

LABRADOR - ISLAND LINK LIMITED PARTNERSHIP

and

ALSTOM GRID CANADA, INC.

SUPPLY AND INSTALL AGREEMENT

CONVERTER STATIONS AND TRANSITION COMPOUNDS

Agreement No. CD0501-001

DATED AS OF March 31, 2014

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THIS AGREEMENT MADE as of the 31st day of March, 2014

BETWEEN:

LABRADOR-ISLAND LINK LIMITED PARTNERSHIP, a limited partnership formed pursuant to the laws of the Province of Newfoundland and Labrador, represented by its general partner, Labrador-Island Link General Partner Corporation (hereinafter referred to as "**Company**")

- and -

ALSTOM GRID CANADA, INC., a corporation duly incorporated pursuant to the laws of the Province of Quebec (hereinafter called "**Contractor**").

WHEREAS Company is retaining the Contractor for the design, supply, installation and commissioning of the Converters and Transition Compounds as more fully described in this Agreement;

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

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

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

**ARTICLE 1
INTERPRETATION**

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

Exhibit	Description
1	Scope of Work
2	Compensation
3	Coordination Procedures
4	Supplier Document Requirement List
5	Health and Safety Requirements
6	Environment and Regulatory Compliance Requirements
7	Quality Requirements
8	Subcontractors, Manufacturers and Material Sources
9	Work and Milestone Schedule
10	Declaration of Residency
11	Company Supplied Documents
12	Worksite Conditions

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Exhibit	Description
13	Provincial Benefits
14	Performance Security
15	Rules for Arbitration
16	Lower Churchill Benefits Strategy
17	Joint Cost Savings Initiative for Civil Works

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

- (a) **"Acceptance"** means express acceptance, concurrence or consent in writing by Engineer and **"Accepted"**, **"Acceptable"** and **"Accept"** shall be construed accordingly.
- (a) **"Aconex"** means a cloud based computer software program for communication that can be accessed via an internet connection and a web browser.
- (b) **"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.
- (c) **"Affiliate Assignee"** has the meaning ascribed thereto in **Article 30.1(a)**.
- (d) **"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.
- (e) **"Agreement"** means this document, including the Exhibits as referenced in **Article 1.1**, originally executed or as they may from time to time be supplemented, amended, revised or otherwise modified in accordance with the applicable provisions of this document and the Exhibits.
- (f) **"Applicable Laws"** means any laws, statutes, regulations, standards, codes, orders, directives or other rules enacted or issued from time to time by any governmental or regulatory body or other duly constituted public authority (whether legislative, administrative or executive) 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.

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- (g) **"Approval"** means express acceptance, concurrence or consent in writing and **"Approve"** and **"Approved"** shall be construed accordingly. Approvals shall not unreasonably be withheld.
- (h) **"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.
- (i) **"Billing Information"** has the meaning ascribed thereto in **Article 12.6**.
- (j) **"Bi-pole Forced Outage Rate"** has the meaning ascribed thereto in Section 14.2.1 of the document entitled "Performance Requirements" in the Technical Specifications.
- (k) **"Breach"** has the meaning ascribed thereto in **Article 30.2(a)**.
- (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 significant increase or decrease in quantities of items forming part or all of the Work;
 - (iii) A deletion of any part of the Work;
 - (iv) A revision or modification to any part of the Work already completed;
 - (v) A variation or reduction or extension of time to the schedule for the completion of a Milestone;
 - (vi) A modification in, variation to or deviation from the requirements set out in Exhibit 1 – Scope of Work;
 - (vii) An amendment to or imposition of new Applicable Laws that impact Contractor's cost to perform the Work because:

1. HST is replaced by tax system comprising of a goods and services tax (GST) and provincial sales tax (PST); or
2. duties are applied to goods, materials or equipment that were duty free as of the Effective Date; and
3. new requirements for permits or licenses are imposed during the execution of the Work.

but for greater certainty, a Change shall not include:

- (A) modifications, revisions or deviations 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 reasonably requested by Company that are necessary because of delays solely 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 completion of a Milestone but which coincide with any concurrent delay of a material nature on the same Milestone one cause of which is the failure of Contractor Group to comply with its obligations under this Agreement.
- (n) **"Change Order"** means an order or directive for a Change issued in the form set out in Exhibit 3 – Coordination Procedures and signed by Company.
- (o) **"Change Request"** means a request for a Change issued in the form set out in Exhibit 3 – Coordination Procedures.
- (p) **"Civil Works"** means the civil work related to the Converter Stations and Transition Compounds.

- (q) **"Civil Works Baseline"** means the civil work related to the Converter Stations, but not to Transition Compounds, as further defined in Section 1.2 of Exhibit 17 - Joint Cost Savings Initiative for Civil Works.
- (r) **"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.
- (s) **"Commissioning"** means the checks, inspections, activities and tests as specified in the document entitled "Testing and Commissioning" in the Technical Specifications to verify that the Work performs in accordance with the requirements of this Agreement and is safe for use and/or occupation.
- (t) **"Company"** means Labrador-Island Link Limited Partnership, represented by its general partner Labrador-Island Link General Partner Corporation, and its successors and permitted assigns.
- (u) **"Company Group"** means collectively Company and Company's Other Contractors (including Engineer), and the respective Affiliates and Personnel of each of the foregoing, and any independent engineer, and its Personnel, retained by or on behalf of an entity that provides financing to Company or any of its Affiliates for the LCP or any part thereof.
- (v) **"Company's Other Contractors"** means all contractors and subcontractors of Company or its Affiliates, including all of their contractors and consultants (including any warranty surveyor or inspector) except Contractor and Subcontractors and, for greater clarity, it shall also include all Civil Works contractors retained by Company.
- (w) **"Company Representative"** means the person designated in accordance with **Article 10.4**.
- (x) **"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.
- (y) **"Confidential Information"** has the meaning ascribed thereto in **Article 28.1**.
- (z) **"Contract"** as used in the Exhibits has the same meaning as Agreement.
- (aa) **"Contract Price"** means:
 - (i) for all purposes other than those described in paragraphs (ii) and (iii) below, the sum total of the fixed lump sum prices in the amounts and currencies set out in Appendix A1 to Exhibit 2- Compensation, 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;

- (ii) for the purposes of the performance security requirements in Article 7 and project insurance requirements in Article 20, the Contract Price shall be the single lump sum in Canadian dollars specified in Section 11.2 of Exhibit 2- Compensation;
 - (iii) for the purposes of the limits on liquidated damages in **Article 37.3**, the Contract Price shall be greater of the amount referenced in paragraph (ii) above or the sum of the amounts referenced in paragraph (i) above converted to Canadian dollars using the exchange rates specified in Section 11.2 of Exhibit 2 - Compensation;
 - (iv) and, for greater certainty, Contract Price does not include HST.
- (bb) **"Contractor"** means the Person identified as Contractor on the first page of this Agreement and its successors and permitted assigns.
 - (cc) **"Contractor Group"** means Contractor and Subcontractors (including Subcontractor's subcontractors of every tier), and Contractor's Affiliates and the respective Personnel of each of the foregoing.
 - (dd) **"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.
 - (ee) **"Contractor's Personnel"** means the Personnel to be provided by Contractor Group from time to time to perform the Work.
 - (ff) **"Contractor's Proprietary Information"** means information of a scientific or technical nature, including patented inventions, designs or trade secrets which Contractor employs in the course of performing the Work and is not otherwise required to be disclosed or delivered in accordance with other provisions in this Agreement.
 - (gg) **"Contractor's Representative"** is the person nominated in accordance with **Article 5.5**.
 - (hh) **"Converter Stations"** means the facilities, including buildings, structures and equipment, to convert between HVac and HVdc located at or near Muskrat Falls, Labrador, and Soldiers Pond, Newfoundland, and as more particularly described in Exhibit 1 - Scope of Work.
 - (ii) **"Court"** means a court of competent jurisdiction and includes the Supreme Court of Canada.
 - (jj) **"Cure Period"** has the meaning ascribed thereto in **Article 30.2(a)**.
 - (kk) **"Defect"** means any error, omission, deficiency, defect and/or failure in design, materials, engineering, workmanship, manufacture and/or installation.

- (ll) **"Deliver", "Delivered" or "Delivery"** means that point in time at which Contractor provides and Company takes physical possession of the Work (or any part), in accordance with **Article 24**.
- (mm) **"Design Target Values"** means the design target values of Forced Energy Unavailability, Schedule Energy Unavailability, Bi-pole Forced Outage Rate and Pole Forced Outage Rate as specified in Section 14.6 of the document entitled "Performance Requirements" in the Technical Specifications applicable to the Converter Stations and Transition Compounds in each year of the Performance Guarantee Assessment Period.
- (nn) **"Dispute"** has the meaning ascribed thereto in **Article 40.1**.
- (oo) **"Effective Date"** means 31 March, 2014.
- (pp) **"Execution Date"** means the date noted as the date the Parties executed this Agreement as shown on the final page of these Articles of Agreement
- (qq) **"Energy Unavailability"** means the Forced Energy Unavailability Rate and the Scheduled Energy Unavailability Rate.
- (rr) **"Engineer"** means Lower Churchill Management Corporation and any successors or assigns.
- (ss) **"Exhibits"** means the Exhibits forming part of this Agreement and identified in **Article 1.1**.
- (tt) **"Final Completion"** means that point in time when Contractor has completed all the Work including for Warranty obligations and any obligations pursuant to **Article 37**.
- (uu) **"Final Completion Certificate"** has the meaning ascribed thereto in **Article 25.9**.
- (vv) **"Forced Energy Unavailability Rate"** has the meaning ascribed thereto in Section 14.2.5 of the document entitled "Performance Requirements" in the Technical Specifications.
- (ww) **"Force Majeure"** has the meaning ascribed thereto in **Article 31.1**.
- (xx) **"Good Utility Practice"** means the practices, methods and acts engaged in, or approved by, a significant portion of the electric utility industry in North America, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, are expected to accomplish the desired result at a reasonable cost consistent with good business, reliability, safety, environmental and expediting practices. Good Utility Practice is not intended to be limited to optimum practice, method or act to the exclusion of all others, but rather to include all practices, methods or acts generally accepted by the electric utility industry in North America.

- (yy) "**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).
- (zz) "**HVac**" means high voltage alternating current.
- (aaa) "**HVdc**" means high voltage direct current.
- (bbb) "**LCP**" means lower Churchill Projects which includes hydroelectric power developments on the lower Churchill River in the Labrador portion of the Province of Newfoundland and Labrador and associated power transmission facilities.
- (ccc) "**LEG2/96**" means the 1996 "Model 'Consequences' Defects Wording" published by the London Engineering Group.
- (ddd) "**Letter of Credit**" means the letters of credit described in **Article 7.3**.
- (eee) "**Logistics and Transportation Strategy**" means Contractor's logistics and transportation strategy required by Exhibit 4 - Supplier Document Requirement List.
- (fff) "**Lower Churchill Construction Projects Benefits Strategy**" means the policy, strategy, obligations and procedures set out in Exhibit 16 – Lower Churchill Construction Benefits Strategy.
- (ggg) "**Milestone**" has the meaning ascribed thereto in Exhibit 3 – Coordination Procedures.
- (hhh) "**Milestone Schedule**" means the schedule for performance of the Work (or any part) as set out in Exhibit 9 – Work and Milestone Schedule, as the same may be amended from time to time by agreement of the Parties or otherwise in accordance with the provisions of the Agreement.
- (iii) "**Notice**" means a written communication that is required to be delivered in accordance with **Article 41**.
- (jjj) "**Party**" means Company or Contractor, as the context requires, and "**Parties**" means Company and Contractor collectively.
- (kkk) "**Payment Certificate**" means the certificate for payment of all or any portion of the Contract Price that is issued by Contractor to Engineer for Approval by Company, all in accordance with **Article 12**.
- (lll) "**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.
- (mmm) "**Performance Bond**" means the performance bond described in **Articles 7.1 and 7.2**.

- (nnn) **"Performance Guarantee"** means the Contractor's guarantees for performance set out in **Article 36.1**.
- (ooo) **"Performance Guarantee Assessment Period"** means the minimum three (3) years and maximum six (6) years period commencing on the earlier of the date on which full power is achieved or after the burn-in period as specified in the document entitled "Testing and Commissioning" in the Technical Specification, or in the event the burn-in period is not required or available, Substantial Completion, as further described in the Performance Requirements.
- (ppp) **"Performance Requirements"** means the requirements set out in document number ILK-SN-CD-8000-EL-DC-0001-01 in the Technical Specifications.
- (qqq) **"Performance Test"** means the scaled demonstration described in Section 8.5.3 in the document entitled "Testing and Commissioning" in the Technical Specifications.
- (rrr) **"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.
- (sss) **"Personnel"** means the directors, officers, employees, consultants, non-employed representatives and agents of a Person.
- (ttt) **"Pole Forced Outage Rate"** has the meaning ascribed thereto in Section **14.2.1** of the document entitled "Performance Requirements" in the Technical Specifications.
- (uuu) **"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 disclosure of information, and the privacy, confidentiality or use of any information, about individuals and corporations.
- (vvv) **"Punch List"** means a list of Defects and/or items or parts of the Work that are not complete.
- (www) **"Quality Plan"** means the plan described in Exhibit 7 – Quality Requirements.
- (xxx) **"Schedule Energy Unavailability Rate"** has the meaning ascribed thereto in Section 14.2.5 of the document entitled "Performance Requirements" in the Technical Specifications.
- (yyy) **"Security Interests"** means the following rights granted by Company to the Security Trustee:
- (i) any right of set-off or combination of accounts intended to secure the payment or performance of an obligation,

- (ii) 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,
 - (iii) any preference, priority, adverse claim, levy, execution, seizure, attachment, garnishment or other encumbrance which binds property, and
 - (iv) any agreement to grant any of the foregoing rights or interests.
- (zzz) **"Security Trustee"** means the collateral trustee under a deed of trust and mortgage relating to senior secured bonds of the Company, for and on behalf of the holders of such bonds from time to time, and any successor or assignee thereof.
- (aaaa) **"Site"** means the locations for the performance of Work at the sites for the Converter Stations and Transition Compounds including all roads and access routes to the sites, as may be further described in Exhibit 1 – Scope of Work.
- (bbbb) **"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.
- (cccc) **"Subcontract"** means an agreement (including any supplement or amendment) entered into between Contractor and any Person in the manner and to the extent permitted under the terms of the Agreement by which Contractor engages such Person to perform any part of the Work.
- (dddd) **"Subcontractor"** means any Person engaged by Contractor to perform any part of the Work pursuant to a Subcontract, and shall include the successors and permitted assigns of any such Person.
- (eeee) **"Substantial Completion"** means that the Work has been completed to the extent specified in **Article 25.3**.
- (ffff) **"Substantial Completion Certificate"** means the certificate issued in accordance with **Article 25.4**.
- (gggg) **"Suspension Expenses"** has the meaning ascribed thereto in **Article 34.2**.
- (hhhh) **"Suspension Period"** has the meaning ascribed thereto in **Article 34.1**.

- (iii) **"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 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.
- (jjj) **"Technical Data Schedules"** means schedules attached to documents in the Technical Specifications.
- (kkkk) **"Technical Requirements"** means specifications, drawings, plans or other documentation of a technical or scientific nature, and tests, set out or referenced in the Exhibits.
- (llll) **"Technical Specifications" or "Specifications"** means the documents contained in Exhibit 1 – Scope of Work.
- (mmmm) **"Term"** has the meaning ascribed thereto in **Article 1.16**.
- (nnnn) **"Thyristor Requirements"** means the requirements set out in document number ILK-SN-CD-8000-EL-TS-0025-01 in the Technical Specifications.
- (oooo) **"Transition Compounds"** means the facilities, including the buildings, structures and equipment, to transition power transmission cables from the overland cable system to the submarine cable system located at or near Forteau Point, Labrador, and Shoal Cove, Newfoundland, and as more particularly described in Exhibit 1 - Scope of Work.
- (pppp) **"Trial Operation"** has the meaning ascribed thereto in Sections 12 and 16 of the document entitled "Testing and Commissioning" in the Technical Specifications
- (qqqq) **"Turnover (Ready for Operations)"** means the formal transfer of documentation and responsibility for operations and maintenance of part systems, systems, equipment, areas, buildings and complete facilities.
- (rrrr) **"Turnover Acceptance Certificate"** means the certificate(s) issued by Company when commissioning is complete, the Trial Operation period(s) is complete at either low and/or high power as specified in Sections 13 and 17 of the "Testing and Commissioning" in the Technical Specification and Turnover has occurred.
- (ssss) **"Warranty"** means Contractor's obligations set out in **Article 17**.
- (tttt) **"Warranty Period"** has the meaning ascribed thereto in **Article 17.1**.
- (uuuu) **"Warranty Work"** has the meaning ascribed thereto in **Article 17.6**.

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(vvvv) "**Work**" means all design, engineering, labour, services, performance testing and obligations to be performed and materials, equipment and products to be supplied by Contractor under the terms of this Agreement, as more particularly described in **Article 3** and Exhibit 1 – Scope of Work and Exhibit 17 – Joint Cost Savings Initiative for Civil Works, including Changes and the provision of all Personnel, plant, supplies, facilities, documentation, records and other items necessary to the performance of such design, engineering, labour, services and obligations.

(wwwv) "**Worksite**" means any lands, waters and any other places on, under, over, in or through which the Work is to be performed, including design offices, workshops, onshore facilities, factories, fabrication facilities and places where Contractor Items are obtained, stored or used for the purposes of this Agreement.

- 1.3 The doctrine of *contra proferentem* shall not apply in the interpretation of this Agreement, meaning that if there is any ambiguous language in this Agreement it shall not be interpreted more strongly against the Party who prepared or drafted the ambiguous language.
- 1.4 Reference to any Party includes that Party's executors, administrators, substitutes (including, but not limited to, persons taking by novation), successors and permitted assigns.
- 1.5 If an action pertaining to the administration of this Agreement, Notices or Disputes is required to be completed on a specified day which is not a Business Day, then the action shall be completed instead on the next Business Day.
- 1.6 Whenever in this Agreement the singular member or a masculine gender occurs the same shall be respectively construed as the plural, feminine or neuter and vice versa as the context or reference may require. Where a word is defined in this Agreement, a derivative of that word shall have a corresponding meaning.
- 1.7 Unless the context otherwise requires, reference to any Article is a reference to an Article or paragraph in this Agreement, and any reference to a Section is a reference to a Section or paragraph in an Exhibit.
- 1.8 The titles, headings, captions or indices shall not be used in any way in construing or interpreting any provisions of this Agreement.
- 1.9 The recitals form part of and are incorporated into this Agreement.
- 1.10 The words "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be construed to be limited by the specific enumeration of items but shall in all cases be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation".
- 1.11 Reference to any Act or legislation, or to a provision of an Act or legislation, is to the Act or legislation as amended and includes any statutory modification or re-enactment of it, a legislative provision substituted for it and any regulation, subordinate legislation or other statutory instrument issued under it.

1.12 If any provision in the Exhibits conflicts with a provision in the Articles of this Agreement, the provision in the Articles of this Agreement shall prevail. In the event that any provision in any of the Exhibits conflicts with any other provision in the Exhibits, priority shall be given in the order listed as follows:

- (a) Exhibit 17 – Joint Cost Savings Initiative for Civil Works
- (b) Exhibit 1 - Scope of Work
- (c) Exhibit 9 – Work and Milestone Schedule
- (d) Exhibit 2 – Compensation
- (e) Exhibit 7 - Quality Requirements
- (f) Exhibit 3 - Coordination Procedures
- (g) Exhibit 11 - Company Supplied Documents
- (h) the remaining Exhibits in their numerical order by Exhibit number

except in respect of Technical Requirements, in which case the more stringent provision will prevail.

1.13 If the Standard of a Prudent Contractor conflicts with any other provision in this Agreement, the other provision in the Agreement shall prevail. Contractor shall give Notice to Company of any standard or requirement in this Agreement that Contractor considers is less stringent than the Standard of a Prudent Contractor.

1.14 The language of this Agreement shall be English and all communications and dealings under and the resolution of any disputes concerning this Agreement shall be conducted in the English language. All information, data or documentation of any nature that Contractor prepares in the performance of the Work, is required to submit to Company or is requested by Company to submit, shall be prepared in English.

1.15 Any Approval by Company or Acceptance by Engineer shall not waive Contractor's obligations under Applicable Laws or as outlined in this Agreement.

1.16 This Agreement shall be effective from the Effective Date and shall remain in full force and effect until the Work, and all Warranty obligations, is complete (the "**Term**"), unless earlier terminated in accordance with the provisions of this Agreement.

1.17 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.

1.18 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. All Disputes, with the exception of Disputes (i) involving intellectual property, patents, trademarks and copyrights; (ii) relating to taxation issues where Revenue Canada is a party to the dispute; and (iii) where the remedy sought is an injunction, are required to be resolved in accordance with **Article 40**. The Parties hereby irrevocably attorn to the Courts of Newfoundland and Labrador and Canada for any Disputes (i) involving intellectual property, patents, trademarks and copyrights; (ii) relating to taxation issues where Canada Revenue Agency is a party to the Dispute; and (iii) where the remedy sought is an injunction.

- 1.19 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.
- 1.20 Company is entering into this Agreement, and Contractor acknowledges that Company is entering into this Agreement, solely in its own right and not on behalf of or as agent of the Crown in right of the Province of Newfoundland and Labrador.
- 1.21 Whenever an amount of money is referred to in this Agreement, unless otherwise expressly stated, such amount shall be deemed to be in Canadian dollars.

ARTICLE 2 CONTRACTOR'S STATUS

- 2.1 In the performance of its obligations under this Agreement, Contractor is an independent contractor and neither Contractor nor Contractor's Personnel shall be employees of Company. Contractor's Personnel shall be under the direct supervision and control of Contractor and not of Company. Contractor accepts complete responsibility as the principal for Contractor's Personnel.
- 2.2 Contractor is not an agent of Company or an agent of any Affiliate of Company. Contractor shall not represent or hold itself out as an agent of Company or an agent of any Affiliate of Company.
- 2.3 This Agreement shall not constitute a joint venture or partnership of Company and Contractor or of Company and any Subcontractor.
- 2.4 Contractor acknowledges that it shall be carrying on business in the Province of Newfoundland and Labrador during the performance of the Work and agrees to comply with the registration and other relevant provisions of the *Corporations Act*, RSNL 1990, c. C-36.

**ARTICLE 3
CONTRACTOR'S OBLIGATIONS**

- 3.1 Contractor shall carry out all of its obligations under this Agreement and shall perform the Work, including:
- (a) any necessary design or engineering which is the responsibility of Contractor under this Agreement;
 - (b) all work required for the procurement, fabrication, manufacturing, construction, testing, transport, delivery, maintenance, storage, documentation, preservation, installation, commissioning, repair and remediation of the Work;
 - (c) provision of all supervision, services, labour, trades, drafting, accounting, purchasing, expediting, inspection, testing, Personnel, Contractor's Items, transportation, mobilization and demobilization required for the compliance with and fulfillment of all Contractor's obligations under this Agreement;
 - (d) provision and installation of all equipment, products and materials required by this Agreement at the Site;
 - (e) ensuring the Work conforms strictly as to quality and description with the particulars stated in Exhibit 1 - Scope of Work and Company Supplied Data and complies with all Applicable Laws;
 - (f) satisfaction of the performance requirements set out in Exhibit 1 – Scope of Work;
 - (g) provision of all documents as required under, and in accordance with, the terms of this Agreement;
 - (h) provision of any work not expressly detailed in this Agreement or in Contractor's proposal, but which is reasonably necessary for the performance of the Work in accordance with this Agreement;
 - (i) rectification of any and all deficiencies as noted by Company, Engineer or any Authority; and
 - (j) completing the Work, and portions thereof, in accordance with Exhibit 9 - Work and Milestone Schedule.
- 3.2 Contractor shall review and verify the details contained in Exhibit 17 – Joint Cost Savings Initiative for Civil Works, Exhibit 1 - Scope of Work, and Exhibit 11 - Company Supplied Documents and represents that it has a full knowledge and understanding of the nature and the scope of the Work, and including weather and all other conditions at Worksites. Contractor shall advise Company of any errors, omissions and inconsistencies in this Agreement and shall not proceed with any part of the Work affected by such until resolved by Engineer.
- 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

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Agreement. Without limitation, Contractor shall undertake the Work in accordance with Applicable Laws, this Agreement and as required by any Authority.

- 3.4 Contractor shall perform the Work to the Standard of a Prudent Contractor and in accordance with Good Utility Practice and shall ensure that Subcontractors shall perform to the same standards. Any material failure or any refusal or inability of Contractor to comply with the foregoing requirements shall constitute a breach of the terms and conditions of this Agreement. Contractor shall be solely responsible for any operations comprising the Work performed by Contractor Group.
- 3.5 Except for the authorizations, permits and licenses provided by Company pursuant 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 requirements of Authorities. Contractor shall promptly notify Company in writing upon any discovery of a failure to adhere to the foregoing requirements in connection with the performance of the Work. Contractor shall not be liable for any delays in the issuance of permits or licenses of any type that Contractor is not obliged to obtain by Applicable Laws or under this Agreement. The Parties shall provide necessary assistance to each other in a timely manner upon request for the purpose of obtaining permits and licenses for the performance of the Work.
- 3.6 Contractor shall assist Company and provide necessary information and documents to support Company fulfilling Company's obligations set out in **Article 10.3**.
- 3.7 Contractor shall comply with all lawful instructions of Company pertaining to the performance of the Work, as communicated through the Company Representative, Engineer or otherwise in accordance with this Agreement. The absence of instructions from Company shall not permit Contractor to avoid its duty to perform its obligations under this Agreement. If Contractor fails to comply with a lawful instruction, then Company may at Contractor's sole risk and cost take whatever measures Company considers necessary to implement the instruction.
- 3.8 Contractor shall cooperate with Company's Other Contractors and Company Personnel working at the Worksites with a view to reducing interference with Company's Other Contractors and Company Personnel or with the operations of Company.
- 3.9 Contractor shall at all times promptly take all steps necessary to maintain good labour relations with Contractor Personnel to the extent that such requirement is consistent with sound business practice in accordance with the Standard of a Prudent Contractor. Subject to **Article 31.1(c)**, the existence of any labour disturbance relating to Contractor Personnel shall not relieve Contractor of its obligations hereunder.
- 3.10 Contractor shall transfer all unused excess materials, if any, to Company at the completion of the Work or, at Company's option, such excess materials shall be sold by Contractor and any amounts realized from such sales shall be credited to Company as a deduction from the Contract Price.
- 3.11 Contractor shall take such action as Company may specify to enable Company to comply with all Applicable Laws to be complied with by Company and in particular, Applicable

Laws governing the use of local personnel, goods and services, which are in effect or which may come into effect during the Term.

- 3.12 Contractor shall not change any location or place of origin identified in the Agreement for fabrication, manufacture or sourcing of equipment, materials or products without the prior Approval of Company.
- 3.13 Contractor shall be responsible, at its cost, for maintaining such inventories of Contractor's Items as necessary so as to avoid interruptions in the performance of the Work.

ARTICLE 4 CONTRACTOR'S DESIGN OBLIGATIONS

- 4.1 The provisions of this **Article 4** shall only apply to any design, engineering or architectural requirements that are the responsibility of Contractor under this Agreement.
- 4.2 All parts of the Work required by Applicable Laws to be performed by licensed or registered professional engineers or architects shall be performed by registered professional engineers and architects. In particular, any drawings, including design, installation and construction drawings, specific to the Province of Newfoundland and Labrador must be stamped by professional engineers registered to practice in the Province of Newfoundland and Labrador.
- 4.3 In the engineering and design of any equipment, products or materials to be incorporated into the Work and in the performance of the Work, Contractor shall exercise the standard of care normally exercised by licensed or registered professional engineers or architects having specialized knowledge, expertise and experience in the design of similar work and the standard of care for Good Utility Practice.
- 4.4 For all engineering and design Contractor Group shall employ only engineering and design personnel who have the requisite knowledge and skills through education, training and experience to perform the engineering and design assigned to them.
- 4.5 Contractor shall design and engineer the Work for a useful life that is not less than the minimum stated in the Technical Requirements.
- 4.6 Contractor shall promptly remedy any error, omission, ambiguity, inconsistency or inadequacy or any other Defect identified by Engineer or Company in any Work.
- 4.7 Engineering and design review meetings will be scheduled and coordinated by Engineer in accordance with the provisions of Exhibit 3 – Coordination Procedures. Contractor shall attend all such engineering and design review meetings.
- 4.8 Contractor shall be solely responsible for all design and engineering for the Work for which it is responsible under this Agreement. Contractor shall not be relieved of its obligations under this Agreement by virtue of any Approval by Company or Acceptance by Engineer of Contractor's design and engineering or by virtue of a design and engineering review by Company Group.

- 4.9 Within fifteen (15) Business Days of receipt of drawings issued by Contractor to Company or Engineer, Company or Engineer shall Approve or Accept the drawings or provide reasons in writing for rejection.

**ARTICLE 5
CONTRACTOR'S PERSONNEL**

- 5.1 Contractor shall furnish and procure the numbers and classifications of Contractor's Personnel required to perform the Work. In the event Contractor fails to provide the numbers or classifications of Contractor's Personnel required in respect of the Work, Company may issue a Notice that Contractor is in default of this **Article 5.1**, and:
- (a) require Contractor within five (5) Business Days of such Notice to prepare an action plan to cure the default for Company's Approval;
 - (b) require Contractor to commence and diligently follow the Approved action plan; and
 - (c) if Contractor fails to commence and diligently follow the action plan, Company may, at Contractor's sole expense, retain other contractors and deduct the costs associated with retaining such other contractors from the applicable compensation payable by Company to Contractor for the period such positions remain unfilled by Contractor.
- 5.2 Contractor shall ensure that throughout the Term each of Contractor's Personnel has the qualifications, training and experience, and holds the licenses and certifications necessary to carry out assigned duties in the performance of the Work. Contractor shall furnish records of competence for all of Contractor's Personnel when requested to do so by Company.
- 5.3 Contractor shall immediately remove and/or replace, at Contractor's own expense, any of Contractor's Personnel if, in the sole judgment of Company, any of Contractor's Personnel:
- (a) cease to carry out his or her duties in a manner satisfactory to Company or engages in misconduct, unsafe activities, or is incompetent or negligent;
 - (b) is certified by a medical practitioner as being medically unfit for the duties required of him or her; or
 - (c) risks impairing his or her usefulness in the performance of his or her duties through the use of alcohol or drugs.
- 5.4 Unless otherwise Approved by Company, Contractor shall replace, or cause to be replaced, at Contractor's own expense, any of Contractor's Personnel who is transferred or dismissed by Contractor or any Subcontractor, or leaves Contractor's or Subcontractor's employ.
- 5.5 Contractor shall nominate in writing one of Contractor's Personnel as Contractor's Representative. Contractor's Representative shall:

- (a) be in charge of Contractor's Personnel and shall supervise Contractor's Personnel and maintain strict discipline in order to ensure the timely and efficient performance of the Work, and shall notify Company in writing of the occurrence of or threat of any labour dispute involving Contractor's Personnel;
 - (b) have full authority to act on behalf of and bind Contractor on all labour and Contractor's Personnel issues which arise between Company and Contractor;
 - (c) supervise the performance of the Work;
 - (d) have the authority to commit Contractor to any course of action within the bounds of its rights and obligations under this Agreement; and
 - (e) be authorized to receive on behalf of Contractor any Notices, information or decisions of Company made pursuant to this Agreement.
- 5.6 Subject to **Article 5.7**, if positions of Contractor's Personnel of key importance to the performance of the Work are listed in Exhibit 2 – Compensation, Contractor shall not change any Personnel in such positions without the prior written consent of Company which consent may be withheld in Company's sole and absolute discretion. If Contractor removes or replaces key Personnel listed in Exhibit 2 – Compensation without Company's prior written consent then Contractor shall pay Company liquidated damages in accordance with Section 12 of Exhibit 2 - Compensation. Any liquidated damages payable by Contractor to Company with respect to key Personnel shall be independent of and not governed by any limits on liquidated damages set out in **Article 37** or otherwise affect Company's rights under this Agreement.
- 5.7 In the event any key Personnel listed in Exhibit 2 – Compensation leave the service of Contractor Group due to illness, death, retirement or termination of employment, Contractor shall promptly use all commercially reasonable efforts to retain suitably trained and experienced replacement key Personnel. In such circumstances, Company shall have the right, which shall be reasonably exercised by Company, to Approve such 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.

ARTICLE 6 SUBCONTRACTS

- 6.1 Subject to **Article 6.2** and **Article 6.3**, Contractor may employ Subcontractors to perform or support the performance of the Work or to furnish equipment to be provided by Contractor hereunder.
- 6.2 Contractor shall not Subcontract the whole of the Work. Contractor may Subcontract for the supply of materials, services and minor fabrication for any single Subcontract without Company's Approval where the value of any such Subcontract is less than five hundred thousand dollars (\$500,000.00). Contractor shall obtain Company's prior Approval for a Subcontract, including subcontracts to Contractor's Affiliates, where the value of the Subcontract equals or exceeds five hundred thousand dollars (\$500,000.00).

- 6.3 Subcontractors that are identified in Exhibit 8 – Subcontractors, Manufacturers and Material Sources, are Approved by Company. Contractor shall not be entitled to replace or add one or more Subcontractors without the prior Approval of Company. Company shall respond to Contractor's request for Approval to replace a Subcontractor within a reasonable time, and such Approval shall not be unreasonably withheld.
- 6.4 Any Subcontract permitted under this **Article 6** shall not relieve Contractor of any of its duties, obligations, warranties, liabilities or responsibilities under this Agreement. Contractor shall be responsible for the acts, omissions and negligence of any delegate and any Subcontractors and any of their respective Personnel as fully as if they were the acts, omissions or negligence of Contractor's own Personnel.
- 6.5 Contractor shall oversee the performance of all Subcontractors and delegates and shall keep such records and accounts and furnish such reports and information relative to Subcontractors as Company may reasonably request. No Subcontract shall bind or purport to bind Company. All Subcontracts shall contain:
- (a) a clear statement that Contractor is entering into such Subcontracts as principal and not as agent for any other Person; and
 - (b) a provision permitting the assignment of the Subcontract by Contractor to Company, at Company's option, without consent of Subcontractor.
- 6.6 Contractor shall ensure that any provisions of this Agreement which are required to be included in its Subcontracts have been so included. Contractor shall preserve and protect the rights of Company under this Agreement with respect to the Work to be performed by any Subcontractors so that the subcontracting thereof shall not prejudice such rights.
- 6.7 Contractor shall be responsible for, and shall defend, protect, release, indemnify and hold Company harmless from and against all Claims of any nature incurred by Company in connection with the payment of Subcontractors and Subcontractor's Personnel, including all compensation, medical costs, Taxes (including all Canadian and foreign payroll and withholding Taxes and remittances), unemployment insurance premiums, Canada pension plan contributions and other benefits of whatever nature or as may be applicable in any jurisdiction (including any jurisdiction where the Work is performed or where the Personnel reside or are employed).

ARTICLE 7 PERFORMANCE SECURITY

- 7.1 Contractor shall deliver within ten (10) Business Days of the Execution Date a performance bond, with rider, to Company in the form and with the content specified in Exhibit 14 - Performance Security and which complies with **Article 7.2** (the "**Performance Bond**"). Contractor shall maintain the Performance Bond at all times until three (3) years after the date for Substantial Completion shown on the Substantial Completion Certificate issued pursuant to **Article 25.4**.
- 7.2 The Performance Bond shall:
- (a) be in effect as of the Execution Date;

- (b) bond all of Contractor's obligations under this Agreement;
- (c) strictly conform to the form of performance bond in Exhibit 14 – Performance Security, including the Rider;
- (d) be in the face amount of fifty percent (50%) of the Contract Price, prepaid and non-cancellable by the surety; and
- (e) be issued by a surety which has a minimum credit rating of A- by Standard & Poor's, Moody's, DBRS or Fitch.

7.3 Company requires Contractor to deliver to Company three letters of credit issued by a bank listed in Schedule I to the *Bank Act*, S.C. 1991, c.46 with a minimum credit rating of A- or equivalent from any one of Standard & Poor's, or Fitch, or not less than A3 or equivalent from Moody's as security for Contractor's obligations under this Agreement, in the form and with the content specified in Exhibit 14 – Performance Security ("**Letter of Credit**"), as follows:

- (a) not less than fifteen (15) Business Days prior to the target date for Substantial Completion set out in Exhibit 9 - Work and Milestone Schedule, a Letter of Credit equal to ten percent (10%) of the Contract Price to be maintained until Final Completion has been achieved;
- (b) upon Approval by Company of the Commissioning static check, a Letter of Credit equivalent to seventy-five percent (75%) of the funds being held pursuant to the *Mechanics' Lien Act* by Company to be maintained until sixty days (60) past the date on the Substantial Completion Certificate to allow early release of holdback.;
- (c) upon completion of the Commissioning static check a Letter of Credit equivalent to twenty-five percent (25%) of the funds being held at that time pursuant to the *Mechanics' Lien Act* to be maintained until the amended Punch List issued after the Turnover Acceptance Certificate is totally (100%) complete; and
- (d) notwithstanding any term in this Agreement, Company is not obliged to make any further payment to Contractor under this Agreement until Contractor has delivered the Letter of Credit in **Article 7.3 (a)** within the timelines specified.

7.4 All costs and expenses incurred in relation to the establishment and maintenance of the Performance Bond and Letter of Credits described in this **Article 7** shall be included in the Contract Price.

7.5 Company may claim and have recourse to the Performance Bond 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
POLICY ON ETHICS/CONFLICTS OF INTEREST**

8.1 Contractor, in performing its obligations under this Agreement, shall establish and maintain appropriate business standards, procedures and controls including those

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necessary to avoid any real or apparent impropriety or adverse impact on the interests of Company and its Affiliates. Company reserves the right to review such standards and procedures at any time during the Term.

- 8.2 Contractor agrees to perform the Work and to conduct its operations in a manner which is in accordance with all Applicable Laws, consistent with the highest of ethical standards, including the Code of Business Conduct and Ethics set out in Exhibit 11 – Company Supplied Documents, and to avoid any unlawful or unethical intervention in the political affairs of any country. Contractor agrees to cause all Subcontractors to adopt and enforce the foregoing policy.
- 8.3 Contractor shall not pay any commission or fee, or grant any rebate or make any loan to any Personnel of Company Group or government official, or favour any Personnel of Company Group or government official with any gift or entertainment of significant value or enter into any business arrangement with any Personnel of Company Group or government official. Contractor agrees to cause all Subcontractors engaged in the performance of the Work to adopt and enforce the foregoing policy.

ARTICLE 9 COMPLIANCE WITH LAWS

- 9.1 In performing the Work and carrying out the provisions of this Agreement, the Parties shall comply with all Applicable Laws.
- 9.2 Company may from time to time require Contractor to provide to Company, and Contractor shall promptly so provide, evidence acceptable to Company, acting reasonably, that Contractor has in all respects complied with the obligations set forth in **Article 9.1**.

ARTICLE 10 COMPANY'S OBLIGATIONS

- 10.1 Subject to the provisions of this Agreement, Company agrees to engage Contractor to perform the Work in accordance with the terms of this Agreement.
- 10.2 Company, through the Company Representative or Engineer, shall provide to Contractor such instructions and information which can only be provided by Company. Subject to **Articles 41.5** and **41.6**, Contractor shall be entitled to reasonably rely on such instructions and information. The provision of any such instructions or information shall not in any way relieve Contractor of any of its obligations under this Agreement.
- 10.3 Company shall obtain all authorizations, permits and licenses as identified in Exhibit 6 – Environment and Regulatory Compliance Requirements which Company is responsible to obtain in its own 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 and issue Notices and perform such other duties and acts reserved to the Company Representative under this Agreement.

- 10.5 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 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 direct loss or damage to the equipment, products and materials supplied by Company to the extent caused by Contractor's negligent acts or omissions.
- 10.9 Subject to coordination and interfacing with work performed by Company's Other Contractors pursuant to Exhibit 9 – Work and Milestone Schedule and drawings in Exhibit 1- Scope of Work, Company shall allow Contractor and all of its Subcontractors unrestricted access to each Site where Work is to be performed, including as required laydown areas.

ARTICLE 11
ROLE AND RESPONSIBILITIES OF ENGINEER

- 11.1 Engineer has been retained by Company to provide engineering, procurement and construction administration services. Engineer shall have such powers, discretions, functions and authorities as are specified in or as may be implied from this Agreement (including issuing instructions, decisions, orders and Acceptance).
- 11.2 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.
- 11.3 Contractor shall comply with the decisions, orders and instructions given by Engineer in accordance with this Agreement.
- 11.4 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.
- 11.5 Engineer shall be the interpreter of first instance of the Technical Requirements.

- 11.6 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.
- 11.7 Contractor shall not commence any Work involving permanent installation of any equipment, materials or products until Contractor has submitted to Engineer and Engineer has Accepted the health, safety and environmental plans required by **Article 15** and drawings marked "Issued for Construction" for the part of the Work to be performed.
- 11.8 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.
- 11.9 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 this **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. Except as may be otherwise expressly provided in Exhibit 2 – Compensation, Company shall have no obligation to pay Contractor for the purchase of any goods or performance of services which have not been Approved prior to the delivery to Company of such goods or prior to the 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 for billing. Contractor shall utilize the pro forma invoice and cost codes when billing Company.
- 12.3 Contractor shall be paid the portion of the Contract Price applicable 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 Contractor will provide Company with separate invoices for each currency to be invoiced. 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 Appendix G to 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 carried in Contractor's invoices for which Payment Certificates have been Approved by Company.

(All invoicing requirements, information and documentation described in this **Article 12.6** 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 required to pay any invoice from Contractor until complete Billing Information has been provided to Company. Company shall not be responsible for delays in payment due to Contractor not providing complete Billing Information.
- 12.8 When Contractor considers that a Payment Milestone has been completed and the criteria for completion of that Milestone have been achieved, Contractor shall issue to Engineer, for Company's Approval, a Payment Certificate in the form set forth in Exhibit 3 – Coordination Procedures, that sets out:
- (a) for Work items paid on a unit price basis, the number of units completed for the Payment Milestone together with the unit price and total claimed for each unit price item;
 - (b) for Work items paid on a fixed lump sum basis, the amount claimed for each fixed lump sum item based on the percentage completed less any amounts previously paid by Company for each such item;

- (c) 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;

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/or Exhibit 2 - Compensation are estimated quantities only. Any increase or decrease in the quantities of Work performed in respect of those unit price items listed in Exhibit 1 – Scope of Work and/or 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 supporting documentation to determine if the Milestone has been achieved. Engineer shall render its decision within ten (10) Business Days from receipt of a Payment Certificate from Contractor. If Engineer determines that:
- (a) the Milestone has been achieved, Engineer shall recommend to Company that the Payment Certificate may be Approved; or
- (b) 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 Within five (5) Business Days after the first day of each month following a month in which a Payment Certificate has been Approved by Company for a Payment Milestone, 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:
- Labrador-Island Link Limited Partnership
Re: Lower Churchill Project
350 Torbay Road Plaza, Suite No. 2
St. John's, NL
A1A 4E1
Attention: Lower Churchill Project Accounts Payable
- 12.13 If any Change affects the Contract Price, Contractor may issue an invoice for the Work completed pursuant to the applicable Change Order, as follows:
- (a) For Change Orders carried out on a lump sum or unit price basis, Contractor shall comply with the requirements outlined in **Articles 12.5** through **12.13** in the same manner as if the completion of the Change Order Work constituted a Payment Milestone.

- (b) For Change Orders carried out on a reimbursable basis, Contractor shall include in its application for payment pursuant to **Article 12.8** that portion of the Change completed in the previous month accompanied by all Billing Information including an executed copy of the relevant Change Order, a copy of timesheets Accepted by Engineer for work compensated on a time and material basis, daily progress reports and any other information as Engineer may require to verify the progress, completion and associated charges pertaining to the Change. The final invoice for reimbursable Changes shall also include any information as Engineer may reasonably require to verify the successful completion of the Change.
- 12.14 If Contractor fails to comply with the requirements of **Article 12.6**, the Work shall be deemed incomplete and Company may withhold monies otherwise payable to Contractor and/or return invoices to Contractor for resubmission until such Billing Information has been provided to the satisfaction of Company.
- 12.15 Within thirty (30) days following Engineer's receipt of a properly prepared invoice, accompanied by acceptable Billing Information in accordance with this **Article 12**, Company shall pay to Contractor the amount and in the currency stated to be due, subject to the following:
- (a) Company shall be entitled to withhold from such payment any amount(s) required by Applicable Laws or permitted hereunder;
- (b) if Engineer disputes any item charged in any invoice, Engineer shall notify Contractor of the disputed item specifying the reason therefore, and payment of such disputed item shall be withheld until settlement of the dispute, provided that payment shall be made on the undisputed portion; and
- (c) Company shall be entitled to set-off amounts which it owes to Contractor under this Agreement or any other agreement with Contractor against amounts which Contractor owes to Company under this Agreement or any other agreement with Company.
- 12.16 Company shall be entitled to deduct and shall retain from each payment a ten percent (10%) holdback pursuant to the *Mechanics' Lien Act*, R.S.N.L 1990, c.M-3. Company shall release the holdback funds in accordance with **Articles 25.8**.
- 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 remit or pay any Tax or make any other payment required under Applicable Laws;
- (c) Defects in the Work not remedied;
- (d) 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;

- (e) as expressly provided in Exhibit 2 – Compensation, or elsewhere in this Agreement; and
 - (f) amounts owing to Company by Contractor as liquidated damages pursuant to **Article 37**.
- 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 material default on the part of Contractor;
 - (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 Payments by Company to Contractor hereunder will be made by electronic transfer to Contractor's bank. Contractor shall provide Company, in writing, 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's Representative. Company shall not be held liable or responsible for errors or delays resulting from incorrect or delayed submission of changes in banking instructions.
- 12.20 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 12.20** on the amount of any claim settled pursuant to **Article 40** 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.
- 12.21 For greater certainty, Contractor and Company acknowledge that, notwithstanding any other provision of this Agreement, any amounts payable by Company to Contractor pursuant to this **Article 12** are exclusive of any HST as payable pursuant to Section 165 of the *Excise Tax Act* (Canada), R.S.C. 1985, c. E-15. If Contractor is required to collect from Company an amount of HST with respect to the provision of any goods or services supplied pursuant to this Agreement, then Company, subject to compliance by Contractor with this **Article 12**, shall pay the amount of such HST to Contractor.

- 12.22 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. Contractor's current HST registration number as of the Effective Date is 86793 1701RT0001. Contractor shall promptly provide any change of HST registration number to Company by Notice.
- 12.23 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.
- 12.24 All travel costs incurred by Contractor, including travel time to the Site by Contractor's Personnel, are included in the Contract Price.

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 12.21**, 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 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 21.7** 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, 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. If Company cannot provide such evidence in a timely manner that the amount withheld is required by Applicable Laws of any country having jurisdiction, Company shall pay the amount withheld to Contractor in order for Contractor to receive full payment as described herein.
- 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 12.21**, 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 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 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.

- 13.9 Notwithstanding any other provision of this Agreement, Contractor Group shall not make any statement, representation, filing, return or settlement regarding Taxes on behalf of Company to an Authority without the prior written consent of Company.
- 13.10 For greater certainty, anti-dumping duties, countervailing duties and the like shall, in all cases, be borne by Contractor. Should any such duties become payable by Company, Contractor shall be liable for and defend, protect, release, indemnify and hold Company harmless from and against any such duties, together with any interest, penalties and reasonable costs related thereto, and Contractor shall immediately provide Company with sufficient funds to pay such duties and other amounts in full. If Company has already paid such duties or other amounts, Contractor shall reimburse Company, on demand, the full amount of such duties and other amounts so paid.

ARTICLE 14 AUDIT AND RECORDS

- 14.1 Contractor shall maintain, 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 personnel records, correspondence, cost estimates, instructions, plans, schedules for the performance of the Work, drawings, receipts, vouchers, memoranda, tapes, data, models, data stored in computer libraries and such other documentation reasonably necessary for an accurate audit and verification of costs of that portion of the Work provided on a reimbursable basis provided under **Article 14.3** and any costs claimed under this Agreement and general contract compliance.
- 14.2 Contractor and Subcontractors shall preserve the documents and records, described in **Article 14.1** during the provision of the Work and for a period of not less than seven (7) years after expiration or any termination of this Agreement or for such longer period as may be required under Applicable Laws. Thereafter, Contractor shall give no less than sixty (60) days' notice to Company of Contractor's or Subcontractors' intention to destroy any of said documents and Company shall have the option to take possession of such records.
- 14.3 Company, its Affiliates and/or its independent consultants shall, at its sole cost and expense and during regular business hours during the period described in **Article 14.2**, have access to and be authorized to examine and make copies of all documents, records set forth in **Article 14.1** and such other documents and records and, under Contractor's control and supervision, systems as may be related to this Agreement for an accurate audit and verification of field or other costs for the Work provided on a reimbursable basis and/or an accurate audit and verification of costs in respect of any claim by

Contractor for additional compensation which Company may reasonably require. In addition and without limiting the foregoing:

- (a) For Work provided on a reimbursable basis as set out in Section 4.0 of Exhibit 2 - Compensation, such documents and records shall consist of time sheets for labour, equipment logs and invoices paid for materials.
- (b) For Work provided on a lump sum basis in accordance with Exhibit 2 - Compensation, such documents and records shall allow Company to verify Contractor's invoices to Company to actual quantities delivered and services provided.
- (c) Company shall be authorized to interview Contractor's Personnel as may be necessary to understand Contractor's accounting method and systems.

14.4 Contractor shall insert in all Subcontracts an audit clause that (1) mandates Subcontractors to maintain in accordance with **Article 14.2** and 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 each Subcontractor's personnel records, correspondence, cost estimates, instructions, plans, schedules for the performance of the Work, drawings, receipts, vouchers, memoranda, tapes, data, models, data stored in computer libraries and such other documentation reasonably necessary for an accurate audit and verification of costs of each Subcontractor's Work ("Subcontractor Data") and that (2) allows Company to fully and completely audit such Subcontractor Data during regular business hours at each Subcontractor's location.

14.5 Notification of any claims made or discrepancies disclosed by an audit pursuant to this **Article 14** 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 Company as a result of such agreement or determination, or Company may set off any amounts owed to it by Contractor for audit claim or discrepancies against any payments owed to Contractor by Company.

14.6 Contractor shall not be reimbursed for any costs it may incur as a result of Company conducting an audit pursuant to this **Article 14**. All such audits shall be conducted during normal business hours of Contractor and Company shall give reasonable notice to Contractor of the audit and shall specify the matters which are the subject of the audit.

ARTICLE 15 HEALTH, SAFETY AND ENVIRONMENTAL PROTECTION

15.1 Contractor shall be responsible for ensuring the health and safety of all of 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 and equipment within Contractor's control are maintained in safe, sound and proper condition and capable of performing the

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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.

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- 15.3 Contractor shall develop and submit to Engineer for Acceptance a detailed environmental protection plan for the Work which demonstrates that, in connection with Contractor's performance of the Work, Contractor has identified risks pertaining to the environment and that effective controls are implemented to prevent threats and damage to the environment. Contractor's plan shall:
- (a) satisfy the requirements of Exhibit 6 – Environmental and Regulatory Compliance Requirements;
 - (b) be structured in accordance with various elements within the Work such as fabrication, transportation, installation and commissioning;
 - (c) include measurable, achievable targets for performance, including performance criteria for environmental emissions and waste, and hazardous materials; and
 - (d) include an environmental management plan that satisfies the Technical Requirements and Applicable Laws.
- 15.4 Engineer, on behalf of Company, shall Accept Contractor's plans required by **Article 15.2** and **Article 15.3** provided the plans comply with this Agreement, Applicable Laws and any ordinances, orders and decrees of any Authority having jurisdiction over health, safety and environmental compliance of the Work or the Worksite and any other requirements of Company.
- 15.5 Contractor shall comply with all such standards and the provisions of the plans required by **Article 15.2** and **Article 15.3**, along with any changes thereto as Contractor may be notified from time to time by Engineer, and all Applicable Laws relating to occupational health, safety and environmental protection. Contractor shall ensure that all Contractor's Personnel involved in the performance of the Work comply with the provisions of Contractor's health, safety and environmental plans and all Applicable Laws relating to occupational health, safety, and environmental protection. Contractor shall appoint a safety officer who shall assist Contractor in safety matters relating to Contractor's Personnel.
- 15.6 Contractor shall promptly investigate and report to Engineer and Authorities having jurisdiction any near miss incidents or any accidents resulting in injury, death or illness to any of Contractor's Personnel engaged in the performance of the Work, any criminal acts, any damage to property or any adverse impact on the environment and any release of substances hazardous to the environment.
- 15.7 Contractor shall submit to Engineer for Acceptance Contractor's drug and alcohol policy which shall be in compliance with Applicable Laws. Contractor shall ensure that Contractor's Personnel who are engaged in the performance of the Work, are familiar with, and comply with, Contractor's drug and alcohol policy.
- 15.8 Company shall have the right to suspend performance of the Work for as long as necessary to prevent or stop any violation of this **Article 15**. 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 41.6**, in the event Company declares an emergency with respect to any matter affecting health, safety, the environment or potential damage to or loss of property, Contractor shall comply with verbal instructions issued by Company or Engineer with respect to such emergency. Company or Engineer shall confirm such instructions in writing at the first reasonable opportunity.
- 15.11 Contractor shall exercise all diligence to conduct operations under this Agreement in a manner that will prevent any adverse impact to the environment including seepage, discharge or escape of pollutants, hazardous substances, debris and damage to or destruction of habitat. Contractor shall be responsible for all risks and costs to:
- (a) handle, dispose and/or cleanup those hazardous substances, if any, identified in Exhibit 11 – Company Supplied Documents in respect of the Site;
 - (b) handle, dispose and/or cleanup those hazardous substances disposed of or discharged on the Site by Contractor Group in connection with or incidental to the performance of or default in any of Contractor's obligations under this Agreement;
 - (c) remediate any environmental damage arising from Contractor's performance of the Work including the removal and cleanup of any pollution, debris and hazardous substances;
 - (d) take such measures as are necessary in the circumstances to prevent or mitigate any environmental damage resulting from any pollution, seepage or discharge or escape of pollutants, debris and hazardous substances; and
 - (e) take such measures that Contractor or Company is under instructions to take from any Authority having jurisdiction to so instruct.
- 15.12 Company shall provide Contractor with written disclosure of all known hazardous substances, contaminants and conditions existing at the Site prior to Contractor's mobilization to Site. Contractor shall be solely responsible for any loss, damage or injury caused by Contractor Group's negligent acts or omissions in the handling, storage or use of any hazardous substances or contaminants Contractor brings to the Site.
- 15.13 If Contractor:
- (a) encounters hazardous substances at the Site; or
 - (b) has reasonable grounds to believe that hazardous substances are present in or on or under any of the Site which are not disclosed in the Exhibit 11 – Company Supplied Documents or are present in or on or under or migrating from any other sites,

then Contractor shall:

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

ARTICLE 16 ACCESS AND QUALITY

- 16.1 Company shall, in accordance with this **Article 16**, have the right to send Company Group Personnel to the Worksites to monitor the progress of the Work, including to any manufacturing facility operated by any member of Contractor's Group where any materials, components, equipment or product is being manufactured, fabricated or assembled for the Work. At all times during the Term, Contractor Group Personnel shall provide all requisite assistance to Company Group Personnel.
- 16.2 Company Group Personnel shall, at all times during the Term, be granted unrestricted right of access to inspect the Work and monitor all the Work in progress or Contractor Items utilized in connection with the creation or construction of the Work for the purpose of determining that the Work is being created or constructed in accordance with this Agreement.
- 16.3 Contractor, with the prior Acceptance of Engineer, shall permit representatives of Authorities to enter onto and inspect a Worksite, with reasonable advance notice and escorted access to the Work. Contractor may provide, and each such Person shall accept, reasonable safety and security measures implemented by Contractor. Contractor shall also promptly provide information reasonably requested by Company, Authorities or any of their representatives.
- 16.4 Contractor shall include appropriate provisions in all its Subcontracts and purchase orders to ensure the proper enforceability of the provisions of this **Article 16**.
- 16.5 No inspection, representation, responsibility or action of any Company Group Personnel hereunder shall relieve Contractor Group of any of its obligations or liabilities under this Agreement or operate as a waiver or release of the same.
- 16.6 Commencing on the Effective Date and throughout the Term, Contractor shall maintain a Quality Plan in respect of every aspect of the Work in accordance with Exhibit 7 – Quality Requirements.
- 16.7 Notwithstanding any Company, Engineer, Authority or other third party inspection, testing or witnessing, Contractor shall be responsible for quality control, quality surveillance/inspection, testing and quality assurance of the Work to verify and be able

to demonstrate compliance with the requirements of this Agreement. Contractor shall carry out its quality management activities in accordance with Exhibit 7 – Quality Requirements.

- 16.8 Contractor shall conduct tests on the Work in accordance and in compliance with the provisions of Exhibit 1 - Scope of Work, Quality Plan, Contractor's quality management system, Company Supplied Data and Applicable Laws. Company and Engineer shall have the right at all times to request and witness any such test on the Work contemplated by this **Article 16.8**.
- 16.9 Contractor shall rectify, at Contractor's sole cost, any failure to comply with the requirements of Exhibit 1 – Scope of Work and Applicable Laws that are identified during testing, commissioning and inspection of the Work.
- 16.10 Upon completion of work necessary to satisfy **Article 16.9** and at the reasonable request of Company or Engineer, Contractor shall re-test the Work at Contractor's sole cost in order to confirm that the requirements of this Agreement are met. Company or Engineer may further require Contractor to re-test, at Contractor's cost, all the Work similar to that Work which originally failed any tests or inspection.
- 16.11 Company and Engineer shall have the right to reject any Work, workmanship, equipment and documentation which do not conform to this Agreement. Contractor shall, at its sole expense, promptly remove any items so rejected and shall immediately repair or replace the same and shall carry out such further inspections or tests on other parts of the Work, as Company or Engineer may require, to ensure that there are no similar parts of the Work that fail to conform with this Agreement.

ARTICLE 17 WARRANTY

- 17.1 Contractor agrees that for a period the later of three (3) years following the date shown for Substantial Completion on the Substantial Completion Certificate or one (1) year following the date shown for Final Completion on the Final Completion Certificate, but in no event later than forty eight (48) months from the date of final delivery of the last major material identified in the Terms of Payment, Main Equipment List, set out in Exhibit 2 – Compensation, ("**Warranty Period**") it shall at its own expense promptly:
- (a) correct any Work which is not in accordance with this Agreement;
 - (b) rectify and make good or cause to be rectified and made good all Defects in the Work which are detected and discovered; and
 - (c) have available at the Worksites or at a proximate location to the Worksites all necessary equipment, spare parts and labour to comply with the foregoing obligations.
- 17.2 Contractor shall provide to Company a products and workmanship warranty on any products, materials, and equipment incorporated into the Work to remain in effect for three (3) years from the date shown for Substantial Completion on the Substantial Completion Certificate. Such warranties shall provide for repair or replacement of the component parts of such products or equipment or replacement of materials and shall

cover reasonable direct costs incurred by Company arising out of Defects in or failure of any Work.

17.3 Contractor shall perform all tests and take all measurements specified in the Technical Specifications to be made and taken during the Warranty Period.

17.4 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 the Technical Specifications which form part of this Agreement and where no purpose is specified, fit for its intended use where such use is consistent with this Agreement; and
- (d) all of the Work and Warranty Work shall be free from Defects, including latent Defects.

17.5 For the avoidance of doubt, the provisions of this **Article 17** shall also extend to all portions of the Work and Warranty Work carried out by Subcontractors. Contractor shall cause to be extended to Company any applicable representations, warranties, guarantees and obligations with respect to design, engineering, materials, workmanship, equipment, tools and supplies furnished by its Subcontractors. All representations, warranties, guarantees and obligations of Subcontractors shall be:

- (a) so written as to survive all Company and Contractor inspections, tests and Approvals; and
- (b) extended to and be enforceable by Company, its successors and assigns.

If applicable, Contractor shall assign to Company all of Contractor's rights and interest in all extended warranties for periods exceeding the Warranty Period which were received by Contractor from any of its Subcontractors or vendors.

17.6 If, within the Warranty Period, any of the Work is faulty, defective or deficient, Contractor, on receipt of Notice from Company, shall commence and diligently perform all services and work and supply all materials and equipment required to remedy such Defect to the Standard of a Prudent Contractor and in the manner and at the times that Company directs so that it conforms to the requirements in the Agreement ("**Warranty Work**").

17.7 During the period that Warranty Work is being performed, Contractor shall continue to cooperate with Company's Other Contractors and Company Personnel in accordance with **Article 3.8**.

- 17.8 If Contractor does not fulfill its requirements under this **Article 17** or fails to commence appropriate steps to correct any Defects, within five (5) Business Days of Notice to Contractor by Company, Company may have the Work which is the subject of the Notice from Company corrected by a third party at the sole cost of Contractor. Such recourse shall in no way relieve Contractor from its Warranty obligations.
- 17.9 Contractor shall not substitute any materials in performing Warranty Work without the prior Approval of Company.
- 17.10 All work required to be performed in accordance with the terms of this **Article 17** shall be performed at the expense of Contractor and shall not give rise to any right of Contractor to remuneration.
- 17.11 This Warranty is subject to the following additional terms and conditions:
- (a) Notwithstanding anything contained elsewhere in the Agreement, this Warranty shall apply to items manufactured and/or installed by Contractor, regardless of whether components or raw materials are supplied by others.
 - (b) Subject to **Article 17.9** Contractor shall have the option of repairing or replacing any Defects in the Work provided such repair or replacement meets all the requirements and specifications outlined in this Agreement.
 - (c) This Warranty does not apply to damage to the Work caused by ordinary wear and tear, abuse by Company Group, alteration or application of products, materials or equipment for purposes not contemplated by the Technical Requirements.
- 17.12 Unless otherwise instructed by Company, Contractor shall remove from the Site and dispose of any parts or equipment that have been replaced, and Contractor shall be solely responsible for all costs associated with such removal and disposal. Company shall have the option, to be exercised at its discretion, to retain ownership of removed and replaced parts, and upon exercising such option Company may use or dispose of the parts as Company shall deem fit.
- 17.13 Company, itself or through Engineer, shall notify Contractor in writing with reasonable promptness after discovery of any Defect in respect of which Contractor shall be obliged pursuant to this **Article 17** to perform Warranty Work. Notice of any Defect discovered during the Warranty Period must be given to Contractor no more than sixty (60) days after the end of the Warranty Period.
- 17.14 Company, at its sole discretion, may retain independent third parties to inspect, test, review and/or observe the Work for compliance with this Agreement. Contractor, upon reasonable notice, shall provide such independent third parties access to the Work and to any facility in which any equipment or products are being manufactured for installation as part of the Work in order to permit the independent third parties to perform their duties.
- 17.15 Notwithstanding anything to the contrary in this Agreement, this Warranty is exclusive of any other warranty, express, implied, statutory or otherwise.

**ARTICLE 18
CONTRACTOR INSURANCE**

- 18.1 Contractor will maintain in place for the duration of the Work insurance policies in accordance with the requirements of **Article 18.3** from a financially sound insurance company. If Contractor fails to procure such policies or fails to provide certificates of insurance confirming such coverage within the time specified in **Article 18.2**, or if any insurance is cancelled and not immediately replaced with comparable insurance, 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**. If required by court order, Contractor shall provide copies of its insurance policies required to be maintained as set forth in **Article 18.3**.
- 18.3 Contractor shall at all times while conducting the Work carry the following insurance coverages with limits specified below, covering property and liability outside the scope of the insurance supplied by Company pursuant to **Article 20**. The cost of insurance procured by Contractor, including deductibles or self-insurance or policy retentions, shall be for the sole account of Contractor:

(a) Workers' Compensation

Workers' Compensation coverage for all of its Personnel engaged in the Work in accordance with the Applicable Laws of the jurisdictions in which the Work is performed. Contractor shall further ensure that non-residents are fully covered by Workers' Compensation insurance and Employer's Liability insurance with such coverage including an extraterritorial benefits extension providing benefits 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 a claims made basis with limits of Canadian five million dollars (\$5,000,000.00) per claim for bodily injury and/or property damage including blanket contractual liability, sudden and accidental pollution liability for risks assumed by Contractor, broad form property damage, personal injury, contractor's protective liability, products and completed operations for a period of not less than twenty-four (24) months, contingent employer's liability and incidental medical malpractice.

(d) Automobile Liability Insurance

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

(e) Owned and Non-owned Aircraft

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

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

(i) Other

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

- (i) as may be required in order to comply with Applicable Laws; and

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- (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 by this **Article 18** shall be endorsed to waive insurer's rights of subrogation against Company Group and their Personnel, stockholders, successors, assigns and Affiliates. All liability policies required above shall be endorsed to include Company Group and their Personnel, successors, assigns and Affiliates as additional insureds and shall contain cross liability and severability of interest provisions. Except with respect to the insurance coverage to be procured by Company pursuant to **Article 20**, all of Contractor's insurance policies shall operate as primary to any similar insurance policies maintained by Company and their Personnel, successors, assigns and Affiliates.
- 18.5 Contractor shall provide Company thirty (30) days prior written notice of cancellation or any material change in coverage.
- 18.6 Contractor shall give Company prompt notification of any claim involving the Work with respect to any of the insurance policies referred to in **Article 18.3**, accompanied by full details of the incident giving rise to such claim. Contractor agrees to do all acts, matters and things as may be reasonably necessary or required to expedite the adjustment of any loss or damage covered by insurance so as to expedite the release and disposition of such insurance in the manner and for the purposes contemplated in this Agreement. If requested by Company, Contractor shall advise Company in writing of the final resolution of any such insurance claims.
- 18.7 If requested by the other Party, a Party shall advise the other Party in writing of the final resolution of any such insurance claims.
- 18.8 Company may reduce or waive all or any portion of these insurance requirements under circumstances where the Work to be performed does not require equivalent insurance coverage. Such reduction or waiver shall be obtained in writing and shall in no way reduce or waive Contractor's responsibility or liability for the Work.
- 18.9 Nothing in this **Article 18** shall or is intended to limit the liability of Contractor under any other provision of this Agreement. The provisions of this **Article 18** will not be interpreted as relieving Contractor of any of its obligations under this Agreement. Contractor may purchase, at its own expense, any additional insurance it deems necessary.

ARTICLE 19 WORKERS COMPENSATION

- 19.1 Prior to the performance of the Work hereunder, Contractor shall provide Company with Contractor's Workers' Compensation number and a letter of good standing in accordance with the Applicable Laws of the jurisdiction in which the Work is performed.
- 19.2 Contractor shall at all times pay, or cause to be paid, any assessment or contribution required to be paid pursuant to Applicable Laws relating to Workers' Compensation in respect of Contractor's Personnel and, upon failure to do so, authorizes Company, in addition to any other rights of Company under this Agreement, to withhold and remit on

behalf of Contractor an amount equal to such assessment or contribution, including any interest and penalty assessed thereon.

- 19.3 Upon completion of Subcontract work, each Subcontractor shall deliver to Engineer a clearance certificate from the Workplace Health, Safety and Compensation Commission of the Province of Newfoundland and Labrador.
- 19.4 Upon completion of the Work, Contractor and all Subcontractors which have not previously provided evidence of compliance with **Article 19.3** above shall deliver to Engineer a clearance certificate from the Workplace, Health, Safety and Compensation Commission of the Province of Newfoundland and Labrador.

ARTICLE 20 PROJECT INSURANCE

- 20.1 The following insurance coverages shall be procured by Company. The policies listed below will cover Company Group, Contractor and subcontractors of every tier (but not including vendors and suppliers except to the extent a vendor or supplier performs operations at the Site) as their interests and/or liabilities may appear:
- (a) Construction All Risk (CAR) insurance, including design defect coverage to LEG2/96 or better, subject to a limit of not less than the total Contract Price, attaching on or in place and in effect as of the Effective Date.
 - (b) Wrap-up Liability insurance, with Company as the named insured and its Personnel, stockholders, successors, assigns and Affiliates as additional insureds, written on an occurrence basis with limits not less than Canadian fifty million dollars (\$50,000,000.00) per occurrence for bodily injury and/or property damage including contractual liability, broad form property damage, personal injury, contractor's protective liability, completed operations for a period of not less than twenty-four (24) months, contingent employer's liability, incidental medical malpractice, cross liability and severability of interest provisions.
 - (c) Pollution Liability insurance, with Company as the named insured and its Personnel, stockholders, successors, assigns and Affiliates as additional insureds, written with limits not less than Canadian ten million dollars (\$10,000,000.00) per occurrence and in the aggregate.
- 20.2 Insurance policies required by this **Article 20** shall:
- (a) be endorsed to waive insurer's rights of subrogation against Contractor and subcontractors of every tier (but not including vendors and suppliers except to the extent a vendor or supplier performs operations at the Site) and their stockholders, successors, assigns and Affiliates; and
 - (b) 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:

- (a) Contractor shall not be responsible for deductibles arising from claims for damage or loss caused by earth quake;
- (b) 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 negligence of Contractor Group; and
- (c) 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 **Article 20.1** shall be in place and shall be maintained until a Final Completion Certificate has been issued, with any completed operations coverage to continue after the Final Completion Certificate has been issued as set out in the policy.
- 20.5 Prior to Contractor commencing work at the Site, Company shall submit to Contractor certificates of insurance or such other documentation as Contractor may reasonably require evidencing the insurance required by this **Article 20**. Failure of Contractor to advise Company of any insurance deficiencies shall not relieve Company of any liability related to its obligations under this **Article 20**. If required by court order, the Company shall provide copies of its insurance policies to Contractor.

ARTICLE 21 INDEMNIFICATION

- 21.1 The Parties hereby agree and acknowledge that if a provision in this **Article 21** conflicts with any other provision in this Agreement, the provision in this **Article 21** shall prevail.
- 21.2 For the purposes of this Agreement, any liability assumed or indemnity given by Contractor for the benefit of Company shall be deemed to be given by Contractor for the benefit of Company, its successors and assigns, Affiliates and Personnel.
- 21.3 Except as otherwise specifically stated in this Agreement, Company shall defend, indemnify, keep indemnified and shall hold harmless Contractor and its Personnel and Affiliates, and each of their successors and assigns, from and against any and all Claims by a third party which such indemnified parties 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.
- 21.4 Contractor shall defend, indemnify, keep indemnified and shall hold harmless Company and its Personnel and Affiliates, and each of their successors and assigns, from and against any and all third party Claims which such indemnified parties may at any time sustain, pay 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 knowing or wilful inaccuracy in or gross negligence in the making of 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 or Person acting on behalf of Contractor of any of the material obligations of Contractor in respect of the performance of the Work;
- (d) Claims in contract, tort, under any statute or otherwise at law or in equity with respect to any bodily injury (including death), damage to or loss of tangible property arising out of a breach of contract or negligent actions or omissions or wilful misconduct of Contractor Group, or any licensee, invitee or Person acting on behalf of any of them in connection with the Work;
- (e) any reasonable and necessary 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) in respect of loss or damage to the property of Contractor Group however caused except to the extent the Claim was caused by the negligence or wilful act or omission by Company;
- (g) in respect of personal injury or death of Contractor's Personnel however caused and regardless of whether or not the Claim was caused by Contractor's negligence, breach of agreement or breach of duty;
- (h) any representation or holding out by Contractor that it is an agent of Company;
- (i) against all fines and penalties, as well as costs, expenses, rates and charges of Contractor Group, resulting from the failure of Contractor Group to comply with **Article 3.5**;
- (j) for any liabilities associated with the retention of such other contractors by Company as a result of Contractor's failure to satisfy the provisions of **Article 5.1**;
- (k) any failure by Contractor to comply with its obligations under **Article 9.1** and **Article 9.2**.

21.5 Contractor shall include in all of its Subcontracts, a provision stating that Subcontractors shall defend, 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 except to the extent the Claim was caused by the negligence or wilful act or omission by Company.

- 21.6 Without limiting the generality of **Article 21.4**, Contractor shall be liable for and defend, 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**.
- 21.7 Without limiting the generality of **Article 21.4**, and subject to the obligation of Company to pay HST pursuant to **Article 12.21**, Contractor shall be liable for and defend, 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; and
 - (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.
- 21.8 Except where expressly stated otherwise, 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.
- 21.9 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.

- 21.10 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 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.
- 21.11 During the period commencing at the time that Contractor has possession of, or control over, Work in which title has vested in Company pursuant to the provisions of **Article 23.2** or items free issued to Contractor, 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.
- 21.12 Contractor shall be responsible for, and shall defend, indemnify and hold Company Group harmless from and against all Claims of any nature incurred by Company Group:
- (a) 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);
 - (b) against any damage to Company Group property arising from any negligent act or omission by Contractor's Personnel.
- 21.13 Subject to any liquidated damages payable pursuant to this Agreement, neither Party shall have any responsibility and shall not be liable under this Agreement to the other Party for any indirect, incidental 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, loss of benefit foreseen by the Lower Churchill Construction Benefits Strategy document, 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.

- 21.14 Notwithstanding anything to the contrary in this Agreement, the maximum aggregate liability of Contractor toward Company for all Claims arising out of or connected with the Work or performance or breach of this Agreement, including **Article 21**, shall be limited to the sum of one hundred percent (100%) of the Contract Price, provided however that such limitation shall not apply in cases of:
- (i) Claims for personal injury (including death) suffered by third parties;
 - (ii) Claims for property damage or loss suffered by third parties;
 - (iii) Contractor's wilful, deliberate or intentional material and fundamental breach of this Agreement;
 - (iv) Taxes, fines and/or penalties (including in respect of breaches of environmental laws) imposed by any Authority for which Contractor is liable under this Agreement; and
 - (v) Claims for infringement of patents and/or other intellectual property rights.
- 21.15 The foregoing shall constitute the sole remedies and liabilities of the Parties for Claims under this **Article 21**.

ARTICLE 22 SITE AND TRANSPORT ROUTE CONDITIONS

- 22.1 Subject to **Articles 22.9 to 22.14**, Contractor shall inform itself fully as to the risks and contingencies and all other data, matters and things, local or otherwise, respecting the Site, transportation routes and any other aspects of the Work necessary to perform Contractor's obligations under this Agreement. Contractor shall be deemed to have been satisfied as to the suitability and availability of such Site, and other aspects of the Work, with the exception of the transportation route between Happy Valley Goose Bay and Cartwright Labrador.
- 22.2 Contractor acknowledges and agrees that utilities and service connections may not be located as exactly shown on drawings provided by Company or Engineer. Contractor shall satisfy itself fully as to the exact location of all utilities and service connections and shall, at no additional cost, make such alterations to the Work as may be required to avoid conflicts in or damage to utilities and connections.
- 22.3 Contractor shall be solely responsible for determining the transport route for shipment of all equipment, materials and products Contractor requires to perform and complete the Work. Contractor shall conduct its own tests or investigations to satisfy itself as to all transport route conditions, including obstructions, road conditions, weight restrictions, size limitations and utilities. Contractor accepts all risks and contingencies associated with the shipment of all equipment, materials and products for the Work.

- 22.4 For transportation within the Province of Newfoundland and Labrador on the Company's preferred route from the port in Cartwright to the Muskrat Falls Worksite only, the Company will undertake, at Company's cost, upgrades to transportation infrastructure necessary to transport the expected loads identified by Contractor in its Logistics and Transportation Strategy. Company will exercise reasonable efforts to complete necessary infrastructure upgrades to meet the expected delivery dates.
- 22.5 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.
- 22.6 Contractor waives its right to any claim against Company for additional compensation or any extension to a date for completion of performance of any part of the Work set out in the Milestone Schedule based on, resulting from or arising out of any differences between transport route conditions that may exist and those conditions that may have been assumed or anticipated by Contractor, including resulting from any assumptions, anticipations, misunderstandings or misinterpretation by Contractor of port, bridge or road conditions or from any information provided by Company or Engineer.
- 22.7 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 Worksite. Contractor shall also obtain, at Contractor's cost, any additional facilities outside a Worksite which Contractor may require for purposes of Work.
- 22.8 Subject to **Article 31**, Contractor shall be solely responsible for and assumes all risks associated with weather conditions at the Site, and the cost of performing the Work under all weather conditions experienced at the Site shall be included in the Contract Price.
- 22.9 If, during the course of the Work, Contractor encounters unforeseen geological or geotechnical conditions, including ground water, and suffers delays and/or incurs costs as a direct result, 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.
- 22.10 Within fifteen (15) Business days of a notice delivered pursuant to **Article 22.9**, Contractor shall determine the magnitude 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.
- 22.11 Except as may otherwise be agreed between the Parties, Contractor agrees that the Construction Schedule and timing of any Payment Milestone shall 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.
- 22.12 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 40** and Exhibit 15.

- 22.13 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.
- 22.14 To the extent unforeseen geological or geotechnical conditions may constitute a Change, the provisions of **Article 26** shall apply.

ARTICLE 23
TITLE AND RISK

- 23.1 Contractor warrants good title to all Contractor's Items, consumables, goods and other items furnished by it under this Agreement and that they are free from any liens or encumbrances in favour of third parties. Risk of and in Contractor's Items shall remain with Contractor throughout the Term.
- 23.2 To the extent Company has compensated Contractor for Work:
- (a) 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;
 - (b) Contractor shall identify, segregate in a secure area so far as possible and mark or otherwise identify all equipment, materials and products for incorporation into the Work as property of Company. Title to any items free issued to Contractor by Company shall always remain vested in Company.
- 23.3 Contractor shall cause the inclusion of terms consistent with the terms of **Articles 23.1** and **23.2** 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.
- 23.4 Contractor states to Company that, to the best of its knowledge and belief, Applicable Laws do not prevent Company from obtaining title to the Work in accordance with this **Article 23**.
- 23.5 Subject to **Article 17**, risk of and in the Work shall be assumed by Company upon Substantial Completion, and Contractor shall assume the risk of and undertake the care and control of the Work until Substantial Completion.
- 23.6 Contractor shall make available to Company all documentation relating to the operation and maintenance of the Work in electronic media for use by Company Group during the Term and during the operation of the Work. Contractor shall undertake all reasonable efforts to ensure documentation 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. Provided Company has compensated Contractor in accordance with this Agreement and where the software necessary to enable Company to fully utilize documentation is based in whole or in part on Contractor's proprietary information/software, Contractor shall grant Company and its Affiliates a non-exclusive, royalty free, irrevocable (except in case

of breach of this license) and non-transferable license to such information/software. Where such information/software is not proprietary to Contractor and obtained through usage of information/software leased or purchased from third parties, Contractor shall, subject to Company's Approval, arrange for and obtain for the benefit of Company and its Affiliates a non-exclusive, royalty free, irrevocable and non-transferable license to use such information/software to enable Company Group to fully use the documentation for the sole purpose of operating and maintaining the Work. All Contractor's costs associated with such provision are deemed to be included in the Contract Price and are not separately reimbursable.

- 23.7 Company, at its discretion and upon Notice to Contractor, may take temporary possession of or temporarily use the Work, and/or any part of the Work, provided that such possession or use is for testing or interface purposes only and is for a limited time as reasonably agreed between the Parties, at any time prior to Substantial Completion of such Work provided that such possession or use does not have a material adverse effect on such Work, any remaining Work or the Warranty. Any such temporary possession or use of any part of the Work by Company, whether or not contemplated in Exhibit 1 – Scope of Work, shall not be deemed to be an Approval of that part of the Work and Contractor shall not be relieved of any of its obligations under this Agreement with respect to such part of the Work.
- 23.8 If Company takes permanent possession of or permanently uses the Work or any part thereof following a Notice pursuant to **Article 23.7** where the possession or use is not contemplated by Exhibit 1 – Scope of Work:
- (a) Engineer shall prepare a Punch List for that part of the Work used or possessed prior to Substantial Completion and upon completion of the Punch List items for compliance with this Agreement, that part of the Work used or possessed shall be deemed to be Approved by Company;
 - (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 17.1**;
 - (c) Contractor shall not be relieved of its responsibilities and obligations under this Agreement; and
 - (d) Contractor shall cease to be liable for the care of the Work and responsibility for that part used and possessed, which shall therefore pass to the Company.

ARTICLE 24 COMPLETION AND DELIVERY

- 24.1 The Work shall be completed and Delivered to Company in accordance with the Milestone Schedule. In the event the Work (or any part) shall be tendered for Delivery before the applicable date in the Milestone Schedule, Company may, but shall not be obliged to, take Delivery of such Work. Any part of the Work ready for Delivery before the applicable date in the Milestone Schedule shall be stored and maintained by and at the expense of Contractor until Delivered to Company.

- 24.2 If Contractor fails to commence performance of the Work on the Effective Date or if the Contractor proceeds with the Work in such a manner that it is evident that the applicable dates in the Milestone Schedule will be exceeded beyond the period where compensation is afforded by liquidated damages for such delay, for reasons within the control of Contractor Group, Company may terminate the Agreement or may elect to continue with the Agreement if Contractor, in accordance with the provisions of **Article 24.3**, proposes an amended Milestone Schedule which is Approved by Company in a Change Order. Any changes to the Milestone Schedule pursuant to this **Article 24.2** and **Article 31** shall not result in an increase to the Contract Price or otherwise affect Company's rights to liquidated damages if a Milestone has not been achieved in accordance with the changed Milestone Schedule.
- 24.3 If Contractor has not or considers that it will not achieve a Milestone by the date specified in Exhibit 9 – Work and Milestone Schedule:
- (a) Contractor shall, within ten (10) Business Days of determining that a Milestone will not be achieved, submit for review and comment by Engineer a written completion plan detailing steps Contractor shall take to complete all necessary Work to meet the requirements of the Milestone, and Engineer shall provide written comment to Contractor within ten (10) Business Days of receipt;
 - (b) Contractor shall then resubmit to Engineer within five (5) Business Days a revised completion plan addressing any comments provided by Engineer, and Engineer shall provide written comment within five (5) Business Days of receipt;
 - (c) Contractor shall revise or resubmit the completion plan within the time limits in paragraphs (a) and (b) above until Contractor has addressed all comments of Engineer; and
 - (d) Contractor shall then promptly provide the necessary services, labour, materials and equipment as may be required under the completion plan.
- 24.4 The preparation, review and revision of a completion plan and provision of services, labour, materials and equipment as required by the completion plan shall not relieve Contractor of its obligations to achieve a Milestone by the date specified in Exhibit 9 – Work and Milestone Schedule or be the basis for an increase in compensation.
- 24.5 Delivery of the Work shall be performed in the manner specified in the Agreement. Except as specified otherwise in the Agreement, Contractor shall be responsible for and shall bear the cost of packaging, loading and/or carriage of the Work to the location for Delivery specified in the Agreement.
- 24.6 Contractor shall ensure that provisions corresponding to those contained in this **Article 24** are included in all Subcontracts.

ARTICLE 25

STATIC CHECKS, SUBSTANTIAL AND FINAL COMPLETION

- 25.1 Completion of Commissioning static checks shall have occurred if and only if the items in paragraphs (a) and (b) of this **Article 25.1** have occurred to the satisfaction of Engineer in accordance with this Agreement:

- (a) The commissioning check list (the "CCL") for the successful Commissioning static check (CSC) of the Work as defined in the Technical Specifications has been issued by Contractor and Approved by Company;
 - (b) The Commissioning static checks have been completed by Contractor as defined in Section 11 of "Testing and Commissioning" of the Technical Specifications and Approved by Company.
- 25.2 Engineer shall prepare and deliver an updated Punch List to the Contractor at the following times:
- (a) within ten (10) days of the scheduled date for the completion of Commissioning static checks; and
 - (b) within ten (10) days of the date of issuance of the Turnover Acceptance Certificate by Company.
- 25.3 Substantial Completion of the Work shall have occurred if and only if the items in paragraphs (a) to (i), inclusive, of this **Article 25.3** have occurred to the satisfaction of Engineer in accordance with this Agreement:
- (a) the Turnover Acceptance Certificate at low power has been issued by Company pursuant to Section 13 of the "Testing and Commissioning" technical specification document ILK – SN-CD-8000 – EL-TS-0013-01;
 - (b) Contractor has paid any liquidated damages payable pursuant to **Article 37.1**;
 - (c) Contractor has delivered to Engineer all drawings, specifications, calculations, test data, performance data, equipment descriptions, equipment and system installation instruction manuals, integrated and coordinated operation and maintenance manuals, data, training aids and other technical documentation and information, for Company to use and maintain the Work;
 - (d) Contractor has delivered to Engineer a Notice:
 - (i) detailing all outstanding Claims up to the time of Substantial Completion of Contractor under this Agreement with documentation sufficient in the opinion of Engineer to support such Claims, and Company shall not be liable to Contractor for any Claim under this Agreement which is not identified within that Notice and supported by sufficient documentation; or
 - (ii) certifying that there are no such outstanding Claims;
 - (e) Contractor has delivered to Engineer the latest available clearance certificate from the Workers' Compensation Board of Newfoundland and Labrador that no assessments or other amounts are owing to the date therein specified;
 - (f) Contractor has removed all Contractor Group's Personnel, supplies, equipment, materials, rubbish and temporary facilities, except those reasonably required for

completion of outstanding Punch List items and any remaining Work, 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 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*, RSNL 1990, c.M-3, with respect to or arising from the Work at that time; and
- (i) Contractor has delivered the Letter of Credit referenced in **Article 7.3(a)** to Company.

25.4 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:

- (a) 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;
- (b) have not been met to the satisfaction of Engineer, then Engineer shall advise Contractor in writing why Substantial Completion has not been achieved.

25.5 Promptly after Substantial Completion has been achieved pursuant to **Article 25.4(a)**, 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; if Engineer fails to promptly issue such Substantial Completion Certificate, the Substantial Completion Certificate shall be deemed to have been issued on the 90th day following the commencement of Trial Operation.

25.6 If any item of Work on the Punch List is not completed by the date specified on the Punch List for such item or at such time as the Parties may otherwise agree upon, Company may complete or employ others to complete the item and Contractor shall be liable for and pay Company one hundred ten percent (110%) the reasonable cost to complete such item, and Company may deduct such amount from any amount otherwise owing to Contractor, without affecting any Warranty.

25.7 Contractor's access to and continued presence at the Sites 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.

25.8 With respect to holdback retained by Company pursuant to **Article 12.16**:

- (a) In the event that Contractor has not provided a Letter of Credit for security for early release of three quarters (3/4) of the holdback as defined in **Article 7.3(b)**, Company shall pay Contractor three quarters (3/4) of the holdback within sixty (60) days after the date of Substantial Completion shown on the Substantial Completion Certificate, provided no liens have been filed or registered with respect to the Work.
- (b) In the event that Contractor provides a Letter of Credit for security for early release of three quarters (3/4) of the holdback pursuant to **Article 7.3(b)**, Company shall pay Contractor three quarters (3/4) of the holdback upon receipt of the said Letter of Credit;
- (c) In the event that Contractor has not provided a Letter of Credit for security for early release of one quarter (1/4) of the holdback as defined in **Article 7.3(c)**, Company shall pay Contractor one quarter (1/4) of the holdback upon completion, to the reasonable satisfaction of Company, of all items on the updated Punch List issued by Company pursuant to **Article 25.2(b)** provided no liens have been filed or registered with respect to the Work as provided by **Article 42**; and
- (d) In the event that Contractor provides a Letter of Credit for security for early release of one quarter (1/4) of the holdback pursuant to **Article 7.3(c)**, Company shall pay Contractor one quarter (1/4) of the holdback upon receipt of the said Letter of Credit.
- 25.9 When Contractor has completed all the Work in accordance with the terms of this Agreement, including for greater certainty all Warranty obligations and any obligations pursuant to **Article 37**, Contractor may by Notice to Company request written confirmation that Contractor has fully performed all of the Work hereunder (the "**Final Completion Certificate**").
- 25.10 By submission of the Notice to Company for confirmation that Contractor has fully performed all of the Work pursuant to **Article 25.9**, 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;
- (b) the balance of the Contract Price payable, if any, upon the issuance of the Final Completion Certificates; and
- (c) any Claims arising out of Company's obligation to indemnify Contractor pursuant to **Article 21.3**.
- 25.11 Company shall not be obliged to issue the Final Completion Certificate until Contractor has fulfilled all of its Work obligations, including:

- (a) satisfied any liens, claims or encumbrances affecting Company's property in connection with the Work or Warranty Work in accordance with **Article 42**; and
 - (b) achieving the performance requirements in **Article 36** or paying in full any and all outstanding obligations against the Work including any liquidated damages payable to Company pursuant to **Article 37**.
- 25.12 Upon Contractor satisfying the criteria set forth in **Article 25.11**, Company shall provide Contractor with the Final Completion Certificate in the form set forth in Exhibit 3 – Coordination Procedures within thirty (30) days of Contractor's Notice under **Article 25.10** or Contractor demonstrating that it has satisfied the criteria set forth in **Article 25.11** whichever is later.
- 25.13 The issuance of the Final Completion Certificate shall not release Contractor from the provisions of this Agreement which expressly or by their nature extend beyond the expiration or any termination of this Agreement.
- 25.14 Within fifteen (15) Business Days after issuance of the Final Completion Certificate, Company shall pay Contractor the balance of the Contract Price for the Work, if any amount is outstanding, and release the Letter of Credit subject to the following:
- (a) any amount to satisfy any liens registered against the property of Company arising out of Contractor Group's performance of the Work in accordance with **Article 42**;
 - (b) any amount Company is entitled to set off against payment to Contractor; and
 - (c) any amount payable by Contractor to Company under this Agreement.
- 25.15 If Trial Operation has not commenced as defined in the Technical Specifications within twelve (12) months from the date of the completion of Commissioning static checks, for reasons not attributable to Contractor, then Substantial Completion shall be deemed to have occurred twelve (12) months after the date of completion of Commissioning static checks.
- 25.16 In the event that the specified tests set out in this Agreement cannot be conducted either in part, or in full, because necessary facilities or power for which Company is responsible have not been completed and/or is not available (including the power transmission line system between Muskrat Falls and Soldier Pond) then Contractor shall have the right by Notice to Company to suspend performance of the Work necessary to reach Substantial Completion until such time as the facilities and/or power are available to permit completion of the specified tests. In such event, the Milestone Schedule shall be extended by a period equivalent to the duration of the suspension plus the period specified in **Article 25.18**. The Contractor shall submit for Company Approval a Change Request for such an extension of the Milestone Schedule and the costs for the Suspension Period, including for the proper storage and preservation of the Work.
- 25.17 During the aforesaid period of suspension, Contractor shall be responsible for the proper storage and preservation of the Work.

- 25.18 When the facilities and/or power are available to permit completion of the specified tests, Company shall provide Contractor with twenty (20) Business Days advance notice to allow Contractor to re-mobilize Contractor's Personnel and prepare Contractor's Items.

**ARTICLE 26
CHANGES IN THE WORK**

- 26.1 Company has the right to make a Change at any time and from time to time during the performance of the Work by issuing a Change Order. Compensation for a Change shall be determined in accordance with Exhibit 2 – Compensation and Exhibit 3 – Coordination Procedures. Any such Change shall not constitute a material addition to the type and nature of the original Work as specified in Exhibit 1 - Scope of Work.
- 26.2 Contractor shall not perform and shall not be entitled to any compensation for a Change without a Change Order issued by Company to Contractor for the Change.
- 26.3 Contractor will comply with the requirements of Engineer and Exhibit 3 – Coordination Procedures in the development of the pricing, impacts on resources and schedule as it relates to such Change and present a comprehensive proposal covering the Change to Company for Approval.
- 26.4 Except to the extent expressly provided in a Change Order, no Changes shall vitiate or invalidate or be deemed to amend or be deemed to constitute a waiver of any provision of this Agreement. All Changes shall be governed by all the provisions of this Agreement. Except as may be set forth in a Change Order, Changes will not result in any limitation of Contractor's Warranty under **Article 17**.
- 26.5 Contractor shall commence with and shall execute all Changes with all due diligence in accordance with the Change Order.
- 26.6 In the event the Parties fail to reach agreement on the pricing and impacts on resources and schedule with respect to a Change, Contractor shall perform the work specified in the Change Order as issued by Company and the Dispute will be handled in accordance with **Article 40**, but in no case shall the price of a Change exceed that amount determined in accordance with **Article 26.10** and Section 6 of Exhibit 2 - Compensation.
- 26.7 If Contractor considers that a Change is necessary or desirable, Contractor may request a Change Order by submitting a Change Request in writing to Engineer in accordance with the procedure set out in Exhibit 3 – Coordination Procedures.
- 26.8 If Contractor considers that an occurrence has taken place which constitutes a Change, then Contractor shall, within fifteen (15) Business Days from 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; or

- (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 40**.

If Contractor fails to comply with the conditions of this **Article 26.8**, it will relinquish its right to request a Change Order and waives any claim it may have for additional compensation and for an extension of time to complete a Milestone arising from the occurrence.

- 26.9 Changes shall be invoiced and paid for in accordance with **Article 12**, Exhibit 2 – Compensation and Exhibit 3 – Coordination Procedures. Cost of the work carried out under a Change Order will reflect any discounts, rebates, refunds or free material credits earned with purchase of material or other goods and services charged under a Change.
- 26.10 The adjustment in the Contract Price for a Change carried out prior to agreement by Contractor and Company on the price for the Change shall be determined on the basis of the cost of expenditures to perform the work and/or cost savings for a reduction in work that are attributable to the Change as determined in accordance with **Articles 26.11** and **26.12(a)**, and overhead and profit being addressed 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, Section 4;
 - (ii) if a Change results in a decrease in the Contract Price, the deduction for overhead and profit shall be as specified in Exhibit 2 - Compensation, Section 4; and
 - (iii) when both additions and deletions covering related work or substitutions are involved in a change in the Work, the allowance or deduction for overhead and profit will be calculated on the basis of the net increase or decrease, if any, with respect to that change in the Work.
- 26.11 Contractor will keep and present in such form as Company may require an itemized accounting of the cost of expenditures and savings referred to in **Article 26.10** together with supporting data. The cost of the Change shall be limited to the actual cost incurred by Contractor for the performance of the work attributable to the Change, using any applicable rates and prices in Exhibit 2 – Compensation, where the actual cost shall be limited to:
 - (a) wages (including applicable Taxes) and benefits paid for labour, supervision, project management, engineering and procurement in the direct employ of Contractor;
 - (b) the cost (including cost of transportation) of all equipment, material and products incorporated into the Work less any trade discounts;

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

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

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

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

26.14 If there is a change in Applicable Laws which makes modifications to the Performance Requirements 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;
- (c) details of the impact on the Contract Price; and
- (d) a Change Request in accordance with **Article 26.7**.

ARTICLE 27
PUBLICITY COMMUNICATIONS

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

ARTICLE 28
CONFIDENTIALITY

- 28.1 The term "Confidential Information" shall mean all information and data, in whatever form, which a Party directly or indirectly acquires from the other Party or from the performance of the Work (including events witnessed by Contractor Group or Company Group and the Personnel of each of the foregoing in connection with the performance of the Work) and includes without limitation, Contractor's Proprietary Information. Confidential Information does not include information which:
- (a) prior to the time of disclosure or acquisition is lawfully in the public domain;
 - (b) after disclosure or acquisition becomes part of the public domain, through no act or omission on the part of a Party;
 - (c) prior to disclosure or acquisition was already lawfully in a Party's possession without limitation on disclosure to others;
 - (d) was obtained by a Party from a third party who is lawfully in possession of such information and is not subject to a contractual or fiduciary relationship with the other Party with respect to such information; or
 - (e) was independently developed by the receiving Party without the use of Confidential Information.
- 28.2 Contractor shall not disclose Company's Confidential Information (including photographs of activities of Company) to any third party nor use any of Company's 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 Company's 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.

- 28.3 Company may disclose Contractor's Confidential Information to its 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 Confidential Information to Company's bankers and to financial institutions from whom Company may seek financing for the LCP.
- 28.4 To the extent Company is subject to the provisions of the Privacy Law, all documents and other records in the custody of or under the control of Company and its Affiliates, and in relation to the Work in the custody of or under the control of Contractor, will be subject to the Privacy Law. Subject to the limitations of the Privacy Law and to the extent it applies to Company or its Affiliates, the confidentiality obligations contained in this Agreement shall apply.
- 28.5 Each Party who discloses Confidential Information of another Party to its Personnel shall ensure that any such Personnel are informed of the confidential nature of the information disclosed and that such Personnel comply with the Party's obligations under this **Article 28**.
- 28.6 This **Article 28** does not apply to the disclosure of information by a Party in order to comply with any Applicable Law or legally binding order of any Court or Authority, as long as prior to such disclosure the disclosing Party gives Notice to the other Party with full particulars of the proposed disclosure.
- 28.7 Contractor acknowledges that Company is subject to the access to information and Privacy Law pursuant to which the public may have access to Company's records.
- 28.8 If requested by Company, whether prior to or after the expiry or earlier termination of the Agreement, Contractor shall promptly deliver to Company all Confidential Information in the custody, possession or control of Contractor or any of its Personnel.
- 28.9 The breach of any of the conditions contained in this **Article 28** will be deemed to be a material breach of the Agreement.

ARTICLE 29

PATENTS, TRADEMARKS, COPYRIGHTS

- 29.1 All intellectual property embedded in or delivered with the Work is the sole and exclusive property of Contractor. Contractor grants to Company and its Affiliates a non-exclusive, royalty-free, irrevocable (except in case of breach of this license by Company), non-transferable license to use any of Contractor's intellectual property embedded in or delivered with the Work for the sole purposes of performance of the Work, for the purposes of interfacing the Work with equipment supplied by third parties and for servicing and maintaining such Work.

- 29.2 All rights, title and interest in and to any discoveries and inventions, original work of authorship and to any design, specification, or drawings produced in the course of the performance of the Work shall be solely owned by Contractor.
- 29.3 Contractor shall not incorporate anything in the Work which involves the use of a copyright, trademark, patent or proprietary information of a third party for which Company has no license rights. Contractor agrees to defend, indemnify and hold Company Group harmless from and against any and all claims, losses, damages, costs (including legal costs), expenses and liabilities of every kind and nature arising out of or from any infringement or alleged infringement of patents or proprietary or protected rights improperly incorporated in the Work. If Company notifies Contractor within thirty (30) days of the receipt of any claim that the Work infringes a patent, Contractor shall, at its sole expense:
- (a) settle (with Company's consent, which shall not be unreasonably withheld) or defend such claim or any suit or proceeding arising therefrom and pay all damages and costs awarded therein against Company;
 - (b) procure for Company the right to continue using the Work;
 - (c) modify the Work so that it becomes non-infringing;
 - (d) replace the Work with a non-infringing Work or re-perform the Work with a non-infringing Work.
- 29.4 Contractor shall require its Subcontractors to provide the same rights and protections for Company Group that Contractor is required to provide pursuant to this **Article 29.3**. Company shall provide such reasonable information and assistance as may be requested by Contractor in respect of Contractor's efforts to settle or defend such claims.
- 29.5 Company agrees to defend, indemnify and hold Contractor Group safe and harmless from and against any and all claims, losses, damages, costs (including legal costs), expenses and liabilities of every kind and nature arising out of or from any infringement or alleged infringement of patent or proprietary or protected rights covering property, methods or processes furnished by Company.
- 29.6 Subject to **Article 29.1** and **29.2**, all drawings, assembly procedures, process specifications, computer programs, documents and information developed by Contractor Group for the purposes of the Agreement or which may arise out of the performance of the Agreement by Contractor shall be the property of Company.
- 29.6 This **Article 29** states Contractor's entire liability for indemnification for patent, trademark, copyright, and trade secret infringement for the Work.

ARTICLE 30 ASSIGNMENT

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

- (a) any Affiliate of Company (an "**Affiliate Assignee**"); 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 entity that has provided or provides financing for those costs of the LCP which includes the Work to Company, the Affiliate Assignee or their respective Affiliates, successors and replacements.

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

- (a) prior to the exercise by Contractor of any rights it may have under the Agreement arising by reason of any breach by Company or Affiliate Assignee, as the case may be, of the Agreement (any such breach, a "**Breach**"), including cancellation or suspension of the 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 or Affiliate Assignee, as the case may be. 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 the 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;
- (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 or Affiliate assignee, as the case may be, under the Agreement, including curing curable breaches which arose prior to such notice.

30.3 Immediately and automatically upon an assignment pursuant to **Article 30.1**, 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, and Contractor acknowledges and agrees that the Affiliate 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. Any assignment pursuant to **Article 30.1** shall become effective immediately upon delivery to Contractor of a Notice from Company in the form set out in Exhibit 3 – Coordination Procedures – Appendix I.

- 30.4 Company shall not assign this Agreement or any of its benefits or obligations thereunder to any third party, other than those described in **Article 30.1** without Contractor's Approval, which Approval shall not be unreasonably withheld, conditioned or delayed.
- 30.5 Following any assignment by Company pursuant to this **Article 30**, this Agreement may be re-assigned to Company without Contractor's Approval.
- 30.6 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 Performance Guarantees, if the Affiliate fails to fulfill any such obligation;
 - (b) Performance Bond and any Letter of Credit shall remain in place, remain effective and available to Company in the event the Affiliate fails to fulfill Contractor's obligation under this Agreement; and
 - (c) if the Affiliate has a tax residency status that is different than the tax residency status of Contractor as declared to Company in accordance with **Article 13.3** (or such subsequent tax residency approved by Company in accordance with **Article 13.3**), Contractor has obtained the prior written approval of Company of the proposed assignment to the Affiliate.
- 30.7 In the event of a transfer by sale, assignment, amalgamation, merger, trust, operation of law or otherwise of any shares, interest or voting rights of Contractor which may result in the change of identity of the Person exercising *de facto* or *de jure* control over Contractor, the provisions of **Article 30.6** shall apply.

ARTICLE 31 FORCE MAJEURE

- 31.1 For the purposes of this Agreement, Force Majeure shall mean and be limited to the following:
- (a) acts of God, riot, civil unrest, civil disturbance (including blockades to and from the Site), war, acts of civil or military authority, epidemics, quarantine restrictions, acts of terrorism;

- (b) earthquake, fire, floods, storms in excess of a fifty (50) year storm, including tornadoes, named tropical storms and hurricanes, tsunamis, volcanic activity or other natural physical disaster, but excluding other weather conditions regardless of severity;
 - (c) strikes at a national or provincial industry-wide level, industrial disputes at a national or provincial industry-wide 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;
 - (e) maritime and aviation disasters; and
 - (f) any other event that is similar in nature to the causes set forth above and which is beyond the reasonable control of the affected Party.
- 31.2 Neither Contractor nor Company shall be responsible for any failure to fulfill any term or condition of this Agreement if and to the extent that such fulfillment has been delayed or rendered impossible by a Force Majeure occurrence of which the other Party has been notified in accordance with this **Article 31** and which is beyond the control and without the fault or negligence of the Party affected, and which by the exercise of reasonable diligence the said Party is unable to provide against. Notwithstanding the foregoing:
- (a) Company shall compensate Contractor as soon as reasonably practicable for Work performed to the date of the Force Majeure upon receipt of an invoice and Billing Information pursuant to **Article 12**; and
 - (b) if Force Majeure affects a Worksite but not other Worksites, Company shall compensate Contractor in accordance with this Agreement for Work performed at such other Worksites.
- 31.3 A Party may not rely upon the provisions of **Article 31.2**:
- (a) unless it shall as soon as physically practicable 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.

- 31.4 Subject to **Article 31.2(a)**, where Company claims Force Majeure and is entitled to rely upon the provisions of **Article 31.2**, then no compensation shall be payable to Contractor during the period that the Force Majeure occurrence continues to prevent performance by Company. Where Contractor claims Force Majeure and is entitled to rely on the provisions of **Article 31.2**, then no compensation shall be payable to Contractor during the period that the Force Majeure occurrence continues to prevent performance by Contractor.
- 31.5 If Contractor is prevented from or delayed in performing any of its obligations as a result of Force Majeure for a consecutive period of more than one hundred twenty (120) 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).
- 31.6 If Company is prevented from or delayed in performing any of its obligations as a result of Force Majeure for a consecutive period of more than one hundred twenty (120) days during the Term, Contractor shall have the right thereafter to immediately terminate this Agreement upon giving Notice thereof to Company and Company shall have no further liability whatsoever to Contractor (except payment for Work performed prior to such termination).
- 31.7 A Force Majeure occurrence shall in no circumstances entitle Contractor to an increase in the Contract Price. Contractor shall be entitled to a reasonable extension of time for the Milestone(s) affected in order to recover from the Force Majeure.
- 31.8 During any period in which the performance of the Work is prevented because of Force Majeure, Contractor and Company shall mutually agree either (1) to continue maintaining Contractor's Items and Personnel at or near the Worksite, in which case Company will reimburse Contractor at the rates outlined in Exhibit 2 - Compensation which is intended to cover only those expenses incurred by Contractor as a direct result of such prevention of performance, or (2) to demobilize Contractor's Items and Personnel.

ARTICLE 32 DEFAULT AND TERMINATION

- 32.1 Company may, without prejudice to any other right or remedy that it may have against Contractor immediately terminate this Agreement by giving Notice to Contractor, after exercising due diligence, in the event that any of the following shall occur:
- (a) Contractor breaches any of its material obligations under **Article 15**;
 - (b) Contractor becomes or is, in Company's reasonable opinion, likely to become insolvent or to go into liquidation pursuant to any of the conditions described in **Article 33.1**;
 - (c) The Work or any significant and material part thereof becomes an actual or constructive total loss prior to Delivery and Contractor cannot provide adequate assurance that it will be able to recover from such actual or constructive loss in a time satisfactory to Company;

- (d) Contractor fails to maintain the insurance required in accordance with **Article 18**;
or
- (e) Contractor fails to procure or maintain the Performance Bond, and/or the Letter of Credit in accordance with **Article 77.3(a)**.

32.2 If Company has provided ten (10) Business Days prior Notice to Contractor of the following applicable occurrence and, within such ten (10) Business Day period or any longer cure period specified in the Notice, Contractor has failed to either present a plan to remedy such occurrence that is accepted by Company or has failed to commence and diligently pursue actions reasonably necessary to mitigate or remedy such occurrence, Company may, without prejudice to any other right or remedy that it may have against Contractor, by giving Notice to Contractor, immediately terminate this Agreement in the event that any of the following shall occur:

- (a) Contractor has substantially failed to execute the Work in accordance with Exhibit 9 – Work and Milestone Schedule;
- (b) Contractor fails to make payment for labour, materials, financing, skill or other services provided to Contractor by third parties in the performance of the Work in accordance with the terms of Contractor's agreement with such third parties;
or
- (c) Except as otherwise allowed by this Agreement, Contractor subcontracts or delegates any portion of the Work, or its obligations hereunder, without Company's Approval in accordance with **Article 6.2**; or
- (d) Contractor assigns this Agreement to a third party other than an Affiliate without Company's Approval pursuant to **Article 30.6**; or
- (e) Contractor disregards reasonable instructions of Company given in accordance with this Agreement and such disregard has a material adverse effect on the Work; or
- (f) Contractor is in breach of any other material obligation(s), including any terms, conditions, covenants, representations or warranties under this Agreement and is unable to rectify such breach within sixty (60) days of Company's Notice or is unable to provide an acceptable plan to Engineer to rectify the breach.

32.3 In the event Company terminates this Agreement pursuant to **Article 32.1, 32.2** or **33.1**, Company may take title and possession of all Work and Company may complete the performance of the Work by whatever method it may deem expedient. In such case:

- (a) Company shall have no liability whatsoever to Contractor, except for any amounts payable up to the date of termination of this Agreement, subject to Company's rights of set off, provided that Contractor shall be reimbursed for all Work performed by Contractor, to the satisfaction of Company, prior to such termination;

- (b) subject always to considerations of health, safety and of the environment, Contractor shall discontinue performance of the Work and shall comply in full with Company's instructions regarding such termination;
- (c) Contractor shall use its best efforts to assign to Company or its nominee any Subcontracts;
- (d) Contractor shall promptly deliver to Company all documents prepared or obtained by Contractor in connection with the Work and shall carry out Company's instructions concerning any cancellation or assignment of Subcontracts, purchase orders and any other matters arising out of this Agreement which Company decides are necessary or expedient;
- (e) Contractor shall allow Company, or its nominees, full right of access to the Worksites so as to remove or perform Work; and
- (f) Company shall grant Contractor Group reasonable right of access to the Sites so as to enable Contractor Group to remove their property.

32.4 Notwithstanding any other provision of this Agreement:

- (a) Company may in its sole and absolute discretion and for any reason, including convenience of Company and without any fault or default on the part of Contractor, terminate this Agreement effective immediately upon giving Notice to Contractor or effective at a future date specified in the Notice; and
- (b) subject to Contractor complying with its obligations to protect persons and property from damage, Contractor shall cease the performance of the Work immediately upon receiving that Notice or upon any later date specified in that Notice.

32.5 In the event Company terminates the Agreement pursuant to **Article 32.4** or **Article 31.5**, Company may take title and possession of all Work and complete the performance of the Work by whatever method it may deem expedient. In such case:

- (a) For Milestone Work, Company shall reimburse Contractor the aggregate value of all achieved and Approved Milestones less the aggregate value of all amounts paid in relation to such achieved and Approved Milestones at the time of termination. Company shall also pay Contractor a proportionate value of any Milestone or lump sum Change Orders by progress, wherein such proportionate value is determined by demonstrated Work progress, as agreed between the Parties, associated with the achievement of such Milestones or lump sum Change Orders.
- (b) For reimbursable Change Orders, Company shall reimburse Contractor for actual Work performed up to the date of termination, subject to Contractor compliance with **Article 12.13(b)**.
- (c) Contractor shall clearly document and present to Company the costs incurred in the performance of the Agreement and the cancellation charges applicable to Subcontracts. In the event that costs incurred in the performance of the

Agreement, together with the cancellation charges applicable to Subcontracts, are less than the amounts which have been previously paid to Contractor on account under the Agreement, Contractor shall reimburse Company in the amount of the difference within ten (10) Business Days of demand by Company following determination of the amount thereof.

- (d) Contractor shall, prior to paying or agreeing to pay any cancellation charges pursuant to such Subcontracts, contracts and other agreements, submit to Company the amount of such charges for Approval. If and to the extent that Company does not Approve the amount of such charges, Contractor shall not pay the same and the Parties shall jointly negotiate with the relevant third party or parties in an attempt to reduce the amount thereof.
 - (e) In the event that the costs incurred in the performance of the Agreement are more than the amounts which have previously been paid to Contractor on account under the Agreement, Company shall reimburse Contractor in the amount of the difference within ten (10) Business Days of demand following determination of the amount thereof provided that Contractor has clearly documented the calculation resulting in such difference and has satisfied the requirements of paragraph (g) of this **Article 32.5**. In no event shall the aggregate of the amounts paid to Contractor under this Article exceed the Contract Price.
 - (f) Subject always to considerations of health, safety and of the environment, Contractor shall discontinue performance of the Work and shall comply in full with Company's instructions regarding such termination.
 - (g) Contractor shall promptly deliver to Company all data, calculations and other materials associated with the Work, all on an appropriate medium, together with all drawings, specifications and other documents prepared or obtained by Contractor in connection with the Work and shall carry out Company's instructions concerning any cancellation or assignment of Subcontracts, purchase orders and any other matters arising out of this Agreement which Company decides are necessary or expedient.
 - (h) Contractor shall allow Company, or its nominees, full right of access to the Worksites so as to remove or perform Work.
- 32.6 The Parties acknowledge and confirm their respective obligations to make commercially reasonable efforts to mitigate any damages or costs arising from any termination of this Agreement.
- 32.7 Contractor shall be entitled to terminate this Agreement upon Notice to Company, after exercising due diligence, if:
- (a) Company substantially fails to perform its material obligations under the Agreement relating to compensation, access to the Site, or obtaining the permits, licenses or authorizations pursuant to **Article 10.3**;
 - (b) a Suspension Period that affects the whole of the Work exceeds three hundred sixty five (365) days;

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- (c) Company or its assets becomes the subject of any proceeding (whether initiated by Company or another Person) under bankruptcy or insolvency laws, including proceedings under the *Companies' Creditors' Arrangement Act* (Canada), R.S.C. 1985, c. C-36;
- (d) Company becomes the subject of any proceeding for liquidation, or winding-up (whether initiated by Company or another Person);
- (e) a receiver or receiver-manager of all or any part of Company's assets is appointed by a Court or by any of its creditors; or
- (f) Company commits an act of bankruptcy as defined in the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c. B-3, or commits any other act or omission which would entitle any of Company's creditors to initiate a process or proceeding to take possession of any of Company's assets or to have any of Company's assets distributed among such creditors.

In the event of an occurrence described by **Article 32.7(a)** or **Article 32.7(b)**, Contractor may, upon giving ten (10) Business Days' Notice to Company, terminate this Agreement if Company has failed to commence and diligently pursue actions reasonably necessary to mitigate, remedy or to cure the default described by **Article 32.7(a)** or fails to end the Suspension Period described in **Article 32.7(b)** within the ten (10) Business Days period. However, in the case of **Articles 32.7 (c) to (f)** Contractor may, by Notice, terminate this Agreement immediately. Notwithstanding the foregoing, if any Authority or Applicable Law requires Company to obtain permits, licenses or authorizations not reasonably anticipated, then Company shall advise Contractor promptly in writing regarding the need for and time required to obtain any such permits, licenses or authorizations and Company shall not be in default under this **Article 32.7** if it commences and diligently pursues actions reasonably necessary to obtain such permits, licenses or authorizations and Contractor shall be entitled to an extension to the dates for completion of any impacted Milestone equal to the number of days the critical path of the Milestone is directly impacted and shall not be subject to any liquidated damages and/or other delay damages on account of thereof.

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

- (a) Contractor shall promptly:
 - (i) cease all further Work, except for such work as may have been instructed by Engineer for the protection of life or property or for the safety of the Work;
 - (ii) deliver to Engineer Contractor's documents, plant, materials and other work, for which the Contractor has received payment; and
 - (iii) remove all Contractor's Items from the Site, except as necessary for safety; and
 - (iv) demobilize from the Site.
- (b) Company shall promptly:

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- (i) return the Performance Bond to Contractor; and
- (ii) pay Contractor in accordance with **Article 32.5**.

ARTICLE 33

BANKRUPTCY; INSOLVENCY AND RECEIVERSHIP

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

ARTICLE 34

SUSPENSION

- 34.1 Company may at any time during the Term, at Company's sole discretion for any reason, suspend performance of the Work, or any part thereof, by giving Notice to Contractor (such period of suspension hereinafter "**Suspension Period**"). The Work shall be resumed by Contractor on a date as may be specified by Company in a Notice to Contractor. During the Suspension Period, Contractor shall properly protect and secure the Work as Approved in advance by Company.
- 34.2 Subject to **Article 34.3** and **Article 34.4**, Company shall reimburse Contractor its reasonable expenses (which Contractor shall use its best efforts to mitigate) incurred in compliance with any suspension order and associated reinstatement order, which reasonable expenses shall include demobilization/remobilization costs, costs for suspension or termination of Subcontracts, site maintenance, and costs for retaining the employment of personnel and Subcontractors which cannot otherwise be utilized during the duration of the Suspension Period (the "Suspension Expenses"). Additionally, should the Suspension Period cause a reprioritization of the manufacturing queue for any Work

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in progress at the commencement of the Suspension Period, the Parties shall meet to discuss the actions to be taken with regard to such Work in progress. Should Company decide to suspend such Work in progress, payment for the completed portion of the Work in progress shall immediately become due and costs for removing and reinserting such Work shall be considered a Suspension Expense. In no event shall Contractor be entitled to any compensation for items covered in **Article 21.12** that may have resulted from such suspension or reinstatement order.

- 34.3 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.
- 34.4 In case of suspension due to Contractor's failure to perform the Work in accordance with **Article 3**, Contractor shall not be entitled to Suspension Expenses incurred from the moment the Notice of suspension was given until a reinstatement order (if any) is given by Company but shall remain liable, without prejudice to Company's other rights under this Agreement.
- 34.5 Contractor shall take reasonable steps to cause all terms of this **Article 34** to be inserted in all Subcontracts so that Company and Contractor shall have the rights herein set forth with respect to all Subcontractors.
- 34.6 In the event of a suspension pursuant to this **Article 34** that is not attributable to any act or omission by Contractor Group, Contractor shall be entitled to a reasonable adjustment to the Milestone Schedule with respect to any Milestone impacted by the suspension. Contractor shall submit a Change Request to Engineer for an adjustment to the Milestone Schedule within a reasonable time of the end of the Suspension Period; upon receipt of the Change Request, Engineer shall determine the reasonable adjustment to be made to the Milestone Schedule and Company shall issue a Change Order for such adjustment.
- 34.7 Contractor shall have the right to suspend performance of the Work in the event:
- (a) Contractor gives Notice that Company has failed to perform Company's material obligations under the Agreement relating to compensation, access to the Site or obtaining the permits, licenses or authorizations, availability of power to commence dynamic/system commissioning, or any other obligations pursuant to **Article 10.3**; and
 - (b) Company is unable to cure and has failed to commence to cure such failure within ten (10) Business Days.
- 34.8 In such event of a suspension pursuant to **Article 34.7**, the Milestone Schedule shall be extended for a period equivalent to the length of such suspension, and all connected Suspension Expenses incurred by Contractor Group as a result of such suspension shall be reimbursed by Company against presentation of Contractor's invoice and supporting evidence, and the invoice shall be processed for payment in accordance with **Article 12**. If the Suspension Period has exceeded ninety (90) consecutive days, Contractor shall not be obliged to re-commence the Work until it has received payment for the Suspension Expenses.

ARTICLE 35
LABOUR RELATIONS

- 35.1 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.
- 35.2 Contractor represents and warrants that no collective or other agreement with its Personnel or between its Subcontractors and their workers, and no expiry or termination of any such agreement, will adversely affect labour peace at the Worksites or delay Contractor's performance of the Work.
- 35.3 Contractor represents and warrants that it and its Subcontractors shall, as of the date of the commencement of the Work at the Site (if no Special Project Order is declared under the *Labour Relations Act* of Newfoundland and Labrador in respect of the Site by such date), 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 Execution Date or of the date an agreement comes into effect.
- 35.4 Whenever Contractor has knowledge that any actual or potential labour dispute is delaying or threatening to delay the schedule and performance of the Work, Contractor shall immediately advise Engineer in writing, including all relevant information with respect to such dispute or potential dispute and potential impact on the schedule and performance of the Work.
- 35.5 Without restricting the generality of Company's right to terminate the Agreement, Company may, but is not obligated to, give Notice to Contractor requiring Contractor to terminate any Subcontract by giving five (5) days' notice to the Subcontractor if:
- (a) the workers of the Subcontractor, or anyone employed by or through the Subcontractor:
 - (i) declare or engage in a strike, a work stoppage or a refusal to supply material; or
 - (ii) engage in a slowdown or other concerted activity which restricts or limits or, is likely to restrict or limit, the progress or performance of the Work; or
 - (iii) picket or cause picketing to occur or support picketing by the refusal to Work, or continue to Work at or in the Worksites whether in support of lawful strike or for any other reason; or
 - (iv) does not comply with **Article 8**.

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- (b) the Subcontractor, or anyone engaged by or through the Subcontractor, imposes a lockout, lawful or unlawful, against their workers engaged in performing the Work.
- 35.6 Contractor shall ensure that all Subcontracts allow termination in each of the events set out in **Article 35.5**.
- 35.7 The sole cost and expense of preventing, avoiding or removing any of the matters or events giving rise to a labour disruption 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.
- 35.8 Except for strikes, labour disputes or industrial disputes referenced in **Article 31.1(c)**, delays in the performance of the Work as a result of any strike, industrial dispute, labour disruption or labour dispute are to be considered as a delay attributable to Contractor, and for which Contractor shall not be entitled to compensation or an extension to the date for completion of a Milestone.

ARTICLE 36 PERFORMANCE GUARANTEE

- 36.1 Contractor guarantees that the Work shall satisfy the performance requirements set out in this Agreement and, in particular, guarantees that:
- (a) the equipment losses, as determined in accordance with Section 13 of the Performance Requirements, for each Converter Station and Transition Compound shall not exceed the guaranteed no load losses as stated in Section 10.2(a) of Exhibit 2 - Compensation.
- (b) Converter Station and Transition Compound availability, as determined in accordance with Section 14 of the Performance Requirements, shall be equal to or greater than the guaranteed values of "annual energy availability" stated in Section 10.2(b) of Exhibit 2 - Compensation.
- (c) Converter Station and Transition Compound reliability, as determined by Section 14 of the Performance Requirements, shall not exceed the guaranteed "number of outages/year" stated in Section 10.2(b), Table A-27, of Exhibit 2 - Compensation.
- (d) Converter Station and Transition Compound guaranteed continuous and overload power transmission capability, as determined in accordance with Section 3 of the Performance Requirements and associated Technical Data Schedules, shall achieve not less than the guaranteed rating values stated in Section 10.2(d) of Exhibit 2 - Compensation.
- (e) at each Converter Station, the annual failure rate of the individual thyristor level, as determined in accordance with Section 10 of the "Thyristor Valves and Associated Equipment" technical specification ILK-SN-CD-8000-EL-TS-0025-01, shall not exceed the "guaranteed annual failure rate" stated in Section 14.4 of the Performance Requirements.

- (f) at each Converter Station, the annual failure rate of individual capacitors shall not exceed the "guaranteed annual failure rate" determined in accordance with the "ac Harmonic Filters and Capacitor Banks" technical specification ILK-SN-CD-8000-EL-TS-0023-01 and associated Technical Data Schedules.

ARTICLE 37
LIQUIDATED DAMAGES

- 37.1 For each Milestone specified in Exhibit 2 – Compensation being subject to liquidated damages, if Contractor fails to Deliver that part of the Work to achieve the Milestone by the date specified, Contractor shall pay Company as liquidated damages the full amount stipulated in Exhibit 2 – Compensation for each calendar day, including any part thereof, of the delay of that Milestone, from the date the delay commenced to the date the Milestone is achieved, unless the failure to achieve the Milestone is due to an event of Force Majeure, a Change affecting the Milestone or a Suspension Period
- 37.2 Contractor shall pay the following liquidated damages to Company for each failure to satisfy a Performance Guarantee in **Article 36.1**:
- (a) for each kilowatt, and portion thereof, greater than the Performance Guarantee for Losses of the Converters and Transition Compounds set out in **Article 36.1(a)**, the amount determined by the formula in Section 10.2(a) in Exhibit 2 – Compensation;
 - (b) for each percent, and portion thereof, of annual energy availability less than the guaranteed values set out in **Article 36.1(b)**, the amount determined by the formula in Section 10.2(b) in Exhibit 2 – Compensation;
 - (c) for each occurrence of Pole Forced Outage greater than the guaranteed number of outages per year set out in **Article 36.1(c)**, the amount determined by the formula in Section 10.2(c) in Exhibit 2 – Compensation;
 - (d) for each kilowatt, and portion thereof, less than the Performance Guarantee for continuous and overload guaranteed rating values set out in **Article 36.1(d)**, the amount determined by the formula in Section 10.2(d) in Exhibit 2 – Compensation;
 - (e) for each occurrence of thyristor failure greater than the guaranteed value set out in **Article 36.1(e)**, the cost of replacements for the period determined in Section 10.2(e) in Exhibit 2 – Compensation;
 - (f) for each occurrence of capacitor failure greater than the guaranteed value set out in **Article 36.1(f)**, the cost of replacements for the period determined in Section 10.2(f) in Exhibit 2 - Compensation.
- 37.3 The following limits of liability shall apply to the liquidated damages payable by Contractor to Company pursuant to this **Article 37**:
- (a) a maximum of fifteen percent (15%) of the Contract Price for the liquidated damages set out in **Article 37.1**; provided that for any day for which Contractor is

liable to pay liquidated damages to Company pursuant to **Article 37.1** for more than one (1) Milestone specified in Exhibit 2 – Compensation, Contractor shall only be liable to pay Company the largest liquidated damages rate applicable on that day;

- (b) a maximum of ten percent (10%) of the Contract Price for the cumulative liquidated damages set out in **Article 37.2**;
- (c) a combined overall liability cap for liquidated damages of twenty percent (20%) with the liquidated damages pursuant to **Article 37.1** being calculated before the liquidated damages pursuant to **Article 37.2**; and
- (d) in the event that Contractor is liable to pay liquidated damages pursuant to **Article 37.1** which exceed ten percent (10%) of the Contract Price, the maximum percentage of liquidated damages pursuant to **Article 37.2**, as capped by **Article 37.3(b)**, shall be reduced accordingly so as not to exceed the combined overall liability cap for liquidated damages of twenty percent (20%) pursuant to **Article 37.3(c)**.

37.4 The Parties agree that the liquidated damages determined in accordance with this **Article 37** are genuine pre-estimates of the damages that Company would incur as a result of Contractor's breach of contract for failure to complete the relevant portion of the Work on the dates specified in the Milestone Schedule or to satisfy a Performance Guarantee. The Parties agree that the liquidated damages set out in this **Article 37** are not intended and shall not be deemed to be penalties.

37.5 The payment by Contractor and receipt by Company of liquidated damages:

- (a) pursuant to **Article 37.1** shall be Company's exclusive remedy for Contractor's failure to Deliver that part of the Work to achieve a Milestone by the date specified;
- (b) pursuant to **Article 37.2** shall be in full and final satisfaction of Contractor's liability in regard to failure to meet the Performance Guarantee.

37.6 Company shall have the right to payment by Contractor of liquidated damages from time to time by giving Notice to Contractor. Any such Notice shall specify the amount of such damages and Contractor shall pay the amount so specified within ten (10) Business Days of the date of such Notice. Failure by Company to give Contractor a Notice shall not constitute a waiver of Company's right to claim all liquidated damages under this **Article 37**.

37.7 Company has the right to set off any amount of liquidated damages, plus interest determined in accordance with **Article 12.20**, owed by Contractor to Company against any amount due or to become due from Company to Contractor under the Agreement.

37.8 Contractor shall diligently use its best efforts to achieve successful completion of Performance Tests in a timely manner notwithstanding any right or entitlement that the Company may have to liquidated damages for failure to complete a Milestone in accordance with the Milestone Schedule.

- 37.9 If the liquidated damages payable pursuant to **Article 37.2** exceed the maximums stated in **Article 37.3(b)** or **37.3(c)**, Contractor shall take action as is necessary to modify or repair the Work as soon as reasonably possible, at a time agreed between the Parties, such that the Work will perform in a manner so that the liquidated damages payable pursuant to **Article 37.2** shall not exceed the maximums stated in **Article 37.3(b)** or **37.3(c)**. Company shall make the relevant Work available for modification or repair by Contractor either within the Performance Guarantee Assessment Period or as soon as reasonably practical after completion of the Performance Guarantee Assessment Period.
- 37.10 For greater certainty, any corrective action or remedial work performed by Contractor pursuant to this **Article 37.9** shall be in addition to and independent of Contractor's Warranty obligations pursuant to **Article 17**.

ARTICLE 38
CONTRACTOR'S REPRESENTATIONS, WARRANTIES AND COVENANTS

- 38.1 Contractor represents and warrants that during the Term:
- (a) it has the required skills, experience, facilities, equipment and capacity to perform the Work in a timely manner and in accordance with the terms of this Agreement, Applicable Laws, the Standard of a Prudent Contractor and Good Utility Practice;
 - (b) all Contractor's Personnel involved in carrying out any of the Work have the qualifications, training and experience, and hold such valid licences and certificates of competence, as are required to carry out their duties in relation to the Work (including visas and work permits);
 - (c) **Article 15** and Exhibit 5 – Health and Safety requirements are satisfied; and
 - (d) the making and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not and will not violate any Applicable Law or any provision of its governing documents.
- 38.2 Contractor covenants that during the Term it shall:
- (a) perform the Work in a diligent, safe, efficient and timely manner and in accordance with the Standard of a Prudent Contractor;
 - (b) perform the Work continuously and in accordance with this Agreement, using only Subcontractors Approved by Company and Contractor's Personnel;
 - (c) use quality assurance programs in performing the Work which comply with the requirements of Exhibit 7 – Quality Requirements, all Applicable Laws and industry accepted practices;
 - (d) schedule all long lead time equipment or products for manufacture at the earliest possible date;

- (e) not displace or set back in a manufacturing queue or production schedule the equipment or product to be manufactured for the Work in favour of another customer or client of Contractor if such displacement or set back would have an adverse impact on Contractor's ability to complete the Work by the date for Substantial Completion in the Milestone schedule, but otherwise Contractor may manage its manufacturing queue and production schedule as it deems appropriate;
- (f) supply materials, equipment and products for installation into the Work that are new and meet or exceed the standards specified in this Agreement ;
- (g) maintain, at its sole risk, cost and expense, all Contractor's Items throughout the Term;
- (h) comply with, and ensure Contractor's Personnel and Subcontractors comply with, all health and safety requirements set out in Exhibit 5 – Health and Safety Requirements and Applicable Laws;
- (i) comply with, and ensure Contractor's Personnel and Subcontractors comply with, all environment and regulatory requirements set out in Exhibit 6 – Environment and Regulatory Compliance Requirements and Applicable Laws;
- (j) take all steps necessary to maintain good labour relations with Contractor's Personnel to the extent that such requirement is consistent with sound business practice;
- (k) comply, on a timely basis, with all instructions of Company consistent with the provisions of this Agreement, including health, safety and environmental instructions;
- (l) provide such reports, records, and other information relating to the performance of the Work as Company may request from time to time, including copies of the qualifications and credentials of Contractor's Personnel and Subcontractors and information relating to quality assurance programs, and permit Company to inspect Contractor's Items and Worksites, to enable Company to satisfy itself that Contractor is complying with the terms of this Agreement;
- (m) assist Company and provide necessary information and documents at Company's cost to support Company in obtaining for the benefit of Company all available exemptions and/or refunds from Taxes; and
- (n) implement and maintain a cost effectiveness program ensuring all techniques proposed for the performance of the Work are or have been reviewed to ensure that they are cost effective.

38.3 Contractor warrants and acknowledges that it has reviewed and understands the Applicable Laws and Lower Churchill Construction Projects Benefits Strategy governing the use of personnel, goods and services in the Work. Contractor shall, throughout the Term, take such action as Company may specify to enable Company to comply with all Applicable Laws regarding the use of Canadian and Newfoundland and Labrador personnel, goods and services, including any Newfoundland and Labrador Benefits

requirements and those requirements set forth in Exhibit 13 - Provincial Benefits of this Agreement. Where Contractor is permitted to subcontract, Contractor shall ensure that Subcontractors comply with such requirements. In addition, Contractor shall provide reports in the manner and format described in Exhibit 13 - Provincial Benefits of this Agreement throughout the term of this Agreement.

- 38.4 Contractor warrants and acknowledges that, except for the Technical Specifications, any information provided by Company or Engineer prior to or after execution of this Agreement, including any and all reports, data, interpretations, recommendations and information, was prepared solely for the purpose of study to consider the general feasibility of the Work and not for the purpose of design, manufacture or installation. Company does not warrant and is not liable for the accuracy, sufficiency, adequacy, completeness or content of any such information or any information subsequently supplied by Company or by Engineer, all of which has been provided to Contractor for general information only and on the condition that such information shall not be relied on by Contractor except to the extent that Contractor has either fully satisfied itself as to its sufficiency and accuracy or has fully accepted all risks and contingencies associated with such information. Any new or additional technical information provided to Contractor by Company or Engineer during the execution of the Work shall be provided by Company or Engineer, as the case may be, in the form of a Change Order to the Technical Specifications.
- 38.5 Contractor shall, maintain, at its sole risk, cost and expense, all Contractor's Items throughout the Term in the manner necessary to ensure that the warranties and covenants in **Article 38.1** and **Article 38.2** shall be true and accurate at all times during the Term. If any of Contractor's Items do not at any time conform to the warranties and covenants given in **Article 38.1** and **Article 38.2**, Contractor shall, at Contractor's sole expense, repair such Contractor's Items or replace with items which conform in all respects to such representations and warranties.
- 38.6 Contractor agrees that all of its representations, warranties and covenants contained in this Agreement are and shall be deemed to be material and shall be conditions of this Agreement.

ARTICLE 39 ENTIRETY OF AGREEMENT, NON WAIVER

- 39.1 This Agreement, as executed by authorized representatives of Company and Contractor, constitutes the entire agreement between the Parties with respect to the matters dealt with herein. This Agreement replaces and supersedes all prior agreements, documents, writings and verbal understandings between the Parties in respect of the Work and there are no oral or written understandings, representations or commitments of any kind, express or implied, which are not expressly set forth herein.
- 39.2 No modification of this Agreement by Contractor or Company, either before or after the execution of this Agreement, shall be of any force or effect unless such modification is in writing, is expressly stated to be a modification of this Agreement and is signed by duly authorized representatives of each of the Parties, with the exception of the following Exhibits where changes to same may be issued solely by Company:

- (a) Exhibit 5 – Health and Safety Requirements;
- (b) Exhibit 6 – Environment and Regulatory Compliance Requirements;
- (c) Exhibit 10 – Declaration of Residency;
- (d) Exhibit 11 – Company Supplied Documents;
- (e) Exhibit 12 – Worksite Conditions;
- (f) Exhibit 13 – Provincial Benefits.

39.3 No waiver of any provision of this Agreement shall be of any force unless such waiver is in writing, is expressly stated to be a waiver of a specified provision of this Agreement and is signed by the Party to be bound thereby. Either Party's waiver of any breach of, or failure to enforce, any of the covenants, conditions or other provisions of this Agreement, at any time, shall not in any way affect or limit that Party's right thereafter to enforce or compel strict compliance with every covenant, condition or other provision hereof.

ARTICLE 40 DISPUTE RESOLUTION

- 40.1 If any dispute, controversy, claim, question or difference of opinion arises between the Parties under this Agreement including an interpretation, enforceability, performance, breach, termination 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.
- 40.2 Upon issuance of Notice of the Dispute, the Parties shall, acting in good faith and a commercially reasonable manner, attempt to resolve the Dispute in the following manner:
- (a) Within fifteen (15) days of the Notice, the senior project managers for each of Company and Contractor shall meet to attempt to resolve the Dispute;
 - (b) If not resolved by senior project managers, the project sponsors or representative Vice Presidents for each of Company and Contractor will meet within thirty (30) days following the meeting of the project managers to attempt to resolve the Dispute; and
 - (c) If not resolved by project sponsors or representative Vice Presidents, the Chief Executive Officers for each of Company and Contractor will meet within thirty (30) days following the meeting of the project sponsors or representative Vice Presidents to attempt to resolve the Dispute.
- 40.3 If the Dispute is not resolved by the Parties within ninety (90) days from the date of delivery of the Notice of Dispute then a Party may by Notice to the other Party require the Dispute to be resolved by binding arbitration in accordance with Exhibit 15 - Rules for Arbitration.

- 40.4 Except where Company or Contractor has terminated this Agreement in accordance with **Article 32** or Company has terminated this Agreement in accordance with **Article 33** and notwithstanding the existence of a Dispute and the referral of the Dispute to the resolution procedures in this **Article 40**, Company and Contractor shall, to the extent reasonably possible, continue to perform their obligations under this Agreement without interruption or delay. The continuation of such performance shall in no way amount to a waiver of, or in any way prejudice, the position that is taken by the Parties in the Dispute. There shall be no extension to the date for completion of a Milestone by reason that a Dispute has been referred to the dispute resolution process in this **Article 40**.

ARTICLE 41
NOTICES

- 41.1 Unless otherwise specified in the Agreement, any Notice given or made pursuant to the Agreement shall:
- (a) be in writing;
 - (b) be marked to the attention of Contractor Representative, in the case of Contractor, or to Company Representative, in the case of Company;
 - (c) where given by Company, be signed or authorized by either Company Representative, an officer, a director or company secretary of Company, or a duly authorized representative of Company;
 - (d) where given by Contractor, be signed or authorized by either Contractor Representative, an officer, a director or company secretary of Contractor, or a duly authorized representative of Contractor; and
 - (e) be delivered by prepaid post, by hand, by Aconex or by facsimile to the Party to whom the Notice is addressed at its address specified in **Article 41.3** or such other address as that Party may have notified to the other Party.
- 41.2 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);
 - (c) in the case of delivery by facsimile, on receipt by the sender of a transmission control report from the sending machine showing the relevant number of pages and the correct destination facsimile machine number or name of the recipient and indicating that the transmission has been made without error;
 - (d) in the case of delivery by Aconex, at the time and date recorded by Aconex for delivery to the recipient.

41.3 Any Notice given or made under the Agreement shall be delivered to the intended recipient by hand, post, Aconex or facsimile to the address or facsimile number below or the address or facsimile number last notified by the intended recipient to the sender pursuant to **Article 41.7**:

(a) to Company:

Labrador-Island Link Limited Partnership
Re: Lower Churchill Project
350 Torbay Road Plaza, Suite No. 2
St. John's, NL
Canada A1A 4E1

Attention: **Darren DeBourke**
Project Manager, HVdc Specialties
Facsimile No.: **1 709 752-3480**
E-mail: **darrendebourke@lowerchurchillproject.ca**

(b) to Contractor:

Alstom Grid Canada Inc.
1400, rue Industrielle , Suite 100
La Prairie, QC
Canada J5R 2E5

Attention: **Denis Jaze**
Project Director
Facsimile No.: **1 450 659 3371**
E-mail: **denis.jaze@alstom.com**

With a copy to:

ALSTOM Grid Canada, Inc.
Ingrid Lehnert, Vice President & General Counsel, NAM Region
2 International Plaza Drive, Suite 325
Philadelphia, PA 19348 USA
Facsimile No.: 1 610 362-2075
E-mail: **Ingrid.lehnert@alstom.com**

41.4 Except where Notice is given using Aconex in accordance with **Articles 41.2** and **41.3**, if the Parties use any other form of electronic mail for day to day communication but 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.

41.5 Any technical communications pertaining to the Work shall be between Engineer and Contractor Representative. Engineer shall, subject to the terms of this Agreement, be authorized to act on behalf of Company in all technical matters concerning the Work but not to commit or bind Company to a Change or an amendment of the Agreement.

- 41.6 Except where expressly provided otherwise in the Agreement, verbal communications will not constitute formal communication or Notice under the Agreement and neither Party has any obligation to act on any verbal communication or instruction unless and until it is confirmed in writing. Any action taken by a Party based on verbal communications, instructions or assurances will be at that Party's sole risk and will be without liability to or recourse against the other Party.
- 41.7 A Party may, from time to time, give Notice to the other Party of any change to its address or facsimile number.

ARTICLE 42
LIENS AND CLAIMS

- 42.1 Without prejudice to the provisions of this **Article 42** and to the extent arising from the Work, Contractor shall prevent the imposition of any liens, claims, encumbrances or attachments by or on behalf of any third party against 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 defend, indemnify, defend and hold Company Group harmless from and against the same.
- 42.2 Contractor shall defend, indemnify and hold Company Group harmless from and against, and shall keep Company's property, Worksites and Work thereon free and clear of all liens, charges, claims, assessments, fines and levies suffered, created, or committed by Contractor Group and their vendors and suppliers, 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.
- 42.3 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 43
ENUREMENT, TIME, SURVIVAL OF PROVISIONS

- 43.1 This Agreement shall be binding upon the Parties, their permitted assignees and successors.
- 43.2 Time is of the essence with respect to the CCL as set forth in the Milestone Schedule.
- 43.3 The following provisions of this Agreement shall survive the termination or expiration of this Agreement and remain in full force and effect: **Articles 1.17, 1.18, 3.5, 5.1, 21.12, 21.4(j), 6.7, 7.1, 7.2, 10.8, Article 12, Article 13, Article 14, Article 17, Article 21, Article 23, Article 24, Article 27, Article 28** (for a period of seven (7) years following the date of Substantial Completion), **Article 29, Article 32, and Article 42.**

**ARTICLE 44
COUNTERPARTS**

- 44.1 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.
- 44.2 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.
- 44.3 Each person signing the Agreement as an authorized representative of a Party hereby represents and warrants that he or she is duly authorized to sign the Agreement for that Party and that the Agreement will, upon having been so executed, be binding on that Party in accordance with its terms.

**ARTICLE 45
COST REDUCTION PROPOSALS**

- 45.1 Contractor may at any time submit to Company a cost reduction proposal to Company for Approval. Contractor shall base any such proposal on a study indicating that such proposal:
- (a) will not impair any function or characteristic of the Work, including safety, service life, performance, reliability, economy of operation, ease of maintenance and necessary standardised features; and
 - (b) will not require a significant extension of the dates in the Schedule.
- 45.2 Company may, at its sole discretion, accept or reject, in whole or in part, any proposal submitted under this **Article 45**. To the extent to which Company Approves such a proposal, the Parties will calculate the net cost savings arising in respect of such proposal. After the Parties agree on such net amount of savings, the Parties will execute an amendment to this Agreement reducing the Contract Price by 50% of such net amount of savings and making all other necessary changes to this Agreement.
- 45.3 Company will not be liable for any delay in acting on, or for failure to act on, any proposal submitted under this **Article 45**. The decision by Company to accept or reject, in whole or in part, any such proposal will not in itself affect any rights or obligations of the Parties under this Agreement except to the extent set out in an amendment pursuant to **Article 45.2**.

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EXECUTED AS AN AGREEMENT on 20th day of June, 2014:

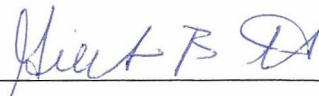
For and on behalf of **LABRADOR-ISLAND LINK LIMITED PARTNERSHIP**, by its general partner Labrador-Island Link General Partner Corporation



Signature of Authorized Representative

Edmond J. Martin
President and CEO

Name of Authorized Representative

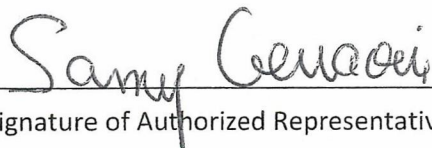


Signature of Authorized Representative

Gilbert Bennett, P.Eng.
Vice President

Name of Authorized Representative

For and on behalf of **ALSTOM Grid Canada, Inc.**



Signature of Authorized Representative

SAMY GENNAOUI

Name of Authorized Representative

Signature of Authorized Representative

Name of Authorized Representative

Execution Page to Agreement number CD0501-001 dated the 31st day of March, 2014 between **LABRADOR-ISLAND LINK LIMITED PARTNERSHIP** and **ALSTOM Grid Canada, Inc.**

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