

*Execution Version*

**ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT**

**FOR**

**TRANSMISSION FACILITIES**

**by and between**

**NEXTBRIDGE INFRASTRUCTURE LP,**  
as Owner,

and

**VALARD CONSTRUCTION LP,**  
as Contractor,

**dated as of**

**December 5, 2017**

**Ontario East/West Transmission Project**

## TABLE OF CONTENTS

ARTICLE I. DEFINITIONS.....	1
1.1    Definitions.....	1
1.2    Rules of Interpretation.....	12
1.3    Exhibits.....	13
1.4    Order of Precedence.....	14
ARTICLE II. RETENTION OF CONTRACTOR; CONTRACTOR RESPONSIBILITIES.....	14
2.1    Work to be Performed.....	14
2.2    Status of Contractor; No Partnership.....	15
2.3    Compliance.....	15
2.4    Commencement of Work; Scheduling.....	16
2.4.1    Limited Notice to Proceed.....	16
2.4.2    Full Notice to Proceed.....	16
2.4.3    Project Schedule.....	16
2.4.4    Acceleration of Work.....	17
2.4.5    Critical Path.....	18
2.5    Materials, Equipment and Related Services.....	18
2.6    Design; Engineering; Contractor Deliverables.....	19
2.7    Quality Control Program.....	19
2.8    Obtaining, Maintaining and Identifying Permits.....	19
2.9    Real Property Rights.....	20
2.10    Consumable Parts.....	20
2.11    Final Plans.....	20
2.12    Labour and Personnel.....	20
2.12.1    Engagement of Labour.....	20
2.12.2    Owner Review of Labour.....	21
2.12.3    Alcohol and Drugs.....	21
2.12.4    Disorderly Conduct.....	21
2.12.5    Labour Disputes.....	21
2.12.6    Personnel Documents.....	21
2.12.7    Non-English Speaking Employees.....	21
2.12.8    Project Management.....	22
2.13    Environmental Compliance Plan, Health Plan and Safety Plan; Emergencies; and Security.....	22
2.13.1    Environmental Compliance Plan, Health Plan and Safety Plan.....	22
2.13.2    Constructor Responsibilities.....	22
2.13.3    Emergencies.....	23
2.13.4    Security.....	23
2.14    Hazardous Materials.....	23
2.14.1    Contractor Duty to Monitor Compliance.....	23
2.14.2    Environmental Releases.....	24
2.14.3    Designated Substance.....	24
2.14.4    Recordkeeping.....	24
2.15    Clean-up; Non-Interference.....	24
2.16    Books and Records; Job Books.....	25
2.16.1    Books and Records.....	25
2.16.2    Job Books.....	25

2.17	Owner's Right to Inspect; Correction of Defects.....	25
2.17.1	Right to Inspect.....	25
2.17.2	Correction of Defects.....	26
2.18	Liens .....	26
2.19	Cooperation and Non-Interference with Other Owner Contractors.....	27
2.20	Intellectual Property Rights.....	27
2.21	Additional Contractor Responsibilities.....	28
2.22	Letter of Credit.....	28
2.23	Anti-Bribery.....	28
2.24	Waiver of Responsibility.....	29
2.25	Project Controls Requirements.....	30
2.26	Archaeological Resources.....	30
2.27	MNRF Sensitive Data.....	30
ARTICLE III. SUBCONTRACTORS .....		30
3.1	Subcontractors and Assignment of Subcontracts.....	30
3.1.1	Subcontractors.....	30
3.1.2	Subcontract Third-Party Beneficiary.....	31
3.1.3	Assignment.....	31
3.1.4	Subcontractor Warranties.....	31
3.2	Major Subcontracts.....	31
ARTICLE IV. CONTRACT PRICE .....		32
4.1	Contract Price.....	32
4.2	Taxes.....	32
4.3	Payment of the Contract Price.....	33
4.4	Disputed Invoices.....	33
4.5	Holdback.....	33
4.6	Conditions of Payment.....	34
4.7	Withholding Payment.....	35
4.8	Intentionally Left Blank.....	35
4.9	Termination Payment.....	35
4.9.1	Termination Payments Due to Contractor.....	35
4.9.2	Payment of Termination Payment.....	35
4.9.3	Termination Payment Contractor's Sole Remedy.....	36
4.10	Effect of Payment.....	36
4.11	Set-off.....	36
4.12	Payment Dates.....	36
4.13	No Payment During Contractor Event of Default.....	36
ARTICLE V. OWNER RESPONSIBILITIES.....		36
5.1	Owner-Furnished Equipment.....	36
5.2	Permits.....	36
ARTICLE VI. PROVISIONAL ACCEPTANCE; FINAL ACCEPTANCE; DELAY		
	LIQUIDATED DAMAGES.....	36
6.1	Intentionally Left Blank.....	36
6.2	Intentionally Left Blank.....	36
6.3	Intentionally Left Blank.....	36
6.4	Provisional Acceptance.....	37

6.4.1	Achievement of Provisional Acceptance.....	37
6.4.2	Confirmation of Provisional Acceptance.....	37
6.5	Intentionally Left Blank.....	37
6.6	Punch List.....	37
6.7	Final Acceptance.....	37
6.7.1	Achievement of Final Acceptance.....	37
6.7.2	Confirmation of Final Acceptance.....	38
6.8	Completion Deadlines.....	38
6.9	Delay Liquidated Damages.....	38
6.9.1	Obligation to Pay.....	38
6.9.2	Fair and Reasonable Amount.....	39
6.9.3	Accrual; Payment.....	39
6.10	Offset Rights; Security for Obligations.....	39
ARTICLE VII. WARRANTIES .....		39
7.1	Warranty Provisions.....	39
7.1.1	Warranty.....	39
7.1.2	Correction of Deficiencies.....	40
7.1.3	Conformance of Warranty Service to Specifications.....	41
7.1.4	Risk of Loss or Damage.....	41
7.2	Delay.....	41
7.3	Subcontractor Warranties.....	41
7.4	Proprietary Rights.....	42
7.5	No Implied Warranties.....	42
7.6	Survival of Warranties.....	42
ARTICLE VIII. FORCE MAJEURE; OWNER CAUSED DELAY; CHANGE IN APPLICABLE LAW; [REDACTED] .....		42
8.1	Performance Excused.....	42
8.2	Owner Caused Delay.....	43
8.3	Change in Applicable Law.....	43
8.4	[REDACTED] .....	44
8.5	Burden of Proof.....	44
ARTICLE IX. SCOPE CHANGES.....		44
9.1	Scope Changes at Owner's Request.....	44
9.2	No Unapproved Scope Changes.....	45
9.3	Presumption Against Scope Changes.....	45
9.4	Scope Changes Due to Concealed Conditions.....	45
9.5	Scope Changes Caused by a Force Majeure Event, Owner-Caused Delay, Change in Applicable Law [REDACTED] .....	45
9.6	Changes to Contract Price; Disputes.....	46
ARTICLE X. INDEMNIFICATION .....		47
10.1	Indemnities.....	47
10.1.1	Contractor's General Indemnity.....	47
10.1.2	Owner's Indemnity.....	48
10.2	Conditions of Indemnification.....	48
10.2.1	Notice of Proceedings.....	48
10.2.2	Conduct of Proceedings.....	49

10.2.3	Representation .....	49
10.3	Contributory Negligence. ....	49
10.4	Survival of Indemnities. ....	49
ARTICLE XI. LIMITATIONS OF LIABILITY .....		49
11.1	Consequential Damages. ....	50
11.2	Contractor Limitation of Liability. ....	50
11.3	Owner Limitation of Liability. ....	50
ARTICLE XII. INSURANCE.....		50
12.1	Contractor's Insurance.....	50
12.1.1	Worker's Compensation. ....	50
12.1.2	Automobile Liability.....	51
12.1.3	Commercial General Liability. . ....	51
12.1.4	Pollution Liability.....	51
12.1.5	Aircraft Liability.....	51
12.1.6	Excess Liability.....	51
12.1.7	All Risk Equipment Insurance. ....	51
12.1.8	Professional Liability Insurance.....	51
12.1.9	Requirements of Contractor's Insurance.....	51
12.2	Right to Insure. ....	52
12.3	Payment of Deductibles and Qualified Insurers. ....	52
12.4	No Limitation on Liability.....	52
ARTICLE XIII. DEFAULT, TERMINATION AND SUSPENSION.....		52
13.1	Contractor Defaults.....	52
13.1.1	Termination for Cause. ....	54
13.1.2	Other Owner Remedies.....	54
13.2	Owner Defaults.....	54
13.2.1	Contractor Termination for Cause. ....	54
13.2.2	Financing Party Cure Rights.....	55
13.3	Termination Without Cause.....	55
13.4	Actions Required Following Termination. ....	56
13.4.1	Discontinuation of Work.....	56
13.4.2	Surviving Obligations. ....	56
13.5	Suspension by Owner for Convenience.....	56
13.6	Suspension by Owner for Cause.....	57
13.7	.....	57
ARTICLE XIV. TITLE AND RISK OF LOSS .....		57
14.1	Title to the Work. ....	57
14.2	Title to Contractor Deliverables. ....	57
14.3	Risk of Loss.....	58
ARTICLE XV. DISPUTE RESOLUTION .....		58
15.1	Senior Representatives Discussion.....	58
15.2	Litigation. ....	58
15.3	Continued Performance. ....	59
15.4	Tolling Statute of Limitations.....	59
15.5	Audit Rights.....	59

15.6	Specific Performance.....	59
ARTICLE XVI. REPRESENTATIONS AND WARRANTIES .....		59
16.1	Contractor Representations and Warranties.....	59
16.1.1	Organization.....	59
16.1.2	No Violation of Law; Litigation. ....	59
16.1.3	Licenses. ....	60
16.1.4	No Breach. ....	60
16.1.5	Corporate Action.....	60
16.1.6	Investigation.....	60
16.1.7	Review of Agreement. ....	60
16.1.8	Review of Additional Documents.....	60
16.1.9	Intellectual Property.....	60
16.1.10	Solvency.....	60
16.1.11	Studies and Reports.....	60
16.1.12	Certifications.....	61
16.1.13	Site Access.....	61
16.1.14	Residency.....	61
16.1.15	MNRF Sensitive Data. ....	61
16.2	Owner Representations and Warranties.....	61
16.2.1	Organization.....	61
16.2.2	No Violation of Law; Litigation. ....	61
16.2.3	Licenses. ....	61
16.2.4	No Breach. ....	61
16.2.5	Corporate Action.....	61
16.3	Survival of Representations and Warranties.....	62
ARTICLE XVII. MISCELLANEOUS PROVISIONS .....		62
17.1	Confidentiality and Publicity.....	62
17.1.1	Confidential Information and Permitted Disclosures.....	62
17.1.2	Consent. ....	63
17.1.3	Press Release.....	63
17.1.4	Ownership of Confidential Information.....	63
17.1.5	Required Disclosure.....	63
17.1.6	Remedies for Unauthorized Disclosure.. ....	63
17.2	Notice. ....	63
17.3	Time of the Essence.....	64
17.4	No Rights in Third Parties. ....	64
17.5	Entire Agreement.....	64
17.6	Amendments.....	64
17.7	Governing Law. ....	65
17.8	Right of Waiver. ....	65
17.9	Severability.....	65
17.10	Assignment. ....	65
17.11	Successors and Assigns. ....	65
17.12	Survival.....	65
17.13	Effectiveness.....	65
17.14	Expenses and Further Assurances. ....	65
17.15	Counterparts. ....	66
17.16	Offset. ....	66
17.17	Good Faith Dealings.....	66

17.18 Financing Parties' Requirements..... 66

17.19 Financial Assurances..... 66

## **ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT FOR TRANSMISSION FACILITIES**

THIS ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT FOR TRANSMISSION FACILITIES (this "Agreement"), is made this 5th day of December, 2017 (the "Effective Date"), by and between Valard Construction LP, an Alberta limited partnership ("Contractor"), and NextBridge Infrastructure LP, an Ontario limited partnership acting through its general partner Upper Canada Transmission, Inc. ("Owner") (each individually referred to hereinafter as a "Party" and collectively as the "Parties").

### **WITNESSETH:**

WHEREAS, Owner is developing a 230 kV transmission line, and all services and utilities related thereto, to form part of the interconnected electricity transmission system located in Ontario, Canada;

WHEREAS, Contractor has represented that it is experienced and qualified in providing technical assistance, construction management, construction, engineering, procurement and installation services, and that it possesses the requisite expertise and resources to complete the Work (as hereinafter defined);

WHEREAS, Owner desires to obtain, and Contractor has agreed to provide, through itself or through Subcontractors (as hereinafter defined), such Work, all for the Contract Price (as hereinafter defined); and

WHEREAS, Contractor has agreed to guarantee the timely and proper completion of the Work in strict accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

### **ARTICLE I. DEFINITIONS**

**1.1 Definitions.** As used in this Agreement, the following terms have the meanings indicated:

"Activity" means, in relation to the Schedule of Values, a task or group of tasks to be performed by Contractor pursuant to the terms of the Agreement.

"Additional Contractor Responsibilities" means those additional Contractor requirements set forth in Exhibit X.

"After-Tax Basis" means, with respect to any indemnity payment to be received by any Person, the amount of such payment (the base payment) supplemented by a further payment (the additional payment) to that Person so that the sum of the base payment plus the additional payment shall, after deduction of the amount of all federal, provincial and local income Taxes, if any, required to be paid by such Person in respect of the receipt or accrual of the base payment and the additional payment (taking into account any reduction in such income Taxes resulting from Tax benefits realized or to be realized by the recipient as a result of the payment or the event giving rise to the payment), be equal to the amount required to be received. Such calculations shall be made on the basis of the highest applicable federal, provincial and local income Tax rates applicable to the corporation or entity for whom the calculation is being made for all relevant periods in effect for the year of the payment, and shall take into account the deductibility of provincial and local income Taxes for federal income Tax purposes and for these purposes any indemnity payment shall be exclusive of HST, if any.



"Affiliate" means, in relation to any Person, any other Person: (i) which directly or indirectly controls, or is controlled by, or is under common control with, such Person; or (ii) which directly or indirectly beneficially owns or holds fifty percent (50%) or more of any class of voting stock or other equity interests of such Person; or (iii) which has fifty percent (50%) or more of any class of voting stock or other equity interests that is directly or indirectly beneficially owned or held by such Person, or (iv) who either holds a general partnership interest in such Person or such Person holds a general partnership interest in the other Person. For purposes of this definition, the word "controls" means possession, directly or indirectly of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or otherwise. It is understood and agreed by the Parties that notwithstanding the definition of "Affiliate," NextEra NextBridge Holdings, Inc., Enbridge Inc., BPC Transmission Trust, Enbridge Transmission Holdings, Inc., Borealis EWT Inc., NextEra Energy UCT Holdings, Inc., Upper Canada Transmission, Inc. and any other limited partner or general partner of Owner (and each of their successors, assigns and/or their affiliates) shall be deemed "Affiliates" for purposes of this Agreement.

"Agreement" has the meaning set forth in the first paragraph hereof (including the Exhibits hereto), as the same may be amended, supplemented or modified from time to time in accordance with the terms hereof.

"Applicable Laws" means: (i) federal, provincial, or municipal laws, orders-in-council, by-laws, codes (including, without limitation, the Transmission System Code), rules (including the IESO Market Rules as well as any manuals or interpretation bulletins issued by the IESO from time to time), policies, guidelines, regulations and statutes; (ii) orders, decisions, codes, judgments, rules, injunctions, decrees, awards, and writs of any Governmental Authority; and (iii) any requirements under or prescribed by any Applicable Permits, licenses and/or common law; applicable to a Party (as to that Party), the Project, the Job Site or the performance of the Work.

"Applicable Permits" means any and all permits, clearances, licenses, authorizations, consents, filings, registrations, exemptions or approvals from or required by any Governmental Authority or requested by Owner that are necessary for the performance of the Work or ownership or operation of the Transmission Facilities or the Project.

"Applicable Standards" means those sound and prudent practices, methods, specifications, codes or standards of assembly, erection, installation, construction, performance, safety and workmanship prudently and generally engaged in or observed by the majority of the professional engineering and construction contractors for high voltage electric transmission facilities in the United States and Canada that, in the exercise of reasonable judgment, would have been expected to accomplish the desired result in a manner consistent with Applicable Laws, Additional Contractor Responsibilities, Applicable Permits, Prudent Electrical Industry Practices, reliability, safety, environmental protection, local conditions, economy and efficiency. Notwithstanding the foregoing, the Work or any portion thereof shall meet specifications that are at least as stringent as those set forth in the Technical Specifications or any other specifications set forth in the Agreement.

"As-Built Drawings" means final Drawings and final Technical Specifications for the Work, as revised to reflect the changes in the Work during construction, and shall include as-built drawings, piping and instrumentation diagrams, underground structure drawings (including buried piping, all utilities, and critical hidden items), electric one lines, electric schematics and connection diagrams.

"Basic Holdback" means that portion of the Holdback with respect to Work performed up to publication of the certificate of "substantial performance" of the Agreement as that term is defined in the Construction Lien Act.

"Business Day" means every day other than a Saturday, Sunday or a day which is a legal holiday in Toronto, Canada.

“Cash Flow Table” means the table of Progress Payments which is set forth in Exhibit B-3.

“Change in Applicable Law” means any newly enacted or change in, or final change in the judicial or administrative interpretation of, or adoption or repeal of, any Applicable Law promulgated by any Governmental Authority of (A) the Province of Ontario (or any city, county or municipality therein) or (B) the Federal government of Canada to the extent such federal law directly affects the Work performed at the Job Site and is at variance with or in addition to any Applicable Law (if any) in effect on the Effective Date, and provided further that (i) such change materially and adversely affect Contractor’s costs or schedule for performing the Work, (ii) such change could not on the Effective Date reasonably have been foreseen and (iii) such change affects a substantial or essential portion of the Work; provided, however, and notwithstanding the foregoing, it is understood and agreed by the Parties that (a) changes to Applicable Law relating to income taxes imposed on Contractor or its Subcontractors, (b) changes to Applicable Law relating to the organization, existence, good standing, qualification, or licensing of Contractor or its Subcontractors in any jurisdiction, (c) the issuance of an Applicable Permit pursuant to Applicable Law, (d) changes to any federal, provincial, or local Tax law or any other law imposing a Tax, duty, levy, impost, fee, royalty, or charge for which Contractor is responsible hereunder, (e) changes to any federal, provincial or local law affecting the cost of Contractor’s or any Subcontractor’s Labour, and (f) changes to the Construction Lien Act, in each case of clauses (a) through (f) of this definition, shall not be a Change in Applicable Law pursuant to this Agreement.

“Commodity Taxes” means all Taxes levied on or measured by, or referred to as transfer, land transfer, registration charges, gross receipt, sales, provincial sales, use, consumption, HST, Quebec sales, value-added, turnover, excise or stamp, all customs duties, countervail, anti-dumping and special import measures and all import and export taxes.

“Confidential Information” has the meaning set forth in Section 17.1.

“Consumable Parts” has the meaning set forth in Section 2.10.

“Construction Lien Act” means the Construction Lien Act (Ontario), and all regulations issued thereunder, all as amended from time to time or any successor statutes thereto.

“Contract Price” means the total sum payable by Owner for all labour, all materials, and all equipment, which sum shall be due in accordance with the terms of the Agreement as consideration for the timely performance of the Scope of Work to be performed by or through Contractor in order to complete the Work, all in strict accordance with the terms of the Agreement, which total sum is guaranteed by Contractor not to exceed the amount set forth in Section 4.1, and which sum shall only be subject to adjustment in accordance with the Agreement.

“Contractor” has the meaning set forth in the first paragraph hereof, and includes its legal successors and permitted assigns, pursuant to the terms of this Agreement.

“Contractor Agent” has the meaning set forth in Section 2.23.1.

“Contractor Deliverables” means all Drawings, Final Plans, operation and maintenance manuals and other documents and similar information prepared or modified by Contractor or any of its Subcontractors and delivered or required to be delivered hereunder.

“Contractor Equipment” means all of the equipment, materials, apparatus, structures, tools, supplies and other goods provided and used by Contractor and its Subcontractors for performance of the Work but which is not intended to be installed or incorporated into the Work.

“Contractor Event of Default” has the meaning set forth in Section 13.1.

“Contractor Permits” means those permits required to be obtained by Contractor, as listed in Part B of Exhibit H.

“Contractor Provided Training” means the training provided by Contractor as set forth in Exhibit K.

“Contractor Safety Requirements” means those safety requirements that Contractor and its Subcontractors shall comply with as more particularly set forth in set forth in Exhibit Q-1.

“Contractor Termination for Cause” has the meaning set forth in Section 13.2.

“Critical Path” means a determination of the Project Schedule specifically illustrating those unique activities and durations that must be completed in sequence to complete the Work in the shortest possible duration, which logic and sequence shall be determined using the critical path method precedence networking techniques applied by Contractor, using Primavera or equivalent electronic scheduling software.

“Defect” means, any design, engineering, software, drawing, component, tool, Equipment, installation, construction, workmanship or Work or portion thereof that, in Owner’s reasonable judgment, (i) does not conform to the requirements of the Agreement, (ii) is not of uniform good quality, free from defects in design, application, manufacture or workmanship, or that contain improper or inferior workmanship or (iii) would adversely affect (A) the performance of the Transmission Facilities under anticipated operating conditions contemplated by the Agreement, and, (B) the continuous safe operation of the Transmission Facilities during the Transmission Facilities’ design life, (C) the structural integrity of the Transmission Facilities or (D) the economic value of Owner’s investment in the Work. Anything to the contrary notwithstanding, the Parties agree that (x) the term “Defect” does not include Owner-Furnished Equipment other than Defects arising from or related to any acts or omissions of Contractor or any of its Subcontractors or any Person directly or indirectly employed by them or for whom any of them are responsible, including, without limitation, compliance with this Agreement and/or failure to follow any Owner provided manufacturer recommendation or directions in regards to Owner-Furnished Equipment, in which case, the term “Defect” shall apply to the Owner-Furnished Equipment, and (y) Work shall be considered to be defective if it does not conform to the Applicable Standards.

“Delay Liquidated Damages” has the meaning set forth in Section 6.9.1.

“Design Documents” has the meaning set forth in Section 2.6.1.

“Deviation Notice” means a written notice pursuant to Article IX and set forth in Exhibit V-3, signed by Owner and Contractor Project Manager acknowledging a Scope Change Order request.

“Disputes” has the meaning set forth in Section 15.1.

“Dollars” and “\$” shall mean the legal currency of Canada, unless otherwise specified.

“Drawings” means (i) all specifications, calculations, designs, plans, drawings, engineering and analyses, Design Documents, and other documents which determine, establish, define or otherwise describe the scope, quantity, and relationship of the components of the Work, including the structure and foundation thereof, and (ii) all technical drawings, operating drawings, specifications, shop drawings, diagrams, illustrations, schedules and performance charts, calculations, samples, patterns, models, operation and maintenance manuals, underground structure drawings, conduit and grounding drawings, lighting drawings, conduit and cable drawings, electric one-lines, electric schematics, connection diagrams and technical information of a like nature, prepared or modified by Contractor or any of its Subcontractors any of which are required to be submitted by Contractor, or any Subcontractor, from time to time under the Agreement or at Owner’s request which illustrates any of the Equipment or any other portion of the Work, either in components or as completed.

“Effective Date” means the date of this Agreement.

“Environmental Compliance Plan” has the meaning set forth in Section 2.13.1.

“Equipment” means all of the equipment (including, without limitation, Owner-Furnished Equipment), materials, apparatus, structures, tools, supplies, goods and other items provided by Contractor and its Subcontractors that are installed or incorporated into the Work (other than Contractor Equipment).

“ESA” means the Electrical Safety Authority of Ontario, or its successor.

“Final Acceptance” means the achievement of each of the following: (a) Provisional Acceptance has been achieved and Contractor has performed all of the Work, including restoration and remediation of the Job Site (including the clean-up and restoration of that portion of the Job Site, the removal from the Job Site of all waste materials introduced or created by Contractor in the performance of the Work, the recycling and/or disposal of such waste material in accordance with Additional Contractor Responsibilities, Applicable Laws and Applicable Permits and the re-grading and/or re-seeding of disturbed areas where appropriate); (b) the Transmission Facilities are capable of being operated safely, reliably, normally and continuously in accordance with the requirements of all Additional Contractor Responsibilities, Applicable Laws, Applicable Permits and the Agreement at all operating conditions and modes specified in the Agreement; (c) Owner has received a final list and summary of the work performed by all Subcontractors and verification of the payment thereof; (d) any and all Liens in respect to the Project, the Work, the Agreement, the Job Site or any fixtures, personal property or Equipment included in the Work created by, through or under, or as a result of any act or omission of, Contractor or any Subcontractor other Person providing labour or materials in connection with the Work have been released or bonded in form satisfactory to Owner; (e) Contractor has delivered (and has caused each Major Subcontractor to deliver) to Owner the statutory declarations in the applicable forms of CCDC 9A/9B, and waiver of claim contemplated in Section 2.18.4 from the Contractor; (f) all Operational Tests have been completed and the results thereof have been to the satisfaction of Owner; (g) all Contractor Equipment and all of Contractor’s supplies, personnel and waste have been removed from the Job Site; (h) any Defects found have been corrected; (i) the Final Plans accurately reflect the Work as constructed; (j) Contractor has paid all Delay Liquidated Damages due under the Agreement, if any; (k) all Contractor Deliverables have been delivered to, and accepted by, Owner; (l) either (1) all Punch List Items have been completed or (2) the Parties have reached an agreement pursuant to Section 6.6.2 and Contractor has paid all amounts due to Owner pursuant thereto; (m) “completion” of the Agreement has been attained by the Contractor for purposes of the Construction Lien Act; and (n) Owner has accepted a Final Acceptance Certificate pursuant to Section 6.7.2.

“Final Acceptance Certificate” means the certificate, in the form of Exhibit T-6, issued by Contractor indicating that Final Acceptance has been achieved.

“Final Acceptance Date” means the date on which Final Acceptance occurs as indicated in the Final Acceptance Certificate.

“Final Plans” means final Drawings for the Work, as revised to reflect the changes during construction, and shall include As-Built Drawings, piping and instrumentation diagrams, underground structure drawings (including buried piping, all utilities, and critical hidden items), electric one-lines, electric schematics and connection diagrams.

“Financing Documents” means all of those documents, instruments and agreements by and between Owner and any of the Financing Parties or otherwise related to the financing provided by the Financing Parties.

“Financing Parties” means the lenders, security holders, investors, export credit agencies, multilateral institutions, equity providers and others providing financing or refinancing to or on behalf of Owner or any Affiliate thereof, and any trustee, agent or engineer, acting on behalf of any of the foregoing.

“Finishing Holdback” means that portion of the Holdback with respect to Work performed after the date of publication of the certificate of “substantial performance” of the Agreement as defined in the Construction Lien Act.

“Force Majeure Event” means any event or circumstance, or combination of events or circumstances, that arises after the date hereof, is beyond the reasonable control of the Party claiming the Force Majeure Event, is unavoidable or could not be prevented or overcome by the reasonable efforts and due diligence of the Party claiming the Force Majeure Event and has an impact which will actually, demonstrably, adversely and materially affect Owner’s ability to perform its obligations (other than payment obligations) in accordance with the terms of the Agreement or has an impact which will actually, demonstrably, adversely and materially affect the Critical Path of the Work and performance of Contractor’s obligations in accordance with the terms of the Agreement; subject to the satisfaction of the foregoing criteria, Force Majeure Events may include, without limitation, the following: acts of God, natural disasters, fires, earthquakes, lightning, floods, storms, civil disturbances, riots, war and military invasion. Notwithstanding the foregoing, the definition of “Force Majeure Event” shall not include: strikes, work stoppages (or deteriorations), slowdowns or other labour actions; any labour or manpower shortages; unavailability, late delivery, failure, breakage or malfunction of equipment or materials or events that affect the cost of equipment or materials; economic hardship (including lack of money); perils of sea; delays in transportation (including delays in clearing customs) other than delays in transportation resulting from accidents or closure of roads or other transportation route by Governmental Authorities; changes in Applicable Laws or Applicable Permits; reasonably foreseeable weather conditions in the Job Site’s geographic area (Contractor acknowledges that it has factored into the schedule a sufficient number of lost days to account for such weather conditions) or elsewhere; actions of a Governmental Authority with respect to Contractor’s compliance with Applicable Laws or Applicable Permits, which may include, without limitation, a Change in Applicable Law; any failure by a Party to obtain and/or maintain any Applicable Permit it is required to obtain and/or maintain hereunder; any surface or subsurface conditions at the Job Site; Move Around Events, Owner Caused Delays or any other act, omission, delay, default or failure (financial or otherwise) of a Subcontractor.

“Full Day Data Sensitivity Training” means a full day classroom or WebEx training course provided by the NHIC or the MNRF, related to the access, use and confidentiality of Sensitive Data, which may be obtained by contacting the NHIC or the MNRF.

“Full Notice to Proceed” means the written notice given from Owner to Contractor, directing Contractor to commence performance of the entire Work.

“Full Notice to Proceed Date” means the date the Full Notice to Proceed is issued as set forth in Section 2.4.2.

“Governmental Authority” means any and all foreign, national, federal, provincial, county, city, municipal, local or regional authorities, departments, bodies, commissions, corporations, branches, directorates, agencies, ministries, courts, tribunals, judicial authorities, legislative bodies, administrative bodies, regulatory bodies, autonomous or quasi-autonomous entities or taxing authorities or any department, municipality or other political subdivision thereof, including the IESO, the OEB, the ESA, the TSSA, any municipality or township, any transmitter (including HONI) or local distribution company, and any Person acting under the authority of any Governmental Authority.

“Gross Negligence” means, in respect of a Party, any act or failure to act by such Party which was (i) intended to cause, or in reckless disregard of or wonton indifference to, harmful consequences that such Party knew or ought to have known could result from such act or failure to act, or (ii) a marked and flagrant departure from the standard of care applicable in the circumstances.

“Guaranteed Final Acceptance Date” means the date as identified in Exhibit C-1, as such date may be extended in accordance with the terms hereof.

“Guaranteed Provisional Acceptance Date” means the date as identified in Exhibit C-1, as such date may be extended in accordance with the terms hereof.

“Hazardous Materials” means and include each substance designated as a hazardous waste, hazardous substance, hazardous material, special waste, radioactive material, dangerous substance or dangerous good, pollutant, contaminant, toxic substance, or other compound, element or substance in any form as designated with words of similar meaning and regulatory effect under any Applicable Law, as well as petroleum and petroleum products, derivatives, wastes or additives, polychlorinated biphenyls, asbestos, and any other substance present in, on, or under the Job Site in excess of that permitted by Applicable Laws, including without limiting the generality of the foregoing, any contaminant, waste, substance or material of any kind that is: (i) defined by Applicable Law as hazardous, toxic or dangerous or any other substance or material prohibited or regulated pursuant to any Applicable Law; (ii) a “designated substance” pursuant to OHSA; (iii) a “hazardous industrial waste”, “hazardous waste”, or “hazardous waste chemical” pursuant to Ontario Regulation 347 (General – Waste Management), R.R.O. 1990, made under the Ontario *Environmental Protection Act*, R.S.O. 1990, c. E.19; (iv) a “contaminant” as defined under the Ontario *Environmental Protection Act*, R.S.O. 1990, c. E.19; (v) a material that “may impair the quality of the water of any waters” within the meaning of s. 30 of the *Ontario Water Resources Act*, R.S.O. 1990, c. O.40, including without limitation soil erosion or sedimentation from construction activities; or, (vi) a “substance” or “toxic substance” or “pollution” under the *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33, or the regulations made thereunder.

“Health Plan” has the meaning set forth in Section 2.13.1.

“Health and Safety Plan” has the meaning set forth in Section 2.13.1.

“Holdback” means the holdback contemplated in the Construction Lien Act and includes the Basic Holdback and the Finishing Holdback.

“HONI” means Hydro One Networks, Inc., or its successor.

“HST” means any harmonized sales tax or goods and services tax levied or imposed under Part IX of the Excise Tax Act (Canada).

“IESO” means the Independent Electricity System Operator established under Part II of the Electricity Act, 1998 (Ontario), or its successor.

“IESO Market Rules” means the rules made under section 32 of the Electricity Act, 1998 (Ontario), together with all market manuals, policies, and guidelines issued by the IESO, all as amended or replaced from time to time.

“Indemnified Person” has the meaning set forth in Section 10.2.

“Indemnifying Party” has the meaning set forth in Section 10.2.

“Intellectual Property Rights” has the meaning set forth in Section 2.20.

“Job Book” means all of the minimal requirements as identified in Exhibit E, which may be amended from time to time in accordance with the terms hereof.

“Job Site” means all those parcels of land in the Province of Ontario on which the Transmission Facilities will be located or Work performed under this Agreement, including any access roads, laydown or storage areas.

"Labour" means the workforce of the relevant Person, including its staff and employee and non-employee and skilled and unskilled workers.

"Late Delivery Liquidated Damages" has the meaning set forth in Section 6.9.1.

"Latest Full Notice to Proceed Date" has the meaning set forth in Section 2.4.2.

"LD Cap" has the meaning set forth in Section 6.9.1.

"Letter of Credit" shall have the meaning set forth in Section 2.22.

"Lien" means any lien, security interest, retention, claim, charge, mortgage, hypothecation, encumbrance or other restriction on title or property interest, and includes written notice of any of the foregoing.

"Limited Notice to Proceed" means any written notice, purchase order or other agreement given by Owner or an Affiliate thereof to Contractor directing or authorizing Contractor to commence performance of any portion of the Work (including the procurement of materials or equipment), which Limited Notice to Proceed may be issued prior to or after the date of this Agreement.

"Limited Notice to Proceed Date" has the meaning set forth in Section 2.4.1.

[REDACTED]

"Major Subcontract" means any agreement with a Subcontractor having an aggregate value in excess of [REDACTED] for performance of any part of the Work.

"Major Subcontractor" means, any Subcontractor with whom Contractor will enter (or has entered) into a Major Subcontract.

"Milestone" means each activity listed in the Project Schedule.

"Milestone Achievement Certificate" means the certificate, in the form of Exhibit T-10, issued by Contractor in connection with a Request for Payment.

"Milestone Date" means the date identified in the Project Schedule as being the date by which the corresponding Milestone is required to be achieved, as such date may be extended pursuant to the terms of this Agreement.

"MNRF" means Her Majesty the Queen in right of Ontario as represented by the Ministry of Natural Resources and Forestry.

"MNRF Sensitive Data" means confidential digital data, meta-data, information or documentation related to Provincially Tracked Species, or other data identified as "medium sensitivity" by the MNRF in accordance with the Government of Ontario's Information Security & Privacy Classification Operating Procedures.

"Monthly Progress Report" means a monthly written report that includes a description of the progress and status of the Work compared to the Project Schedule, the Subcontractors' activities, cost information regarding backcharges, a summary of any Scope Change Orders executed by the Parties as of the date of such report and a summary of any events which may affect the Project Schedule (including, without limitation, any Force Majeure Events, Liens on the Job Site or the Project, or any asserted violations of Applicable Laws).



"MW" means one (1) megawatt or one million (1,000,000) watts.

"NHIC" means the National Heritage Information Center.

"OEB" means the Ontario Energy Board, or its successor.

"OHSA" means the Occupational Health and Safety Act (Ontario), and all regulations issued thereunder, all as amended from time to time.

"Operational Tests" means the operational tests (as such tests are more particularly described in Exhibit A) to be conducted by Utility, which are necessary and required for Contractor to demonstrate to the satisfaction of Owner that the Transmission Facilities (i) have been interconnected and synchronized with the high voltage facilities of Utility in accordance with the Utility's interconnection requirements and (ii) are being operated safely, reliably, normally and continuously in accordance with the requirements of all Additional Contractor Responsibilities, Applicable Laws, Applicable Permits and the Agreement at all operating conditions and modes specified in the Agreement.

"Owner" has the meaning set forth in the first paragraph hereof, and includes its legal successors and permitted assigns, pursuant to the terms of this Agreement.

"Owner Caused Delay" means a material delay in Contractor's performance of the Work that is actually and demonstrably caused directly and solely by Owner's failure to perform any covenant of Owner hereunder (other than a Move Around Event and/or by exercise of rights under this Agreement, including the exercise by Owner of the right to have defective or nonconforming Work corrected or re-executed) which actually, demonstrably, adversely and materially affects the Critical Path of the Work. Contractor expressly acknowledges and agrees that any delay that is due in part to Contractor's or any of its Subcontractors' action or inaction is not an Owner Caused Delay.

"Owner Event of Default" has the meaning set forth in Section 13.2.

"Owner-Furnished Equipment" means the equipment and materials incorporated into the Work, which are furnished by Owner and identified in Exhibit N.

"Owner Indemnified Party" has the meaning set forth in Section 10.1.1.

"Owner Permits" means the Permits required to be obtained by Owner, as listed in Part A of Exhibit H.

"Owner Taxes" has the meaning set forth in Section 4.2.



"Owner Termination for Cause" has the meaning set forth in Section 13.1.1.

"Party" means, individually, Owner or Contractor.

"Parties" means, collectively, Owner and Contractor.

"Permit" means any valid waiver, exemption, variance, certificate, franchise, permit, authorization, license or similar order of or from, or filing with, or notice to, any Governmental Authority.

"Person" means any individual, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, joint venture, Governmental Authority or other entity of whatever nature.

"Pre-Existing Hazardous Material" means Hazardous Material that existed on or in the Job Site prior to the date when Contractor or any of its Subcontractors or other representatives is first present on the Job Site on or following the earlier of Limited Notice to Proceed Date or the date of this Agreement.

"Progress Payments" has the meaning set forth in Section 4.6.

"Project" means the 230 kV transmission facilities to be located in the Province of Ontario, and consisting of all poles, structures, facilities, transformers, substation facilities, appliances, lines (including transmission lines), conductors, instruments, equipment, apparatus, components, roads and other property comprising and integrating the entire facility, including the Transmission Facilities and other Work, as more particularly described in the Agreement.

"Project Schedule" means the schedule for key dates and milestones for the completion of the Work as set forth in Exhibit C-1, as amended in accordance with the terms of this Agreement.

"Provincially Tracked Species" means (i) species listed on the Species at Risk in Ontario List in O. Reg. 230/08 made under the Endangered Species Act, 2007, S.O. 2007, c. 6, as amended, or (ii) other species identified by the NHIC for which there are very few known observations or a potential conservation concern at a global, national or provincial level, included in the Provincially Tracked Species List, as amended from time to time, and available on the NHIC's website.

"Provisional Acceptance" means the achievement of each of the following: (a) the Work has been completed (other than Punch List Items) and the Transmission Facilities are capable of being energized; (b) the Transmission Facilities are capable of being interconnected and synchronized with the high voltage facilities of Utility in accordance with the Utility's interconnection requirements; (b) Contractor has prepared and submitted to Owner the final and complete list of Punch List Items and Owner has reviewed and approved such list; (c) the Transmission Facilities are capable of being operated safely, reliably, normally and continuously in accordance with the requirements of all Additional Contractor Responsibilities, Applicable Laws, Applicable Permits and the Agreement at all operating conditions and modes specified in the Agreement; (d) all training, if any, required under the Agreement has been completed; (e) all spare parts required under the Agreement have been delivered by Contractor to the Job Site; (f) a certificate of substantial performance (in the form prescribed by the Construction Lien Act) shall have been issued by Contractor with the agreement of the Owner and publication of notice of substantial performance shall have been effected as required by the Construction Lien Act; and (g) Owner and Contractor have each executed a Provisional Acceptance Certificate with respect to the Work pursuant to Section 6.4.2.

"Provisional Acceptance Certificate" means a certificate, in the form of Exhibit T-5, issued by

Contractor indicating that Provisional Acceptance has been achieved.

“Provisional Acceptance Date” means the date on which Provisional Acceptance occurs as indicated in the Provisional Acceptance Certificate.

“Provisional Acceptance Delay Liquidated Damages” has the meaning set forth in Section 6.9.1.

“Prudent Electrical Industry Practices” means those practices, methods, standards and acts (including those engaged in or approved by a significant portion of the electric utility industry for facilities in the United States and Canada similar to the Transmission Facilities) that at a particular time in the exercise of good judgment would have been expected to accomplish the desired result in a manner consistent with Applicable Laws, Applicable Permits, Applicable Standards, reliability, safety, environmental protection, local conditions, economy and efficiency.

“Punch List Items” means minor items that remain to be performed hereunder at the time of Provisional Acceptance that do not affect the safety, reliability or operability of the Work, the Project or any part of them and do not require a shut-down or reduced operation of the Work, the Project or any part of them to be completed and which items the Contractor must complete before Final Acceptance.

“Quality Control Program” means Contractor’s written quality control program for the Work, which is substantially in the form of Exhibit Z and reviewed and approved by Owner, that includes at a minimum measures to insure that: (i) materials are accurately specified and ordered; (ii) correct materials are received, properly stored and controlled, (iii) accurate instructions are provided and followed to perform the Work, (iv) critical parameters and data are identified and checked using proper inspection and testing techniques; (v) special processes such as welding and coatings are correctly performed, inspected and documented; (vi) installation and testing is properly performed using proper test equipment and techniques; (vii) nonconforming conditions and/or deficiencies are identified and correctly resolved; and (viii) proper records and documentation are maintained, reviewed and certified for correctness.

“Real Property Rights” means all rights in or to real property, including leases, agreements, Permits, easements, licenses and private rights-of-way, obtained by Owner or its Affiliates in connection with the right to use or access the Job Site.

“Request for Payment” has the meaning set forth in Section 4.3.

“Safety Plan” has the meaning set forth in Section 2.13.1.

“Schedule of Values” means the table of unit rates set forth in Exhibit B.

“Scope Change” has the meaning set forth in Section 9.1.

“Scope Change Order” means a written order, in the form set forth in Exhibit V-1, to Contractor pursuant to Article IX, signed by Owner and countersigned by Contractor, authorizing a Scope Change.

“Scope of Work” means the services and work to be provided, or caused to be provided, by or through Contractor under the Agreement, as more particularly described in Exhibit A, and the other obligations of Contractor under the Agreement, including the Technical Specifications, as the same may be amended from time to time in accordance with the terms hereof, and which Scope of Work includes, without limitation, all licenses, technical assistance, assembly, construction management, construction, services, labour, materials, equipment, operations and management that are indicated on, inferable from, or incidental to, the Agreement or the Drawings, all in order to produce Transmission Facilities that complies with the requirements of the Agreement.

“Sensitive Data Location Standards” refers to the standards created by the NHIC for representing Sensitive Data on a map or in an application, as amended from time to time, and available from the NHIC’s website.

“Subcontractor” means any subcontractor or supplier of equipment, services or other work to Contractor or any subcontractor or any Person engaged or employed by Contractor or any subcontractor in connection with the performance of the Work.

“Tax” or “Taxes” shall mean all fees, taxes (including HST, consumption taxes, sales taxes, use taxes, stamp taxes, value-added taxes, ad valorem taxes and property taxes (personal and real, tangible and intangible), levies, assessments, withholdings and other charges and impositions of any nature, plus all related interest, penalties, fines and additions to tax, now or hereafter imposed by any federal, provincial, local or foreign government or other taxing authority.

“Technical Specifications” means the detailed technical specifications for the Project set forth as in Exhibit A.

“Termination Payment” has the meaning set forth in Section 4.9.1.

“Termination Without Cause” has the meaning set forth in Section 13.3.

“Transmission Facilities” means the 230 kV transmission line, as more particularly described in the Technical Specifications, including all necessary grid transformers (new), protection equipment, metering and associated control buildings.

“Transmission System Code” means the “Transmission System Code” approved by the OEB, as may be amended, supplemented or replaced from time to time.

“TSSA” means the Technical Standards and Safety Authority of Ontario, or its successor.

“Understanding Sensitive Information Training” means the e-learning module related to the access, use and confidentiality of Sensitive Data, which may be obtained by contacting the MNRF.

“Utility” means HONI.

“Warranty Period” has the meaning set forth in Section 7.1.1.

“Work” has the meaning set forth in Section 2.1 and includes the PO Work, Contactor Deliverables, the Equipment, the Transmission Facilities and any other product or result of the Work.

**1.2 Rules of Interpretation.** Unless otherwise required by the context in which any term appears: (a) capitalized terms used in this Agreement have the meanings specified in this Article I; (b) the gender of all words used herein shall include the masculine, feminine and neuter and the singular shall include the plural; (c) unless otherwise specified, references to “Articles,” “Sections,” “Schedules,” “Annexes,” “Appendices” or “Exhibits” (if any) shall be to Articles, Sections, schedules, annexes, appendices or Exhibits (if any) of this Agreement, as the same may be amended, modified, supplemented or replaced from time to time hereunder; (d) all references to a Person shall include a reference to such Person’s successors and permitted assigns; (e) the words “herein,” “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular Section or subsection of this Agreement; (f) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles in Canada, consistently applied; (g) references to this Agreement shall include a reference to all appendices, annexes, schedules and Exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time; (h) references to any agreement, document or instrument shall mean a reference to such agreement,

document or instrument as the same may be amended, modified, supplemented or replaced from time to time; (i) the use of the word “including” in this Agreement to refer to specific examples shall be construed to mean “including, without limitation” or “including but not limited to” and shall not be construed to mean that the examples given are an exclusive list of the topics covered; (j) references to an Applicable Law shall mean a reference to such Applicable Law as the same may be amended, modified, supplemented or restated and be in effect from time to time; and (k) the headings contained herein are used solely for convenience and do not constitute a part of this Agreement nor should they be used to aid in any manner to construe or interpret this Agreement. The Parties collectively have prepared this Agreement, and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof. The Parties hereto have requested that this Agreement and all related documents (unless otherwise specified herein) be drafted in the English language. Les parties aux présentes ont requis que cette entente ainsi que tous les autres documents reliés (à moins de mention à l’effet contraire) soient rédigés en langue anglaise.

**1.3 Exhibits.** The following exhibits are attached to and incorporated into and made a part of this Agreement:

Exhibit A	Scope of Work, Rev. 11/15/17;
Exhibit B-1	Contract Price Breakdown, Rev. 11/13/17;
Exhibit B-2	Unit Rate Schedule, Rev. 11/13/17;
Exhibit B-3	Cash Flow Table, Rev. 11/13/17;
Exhibit C-1	Project Schedule, Rev. 11/30/17;
Exhibit C-2	Project Controls Requirements, Rev. 03/30/16;
Exhibit D	Intentionally Left Blank;
Exhibit E	Job Books Documentation Requirements, Rev. 03/01/16;
Exhibit F	Intentionally Left Blank;
Exhibit G	Intentionally Left Blank;
Exhibit H	List of Permits, Rev. 08/30/16;
Exhibit I	List of Approved Major Subcontractors, Rev. 03/24/16;
Exhibit J	Form of Letter of Credit, Rev. 11/17/17;
Exhibit K	Contractor Provided Training, Rev. 04/14/16;
Exhibit L	Intentionally Left Blank;
Exhibit M	Intentionally Left Blank;
Exhibit N	Owner Furnished Equipment, Rev. 10/16/17;
Exhibit O	Project Management Team, Rev. 10/17/17;
Exhibit P	Intentionally Left Blank;
Exhibit Q-1	Contractor Safety Requirements Policy, Rev. 02/18/16;
Exhibit R	Intentionally Left Blank;
Exhibit S	Intentionally Left Blank;
Exhibit T-1	Intentionally Left Blank;
Exhibit T-2	Intentionally Left Blank;
Exhibit T-3	Intentionally Left Blank;
Exhibit T-4	Intentionally Left Blank;
Exhibit T-5	Form of Provisional Acceptance Certificate, Rev. 01/14/16;
Exhibit T-6	Form of Final Acceptance Certificate, Rev. 01/14/16;
Exhibit T-7	Intentionally Left Blank;
Exhibit T-8	Intentionally Left Blank;
Exhibit T-9	Intentionally Left Blank;
Exhibit T-10	Form of Milestone Achievement Certificate, Rev. 01/15/16;
Exhibit U	Intentionally Left Blank;
Exhibit V-1	Form of Scope Change Order, Rev. 04/03/17;
Exhibit V-2	Scope Change Process, Rev. 08/29/17;
Exhibit V-3	Form of Deviation Notice, Rev. 02/5/16;
Exhibit W-1	Intentionally Left Blank;

Exhibit W-2	Intentionally Left Blank;
Exhibit X	Additional Contractor Responsibilities, Rev. 11/15/17;
Exhibit Y	Form of Request for Payment, Rev. 01/14/16;
Exhibit Z	Form of Quality Control Program, Rev. 01/15/16;
Exhibit AA-1	Intentionally Left Blank;
Exhibit AA-2	Intentionally Left Blank;
Exhibit BB-1	Contractor's Statutory Declaration in the form of CCDC 9A;
Exhibit BB-2	Major Subcontractor's Statutory Declaration in the form of CCDC 9B; and
Exhibit CC-1	List of Designated Substances under the OHSA, letter dated as of 11/9/17.

#### **1.4 Order of Precedence.**

**1.4.1** In the event of any inconsistencies between the terms of this Agreement, the following order of precedence in the interpretation hereof or resolution of such conflict hereunder shall prevail:

(a) Amendments, addenda or other modifications to the Agreement (including Scope Change Orders) duly signed and issued after the signing of this Agreement, with those of a later date having precedence over those of an earlier date;

(b) The terms of the Agreement (other than Exhibits);

(c) Exhibits hereto; and

(d) Drawings produced and delivered pursuant hereto (in respect of which, precedence shall be given to Drawings of a larger scale over those of smaller, figured dimensions on the drawings shall control over scaled dimensions, and noted materials shall control over undimensioned graphic indications).

**1.4.2** In the event of a conflict among, or within, any provision within any one of the levels set forth in the foregoing order of precedence, the more stringent or higher quality requirements of such provisions which are applicable to the obligations of Contractor shall take precedence over the less stringent or lesser quality requirements applicable thereto. All obligations imposed on Contractor and each Subcontractor under the Agreement (other than this Agreement) or under Applicable Laws, Applicable Permits, Prudent Electrical Industry Practices or Applicable Standards and not expressly imposed or addressed in this Agreement shall be in addition to and supplement the obligations imposed on Contractor under this Agreement, and shall not be construed to create an "irreconcilable conflict." Where a conflict exists among codes and standards applicable to Contractor's performance of the Work, the most stringent provision of such codes and standards shall govern.

### **ARTICLE II.**

#### **RETENTION OF CONTRACTOR; CONTRACTOR RESPONSIBILITIES**

##### **2.1 Work to be Performed.**

**2.1.1** Owner hereby retains Contractor, and Contractor hereby agrees to be retained by Owner, to perform or cause to be performed all Work in accordance with the terms and conditions of the Agreement. Contractor shall, at its own cost and expense, (a) design and engineer (to the extent of Contractor's design and engineering obligation in the Scope of Work), procure and construct the Transmission Facilities, and (b) manage, supervise, inspect and furnish all labour, equipment, materials, temporary structures, temporary utilities, machinery, tools, transportation, products and services, all on a turnkey basis, for the performance of Contractor's obligations hereunder, including completion of the Scope of Work, all in accordance with the Agreement, including, without limitation, the Project Schedule, as each may be modified from time to time in accordance with the terms hereof by a Scope Change Order or other amendment hereto

(all of the foregoing being collectively referred to in this Agreement as the "Work").

**2.1.2** In light of the foregoing, Contractor has included within the Contract Price the cost to complete the entire Scope of Work. Items need not be specifically listed in the Agreement or in the Technical Specifications in order to be deemed to be items within the Scope of Work. It is understood that Contractor is better qualified to list exclusions than Owner is to list inclusions. Therefore, any item indicated in the Agreement, inferable therefrom, incidental thereto or required in accordance with any Applicable Law, Ancillary Requirement, Applicable Permit, Prudent Electrical Industry Practices or Applicable Standard is to be considered as part of the Scope of Work. In addition, the Scope of Work includes all that should be properly included and all that would be customarily included within the general scope and magnitude of the Work. As a result, Contractor, without prejudice to its rights under Article IX, hereby waives any and all claims for an increase in the Contract Price or an extension of time hereunder, including, without limitation, the applicable Guaranteed Provisional Acceptance Date or the Guaranteed Final Acceptance Date based, in whole or in part, upon an assertion that any certain license, technical assistance, assembly, construction, service, Labour, material, equipment, operation or management is beyond the Scope of Work when such license, technical assistance, assembly, construction, service, Labour, material, Equipment, operation or management is indicated in the Agreement, the Drawings or other instruments of service prepared in connection with the Agreement, inferable therefrom, incidental thereto, required in accordance with any Applicable Law, Ancillary Requirement, Applicable Permits, Prudent Electrical Industry Practices, Applicable Standards or otherwise necessary in order to complete the Work in accordance with and subject to the requirements of the Agreement.

**2.2 Status of Contractor; No Partnership.** Contractor shall be an independent contractor with respect to any and all Work performed or to be performed under the Agreement. The Agreement shall not be interpreted or construed to create an association, joint venture or partnership relationship among or between the Parties or any similar relationship, obligations or liabilities. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, act on behalf of, or to act as or be an agent or representative of, or to otherwise bind or obligate the other Party.

**2.3 Compliance.** The Work shall meet professional standards utilized by construction professionals regularly involved in projects in the United States and Canada of technology, complexity and size similar to the Transmission Facilities. Without limiting the generality of the foregoing, Contractor shall: (i) comply with, and shall cause the Work and all components thereof to comply with, Additional Contractor Responsibilities, Prudent Electrical Industry Practices, Applicable Laws, Applicable Permits, Applicable Standards, the Agreement, including the Technical Specifications and Owner's reasonable requests; (ii) cause all engineering and design services to be provided in accordance with Prudent Electrical Industry Practices, Applicable Laws, Applicable Permits, Applicable Standards, the Agreement, including the Technical Specifications and the generally accepted standard of care, skill and diligence as would be provided by, in the case of engineering services, a prudent engineering firm, and in the case of assembly, erection, construction and installation services, by a prudent construction firm, in each case experienced in supplying construction services in the United States and Canada to electric utilities for projects of technology, complexity and size similar to the Transmission Facilities; and (iii) cause the Work to be performed with Contractor's best skill and judgment, in a safe, expeditious, good and workmanlike manner in accordance with the preceding clauses (i) and (ii). Contractor shall inspect or cause to be inspected all materials and equipment to be incorporated into or used in the performance of the Work and shall reject those items determined not to be in compliance with the requirements of this Agreement. Except as otherwise expressly provided in this Agreement, the standard of performance set forth in this Section 2.3 shall apply to all aspects of the Work, and this Section 2.3 shall be deemed to be incorporated by reference into each provision of the Agreement describing the Work, Contractor's obligations hereunder, or referring to the "requirements of this Agreement" or words of similar effect. In no event will references in any provision of this Agreement to one or more of the standards, guidelines, practices, regulations, laws, or permits contained in this Section 2.3 be interpreted to limit in the applicability of all such standards, guidelines, practices, regulations, laws, and permits to such provision. Additionally, as a condition to meeting any Milestone, including Provisional Acceptance or Final Acceptance,

the Work for such Milestone must be completed in accordance with all of the standards, guidelines, practices, regulations, laws, and permits contained in this Section 2.3. Without limiting Contractor's obligations under this Agreement, Contractor acknowledges and agrees that its compliance with the Ministry of Labor Occupational Health and Safety Act includes, without limitation, the preparation and filing of the "Notice of Project" prior to the start of any onsite Work and shall identify Owner as "Owner" and Contractor as "Constructor" as defined by the Ministry of Labour Occupational Health and Safety Act.

## **2.4 Commencement of Work; Scheduling.**

**2.4.1 Limited Notice to Proceed.** Prior to or after the Effective Date hereof, Owner may issue one or more Limited Notices to Proceed. The date on which Owner provides Contractor with a Limited Notice to Proceed, if at all, shall be the respective "Limited Notice to Proceed Date." Any work described in a Limited Notice to Proceed shall be deemed to be Work hereunder and be subject to the terms of this Agreement. Any payment by Owner under any Limited Notice to Proceed shall be credited against the earliest payments of the Contract Price to be made in accordance with Article IV hereof.

**2.4.2 Full Notice to Proceed.** The Full Notice to Proceed shall be issued by Owner no later than the date identified in Exhibit C-1 (the "Latest Full Notice to Proceed Date"). On the Full Notice to Proceed Date, Contractor shall commence and shall thereafter diligently pursue all of the Work assigning to it a priority that should reasonably permit the attainment of Provisional Acceptance on or before the Guaranteed Provisional Acceptance Date. Contractor shall proceed with the performance of the Work in accordance with the Project Schedule. If a Full Notice to Proceed has not been issued by the Latest Full Notice to Proceed Date, and such failure satisfies the requirement of an Owner Caused Delay, then Contractor shall promptly notify Owner thereof in writing and Owner may either (i) issue a Scope Change Order to address such failure in which event the Latest Full Notice to Proceed Date shall be extended for [REDACTED] (or longer period of time mutually agreed to by the Parties) and the procedure set forth herein shall be repeated upon the expiration of each additional [REDACTED] period (or longer period of time mutually agreed to by the Parties); or (ii) terminate this Agreement pursuant to Section 13.3, except that Owner shall only be obligated to pay Contractor an amount equal to any applicable Termination Payment. If this Agreement is terminated pursuant to this Section 2.4.2, then except as set forth in Section 13.3, neither Party shall have any further rights or obligations hereunder (other than such rights and obligations that by the express terms of this Agreement survive the expiration or earlier termination of this Agreement or as otherwise set forth in a Limited Notice to Proceed).

**2.4.3 Project Schedule.** Contractor shall perform the Work in accordance with the Project Schedule, including completing the Work required on or before the applicable Guaranteed Provisional Acceptance Date and the Guaranteed Final Acceptance Date. Contractor hereby covenants and warrants to Owner that, in undertaking to complete the Work in accordance with the terms hereof, Contractor has taken into consideration and made reasonable allowances for hindrances and delays incident to such Work. Contractor shall meet or achieve each Milestone noted as such on the Project Schedule no later than the Milestone Date therefor. Contractor shall coordinate and incorporate the schedules of all Subcontractors and other contractors of Owner performing Work at or near the Job Site into all applicable schedules, work plans

and progress reports. Contractor shall promptly notify Owner in writing at any time that Contractor has reason to believe that there will be a material deviation from the Project Schedule and shall specify in such notice the corrective action planned by Contractor. During the performance of the Scope of Work, Contractor and Owner shall, at a minimum, conduct meetings each month (or more frequently or less frequently as may be requested by Owner) at a mutually convenient time and date for the purpose of reviewing the progress of the Scope of Work, the latest progress reports, the Health and Environmental Compliance Plan, Safety Plan, Quality Control Program, Contractor's and Subcontractors' adherence to the Scope of Work and the Project Schedule as well as the status of any claims submitted pursuant to the terms of the Agreement. Contractor shall prepare detailed minutes of each such meeting, in form and content acceptable to Owner, and shall distribute same to Owner within five (5) Business Days after such meeting.

#### **2.4.4 Acceleration of Work.**

(a) If, at any time or from time to time, Owner determines, in its sole discretion, that: (i) Contractor has failed to show adequate progress of the Work toward completion of a Milestone by the date required by the applicable Milestone Date, or (ii) Contractor has failed to achieve a Milestone by the applicable Milestone Date, then, on each such date, Contractor shall promptly, but in any event within two (2) Business Days of such date, submit for approval by Owner a written recovery plan to complete all necessary Work to achieve completion of the remaining Milestones by the applicable Milestone Dates. Owner shall approve or submit reasonable revisions to such written recovery plan. Contractor shall incorporate such revisions into such recovery plan and resubmit such recovery plan to Owner for approval within two (2) Business Days of receipt of Owner's revisions. Upon approval by Owner, Contractor shall diligently prosecute the Work in accordance with such recovery plan at its sole cost and expense. Notwithstanding anything to the contrary in this Agreement, in law, or in equity, neither approval by Owner of such recovery plan nor Contractor's prosecution of the Work in compliance with such recovery plan shall (A) be deemed in any way to have relieved Contractor of its obligations under the Agreement relating to the failure to timely achieve any Milestone by the applicable Milestone Date, or (B) be a basis for a Scope Change Order, any claim for Owner-directed acceleration (or similar claim however phrased), or any other compensation or an increase whatsoever in the Contract Price or extension whatsoever in the Project Schedule. In the event that Contractor fails to deliver a recovery plan in accordance with this Section 2.4.4(a) or fails to comply with such recovery plan or thereafter fails to achieve a Milestone by the applicable Milestone Date, Owner shall have the right to require Contractor to accelerate the Work by means of overtime, additional personnel, additional shifts, additional equipment and/or re-sequencing of the Work. Notwithstanding anything to the contrary in this Agreement, in law, or in equity, Contractor agrees that it shall not be entitled to a Scope Change Order, any claim for Owner-directed acceleration (or similar claim however phrased), or any other compensation or increase in the Contract Price or extension whatsoever in the Project Schedule in connection with the implementation of any recovery plan or any such requirement to accelerate. This Section 2.4.4(a) shall not be construed to limit any of the rights and remedies hereunder.

(b) In addition to the provisions of Section 2.4.4(a) relating to delays in the Work, (i) in the event of a delay arising from any Owner Caused Delay or Force Majeure Event or (ii) if Contractor provides evidence reasonably acceptable to Owner that such delay results from a suspension pursuant to Section 13.5, Owner may, in accordance with the provisions of Article IX, direct that the Work be accelerated by means of overtime, additional crews or additional shifts or resequencing of the Work. If (A) such delay arises from any Owner Caused Delay or Force Majeure Event, or (B) Contractor provides evidence reasonably acceptable to Owner that such delay results from a suspension pursuant to Section 13.5, then Contractor shall be entitled to reimbursement of increased costs (such costs being based on the unit rates set out in Exhibit B-2 to the extent a unit rate exists) as a result of such acceleration (i.e., premium portion of overtime pay, additional crew, shift or Equipment cost and such other items of incremental cost requested in advance by Contractor and approved by Owner which approval will not be unreasonably withheld) less savings or costs not incurred due to such acceleration, but expressly waives any other compensation therefor. CONTRACTOR SHALL RECEIVE NO SUCH REIMBURSEMENT, FOR COSTS ARISING OUT OF, AND CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR ANY COSTS INCURRED BY



CONTRACTOR AS A RESULT OF, ACCELERATION RELATED TO ANY EVENT OTHER THAN THE EVENTS SPECIFICALLY DESCRIBED IN CLAUSES (i) AND (ii) OF THIS SECTION 2.4.4(b). Contractor shall cause prosecution of the Work to conform to the Project Schedule within thirty (30) days after receiving written notice from Owner to accelerate the Work under this Section 2.4.4(b).

**2.4.5 Critical Path.** No later than fifteen (15) days following the date hereof, Contractor shall prepare and submit to Owner for review and comment a preliminary draft of the Critical Path, in form and content acceptable to Owner, and being in such electronic native format that includes full disclosure the logic and sequencing assumptions within the Critical Path. Upon receipt of comment from Owner, Contractor shall either promptly make changes to the Critical Path as suggested by Owner or negotiate and resolve in good faith with Owner such changes. Upon approval of the Critical Path by the Parties, Contractor shall comply with the provisions thereof. Contractor shall provide five (5) copies, as well as an electronic copy, of the Critical Path to Owner. Contractor shall not revise or modify the Critical Path without the written consent of Owner, and if such consent is received, the Critical Path shall be maintained so that so that it reflects and clearly indicates the impact of Scope Change Orders and other occurrences that impact the Project Schedule, on an ongoing basis.

## **2.5 Materials, Equipment and Related Services.**

**2.5.1** Contractor shall procure and supply, at its own expense, whether by producing itself or by procuring from others, all materials, tools, equipment, supplies, consumables, transportation, labour, supervision and other goods and services required for performance of its obligations under this Agreement (whether on or off the Job Site). Contractor shall be responsible, at its sole expense, for furnishing and installation of all temporary utilities, telephone, data lines, cabling and wiring necessary for all activities associated with the completion of the Work. All Equipment and materials produced or procured by Contractor for use in performance of the Work shall be new (except as otherwise agreed to in writing by Owner and Contractor) and, where otherwise not specified in the Technical Specification, of suitable grade for their respective purpose. Contractor shall provide appropriate storage for materials, supplies, tools and Equipment for use in performance of the Work. Contractor shall have exclusive responsibility for construction and installation methods, means, techniques and procedures and for the establishment of and compliance with safety procedures at the Job Site, including, without limitation, the Contractor Safety Requirements. All materials, supplies, tools and Equipment which may be used in the performance of the Work and which are stored at a location other than on the Job Site shall be segregated from other goods.

**2.5.2** Contractor shall (or if necessary, Contractor shall designate a licensed customs broker to act as the importer of record and make entry on the Contractor's behalf) be responsible for customs clearance and performing administrative formalities in connection therewith, including being the "importer of record" and obtaining all approvals, documents and licenses which may be pertinent and/or necessary for the exportation or importation of Equipment, Contractor Equipment, spare parts and other items required for performance of the Work hereunder and for providing all completed documentation required by all applicable Governmental Authorities to import equipment, machinery, materials and spare parts required for the Work. Contractor also agrees to prepare and execute any necessary or appropriate documents to acknowledge or demonstrate that Contractor or the licensed customs broker designated by Contractor is the importer of record for, and consignee of all portions of the Work shipping from international locations into Canada. All custom duties for the importation of Equipment, Contractor Equipment, spare parts and other items required for performance of the Work hereunder shall be paid by Contractor and be deemed to be included in the Contract Price. Without limiting Contractor's obligations hereunder, Contractor shall be responsible for all broker and other customs and import fees, duties and Taxes with respect to the importation of the Work into Canada (including any antidumping or countervailing duties). Notwithstanding anything in this Section 2.5.2 to the contrary, Owner shall retain title to the Work in accordance with Section 14.1.

## **2.6 Design; Engineering; Contractor Deliverables.**

**2.6.1** Contractor shall perform all engineering and design services within the Scope of Work in conformity with the requirements of this Agreement. All engineering work of Contractor requiring certification shall be certified, and all drawings and specifications for the Work (the "Design Documents") requiring sealing shall be sealed, in each case by professional engineers licensed and properly qualified to perform such engineering services in all appropriate jurisdictions, which engineers and their qualifications shall be subject to Owner's review under Section 2.6.4. The portion of the Work performed by Contractor for which it has design and engineering responsibility shall be designed and engineered: (i) in accordance with the Technical Specifications and all design and engineering requirements set forth in the Agreement, including, those requirements set forth in Section 2.3; and (ii) be capable of being operated safely, reliably, normally and continuously (other than Owner designated planned maintenance) for at least fifty (50) years under the climatic and normal operating conditions described in Exhibit A. No later than the dates set forth in Exhibit C-1, Contractor shall prepare and submit all Design Documents for Owner's review. Based on the Technical Specifications, Contractor shall prepare comprehensive drawings and specifications setting forth in detail the requirements for the construction of the Work. As the drawings and specifications for the Work are issued, they shall be clearly identified as Design Documents.

**2.6.2** The Contractor shall maintain at the Job Site, as required during the performance of the Work, qualified technical representatives of the manufacturers of Equipment and other qualified personnel to aid the Contractor until Provisional Acceptance all at the Contractor's cost and expense. Notwithstanding the foregoing, the Contractor shall, at its sole cost and expense, fully perform its obligation to address Defects and breaches of warranty set forth in Article VII by providing any technical assistance necessary in connection with any such Defect or breach of warranty.

**2.6.3** Contractor shall deliver the Contractor Deliverables to Owner in accordance with the Project Schedule and the Technical Specifications. All Contractor Deliverables shall be in English. All Contractor Deliverables, reports and other information furnished by Contractor, or prepared by it, its Subcontractors or others in connection with the performance of the Work, whenever provided, shall be kept by Contractor at the Job Site in an orderly and catalogued fashion for reference by Owner during the performance by Contractor of the Work.

**2.6.4** Contractor shall submit all Contractor Deliverables in electronic format to Owner in accordance with Exhibit A for review and comment as provided in the Scope of Work. Based upon Owner's comments, if any, Contractor shall resolve Owner's comments and resubmit such Contractor Deliverable to Owner for review and comment within the time periods set forth in Exhibit A. Such process shall continue until Owner approves such Contractor Deliverable. Notwithstanding anything contained herein to the contrary, Owner's review and/or acceptance of any Contractor Deliverable, or any portion thereof, shall not in any way relieve Contractor of any of its obligations or warranties set forth herein, including, but not limited to, its full responsibility for the accuracy of the dimensions, details, integrity and quality of Contractor Deliverables.

**2.7 Quality Control Program.** Not later than thirty (30) days after the Effective Date, Contractor shall submit for Owner's approval a draft Quality Control Program, which shall be substantially in the form of Exhibit Z, to be used by Contractor in the performance of the Work. Within fifteen (15) days of such submission, Owner shall notify Contractor of Owner's approval of the draft Quality Control Program, or its revisions to or rejection of all or any portion thereof. In the event Owner revises or rejects all or any portion of the draft Quality Control Program, within fifteen (15) days after receipt of notice of such revision or rejection Contractor shall make appropriate changes to the draft Quality Control Program to respond to Owner's revisions or rejection and shall resubmit such draft Quality Control Program to Owner. Such process shall be repeated until Owner accepts such Quality Control Program. Upon acceptance by Owner, Contractor shall, and shall cause its Subcontractors, comply with the Quality Control Program.

**2.8 Obtaining, Maintaining and Identifying Permits.** Contractor shall timely obtain and

maintain all Contractor Permits and any other Applicable Permit necessary for performance of the Work. In addition, Contractor shall provide all assistance reasonably requested by Owner in connection with Owner's efforts to obtain and maintain the Owner Permits, including, without limitation, witnesses testimony, depositions, preparation of exhibits, technical calculations and attending meetings. In the event that any Applicable Permit is required to perform the Work that is not identified in the Agreement, Contractor or Owner, as applicable, shall promptly, after it becomes aware of the need for such Applicable Permit, notify the other Party that such Applicable Permit is required. If such permit is of a nature typically obtained by contractors in similar projects, Contractor shall, at its sole cost and expense, be obligated to obtain and maintain such Applicable Permit on behalf of Owner. Contractor shall deliver to Owner true and complete copies of all Applicable Permits obtained by Contractor upon its receipt thereof.

**2.9 Real Property Rights.** Contractor shall comply with the terms of the Real Property Rights. As of the Effective Date, Contractor represents and warrants that it has inspected and is fully familiar with the Job Site and the Real Property Rights, and that (i) other than with respect to the status of Owner's title thereto (as to which Contractor makes no representation or warranty), the Job Site and such Real Property Rights are sufficient for Contractor to undertake and complete the Work in accordance with the Agreement, Applicable Laws, Applicable Permits, Applicable Standards and Prudent Electrical Industry Practices, and (ii) Contractor has not discovered any conditions that in Contractor's reasonable judgment would be a basis for claiming a Scope Change. Contractor shall have the sole responsibility to obtain all construction permits, transportation permits, railroad or waterway crossing rights, blasting and other seismic rights, other licenses, rights-of-way and other real property rights and easements necessary for Contractor to complete the Work that are not Owner Permits or part of the Real Property Rights.

**2.10 Consumable Parts.** Included within the Work is the provision of consumable parts for such Work and for achievement of Provisional Acceptance of such Work, including consumable supplies normally consumed in the construction and installation of Transmission Facilities (the "Consumable Parts"). Contractor shall ensure that an initial stock of Consumable Parts is in storage at the Job Site upon commencement of the Work hereunder. All Consumable Parts not used by Contractor as of the Provisional Acceptance Date shall become the property of Owner.

**2.11 Final Plans.** Thirty (30) days prior to the date on which Contractor is scheduled to achieve Provisional Acceptance, Contractor shall deliver to Owner two (2) copies of the semi-final draft of the Final Plans. A semi-final draft shall mean a draft that is as reasonably complete as available information will allow. Contractor shall provide five (5) copies of the final and complete Final Plans to Owner within ten (10) days prior to the Guaranteed Final Acceptance Date. Final Plans must be presented in a format acceptable to Owner for Final Acceptance to occur. The Final Plans shall be prepared in English only. Where any of the information in the Final Plans was produced by computer-aided design and is available to Contractor or any Subcontractor, Contractor shall provide or cause to be provided to Owner an electronic copy of such information.

## **2.12 Labour and Personnel.**

**2.12.1 Engagement of Labour.** Contractor shall provide, manage, oversee, hire, remove, promote and transfer all Labour and personnel required in connection with the performance of the Work and of its obligations hereunder, all of whom shall have had extensive experience (in the case of supervisors, managers and other key personnel) and appropriate levels of experience (in the case of other personnel) performing work similar in technology and magnitude to those portions of the Work each will perform, including: (i) a project manager; (ii) construction personnel and supervisors; (iii) professional engineers licensed to perform engineering services in each jurisdiction where the performance of the Work requires such licensing; and (iv) quality assurance personnel and supervisors, all of whom are competent to perform their assigned duties in a safe and secure manner. Contractor agrees, where required by Applicable Law or at Owner's request, to employ only licensed personnel in good standing with their respective trades and licensing authorities to perform the Work. All such professional services shall be performed with the degree of care,

safety, skill and responsibility customary among such licensed personnel.

**2.12.2 Owner Review of Labour.** Upon Owner's request, Contractor shall provide Owner with the resumes of, and arrange for the interview by Owner of, any or all management and supervisory personnel employed in connection with the Work. Owner may require the replacement of any of Contractor's or its Subcontractors' Labour, at Contractor's sole expense if, in Owner's opinion, such person is impeding the orderly progress of the Work, creating any unsafe condition or other situation that may cause damage or harm to any person or property or otherwise causing interference or delays with respect to the Work. Rejection of Contractor's Labour by Owner shall not relieve Contractor of any of its obligations hereunder or be construed as a waiver by Owner of any of its rights under the Agreement.

**2.12.3 Alcohol and Drugs.** Contractor shall not possess, consume, import, sell, give, barter or otherwise make available or dispose of any alcoholic beverages or drugs (excluding drugs for proper medical purposes and then only in accordance with Applicable Law) at the Job Site, or permit or suffer any such possession, consumption, importation, sale, gift, barter or disposal by its Subcontractors, agents or Labour and shall at all times assure that the Job Site is kept free of all such substances and that its Subcontractors, agents and Labour perform the Work free from the influence of all such substances. To the extent permitted by Applicable Law, Contractor shall perform random alcohol testing on Subcontractors, agents and Labour and shall be required to perform a drug and alcohol test on any Subcontractor, agent or Labour that Contractor or Owner reasonably suspects is in possession of or under the influence of any dangerous or controlled drug, alcohol or other such substance at any time during such Person's performance of any portion of the Work at the Job Site. Contractor shall immediately identify and remove from its or its Subcontractors' employment at the Job Site any Person (whether in the charge of Contractor or any Subcontractor) who (i) is in possession of or under the influence of any dangerous or controlled drug, alcohol or other such substance at any time during such Person's performance of any portion of the Work, excluding any Person using a prescription drug under supervision and approval from a medical doctor, or (ii) who is required to submit to a drug or alcohol test in accordance with this Section 2.12.3, pending the results of such test.

**2.12.4 Disorderly Conduct.** Contractor shall be responsible for the conduct and deeds of its Labour and its Subcontractors' Labour relating to the Agreement and the consequences thereof. Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or among such Labour and for the preservation of peace, protection and safety of Persons and property in the area of the Job Site against the same. Contractor shall not interfere with any members of any authorized police, military or security force in the execution of their duties.

**2.12.5 Labour Disputes.** Contractor shall minimize the risk of labour-related delays or disruption of the progress of the Work. Contractor shall promptly take any and all reasonable steps that may be available in connection with the resolution of violations of collective bargaining agreements or labour jurisdictional disputes, including the filing of appropriate processes with any court or administrative agency having jurisdiction to settle, enjoin or award damages resulting from violations of collective bargaining agreements or labour jurisdictional disputes. Contractor shall advise Owner promptly, in writing, of any actual or threatened labour dispute of which Contractor has knowledge that might materially affect the performance of the Work by Contractor or by any of its Subcontractors.

**2.12.6 Personnel Documents.** Contractor shall ensure that all its personnel and personnel of any Subcontractors performing the Work are, and at all times shall be, in possession of all such documents (including, without limitation, visas, driver's licenses and work permits) as may be required by any and all Applicable Laws.

**2.12.7 Non-English Speaking Employees.** Contractor's use of non-English speaking employees will not impede or adversely affect the efficient and safe prosecution of the Work.

**2.12.8 Project Management.** Contractor has designated the management team positions, as set forth on Exhibit O. Any future members of the management team must be approved by Owner in writing prior to his/her designation becoming effective, which approval shall not be unreasonably withheld. During the performance of the Work from the initial Job Site mobilization and thereafter, Contractor shall maintain continuously at the Job Site adequate management, supervisory, administrative, security and technical personnel to ensure expeditious and competent handling of all matters related to the Work, according to its determination of the staffing required for this purpose. Contractor will not re-assign, remove or replace those Persons set forth on Exhibit O without Owner's prior written consent, except to the extent Contractor no longer employs or has a contract with such Person. To the extent any change to a Person identified on Exhibit O is approved by Owner, the Parties shall enter into a Scope Change Order to update Exhibit O.

**2.13 Environmental Compliance Plan, Health Plan and Safety Plan; Emergencies; and Security.**

**2.13.1 Environmental Compliance Plan, Health Plan and Safety Plan.** No later than thirty (30) days prior to the first instance when any of Contractor or its Subcontractors' Labour or other representatives will be present on the Job Site or as otherwise required pursuant to a Limited Notice to Proceed, Contractor shall prepare and submit to Owner (i) a project specific health plan that includes health, first aid facility/area with qualified attendant and emergency procedures to be used at the Job Site (the "Health Plan"); (ii) a project specific environmental compliance plan that satisfies and complies with all of the requirements set forth in Exhibit X and which also includes, without limitation, (a) a Hazardous Materials, waste and industrial hazards management and disposal program which details the controlled usage and treatment of all Hazardous Materials, toxic wastes, industrial hazards, sanitary waste, solid waste and other waste brought onto, used or produced at the Job Site or in relation to the Work and outlines a management structure for carrying out the specific provisions of such program, (b) an environmental protection and management program, including, without limitation, a sediment and erosion control program, (c) a re-vegetation program and (d) the description, location and drawings of construction facilities and temporary works (the "Environmental Compliance Plan"); and (iii) a project specific safety plan that, at a minimum satisfies and complies with the requirements set forth in the Contractor Safety Requirements, and which plan shall also include an acknowledgement by Contractor that Contractor shall at all times remain in compliance with all federal, provincial and local safety codes and other Applicable Laws (the "Safety Plan," together with the Health Plan, the "Health and Safety Plan"). Each of the Health and Safety Plan and the Environmental Compliance Plan shall be consistent with all Applicable Laws, and Applicable Permits and shall be submitted to Owner for review and comment. Contractor shall either promptly make changes to such Health and Safety Plan and/or Environmental Compliance Plan incorporating the comments of Owner or negotiate and resolve in good faith with Owner any such changes. Contractor shall comply and shall cause its Subcontractors comply with the Health and Safety Plan and the Environmental Compliance Plan and the Contractor Safety Requirements, and to follow all other safety measures and procedures implemented by Owner or the Utility at the Job Site. Without limiting the generality of the foregoing, Contractor shall furnish and maintain all necessary safety equipment such as barriers, signs, warning lights and guards as required to provide adequate protection to Persons and property during the term of this Agreement. Contractor shall be responsible for (x) all damage it and its Subcontractors cause to public roads and highways, (y) all damage caused by it and its Subcontractors to private roads or property of third parties, in each case in connection with performance of the Work, and (z) all injury resulting from a failure of its agents, employees or Subcontractors to abide by the requirements of the Health and Safety Plan and the Environmental Compliance Plan, in each case in connection with performance of the Work. Without limiting Contractor's obligations under this Agreement, Contractor acknowledges and agrees that its compliance with OHSA includes, without limitation, the preparation, filing and posting of the "Notice of Project" prior to the start of any onsite Work and shall identify Owner as "Owner" and Contractor as "Constructor" as defined by OHSA.

**2.13.2 Constructor Responsibilities.** Without limiting the generality of Contractor's obligations under Section 2.13.1, and notwithstanding anything in this Agreement to the contrary, until the Final Acceptance Date, the Contractor shall: (i) be, and fulfill all of the duties and obligations of, the

“constructor” (as that term is defined under OHSA) with respect to the Work and work and other activities performed by Owner and other contractors and other service providers employed by Owner at the Job Site (e.g., telephone and metering installation) for the purposes of OHSA; (ii) have complete and sole responsibility for all health and safety matters regarding the Work and work and other activities performed by Owner and other contractors and subcontractors at the Job Site, including, without limitation, compliance with all requirements pursuant to Applicable Laws, familiarizing all relevant Persons with the provisions of OHSA that apply to the Work and work performed by Owner and other contractors and subcontractors at the Job Site and all potential or actual dangers to health and safety in the workplace and as otherwise set out in this Agreement; (iii) initiate, maintain and take complete responsibility for supervising health and safety precautions and programs necessary to comply with Applicable Laws and to prevent injury to Persons or damage to property on, about or adjacent to the Job Site; (iv) be responsible for submission of the required “Notice of Project” and registration form under OHSA; and (v) comply with the pre-start safety review in accordance with OHSA. On and after the Final Acceptance Date, Contractor shall comply with the safety, health and project regulations, policies or directives of Owner and promptly remove from the Job Site anyone under the control of Contractor who violates any of the aforesaid safety, health, or plant regulations, policies or directives or upon reasonable request of Owner.

**2.13.3 Emergencies.** In the event of any emergency endangering Persons or property during the performance of the Work, Contractor shall take such action as may be reasonable and necessary to prevent, avoid or mitigate injury, damage or loss and shall, as soon as possible, report any such incidents, including Contractor’s response thereto, to Owner. Whenever Contractor has not taken reasonable precautions for the safety of the public or the protection of the Work or of structures or property on or adjacent to the Job Site, Owner may, but shall be under no obligation to, take such action as is reasonably necessary under the circumstances. The taking of such action by Owner or Owner’s failure to do so shall not limit Contractor’s obligations or liability hereunder. Contractor shall reimburse Owner for any costs incurred by Owner in taking such actions in the event of an emergency.

**2.13.4 Security.** Contractor shall be responsible for the security and protection of the Equipment, machinery and components comprising the Work and other property owned or leased by Contractor or any Subcontractor located at the Job Site or stored or warehoused off the Job Site through the Final Acceptance Date. Contractor shall use the same care to protect any of Owner’s property at any time in its possession or under its control while performing the Work as it does with its own property and shall be responsible for any damage to such property resulting from its failure to use such care.

## **2.14 Hazardous Materials.**

**2.14.1 Contractor Duty to Monitor Compliance.** Contractor shall, and shall cause its Subcontractors to, comply with all Applicable Laws relating to Hazardous Materials and all Applicable Permits. Without limiting the generality of the foregoing: (i) Contractor shall, and shall cause its Subcontractors to, apply for, obtain, comply with, maintain and renew all Applicable Permits required of Contractor by Applicable Laws regarding Hazardous Materials that are necessary, customary or advisable for the performance of the Work. Contractor shall, and shall cause its Subcontractors to, comply with all waste generation facility, generator registration, manifesting, and reporting requirements for the generation, storage, handling, transportation and disposal of Hazardous Material under the Agreement if and as required under Applicable Laws or Applicable Permits; (ii) Contractor shall conduct its activities under the Agreement, and shall cause each of its Subcontractors to conduct its activities, in a manner designed to prevent pollution of the environment or any other release of any Hazardous Material by Contractor and its Subcontractors in a manner or at a level requiring remediation pursuant to any Applicable Law and/or Applicable Permit; (iii) Contractor shall not cause or allow the release or disposal of Hazardous Material at the Job Site, bring Hazardous Material to the Job Site, or transport Hazardous Material from the Job Site, except in accordance with Applicable Law and Applicable Permits. Contractor shall be responsible for the management of and proper disposal of all Hazardous Material brought onto or generated at the Job Site by it or its Subcontractors, if any. Contractor shall cause all such Hazardous Material brought onto or generated at the Job Site by it or its Subcontractors, if

any, (A) to be transported only by carriers maintaining valid permits and operating in compliance with such permits and laws regarding Hazardous Material pursuant to manifest and shipping documents identifying only Contractor as the generator of waste or person who arranged for waste disposal, and (B) to be treated and disposed of only at treatment, storage and disposal facilities maintaining valid permits operating in compliance with such permits and laws regarding Hazardous Material, from which, to the best of Contractor's knowledge, there has been and will be no release of Hazardous Material. Contractor shall submit to Owner a list of all Hazardous Material to be brought onto or generated at the Job Site prior to bringing or generating such Hazardous Material onto or at the Job Site. Contractor shall keep Owner informed as to the status of all Hazardous Material on the Job Site and disposal of all Hazardous Material from the Job Site.

**2.14.2 Environmental Releases.** Contractor shall perform the Work and turn the Work over to Owner in a manner that is environmentally sustainable, prevents the discharge or release of Hazardous Materials to the environment, and fully protects all waterways, watersheds, habitats and lands in proximity to the Job Site, from any and all environmental impacts. If Contractor or any of its Subcontractors releases any Hazardous Material on, at, or from the Job Site, or becomes aware of any Person who has stored, released or disposed of Hazardous Material on, at, or from the Job Site during the Work, Contractor shall immediately notify Owner in writing. If Contractor's Work involved the area where such release occurred, Contractor shall immediately stop any Work affecting the area. Contractor shall, at its sole cost and expense, diligently proceed to take all necessary or desirable remedial action to clean-up fully the contamination caused by (A) any negligent release or exacerbation by Contractor or any of its Subcontractors of any Pre-Existing Hazardous Material, and (B) any Hazardous Material that was brought onto the Job Site by, or used in performance of the Work by, Contractor or any of its Subcontractors, whether on or off the Job Site. If Contractor discovers any Pre-Existing Hazardous Material that has been stored, released or disposed of at the Job Site, Contractor shall immediately notify Owner in writing. If Contractor's Work involves the area where such a discovery was made, Contractor shall immediately stop any Work affecting the area and Owner shall determine a reasonable course of action. Contractor shall not, and shall cause its Subcontractors to not, take any action that may exacerbate any such Pre-Existing Hazardous Material or cause or permit its discharge, further discharge or migration from the Job Site.

**2.14.3 Designated Substance.** Contractor acknowledges that: (i) prior to the negotiation and execution of this Agreement, Owner conducted an environmental assessment of the Job Site and provided the results to the Contractor as set out in Exhibit CC-1; and (ii) in light of the nature of the Project and the large geographic expanse of the Job Site, such assessment represents a genuine and reasonable determination as to Pre-Existing Hazardous Materials which are a "designated substance" as defined under the OHSA and its regulations, and which are potentially present at the Job Site. Contractor agrees to proceed with the Work in light of the results of due diligence assessment in Exhibit CC-1, and shall take all appropriate precautions in preparing for and conducting the Work as it relates to such potentially present designated substances, and shall comply with all obligations imposed upon in by the OHSA in respect of "designated substances" that may be encountered by Contractor and its Subcontractors at the Job Site.

**2.14.4 Recordkeeping.** Contractor shall maintain an updated file of all material safety data sheets for all Hazardous Materials used in connection with performance of the Work or at or near the Job Site and shall deliver an update of such file to Owner no later than ten (10) Business Days after the end of each month. Contractor shall maintain an accurate record and current inventory of all Hazardous Materials used in performance of the Work or at or near the Job Site, which record shall identify quantities, location of storage, use and final disposition of such Hazardous Materials.

**2.15 Clean-up; Non-Interference.** Contractor shall at all times keep the Job Site reasonably free from waste materials or rubbish related to the Work. Contractor shall maintain the Job Site in a neat and orderly condition throughout the performance of the Work. Prior to the Final Acceptance Date or as soon as practicable after termination of this Agreement by Owner in accordance with the provisions of Article XIII, Contractor shall remove all of Contractor Equipment and materials not constituting part of the Work (other than equipment, supplies and materials necessary or useful to the operation or maintenance of the Work and

equipment, supplies and materials directed by Owner to remain at the Job Site until completion of the Work) and complete removal of all waste material and rubbish from and around the Job Site. All waste material and rubbish resulting from the Work shall be handled and disposed of by Contractor at its own expense in accordance with all Applicable Laws and Applicable Permits. Contractor shall provide to Owner all waste disposal manifests, if any. Contractor shall re-grade and/or re-seed areas disturbed as a result of the performance of the Work.

## **2.16 Books and Records; Job Books.**

**2.16.1 Books and Records.** During the term of the Agreement and continuing for seven (7) years after the Final Acceptance Date, Owner or its representatives or agents may audit, examine and/or copy, at any time during the office hours of the Contractor, the Contractor's books, records, accounts, relevant correspondence, specifications, time cards, drawings, designs and other documents, to the extent that these are related to the Work and insofar as Owner believes necessary (i) to verify items paid by the Owner pursuant to the Agreement, (ii) to verify Contractor's compliance with this Agreement or (iii) for Owner's Tax or regulatory filings or exemptions or positions advocated by Owner.

**2.16.2 Job Books.** Not later than thirty (30) days prior to the Guaranteed Provisional Acceptance Date, Contractor shall deliver to Owner two (2) copies of the semi-final draft of the Job Books, either in job book format or in form and format available as a result of the design and construction process, as appropriate. A semi-final draft shall mean a draft that does not contain final As-Built Drawings and documentation, but is as reasonably complete as available information will allow, containing at a minimum sufficient information to permit the conduct of operator training and operation, repair and modification of the Transmission Facilities by Persons generally familiar with machinery and equipment similar to that comprising the Transmission Facilities. Contractor shall provide two (2) paper copies and two (2) compact disk (data type, not audio) sets of the final and complete Job Books to Owner within thirty (30) days after the Final Acceptance Date. The Job Books shall be prepared in English only. Where any of the information in the Job Books was produced by computer-aided design and is available to Contractor or any Subcontractor, Contractor shall provide or cause to be provided to Owner a disk copy of such information. Owner shall have a license to use such information.

## **2.17 Owner's Right to Inspect; Correction of Defects.**

### **2.17.1 Right to Inspect.**

(a) Owner, its authorized representatives and, with Owner's prior approval, any of Owner's other contractors, the Financing Parties and any of their authorized representatives, shall have the right to inspect the Work and to maintain personnel at the Job Site for such purpose, subject in all cases to Contractor's reasonable safety precautions. Contractor shall include rights in all Subcontracts to permit Owner, the Financing Parties and any of their authorized representatives to audit, inspect, test and observe the Equipment at the facilities of any Subcontractor and the manufacturer of Equipment, and Contractor shall ensure reasonable, adequate and safe access to such facilities for such purposes.

(b) If any portion of the Work should be covered contrary to the request of Owner or contrary to requirements specifically expressed in the Agreement, such portion of the Work shall, if requested by Owner, be uncovered for observation and shall be replaced at Contractor's expense. If any portion of the Work has been covered which Owner has not specifically requested to observe prior to being covered, Owner may request to see such Work and Contractor shall uncover it. If such portion of the Work is found not to be in accordance with the requirements of this Agreement, the cost of uncovering, replacement and re-covering shall be charged to Contractor. If such portion of the Work is found to be in accordance with the requirements of this Agreement, Owner shall pay such costs pursuant to an appropriate Scope Change Order in accordance with Article IX. Such inspection of any part of the Work shall in no way relieve



Contractor of its obligation to perform the Work in accordance with this Agreement.

(c) Contractor shall perform such detailed inspection of Work in progress at intervals appropriate to the stage of construction of the Work and the fabrication of Equipment at the facilities of Subcontractors and the manufacturer of Equipment as is necessary to ensure that such Work is proceeding in accordance with the Agreement and to protect Owner against Defects and deficiencies in such Work. With respect to any inspection or test of the Work performed by Contractor, Contractor (i) shall advise Owner of any Defects and deficiencies revealed through such inspections or tests and of the measures proposed by Contractor to remedy such deficiencies in order to avoid any delay in the completion of the Work and Contractor's performance of the Work; provided that, any such notice provided pursuant to this Section shall not constitute a request for adjustment, extension or modification of the Project Schedule or Owner's consent to any of the same; and (ii) shall, upon Owner's request, provide Owner with a reasonable opportunity to review Contractor's records with respect to such inspections or tests.

**2.17.2 Correction of Defects.** Contractor shall, at its own cost and expense, correct or replace any Work that contains a Defect, or is not otherwise in compliance with the terms and requirements of the Agreement. Equipment that has been replaced, if situated on the Job Site, shall be removed by Contractor from the Job Site at Contractor's own cost and expense. If Contractor fails within a reasonable period of time (as reasonably determined by Owner) after it knows or should have known of such Defect or noncompliance or neglects to commence and continue correction of such Defect or noncompliance with diligence and promptness, Owner may, without prejudice to other remedies Owner may have under the Agreement, correct such Defect or noncompliance. In such event, an appropriate Scope Change Order shall be issued deducting from payments then or thereafter due to Contractor the cost of correcting such Defect or noncompliance, including compensation for the costs to enforce this provision (including legal fees) and any consultant's additional services and expenses made necessary by such neglect or failure. If payments then or thereafter due to Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to Owner within three (3) days from Owner's request therefor. Contractor shall correct any and all Defects and noncompliance as required by the Agreement notwithstanding any actual or possible legal obligation or duty of a Subcontractor concerning same and nothing contained in this Section shall modify Contractor's obligations under the Agreement.

## **2.18 Liens**

**2.18.1** Contractor shall not suffer to be created any Lien in respect to the Project, the Work, the Agreement, the Equipment, the Job Site, the property of an adjacent operator or other neighbouring property, or any fixtures or personal property included in the Work (whether or not any such Lien is valid or enforceable) created by, through or under, or as a result of any act or omission (or alleged act or omission) of, Contractor or any Subcontractor, or other Person providing Labour or materials within the Scope of Work. Contractor shall immediately notify Owner in writing of the assertion of any Lien, whether by registration on title of a Lien or delivery of a notice of Lien that is not registered on title.

**2.18.2** Contractor shall, at Contractor's sole expense, within ten (10) days of the earlier of (i) receipt of a written demand from Owner and (ii) the Contractor having knowledge of or should have had knowledge of the assertion of any Lien, vacate or discharge the Lien from title to the premises, cancel the notice of Lien, or make alternative arrangements consented to by Owner in writing to bond or otherwise secure the amount of the Lien claim and costs associated therewith, as the case may be, in accordance with Applicable Law.

**2.18.3** In the event that Contractor fails or refuses to vacate or discharge a Lien, cancel a notice of Lien, or make alternative arrangements to bond the amount of Lien claim and costs associated therewith, as the case may be, within ten (10) days, Owner shall, at its option, be entitled to take all steps necessary to vacate and/or discharge Lien, or cancel the notice of Lien by paying monies into court or posting security in accordance with the Construction Lien Act, and all costs and expenses incurred by Owner in so

doing (including all losses and the cost and amount of the security posted to vacate Lien) shall be for the account of Contractor, and Owner may draw down and use funds from the Letter of Credit for such purpose and/or deduct such amounts from amounts otherwise due or owing to Contractor. If Owner vacates a Lien, it shall be entitled to retain all amounts it would be required to retain pursuant to the Construction Lien Act if Lien had not been vacated.

**2.18.4** Except (i) as otherwise expressly prohibited under the Construction Lien Act or (ii) claims for which Contractor has delivered a dispute notice to Owner in accordance with the time periods set forth in this Agreement, in consideration of each payment to Contractor hereunder and on the date of any Request for Payment hereunder, Contractor does hereby unconditionally and irrevocably waive, release, remise, relinquish and quit claim all actions, claims and demands, of any kind whatsoever, which Contractor ever had or then has (or, upon final payment hereunder, may have in the future), known against the Work, the Project, the property on which the Work or the Project is located, or against Owner, its Affiliates, at all tiers, and its and their insurers, sureties, employees, officers, directors, representatives, partners, members, shareholders, agents, and all Persons acting for any of them, including, without limitation, all claims related to, in connection with, or arising out of, all facts, acts, events, circumstances, changes or extra work, constructive or actual delays or accelerations, interferences and the like which have occurred or may be claimed to have occurred. Contractor acknowledges and agrees that the releases and waivers given by Contractor pursuant to this Section 2.18.4 shall be provided to Owner from time to time at the same times as the CCDC 9A statutory declarations are required under this Agreement, and are freely and voluntarily given by Contractor, and Contractor has had the advice of counsel in connection herewith and is fully informed as to the legal effects of such releases and waivers.

**2.19 Cooperation and Non-Interference with Other Owner Contractors.** Contractor shall cooperate with Owner in connection with Owner's efforts to obtain the approvals, certificates, financing, Applicable Permits and Owner's commissioning and testing of the Project. Contractor acknowledges that work may be performed by others at or near the Job Site during the execution of Work under this Agreement. Contractor further acknowledges that Owner, through itself or through its employees, subcontractors or agents, will continue to work and perform activities in connection therewith at the Job Site during the execution of the Work under this Agreement. In addition to Contractor's obligations under Section 2.13 regarding safety for any such persons at the Job Site, Contractor shall cooperate and cause its Subcontractors to cooperate with Owner and other unrelated contractors and the Utility who may be working at or near the Job Site in order to assure that neither Contractor, nor any of its Subcontractors unreasonably hinders or increases, or makes more difficult than necessary the work being done by Owner, other unrelated contractors and the Utility. Contractor agrees to perform the Work in full cooperation with such others and to permit, without charge, reasonable access to, and use of, the Job Site and the Work, by said others or by Owner, whether such Work is partially or entirely complete, when, in the judgment of Owner, such access or use is necessary for the performance and completion of the work of others. All material and Labour shall be furnished, and the Work performed, at such time or times as shall be for the best interest of all contractors concerned, to the end that all Work, and the work of any separate contractor, will be properly coordinated and completed in accordance with the applicable schedules and the times of completion required by the Agreement. Notwithstanding any other provision in this Agreement to the contrary, Contractor shall not communicate with the Financing Parties and their independent engineer and technical advisors, if any, except with the prior written consent of Owner.

**2.20 Intellectual Property Rights.** Contractor agrees to obtain and maintain, until the later of completion of the Work (including warranty obligations) or the expiration of the Warranty Period, all trade secrets, patents, copyrights, trademarks, proprietary rights or information, licenses or other intellectual property rights (collectively, the "Intellectual Property Rights") necessary for performance of the Work. Contractor hereby grants to Owner and its Affiliates an irrevocable, non-exclusive, perpetual, royalty-free license under all Intellectual Property Rights whether now existing or developed for the Work, now or hereafter owned, licensed to or controlled by Contractor or any of its Affiliates, to the extent necessary for the completion, operation, maintenance, repair, rebuilding, alteration and expansion of the Work for the Project and all subsystems and components thereof including the rights to disclose and sub-license to third parties as

required for such purposes. Owner shall have the right to assign the benefit of such license to any Financing Party in connection with granting a security interest in the Transmission Facilities, to a purchaser in connection with a transfer of the Transmission Facilities, or to any subsequent purchaser or assignee of same. Any such purchaser or assignee shall acquire such license subject to the same terms and restrictions as stated in this Section 2.20.

**2.21 Additional Contractor Responsibilities.** Contractor shall (and shall cause its Subcontractors) to comply with all Additional Contractor Responsibilities in connection with Agreement, including, without limitation, the performance of the Work and any other activities at the Job Site.

2.22 Letter of Credit. Within [REDACTED] after the date hereof, Contractor shall deliver to Owner [REDACTED] standby letter of credit in favour of Owner [REDACTED]

(“Issuing Bank”) meeting the requirements of this Section 2.22 and in form and substance as set forth on Exhibit J herein (the “Letter of Credit”).

\_\_\_\_\_ The Letter of Credit shall constitute security for Contractor's obligations hereunder. Owner may, in its sole discretion, assign the Letter of Credit and such written commitment to any Financing Party, lending agency, trustee or their assignees or designees without the consent of Contractor. \_\_\_\_\_

\_\_\_\_\_ The Letter of Credit shall comply with and be subject to the following terms and conditions:

**2.22.1** Upon issuance, the Letter of Credit shall have a face amount equal to

### 2.22.2

### 2.22.3

### 2.23 Anti-Bribery.

**2.23.1** Contractor represents and warrants that neither Contractor nor any past or present shareholder, member, partner, director, officer, parent, subsidiary or Affiliate, employee, representative or agent of Contractor or any other Person acting on Contractor's behalf (any of the foregoing being a "Contractor Agent") (at any time during which such Person was a shareholder, member, partner, director, officer, parent, subsidiary or Affiliate, employee, representative or agent of Contractor) has directly or indirectly, paid, promised or offered to pay, or authorized the payment of any money or anything of value to:

(i) an officer, employee, agent or representative of any government (including, without limitation, Aboriginal governments), including any department, agency or instrumentality of any government or any government-owned or government controlled entity or any Person acting in an official capacity on behalf thereof; or (ii) a candidate for political office, any political party or any official of a political party; or (iii) any other Person while knowing or having reason to believe that some portion or all of the payment or thing of value will be offered, given or promised, directly or indirectly, to any Person described in this Section 2.23; in each case under clause (i), (ii) or (iii) above, for the purpose of influencing any act or decision of such government official, political party, party official, or candidate in his or its official capacity, including a decision to do or omit to do any act in violation of the lawful duty of such Person, or inducing such Person to use his or its influence with the government or instrumentality thereof to affect or influence any act or decision.

**2.23.2** Contractor agrees that neither it nor any Contractor Agent or Subcontractors will violate any applicable anti-bribery laws. Without limiting the foregoing, Contractor agrees that it will not (and shall cause each Contractor Agent and Subcontractor not to), directly or indirectly, pay, promise or offer to pay, or authorize the payment of any money or anything of value to (including a "grease," "expediting" or facilitation payment): (i) an officer, employee, agent or representative of any government (including, without limitation, Aboriginal governments), including any department, agency or instrumentality of any government or any government-owned or government controlled entity or any Person acting in an official capacity on behalf thereof; or (ii) a candidate for political office, any political party or any official of a political party; or (iii) any other Person while knowing or having reason to believe that some portion or all of the payment or thing of value will be offered, given or promised, directly or indirectly, to any Person described above; in each case under clause (i), (ii) or (iii), for the purpose of influencing any act or decision of such government official, political party, party official, or candidate in his or its official capacity, including a decision to do or omit to do any act in violation of the lawful duty of such Person, or inducing such Person to use his or its influence with the government or instrumentality thereof to affect or influence any act or decision, for the benefit of Owner, Contractor or any Contractor Agent or Subcontractor in connection with the Agreement.

**2.23.3** In addition, no payment shall be made to anyone for any reason on behalf of or for the benefit of Owner which is not properly and accurately recorded in Contractor's, any Contractor Agent's and Subcontractors' books and records, including the amount, purpose and recipient, all of which shall be maintained with supporting documentation. For seven (7) years after Contractor's receipt of the last payment made under this Agreement, Owner shall have the right to audit the Contractor's books and records with respect to payments made to anyone for any reason on behalf of or for the benefit of Owner.

**2.23.4** Contractor agrees to provide prompt written notice to Owner in the event that the performance of Work will require any Contractor Agent to, directly or indirectly, interact with, on behalf of Owner or any Owner Affiliate, (i) any officer, employee, agent or representative of any government, including any department, agency or instrumentality of any government or any government-owned or government controlled entity or any Person acting in an official capacity on behalf thereof, or (ii) a candidate for political office, any political party or any official of a political party. Contractor agrees that no Contractor Agent shall engage in any such activity without the prior written consent of Owner.

**2.24 Waiver of Responsibility.** No inspection made, acceptance of Work, payment of money or approval given by Owner shall be deemed a waiver of any provision by Owner or relieve Contractor of its obligations for the proper performance of the Work in accordance with the terms hereof. Owner may reject any Work with Defects or which is not in accordance with the requirements of the Agreement, regardless of the stage of completion, the time or place of discovery of error, and whether Owner previously accepted any or all of such Work through oversight or otherwise. No approval given by Owner shall be considered as an assumption of risk or liability by Owner. Any such approval shall mean that Owner has no objection to the adoption or use by Contractor of the matter approved at Contractor's own risk and responsibility. Contractor shall have no claim relating to any such matter approved, including any claims relating to the failure or inefficiency of any method approved.

**2.25 Project Controls Requirements.** Contractor shall comply with the requirements of Exhibit C-2 hereto.

**2.26 Archaeological Resources.** In the event any archaeological sites, places, monuments or areas are discovered or identified by Contractor during the performance of Work under the Agreement, Contractor shall leave such sites untouched and protected by fencing and shall immediately stop any Work affecting the area. Contractor promptly shall notify Owner of any such discovery as soon as practicable, and Contractor shall carry out Owner's instructions for dealing with the same. All fossils, coins, articles of value or antiquity and structures and other remains or things of geological, archaeological, historical, religious, cultural or similar interest discovered on the Job Site shall, as between Owner and Contractor, be deemed to be the absolute property of Owner. Contractor shall prevent its and its Subcontractors' Labour and any other Persons from removing or damaging any such article or thing. If Contractor discovers such sites, articles or things and their existence actually, demonstrably, adversely and materially affects (i) the Critical Path of the Work and (ii) performance of Contractor's obligations in accordance with the terms of the Agreement, then Contractor shall promptly, but in any event within five (5) days after any such discovery, notify Owner thereof and Owner shall either (x) issue a Scope Change Order to address the effect (if any) on the Contract Price and/or the Project Schedule as a result of the discovery of any archaeological sites or articles or (y) terminate this Agreement pursuant to Section 13.3.

**2.27 MNRF Sensitive Data.** Contractor shall cause each of Contractor's Recipients who have a need to view the MNRF Sensitive Data to have successfully completed either (i) the Full Day Data Sensitivity Training, or (ii) the Understanding Sensitive Information Training under the supervision of another employee or person who has successfully completed the Full Day Data Sensitivity Training. It is understood and agreed by Contractor that Contractor shall cause each of Contractor's Recipients who have a need to view the MNRF Sensitive Data to: (a) use the MNRF Sensitive Data solely for purposes of completing the Work for the Project and for no other use or purpose; (b) reproduce all applicable notices that appear on the MNRF Sensitive Data when received on all copies made by each of Contractor's Recipients who have a need to view the MNRF Sensitive Data; and (c) not display the MNRF Sensitive Data related to the location of Provincially Tracked Species in a document to be made available to any Person other than Owner, except in accordance with the Sensitive Data Location Standards and agreed to by Owner in writing.

### **ARTICLE III. SUBCONTRACTORS**

#### **3.1 Subcontractors and Assignment of Subcontracts.**

**3.1.1 Subcontractors.** Owner acknowledges that Contractor intends to have portions of the Work accomplished by Subcontractors qualified to perform such Work pursuant to written subcontracts between Contractor and such Subcontractors; provided, that Contractor may not enter into any contract with a Major Subcontractor unless the Major Subcontractor is named on Exhibit I or has been approved by Owner in accordance with Section 3.2 and that Contractor shall provide Owner with the right to inspect all aspects of the Work at facilities of each Major Subcontractor to the extent practical. Contractor shall be solely responsible for engaging, managing, supervising and paying all such Subcontractors. Contractor shall require that all Work performed, and all Equipment provided by Subcontractors are received, inspected and otherwise furnished in accordance with the Agreement, and Contractor shall be solely liable for all acts, omissions, liabilities and Work (including Defects therein) of such Subcontractors and of Persons directly or indirectly employed by them. All contracts with Subcontractors shall be consistent with the terms and provisions of the Agreement. At a minimum, all subcontracts shall require the Subcontractors to comply with Applicable Laws and Applicable Permits, shall provide that Owner has the right of inspection as provided hereunder and require such Subcontractors to (a) be subject to the Labour obligations hereunder as well as the safety and security provisions of the Agreement, (b) provide guarantees and warranties with respect to its portion of the Work and the Equipment, (c) with respect to Major Subcontractors, provide certificates of insurance as set forth herein,

and (d) be subject to the dispute resolution procedures as required herein. All subcontracts shall preserve and protect the rights of Owner, shall not prejudice such rights and shall require each Subcontractor to enter into similar agreements with other Subcontractors. Except as hereinafter provided, no contractual relationship shall exist between Owner and any Subcontractor with respect to the Work to be performed hereunder. Contractor shall require and shall cause all Subcontractors to perform their portions of the Work in accordance with the requirements of the Agreement. Nothing contained herein shall obligate Owner to pay any Subcontractor and Contractor shall be solely responsible for paying each Subcontractor and any other Person to whom any amount is due from Contractor in connection with the Work.

**3.1.2 Subcontract Third-Party Beneficiary.** In addition to the requirements set forth in Section 3.1.1, Contractor shall include in each subcontract entered into with Subcontractors the following language to make Owner an express third-party beneficiary of such subcontract:

“The parties hereto agree and acknowledge that the services/work/equipment to be provided hereunder by [subcontractor] will be incorporated into the transmission facilities being developed by [Owner] who is not a party to this subcontract and who has no obligations under this subcontract. As such, the parties expressly agree that the Contractor is a trustee of the Owner for the limited purpose of holding in trust for the Owner the benefit of the applicable covenants, warranties, and guarantees relating to such services/work/equipment. Owner is a third-party beneficiary of this [Agreement] entitled, in its own name or in the name of [Contractor], to enforce this [Agreement] against [subcontractor]. The parties agree that the Beneficiary may, at its option, enforce such rights and promises in their own right (and shall not be required to add Contractor as a party to any proceedings for such enforcement).”

**3.1.3 Assignment.** No subcontract or purchase order shall bind or purport to bind Owner, but each subcontract entered into between Contractor and a Subcontractor with respect to the Work shall contain a provision permitting its assignment to Owner upon Owner’s written request, following default by Contractor or termination or expiration of this Agreement.

**3.1.4 Subcontractor Warranties.** Without in any way derogating Contractor’s representations and warranties and other testing requirements and guarantees set forth herein with respect to all of the Work, Contractor shall use reasonable efforts to obtain from all Subcontractors any representations, warranties, guarantees, and obligations offered by such Subcontractors and to negotiate the longest reasonably practicable warranty periods at no additional cost with respect to design, materials, workmanship, Equipment, tools, supplies, and other items furnished by such Subcontractors. Contractor shall assign all representations, warranties, guarantees, and obligations of all Subcontractors at the request and direction of Owner, and without recourse to Contractor, to Owner upon default by Contractor or termination or expiration of this Contract; provided, however, that, notwithstanding such assignment, Contractor shall be entitled to enforce each such representation, warranty, guaranty, and obligation so long as Contractor has any liability under this Agreement. Contractor hereby assigns to Owner, effective as of the end of the Warranty Period, all representations, warranties, guaranties and obligations of all Subcontractors.

**3.2 Major Subcontracts.** Exhibit I contains a list of approved Major Subcontractors. In the event that Contractor is considering the selection of a Subcontractor not listed in Exhibit I for a Major Subcontract, Contractor shall (i) notify Owner of the proposed Major Subcontractor at the earliest practical point in its selection process and furnish to Owner all information reasonably requested by Owner with respect to Contractor’s selection criteria (including copies of bid packages furnished to prospective Major Subcontractors and the qualifications of proposed Major Subcontractors) and (ii) notify Owner no less than fifteen (15) Business Days prior to the proposed date of execution of a Major Subcontract. Owner shall have the right to reject any proposed Major Subcontractor or Major Subcontract, and Contractor shall not enter into any Major Subcontract with a proposed Major Subcontractor rejected by Owner. Owner shall undertake in good faith to review the information provided by Contractor expeditiously and shall notify Contractor of any

such rejection as soon as practicable after such decision is made. If at the end of the fifteen (15) Business Days after receipt of such information by Owner Contractor has not received notice of Owner's rejection of the proposed Major Subcontractor or Major Subcontract, Contractor shall have the right to execute such agreement with the proposed Major Subcontractor and such Major Subcontractor shall be deemed added to the list of approved Subcontractors in Exhibit I. Approval (or deemed approval) of any Major Subcontractor under this paragraph shall only be for the portion of the Work so approved. Contractor hereby acknowledges and agrees that the review and/or acceptance of any subcontract by Owner and the acceptance of the approved Major Subcontractors shall not (i) modify, in any way, the obligations of Contractor pursuant to the Agreement; or (ii) be raised as a claim or as a defense or counterclaim to any claim in connection with the Agreement.

## **ARTICLE IV. CONTRACT PRICE**

### **4.1 Contract Price.**

**4.1.1** As full consideration and payment to Contractor for completing and furnishing the Work, Owner agrees to pay Contractor an amount, equal to [REDACTED], subject to any price adjustments as may arise from time to time pursuant to this Section 4.1. The Contract Price is a fixed price and is stated in Canadian dollars and is not subject to adjustment for exchange rate fluctuations. For the purpose of accounting requirements, the Contract Price is broken down by WBS element as set forth in Exhibit B-1.

**4.1.2** The Contract Price is fixed, subject to any price adjustments as may arise from time to time pursuant to Article IX.

**4.1.3** The following amounts and only the following amounts that may be payable to Contractor pursuant to the terms hereof are in addition to the Contract Price: (i) interest payable on overdue payments by Owner hereunder that are not being disputed by Owner; and (ii) indemnification payments pursuant to Article X.

### **4.2 Taxes.**

**4.2.1 Contract Price.** The Contract Price is inclusive of any Tax (other than any applicable HST as noted in Section 4.2.4), benefits and burdens of Persons with respect to the Work performed thereby. For greater certainty, the Contract Price excludes applicable HST on all equipment and materials that are not conveyed to Owner as part of this Agreement.

**4.2.2 Contractor Taxes.** Except as otherwise provided herein, Contractor shall pay all Taxes payable by Contractor under Applicable Law, plus any Commodity Taxes (other than HST and real property Taxes as noted in Section 4.2.3) payable by Owner under Applicable Law as levied on the Work or in connection with Contractor's performance hereunder, including without limitation, applicable HST on all materials, supplies and equipment supplied to Contractor in respect of the Work or this Agreement, Taxes based on or related to the income, receipt, capital or net worth of Contractor, Contractor's or its Subcontractors' Labour or income, HST on Contractor owned, leased or rented equipment, all personal property taxes assessed, if any, by any Governmental Authority with respect to or against any Contractor equipment located at the Job Site, and any amounts related to licenses and permits required for Contractor to carry on business or perform any Work or deliver any goods (collectively, "Contractor Taxes"). Contractor will be responsible for any sales and use Tax related to the items purchased for their own consumption. Owner Taxes, shall be governed by the Section below, and shall not be included within the term "Contractor Taxes." Contractor and Owner agree that sales and use Taxes (or other similar transfer or transaction Taxes) will be governed by Section 4.2.4 below. Contractor shall cooperate with Owner to minimize Taxes. Contractor shall act as importer of record for all goods to be imported into Canada for consumption, use or supply in the performance of the Work and pay all Commodity Taxes in respect of such import.

**4.2.3 Owner Taxes.** Owner shall pay all real property Taxes assessed by the Province of Ontario against real property owned by Owner, plus all income and capital Taxes of the Owner. Except as set forth in the preceding sentence, all other Commodity Taxes payable by the Owner under Applicable Law are included in the Contract Price and shall deemed Contractor Taxes and the responsibility of Contractor to remit to the applicable Governmental Authority.

**4.2.4 Sales Tax and HST.** Owner and Contractor agree that this Agreement is a real property improvement contract. As such, Owner and Contractor acknowledge that the Contractor will be deemed the ultimate consumer of the materials and supplies used to perform the Work and will be responsible for paying the HST to Contractor's suppliers on all purchases. Contractor shall bill the Owner, as required by Applicable Law, HST due on the Contract Price as a separate line item. Contractor agrees to take such action as may be reasonably required by Owner to allow any of the property included within the Project to qualify for any applicable Tax exemptions. Contractor shall, as required by Applicable Law, pay HST on materials and equipment, and Contractor shall pay HST on all materials and equipment physically incorporated in the Project, purchased by Contractor that are not subject to exemption. In the event that an assessment for HST is levied against Contractor on materials and equipment subject to exemption, Contractor shall promptly notify Owner and furnish to Owner a copy of such assessment. If Owner determines that the assessment should be contested and so notifies Contractor in writing, Owner may file such documents as are necessary to contest such assessment. Owner shall exclusively control any contest, assessment or other action regarding any such Taxes or assessments, or any penalties or interest in respect thereof. Contractor shall cooperate with and assist Owner in any contest or proceeding relating to HST assessed or paid on materials and equipment included in this Agreement. In the event that Owner is required to pay additional Taxes, penalties or interest because Contractor failed to follow written instructions of Owner appropriately or to comply with its obligations under this Section 4.2, Contractor shall be responsible for the cost of such additional Taxes, penalties and interest within thirty (30) days of Owner's written request therefor. Contractor shall (and shall cause its Subcontractors to) provide to Owner all information and documentation necessary for Owner to recover any HST paid to Contractor.

**4.2.5 Tax Indemnity.** Owner shall not be obligated to pay, and shall be promptly reimbursed by Contractor if Owner does pay, any amounts of Taxes, penalties or interest charges levied or assessed by reason of any failure of Contractor to comply with Applicable Laws or Applicable Permits or governmental regulations, and Contractor shall indemnify and hold Owner Indemnified Parties (as defined in Section 10.1.1) harmless, on an After-Tax Basis, from the payment of any or all such Taxes, penalty, and interest and all costs, expenses, and charges (including legal fees) associated therewith or arising therefrom. Any limitations of Contractor liability present in other sections of this Agreement are not applicable to payments made by Contractor under this section. Contractor further agrees to provide to Owner, upon request, all forms and/or other documentation as may be required by Applicable Laws for purposes of Federal, provincial, county or municipal Tax reporting, including, but not limited to, certification(s) regarding residency.

**4.3 Payment of the Contract Price.** Owner shall pay the Contract Price to Contractor based on progress of completion of Activities in the Schedule of Values and made in accordance with the Cash Flow Table, subject to the terms and conditions hereof. Commencing after the Effective Date, Contractor shall, on the first (1st) day of a calendar month (or the following Business Day) following any month in which Contractor achieves completion of a Activity, Contractor may submit to Owner a request for payment (the "Request for Payment") (separating materials and labour) for each Activity completed during the previous month.

**4.4 Disputed Invoices.** If there is any Dispute about any amount invoiced by Contractor, the amount not in dispute shall be promptly paid, and any amount that is disputed in good faith by proper proceedings shall be paid if required following resolution of the Dispute.

**4.5 Holdback.** There shall be withheld as Holdback from each payment due and payable to



Contractor hereunder such amounts as required by, and in accordance with, the Construction Lien Act. When Contractor believes that this Agreement has attained "substantial performance" pursuant to the Construction Lien Act, Contractor shall submit an application to Owner with respect to the issuance and publication of a "Certificate of Substantial Performance" of this Agreement as that term and process are defined in, and in accordance with the requirements of, the Construction Lien Act. No later than ten (10) days after the receipt of Contractor's application with respect to the issuance and publication of a "Certificate of Substantial Performance", Owner shall review the Work to verify the validity of such application, and no later than seven (7) days after completing the review, Owner shall notify Contractor whether the Agreement is substantially performed or not. Upon mutual agreement by the Parties that substantial performance has been attained, Owner and Contractor shall state the date of substantial performance in a certificate signed by them. Contractor shall publish the mutually signed certificate of substantial performance in accordance with the requirements of the Construction Lien Act. Any interest accruing on Holdback shall accrue for the account of Owner and not Contractor.

**4.5.1 Basic Holdback.** Within a reasonable time following the Final Acceptance Date, and provided that the forty-five (45) day lien period pursuant to the Construction Lien Act has expired, Contractor may prepare a Request for Payment for the Basic Holdback. Subject to the Owner's rights pursuant to this Agreement and provided that there are no pending claims under the Construction Lien Act or otherwise which Owner determines may be claimed against such monies, the release of the Basic Holdback authorized by this certificate shall be carried out provided that the Contractor has submitted to Owner the statutory declarations of itself and all Major Subcontractors in the forms referenced in Exhibit BB-1 and Exhibit BB-2, respectively, and the Contractor has provided Owner with evidence of compliance with the provisions of the Workplace Safety and Insurance Act (Ontario) including payments due thereunder.

**4.5.2 Finishing Holdback.** Subject to Owner's rights pursuant to this Agreement, the release of the Finishing Holdback, by way of a further payment shall be carried out in accordance with the Construction Lien Act, provided that (i) there are no pending claims under the Construction Lien Act or otherwise which Owner determines may be claimed against such monies, and (ii) the Contractor has submitted to the Owner the statutory declarations of itself and all Major Subcontractors in the forms referenced in Exhibit BB-1 and Exhibit BB-2, respectively, and Contractor has provided Owner with evidence of compliance with the provisions of the Workplace Safety and Insurance Act (Ontario) including payments due thereunder.

**4.6 Conditions of Payment.** Contractor's right to receive any payment to be paid to it hereunder is conditioned upon (i) [REDACTED] (ii) Contractor's compliance with its obligations under Section 12.1.1 and (iii) in a form acceptable to Owner, (A) a Request for Payment in the form of Exhibit Y, (B) evidence of compliance with the provisions of the Workplace Safety and Insurance Act (Ontario) including payments due thereunder, (C) a duly executed Exhibit BB-1 Contractor's Statutory Declaration in the form of CCDC 9A, (D) Subcontractor's statutory declaration from all Major Subcontractors in the form of CCDC 9B, and (E) such other documentation as provided for under this Agreement or reasonably requested by Owner. Each Request For Payment shall provide, for each Activity in the Schedule of Values, 1) the value attributed to the applicable Activity which had been previously paid by Owner, 2) the value attributed to the applicable Activity which had been earned during the month for which the applicable Request for Payment is being submitted, 3) the total value attributed to the applicable Activity which has been earned to date and 4) the total value of the applicable Activity. In addition, as a condition to Contractor's right to receive any payment to be paid hereunder, with each such Request for Payment Contractor will submit evidence of completion of all Activities required to be achieved prior to such payment. Within [REDACTED] days after its receipt of a Request for Payment, provided that Contractor has satisfied the foregoing conditions [REDACTED], and provided that no Lien is preserved that has not been satisfied, discharged or vacated as provided in this Agreement, and that there are no pending claims under the Construction Lien Act (other than Contractor's claim for the Holdback) or otherwise which may be claimed against such monies, Owner shall, subject to the waiver of claims set forth in Section 2.18.4, pay to Contractor the amount that remains after the deduction from the amount requested in the applicable Request for Payment of the following amounts (I) any portion thereof that Owner disputes as not

being due and owing, (II) any overpayment made by Owner for any previous period, (III) any Delay Liquidated Damages (including interest thereon) payable by Contractor, (IV) any amounts withheld pursuant to Section 4.5 and Section 4.7 and (V) any costs incurred by Owner in enforcing any provision hereof (including legal fees and other consultants' fees) regardless of whether such provisions expressly provide for withholding or set-off (the "Progress Payment"). Owner shall not be obligated to make more than one (1) Progress Payment during each month.

**4.7 Withholding Payment.** Notwithstanding any other provision to the contrary contained herein, Owner may withhold payments to Contractor hereunder and Owner may decide not to certify payment or may nullify the whole or a part of a certification for payment made pursuant to a previous Request for Payment to such extent as may be necessary in Owner's reasonable opinion to protect Owner from loss because of: (i) Defects in the Work not remedied; (ii) any Lien described in Section 2.18; (iii) the failure of Contractor to make payments when due to Subcontractors; (iv) damage to Owner or another contractor, for which Contractor is liable, including damage to the property of Owner or any of its Affiliates; (v) Contractor's or any Subcontractor's failure to carry out the Scope of Work in accordance with the Agreement; (vi) the occurrence of a Contractor Event of Default; (vii) a good faith determination by Owner that Contractor cannot, with prompt and reasonable acceleration of the Work, achieve Provisional Acceptance by the applicable Guaranteed Provisional Acceptance Date; (viii) Contractor's failure to deliver any item required to be delivered by Contractor hereunder to Owner on or before the date such item is scheduled to be delivered. Contractor shall not have any rights of termination or suspension hereunder as a result of Owner's exercise or attempted exercise of its rights under this Section 4.7; or (ix) withholdings as required by Applicable Law. Subject to Applicable Law, Owner shall release payments withheld pursuant to this Section 4.7 within thirty (30) days from the date when Contractor cures all such events or breaches to the satisfaction of Owner.

**4.8 Intentionally Left Blank.**

**4.9 Termination Payment.**

**4.9.1 Termination Payments Due to Contractor.** Upon a termination of this Agreement pursuant to Section 13.2 or Section 13.3 on or after the date of this Agreement, Contractor shall be entitled to a payment (the "Termination Payment"), which shall equal (but in no event exceed the Contract Price less payments of the Contract Price made hereunder) the sum of the following, without duplication: (i) that portion of the Contract Price that is applicable to Work completed up to the date of termination that has not previously been paid to Contractor (as determined below); (ii) the expenses reasonably incurred by Contractor in withdrawing Contractor's Equipment and personnel from the Job Site and in otherwise demobilizing; and (iii) the expenses reasonably incurred by Contractor in terminating contracts with Subcontractors pertaining to the Work (excluding fees of any Affiliates of Contractor), except to the extent Owner has instructed Contractor not to terminate such contracts, in which event such contract will be assigned to Owner, subject to Owner's assumption of same. The Termination Payment shall not include any costs incurred by Contractor after the date of the event giving rise to such termination that Contractor reasonably could have mitigated. Contractor shall use all reasonable diligent efforts to mitigate the costs associated with termination of this Agreement, including identifying and pursuing other uses for Equipment or supplies manufactured or obtained pursuant to this Agreement.

**4.9.2 Payment of Termination Payment.** Contractor shall submit an invoice to Owner for the Termination Payment with the supporting information and documentation of any fees or expenses claimed by Contractor pursuant to Section 4.9.1. Upon review and agreement that such invoice is proper, Owner shall pay such invoice within [REDACTED] days after its receipt of same unless it disputes in good faith certain elements thereof, in which event only the undisputed portion of the Termination Payment need be made within such [REDACTED] day period, provided that payments for termination under Section 13.3 shall

be due Contractor within forty-five (45) days after receipt of a substantiated invoice and Owner's receipt of any and all Equipment and Work under Section 13.3 and Section 13.5. As a condition precedent to receiving any Termination Payment, Contractor shall comply with Section 13.4 in its entirety and deliver to Owner the additional documentation referenced in Section 4.6.

**4.9.3 Termination Payment Contractor's Sole Remedy.** Payment of the Termination Payment shall be the sole and exclusive liability of Owner, and the sole and exclusive remedy of Contractor, with respect to termination of this Agreement under Section 13.2 or Section 13.3, and in such event Owner shall have no further liability to Contractor notwithstanding the actual amount of damages that Contractor may have sustained in connection with such termination. Calculation of the Termination Payment has been agreed upon hereunder because of the difficulty of ascertaining the exact amount of such damages Contractor will actually sustain in the event of a termination of this Agreement pursuant to Section 13.2 or Section 13.3, and Owner and Contractor agree that the calculation of the Termination Payment is fair and reasonable. If this Agreement is cancelled pursuant to Section 13.1, no Termination Payment shall be due and payable pursuant to this Section 4.9 from Owner and any payment to Contractor shall be computed solely in accordance with Section 13.1.

**4.10 Effect of Payment.** Payment of the Contract Price shall not constitute Owner's approval of any portion of the Work that has been determined not to be, or subsequently is determined not to have been, performed in accordance with the requirements of the Agreement.

**4.11 Set-off.** Owner may deduct and set-off against any part of the balance due or to become due to Contractor under this Agreement (i) any Delay Liquidated Damages due or accrued but not paid from Contractor to Owner hereunder, (ii) any Holdback held by Owner, and (iii) any other amounts that are due from Contractor to Owner under or in connection with this Agreement.

**4.12 Payment Dates.** Notwithstanding anything to the contrary in this Article IV, in the event that a payment to be made under this Agreement falls due on any day that is not a Business Day, the payment shall be deemed due on the first Business Day thereafter.

**4.13 No Payment During Contractor Event of Default.** Notwithstanding any other provision to the contrary contained herein, Owner shall have no obligation to make any payment to Contractor at any time when a Contractor Event of Default has occurred and is continuing.

## **ARTICLE V. OWNER RESPONSIBILITIES**

**5.1 Owner-Furnished Equipment.** Owner shall provide or cause to be provided all Owner-Furnished Equipment in accordance with the delivery schedule therefor set forth in Exhibit N.

**5.2 Permits.** Owner shall, with Contractor's reasonable assistance (to be provided at no additional cost to Owner), timely obtain and maintain, at its own cost and expense, all Owner Permits as set forth in Exhibit H. In addition, Owner shall execute, at no cost to Owner, such applications as Contractor may reasonably request in connection with obtaining any of the Contractor Permits.

## **ARTICLE VI. PROVISIONAL ACCEPTANCE; FINAL ACCEPTANCE; DELAY LIQUIDATED DAMAGES**

**6.1 Intentionally Left Blank.**

**6.2 Intentionally Left Blank.**

**6.3 Intentionally Left Blank.**

#### **6.4 Provisional Acceptance.**

**6.4.1 Achievement of Provisional Acceptance.** Contractor shall cause Provisional Acceptance of the Work to occur on or prior to the applicable Guaranteed Provisional Acceptance Date. If Contractor fails to achieve Provisional Acceptance by the applicable Guaranteed Provisional Acceptance Date, Contractor shall pay to Owner Delay Liquidated Damages pursuant to Section 6.9. On the date on which Contractor believes it has achieved Provisional Acceptance, Contractor shall prepare and submit to Owner a completed Provisional Acceptance Certificate for such portion of the Work. Such Provisional Acceptance Certificate shall include a report containing all information relevant to the achievement of Provisional Acceptance, which report shall be in a form reasonably acceptable to Owner, with sufficient detail to enable Owner to corroborate that Provisional Acceptance has been achieved.

**6.4.2 Confirmation of Provisional Acceptance.** By the close of the fifteenth (15) Business Day following the date on which the Provisional Acceptance Certificate is received by Owner, Owner shall review and inspect all Work and shall either (i) countersign and deliver to Contractor the Provisional Acceptance Certificate, or (ii) notify Contractor that Provisional Acceptance has not been achieved. Any notice issued pursuant to clause (ii) above shall state in detail Owner's reasons for determining that Contractor has not achieved Provisional Acceptance. If Owner determines that Provisional Acceptance has not been achieved and delivers the notice under the preceding clause (ii), Contractor promptly shall take such action, including the performance of additional Work, as will achieve Provisional Acceptance thereof. Upon completing such actions, Contractor shall issue a new Provisional Acceptance Certificate for such Work for reconsideration by Owner. Such procedure shall be repeated as necessary until Provisional Acceptance has been achieved for such Work. For all purposes of this Agreement, the date and time of achievement of Provisional Acceptance for any portion of the Work shall be the date and time the Provisional Acceptance Certificate ultimately accepted by Owner was submitted to Owner after achievement of Provisional Acceptance.

#### **6.5 Intentionally Left Blank.**

#### **6.6 Punch List.**

**6.6.1** No later than thirty (30) days before the Provisional Acceptance Date, Contractor shall prepare and submit to Owner a comprehensive list of the Punch List Items to be completed for the Work to reach Final Acceptance. Contractor shall make such revisions such list as and when requested by Owner from time to time. Contractor shall complete the Punch List Items within thirty (30) days after the Provisional Acceptance Date.

**6.6.2** Upon request of Owner, the Parties shall reasonably agree upon the commercial value of all Punch List Items that have not been completed. The Parties agree that with respect to Punch List Items that remain uncompleted and which are preventing Final Acceptance, it may be more expedient for Owner to complete any or all of the Punch List Items, at its election and option. Notwithstanding the foregoing, if such Punch List Items are not completed thirty (30) days from the Provisional Acceptance Date (or such date as mutually agreed to in writing by the Parties), Owner shall have the right, in its sole discretion, to complete such Punch List Items, and apply the Holdback to or off-set against the payment of Final Acceptance the costs incurred by Owner to complete such Punch List Items, [REDACTED] with any balance of the Holdback remaining thereafter to be paid to Contractor in accordance with Section 4.5.

#### **6.7 Final Acceptance.**

**6.7.1 Achievement of Final Acceptance.** Contractor shall cause Final Acceptance to occur on or before the Guaranteed Final Acceptance Date and otherwise in accordance with the requirements

of the Agreement. Upon satisfaction of all requirements for Final Acceptance, Contractor shall provide Owner with a Final Acceptance Certificate with respect to the achievement of such activity. Such Final Acceptance Certificate shall include a report containing all information relevant to the achievement of Final Acceptance, which report shall be presented in a form reasonably acceptable to Owner, with sufficient detail to enable Owner to determine that Contractor has achieved Final Acceptance.

**6.7.2 Confirmation of Final Acceptance.** Within thirty (30) days following the date on which the Final Acceptance Certificate is received by Owner, Owner shall review and inspect the Work and shall either (a) deliver to Contractor a countersigned Final Acceptance Certificate indicating its acceptance of the achievement of Final Acceptance, or (b) notify Contractor in writing that such Final Acceptance has not been achieved, stating in detail the reasons therefor. If Owner delivers the notice under the preceding clause (b), Contractor shall promptly take all actions necessary, including the performance of additional Work, to achieve Final Acceptance, and upon completion of such actions shall issue to Owner another Final Acceptance Certificate pursuant to this Section 6.7.2. Such procedure shall be repeated as necessary until Final Acceptance has been achieved. For all purposes of this Agreement, the date of achievement of Final Acceptance shall be the date on which Contractor delivers to Owner the Final Acceptance Certificate that Owner ultimately accepts after achievement of Final Acceptance.

**6.8 Completion Deadlines.** Time is of the essence in Contractor's performance of its obligations under this Agreement. Without duplication or limitation of the foregoing or any other provisions of the Agreement, Contractor shall do whatever is commercially necessary to perform the Work in full compliance with the Agreement so that the performance of the Work satisfies all of the conditions of Provisional Acceptance and Final Acceptance by the guaranteed date for the applicable milestone.

**6.9 Delay Liquidated Damages.**

**6.9.1 Obligation to Pay.**

(a) Owner and Contractor acknowledge and agree that any failure to achieve Provisional Acceptance on or before the applicable Guaranteed Provisional Acceptance Date will directly cause substantial damage to Owner, which damage cannot be ascertained with reasonable certainty. Accordingly, if Contractor fails to achieve Provisional Acceptance for any portion of the Work on or before the applicable Guaranteed Provisional Acceptance Date, it shall pay to Owner, as liquidated and agreed damages, an amount (collectively, the "Provisional Acceptance Delay Liquidated Damages") equal to [REDACTED] for each day (or portion thereof) of delay beyond the applicable Guaranteed Provisional Acceptance Date, commencing with the first calendar day after such Guaranteed Provisional Acceptance Date.

(b) Owner and Contractor acknowledge and agree that any failure of the Transmission Facilities to satisfy the Operational Tests between the Provisional Acceptance Date and Final Acceptance will directly cause substantial damage to Owner, which damage cannot be ascertained with reasonable certainty. Accordingly, if the Transmission Facilities fail to satisfy the Operational Tests between the Provisional Acceptance Date and Final Acceptance, Contractor shall pay to Owner, as liquidated and agreed damages, an amount (collectively, the "Late Delivery Delay Liquidated Damages" together with the Provisional Acceptance Liquidated Damages, the "Delay Liquidated Damages") equal to [REDACTED] for each day (or portion thereof) of delay between the Provisional Acceptance Date and Final Acceptance that the Transmission Facilities fail to satisfy the Operational Tests, commencing on the tenth (10th) calendar day after the date the Transmission Facilities are first interconnected with the high voltage facilities of Utility in accordance with the Utility's interconnection requirements.

(c) The amount of Delay Liquidated Damages shall not exceed [REDACTED] of the Contract Price (the "LD Cap"). Except as set forth in Section 6.9.2, payment of Delay Liquidated Damages in accordance with this Section 6.9.1 shall constitute Contractor's sole liability, and Owner's exclusive remedy, for delay in achieving Provisional Acceptance or failure of the Transmission Facilities to satisfy the



Operational Tests between the Provisional Acceptance Date and Final Acceptance, as applicable, but in no event shall excuse Contractor from performance of any of its other obligations hereunder, including the obligation of Provisional Acceptance and Final Acceptance to occur. Notwithstanding the foregoing, if Contractor fails to: (i) achieve Provisional Acceptance by the first to occur of (A) the date that is [REDACTED] days after the Guaranteed Provisional Acceptance Date, and (B) the date that Provisional Acceptance Delay Liquidated Damages payable hereunder reaches the LD Cap; or (ii) achieve Final Acceptance by the first to occur of (1) the date that is [REDACTED] days after the Guaranteed Final Acceptance Date and (2) the date that Late Delivery Delay Liquidated Damages payable hereunder reaches the LD Cap, such failure shall automatically constitute a Contractor Event of Default under Article XIII and Owner shall be entitled to any and all remedies afforded Owner under this Agreement.

**6.9.2 Fair and Reasonable Amount.** It is understood and agreed between the Parties that the terms, conditions and amounts fixed pursuant to this Article VI as Delay Liquidated Damages are fair and reasonable, considering the damages that Owner would sustain if (i) Provisional Acceptance is delayed beyond the applicable Guaranteed Provisional Acceptance Date or (ii) failure of any of the Transmission Facilities to satisfy the Operational Tests between the Provisional Acceptance Date and Final Acceptance, as applicable, and that these amounts are agreed upon and fixed as liquidated damages, and not as a penalty, because of the difficulty of ascertaining the exact amount of damages that would be sustained as a result of (a) delay in achieving Provisional Acceptance or (b) failure of any of the Transmission Facilities to satisfy the Operational Tests between the Provisional Acceptance Date and Final Acceptance.

**6.9.3 Accrual; Payment.** After the end of any week during which Delay Liquidated Damages accrue under this Section 6.9, Owner may provide Contractor with a statement of the amount of Delay Liquidated Damages owed for such week. Contractor shall pay any Delay Liquidated Damages within seven (7) days after receipt of such statement(s). Contractor's obligation to pay Delay Liquidated Damages when and as provided in this Section 6.9 is an absolute and unconditional obligation, and shall not be released, discharged, diminished, or in any way affected by (i) any default by Owner in the performance or observance of any of its obligations hereunder, provided that Owner has paid all undisputed amounts due to Contractor hereunder, (ii) the assignment by Owner of the Agreement to any Person, or (iii) any other circumstances, happening, condition or event. Contractor shall pay such Delay Liquidated Damages without deduction, set-off, reduction or counterclaim. Contractor shall continue to make such payments of Delay Liquidated Damages until achievement of Final Acceptance, at which time Contractor shall pay all previously accrued and unpaid Delay Liquidated Damages amounts. Contractor shall pay Delay Liquidated Damages required hereunder by wire transfer. In no event shall the payment of Delay Liquidated Damages excuse Contractor from performance of any of its other obligations hereunder, including the obligation to cause Provisional Acceptance or Final Acceptance to occur.

**6.10 Offset Rights; Security for Obligations.** Owner shall have the right to offset any amounts owing to Owner under this Article VI against Progress Payments or other amounts owing to Contractor and to exercise its rights against any security provided to Owner hereunder by or for the benefit of Contractor, in such order as Owner may elect in its sole discretion.

## **ARTICLE VII. WARRANTIES**

### **7.1 Warranty Provisions.**

#### **7.1.1 Warranty.**

(a) Contractor warrants to Owner that all Equipment (other than Owner-Furnished Equipment) shall (i) be new, unused and undamaged when installed, (ii) be free from improper workmanship and Defects, (ii) conform to all applicable requirements of all Additional Contractor Responsibilities, Applicable Laws, Applicable Permits, Applicable Standards, Prudent Electrical Industry

Practices and the Agreement and (iii) where otherwise not specified in the Technical Specification, be suitable for Owner's use in the Transmission Facilities in accordance with Owner's intended purposes.

(b) Contractor warrants to Owner that the Work will be performed in a good and workmanlike manner, and that the Work: (i) will conform to, and be designed and engineered (to the extent of Contractor's design and/or engineering responsibilities set forth in the Technical Specifications), and constructed in accordance with, all Applicable Laws, Applicable Permits, Applicable Standards, Prudent Electrical Industry Practices and the other terms and requirements of the Agreement; and (ii) will be constructed to operate, and shall be capable of being operated, safely, normally and continuously in accordance with the requirements of all Applicable Laws, Applicable Permits and the Agreement at all operating levels and modes specified in the Agreement and the Drawings. Contractor also warrants and guarantees to Owner that none of the Work, Equipment, the Contractor Deliverables and the design, engineering and other services rendered by or through Contractor hereunder, nor the use, operation or ownership of the Work (including the Equipment (other than the Owner-Furnished Equipment) and the Contractor Deliverables) by Owner, nor any license granted hereunder, infringes, violates or constitutes a misappropriation of any Intellectual Property Rights.

(c) Except as expressly stated herein to the contrary, Contractor agrees to remedy any Defects or breach of any warranty set forth in this Section 7.1.1 which appear within a period of twelve (12) months following Final Acceptance (as such period may be extended in accordance with the terms hereof) (the "Warranty Period"); provided, however, that if any portion of the Work is remedied pursuant to this Section, then the Warranty Period with respect to such Work shall be continued until the later of (i) the expiration of the Warranty Period and (ii) twelve (12) months from the date of completion of such remedying Work; provided, however, in no event shall the Warranty Period extend beyond twenty-four (24) months from the Final Acceptance Date, except for serial component failures set forth in Section 7.1.1(d). The provisions of this Section apply to Work performed by Subcontractors as well as Work performed directly by Contractor. Contractor shall bear all costs and expenses associated with remedying any Defect or breach of warranty, including, without limitation, necessary disassembly, removal, replacement, transportation, reassembly and retesting, as well as reworking, repair or replacement of such Work and any portion of the Work affected by such the Defect or breach of warranty, disassembly and reassembly of piping, ducts, structures, electrical work, instrumentation, insulation, machinery, Equipment, any obstruction or other work as necessary to give access to the Defect or the affected Work and correction, removal or repair of any damage to other work or property that arises from the Defect or breach of warranty (including, without limitation, costs of cranes and dunnage). If Contractor is obligated to repair, replace or renew any Equipment, item or portion of the Work hereunder, Contractor will, at its sole costs and expenses, undertake a technical analysis of the problem and correct the "root cause" unless Contractor can demonstrate to Owner's satisfaction that there is not a risk of the reoccurrence of such problem.

(d)



**7.1.2 Correction of Deficiencies.** Owner shall provide Contractor with reasonable access to the Work in order to perform its obligation under this Article, and the Parties shall schedule such remedying

Work as necessary so as to minimize disruptions to the operation of the Project. No such remedying Work shall be considered complete until Owner shall have reviewed and accepted such Work in writing.

**7.1.3 Conformance of Warranty Service to Specifications.** Contractor warrants in favour of Owner that all materials and equipment incorporated into the Work as part of repairs to and replacements of the Work by Contractor or any Subcontractor, and repairs to and replacements of the Work pursuant to the warranties set forth in this Section 7.1, shall conform to the requirements of the Agreement and all applicable warranties for the foregoing and shall be free from Defects. Contractor shall perform, at its cost and expense, such tests as Owner may reasonably request to verify that any correction, repair, replacement or re-performance of the Work pursuant to this Article complies with the requirements of the warranties set forth in this Section 7.1.

**7.1.4 Risk of Loss or Damage.** Whenever Contractor is required to repair or replace Work pursuant to this Article VII, Contractor shall bear the risk of loss or damage (including, without limitation, all insurance related thereto, provided that such insurance is maintained in accordance with the requirements set forth in Article XII) for such Work during the period of such repair or replacement. If any Work must be removed from the Job Site, transportation charges associated with any repair or replacement shall be borne by Contractor.

**7.2 Delay.** If, after notification of a Defect or breach of warranty, Contractor fails to mobilize to commence remedying such Defect or breach of warranty (and performing its other obligations under Section 7.1.1(c)) within five (5) days after notice thereof or if in Owner's sole opinion shall thereafter fail to diligently continue remedying to completion such Defect or breach of warranty and performing such obligations, then Owner may correct such Defect or breach of warranty and perform such obligations, and Contractor shall be liable for all costs, charges and expenses incurred by Owner in connection with such remedying Work and performance of such obligations and shall pay to Owner an amount equal to such costs, charges and expenses within thirty (30) days after demand therefor. Any remedying Work performed by Owner or its contractors pursuant to this Section shall not affect the warranties herein or Contractor's warranty obligations hereunder, shall be deemed to have been performed by Contractor hereunder and shall be subject to extended Warranty Periods in accordance with Section 7.1.1(c).

### **7.3 Subcontractor Warranties.**

**7.3.1** Contractor shall, for the protection of Contractor and Owner, obtain from the Subcontractors such guarantees and warranties with respect to Work performed as are reasonably obtainable, which guarantees and warranties shall equal or exceed those set forth in Section 7.1 and shall be made available and assignable to Owner and the Financing Parties to the full extent of the terms thereof upon the expiration of the Warranty Period. Owner shall be an express third-party beneficiary of all such guarantees and warranties. To the extent available, Owner shall have the right to require Contractor to secure additional warranty or extended guarantee protection pursuant to a Scope Change Order issued in accordance with the provisions of Article IX. Upon the earlier of the expiration of the Warranty Period or termination of this Agreement, Contractor shall deliver to Owner copies of all relevant contracts providing for such guarantees and warranties.

**7.3.2** Contractor shall be responsible for enforcing the warranties of all Subcontractors through the Warranty Period unless Owner requests that any such warranties be assigned to it at an earlier date. Upon the earlier of the expiration of the Warranty Period or termination of this Agreement, Contractor shall assign to Owner all warranties received by it from Subcontractors or otherwise obtained under Section 7.3.1. Contractor shall provide reasonable assistance to Owner without cost to Contractor in connection with the enforcement by Owner of any Subcontractor warranty after such assignment. Such assignment of warranties to Owner must also allow Owner to further assign such warranties. However, in the event that Owner makes any warranty claim against Contractor with respect to services supplied in whole or in part by any Subcontractor, and Contractor fulfills its obligations with respect to such claim by Owner, Contractor shall be



entitled to enforce for its own benefit any warranty given by such Subcontractor with respect to such services.

**7.4 Proprietary Rights.** Without limiting any of the provisions of the Agreement and notwithstanding any provision herein to the contrary, if Owner or Contractor is prevented from completing the Work (or any part thereof) in accordance with the Agreement or from the use, operation repair, maintenance, alteration, expansion, rebuilding or enjoyment of the Work (or any part thereof) as a result of a claim, action or proceeding by any Person for unauthorized disclosure, infringement or use of Intellectual Property Rights arising from Contractor's performance (or that of its Subcontractors) under the Agreement or any Intellectual Property Right or Contractor Deliverable transferred or licensed to Owner hereunder, Contractor shall promptly, but in no event later than thirty (30) days from the date of any action or proceeding, take all actions necessary to remove such impediment, including (a) secure termination of the injunction and procure for Owner or its assigns, as applicable, the right to use such materials, Equipment or Contractor Deliverable in connection with the completion, repair, operation, maintenance, alteration, rebuilding or expansion of the Work without obligation or liability; or (b) replace such materials, Equipment, or Contractor Deliverable, with a non-infringing equivalent, or modify same to become non-infringing, all at Contractor's sole expense, but subject to all the requirements of the Agreement.

**7.5 No Implied Warranties.** THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, FOR PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. THERE ARE NO OTHER WARRANTIES, AGREEMENTS, ORAL OR WRITTEN, OR UNDERSTANDINGS WHICH EXTEND BEYOND THOSE SET FORTH IN THIS AGREEMENT WITH RESPECT TO THE WARRANTED WORK, MATERIALS AND EQUIPMENT.

**7.6 Survival of Warranties.** The provisions of this Article VII shall survive the expiration or termination of this Agreement.

#### **ARTICLE VIII FORCE MAJEURE; OWNER CAUSED DELAY; CHANGE IN APPLICABLE LAW; [REDACTED]**

**8.1 Performance Excused.** So long as the conditions set forth in this Section 8.1 are satisfied, neither Party shall be responsible or liable for or deemed in breach of this Agreement because of any failure or delay in complying with its obligations under or pursuant to the Agreement to the extent that such failure has been caused, or contributed to, by one or more Force Majeure Events or its effects or by any combination thereof, and in such event:

(a) The Party claiming a Force Majeure Event shall give the other Party notice describing the particulars of the cause and nature of the occurrence, with written notice given promptly after the occurrence of the Force Majeure Event, and in no event more than five (5) Business Days after the affected Party becomes aware of such occurrence and as soon as reasonably practicable, but in any case within ten (10) Business Days after such occurrence, the Party claiming a Force Majeure Event shall give the other Party sufficient proof of the occurrence of such Force Majeure Event and written notice estimating the Force Majeure Event's expected duration and probable impact on the performance of such Party's obligations hereunder, and such affected Party shall continue to furnish timely regular reports with respect thereto during the continuation of the Force Majeure Event;

(b) The performance of the Party claiming the Force Majeure Event of its obligations hereunder shall be suspended, provided the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the effects of the Force Majeure Event;

(c) Any liability of either Party, which arose before the occurrence of the Force Majeure Event causing the suspension of performance, shall not be excused as a result of the occurrence;

(d) The affected Party shall continually exercise all commercially reasonable efforts to alleviate and mitigate the cause and effect of such Force Majeure Event, remedy its inability to perform and limit damages to the other Party;

(e) The affected Party shall use all reasonable efforts to continue to perform its obligations hereunder and to correct or cure the event or condition excusing performance; and

(f) When the affected Party is able to resume performance of the affected obligations under the Agreement, that Party shall give the other Party written notice to that effect, and the affected Party promptly shall resume performance under the Agreement.

So long as the conditions set forth in this Section 8.1 are satisfied, Contractor shall be entitled to suspension of performance or extension of time (including an extension of the applicable Guaranteed Provisional Acceptance Date to the extent achievement thereof is affected) with respect to a Force Majeure Event to the extent agreed upon by both Parties pursuant to a Scope Change Order under Article IX. A Party's failure to comply with the provisions of this Section 8.1 shall constitute a waiver of any claim of a Force Majeure Event.

**8.2 Owner Caused Delay.** In the event Contractor desires to claim an Owner Caused Delay, Contractor shall within three (3) Business Days after it becomes aware of the Owner Caused Delay, give Owner written notice describing the details of the Owner Caused Delay, the anticipated length of such delay and any other effect on Contractor's performance of its obligations hereunder. Within ten (10) days after initial notification, Contractor shall provide to Owner demonstrable proof (i) of the occurrence and duration of such Owner Caused Delay and (ii) that such Owner Caused (x) prevents Contractor from performing all or a portion of the Work, (y) has a demonstrable material cost increase to Contractor and (z) has a schedule impact that will actually, demonstrably, adversely and materially affect Contractor's ability to complete the Critical Path of the Work by the required dates. So long as the conditions set forth in this Section 8.2 are satisfied, Contractor shall be entitled to suspension of performance or extension of time with respect thereto, together with an increase in the Contract Price for its demonstrated, justified and reasonable additional costs, incurred by reason of such delay to the extent agreed upon by both Parties pursuant to a Scope Change Order issued in accordance with the provisions of Article IX, provided that: (A) such suspension of performance and extension of time shall be of no greater scope and of no longer duration than is required by the effects of the Owner Caused Delay; (B) Contractor provides timely notice of the Owner Caused Delay; and (C) Contractor shall continually exercise all commercially reasonable efforts to alleviate and mitigate the cause and effect of such Owner Caused Delay, remedy its inability to perform and limit damages to Owner. Contractor's failure to comply with the terms of this Section 8.2 shall constitute a waiver of any claim of an Owner Caused Delay.

**8.3 Change in Applicable Law.** In the event Contractor desires to claim a Change in Applicable Law, Contractor shall within five (5) Business Days after it becomes aware of the Change in Applicable Law, give Owner written notice describing the details of the Change in Applicable Law, the anticipated length of such delay and any other effect on Contractor's performance of its obligations hereunder. Within ten (10) days after initial notification, Contractor shall provide to Owner demonstrable proof (i) of the occurrence and duration of such Change in Applicable Law and (ii) that such Change in Applicable Law (x) prevents Contractor from performing all or a portion of the Work, (y) has a demonstrable material cost increase to Contractor and (z) has a schedule impact that will actually, demonstrably, adversely and materially affect Contractor's ability to complete the Critical Path of the Work by the required dates. So long as the conditions set forth in this Section 8.3 are satisfied, Contractor shall be entitled to suspension of performance or extension of time with respect thereto, an adjustment (whether an increase or a decrease) in the Contract Price for its demonstrated, justified and reasonable costs, incurred or not incurred by reason of such delay to the extent agreed upon by both Parties pursuant to a Scope Change Order issued in accordance with the provisions of Article IX, provided that: (A) such suspension of performance and extension of time shall be of no greater scope and of no longer duration than is required by the effects of the Change in Applicable Law; (B) Contractor provides timely written notice of the Change in Applicable Law; and (C) Contractor shall

continually exercise all commercially reasonable efforts to alleviate and mitigate the cause and effect of such Change in Applicable Law, remedy its inability to perform and limit damages to Owner. Contractor's failure to comply with the terms of this Section 8.3 shall constitute a waiver of any claim of a Change in Applicable Law.

8.4



**8.5 Burden of Proof.** The burden of proof as to whether a Force Majeure Event, Owner Caused Delay, Change in Applicable Law or [REDACTED] has occurred, and whether the Force Majeure Event, Owner Caused Delay, Change in Applicable Law [REDACTED] excuses the claiming Party from performance under Section 8.1, Section 8.2, Section 8.3 or Section 8.4 shall be upon the Party claiming such Force Majeure Event or Owner Caused Delay.

#### **ARTICLE IX. SCOPE CHANGES**

**9.1 Scope Changes at Owner's Request.** Owner may, from time to time, without invalidating this Agreement, order or approve scope changes in all or a portion of the Work or changes in the Project Schedule (collectively, "Scope Changes") by notification in writing to Contractor. Contractor shall make a written response thereto within ten (10) days after receiving such request. If Contractor believes that giving effect to any Scope Change requested by Owner will increase or decrease its cost of performing the Work, shorten or lengthen the time needed for completion of the Work or require a modification of any provisions of the Agreement, its response to the Scope Change request shall set forth such changes (including any amendments to the Agreement) that Contractor deems necessary as a result of the requested Scope Change and its justification therefor. If Contractor accepts the Scope Changes requested by Owner (together with any amendments to the Agreement specified therein) or if the Parties agree upon a modification of such requested Scope Changes, the Parties shall set forth the agreed upon Scope Change in the Work and agreed upon amendments to the Agreement, if any, in a Scope Change Order. Each Scope Change Order shall constitute a final settlement of all items covered therein, including any schedule relief or compensation for any impact on, or delay or acceleration in, performing the Work. If the Parties do not agree upon all terms of the Scope Change Order, Contractor shall proceed with such Work, and the dispute shall be resolved in accordance with the terms hereof.

**9.2 No Unapproved Scope Changes.** Contractor shall not perform any Scope Changes until Owner has approved in writing the proposed adjustments or has expressly authorized Contractor in writing to perform the Scope Change prior to such approval. If Owner does not approve the proposed adjustments and Contractor and Owner are unable mutually to agree upon alternative adjustments, Owner may by written notice to Contractor cancel the Scope Change. Upon receiving from Owner such written approval or such written authorization to perform, Contractor shall diligently perform the Scope Change in accordance with and subject to all of the terms of the Agreement. Scope Changes are processed in accordance with Exhibit V-2.

**9.3 Presumption Against Scope Changes.** It is the intent of Owner and Contractor that the Scope of Work attached hereto as Exhibit A and the Technical Specifications includes all items necessary for the proper execution and completion of the Work. As more particularly described in Section 2.1, Work not described in the Scope of Work shall not require a Scope Change Order if such Work is consistent with and reasonably inferable from the Scope of Work, so that a contractor of Contractor's experience and expertise should have anticipated that the Work would have been required. Within ten (10) days of Contractor's becoming aware of any event or circumstance for which Contractor may be entitled to a Scope Change Order, Contractor shall provide written notice to Owner specifically requesting a Scope Change Order, which notice must provide in detail all claims to be made by Contractor related to such event or circumstance, including any schedule relief or compensation for any impact on, or delay or acceleration in, performing the Work. Contractor's failure to provide written notice to Owner of any claim related to such event or circumstance within such ten (10) day period shall constitute a waiver of such claim.

**9.4 Scope Changes Due to Concealed Conditions.** Excluding archaeological artifacts at the Job Site which shall be governed by Section 2.26, Contractor shall conduct and complete, at Contractor's own cost, at the Job Site a geotechnical investigation of any portion of the Job Site as Contractor reasonably deems necessary to confirm the Job Site conditions. If, as a result of the geotechnical investigation but subject to the next sentence in this Section 9.4, within ten (10) days after the date Contractor (i) acquires knowledge of or encounters any concealed subsurface conditions which a reasonable, experienced contractor would not foresee existing at the Job Site and which vary materially from the conditions shown in this Agreement, if any, and (ii) any such condition causes an actual, demonstrable and material increase or decrease in the Contract Price, then Contractor shall notify Owner of the existence of such unknown and unforeseen subsurface condition in accordance with the Scope Change process outlined in Exhibit V-2 with written notice in the form of Exhibit V-3 with respect to such unknown and unforeseen subsurface condition at the Job Site.

Owner in its sole discretion may either (a) issue a Scope Change Order to address such condition (by either abandoning such layout location or adapting the design and plan to accommodate the conditions encountered), pursuant to which Contractor shall be entitled to an extension of the time to perform the Work hereunder, which extension shall be for an equitable duration designed to reflect the delay actually caused by such condition and/or an increase in the Contract Price in accordance with the unit rates set forth in Exhibit B-2 hereto or (b) terminate this Agreement pursuant to Section 13.3. Contractor specifically waives the right to make any such claims with respect to the relevant portion of the Job Site (1) after the expiration of ten (10) day period set forth in this Section 9.4 or (2) if Contractor failed to comply with the Scope Change process outlined in Exhibit V-2 with written notice in the form of Exhibit V-3. Except as set forth in this Section 9.4, Contractor assumes the risk of surface and subsurface conditions at the Job Site and shall not be entitled to an extension of the Project Schedule or an increase in the Contract Price as a result thereof.

**9.5 Scope Changes Caused by a Force Majeure Event, Owner-Caused Delay, Change in Applicable Law**

**9.5.1** Owner and Contractor may, by written notice to the other Party, propose Scope Changes in the Work or the Project Schedule due to a Force Majeure Event, Owner Caused Delay or Change in Applicable

If Owner agrees that Contractor has met all of the applicable condition precedents for a requested Force Majeure Event, Owner Caused Delay, Change in Applicable Law [REDACTED], as applicable, including, without limitation, Contractor establishing there is a material impact that will actually, demonstrably, adversely and materially affects the Critical Path as a result of such Force Majeure Event, Owner Caused Delay, Change in Applicable Law [REDACTED] then the Parties agree to negotiate reasonably and in good-faith for the execution of a mutually acceptable Scope Change Order.

**9.5.2** Force Majeure Events will entitle Contractor only to extensions of the Project Schedule and will not entitle Contractor to any compensation, reimbursement of costs or any increase in the Contract Price. [REDACTED]

Any extension permitted under this Section 9.5 shall be of an equitable duration designed to reflect the delay actually caused by the relevant event despite Contractor's efforts to mitigate the same. In the case of Force Majeure Events, Owner Caused Delays and Change in Applicable Law, the Parties acknowledge that such equitable extension will generally be equal to or less than the number of days during which a (i) Force Majeure Event or the effects thereof persisted, (ii) the number of days of the Owner Caused Delay or (iii) Change in Applicable Law or the effects thereof persisted, as the case may be; provided, however, that in no event will Contractor be entitled to an extension that is longer than the duration of the applicable (a) Force Majeure Event or the effects thereof, (b) Owner Caused Delay or (c) Change in Applicable Law or the effects thereof persisted.

**9.6 Changes to Contract Price; Disputes.** A Scope Change Order initiated by Owner may have the effect of either increasing or decreasing the Contract Price. [REDACTED]

Any Contractor response to a Scope Change Order under Section 9.1 and any Contractor notification under Section 9.4, shall be accompanied by a proposed all-inclusive final lump sum cost (separating materials and labour) to Owner; provided, however, Owner may in its sole discretion

determine that Contractor shall be paid for such Scope Change on a not to exceed cost plus basis. In the event that the Parties are unable to reach an agreement on an all-inclusive final lump sum cost to Owner or a not-to-exceed cost estimate as a result of a requested Scope Change, then Contractor agrees to perform the requested Scope Change at a price equal to Owner's proposed lump sum amount (such lump sum amount being based on unit rates identified in Exhibit B-2 to the extent a unit rate exists) and to resolve (in accordance with the dispute resolution procedures set forth in Article XV) the issue of any excess of Contractor's proposed lump sum cost over that of Owner's proposed lump sum amount. In addition, in the event that Owner and Contractor are unable to reach agreement on a Scope Change Order for a Scope Change requested by either Owner or Contractor, at the direction of Owner (and only at the direction of Owner), Owner's proposed Scope Changes shall become effective as a Scope Change Order and Contractor shall continue to perform the Work in accordance with such Scope Change Order and the proposed Scope Changes shall be performed by Contractor at its sole cost and expense pending resolution of the dispute pursuant to the dispute resolution procedures set forth in Article XV. Contractor shall not suspend, in whole or in part, performance of this Agreement during any good faith dispute over any Scope Change Order unless directed to do so by Owner.

## **ARTICLE X. INDEMNIFICATION**

### **10.1 Indemnities.**

**10.1.1 Contractor's General Indemnity.** Contractor shall defend, indemnify and hold harmless, on an After-Tax Basis, each of Owner, the Financing Parties and each of their subsidiaries and Affiliates, and the directors, officers, agents, employees, successors and assigns of each of them (each, an "Owner Indemnified Party") from and against losses, costs, damages, injuries, liabilities, claims, demands, penalties, assessments, interest and causes of action, expenses, including reasonable legal fees, incurred by or asserted against any Owner Indemnified Party to the extent and as a result of the following:

(a) Bodily injury, death or damage to property caused by any negligent act or omission (or, on a strict liability basis where applicable) relating to or arising out of the performance of the Work (including any warranty Work) by Contractor or any Affiliate thereof, any Subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts such Person may be liable;

(b) Claims resulting from bodily injury, death or damage to property arising out of any Defect or breach of any warranty set forth in Article VII to the extent caused by the negligent act or omission (or, on a strict liability basis where applicable) of Contractor or any Affiliate thereof, any Subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts such Person may be liable;

(c) Claims by any Governmental Authority for, or in respect of or in connection with, any Taxes payable by Contractor;

(d) (i) Any Hazardous Material brought to the Job Site or generated at the Job Site by Contractor or any Subcontractor, or (ii) any contamination or pollution, or any release or discharge of any Hazardous Material, on, under or from the Job Site or any portion thereof that is caused or contributed to by Contractor or any Subcontractor (excluding as a result of releasing Pre-Existing Hazardous Material, exacerbating Pre-Existing Hazardous Material or rendering removal or remediation of Pre-Existing Hazardous Material, except as has been made more costly as a result of the of Contractor or any Affiliate thereof, any Subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts such Person may be liable);

(e) Provided Owner has paid all undisputed amounts due pursuant to the Agreement, any Lien, on the Project, the Work, Equipment, the Job Site or any fixtures or personal property included in the Work created by, through or under, or as a result of any act or omission (or alleged act or

omission) of, Contractor, any Subcontractor or other Person providing Labour or materials in connection with the Work;

(f) Any claim, action or proceeding by any Person for unauthorized disclosure, infringement or use of any Intellectual Property Right arising from or related to (i) Contractor's performance (or that of its Affiliates, Subcontractors) under the Agreement, (ii) the design, construction, use, operation or ownership of the Work (including the Equipment, Contractor Deliverables or any portion of any of them), or (iii) Owner's use of any license granted hereunder;

(g) Any failure of the Work, as designed (to the extent of Contractor's design responsibilities), constructed and completed by Contractor, to comply with, or be capable of operating in compliance with, Applicable Laws or the conditions or provisions of Applicable Permits;

(h) Any failure of Contractor to comply with Applicable Laws or the conditions or provisions of Applicable Permits;

(i) Any claims with respect to employer's liability or worker's compensation filed by any employee of Contractor or any of its Subcontractors;

(j) Any breach by Contractor of any representation or warranty contained in Article XVI;

(k) Any vitiation of any insurance policy procured under Article XII as a result of Contractor's failure to comply with any of the requirements set forth in such policy or any other act by Contractor or any Subcontractor;

(l) Any allegation or claim of noncompliance by Contractor or any Contractor Agent or Subcontractor with, or breach of any representation set forth in, Section 2.23; and

(m) Any allegation or claim of noncompliance by Contractor or any its Recipients with, or breach of any obligation set forth in, Section 2.27.

**10.1.2 Owner's Indemnity.** Owner shall defend, indemnify and hold harmless, on an After-Tax Basis, Contractor and its directors, officers, agents, employees, Subcontractors, successors and assigns from and against any and all losses, costs, damages, injuries, liabilities, claims, demands, penalties, assessments, interest and causes of action, expenses, including reasonable legal fees, incurred by or asserted against any such Person to the extent and as a result (i) of the injury or death of any Person, including employees of Owner, Contractor or any Person employed by any of them for whose acts any of them may be liable resulting from Owner's negligent acts or omissions under this Agreement or (ii) resulting from loss of or damage to property resulting from Owner's negligent acts or omissions under this Agreement.

**10.2 Conditions of Indemnification.** The respective rights and obligations of the Parties and the other indemnitees under this Article with respect to claims resulting from the assertion of liability by third parties shall be subject to the following terms and conditions:

**10.2.1 Notice of Proceedings.** Within fourteen (14) days (or such earlier time as might be required to avoid prejudicing the indemnifying Party's position) after receipt of notice of commencement of any legal action or of any claims against such indemnitee in respect of which indemnification will be sought, the Person claiming to be indemnified under the terms of this Article (the "Indemnified Person") shall give the Party from which indemnification is sought (the "Indemnifying Party") written notice thereof, together with a copy of such claim, process or other legal pleading. Failure of the Indemnified Person to give such notice will not reduce or relieve the Indemnifying Party of liability hereunder unless and to the extent that the Indemnifying Party was precluded from defending such claim, action, suit or proceeding as a result of the



failure of the Indemnified Person to give such notice. In any event, the failure to so notify shall not relieve the Indemnifying Party from any liability that it may have to the Indemnified Person otherwise than under this Article.

**10.2.2 Conduct of Proceedings.** Each Party and each other indemnitee shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against it arising out of any matter in respect of which it is entitled to be indemnified hereunder and the reasonable costs and expenses thereof (including reasonable legal fees and expert witness fees) shall be subject to the said indemnity; provided that the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding at its expense upon its giving written notice thereof to the Indemnified Person. The Indemnified Person shall provide reasonable assistance to the Indemnifying Party, at the Indemnifying Party's expense, in connection with such claim, action, suit or proceeding. Upon such assumption, the Indemnifying Party shall reimburse the Indemnified Person for the reasonable costs and expenses previously incurred by it prior to the assumption of such defence by the Indemnifying Party. The Indemnifying Party shall keep the Indemnified Person informed as to the status and progress of such claim, action, suit or proceeding. Except as set forth in paragraph (c) below, in the event the Indemnifying Party assumes the control of the defence, the Indemnifying Party will not be liable to the Indemnified Person under this Article for any legal fees or expenses subsequently incurred by the Indemnified Person in connection with such defence. The Indemnifying Party shall control the settlement of all claims over which it has assumed the defence; provided, however, that the Indemnifying Party shall not agree to or conclude any settlement that affects the Indemnified Person without the prior written approval of the Indemnified Person, (whose said approval shall not be unreasonably withheld).

**10.2.3 Representation.** In the event the Indemnifying Party assumes control of the defence, the Indemnified Person shall have the right to employ its own counsel and such counsel may participate in such claim, action, suit or proceeding, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person, when and as incurred, unless the:

(a) Employment of counsel by such Indemnified Person has been authorized in writing by the Indemnifying Party;

(b) Indemnified Person shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Person in the conduct of the defence of such action; or

(c) Indemnified Person shall have reasonably concluded and specifically notified the Indemnifying Party either that there may be specific defence available to it which are different from or additional to those available to the Indemnifying Party.

If any of the preceding clauses (a) through (c) shall be applicable, then counsel for the Indemnified Person shall have the right to direct the defence of such claim, action, suit or proceeding on behalf of the Indemnified Person and the reasonable fees and expenses of such counsel shall be reimbursed by the Indemnifying Party.

**10.3 Contributory Negligence.** If the joint, concurring, comparative or contributory negligence of the Parties gives rise to damages for which the Parties are entitled to indemnification under this Article X, then such damages shall be allocated between the Parties in proportion to their respective degrees of negligence contributing to such damages.

**10.4 Survival of Indemnities.** The indemnities set forth in this Agreement shall survive the termination or expiration of this Agreement.

## ARTICLE XI LIMITATIONS OF LIABILITY



**11.1 Consequential Damages.** Subject to the next sentence and except as expressly set forth herein, neither Owner nor Contractor nor any of either of their Affiliates, successors or assigns, or the respective shareholders, partners, assigns, directors, officers, agents or employees or representatives of either of them, shall be liable to the other for consequential, special, exemplary, indirect or incidental losses or damages under this Agreement, including loss of use, cost of capital, loss of goodwill, lost revenues or loss of profit, and Owner and Contractor each hereby releases the other and each of such Persons from any such liability.

**11.2 Contractor Limitation of Liability.** In no event shall the aggregate damages payable by Contractor hereunder exceed one hundred percent (100%) of the Contract Price (as the same may increase or decrease from time to time in accordance with the terms of this Agreement); provided, however, that this limitation of liability shall not apply to: (i) any loss or damage arising out of or connected with Contractor's Gross Negligence, fraud, willful misconduct or illegal or unlawful acts; (ii) Contractor's indemnification obligations under the Agreement to the extent that any claim is made against an Owner Indemnified Party by any Person other than Contractor or Owner; (iii) in the case of a Contractor Event of Default, costs incurred by Owner in completing the Work in excess of what would have otherwise been paid to Contractor under this Agreement; provided, however, in no event shall the aggregate damages payable by Contractor under this clause (iii) of this Section 11.2 exceed an amount equivalent to one hundred fifty percent (150%) of the Contract Price; or (iv) risks insured through insurance required under this Agreement, it being the Parties' intent that the limitation of liability shall not be reduced by the amount of insurance proceeds available to Contractor up to the limits of the policies required under Article XII.

**11.3 Owner Limitation of Liability.** In no event shall the aggregate damages payable by Owner hereunder exceed one hundred percent (100%) of the Contract Price (as the same may increase or decrease from time to time in accordance with the terms of this Agreement); provided, however, that this limitation of liability shall not apply to any loss or damage arising out of or connected with Owner's Gross Negligence, fraud, willful misconduct or illegal or unlawful acts. Contractor's sole recourse for any damages or liabilities due to Contractor by Owner pursuant to this Agreement shall be limited to the assets of Owner without recourse individually or collectively to the assets of the members or the Affiliates of Owner or their respective officers, directors, employees or agents of Owner, its members or their Affiliates.

## **ARTICLE XII. INSURANCE**

**12.1 Contractor's Insurance.** Prior to performing any Work at the Job Site, Contractor shall obtain and provide a certificate of insurance to Owner and thereafter shall maintain until the expiration of the Warranty Period and Contractor's satisfaction of its warranty obligations hereunder, the following limits of insurance:

**12.1.1 Worker's Compensation.** Contractor shall provide and maintain workers' compensation insurance as required by any workers' compensation and/or occupational disease laws of any applicable provincial or federal law of Canada or where the Work is performed and employer's liability insurance with a limit of liability of (i) [REDACTED] for bodily injury per accident, (ii) [REDACTED] for bodily injury by disease per policy and (iii) [REDACTED] for bodily injury by disease per employee. Prior to commencing the Work and as a condition precedent to Contractor's right to receive payment in respect of each progress draw and final payment, Contractor shall provide evidence of compliance with the requirements of the Workplace Safety and Insurance Act (Ontario) including payments due thereunder. All employees and workers of Contractor and Subcontractors working on the Project must be covered by the Workplace Safety and Insurance Act (Ontario).

At any time during the term of the Agreement, when requested by Owner, Contractor shall provide such evidence of compliance by itself and its Subcontractors;

**12.1.2 Automobile Liability.** Contractor shall provide and maintain business auto liability insurance covering owned, non-owned, leased, hired and borrowed automobiles in the amount of [REDACTED] combined single policy limit for bodily injury and property damage for each accident;

**12.1.3 Commercial General Liability.** Contractor shall provide and maintain commercial general liability insurance with a limit of [REDACTED] per occurrence and in the aggregate for bodily injury and/or property damage, including coverage for premises and construction operations; independent contractors; products and completed operations; explosion, collapse and underground hazards; forest fire fighting expense; broad form contractual liability; personal injury; non-owned watercraft, if applicable; broad form property damage; broad form named insured endorsement; action over coverage, and non-owned aircraft, if applicable. The products and completed operations coverage will be for a period not less than twenty-four (24) months following the Provisional Acceptance Date.

**12.1.4 Pollution Liability.** Contractor shall provide and maintain pollution liability insurance including sudden and accidental coverage with a limit of [REDACTED] for each occurrence or accident;

**12.1.5 Aircraft Liability.** Contractor shall provide and maintain aircraft liability insurance for all owned, non-owned and hired aircraft used in the performance of the Work with a limit of liability of [REDACTED] for bodily injury and property damage (other than passenger) and [REDACTED] for bodily injury per person for passengers;

**12.1.6 Excess Liability.** Contractor shall provide and maintain excess liability insurance on a following form basis covering employer's liability, automobile liability, commercial general liability, and pollution liability, each to a limit of [REDACTED] combined single policy limit for bodily injury and property damage;

**12.1.7 All Risk Equipment Insurance.** Contractor shall provide and maintain or shall have the right to self-insure all risk equipment insurance covering all risk of physical damage to equipment owned by Contractor and/or provided for use at the Job Site by Contractor; and

**12.1.8 Professional Liability Insurance.** Contractor shall provide and maintain professional liability insurance on a claims-made basis with limits of [REDACTED] for liability arising out of any negligent act, error, mistake or omission resulting from Contractor's engineering, design, procurement, construction, commissioning, start-up and testing services, such coverage to remain in effect for not less than [REDACTED].

**12.1.9 Requirements of Contractor's Insurance.** [REDACTED]

[REDACTED] Except for Professional Liability Insurance, which shall be required to be maintained on a "per claim basis," all Contractor liability policies required to be maintained by Contractor pursuant to this Section 12.1 shall be maintained on an "occurrence basis." All policies of insurance required to be maintained by Contractor hereunder shall: (i) be endorsed to specify that they are primary to and not excess to or on a contributing basis with any insurance or self-insurance maintained by Owner, Owner's Affiliates, the Financing Parties (including their respective officers, directors and employees) or any Subcontractors in respect of losses arising out of or in connection with the Work; (ii) provide a severability of interests or cross liability clause; (iii) provide for waivers of subrogation (or the equivalent thereof) in favour of Owner, its Affiliates, the Financing Parties and such other Persons (including their respective officers, directors and employees) as may be requested by Owner, from its

Subcontractors and their respective agents, officers and employees; (iv) provide that Owner and any additional insured shall be provided thirty (30) days' prior written notice of any non-renewals or cancellations; (v) provide that Owner and the Financing Parties shall have the right, but not any obligation, to pay premiums if Contractor shall fail to do so; and (vi) waive any right of subrogation against Owner, its Affiliates or the Financing Parties and waive any other right of the insurers to any off-set or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of Owner or the Financing Parties. Contractor shall promptly provide evidence of the minimum insurance coverage required under the Agreement in the form of an ACORD certificate or other certificate of insurance acceptable to Owner. Upon Owner's request, Contractor will make available certified copies of insurance policies available for inspection by Owner or Owner's representatives. Neither Contractor's failure to provide evidence of minimum coverage of insurance following Owner's request, nor Owner's decision to not make such a request, shall release Contractor from its obligation to maintain the minimum coverage provided for in this Article XII.

**12.2 Right to Insure.** Should Contractor fail to provide or maintain any of the insurance coverage required pursuant to this Article XII, Owner shall have the right to provide or maintain such insurance coverage at Contractor's expense, either by direct charge or set-off.

**12.3 Payment of Deductibles and Qualified Insurers.** Contractor shall be responsible for the payment of any deductible of any insurance coverage required pursuant to this Article XII. All Contractor Insurance Policies shall be written by insurers reasonably acceptable to Owner and the Financing Parties and that are rated "A-" VII or higher by A.M. Best's Key Rating Guide, or as may be approved in writing by Owner and the Financing Parties from time to time.

**12.4 No Limitation on Liability.** Nothing in this Article XII shall be deemed to limit Owner or Contractor's liability under the Agreement regardless of the insurance coverages required by this Article. No limitation of liability provided to Owner or Contractor under the Agreement is intended nor shall run to the benefit of any insurance company or in any way prejudice, alter, diminish, abridge or reduce, in any respect, the amount of proceeds of insurance otherwise payable to Owner or Contractor under coverage required to be carried by other Party under the Agreement, it being the intent of the Parties that the full amount of insurance coverage bargained for be actually available notwithstanding any limitation of liability contained in the Agreement, if any.

### **ARTICLE XIII. DEFAULT, TERMINATION AND SUSPENSION**

**13.1 Contractor Defaults.** The occurrence of any one or more of the following events shall constitute an event of default by Contractor hereunder ("Contractor Event of Default"):

(a) Any of the following occurs: (i) Contractor consents to the appointment of or taking possession by, a receiver, a trustee, custodian, or liquidator of itself or of a substantial part of its assets, or fails or admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors; (ii) Contractor files a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any applicable bankruptcy or insolvency laws or an answer admitting the material allegations of a petition filed against it in any such proceeding, or seeks relief by voluntary petition, answer or consent, under the provisions of any now existing or future bankruptcy, insolvency or other similar law providing for the liquidation, reorganization, or winding up of corporations, or providing for an agreement, composition, extension, or adjustment with its creditors; (iii) a substantial part of Contractor's assets is subject to the appointment of a receiver, trustee, liquidator, or custodian by court order and such order shall remain in effect for more than thirty (30) days; or (iv) Contractor is adjudged bankrupt or insolvent, has any property sequestered or seized by court order and such order shall remain in effect for more than thirty (30) days, or has filed against it a petition under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and such petition shall not be dismissed within thirty (30) days of such filing;

(b) Contractor fails to achieve Provisional Acceptance by the earlier of (i) the date on which the cap, if any, on Delay Liquidated Damages has been reached or (ii) [REDACTED] days after the Guaranteed Provisional Acceptance Date;

(c) Contractor fails, for any reason, (i) to pay when due Delay Liquidated Damages as required herein or (ii) to make any other payment or payments required to be made to Owner under the Agreement within ten (10) Business Days after receipt of written notice from Owner of Contractor's failure to make such other payment or payments;

(d) Contractor suspends performance of a material portion of the Work (other than as permitted under Article VIII or pursuant to a Scope Change Order);

(e) Contractor disregards any provision of any Applicable Law, and such condition remains unremedied for fifteen (15) days following written notice thereof by Owner;

(f) Any breach by Contractor of any representation or warranty contained in Article XVI;

(g) The failure by Contractor to deliver any recovery plan described in Section 2.4.4(a) in accordance with the terms of such Section, or following approval of a recovery plan pursuant to such Section, the failure of Contractor to comply with such recovery plan;

(h) The dissolution of Contractor, except for the purpose of merger, consolidation or reorganization where the successor expressly assumes Contractor's obligations hereunder and such assignment and assumption does not materially adversely affect the ability of the successor to perform its obligations under the Agreement, as applicable, remains in full force and effect for the obligations of such successor;

(i) The transfer by Contractor of (i) all or a substantial portion of the rights and/or obligations of Contractor hereunder, except for an assignment permitted hereunder, or (ii) all or a substantial portion of the assets or obligations of Contractor;

(j) Any failure by Contractor to maintain the insurance coverages required of it in accordance with Article XII;

(k) [REDACTED]

(l) Any noncompliance by Contractor (or its employees) or any Subcontractor (or its employees) with, or breach of any obligation set forth in Section 2.27;

(m) Any noncompliance by Contractor or any Contractor Agent or any Subcontractor with, or breach of any representation set forth in Section 2.23; or

(n) Contractor is in breach of any provision of this Agreement or has failed to perform its obligations under the Agreement (other than those breaches specified in this Section 13.1 (a) through (m) above) and (i) such breach is not cured by Contractor within fifteen (15) days after notice thereof from Owner, or (ii) if such breach is not capable of being cured within such fifteen (15) day period (as determined in

Owner's reasonable judgment), Contractor (A) fails to commence to cure such breach within such fifteen (15) day period, (B) fails to thereafter diligently proceed to cure such breach in a manner satisfactory to Owner or (C) fails to cure such breach within sixty (60) days after notice thereof from Owner.

**13.1.1 Termination for Cause.** Upon the occurrence and during the continuation of any Contractor Event of Default hereunder, Owner, in addition to its right to pursue any other remedy now or hereafter existing at law or in equity or otherwise, shall have the right to terminate this Agreement by written notice to Contractor (an "Owner Termination for Cause"). An Owner Termination for Cause shall be effective upon delivery of Owner's notice with respect thereto, subject to the applicable cure periods set forth herein. In the event of a termination by Owner under this Section 13.1.1, Owner shall have the right to take possession of and use all of the Contractor Equipment located at the Job Site on the date of such termination for the purpose of completing the Work and may employ any other Person to complete the Work by whatever method that Owner may deem necessary. In addition, Owner may make such expenditures as in Owner's sole judgment will accomplish the timely completion of the Work in accordance with the terms hereof. Owner shall, within a reasonable period of time after the Work is finally completed by the work of one or more replacement contractors, determine the total cost to Owner for completing the Work in accordance with the Scope of Work, the Technical Specifications, and the other requirements of the Agreement, including all sums previously paid or then owed to Contractor pursuant to this Agreement. In the event of termination by Owner under this Section 13.1.1, Contractor shall be responsible for and shall reimburse Owner for the following amounts: (i) all costs and expenses incurred by Owner to engage one or more substitute contractors to complete (or cure Defects in) the Work, including, without limitation, overhead and legal, engineering and other professional expenses, (ii) all other costs, expenses and damages suffered by Owner as a result of a default or breach by Contractor of the requirements of this Agreement and the termination of the Agreement as a result thereof, and (iii) the amount by which (A) the cost to complete (or cure Defects in) the Work, exceeds (B) the balance of the Contract Price unpaid at the time of the termination. Any amount owed by Owner to Contractor for the completion of the Work shall be retained by Owner until after completion of the Work and applied by Owner to pay any amounts owed by Contractor pursuant to this Section 13.1.1 or otherwise. Any excess of the amount retained by Owner over the amount due to Owner from Contractor under this Section 13.1.1 shall be remitted to Contractor within thirty (30) days after the Final Acceptance Date.

**13.1.2 Other Owner Remedies.** Upon the occurrence and during the continuance of a Contractor Event of Default but prior to termination of this Agreement by Owner, Owner may, without prejudice to any of its other rights or remedies under the Agreement or existing at law or in equity, (i) seek performance by any guarantor of Contractor's obligations hereunder or make a claim or draw under any security for Contractor's performance (including any letter of credit) to cure such Contractor Event of Default, (ii) seek equitable relief to cause Contractor to take action or to refrain from taking action pursuant to the Agreement, or to make restitution of amounts improperly received under the Agreement, and/or (iii) make such payments or perform such obligations as are required to cure such Contractor Event of Default and Contractor shall reimburse Owner for the cost of such payment or performance within fifteen (15) days after demand therefor; provided that Owner shall be under no obligation to cure any such Contractor Event of Default.

## **13.2 Owner Defaults.**

**13.2.1 Contractor Termination for Cause.** The occurrence of any one or more of the following events shall constitute an event of default by Owner hereunder ("Owner Event of Default"):

(a) Any of the following occurs: (i) Owner consents to the appointment of or taking possession by, a receiver, a trustee, custodian, or liquidator of itself or of a substantial part of its assets, or fails or admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors; (ii) Owner files a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any applicable bankruptcy or insolvency laws or an answer admitting the material allegations of a petition filed against it in any such proceeding, or seeks relief by voluntary petition, answer or consent, under the provisions of any now existing or future

bankruptcy, insolvency or other similar law providing for the liquidation, reorganization or winding up of corporations, or providing for an agreement, composition, extension or adjustment with its creditors; (iii) a substantial part of Owner's assets are subject to the appointment of a receiver, trustee, liquidator or custodian by court order and such order shall remain in effect for more than thirty (30) days; or (iv) Owner is adjudged bankrupt or insolvent, has any property sequestered by court order and such order remains in effect for more than thirty (30) days, or has filed against it a petition under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and such petition is not dismissed within thirty (30) days of such filing;

(b) The dissolution of Owner except for the purpose of merger, consolidation or reorganization where the successor expressly assumes Owner's obligations hereunder and such assignment and assumption does not materially adversely affect the ability of the successor to perform its obligations under the Agreement; or

(c) The transfer by Owner of (i) all or a substantial portion of the rights and/or obligations of Owner hereunder, except for an assignment permitted hereunder, or (ii) all or a substantial portion of the assets or obligations of Owner, except where the transferee expressly assumes the transferred obligations and such transfer does not materially adversely affect the ability of Owner or the transferee, as applicable, to perform its obligations under the Agreement.

(d) Owner is in breach of any provision of this Agreement or has failed to perform its obligations under the Agreement (other than those breaches specified above) and (i) such breach is not cured by Owner within thirty (30) days after notice thereof from Contractor, or (ii) if such breach is not capable of being cured within such thirty (30) day period (as determined in Owner's reasonable judgment), Owner (A) fails to commence to cure such breach within such thirty (30) day period, (B) fails to thereafter diligently proceed to cure such breach in a manner satisfactory to Contractor or (C) fails to cure such breach within sixty (60) days after notice thereof from Contractor; provided that Owner shall not be deemed to be in breach of this Agreement due to the failure of Owner to pay any portion of any amount that remains in dispute hereunder.

Upon the occurrence and during the continuation of any Owner Event of Default hereunder, Contractor shall have the right to terminate this Agreement by written notice to Owner (an "Contractor Termination for Cause"), subject to the applicable cure periods set forth herein, and shall be entitled to be paid the Termination Payment under Section 4.9, as Contractor's sole and exclusive remedy due to such termination or any Owner Event of Default or other breach by Owner of any provision hereof. A Contractor Termination for Cause shall be effective upon delivery of Contractor's notice with respect thereto, subject to the applicable cure periods set forth herein. Unless Contractor terminates this Agreement pursuant to the foregoing provisions, Contractor shall not be entitled to terminate the Agreement and shall not suspend or delay performance of the Work because of any Owner Event of Default or other breach by Owner of any provision hereof. Contractor shall continue performance of the Work during any dispute under or related to this Agreement.

**13.2.2 Financing Party Cure Rights.** Contractor's right to exercise the option to terminate this Agreement pursuant to Section 13.2.1 is subject to Contractor's first delivering to the Financing Parties, simultaneously with delivery thereof to Owner, notice of Owner's failure to cure the default and Contractor's intent to terminate as a result thereof. Each Financing Party shall have the option to cure such Owner Event of Default within ninety (90) days after receipt of such notice or to cause the Financing Parties' designee to assume this Agreement. If the Financing Parties desire to cause their designee to assume this Agreement, they shall provide notice to that effect within ninety (90) days after receipt of Contractor's notice to the Financing Parties of Contractor's intent to terminate. In either such case, Contractor's right to terminate this Agreement shall be of no further force and effect upon the cure by the Financing Parties of such default or receipt by Contractor of such notice from the Financing Parties of their intent to have this Agreement assumed.

**13.3 Termination Without Cause.** Owner may for its convenience terminate this Agreement



after giving written notice to Contractor in which event Contractor shall be entitled to be paid the Termination Payment pursuant to Section 4.9. As a condition to any termination by Owner pursuant to this Section 13.3 (a "Termination Without Cause"), Owner must provide written notice to Contractor of the Termination Without Cause prior to the effective date of such termination. If, at the date of termination under this Section 13.3, Contractor has properly performed services or purchased, prepared or fabricated off the Job Site any materials or Equipment for subsequent incorporation at the Job Site, Owner shall have the option of having such materials or Equipment delivered to the Job Site or to such other place as Owner shall reasonably direct.

#### **13.4 Actions Required Following Termination.**

**13.4.1 Discontinuation of Work.** Upon termination of this Agreement, Owner shall be immediately released from any and all obligations to Contractor (except for Owner's obligation to pay any amount specified in the event of such termination, if applicable) and Contractor immediately shall discontinue the Work. Upon a termination of this Agreement: (a) Contractor shall leave the Job Site and remove from the Job Site all the Contractor Equipment, waste, rubbish and Hazardous Material as Owner may request; (b) Owner shall take possession of the Job Site and of the Equipment (whether at the Job Site, in transit or otherwise); (c) Contractor shall promptly assign to Owner or its designee any contract that it has with Subcontractors as requested by Owner, and Contractor shall execute such documents as may be reasonably requested by Owner to evidence such assignment, subject to Owner's assumption of same; (d) Contractor shall promptly furnish Owner with copies of all completed Contractor Deliverables and, to the extent available, drafts of incomplete Contractor Deliverables; (e) Contractor shall execute such documents as may be reasonably requested by Owner to evidence the licenses granted hereunder; (f) Contractor shall assist Owner in preparing an inventory of all Equipment in use or in storage at the Job Site; and (g) Contractor shall take such other action as required hereunder upon termination of the Agreement.

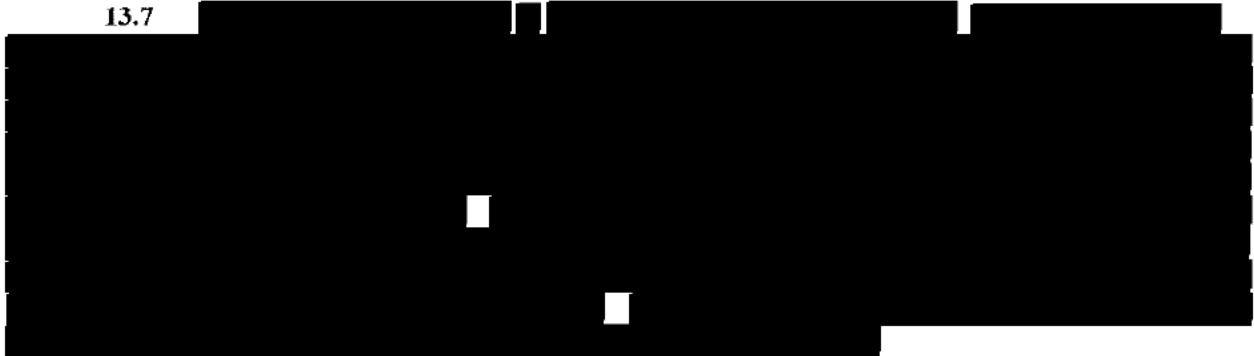
**13.4.2 Surviving Obligations.** Termination or expiration of this Agreement (a) shall not relieve either Party of its obligations with respect to the confidentiality of the other Party's information as set forth in Section 17.1, (b) shall not relieve either Party of any obligation hereunder which expressly or by implication survives termination hereof and (c) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Owner or Contractor of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination, and shall not relieve Contractor of its obligations as to portions of the Work or other services hereunder already performed or of obligations assumed by Contractor prior to the date of termination. This Article XIII shall survive the termination or expiration of this Agreement.

**13.5 Suspension by Owner for Convenience.** Owner may suspend all or a portion of the Work to be performed under the Agreement at any time for any reason in its sole discretion by giving written notice thereof to Contractor. Such suspension shall continue for the period specified in the notice of suspension, and Contractor agrees to resume performance of the Work promptly upon receipt of notice from Owner. Upon receiving any such notice of suspension, unless the notice requires otherwise, Contractor shall: (i) immediately discontinue the Work on the date and to the extent specified in the notice; (ii) place no further orders or subcontracts for Equipment, services or materials with respect to suspended Work, other than to the extent required in the notice; (iii) promptly make every reasonable effort to obtain suspension, with terms satisfactory to Owner, of all orders, subcontracts and rental agreements to the extent they relate to performance of suspended Work; (iv) continue to protect and maintain the Work performed, including those portions on which Work has been suspended; and (v) take any other reasonable steps to minimize costs and expenses associated with such suspension. Contractor shall use reasonable commercial efforts to include a suspension for convenience provision with terms similar to the foregoing in all subcontracts. Any Scope Changes required as a result of a suspension of Work pursuant to this Section 13.5 shall be made pursuant to a Scope Change Order issued in accordance with the provisions of Article IX, provided that Contractor's full compensation for any suspension under this Section will be reimbursed by Owner for the costs, as reasonably incurred, without duplication of any item, to the extent that such costs directly result from such suspension of the Work and to

the extent that they do not reflect reimbursement for Contractor's or Subcontractors' anticipated profit from unperformed Work, including all necessary and reasonable costs incurred in connection with demobilization and remobilization of Contractor's facility and Labour and the Contractor Equipment and of receiving, maintaining and protecting that portion of Work upon which performance has been suspended, in each case as such costs have been agreed to by Owner and Contractor.

**13.6 Suspension by Owner for Cause.** Owner may, by notice, temporarily suspend the Work, or any portion thereof, under this Agreement (i) when the performance by Contractor is unsatisfactory to obtain the results required by this Agreement or (ii) upon the occurrence of a Contractor Event of Default. The methods by which Contractor performs its Work are entirely the responsibility of Contractor. Owner's right to suspend Work under this Section 13.6 is intended solely to verify that the Work being performed by Contractor conforms to the Agreement, including the Drawings and Project Schedule and shall not obligate Owner to review the efficiency, adequacy or safety of Contractor's methods or means of operation or construction. Any additional costs incurred by Contractor resulting from such suspension shall be borne solely by Contractor. Upon receiving any such notice of suspension under this Section 13.6, unless the notice requires otherwise, Contractor shall: (a) immediately discontinue the Work on the date and to the extent specified in the notice; (b) place no further orders or subcontracts for Equipment, services or materials with respect to suspended Work, other than to the extent required in the notice; (c) promptly make every reasonable effort to obtain suspension, with terms satisfactory to Owner, of all orders, subcontracts and rental agreements to the extent they relate to performance of suspended Work; and (d) continue to protect and maintain the Work performed, including those portions on which Work has been suspended. Contractor shall use reasonable commercial efforts to include a suspension for cause provision with terms similar to the foregoing in all subcontracts. If the unsatisfactory condition is immediately corrected by Contractor, Owner shall authorize resumption of the Work. Contractor's failure to promptly effect correction of the unsatisfactory conditions shall be cause for immediate termination of the Agreement in accordance with Section 13.1.

13.7



#### **ARTICLE XIV. TITLE AND RISK OF LOSS**

**14.1 Title to the Work.** Contractor warrants and guarantees that legal title to and ownership of each portion of the Work (including, without limitation, all Equipment) shall pass to Owner, free and clear of any and all Liens, upon the earlier of (i) payment to Contractor of the portion of the Contract Price then actually due Contractor in connection with the applicable Request for Payment as provided in the Agreement or (ii) delivery of such portion of the Work to the Job Site or other Owner designated location. Notwithstanding anything to the contrary, (a) title to any Equipment provided (or to be provided) by Contractor that is manufactured outside Canada shall pass to Owner no earlier than at the port of export after having cleared customs, (b) the costs of unloading and transporting to the Job Site are included in the Contract Price and (c) all right, title and interest in and to all Owner-Furnished Equipment shall remain with Owner.

**14.2 Title to Contractor Deliverables.** Except as otherwise provided in Article XIII, title to the Contractor Deliverables, which are owned by Contractor, shall be transferred to Owner upon the earlier of



delivery of such Contractor Deliverable, Provisional Acceptance or termination of the Agreement. In addition, Contractor grants to Owner an irrevocable, perpetual, non-exclusive royalty-free license to use and reproduce such Contractor Deliverables to which Contractor does not have title solely for the purpose of completing construction of, operating and maintaining, rebuilding, modifying and expanding the Work. Owner shall have the right to assign the benefit of such license to the Financing Parties in connection with granting a security interest in the Transmission Facilities, to a purchaser or the Utility in connection with a transfer of the Transmission Facilities, or to any subsequent purchaser or assignee of same. Any such purchaser or assignee shall acquire such license subject to the same terms and restrictions as stated in this Section 14.2. Owner may retain the necessary number of copies of all such documents for purposes of construction, operation, maintenance and repair of the Work.

**14.3 Risk of Loss.** Notwithstanding passage of title as provided in Section 14.1, from the Effective Date until the Provisional Acceptance Date, Contractor hereby assumes the risk of loss for the Work, including: (a) any Equipment whether on or off the Job Site, (b) all other Work completed on or off the Job Site, (c) Owner-Furnished Equipment on the Job Site and (d) all Work in progress. All Equipment and Owner-Furnished Equipment not yet incorporated into the Work shall be stored in secured areas. Contractor shall bear the responsibility of preserving, safeguarding and maintaining such Equipment, Owner-Furnished Equipment and any other completed Work and Work in progress (including spare parts provided by Owner). If any loss, damage, theft or destruction occurs to Owner-Furnished Equipment and the Work, on or off the Job Site, for which Contractor has so assumed the risk of loss, Contractor shall, at its cost, promptly repair or replace the property affected thereby. Risk of loss for the Work shall pass to Owner (excluding Contractor Equipment and other items to be removed by Contractor, which shall remain the responsibility of Contractor) on the Provisional Acceptance Date; provided, however, Contractor shall continue to be responsible until the Final Acceptance Date for claims, physical loss or damage to the Owner-Furnished Equipment and Work to the extent resulting from Contractor's or its Subcontractors' acts or omissions, and/or failure to comply with the requirements of the Agreement. Notwithstanding the foregoing, if Contractor is obligated by the terms of this Agreement to perform additional Work subsequent to the date of completion for such Work, Contractor shall bear the risk of loss and damage with respect to such Work until such additional Work is complete.

## **ARTICLE XV. DISPUTE RESOLUTION**

**15.1 Senior Representatives Discussion.** Any dispute between the Parties relating to the prosecution of the Work, including without limitation, the scheduling thereof, the achievement of Milestones, and the entitlement of Contractor for payment in accordance with the Schedule of Values for completed Activities, shall be referred to the on-site project managers of the Parties for prompt resolution. Any such dispute between the Parties that cannot be resolved by on-site project managers within fifteen (15) days and any other dispute arising out of or relating to this Agreement (collectively, "Disputes"), including without limitation, Disputes concerning the breach, termination or invalidity hereof, shall be reviewed by senior representatives of each of the Parties designated by such Party, for resolution on an informal basis as promptly as practicable. If such consultations do not result in a resolution of the Dispute within thirty (30) days after notice of a Dispute is delivered by either Party, then either Party may pursue all of its remedies.

### **15.2 Litigation.**

**15.2.1** If a Dispute cannot be resolved pursuant to Section 15.1, and in the event of litigation arising hereunder, the Parties agree that the exclusive venue for such litigation shall be the courts of the Province of Ontario located in Toronto and any appellate court from any thereof. The Parties irrevocably waive any objection, which any of them may now or hereafter have to the bringing of any such action or proceeding in such respective jurisdictions, including any objection to the laying of venue based on the grounds of forum non conveniens and any objection based on the grounds of lack of in personam jurisdiction.

**15.2.2** IN ANY LITIGATION ARISING FROM OR RELATED TO THIS AGREEMENT,

THE PARTIES HERETO EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR OWNER AND CONTRACTOR TO ENTER INTO THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAWS. EACH PARTY AGREES THAT FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN ANY OTHER JURISDICTION BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY APPLICABLE LAW.

**15.2.3** The rights and obligations of the Parties under this Article XV shall not be impaired, reduced or otherwise affected as a result of any of the following: (i) the receipt by a Party from any third party of any amounts in reimbursement of damages that are the subject of the Dispute; or (ii) the assignment or transfer by either Party of any or all of its rights and/or obligations under the Agreement as permitted hereunder.

**15.3 Continued Performance.** During the continuation of any Dispute, so long as the dispute resolution procedures set forth in this Article XV are continuing, the Parties shall continue to perform their respective obligations under this Agreement including continuation of Work under the Project Schedule and prompt and timely payment of all undisputed amounts due hereunder until a final non-appealable resolution is reached.

**15.4 Tolling Statute of Limitations.** All applicable statutes of limitation and defences based upon the passage of time and similar contractual limitations shall be tolled while the procedures specified in this Article XV are pending. The Parties will take such action, if any, required to effectuate such tolling. Without prejudice to the procedures specified in this Article XV, a Party may file a complaint for statute of limitations purposes, if in its sole judgment such action may be necessary to preserve its claims or defences. Despite such action, the Parties will continue to participate in good faith in the procedures specified in this Article XV.

**15.5 Audit Rights.** In addition to Owner's rights to audit elsewhere in this Agreement, in the event of a claim by Owner or Contractor under this Agreement involving an amount greater than [REDACTED] or for any audit to which the Owner is subject under Applicable Law regardless of amount including relating to any regulatory requirements, Contractor shall grant audit rights to Owner with respect to all relevant documentation pertaining to such claim.

**15.6 Specific Performance.** Notwithstanding anything to the contrary contained in this Article XV, if, due to a material breach or threatened material breach or default or threatened default, a Party is suffering irreparable harm for which monetary damages are inadequate, such Party may petition a court of competent jurisdiction for injunctive relief, specific performance or other equitable relief.

## **ARTICLE XVI. REPRESENTATIONS AND WARRANTIES**

**16.1 Contractor Representations and Warranties.** Contractor represents and warrants to Owner that:

**16.1.1 Organization.** It is a limited partnership duly formed, validly existing and in good standing under the laws of the Province of Alberta, and is duly authorized and qualified to do business in the Province of Ontario.

**16.1.2 No Violation of Law; Litigation.** It is not in violation of any Applicable Laws or

Applicable Permits or judgments entered by any Governmental Authority which violations, individually or in the aggregate, would affect its performance of any obligations under this Agreement. There are no legal, administrative or arbitration proceedings or actions now pending or, to the best knowledge of Contractor, threatened against Contractor which, if adversely determined, could reasonably be expected to affect the ability of Contractor to perform any of its obligations under this Agreement. Contractor does not know of any basis for any such proceedings.

**16.1.3 Licenses.** It is the holder of all governmental consents, licenses, permissions and other authorizations and Applicable Permits required to operate and conduct its business now and as contemplated by this Agreement, other than Applicable Permits which will be obtained in accordance with the terms of the this Agreement;

**16.1.4 No Breach.** None of the execution, delivery and performance of this Agreement, the consummation of the transactions herein contemplated, or compliance with the terms and provisions hereof, shall conflict with or result in a violation or breach of the terms, conditions or provisions of, or require any consent under, the charter or by-laws of Contractor, or any Applicable Law or regulation, order, writ, injunction, award, judgment or decree of any court, or any agreement, contract, indenture or other instrument to which Contractor is a party or by which it or its assets is bound or to which it or its assets is subject, or constitute a default under any such agreement or instrument;

**16.1.5 Corporate Action.** It has all necessary power and authority to conduct its business, own its properties and to execute, deliver and perform its obligations under this Agreement; the execution, delivery and performance by Contractor of this Agreement have been duly authorized by all requisite corporate action; and this Agreement has been duly and validly executed and delivered by Contractor and constitutes the legal, valid and binding obligation of Contractor enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles;

**16.1.6 Investigation.** It has: (i) by itself and through its Subcontractors, full experience and proper qualifications to perform the Work and (ii) ascertained the nature and location of the Work, the general character and accessibility of the Job Site, the existence of obstacles to performance of the Work, the location and character of existing or adjacent work or structures, and other general and local conditions and Applicable Laws (including Labour) which might affect its performance of the Work or the cost thereof and has performed such testing or examined the results of such testing as would normally be conducted by a contractor considering entering into an agreement such as this Agreement;

**16.1.7 Review of Agreement.** It has examined this Agreement, including all Exhibits attached hereto, thoroughly and become familiar with all its terms and provisions;

**16.1.8 Review of Additional Documents.** It has reviewed all other documents and information necessary and available to it in order to ascertain the nature, location and scope of the Work, the character and accessibility of the Job Site, the existence of obstacles to performance of the Work, the availability of facilities and utilities, and the location and character of existing or adjacent work or structures.

**16.1.9 Intellectual Property.** It owns or has the right to use all patents, trademarks, service marks, tradenames, copyrights, licenses, franchises, Permits and intellectual property rights necessary to perform the Work without conflict with the rights of others;

**16.1.10 Solvency.** It is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete its obligations under this Agreement;

**16.1.11 Studies and Reports.** Owner may provide or may have provided it with copies of certain studies, assessments, reports or other information (including oral statements) and it represents and

acknowledges that (i) all such documents or information have been or will be provided as background information and as an accommodation to Contractor, (ii) Owner makes no representations or warranties with respect to the accuracy of such documents or the information (including oral statements) or opinions therein contained or expressed and (iii) it is not relying on Owner for any information, data, inferences, conclusions, or other information with respect to the Job Site, including the surface conditions of the Job Site and the surrounding areas;

**16.1.12 Certifications.** All Persons who will perform any portion of the Work have and will have all business and professional certifications required by Applicable Law to perform their respective services under this Agreement;

**16.1.13 Site Access.** The access rights granted to or obtained by Contractor to the Job Site are adequate for the performance of the Work;

**16.1.14 Residency.** Contractor is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada); and

**16.1.15 MNRF Sensitive Data.** Contractor and each of its Recipients who have a need to view the MNRF Sensitive Data have successfully completed either (i) the Full Day Data Sensitivity Training, or (ii) the Understanding Sensitive Information Training under the supervision of another employee or person who has successfully completed the Full Day Data Sensitivity Training.

**16.2 Owner Representations and Warranties.** Owner represents and warrants to Contractor that:

**16.2.1 Organization.** It is a limited partnership duly formed, validly existing and in good standing under the laws of the Province of Ontario, and is duly authorized and qualified to do business in the Province of Ontario.

**16.2.2 No Violation of Law; Litigation.** It is not in violation of any Applicable Laws or Applicable Permits or judgments entered by any Governmental Authority which violations, individually or in the aggregate, would affect its performance of any of its obligations under this Agreement;

**16.2.3 Licenses.** It is the holder of all governmental consents, licenses, permissions and other authorizations and Applicable Permits required to operate and conduct its business now and as contemplated by this Agreement, other than Applicable Permits which will be obtained in accordance with the terms of this Agreement;

**16.2.4 No Breach.** None of the execution and delivery of this Agreement, the consummation of the transactions herein contemplated, or compliance with the terms and provisions hereof and thereof, conflicts with or will result in a breach of, or require any consent under, the limited liability company agreement of Owner, or any Applicable Law or regulation, order, writ, injunction or decree of any court, or any agreement or instrument to which Owner is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument; and

**16.2.5 Corporate Action.** It has all necessary power and authority to conduct its business, own its properties and to execute, deliver and perform its obligations under this Agreement; the execution, delivery and performance by Owner of this Agreement have been duly authorized by all requisite limited liability company action; and this Agreement has been duly and validly executed and delivered by Owner and constitutes the legal, valid and binding obligation of Owner enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

**16.3 Survival of Representations and Warranties.** The representations and warranties of the Parties in this Article shall survive execution and termination of this Agreement.

## **ARTICLE XVII. MISCELLANEOUS PROVISIONS**

### **17.1 Confidentiality and Publicity.**

**17.1.1 Confidential Information and Permitted Disclosures.** Contractor and Owner shall hold in confidence the contents of the Agreement and any information provided by the other Party pursuant to this Agreement and any other information supplied by either Party to the other Party or any Subcontractor or other Affiliate or agent that is either (i) marked as “confidential” or “proprietary” by an appropriate stamp, label, legend or other written notice thereon if transmitted electronically or other written form, and if disclosed orally by a Party, then the disclosing Party shall confirm the oral or visual disclosure that shall be considered Confidential Information in a written memorandum to the receiving Party within thirty (30) days after such visual or oral disclosure or (ii) information that due to its character and nature, a reasonable person under like circumstances would treat such information as confidential or proprietary (collectively, “Confidential Information”). Notwithstanding foregoing, any MNRF Sensitive Data disclosed by Owner or its agents to Contractor or its Recipients under this Agreement shall be deemed Confidential Information. Both Parties shall inform their respective Affiliates, Subcontractors, suppliers and employees of its obligations under this Section 17.1 and require such Persons to adhere to the provisions hereof. Notwithstanding the foregoing, either Party may disclose the following categories of information or any combination thereof:

(i) Confidential Information that was in the public domain prior to receipt thereof by either party or which subsequently becomes part of the public domain by publication or otherwise except by a wrongful act of the Party to whom which the Confidential Information had been provided or its Affiliates, Subcontractors, employees, directors, officers, agents, advisers or representatives;

(ii) Confidential Information that either Party can show was lawfully in its possession prior to receipt thereof from the other Party through no breach of any confidentiality obligation;

(iii) Confidential Information received by either Party from a third party having no obligation of confidentiality with respect thereto;

(iv) Confidential Information at any time developed independently by either Party providing it is not developed from otherwise Confidential Information;

(v) Confidential Information disclosed pursuant to and in conformity with Applicable Law;

(vi) Confidential Information that is necessary or advisable to disclose for Owner to exercise its Intellectual Property Rights under this Agreement;

(vii) Confidential Information that is necessary or advisable to disclose for the purpose of enforcing the disclosing Party’s rights hereunder;

(viii) Confidential Information required to be disclosed under securities laws applicable to publicly traded companies and their subsidiaries; and

(ix) Confidential Information disclosed to Affiliates, Subcontractors, contractors, consultants, employees, directors, officers, agents, advisors, insurers or representatives (the “Recipients”) of either Party as necessary for purposes of the Work, the Project or other Owner purpose; provided that such Recipients are informed of the confidential nature of the Confidential Information, and disclosing Party shall

be liable to the other Party for any disclosure by such Recipients in violation of the terms of this Section 17.1.

**17.1.2 Consent.** Notwithstanding the foregoing, either Party may disclose Confidential Information with the express written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Owner may disclose information on a need-to-know basis to (a) any existing or potential Financing Party or potential purchaser of any direct or indirect interest in the Work, the Project or Owner, and (b) any Person relating to the completion, operation, repair or maintenance of the Work or the Project; provided, however, that such disclosures shall be subject to such Financing Party or other Person being informed of the confidential nature of the Confidential Information, and disclosing Party shall be liable to the other Party for any disclosure by such Financing Party or other Person in violation of the terms of this Section 17.1.

**17.1.3 Press Release.** Contractor shall not issue any press or publicity release or otherwise release, distribute or disseminate any confidential information for publication concerning this Agreement or the participation of Owner in the transactions contemplated hereby without the prior written consent of Owner; provided, however, that such limitation on disclosure shall not apply to disclosures or reporting required by a Governmental Authority if Contractor informs Owner of the need for such disclosure and, if reasonably requested by Owner, seeks, through a protective order or other appropriate mechanism, to maintain the confidentiality of Confidential Information.

**17.1.4 Ownership of Confidential Information.** All right and title to, and interest in, Owner's Confidential Information shall remain with Owner. All Confidential Information obtained, developed or created by or for Contractor exclusively for the Work, including copies thereof, is the exclusive property of Owner whether delivered to Owner or not. No right or license is granted to Contractor or any third party respecting the use of Confidential Information by virtue of this Agreement. Contractor shall deliver the Confidential Information, including all copies thereof, to Owner upon request.

**17.1.5 Required Disclosure.** In the event that a Party is requested or required by legal or regulatory authority to disclose any Confidential Information, the receiving Party shall promptly notify the disclosing Party of such request or requirement prior to disclosure, if permitted by law, so that the disclosing Party may seek an appropriate protective order and/or waive compliance with the terms of this Agreement. In the event that a protective order or other remedy is not obtained, or the disclosing Party waives compliance with the provisions hereof, the receiving Party agrees to furnish only that portion of the Confidential Information that it reasonably determines, in consultation with its counsel, is consistent with the scope of the subpoena or demand, and to exercise reasonable efforts to obtain assurance that confidential treatment will be accorded such Confidential Information.

**17.1.6 Remedies for Unauthorized Disclosure.** The Parties agrees that money damages would not be a sufficient remedy for any breach of the a Party's Confidential Information under this Agreement and that the disclosing Party shall be entitled to injunctive or other equitable relief to remedy or prevent any breach or threatened breach of this Agreement. Such remedy for an unauthorized disclosure of a Party's Confidential Information shall not be the exclusive remedy for any breach of this Agreement, but shall be in addition to all other rights and remedies available at law or in equity.

**17.2 Notice.** All notices and other communications required or permitted by this Agreement or by law to be served upon or given to a Party by any other Party shall be in writing signed by the Party giving such notice and shall be deemed duly served, given and received (i) when actually received by the Party to whom it is sent, if served personally or if delivered by nationally recognized courier service to the Party to whom notice is to be given, (ii) on the first (1st) day following the day transmitted (with confirmation of receipt) if delivered by facsimile or (iii) on the third (3rd) Business Day after mailing, if mailed by first class registered or certified mail, return receipt requested, postage prepaid, addressed to the appropriate Party, at the address and/or facsimile numbers of such Party set forth below (or at such other address as such Party may designate by written notice to the other Party in accordance with this Section 17.2):

If to Owner:

NextBridge Infrastructure LP

[REDACTED]  
390 Bay Street  
Suite 1720  
Toronto Ontario, Canada M5H 2Y2  
[REDACTED]

NextBridge Infrastructure LP

[REDACTED]  
700 Universe Boulevard  
Juno Beach, Florida 33408  
[REDACTED]

If to Contractor:

Valard Construction LP

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Valard Construction LP

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**17.3 Time of the Essence.** Time is of the essence to the performance of the Work in accordance with the requirements of this Agreement.

**17.4 No Rights in Third Parties.** Except with respect to the rights of indemnitees under Article X (a) nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any Person that is not a Party, (b) no Person that is not a Party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder and (c) this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services to be provided hereunder.

**17.5 Entire Agreement.** The Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, arrangements, discussions, undertakings and commitments (whether written or oral) with respect thereto. There are no other oral understandings, terms or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement.

**17.6 Amendments.** No amendment or modification of this Agreement shall be valid or binding

upon the Parties unless such amendment or modification shall be in writing and duly executed by authorized officers of both Parties.

**17.7 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the province of Ontario, Canada, and the laws of Canada applicable therein, other than any provision thereof relation to the choice or conflict of law.

**17.8 Right of Waiver.** No delay, failure or refusal on the part of any Party to exercise or enforce any right under this Agreement shall impair such right or be construed as a waiver of such right or any obligation of another Party, nor shall any single or partial exercise of any right hereunder preclude other or future exercise of any right. The failure of a Party to give notice to the other Party of a breach of this Agreement shall not constitute a waiver thereof. Any waiver of any obligation or right hereunder shall not constitute a waiver of any other obligation or right, then existing or arising in the future. Each Party shall have the right to waive any of the terms and conditions of this Agreement that are for its benefit. To be effective, a waiver of any obligation or right must be in writing and signed by the Party waiving such obligation or right.

**17.9 Severability.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of the this Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

**17.10 Assignment.** Except as set forth herein, this Agreement and all of the Contractor's rights, duties and obligations under this Agreement are personal in nature and shall not be subcontracted, assigned, delegated or otherwise disposed of by the Contractor without the prior written consent of Owner. Without limiting Owner's right to assign this Agreement, it is understood and acknowledged by Contractor that (i) Owner shall be entitled to assign this Agreement and its rights herein without the consent of Contractor to any of Owner's Affiliates that has a direct or indirect interest in the Project, and (ii) Contractor hereby consents to the granting of a security interest in and an assignment by Owner of the Agreement and its rights herein to the Financing Parties and their successors, assigns and designees in connection with any financing or refinancing related to the development, construction, operation and maintenance of the Project. In furtherance of the foregoing, Contractor further acknowledges that Owner's Affiliates and/or the Financing Parties may under certain circumstances assume the interests and rights of Owner under the Agreement.

**17.11 Successors and Assigns.** This Agreement shall be binding upon the Parties and their successors and permitted assigns.

**17.12 Survival.** All provisions of the Agreement that are expressly or by implication to come into or continue in force and effect after the expiration or termination of this Agreement shall remain in effect and be enforceable following such expiration or termination.

**17.13 Effectiveness.** This Agreement shall be effective on, and binding upon each of the Parties, the Effective Date.

**17.14 Expenses and Further Assurances.** Each Party shall pay its own costs and expenses in relation to the negotiation, preparation, execution and carrying into effect this Agreement. Contractor and Owner agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party (at the cost and expense of the other Party) in order to give full effect to this Agreement and to carry out the intent of this Agreement.



**17.15 Counterparts.** This Agreement may be executed in any number of counterparts and each counterpart shall represent a fully executed original as if executed by both Parties, with all such counterparts together constituting but one and the same instrument. Delivery hereof may be performed by facsimile of, or the electronic transmission of scanned, signature pages.

**17.16 Offset.** Notwithstanding any other provision hereof, any and all amounts owing or to be paid by Owner to Contractor hereunder or otherwise, shall be subject to offset and reduction in an amount equal to any amounts that may be owing at any time by Contractor to Owner.

**17.17 Good Faith Dealings.** The Parties undertake to act fairly and in good faith in relation to the performance and implementation of this Agreement and to take such other reasonable measures as may be necessary for the realization of its purposes and objectives.

**17.18 Financing Parties' Requirements.** Contractor acknowledges that Owner or its Affiliates may borrow certain funds from the Financing Parties and that, as a condition to making loans to Owner or its Affiliates, the Financing Parties may from time to time require certain documents from, and agreements by, Contractor and its Subcontractors. In connection therewith, Contractor agrees to furnish to the Financing Parties, and to cause its Subcontractors to furnish to the Financing Parties, such written information, certificates, copies of invoices and receipts, statutory declarations, affidavits, consents to assignment of the Agreement and other like documents as the Financing Parties may reasonably request. In addition, Contractor agrees to accept all revisions or amendments to the Agreement, which are reasonably requested by the Financing Parties, provided that such revisions or amendments are of a nature typically obtained by financing parties in non-recourse financing. Upon the request of the Financing Parties, Contractor shall state in writing whether or not it is satisfied with Owner's performance to that date.

**17.19 Financial Assurances.** If Owner determines that Contractor's financial condition has deteriorated so as to create a risk of loss to Owner, then Owner may inform Contractor in writing of such insecurity, and as Owner shall direct in its sole discretion, Contractor shall immediately: (a) provide written assurance within five (5) Days that Contractor is capable of performing and completing the Work and its obligations under this Agreement; (b) increase the forms and/or amounts of security; (c) require direct payment or co-payment to Subcontractors; (d) adjust the amount of Work to be performed by Contractor with corresponding adjustments in the Contract Price; and/or (e) to assign to Owner any agreement or purchase order with a Subcontractor, provided that Contractor shall remain responsible for its obligations under such agreement or purchase order.

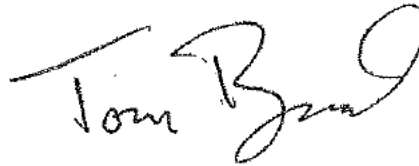
[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURES APPEAR ON FOLLOWING PAGE.]

IN WITNESS WHEREOF, the Parties have caused this ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT FOR TRANSMISSION FACILITIES to be executed by their duly authorized representatives as of the date and year first above written.

as Owner:

NEXTBRIDGE INFRASTRUCTURE LP

By: Upper Canada Transmission, Inc., its general partner



By:

Name: Tom Broad

Title: Vice President

Date: \_\_\_\_\_

as Contractor:

VALARD CONSTRUCTION LP

By: Valard Construction 2008 Ltd., its general partner

