

# WORKER ACCOMMODATION PROJECT AGREEMENT

## SCHEDULE 12

### CHANGES

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#### 1 INTERPRETATION

##### 1.1 Definitions

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

**“Change”** means a Facility Change or a Services Change as the context requires;

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

**“Change Order”** has the meaning set out in Section 2.4 of this Schedule 12 [Changes];

**“Change Report”** means a written report prepared by Project Co in response to a Preliminary Change Instruction, containing the information described in Section 3.3 of this Schedule 12 [Changes];

**“Facility Change”** means a change, including an addition, deletion, alteration, substitution or otherwise, to Project Co’s Design or Construction obligations under this Agreement;

**“Innovation Proposal”** has the meaning set out in Section 8.1 of this Schedule 12 [Changes];

**“Minor Works”** means a Change that is requested by BC Hydro at any time after the Service Commencement Date with a value that does not exceed [REDACTED] unless otherwise agreed by BC Hydro;

**“Minor Works Rates”** has the meaning set out in Section 7.1(a) of this Schedule 12 [Changes];

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

**“Services Change”** means a change, including an addition, deletion, alteration, substitution or otherwise, to Project Co’s Services obligations under this Agreement.

#### 2 CHANGES

##### 2.1 BC Hydro’s Right to Require Changes

BC Hydro may require a Change by issuing a written Change Order or a written Change Directive, and except to the extent that a Change Order or Change Directive expressly requires otherwise, Project Co will comply with all applicable terms of this Agreement, including Schedule 2 [Design and Construction Protocols], Schedule 6 [Specifications and Drawings] and Schedule 29 [BC Hydro Offices – Specifications and Drawings] in implementing the Change.

##### 2.2 Restrictions on Changes

BC Hydro will not at any time require, and Project Co may refuse to implement, a Change which:

- (a) would be contrary to Law;



- (b) would render the insurance policies required under this Agreement void or voidable and BC Hydro does not agree to provide replacement security satisfactory to Project Co acting reasonably;
- (c) would cause the revocation of any Permit required by Project Co to perform its obligations under this Agreement, and such Permit would not, using reasonable efforts, be capable of amendment or renewal;
- (d) would require a new Permit for Project Co to perform its obligations under this Agreement, which Permit would not, using reasonable efforts by Project Co or BC Hydro, as applicable, be obtainable;
- (e) would cause Project Co to be unable to obtain a Permit required by Project Co to perform its obligations under this Agreement, provided that such Permit was previously required but at the time of the Preliminary Change Instruction had not been obtained and such Permit would not, using reasonable efforts by Project Co or BC Hydro, as applicable, be obtainable; or
- (f) would materially and adversely affect the risk allocation under this Agreement with respect to the Design, Construction or Services

If Project Co, acting reasonably, determines that a Change is unacceptable because it contravenes one or more of the above, then Project Co will promptly give notice to BC Hydro of its objection, with written reasons. If BC Hydro disagrees then it may deliver a Dispute Notice to Project Co, and the parties will cooperate to have the issue resolved in a timely manner in accordance with Schedule 14 [Dispute Resolution Procedure].

### 2.3 No Change Without Written Direction

Except as expressly set out otherwise in this Agreement, Project Co will not proceed with any Change prior to the receipt of a written Change Order or Change Directive issued by BC Hydro. No claim for an adjustment to the Construction Payments or Service Payments, as applicable, or the time for the performance of the Design, Construction or the Services, as applicable, may be made without such written direction. Project Co will not be entitled to, nor will Project Co rely on, any oral representation (except in an emergency), Site meeting discussion or minutes, or other communication as approval for a Change.

### 2.4 Change Orders

When the adjustments, if any, to the Construction Payments or Service Payments, as applicable, or the time for the performance of the Design, Construction or the Services or both with respect to a Change are agreed by BC Hydro and Project Co, Hydro's Representative will issue a written approval (a **Change Order**) setting out:

- (a) a description of the Design, Construction or Services, as applicable, covered by the Change;
- (b) the price or method of valuation for such Design, Construction or Services;
- (c) the total adjustment, if any, to the Construction Payments or Service Payments, as applicable, (excluding only GST) on account of the Change and, for certainty, will be deemed to include all claims for compensation on account of all related costs, including all direct, indirect or "impact", overhead, and all other costs, and all mark ups and profits, even if the Change Order does not specifically mention such items; and
- (d) the net effect on the time for the performance of the Design, Construction or the Services on account of the Change and, for certainty, will be deemed to include all effects on the time for the



performance of the Design, Construction or the Services, and if there is no mention in the Change Order of a required adjustment to the time for the performance of the Design, Construction or the Services, then the Change Order will be interpreted to mean that Project Co will complete the performance of the Design, Construction or the Services covered by the Change Order without any adjustment to the time for the performance of the Design, Construction or the Services.

Hydro's Representative and Project Co's Representative will sign the Change Order to confirm agreement and, upon receipt of a signed Change Order, Project Co will proceed with the Change without delay.

## 2.5 Change Directives

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

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

Upon receipt of a Change Directive Project Co will proceed with the Design, Construction or the Services, including the Change, without delay, without prejudice to Project Co's and BC Hydro's rights to claim an adjustment to the Construction Payments or Service Payments, as applicable, and the time for the performance of the Design, Construction or the Services or both as a result of the Change, and the following will apply:

- (e) the valuation of the cost of the Change and impact on the Work Program and Schedule will be evaluated in the same manner as described in Section 5 of this Schedule 12 [Changes], calculated as soon as reasonably possible after the delivery of the Change Directive;
- (f) pending a final determination as to any adjustments to the Construction Payments or Service Payments, as applicable, or the time for the performance of the Design, Construction or the Services or both for the Change BC Hydro will make a monthly payment to Project Co of amounts Project Co substantiates that it incurred on account of the Change and that BC Hydro, acting reasonably, agrees are owing on account of the Change;
- (g) if the parties reach agreement on adjustments to the Construction Payments or Service Payments, as applicable, or the time for the performance of the Design, Construction or the Services or both for the Change BC Hydro will issue a signed Change Order confirming the valuation of the Change and the impact on the Work Program and Schedule;
- (h) if within 30 Business Days after the delivery of a Change Directive to Project Co, or such other time as the parties acting reasonably may agree in writing, the parties have not reached agreement on a Change Order covering all Changes implemented by the Change Directive, then Hydro's Representative will deliver to Project Co's Representative a draft Change Order acceptable to BC Hydro covering all Changes in the Change Directive, and if Project Co does not agree to the draft Change Order within 10 Business Days of receipt by Project Co, or such other time as the parties acting reasonably may agree in writing, then either party may refer the



valuation of the cost of the Change and impact on the Work Program and Schedule to be settled in accordance with Schedule 14 [Dispute Resolution Procedure].

### **3 POTENTIAL CHANGES**

#### **3.1 Preliminary Change Instruction**

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

#### **3.2 Delivery of Change Report**

Subject to Section 2.2 of this Schedule 12 [Changes], as soon as practicable and in any event, to the extent reasonably possible, within 15 Business Days after receipt of a Preliminary Change Instruction, or such other period as the parties may agree in writing acting reasonably, Project Co will, at its cost, prepare and deliver to BC Hydro a Change Report, signed by Project Co's Representative, for the contemplated Change described in the Preliminary Change Instruction.

#### **3.3 Change Report Contents**

A Change Report will include:

- (a) a description of the scope of the contemplated Change;
- (b) a comparison of the scope of Design, Construction or the Services as a result of the contemplated Change as compared to the scope prior to the Change;
- (c) subject to Project Co's duties under Section 2.10 of this Agreement, a description of any adjustments to the Work Program and Schedule which Project Co will require as a result of the implementation of the contemplated Change (including details of any corresponding adjustments required by any Subcontractor);
- (d) an estimate of all costs, if any, reasonably necessary for and directly associated with the contemplated Change, including the following (which will be shown separately if requested by BC Hydro), as applicable:
  - (i) the cost of all Design, if any (based on the estimated number of hours reasonably required to perform any such Design);
  - (ii) all labour, material and equipment costs, supported as the case may be by quotations from applicable Subcontractors;
  - (iii) all additional costs of direct management of the Design, Construction or the Services, including supervision of trade foremen and Worker Accommodation Area overheads;
  - (iv) all costs of Permits required on account of the Change, including any required new Permit(s) or amendment or renewal of an existing Permit(s);
  - (v) all costs associated with services provided by third party professional advisors or Subcontractors;



- (vi) an estimate of the cost savings, if any, resulting for any reason (including reduction in scope of Design, Construction or the Services or reduction in the time for the performance of the Design, Construction or the Services) from the contemplated Change;
  - (vii) any proposal(s) as to how the contemplated Change could be accomplished at a lower or zero net cost;
  - (viii) a description of the extent to which the contemplated Change would interfere with Project Co's ability to comply with any of its obligations under this Agreement, any Subcontracts and any Permits;
  - (ix) the name of the Subcontractor(s) (if any) which Project Co intends to engage for the purposes of implementing the contemplated Change together with a description of the qualifications of any such Subcontractor(s) so as to demonstrate the ability of such Subcontractor(s) to implement the contemplated Change;
  - (x) a description of any further effects (including benefits and impairments) which, Project Co foresees as being likely to result from the contemplated Change;
  - (xi) a description of any actions that would be reasonably required by BC Hydro to implement the contemplated Change; and
  - (xii) a description of the steps Project Co will take to implement the contemplated Change, in such detail as is reasonable and appropriate in all the circumstances.
- (e) a description of any change in the cost of financing that would be required to reflect a change in the risk profile of the Facility arising from the contemplated Change;
  - (f) a description of any changes to the Service Payments that are required to reflect the costs and cost savings referred to in Sections 3.3(d)(i) and 3.3(d)(ii) of this Schedule 12 [Changes];
  - (g) a description of any additional consents or approvals required, including amendments, if any, of any Permits required to implement the contemplated Change; and
  - (h) a description of any impact on the obligations of Project Co under any Project Contracts.

The cost or impact on the Work Program and Schedule of the correction of a Defect will not be included in the valuation of a Change.

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

### 3.4 Change Report to Cover all Cost and Time

Any Change Report submitted by Project Co will, except as expressly set out otherwise in the Change Report, be interpreted to represent the proposed total adjustment to the Construction Payments or Service Payments, as applicable, (excluding only GST) and the net effect on the time for the performance of the Design, Construction or the Services on account of such contemplated Change, and, for certainty, will be deemed to include:

- (a) all claims for compensation on account of all related costs, including all direct, indirect or "impact", overhead, and all other costs, and all mark-ups and profits, even if the Change Report does not specifically mention such items; and



- (b) all effects on the time for the performance of the Design, Construction or the Services, and if there is no mention in the Change Report of a required adjustment to the time for the performance of the Design, Construction or the Services, then the Change Report will be interpreted to mean that Project Co will complete the performance of the Design, Construction or the Services as covered by the Change Report without any adjustment to the time for the performance of the Design, Construction or the Services.

### 3.5 Third Party Costs to Prepare Change Report

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

### 3.6 Justification and Supporting Documentation for Contemplated Change Estimates

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

- (a) Project Co has used all reasonable efforts, including utilizing competitive quotes or tenders, to minimize the cost of a contemplated Change and maximize potential related cost savings;
- (b) Project Co and Subcontractors have valued the Change as described in Section 5.1 of this Schedule 12 [Changes], and have not included margins or mark-ups not provided for in Section 5.2 of this Schedule 12 [Changes];
- (c) the full amount of any and all expenditures that have been reduced or avoided have been fully taken into account; and
- (d) Project Co has mitigated or will mitigate, in accordance with Section 2.10 (General Duty of Project Co to Mitigate) of this Agreement, the impact of the contemplated Change, including on the Work Program and Schedule and the direct costs to be incurred.

### 3.7 Project Co's Costs to Prepare Change Report

If, following receipt of a Change Report:

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



### 3.8 Agreement on a Change

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

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

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

### 3.9 Disagreement on Change Report

If the parties do not agree on a Change Report, then BC Hydro may:

- (a) elect not to proceed with the Change described in the Preliminary Change Instruction; or
- (b) issue a Change Directive with respect to some or all of the Change described in the Change Report.

## **4 CLAIM FOR A CHANGE**

### 4.1 Claim for a Change

If Project Co at any time wishes to claim that a Change has occurred, then:

- (a) if Project Co receives a direction, instruction or decision from Hydro's Representative for which a Change Order or Change Directive was not given, then Project Co may only claim an adjustment to the Construction Payments or Service Payments, as applicable, or an adjustment to the time for the performance of the Design, Construction or the Services or both as follows:
  - (i) prior to proceeding with such direction, instruction or decision, Project Co will give written notice to Hydro's Representative of its intention to make such a claim with sufficient detail to permit Hydro's Representative to be able to understand the basis for the claim as well as the anticipated impact on the Construction Payments or Service Payments, as applicable, if any, and the time for the performance of the Design, Construction or the Services, if any; and



- (ii) Project Co will maintain daily records of the resources used in connection with the claimed Change, including labour, equipment and materials, prepared contemporaneously with the performance of the affected Design, Construction or the Services, and submit such records, together with the amount claimed for such affected Design, Construction or the Services, to Hydro's Representative on a rolling two business day basis;
- (b) upon receipt of a notice under Section 4.1(a)(i) of this Schedule 12 [Changes] from Project Co, Hydro's Representative will promptly investigate the conditions giving rise to the claimed Change;
- (c) in no event will Project Co be entitled to, nor will Project Co make any claim for, an adjustment to the Construction Payments or Service Payments, as applicable, or the time for the performance of the Design, Construction or the Services on account of any circumstance, condition or event that entitles Project Co to make a claim under Section 4.1 of this Schedule 12 [Changes]:
  - (i) that occurs more than seven days prior to the notice delivered by Project Co to Hydro's Representative as provided by Section 4.1(a)(i) of this Schedule 12 [Changes]; or
  - (ii) notwithstanding Section 4.1(c)(i) of this Schedule 12 [Changes], to the extent BC Hydro is materially prejudiced by any delay in Project Co complying with its obligations under Section 4.1(a)(i) of this Schedule 12 [Changes]; and
- (d) in no event will Project Co be entitled to, nor will Project Co make any claim for, an adjustment to the Construction Payments or Service Payments, as applicable, on account of any circumstance, condition or event that entitles Project Co to make a claim under 4.1 of this Schedule 12 [Changes] for which Project Co has not kept, nor made available to Hydro's Representative, the records as required under Section 4.1(a)(ii) of this Schedule 12 [Changes].

If Hydro's Representative refuses Project Co's request for a Change Order or Change Directive, then such refusal will be subject to settlement in accordance with Schedule 14 [Dispute Resolution Procedure].

## **5 VALUATION OF CHANGES**

### **5.1 Valuation of Changes**

The value and method of valuation of a Change will be determined by one or more of the following methods:

- (a) as set out in a Change Report, if any, and accepted in writing by Hydro's Representative, in accordance with this Schedule 12 [Changes];
- (b) by a lump sum as agreed by the parties covering some or all of the Change;
- (c) by unit prices as applicable to the Design, Construction or the Services covered by the Change; and
- (d) to the extent not settled under one or more of Sections 5.1(a), 5.1(b) or 5.1(c) of this Schedule 12 [Changes], by the direct cost (or saving) of implementing the Change, calculated as follows:
  - (i) with respect to labour, the total of:
    - (A) the reasonable and substantiated wages and salaries, including payroll burden and statutory assessments, paid directly by Project Co for labour directly and actively engaged in the performance of such Change, including a proper



proportion of the time of Worker Accommodation Area supervisors directly supervising the performance of such Change; plus

- (B) the reasonable and substantiated food, lodging and additional transportation costs for labour and supervisory personnel directly and actively engaged in the performance of such Change, to the extent Project Co actually pays such costs; plus
- (ii) with respect to materials, the total of the reasonable and substantiated direct costs of all materials reasonably and necessarily used by Project Co for or incorporated into the Design, Construction or the Services on account of such Change, including extraordinary freight and shipping costs, if any; plus
- (iii) with respect to equipment (other than small tools) the total of the reasonable and substantiated rental charges for such equipment used directly in the performance of such Change, including equipment owned by Project Co, at the rates established in the most recently published edition of the book entitled "Equipment Rental Rate Guide" and "The Blue Book" as published by the B.C. Road Builders & Heavy Construction Association on the date when such Change is performed, without mark-up. Such rates will be without an operator and the cost of the operator of such equipment may be included in the amount permitted for labour under Section 5.1(d)(i) of this Schedule 12 [Changes]; plus
- (iv) with respect to Project Contractors performing some or all of such Change, BC Hydro will pay the amounts as determined under Sections 5.1(d)(i), 5.1(d)(ii) and 5.1(d)(iii) of this Schedule 12 [Changes] as incurred by the Project Contractors;
- (v) the rates and charges applied will be no greater than the market rates and charges prevailing at the time of the implementation of the Change, paid between arms-length contracting parties;
- (vi) unless otherwise agreed by BC Hydro in writing, Project Co will obtain, or will require the Project Contractors to obtain, competitive quotations or tenders for all work, equipment and materials required to implement a Change; and
- (vii) the rates and charges of Project Co and the Project Contractors will be determined all without addition of any mark-ups for indirect costs, and the aggregate of mark-ups payable to Project Co or to any Project Contractor with respect to a Change will be limited to the mark-ups set out in Section 5.2 of this Schedule 12 [Changes].

The final evaluation of a Change will take account of any savings resulting from the Change and accordingly valuation of a Change will be is the aggregate of the direct incremental costs minus the aggregate direct cost savings reasonably incurred or resulting from the implementation of the Change. For certainty a Change may have a net cost, or a net saving, or may result in no net cost or saving.

## 5.2 Mark-Up on Changes

Mark-up on direct costs relating to a Change valued under Section 5.1(d) of this Schedule 12 [Changes] will be payable only as follows:

- (a) for the purposes of this Section 5.2 a mark-up will be deemed to cover all indirect, head office, supervision and management, including without duplication, any costs related to Project Co's, and any Project Contractors', management and oversight of the Design, Construction or the Services, Worker Accommodation Area management, supervision of trade foremen, Worker Accommodation Area overheads, and other costs and profit associated with the Change;



- (b) if the aggregate of the direct incremental costs minus the aggregate direct cost savings of a Change is positive such that there is a net cost for the Change then, in addition to such aggregate net cost, BC Hydro will pay Project Co a mark-up on such aggregate net cost of [REDACTED] and
- (c) if the aggregate of the direct incremental costs minus the aggregate direct cost savings of a Change is negative such that there is a net saving for the Change then Project Co will pay BC Hydro such net saving without adjustment of such net saving on account of any mark-up.

### 5.3 Quantity Variation

If, for any reason, including an addition or deletion to the scope of the Design, Construction or the Services under Section 2 of this Schedule 12 [Changes], the actual quantity of a unit price item varies by more than [REDACTED] from the estimated quantity for that unit price item as listed in this Agreement, or as otherwise agreed to pursuant to this Agreement, then either BC Hydro or Project Co may, by written notice to the other party, request the other party to agree to a revised unit price, to take account of the variation in quantity and prevent either party from obtaining a windfall or suffering a loss as a result of the quantity variation. A party will make a request for a revised unit price as soon as reasonably practicable after it becomes aware of the quantity variation. Upon a request under this Section 5.2 of this Schedule 12 [Changes] Project Co's Representative will deliver to Hydro's Representative all documentation reasonably required by Hydro's Representative to evaluate and substantiate the calculation of the applicable unit price(s).

### 5.4 Adjustments to Time for the Performance of the Design, Construction or the Services

Subject always to Project Co's duties under Section 2.10 (General Duty of Project Co to Mitigate) of this Agreement, the time for the performance of the Design, Construction or the Services will be adjusted on account of a Change by the net amount of time reasonably required by Project Co to accommodate and perform the Change, taking account of any impacts that require more time, and any impacts, that result in time savings, as follows:

- (a) as set out in a Change Report, if any, and accepted by Hydro's Representative pursuant to Section 3.8 of this Schedule 12 [Changes];
- (b) as otherwise agreed in writing by the parties; or
- (c) in the absence of an agreement, in accordance with Schedule 14 [Dispute Resolution Procedure].

## **6 EMERGENCY**

### 6.1 Emergency

Notwithstanding any other provision in this Agreement, Hydro's Representative may, in the event of an emergency, issue oral orders to Project Co for any Change required by reason of an emergency. Project Co will proceed with such Change without delay, without prejudice to Project Co's right to claim an adjustment to the Construction Payments or Service Payments, as applicable, or the time for the performance of the Design, Construction or the Services or both. Hydro's Representative will confirm such orders in the form of a Change Order or Change Directive as soon as practicable.



## 7 **MINOR WORKS**

### 7.1 **Minor Work Rates**

Rates for Minor Works will be established and applied as follows:

- (a) not less than 60 days before the anticipated Service Commencement Date, and not less than 30 days before the commencement of each subsequent Contract Year, Project Co will submit to BC Hydro for review and approval by BC Hydro any amendments to the table of categories and hourly rates set out in Section 7.1(b) of this Schedule 12 [Changes] (the **Minor Works Rates**) to be applied in respect of any request by BC Hydro for Minor Works to be completed during the next occurring Contract Year;
- (b) for reference purposes, the Minor Works Rates that would apply to the first Contract Year (if Minor Work Rates were to apply in that Contract Year), will be as follows:



BC Hydro, acting reasonably, may identify amendments to the categories that may be required for Minor Works in the next applicable Contract Year. For greater certainty, the categories and Minor Works Rates will apply to the Project Contractors and Sub-Contractors unless otherwise agreed by BC Hydro;

- (c) the Minor Work Rates will be based

- (d) if the parties are unable to agree on the categories and Minor Works Rates as required under Section 7.1(a) of this Schedule 12 [Changes] then the cost of Minor Works will be valued as described in Section 7.5 of this Schedule 12 [Changes].



## 7.2 Direction for Minor Works

BC Hydro may at any time following the Service Commencement Date require Project Co to perform Minor Works as follows:

- (a) within 10 Business Days of a request in writing for Minor Works, Project Co will at its own cost prepare and deliver to BC Hydro a written price estimate covering the full scope of the requested Minor Works, based on the applicable Minor Works Rates or, if and to the extent the Minor Works Rates are not applicable, at cost plus [REDACTED]
- (b) a Preliminary Change Instruction and a Change Report will not be required for Minor Works;
- (c) upon further written direction from BC Hydro, Project Co will in a timely manner carry out the Minor Works; and
- (d) the completed Minor Works will be a part of the completed Facility and accordingly, as required by this Agreement, and without further payment, except for an appropriate adjustment to the Service Payment to reflect the effect, if any, on the cost of the Services, Project Co will be responsible for any Defect and for all Services related to the completed Minor Works.

Project Co will not be entitled to charge BC Hydro for preparing a written price quote in accordance with Section 7.2(a) of this Schedule 12 [Changes].

## 7.3 Project Co to Minimize Inconvenience

Prior to commencing any Minor Works, Project Co will notify BC Hydro of the estimated duration of the Minor Works so that BC Hydro and Project Co can agree upon a convenient time for carrying out the Minor Works in a manner that minimizes and mitigates inconvenience and disruption to the use of the Facility. Project Co will use all reasonable efforts to minimize the duration of any Minor Works, and will schedule Minor Works as reasonably requested by BC Hydro, including doing works outside normal operating hours.

## 7.4 Payment for Minor Works

Project Co will as of the end of a calendar month invoice BC Hydro monthly for Minor Works completed in the calendar month, supported by appropriate invoices and work records, and BC Hydro will pay Project Co by the later of the 20<sup>th</sup> day of the next calendar month, or 20 calendar days following receipt of the invoice, for Minor Works performed in the previous calendar month.

## 7.5 Minor Works Dispute

Any Dispute arising in connection with Minor Works, including the price to be paid for Minor Works and the annual determination of the Minor Works Rates, will be resolved in accordance with the Dispute Resolution Procedure.



## **8 INNOVATION PROPOSALS**

### **8.1 Innovation and Value Engineering**

Project Co may at any time during the Operating Period submit a proposal to BC Hydro (an **Innovation Proposal**) to implement modifications to the Facility and the Services, including through innovation or value engineering, for the purpose of achieving efficiencies and reducing the Service Payments or the overall cost to BC Hydro of the Facility and the Services. Project Co must demonstrate to BC Hydro's satisfaction that an Innovation Proposal:

- (a) is originated and initiated solely by Project Co (including by Project Co bearing all research and development costs) without the involvement of BC Hydro or its consultants; and
- (b) offers savings, innovation or efficiency that is not otherwise called for or provided by this Agreement.

### **8.2 Content of Innovation Proposal**

An Innovation Proposal will:

- (a) set out all the information required in a Change Report as required under Section 3.3 of this Schedule 12 [Changes], modified to apply to an Innovation Proposal;
- (b) specify Project Co's reasons and justification for proposing the Innovation Proposal;
- (c) request BC Hydro to consult with Project Co with a view to BC Hydro deciding whether to agree to the Innovation Proposal and, if so, what consequential changes BC Hydro may require;
- (d) indicate any implications of the Innovation Proposal, including a difference between the existing and the proposed requirements of this Agreement, and the comparative advantages of each to Project Co and BC Hydro;
- (e) indicate whether a payment by BC Hydro in respect of direct costs or a variation to the Service Payments is proposed and, if so, give a detailed estimate of such proposed payment or variation;
- (f) indicate if there are any dates by which a decision by BC Hydro must be made; and
- (g) include such other information and documentation as may be reasonably requested by BC Hydro to fully evaluate and consider the Innovation Proposal.

### **8.3 Costs of Developing Innovation Proposal**

Project Co may deliver to BC Hydro preliminary information with respect to a proposed Innovation Proposal, but unless BC Hydro, in its discretion, agrees to pay or share the costs of developing an Innovation Proposal, the costs of investigating a potential Innovation Proposal will be borne entirely by Project Co.

### **8.4 Evaluation of Innovation Proposal**

BC Hydro will evaluate and give consideration to an Innovation Proposal taking into account all relevant issues, including whether:

- (a) a change in the Service Payments will occur;
- (b) the Innovation Proposal affects the quality or delivery of the Facility or the Services;



- (c) the Innovation Proposal will interfere with the relationship of BC Hydro with any third parties;
- (d) the financial strength of Project Co is sufficient to deliver the changed Facility or changed Services, as applicable;
- (e) the residual value of the Facility is affected; and
- (f) the Innovation Proposal materially affects the risks or costs to which BC Hydro is exposed,

and any other matter BC Hydro considers relevant. BC Hydro may request clarification or additional information regarding the Innovation Proposal, and may request modifications to the Innovation Proposal.

#### 8.5 Acceptance and Implementation of Innovation Proposal

Notwithstanding any potential cost savings of an Innovation Proposal, BC Hydro is under no obligation to accept an Innovation Proposal and may in its discretion elect not to implement an Innovation Proposal. An Innovation Proposal that is accepted by BC Hydro will be implemented as a Change and Project Co will not implement an Innovation Proposal prior to the issuance of a Change Order.

#### 8.6 Sharing Benefits of an Innovation Proposal

If the Innovation Proposal causes or will cause the costs of Project Co or of a Project Contractor or Sub-Contractor to decrease, after taking into account the agreed implementation and reasonably allocated development costs (incurred by Project Co, a Project Contractor or a Sub-Contractor) of the Innovation Proposal (taking into account any other uses of the Innovation Proposal by Project Co), the net savings in the costs of Project Co and such Project Contractor or Sub-Contractor will be [REDACTED] and BC Hydro's share of the net savings will be reflected in a reduction of the Service Payments.