

MAIN CIVIL WORKS CONTRACT

SCHEDULE 11

PRICES AND PAYMENT

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MAIN CIVIL WORKS CONTRACT

SCHEDULE 11

PRICES AND PAYMENT

1 INTERPRETATION

1.1 Definitions

In this Schedule 11 [Prices and Payment], in addition to the definitions set out in Schedule 1 [Definitions and Interpretation]:

“**Advance Payment**” has the meaning set out in Section 7.4 of this Schedule 11 [Prices and Payment];

“**Advance Payment Letter of Credit**” has the meaning set out in Section 7.5 of this Schedule 11 [Prices and Payment];

“**Bonus**” has the meaning set out in Section 12.1 of this Schedule 11 [Prices and Payment];

“**Cement Product Rail Adjustment**” has the meaning set out in Section 8.5(b) of this Schedule 11 [Prices and Payment];

“**Cement Product Trucking Adjustment**” has the meaning set out in Section 8.5(a) of this Schedule 11 [Prices and Payment];

“**Contract Year**” has the meaning set out in Section 8.6(a)(i) of this Schedule 11 [Prices and Payment];

“**Contract Year Labour Cost**” has the meaning set out in Section 8.6(a)(ii) of this Schedule 11 [Prices and Payment];

“**Contractor Duties**” has the meaning set out in Section 9.4 of this Schedule 11 [Prices and Payment];

“**Contractor Taxes**” has the meaning set out in Section 9.4 of this Schedule 11 [Prices and Payment];

“**Contractor’s Actual Daily Electricity Use**” has the meaning set out in Section 8.2(a)(ii) of this Schedule 11 [Prices and Payment];

“**Contractor’s Actual Daily Guest Night Use**” has the meaning set out in Section 8.1(a)(ii) of this Schedule 11 [Prices and Payment];

“**Contractor’s Aggregate Electricity Use**” has the meaning set out in Section 8.2(a)(iii) of this Schedule 11 [Prices and Payment];

“**Contractor’s Aggregate Guest Night Use**” has the meaning set out in Section 8.1(a)(iii) of this Schedule 11 [Prices and Payment];

“**Contractor’s Electricity Use Entitlement**” has the meaning set out in Section 8.2(a)(i) of this Schedule 11 [Prices and Payment];

“**Contractor’s Electricity Use Overage**” has the meaning set out in Section 8.2(d) of this Schedule 11 [Prices and Payment];

“**Contractor’s Guest Night Entitlement**” has the meaning set out in Section 8.1(a)(i) of this Schedule 11 [Prices and Payment];

“Contractor’s Guest Night Overage” has the meaning set out in Section 8.1(d) of this Schedule 11 [Prices and Payment];

“Corresponding Fuel Product” has the meaning set out in Section 8.3(c) of this Schedule 11 [Prices and Payment];

“CN 7403” has the meaning set out in Section 8.4 of this Schedule 11 [Prices and Payment];

“Deposit Application” has the meaning set out in Section 5.2 of this Schedule 11 [Prices and Payment];

“Diversion Works” has the meaning set out in Section 7.8(a) of this Schedule 11 [Prices and Payment];

“Excusable Delay” has the meaning set out in Section 11.3 of this Schedule 11 [Prices and Payment];

“Fuel Surcharge Escalation Adjustment” has the meaning set out in Section 8.4 of this Schedule 11 [Prices and Payment];

“Indicative Cost of Labour” has the meaning set out in Section 8.6(d)(ii) of this Schedule 11 [Prices and Payment];

“Indicative Craft Trades” has the meaning set out in Section 8.6(a)(iii) of this Schedule 11 [Prices and Payment];

“Labour & Material Payment Bond” has the meaning set out in Section 3.2(b) of this Schedule 11 [Prices and Payment];

“Labour Escalation” has the meaning set out in Section 8.6(d)(iv) of this Schedule 11 [Prices and Payment];

“Labour Escalation Adjustment” has the meaning set out in Section 8.6(d) of this Schedule 11 [Prices and Payment];

“Labour Hourly Rates” has the meaning set out in Section 8.6(a)(iv) of this Schedule 11 [Prices and Payment];

“Liquidated Damages” means the amount of damages which under the terms of Section 11 of this Schedule 11 [Prices and Payment] the parties have agreed will be paid by one party to the other upon the occurrence of a defined event;

“Monthly Cement Product Adjustment” has the meaning set out in Section 8.5(c) of this Schedule 11 [Prices and Payment];

“Monthly Total Actual Volume” has the meaning set out in Section 8.3(a) of this Schedule 11 [Prices and Payment];

“Monthly Total Fuel Cost Escalation Adjustment” has the meaning set out in Section 8.3(e) of this Schedule 11 [Prices and Payment];

“Parent Company Guarantee” has the meaning set out in Section 3.2(c) of this Schedule 11 [Prices and Payment];

“Performance Bond” has the meaning set out in Section 3.2 of this Schedule 11 [Prices and Payment];

“Performance Security” has the meaning set out in Section 3.1 of this Schedule 11 [Prices and Payment];

“Progress Payment Estimate” has the meaning set out in Section 6.1 of this Schedule 11 [Prices and Payment];

“Stockpile Type 1” has the meaning set out in Section 7.17(a)(i) of this Schedule 11 [Prices and Payment];

“Stockpile Type 2” has the meaning set out in Section 7.17(a)(ii) of this Schedule 11 [Prices and Payment];

“Stockpile Type 3” has the meaning set out in Section 7.17(a)(iii) of this Schedule 11 [Prices and Payment];

“Stockpile Unit Price” has the meaning set out in Section 7.17(b) of this Schedule 11 [Prices and Payment];

“Stockpile Volume Measurement Date” has the meaning set out in Section 7.17(c) of this Schedule 11 [Prices and Payment];

“Substantial Completion” has the meaning set out in Section 7.8 of this Schedule 11 [Prices and Payment];

“Temporary Stockpile Payment” has the meaning set out in Section 7.17(d) of this Schedule 11 [Prices and Payment];

“Total Completion” has the meaning set out in Section 7.11 of this Schedule 11 [Prices and Payment];

“Train Hauled Materials” has the meaning set out in Section 8.4 of this Schedule 11 [Prices and Payment]; and

“Warranty Work” means Work performed during the Warranty Period.

2 **GENERAL**

2.1 Monthly Payments

BC Hydro will make monthly payments to the Contractor in accordance with this Schedule 11 [Prices and Payment] on account of the Work performed by the Contractor in accordance with the Contract Documents during the monthly payment period, measured in accordance with Appendix 11-2 [Measurement and Payment]. The amount of the monthly payments will be calculated based on the unit and lump sum prices for the applicable Price Items as set out in Appendix 11-1 [Schedule of Prices and Estimated Quantities].

2.2 Complete Prices

The prices listed in Appendix 11-1 [Schedule of Prices and Estimated Quantities] represent the complete price to BC Hydro, excluding GST, for the performance of the Work based on the estimated quantities in Appendix 11-1 [Schedule of Prices and Estimated Quantities]. Notwithstanding the generality of the above, the Price Items listed in Appendix 11-1 [Schedule of Prices and Estimated Quantities] (including unit prices, lump sum prices, or other forms of pricing) will be deemed to include sufficient amounts to cover:

- (a) the costs of all labour, equipment and material included in or required for the complete performance of all the Work, including all the cost of all elements which, while not specifically listed in Appendix 11-1 [Schedule of Prices and Estimated Quantities], are included in the Work

expressly in the Contract Documents or by necessary inference in the interpretation of the Contract Documents;

- (b) all overhead costs, including head office and on-Site overhead costs, and all amounts for the Contractor's profit required for or relating to the complete performance of the Work;
- (c) all costs associated with all Performance Security, including any overhead costs, whether head office or on-Site costs, with respect to the Performance Security; and
- (d) all costs associated with insurance, including any overhead costs, whether head office or on-Site costs, with respect to insurance;
- (e) all costs required for compliance with all Laws and Permits applicable to the performance of the Work; and
- (f) all applicable taxes, PST, duties, levies and charges (excluding only GST) payable in respect of the Work described in those Price Items as set out in Section 9.1 of this Schedule 11 [Prices and Payment].

2.3 Costs of Labour

The prices listed in Appendix 11-1 [Schedule of Prices and Estimated Quantities] will be deemed to include all costs of labour required for the performance of the Work including the cost of:

- (a) compliance with the requirements of the Contract Documents;
- (b) all assessments payable with respect to labour as required by any statutory scheme such as Workers' Compensation, unemployment insurance, holiday pay, insurance, CPP and all employee benefits and compliance with all applicable Laws regarding trade or other qualifications of employees performing the Work; and
- (c) payment of appropriate wages for labour included in or required for the Work.

2.4 No Escalation

The Contractor will not be entitled to seek and BC Hydro will have no obligation to pay any amount on account of the escalation of any of the costs associated with the complete performance of the Work except as set out in Section 8 of this Schedule 11 [Prices and Payment].

2.5 Estimated Quantities

As provided by Section 1.6 of Appendix 11-2 [Measurement and Payment], the quantities listed in Appendix 11-1 [Schedule of Prices and Estimated Quantities] are estimated and the actual quantities may vary.

3 PERFORMANCE SECURITY

3.1 Delivery of Performance Security

Unless expressly specified otherwise in the Contract Documents, within 28 days of the Effective Date, or by such later date as Hydro's Representative may agree to in writing, but in any event prior to the commencement of the Work, in addition to and not in substitution for any security that the Contractor is required to provide to BC Hydro under the Contract for the performance of the Work, and, unless otherwise agreed to in writing by Hydro's Representative, the Contractor will deliver to BC Hydro the

performance security specified in Section 3.2 of this Schedule 11 [Prices and Payment] (collectively, the "**Performance Security**").

3.2 Performance Security

- (a) Performance Bond: The Contractor will deliver to BC Hydro an executed performance bond (the "**Performance Bond**") in an amount equal to 20% of the total amount of the Contract Price. The Performance Bond will be held by BC Hydro as security for the Contractor's:
- (i) performance of all of the Contractor's obligations for Work under the Contract, including the payment of Liquidated Damages, if any, as specified in the Contract; and
 - (ii) warranty obligations for Work under the Contract described in Section 25 of Schedule 2 [General Conditions].

Performance Bond Form: The Performance Bond will be in the form and contain the content as set out in Appendix 11-4 [Form of Performance Bond] unless otherwise agreed in writing by BC Hydro.

The Performance Bond will be issued by a surety licensed to transact the business of suretyship in British Columbia, having a minimum credit rating of not less than Standard & Poor's A-, A.M. Best B++, Moody's A3 or DBRS A (low). If such credit rating agencies publish differing credit ratings for the same surety, the lowest credit rating of any of the credit rating agencies will apply for the purposes of this section. If the Performance Bond is issued by more than one surety on a joint and several basis, then the minimum credit rating requirement will be met as long as one of the joint and several sureties issuing the Performance Bond meets the minimum credit rating.

Performance Bond Term: The Performance Bond will be maintained by the Contractor, and will remain in full force and effect for the benefit of BC Hydro, until the earlier of:

- (iii) two years from the date on which the Contract is terminated; or
- (iv) the end of the Warranty Period as described in Section 25.3 of Schedule 2 [General Conditions].

For the purposes of this Contract the words "the date when the work is ready for use or is being used for the purpose intended" in the Performance Bond will mean the date that Hydro's Representative issues the certificate of Substantial Completion.

- (b) Labour & Materials Payment Bond: The Contractor will deliver to BC Hydro an executed labour and material payment bond (the "**Labour & Material Payment Bond**") in an amount equal to 5.0% of the total amount of the Contract Price payment obligations with respect to the Work. The Labour & Material Payment Bond will be held by BC Hydro as security for the Contractor's payment obligations for Work and Warranty Work under the Contract with respect to equipment, labour, materials and services.

Labour & Material Payment Bond Form: The Labour & Material Payment Bond will be in the form and contain the content as set out in Appendix 11-5 [Form of Labour & Material Payment Bond] unless otherwise agreed in writing by BC Hydro.

The Labour & Material Payment Bond will be issued by a surety licensed to transact the business of suretyship in British Columbia, having a minimum credit rating of not less than Standard & Poor's A-, A.M. Best B++, Moody's A3 or DBRS A (low). If such credit rating agencies publish differing credit ratings for the same surety, the lowest credit rating of any of the credit rating agencies will apply for the purposes of this section. If the Labour & Material Payment Bond is

issued by more than one surety on a joint and several basis, then the minimum credit rating requirement will be met as long as one of the joint and several sureties issuing the Labour & Material Payment Bond meets the minimum credit rating.

Labour & Material Payment Bond Term: The Labour & Material Payment Bond will be maintained by the Contractor, and will remain in full force and effect for the benefit of BC Hydro, until the earlier of:

- (i) two years from the date on which the Contract is terminated; or
- (ii) the end of the Warranty Period as described in Section 25.3 of Schedule 2 [General Conditions].

Notice of Bonding: The Contractor will:

- (iii) when it enters into a contract with a Subcontractor for a portion of the Work, advise the Subcontractor in writing that a Labour & Material Payment Bond is in effect; and
- (iv) supply the Subcontractor with a copy of the Labour & Material Payment Bond on request.

For the purposes of this Contract the words “following the date on which the Contractor ceased work on the Contract” in the Labour & Material Payment Bond will mean the date that Hydro’s Representative issues the certificate of Substantial Completion.

- (c) Parent Company Guarantee: The Contractor will deliver to BC Hydro a guarantee (the “**Parent Company Guarantee**”) in the amount equal to 25.0% of the total amount of the Contract Price, executed by an entity acceptable to BC Hydro. The Parent Company Guarantee will be held by BC Hydro as security for the Contractor’s:
 - (i) performance of all of the Contractor’s obligations for Work under the Contract, including the payment of Liquidated Damages, if any, as specified in the Contract;
 - (ii) payment obligations for Work and Warranty Work under the Contract with respect to equipment, labour, materials and services under the Contract and during Warranty Work; and
 - (iii) warranty obligations for Work under the Contract described in Section 25 of Schedule 2 [General Conditions].

Parent Company Guarantee Form: The Parent Company Guarantee will be in the form and contain the content as set out in Appendix 11-7 [Form of Parent Company Guarantee] unless otherwise agreed to in writing by BC Hydro. If the Contractor is composed of more than one member corporation then the parent of each member will sign the same, single Parent Company Guarantee on a joint and several basis, in the form as set out in Appendix 11-7 [Form of Parent Company Guarantee] amended as required to accommodate the multiple signatories. The guarantor under the Parent Company Guarantee must be acceptable to BC Hydro with respect to the guarantor’s ability to meet the guarantor’s obligations under the Parent Company Guarantee at all times during the Parent Company Guarantee term. If a material event causes BC Hydro, acting reasonably, to have concerns about the guarantor’s ability to meet the guarantor’s obligations under the Parent Company Guarantee, then BC Hydro may request financial statements of the guarantor to determine whether or not the guarantor continues to be acceptable to BC Hydro.

Parent Company Guarantee Term: The Parent Company Guarantee will be maintained by the Contractor (including renewal and replacement as necessary), and will remain in full force and effect for the benefit of BC Hydro, until the later of:

- (iv) two years from the date on which the Contract is terminated; or
- (v) the end of the Warranty Period as described in Section 25.3 of Schedule 2 [General Conditions].

3.3 Performance Security – BC Hydro's Rights

BC Hydro will have the immediate and absolute right to pursue its remedies under any and all of the Performance Security simultaneously, as long as there is no double recovery, and will not be required to exhaust its recourse under any one Performance Security before pursuing its remedies under another Performance Security, or any other remedy available to it under the Contract or at law:

- (a) upon the occurrence of any of the events specified in Sections 15.1 or 15.2 of Schedule 2 [General Conditions]; or
- (b) if the Contractor breaches any term of the Contract or fails to perform any obligation under the Contract (including failing to pay any amount owing to BC Hydro under the Contract or failing to provide the required Performance Security); or
- (c) if the Contractor fails to replace or have re-issued any Performance Security such that at all times the entity that has issued the then current Performance Security (1) meets the minimum required credit ratings, or (2) is acceptable to BC Hydro, acting reasonably.

3.4 No Limitation on BC Hydro's Remedies

The Performance Security given by the Contractor to BC Hydro pursuant to Section 3.2 of this Schedule 11 [Prices and Payment] will not in any way limit BC Hydro's other remedies under the Contract or applicable Laws.

3.5 Return of Performance Security

BC Hydro will return to the Contractor any unused Performance Security held by it under Section 3 of this Schedule 11 [Prices and Payment] after such Performance Security ceases to be of any force and effect in accordance with Section 3 of this Schedule 11 [Prices and Payment], or at such earlier time as BC Hydro may, in its sole discretion, consider appropriate.

4 MEASUREMENT AND PAYMENT

4.1 Measurement and Payment for Bill of Quantity Price Items

The performance of the Work will be measured for the purposes of payment as against the Price Items that are set out in Appendix 11-1 [Schedule of Prices and Estimated Quantities]. The measurement for payment is as described in Appendix 11-2 [Measurement and Payment].

5 PAYMENT FORMS

5.1 Breakdown of Contract Price

The Contractor will submit to Hydro's Representative, at least 14 days before the first application for payment, a schedule of values of the various parts of the performance of the Work based on the attached Appendix 11-1 [Schedule of Prices and Estimated Quantities], aggregating the total amount of the

Contract Price. The schedule of values will be also be based on Appendix 11-3 [Form of Payment Application – Schedule of Values], supported by such evidence as to its correctness as Hydro’s Representative may reasonably request, and, when approved by Hydro’s Representative, will be used as the basis for all applications from the Contractor for payment.

5.2 Direct Deposit Application Form

Within ten days of the Effective Date, or such later date as Hydro’s Representative may agree to in writing, the Contractor will provide to Hydro’s Representative a completed Direct Deposit Application Form in the form provided by Hydro’s Representative (the “**Deposit Application**”) giving details for direct payment by BC Hydro of payments owing under this Contract, for approval by Hydro’s Representative, acting reasonably. The following will apply to the information contained on the Deposit Application:

- (a) BC Hydro is entitled to rely on such information without further enquiry or investigation;
- (b) BC Hydro reserves the right (but does not have the obligation), in its sole discretion, to require the Contractor’s Representative to provide evidence as to the accuracy of such information;
- (c) the Contractor will, at no cost to BC Hydro, promptly provide such evidence to Hydro’s Representative; and
- (d) the Contractor will give Hydro’s Representative no less than 30 days advance written notice of any change to such information, failing which BC Hydro will be entitled to continue to rely on the information for the purposes of making payments owing to the Contractor under this Contract.

If at any time the information contained on the Contractor’s completed Deposit Application becomes inaccurate, or the Contractor wishes to amend such information, the Contractor’s Representative will submit to Hydro’s Representative a revised Deposit Application for approval by Hydro’s Representative, acting reasonably.

BC Hydro will make payments owing under the Contract as described in the Deposit Application approved by Hydro’s Representative.

6 PAYMENT APPLICATION AND PAYMENT INVOICES

6.1 Application for Monthly Payment

The Contractor will make application for payment as owing under the Contract by submitting a monthly estimate, in a format as Hydro’s Representative may require, within ten days before the end of a month to Hydro’s Representative (the “**Progress Payment Estimate**”) setting out a payment estimate of the progress of the Work achieved as of the end of that month. The Progress Payment Estimate will:

- (a) be in a form as approved by Hydro’s Representative based on the breakdown described in Section 5.1 of this Schedule 11 [Prices and Payment];
- (b) include:
 - (i) the Contract Price as of the date of application;
 - (ii) the quantities of Work completed by the Contractor in accordance with the Contract Documents in respect of each Price Item, measured in accordance with Appendix 11-2 [Measurement and Payment], including actual quantities in respect of any unit Price Items and the percentage completion of Work in respect of any lump sum Price Items;

- (iii) any pro-rated monthly amounts in respect of the lump sum Price Items specified in Appendix 11-2 [Measurement and Payment];
 - (iv) any amounts for which the Contractor is entitled to be reimbursed by BC Hydro in accordance with the Contract Documents;
 - (v) the value of any approved Change Orders;
 - (vi) the estimated value of any pending Change Orders;
 - (vii) the value of any payment adjustments under Section 8 of this Schedule 11 [Prices and Payment];
 - (viii) the Contractor's estimated value of Disputes;
 - (ix) the total amount earned to date exclusive of Disputes;
 - (x) the total Contract payments received to date and all amounts for holdbacks as apply in accordance with the terms of the Contract;
 - (xi) the total payment due in the current period; and
 - (xii) a 30 day cash flow forecast and forecast to completion based on monthly actuals to date;
- (c) comply with the measurement of the Work as described in Appendix 11-2 [Measurement and Payment];
- (d) include all amounts owing by the Contractor to BC Hydro including, as applicable, a monthly payment on account of the Advance Payment as described in Section 7.6 of this Schedule 11 [Prices and Payment]; and
- (e) be accompanied by:
- (i) the monthly updated Work Program and Schedule as described by Section 2.7 of Schedule 4 [Work Program and Schedule] that has been endorsed "Accepted";
 - (ii) the Monthly Progress Report covering the month prior to the month covered by the Progress Payment Estimate that has been endorsed "Accepted";
 - (iii) the work force report as described by Section 6.19 of Schedule 2 [General Conditions], in a form satisfactory to Hydro's Representative;
 - (iv) all supporting documents as expressly required by the Contract Documents;
 - (v) a statutory declaration in the form attached as Appendix 11-8 [Form of Environmental Compliance Statement]; and
 - (vi) a statutory declaration in the form attached as Appendix 11-9 [Form of Statutory Declaration].

6.2 BC Hydro Review of Payment Application

Within seven days after receipt of the Progress Payment Estimate as well as the other required material under Section 6.1 of this Schedule 11 [Prices and Payment], Hydro's Representative will, in consultation with the Contractor's Representative, review the Progress Payment Estimate and either:

- (a) if Hydro's Representative agrees with the amount claimed by the Contractor on a Progress Payment Estimate, then Hydro's Representative will return the Progress Payment Estimate to the Contractor's Representative with a written notice confirming such agreement; or
- (b) if Hydro's Representative disagrees with any amount claimed by the Contractor on a Progress Payment Estimate, then Hydro's Representative will return the Progress Payment Estimate to the Contractor's Representative with a written notice setting out:
 - (i) the amount, if any, Hydro's Representative agrees is payable; and
 - (ii) the reasons for the disagreement and, if available, the amount disputed.

6.3 Payment Invoice

Within ten days after receipt of the Progress Payment Estimate under Section 6.2(a) or Section 6.2(b) of this Schedule 11 [Prices and Payment], as the case may be, the Contractor's Representative will submit to BC Hydro an original invoice in the amount that Hydro's Representative has indicated under Section 6.2 of this Schedule 11 [Prices and Payment] is payable, dated the date the invoice is issued, with a copy of the invoice to Hydro's Representative. The original invoice will be submitted as follows:

- (a) if the Contractor is set up to do so, to BC Hydro's third party invoice processing provider, Ariba Network eCommerce. The Contractor will, at BC Hydro's request and at no cost to BC Hydro, implement the Ariba Network eCommerce system to transact all orders and invoicing with respect to the Contract; or
- (b) otherwise, by email to BCH-InvoicesforPayment@absu.accenture.com, or by hard copy to BC Hydro Accounts Payable, 6911 Southpoint Drive, Burnaby, BC V3N 4X8, both in accordance with any additional invoicing instructions provided by Hydro's Representative.

The Contractor will show as separate entries on any invoice or Progress Payment Estimate, as the case may be, submitted for payment, the GST payable by BC Hydro and collectable by the Contractor on that portion of Work invoiced or for which a Progress Payment Estimate has been issued. The Contractor will provide to BC Hydro on all invoices and Progress Payment Estimates the Contractor's GST registration number and all other information as may be required pursuant to the *Excise Tax Act* (Canada).

6.4 Application for Payment Not a Waiver

The Contractor's application for payment under Section 6.1 of this Schedule 11 [Prices and Payment] will be without prejudice to the Contractor's rights to dispute under Schedule 14 [Dispute Resolution Procedure].

7 PAYMENT

7.1 Payment

Payment will be made to the Contractor as follows:

- (a) BC Hydro will pay the Contractor the amount of each invoice prepared and submitted in accordance with Section 6.3 of this Schedule 11 [Prices and Payment], less any holdbacks, within 30 days after date of the invoice; and

- (b) all amounts due and owing as determined in accordance with Section 7.1(a) of this Schedule 11 [Prices and Payment] will be paid:
 - (i) if the Contractor is a Canadian entity, by direct deposit using an electronic funds transfer to the account the Contractor has designated in its then current Deposit Application; or
 - (ii) in any other case, either by wire transfer to the account the Contractor has designated in its then current Deposit Application or by cheque or bank draft, in BC Hydro's sole discretion.

Any fees charged by the receiving institution related to accepting or processing an electronic funds transfer or a wire transfer will be the responsibility of the Contractor.

Notwithstanding anything to the contrary in the Contract, BC Hydro will not make any payment to the Contractor unless and until all of the Performance Security is received by BC Hydro.

7.2 Payment Not a Waiver

No payment made to the Contractor by BC Hydro will at any time constitute approval or acceptance of any performed Work, nor be considered a waiver by BC Hydro of any of the terms of the Contract, nor relieve the Contractor of any of its duties, obligations or responsibilities under the Contract to perform the Work in accordance with the requirement of the Contract Documents.

7.3 Right of Set-off

BC Hydro may set-off, as against any amounts due to the Contractor, any amount owing from the Contractor to BC Hydro under the Contract, including Liquidated Damages and other amounts as payable under the Contract Documents.

■ [REDACTED]

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7.8 Substantial Completion

“**Substantial Completion**” means the stage of completion of the Work when:

- (a) the Diversion Tunnels, including construction of the concrete tunnel plugs, including drilling and grouting operations; backfilling of the Diversion Tunnels upstream and downstream of the tunnel plugs with granular material and grout (including the Diversion Outlet Structures) and buttressing the diversion outlet portal with granular material (collectively the “**Diversion Works**”) are completely removed or decommissioned in accordance with the requirements of the Contract Documents;
- (b) with respect to all Work other than the Diversion Works, the main reservoir is filled to its “Maximum Normal Reservoir Level” as indicated in Contract Documents and such Work is sufficiently complete in accordance with the requirements of the Contract Documents so that BC Hydro can use the Work for its intended purposes;
- (c) the Work to be done under the Contract is capable of completion or correction at a cost of not more than 2% of the Contract Price;
- (d) any other conditions specified in the Contract Documents to be satisfied on or before Substantial Completion, including the submission of all information and documents required by Section 7.7 of this Schedule 11 [Prices and Payment], have been satisfied, or waived by BC Hydro; and
- (e) Hydro’s Representative has issued the certificate of Substantial Completion.

Hydro’s Representative will, no later than 23 days after the receipt of an application under Section 7.7 of this Schedule 11 [Prices and Payment], inspect the Work to verify the validity and accuracy of the application. Hydro’s Representative will, no later than a further seven days after the inspection, notify the Contractor in writing of approval, or the reasons for refusal, of the application. If the application is refused, then the Contractor will address the reasons for refusal and may re-apply for a certificate of Substantial Completion pursuant to Section 7.7 of this Schedule 11 [Prices and Payment]. The provisions of this Section 7.8 will apply to any such subsequent application.

When Hydro’s Representative, acting reasonably, determines that the requirements for Substantial Completion have been achieved (other than the issuance of the certificate of Substantial Completion), Hydro’s Representative will issue a certificate of Substantial Completion that includes the date of Substantial Completion. Concurrently with the issuance of such certificate, Hydro’s Representative will prepare a written list of items of the Work to be completed or corrected that were apparent to Hydro’s Representative in the inspection of the Work. The issuance of such list will not relieve the Contractor of any of its duties, obligations or responsibilities under the Contract to perform the Work, complete the

performance of the Work and correct all defects and deficiencies in the Work, all in accordance with the requirements of the Contract Documents.

7.9 Deficiencies Holdback

BC Hydro may retain, out of the amount due and owing to the Contractor upon Substantial Completion, an amount equal to two times the value of the estimated cost to complete or correct the items set out in the list provided pursuant to Section 7.7(a) of this Schedule 11 [Prices and Payment]. If the total amount due and owing to the Contractor upon Substantial Completion is less than two times the value of the estimated cost to complete or correct the items set out in the list provided pursuant to Section 7.7(a) of this Schedule 11 [Prices and Payment], then such difference will be immediately due and owing by the Contractor to BC Hydro upon receipt of an invoice from BC Hydro for such difference.

7.10 Application for Total Completion

When the Contractor judges that all deficiencies have been corrected and that the performance of the Work is fully complete except for Contractor's warranty obligations, the Contractor may apply to Hydro's Representative for a certificate of Total Completion. The application will be in writing and will include the following:

- (a) evidence that all deficiencies have been corrected and approved by Hydro's Representative;
- (b) evidence from the Workers' Compensation Board of British Columbia that the Contractor is in good standing;
- (c) a statement as to the status of amounts owing to first tier Subcontractors and as to any unresolved claims made by Subcontractors against the Contractor or another Subcontractor; and
- (d) a statutory declaration substantially in accordance with Appendix 11-9 [Form of Statutory Declaration].

7.11 Total Completion

Hydro's Representative will, as soon as practicable after receipt of an application under Section 7.10 of this Schedule 11 [Prices and Payment], inspect the Work to verify the validity of the application and, when all Work is complete in accordance with the requirements of the Contract Documents except for the Contractor's warranty obligations ("**Total Completion**"), issue the certificate of Total Completion.

7.12 Limitation of Certificates

Neither Hydro's Representative nor BC Hydro, by issuing any certificate, including a certificate of Substantial Completion or Total Completion, guarantees, or otherwise becomes liable or responsible in any way for, the completeness or correctness of the Work, and no certificate will make Hydro's Representative or BC Hydro in any way responsible or liable for the performance of the Work.

7.13 Waiver of Claims

As of the dates of the Contractor's application for Substantial Completion and Total Completion, the Contractor expressly waives and releases the Indemnified Parties from any and all Claims which, as of the date of the applicable application, the Contractor has or reasonably ought to have known the Contractor has against the Indemnified Parties, or any one of them, with respect to the performance of the Work or with respect to the Contract, including those that may arise from the negligence of or breach of the Contract by an Indemnified Party, or any other representative of BC Hydro, except for Claims set out in writing and delivered to Hydro's Representative prior to the delivery by the Contractor of the applicable application and still unsettled.

7.14 Provisional Sums

If BC Hydro has designated a portion of the Work as a provisional sum(s) in Appendix 11-1 [Schedule of Prices and Estimated Quantities] then the amount of payment for such Work will be as set out in a Change Order. Payment for Work covered by a provisional sum will be limited to the Direct Costs of such work, plus a Mark-Up of 15%. BC Hydro will not owe any compensation on account of work covered by a provisional sum that BC Hydro elects not to include in the Work.

7.15 Interest on Overdue Amounts

If payment on any amount payable under the Contract is not made when due, interest will be payable on such amount as of the date the amount became payable at the Prime Rate established as of the date the amount became payable, plus 2% compounded monthly.

7.16 Optional Work

Work related to Price Items that are identified in Appendix 11-1 [Schedule of Prices and Estimated Quantities] as "Optional Work" will be included in the Work only as directed in writing by Hydro's Representative, in which event the related Price Item will apply and, for certainty, Section 1.6.2 of Appendix 11-2 [Measurement and Payment] will apply with respect to that Price Item. The Contractor will not proceed with any "Optional Work" without the written direction of Hydro's Representative.

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9 TAXES

9.1 Tax Included in Contract Price

The Contract Price (and any part of the Contract Price) paid or payable by BC Hydro to the Contractor includes all applicable taxes, PST, duties, levies and charges (excluding only GST) payable in respect of the performance of the Work (or any part of the Work) assessed by any and all Governmental Authorities for Work performed by the Contractor, its Subcontractors, their employees or other Persons engaged by

or through them in connection with the Work, and includes all customs duties with respect to all imported equipment and materials.

9.2 GST

GST will be identified as a separate line item on all invoices, and will be payable by BC Hydro to the Contractor as a separate item in addition to the Contract Price.

9.3 Input Tax Credits

Each party will provide to the other party at all times when any GST is required to be paid, such documents and particulars relating to the supply as may be required by either BC Hydro or the Contractor, as the case may be, to substantiate a claim for any input tax credits as may be permitted pursuant to the *Excise Tax Act* (Canada) in respect of GST.

9.4 Payment of Taxes

Except as may be specifically and expressly set out in the Contract Documents, the Contract Price (and any part of the Contract Price) paid or payable by BC Hydro to the Contractor includes all applicable taxes, PST, levies and charges (excluding only GST) payable or assessed on any of the Contractor, Subcontractors, or their employees or other Persons engaged by or through them by any and all Governmental Authorities in connection with the performance of the Work ("**Contractor Taxes**"), and includes all customs duties with respect to all imported equipment and materials regardless of whether such equipment is held in the name of the Contractor, a Subcontractor or BC Hydro at the time of import ("**Contractor Duties**"). The Contractor is solely responsible to incur and bear the Contractor Taxes and Contractor Duties on inputs relating to the Work.

9.5 Tax Indemnity

The Contractor will indemnify and hold harmless the Indemnified Parties, or any one of them, from and against any liability and costs incurred by them in respect of any Contractor Taxes or Contractor Duties, or any other related charges, including any related interest, fines, or penalties and any related reporting obligations and costs incurred as a consequence of such. The Contractor will be registered with all Governmental Authorities in accordance with Laws and will comply with all of its obligations to pay any such Contractor Taxes and Contractor Duties. Notwithstanding any other provision in the Contract, BC Hydro may, in its sole discretion, withhold from any monies owed to the Contractor, whether such monies are owed under and pursuant to the Contract or otherwise, such amounts as are payable by the Contractor in respect of Contractor Taxes or Contractor Duties for which BC Hydro becomes or may become liable.

9.6 Non-Resident

The Contractor represents and warrants that it is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada). In the event that the Contractor becomes a non-resident of Canada for purposes of the *Income Tax Act* (Canada), the Contractor will provide Hydro's Representative with written notice of such circumstance.

If the Contractor:

- (a) is a "non-resident person" (as defined in the *Income Tax Act* (Canada));
- (b) provides or performs any part of the Work in Canada; and
- (c) has not received and provided Hydro's Representative with a copy of a waiver letter from the Canada Revenue Agency,

then BC Hydro may deduct and withhold 15% of the value of the Work performed in Canada, or such other amount as may be specified by the Canada Revenue Agency from time to time, and remit such amount according to Laws. If the Canada Revenue Agency assesses BC Hydro for a failure to deduct non-resident withholding tax, then the Contractor will indemnify the Indemnified Parties against all taxes, penalties, interest and costs resulting from such failure.

If the Contractor hires employees or Subcontractors who are not residents of Canada to perform any portion of the Work, the Contractor will, as part of the Work, be responsible for all income tax compliance and other expenditures relating to non-resident workers.

9.7 Tax Exemptions, Refunds and Compliance

The Contractor will, where applicable, use all commercially reasonable efforts to obtain for the benefit of BC Hydro all available exemptions, deductions, rebates, remissions and refunds for all Contractor Taxes and Contractor Duties, including any other related charges, including any related interest, fines or penalties, and upon receipt of any amount in respect of any such exemption, deduction, rebate, remission or refund, the Contractor will promptly pay such amount to BC Hydro.

The Contractor will show as separate entries on any invoice submitted for payment, each of the GST and, if applicable, the PST, in each case, payable by BC Hydro and collectable by the Contractor on that portion of the Work invoiced or for which a monthly estimate has been provided.

The Contractor will self-assess the PST payable on all taxable equipment and materials that are brought into British Columbia for incorporation into the Work unless an exemption applies (such as the PST exemption for production machinery and equipment). The Contractor will use the landed cost of the equipment or materials in British Columbia as the tax base for the self-assessment.

If the Contractor is required to collect PST from BC Hydro, the Contractor must be registered to do so in the Province of British Columbia.

If the Contractor is required to collect GST from BC Hydro, the Contractor must be registered for GST under the *Excise Tax Act* (Canada) and must provide to BC Hydro on all invoices the Contractor's Canadian federal GST registration number and all other information as may be required pursuant to the *Excise Tax Act* (Canada).

9.8 Tax Change

Where, at any time after the Effective Date:

- (a) the rate of any applicable Canadian federal or British Columbia sales tax, excise tax, or duty has been varied;
- (b) the application of any Canadian federal or British Columbia sales tax, excise tax, or duty has been changed; or
- (c) a new Canadian federal or British Columbia sales tax, excise tax, or duty has been levied,

that causes an increase or decrease to the expenditure for property and services with respect to the Work, either party may before the certificate of Substantial Completion is issued give written notice to the other party that such event is a Change to which Schedule 12 [Changes] applies. The party seeking a Change will provide a detailed analysis of the estimated expenditure on property and services as at the Effective Date, and this estimate will be used to calculate the increase or decrease in expenditure if there is a Change as contemplated in this Section 9.8.

9.9 Termination and Modification Payments and Bulk Transactions

If Section 182 of the *Excise Tax Act* (Canada) applies to a termination or modification payment made by BC Hydro under this Contract, the Contractor will remit the applicable GST included in the amount payable on its next GST return for the period the payment is made.

If termination of this Contract qualifies as a "bulk transaction" as contemplated in Section 187 of the *Provincial Sales Tax Act* (British Columbia), the Contractor will request a certificate as required under Subsection 187(3) of the *Provincial Sales Tax Act* (British Columbia) in a timely manner and provide a copy of the certificate to BC Hydro.

10 FINAL ACCOUNTING AND PAYMENT

10.1 Summary of Payments

After the Certificate of Total Completion has been issued, Hydro's Representative will prepare a summary of all payments due to the Contractor, setting off the total of all:

- (a) payments already made by BC Hydro to the Contractor under the Contract;
- (b) amounts payable by the Contractor to BC Hydro under the Contract;
- (c) amounts payable by the Contractor to BC Hydro in respect of any other matters under the Contract in respect of which the cost is to be borne by the Contractor; and
- (d) amounts paid by BC Hydro on behalf of the Contractor or a Subcontractor to a third party.

10.2 Certification

Where satisfied that the Work has been properly performed under the Contract, Hydro's Representative will certify in the summary the amount which, after the set off, is owing by one party to the other and will send a copy of the summary to the Contractor.

10.3 Payment Due

The party owing any amount certified in the summary in Section 10.2 of this Schedule 11 [Prices and Payment] as payable will pay that amount to the other party within 30 days:

- (a) in the case of BC Hydro, after certification of the summary; and
- (b) in the case of the Contractor, after receipt of an invoice for the amount owing.

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