whatever measures Company considers necessary to implement the instruction.
- 3.8 Contractor shall cooperate with Company's Other Contractors and Company Personnel working at the Worksites with a view to reducing interference with Company's Other Contractors and Company Personnel or with the operations of Company; provided that if any such cooperation results in a Change as defined by **Article 1.2(m)(v)** and **Articles 1.2(m)(A) to (F)** inclusive, then Contractor may proceed in accordance with **Articles 26.7** or **26.8** to seek an extension of the Milestone Schedule, provided that Contractor shall use reasonable care and diligence to mitigate such Change.
- 3.9 Contractor shall at all times promptly take all steps necessary to maintain good labour relations with Contractor Personnel to the extent that such requirement is consistent with sound business practice in accordance with the Standard of a Prudent Contractor. Subject to **Article 31.1(c)**, the existence of any labour disturbance relating to Contractor Personnel shall not relieve Contractor of its obligations hereunder.
- 3.10 Contractor shall transfer all unused excess materials, if any, to Company at the completion of the Work or, at Company's option, such excess materials shall be sold by Contractor and any amounts realized from such sales shall be credited to Company as a deduction from the Contract Price.
- 3.11 Contractor shall take such action as Company may specify to enable Company to comply with all Applicable Laws to be complied with by Company and in particular, Applicable Laws governing the use of local personnel, goods and services, which are in effect or which may come into effect during the Term.
- 3.12 Contractor shall not change any location or place of origin identified in the Agreement for fabrication, manufacture or sourcing of equipment, materials or products without the prior Approval of Company.
- 3.13 Contractor shall be responsible, at its cost, for maintaining such inventories of Contractor's Items as necessary so as to avoid interruptions in the performance of the Work.

ARTICLE 4

CONTRACTOR'S DESIGN OBLIGATIONS

- 4.1 The provisions of this **Article 4** shall only apply to any design, engineering or architectural requirements that are the responsibility of Contractor under this Agreement.
- 4.2 All parts of the Work required by Applicable Laws to be performed by licensed or registered professional engineers or architects shall be performed by registered professional engineers and architects. In particular, any drawings, including design, installation and construction drawings, specific to the Province of Newfoundland and Labrador must be stamped by professional engineers registered to practice in the Province of Newfoundland and Labrador.



- 4.3 In the engineering and design of any equipment, products or materials to be incorporated into the Work and in the performance of the Work, Contractor shall exercise the standard of care normally exercised by licensed or registered professional engineers or architects having specialized knowledge, expertise and experience in the design of similar work.
- 4.4 For all engineering and design Contractor Group shall employ only engineering and design personnel who have the requisite knowledge and skills through education, training and experience to perform the engineering and design assigned to them.
- 4.5 Contractor shall design and engineer the Work for a useful life that is not less than the minimum stated in the Technical Requirements.
- 4.6 Contractor shall promptly remedy any error, omission, ambiguity, inconsistency or inadequacy, or any other Defect, in the Work identified by Engineer or Company before the start of the Warranty Period, and after such date as provided for in accordance with the Warranty.
- 4.7 Engineering and design review meetings will be scheduled and coordinated by Engineer in accordance with the provisions of Exhibit 3 – Coordination Procedures. Contractor shall attend all such engineering and design review meetings.
- 4.8 Contractor shall be solely responsible for all design and engineering for the Work for which it is responsible under this Agreement. Contractor shall not be relieved of its obligations under this Agreement by virtue of any Approval by Company or Acceptance by Engineer of Contractor's design and engineering or by virtue of a design and engineering review by Company Group.

ARTICLE 5 CONTRACTOR'S PERSONNEL

- 5.1 Contractor shall furnish and procure the numbers and classifications of Contractor's Personnel required to perform the Work. In the event Contractor fails to provide the numbers or classifications of Contractor's Personnel required in respect of the Work, Company may issue a Notice that Contractor is in default of this **Article 5.1**, and:
- (a) require Contractor within five (5) Business Days of such Notice to prepare an action plan to cure the default for Company's Approval;
 - (b) require Contractor to commence and diligently follow the Approved action plan; and
 - (c) if Contractor fails to commence and diligently follow the action plan, Company may, at Contractor's sole expense, retain other contractors and deduct the costs associated with retaining such other contractors from the applicable compensation payable by Company to Contractor for the period such positions remain unfilled by Contractor.
- 5.2 Contractor shall ensure that throughout the Term each of Contractor's Personnel has the qualifications, training and experience, and holds the licenses and certifications necessary to



- carry out assigned duties in the performance of the Work. Contractor shall furnish records of competence for all of Contractor's Personnel when requested to do so by Company.
- 5.3 Contractor shall immediately remove and/or replace, at Contractor's own expense, any of Contractor's Personnel if, in the sole and reasonable judgment of Company, any of Contractor's Personnel:
- (a) ceases to carry out his or her duties in a manner satisfactory to Company or engages in misconduct, unsafe activities, or is incompetent or negligent;
 - (b) is certified by a medical practitioner as being medically unfit for the duties required of him or her; or
 - (c) risks impairing his or her usefulness in the performance of his or her duties through the use of alcohol or drugs.
- 5.4 Unless otherwise Approved by Company, Contractor shall replace, or cause to be replaced, at Contractor's own expense, any of Contractor's Personnel who is transferred or dismissed by Contractor or any Subcontractor, or leaves Contractor's or Subcontractor's employ.
- 5.5 Contractor shall nominate in writing one of Contractor's Personnel as Contractor's Representative. Contractor's Representative shall:
- (a) be in charge of Contractor's Personnel and shall supervise Contractor's Personnel and maintain strict discipline in order to ensure the timely and efficient performance of the Work, and shall notify Company in writing of the occurrence of or threat of any labour dispute involving Contractor's Personnel;
 - (b) have full authority to act on behalf of and bind Contractor on all labour and Contractor's Personnel issues which arise between Company and Contractor;
 - (c) supervise the performance of the Work;
 - (d) have the authority to commit Contractor to any course of action within the bounds of its rights and obligations under this Agreement; and
 - (e) be authorized to receive on behalf of Contractor any Notices, information or decisions of Company made pursuant to this Agreement.
- 5.6 If positions of Contractor's Personnel of key importance to the performance of the Work are listed in Exhibit 3 – Coordination Procedures, Contractor shall not change any Personnel in such positions without the prior Approval of Company. In the event any such key Personnel leave the service of Contractor, Contractor shall promptly use all commercially reasonable efforts to retain suitably trained and experienced replacement key Personnel. In such circumstances, Company shall have the right, which shall be reasonably exercised by Company, to Approve such key Personnel. Contractor shall not retain such replacement key Personnel on a permanent basis without first obtaining Company's Approval, which shall not be unreasonably withheld or delayed.
- 5.7 Contractor shall be responsible for, and shall defend, protect, release, indemnify and hold Company Group harmless from and against all Claims of any nature incurred by Company



Group in connection with the payment of Contractor's Personnel, including all compensation, medical costs, Taxes (including all Canadian and foreign payroll and withholding Taxes and remittances), unemployment insurance premiums, Canada pension plan contributions and other benefits of whatever nature or as may be applicable in any jurisdiction (including any jurisdiction where the Work is performed or where the Personnel reside or are employed).

ARTICLE 6 SUBCONTRACTS

- 6.1 Subject to **Article 6.2** and **Article 6.3**, Contractor may employ Subcontractors to perform or support the performance of the Work or to furnish equipment to be provided by Contractor hereunder.
- 6.2 Contractor shall not Subcontract the whole of the Work. Subject to **Article 6.3**, Contractor shall not Subcontract the performance of any portion of the Work, or its obligations hereunder, without Company's prior Approval.
- 6.3 For all Subcontractors that are identified in Exhibit 8 – Subcontractors, Manufacturers and Material Sources, Contractor shall not be entitled to replace or add one or more Subcontractors without the prior Approval of Company, which Approval shall not be unreasonably withheld.
- 6.4 Any Subcontract permitted under this **Article 6** shall not relieve Contractor of any of its duties, obligations, warranties, liabilities or responsibilities under this Agreement. Contractor shall be responsible for the acts, omissions and negligence of any delegate and any Subcontractors and any of their respective Personnel as fully as if they were the acts, omissions or negligence of Contractor's own Personnel.
- 6.5 Contractor shall oversee the performance of all Subcontractors and delegates and keep such records and accounts and furnish such reports and information relative to Subcontractors as Company may reasonably request. No Subcontract shall bind or purport to bind Company. All Subcontracts shall contain:
- (a) a clear statement that Contractor is entering into such Subcontracts as principal and not as agent for any other Person; and
 - (b) a provision permitting the assignment of the Subcontract by Contractor to Company, at Company's option, without consent of Subcontractor.
- 6.6 Contractor shall ensure that any provisions of this Agreement which are required to be included in its Subcontracts have been so included. Contractor shall enforce the rights of Company under this Agreement with respect to the Work to be performed by any Subcontractors and the subcontracting thereof shall not prejudice such rights.
- 6.7 Contractor shall be responsible for, and shall defend, protect, release, indemnify and hold Company harmless from and against all Claims of any nature incurred by Company in

connection with the payment of Subcontractor or Subcontractor's Personnel, including all compensation, medical costs, Taxes (including all Canadian and foreign payroll and withholding Taxes and remittances), unemployment insurance premiums, Canada pension plan contributions and other benefits of whatever nature or as may be applicable in any jurisdiction (including any jurisdiction where the Work is performed or where the Personnel reside or are employed).

- 6.8 Contractor agrees and shall cause the Subcontractors to agree at all times to highlight the independent nature of the relationship between Company and Contractor wherever possible, including through the use of on-site signage and identifiable logo, letterhead, colour schemes and equipment identification.

ARTICLE 7 PERFORMANCE SECURITY

- 7.1 Contractor shall deliver on or before the Effective Date a letter of credit issued by a bank listed in Schedule I to the *Bank Act*, S.C. 1991, c.46 as security for the proper performance of Contractor's obligations under this Agreement, in the form and with the content specified in Exhibit 14 – Performance Security, the value and duration of which shall be:
- (a) equal to fifteen percent (15%) of the total estimated Contract Price stated in Exhibit 2 – Compensation, until a Final Completion Certificate has been issued pursuant to **Article 25**; and thereafter
 - (b) equal to five percent (5%) of the total estimated Contract Price stated in Exhibit 2 – Compensation, during the Warranty Period.
- 7.2 All costs and expenses incurred in relation to the establishment and maintenance of the letter of credit described in this **Article 7** shall be included in the Contract Price.
- 7.3 Company may claim and have recourse to the letter of credit if Contractor has not performed its obligations in accordance with the Agreement or if Company otherwise has a Claim against Contractor.

ARTICLE 8 POLICY ON ETHICS/CONFLICTS OF INTEREST

- 8.1 Contractor, in performing its obligations under this Agreement, shall establish and maintain appropriate business standards, procedures and controls including those necessary to avoid any real or apparent impropriety or adverse impact on the interests of Company and its Affiliates. Company reserves the right to review such standards and procedures at any time during the Term.
- 8.2 Contractor agrees to perform the Work and to conduct its operations in a manner which is in accordance with all Applicable Laws, consistent with the highest of ethical standards, including the Code of Business Conduct and Ethics set out in Exhibit 11 – Company Supplied

Documents, and to avoid any unlawful or unethical intervention in the political affairs of any country. Contractor agrees to cause all Subcontractors to adopt and enforce the foregoing policy.

- 8.3 Contractor shall not pay any commission or fee, or grant any rebate or make any loan to any Personnel of Company Group or government official, or favour any Personnel of Company Group or government official with any gift or entertainment of significant value or enter into any business arrangement with any Personnel of Company Group or government official. Contractor agrees to cause all Subcontractors engaged in the performance of the Work to adopt and enforce the foregoing policy.

ARTICLE 9 COMPLIANCE WITH LAWS

- 9.1 In performing the Work and carrying out the provisions of this Agreement, Contractor shall comply with all Applicable Laws.
- 9.2 Company may from time to time require Contractor to provide to Company, and Contractor shall promptly so provide, evidence acceptable to Company that Contractor has in all respects complied with the obligations set forth in **Article 9.1**.
- 9.3 Subject to **Article 21.4**, Contractor shall defend, protect, release, indemnify and hold Company harmless from and against all Claims which may be brought against Company or which Company may sustain, pay or incur as a result of any failure by Contractor to comply with its obligations under **Article 9.1** and **Article 9.2**.

ARTICLE 10 COMPANY'S OBLIGATIONS

- 10.1 Subject to the provisions of this Agreement, Company agrees to engage Contractor to perform the Work in accordance with the terms of this Agreement.
- 10.2 Company, through the Company Representative or Engineer, shall provide to Contractor such instructions and information which can only be provided by Company. The provision of any such instructions or information shall not in any way relieve Contractor of any of its obligations under this Agreement.
- 10.3 Company shall obtain all authorizations, permits and licenses: (a) as identified in Exhibit 6 - Environmental and Regulatory Compliance Requirements which Company is responsible to obtain in its own name; and (b) as required by Applicable Laws for the performance of the Work and which are required by such Applicable Laws to be and can only be obtained in Company's name.
- 10.4 Company shall designate a Company Representative who shall have authority to act on behalf of Company regarding matters under the Agreement, receive Notices and perform such other duties and acts reserved to the Company Representative under this Agreement.

- 10.5 The Company Representative, by Notice to Contractor, may delegate any of his or her authority to any nominated deputy. Such Notice shall specify the precise authority of such deputy.
- 10.6 Company may change the Company Representative at any time at its sole discretion by Notice to Contractor.
- 10.7 Company is not obligated to supply any equipment, products or materials unless expressly stated in the Exhibits that Company will supply specific equipment, products or materials. If any such equipment, products or materials are supplied by Company to Contractor, the equipment, products and materials shall be in the care and custody of Contractor from the time Contractor takes physical possession of them, but shall remain the property of Company. Contractor shall not use any such equipment, products and materials supplied by Company except for the purpose for which they were intended under this Agreement, and Contractor shall be responsible for the proper care, handling and maintenance of all such equipment and materials.

ARTICLE 11 ROLE AND RESPONSIBILITIES OF ENGINEER

- 11.1 Engineer has been retained by Company to provide procurement, construction management and contract administration services. Engineer shall have such powers, discretions, functions and authorities as are specified in or as may be implied from this Agreement and shall carry out such duties (including issuing instructions, decisions, orders and Acceptance). Wherever Engineer is required to exercise its discretion by the giving of a decision, opinion or Acceptance, or to determine the cost or value of any matter which may affect the rights or obligations of a Party, Engineer shall exercise such discretion impartially within the terms of this Agreement, having regard to all circumstances.
- 11.2 Contractor shall comply with the decisions, orders and instructions given by Engineer in accordance with this Agreement.
- 11.3 Engineer shall confirm any decision, order or instruction in writing and any decision, order or instruction shall not be effective until such written confirmation has been received by Contractor.
- 11.4 Engineer shall be the interpreter of first instance of the Technical Requirements.
- 11.5 Contractor agrees that all Contractor's Items may be subject to inspection and Acceptance from time to time by Engineer or any Authority. Any Contractor Item which is rejected for not performing to standards set out in this Agreement or by Applicable Laws shall be immediately repaired, or removed from the Site and replaced with Contractor's Items Acceptable to Engineer, by Contractor at Contractor's cost.



- 11.6 Contractor shall not commence any Work involving permanent installation of any equipment, materials or products until Contractor has submitted to Engineer and Engineer has Accepted the health, safety and environmental plans required by **Article 15** and drawings marked "Issued for Construction" for the part of the Work to be performed.
- 11.7 The Site will be available for permanent installation of any equipment, materials or products as part of the Work in accordance with the applicable Milestone dates of the Milestone Schedule, and Contractor shall not commence any Work related to such permanent installation at the Site until such Milestone dates or earlier as Approved by Company.
- 11.8 Where the Agreement calls for the Acceptance by Engineer or Approval by Company with respect to design, manufacture, installation, testing and commissioning of the Work, any such Acceptance or Approval is for general compliance with the Technical Requirements and does not relieve Contractor from satisfying all Technical Requirements. No inspection, review or Acceptance by Engineer or Approval by Company shall release Contractor from compliance with Contractor's obligations under this Agreement or Applicable Law.

ARTICLE 12 COMPENSATION AND TERMS OF PAYMENT

- 12.1 As full compensation for the performance by Contractor of all its obligations under this Agreement, Company shall pay Contractor the Contract Price, in accordance with the terms of this Agreement including **Article 12**, Exhibit 2 – Compensation and Exhibit 3 – Coordination Procedures. Only those rates and prices specifically identified in Exhibit 2 – Compensation shall be paid by Company and any costs not specifically identified in Exhibit 2 – Compensation shall be deemed to be included in such rates and prices. Company shall have no obligation to pay Contractor for the purchase of any goods or performance of services which have not been Approved by Company prior to the delivery of such goods or prior to the performance of such services.
- 12.2 Within thirty (30) days of the Effective Date, Engineer, on behalf of Company, shall provide Contractor with a pro forma invoice that sets out all relevant Company cost codes and required information. Contractor shall utilize said pro forma invoice and cost codes when billing Company.
- 12.3 Compensation to Contractor shall be paid:
- (a) monthly based on progress, and/or
 - (b) upon achieving a Payment Milestone,
- as further specified in Exhibit 2 – Compensation. Contractor shall be paid the portion of the Contract Price applicable to monthly progress or to a Payment Milestone following Approval by Company of a Payment Certificate and in accordance with the provisions of this **Article 12**.



- 12.4 Contractor shall provide, maintain and issue to Engineer, a detailed listing of the invoiced amounts of the Work and cash flow requirements regarding unbilled portions of the Work in accordance with the requirements set out in Exhibit 3 - Coordination Procedures. Contractor shall develop and present a format for the listing for Company Approval.
- 12.5 Contractor's invoices shall comply in all respects with Company's invoicing instructions as provided for in this Agreement, including Exhibit 2 – Compensation, Exhibit 3 – Coordination Procedures and Exhibit 13 - Provincial Benefits.
- 12.6 Invoices shall be accompanied by:
- (a) all relevant supporting documentation as Company or Engineer may require to verify completion of the Work, the accuracy of the fees, charges and third party charges invoiced including copies of any relevant third party invoices, receipts and purchase orders;
 - (b) timesheets Accepted by Engineer for any Work performed on a time and materials basis;
 - (c) receiving reports and a summary page of all third party invoices, complete with summary sheet cross referring to all backup information;
 - (d) a sworn declaration, in the form set out in Exhibit 2 - Compensation, that Contractor has paid Subcontractors, vendors and suppliers all amounts properly due for work, services, materials and equipment supplied or performed and billed by the Subcontractors, vendors and suppliers and included in Contractor's prior invoices for which Payment Certificates have been Approved by Company; and
 - (e) any other documentation Company may reasonably require.

(All invoicing requirements, information and documentation described in **Articles 12.5 , 12.6 and 12.22** shall be referred to as the "**Billing Information**". Billing Information should always comprise a summary sheet with cross referencing to all backup information which demonstrates a clear audit trail substantiating all charges presented on the invoice.)

- 12.7 Company shall not be required to pay any invoice from Contractor until complete Billing Information has been provided to Company. Company shall not be responsible or liable for any Claim arising from delays in payment due to Contractor not providing complete Billing Information.
- 12.8 Contractor shall submit an application for payment as follows:
- (a) For compensation based on monthly progress, Contractor shall issue to Engineer on the 25th day of each month during the performance of the Work, for Company's Approval, a Payment Certificate in the form set forth in Exhibit 3 – Coordination Procedures, that sets out:
 - (i) for Work items paid on a unit price basis, the number of units completed in that month together with the unit price and total claimed for each unit price item;



- (ii) for Work items paid on a lump sum basis, the percentage completed as of the 25th of the month together with the amount claimed for each lump sum item based on the percentage completed less any amounts previously paid by Company for each such item;
- (iii) for Work items paid on a reimbursable basis, Contractor will include such reimbursable items accompanied by appropriate references to the Agreement covering such items and a summary sheet cross referencing such items to all relevant Billing Information to demonstrate a clear audit trail substantiating all such items presented with the Payment Certificate;

and accompanied by all relevant supporting documentation as Engineer or Company may reasonably require to verify the progress achieved.

- (b) For compensation based on Payment Milestones, when Contractor considers that a Payment Milestone has been completed and the criteria for completion of that particular Milestone have been achieved, it shall issue to Engineer, for Company's Approval, a Payment Certificate in the form set forth in Exhibit 3 – Coordination Procedures, together with all relevant supporting documentation as Engineer or Company may reasonably require to verify the successful completion of the relevant Milestone criteria and achievement of the Payment Milestone.

12.9 Where payment is made for Work items on a unit price basis, the quantities of unit priced items in Exhibit 1 – Scope of Work and Schedule of Unit Prices in Exhibit 2 - Compensation are estimated quantities only. Any increase or decrease in the quantities of Work performed in respect of those items listed in Exhibit 1 – Scope of Work and Schedule of Units Prices in Exhibit 2 – Compensation shall not result in a change in the unit price for those items.

12.10 Within ten (10) Business Days of receipt of a Payment Certificate, Engineer shall review it and the associated supporting documentation and make a determination as set out in paragraphs (a) and (b) below. If Engineer determines that:

- (a) For Work compensated on a monthly progress basis:
 - (i) the progress claimed in the Payment Certificate has been achieved, Engineer shall recommend to Company that the Payment Certificate may be Approved; or
 - (ii) the progress claimed has not been achieved, Engineer shall amend the Payment Certificate to reflect the progress actually achieved and advise Contractor in writing the reasons for the revision, and recommend to Company that the revised Payment Certificate may be Approved; and
- (b) For Work compensated on a Payment Milestone basis:
 - (i) the Milestone has been achieved, Engineer shall recommend to Company that the Payment Certificate may be Approved; or
 - (ii) the Milestone has not been achieved, Engineer shall reject the Payment Certificate and advise Contractor in writing the reasons why the Milestone has not been achieved.

- 12.11 Upon receipt of a Payment Certificate Approved by Company, Contractor shall submit an invoice for the amount due as determined in accordance with Exhibit 2 – Compensation and the requirements of Exhibit 3 – Coordination Procedures. The invoice shall be supported by the Approved Payment Certificate and all Billing Information as Engineer or Company may reasonably require.
- 12.12 Contractor shall issue a single invoice and single neutral funding invoice for each payment period covering the services provided by Contractor. Contractor shall address invoices to:
- Muskrat Falls Corporation
350 Torbay Road Plaza, Suite No. 2
St. John's, NL
A1A 4E1
Attention: Lower Churchill Project Accounts Payable
- 12.13 If any Change affects the Contract Price, Contractor may issue an invoice for the Work completed pursuant to the applicable Change Order, as follows:
- (a) For Change Orders carried out on a lump sum or unit price basis, Contractor shall comply with the requirements outlined in **Articles 12.5** through **12.12** in the same manner as if the completion of the Change Order Work is payable by monthly progress or constitutes a Payment Milestone.
- (b) For Change Orders carried out on a reimbursable basis, Contractor shall include that portion of the Change completed in the previous month in its application for payment pursuant to **Article 12.8(a)**. Invoices in respect of such Changes shall be accompanied by all Billing Information including an executed copy of the relevant Change Order, a copy of time sheets Accepted by Engineer, daily progress reports and any other information as Engineer may require to verify the progress, completion and associated charges pertaining to the Change. The final invoice for reimbursable Changes shall also include any information as Engineer may reasonably require to verify the successful completion of the Change.
- 12.14 If Contractor fails to comply with the requirements of **Article 12.6**, the Work shall be deemed incomplete and Company may withhold monies otherwise payable to Contractor and/or return invoices to Contractor for resubmission until such Billing Information has been provided to the satisfaction of Company.
- 12.15 Within thirty (30) days following Engineer's receipt of a properly prepared invoice, accompanied by acceptable Billing Information in accordance with this **Article 12**, Company shall pay to Contractor the amount stated to be due, subject to all of the following:
- (a) Company shall be entitled to withhold from such payment any amount(s) required by Applicable Laws or permitted hereunder;
- (b) If Engineer disputes any item charged in any invoice, Engineer shall notify Contractor of the disputed item specifying the reason therefor and payment of such disputed item shall be withheld until settlement of the dispute, provided that payment shall be made on the undisputed portion;

- (c) Company shall be entitled to set off amounts which it owes to Contractor under this Agreement against amounts which Contractor owes to Company under this Agreement or any other agreement; and
 - (d) For any payments made by Company to Contractor by electronic transfer, Contractor shall provide Company with the necessary banking information to facilitate electronic transfer of funds to Contractor's bank. Any changes in Contractor's banking information or payment instructions shall be submitted in writing to the Company Representative. Company shall not be held liable or responsible for errors or delays resulting from incorrect or delayed submission of changes in banking instructions.
- 12.16 Company shall be entitled to deduct and shall retain from each payment a ten percent (10%) holdback pursuant to the *Mechanics' Lien Act*, R.S.N.L 1990, c.M-3. Company shall release the holdback funds in accordance with **Articles 25.6 and 25.12**.
- 12.17 Company shall be entitled to withhold payment, or to deduct from Contractor's compensation, any amounts associated with:
- (a) invoiced items reasonably disputed by Company;
 - (b) Contractor's failure to make payments promptly to Subcontractors, agents, or suppliers;
 - (c) Contractor's failure to remit or pay any Tax or make any other payment required under Applicable Laws where Company, acting reasonably, determines that any such remittance or payment may be assessed against Company;
 - (d) Defects in the Work not remedied;
 - (e) liens or claims filed or registered against property, or reasonable evidence indicating to Company the probability of claims or liens being filed or registered, with respect to the Work, other than a lien or claim properly filed or registered by Contractor as a result of Company's failure to pay amounts due to Contractor in accordance with the requirements of this Agreement; and
 - (f) any other matter as permitted or required by Applicable Laws or as expressly provided in Exhibit 2 – Compensation, or elsewhere in this Agreement.
- 12.18 Company's obligation to pay any amounts to Contractor under this Agreement is subject to the following terms and conditions, which are inserted for the sole benefit of Company and may be waived by Company in whole or in part in respect of any payment, without prejudicing the rights of Company at any time to assert such terms or conditions in respect of any subsequent payment, namely:
- (a) no notice of claim for lien (other than a claim for lien by Contractor as a result of Company's failure to pay amounts due to Contractor in accordance with the requirements of this Agreement) shall have been given in connection with the Work or if a notice of such a claim for lien shall have been given, such claim shall have been released, vacated or, if applicable, removed from title or the claim shall have

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been secured through the delivery of a bond in respect of the full amount of the claim;

- (b) there shall exist no default, or any event which, with the passage of time or the giving of notice or both, would constitute a default on the part of Contractor; and
 - (c) Company shall have received such other documents or satisfied such other conditions as Company or its project lenders may reasonably require and which are material to the Work.
- 12.19 If either Party fails to make payments as they become due under the terms of this Agreement or under an award by arbitration or Court, interest at the three (3) month Treasury Bill rate, as published by the Bank of Canada for the period in question, on unpaid amounts will also be due and payable until payment. Interest will apply at the rate and in the manner prescribed by **Article 12.19** on the amount of any claim settled pursuant to **Article 39** from the date the amount would have been due and payable under this Agreement, had it not been in dispute, until the date it is paid.
- 12.20 For greater certainty, Contractor and Company acknowledge that, notwithstanding any other provision of this Agreement, any amounts payable by Company to Contractor pursuant to this **Article 12** are exclusive of any HST as payable pursuant to section 165 of the *Excise Tax Act* (Canada), R.S.C. 1985, c. E-15. If Contractor is required to collect from Company an amount of HST with respect to the provision of any goods or services supplied pursuant to this Agreement, then Company, subject to compliance by Contractor with this **Article 12**, shall pay the amount of such HST to Contractor.
- 12.21 Contractor represents and warrants that it is now and shall remain registered for the purposes of the HST in accordance with Part IX of the *Excise Tax Act* (Canada), R.S.C. 1985, c. E-15, for the Term and that its HST Registration number is **82387 5513**.
- 12.22 Contractor shall provide, at all times when any HST is required to be collected, such documents and particulars relating to the supply as may be required by Company to substantiate a claim for any input tax credits as may be permitted pursuant to the *Excise Tax Act* (Canada), R.S.C. 1985, c. E-15, in respect of such HST. Without limiting the foregoing, Contractor shall include on all invoices issued pursuant to this **Article 12** all of the following particulars:
- (a) HST registration number of Contractor;
 - (b) the subtotal of all taxable supplies;
 - (c) the applicable HST rate(s) and the amount of HST charged on such taxable supplies; and
 - (d) a subtotal of any amounts charged for any "exempt" or "zero-rated" supplies as defined in Part IX of the *Excise Tax Act* (Canada), R.S.C. 1985, c. E-15.

ARTICLE 13 TAXES

- 13.1 Contractor acknowledges that it shall be carrying on business in the Province of Newfoundland and Labrador (and elsewhere as applicable) during the performance of the Work and agrees to prepare and to file in a timely manner all Tax returns or declarations required by any applicable Authority or Applicable Laws having jurisdiction over this Agreement or any portion thereof. Contractor shall lawfully discharge its Tax obligations.
- 13.2 Subject to the obligation of Company to pay HST pursuant to **Article 12.20**, Contractor shall remit to the applicable Authority all HST collected from Company. Contractor shall use commercially reasonable efforts to require Subcontractors to pay all Taxes which may be lawfully imposed upon Subcontractors by any Authority having jurisdiction over such Subcontractors or this Agreement.
- 13.3 Contractor represents that Contractor's residence status for the purposes of Canadian income tax legislation is as set forth in Exhibit 10 – Declaration of Residency. Contractor shall advise Company of the country where Contractor is a resident for income tax purposes and shall give thirty (30) days' Notice to Company and obtain its prior written consent before making or allowing any change to its tax residency status. If Contractor obtains, and provides to Company a copy of, an income tax waiver from the Canada Revenue Agency (CRA) waiving a non-resident tax source deduction as may be required by Canadian income tax legislation, Company agrees not to withhold any such income tax deduction to the extent waived so long as the waiver is and remains in force. In any event, Contractor further agrees to be liable for all such Taxes and shall indemnify Company in respect thereof pursuant to **Article 21.9** of this Agreement.
- 13.4 If required by the Applicable Laws of any country having jurisdiction, Company shall have the right to withhold amounts, at the withholding rate specified by such Applicable Laws, from any compensation payable for the Work performed by Contractor Group, and any such amounts paid by Company to an Authority pursuant to such Applicable Laws shall, to the extent of such payment, be credited against and deducted from amounts otherwise owing to Contractor hereunder. Contractor shall note on each invoice whether any portion of the Work covered by such invoice was performed inside or outside of Canada for the purposes of Canadian income tax legislation or such other information requested or required by Company to properly assess withholding requirements. At the request of Contractor, Company shall deliver to Contractor properly documented evidence of all amounts so withheld which were paid to the proper Authority for the account of Contractor.
- 13.5 Contractor shall supply and arrange for all Contractor's Personnel to supply Company with all information relating to the activities under this Agreement that is necessary to enable Company or its Affiliates to comply with the lawful demand for information by any Authority. In the event Contractor does not supply or take all steps to arrange for any Subcontractor to supply such information and, as a result, an Authority imposes a Tax or fine upon Company or any of its Affiliates, Contractor shall forthwith pay or reimburse Company or any of its Affiliates for such Tax or fine.



- 13.6 Subject to the obligation of Company to pay HST pursuant to **Article 12.20**, the Contract Price shall include, and Contractor shall be responsible for, all other Taxes imposed on Company or Contractor Group, for the purchase, sale, importation and exportation of the Work, Contractor's Items, or personal property of any member of Contractor Group. Except as otherwise expressly provided herein, Contractor, or other members of Contractor Group making sales to Contractor or any other member of Contractor Group (and provided that such members are registered for the purposes of the HST in accordance with Part IX of the *Excise Tax Act* (Canada), R.S.C. 1985, c. E-15), shall be the "importer of record" for the purpose of importing into Canada all Contractor's Items and the Work, or any part thereof, and shall pay (and Contractor shall use its commercially reasonable efforts to require Contractor Group to pay) to the applicable Authority all Taxes payable in respect of all such importations. Notwithstanding anything in this Agreement to the contrary, Company shall be solely responsible for and shall, as required by Applicable Laws, pay the applicable Authority all Taxes imposed on equipment, materials, labor, services and other items provided by Company to Contractor in connection with the Work.
- 13.7 Contractor shall obtain for the benefit of Company all available exemptions from or recoveries of Taxes and shall employ all prudent mitigation strategies to minimize the amounts of Taxes required to be paid in accordance with Applicable Laws. In the event Contractor obtains any rebate, refund or recovery in respect of any such Taxes, it shall immediately be paid to Company to the extent that such amounts were paid by Company or reimbursed to Contractor by Company.
- 13.8 Notwithstanding any other provision of this Agreement, Contractor Group shall not make any statement, representation, filing, return or settlement regarding Taxes on behalf of Company to an Authority without the prior written consent of Company.
- 13.9 For greater certainty, Contractor and Company acknowledge that, notwithstanding any other provision of this Agreement, any amounts payable by Contractor to Company pursuant to this Agreement are exclusive of any HST payable pursuant to the *Excise Tax Act* (Canada), R.S.C. 1985, c. E-15 or any other Taxes exigible in respect of such amounts payable. If Company is required by Applicable Laws or any applicable Authority to collect from Contractor an amount of HST or other Taxes with respect to any such amounts payable pursuant to this Agreement, then Contractor shall pay the amount of such HST or other Taxes to Company. If the amounts payable by Contractor to Company pursuant to this Agreement are deemed by any Applicable Law to include an amount of HST or other Taxes, the amount otherwise payable pursuant to this Agreement shall be increased to the extent necessary so that the amount payable to Company, net of such HST or other Taxes, is equal to the amount that would have been payable to Company if such HST or other Taxes were not deemed to have been included in such amount.
- 13.10 For greater certainty, anti-dumping duties, countervailing duties and the like shall, in all cases, be borne by Contractor. Should any such duties become payable by Company, Contractor shall be liable for and defend, protect, release, indemnify and hold Company harmless from and against any such duties, together with any interest, penalties and reasonable costs related thereto, and Contractor shall immediately provide Company with



sufficient funds to pay such duties and other amounts in full. If Company has already paid such duties or other amounts, Contractor shall reimburse Company, on demand, the full amount of such duties and other amounts so paid.

ARTICLE 14 AUDIT AND RECORDS

- 14.1 Contractor shall maintain, and shall require each Subcontractor to maintain, in accordance with generally accepted accounting principles and practices satisfactory to Company, books, records, expense accounts and accounts pertaining to the provision of the Work, including Contractor's and Subcontractors' personnel records, correspondence, instructions, plans, drawings, receipts, vouchers, memoranda, tapes, data, models, data stored in computer libraries and such other documentation and related systems of controls necessary for an accurate audit and verification of costs of the Work provided, any other costs or expenses claimed under this Agreement and general contract compliance.
- 14.2 Contractor and Subcontractors shall preserve the documents, records, registers and systems of control described in **Article 14.1** during the provision of the Work and for a period of not less than seven (7) years after expiration or any termination of this Agreement or for such longer period as may be required under Applicable Laws. Thereafter, Contractor shall give no less than sixty (60) days' notice to Company of Contractor's or Subcontractors' intention to destroy any of said documents and Company shall have the option to take possession of such records.
- 14.3 Company shall, at all times, have access to and be authorized to examine and make copies, including electronic copies, of all documents, records and systems of control set forth in **Article 14.1** and such other documents and systems as may be related to this Agreement and shall be authorized to interview Contractor's Personnel as may be necessary for an accurate audit and verification of costs of the Work provided and general contract compliance. Company's rights under this **Article 14.3** shall not apply to the composition of any lump sum prices or any unit rates under this Agreement, except where such pricing is related in any way to a Claim.
- 14.4 Notification of any claims made or discrepancies disclosed by such audit shall be made in writing to Contractor. Contractor and Company shall diligently attempt to resolve and agree upon such audit claims or discrepancies. Upon an audit claim or discrepancy being resolved and agreed upon, Contractor shall forthwith reimburse Company for any monies due as a result of such agreement or determination. Company may set off any amounts owed to it by Contractor for audit claim or discrepancies against any payments owed to Contractor by Company.
- 14.5 Contractor shall not be reimbursed for any costs it may incur as a result of Company conducting an audit pursuant to this **Article 14**. All such audits shall be conducted during normal business hours of Contractor and Company shall give reasonable notice to Contractor of the audit and shall specify the matters which are the subject of the audit.



- 14.6 Within five (5) Business Days of Notice by Company to Contractor, Contractor shall deliver to Company the most recent annual audited financial statements of Contractor. Company shall keep such financial statements confidential in accordance with **Article 28**.

ARTICLE 15 HEALTH, SAFETY AND ENVIRONMENTAL PROTECTION

- 15.1 Contractor shall be responsible for ensuring the health and safety of all Contractor's Personnel who are engaged in the performance of the Work and also be responsible for environmental management. Without limiting the foregoing, Contractor shall:
- (a) ensure that all Contractor's Items are maintained in safe, sound and proper condition and capable of performing the function for which each is intended and meets all industry standards and Applicable Laws;
 - (b) cease all activities in the area of any identified health, safety or environmental problem until such problem is resolved;
 - (c) immediately report to Engineer all health, safety and environmental problems and hazards;
 - (d) provide sufficient supervision, instruction and resources to ensure that Contractor Group's Work execution and Worksites comply with all Applicable Laws and good environmental practices;
 - (e) at its own expense and in accordance with Applicable Laws, supply and maintain Contractor's Personnel with personal protective equipment which shall be worn and used on all occasions as indicated by notices, instructions, good practice or as required by risk assessment;
 - (f) conduct such drills and tests of Contractor's Items, equipment, Personnel and procedures to ensure that they are available, trained and in place, respectively, for immediate and effective action in the event of emergency;
 - (g) comply with Company's emergency response requirements as described in Exhibit 11 – Company Supplied Documents;
 - (h) cooperate fully and comply with any directions given by Authorities, including the police, safety and environment regulatory officials and fire authorities; and
 - (i) report to Engineer monthly training compliance and safety statistics as identified by Engineer.
- 15.2 Contractor shall develop and submit to Engineer for Acceptance a detailed health and safety plan for the Work which demonstrates that, in connection with Contractor's performance of the Work, Contractor has identified risks pertaining to the health and safety of Contractor's Personnel, and that effective controls are implemented to prevent accidents and health and safety threats. Contractor's plan shall:
- (a) satisfy the requirements of Exhibit 5 – Health and Safety Requirements;



- (b) be structured in accordance with various elements within the Work such as fabrication, transportation, installation and commissioning;
 - (c) include measurable, achievable targets for health and safety performance, including: lost time frequency; total recordable frequency; injury severity data; and first aid cases;
 - (d) comply with Company's safety policies and procedures set out or described in Exhibit 11 – Company Supplied Documents; and
 - (e) comply with Applicable Laws and Exhibit 3 – Coordination Procedures.
- 15.3 Contractor shall develop and submit to Engineer for Acceptance a detailed environmental protection plan for the Work which demonstrates that, in connection with Contractor's performance of the Work, Contractor has identified risks pertaining to the environment and that effective controls are implemented to prevent threats and damage to the environment. Contractor's plan shall:
- (a) satisfy the requirements of Exhibit 6 – Environmental and Regulatory Compliance Requirements;
 - (b) be structured in accordance with various elements within the Work such as fabrication, transportation, installation and commissioning;
 - (c) include measurable, achievable targets for performance, including: performance criteria for environmental emissions and waste, and hazardous materials; and
 - (d) include an environmental management plan that satisfies the Technical Requirements and Applicable Laws.
- 15.4 Engineer, on behalf of Company, shall Accept Contractor's plans required by **Article 15.2** and **Article 15.3** provided the plans comply with this Agreement, Applicable Laws and any ordinances, orders and decrees of any Authority having jurisdiction over health, safety and environmental compliance of the Work or the Worksite and any other requirements of Company.
- 15.5 Contractor shall comply with all such standards and the provisions of the plans required by **Article 15.2** and **Article 15.3**, along with any changes thereto as Contractor may be notified from time to time by Engineer, and all Applicable Laws relating to occupational health, safety and environmental protection. Contractor shall ensure that all Contractor's Personnel involved in the performance of the Work comply with the provisions of Contractor's health, safety and environmental plans and all Applicable Laws relating to occupational health, safety, and environmental protection. Contractor shall appoint a safety officer who shall assist Contractor in safety matters relating to Contractor's Personnel.
- 15.6 Contractor shall promptly investigate and report to Engineer and Authorities having jurisdiction any near miss incidents or any accidents resulting in injury, death or illness to any of Contractor's Personnel engaged in the performance of the Work, any criminal acts,



- any damage to property or any adverse impact on the environment and any release of substances hazardous to the environment.
- 15.7 Contractor shall submit to Engineer for Acceptance Contractor's drug and alcohol policy which shall be in compliance with Applicable Laws. Contractor shall ensure that Contractor's Personnel who are engaged in the performance of the Work, are familiar with, and comply with, Contractor's drug and alcohol policy.
- 15.8 Company shall have the right to suspend performance of the Work for as long as necessary to prevent or stop any violation of this **Article 15** by a member of Contractor Group or Contractor's Personnel. During such period of suspension, Contractor shall not demobilize from any Worksite. No compensation shall be payable to Contractor by Company and Contractor shall not be entitled to compensation for any costs it incurs as a result of the suspension.
- 15.9 Company reserves the right to audit and inspect the Worksites to verify compliance with this **Article 15**, which audits and inspections may be performed by Engineer or such other third party as Company may direct.
- 15.10 Notwithstanding **Article 40.6**, in the event Company declares an emergency with respect to any matter affecting health, safety, the environment or potential damage to or loss of property, Contractor shall comply with verbal instructions issued by Company or Engineer with respect to such emergency. Company or Engineer shall confirm such instructions in writing at the first reasonable opportunity.
- 15.11 Contractor shall exercise all diligence to conduct operations under this Agreement in a manner that will prevent any adverse impact to the environment including seepage, discharge or escape of pollutants, hazardous substances, debris and damage to or destruction of habitat. Contractor shall be responsible for all risks and costs to:
- (a) handle, dispose and/or cleanup those hazardous substances, if any, identified in Exhibit 11 – Company Supplied Documents in respect of the Site;
 - (b) handle, dispose and/or cleanup those hazardous substances disposed of or discharged on the Site by Contractor Group in connection with or incidental to the performance of or default in any of Contractor's obligations under this Agreement;
 - (c) remediate any environmental damage arising from Contractor's performance of the Work including the removal and cleanup of any pollution, debris and hazardous substances;
 - (d) take such measures as are necessary in the circumstances to prevent or mitigate any environmental damage resulting from any pollution, seepage or discharge or escape of pollutants, debris, and hazardous substances arising from Contractor's performance of the Work; and
 - (e) take such measures that Contractor or Company is under instructions to take from any Authority having jurisdiction to so instruct.

15.12 If Contractor:

- (a) encounters hazardous substances at the Site; or
- (b) has reasonable grounds to believe that hazardous substances are present in or on or under any of the Site which are not disclosed in the Exhibit 11 – Company Supplied Documents or are present in or on or under or migrating from any other sites;

Contractor shall:

- (c) take all reasonable steps to secure such Site, including stopping the Work, to ensure that no individual suffers an injury, sickness or death and that no property is damaged or destroyed as a result of exposure to the presence of the hazardous substances;
 - (d) immediately report the circumstances to Engineer in writing; and
 - (e) report the circumstances to Authorities as required by Applicable Laws.
- 15.13 If hazardous substances are encountered during the Work, Contractor shall employ best practices and methods so as to minimize the costs of any work which may be required to handle and dispose of the hazardous substances and any environmental cleanup and to meet the requirements of Applicable Laws or Authorities.

ARTICLE 16 ACCESS AND QUALITY

- 16.1 Company shall, in accordance with this **Article 16**, have the right to send Company Group Personnel to the Worksites to monitor the progress of the Work, including to any manufacturing facility operated by any member of Contractor's Group where any materials, components, equipment or product is being manufactured, fabricated or assembled for the Work. At all times during the Term, Contractor Group Personnel shall provide all requisite assistance to Company Group Personnel.
- 16.2 Company Group Personnel shall, at all times during the Term, be granted unrestricted right of access to inspect the Work and monitor all the Work in progress or Contractor Items utilized in connection with the creation or construction of the Work for the purpose of determining that the Work is being created or constructed in accordance with this Agreement.
- 16.3 Contractor, with the prior Acceptance of Engineer, shall permit representatives of Authorities to enter onto and inspect a Worksite, with reasonable advance notice and escorted access to the Work. Contractor may provide, and each such Person shall accept, reasonable safety and security measures implemented by Contractor. Contractor shall also promptly provide information reasonably requested by Company, Authorities or any of their representatives.
- 16.4 Contractor shall include appropriate provisions in all its Subcontracts and purchase orders to ensure the proper enforceability of the provisions of this **Article 16**.

- 16.5 No inspection, representation, responsibility or action of any Company Group Personnel hereunder shall relieve Contractor Group of any of its obligations or liabilities under this Agreement or operate as a waiver or release of the same.
- 16.6 Commencing on the Effective Date and throughout the Term, Contractor shall maintain a Quality Plan in respect of every aspect of the Work in accordance with Exhibit 7 – Quality Requirements.
- 16.7 Notwithstanding any Company, Engineer, Authority or other third party inspection, testing or witnessing, Contractor shall be responsible for quality control, quality surveillance/inspection, testing and quality assurance of the Work to verify and be able to demonstrate compliance with the requirements of this Agreement. Contractor shall carry out its quality management activities in accordance with Exhibit 7 – Quality Requirements.
- 16.8 Contractor shall conduct tests on the Work in accordance and in compliance with the provisions of Exhibit 1 - Scope of Work, Quality Plan, Contractor's quality management system, Company Supplied Data and Applicable Laws. Company and Engineer shall have the right at all times to request and witness any such test on the Work contemplated by this **Article 16.8**.
- 16.9 Contractor shall rectify, at Contractor's sole cost, any failure to comply with the requirements of Exhibit 1 – Scope of Work and Applicable Laws that are identified during testing, commissioning and inspection of the Work.
- 16.10 Upon completion of work necessary to satisfy **Article 16.9** and at the request of Company or Engineer, Contractor shall re-test the Work at Contractor's sole cost in order to confirm that the requirements of this Agreement are met. Company or Engineer may further require Contractor to re-test in accordance with the Standard of a Prudent Contractor, at Contractor's cost, all the Work similar to that Work which originally failed any tests or inspection.
- 16.11 Company and Engineer shall have the right to reject any Work, workmanship, equipment and documentation which do not conform to this Agreement. Contractor shall, at its sole expense, promptly remove any items so rejected and shall immediately repair or replace the same and shall carry out such further inspections or tests on other parts of the Work, as Company or Engineer may reasonably require, to ensure that there are no similar parts of the Work that fail to conform with this Agreement.

ARTICLE 17 WARRANTY

- 17.1 Contractor agrees that, for a period of three (3) years following the date of Final Completion shown on the Final Completion Certificate ("**Warranty Period**"), it shall at its own expense promptly:
- (a) correct any Work which is not in accordance with this Agreement;

- (b) rectify and make good or cause to be rectified and made good all Defects in the Work which are detected and discovered; and
 - (c) have available at the Worksites or at a proximate location to the Worksites all necessary equipment, spare parts and labour to comply with the foregoing obligations.
- 17.2 Contractor shall provide to Company a products and workmanship warranty on any products, materials, and equipment incorporated into the Work to remain in effect for three (3) years from the date of Final Completion shown on the Final Completion Certificate. Such warranties shall provide for replacement of the component parts of such products or equipment or replacement of materials and shall cover incidental direct costs incurred by Company arising out of Defects in or failure of the warranted product, materials or equipment.
- 17.3 Contractor shall perform all tests and take all measurements specified in the Technical Specifications to be made and taken during the Warranty Period.
- 17.4 For the duration of the Warranty Period, Contractor warrants:
- (a) all of the Work and Warranty Work, against any and all Defects; and
 - (b) to the extent that Contractor is responsible for design under this Agreement, the Work applicable to such design shall be fit for purpose, as more specifically set forth in the Technical Requirements, and where no purpose is specified, in accordance with the Standard of a Prudent Contractor; and all other Work and Warranty Work shall be in accordance with the Technical Requirements.
- 17.5 For the avoidance of doubt, the provisions of this **Article 17** shall also extend to all portions of the Work and Warranty Work carried out by Subcontractors. Contractor shall use commercially reasonable efforts to cause to be extended to Company any applicable representations, warranties, guarantees and obligations with respect to design, engineering, materials, workmanship, equipment, tools and supplies furnished by its Subcontractors. All such representations, warranties, guarantees and obligations of Subcontractors shall be:
- (a) so written as to survive all Company and Contractor inspections, tests and Approvals; and
 - (b) extended to and be enforceable by Company, its successors and assigns.
- If applicable, Contractor shall assign to Company all of Contractor's rights and interest in all extended warranties for periods exceeding the Warranty Period which were received by Contractor from any of its Subcontractors or vendors.
- 17.6 If, within the Warranty Period, any of the Work is faulty, defective or deficient, Contractor, on receipt of Notice from Company, shall commence and diligently perform all services and work and supply all materials and equipment required to remedy such Defect to the Standard of a Prudent Contractor and in the manner and at the times that Company directs so that it conforms to the requirements in the Agreement ("**Warranty Work**").



- 17.7 During the period that Warranty Work is being performed, Contractor shall continue to cooperate with Company's Other Contractors and Company Personnel in accordance with **Article 3.8**.
- 17.8 If Contractor does not fulfill its requirements under this **Article 17** or fails to fulfill its requirements within the period set by Company, within five (5) Business Days of Notice to Contractor by Company, Company may have the Work which is the subject of the Notice from Company corrected by a third party at the sole cost of Contractor. Such recourse shall in no way relieve Contractor from its Warranty obligations.
- 17.9 Contractor shall not substitute any materials in performing Warranty Work without the prior Approval of Company.
- 17.10 All work required to be performed in accordance with the terms of this **Article 17** shall be performed at the expense of Contractor and shall not give rise to any right of Contractor to remuneration.
- 17.11 Contractor shall at its own cost, re-design, re-build and/or replace (at Contractor's option) any Work which, within the Warranty Period, fails to meet the requirements of this Agreement; provided that Company shall have the right to instruct Contractor to re-design, re-build and/or replace (at Company's option) such Work if such failure affects the operation of the LCP or any of the facilities referenced in **Articles 1.2(hh)(i) to (iii)** inclusive.
- 17.12 This Warranty is subject to the following additional terms and conditions:
- (a) Notwithstanding anything contained elsewhere in the Agreement, this Warranty shall apply to items manufactured and/or installed by Contractor, regardless of whether components or raw materials are supplied by others, but shall not extend to items supplied by Company Group, provided that Contractor's Work with respect to such items shall be warranted in accordance with **Article 17**.
 - (b) Subject to **Article 17.9** and **17.11**, Contractor shall have the option of repairing or replacing any Defects in the Work provided such repair or replacement meets all the requirements and specifications outlined in this Agreement.
- 17.13 Unless otherwise instructed by Company, Contractor shall remove from the Site and dispose of any parts or equipment that have been replaced, and Contractor shall be solely responsible for all costs associated with such removal and disposal. Company shall have the option, to be exercised at its discretion, to retain ownership of removed and replaced parts, and upon exercising such option Company may use or dispose of the parts as Company shall deem fit.
- 17.14 Company, itself or through Engineer, shall notify Contractor in writing with reasonable promptness after discovery of any Defect in respect of which Contractor shall be obliged pursuant to this **Article 17** to perform Warranty Work. Notice of any Defect discovered during the Warranty Period must be given to Contractor no more than sixty (60) days after the end of the Warranty Period.

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- 17.15 Company, at its sole discretion, may retain independent third parties to inspect, test, review and/or observe the Work for compliance with this Agreement. Contractor, upon reasonable notice, shall provide such independent third parties access to the Work and to any facility in which any equipment or products are being manufactured for installation as part of the Work in order to permit the independent third parties to perform their duties.
- 17.16 Notwithstanding anything to the contrary in this Agreement, the Warranty is exclusive and no other warranties, whether express, implied, patent or latent, statutory or otherwise, in respect of Defects in the Work shall apply.

ARTICLE 18 CONTRACTOR INSURANCE

- 18.1 Contractor will procure insurance policies in accordance with the requirements of **Article 18.3** from a financially sound insurance company and which is acceptable to Company. If Contractor fails to procure such policies or fails to provide certificates of insurance confirming such coverage in a form and with content acceptable to Company within the time specified in **Article 18.2**, or if any insurance is cancelled and not immediately replaced with comparable insurance to the satisfaction of Company, then Company may at any time by Notice to Contractor terminate the Agreement.
- 18.2 Prior to commencing work at the Site or within ten (10) Business Days following the Effective Date, whichever is earlier, Contractor shall submit to Company certificates of insurance or such other documentation as Company may reasonably require evidencing the insurance required by **Article 18.3**. Failure of Company to advise Contractor of any insurance deficiencies shall not relieve Contractor of any liability related to its obligations under this **Article 18**. On written request by Company to Contractor, Contractor shall provide copies of insurance policies obtained by Contractor in accordance with **Article 18.3**.
- 18.3 Contractor shall at all times while conducting the Work carry at least the following insurance coverages with limits not less than those specified below, covering property and liability outside the scope of the insurance supplied by Company pursuant to **Article 20**. The cost of insurance procured by Contractor, including deductibles or self-insurance or policy retentions, shall be for the sole account of Contractor:

(a) Workers' Compensation

Workers' Compensation coverage for all of its Personnel engaged in the Work in accordance with the Applicable Laws of the jurisdictions in which the Work is performed. Contractor shall further ensure that non-residents are fully covered by Workers' Compensation insurance and Employer's Liability insurance with such coverage including an extraterritorial benefits extension providing benefits at least equal to those provided by the jurisdiction in which the Work is performed.

(b) Employer's Liability

Employer's Liability insurance, with limits as required by Applicable Laws, but not less than Canadian five million dollars (\$5,000,000.00) per accident covering each employee engaged in the Work.

(c) Commercial General Liability

For Contractor's off-Site premise and operations, Commercial General Liability insurance written on an occurrence basis with limits of not less than Canadian five million dollars (\$5,000,000.00) per occurrence for bodily injury and/or property damage including blanket contractual liability, sudden and accidental pollution liability for risks assumed by Contractor, broad form property damage, personal injury, contractor's protective liability, products and completed operations for a period of not less than twenty-four (24) months, contingent employer's liability and incidental medical malpractice.

(d) Automobile Liability Insurance

When not otherwise covered by Contractor's Commercial General Liability policy, Contractor shall obtain and maintain in effect automobile liability insurance covering all licensed vehicles whether owned, non-owned, leased or hired. Such insurance will provide a minimum combined single limit of liability for bodily injury and property damage of Canadian five million dollars (\$5,000,000.00) per occurrence.

(e) Owned and Non-owned Aircraft

To the extent that aircraft are used in the performance of the Work, owned and non-owned aircraft liability insurance with a combined single limit of Canadian ten million dollars (\$10,000,000.00) per occurrence.

(f) Property

"All risks" property insurance covering all real and personal property which Contractor owns, leases or has in its care, custody or control including all machinery and equipment to be used for the Work but not forming part of the Work. Notwithstanding the foregoing, Contractor may self-insure for property, including tools and equipment, for which it owns and valued at less than Canadian fifty thousand dollars (\$50,000.00).

(g) Property in Transit

If required by Exhibit 2 – Compensation, Contractor shall provide property insurance coverage for the full value of equipment, goods, products and materials to be incorporated into the Work with such coverage to apply during transportation from Contractor's plant, factory or distribution centre to the location for Delivery, with a maximum deductible of Canadian twenty-five

thousand dollars (\$25,000.00).

(h) Subcontractors

Contractor is required to ensure that each of the Subcontractors provides insurance similar to the foregoing, as well as insurance which:

- (i) is required by Applicable Laws; or
- (ii) is reasonably appropriate in respect of the Work to be performed.

When requested to do so by Company, Contractor shall provide or cause to be provided to Company certificates of insurance confirming such Subcontractor insurance policies or such other evidence of insurance acceptable in form and content acceptable to Company, acting reasonably. Contractor Group shall not perform Work during any period when any required policy of insurance is not in effect.

(i) Other

In addition to the insurance coverage specified in this **Article 18**, Contractor shall carry such other insurance policies and in such amounts:

- (i) as may be required in order to comply with Applicable Laws; and
- (ii) as agreed by the Parties with regard to liabilities assumed under the Agreement or in respect of specific activities performed for the Work.

- 18.4 All insurance policies required by this **Article 18** shall be endorsed to waive insurer's rights of subrogation against Company Group and their Personnel, stockholders, successors, assigns and Affiliates. All liability policies required above shall be endorsed to include Company Group and their Personnel, stockholders, successors, assigns and Affiliates as additional insureds and shall contain cross liability and severability of interest provisions. Except with respect to the insurance coverage to be procured by Company pursuant to **Article 20**, all of Contractor's insurance policies shall operate as primary to any insurance policies maintained by Company and their Personnel, stockholders, successors, assigns and Affiliates.
- 18.5 All policies obtained by Contractor in accordance with **Article 18.3** shall be further endorsed to provide Company thirty (30) days prior written notice of cancellation or any material change in coverage.
- 18.6 Contractor shall give Company prompt notification of any claim involving the Work with respect to any of the insurance policies referred to in **Article 18.3**, accompanied by full details of the incident giving rise to such claim. Contractor agrees to do all acts, matters and things as may be reasonably necessary or required to expedite the adjustment of any loss or damage covered by insurance so as to expedite the release and disposition of such insurance in the manner and for the purposes contemplated in this Agreement. If

requested by Company, Contractor shall advise Company in writing of the final resolution of any such insurance claims.

- 18.7 If requested by the other Party, a Party shall advise the other Party in writing of the final resolution of any such insurance claims.
- 18.8 Company may reduce or waive all or any portion of these insurance requirements under circumstances where the Work to be performed does not require equivalent insurance coverage. Such reduction or waiver shall be obtained in writing and shall in no way reduce or waive Contractor's responsibility or liability for the Work.
- 18.9 Nothing in this **Article 18** shall or is intended to limit the liability of Contractor under any other provision of this Agreement. The provisions of this **Article 18** will not be interpreted as relieving Contractor of any of its obligations under this Agreement. Contractor may purchase, at its own expense, any additional insurance it deems necessary.

ARTICLE 19 WORKERS COMPENSATION

- 19.1 Prior to the performance of the Work hereunder, Contractor shall provide Company with Contractor's Workers' Compensation number and a letter of good standing in accordance with the Applicable Laws of the jurisdiction in which the Work is performed.
- 19.2 Contractor shall at all times pay, or cause to be paid, any assessment or contribution required to be paid pursuant to Applicable Laws relating to Workers' Compensation in respect of Contractor's Personnel and, upon failure to do so, authorizes Company, in addition to any other rights of Company under this Agreement, to withhold and remit on behalf of Contractor an amount equal to such assessment or contribution, including any interest and penalty assessed thereon.
- 19.3 Upon completion of Subcontract work, each Subcontractor shall deliver to Engineer a clearance certificate from the Workplace Health, Safety and Compensation Commission of the Province of Newfoundland and Labrador.
- 19.4 Upon completion of the Work, Contractor and all Subcontractors which have not previously provided evidence of compliance with **Article 19.3** above shall deliver to Engineer a clearance certificate from the Workplace Health, Safety and Compensation Commission of the Province of Newfoundland and Labrador.

ARTICLE 20 PROJECT INSURANCE

- 20.1 The following insurance coverages shall be procured by Company. The policies listed below will cover Company Group, Contractor and subcontractors of every tier (but not including vendors and suppliers except to the extent a vendor or supplier performs operations at the Site) as their interests and/or liabilities may appear:



- (a) Construction All Risk (CAR) insurance, including design defect coverage to LEG2/96 or better, subject to a limit of not less than the total Contract Price, attaching on or in place and in effect as of the Effective Date.
- (b) Wrap-up liability insurance, with Company as the named insured and its Personnel, stockholders, successors, assigns and Affiliates as additional insureds, written on an occurrence basis with limits not less than Canadian fifty million dollars (\$50,000,000.00) per occurrence for bodily injury and/or property damage including contractual liability, broad form property damage, personal injury, contractor's protective liability, completed operations for a period of not less than twenty-four (24) months, contingent employer's liability, incidental medical malpractice, cross liability and severability of interest provisions.
- (c) Pollution liability insurance, with Company as the named insured and its Personnel, stockholders, successors, assigns and Affiliates as additional insureds, written with limits not less than Canadian ten million dollars (\$10,000,000.00) per occurrence and in the aggregate.

20.2 Insurance policies required by this **Article 20** shall:

- (i) be endorsed to waive insurer's rights of subrogation against Contractor and subcontractors of every tier (but not including vendors and suppliers except to the extent a vendor or supplier performs operations at the Site) and their stockholders, successors, assigns and Affiliates;
- (ii) include Contractor and subcontractors of every tier (but not including vendors and suppliers except to the extent a vendor or supplier performs operations at the Site) as additional insureds; and
- (iii) Company will provide Contractor thirty (30) days prior written notice of cancellation in coverage in accordance with **Article 20.1**.

20.3 Contractor shall be responsible for deductibles under the Construction All Risk (CAR) policy of Canadian two million dollars (\$2,000,000.00), under the wrap-up liability policy of Canadian one hundred thousand dollars (\$100,000.00), under the pollution liability policy of Canadian two hundred fifty thousand dollars (\$250,000.00), up to a maximum of five percent (5%) of the Contract Price for any one claim, provided that:

- (i) Contractor shall not be responsible for deductibles arising from claims for damage or loss caused by earth quake;
- (ii) Contractor shall not be responsible for deductibles arising from claims for damage or loss caused by flood except Contractor shall be responsible for deductibles where the flood was caused or exacerbated by the acts or omissions of Contractor; and
- (iii) to the extent a claim for damage or loss was caused by the negligence of Company, Company shall be responsible for that portion of the deductible which represents the proportion of fault attributable to Company.

- 20.4 The insurance policies required by **Articles 20.1** shall be in place and shall be maintained until a Final Completion Certificate has been issued, with any completed operations coverage to continue after the Final Completion Certificate has been issued as set out in the policy.

ARTICLE 21

LIABILITY AND INDEMNIFICATION

- 21.1 The Parties hereby agree and acknowledge that if a provision in this **Article 21** conflicts with any other provision in this Agreement, the provision in this **Article 21** shall prevail.
- 21.2 For the purposes of this Agreement, any liability assumed or indemnity given by Contractor for the benefit of Company shall be deemed to be given by Contractor for the benefit of Company, its successors and assigns, Affiliates and Personnel.
- 21.3 It is agreed and understood that the exculpatory clauses and indemnity obligations of each Party as provided in this Agreement shall apply to any and all Claims whatsoever incurred by the indemnified Party.
- 21.4 Except as otherwise specifically stated in this Agreement, Company shall be liable to Contractor for any and all Claims which Contractor may at any time sustain or incur by reason of or in consequence of a breach or non-performance by Company or any agent, employee or licensee for whom Company is in law responsible arising from the performance or non-performance of any of the obligations of Company under this Agreement.
- 21.5 (a) Contractor shall be liable to Company, to the full extent it is liable at law, for any and all Claims which Company may at any time sustain or incur by reason of or in consequence of any one or more of the following:
- (i) any inaccuracy in any representation or warranty made by Contractor Group, its guarantors or any other Person that delivers to Company any document or security instrument containing any such representation or warranty pursuant to this Agreement;
 - (ii) any breach or non-performance by Contractor Group, or any licensee, invitee or Person acting on behalf of Contractor of any of the obligations of Contractor in respect of the performance of the Work; and
 - (iii) any action taken by Company to mitigate or cure a breach or non-performance by Contractor Group of any covenant or inaccuracy in any representation or warranty pursuant to this Agreement.
- (b) Contractor shall defend, indemnify and shall hold Company harmless from and against any and all Claims which Company may at any time sustain or incur by reason of or in consequence of any one or more of the following:
- (i) any non-payment of amounts due and payable to Subcontractors, and Subcontractors' subcontractors, vendors and suppliers of every tier,

resulting from furnishing of services, material, equipment, labour or otherwise in connection with the performance of Work;

- (ii) any Claim in respect of loss or damage to the property of Contractor Group however caused, except to the extent the Claim is caused by the negligence or wilful act or omission by Company;
- (iii) any Claim in respect of personal injury or death of Contractor's Personnel however caused, except to the extent the Claim is caused by the negligence or wilful act or omission by Company;
- (iv) any Claim in respect of loss or damage to Company Group property arising from the negligence or wilful act or omission by Contractor; or
- (v) any representation or holding out by Contractor that it is an agent of Company.

21.6 For all Subcontractors identified in Exhibit 8 - Subcontractors, Manufacturers and Material Sources, other Subcontractors performing Work at the Site and Subcontractors handling the Work or Company supplied items at a Worksite, Contractor shall include in all of such Subcontracts, a provision stating that such Subcontractors shall defend, protect, release, indemnify and hold Company harmless from and against all Claims for the death of or bodily injury to such Subcontractors and their respective Personnel, and for damage to or loss of the property of Subcontractors or their respective Personnel, unless the Claims were caused by the negligence or wilful act or omission by Company.

21.7 Except as provided in **Article 21.4**, Contractor shall:

- (a) be liable to Company for all Claims which Company may suffer, sustain, pay or incur; and
- (b) defend, protect, release, indemnify and hold Company harmless from and against all Claims which may be brought against or suffered by Company or which Company may sustain, pay or incur;

directly or indirectly on account of the death of or bodily injury to third parties or Company's and its Affiliates' Personnel, and for damage to or loss of property of third parties (such third parties shall not include Company and its Affiliates and Personnel), arising from or in connection with the performance, non-performance or purported performance of the Work, but only to the extent caused by the negligence or wilful misconduct of Contractor or any of its Personnel.

21.8 Without limiting the generality of **Article 21.5**, Contractor shall be liable for and defend, protect, release, indemnify and hold Company harmless from and against all Claims (including any fine, penalty or demand of any Authority having jurisdiction) which may be brought against or suffered by Company or which Company may sustain, pay or incur, arising out of any failure by Contractor to comply with its obligations with respect to the environment under **Article 15**.

- 21.9 Without limiting the generality of **Article 21.5**, and subject to the obligation of Company to pay HST pursuant to **Article 12.20**, Contractor shall be liable for and defend, protect, release, indemnify and hold Company harmless from and against:
- (a) any and all Taxes imposed by any Authority on any of Contractor Group in respect of this Agreement, and any and all Claims including payment of Taxes which may be brought against or suffered by Company or which Company may sustain, pay or incur in conjunction with the foregoing as a result of the failure by Contractor to pay any and all Taxes imposed as stated herein;
 - (b) any and all Taxes imposed by any Authority in respect of the Work, or Contractor's Items, or any other items used by Contractor Group in the performance of the Work, or in respect of any services performed by Contractor Group in respect of this Agreement, and any and all Claims (including Taxes) which may be brought against or suffered by Company or which Company may sustain, pay or incur in conjunction with the foregoing as a result of the failure by any member of Contractor Group to pay any and all Taxes imposed as stated herein; and
 - (c) all Claims of any nature in connection with the payment of any of Contractor Group, including all compensation, medical costs, Taxes (including all Canadian and foreign payroll and withholding Taxes and remittances), unemployment insurance premiums, Canada pension plan contributions and other benefits of whatever nature or as may be applicable in any jurisdiction (including any jurisdiction where the Work is performed or where the Personnel of the foregoing reside or are employed).
- 21.10 Except as expressly provided otherwise herein, the liability and indemnities specified in this **Article 21** shall apply:
- (a) subject to **Articles 21.15** and **36.2**, without limit and without regard to the cause of any Claim, including the negligence or fault (whether sole, concurrent, gross (except when gross negligence or wilful misconduct is expressly provided as an exception to a specific provision hereof), active or passive negligence) or otherwise or wilful act or omission and including strict liability, breach of contract, breach of duty (statutory or otherwise) and including any pre-existing conditions, of either Party or any other Person (including the Party or Person seeking indemnity);
 - (b) whether or not any Claim is made or enjoyed by the Person sustaining the injury or loss or by the dependents, heirs, claimants, executors, administrators, successors, survivors or assigns of such Person.
- 21.11 The indemnities given in this **Article 21** shall apply in respect of the full liability of the indemnified Party for Claims, notwithstanding that the indemnified Party may be entitled to contribution thereto from any other Person and notwithstanding such liability may relate to the negligence of a third party, provided that in such case the indemnifying Party shall be fully subrogated to the rights of the indemnified Party against such third party.
- 21.12 If a Claim by a third party is asserted in circumstances which gives or may give rise to indemnification under this Article, the Party against whom the Claim is asserted (the "non-

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indemnifying Party") shall, within fifteen (15) days of the assertion of such Claim, give Notice thereof to the other Party (the "indemnifying Party") and, at the discretion of the non-indemnifying Party, the indemnifying Party shall undertake the defence of such Claim. The Parties shall consult and cooperate in respect of such Claim and in determining whether such Claim and any legal proceedings relating thereto should be resisted, compromised or settled. Each Party shall make available to the other all information in its possession or to which it has access, and which it is legally entitled to disclose, which is or may be relevant to the particular Claim. The indemnifying Party shall provide the non-indemnifying Party with reasonable information as to the progress of such Claim on a regular basis. No such Claim shall be settled or compromised without the written consent of the indemnifying Party. Notwithstanding the foregoing, if the indemnifying Party, within a reasonable time after Notice of any such Claim is given to it by the non-indemnifying Party, fails to defend such Claim, the non-indemnifying Party shall have the right to undertake the defence and compromise or settle such Claim on behalf of and for the account of the indemnifying Party.

21.13 Notwithstanding **Article 21.5(b)(iv)**, during the period commencing at the time that Contractor has possession of, or control over, Work in which title has vested in Company pursuant to the provisions of **Article 23.2** or items free issued to Contractor, including items and/or services free issued by Company's Other Contractors, and until such time as Company takes care, custody and control of those items, Contractor shall:

- (a) be liable to Company for all Claims which Company may suffer, sustain, pay or incur directly or indirectly on account of damage to or loss of such Work or items or any other items free issued to Contractor; and
- (b) defend, protect, release, indemnify and hold Company harmless from and against all Claims which may be brought against or suffered by Company or which Company may sustain, pay or incur directly or indirectly on account of damage to or loss of such Work or items or any other items free issued to Contractor.

21.14 Notwithstanding anything herein to the contrary, no Party shall have responsibility and be liable under this Agreement to the other Party or its Affiliates or each of their officers, directors, employees and agents for any Claim in respect of loss of profit, business interruption, loss of use, loss of opportunity, loss of goodwill, cost of capital, cost of replacement power, loss of production or any similar indirect or consequential damages or losses resulting from, arising out of or in connection with the Work or any obligation pursuant to this Agreement howsoever caused even if a Party has been advised of the possibility of such damages or losses except that the foregoing exclusions of liability in this **Article 21.14** shall not apply to:

- (a) any payment in respect of a third party Claim for which one Party has an obligation to indemnify the other Party under this Agreement; and
- (b) any liquidated damages payable under this Agreement.

21.15 The maximum aggregate liability of Contractor to Company for a Claim arising out of or connected with the Work or performance or breach of this Agreement shall be limited to the sum of one hundred percent (100%) of the total estimated Contract Price stated in

Exhibit 2 – Compensation and actual insurance proceeds received from insurance to be maintained under this Agreement, provided however that such limitation shall not apply in cases of:

- (a) Claims for personal injury (including death);
- (b) Claims for property damage or loss, except for damage to or loss of the Work;
- (c) Contractor's fraud or willful misconduct;
- (d) Taxes, fines and/or penalties imposed by any Authority for which Contractor is liable under this Agreement;
- (e) Claims for infringement of patents and/or other intellectual property rights, or breach of the confidentiality provisions of this Agreement;
- (f) Claims for any environmental damage or loss; and
- (g) Any other Claims by a third party, including any Authority, for which Contractor has a duty to indemnify Company under this Agreement.

21.16 The limitations and exclusions of liability set forth in **Articles 21.13** and **21.14** shall take precedence over any other provision of this Agreement and shall apply whether the liability arises in contract, tort (including negligence), warranty, strict liability, indemnity or otherwise.

21.17 Company confirms that language exists in contract no.'s CH0007 (with Astaldi Canada Inc.), CH0030 (with Andritz Hydro Canada Inc.) and CH0032-001 (with Andritz Hydro Canada Inc.) that Company is not liable to such Company's Other Contractors for indirect, consequential or similar damages arising out of or in connection with any obligation pursuant to such contracts (except for liquidated damages). Notwithstanding the foregoing, if it is determined that Company is so liable, any liability or indemnity of Contractor under this Agreement for such damages shall be limited to the sum stated in **Article 21.15**.

ARTICLE 22 SITE AND TRANSPORT ROUTE CONDITIONS

22.1 Contractor shall inform itself fully as to the risks and contingencies and all other data, matters and things, local or otherwise, respecting the Site, transportation routes and any other aspects of the Work necessary to satisfactorily perform Contractor's obligations under this Agreement. Contractor shall be deemed to have been satisfied as to the suitability and availability of such Site, transportation routes including access routes to the Site, and such other aspects of the Work.

22.2 Contractor acknowledges and agrees that utilities and service connections may not be located as exactly shown on drawings provided by Company or Engineer. Contractor shall satisfy itself fully as to the exact location of all utilities and service connections and shall, at no additional cost, make such alterations to the Work as may be required to avoid conflicts in or damage to utilities and connections.



- 22.3 Contractor shall be solely responsible for determining the transport route for shipment of all equipment, materials and products Contractor requires to perform and complete the Work. Contractor shall conduct its own tests or investigations to satisfy itself as to all transport route conditions, including obstructions, road conditions, weight restrictions, size limitations and utilities. Contractor accepts all risks and contingencies associated with the shipment of all equipment, materials and products for the Work.
- 22.4 Contractor shall be solely responsible for and assumes all risks associated with the transportation of all Contractor's Personnel to and within the Site, and the cost of such transportation shall be included in the Contract Price.
- 22.5 Contractor waives its right to any claim against Company for additional compensation or any extension to a date for completion of performance of any part of the Work set out in the Milestone Schedule based on, resulting from or arising out of any differences between transport route conditions that may exist and those conditions that may have been assumed or anticipated by Contractor, including resulting from any assumptions, anticipations, misunderstandings or misinterpretation by Contractor of port, bridge or road conditions or from any information provided by Company or Engineer.
- 22.6 Contractor shall bear all costs and charges for special and/or temporary rights which Contractor may require, including those for transport of components of the Work and access to the Site. Contractor shall also obtain, at Contractor's cost, any additional facilities outside the Site which Contractor may require for purposes of Work.
- 22.7 Subject to **Article 31**, Contractor shall be solely responsible for and assumes all risks associated with weather conditions at the Site, and the cost of performing the Work under all weather conditions experienced at the Site shall be included in the Contract Price.

ARTICLE 23 TITLE AND RISK

- 23.1 Contractor warrants good title to all Contractor's Items, consumables, goods and other items furnished by it under this Agreement and that they are free from any liens or encumbrances in favour of third parties. Risk of and in Contractor's Items shall remain with Contractor throughout the Term.
- 23.2 Title to the Work (or any part of the Work) performed, including all Contractor's documentation related to the Work, shall vest in Company as and when performed or prepared. Title to all equipment, materials and products to be supplied by Contractor or its Subcontractors for incorporation into the Work shall vest in Company as and when identified and designated for incorporation into the Work. Contractor shall identify, segregate in a secure area so far as possible and mark or otherwise identify all equipment, materials and products for incorporation into the Work as property of Company. Title to any items free issued to Contractor by Company shall always remain vested in Company.

- 23.3 Company shall have the right, without prejudice to any other right it may have under the Agreement, to decline to pay for any part of the Work if Contractor is unable to provide evidence reasonably satisfactory to Company that title to the same has passed to Contractor or shall pass unconditionally to Company as provided in the Agreement, free from any liens or encumbrances in favour of any third parties.
- 23.4 For all Subcontractors identified in Exhibit 8 - Subcontractors, Manufacturers and Material Sources and other Subcontractors supplying equipment, materials and products for incorporation into the Work, Contractor shall cause the inclusion of terms consistent with the terms of **Articles 23.1, 23.2 and 23.3** in all such Subcontracts so that Company and Contractor shall have the rights herein set forth with respect to each such Subcontractor.
- 23.5 Contractor warrants to Company that Applicable Laws do not prevent Company from obtaining title to the Work in accordance with this **Article 23**.
- 23.6 Subject to **Article 17** and **23.8**, risk of and in the Work shall be assumed by Company upon issuance of a Substantial Completion Certificate, and Contractor shall assume the risk of and undertake the care and control of the Work until such time as the Substantial Completion Certificate is issued in accordance with **Article 25**.
- 23.7 Contractor shall make available to Company all data relating to the operation and performance of the Work in electronic media for use by Company during the Term and during the operation of the Work. Contractor shall undertake all reasonable efforts to ensure data is provided in a form fully useable to Company with well recognized industry standard applications, including the requirements of Exhibit 3 - Coordination Procedures and Exhibit 11 - Company Supplied Documents. Where the software necessary to enable Company to fully utilize data is based in whole or in part on Contractor's proprietary information/software, Contractor shall grant Company and its Affiliates a non-exclusive, royalty free, irrevocable and non-transferable license to such information/software. Where such information/software is not proprietary to Contractor and obtained through usage of information/software leased or purchased from third parties, Contractor shall, subject to Company's Approval, arrange for and obtain for the benefit of Company and its Affiliates a non-exclusive, royalty free, irrevocable and non-transferable license to use such information/software to enable Company to fully utilize data. All Contractor's costs associated with such provision are deemed to be included in the Contract Price and are not separately reimbursable.
- 23.8 Company, at its discretion and upon Notice to Contractor, may take possession of or use Work, and/or any part of the Work, at any time prior to Substantial Completion of such Work. If Company takes possession of or uses the Work following such Notice:
- (a) Company shall not be deemed to have Approved the Work or that part possessed or used;
 - (b) the Warranty obligations in **Article 17** shall apply except that the Warranty Periods for the Warranties shall commence upon use of the part of the Work to which the Notice applies, notwithstanding the time for commencement in those Articles, and continue for the period specified in **Article 17**;



- (c) Contractor shall be deemed to no longer have possession of or control over such Work, and risk of loss of such Work shall pass from Contractor to Company, only during such possession or use of such Work by Company; and
- (d) Except to the extent stated in **Article 23.8(c)**, Contactor shall not be relieved of its responsibilities and obligations under this Agreement.

ARTICLE 24 COMPLETION AND DELIVERY

- 24.1 The Work shall be completed and Delivered to Company in accordance with the Milestone Schedule. In the event the Work (or any part) shall be tendered for Delivery before the applicable date in the Milestone Schedule, Company may, but shall not be obliged to, take Delivery of such Work. Any part of the Work ready for Delivery before the applicable date in the Milestone Schedule shall be stored and maintained by and at the expense of Contractor until Delivered to Company.
- 24.2 If Contractor fails to commence performance of the Work on the Effective Date, or diligently proceed to complete the Work (or any part) for Delivery by the applicable date in the Milestone Schedule, Company may terminate the Agreement in accordance with **Article 32.1(c)** or may elect to continue with the Agreement if Contactor, in accordance with the provisions of **Article 24.3**, proposes an amended Milestone Schedule which is Approved by Company in a Change Order. Any changes to the Milestone Schedule pursuant to this **Article 24.2** and **Article 31** shall not result in an increase to the Contract Price or otherwise affect Company's rights to liquidated damages if a Milestone has not been achieved in accordance with the changed Milestone Schedule.
- 24.3 If Contractor has not or considers that it will not achieve a Milestone by the date specified in Exhibit 9 – Schedule:
- (a) Contractor shall, within ten (10) Business Days of determining that a Milestone will not be achieved, submit for review and comment by Engineer a written completion plan detailing steps Contractor shall take to complete all necessary Work to meet the requirements of the Milestone, and Engineer shall provide written comment to Contractor within ten (10) Business Days of receipt;
 - (b) Contractor shall then resubmit to Engineer within five (5) Business Days a revised completion plan addressing any comments provided by Engineer, and Engineer shall provide written comment within five (5) Business Days of receipt;
 - (c) Contractor shall revise or resubmit the completion plan within the time limits in paragraphs (a) and (b) above until Contractor has addressed all comments of Engineer; and
 - (d) Contractor shall then promptly provide the necessary services, labour, materials and equipment as may be required under the completion plan.



- 24.4 The preparation, review and revision of a completion plan and provision of services, labour, materials and equipment as required by the completion plan shall not relieve Contractor of its obligations to achieve a Milestone by the date specified in Exhibit 9 – Schedule or be the basis for an increase in compensation.
- 24.5 Delivery of the Work shall be performed in the manner specified in the Agreement. Except as specified otherwise in the Agreement, Contractor shall be responsible for and shall bear the cost of packaging, loading and/or carriage of the Work to the location for Delivery specified in the Agreement.
- 24.6 Contractor shall ensure that provisions corresponding to those contained in this **Article 24** are included in all Subcontracts with Subcontractors supplying equipment, materials and products for incorporation into the Work.

ARTICLE 25

SUBSTANTIAL AND FINAL COMPLETION

- 25.1 Substantial Completion of the Work shall have occurred if and only if all of the items in paragraphs (a) to (h), inclusive, of this **Article 25.1** have occurred to the satisfaction of Engineer in accordance with this Agreement:
- (a) The Work is ready for use or is being used for the purpose intended and is capable of achieving Final Completion at a cost of not more than two percent (2%) of the Contract Price;
 - (b) Contractor has delivered to Engineer all drawings, specifications, calculations, test data, performance data, equipment descriptions, equipment and system installation instruction manuals, integrated and coordinated operation and maintenance manuals, data, training aids and other technical documentation and information, for Company to use and maintain the Work;
 - (c) Engineer has prepared and delivered an updated Punch List to Contractor, which includes any minor items with respect to which Engineer has notified Contractor are incomplete or have Defects;
 - (d) Contractor has delivered to Engineer a Notice:
 - (i) detailing all outstanding Claims of Contractor under this Agreement with documentation sufficient in the opinion of Engineer to support such Claims, and Company shall not be liable to Contractor for any Claim under this Agreement which is not identified within that Notice and supported by sufficient documentation; or
 - (ii) certifying that there are no such outstanding Claims;
 - (e) Contractor has delivered to Engineer the latest available clearance certificate from the Workers' Compensation Board of Newfoundland and Labrador that no assessments or other amounts are owing to the date therein specified;



- (f) Contractor has removed all Contractor Group's Personnel, supplies, equipment, materials, rubbish and temporary facilities, except those reasonably required for completion of outstanding Punch List items, from the Site so that the Site is neat, clean and safe;
 - (g) Contractor shall have assigned to Company all representations, warranties, guarantees and obligations which Contractor received from Contractor Group subject to Contractor's right to retain the benefit of all Subcontractors that Contractor requires to complete the Work; and
 - (h) There being no liens filed or registered pursuant to the *Mechanics' Lien Act*, RSNL 1990, c.M-3, with respect to or arising from the Work at that time (other than liens properly filed or registered by Contractor as a result of Company's failure to pay amounts due to Contractor in accordance with the requirements of this Agreement), or if any such liens have been so filed or registered, all such liens shall have been vacated or removed from title or the claims relating to such liens shall have been secured through the delivery of bonds in respect of the full amounts of such claims.
- 25.2 When Contractor believes the requirements of Substantial Completion have been met, Contractor shall request from Engineer a Substantial Completion Certificate. Such request shall contain a declaration by Contractor that all the requirements of Substantial Completion have been met and a report of the results of any required tests for the Work with sufficient detail to enable Engineer to determine whether Substantial Completion has been achieved. If all requirements of Substantial Completion have been met, the date of Substantial Completion shall be the later of (i) the date specified in Contractor's request, and (ii) the date when the requirements of Substantial Completion were met. Promptly after Substantial Completion has been achieved as provided above, Engineer shall issue a Substantial Completion Certificate to Contractor, which states the date of Substantial Completion and Contractor shall turn over control and operation of the Work to Company.
- 25.3 If Contractor fails to rectify any items on the Punch List (following delivery to the Contractor pursuant to **Article 25.1(c)**) as soon as practicable, Engineer may notify Contractor and thereafter Company may employ others to carry out the rectification, the cost thereof being for the account of Contractor, without affecting any Warranties.
- 25.4 If any item of Work on the Punch List is not completed by the date specified on the Punch List for such item, Company may complete or employ others to complete the item and Contractor shall be liable for and pay Company all costs to complete such item, plus ten percent (10%), and Company may deduct such amount from any amount otherwise owing to Contractor, without affecting any Warranty.
- 25.5 Contractor's access to and continued presence at the Site after the date of Substantial Completion shall be for the purpose of achieving Final Completion. In performing such work Contractor will use its best efforts not to inconvenience or interfere with Company and Company's Other Contractors.
- 25.6 Within forty-five (45) days of the date of Substantial Completion, or such other time as may be specified in the *Mechanics' Lien Act*, RSNL 1990, c. M-3, and provided no liens have been

- filed or registered with respect to the Work (other than a claim for lien properly filed or registered by Contractor as a result of Company's failure to pay amounts due to Contractor in accordance with the requirements of this Agreement), Company shall pay Contractor three quarters of the holdback retained by Company pursuant to the *Mechanics' Lien Act*, RSNL 1990, c. M-3.
- 25.7 When Contractor has completed all the Work in accordance with the terms of this Agreement, except Warranty obligations, Contractor may by Notice to Company request written confirmation that Contractor has fully performed all of the Work hereunder (the "**Final Completion Certificate**").
- 25.8 By submission of the Notice to Company for confirmation that Contractor has fully performed all of the Work pursuant to **Article 25.7**, Contractor agrees that, as of the date of the issuance of the Notice, Contractor waives, remises, releases and discharges Company of any and all Claims as of the date of the Notice that are known, ought to have been known or discoverable by reasonable means by Contractor, which Contractor has or may have relating to or arising out of this Agreement and the subject matter of this Agreement, and all facts and circumstances related to the Work, save and except:
- (a) any Claims previously submitted in writing prior to the date of the Notice, and remaining unresolved; and
 - (b) the balance of the Contract Price payable, if any, upon the issuance of the Final Completion Certificate.
- 25.9 Company shall not be obliged to issue the Final Completion Certificate until Contractor has fulfilled all of its Work obligations, including:
- (a) satisfied all liens, claims or encumbrances affecting Company's property in connection with the Work or Warranty Work in accordance with **Article 41** (other than a claim for lien properly filed or registered by Contractor as a result of Company's failure to pay amounts due to Contractor in accordance with the requirements of this Agreement) or if any such liens, claims or encumbrances existed, all such liens, claims and encumbrances shall have been released, vacated or, if applicable, removed from title or such liens, claims and/or encumbrances shall have been secured through the delivery of bonds in respect of the full amounts of such liens, claims and/or encumbrances; and
 - (b) paid in full any and all outstanding obligations against the Work.
- 25.10 Upon Contractor satisfying the criteria set forth in **Article 25.9**, Company shall provide Contractor with the Final Completion Certificate in the form set forth in Exhibit 3 – Coordination Procedures within thirty (30) days of Contractor's Notice under **Article 25.7** or Contractor demonstrating that it has satisfied the criteria set forth in **Article 25.9**, whichever is later.
- 25.11 The issuance of the Final Completion Certificate shall not release Contractor from the provisions of this Agreement which expressly or by their nature extend beyond the expiration or any termination of this Agreement.

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- 25.12 Within thirty (30) days after issuance of the Final Completion Certificate, Company shall pay Contractor the balance of the Contract Price for the Work, including the balance of the holdback retained by Company pursuant to the *Mechanics' Lien Act*, R.S.N.L. 1990, c.M-3, less:
- (a) an amount to satisfy any liens registered against the property of Company arising out of Contractor Group's performance of the Work;
 - (b) any amount Company is entitled to set off against payment to Contractor;
 - (c) any amount payable by Contractor to Company under this Agreement; and
 - (d) any amounts required or permitted to be withheld by Company by Applicable Laws or this Agreement.

ARTICLE 26 CHANGES IN THE WORK

- 26.1 Company has the right to make a Change at any time and from time to time during the performance of the Work by issuing a Change Order. Compensation for a Change shall be determined in accordance with Exhibit 2 – Compensation and Exhibit 3 – Coordination Procedures.
- 26.2 Contractor shall not perform and shall not be entitled to any compensation for a Change without a Change Order issued by Company to Contractor for the Change.
- 26.3 Contractor will comply with the requirements of Engineer and Exhibit 3 – Coordination Procedures in the development of the pricing, impacts on resources and schedule as it relates to such Change and present a comprehensive proposal covering the Change to Company for Approval.
- 26.4 Except to the extent expressly provided in a Change Order, no Changes shall vitiate or invalidate or be deemed to amend or be deemed to constitute a waiver of any provision of this Agreement. All Changes shall be governed by all the provisions of this Agreement. Changes will not result in any limitation of Contractor's Warranty under **Article 17**.
- 26.5 Contractor shall commence with and shall execute all Changes with all due diligence immediately upon receipt of a Change Order.
- 26.6 In the event the Parties fail to reach agreement on the pricing and impacts on resources and schedule with respect to a Change, Contractor shall perform the work specified in the Change Order as issued by Company and the Dispute will be handled in accordance with **Article 39**, but in no case shall the price of a Change exceed that amount determined in accordance with **Article 26.10** and **Article 26.11**.
- 26.7 If Contractor considers that a Change is necessary or desirable, Contractor may request a Change Order by submitting a Change Request in writing to Engineer in accordance with the procedure set out in Exhibit 3 – Coordination Procedures.

- 26.8 If Contractor considers that an occurrence has taken place which constitutes a Change, then Contractor shall, within ten (10) Business Days, contact Engineer and request a Change Order by submitting a Change Request to Engineer in accordance with the procedure set out in Exhibit 3 – Coordination Procedures. If Company:
- (a) agrees that the occurrence constitutes a Change, then Company shall issue a Change Order in respect of the Change;
 - (b) disagrees that the occurrence constitutes a Change, Contractor shall proceed with the Work without delay and such continuation of the Work shall be without prejudice to Contractor's rights to advance a Dispute under **Article 39**.
- If Contractor fails to comply with the conditions of this **Article 26.8**, it will relinquish its right to request a Change Order and waives any claim it may have for additional compensation and for an extension of time to complete a Milestone arising from the occurrence.
- 26.9 Changes shall be invoiced and paid for in accordance with **Article 12**, Exhibit 2 – Compensation and Exhibit 3 – Coordination Procedures. Cost of the work carried out under a Change Order will reflect any discounts, rebates, refunds or free material credits earned with purchase of material or other goods and services charged under a Change.
- 26.10 The adjustment in the Contract Price for a Change Order carried out prior to agreement by Contractor and Company on the price for the Change shall be determined on the basis of the cost of expenditures to perform the work and/or cost savings for a reduction in work that are attributable to the Change as determined in accordance with **Articles 26.11** and **26.12(a)**, and overhead and profit as follows:
- (a) to the extent rates and prices in Exhibit 2 – Compensation apply, there shall be no allowance for overhead and profit (except as already included in those rates);
 - (b) to the extent rates and prices in Exhibit 2 – Compensation do not apply:
 - (i) if a Change results in an increase in the Contract Price, an allowance for overhead and profit will be included as specified in Exhibit 2 - Compensation;
 - (ii) if a Change results in a decrease in the Contract Price, the deduction for overhead and profit shall be fifteen percent (15%) of the cost reduction; and
 - (iii) when both additions and deletions covering related work or substitutions are involved in a change in the Work, the allowance or deduction for overhead and profit will be calculated on the basis of the net increase or decrease, if any, with respect to that change in the Work.
- 26.11 Contractor will keep and present in such form as Company may require an itemized accounting of the cost of expenditures and savings referred to in **Article 26.10** together with supporting data. The cost of the Change shall be limited to the actual cost incurred by Contractor for the performance of the work attributable to the Change, using any applicable rates and prices in Exhibit 2 – Compensation, where the actual cost shall be limited to:
- (a) wages (including applicable Taxes) and benefits paid for labour and supervision in the direct employ of Contractor under applicable collective bargaining agreements;

- (b) the cost (including cost of transportation) of all equipment, material and products incorporated into the Work less any trade discounts;
- (c) the cost (including cost of transportation) of materials, supplies, equipment and maintenance thereof, which are consumed, less any trade discounts and cost less salvage value on such items used but not consumed and which remain the property of Contractor;
- (d) rental cost of all tools, machinery and equipment, exclusive of hand tools, whether rented from or provided by Contractor or others;
- (e) deposits lost;
- (f) the amounts of all costs arising out of Subcontracts;
- (g) the cost of quality assurance such as independent inspection and testing services;
- (h) any adjustment in duties, and bonding and/or insurance costs, for which Contractor is liable; and
- (i) the cost of removal and disposal of waste products and debris.

26.12 If the quantity of the Work is decreased or any part of the Work is deleted:

- (a) To the extent possible, the value of any deletion or reduction in the Work shall be determined using the rates and prices set out in Exhibit 2 – Compensation; and
- (b) Contractor shall not be entitled to claim any indirect or consequential damages, including loss of profits or loss of revenue.

26.13 If at any time after the start of the work directed by a Change Order for which there was no agreement on price, Company and Contractor reach agreement on the adjustment to the Contract Price and any adjustment to Exhibit 9 – Schedule, this agreement will be recorded in an amendment to the Change Order issued by Company.

26.14 If there is a change in Applicable Laws which makes modifications to the Work necessary or advisable, Company or Contractor may advise the other Party of the change in Applicable Law and present to the other Party a proposal for such modifications required as a result of the change in Applicable Laws. Contractor shall prepare and provide to Company the following:

- (a) details of the effect, if any, on the costs of the Work;
- (b) details of the impact, if any, on dates for completion of Milestones and/or the Technical Requirements; and
- (c) details of the impact on the Contract Price.



ARTICLE 27

PUBLICITY COMMUNICATIONS

- 27.1 Contractor agrees that all public relation matters arising out of or in connection with the Work shall be the sole responsibility of Company. Contractor shall obtain Company's Approval of the text of any announcement, publication or other type of communication concerning the Work.
- 27.2 Contractor shall not advertise or issue any information, publication, document or article (including photographs or film) for publication or media releases or other publicity relating to the Work, the Agreement, the LCP or Company's business and activities without Approval of Company except as may be required by Applicable Law. Contractor shall promptly notify Company in advance of any such advertisement, issuance or publication that may be required by Applicable Law.
- 27.3 Contractor shall refer to Company any enquiries from the media concerning the Work, the Agreement, the LCP or Company's business and activities.
- 27.4 Contractor shall include in each Subcontract a provision that incorporates the terms of **Articles 27.1, 27.2 and 27.3** such that those terms shall apply to each Subcontractor.

ARTICLE 28

CONFIDENTIALITY

- 28.1 The term "Confidential Information" shall mean all information and data, in whatever form, which a Party directly or indirectly acquires from the other Party or from the performance of the Work (including events witnessed by Contractor Group or Company Group and the Personnel of each of the foregoing in connection with the performance of the Work) and includes without limitation, Contractor's Proprietary Information. Confidential Information does not include information which:
- (a) prior to the time of disclosure or acquisition is lawfully in the public domain;
 - (b) after disclosure or acquisition becomes part of the public domain, through no act or omission on the part of a Party;
 - (c) prior to disclosure or acquisition was already lawfully in a Party's possession without limitation on disclosure to others;
 - (d) was obtained by a Party from a third party who is lawfully in possession of such information and is not subject to a contractual or fiduciary relationship with the other Party with respect to such information; or
 - (e) was independently developed by the receiving Party without the use of Confidential Information.



- 28.2 A Party shall not disclose the other Party's Confidential Information (including photographs of activities of Company but excluding Company's photographs of the Work) to any third party without the Approval of such other Party, except as provided in **Article 28.3**.
- 28.3 A Party (the disclosing Party) may disclose the other Party's Confidential Information to its Affiliates, Engineer and the directors, officers, employees, contractors, subcontractors, legal counsel, consultants and advisors of the foregoing, including the disclosing Party, to whom disclosure is required to enable the disclosing Party to perform its obligations hereunder or to any other Person if such disclosure is required by Applicable Laws, provided the disclosing Party has taken such reasonable and necessary precautions to prevent any of the foregoing parties from disclosing such information to any third party. The disclosing Party shall promptly notify the other Party in advance of any such intended disclosure. Any Approval in respect of Confidential Information shall apply only to the specific request for Approval made by a Party in respect of such Confidential Information. Company may disclose such necessary Contractor's Confidential Information to Company's bankers and to financial institutions from whom Company may seek financing for the LCP.
- 28.4 To the extent Company is subject to the provisions of the Privacy Law, all documents and other records in the custody of or under the control of Company and its Affiliates, and in relation to the Work in the custody of or under the control of Contractor, will be subject to the Privacy Law. Subject to the limitations of the Privacy Law and to the extent it applies to Company or its Affiliates, the confidentiality obligations contained in this Agreement shall apply.
- 28.5 Each Party who discloses Confidential Information of another Party to its Personnel shall ensure that any such Personnel are informed of the confidential nature of the information disclosed and that such Personnel comply with the Party's obligations under this **Article 28**.
- 28.6 **Article 28** does not apply to the disclosure of information by a Party in order to comply with any Applicable Law or legally binding order of any Court or Authority, as long as prior to such disclosure the disclosing Party to the extent it is able to do so, gives Notice to the other Party with full particulars of the proposed disclosure.
- 28.7 Contractor acknowledges that Company is subject to the access to information and Privacy Law pursuant to which the public may have access to Company's records.
- 28.8 If requested by a Party, whether prior to or after the expiry or earlier termination of the Agreement, the other Party shall promptly deliver to the requesting Party all Confidential Information provided by the requesting Party that is in the custody, possession or control of the other Party or any of its Personnel. Notwithstanding the foregoing, such other Party may keep a copy of such Confidential information for the purposes of legal archives, in contemplation of a dispute or litigation, or as required by Applicable Laws or to the extent that routine computer back-up procedures create copies in the associated back-up or archival computer storage system.
- 28.9 The breach of any of the conditions contained in this **Article 28** will be deemed to be a material breach of the Agreement.



ARTICLE 29

PATENTS, TRADEMARKS, COPYRIGHTS

- 29.1 Contractor grants to Company and its respective Affiliates a worldwide, non-exclusive, royalty-free, irrevocable, non-transferable license to use any of its intellectual property rights for the purposes of performance of the Work, the use and operation of any property resulting from the performance of the Work, for the purposes of interfacing the Work with equipment supplied by third parties and for servicing and maintaining such property, including to have service and maintenance by third parties.
- 29.2 Contractor agrees to disclose promptly to Company, all inventions or concepts which it or its Personnel may make as a result of the performance of the Work or which are wholly or in part based on or derived from the Work and which are based mainly or wholly on technical information supplied by Company. All rights, title and interest in and to such inventions, and to any design, specification, or drawings produced in the course of the performance of the Work shall belong to Company. Contractor agrees to execute or have executed all documents and to perform or have performed all such lawful acts as may be necessary to perfect Company's title to such inventions and, subject to reimbursement of all reasonable costs incurred, to assist Company in obtaining and maintaining patent coverage, trademark or copyright thereon throughout the world.
- 29.3 Contractor shall not incorporate anything in the Work which involves the use of a copyright, trademark, patent or proprietary information of a third party for which Company has no license rights. Contractor agrees to defend, indemnify and hold Company Group safe and harmless from and against any and all claims, losses, damages, costs (including legal costs), expenses and liabilities of every kind and nature arising out of or from any infringement or alleged infringement of patents or proprietary or protected rights covering the Work and any property, methods or processes furnished by Contractor. Contractor shall require its Subcontractors to provide the same rights and protections for Company Group that Contractor is required to provide pursuant to this **Article 29.3**.
- 29.4 Company agrees to indemnify and hold Contractor Group safe and harmless from and against any and all claims, losses, damages, costs (including legal costs), expenses and liabilities of every kind and nature arising out of or from any infringement or alleged infringement of patent or proprietary or protected rights covering property, methods or processes furnished by Company.
- 29.5 Subject to **Article 29.1** and **29.2**, and except for the intellectual property rights identified in **Article 29.1** which are owned by Contractor Group, all drawings, assembly procedures, process specifications, computer programs, documents and information developed by Contractor Group for the purposes of the Agreement or which may arise out of the performance of the Agreement by Contractor shall be the property of Company.



ARTICLE 30 ASSIGNMENT

30.1 Company may, without the Approval of Contractor, assign this Agreement, or any part thereof, to:

- (a) any Affiliate of Company (an "**Affiliate Assignee**");
- (b) any successor to or replacement corporation of Company or similar entity in connection with any merger, consolidation or other reorganization of Company or transfer of all or any part of Company's assets other than as contemplated in paragraph (a) above; or
- (c) any entity which has provided or provides financing for the LCP, or any part thereof, to Company or its Affiliates, successors and replacements;

and upon Notice by Company to Contractor of such assignment, Company shall be fully and finally released and discharged from all liabilities, obligations, any and all actions, causes of action and covenants, whether expressed or implied, Claims or demands for damages, sums due, indemnity, costs (including without limitation legal fees and disbursements), expenses, interest, loss or injury of every nature and kind whatsoever and howsoever arising, which Contractor may hereinafter have, in any way relating to or under this Agreement. In the case of an assignment to an entity described in paragraphs (a) or (b) of this **Article 30.1**, Contractor acknowledges and agrees that the assignee shall thereupon be the sole obligor for all past and any future obligations under this Agreement in the same manner and to the same extent as if it was the sole obligor and original party hereto in the place and stead of Company under this Agreement, the whole without any further action, Approval, notice or document being taken, obtained, sent or executed by or to any of the Parties at any time.

30.2 In the event of an assignment pursuant to **Article 30.1(c)**, Contractor agrees that:

- (a) prior to the exercise by Contractor of any rights it may have under the Agreement arising by reason of any breach by Company of the Agreement (any such breach, a "**Breach**"), including cancellation or suspension of Contractor's performance thereunder, Contractor shall give to the Agent Party at such time, written notice of the Breach at the time such notice is provided to Company. Upon receipt of such notice, such Agent Party shall be entitled, but shall in no way be obligated, to cure or cause to be cured such Breach and curable breaches which arose prior to such notice within sixty (60) days following the receipt by such Agent Party of such notice ("**Cure Period**"), provided that:
 - (i) such Cure Period will automatically be extended for the period of time Contractor is precluded by Applicable Laws or by virtue of any debt reorganization, insolvency or bankruptcy proceedings, from cancelling the Agreement; and
 - (ii) during the Cure Period, Contractor will not be obligated to supply goods or services or otherwise perform prospective obligations under the Agreement unless Contractor receives immediate payment for such goods, services or obligations; and

- (b) it shall not exercise any rights of cancellation or suspension under the Agreement before the expiry of the Cure Period, unless the Agent Party at such time, expressly notifies Contractor in writing that such Agent Party shall not:
- (i) cure or cause to be cured the Breach specified in the relevant notice if such Breach is of a curable nature; or
 - (ii) observe and perform the obligations of Company under the Agreement, including curing curable breaches which arose prior to such notice.
- 30.3 Company shall not assign this Agreement or any of its benefits or obligations thereunder to any third party, other than those described in **Article 30.1**, without Contractor's Approval, which Approval shall not be unreasonably withheld, conditioned or delayed.
- 30.4 Following any assignment by Company pursuant to this **Article 30**, this Agreement may be re-assigned to Company without Contractor's Approval.
- 30.5 Contractor shall not assign any of its interest in this Agreement without the Approval of Company. Such Approval shall not release or relieve Contractor from any representation or warranty given by Contractor or any obligation to be performed on the part of Contractor under this Agreement. Notwithstanding the foregoing, Contractor may at any time assign its interest in this Agreement to an Affiliate, provided that:
- (a) Contractor shall remain liable for any obligation to be performed on the part of Contractor under this Agreement, including Warranties, if the Affiliate fails to fulfill any such obligation;
 - (b) the letter of credit shall remain in place, remain effective and available to Company in the event the Affiliate fails to fulfill Contractor's obligation under this Agreement; and
 - (c) if the Affiliate has a tax residency status that is different than the tax residency status of Contractor as declared to Company in accordance with **Article 13.3** (or such subsequent tax residency approved by Company in accordance with **Article 13.3**), Contractor has obtained the prior written approval of Company of the proposed assignment to the Affiliate.
- 30.6 In the event of a transfer by sale, assignment, amalgamation, merger, trust, operation of law or otherwise of any shares, interest or voting rights of Contractor which may result in the change of identity of the Person exercising *de facto* or *de jure* control over Contractor, the provisions of **Article 30.5** shall apply.

ARTICLE 31 FORCE MAJEURE

- 31.1 For the purposes of this Agreement, Force Majeure shall mean and be limited to the following:

- (a) acts of God, riot, civil unrest, civil disturbance (including blockades to or from the Site), war, acts of civil or military authority, epidemics, quarantine restrictions, acts of terrorism;
 - (b) earthquake, flood, fire, storms in excess of a one hundred (100) year storm or other natural physical disaster, but excluding other weather conditions as such regardless of severity;
 - (c) strikes at a national level, industrial disputes at a national level, which affect a substantial or essential portion of the Work;
 - (d) a change in Applicable Law or the interpretation thereof (recognized by relevant Courts or relevant government authorities) which change could not on the Effective Date reasonably have been foreseen and which affects a substantial or essential portion of the Work; and
 - (e) maritime and aviation disasters.
- 31.2 Neither Contractor nor Company shall be responsible for any failure to fulfil any term or condition of this Agreement if and to the extent that such fulfilment has been delayed or rendered impossible by a Force Majeure occurrence of which the other Party has been notified in accordance with this **Article 31** and which is beyond the control and without the fault or negligence of the Party affected, and which by the exercise of reasonable diligence the said Party is unable to provide against.
- 31.3 A Party may not rely upon the provisions of **Article 31.2**:
- (a) unless it shall immediately upon being made aware of the Force Majeure occurrence notify the other Party of such Force Majeure and of the obligations expected to be affected thereby; and
 - (b) unless it shall immediately take all such steps as may be commercially reasonable in the circumstances to cause the discontinuance of, and to minimize the effect of, the Force Majeure occurrence and resume performance of the obligation affected by the Force Majeure as soon as reasonably possible.
- 31.4 Where Company claims Force Majeure and is entitled to rely upon the provisions of **Article 31.2**, then no compensation shall be payable to Contractor during the period that the Force Majeure occurrence continues to prevent performance by Company. Where Contractor claims Force Majeure and is entitled to rely on the provisions of **Article 31.2**, then no compensation shall be payable to Contractor during the period that the Force Majeure occurrence continues to prevent performance by Contractor.
- 31.5 (a) If Contractor is prevented from or delayed in performing any of its obligations as a result of an event of Force Majeure for a cumulative period of more than thirty (30) days or a consecutive period of more than fifteen (15) days during the Term, Company shall have the right thereafter to immediately terminate this Agreement upon giving Notice thereof to Contractor, and Company shall have no further liability whatsoever to Contractor (except payment for Work performed prior to such termination).



- (b) If Company is prevented from or delayed in performing any of its obligations as a result of an event of Force Majeure and Contractor is entitled to rely on the provisions of **Article 31.2**, then no compensation shall be payable to Contractor during the period that the Force Majeure occurrence continues to prevent performance by Company up to a maximum of thirty (30) consecutive days or ninety (90) cumulative days (either of which shall be referred to as the "Initial Force Majeure Period"). Where the Force Majeure occurrence continues, Contractor shall, at any time, have the right to terminate this Agreement after the expiry of the Initial Force Majeure Period upon giving five (5) days' Notice to Company and such Notice of termination shall be effective upon the expiry of such five (5) day period (the "FM Termination Date"), provided that such Notice of termination shall not be effective if Company provides Notice to Contractor before the intended FM Termination Date that Contractor is to remain on standby to complete the Work (the "Standby Notice"). If no Standby Notice is provided by Company prior to the intended FM Termination Date, this Agreement shall be terminated as of the FM Termination Date and, in such case, Company shall have no further liability whatsoever to Contractor (except for payment for Work performed prior to the FM Termination Date). If Company provides the Standby Notice prior to the intended FM Termination Date, then Contractor shall remain available to perform the Work and shall be entitled to a Change Order to the extent the Force Majeure occurrence(s) cause or result in a Change.
- 31.6 A Force Majeure occurrence shall in no circumstances entitle Contractor to an increase in the Contract Price.
- 31.7 Notwithstanding anything stated in this **Article 31** to the contrary, during any period in which the performance of the Work is prevented because of Force Majeure, Contractor and Company shall mutually agree either (a) to continue maintaining Contractor's Items and Personnel at or near the Worksite, in which case Company will reimburse Contractor at the rates outlined in Exhibit 2 - Compensation which is intended to cover only those expenses incurred by Contractor as a direct result of such prevention of performance, or (b) to demobilize Contractor's Items and Personnel.

ARTICLE 32

DEFAULT AND TERMINATION

- 32.1 Company may, without prejudice to any other right or remedy that it may have against Contractor, by giving Notice to Contractor, immediately terminate this Agreement in the event that any of the following shall occur:
- (a) Contractor breaches any of its material obligations under **Article 15** and has failed to commence and diligently pursue actions reasonably necessary to remedy such breach within fifteen (15) days or, if such breach is irremediable, Contractor fails to commence and diligently pursue actions reasonably necessary to mitigate or remedy the causes of such breach within fifteen (15) days;

- (b) Contractor becomes or is, in Company's reasonable opinion, likely to become insolvent or to go into liquidation;
- (c) Contractor fails to execute:
 - (i) the Work related to the achievement of either of Milestone No.'s M-UN1-1, M-UN2-1 or M-GEN-1 in accordance with Exhibit 9 – Schedule and has failed to commence and diligently pursue actions reasonably necessary to mitigate or remedy such failure so as to achieve, to the satisfaction of Company, the completion of either Milestone No. M-UN1-1, M-UN2-1 or M-GEN-1 within ninety (90) days after the applicable Milestone date identified for such Milestone in Exhibit 9 – Schedule; or
 - (ii) any other Work in accordance with Exhibit 9 – Schedule and has failed to commence and diligently pursue actions reasonably necessary to mitigate or remedy such failure within thirty (30) days;
- (d) the Work or any material part thereof becomes an actual or constructive total loss prior to Delivery (except if such loss is caused by Company Group or a Force Majeure occurrence) and Contractor has failed to recover from such loss within ten (10) days of such loss, or such other longer time period determined by Company at its discretion;
- (e) Contractor fails to obtain or maintain the insurance required in accordance with **Article 18**;
- (f) Contractor fails to procure or maintain the letter of credit in accordance with **Article 7**; or
- (g) Contractor is in breach of any other material obligations hereunder, including any terms, conditions, covenants, representations or warranties under this Agreement and has not commenced to rectify such breach within ten (10) Business Days after Notice thereof from Company or, after commencing to rectify such breach, is unable to rectify such breach within sixty (60) days of Company's Notice.

32.2 Notwithstanding **Article 32.1(g)**, if Company has provided ten (10) Business Days prior Notice to Contractor of the following applicable occurrence and Contractor has failed to remedy such occurrence within such ten (10) Business Day period, Company may, without prejudice to any other right or remedy that it may have against Contractor, by giving Notice to Contractor, immediately terminate this Agreement in the event that any of the following shall occur:

- (a) except in a case of a valid dispute over entitlement to payment, Contractor fails to make prompt payment for labour, materials, financing, skill or other services provided to Contractor by third parties in the performance of the Work; or
- (b) Contractor subcontracts or delegates any portion of the Work, or its obligations hereunder, without Company's Approval in accordance with **Article 6.2**; or
- (c) Contractor assigns this Agreement without Company's Approval pursuant to **Article 30.5**; or



- (d) Contractor disregards reasonable instructions of Company.
- 32.3 In the event Company terminates this Agreement pursuant to **Article 32.1** or **32.2**, Company may take title and possession of all Work and Company may complete the performance of the Work by whatever method it may deem expedient. In such case:
- (a) Company shall have no liability whatsoever to Contractor, except for any amounts payable up to the date of termination of this Agreement, subject to Company's rights of set off, provided that Contractor shall be reimbursed for all Work performed by Contractor, to the satisfaction of Company, prior to such termination;
 - (b) subject always to considerations of health, safety and of the environment, Contractor shall discontinue performance of the Work and shall comply in full with Company's instructions regarding such termination;
 - (c) Contractor shall use its best efforts to assign to Company or its nominee any Subcontracts, including any contracts related to Contractor Personnel or any equipment required to complete the Work;
 - (d) Contractor shall promptly deliver to Company all data, calculations and other materials associated with the Work, all on an appropriate medium, together with all drawings, specifications and other documents prepared or obtained by Contractor in connection with the Work and shall carry out Company's instructions concerning any cancellation or assignment of Subcontracts, purchase orders and any other matters arising out of this Agreement which Company decides are necessary or expedient; and
 - (e) Contractor shall allow Company, or its nominees, full right of access to the Worksites so as to remove or perform Work.
- 32.4 Notwithstanding any other provision of this Agreement:
- (a) Company may in its sole and absolute discretion and for any reason, including convenience of Company and without any fault or default on the part of Contractor, terminate this Agreement effective immediately upon giving Notice to Contractor or effective at a future date specified in the Notice; and
 - (b) subject to Contractor complying with its obligations to protect persons and property from damage, Contractor shall cease the performance of the Work immediately upon receiving that Notice or upon any later date specified in that Notice.
- 32.5 Company may, without prejudice to any other right or remedy that it may have against Contractor, terminate this Agreement in the event that Contractor is prevented from or delayed in performing any of its obligations as a result of an event of Force Majeure pursuant to **Article 31.5** by giving Notice of termination to Contractor.
- 32.6 In the event Company terminates the Agreement pursuant to **Article 32.4** or **Article 32.5**, Company may take title and possession of all Work and complete the performance of the Work by whatever method it may deem expedient. In such case:

- (a) For Milestone Work, Company shall reimburse Contractor the aggregate value of all achieved and Approved Milestones less the aggregate value of all amounts paid in relation to such achieved and Approved Milestones at the time of termination. Company shall also pay Contractor a proportionate value of any Milestone or lump sum Change Orders by progress, wherein such proportionate value is determined by demonstrated Work progress, as agreed between the Parties, associated with the achievement of such Milestones or lump sum Change Orders.
- (b) For reimbursable Change Orders, Company shall reimburse Contractor for actual Work performed up to the date of termination, subject to Contractor compliance with **Article 12.13(b)**.
- (c) Contractor shall clearly document and present to Company the costs incurred in the performance of the Agreement and the cancellation charges applicable to Subcontracts. In the event that costs incurred in the performance of the Agreement, together with the cancellation charges applicable to Subcontracts, are less than the amounts which have been previously paid to Contractor on account under the Agreement, Contractor shall reimburse Company in the amount of the difference within ten (10) Business Days of demand by Company following determination of the amount thereof.
- (d) Contractor shall, prior to paying or agreeing to pay any cancellation charges pursuant to such Subcontracts, contracts and other agreements, submit to Company the amount of such charges for Approval. If and to the extent that Company does not Approve the amount of such charges, Contractor shall not pay the same and the Parties shall jointly negotiate with the relevant third party or parties in an attempt to reduce the amount thereof.
- (e) In the event that the costs incurred in the performance of the Agreement, together with cancellation charges applicable to Subcontracts, are more than the amounts which have previously been paid to Contractor on account under the Agreement, Company shall reimburse Contractor in the amount of the difference within ten (10) Business Days of demand following determination of the amount thereof provided that Contractor has clearly documented the calculation resulting in such difference and has satisfied the requirements of paragraph (g) of this **Article 32.6**. In no event shall the aggregate of the amounts paid to Contractor under this Article exceed the Contract Price.
- (f) Subject always to considerations of health, safety and of the environment, Contractor shall discontinue performance of the Work and shall comply in full with Company's instructions regarding such termination.
- (g) Contractor shall promptly deliver to Company all data, calculations and other materials associated with the Work, all on an appropriate medium, together with all drawings, specifications and other documents prepared or obtained by Contractor in connection with the Work and shall carry out Company's instructions concerning any cancellation or assignment of Subcontracts, purchase orders and any other matters arising out of this Agreement which Company decides are necessary or expedient.

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(h) Contractor shall allow Company, or its nominees, full right of access to the Worksites so as to remove or perform Work.

32.7 Contractor shall be entitled to terminate this Agreement upon Notice to Company, after exercising due diligence, if:

- (a) Company has failed to pay an undisputed invoice eighty (80) days after the invoice has become payable pursuant to this Agreement;
- (b) Company substantially fails to perform its material obligations under the Agreement relating to access to the Site;
- (c) Company or its assets becomes the subject of any proceeding (whether initiated by Company or another Person) under bankruptcy or insolvency laws, including proceedings under the *Companies' Creditors' Arrangement Act* (Canada), R.S.C. 1985, c. C-36;
- (d) Company becomes the subject of any proceeding for liquidation, or winding-up (whether initiated by Company or another Person);
- (e) a receiver or receiver-manager of all or any part of Company's assets is appointed by a Court or by any of its creditors; or
- (f) Company commits an act of bankruptcy as defined in the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c. B-3, or commits any other act or omission which would entitle any of Company's creditors to initiate a process or proceeding to take possession of any of Company's assets or to have any of Company's assets distributed among such creditors.

In the event of an occurrence described by **Articles 32.7(a)** or **32.7(b)**, Contractor may, upon giving ten (10) Business Days' Notice to Company, terminate this Agreement if Company has failed to commence and diligently pursue actions reasonably necessary to mitigate, remedy or to cure the default described by **Articles 32.7(a)** or **32.7(b)** within the ten (10) Business Day period. However, in the case of **Articles 32.7(c)** to **32.7(f)** inclusive, Contractor may, by Notice, terminate this Agreement immediately.

32.8 Upon termination of this Agreement by Contractor pursuant to **Article 32.7**:

- (a) Contractor shall promptly:
 - (i) cease all further Work, except for such work as may have been instructed by Engineer for the protection of life or property or for the safety of the Work;
 - (ii) deliver to Engineer Contractor's documents, plant, materials and other work;
 - (iii) remove all Contractor's Items from the Site, except as necessary for safety; and
 - (iv) demobilize from the Site.
- (b) Company shall promptly:
 - (i) return to Contractor the performance security referenced in **Article 7**; and
 - (ii) pay Contractor in accordance with **Article 32.6**.

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- 32.9 The Parties acknowledge and confirm their respective obligations to make commercially reasonable efforts to mitigate any damages or costs arising from any termination of this Agreement.

ARTICLE 33 BANKRUPTCY, INSOLVENCY AND RECEIVERSHIP

- 33.1 Company shall have the right, without limiting any of its other rights or remedies, to terminate this Agreement immediately by giving Notice of termination to Contractor pursuant to **Article 32.1** if:
- (a) Contractor or its assets becomes the subject of any proceeding (whether initiated by Contractor or another Person) under bankruptcy or insolvency laws, including proceedings under the *Companies' Creditors' Arrangement Act* (Canada), R.S.C. 1985, c. C-36; or
 - (b) Contractor becomes the subject of any proceeding for liquidation, reorganization or winding-up (whether initiated by Contractor or another Person); or
 - (c) a receiver or receiver-manager of all or any part of Contractor's assets is appointed by a Court or by any of its creditors; or
 - (d) Contractor commits an act of bankruptcy as defined in the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c. B-3, or commits any other act or omission which would entitle any of Contractor's creditors to initiate a process or proceeding to take possession of any of Contractor's assets or to have any of the Contractor's assets distributed among such creditors.
- 33.2 If this Agreement is terminated by Company under **Article 33.1**, Company shall be entitled to withhold further payments to Contractor and set-off those payments against any amounts which Contractor owes or will owe to Company under this Agreement or any other agreement and Company reserves to itself all other rights, remedies and counterclaims to which it may be entitled hereunder or at law or equity.

ARTICLE 34 SUSPENSION

- 34.1 Company may at any time during the Term, at Company's sole discretion for any reason, suspend performance of the Work, or any part thereof, by giving Notice to Contractor (such period of suspension hereinafter "**Suspension Period**"). The Work shall be resumed by Contractor on a date as may be specified by Company in a Notice to Contractor. During the Suspension Period, Contractor shall properly protect and secure the Work as Approved in advance by Company.



- 34.2 Subject to **Article 34.3** and **Article 34.4**, Company shall reimburse Contractor its reasonable expenses at the applicable rates stated in Exhibit 2 – Compensation for personnel and equipment necessary for compliance with any suspension order and associated reinstatement order (which Contractor shall use its reasonable care and diligence to mitigate), including without limitation demobilization, security, protection, preservation and remobilization costs (the "**Suspension Expenses**"). Subject to the foregoing, in no event shall Contractor be entitled to any compensation for items covered in **Article 21.14** that may have resulted from such suspension or reinstatement order.
- 34.3 Pursuant to **Article 15.8**, Company shall have the right to suspend performance of the Work for as long as necessary to prevent or stop any contravention of **Article 15**. During such period of suspension, no Suspension Expenses shall be payable to Contractor by Company.
- 34.4 In case of suspension due to Contractor's failure to perform the Work in accordance with **Article 3**, Contractor shall not be entitled to Suspension Expenses incurred from the moment the Notice of suspension was given until a reinstatement order (if any) is given by Company but shall remain liable, without prejudice to Company's other rights under this Agreement.
- 34.5 If Company suspends the Work for any reason whatsoever, Contractor shall not be entitled to Suspension Expenses if Contractor would have otherwise been delayed in performing the Work during the suspension period due to fault or default on the part of Contractor or as a result of Force Majeure.
- 34.6 Contractor shall cause all terms of this Article to be inserted in all Subcontracts so that Company and Contractor shall have the rights herein set forth with respect to all Subcontractors.
- 34.7 If there is a suspension under **Article 34.1** for greater than one hundred twenty (120) days, either consecutively or in the aggregate, Contractor may give Company five (5) Business Days' Notice of Contractor's intent to suspend or terminate the Agreement. Company may, by Notice to Contractor, require Contractor to resume the Work within such five (5) Business Day period, in which case this Agreement shall remain in full force and effect. Any further suspension under **Article 34.1** shall entitle Contractor, upon Notice to Company, to immediately suspend or terminate this Agreement at its sole discretion, without prejudice to Contractor's right to Suspension Expenses subject to the terms of this **Article 34**. If Company does not require Contractor to resume the Work within such five (5) Business Day period, then this Agreement shall be suspended or terminated (as the case may be as stated in Contractor's Notice) upon the expiry of such period without any further Notice, without prejudice to Contractor's right to Suspension Expenses subject to the terms of this **Article 34**. For the purposes of this **Article 34.7**, "Business Day" shall have the meaning ascribed to it in **Article 1.2(l)** and means a period of twenty-four (24) consecutive hours from midnight of the day previous to such Business Day to midnight of such Business Day.
- 34.8 In the event of a suspension pursuant to this **Article 34** that is not attributable to any act or omission by Contractor Group, and if such suspension results in a Change as defined by **Article 1.2(m)(v)** and **Articles 1.2(m)(A) to (F)** inclusive, then Contractor may proceed in



accordance with **Articles 26.7** or **26.8** to seek an extension of the Milestone Schedule, provided that Contractor shall use reasonable care and diligence to mitigate such Change.

- 34.9 Contractor shall have the right to suspend performance of the Work in the event Company has failed to pay an undisputed invoice forty-five (45) days after the invoice has become payable pursuant to this Agreement, and Contractor has given Company Notice of such failure and Company is unable to cure and has failed to commence to cure such failure within ten (10) Business Days. If such suspension results in a Change as defined by **Article 1.2(m)(v)** and **Articles 1.2(m)(A) to (F)** inclusive, then Contractor may proceed in accordance with **Articles 26.7** or **26.8** to seek an extension of the Milestone Schedule, provided that Contractor shall use reasonable care and diligence to mitigate such Change.

ARTICLE 35

LABOUR RELATIONS

- 35.1 Contractor acknowledges that some or all of Company's Other Contractors and their subcontractors at the Site may be union or non-union and that Company requires Contractor to ensure that labour peace shall be maintained. Contractor shall take all necessary precautions to avoid labour disputes and to minimize the disruption in the event of any dispute.
- 35.2 Contractor represents and warrants that no collective or other agreement with its Personnel or between its Subcontractors and their workers, and no expiry or termination of any such agreement, will adversely affect labour peace at the Worksites or delay Contractor's performance of the Work.
- 35.3 Contractor represents and warrants that it and its Subcontractors, if unionized, have written agreements with the unions representing the workers employed by them that include provisions that non-affiliation rights in any collective agreement or pursuant to any statutory right will not be exercised in connection with the Work. Any and all such agreements shall be submitted to Engineer within five (5) Business Days of the Effective Date or of the date an agreement comes into effect.
- 35.4 Whenever Contractor has knowledge that any actual or potential labour dispute is delaying or threatening to delay the schedule and performance of the Work, Contractor shall immediately advise Engineer in writing, including all relevant information with respect to such dispute or potential dispute and potential impact on the schedule and performance of the Work.
- 35.5 Without restricting the generality of Company's right to terminate the Agreement, Company may, but is not obligated to, give Notice to Contractor requiring Contractor to terminate any Subcontract by giving five (5) days' notice to the Subcontractor if:
- (a) the workers of the Subcontractor, or anyone employed by or through the Subcontractor:

- (i) declare or engage in a strike, a work stoppage or a refusal to supply material; or
 - (ii) engage in a slowdown or other concerted activity which restricts or limits or, is likely to restrict or limit, the progress or performance of the Work; or
 - (iii) picket or cause picketing to occur or support picketing by the refusal to Work, or continue to Work at or in the Worksites whether in support of lawful strike or for any other reason; or
 - (iv) does not comply with **Article 8**.
- (b) the Subcontractor, or anyone engaged by or through the Subcontractor, imposes a lockout, lawful or unlawful, against their workers engaged in performing the Work.
- 35.6 Contractor shall ensure that all Subcontracts allow termination in each of the events set out in **Article 35.5**.
- 35.7 The sole cost and expense of preventing, avoiding or removing any of the matters or events giving rise to a labour disruption caused or contributed to by Contractor Group, shall be borne by Contractor who shall use reasonable commercial efforts to prevent, avoid and remove any and all such labour disruptions within five (5) days of the commencement of such disruptions, including making any necessary applications for injunctive or other relief to the Court.
- 35.8 Except for strikes, labour disputes or industrial disputes referenced in **Article 31.1(c)**, delays in the performance of the Work as a result of any strike, industrial dispute, labour disruption or labour dispute are to be considered as a delay attributable to Contractor, and for which Contractor shall not be entitled to compensation or an extension to the date for completion of a Milestone.

ARTICLE 36 LIQUIDATED DAMAGES

- 36.1 For each Milestone specified in Exhibit 2 – Compensation as being subject to liquidated damages, if Contractor fails to Deliver that part of the Work to achieve the Milestone by the date specified, Contractor shall pay Company as liquidated damages the full amount stipulated in Exhibit 2 – Compensation for each day, including any part thereof, of the delay of that Milestone, from the date the delay commenced to the date the Milestone is achieved, unless the failure to achieve the Milestone is due to an event of Force Majeure, a Change affecting the Milestone or a Suspension Period. Liquidated damages shall cease to accrue on termination under **Articles 32** or **33**. Subject to **Article 32.1(c)**, liquidated damages shall constitute Company's sole and exclusive remedy, and satisfaction of all of Contractor's liabilities, for delay by Contractor in the performance of the Work under this Agreement.
- 36.2 Contractor's limit of liability for liquidated damages payable by Contractor to Company pursuant to this **Article 36** shall be a maximum of five percent (5%) of the total estimated Contract Price stated in Exhibit 2 – Compensation as of the Effective Date.

- 36.3 Contractor acknowledges that Company's damages for which Contractor is responsible as determined in accordance with **Article 36.1** are difficult to ascertain, and that the remedies of Company described therein are fair and reasonable in the circumstances, and Contractor agrees that it will not challenge the validity of any such remedies in any legal proceedings or otherwise claim or assert that any such remedies are invalid or unenforceable. Contractor agrees that Company may plead this **Article 36.3** in any legal proceedings as an estoppel and complete answer in defence to any challenge, claim or assertion. For clarification, **Articles 36.1, 36.2 and 36.3** shall not be construed as restricting the rights or remedies of Company:
- (a) with respect to the exercise by Company of any remedy otherwise available under this Agreement or at law;
 - (b) in respect of any Claim by Company that a breach of this Agreement by Contractor has occurred; or
 - (c) as to the amount or value of any damages incurred or suffered by Company as a result of any breach by Contractor (other than a delay covered by liquidated damages).
- 36.4 Company shall have the right to payment by Contractor of liquidated damages from time to time by giving Notice to Contractor. Any such Notice shall specify the amount of such damages and Contractor shall pay the amount so specified within thirty (30) days of the date of such Notice. Failure by Company to give Contractor a Notice shall not constitute a waiver of Company's right to claim all liquidated damages under this **Article 36**.
- 36.5 Company has the right to set off any amount of liquidated damages, plus interest determined in accordance with **Article 12.19**, owed by Contractor to Company against any amount due or to become due from Company to Contractor under the Agreement.

ARTICLE 37

CONTRACTOR'S REPRESENTATIONS, WARRANTIES AND COVENANTS

- 37.1 Contractor represents and warrants that during the Term:
- (a) it has the required skills, experience, facilities, equipment and capacity to perform the Work in a timely manner and in accordance with the terms of this Agreement, Applicable Laws, the Standard of a Prudent Contractor and sound industry accepted practices;
 - (b) all Contractor's Personnel involved in carrying out any of the Work have the qualifications, training and experience, and hold such valid licences and certificates of competence, as are required to carry out their duties in relation to the Work (including visas and work permits);
 - (c) each of Contractor's Items is of good quality, in good working condition, is in compliance with all Applicable Laws and is fit for its intended use as contemplated in this Agreement; and

- (d) the making and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not and will not violate any Applicable Law or any provision of its governing documents.

37.2 Contractor covenants that during the Term it shall:

- (a) perform the Work in a diligent, safe, efficient and timely manner and in accordance with the Standard of a Prudent Contractor;
- (b) perform the Work continuously and in accordance with this Agreement, using only Contractor's Personnel and Subcontractors Approved by Company;
- (c) use quality assurance programs in performing the Work which comply with the requirements of Exhibit 7 – Quality Requirements, all Applicable Laws and industry accepted practices;
- (d) schedule all long lead time equipment or products for manufacture at the earliest possible date;
- (e) not displace or set back in a manufacturing queue or production schedule the equipment or product to be manufactured for the Work in favour of another customer or client of Contractor following such equipment or product placement in a manufacturing queue or production schedule;
- (f) supply materials, equipment and products for installation into the Work that are new and meet or exceed the standards specified in this Agreement ;
- (g) maintain, at its sole risk, cost and expense, all Contractor's Items throughout the Term;
- (h) comply with, and ensure Contractor's Personnel and Subcontractors comply with, all health and safety requirements set out in Exhibit 5 – Health and Safety Requirements and Applicable Laws;
- (i) comply with, and ensure Contractor's Personnel and Subcontractors comply with, all environment and regulatory requirements set out in Exhibit 6 – Environmental and Regulatory Compliance Requirements and Applicable Laws;
- (j) take all steps necessary to maintain good labour relations with Contractor's Personnel to the extent that such requirement is consistent with sound business practice;
- (k) comply, on a timely basis, with all instructions of Company consistent with the provisions of this Agreement, including health, safety and environmental instructions;
- (l) provide such reports, records, and other information relating to the performance of the Work as Company may request from time to time, including copies of the qualifications and credentials of Contractor's Personnel and Subcontractors and information relating to quality assurance programs, and permit Company to inspect Contractor's Items and Worksites, to enable Company to satisfy itself that Contractor is complying with the terms of this Agreement;

- (m) obtain for the benefit of Company all available exemptions and/or refunds from Taxes; and
 - (n) implement and maintain a cost effectiveness program ensuring all techniques proposed for the performance of the Work are or have been reviewed to ensure that they are cost effective.
- 37.3 Contractor warrants and acknowledges that it has reviewed and understands the Applicable Laws and Lower Churchill Construction Projects Benefits Strategy governing the use of personnel, goods and services in the Work. Contractor shall, throughout the Term, take such action as Company may specify to enable Company to comply with all Applicable Laws regarding the use of Canadian and Newfoundland and Labrador personnel, goods and services, including any Newfoundland and Labrador Benefits requirements and those requirements set forth in Exhibit 13 - Provincial Benefits of this Agreement. Where Contractor is permitted to subcontract, Contractor shall ensure that Subcontractors comply with such requirements. In addition, Contractor shall provide reports in the manner and format described in Exhibit 13 - Provincial Benefits of this Agreement throughout the term of this Agreement.
- 37.4 Contractor warrants and acknowledges that, except for the Technical Specifications, any information provided by Company or Engineer prior to or after execution of this Agreement, including any and all reports, data, interpretations, recommendations and information, was prepared solely for the purpose of study to consider the general feasibility of the Work and not for the purpose of design, manufacture or installation. Company does not warrant and is not liable for the accuracy, sufficiency, adequacy, completeness or content of any such information or any information subsequently supplied by Company or by Engineer, all of which has been provided to Contractor for general information only and on the condition that such information shall not be relied on by Contractor that Contractor has either fully satisfied itself as to its sufficiency and accuracy or has fully accepted all risks and contingencies associated with such information.
- 37.5 Contractor shall, maintain, at its sole risk, cost and expense, all Contractor's Items throughout the Term in the manner necessary to ensure that the warranties and covenants in **Article 37.1** and **Article 37.2** shall be true and accurate at all times during the Term. If any of Contractor's Items do not at any time conform to the warranties and covenants given in **Article 37.1** and **Article 37.2**, Contractor shall, at Contractor's sole expense, repair such Contractor's Items or replace with items which conform in all respects to such representations and warranties.
- 37.6 Contractor agrees that all of its representations, warranties and covenants contained in this Agreement are and shall be deemed to be material and shall be conditions of this Agreement.

ARTICLE 38 ENTIRETY OF AGREEMENT, NON WAIVER

- 38.1 This Agreement, as executed by authorized representatives of Company and Contractor, constitutes the entire agreement between the Parties with respect to the matters dealt with herein. This Agreement replaces and supersedes all prior agreements, documents, writings and verbal understandings between the Parties in respect of the Work and there are no oral or written understandings, representations or commitments of any kind, express or implied, which are not expressly set forth herein. Subject to Applicable Laws, no Party shall be bound by or be liable for any statement, representation, promise, warranty, inducement, agreement, obligation or understanding of any kind or nature not set forth in this Agreement.
- 38.2 No modification of this Agreement by Contractor or Company, either before or after the execution of this Agreement, shall be of any force or effect unless such modification is in writing, is expressly stated to be a modification of this Agreement and is signed by duly authorized representatives of each of the Parties, with the exception of the following Exhibits where changes to same may be issued solely by Company (in which case **Article 26** shall apply only if such a change constitutes a Change as defined under **Article 1.2(m)**):
- (a) Exhibit 3 – Coordination Procedures;
 - (b) Exhibit 5 – Health and Safety Requirements;
 - (c) Exhibit 6 – Environmental and Regulatory Compliance Requirements;
 - (d) Exhibit 10 – Declaration of Residency;
 - (e) Exhibit 11 – Company Supplied Documents;
 - (f) Exhibit 12 – Site Conditions;
 - (g) Exhibit 13 – Provincial Benefits.
- 38.3 No waiver of any provision of this Agreement shall be of any force unless such waiver is in writing, is expressly stated to be a waiver of a specified provision of this Agreement and is signed by the Party to be bound thereby. Either Party's waiver of any breach of, or failure to enforce, any of the covenants, conditions or other provisions of this Agreement, at any time, shall not in any way affect or limit that Party's right thereafter to enforce or compel strict compliance with every covenant, condition or other provision hereof.
- 38.4 Each of the Parties shall, from time to time, at its own cost and expense, execute or cause to be executed all such further documents and do or cause to be done all things which are necessary to give effect to the provisions of this Agreement.

ARTICLE 39 DISPUTE RESOLUTION

- 39.1 If any dispute, controversy, claim, question or difference of opinion arises between the Parties under this Agreement including an interpretation, enforceability, performance, breach or validity of this Agreement ("**Dispute**"), the Party raising the Dispute shall give Notice to the other Party in writing within thirty (30) days of the Dispute arising, and such Notice shall provide all relevant particulars of the Dispute.
- 39.2 Upon issuance of the Notice of Dispute, the Parties shall, acting in good faith and a commercially reasonable manner, attempt to resolve the Dispute in the following manner:
- (a) Within fifteen (15) days of the Notice, the senior project managers for each of Company and Contractor shall meet to attempt to resolve the Dispute;
 - (b) If not resolved by senior project managers, the project sponsors or representative Vice Presidents for each of Company and Contractor will meet within thirty (30) days following the meeting of the project managers to attempt to resolve the Dispute; and
 - (c) If not resolved by project sponsors or representative Vice Presidents, the Presidents and/or Chief Executive Officers for each of Company and Contractor will meet within thirty (30) days following the meeting of the project sponsors or representative Vice Presidents to attempt to resolve the Dispute.
- 39.3 If the Dispute is not resolved by the Parties within ninety (90) days from the date of delivery of the Notice of Dispute then a Party may by Notice to the other Party require the Dispute to be resolved by binding arbitration in accordance with Exhibit 15 – Rules for Arbitration.
- 39.4 Notwithstanding the existence of a Dispute and the referral of the Dispute to the resolution procedures in this **Article 39**, Company and Contractor shall, to the extent reasonably possible, continue to perform their obligations under this Agreement without interruption or delay, unless:
- (a) advised in writing by Company to suspend or discontinue Work; or
 - (b) this Agreement has been terminated by a Party, in which case performance of the Work shall cease and the Parties shall perform their respective obligations upon termination as set out in **Article 32**.

The continuation of such performance shall in no way amount to a waiver of, or in any way prejudice, the position that is taken by the Parties in the Dispute. There shall be no extension to the date for completion of a Milestone by reason that a Dispute has been referred to the dispute resolution process in this **Article 39**, unless as a result of the dispute resolution process a determination is made that Contractor is entitled to such extension.



ARTICLE 40 NOTICES

- 40.1 Unless otherwise specified in the Agreement, any Notice given or made pursuant to the Agreement shall:
- (a) be in writing;
 - (b) be marked to the attention of Contractor Representative, in the case of Contractor, or to Company Representative, in the case of Company;
 - (c) where given by Company, be signed or authorized by either Company Representative, an officer, a director or company secretary of Company, or a duly authorized representative of Company;
 - (d) where given by Contractor, be signed or authorized by either Contractor Representative, an officer, a director or company secretary of Contractor, or a duly authorized representative of Contractor; and
 - (e) be delivered by prepaid post, by hand or by Aconex to the Party to whom the Notice is addressed at its address specified in **Article 40.3** or such other address as that Party may have notified to the other Party.
- 40.2 A Notice will be taken to be duly given:
- (a) in the case of delivery by hand, when delivered
 - (b) in the case of delivery by post, five (5) Business Days after the date of posting (if posted to an address in the same country) or twenty (20) Business Days after the date of posting (if posted to an address in another country); and
 - (c) in the case of delivery by Aconex, at the time and date recorded by Aconex for delivery to the recipient.
- 40.3 Any Notice given or made under the Agreement shall be delivered to the intended recipient by hand, post or Aconex to the address below or the address last notified by the intended recipient to the sender by Notice:
- (a) to Company:

Muskrat Falls Corporation
Re: Lower Churchill Project
350 Torbay Road Plaza, Suite No. 2
St. John's, NL
Canada A1A 4E1

Attention: Scott O'Brien, Project Manager Muskrat Falls Generation
E-mail: ScottOBrien@lowerchurchillproject.ca
 - (b) to Contractor:

Cahill-Ganotec, a Partnership

The Tower Corporate Campus
240 Waterford Bridge Road, Suite 101
St. John's, NL
A1E 1E2

Attention: James Parmiter
E-mail: jparmiter@cahill.ca

- 40.4 Except where Notice is given using Aconex in accordance with **Articles 40.2** and **40.3**, if the Parties use any other form of electronic mail for day to day communication such electronic mail shall not be used for and will not constitute Notice under the Agreement where the Agreement expressly requires that a Notice be given.
- 40.5 Any technical communications pertaining to the Work shall be between Engineer and Contractor Representative. Engineer shall, subject to the terms of this Agreement, be authorized to act on behalf of Company in all technical matters concerning the Work but not to commit or bind Company to a Change or an amendment of the Agreement.
- 40.6 Except where expressly provided otherwise in the Agreement, verbal communications will not constitute formal communication or Notice under the Agreement and neither Party has any obligation to act on any verbal communication or instruction unless and until it is confirmed in writing. Any action taken by a Party based on verbal communications, instructions or assurances will be at that Party's sole risk and will be without liability to or recourse against the other Party.
- 40.7 A Party may, from time to time, give Notice to the other Party of any change to its address.

ARTICLE 41 LIENS AND CLAIMS

- 41.1 Without prejudice to the provisions of this **Article 41**, Contractor shall prevent the imposition of any liens, claims, encumbrances or attachments by or on behalf of any third party against Contractor's Items, the Work, and Company property wherever located, or any portion thereof and any liens or attachments which nevertheless are imposed shall be promptly vacated and removed from title by Contractor, at Contractor's sole cost, and Contractor shall indemnify, defend and hold Company Group harmless from and against the same.
- 41.2 Contractor shall defend, protect, release, indemnify and hold Company Group harmless from and against, and shall keep Contractor's Items, Company's property, Worksites and Work thereon free and clear of all liens, charges, claims, assessments, fines and levies suffered, created, or committed by Contractor Group, save only (a) liens or encumbrances created with the prior written consent of Company voluntarily in favour of financial organizations in connection with Contractor's obtaining reasonable, prudent and necessary financing, or (b) as may be required in order to preserve Contractor's lien rights to the extent of any nonpayment of amounts owing to Contractor by Company in accordance with the requirements of this Agreement. Company may post on any of Contractor's property such



notices as it may desire to protect itself against such liens, claims, assessments, fines and levies.

- 41.3 Notwithstanding the efforts of Contractor hereunder, if Company suffers costs or expenses or becomes liable for payment as a result of the imposition of such liens or attachments, then without prejudice to any other rights or remedies available to Company, Company shall have the right to withhold and set off an amount equal to any such costs, expenses or payments incurred or made by Company from any payments due to Contractor hereunder.

ARTICLE 42 ENUREMENT, TIME, SURVIVAL OF PROVISIONS

- 42.1 This Agreement shall be binding upon and enure to the benefit of the Parties, their respective successors permitted assignees.
- 42.2 Time is of the essence with respect to Milestones in the Milestone Schedule.
- 42.3 The following provisions of this Agreement shall survive the termination or expiration of this Agreement and remain in full force and effect: **Articles 1.17, 1.19, 3.6, 5.1, 5.7, 6.7, 9.3, 10.7, Article 12, Article 13, Article 14, Article 17, Article 21, Article 23, Article 24, Article 27, Article 28, Article 29, Article 32, and Article 41.**

ARTICLE 43 COUNTERPARTS

- 43.1 This Agreement may be executed in any number of counterparts and any Party may transmit by facsimile or email in portable document format to the other Party a copy of this Agreement executed by that Party, the receipt of which shall have the same force and effect as if the original thereof had in fact been delivered at the same time.
- 43.2 Any original, facsimile copy, portable document format or photocopy of this Agreement bearing one or more signatures on behalf of a Party shall be admissible against that Party in any legal proceeding as evidence of the execution and delivery of this Agreement by that Party and without the requirement to produce an executed original of the Agreement.
- 43.3 Each person signing the Agreement as an authorized representative of a Party hereby represents and warrants that he or she is duly authorized to sign the Agreement for that Party and that the Agreement will, upon having been so executed, be binding on that Party in accordance with its terms.



EXECUTED AS AN AGREEMENT:

For and on behalf of **Muskrat Falls Corporation**

Gilbert Bennett

Signature of Authorized Representative

Gilbert Bennett

Name of Authorized Representative

Stan Marshall

Signature of Authorized Representative

STAN MARSHALL

Name of Authorized Representative

For and on behalf of **Cahill-Ganotec,
a Partnership:**

For and on behalf of **G.J. Cahill (1979) Limited:**

Fred J Cahill

Signature of Authorized Representative

Fred J Cahill

Name of Authorized Representative

Signature of Authorized Representative

Name of Authorized Representative

For and on behalf of **Ganotec Inc.:**

Sebastien Larivee

Signature of Authorized Representative

SEBASTIEN LARIVEE

Name of Authorized Representative

Signature of Authorized Representative

Name of Authorized Representative

Execution Page to Agreement number CH0031-001 dated the 16th day of June, 2017 between Muskrat Falls Corporation and Cahill-Ganotec, a Partnership.

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