

17 September 2015

MUSKRAT FALLS CORPORATION

and

BARNARD PENNECON LIMITED PARTNERSHIP

**CIVIL WORKS AGREEMENT
CONSTRUCTION OF NORTH AND SOUTH DAMS**

Agreement No. CH0009

DATED AS OF AUGUST 20, 2015

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TABLE OF CONTENTS

Article 1 Interpretation 1

Article 2 General Covenants of Contractor 12

Article 3 Contractor’s Work Obligations 16

Article 4 Reporting and Meetings 20

Article 5 Contractor's Personnel 21

Article 6 Subcontracts 23

Article 7 Performance Security 25

Article 8 Construction Schedule..... 25

Article 9 Construction Supervision..... 26

Article 10 Company’s Obligations and Rights 27

Article 11 Role and Responsibilities of Engineer 28

Article 12 Compensation and Terms of Payment 29

Article 13 Taxes 34

Article 14 Changes in the Work 36

Article 15 Health, Safety and Environmental Protection..... 39

Article 16 Access, Inspection, Testing, Audit 42

Article 17 Warranty..... 45

Article 18 Contractor Insurance..... 46

Article 19 Workers’ Compensation 49

Article 20 Project Insurance 50

Article 21 Indemnity..... 51

Article 22 Site and Transport Conditions 55

Article 23 Subsurface Conditions 56

Article 24 Default and Termination 56

Article 25 Substantial and Final Completion..... 61

Article 26 Title and Risk..... 64

Article 27 Suspension..... 65

Article 28 Force Majeure 66

Article 29 Dispute Resolution 68

Article 30 Labour Relations 68

Article 31 Confidentiality 70
Article 32 General 71
Article 33 Assignment 73
Article 34 Liens and Claims 75
Article 35 Contractor’s Documents and Intellectual Property 75
Article 36 Shop Drawings 76
Article 37 Approval of Equipment..... 77
Article 38 Notices 77
Article 39 Execution 79

Exhibit 1 - Scope of Work

Exhibit 2 - Compensation

Exhibit 3 - Coordination Procedures

Exhibit 4 - Supplier Document Requirements List

Exhibit 5 - Health and Safety Requirements

Exhibit 6 - Environmental and Regulatory Compliance Requirements

Exhibit 7 - Quality Requirements

Exhibit 8 - Subcontractors, Manufacturers and Material Sources

Exhibit 9 - Schedule

Exhibit 10 - Declaration of Residency

Exhibit 11 - Company Supplied Documents

Exhibit 12 - Site Conditions

Exhibit 13 - Provincial Benefits

Exhibit 14 - Performance Security

Exhibit 15 - River Diversion Option



THIS AGREEMENT MADE as of August 20, 2015

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 -

BARNARD PENNECON LIMITED PARTNERSHIP, a limited partnership pursuant to the Partnership Act of British Columbia and having its principle place of business in Vancouver, British Columbia (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 intent of this Agreement is to include all equipment, material, labour, products and services necessary for Contractor to perform the Work in accordance with this Agreement and any equipment, material, labour, products and services properly inferable therefrom. Contractor will not supply products or perform work inconsistent with or in contravention of this Agreement.
- 1.2 Capitalized words and phrases used herein shall, for all purposes of this Agreement and the Schedules hereto (unless there is something in the subject matter or context inconsistent therewith or unless otherwise defined herein), have the meaning set out below:
- (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 33.1**.
- (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 1.16**, 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 all laws, statutes, regulations, standards, codes, orders, by-laws, ordinances, directives or other rules enacted or issued from time to time by any duly constituted 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 33.2**.



- (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) A deletion of any part of the Work;
 - (iii) A revision or modification to any part of the Work already completed;
 - (iv) A variation to the schedule for the completion of a Milestone;
 - (v) 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 (n) 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) **"Company"** means Muskrat Falls Corporation and its successors and assigns.
- (r) **"Company Group"** means collectively Company and Company's Other Contractors (including Engineer), and the respective Affiliates and Personnel of each of the foregoing.
- (s) **"Company's Other Contractors"** means all contractors and subcontractors of Company or its Affiliates, including all of their contractors and consultants (including any inspector) except Contractor and Subcontractors.
- (t) **"Company Representative"** means the person designated in accordance with **Article 10.3**.
- (u) **"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.
- (v) **"Confidential Information"** has the meaning ascribed thereto in **Article 31.1**.
- (w) **"Construction Schedule"** means the schedules for Contractor's performance of the Work referenced in **Article 8.1** and described in Exhibit 3 – Coordination Procedures.
- (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 but which are not incorporated into and form part of the completed 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 Representative**" is the person nominated as such in accordance with **Article 5.5**.
- (dd) "**Court**" means a court of competent jurisdiction and includes the Supreme Court of Canada.
- (ee) "**Cure Period**" has the meaning ascribed thereto in **Article 33.2**.
- (ff) "**Defect**" means any error, omission, deficiency, defect and/or failure in design, materials, engineering, workmanship, manufacture and/or installation.
- (gg) "**Dispute**" has the meaning ascribed thereto in **Article 29.1**.
- (hh) "**Drawings**" means the drawings set out in Exhibit 1 - Scope of Work.
- (ii) "**Effective Date**" means August 20, 2015.
- (jj) "**Execution Date**" means the date shown on the Execution Page.
- (kk) "**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.
- (ll) "**Exhibits**" means the Exhibits forming part of this Agreement and identified in **Article 1.16**.
- (mm) "**Final Completion**" means that point in time when the conditions set out in **Article 25.5** have been satisfied.
- (nn) "**Final Completion Certificate**" means the certificate issued in accordance with **Article 25.6**.
- (oo) "**Force Majeure**" has the meaning ascribed thereto in **Article 28.1**.
- (pp) "**Holdback Release Bond**" means the bond described in **Article 12.16**
- (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 (HST).
- (rr) "**Intellectual Property**" has the meaning ascribed thereto in **Article 35.1**.
- (ss) "**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.

- (tt) "**LEG2/96**" means the 1996 "Model 'Consequences' Defects Wording" published by the London Engineering Group.
- (uu) "**Lender**" means any financial institution providing financing to Company or any of Company's Affiliates for the Work or for the LCP.
- (vv) "**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.
- (ww) "**Milestone**" means the start or completion of an activity in the performance of the Work and which is identified as such in Exhibit 9 – Schedule.
- (xx) "**Notice**" means a written communication that is required to be delivered in accordance with **Article 38**.
- (yy) "**Parent Guarantees**" means the guarantees referenced in **Article 7.1**.
- (zz) "**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.
- (aaa) "**Payment Certificate**" means the certificate described in **Article 12.8**.
- (bbb) "**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.
- (ccc) "**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.
- (ddd) "**Personnel**" means the directors, officers, employees, consultants, non-employed representatives and agents of a Person.
- (eee) "**Privacy Law**" means the *Access to Information and Protection of Privacy Act*, S.N.L. 2002, c. A-1.1, and all other applicable federal or provincial laws relating to the privacy, confidentiality or use of any information about individuals.
- (fff) "**Project Manager**" means the person designated to represent Contractor in accordance with **Article 9.4** and **Article 9.5**.
- (ggg) "**Punch List**" means a list of Defects or items of the Work that are not complete.

- (hhh) **"Quality Plan"** means the plan described in Exhibit 7 – Quality Requirements.
- (iii) **"Rights"** has the meaning ascribed thereto in **Article 35.3**.
- (jjj) **"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.
- (kkk) **"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.
- (lll) **"Shop Drawings"** has the meaning ascribed thereto in **Article 36.1**.
- (mmm) **"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.
- (nnn) **"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.
- (ooo) **"Subcontract"** means an agreement (including any written 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.

- (ppp) "**Subcontractor**" means any Person engaged by Contractor, other than employees of Contractor, to perform any part of the Work pursuant to a Subcontract, and shall include the successors and permitted assigns of any such Person.
- (qqq) "**Substantial Completion**" means that the Work has been completed to the extent specified in **Article 25.1**.
- (rrr) "**Substantial Completion Certificate**" means the certificate issued in accordance with **Article 25.2**.
- (sss) "**Suspension Expenses**" has the meaning ascribed thereto in **Article 27.2**.
- (ttt) "**Suspension Period**" has the meaning ascribed thereto in **Article 27.1**.
- (uuu) "**Tax**" or "**Taxes**" means any tax, fee, levy, rental, 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, without limitation, 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.
- (vvv) "**Technical Requirements**" means specifications, drawings, plans or other documentation of a technical or scientific nature, and tests, set out or referenced in the Exhibits.
- (www) "**Technical Specifications**" or "**Specifications**" means the documents contained in Exhibit 1 – Scope of Work.
- (xxx) "**Term**" has the meaning ascribed thereto in **Article 1.17**.
- (yyy) "**Warranty**" means Contractor's obligations set out in **Article 17**.
- (zzz) "**WHSCC**" means the Workplace Health, Safety and Compensation Commission of the Province of Newfoundland and Labrador.
- (aaaa) "**Work**" means all labour, supervision, engineering, design 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 but

not limited to **Article 3** and Exhibit 1 – Scope of Work, including Changes and the provision of all Personnel, plant, equipment, tools, supplies, facilities, documentation, records and other items necessary to the performance of such services and obligations.

- (bbbb) "**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 titles, headings, captions, recitals and the provision of a table of contents are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- 1.4 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.
- 1.5 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.
- 1.6 Any reference in this Agreement to all or any part of any statute, regulation, by-law or other legislative enactment shall, unless otherwise expressly stated, be a reference to that statute, regulation, by-law or legislative enactment or relevant part thereof as amended, substituted, replaced or re-enacted from time to time.
- 1.7 Whenever an amount of money is referred to in this Agreement, such amount shall, unless otherwise expressly stated, be deemed to be Canadian dollars.
- 1.8 Time shall be of the essence with respect to the Milestones in Exhibit 9 – Schedule.
- 1.9 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.
- 1.10 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 discretion of Company.

- 1.11 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. A 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.
- 1.12 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.
- 1.13 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.
- 1.14 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 conflict 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.
- 1.15 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.
- 1.16 The following Exhibits are attached hereto and shall form and be read and construed as an integral part of this Agreement:



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	River Diversion Option

- 1.17 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 has been issued pursuant to **Article 25.6** and all Warranty obligations have been satisfied (the "**Term**"), unless earlier terminated in accordance with the provisions of this Agreement.
- 1.18 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".
- 1.19 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 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.
- 1.21 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.

- 1.22 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.
- 1.23 Any Approval by Company or Acceptance by Engineer shall not waive Contractor's obligations under Applicable Laws or as outlined in this Agreement.
- 1.24 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 Nalcor Energy.
- 1.25 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 31**.

ARTICLE 2 GENERAL COVENANTS OF CONTRACTOR

- 2.1 Contractor shall maintain in good standing its corporate existence and shall remain duly qualified to own its assets. 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.
- 2.2 Without limitation, Contractor shall undertake the Work in accordance with Applicable Laws, this Agreement and as required by any Authority. Contractor shall be subject to Company's environmental assessment obligations. For clarification, if any environmental effects or compliance monitoring or other measures are required by any Authority, the costs of such required measures shall be the responsibility of Contractor.
- 2.3 Contractor shall take such action as Company may specify to enable Company to comply with all Applicable Laws 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.
- 2.4 Contractor shall promptly pay and discharge all amounts due and payable by Contractor to any and all creditors of Contractor (including all fees payable to obtain or maintain the

Approvals and any fines, penalties or judgments resulting from any violation of the terms and conditions of the Approvals or breach of Applicable Laws relating to the LCP) except that Contractor shall not be required to pay any amounts due and payable to such creditors in respect of any amounts the validity of which is being contested in mediation, arbitration or litigation, provided an amount sufficient to satisfy the amount of the Claim, including interest and penalties, or security satisfactory to the Court has been paid into or delivered to the Court or to a trustee, or alternate provision therefor has been made on terms satisfactory to Company.

- 2.5 Contractor shall maintain the Work free and clear of all security interests other than security interests Approved by Company for financing of Contractor's performance of the Work. If a security interest is filed or registered against the Work that has not been Approved by Company, Contractor shall forthwith pay and discharge such security interest and an amount sufficient to satisfy the amount secured by the security interest, including interest and penalties, or security satisfactory to the Court has been paid into or delivered to the Court or alternate provision therefore has been made on terms satisfactory to Company.
- 2.6 Contractor shall give Notice to Company of any action, suit or proceeding pending or, to the knowledge of Contractor, threatened before any Authority, or before any arbitrator, mediator or referee that materially adversely affects or would reasonably be expected to materially adversely affect the Work.
- 2.7 Contractor shall preserve, protect and defend the Work from and against any action, suit or proceeding that materially adversely affects or, if successful, would reasonably be expected to materially adversely affect the Work. Contractor acknowledges that Company shall have the right, in its sole discretion, to defend its interests in the Work from and against any such action, suit or proceeding and, should Company elect to separately defend, Contractor shall pay all of Company's Costs of such defence and Contractor shall instruct its counsel to make full disclosure to Company.
- 2.8 Contractor represents and warrants that during the Term:
- (a) it has the required skills, experience, facilities, equipment, Personnel 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) 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
 - (c) 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.
- 2.9 Contractor covenants that during the Term it:

- (a) shall perform the Work in a diligent, safe, efficient and timely manner and in accordance with the Standard of a Prudent Contractor;
 - (b) shall perform the Work continuously and in accordance with this Agreement, using only Contractor's Personnel and Subcontractors Approved by Company;
 - (c) shall 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) shall schedule all long lead time equipment or products for manufacture at the earliest possible date;
 - (e) shall maintain, at its sole risk, cost and expense, all Contractor's Items throughout the Term;
 - (f) shall 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;
 - (g) shall 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;
 - (h) shall 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;
 - (i) shall, to enable Company to satisfy itself that Contractor is complying with the terms of this Agreement, 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; and
 - (j) shall 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.
- 2.10 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 representations and warranties in **Article 2.8** 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 representations and warranties given in **Article 2.8**, 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.
- 2.11 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.
- 2.12 Contractor acknowledges and agrees that, except as otherwise expressly provided in this Agreement:

- (a) the success of the construction of the Work is dependent upon the timely performance by Contractor of all of its obligations under this Agreement and upon Company's ability to enforce its rights and remedies under this Agreement;
 - (b) the financial obligations of Company to Contractor in respect of the Work are limited to the payment of the Contract Price in accordance with the terms of this Agreement;
 - (c) Company makes no representations and warranties and gives no undertakings concerning the Tax consequences of or other effects of Applicable Laws on the Work or any corporate structure utilized by Contractor with respect to the Work;
 - (d) Contractor is solely responsible for obtaining its own independent financial, legal, Tax, accounting and technical advice with respect to all aspects of the Work;
 - (e) except as otherwise expressly provided for in this Agreement, Contractor is solely responsible for:
 - (i) the examination and review of all documents and information submitted by Contractor;
 - (ii) obtaining any required Tax rulings; and
 - (iii) all other matters which in any way relate to or affect the Work, the Contract Price or the time for completion of Milestones; and
 - (f) Contractor shall carry out its obligations hereunder independently and without reliance on Company in any manner whatsoever.
- 2.13 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.
- 2.14 Contractor agrees to perform the Work and to conduct its operations in a manner which is 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.
- 2.15 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.
- 2.16 Whenever in this Agreement reference is made to Company or Engineer providing assistance, services, reviews, Approvals, Acceptances or consents or to Company inspecting

the Work or the books or records of Contractor or conducting tests, observations and inspections, such undertaking by Company and Engineer shall not relieve, insulate or exempt Contractor from or represent a waiver of any requirement, liability, covenant or obligation under this Agreement or at law or in equity and shall not create or impose any requirement, liability, covenant, agreement or obligation on Company not otherwise created or imposed pursuant to the express provisions of this Agreement. In no event shall such undertaking by Company be a representation that there has been or will be compliance by Contractor with this Agreement.

- 2.17 All transactions, including those contemplated pursuant to this Agreement, with any Person which is not at arm's length (as that term is defined for purposes of the *Income Tax Act* (Canada) R.S.C. 1985, c.1 (5th Supp.)) from Contractor shall be on terms not less favourable to Contractor than competitive terms available to Contractor in comparable transactions with Persons that are at arm's length from Contractor.
- 2.18 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.

ARTICLE 3

CONTRACTOR'S WORK OBLIGATIONS

- 3.1 Contractor shall carry out all of its obligations under this Agreement and shall perform the Work, including:
- (a) all procurement, fabrication, construction, testing, transport, delivery, maintenance, storage, documentation, preservation, installation, testing, commissioning, repair and remediation of the Work;
 - (b) 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;
 - (c) provision and installation of all equipment, products and materials required by this Agreement at a Site;
 - (d) 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;

- (e) any design or engineering which is the responsibility of Contractor under this Agreement;
 - (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 but which is necessary for the performance of the Work in accordance with this Agreement;
 - (i) rectification of any and all Defects in the Work as noted by Company, Engineer or any Authority; and
 - (j) completing the Work, and portions thereof, in accordance with Exhibit 9 – Schedule.
- 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 :
- (a) advise Engineer 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; and
 - (b) promptly report to Engineer any error, inconsistency or omission or any non-compliance with Applicable Laws which Contractor may discover and not proceed with the affected work until Engineer has received corrected or missing information from Contractor.
- 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.
- 3.4 Products and materials provided by Contractor shall be new. Products or materials which are not specified shall be of a quality consistent with those specified, fit for their intended use and Acceptable to Engineer.
- 3.5 All equipment, material, products, services, labour and other items required for completion of the Work are to be provided by Contractor and included in this Agreement, regardless of whether they are included in or differ from the quantities of equipment, material, labour and other items shown or described in Exhibit 1 – Scope of Work.
- 3.6 Contractor shall perform the Work to the Standard of a Prudent Contractor and shall ensure that Contractor Group 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 this Agreement. Contractor shall be solely responsible for any operations comprising the Work performed by Contractor Group.

- 3.7 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 assist Company and provide necessary information and documents to support Company fulfilling Company's obligations set out in **Article 10.3**. 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 and shall defend, indemnify and hold Company Group harmless from and against all fines and penalties, as well as costs, expenses, rates and charges of Contractor Group and third parties, resulting from the failure of Contractor Group to comply with the foregoing requirements.
- 3.8 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. 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.
- 3.9 When work is performed by Company's Other Contractors at a Site at which Contractor is performing Work, Contractor shall:
- (a) afford Company and Company's Other Contractors reasonable opportunity to introduce and store their products and use their construction machinery and equipment to execute their work;
 - (b) co-ordinate and schedule the Work with the work of Company's Other Contractors;
 - (c) participate with Company's Other Contractors and Engineer in reviewing their construction schedules when directed to do so;
 - (d) where part of the Work is affected by or depends upon for its proper execution the work of Company's Other Contractors, promptly report to Engineer in writing and prior to proceeding with that part of the Work, any apparent deficiencies in such work (failure by Contractor to so report will constitute a waiver of claims against Company by reason of the deficiencies in the work of Company's Other Contractors except for those deficiencies not then reasonably discoverable); and
 - (e) comply with the requirements of **Article 30**;
- provided that if the acts of Company's Other Contractors are impeding the performance of the Work and as a result impacts the Contract Price or a Milestone Date then Contractor may proceed in accordance with **Articles 14.7** or **14.8**.
- 3.10 At Company's option, Contractor shall transfer all unused excess materials, if any, to Company at the completion of the Work or sell such excess materials and any amounts

realized from such sales shall be credited to Company as a deduction from the Contract Price.

- 3.11 Contractor shall direct and supervise the Work effectively to ensure conformity with the Agreement. Contractor will have sole responsibility for construction and installation means, methods, techniques, sequences and procedures and for coordinating the various parts of the Work under this Agreement.
- 3.12 Contractor will have the sole responsibility for the design, erection, operation, maintenance and removal of temporary supports, structures and facilities and the design and execution of construction methods required in their use.
- 3.13 Contractor will engage and pay for registered professional engineering personnel skilled in the appropriate disciplines to perform those functions referred to in **Articles 3.1(e)** and **3.12** where required by Applicable Laws or by the Agreement and in all cases where such temporary supports, structures and facilities and their method of construction are of such a nature that professional engineering skill is required to produce safe and satisfactory results.
- 3.14 Contractor Group will confine construction machinery and equipment, storage of products and operations of Contractor Group Personnel to limits indicated by Applicable Laws, permits or the Agreement and will not unreasonably encumber the Work with products, materials, or equipment.
- 3.15 Contractor will not load or permit to be loaded any part of the Work with a weight or force that will endanger the safety of Persons or the Work. Contractor shall be responsible for all aspects of lifting activities for the performance of the Work unless otherwise stated in Exhibit 1 – Scope of Work.
- 3.16 Where the Work and work of Company's Other Contractors is to be joined, connected, incorporated or merged, Contractor will do the cutting and remedial work required to make the several parts of the Work and the work performed by Company's Other Contractors come together properly. Contractor is responsible for:
- (a) the integration of the Work with existing work or on-going work being carried out by Company's Other Contractors;
 - (b) coordinating the Work to ensure that this requirement is kept to a minimum;
 - (c) performing any cutting and remedial work in a manner to neither damage nor endanger the Work.
- 3.17 Contractor will maintain the Work in a tidy condition and free from accumulation of waste products and debris, other than that caused by Company, Company's Other Contractors or their Personnel.
- 3.18 Contractor will remove waste products and debris, other than that resulting from the work of Company, Company's Other Contractors or their Personnel, and will leave the Work clean

and suitable for use by Company before attainment of Substantial Completion. Contractor will remove products, tools, construction machinery and equipment not required for the performance of the remaining Work.

- 3.19 Prior to application for a Final Completion Certificate for payment, Contractor will remove all products, tools, construction machinery and equipment and waste products and debris, other than that resulting from the work of Company, Company's Other Contractors or their Personnel.
- 3.20 Contractor shall provide and pay for labour, products, tools, construction machinery and equipment, water, heat, light, power, transportation and other facilities and services necessary for the performance of the Work unless expressly stated in Exhibit 1 – Scope of Work that one or more of such items is to be provided by Company.
- 3.21 Subject to a Change to the Milestone Schedule made pursuant to **Article 14**, Contractor agrees to:
- (a) commence on or before the start date for each Milestone in Exhibit 9 – Schedule;
 - (b) complete the Work for each Milestone by the date specified for each Milestone in Exhibit 9 - Schedule;
 - (c) complete the Work on or before the date for Final Completion for the Work set out in Exhibit 9 – Schedule; and
 - (d) take all measures and act diligently in order that Contractor Group may timely comply with the duties and obligations imposed on Contractor under this Agreement.
- 3.22 Except as expressly provided in this Agreement, Contractor shall bear all costs, risk and liability in relation to the planning, procuring, construction, commissioning and completion of the Work including risk in delay, cost overruns and third party claims.
- 3.23 Contractor shall cause to be documented any archaeological finds located in or under the Worksites. Any artefacts exposed and/or recovered as a result of the excavation of a Site shall, as between Contractor and Company, become the property of Company.

ARTICLE 4 REPORTING AND MEETINGS

- 4.1 Contractor shall attend and participate in the meetings described in Exhibit 3 – Coordination Procedures and shall ensure, unless otherwise required by Engineer, that all relevant Subcontractors shall also attend when the subject matter of the meeting involves, relates to or impacts Subcontract work of that Subcontractor.
- 4.2 Contractor shall prepare and deliver to Engineer the progress and other reports set out in Exhibit 3 – Coordination Procedures.

- 4.3 Contractor agrees that Contractor's submission of a progress or other report is for Company's information only, and Company's receipt of such reports shall not bind Company in any manner. Company's receipt of a progress or other report shall not imply that Company:
- (a) approves Contractor 's Construction Schedule;
 - (b) agrees that Contractor has the capacity or ability to complete the Work in accordance with the Construction Schedule;
 - (c) agrees that the Work can or will be completed in accordance with Exhibit 9 – Schedule;
 - (d) consents to any changes in scheduling or agrees to any extension of time;
 - (e) has been given Notice of any thing for which Notice is required under this Agreement; or
 - (f) waives any of the terms or conditions of this Agreement.
- 4.4 Contractor shall also attend any meeting which may be required by Company, acting reasonably, from time to time in connection with the Work, provided that Contractor has had at least twenty-four (24) hours notice of such meeting. Company and Engineer shall have the right of direct access to Contractor Personnel responsible for the functions of planning, constructing, commissioning, and environmental management.
- 4.5 Contractor shall inform Engineer in a timely manner of:
- (a) all emergencies;
 - (b) the status of the Approval processes;
 - (c) the occurrence of all uncontrollable material events; and
 - (d) any other significant information as would be expected under customary and prudent business practices given the nature of the Work.

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, 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. In such circumstances, Contractor shall assume, indemnify and save Company harmless for all liabilities associated with the retention of such other contractors.
- 5.2 Contractor shall ensure that throughout the Term each of Contractor's Personnel has the qualifications, training and experience, and holds valid licenses and certifications necessary to carry out assigned duties in the performance of the Work (including visas and work

permits). 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 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;
 - (b) shall notify Company in writing of the occurrence of or threat of any labour dispute involving Contractor's Personnel;
 - (c) 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;
 - (d) supervise the performance of the Work;
 - (e) have the authority to commit Contractor to any course of action consistent with Contractor's rights and obligations under this Agreement; and
 - (f) 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. 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).

- 5.8 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, including Claims by third parties and Company's Other Contractors, and against any damage to Company Group property arising from any act or omission by Contractor's Personnel.

ARTICLE 6 SUBCONTRACTS

- 6.1 Subject to **Articles 6.2** and **6.3**, Contractor may enter into Subcontracts for the performance of its obligations as set out in this Agreement provided, however, that Contractor shall not be relieved of any of its obligations to Company as set forth in this Agreement.
- 6.2 Contractor shall not Subcontract the whole of the Work and shall not Subcontract the performance of any portion of the Work, or its obligations under this Agreement, 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 Contractor agrees that:
- (a) each Subcontract shall be in writing, in form and substance satisfactory to Engineer;
 - (b) upon written request by Engineer, Contractor shall deliver to Engineer a copy of the executed Subcontract (which may omit pricing details only);
 - (c) no Subcontract shall be amended, varied or terminated without the prior Acceptance of Engineer provided, however, Engineer's Acceptance is not required for amendments or variations which impact on the Work but which do not cause the Work to vary from the Technical Requirements;
 - (d) for any Subcontract delivered to Engineer, Contractor shall deliver to Engineer a copy of all amendments or variations to the Subcontract forthwith upon execution thereof; and
 - (e) Contractor shall obtain or cause to be obtained from each Subcontractor a consent by such Subcontractor permitting the assignment to Company of the Subcontract.
- 6.5 Contractor will preserve and protect the rights of Company under this Agreement with respect to work to be performed under Subcontract and will:

- (a) incorporate the terms and conditions of the Agreement into all contracts or written agreements with Subcontractors; and
 - (b) be as fully responsible to Company for acts and omissions of Subcontractors and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by Contractor.
- 6.6 Company may, in Company's sole discretion, at any time object to the use of a Subcontractor and require Contractor to employ another Subcontractor.
- 6.7 Company may provide to a Subcontractor information as to the percentage of such Subcontractor's work which has been certified for payment.
- 6.8 Contractor shall be responsible for all acts, defaults, and neglects whether occurring in relation to workmanship under contract, tort or statute of any Subcontractor, agent, servant, supplier, manufacturer and/or workman employed, retained or used by Contractor as fully as if they were acts, defaults or neglects of Contractor directly.
- 6.9 Contractor will maintain good order and discipline among Contractor Group and their respective Personnel or agents engaged on the Work and will not employ on the Work anyone not skilled in the tasks assigned.
- 6.10 Nothing contained in this Agreement will create any contractual relationship between or among:
- (a) Company and any Subcontractor, and any agent, employee and consultant thereof, or any other Person performing any of the Work;
 - (b) Company and any design or engineering consultant retained or hired by Contractor Group or their agent, employee or other person performing any of the Work.
- 6.11 Contractor shall immediately upon receipt of notice of any claim by any member of Contractor Group for a lien under the *Mechanics' Lien Act*, R.S.N.L. 1990, c.M-3, or otherwise, affecting or purporting to affect the Work, the LCP or the Site:
- (a) give Notice to Company; and
 - (b) take or cause to be taken on behalf of Company such measures as shall be necessary to procure the discharge thereof, including legal proceedings, if required.

However, in the event of a bona fide dispute with the lien claimant as to the validity of any claim for such lien, Contractor, subject to the Approval of Company, shall defend on behalf of Company, after first taking such steps on behalf of Company as may be necessary to remove all registrations in connection with such lien from title to the Work, the LCP and the Worksites, and shall indemnify Company pursuant to the provisions of **Article 21**. To the extent necessary to implement the foregoing, Company hereby authorizes Contractor to make such applications and to commence or participate in any legal or other proceedings in the name of Company as may be considered by Contractor to be necessary to perform the aforesaid obligations.

ARTICLE 7
PERFORMANCE SECURITY

- 7.1 Contractor shall deliver to Company on or before the Execution Date guarantees duly executed by Barnard Companies Inc. and Pennecon Limited and in the form which is attached to and forms part of Exhibit 14 – Performance Security ("**Parent Guarantees**").
- 7.2 The Parent Guarantees required pursuant to **Article 7.1** shall provide that Barnard Companies Inc. and Pennecon Limited undertakes and guarantees that, if for any reason Contractor becomes unable or otherwise fails to carry out its obligations under this Agreement, Barnard Companies Inc. and Pennecon Limited shall provide such financial or other support as may be required by Company to ensure that all Contractor's obligations under this Agreement continue to be fulfilled.
- 7.3 Contractor shall deliver to Company on or before the Execution Date, a letter of credit or letters of credit issued by a bank listed in Schedule 1 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 Contract Price until a Final Completion Certificate has been issued pursuant to **Article 25.6**; and thereafter
 - (b) equal to five percent (5%) of the Contract Price during the warranty period set out in **Article 17**.
- 7.4 All costs and expenses incurred in relation to the establishment and maintenance of the Parent Guarantees and letters of credit described in this **Article 7** shall be included in the Contract Price.
- 7.5 Company may claim and have recourse to the Parent Guarantees or to the letters of credit, or in any combination, if Contractor has not performed its obligations in accordance with the Agreement or if Company otherwise has a Claim against Contractor.

ARTICLE 8
CONSTRUCTION SCHEDULE

- 8.1 Contractor shall prepare and maintain the schedules for the performance of the Work set out in Exhibit 3 – Coordination Procedures ("**Construction Schedule**").
- 8.2 Contractor represents and warrants to and in favour of Company that the Construction Schedule:
- (a) includes all elements of the Work;
 - (b) is consistent with this Agreement;
 - (c) provides that each Milestone shall be achieved on or before the applicable date in Exhibit 9 – Schedule;

- (d) includes critical start and finish dates, critical milestones and commissioning periods for each element of the Work; and
 - (e) includes an appropriate allocation of time for completion of each item of Work.
- 8.3 The Construction Schedule shall be updated as necessary and in any event shall be updated by Contractor at least monthly and delivered to Engineer not more than seven (7) days after the end of the preceding month. Updates to the Construction Schedule shall comply with the requirements of this **Article 8** and the other terms of this Agreement.
- 8.4 Contractor shall use computer-based critical path methodology in maintaining and updating the Construction Schedule which shall estimate and schedule the time required to complete each element of the Work. The Construction Schedule shall, at all times, show all significant construction and related activities in support of all start dates and Milestone completion dates established under this Agreement, sufficiently detailed so that each of the following will be included and will be readily apparent:
- (a) the construction activities necessary to complete the Work;
 - (b) the dates for delivery of all material, machinery, equipment and fixtures forming part of the Work;
 - (c) Subcontractor interfaces and requirements; and
 - (d) Milestone completion dates, which shall include allowances for normal delays and difficulties that may be encountered in work of this nature, including weather and holidays.

ARTICLE 9 CONSTRUCTION SUPERVISION

- 9.1 Contractor will be solely responsible for construction safety at the Worksites and for compliance with the rules, regulations and practices required by the applicable construction health and safety legislation and will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work.
- 9.2 Unless otherwise agreed in writing by Company, Contractor shall carry out or arrange for security for the Worksites and establish sufficient lighting and sign posting sufficient to ensure protection against damage or injury to persons or to the Work.
- 9.3 Contractor shall be responsible for all costs related to safety measures necessary for the prevention of accidents, the occupation of land, traffic, access to adjacent properties and the observation of all health and safety requirements under the Applicable Law.
- 9.4 Contractor will employ a competent Project Manager, site supervisor and necessary assistants. The site supervisor and necessary assistants will be in attendance at the Worksites while Work is being performed. The Project Manager or site supervisor will not be changed except for valid reason and only then with the prior Approval of Company.



Company will be entitled by Notice to Contractor to object to any representative or person employed by Contractor (including persons other than Contractor's supervisor) in the execution of the Work who, in the opinion of Company, misconducts himself or herself is incompetent or negligent, and Contractor shall remove such person from the Work.

- 9.5 The Project Manager will represent Contractor generally and the site supervisor will represent Contractor at the Site. Instructions and notices given by Company to the Project Manager or to the site supervisor at the Site will be deemed received by Contractor.
- 9.6 For the purposes of the Applicable Laws, Contractor will be deemed to have control and management of the Worksites.

ARTICLE 10
COMPANY'S OBLIGATIONS AND RIGHTS

- 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. Contractor acknowledges and agrees that Company makes no representations or warranties in relation to the fullness or accuracy of such instructions or information.
- 10.3 Company shall obtain all authorizations, permits and licenses required by Applicable Laws for the performance of the Work and which are required 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 shall at all times during the Term have access to Contractor's Items and Worksites and may without limitation monitor the performance of the Work.
- 10.6 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.
- 10.7 Company may change the Company Representative at any time at its sole discretion by Notice to Contractor.
- 10.8 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 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 and shall indemnify Company against any loss or damage.

- 10.9 Company has the right to award contracts in connection with the LCP to Company's Other Contractors.

**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 removed from the Worksite by Contractor and replaced with Contractor's Items Acceptable to Engineer 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 Engineer has issued drawings marked "issued for construction" for the part of the Work to be performed.
- 11.7 Engineer shall notify Contractor when the Site is available for permanent installation of any equipment, materials or products as part of the Work, and Contractor shall not commence any Work at the Site until such notification has been given.



- 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 any services which have not been Approved by Company prior to delivery of such goods or prior to performance of such services.
- 12.2 Within thirty (30) days of the Execution 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 this **Article 12** shall hereinafter 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 responsible for 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.

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- (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 On receipt of a Payment Certificate, Engineer shall review it and the associated supporting Billing Information. 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 address invoices to:
- Muskrat Falls Corporation
CH0009 – Construction of North and South Dams
350 Torbay Road Plaza, Suite No. 2
St. John's, NL

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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 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)** 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 **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) Notwithstanding the foregoing, if Engineer disputes any item charged in any invoice, Engineer shall notify Contractor of the disputed item specifying the reason therefor. 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.
 - (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 For the purposes of the *Mechanics' Lien Act*, R.S.N.L 1990, c.M-3:

- (a) prior to the first payment by Company to Contractor under this Agreement, Contractor shall provide Company with a Holdback Release Bond in the form in Exhibit 14 – Performance Security from a surety acceptable to Company that secures Company for all Company's obligations with respect to holdback funds under the *Mechanics' Lien Act*, R.S.N.L 1990, c.M-3; and
- (b) the Holdback Release Bond described in **Article 12.16(a)** shall remain in place and be effective until the later of forty-five (45) days from the date of Final Completion shown on the Final Completion Certificate or all liens registered against Company property in respect of the Work have been vacated by order of a Court.

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; 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 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 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 this Article on the amount of any claim settled pursuant to **Article 29** 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 **Articles 12.21** and **12.22**, 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 808345920 RT0001.
- 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 pay all Tax and shall use its best efforts to ensure payment by Subcontractors of all Tax

which may be lawfully assessed upon Contractor or any Subcontractor by any Authority having jurisdiction over Contractor, Subcontractor 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 Taxes which Contractor or Company is obliged pursuant to Applicable Laws to pay and does pay, for the purchase, sale, importation and exportation of the Work, or Contractor's Items, or personal property of any member of Contractor Group. Except as otherwise expressly provided herein, Contractor 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 all Taxes payable in respect of all such importations.
- 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 Approval 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 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 CHANGES IN THE WORK

- 14.1 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. Contractor shall implement all Changes required by Company. Compensation for a Change shall be determined in accordance with Exhibit 2 – Compensation and Exhibit 3 – Coordination Procedures.
- 14.2 Except as provided for in **Article 14.8**, 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.
- 14.3 Contractor shall commence with and shall execute all Changes with all due diligence immediately upon receipt of a Change Order issued by Company.

- 14.4 Contractor shall comply with the requirements of Exhibit 3 – Coordination Procedures in the development of the pricing, impacts on resources and schedule as it relates to a Change and present a comprehensive proposal covering the Change to Company for Approval.
- 14.5 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**.
- 14.6 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 either Party may give a Notice of the Dispute which will be handled in accordance with **Article 29** but in no case shall the price of any Change exceed an amount determined in accordance with **Article 14.10**.
- 14.7 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.
- 14.8 If Contractor considers that an occurrence has taken place which constitutes a Change, then Contractor shall, within ten (10) Business Days of the occurrence, 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 29**.
- If Contractor fails to comply with the conditions of this **Article 14.8**, 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.
- 14.9 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.
- 14.10 The adjustment in the Contract Price for a Change 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 14.11** and **14.12(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;

- (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 twelve percent (12%) 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.

14.11 Contractor shall keep and present in such form as Company may require an itemized accounting of the cost of expenditures and savings referred to in **Article 14.10** together with supporting data. The cost of performing the work attributable to 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 in the direct employ of Contractor under applicable collective bargaining agreements;
- (b) the cost (including cost of transportation) of all equipment, material 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 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.

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- 14.12 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.
- 14.13 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.
- 14.14 If there is a change in Applicable Laws which makes modifications to the Work necessary or advisable, Company shall advise Contractor of the change in Applicable Law and shall present to Contractor a proposal for such modifications required as a result of the change in Applicable Law. On receipt of such proposal, 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 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.

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- 15.4 Engineer, on behalf of Company, shall Accept Contractor's plans required by **Articles 15.2** and **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 **Articles 15.2** and **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**. During such period of suspension, Contractor shall not demobilize from the 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 Agreement, which audits and inspections may be performed by Engineer or such other third party as Company may direct.
- 15.10 Notwithstanding **Article 38.6**, 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 Sites;
- (b) handle, dispose and/or cleanup those hazardous substances disposed of or discharged on the Worksites 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 during Contractor's performance of the Work to prevent or mitigate any environmental damage that may result from any pollution, seepage or discharge or escape of pollutants, debris and hazardous substances which could be or has been caused by 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 a Site; or
- (b) has reasonable grounds to believe that hazardous substances are present in or on or under any of the Worksites 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 injured 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 as a result thereof.

**ARTICLE 16
ACCESS, INSPECTION, TESTING, AUDIT**

16.1 Contractor shall:

- (a) keep one copy of the current Agreement, submittals, reports, construction documents (including working plans or drawings, "issued for construction" drawings,

Technical Specifications and shop drawings) and records of meetings at the Worksites, in good order and available for inspection by Company and Engineer; and

- (b) 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, 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 and general contract compliance.

16.2 Company Group may:

- (a) at any time, without notice, have access to all Work being conducted on the Worksites;
- (b) upon reasonable notice, have access to any and all other premises where Contractor or any Subcontractor carries on any activity in any way relating to the Work, the LCP or this Agreement or where any test results, samples, books, records, accounts and documents are kept relating to the Work or this Agreement; and
- (c) upon reasonable notice, have access to such test results, samples, books, records, accounts and documents and be authorized to examine and make copies, including electronic copies, of all such test results, samples, books, records and documents 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.

16.3 Notification of any claims made or discrepancies disclosed by an 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.

16.4 Contractor shall not be reimbursed for any costs it may incur as a result of Company conducting an audit pursuant to this **Article 16**. 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.

16.5 Contractor shall provide, and shall cause the Subcontractors to provide, Company and Engineer with all requested information and documentation with respect to the Work and this Agreement, and access thereto on a timely basis.

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- 16.6 Company's rights of access, inspection, testing and audit pursuant to this Agreement shall expire seven (7) years after the satisfaction of all of the obligations of Contractor pursuant to this Agreement.
- 16.7 The existence or exercise by Company or Engineer of its rights of access, inspection and audit shall not in any manner reduce or limit the obligations and responsibilities of Contractor pursuant to this Agreement.
- 16.8 Contractor shall provide sufficient, safe and proper facilities at all times for the inspection and testing activities by Company Group and all inspection and testing activities by Authorities.
- 16.9 Contractor shall:
- (a) prepare and maintain at all times copies of all test results and samples and, in accordance with principles and practices satisfactory to Company, proper, accurate and complete books, records, accounts and documents in which fair and proper entries shall be made of all activities and transactions in respect of the Work and this Agreement;
 - (b) ensure that Company Group Personnel has access to such test results, samples, books, records, accounts and documents in accordance with **Article 16.2** in order that Company and Engineer may exercise rights of inspection and audit; and
 - (c) ensure that such test results, samples, books, records, accounts and documents shall not be destroyed until Company's rights of access, inspection and audit have expired or, if arbitration or Court proceedings to which such test results, samples, books, records, accounts and documents are relevant have been commenced, until such arbitration or Court proceedings have been finally concluded.
- 16.10 Company and Engineer shall each have the right at any time to conduct such on-site observations and inspections and such civil, structural, mechanical, electrical or other tests of the Work as Company or Engineer deem desirable to ascertain whether the Work complies with this Agreement. Company shall pay for any test, observation or inspection requested by Company, and the costs of such tests, observations or inspections (including the cost of any work reasonably necessary to restore any aspect of the Work to a condition or state that existed prior to the conduct of such test, observation or inspection) shall be borne by Company unless such test, observation or inspection reveals the failure of the Work to comply with this Agreement, in which event Contractor shall correct the Work and reimburse Company for the costs of such tests, observations and inspections.
- 16.11 Contractor shall give Engineer reasonable notice of its schedule with respect to inspections or testing of the Work in progress prior to its covering or completion, which notice shall be sufficient to afford Engineer a reasonable opportunity to conduct a full inspection of such Work.

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- 16.12 Contractor shall, at Engineer's request, take apart or uncover for inspection or testing any previously covered or completed Work. The cost of uncovering, taking apart or replacing such Work shall be borne as follows:
- (a) by Contractor, if such observation or test reveals that the Work does not comply with this Agreement; or
 - (b) by Company, if such observation or test reveals that the Work complies with this Agreement.
- 16.13 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.

ARTICLE 17
WARRANTY

- 17.1 Contractor agrees that, for a period of one (1) years following the date of Final Completion shown on the Final Completion Certificate, 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 one (1) 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 Company shall notify Contractor of any Defects in the Work or any such failure in respect of any item of Work as soon as practicable after Company becomes aware of them and shall stipulate a reasonable period of time within which the Defect or failure is to be rectified. Contractor shall rectify any such Defect or any such failure within the time stipulated therein. Notice of any Defect discovered during the period set out in **Article 17.1** must be given to Contractor no more than sixty (60) days after the end of the period in **Article 17.1**.
- 17.4 Contractor shall secure for the benefit of Company, written warranties from the Subcontractors who provide or cause to be provided equipment, materials and/or systems which warranties shall include the terms set forth in **Article 17.2**.
- 17.5 Contractor will correct or pay for damage resulting from corrections made under the requirements of **Article 17**.



- 17.6 No payment by Company under this Agreement nor partial or entire use or occupancy of the Work by Company shall constitute an Approval of any portion of the Work which is not in accordance with this Agreement or a waiver by Company of any of the requirements of this Agreement.
- 17.7 Nothing in this Article shall be construed so as to prejudice, restrict, limit, waive or otherwise diminish the rights and remedies of Company at law with respect to latent Defects. Without limiting the foregoing, nothing in this Article shall be construed so as to restrict, limit, waive or otherwise diminish Contractor's warranty of adequacy of the Work and Contractor guarantees that:
- (a) all material will be new and free from Defects;
 - (b) all Work will be of a good and workmanlike quality;
 - (c) 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 this Agreement, and where no purpose is specified, fit for its intended use; and
 - (d) the Work shall be free from Defects, including latent Defects.
- 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.

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 Execution Date, whichever is earlier, Contractor shall submit to Company certificates of insurance or such other documentation as Company may 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, with limits not less than those specified below, covering property and liability

outside the scope of insurance supplied by Company pursuant to **Article 20.1**. 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) covering each employee engaged in the Work.

(c) Commercial General Liability

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 contractual liability, sudden and accidental pollution liability for risks assumed by Contractor, 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 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/or non-owned aircraft liability insurance with a combined single limit of not less than Canadian ten million dollars (\$10,000,000.00).

(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.

(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 certified copies of such Subcontractor insurance policies or such other evidence of insurance acceptable in form and content to Company acting reasonably. Contractor Group shall not perform the Work during any period when any required policy of insurance is not in effect.

(i) Other

In addition to the insurance coverage specified above, 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 directed by Company with regard to liabilities assumed under the Agreement or in respect of specific activities performed for the Work.

- 18.4 All insurance policies required to be obtained by Contractor in accordance with **Article 18.3** 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 20.1**, all insurance policies obtained by Contractor shall operate as primary to any insurance policies maintained by Company and their Personnel, stockholders, successors, assigns and Affiliates.

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- 18.5 All policies obtained by Contractor in accordance with **Article 18.3** shall be further endorsed to provide Company thirty (30) days prior Notice of cancellation or any material change in coverage.
- 18.6 Company may reduce or waive all or any portion of Contractor's insurance requirements under this **Article 18** 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.
- 18.7 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.
- 18.8 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.

ARTICLE 19
WORKERS' COMPENSATION

- 19.1 Prior to the commencement of any Work, Contractor and all Subcontractors shall provide written confirmation to Engineer from the WHSCC of compliance with or exemption from workers' compensation requirements and confirmation that all required assessments that are due and payable have been paid.
- 19.2 Upon completion of Subcontract work, each Subcontractor shall deliver to Engineer a clearance certificate from the WHSCC.
- 19.3 Upon completion of the Work, Contractor shall deliver to Engineer a clearance certificate from the WHSCC and all Subcontractors which have not previously provided evidence of compliance with **Article 19.2** shall deliver to Engineer a clearance certificate from the WHSCC.
- 19.4 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.

ARTICLE 20
PROJECT INSURANCE

- 20.1 The following insurance coverages shall be procured by Company. Policies 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 All insurance policies required by **Article 20.1** 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 Personnel, stockholders, successors, assigns and Affiliates; and
 - (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.
- 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 this **Article 20** 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 issuance of the Final Completion Certificate as set out in the policy.

ARTICLE 21
INDEMNITY

- 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 defend, indemnify, keep indemnified and shall hold Contractor harmless from and against any and all Claims by a third party 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 of any of the obligations of Company under this Agreement.
- 21.5 Contractor shall defend, indemnify, keep indemnified 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:
- (a) any negligent act or omission or wilful misconduct of Contractor Group or any licensee, invitee or Person acting on behalf of any of them in connection with or incidental to the performance of or default in any of Contractor's obligations under this Agreement;
 - (b) any inaccuracy in any representation or warranty made by Contractor Group, the guarantors or any other Person that delivers to Company any document, or security instrument containing any such representation or warranty pursuant to this Agreement;
 - (c) 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;

- (d) any Claims by any third party in contract, tort, under any statute or otherwise at law or in equity with respect to any injury, damages, losses, costs, and expenses arising out of a breach of contract or negligent actions or omissions or wilful misconduct of Contractor Group or any invitee, licensee or Person acting on behalf of any of them in connection with or incidental to the Work;
- (e) 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 the Agreement;
- (f) 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;
- (g) any Claim in respect of loss or damage to the property of Contractor Group however caused unless the Claim was caused by the sole negligence or wilful act or omission by Company;
- (h) any Claims in respect of personal injury or death of Contractor's Personnel however caused and regardless of whether or not the Claim was caused by negligence, breach of agreement or breach of duty; or
- (i) any representation or holding out by Contractor that it is an agent of Company.

21.6 Contractor shall include in all of its Subcontracts, a provision stating that Subcontractors shall defend, protect, release, indemnify and hold Company harmless from and against all Claims for the death of or bodily injury to 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 sole 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, and for damage to or loss of property of third parties arising from or in connection with the performance, non-performance or purported performance of the Work except to the extent caused by or contributed to by the negligence of Company 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 The liability and indemnities specified in this **Article 21** shall apply:

- (a) 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 asserted to have arisen by virtue of tort, contract, quasi-contract, statutory duty, or any Applicable Laws;
- (c) 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-indemnifying Party**") shall forthwith 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 During the period commencing at the time that Contractor has possession of, or control over, Work in which title has vested in Company, 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 Neither Party shall have any responsibility and shall not be liable under this Agreement to the other Party for any indirect or consequential damages or losses, including and whether or not the following are determined in any proceeding to be direct damages, any Claim in respect of loss of profit, loss of revenue, business interruption, loss of use, loss of opportunity, loss of goodwill, cost of capital, cost of replacement power, whether foreseeable or not, resulting from, arising out of or in connection with the performance or non-performance of any obligation pursuant to this Agreement howsoever caused, provided however, for clarity, that the limitation in this **Article 21.14** shall not apply in respect of Claims by third parties that are not part of the Company Group or the Contractor Group.

ARTICLE 22
SITE AND TRANSPORT 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 a 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 and materials for use at a Site. 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 transport of all equipment and materials for the Work.
- 22.4 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 Exhibit 9 – 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.
- 22.5 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 a Site. Contractor shall also obtain, at Contractor's cost, any additional facilities outside a Site which Contractor may require for purposes of Work.
- 22.6 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.
- 22.7 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
SUBSURFACE CONDITIONS

- 23.1 If, during the course of the Work, Contractor encounters unforeseen geological or geotechnical conditions, including ground water, which it believes may impact upon its ability to complete the Work by the dates specified in Exhibit 9 – Schedule, Contractor shall immediately provide notice in writing to Engineer, which notice shall contain such information as is reasonably available to Contractor at that time relating to the nature of the unforeseen geological or geotechnical conditions.
- 23.2 Within ten (10) Business days of a notice delivered pursuant to **Article 23.1**, Contractor shall determine the length of the delay resulting solely and directly from the unforeseen geological or geotechnical conditions, if any, and Contractor shall prepare and deliver to Engineer for Acceptance a revised Construction Schedule showing the impact thereof.
- 23.3 Contractor agrees that the Construction Schedule and timing of any Payment Milestone may be adjusted by Engineer to reflect the time by which Contractor is solely and directly delayed or prevented from proceeding with the Work as a result of unforeseen geological or geotechnical conditions.
- 23.4 If Contractor disputes Engineer's decision regarding the delay, it may give a Notice of Dispute respect to the matter and thereafter refer the matter for resolution pursuant to the Dispute resolution procedures in **Article 29**.
- 23.5 Contractor shall at all times use all reasonable efforts and take all reasonable steps as may be required to eliminate or mitigate the impact on the Construction Schedule due to unforeseen geological, groundwater or geotechnical conditions.
- 23.6 To the extent unforeseen geological or geotechnical conditions may constitute a Change, the provisions of **Article 14** shall apply.

ARTICLE 24
DEFAULT AND TERMINATION

- 24.1 The following events shall constitute defaults by Contractor:
- (a) if Contractor does not properly prosecute the Work or fails in the performance or observance of any of its obligations under this Agreement and such failure has a material adverse effect on Company or the Work except to the extent that the failure in performance or observance is excused by reason of Force Majeure; or
 - (b) if any representation or warranty made by Contractor herein or in any certificate, statement or document given pursuant to the terms thereof shall prove to be false or intentionally misleading in any material respect as of the date on which it was made, and any material adverse consequences to Company directly caused thereby shall have not been remedied within five (5) days after Notice thereof shall have been given to Contractor by Company; or



- (c) if Contractor fails to make prompt payment when due to any Subcontractor or supplier except to the extent that such payments are being contested through mediation, arbitration or litigation; or
- (d) if Contractor fails to comply with the Applicable Laws and such failure has a material adverse effect on the Work, this Agreement or the interests of Company therein; or
- (e) if Contractor has made an assignment of this Agreement without the Approval of Company; or
- (f) if there is an abandonment of the Work or any part thereof; or
- (g) if the Work is discontinued or ceases for a single continuous period of seven (7) days or more, unless contemplated by the Construction Schedule or seasonal interruptions which are customary in the usual and ordinary course of the construction of the Work or without the prior Approval of Company (not to be unreasonably withheld); or
- (h) if there is an adverse departure from the Technical Requirements; or
- (i) if Contractor consents to an appointment of or the taking of possession by a receiver, trustee, custodian or liquidator of itself or of a substantial part of its property, or fails or admits in writing its inability to pay its debts generally as they become due or makes a general assignment for the benefit of creditors; or
- (j) if Contractor files a petition in bankruptcy or seeks reorganization and a proceeding under any applicable bankruptcy or insolvency law (as may now or hereafter come into effect) or seeks relief by voluntary petition under the provisions of any existing or future bankruptcy or insolvency or other laws providing for the liquidation, reorganization or winding-up of corporations or form of agreement of extension or adjustment with its creditors; or
- (k) except as stated in **Article 24.1(j)**, if Contractor has a substantial part of its properties made subject to the appointment of a receiver, trustee, liquidator or custodian by Court order and such order shall remain in effect for more than five (5) days or Contractor is declared bankrupt or insolvent or has any property sequestered by a Court order and such order shall remain in undisputed effect for a period of more than fourteen (14) days; or
- (l) Contractor fails to procure or maintain the Parent Guarantees and/or the letter of credit or letters of credit in accordance with **Article 7** or fails to procure or maintain the Holdback Release Bond.

24.2 In the event of a default by Contractor (other than a default as described in **Articles 24.1(i), 24.1(j), 24.1(k)** and **24.1(l)** or another default which Company considers may cause irreparable harm to any member of Company Group or the LCP), Company shall give a Notice of the default to Contractor and the surety. Contractor shall remedy the default to the satisfaction of Company within fourteen (14) days of receipt of such Notice or, if such default cannot reasonably be remedied within such fourteen (14) day period, Contractor

shall promptly begin to remedy the default within the fourteen (14) day period and thereafter diligently prosecute to conclusion all acts necessary to remedy the default.

- 24.3 On the occurrence of a default by Contractor as described in **Articles 24.1(i), 24.1(j), 24.1(k) and 24.1(l)** or another default which Company considers may cause irreparable harm to any member of Company Group or to the LCP, Company may elect to terminate this Agreement and, if Company so elects, shall give Contractor two (2) days' Notice of such termination. Contractor shall have no right to dispute the termination. On such termination Contractor shall cease all Work.
- 24.4 If Contractor fails to remedy a default, in accordance with **Article 24.2**, Company shall have the right, at its election, to exercise any or all of the following remedies:
- (a) terminate in whole or in part, the rights or obligations of Contractor under this Agreement;
 - (b) take possession of the Work and Worksites and, subject to **Article 24.8**, finish the Work by whatever method Company deems expedient;
 - (c) remedy or cause to be remedied the default;
 - (d) require the Contractor's parent companies to perform under the Parent Guarantees;
 - (e) require the performance of the Work to be stopped (in whole or in part); and
 - (f) bring any proceedings in the nature of specific performance, injunction, or other equitable remedy, it being acknowledged that damages at law may be an inadequate remedy for default by Contractor under this Agreement.
- 24.5 This Agreement shall not be construed as limiting Company's rights or remedies at law or in equity and any such rights or remedies of Company whether at law or in equity or under this Agreement:
- (a) may be exercised individually or together with any one or more of its other rights or remedies and as often or in such order as Company deems expedient; and
 - (b) are cumulative and are in addition to and not in substitution for any other rights and remedies.
- 24.6 All costs of Company relating to or arising out of the lawful exercise by Company of any of its remedies:
- (a) shall constitute a debt by Contractor to Company which shall immediately become due and payable;
 - (b) shall bear interest at the three (3) month Treasury Bill rate, as published by the Bank of Canada for the period in question, until payment is made;
 - (c) may be deducted by Company from the Contract Price; and
 - (d) failing payment by Contractor, shall be paid by the surety or sureties under the Holdback Release Bonds.

- 24.7 Notwithstanding anything to the contrary contained in this Agreement, if in the reasonable opinion of Company there is a real or apprehended danger of material injury or damage to Persons, property or the environment arising out of or in connection with any matter, state, condition or thing relating to the Work, whether as a result of a breach by Contractor of this Agreement or otherwise, Company may, without notice and without prejudice to other remedies (but without obligation to do so), rectify any such matter, state, condition or thing, in which event Contractor shall be responsible for all costs incurred by Company in connection therewith. Company shall forthwith advise Contractor of any action Company takes in reliance on this **Article 24.7**.
- 24.8 Where Company has, pursuant to **Article 24.3** or **Article 24.4(a)** terminated the rights or obligations of Contractor under this Agreement, Company shall, within thirty (30) days of the termination, advise Contractor as to whether or not Company shall complete or cause the Work to be completed. If Company elects to complete or cause the Work to be completed, Company shall use reasonable efforts to ensure that the Work is completed in a cost efficient and timely manner and shall cause the Work to be completed in accordance with this Agreement.
- 24.9 If Company elects to complete the Work (or cause the Work to be completed), Company is not obliged to pay Contractor for any Work in connection with the completion of the Work until the date of Final Completion, in which event the amount to be paid to Contractor will be the Contract Price for such Work less:
- (a) one hundred ten percent (110%) of the costs of completing the Work actually incurred by Company; and
 - (b) any amounts previously paid to Contractor on account of Work performed.
- 24.10 Company shall, as soon as practicable after the date of Final Completion, determine the total costs incurred and accrued in completing the Work including additional overhead and reasonable legal fees on a solicitor-client basis. If the total costs incurred by Company in completing the Work in accordance with the terms of this Agreement exceed the balance of the Contract Price unpaid at the time of delivery of the Default Notice, then Contractor shall be responsible and shall forthwith pay to Company the amount of such excess costs.
- 24.11 Notwithstanding any other provision of this Agreement, 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.
- 24.12 If Company terminates this Agreement pursuant to **Article 24.11** or pursuant to **Articles 24.3** or **24.4(a)** and Company elects not to complete the Work, Contractor is not entitled to further payment for any of the Work; provided however, Contractor is entitled to any amounts payable on account of Work it performed and to retain any amounts previously paid to Contractor on account of Work it performed.



- 24.13 Where Company has terminated the rights and obligations of Contractor under this Agreement, Contractor shall:
- (a) stop the performance of all Work and services hereunder except as may be necessary to carry out such termination;
 - (b) assign to Company, upon Company's request, all rights of Contractor under such of the Subcontracts entered into by Contractor in connection with this Agreement as Company may specify;
 - (c) terminate all Subcontracts as Company may specify in writing;
 - (d) provide to Company a detailed list of all tangible and intangible property relating in any way to the Work including all equipment, machinery, fixtures, supplies, designs, concepts, plans, drawings, specifications, schedules, models, samples, patents, technology leases, licenses, books and records;
 - (e) be deemed to have granted to Company for Company purposes a non-exclusive, perpetual license or other right to use any and all intellectual property, subject to the terms and conditions set forth in **Article 35.3**;
 - (f) deliver or cause to be delivered to Company executed copies of all Subcontracts and related agreements to which it is a party, and shall use its best efforts to deliver or cause to be delivered copies of all documents and agreements relating to the Work which are in the possession or control of any Subcontractors;
 - (g) deliver or cause to be delivered record drawings for the portion of the Work which has been completed to that date;
 - (h) remove from the Site all material, debris, equipment and supplies that have not been incorporated in the Work and that are designated in writing by Company to be so removed;
 - (i) do all such acts, execute and deliver to Company all such documents, conveyances, deeds, assignments, transfers, bills of sale, assurances and certificates and take all actions as may be required by Company to exercise its rights hereunder;
 - (j) quit the Site;
 - (k) surrender possession and control of the Site and the Work and deliver to Company or its nominee the Work (except those owned by third parties) free and clear of any and all security interests;
 - (l) provide Company with such evidence or assurances as Company may reasonably require that title to the Work is unencumbered, and indemnify Company in connection therewith as provided for in **Article 21**, including an indemnification for any outstanding actions, suits or proceedings;
 - (m) remove and dispose of such of the Work as is designated in writing by Company to be so removed and decommission or mothball the Work as reasonably required by Company; and



- (n) take any other action towards termination of the Work which Company shall request in writing.
- 24.14 Company and Contractor each agree that, upon the request of the other, it will do all such acts and execute all such further documents, conveyances, deeds, assignments, transfers, assurances, certificates and the like as may be necessary or desirable to effect the purpose of this **Article 24**, whether before or after this Agreement is terminated.
- 24.15 To the extent Contractor does not perform its obligations under **Articles 24.13, 24.14** or 35.3, Contractor hereby irrevocably nominates, constitutes and appoints Company as Contractor's true and lawful attorney in fact and agent for, in the name of and on behalf of Contractor to execute and deliver all such assignments, transfers, deeds, instruments, conveyances and other documents as may be necessary to give effect to the provisions of **Articles 35.3** and this **Article 24**, as the case may be. Such appointment and power of attorney, being coupled with an interest, shall not be revoked by the dissolution, winding-up, bankruptcy, insolvency or subsequently in the capacity of Contractor, and Contractor hereby ratifies and confirms and agrees to ratify and confirm all that Company may lawfully do or cause to be done by virtue of the provision hereof.

ARTICLE 25
SUBSTANTIAL AND FINAL COMPLETION

- 25.1 Substantial Completion 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 documents required in Exhibit 4 – Supplier Document Requirements List.
- (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 which have Defects.
- (d) Contractor has delivered to Engineer a certificate that, except of any Claims arising from Company's indemnity obligations pursuant to **Article 21.4**:
- (i) provides the details of 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) certifies that there are no such outstanding Claims.



- (e) Contractor has delivered to Engineer the latest available clearance certificate from the WHSCC that no assessments or other amounts are owing to the date therein specified.
 - (f) Contractor has removed all Contractor's Items, Contractor's Personnel, supplies, equipment, materials, rubbish and temporary facilities, except those reasonably required for completion of outstanding Punch List items, from the Worksite so that the Worksite is neat, clean and safe.
 - (g) Contractor shall have assigned to Company all representations, warranties, guarantees and obligations which Contractor received from Subcontractors, manufacturers or suppliers subject to Contractor's right to retain the benefit of all Subcontractors that Contractor requires to complete the Work.
 - (h) There being no liens filed or registered pursuant to the *Mechanics' Lien Act*, R.S.N.L. 1990, c.M-3 with respect to or arising from the Work at that time.
- 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 to the satisfaction of Engineer, 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 to the satisfaction of Engineer. 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 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.
- 25.4 Contractor's access to and continued presence at the Worksite after the date of Substantial Completion shall be for the sole 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.
- 25.5 Final Completion of the Work shall have occurred if and only if all of the following have occurred to the satisfaction of Engineer in accordance with this Agreement:
- (a) Substantial Completion shall have occurred and a Certificate of Substantial Completion has been issued;



- (b) all other outstanding obligations of Contractor under this Agreement have been fulfilled;
 - (c) Contractor shall have delivered the warranties from Subcontractors as referred to in **Article 17**;
 - (d) Contractor shall have delivered to Engineer electronic copies and reproducible hard copies of the record drawings for the Work; and
 - (e) all Punch List items have been remedied to the satisfaction of Engineer.
- 25.6 When Contractor believes the requirements of Final Completion have been satisfied, Contractor shall request by Notice a Final Completion Certificate. Such Notice shall contain a declaration by Contractor that all the requirements of Final Completion have been met. If all requirements of Final Completion have been met to the satisfaction of Engineer, the date of Final Completion shall be the later of (i) the date specified in Contractor's request, and (ii) the date when the requirements of Final Completion were met to the satisfaction of Engineer. Promptly after Final Completion has been achieved as provided above, Company shall issue a Final Completion Certificate to Contractor, which states the date of Final Completion.
- 25.7 By submission of the Notice to Company for confirmation that Contractor has fully performed all of the Work pursuant to **Article 25.6**, 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.
- 25.8 A Final Completion Certificate shall not be conclusive evidence of the value of the Work or that the Work is in accordance with the Agreement or that Contractor has performed all its obligations under the Agreement:
- (a) to the extent that fraud or dishonesty relates to or affects any matter dealt with in the Notice of Final Completion; or
 - (b) to the extent that any latent Defect is discovered.
- 25.9 Within forty-five (45) days following issuance of a Final Completion Certificate, Company shall pay the balance of the Contract Price for the Work, 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 to Company pursuant to the provisions of this Agreement; and
 - (d) any amounts required or permitted to be withheld by Company by Applicable Laws or this Agreement.
- 25.10 Within forty-five (45) days following issuance of a Final Completion Certificate, Company shall return to Contractor the Holdback Release Bond provided pursuant to **Article 12.16**, provided that:
- (a) Contractor delivers a certificate of one of its senior officers that all accounts for all Subcontracts and all other indebtedness which may have been incurred by Contractor in connection with the Work have been paid in full (except for amounts properly retained as a holdback or as an identified amount in dispute); and
 - (b) Contractor delivers a certificate that its Subcontractors have paid or discharged their obligations in connection with the performance of the Work referred to in the certificate which certificate shall have attached thereto such releases and waivers of liens which are in the possession of the Subcontractors as may reasonably be requested by Company in order to establish such payment or discharge; provided however that if a Subcontractor is unable to provide a certificate that a lien has been discharged, such Subcontractor or Contractor shall furnish a bond or other instrument acceptable to Company to indemnify Company against any such lien claim; and provided further that if any such lien claim remains unsatisfied after all payments are made, Contractor shall refund to Company all monies that Company may be compelled to pay in discharging such lien including reasonable legal fees on a solicitor-client basis; and
 - (c) there shall exist no event of default, or an event which, with the passage of time or the giving of notice or both would constitute an event of default as described in **Article 24**; and
 - (d) Contractor has delivered to Engineer evidence satisfactory to Engineer that Contractor and all Subcontractors engaged in the Work are then assessed with the WHSCC and that their respective accounts are current.

ARTICLE 26
TITLE AND RISK

- 26.1 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.
- 26.2 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. Title to any items free issued to Contractor by Company shall always remain vested in Company.

- 26.3 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.
- 26.4 Contractor shall cause the inclusion of terms consistent with the terms of **Articles 26.1, 26.2** and **26.3** in all Subcontracts so that Company and Contractor shall have the rights herein set forth with respect to each Subcontractor involved in the performance of the Work.
- 26.5 Subject to **Article 17**, 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 25.2**.
- 26.6 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.
- 26.7 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 shall apply except that the Warranty shall commence upon use of that part of the Work to which the Notice applies, notwithstanding the time for commencement in **Article 17.1**, and continue for the duration specified in **Article 17**; and
 - (c) Contractor shall not be relieved of its responsibilities and obligations under this Agreement.

ARTICLE 27 SUSPENSION

- 27.1 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.

- 27.2 Subject to **Articles 27.3** and **27.4**, Company shall reimburse Contractor its reasonable expenses (which Contractor shall use its best efforts to mitigate) incurred in compliance with any suspension order and associated reinstatement order (the "**Suspension Expenses**"). Any such Suspension Expenses are to be subject to audit in accordance with **Article 16**. In no event shall Contractor be entitled to any compensation for indirect or consequential losses, including lost profits and revenue, that may have resulted from such suspension or reinstatement order.
- 27.3 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.
- 27.4 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.
- 27.5 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.

ARTICLE 28 FORCE MAJEURE

- 28.1 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, major ice jam, flood, fire, storms in excess of a one in twenty (1 in 20) 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.



- 28.2 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 28** 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.
- 28.3 A Party may not rely upon the provisions of **Article 28.2**:
- (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;
 - (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; and
 - (c) to the extent that and for so long as there would be concurrent delay to Work resulting from pre-existing matters within the responsibility or obligation of Contractor under this Agreement.
- 28.4 Where Company claims Force Majeure and is entitled to rely upon the provisions of **Article 28.2**, 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 28.2**, then no compensation shall be payable to Contractor during the period that the Force Majeure occurrence continues to prevent performance by Contractor.
- 28.5 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 sixty (60) days or a consecutive period of more than thirty (30) 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 and reasonable demobilization costs incurred by the Contractor as a result of the termination).
- 28.6 A Force Majeure occurrence shall in no circumstances entitle Contractor to an increase in the Contract Price.
- 28.7 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 for each day such Force Majeure exceeds thirty (30) days 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 29
DISPUTE RESOLUTION

- 29.1 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.
- 29.2 Upon issuance of 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;
 - (b) If not resolved by senior project managers, the project sponsors or representative Vice Presidents for each of Company and Contractor shall meet within thirty (30) days following the meeting of the project managers; and
 - (c) If not resolved by project sponsors or representative Vice Presidents, the Chief Executive Officers for each of Company and Contractor shall meet within thirty (30) days following the meeting of the project sponsors or representative Vice Presidents.
- 29.3 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 take whatever action is deemed appropriate pursuant to this Agreement. For greater certainty, the Parties must comply with this **Article 29** before commencing any further action, legal or otherwise, with respect to a Dispute under this Agreement.
- 29.4 Notwithstanding that a matter or matters have been referred to be resolved by application of the Dispute resolution procedures in this **Article 29**, each of Company and Contractor shall, to the extent reasonably possible or unless advised in writing by Company to suspend or discontinue Work, continue to perform their obligations under this Agreement without interruption or delay and the continuation of such performance shall in no way amount to a waiver of, or in any way prejudice, positions taken by the Parties in the dispute being arbitrated under this Agreement. There shall be no extension to any date for completion of a Milestone by reason that a matter or matters have been referred to be resolved pursuant to the Dispute resolution procedures in this **Article 29**.

ARTICLE 30
LABOUR RELATIONS

- 30.1 Contractor acknowledges that some or all of Company's Other Contractors and their Subcontractors at a Worksite 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.



- 30.2 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 28.1(c)**, the existence of any labour disturbance relating to Contractor Personnel shall not relieve Contractor of its obligations under this Agreement.
- 30.3 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.
- 30.4 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.
- 30.5 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.
- 30.6 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;
 - (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) do not comply with **Article 2.14**.
 - (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.
- 30.7 Contractor shall ensure that all Subcontracts allow termination in each of the events set out in **Article 30.6**.

- 30.8 The sole cost and expense of preventing, avoiding or removing any of the matters or events giving rise to a labour disruption shall be borne by Contractor, who shall 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.
- 30.9 Except for strikes, labour disputes or industrial disputes referenced in **Article 28.1(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 31
CONFIDENTIALITY

- 31.1 The term "**Confidential Information**" shall mean all information and data, in whatever form, which Company provides to Contractor in connection with this Agreement (including events witnessed by Contractor Group in connection with the performance of the Work). 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.
- 31.2 Contractor shall not disclose Confidential Information (including photographs of activities of Company) to any third party nor use any Confidential Information without the Approval of Company. Notwithstanding the foregoing, Contractor may disclose Company's Confidential Information if required by Applicable Laws. Contractor shall promptly notify Company in advance of any such intended disclosure. Contractor shall adopt and follow precautionary measures with respect to Confidential Information to ensure that it is not disclosed to third parties by any of Contractor Group, without the Approval of Company. Any Approval given by Company shall apply only to the specific request for Approval made by Contractor.
- 31.3 Company may disclose information received by Contractor to Company's Affiliates, Engineer and the directors, officers, employees, contractors, subcontractors, legal counsel, consultants and advisors of the foregoing to whom disclosure is required to enable Company to perform its obligations hereunder or to any other Person if such disclosure is required by Applicable Laws, provided Company has taken such reasonable and necessary



precautions to prevent any of the foregoing parties from disclosing such information to any third party. Company may disclose such necessary Contractor's information to Company's bankers and to financial institutions from whom Company may seek financing for the LCP.

- 31.4 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. 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.
- 31.5 If Contractor discloses Confidential Information to its Personnel, Contractor shall ensure that any such Personnel are informed of the confidential nature of the information disclosed and that such Personnel comply with Contractor's obligations under this **Article 31** does not apply to the disclosure of Confidential Information by Contractor in order to comply with any Applicable Law or legally binding order of any Court or Authority, as long as prior to such disclosure Contractor gives Notice to Company with full particulars of the proposed disclosure.
- 31.6 If requested by Company, whether prior to or after the expiry or earlier termination of the Agreement, Contractor shall promptly deliver to Company all Confidential Information provided by Company that is in the custody, possession or control of Contractor or any of its Personnel.
- 31.7 The breach of any of the conditions contained in this **Article 31** will be deemed to be a material breach of the Agreement.

ARTICLE 32 GENERAL

- 32.1 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. 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.
- 32.2 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. 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.

- 32.3 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.
- 32.4 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.
- 32.5 This Agreement embodies the entire agreement between Contractor and Company with respect to the Work and comprises all matters relating to the planning, procurement, construction, testing, inspection, commissioning and completion of the Work. Unless otherwise expressly stated, this Agreement supersedes all prior agreements, understandings or writings between the Parties, whether written or oral and whether legally enforceable or not. 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.
- 32.6 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:
- (a) Exhibit 3 – Coordination Procedures;
 - (b) Exhibit 5 – Health and Safety Requirements;
 - (c) Exhibit 6 – Environmental and Regulatory Compliance Requirements;
 - (d) Exhibit 11 – Company Supplied Documents;
 - (e) Exhibit 12 – Site Conditions;
 - (f) Exhibit 13 – Provincial Benefits.
- 32.7 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.
- 32.8 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 refer to



Company any enquiries from the media concerning the Work, the Agreement, the LCP or Company's business and activities. Contractor shall include in each Subcontract a provision that incorporates the terms of **Article 32.7** and this **Article 32.8** such that those terms shall apply to each Subcontractor.

- 32.9 This Agreement shall be binding upon and shall enure to the benefit of the Parties hereto and their respective successors and permitted assignees.
- 32.10 The following provisions of this Agreement shall survive the termination or expiration of this Agreement and remain in full force and effect: **Articles 1.11, 1.12, 1.14, 1.15, 1.19, 3.7, 5.1, 5.7, 5.8, 6.11, 7.5, 10.7, 12.15, Article 13, Article 17, Article 21, Article 24, Article 25, Article 31, 32.8, 32.9, 34.1, 34.2 and Article 38.**

ARTICLE 33 ASSIGNMENT

- 33.1 Company may, without the Approval of Contractor, assign this Agreement, or any part thereof, to:
- (a) any Affiliate of Company (an "**Affiliate Assignee**"); or
 - (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 Lender;

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 legal fees and disbursements), expenses, interest, loss or injury of every nature and kind whatsoever and howsoever arising, which Contractor may heretofore have had, may now have, or may hereinafter have, in any way relating to or under this Agreement, both past and future. In the case of an assignment to an entity described in paragraphs (a) or (b) of this **Article 33.1**, 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.

- 33.2 In the event of an assignment pursuant to **Article 33.1(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.

33.3 Company shall not assign this Agreement or any of its benefits or obligations thereunder to any third party, other than those described in **Article 33.1**, without Contractor's Approval, which Approval shall not be unreasonably withheld, conditioned or delayed.

33.4 Following any assignment by Company pursuant to this **Article 33**, this Agreement may be re-assigned to Company without Contractor's Approval.

33.5 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 such Affiliate fails to fulfill any such obligation;
- (b) the Parent Guarantees, the Holdback Release Bond and/or any letters 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), Contractor has obtained the prior written approval of Company of the proposed assignment to the Affiliate.

- 33.6 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 33.5** shall apply.

ARTICLE 34
LIENS AND CLAIMS

- 34.1 Without prejudice to the provisions of this **Article 34**, 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.
- 34.2 Contractor shall defend, protect, release, indemnify and hold Company Group harmless from and against, and shall keep Contractor's Items, Company's property, Site and Work thereon free and clear of all liens, charges, claims, assessments, fines and levies suffered, created, or committed by Contractor Group, save only 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. 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.
- 34.3 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 35
CONTRACTOR'S DOCUMENTS AND INTELLECTUAL PROPERTY

- 35.1 Contractor, on or before the time set forth herein, shall prepare and deliver to Engineer all documents listed in Exhibit 4 – Supplier Document Requirements List.
- 35.2 Contractor shall provide Engineer, without charge or cost, copies of all documents required by this Agreement whether obtained by or prepared by or on behalf of Contractor.
- 35.3 (a) All plans, specifications and other documents conceived of or produced or caused to be prepared, conceived of or produced and delivered in the performance of this Agreement by or on behalf of Contractor ("**Intellectual Property**") and which are particular to the Work shall be the property of Company.



- (b) Subject as is hereinafter provided, Contractor hereby grants to Company the exclusive, perpetual license or other right to use all such Intellectual Property and all patents, copyrights and other industrial and intellectual property rights, including trade secrets, arising in relation to the Intellectual Property ("**Rights**"), if any, that are held by Contractor. Contractor also agrees to obtain a non-exclusive, perpetual licence or other right to use such Intellectual Property and Rights from any other Persons who hold any rights and interests in the Intellectual Property and Rights and agrees to assign to Company the right to use all such Intellectual Property and Rights for all purposes in relation to the LCP.
- (c) Contractor shall execute any and all written documentation which Company, Engineer and/or Lender may require to evidence the grant and assignment of the Rights.
- (d) Contractor shall not be liable in any manner whatsoever for Claims arising as a result of the use by Company or Engineer of the Intellectual Property or Rights other than in connection with the LCP.

**ARTICLE 36
SHOP DRAWINGS**

- 36.1 Shop Drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures, product and other data (including data in electronic form) which Contractor provides to illustrate details of a portion of the Work.
- 36.2 Shop Drawings shall be based on the design drawings and specifications set out in Exhibit 1 – Scope of Work.
- 36.3 Contractor will provide Shop Drawings as described in the Agreement or as Engineer may reasonably request.
- 36.4 Contractor will review all Shop Drawings prior to submission to Engineer. Contractor represents by this review that Contractor has determined and verified all field measurements and field construction conditions, product requirements, catalogue numbers and similar data and that Contractor has checked and coordinated each Shop Drawing with the requirements of the Work and of the Agreement. Contractor will confirm this review of each Shop Drawing by stamp, date and signature of the person responsible. At the time of submission Contractor will notify Engineer in writing of any deviations in the Shop Drawings from the requirements of the Agreement.
- 36.5 Contractor will submit Shop Drawings to Engineer to review in orderly sequence and sufficiently in advance so as to cause no delay in the Work or in the work of Company's Other Contractors. Upon request of Engineer, Contractor and Engineer will jointly prepare a schedule of the dates for submission and return of Shop Drawings. Any Shop Drawings which require Approval of any Authority will be submitted to such Authority by Contractor for Approval.



- 36.6 Contractor will submit Shop Drawings in the form specified in the Agreement or as Engineer may direct. Engineer will review and return Shop Drawings in accordance with the schedule agreed upon or otherwise with reasonable promptness. Engineer's review is for conformity to the design concept and for general arrangement only. Engineer's review will not relieve Contractor of responsibility for errors or omissions in any Shop Drawing submitted by Contractor or for meeting all requirements of the Agreement unless Engineer expressly notes the Acceptance of a deviation on the Shop Drawings.
- 36.7 Upon Engineer's request, Contractor will revise and resubmit Shop Drawings which Engineer rejects as inconsistent with the Agreement unless otherwise directed by Engineer. Contractor will notify Engineer in writing of any revisions to the resubmission other than those requested by Engineer. Contractor will not be entitled to any extension to the dates for completion of a Milestone nor any adjustment to the Contract Price as a result of complying with its obligations to resubmit Shop Drawings under this paragraph.

ARTICLE 37
APPROVAL OF EQUIPMENT

- 37.1 For equipment types identified in Exhibit 1 – Scope of Work, Contractor shall provide Engineer with a detailed list of the equipment that Contractor proposes to use in the performance of the Work. The list of equipment provided by Contractor shall include manufacturer, model and a summary specification for each item listed.
- 37.2 Contractor shall not use any type of equipment required to be listed in accordance with **Article 37.1** unless the specific equipment has been Accepted by Engineer. If Contractor seeks to use different equipment from that listed and Accepted by Engineer, Contractor shall notify Engineer and provide Engineer with such information as Engineer may require.
- 37.3 Engineer may, on reasonable grounds, object to any item of equipment proposed by Contractor in the equipment list. If each alternative make, manufacturer or model is rejected by Company for any item, type or class of equipment set out in the proposed list of equipment then Contractor shall resubmit the proposed list of equipment with further alternatives for the rejected item, type or class of equipment.

ARTICLE 38
NOTICES

- 38.1 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's Project Manager , in the care of Contractor, or to the 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 Project Manager, 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 38.3** or such other address as that Party may have notified to the other Party

38.2 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); or
- (c) in the case of delivery by Aconex, at the time and date recorded by Aconex for delivery to the recipient

38.3 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:

- (i) to Company:

Muskrat Falls Corporation
CH0009 – Construction of North and South Dams
 Re: Lower Churchill Project
 350 Torbay Road Plaza, Suite No. 2
 St. John's, NL
 Canada A1A 4E1
 Attention: Scott O'Brien/Muskrat Fall Project Manager
 email: ScottOBrien@lowerchurchillproject.ca

- (ii) to the Contractor:

Barnard Pennecon Limited Partnership
 c/o Bennett Jones LLP
 Suite 2200, 1055 West Hastings Street
 Vancouver, British Columbia
 Attention: Derek Tisdel/Director
 Email: derek.tisdell@barnard-inc.com

38.4 Except where Notice is given using Aconex in accordance with **Articles 38.2** and **38.3**, 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. Any technical communications pertaining to the Work shall be between Engineer and Contractor's Project Manager. 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 amendment of the Agreement.

38.5 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.

38.6 A Party may, from time to time, give Notice to the other Party of any change to its address.

**ARTICLE 39
EXECUTION**

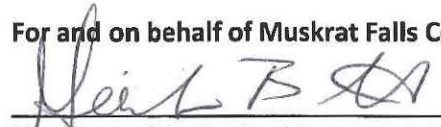
39.1 This Agreement may be executed in any number of counterparts and any Party may transmit by facsimile or email in portable document format to the other Party a copy of this Agreement executed by that Party, the receipt of which shall have the same force and effect as if the original thereof had in fact been delivered at the same time.

39.2 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.

39.3 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, upon having been so executed, shall be binding on that Party in accordance with its terms.


EXECUTED AS AN AGREEMENT:

For and on behalf of Muskrat Falls Corporation



Signature of Authorized Representative
Gilbert Bennett, P. Eng
Vice President

Name of Authorized Representative



Signature of Authorized Representative
Edmund Martin
President and CEO

Name of Authorized Representative

For and on behalf of Barnard Pennecon Limited Partnership

Derek C. Tisdel

Signature of Authorized Representative

Derek C. Tisdel

Name of Authorized Representative

80
David W. Mitchell

DAVID W. MITCHELL

Execution Page to Agreement number CH0009 dated the ^{29th} day of October, 2015 between Muskrat Falls Corporation and Barnard Pennecon Limited Partnership.

(19756658.9)

John
Page 80

David W. Mitchell
DAVID W. MITCHELL

Signature of Authorized Representative

Name of Authorized Representative

Execution Page to Agreement number _____ dated the _____, day of _____, 2015 between **Muskat Falls Corporation** and **Barnard Pennecon Limited Partnership**.

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