

PROJECT AGREEMENT

for PUC UDM Project

PUC DISTRIBUTION INC.

("PUC")

and

■

("Project Co")

Dated: ■, 2019

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PROJECT AGREEMENT

THIS PROJECT AGREEMENT dated as of _____, 2019 (the “**Agreement**”) is entered into:

BETWEEN:

PUC Distribution Inc.

(“**PUC**”)

AND:

[•] [NTD: Entity to be confirmed.]

(“**Project Co**”)

[NTD: Corporate structure of Project Co and supporting documentation to be confirmed/provided once available.]

WHEREAS:

- A. PUC has selected Project Co to design, build, finance, and help facilitate the operations, maintenance and lifecycle rehabilitation on the UDM System; and
- B. the rights and obligations between the Parties will be governed by the terms and conditions set out in this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged by each of the parties hereto, the parties hereto agree as follows:

1. INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires, the capitalized terms will have the meanings set out in Schedule 1 [Definitions and Interpretation]. Certain words and expressions are defined within the schedules hereto and such definitions will apply, unless the context otherwise requires, in all other parts of this Agreement whether or not Schedule 1 [Definitions and Interpretation] contains a cross-reference to such definitions.

1.2 Interpretation

This Agreement will be interpreted and construed in accordance with the provisions set out in Schedule 1 [Definitions and Interpretation].

1.3 Schedules

The schedules hereto and the terms set out therein will be deemed fully a part of this Agreement.

2. GENERAL PROJECT TERMS

2.1 Term and Termination

- (a) Save and except for this Section 2.1, 3.4 and [●] which shall be effective on the Effective Date, the remaining provisions of this Agreement shall not be effective until the Commencement Date, which will only occur upon satisfaction or waiver by, (in the case of Section 2.1(a)(1)) PUC or by, (in the case of 2.1(a)(2)) Project Co of the following conditions precedent:
 - (1) the approval of the OEB of the UDM System as an incremental capital project and for cost recovery by PUC pursuant to an incremental capital module application in accordance with the OEB's Filing Requirements for Electricity Distribution Rate Applications – 2017 Edition for 2018 Rate Applications dated July 20, 2017, as amended, restated or replaced from time to time;
 - (2) consent by all PUC's secured lenders to the grant by PUC of such security interests in the PUC Distribution System (including the UDM System) that is acceptable to Project Co (collectively, the "**Security**") which Security is to be delivered on the Commencement Date in form and content satisfactory to Project Co and its lenders.
- (b) In the event the Commencement Date does not occur prior to [●], this Agreement shall immediately terminate and expire without any liability to the Parties.
- (c) Upon the Commencement Date occurring, any portion of the Design work described in the Early Works Contract shall be subject to the terms of this Agreement and shall be deemed to be part of Project Co's Design obligations pursuant to this Agreement. Any payment by PUC under the Early Works Contract shall be applied against any payments due under this Agreement at any time following the Commencement Date.
- (d) The term of this Agreement (the "**Term**") will commence on the Commencement Date and will continue to the Expiry Date unless earlier terminated:
 - (1) by PUC at any time in its discretion, and at the convenience of PUC, by notice stating that termination is for convenience pursuant to this Section 2.1(d)(1);
 - (2) by PUC pursuant to Section 6.6 if PUC elects not to re-instate the Project after receipt of a Reinstatement Plan;
 - (3) by PUC pursuant to Section 6.12(a) or 6.12(c)(2) in connection with a Principal Insured Risk becoming Uninsurable;

- (4) by either Party pursuant to Section 8.4(c) or 8.4(d) in connection with a Relief Event;
- (5) by either Party pursuant to Section 8.5(c) or 8.5(d) in connection with a Force Majeure Event;
- (6) by PUC pursuant to Section 12.4 in connection with a Project Co Event of Default;
- (7) by Project Co pursuant to Section 13.3 in connection with an PUC Event of Default; or
- (8) pursuant to any other provision hereunder which entitles either party to terminate this agreement.

Unless otherwise specified, the Termination Date for such earlier terminations will be the date notice of termination is given by one Party to the other Party in accordance with this Agreement. Except as referred to in this Section 2.1, neither party will have the right to terminate this Agreement.

2.2 Document Deliveries

Concurrently with the execution and delivery of this Agreement,

- (a) Project Co will deliver to PUC the documents described in Section 2 of Schedule 18 [Completion Documents]; and
- (b) PUC will deliver to Project Co the documents described in Section 3 of Schedule 18 [Completion Documents].

2.3 Assumption of Risk

Except to the extent expressly allocated to PUC or otherwise provided for under this Agreement, all risks, costs and expenses in relation to the performance by Project Co of its obligations under this Agreement are allocated to, and accepted by, Project Co as its entire and exclusive responsibility.

2.4 Opportunities

Except as expressly provided in this Agreement, or as may be specifically agreed in writing between PUC and Project Co during the Term and without prejudice to Project Co's rights to perform its obligations under this Agreement, PUC reserves the right to all commercial and other opportunities for, or related to, the Project and the Lands. In the event the exercise of such rights by PUC impedes Project Co in the performance of its obligations under this Agreement and as a result of the same, Project Co is required to perform additional work or incur additional costs, then prior to performing such additional work or incurring such additional costs, Project Co shall be entitled to a Change pursuant to Schedule 6 [Changes, Minor Works and Innovation Proposals].

2.5 General Duty of PUC to Mitigate

In all cases where PUC is entitled to receive from Project Co any relief from its obligations under this Agreement or compensation, costs or damages, PUC will use all commercially reasonable efforts to mitigate such relief sought from its obligations under this Agreement or amount required to be paid by Project Co to PUC under this Agreement including causing all applicable PUC Persons to use their respective commercially reasonable efforts to mitigate any such relief, losses, costs or expenses they might require or suffer and which might impact any relief sought or compensation, costs or damages payable by Project Co to PUC hereunder.

2.6 General Duty of Project Co to Mitigate

In all cases where Project Co is entitled to receive from PUC any relief from its obligations under this Agreement or any compensation, costs or damages, Project Co will use all commercially reasonable efforts to mitigate such relief sought from its obligations under this Agreement or such amount required to be paid by PUC to Project Co under this Agreement including causing all applicable Project Co Persons to use their respective commercially reasonable efforts to mitigate any such relief, losses, costs or expenses they may require or suffer and which might impact any relief sought or compensation, costs or damages payable by PUC to Project Co hereunder.

2.7 Representatives

Project Co and PUC will each have a Design and Construction Representative, appointed in accordance with and with the rights and responsibilities set out in Schedule 2 [Design and Construction Protocols], and an Operating Period Representative, appointed in accordance with and with the rights and responsibilities set out in Schedule 4 [Services]. Project Co's Design and Construction Representative and Operating Period Representative may be the same person. PUC may in its discretion appoint the same person to any or all of its Representative positions. From time to time, PUC may by notice in writing to Project Co change the signing authority of any or all of the PUC Representatives and appoint or remove one or more other persons having signing authority, and Project Co may by notice in writing to PUC change the signing authority of Project Co's Representatives and appoint or remove one or more other persons having signing authority. Notwithstanding anything to the contrary, the parties hereto acknowledge that Project Co's Design and Construction Representative and Operating Period Representative are not required to be employees of Project Co and may be employees of a Sub-Contractor.

2.8 Key Individuals

Attached as Schedule 17 [Key Individuals] is a list of persons (the "**Key Individuals**") that Project Co and PUC will utilize in undertaking the Design and the Construction and as otherwise required in relation to the Project, as described in that Schedule, subject to any rights Project Co and/or PUC may have under this Agreement to replace any Key Individual. With respect to each of the Key Individuals:

- (a) Project Co and PUC will use all reasonable efforts to retain the Key Individuals under their respective control to perform their duties for the period described in Schedule 17 [Key Individuals]; and

- (b) if for any reason a Key Individual resigns or, subject to Section 2.8(a) is otherwise unavailable to perform the duties described in Schedule 17 [Key Individuals] then Project Co and/or PUC, as the case may be, will use all reasonable efforts to retain a replacement with similar expertise and experience to the unavailable Key Individual, satisfactory to PUC or Project Co, as the case may be, each acting reasonably, and neither PUC nor Project Co will replace any Key Individual without the other Party's consent, acting reasonably, provided that the Party seeking to replace the Key Individual shall not be in breach of this Section 2.8 if it has used reasonable efforts to retain a replacement, but such replacement is not in place because the other Party's consent to such replacement has been unreasonably withheld or delayed.

No later than 4 months prior to Service Commencement, Project Co will notify PUC of the name and qualifications of the person appointed by Project Co to be the "General Manager" or equivalent as of the start of the Operating Period, and such person will also be a Key Individual for the purposes of Section 2.8(b) above.

2.9 Naming

PUC will have the exclusive right to name the UDM System and any parts thereof.

2.10 Signs

Subject to Section 7.16 of Schedule 2 [Design and Construction Protocols], Project Co will not erect or maintain any signs on the Lands or on the UDM System without the written consent of PUC, which consent shall not be unreasonably withheld or delayed.

3. PUC'S GENERAL OBLIGATIONS

3.1 Payments

Subject to Project Co meeting the requirements for payment set out in this Agreement and any right PUC may have under this Agreement to withhold or set off any amounts payable hereunder, PUC will make Monthly Payments to Project Co commencing on the Payment Commencement Date. The Monthly Payments will be fixed as set out in Schedule 8 [Payments]. The payments will be sufficient to (i) amortize its Design, Construction, Provisioning and Services costs (including the cost of the Design-Build Agreement) pertaining to the Project and the UDM System and (ii) pay a return on equity/debt to Project Co, over the Term of this Agreement.

In addition, PUC will pay, if applicable:

- (a) the Termination Payments as set out in Schedule 9 [Compensation on Termination];

- (b) amounts owing under Section 6 (Insurance, Damage and Destruction);
- (c) amounts owing under Section 7 (Changes, Minor Works and Innovation Proposals);
- (d) amounts owing under Section 8 (Supervening Events);
- (e) amounts owing under Section 9 (Indemnities and Limits on Liabilities and Remedies); and
- (f) amounts owing pursuant to the final resolution of a Dispute in accordance with the Dispute Resolution Procedure set out in Schedule 13 [Dispute Resolution Procedure],

in accordance with the provisions of this Agreement and all applicable Laws.

3.2 Provision of Lands

PUC will, on a non-exclusive basis, make the Lands available for the Project in accordance with the **[Phasing Requirements]** set out in Schedule 7 [Lands] as required by Project Co and any Project Co Person and the Parties' rights and obligations in respect of the Lands are set out in such Schedule 7 [Lands] subject to any restrictions or covenants thereon. In the event that any Lands are not made available by the Commencement Date, or, if applicable, in accordance with the Phasing Requirements, any delay or increased costs to Project Co incurred as a result of such failure are to be treated as a Relief Event and/or Compensation Event, as the case may be.

[Note: We don't anticipate access to Lands under this Agreement will be permitted prior to the satisfaction of conditions precedent on the Commencement Date.]

3.3 PUC Permits

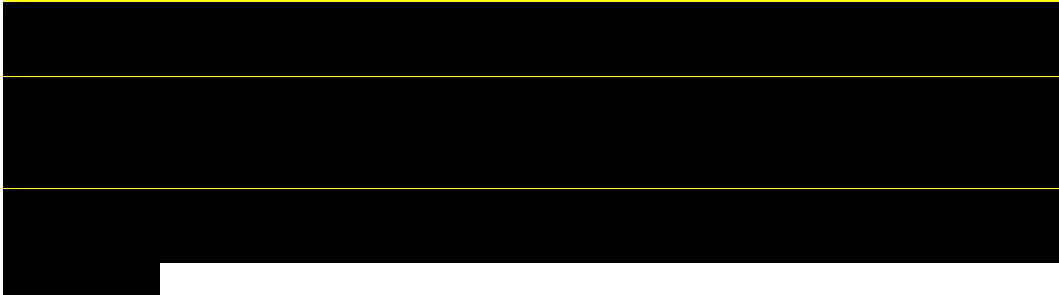
- (a) PUC shall, at its own cost and risk:
 - (1) obtain (in accordance with the Project Schedule), maintain, and, as applicable, renew all PUC Permits in accordance with Schedule 2 [Design and Construction Protocols] and Appendix 2E [Permits]; and
 - (2) comply with all Permits in accordance with their terms.
- (b) PUC shall, at its own cost, provide or cause to be provided such information, documentation, and administrative assistance as Project Co may request, acting reasonably, and as PUC may reasonably be able to provide, and shall execute such applications as are required to be in its name, to enable Project Co to obtain, maintain or renew any Project Co Permit or to demonstrate compliance with any Permit. PUC shall provide or cause to be provided such information, documentation and assistance and/or execute such applications pursuant to this Section 3.3(b) within 10 Business Days of receipt of Project Co's request. Subject to Section 3.3(a), PUC shall not be responsible for obtaining or for any delay in obtaining or for the failure of Project Co to obtain any Project Co Permit, unless such delay or failure is caused by any act or omission of PUC or any PUC Person. For greater certainty, PUC shall not be obligated to:

- (1) exercise any rights it may have in order to avoid or eliminate the requirement to obtain any Permit; or
- (2) automatically grant to Project Co any Permit for which it is the authorizing entity.

When acting as the authorizing entity, PUC will apply its usual and customary procedures and criteria in considering applications from Project Co for any Permit. For greater certainty, nothing in this Agreement shall fetter PUC's discretion in considering any application by Project Co for a Permit for which PUC is the authorizing entity provided always that PUC shall not act unreasonably in the exercise of such discretion.

3.4 PUC Covenant re Ontario Energy Board

- (a) The Parties acknowledge and agree that PUC's rates are regulated by the Ontario Energy Board (the "**OEB**") and as at the date hereof are fixed in a rate order approved by the OEB for the period commencing **[October 1, 2018]**. PUC's rates are based on its approved cost of service, which as at the date hereof does not currently include PUC's expenditure of the Monthly Payments. PUC's incremental capital module application will include a request for recovery of the capital cost portion of the Monthly Payments for the Term of the Project Agreement. Project Co agrees to provide reasonable support and if requested by PUC, acting reasonably, to use commercially reasonable efforts to intervene in any such proceeding before the OEB for recovery of such costs provided always Project Co will not make any submissions to or filings with the OEB or participate in any meetings or material conversations with the OEB or any other party to PUC's application without providing PUC with the opportunity to participate in or approve such submissions, filings, meetings or conversations.

- (b) 

3.5 PUC Additional Covenants

Subject to and in accordance with the provisions of this Agreement and all applicable Laws and Permits, PUC will be responsible for:

- (a) complying with all Permits issued in its name or otherwise relevant to the Project and issued to any Project Co Person which Project Co has notified PUC of in advance (provided such compliance is only possible pursuant to actions of PUC) except where any such actions have been taken to comply with Laws or the Distribution System Code;

- (b) coordination and cooperation with Project Co to facilitate the Design and Construction;
- (c) coordination and cooperation with Project Co and the Service Provider to facilitate the provision of the Services by Project Co; and
- (d) making payments to Project Co contemplated in this Agreement when due and payable,

provided always that PUC shall not be under any obligation to perform any of Project Co's obligations under this Agreement.

3.6 Security



3.7 Representations and Warranties

PUC represents and warrants to Project Co, as of the Effective Date, that:

- (a) PUC has the requisite power and capacity to enter into, carry out the transactions contemplated by and duly observe and perform all its obligations contained in this Agreement and all other documents, instruments and agreements required to be executed and delivered by PUC pursuant to this Agreement;
- (b) the execution and delivery of this Agreement and all documents, instruments and agreements required to be executed and delivered by PUC pursuant to this Agreement, and the completion of the transactions contemplated by this Agreement, have been duly authorized by all necessary corporate action on the part of PUC, and this Agreement has been duly executed and delivered by PUC and constitutes a legal, valid and binding obligation of PUC enforceable in accordance with its terms, subject to limitations on account of bankruptcy, insolvency, liquidation, reorganization, reconstruction and other similar laws of general application affecting the enforceability of remedies and rights of creditors and subject to availability of equitable remedies such as specific performance and injunction that are in the discretion of a court;
- (c) all required third party consents to the execution by PUC of, and performance of its obligations under, this Agreement have been received, other than any Permits and other approvals contemplated herein to be obtained after the Effective Date in connection with the Project;
- (d) PUC has the rights and interest in and to the Lands, in each case free and clear of all encumbrances, restrictions or limitations except the Encumbrances and the Security and any encumbrances which do not adversely affect, financially or otherwise, the Licence or the ability of Project Co to conduct the Design or Construction or perform the Provisioning, System Expansion or Services as contemplated by this Agreement; and
- (e) the parcels or interests comprising the Lands permit the grant of the Licence by PUC and the conduct by Project Co of the Design and the Construction and the performance by

Project Co of the Provisioning, System Expansion and Services as contemplated by this Agreement.

3.8 Background Information

- (a) PUC confirms and agrees that the Disclosed Data was at the time of disclosure to Project Co and/or any Project Co Person, as applicable, materially accurate and correct except as set out in Schedule [●].
- (b) Subject to Section 3.8(a), PUC shall not be liable to Project Co in respect of any failure to review or update the Disclosed Data, provided always that PUC has not deliberately or willfully concealed or refused to disclose any information that PUC has knowledge would be material to Project Co's performance of its obligations pursuant to this Agreement.
- (c) PUC shall inform Project Co of any material information or data that might render the Disclosed Data materially inaccurate or incorrect and of which it Has Knowledge whether arising prior to or following the Effective Date. Any failure of PUC to inform Project Co of any such material inaccuracies or error of which it Has Knowledge and which negatively impacts Project Co's performance of its obligations hereunder or results in Project Co incurring any additional costs shall constitute a Relief Event or Compensation Event, as the case may be.

4. PROJECT CO'S GENERAL OBLIGATIONS

4.1 General Obligations Re: Project

Subject to and in accordance with the provisions of this Agreement and all applicable Laws and Permits, Project Co will:

- (a) carry out its obligations under this Agreement, including the Design, Construction and performance of the Provisioning, System Expansion and Services:
 - (1) in compliance with applicable Law and Permits;
 - (2) so as to meet or exceed the Design and Construction Specifications and/or Services Specifications, as applicable;
 - (3) in accordance with Good Industry Practice; and
 - (4) with due care and diligence in a timely and professional manner.
- (b) provide reasonable support and if requested by PUC, acting reasonably, use commercially reasonable efforts to intervene in PUC's proceedings before the OEB for recovery in rates of the Monthly Payments for the Term of the Project Agreement in accordance with Section 3.4;
- (c) be responsible for the conduct of the Project Co Parties;

- (d) obtain and maintain the Project Co Permits, and comply with all such Permits in accordance with their terms; and
- (e) attain Service Commencement by the Target Service Commencement Date, provided Project Co's liability for failing to do so shall be limited as set out in Section 9.7.

4.2 Design

Project Co will be responsible for the Design, details of which are set out in Schedule 2 [Design and Construction Protocols] and Schedule 3 [Design and Construction Specifications].

The Design will include the following, as described in more detail in Schedule 2:

- (a) volt var management (“**VVM**”);
- (b) distribution automation (“**DA**”);
- (c) advanced metering infrastructure (“**AMI**”); and
- (d) data analytics and performance reporting.

4.3 Services

Notwithstanding anything else set out herein to the contrary, and pursuant to the terms of the services agreement to be entered into between Project Co and the Service Provider, the parties hereto acknowledge and agree that Project Co shall have no liability to PUC in respect of the performance of the Services by the Service Provider and that the Service Provider shall be solely responsible for its performance of any Services pursuant its services agreement with Project Co. Notwithstanding the foregoing the parties acknowledge and agree that the foregoing shall in no circumstances limit PUC's rights under this Agreement and Project Co's liability relating thereto whether arising before or after the Service Commencement Date where any such matter arises from the performance of the Design and Construction or any Services provided by any Person other than PUC Services Inc.

4.4 Records and Reports

Project Co will, at its own cost and expense, retain and maintain the records and reports referred to in Schedule 14 [Records and Reports] in accordance with such Schedule and in a form that is capable of audit by PUC. Project Co will:

- (a) make all such records available to PUC for inspection and copying (at PUC's expense) during normal business hours upon at least 24 hours written notice delivered to Project Co; and
- (b) upon request from PUC provide PUC with electronic copies, in a readable form in accordance with industry standards, and in raw editable form by the PUC pursuant to standard industry practice of any such records and respond to all written inquiries from PUC in relation to the Project as soon as reasonably practicable.

4.5 No Other Business

Project Co will not engage in any business or activity other than the business or activities conducted for the purpose of the Project or otherwise expressly permitted hereunder.

4.6 Project Co Parties

Project Co will, as between itself and PUC, be responsible for, and not relieved of or excused from its obligations hereunder by, the acts, omissions, breaches, defaults, non-compliance, negligence and wilful misconduct of each Project Co Person and all references in this Agreement to any act, omission, breach, default, non-compliance, negligence or wilful misconduct of Project Co will be construed accordingly to include any such act, omission, breach, default, non-compliance, negligence or wilful misconduct committed by a Project Co Person.

4.7 Use of Sub-Contractors

- (a) Without limiting Section 4.6, PUC acknowledges that Project Co may carry out the Design, Construction, Provisioning, System Expansion and/or Services by contracting such obligations to Project Contractors who in turn may contract all or part of their obligations under any Project Contract to one or more Sub-Contractors. In respect of the Project, Project Co will not contract with, or allow any of its Project Contractors or any Sub-Contractors to contract with, any Person that is a Restricted Person.
- (b) Notwithstanding the use of Project Contractors or Sub-Contractors, Project Co:
 - (1) will not be relieved or excused from any of its obligations or liabilities under this Agreement;
 - (2) will be solely responsible for the engagement, management and payment of Project Contractors and Sub-Contractors and PUC shall have no obligation to pay or see to the payment of any monies to a Project Contractor or Sub-Contractor with respect to the performance of Project Co's obligations under this Agreement; and
 - (3) will remain principally liable to PUC for the due observance and performance of all the covenants, obligations, agreements and conditions of this Agreement that are to be observed and performed by Project Co.
- (c) Project Co shall ensure all Material Contract Parties enter into Material Project Contractor Collateral Agreements with PUC.

4.8 Material Contracts

Project Co will not:

- (a) terminate, or agree to or permit the termination of, all or any material part of any Material Contract except:

- (1) as may be required by PUC pursuant to this Agreement;
 - (2) if there is an event of default under a Material Contract and Project Co terminates it in order to prevent or cure a Project Co Event of Default; or
 - (3) where such Material Contract expires in accordance with its terms;
- (b) make, or agree to or permit the making of:
 - (1) any material amendment of any Material Contract, other than amendments (whether made by Change Certificate or otherwise) that are the direct and reasonable consequence of a Change; or
 - (2) any departure by any party from any material provision of any Material Contract;
- (c) permit any Material Contract Party to assign or transfer to any Person any of such Material Contract Party's rights or obligations under a Material Contract other than by way of a Sub-Contract that is not a subcontract of all or substantially all of the obligations under the Material Contract or by way of assignment by way of security by a Material Contract Party; or
- (d) enter into, or permit the entering into of, any Material Contract other than those entered into on or before the Effective Date,

unless Project Co has, at its earliest practicable opportunity, submitted to PUC notice of the proposed course of action (and any relevant documentation) and PUC has consented to such course of action, such consent not to be unreasonably withheld or delayed. PUC will give or deny such consent within: (i) 5 Business Days of receipt of such notice and all relevant documentation, if Project Co is seeking to terminate a Material Contract and such Material Contract may, in accordance with its terms, be terminated immediately; and (ii) 10 Business Days of receipt of such notice and all relevant documentation in all other cases, and if PUC fails to give or deny its consent within such time periods it will be deemed to have given its consent. In determining whether to provide such consent, it will, without limitation, be reasonable for PUC to refuse its consent to the proposed course of action where the proposed assignee, transferee or party entering into any Material Contract, or any of its Affiliates, is a Restricted Person.

4.9 Replacement Material Contract

If any Material Contract at any time lapses, terminates, or otherwise ceases to be in full force and effect (whether by reason of expiry or otherwise), unless the goods, services or rights which were the subject matter of such Material Contract are no longer reasonably required for the Project or such Material Contract has been fully performed and all liabilities and obligations thereunder have been fully discharged:

- (a) Project Co will forthwith enter into, or cause to be entered into, a replacement contract or contracts upon the same or substantially similar terms as the contract so replaced (to the extent reasonably practicable) and PUC shall have no liability for any increased costs or expenses which may directly or indirectly be borne by Project Co as a result of the terms of such replacement Material Contract(s) except where the requirement for Project Co to

enter into or cause to be entered into, a replacement contract is directly due to a breach by PUC of any of its obligations under this Agreement; and

- (b) if PUC and the relevant Material Contract Party had entered into a Material Project Contractor Collateral Agreement with respect to the replaced Material Contract, Project Co will forthwith enter into, or cause the replacement Material Contract Party to enter into, a Material Project Contractor Collateral Agreement.

4.10 Delivery of Amended Material Contracts

If at any time any amendment is made to any Material Contract, or a replacement Material Contract (or any agreement which materially affects the interpretation or application of any Material Contract) is entered into, Project Co will deliver to PUC a copy of each such amendment or agreement within 10 Business Days of the date of its execution or creation, certified as a true copy by an officer of Project Co.

4.11 Project Co Permits

- (a) Project Co shall, at its own cost and risk:
 - (1) obtain (in accordance with the Project Schedule), maintain, and, as applicable, renew all Project Co Permits in accordance with Schedule 2 [Design and Construction Protocols] and Appendix 2E [Permits]; and
 - (2) comply with all Permits in accordance with their terms.

4.12 Project Co's Representations and Warranties

Project Co represents and warrants to PUC that:

- (a) Project Co is a **[limited partnership]** duly created and validly existing under the ■ and in good standing with ■ and has full power and capacity to enter into, carry out the transactions contemplated by and duly observe and perform all its obligations contained in this Agreement and all other documents, instruments and agreements required to be executed and delivered by Project Co pursuant to this Agreement;
- (b) the **[General Partner]** is a duly incorporated and validly existing company under the ■ and in good standing with ■ and has full power and capacity to enter into, carry out the transactions contemplated by and duly observe and perform all its obligations contained in this Agreement and all other documents, instruments and agreements required to be executed and delivered by Project Co pursuant to this Agreement;
- (c) the information set out in Schedule 12 [Project Co's Ownership Information] is true and correct and, **[except as set out in Schedule 12 [Project Co's Ownership Information]]**, there is as at the date of this Agreement no outstanding offer, agreement or other arrangement pursuant to which:

- (1) any Person is obligated to subscribe for or take by means of transfer or by conversion any form of investment, security or voting rights in Project Co or the General Partner; or
 - (2) the **[limited partnership agreement]** governing Project Co will be amended or otherwise altered;
- (d) none of Project Co, the General Partner, persons who control Project Co or any Affiliates of those persons, the Project Contractors and Sub-Contractors are Restricted Persons;
- (e) the execution and delivery of this Agreement and all other documents, instruments and agreements required to be executed and delivered by Project Co pursuant to this Agreement, and the completion of the transactions contemplated by this Agreement, have been duly authorized by all necessary **[partnership action on the part of Project Co and corporate action on the part of the General Partner]**, and this Agreement has been duly executed and delivered by **[the General Partner on behalf of]** Project Co and constitutes a legal, valid and binding obligation of Project Co enforceable in accordance with its terms, subject to limitations on account of bankruptcy, insolvency, liquidation, reorganization, reconstruction and other similar laws of general application affecting the enforceability of remedies and rights of creditors and subject to availability of equitable remedies such as specific performance and injunction that are in the discretion of a court;
- (f) all required third party consents to the execution by Project Co of, and performance of its obligations under, this Agreement have been received, other than any Permits and other approvals contemplated herein to be obtained after the Effective Date in connection with the Project;
- (g) it has carefully reviewed the whole of this Agreement, including the Design and Construction Protocols, the Disclosed Data, the Design and Construction Specifications, and all applicable Laws, and has taken all steps it considers necessary to satisfy itself that nothing contained herein inhibits or prevents Project Co from performing and completing the Design, Construction, Provisioning, System Expansion and Services in accordance with this Agreement so that Project Co achieves and satisfies the requirements of this Agreement; and
- (h) Project Co and the Project Co Parties, collectively, have extensive experience and are knowledgeable in the design, construction, and maintenance of energy distribution facilities similar to the Project in scale, scope, type and complexity and have the required ability, experience, skill and capacity to perform the Design, Construction, Provisioning, System Expansion and Services in a timely and professional manner in accordance with this Agreement;
- (i) the execution, delivery and performance by Project Co of this Agreement does not and will not violate or conflict with, or constitute a default under:
 - (1) its constating, formation or organizational documents, including any by-laws;

- (2) applicable Law; or
- (3) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (j) there are no actions, suits, proceedings, or investigations pending or threatened against Project Co or, to Project Co's knowledge, any person that controls Project Co or any Project Co Person at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on Project Co's ability to perform its obligations under this Agreement, and Project Co has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect;
- (k) Project Co is able to meet its obligations as they generally become due;
- (l) Project Co is registered under Division V or Part IX of the Excise Tax Act (Canada) and its HST registration number is [●];
- (m) the Target Service Commencement Date is a realistic date and is achievable by Project Co performing its obligations in accordance with this Agreement; and
- (n) Project Co is not a Non-Resident.

The representation and warranty of Project Co in Section 4.12(g) is included only for the purpose of allowing PUC to rely on it for the purpose of defending or contesting any action brought against PUC pursuant to this Agreement or any claim by Project Co for damages, extensions of time, additional compensation or any other relief arising pursuant to this Agreement and PUC may not rely on such representation and warranty for the purpose of bringing any action against Project Co or for the purposes of terminating this Agreement.

4.13 Environmental and/or Geotechnical Changes

Subject always to the provisions of Schedule 7 [Lands], Project Co shall not be responsible for current conditions and changes in the environmental and/or geotechnical conditions of the Lands that are not described in the Disclosed Data in written or electronic form that is made available to Project Co prior to the execution of this Agreement.

5. FINANCING OF THE PROJECT

5.1 Financing and Refinancing

- (a) Project Co shall have the right to finance or refinance any portion of its business without consent of PUC, provided that any such financing or refinancing arrangements are in respect of the performance of its obligations under this Agreement and shall not result in any additional or increased costs or liability for PUC in relation to the Project or pursuant to the terms of this Agreement or increase to the Monthly Payments. In the event that any such financing or refinancing would have the effect of increasing the costs or liabilities of

PUC as described herein, Project Co shall be required to obtain the consent of PUC to such financing or refinancing, such consent not to be unreasonably withheld.

- (b) If requested by Project Co PUC agrees to enter into a Lenders' Remedies Agreement with Project Co's lenders in substantially the form set out in Schedule 10 [Lenders' Remedies Agreement] subject to any reasonable comments by PUC together with (at Project Co's cost) any documents ancillary to such Lender's Remedies Agreement that Project Co's lenders may request, acting reasonably.
- (c) Notwithstanding Section 5.1(b), but subject always to its right of consent under Section 5.1(a) PUC agrees to, at Project Co's cost, cooperate and provide reasonable assistance to Project Co in relation to any requests for information or access to the Project that may reasonably be requested by Project Co's lenders in connection with any Project Co financing or refinancing referred to in Section 5.1(a).

6. INSURANCE, DAMAGE AND DESTRUCTION

6.1 Insurance Coverage

Subject to Section 6.12(b), Project Co will take out, maintain in force, pay for and renew, or cause to be taken out, maintained in force, paid for and renewed, insurance for the Project as set out in Schedule 5 [Insurance Requirements].

6.2 Agreement Not Affected by Damage or Destruction

Except as otherwise expressly provided, the partial destruction or damage or complete destruction by fire or other damage to the UDM System will not permit either party to terminate this Agreement or entitle Project Co to surrender possession of the UDM System or to demand any increase in any amounts payable to Project Co under this Agreement and all of the provisions of this Agreement will continue to apply.

6.3 Project Co's Obligations - Damage or Destruction

Subject to Section 6.4, and without prejudice to Section 8, if, at any time prior to the Service Commencement Date, all or any part of the UDM System is damaged or destroyed, Project Co will repair, replace or restore the part of the UDM System so damaged or destroyed in accordance with the Design and Construction Specifications subject only to:

- (a) applicable Laws; and
- (b) where such damage or destruction has not occurred due to any act or omission of Project Co or any Project Co Person, PUC agreeing to pay to Project Co:
 - (1) the amount, if any, by which the cost of such repair, replacement or restoration exceeds the maximum amount of insurance coverage required under this Agreement for such risk (which for greater certainty is the maximum amount of coverage prior to any deductibles for which Project Co is responsible pursuant to Schedule 5 [Insurance Requirements]); or

- (2) if no insurance coverage is required under this Agreement for such risk, an amount equal to the total costs of such repair, replacement or restoration,

and if PUC agrees, PUC will pay such amounts promptly upon receipt of one or more invoices from Project Co indicating that such amounts are due and payable by Project Co in connection with such repair, replacement or restoration.

For the purposes of this Section 6.3, the maximum amount of insurance coverage is in respect of insurance required to be obtained by Project Co, the full amount of coverage required under this Agreement for such risk prior to any deductibles for which Project Co is responsible pursuant to Schedule 5 [Insurance Requirements].

6.4 Project Co's Obligations - Material Damage or Destruction

Where Section 6.3 applies and provided that the cost to remedy the relevant damage or destruction is reasonably likely to exceed \$[•] and without derogating from Project Co's repair, restoration and replacement obligation pursuant to Section 6.3:

- (a) Project Co will, as soon as practicable and in any event within 30 days of such damage or destruction, and before undertaking any material remedial work, provide PUC with a draft plan (the "**Draft Reinstatement Plan**") for the carrying out of the works necessary (the "**Reinstatement Works**") to repair, replace and restore the damaged or destroyed portions of the UDM System, and containing to the extent possible the details required to be included in the Reinstatement Plan under (d) below;
- (b) as soon as reasonably practicable and in any event within 30 days after the delivery of the Draft Reinstatement Plan, PUC:
 - (1) will provide Project Co with any comments it may have on the Draft Reinstatement Plan; and
 - (2) if it has decided that the UDM System is not required to be reinstated in the same form as prior to the damage or destruction, will issue a Preliminary Change Instruction to that effect;
- (c) as soon as reasonably practicable and in any event within 21 days after receipt of PUC's comments pursuant to Section 6.4(b)(1), Project Co will deliver to PUC a revised plan (the "**Reinstatement Plan**") amending the Draft Reinstatement Plan to reasonably take into account the comments received from PUC and those changes to the Draft Reinstatement Plan necessary to reflect the contractual terms agreed (as negotiated and finalized) with the person effecting the Reinstatement Works; and
- (d) the Reinstatement Plan will set out in as much detail as is reasonable in the circumstances:
 - (1) the identity of the person, or (if Project Co is seeking competitive tenders) persons intended, to carry out the Reinstatement Works;

- (2) the terms and timetable or (if not then established) the reasonably anticipated terms and timetable upon which the Reinstatement Works are to be effected, and any impact such Reinstatement Works will have on the Service Commencement Date;
- (3) the total cost or (if not then established) the reasonably anticipated total cost of the Reinstatement Works; and
- (4) the impact of any Change requested by PUC as part of the reinstatement.

6.5 Financial Model Update

Upon delivery of the Reinstatement Plan, Project Co will amend the Financial Model based on the following assumptions:

- (a) that the Reinstatement Plan will be effected in accordance with its terms; and
- (b) that payments in respect of any Change comprised in the Reinstatement Plan as referred to in Section 6.4(d)(4) will be determined in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals],

and will deliver the updated Financial Model to PUC for its approval, not to be unreasonably withheld or delayed.

6.6 PUC Election Not to Reinstate

If PUC, within 30 days after receipt of the Reinstatement Plan, at its discretion elects not to require Project Co to reinstate the UDM System either Party may, by notice to the other Party terminate this Agreement. Upon the termination of this Agreement pursuant to this Section 6.6, Project Co's sole entitlement to compensation as a result of such termination shall be as set out in Section 5 of Schedule 9 [Compensation on Termination].

6.7 Application of Insurance Proceeds If No Termination

Unless a party has terminated this Agreement (including pursuant to Section 6.6), Project Co will cause all:

- (a) applicable Insurance Proceeds which Project Co has received;
- (b) applicable Insurance Proceeds which Project Co is entitled to receive;
- (c) amounts which PUC has agreed to pay as contemplated in Section 6.3(b); and
- (d) amounts which Project Co has agreed to pay to cover the amount by which the cost to repair, replace or restore the UDM System exceeds the Insurance Proceeds and Insurance Receivables with respect to complete or substantial destruction,

to be applied to the reinstatement of the UDM System in accordance with the terms of this Agreement.

6.8 Application of Insurance Proceeds In Case of Termination

If a party has terminated this Agreement pursuant to Section 6.6:

- (a) any Insurance Proceeds received prior to the Termination Payment Date by Project Co in respect of damage to the UDM System and not already applied to the repair of such damage will first be applied towards the Termination Payment and any Insurance Proceeds remaining after such application will be paid to PUC; and
- (b) on the Termination Payment Date, Project Co will assign to PUC the benefit of all Insurance Receivables which have been taken into account in calculating the Termination Payment.

6.9 Standards of Replacement, Repair or Reconstruction

Any replacement, repair, or reconstruction of the UDM System or any part thereof pursuant to the provisions of Sections 6.3 or 6.4 will be made or done in compliance with the Design and Construction Protocols and the Design and Construction Specifications and, subject to any agreement made between PUC and Project Co to revise the Design and Construction Protocols or the Design and Construction Specifications as they pertain to any replacement, repaired or reconstructed UDM System.

6.10 Mitigation

Project Co and PUC will each take all reasonable steps to mitigate the effects of any risks or claims covered by this Section 6 (including minimizing the amount of any costs and expenses which might result).

6.11 Risks Becoming Uninsurable

Each Party will, forthwith upon Having Knowledge, notify the other if a Principal Insured Risk becomes or is expected to become Uninsurable. If both Parties agree or it is determined in accordance with the Dispute Resolution Procedure that the relevant Principal Insured Risk is or is about to become Uninsurable and that the Principal Insured Risk being Uninsurable was not caused by any act or omission of Project Co or any Project Co Person or PUC or any PUC Party contrary to Section 5.10 of Schedule 5 [Insurance Requirements], then the Parties together with their respective insurance advisors will meet to discuss the means by which such Principal Insured Risk should be managed (including considering the feasibility of self-insurance by either or all Parties) in accordance with Section 6.12.

6.12 Consequences of Risks Becoming Uninsurable

If the requirements of Section 6.11 are satisfied but the Parties cannot agree within 20 Business Days on how to manage a Principal Insured Risk that becomes Uninsurable (the “**Uninsurable Risk**”):

- (a) if the Uninsurable Risk is third party liability, if and for so long as the Uninsurable Risk is Uninsurable, PUC may by notice to Project Co terminate this Agreement whereupon Project Co will be entitled to compensation on termination as provided in Section 5 of Schedule 9 [Compensation on Termination];
- (b) if the Uninsurable Risk is not third party liability or if (and for as long as) PUC has not terminated this Agreement under Section 6.12(a), then this Agreement will continue, but

neither Project Co nor PUC will be obligated by this Agreement to maintain insurance in respect of the Uninsurable Risk and references in this Agreement to the insurance required by this Section 6 (Insurance, Damage and Destruction) or Schedule 5 [Insurance Requirements] will be construed accordingly. In such event the Monthly Payment will thereafter be adjusted in accordance with Section 10.3 (Adjustments to Monthly Payment) by agreement of the Parties acting reasonably or, failing such agreement, by the Dispute Resolution Procedure, from the date upon which the Uninsurable Risk became Uninsurable, to reflect any savings in Project Co's insurance cost as a result of Project Co not having to insure against the Uninsurable Risk; and

- (c) subject to Section 6.13, on the occurrence of the Uninsurable Risk PUC will either:
- (1) pay to Project Co an amount equal to the insurance proceeds that would have been payable directly to Project Co under the relevant policies in respect of the Uninsurable Risk had the relevant insurance continued to be available and in effect, and this Agreement will continue provided always that in the event that any Uninsurable Risk is directly caused by any act or omission or non-compliance with the terms of this Agreement by Project Co or any Project Co Person, PUC shall have no obligation to pay any such amounts to Project Co pursuant to this Section 6.12(c) and Project Co's entitlement to compensation on termination pursuant to Section 6.12(c)(2) (if applicable) shall be as provided in Section 3 of Schedule 9 [Compensation on Termination], or
 - (2) by notice to Project Co, terminate this Agreement whereupon Project Co will be entitled to compensation on termination as provided in Section 5 of Schedule 9 [Compensation on Termination],

except that PUC may not in any such case terminate this Agreement pursuant to Section 6.12(c)(2) if Project Co releases PUC from all obligations under Section 6.12(c)(1) and deposits into the Insurance Account an amount equal, in the reasonable opinion of PUC, to the insurance proceeds, and all amounts in respect of deductibles and waiting periods that would have been the responsibility of Project Co under Section 5.7 of Schedule 5 [Insurance Requirements], that would have been payable in respect of the Uninsurable Risk that occurred had the relevant insurance continued to be available and in effect.

6.13 Third Party Liability Insurance as an Uninsurable Risk

If this Agreement is terminated pursuant to Section 6.12(c)(2) and at the date of such termination third party liability is an Uninsurable Risk, and if:

- (a) there is an outstanding third party claim against Project Co in relation to the Project at the Termination Date; or
- (b) following the Termination Date a third party claim is subsequently made against Project Co in respect of an event or circumstance that occurred before the Termination Date,

which in either case would have been covered by the third party liability insurance that either PUC or Project Co would have been required to carry had that risk not been an Uninsurable Risk, then PUC will pay to Project Co the amount for which Project Co becomes liable in respect of such claim in addition to (without double counting) the compensation payable pursuant to Section 6.12(c)(2) except where such liability is directly attributable to an act or omission or non-compliance with the terms of this Agreement by Project Co or a Project Co Person.

6.14 Subrogation

If PUC makes any payment to Project Co pursuant to Section 6.12(c)(1) or Section 6.13, then PUC, to the extent of the amount paid, will be subrogated to Project Co's rights against any third party in respect of the occurrence or claim as a result of which the payment was made, other than any third party that was an insured under the last policy of insurance to cover the Uninsurable Risk before it became Uninsurable, to the extent the insurers did not have a right of subrogation against such third party.

6.15 Continuing Attempts to Insure Uninsurable Risks

When there is an Uninsurable Risk for which Project Co is responsible to obtain insurance under Schedule 5 [Insurance Requirements] Project Co will approach the insurance market on a regular basis and in any event at regular intervals of no longer than six months to establish whether the Uninsurable Risks remain Uninsurable.

6.16 Uninsurable Risks Becoming Insurable

In the event that a risk that was previously an Uninsurable Risk ceases to be so and Project Co becomes aware or is informed by the other party that this is the case, Project Co will forthwith take out, maintain and pay for or cause to be taken out, maintained and paid for insurance in accordance with the requirements of this Agreement in respect of the risk, and in any case:

- (a) Sections 6.11, 6.12, 6.13 and 6.15 will no longer apply to the risk so long as it is not an Uninsurable Risk; and
- (b) the Monthly Payment will be adjusted pursuant to Section 10.3 (Adjustments to Monthly Payment) by agreement of the Parties acting reasonably or, failing such agreement, by the Dispute Resolution Procedure, from the date upon which the Uninsurable Risk became insurable, to reflect any increase in Project Co's insurance cost as a result of having to insure the risk that ceased to be an Uninsurable Risk.

7. CHANGES, MINOR WORKS AND INNOVATION PROPOSALS

7.1 Changes Required by PUC

PUC may require Changes in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals].

7.2 Innovation and Value Engineering

Project Co may submit an Innovation Proposal or where it is permitted by the terms of this Agreement, a Change Request for consideration by PUC in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals].

7.3 Minor Works

PUC may require Minor Works in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals].

8. SUPERVENING EVENTS

8.1 Supervening Events

If:

- (a) a Compensation Event or Relief Event occurs, Project Co may; or
- (b) a Force Majeure Event or Eligible Change in Law Event occurs, either Party may,

apply for relief from its obligations, extensions of time, claim compensation or claim a termination right under this Agreement to the extent provided in this Section 8 (Supervening Events). The “**Applicant**” means the party making such application.

8.2 Procedures Upon the Occurrence of a Supervening Event

The following procedure will apply if a Supervening Event occurs:

- (a) as soon as practicable, and in any event within 5 Business Days after the Applicant Has Knowledge that the Supervening Event has caused, or is reasonably likely to cause, an entitlement under this Section 8 (Supervening Events), the Applicant will give to the other Party a notice (“**Supervening Event Notice**”) identifying the particular Supervening Event and summarizing, to the extent the Applicant Has Knowledge, the consequences and the nature of the Applicant’s claim;
- (b) within 10 Business Days after delivery by the Applicant of a Supervening Event Notice, to the extent the Applicant Has Knowledge, the Applicant will give to the other Party:
 - (1) additional details, including available supporting documentation, in support of its claim; and
 - (2) if applicable, a detailed breakdown of all Direct Losses incurred or which will be incurred or other compensation or relief sought by Project Co, if it is the Applicant, as a result of the Supervening Event to the extent such are known at that time;
- (c) from time to time thereafter the Applicant will notify the other Party if at any time it receives or becomes aware of any further information relating to the Supervening Event, giving

details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading. In particular, a party claiming relief as a result of a Force Majeure Event will notify the other as soon as the Force Majeure Event has ceased and of the time when performance of its affected obligations can be resumed;

- (d) a Party may make multiple but not duplicative claims in respect of a Supervening Event and both Parties may make claims in respect of the same Supervening Event;
- (e) where PUC is claiming the benefit of an Eligible Change in Law Event, Project Co will provide PUC information reasonably requested in order to make its claim;
- (f) the Applicant must demonstrate:
 - (1) it could not have avoided such occurrence or the consequences of the Supervening Event by steps which it (or the Project Co Parties where the Applicant is Project Co) might reasonably be expected to have taken;
 - (2) if applicable, the Supervening Event caused or will cause the Applicant to incur Direct Losses, a delay in the Project Schedule or the need for relief from other obligations under this Agreement; and
 - (3) in the case of Project Co, it has complied with its mitigation obligations pursuant to Section 2.6 and in the case of PUC, it has complied with its mitigation obligations pursuant to Section 2.52.6;
- (g) the Applicant will advise whether, in the Applicant's opinion, any amendments should be considered to this Agreement, any Material Contract or any Senior Financing Agreement as a result of the Supervening Event; and
- (h) the Parties will meet within 15 Business Days of delivery of the Supervening Event Notice to consult and seek to agree to the effect of the Supervening Event and if the Parties, within 10 Business Days following the meeting, have not agreed to the occurrence or the effect of the Supervening Event, either Party may refer the question of whether a Supervening Event has occurred, whether the conditions in Section 8.2(f) above have been satisfied or the extent of relief or compensation to which the affected Party is entitled, for resolution in accordance with the Dispute Resolution Procedure.

8.3 Project Co's Entitlements Upon Occurrence of a Compensation Event

Subject to Section 8.11, if at any time a Compensation Event has occurred and Project Co has given PUC a Supervening Event Notice related thereto:

- (a) Project Co is relieved from any liability or consequence (including termination by PUC) under this Agreement arising from any delay or failure in performing any of its obligations under or in connection with this Agreement provided always that such relief shall only apply

during the period referred to in Section 8.3(e), subject always to compliance by PUC with its obligations in Sections 8.3(b) and 8.3(c);

- (b) Monthly Payments accruing during the period of the Compensation Event will be calculated as if the Compensation Event had not occurred;



- (c) PUC will pay to Project Co compensation in respect of a Compensation Event calculated on the basis that Project Co will be placed in no better or worse position than it would have been in had a Compensation Event not occurred and taking into consideration the following (without duplication):

- (1) any Direct Losses (including the amount of any applicable insurance deductibles and calculated without netting out Insurance Receivables) resulting from the Compensation Event;
- (2) any net increase or decrease in the costs of Project Co performing its obligations under this Agreement resulting from the Compensation Event; and
- (3) the Monthly Payment payable to Project Co,

[Note: Deduction regime to be discussed.]

except that:

- (4) Avoidable Costs and applicable Insurance Proceeds and insurance proceeds which Project Co would have recovered as a result of the Compensation Event if it had complied with the requirements of this Agreement or any policy of insurance maintained or required to be maintained under this Agreement will be deducted therefrom; and
 - (5) no Indirect Losses will be taken into consideration;
- (d) concurrent with the first payment of compensation under Section 8.3(c), Project Co will assign to PUC its rights to all applicable Insurance Receivables (whether or not Project Co has made a claim); and
- (e) the Project Schedule will be amended and the Target Service Commencement Date and the Longstop Date will be postponed by such time as is reasonable in the circumstances to take account of the effect of the delay caused by the Compensation Event.

8.4 Project Co's Entitlements Upon Occurrence of a Relief Event

Subject to Section 8.11, if at any time a Relief Event has occurred and Project Co has given PUC a Supervening Event Notice related thereto:

- (a) Project Co is relieved from any liability or consequence (including termination by PUC, except as provided for in this Section 8.4) under this Agreement arising from any delay or failure in performing any of its obligations under this Agreement;
- (b) the Project Schedule will be amended and the Target Service Commencement Date and the Longstop Date will be postponed by such time as is reasonable in the circumstances to take account of the effect of the delay caused by the Relief Event;
- (c) if the Relief Event, or its effects, persists or is likely to persist for more than 180 days after the date a Supervening Event Notice is delivered by Project Co pursuant to this Section 8.4, PUC may at any time so long as such Relief Event is, or such effect is, continuing and subject to Section 14.2, terminate this Agreement by notice to Project Co;
- (d) if PUC fails to give notice to Project Co under Section 8.4(c) terminating this Agreement within 60 days after the date a Supervening Event Notice is delivered by Project Co pursuant to this Section 8.4:
 - (1) Project Co, insofar as it is able to do so, will continue to perform its obligations in accordance with the provisions of this Agreement;
 - (2) the Relief Event will be deemed to constitute a Compensation Event occurring as of the date on which the Relief Event first occurred;
 - (3) at any time so long as the Supervening Event referred to in Section 8.4(d)(2) is continuing, PUC may terminate this Agreement by notice to Project Co; and
 - (4) Project Co may at any time so long as the Supervening Event referred to in Section 8.4(d)(2) has continued for a period of 360 days after the date on which Project Co delivered the Supervening Event Notice was delivered pursuant to this Section 8.4 terminate this Agreement by notice to PUC; and
- (e) if this Agreement is terminated pursuant to this Section 8.4, Project Co will be entitled to compensation on such termination in accordance with Section 5 of Schedule 9 [Compensation on Termination].

8.5 Parties' Entitlements Upon Occurrence of a Force Majeure Event

Subject to Section 8.11, if at any time a Force Majeure Event has occurred and the Applicant has given the other party a Supervening Event Notice related thereto:

- (a) the Applicant is relieved from any liability or consequence (including termination by PUC except as provided for in this Section 8.5) under this Agreement arising from any delay or failure in performing any of its obligations under this Agreement to the extent caused directly by the Force Majeure Event;

[Note: Deduction regime to be discussed.]

- (b) the Project Schedule will be amended and the Target Service Commencement Date, the Longstop Date and Expiry Date will be postponed by such time as is reasonable in the circumstances to take account of the effect of the delay caused by the Force Majeure Event;
- (c) if a Force Majeure Event occurs and it, or its effects, persists or is likely to persist for more than 180 days after the date a Supervening Event Notice is delivered by the Applicant, PUC may at any time, so long as such Force Majeure Event is, or such effect is, continuing, terminate this Agreement by notice to Project Co;
- (d) If PUC fails to give notice to Project Co under Section 8.5(c) terminating this Agreement within 60 days pursuant to this Section 8.5:
 - (1) Project Co, insofar as it is able to do so, will continue to perform its obligations in accordance with the provisions of this Agreement;
 - (2) the Force Majeure Event will be deemed to constitute a Compensation Event occurring as of the date the Force Majeure Event first occurred;
 - (3) at any time so long as the Compensation Event referred to in Section 8.5(d)(2) is continuing, PUC may terminate this Agreement by notice to Project Co; and
 - (4) Project Co may at any time so long as the Compensation Event referred to in Section 8.5(d)(2) has continued for a period of 360 days after the date on which the Supervening Event Notice was delivered pursuant to this Section 8.5, terminate this Agreement by notice to PUC; and
- (e) if this Agreement is terminated pursuant to Section 8.5(c) or Sections 8.5(d)(3) or 8.6(d)(4), Project Co will be entitled to compensation on such termination in accordance with Section 5 of Schedule 9 [Compensation on Termination].

8.6 Parties' Entitlements Upon Occurrence of an Eligible Change in Law Event

Subject to Section 8.11, if at any time an Eligible Change in Law Event has occurred and the Applicant has given the other party a Supervening Event Notice related thereto:

- (a) subject to Section 8.6(c), in the case of an Eligible Change in Law Event, the Monthly Payment will be increased or decreased to compensate for any increase or decrease (as the case may be) in the net cost to Project Co of performing its obligations hereunder resulting from the Eligible Change in Law Event;
- (b) subject to Section 8.6(c), any increase or decrease in the Monthly Payment in respect of an Eligible Change in Law Event will be calculated on the basis that Project Co will be placed in no better or worse position than it would have been in had such Eligible Change in Law Event not occurred and taking into consideration the following (without duplication):
 - (1) any Direct Losses (calculated without netting out Insurance Receivables) resulting from the Eligible Change in Law Event; and

(2) the Monthly Payment payable to Project Co,

except that:

(3) Avoidable Costs and applicable Insurance Proceeds and insurance proceeds which Project Co would have recovered if it had complied with the requirements of this Agreement or any policy of insurance maintained or required to be maintained under this Agreement will be deducted therefrom; and

(4) no Indirect Losses will be taken into consideration,

and concurrent with the adjustment to the Monthly Payment under this Section 8.6(b), Project Co will assign to PUC its rights to all applicable Insurance Receivables (whether or not Project Co has made a claim);

(c) PUC may at any time and upon providing written notice to Project Co, terminate this Agreement in which case Project Co's sole entitlement to compensation as a result of the Eligible Change in Law Event shall be as set out in Section 5 of Schedule 9 [Compensation on Termination].

[Note: Change consistent with termination consequence for other Supervening Events.]

8.7 Parties' Entitlements Upon Occurrence of a Change in Law

Without limiting Section 8.4 or Section 8.6:

- (a) if compliance by Project Co with an Eligible Change in Law Event is outside the scope of, or inconsistent with, Project Co's obligations under this Agreement, or would mean a change in Project Co's obligations under this Agreement or a change in the scope or manner of carrying out the Project, such Eligible Change in Law Event will be deemed to constitute a Change having effect from the time that such Eligible Change in Law Event takes effect, except that Project Co will not be entitled to any payment or other compensation other than as set out in Section 8.4 or Section 8.6;
- (b) except as otherwise provided in this Agreement, including in Section 8.4 or Section 8.6, Project Co will not be entitled to any other payment or compensation or relief in respect of any Eligible Change in Law Event or the consequences thereof; and
- (c) nothing in Section 8.4 or Section 8.6 will be interpreted as relieving Project Co of its obligation, following any and all Eligible Changes in Law, to perform its obligations under this Agreement in compliance with all Laws.

8.8 Labour Disputes

If Project Co Has Knowledge of an actual or potential labour dispute that may affect any of the Design, Construction, Provisioning, System Expansion or Services, Project Co will promptly:

- (a) give notice thereof to PUC, including all relevant information related to the dispute of which Project Co Has Knowledge; and
- (b) take all reasonable steps to mitigate the effects of such labour dispute on the performance of any of the Design, Construction, Provisioning, System Expansion or Services including by applying for relief to appropriate tribunals or courts if such labour dispute involves workers of Project Co, a Project Contractor and/or a Sub-Contractor.

Project Co acknowledges that if the labour dispute involves workers of a Project Contractor or Sub-Contractor, or of anyone employed by or through them, PUC will not be required to provide any facilities, space or assistance in the UDM System or on the Lands for the purposes of such workers or any applicable union.

8.9 Payments in Respect of Supervening Events

Payments between the parties and any adjustments to Monthly Payment in respect of Supervening Events will be made in accordance with Section 10 (Lump Sum Payments and Service Payment Adjustments).

8.10 Supervening Events Mitigated by Change

Nothing in this Agreement will limit the right of PUC to perform or mitigate its obligations in respect of Supervening Events or the consequences of a Supervening Event by requiring a Change or Changes.

8.11 Delay in Notification

If the Supervening Event Notice or any required information is provided by an Applicant to the other Party after the dates referred to in Section 8.2 (Procedures Upon the Occurrence of a Supervening Event) or the Applicant does not comply with its obligations under Section 2.5 or 2.6 (as applicable) to mitigate the impact of the Supervening Event, then without prejudice to any other rights or remedies of the other party under this Agreement the Applicant will not be entitled to any compensation, extension of time or relief from its obligations under this Agreement to the extent that the amount thereof was increased or the ability to mitigate was adversely affected as a result of such delay in providing such notice or information.

8.12 Equivalent Project Relief

The parties acknowledge that Project Co will share with the Project Contractors, who will in turn share with Sub-Contractors, in accordance with the Project Contracts, certain benefits to Project Co derived from the rights of Project Co under, and subject to the obligations and limitations under, this Agreement including rights of Project Co under Section 8 (Supervening Events) (such rights, as qualified by such obligations and limitations, are in this Section collectively "**Project Co's Rights**"). Accordingly:

- (a) any circumstance affecting a Project Contractor or a Sub-Contractor which, if such circumstance had affected Project Co directly would have given rise to a claim by Project Co pursuant to Project Co's Rights will, for the purpose of this Agreement, be deemed to be a circumstance affecting Project Co in respect of which Project Co may claim under and subject to Project Co's Rights; and

- (b) amounts claimed by the Project Contractor or Sub-Contractor against Project Co in respect of any circumstance referred to in Section 8.12(a) above may be claimed by Project Co against PUC under and subject to Project Co's Rights, but whether or not PUC is liable for such amounts will be determined under this Agreement as if the circumstance had affected Project Co directly,

provided that:

- (c) all such claims will be made and administered by Project Co and no Project Contractor or Sub-Contractor will have any rights against PUC, including under this Section 8.12;
- (d) in no event will the liability of PUC under this Section 8.12 be greater than it would have been if Project Co had been directly affected by the circumstance referred to in Section 8.12(a) above; and
- (e) in no event will PUC be liable under this Section 8.12 for any Direct Losses or other compensation that PUC would not have been liable for if Project Co had been directly affected by the circumstance referred to in Section 8.12(a) above.

9. INDEMNITIES AND LIMITS ON LIABILITIES AND REMEDIES

9.1 Project Co's Obligation to Indemnify

Project Co will indemnify, defend and save harmless PUC and each PUC Indemnified Person at all times from and against all Direct Losses that any such Person may sustain in connection with:

- (a) any loss of or physical damage to all or any part of property or assets of PUC or any PUC Indemnified Person, or any claim made by one or more third parties (including for loss of or physical damage to property or assets), or any claim for, or in respect of, the death, personal injury, disease or illness of any Person, including any PUC Indemnified Person, arising by reason of any non-compliance by Project Co or any Project Co Person with any of the provisions of this Agreement or any document, instrument or agreement delivered to PUC as required under this Agreement [REDACTED]
- (b) breach of any representation or warranty by Project Co under this Agreement;
- (c) any Project Co Hazardous Substances;
- (d) breach by Project Co of, or non-compliance by Project Co with, Permits or Laws;
- (e) a failure by Project Co to obtain and maintain Project Co Permits; or
- (f) any infringement or misappropriation of Intellectual Property rights of any Person by Project Co,

except to the extent caused, or contributed to, by non-compliance by PUC with any provision of this Agreement or any document, instrument or agreement delivered to Project Co as required under this

Agreement or any negligent act or omission, or any wilful misconduct, of PUC or any PUC Person or Project Co acting in accordance with a Change Directive. For greater certainty, Section 4.6 applies to this Section 9.1.

9.2 PUC's Obligation to Indemnify

PUC will indemnify and keep Project Co and each Project Co Indemnified Person indemnified at all times from and against all Direct Losses that any such Person may sustain in connection with:

- (a) any loss of or physical damage to all or any part of property or assets of Project Co or any Project Co Indemnified Person, or any claim made by one or more third parties (including for loss of or physical damage to property or assets), or any claim for, or in respect of, the death, personal injury, disease or illness of any Person, including any Project Co Indemnified Person, arising by reason of any non-compliance by PUC or any PUC Person with any of the provisions of this Agreement or any document, instrument or agreement delivered to PUC as required under this Agreement, or which has been caused by PUC or any PUC Person;
- (b) breach of any representation or warranty by PUC under this Agreement;
- (c) any PUC Hazardous Substances;
- (d) breach by PUC of, or non-compliance by PUC with, Permits or Laws;
- (e) a failure by PUC to obtain and maintain PUC Permits; or
- (f) any infringement or misappropriation of Intellectual Property rights of any Person by PUC,

except to the extent caused, or contributed to, by non-compliance by Project Co with any provision of this Agreement or any document, instrument or agreement delivered to Project Co as required under this Agreement or any negligent act or omission, or any wilful misconduct, of Project Co or any Project Co Person or Project Co acting in accordance with a Change Directive.

9.3 Conduct of Third Person Claims

This Section 9.3 will apply to the conduct of claims made by a third Person against a party having or claiming to have with respect to such third Person claim, the benefit of an indemnity or a right to compensation under this Agreement. The party having, or claiming to have, the benefit of the indemnity or right to compensation is referred to as the "**Beneficiary**" and the party from whom the indemnity or compensation is sought is referred to as the "**Indemnifier**". Accordingly, subject to the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Agreement:

- (a) if the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification or compensation under this Agreement in respect of the entire claim, the Beneficiary will give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Business Days of receipt thereof;

- (b) the Indemnifier will be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary will give the Indemnifier all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim;
- (c) in defending any claim described in Section 9.3(b) in which there is a conflict of interest between the Indemnifier and the Beneficiary, the Beneficiary may appoint independent legal counsel in respect of such claim and, if it is determined that the Beneficiary is entitled to indemnification by or compensation from the Indemnifier, all reasonable costs and expenses incurred by the Beneficiary in so doing will be included in the indemnity or compensation from the Indemnifier;
- (d) with respect to any claim conducted by the Indemnifier pursuant to Section 9.3(b) the indemnifier will:
 - (1) keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
 - (2) demonstrate to the Beneficiary, at the reasonable request of the Beneficiary, that the Indemnifier has sufficient means to pay all costs and expenses that it may incur by reason of conducting the claim; and
 - (3) not pay or settle such claims without the consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
- (e) the Beneficiary may take conduct of any defence, dispute, compromise or appeal of the claim and of any incidental negotiations if:
 - (1) the Indemnifier is not entitled to take conduct of the claim in accordance with Section 9.3(b); or
 - (2) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within 10 Business Days of the notice from the Beneficiary under Section 9.3(a) or notifies the Beneficiary that it does not intend to take conduct of the claim; or
 - (3) the Indemnifier fails to comply in any material respect with Section 9.3(d) above.

In the case of (2) or (3) above the Beneficiary may pay or settle any claim on such terms as it thinks fit (provided such settlement is in monetary terms only) and without prejudice to its rights and remedies under this Agreement. Otherwise the Beneficiary will not pay or settle such claims without the consent of the Indemnifier, such consent not to be unreasonably withheld or delayed;
- (f) the Beneficiary may at any time give notice to the Indemnifier that it is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise, settlement or

appeal of any claim, or of any incidental negotiations, to which Section 9.3(b) above applies. On receipt of such notice the Indemnifier will promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and will provide to the Beneficiary all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section 9.3(f) (for the sake of clarity, for reasons other than as provided in Section 9.3(e)), then the Indemnifier will be released from any liability under its indemnity under Section 9.1 or Section 9.2 or its obligation to provide compensation, as the case may be; and

- (g) in response to any claim of infringement or misappropriation or alleged infringement or misappropriation of the Intellectual Property rights of any Person, Project Co may replace such infringing or allegedly infringing item provided that:
 - (1) the replacement is performed without additional cost to PUC; and
 - (2) the replacement has at least equal quality performance capabilities when used in conjunction with the UDM System.

9.4 General Obligation to Pursue Third Person Recovery

If a Party (the “**Paying Party**”) has paid to the other Party (the “**Receiving Party**”) an amount in respect of any indemnity, Supervening Event or other liability hereunder (a “**Liability Payment**”), and the Receiving Party has a *bona fide* claim for recovery of any such Liability Payment from a third Person or under any insurance required pursuant to this Agreement, the Receiving Party will:

- (a) as directed by the Paying Party either:
 - (1) promptly make all reasonable efforts to pursue and recover such claim and provide evidence of such efforts to the Paying Party; or
 - (2) assign to the Paying Party the right to pursue and recover such claim and, at the Paying Party’s cost, provide reasonable cooperation in connection with the pursuit and recovery of such claim; and
- (b) if it subsequently recovers, or the Paying Party makes recovery on its behalf, (whether by payment, discount, credit, saving, relief or other benefit or otherwise) an amount which is directly referable to the fact, matter, event or circumstances giving rise to the payment of the Liability Payment, forthwith repay to the Paying Party an amount equal to the lesser of:
 - (1) an amount equal to the sum recovered (or of the value of the recovery whether by discount, credit, saving, relief or otherwise) less any out of pocket costs and expenses properly incurred by the Receiving Party in recovering such sum; and
 - (2) the Liability Payment,

provided that the Paying Party will be repaid only to the extent that the amount of such recovery plus the Liability Payment exceeds the total loss or liability of the Receiving Party in respect of the fact, matter or circumstance giving rise to the Liability Payment.

For greater certainty, the above reference to a “third Person” will not include, in the case where PUC is the Paying Party, Project Co and Project Co Parties and their respective employees, directors, officers and agents and will not include, in the case where Project Co is the Paying Party, PUC and PUC Indemnified Persons.

9.5 Waiver of Remedies

No failure to exercise, and no delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

9.6 Remedies Cumulative

Subject to Sections 9.7, 9.8 and 9.9:

- (a) the rights and remedies of the parties under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise;
- (b) a party will not be prevented from enforcing a right or remedy on the basis that another right or remedy hereunder deals with the same or similar subject matter; and
- (c) no single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

9.7 Limitation on PUC’s Remedies

PUC’s remedies in respect of any failure by Project Co to achieve Service Commencement by the Target Service Commencement Date or the Longstop Date will be limited to PUC’s rights to indemnification by Project Co and Project Co shall indemnify PUC for all Direct Losses arising from such failure, provided that nothing in this Section 9.7 will limit PUC’s right to:

- (a) claim, on or after a termination of this Agreement, costs, losses, damages and expenses suffered or incurred by PUC as a result of rectifying or mitigating the effects of any breach of this Agreement by Project Co except to the extent recovered by PUC under this Agreement or taken into account to reduce any compensation payable by PUC pursuant to Schedule 9 [Compensation on Termination];
- (b) deliver to Project Co a Dispute Notice or a notice of default or termination pursuant to Section 12 and pursue all remedies in respect thereof; or
- (c) pursue any other express remedy available to PUC under this Agreement or any equitable remedy, including injunctive relief and specific performance.

9.8 Limitation on Project Co’s Remedies

To the extent Project Co has claimed for relief or compensation for a Supervening Event pursuant to Section 8, Project Co may not make any further claim against PUC for costs, losses, damages or expenses

incurred by Project Co, or for any other relief, in respect of any such events provided that nothing in this Section 9.8 will limit Project Co's right to:

- (a) deliver to PUC a Dispute Notice or a notice of default or termination pursuant to Section 13 (PUC Events of Default) and pursue all remedies in respect thereof; or
- (b) pursue any other express remedy available to Project Co under this Agreement or any equitable remedy, including injunctive relief and specific performance.

9.9 Limits on Monetary Compensation

Every right to claim compensation or indemnification or reimbursement under this Agreement will be construed so that recovery is without duplication to any other amount recoverable under this Agreement. Neither party will be entitled to make any claim against the other party for compensation, indemnification or reimbursement other than as provided under this Agreement.

9.10 No Liability for Indirect Losses

Unless specifically allowed in this Agreement, neither party to this Agreement will be liable to the other party, whether in contract or in tort or on any other basis whatsoever, for any Indirect Losses suffered or incurred by that other party.

9.11 PUC's Right of Set Off

PUC may set off any amounts owing by Project Co to PUC under this Agreement against payments due by PUC to Project Co under this Agreement, provided that in respect of Termination Payments payable under Sections 2 of Schedule 9 (Compensation on Termination) such set off will be available only to the extent that after such amount has been set off, such Termination Payment made is equal to an amount not less than the outstanding Senior Debt.

9.12 Project Co's Right of Set Off

Project Co may set off any amounts owing by PUC to Project Co under this Agreement against any payments due by Project Co to PUC under this Agreement.

9.13 Undisputed Amounts and Interest on Disputed Amounts

A party will pay any undisputed portion of any disputed amount payable to the other party in accordance with this Agreement, but any disputed portion or amount will not be payable until the Dispute is resolved in accordance with the Dispute Resolution Procedure.

If payment of any amount payable under this Agreement is delayed while the matter is in Dispute, then if the Dispute is resolved in favour of the party owing the amount of the payment that remains unpaid, no interest will be payable on such amount. Alternatively, if the matter is resolved in favour of the Payor of the amount payable in connection with the matter in Dispute, then interest will be payable on any amounts determined payable pursuant to the Dispute Resolution Procedure and will be calculated at the Prime Rate compounded monthly from the time such amount became payable under the Agreement until paid.

9.14 Interest on Overdue Amounts

If payment of any amount payable under this Agreement is not made when due (including Termination Payments payable pursuant to Schedule 9 [Compensation on Termination]), interest will be payable on such amount at the Default Rate and will be calculated from the date due under this Agreement until paid, compounded monthly. The Party to whom payment is owed and overdue will notify the other Party at least monthly of the overdue amount and the accrued interest on that amount.

9.15 Maximum Liability

- (a) The maximum aggregate liability of each Party in respect of all claims under Section 9 shall not exceed **[\$●] [NTD: Commercial teams/lenders to consider and advise of appropriate cap.]** (Index Linked). This limit shall be exclusive of any insurance proceeds received or which will be received pursuant to policies maintained in accordance with the insurance requirements set out in Schedule 5 [Insurance Requirements]. This limit shall not apply in cases of fraud, willful misconduct or deliberate acts of wrongdoing.

[Note: Size of cap to be considered further.]

- (b) Nothing in this Section 9.15 shall restrict, limit, prejudice or in any other way impair the rights and/or remedies of the Parties under any other provision of this Agreement.

10. LUMP SUM PAYMENTS AND SERVICE PAYMENT ADJUSTMENTS

10.1 Lump Sum Payments

To the extent a Party:

- (a) is entitled to payment from the other party under this Agreement, including in respect of a Change under Section 7 (Changes, Minor Works and Innovation Proposals), a Supervening Event under Section 8 (Supervening Events) or an indemnification claim under Section 9 (Indemnities and Limits on Liabilities and Remedies); or
- (b) is entitled to share in a benefit and to receive payment from the other party under this Agreement, including in respect of an Eligible Change in Law Event under Section 8 (Supervening Events),

the affected or entitled Party may make written demand for such payments from time to time after being entitled to payment and (i) in respect of any Direct Losses, after such Direct Losses have been incurred, and (ii) in respect of any shared benefit, after receipt by the other Party of the shared benefit, and payment will be made in accordance with this Section 10.

If PUC is obligated to compensate, reimburse or otherwise pay Project Co, PUC may in its discretion make such payment by lump sum payment or by payments that reasonably match the cash outlays of Project Co.

If Project Co is obligated to compensate, reimburse or otherwise pay PUC, PUC may in its discretion, require Project Co to make such payment:

- (c) by a lump sum payment, up to a maximum lump sum payment of \$500,000 (Index Linked) without the consent of Project Co, and any greater amount with the consent of Project Co, acting reasonably; or
- (d) by payments that reasonably match the cash inflows to Project Co or the averted cash outlays.

Lump sum payments and payments that reasonably match cash inflows, cash outlays or averted cash outlays will be due and payable within 20 Business Days of delivery of written demand supported by all relevant information.

The parties may agree to any other basis for payment.

10.2 Financing of Lump Sum Payment Amounts

If PUC is obligated to compensate, reimburse or otherwise pay Project Co and exercises its discretion to do so by a lump sum payment in accordance with Section 10.1 (Lump Sum Payments), at PUC's request Project Co will use all reasonable efforts to obtain the financing required to make such payment on the best terms reasonably available and, to the extent that Project Co is able to obtain such financing, there will be a corresponding increase made to the Monthly Payment in accordance with Section 10.3 (Adjustments to Monthly Payment). PUC will:

- (a) promptly pay to Project Co an amount equal to the reasonable out-of-pocket expenses incurred by Project Co in seeking such financing; and
- (b) provide concurrent interim financing of any expenditures and costs to be incurred by Project Co until the earlier of the date on which such financing is obtained or payment is made pursuant to Section 10.1 (Lump Sum Payments).

PUC acknowledges that the Senior Lenders have no obligation to provide the financing referred to in this Section 10.2 or to subordinate or share their security.

10.3 Adjustments to Monthly Payment

Subject to PUC's discretion for the basis of payment under Section 10.1 (Lump Sum Payments) or the Parties' agreement to another basis for payment under Section 10.1 (Lump Sum Payments), if either Party gives notice to the other Party that it wishes the Parties to consider whether an entitlement to payment under this Agreement is more efficiently effected by adjustments (both increases and decreases) to Monthly Payment, or if this Agreement requires that an entitlement be effected by such adjustments:

- (a) within 10 Business Days after such notice or after the determination that Monthly Payment are required to be adjusted, Project Co will give notice to PUC of the proposed adjustments to be made to the Monthly Payment to achieve the objectives and outputs set out in Section 10.3(b). Such proposed adjustments will be ascertained by entering the relevant cost adjustments and losses into the Financial Model with effect from the relevant date determined in accordance with Section 10.3(c);

- (b) the adjustments to the calculation of the Monthly Payment will be determined so that upon comparing the output of the Financial Model as at the adjustment date (after updating the Financial Model to reflect actual performance to date) before and after the proposed adjustments to Monthly Payment, and taking into account the impact of such adjustments on the economics of the Project as reflected in the Financial Model, the timing of liability for taxation and the time when the adjustments to the Monthly Payment will take effect, such comparison of the output from such Financial Model shows that:
 - (1) the Equity IRR in respect of equity subscribed in **[and Junior Debt advanced to]** Project Co in accordance with the Financial Model prior to the Monthly Payment adjustment will be unchanged except to the extent required to reflect:
 - (A) any material change in the risk profile of the Project arising in connection with the circumstance giving rise to the adjustment; or
 - (B) any benefit to the parties; and
 - (2) Project Co would not, by reason of the effect of the occurrence of the adjustment or the consequential change in cash flow during the Term as shown in the Financial Model (as adjusted), be placed, in respect of any of the Senior Financing Agreements, in a position worse than it would have been in if the change had not occurred;
- (c) the relevant date for adjustments to the Monthly Payment is:
 - (1) in the case of an adjustment occurring before the Service Commencement Date, the Service Commencement Date, unless otherwise agreed or specified in Schedule 6 [Changes, Minor Works and Innovation Proposals]; or
 - (2) in the case of an adjustment occurring after the Service Commencement Date, the start of the next Payment Period in the Financial Model falling after the completion or implementation of the adjustments is achieved;
- (d) if within 10 Business Days after Project Co gives notice of the proposed adjustments the Parties agree that the entitlement to payment should be effected by adjustments to the Monthly Payment, or if this Agreement requires that the entitlement be effected by such adjustments, the Parties will implement such adjustments and update the Financial Model accordingly; and
- (e) if completion or implementation of the adjustments is delayed beyond the scheduled date for completion or implementation by reference to which the Financial Model has been re-run in accordance with this Section 10.3 other than delay resulting from an audit under Section 10.4, the date of adjustment to the Monthly Payment payable by PUC will be delayed by a period equal to the delay in the completion or implementation of the required adjustments.

10.4 Audit of Financial Model

Prior to implementing any adjustments to the Monthly Payment contemplated in Section 10.3, PUC may, at its own expense, review and audit the revised Financial Model prepared by Project Co and Project Co will provide such information as is reasonably required by PUC to conduct such audit.

11. PUC'S STEP-IN RIGHTS

11.1 PUC's Step-in Rights

Subject to the rights granted to the Lenders pursuant to the Lenders' Remedies Agreement, if PUC reasonably considers that a breach by Project Co of any obligation under this Agreement or an event:

- (a) creates or in PUC's opinion, acting reasonably, is likely to create an immediate and serious threat to the health or safety of any person, any property, or the environment;
- (b) may compromise:
 - (1) the reputation or integrity of PUC or its distribution system and the supply and distribution of electricity to consumers; or
 - (2) the UDM System, so as to affect public confidence in the UDM System or any operations related to the UDM System; or
- (c) is prejudicial to the ability to carry on PUC Activities and/or the Intended Uses to a material degree;

then PUC, acting reasonably, may either:

- (d) if it considers (i) that there is sufficient time and (ii) that it is likely that Project Co will be willing and able to provide assistance, require Project Co by notice to take such steps as are necessary (or expedient) to mitigate or rectify such state of affairs including, if applicable due to breach of any Project Contract or Sub-Contract, suspension or termination and replacement of the Project Contractor or Sub-Contractor, and Project Co will use all reasonable efforts to comply with PUC's requirements as soon as reasonably practicable; or
- (e) if it considers (in each case acting reasonably) that there is not sufficient time, that Project Co is not likely to be willing and able to take the necessary steps or that it would materially impact the operation of PUC's distribution system to require Project Co to take such necessary steps in accordance with Section 11.1(d), take such steps as PUC considers are appropriate (either itself or by engaging others) to mitigate or rectify such state of affairs and to ensure performance of all relevant obligations under this Agreement to the standards required by this Agreement (or as close as possible to those standards as the circumstances permit). PUC will carry out such steps as quickly as is practicable, and in such manner as will minimize interference with Project Co's performance of its obligations under this Agreement.

Project Co will ensure that the provisions contained in all applicable Sub-Contracts will not prevent or inhibit PUC from exercising its rights under this Section 11.

11.2 PUC's Rectification Rights

If PUC gives notice to Project Co under Section 11.1(d) and Project Co either:

- (a) does not confirm, within 5 Business Days of such notice, or such shorter period as is appropriate in the case of an emergency, that it is willing to take such steps as are required in such notice or present an alternative plan to PUC to mitigate, rectify and protect against such circumstances that PUC may, within a further 5 Business Days, accept or reject, acting reasonably; or
- (b) fails to take the steps as are referred to or required in such notice or accepted alternate plan within such time as set out in such notice or accepted alternate plan or within such time as PUC, acting reasonably, will stipulate,

then PUC may take such steps as it reasonably considers necessary or expedient to mitigate, rectify or protect against such circumstances either itself or by engaging others to take any such steps and which may include exercising step-in rights under direct agreements to which it is a party. Such steps may include the partial or total suspension of the right and obligation of Project Co to undertake the Project, but only for so long as such circumstances subsist.

11.3 Notice of UDM System Change

PUC will notify Project Co of any UDM System Change which PUC intends to make pursuant to the exercise of PUC's rights under Section 11.1(d) or Section 11.2 and provide Project Co a reasonable opportunity, taking into account all the circumstances, to comment on the proposed UDM System Change. In making such UDM System Change, PUC will reasonably consider comments received in a timely manner from Project Co on the proposed UDM System Change.

11.4 No Effect on Project Co's Design and Construction Responsibility

The exercise by PUC of any of its rights under this Section 11 will not reduce or affect in any way Project Co's responsibility under Section [4.1] of Schedule 2 [Design and Construction Protocols] or otherwise limit its obligations under this Agreement in each case with respect to such responsibilities and obligations arising after the exercise by PUC of any of its rights under Section 11.2.

11.5 Allocation of Costs for PUC Actions

To the extent that any of the circumstances set out in Section 11.1 arise as a result of any breach by Project Co of its obligations under this Agreement, Project Co will pay PUC the amount of all direct costs and expenses reasonably incurred by PUC in exercising its rights under Section 11.1 or Section 11.2 and an additional mark-up of ■% of such costs and expenses in respect of indirect costs and overhead not otherwise directly attributable to the exercise of such rights. In all other cases, any actions of PUC under Sections 11.1 and 11.2 will constitute a Compensation Event.

12. PROJECT CO EVENTS OF DEFAULT

12.1 Project Co Events of Default

For the purposes of this Agreement, “**Project Co Event of Default**” means any of the following events or circumstances:

- (a) the occurrence of a Project Co Material Breach that is not remedied in accordance with Section 12.3 including in accordance with the program for remediation under that Section, or the occurrence of a Project Co Material Breach for which a program for remediation has not been produced by Project Co in accordance with Section 12.3;
- (b) the occurrence of a Project Co Insolvency Event;
- (c) Project Co abandons the Project for a period exceeding 10 Business Days from the date of notice from PUC to resume performance, other than pursuant to its right to suspend performance or terminate this Agreement under Section 13.3 (Project Co's Options) or due to a Supervening Event;
- (d) Service Commencement does not occur on or before the Longstop Date;
- (e) Project Co breaches Section 16.1 or a Change in Control occurs which is prohibited by Section 16.2;
- (f) at any time after the Service Commencement Date, Project Co breaches its obligations under this Agreement (other than as a consequence of a breach by PUC of its obligations under this Agreement) which results in the criminal conviction or a conviction under the *Occupational Health and Safety Act* against Project Co or any Project Co Person or PUC (an “**H&S Conviction**”) except that:
 - (1) an H&S Conviction of Project Co, a Project Co Person or PUC will not constitute a Project Co Event of Default if, within 60 Business Days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Project of each relevant Project Co Person is terminated or Project Co takes such other action against each such Project Co Person as is acceptable to PUC acting reasonably; and
 - (2) in determining whether to exercise any right of termination for a Project Co Event of Default pursuant to this Section 12.1(f) PUC will:
 - (A) act in a reasonable and proportionate manner having regard to such matters as the gravity of the offence and the identity of the person committing the act leading to the H&S Conviction; and
 - (B) give all due consideration, where appropriate, to action other than termination of this Agreement;

- (g) Project Co makes a representation or warranty herein that is false or misleading when made, and that has or will have at any time a material adverse effect on the performance of the Project in the case of a false or misleading representation or warranty that is capable of being remedied, Project Co has not remedied such breach within 10 Business Days following notice from PUC;
- (h) Project Co failing to remove an Encumbrance that arose due to an act or omission of Project Co or any Project Co Person (other than a Title Encumbrance and any Encumbrance derived through PUC) within 45 days of the date on which Project Co or any Project Co Person knew, or ought to have known, about the existence of the Encumbrance; or
- (i) Project Co failing to obtain any bond, security or insurance required to be obtained by or on behalf of Project Co pursuant to this Agreement or any such bond, security or insurance being vitiated or otherwise ceasing to be in full force and effect or in material compliance with the requirements set out in this Agreement, other than as a consequence of a breach by PUC of its obligations under this Agreement, and:
 - (1) in respect of insurance, such breach by Project Co is not remedied within 10 Business Days of the occurrence of the breach; and
 - (2) in respect of a bond or security, such breach by Project Co is not remedied within 20 Business Days of Project Co becoming aware of such breach,

unless caused by non-compliance by PUC with any provision of this Agreement or any document, instrument or agreement delivered to Project Co as required under this Agreement or any negligent act or omission, or any wilful misconduct, of PUC or any PUC Person.

12.2 Notification

Project Co will notify PUC of the occurrence, and details, of any Project Co Event of Default promptly when Project Co Has Knowledge of its occurrence.

12.3 Project Co Material Breach Cure and Remedial Program

After the occurrence of a Project Co Material Breach and while it is subsisting, PUC may serve a notice on Project Co specifying in reasonable detail the type and nature of the Project Co Material Breach and:

- (a) Project Co will remedy such Project Co Material Breach referred to in such notice (if it is continuing) within 20 Business Days of such notice; or
- (b) if either PUC (as set out in its notice) or Project Co reasonably considers that a Project Co Material Breach cannot reasonably be remedied within 20 Business Days of such notice, Project Co will deliver to PUC within 10 Business Days of such notice a reasonable program (set out, if appropriate, in stages) for remedying the Project Co Material Breach and if accepted and agreed by PUC, acting reasonably, Project Co shall thereafter begin to diligently pursue such remediation. The program will specify in reasonable detail the

manner in, and the latest date by, which the Project Co Material Breach is proposed to be remedied. In the event that a program proposed by Project Co pursuant to this Section 12.3(b) for the remediation of a Project Co Material Breach is not agreed by PUC within 10 Business Days of submission of the same to PUC, either party may refer such matter to [●] pursuant to Section [●] of the Dispute Resolution Procedure for an expedited determination (which shall be binding on both parties) of both the scope of the program for remediation of the Project Co Material Breach and a reasonable period within which the Project Co Material Breach shall be required to be remedied pursuant to such program.

12.4 PUC Termination Right

If:

- (a) a Project Co Material Breach is not remedied before the expiry of the period referred to in Section 12.3(a);
- (b) where Section 12.3(b) applies and a remediation program has been agreed by the parties or determined pursuant to the Dispute Resolution Procedure, Project Co fails to achieve any material element of the program or the end date for the program, as the case may be;
- (c) any program put forward by Project Co pursuant to Section 12.3(b) is rejected by PUC as not being reasonable and, if such rejection is disputed by Project Co, the Dispute Resolution Procedure does not find against that rejection; or
- (d) any Project Co Event of Default other than a Project Co Material Breach occurs,

then PUC may (if the Project Co Event of Default continues unwaived and unremedied), subject to the terms of the Lenders' Remedies Agreement, terminate this Agreement by notice to Project Co. The right of PUC to terminate this Agreement under this Section 12.4 is in addition, and without prejudice, to any other right which PUC may have in connection with Project Co's defaults hereunder.

For the purposes of Section 12.4(b), if Project Co's performance of the program is adversely affected by the occurrence of a Supervening Event or a breach by PUC of its obligations under this Agreement, then, subject to Project Co complying with the mitigation and other requirements in this Agreement concerning such events, the time for performance of the program or any relevant element of it will be deemed to be extended by a period equal to the delay caused by such events which is agreed by the parties or determined in accordance with the Dispute Resolution Procedure.

12.5 PUC's Costs

Project Co will reimburse PUC for all reasonable costs incurred by PUC in exercising any of its rights (including any relevant increased administrative expenses and actual legal expenses) under this Section 12 (Project Co Events of Default).

13. PUC EVENTS OF DEFAULT

13.1 PUC Events of Default

For the purposes of this Agreement, “**PUC Event of Default**” means any of the following events or circumstances:

- (a) a failure by PUC to pay any amount due and owing to Project Co under this Agreement on the due date (which amount is not being disputed in good faith) and PUC has not remedied such failure to pay within 5 Business Days of notice from Project Co;
- (b) except as provided for in Section 13.1(a), a breach, or series of breaches, by PUC of any term, covenant or undertaking to Project Co, or any representation or warranty made by PUC to Project Co in this Agreement is incorrect when made, the consequence of which:
 - (1) has an adverse effect on the performance of the Design, Construction, Provisioning, System Expansion or Services; or
 - (2) results in any provision of this Agreement being unenforceable against PUC,and as a result thereof Project Co is reasonably likely to be materially deprived of the benefit of this Agreement;
- (c) the occurrence of a PUC Insolvency Event; or
- (d) PUC breaches Section 16.4 (Limitations on Assignment of Project by PUC).

13.2 Notification

PUC will notify Project Co of the occurrence, and details, of any PUC Event of Default and of any event of circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a PUC Event of Default, in either case promptly on PUC Having Knowledge of its occurrence.

13.3 Project Co's Options

After the occurrence of an PUC Event of Default and while an PUC Event of Default is continuing, Project Co may, at its option exercise one or more of the following, as applicable:

- (a) in respect of the Design and the Construction prior to the Service Commencement Date, suspend performance by it of its obligations under this Agreement until such time as PUC has demonstrated to the reasonable satisfaction of Project Co that it will perform and is capable of performing its obligations under this Agreement and the Target Service Commencement Date and the Longstop Date will be extended by the time such suspension is in effect;
- (b) in the case of an PUC Event of Default under Section 13.1(a), suspend performance by it of its obligations under this Agreement until PUC has remedied such PUC Event of Default and the Target Service Commencement Date and the Longstop Date will be extended by

the time such suspension is in effect and such additional time as may be reasonably required to return to normal operations following such suspension;

- (c) in the case of an PUC Event of Default under Sections 13.1(a), 13.1(b) or 13.1(c), serve notice on PUC of the occurrence specifying details of such PUC Event of Default and if the relevant matter or circumstance has not been rectified or remedied by PUC or otherwise within 10 Business Days of such notice (or in the case of an PUC Event of Default under Section 13.1(b) or 13.1(c) such longer period as is reasonably required for PUC to rectify or remedy such PUC Event of Default as long as PUC is diligently pursuing such rectification or remedy), Project Co may serve a further notice on PUC terminating this Agreement with immediate effect in which case compensation on termination shall be payable by PUC to Project Co in accordance with the terms of Section 2 of Schedule 9 (Compensation on Termination);
- (d) in the case of a PUC Event of Default under Section 13.1(a) take such action pursuant to the Security as it deems necessary or desirable; or
- (e) in the case of an PUC Event of Default under Sections 13.1(c) and 13.1(d), terminate this Agreement by notice to PUC in which case compensation on termination shall be payable by PUC to Project Co in accordance with the terms of Section 2 of Schedule 9 (Compensation on Termination).

13.4 Project Co's Costs

PUC will reimburse Project Co for all reasonable costs incurred by Project Co in exercising any of its rights (including any relevant increased administrative expenses, interest expenses during Construction and actual legal and other expenses) under this Section 13 (PUC Events of Default).

13.5 Expropriation

"In the event that any material part of the UDM System or the portion of the Lands on which the UDM System is situated is expropriated by any Governmental Authority, the parties shall work collaboratively and in good faith to determine how and in what manner to redistribute or otherwise alter the UDM System so as to minimize the impact of such expropriation. If and to the extent that Project Co incurs any additional expenses or costs in connection therewith, such expropriation shall be deemed to be an Eligible Change in Law Event.

13.6 No Other Rights to Terminate

Neither PUC nor Project Co shall have the right to terminate this Agreement or to accept any repudiation of this Agreement and shall not exercise, nor purport to exercise, any such right or entitlement except as expressly set forth in this Agreement.

14. PROCEDURE ON TERMINATION

14.1 Compensation on Termination

If this Agreement is terminated pursuant to its terms, PUC will pay compensation to Project Co in accordance with Schedule 9 [Compensation on Termination].

14.2 Transfer to PUC of Assets, Contracts, etc.

On or promptly after the later of the Termination Date and the date on which any payment due under Schedule 9 [Compensation on Termination] has been made:

- (a) if prior to the Service Commencement Date:
 - (1) in so far as any transfer will be necessary to fully and effectively transfer property to PUC, Project Co will transfer to, and there will vest in, PUC (or any New Project Co as may be appointed by PUC) free from all Encumbrances:
 - (A) such part of the UDM System as has been constructed on or has become affixed to the Lands, title to which has not already passed to PUC and such items of plant and equipment as shall have been obtained by Project Co in relation to the Project; and
 - (B) all construction materials as shall have been obtained to in relation to the Project to be affixed to the Lands or otherwise used in the UDM System; and
 - (2) if PUC so elects:
 - (A) the construction equipment will remain available to PUC or the New Project Co for the purposes of completing the Design and Construction; and
 - (B) all other Project related materials on or near the Lands will remain available to PUC or the New Project Co for the purposes of completing the Design and Construction,

subject to payment by PUC of the Design-Builder's reasonable charges in relation thereto; and
- (b) if PUC so elects, Project Co will cause any or all of the Project Contracts to be novated or assigned to PUC, provided that:
 - (1) Project Co will not be obligated to assign to PUC any of Project Co's rights to claim against the applicable Project Contractor that arose under such Project Contract prior to the date of such novation or assignment; and

- (2) if termination occurs under Section 13.3 (Project Co's Options) the consent of the applicable Project Contractor will be required;
- (c) Project Co will, or will cause any Material Contract Party to, offer to sell to PUC at the Fair Market Value, free from any encumbrance all or any part of the stocks of material and other assets, vehicles, spare parts and other moveable property owned by Project Co or any Material Contract Party and reasonably required by PUC in connection with the operation of the UDM System or the provision of the Services;
- (d) Project Co will deliver to PUC (to the extent not already delivered to PUC):
 - (1) all existing designs, plans and other documents produced in connection with the UDM System and in the control of Project Co or any Project Co Person; [REDACTED]
 - (2) one complete set of existing "as built drawings" showing all alterations made to the UDM System since the commencement of operation of the UDM System; and
 - (3) one complete set of existing up to date maintenance, operation and training manuals for the UDM System,

subject to reasonable generally applicable third party licensing terms;

- [REDACTED]
- (e) Project Co will secure the benefit of existing Project Intellectual Property and all warranties in respect of mechanical and electrical equipment used or made available by Project Co under this Agreement and included in the UDM System but not previously assigned or licensed to PUC are assigned, licensed or otherwise transferred to PUC;
 - (f) to the extent permitted by Law, Project Co will assign to PUC (or any New Project Co as may be appointed by PUC) all Permits;
 - (g) Project Co will deliver to PUC all records required to be kept by Project Co hereunder (Project Co having the right to retain copies thereof) unless such documents are:
 - (1) required by Law to be retained by Project Co or a Project Contractor or Sub-Contractor, in which case complete copies will be delivered to PUC; or
 - (2) privileged from production pending resolution of any outstanding Dispute, in which case such records will be delivered forthwith upon resolution of such Dispute, provided that any records that are necessary for the performance of the Design, Construction, Provisioning, System Expansion or Services will be delivered to PUC no later than the Termination Payment Date; and
 - (h) return to PUC all Confidential Information of PUC within the possession or control of Project Co or any Project Contractor or Sub-Contractor.

Project Co will ensure that provision is made in all applicable contracts to ensure that PUC will be in a position to exercise its rights, and Project Co will be in a position to comply with its obligations, under this Section 14.2 without additional payment or compensation to any Person.

14.3 Transition Out Arrangements

At the expiry of the Term, Project Co will co-operate with PUC to provide a seamless transition of any and all of Project Co's responsibilities with respect to the Services to PUC or any successor thereto.

14.4 Continued Performance

Subject to Project Co's rights of suspension under Sections 13.3(a) and 13.3(b) (Project Co's Options) and subject to the provisions of this Section 14, the Parties will continue to perform their obligations under this Agreement (including PUC continuing to make Monthly Payment) notwithstanding the giving of any notice of default or notice of termination.

14.5 Project Co Materials

In connection with all agreements, warranties, information, records, documents, data and other materials delivered by Project Co to PUC as required pursuant to this Section 14.5 (collectively, the "**Project Co Materials**") Project Co shall deliver to PUC a certificate of an officer of Project Co addressed to PUC in form and substance satisfactory to PUC, certifying among other things to his or her knowledge (having made due and diligent enquiries) and without personal liability:

- (a) all Project Co Materials delivered to PUC are materially true, accurate and complete copies of the originals of all such Project Co Materials;
- (b) with respect to Project Co Materials that constitute agreements, understandings, indentures, contracts, leases, deeds of trust, licences, options, instruments, warranties or other commitments between Project Co and any persons:
 - (1) all are in good standing and in full force and effect with no amendments (except as disclosed) and Project Co is entitled to all rights and benefits thereunder;
 - (2) Project Co has complied with all material terms thereof, has paid all amounts due thereunder, has not waived any rights thereunder and no default or breach exists in respect thereof on the part of any of the parties thereto and no event has occurred which, after the giving of notice or the lapse of time or both, would constitute such a default or breach; and
 - (3) all are valid and binding obligations of the parties thereto enforceable in accordance with their respective terms.

15. DISPUTE RESOLUTION

15.1 Procedure

Except as otherwise provided in this Agreement, any Dispute will be resolved in accordance with, and the parties will comply with, the Dispute Resolution Procedure set out in Schedule 13 [Dispute Resolution Procedure].

15.2 Undisputed Amounts

A party will promptly pay any undisputed portion of any disputed amount to the other party in accordance with this Agreement but any disputed portion or amount will not be payable until the Dispute is resolved as aforesaid.

16. ASSIGNMENT/CHANGE IN CONTROL

16.1 Limitations on Assignment of Project by Project Co

Project Co will not assign, transfer or otherwise dispose of any interest in this Agreement or a Project Contract except:

- (a) as security, substantially in a form approved by PUC, acting reasonably, prior to its grant for any loan made to Project Co under any Senior Financing Agreement and provided the Senior Lenders enter into the Lenders' Remedies Agreement;
- (b) in connection with the exercise of rights of the Senior Lenders under the Senior Financing Agreements in accordance with the Lenders' Remedies Agreement; or
- (c) otherwise:
 - (1) prior to the day (the "**Transfer Restriction Date**") that is one year after the Service Commencement Date, with the written consent of PUC, which may be given or withheld in PUC's discretion, and
 - (2) after the Transfer Restriction Date, with the written consent of PUC, which will not be unreasonably withheld or delayed,

provided that in the case of an assignment under 16.1(b) or 16.1(c) above the assignee:

- (d) is not a Restricted Person; and
- (e) assumes all the obligations of Project Co under this Agreement.

16.2 Limitations on Change in Control

No Change in Control of Project Co will be permitted (whether by Project Co or otherwise) to occur except:

- (a) further to the exercise of rights of the Senior Lenders under the Senior Financing Agreements in accordance with the Lenders' Remedies Agreement, provided that such Change of Control does not result in a Restricted Person obtaining Control of Project Co;
- (b) arising from any bona fide open market transaction in any shares or other securities of Project Co effected on a recognized public stock exchange; or
- (c) otherwise:
 - (1) prior to the Transfer Restriction Date, with the written consent of PUC, which may be given or withheld in PUC's discretion; and
 - (2) after the Transfer Restriction Date, with the written consent of PUC, which will not be unreasonably withheld or delayed.

16.3 Factors PUC May Consider

In determining whether to provide its consent under Section 16.1(c) or 16.2(c) and without limiting PUC's discretion thereunder, it will be reasonable for PUC to refuse its consent if:

- (a) the proposed assignee or the new party in control of Project Co, as the case may be, or any of their Affiliates, is a Restricted Person;
- (b) the proposed assignee or the new party in control of Project Co, as the case may be, is, in the reasonable opinion of PUC, not sufficiently creditworthy or having sufficient financial or technical capacity taking into account the nature of the obligations under this Agreement; or
- (c) the assignment or Change in Control could, in the reasonable opinion of PUC, have a material adverse effect on PUC or the Project.

16.4 Limitations on Assignment of Project by PUC

PUC will not assign, transfer or otherwise dispose of any interest in this Agreement unless:

- (a) such transfer or assignment is as security or is otherwise in connection with the exercise of rights of lenders to PUC in relation to the enforcement of security relating to this Agreement;
- (b) the assignment, transfer or other disposition is to a Qualified Person; and
- (c) the assignee assumes all the obligations of PUC under this Agreement.

16.5 Costs of Request for Consent

If Project Co requests consent to an assignment, transfer or disposition pursuant to Section 16.1 or to a Change in Control pursuant to Section 16.2, Project Co will pay PUC's reasonable internal administrative and personnel costs and all reasonable out-of-pocket costs in connection with considering any such

request. At the time of such request, Project Co will make a payment to PUC in the amount of \$10,000 (Index Linked) against its obligation under this Section 16.5. After PUC renders its decision, PUC will either refund any over payment or invoice Project Co for any additional amounts owing under this Section 16.5 and Project Co will promptly pay such amount to PUC.

17. GENERAL

17.1 Confidentiality

- (a) Subject to Section 17.1(b), each party will hold in confidence any Confidential Information received from the other party, except that this Section 17.1 will not restrict:
 - (1) Project Co from disclosing or granting access to such information to its professional advisers and consultants, to the extent necessary, to enable it to perform (or to cause to be performed) or to enforce its rights or obligations under this Agreement and provided further that Project Co may, subject to obtaining confidentiality restrictions similar to those set out in this Agreement:
 - (A) provide to the Senior Lenders and other potential lenders, equity providers, underwriters, arrangers, investment dealers, monoline insurers and their respective advisors such documents and other information as are reasonably required by them in connection with raising financing for the Project or complying with the terms of the Senior Financing Agreements or related agreements; and
 - (B) provide to a Project Contractor and its advisors, or provide or cause to be provided to other third parties, Confidential Information which is necessary to enable Project Co to perform (or to cause to be performed) its obligations under this Agreement provided such Confidential Information is not used by Project Contractor, its advisors, or other third parties, as applicable, for any other purpose; and
- (b) Subject to any restrictions on the Confidential Information which are imposed by a third party that may own any Confidential Information, the obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:
 - (1) which the party that disclosed the Confidential Information confirms in writing is not required to be treated as Confidential Information;
 - (2) which is or comes into the public domain otherwise than through any disclosure prohibited by this Agreement;
 - (3) to the extent any Person is required to disclose such Confidential Information by Law;

- (4) to the extent consistent with any PUC's policy concerning PUC's Confidential Information, the details of which have been provided to Project Co in writing prior to the disclosure;
 - (5) that PUC may be entitled to receive from Project Co pursuant to this Agreement for the operation, maintenance or improvement of the UDM System in the event of, or following, termination of this Agreement; or
 - (6) that is known to the recipient of the Confidential Information prior to disclosure to the recipient by the other party or becomes known to the recipient thereafter by way of disclosure to the recipient by any other Person who, to the knowledge of the recipient, is not under any obligation of confidentiality with respect thereto.
- (c) Without prejudice to any other rights and remedies that the other party may have, each of the parties agrees that damages may not be an adequate remedy for a breach of Section 17.1(a) and that the other party will, in such case, be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of Section 17.1(a).
- (d) Project Co will be fully liable for any breach of confidentiality under this Section 17.1 by any Person to whom Project Co has disclosed or granted access to Confidential Information under this Section 17.1 to the same extent as if Project Co itself breached confidentiality under this Section 17.1.

17.2 Public Communications

Unless expressly provided in this Agreement or otherwise required by any Law (but only to that extent), neither party will make or permit to be made any public announcement or disclosure whether for publication in the press, radio, television or any other medium of any Confidential Information or any matters relating thereto, without the consent of the other party (which will not be unreasonably withheld or delayed). The parties will comply with Schedule 16 [Communication Roles].

17.3 Law of Agreement

This Agreement will be deemed to be made pursuant to the laws of the Province of Ontario and the federal laws of Canada applicable therein and will be governed by and construed in accordance with such laws.

17.4 Attornment

For the purposes of any legal actions or proceedings brought by any party hereto against the other party, the parties hereby irrevocably submit to the exclusive jurisdiction of the courts in the City of Toronto, Ontario and acknowledge their competence and the convenience and propriety of the venue and agree to be bound by any judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

17.5 Entire Agreement, Waivers and Consents in Writing

This Agreement and the instruments and documents to be executed and delivered pursuant to it constitute the entire agreement between the parties, expressly superseding all prior agreements and communications (both oral and written) between any of the parties hereto with respect to all matters contained herein or therein, and except as stated herein or the instruments and documents to be executed and delivered pursuant hereto, contains all the representations and warranties of the respective parties. In addition:

- (a) no waiver of any provision of this Agreement; and
- (b) no consent required pursuant to the terms of this Agreement,

is binding or effective unless it is in writing and signed by the party providing such waiver or consent.

17.6 Notices

Any notice or communication required or permitted to be given under this Agreement will be in writing and will be considered to have been sufficiently given if delivered by hand or transmitted by electronic transmission to the address or electronic mail address of each party set out below:

if to PUC:

■

Attention: ■

E-mail: ■

if to Project Co:

■

Attention: ■

E-mail: ■

or to such other address or electronic mail address as any party may, from time to time, designate in the manner set out above. Any such notice or communication will be considered to have been received:

- (a) if delivered by hand during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and
- (b) if delivered by electronic mail during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day provided that:
 - (1) the receiving party has, by electronic mail or by hand delivery, acknowledged to the notifying party that it has received such notice; or

- (2) within 24 hours after sending the notice, the notifying party has also delivered a copy of such notice to the receiving party by hand delivery.

17.7 Further Assurances

The parties will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as the other may reasonably request for the purpose of giving effect to this Agreement or for the purpose of establishing compliance with the representations, warranties and obligations of this Agreement.

17.8 Counterparts

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement so that it will not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

17.9 No Partnership, etc.

Nothing contained in this Agreement nor any action taken pursuant hereto or thereto will be deemed to constitute PUC and Project Co a partnership, joint venture or any other similar such entity.

17.10 Survival

Notwithstanding any other provision of this Agreement, the provisions of Section 6.13 (Third Party Liability Insurance as an Uninsurable Risk), Section 8 (Supervening Events) (if and to the extent a Compensation Event relates to a claim made by a third party against Project Co after the Termination Date), Section 9 (Indemnities and Limits on Liabilities and Remedies), Section 14 (Procedure on Termination), Section 15 (Dispute Resolution), Section 17.1 (Confidentiality), Schedule 9 [Compensation on Termination] and Schedule 13 [Dispute Resolution Procedure] will survive the expiry or any earlier termination of this Agreement.

[PUC Note: Deletion of reference to Schedule 4B to be considered further once provided for review.]

[signature page follows]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

PUC DISTRIBUTION INC.

Per: _____
Name: _____
Title: _____

[PROJECT CO]

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____