

APPENDIX B – COMPENSATION

Article 1 - Definitions

1.1 The following terms, wherever capitalised in the *Contract*, or in any document produced pursuant to the terms of the *Contract*, shall have the following meanings:

- (a) *Contractor's Fee* is an amount equal to [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- (b) *Cost Estimate for Balance of Work* means an estimate prepared by the *Contractor* with a level of precision based on the degree of completion of the *Engineering Services* at the time; presented in elemental format; and composed of the *Cost of Work*, the *Contractor's Fee*, cash allowances, contingencies, and allowances for design, escalation, market conditions, as applicable;
- (c) *Cost of Work* means the actual cost incurred or to be incurred by the *Contractor* in performing the *Balance of Work*, a *Change Order* or a *Change Directive* and is limited to the actual cost of the following:
 - (i) the cost of personnel in the direct employ of the *Contractor* in accordance with the schedule of hourly rates agreed upon by the *Owner* and the *Contractor*, which shall be inclusive of all salaries, wages and benefits, as well as all contributions, assessments and taxes incurred for such items as employment insurance, provincial or territorial health insurance, workers' compensation, and Canada or Quebec Pension Plan based on wages, salaries or other remuneration paid to employees of the *Contractor*;
 - (ii) all *Goods* including cost of transportation thereof;
 - (iii) materials, supplies, construction equipment, temporary work, and hand tools not owned by the workers, including transportation and maintenance thereof, which are consumed in the performance of the *Work*; the cost less salvage value on such items used, but not consumed, which remain the property of the *Contractor*;
 - (iv) all tools and *Construction Equipment*, exclusive of hand tools used in the performance of the *Work*, whether rented from or provided by the *Contractor* or others, including installation, minor repairs and replacements, dismantling, removal, transportation, and delivery cost thereof;

- (v) deposits lost provided that they are not caused by negligent acts or omissions of the *Contractor* and the *Work* is performed in accordance with this *Contract*;
 - (vi) the amounts of all written agreements with *Subcontractors*;
 - (vii) quality assurance such as independent inspection and testing services as required by the *Owner's Requirements*, the *Quality Plan* or the *Inspection and Testing Plan*;
 - (viii) charges levied by authorities having jurisdiction over the *Work* other than those arising out of the acts or omissions of the *Contractor* or those for whom the *Contractor* is in law responsible;
 - (ix) premiums for all contract securities and insurance that the *Construction Manager* is required, by the *Contract*, to purchase and maintain; for clarity, the *Cost of Work* does not include the cost of any letter of credit provided by the *Contract*, at its option, under Section 4.1;
 - (x) all taxes, other than Harmonized Sales Tax, and duties relating to the *Work* for which the *Contractor* is liable in relation to the performance of the *Work* other than those relating to the *Contractor's* income, real or personal property or employees or payroll;
- (d) *Fixed Price* is the amount equal to the sum of the *Upfront Engineering Fixed Price* and the *Balance of Work Fixed Price*, being the full and complete compensation for the *Work*, in accordance with the parameters set forth in this Appendix B – Compensation, as adjusted by any *Change Order* or *Change Directive*;
 - (e) *Maximum Price* is \$27,745,044, as adjusted by any *Change Order* or *Change Directive*;
 - (f) *Open-to-Closed-Book Process* means the process described in Schedule 2 for reaching agreement on the *Balance of Work Fixed Price*;
 - (g) *Upfront Engineering Fixed Price* is \$5,086,378, as adjusted by any *Change Order* or *Change Directive*;

Table 1: Breakdown of Maximum Price

Sault Smart Grid Project		
Description	Step	Price (CAD-\$)
Upfront Engineering	1	
Engineering		
PUC Operational Domain Tasks	1	
PUC Field Domain Tasks	1	
PUC Organizational Domain Tasks	1	
Procurement Firm Price Tasks	1	
SMARTStart	1	
PMO	1	
Other Expenses: Taxes	1	
Total: PMO + SMARTStart + Upfront Engineering¹	1	\$ 5,086,378
Balance of Work	2	
Balance of Work-Engineering		
PUC Operational Domain Tasks	2	
PUC Field Domain Tasks	2	
PUC Organizational Domain Tasks	2	
Balance of Work-Procurement	2	
Purchasing Equipment & Tasks	2	
Staging and Testing Tasks	2	
Balance of Work-Construction & Implementation		
PUC Operational Domain Tasks	2	
PUC Field Domain Tasks	2	
Total: Balance of Work²	2	
Maximum Price	1,2	\$ 27,745,044

Article 2 - Compensation

- 2.1 As full and complete compensation for the *Upfront Engineering Services*, the *Owner* shall pay the *Contractor* the *Upfront Engineering Fixed Price* in accordance with Article 3 – Applications for Payments on Account.

- 2.2 As full and complete compensation for the *Balance of Work*, the *Owner* shall pay the *Contractor* the *Balance of Work Fixed Price* in accordance with *Price* in accordance with Article 3 – Applications for Payments on Account.
- 2.3 The *Cost of Work* does not include any cost or expense relating to
- (a) the negligence, unlawful conduct or wilful misconduct of the *Contractor*, a *Subcontractor* or anyone directly or indirectly employed or engaged by any of them or for whom any of them may be liable;
 - (b) the failure of the any of the persons described in paragraph 2.5(a) to exercise reasonable care and diligence in their attention to the *Work*;
 - (c) *Deficiencies* or other improperly performed *Work*;
 - (d) any costs noted in the *Contract* as non-reimbursable by the *Owner* or paid or incurred at the *Contractor's* expense.
- 2.4 In accordance with the *Open-to-Closed-Book Process*, all cash discounts and rebates and refunds shall accrue to the *Owner*, including, without limitation, all returns from sale of surplus materials and equipment applicable to the *Work*, and the *Contractor* shall make provisions so that they can be secured without delay.
- 2.5 The *Contractor's* personnel rates for time and material *Work* are set out in Schedule 1 – Rate Sheet to this Appendix B – Compensation. The *Contractor* represents that such rates (among others) have been used to build up the estimate on which the *Maximum Price* is based. Such rates shall be used to value adjustments to the *Fixed Price* under the *Contract*, including *Work* performed under a *Change Directive*. Where such rates are inapplicable, the parties will use a transparent, open-book process to negotiate adjustments to the *Fixed Price*, which will, to the extent applicable, be based on the price breakdown provided in the *Cost Estimate for Balance of Work* on which the *Fixed Price* was based.

Table 2: Payment Milestones

Payment Milestones			
Description	Criteria ²	% Payment of Total Price	
Step 1: Upfront Engineering			
Start Work	Owner written authorization to start work		
Review 1: Operational, Field, Organizational & EPC Price ¹	Preliminary Review Meeting Upfront Engineering scope of work		
Review 2: Operational, Field, Organizational & EPC Price ¹	Final Review Meeting for the Upfront Engineering scope of work		
Step 2: Balance of the Work			
Start Work	Owner written authorization to start work		
Engineering			
Review 1: Operational, Field, Organizational ¹	Preliminary Review Meeting for the Balance of the Work		
Review 2: Operational, Field, Organizational ¹	Final Review Meeting for the Balance of the Work		
Procurement			
Procurement: Purchase BOMM ¹	BV submits PO to Suppliers per BOMM with PUC Approval		
Procurement: Receive BOMM ¹	Review Received Equipment per BOMM for PUC Approval.		
Construction			
25% VVO, DA Feeders Functionally Complete ¹	Site Install and Tested per Project Execution Plan		
50% VVO, DA Feeders Functionally Complete ¹	Site Install and Tested per Project Execution Plan		
75% VVO, DA Feeders Functionally Complete ¹	Site Install and Tested per Project Execution Plan		
100% VVO, DA Feeders Functionally Complete ¹	Site Install and Tested per Project Execution Plan		
50% VVO, DA Feeders Substantially Complete ¹	System Integration Test per Scope		
100% VVO, DA Feeders Substantially Complete ¹	System Integration Test per Scope		
Close-Out & Acceptance	System TurnOver Acceptance Certificate per Scope		
Note 1: Payment Milestone will be applied proportionally to each of the Domains when completed.			
Note 2: See scope of work deliverables for each payment milestone and criteria details			

Article 3 - Applications for Payments on Account

- 3.1 Applications for payment on account of the *Upfront Engineering Fixed Price* and the *Balance of Work Fixed Price*, as applicable, may be made as the payment milestones set out in Table 2 are achieved.
- 3.2 In the event of time and materials work, applications for payment shall be dated the last day of each payment period, which is the last day of the month or an alternative day of the month agreed in writing by the parties.
- 3.3 The amount claimed shall be for the value associated with the payment milestones achieved, as of the last day of the payment period, in accordance with Table 2. For payment milestones under Step 1: Upfront Engineering of Table 2, the % Payment of Total Price column refers to a percentage of the *Upfront Engineering Fixed Price*. For payment milestones under Step 2: Balance of Work of Table 2, the % Payment of Total Price column refers to a percentage of the *Balance of Work Fixed Price*.
- 3.4 Where the *Contract* does not set out payment milestones, such as for *Work* performed under a *Change Order* or *Change Directive*, the *Contractor* shall submit to the *Owner*, at least 15 calendar days before the first application for payment, a schedule of values for the parts of the *Work*, aggregating the total amount of the relevant *Compensation* or, as applicable, the estimated *Compensation*, so as to facilitate evaluation of applications for payment. For certainty, a schedule of milestone payments shall be considered a schedule of values the purposes of the *Contract*.

- 3.5 The criteria for the achievement of payment milestones and schedule of values shall be made out in such form and supported by such evidence as the *Owner* may reasonably require and, when accepted by the *Owner*, shall be used as the basis for applications for payment, unless it is found to be in error.
- 3.6 The *Contractor* shall include a statement based on criteria for the achievement of payment milestones and the schedule of values, as applicable, with each application for payment.
- 3.7 Applications for payment for *Goods* delivered to the *Work Site* but not yet incorporated into the *Work* shall only be permitted if specified in the *Owner's Requirements* and shall be supported by such evidence as the *Owner* may reasonably require to establish the value and delivery of the *Goods*.
- 3.8 It shall be a condition of the first payments on account of the *Upfront Engineering Fixed Price* and *Balance of the Work Fixed Price*, respectively, that the *Contractor* has provided the *Owner* confirmation of insurance coverage or, in the case of project-specific policies, certified true copies of policies of insurance, as may be required by the *Contract* or any *Notice to Proceed*, and has provided the *Owner* and *Consultant* a clearance certificate from the WSIB (Ontario).
- 3.9 It shall be a condition of the second and subsequent payments on account of the *Upfront Engineering Fixed Price* and *Balance of the Work Fixed Price*, respectively, that the *Contractor* has provided to the *Owner* and *Consultant*
- (a) a statutory declaration in the form included in Appendix F – Forms stating that all wages and *Subcontractors* have been paid toward the performance of the *Work*; and
 - (b) a declaration that the *Contractor* is not aware of any lien having been preserved (by registration or otherwise) or any written notice of lien having been delivered in relation to the *Work* or the *Contract* other than those of which the *Contractor* has given written notice to the *Owner* and which the *Contractor* is actively taking steps to remove, vacate or effect the withdrawal of in accordance with its obligations under the *Contract*.
 - (c) a clearance certificate from the WSIB (Ontario).
- 3.10 The parties acknowledge that an application for payment must meet the requirements of a “proper invoice” under the Construction Act (Ontario).
- 3.11 Where the *Contract* sets out a schedule of milestone payments, the *Contractor* shall only be entitled to make applications for payment on achievement of the associated payment milestones and not on the basis of progress of the *Work*.
- 3.12 The *Contractor* shall not be entitled to submit an application for payment for *Work* in respect of which the *Contract* requires testing or commissioning until such testing or commissioning has been successfully passed or achieved.

- 3.13 Where the *Owner* has amended an application for payment or the *Owner* otherwise disputes an application for payment, the *Owner* may refuse to pay the disputed portion of the amount requested under the application for payment if, no later than 14 days after receipt by the *Owner* of the application for payment, the *Owner* gives the *Contractor* a notice of non-payment, in the form and manner prescribed by the Construction Act (Ontario), specifying the amount not being paid and detailing all of the reasons for non-payment.
- 3.14 The *Owner* shall make payment to the *Contractor* on account on or before 28 calendar days after the later of:
- (a) receipt by the *Owner* and *Consultant* of the application for payment, or
 - (b) the last day of the monthly payment period for which the application for payment is made.

Article 4 - Construction Act Holdback

- 4.1 The *Owner* shall retain from all payments due and payable to the *Contractor* an amount equal to 10% of the value of the *Work* actually done and materials furnished by the *Contractor* in accordance with the Construction Act (Ontario). At the option of the *Contractor*, the *Owner* shall retain the holdback in the form of a letter of credit provided by the *Contractor* in the prescribed form. The *Contractor* may provide a letter of credit with each application for payment or at such other frequency as the *Owner* and *Contractor* may agree, each acting reasonably.
- 4.2 If:
- (a) a subcontract has been certified complete under the Construction Act (Ontario); and
 - (b) all liens in respect of the completed subcontract have expired or been satisfied, discharged or otherwise provided for under the Construction Act (Ontario);
- the amount that the *Owner* shall retain under Section 4.1 shall be reduced by the amount of holdback the *Owner* has retained in respect of the completed subcontract, not to exceed 10% of the price of the subcontract.
- 4.3 In Ontario, the holdback amount authorized by the certificate for payment of the holdback amount is due and payable on the 61st calendar day following the date on which a copy of the certificate or declaration of substantial performance of the *Work* has been published as provided in section 32 of the Construction Act (Ontario), provided that there are no preserved liens in respect of the *Contract* or the *Work*. The *Owner* may refuse to pay some or all of the holdback amount, in accordance with this *Contract*, if the *Owner* publishes a notice in the form prescribed by the Construction Act (Ontario) specifying the amount of the holdback that the *Owner* refuses to pay, and the notice is published in the manner set out in the regulations no later than 40 days after the date on which a copy of the certificate or declaration of substantial performance of the *Work* has been published as provided in section 32 of the Construction Act (Ontario).

- 4.4 In order to provide evidence there are the no preserved liens in respect of the *Contract* or the *Work*, the *Contractor* shall perform and deliver to the *Owner* a parcel register search (or searches) for the *Place of the Work* on the 61st calendar day following the date on which a copy of the certificate or declaration of substantial performance of the *Work* has been published as provided in section 32 of the Construction Act (Ontario).

Article 5 - Withholding of Payment

- 5.1 Without limiting any other right or remedy the *Owner* may have, including any other right of set-off or withholding, the *Owner* may withhold payment for the following reasons in an amount reasonably necessary to protect the *Owner*:
- (a) a lien has been preserved against the *Work Site* or the *Owner* has received a written notice of lien in relation to the *Work* or this *Contract* in accordance with the Construction Act (Ontario);
 - (b) a third party has issued a formal demand or claim in respect of matter against which the *Contractor* has agreed to indemnify the *Owner* under the *Contract* and the *Contractor* has not taken reasonable steps to defend the claim or has failed to submit a claim in accordance with any applicable insurance policy;
 - (c) the *Contractor* has caused damage to property for which the *Contractor* is responsible under the *Contract* and the *Contractor* has not taken reasonable steps to make good the damage or otherwise to make the owner of the property whole, or has failed to submit a claim in accordance with any applicable insurance policy;
 - (d) the *Contractor* has failed to correct a default in accordance with Section 36.4 of the main body of the *Contract*;
 - (e) after reasonable notice, the *Contractor* has not demonstrated to the reasonable satisfaction of the *Owner* that it has sufficient financial and other resources or commitment to complete the *Work*.

Article 6 - Fixed Price

- 6.1 The parties acknowledge their mutual intent that the *Fixed Price* shall not exceed the *Maximum Price*. As set forth in Section 6.3(c), the parties further acknowledge that the description of the *Balance of Work* set out in Appendix A – SSG Scope of Work is preliminary and does not represent a commitment by *Contractor* to deliver such scope of work to *Owner* for the estimated *Balance of Work Fixed Price*.
- 6.2 The *Maximum Price* has been developed by the *Contractor* based on a *Cost Estimate for Balance of Work*, assuming a U.S. dollar to Canadian dollar exchange rate of 1.33 and no applicable tariffs. The *Maximum Price* has been broken down in Table 1 above.
- 6.3 As part of the *Upfront Engineering Services*:

- (a) the *Contractor* will prepare revised *Cost Estimates for Balance of Work*, using the *Open-to-Close-Book Process* as the *Owner's Requirements* are developed; and
 - (b) the revised *Cost Estimate for Balance of Work* will be a Class B estimate, being an elemental cost analysis based on design development drawings and outline specifications, which include the design of all major systems and subsystems, as well as the results of site field visits to verify existing conditions above grade;
 - (c) if a *Cost Estimate for Balance of Work* exceeds the *Maximum Price*, the *Contractor* will work with the *Owner* to determine cost-saving measures, which may include revisions to the *Owner's Requirements*, such as value engineering, or reducing the scope of work in order to meet the *Maximum Price*.
- 6.4 The parties will negotiate in good faith to execute the *Notice to Proceed with Balance of Work* as soon as reasonably possible following the completion of the *Upfront Engineering Services*. If at any point after the *Contractor's* submission of a revised *Cost Estimate for Balance of Work*, the *Contractor* is of the view that the *Notice to Proceed with Balance of Work* will not be executed promptly, including because of the failure to satisfy the condition precedent set out in Section 12.5 of the main body of the *Contract*, it may give notice of same to the *Owner*. If the *Notice to Proceed with Balance of Work* is not executed within 90 days of such notice, and the *Contract* is not terminated for the *Owner's* convenience under Section 35.1 of the main body of the *Contract*, the *Contractor* may terminate the *Contract* under Section 35.2 of the main body of the *Contract*.
- 6.5 The *Upfront Engineering Fixed Price* includes the *Contractor's* costs for the preparation of the *Cost Estimate for Balance of Work* and negotiation of the *Notice to Proceed with Balance of Work*; provided that the *Contractor* shall bear its own legal costs for the negotiation of the *Notice to Proceed with Balance of Work*.

Schedule 1 – Rate Sheet

CONTRACTOR CARD: EPC AGREEMENT	CAD	CAD	CAD
Position – Level of Resource	2019	2020	2021
Management			
Engineering			

CONTRACTOR CARD: EPC AGREEMENT	CAD	CAD	CAD
Site Acquisition			

CONTRACTOR CARD: EPC AGREEMENT	CAD	CAD	CAD
Construction Management			
Procurement			
Services/Other			
Safety			

Schedule 2 – Open-to-Closed-Book Process

This Schedule 2 is intended as a description of the process the parties currently intend to follow in their negotiation to agree on the *Fixed Price* and does not in any way affect the rights and obligations of the parties set out in the *Contract*.

The following describes the open to closed book approach to develop a firm price for the Upfront Engineering & Balance of the Work.

- Upfront Engineering-Contractor to perform the site walks, engineering, bill of materials & develop the engineering packages for a fixed price based upon mutually agreed hours, rates and expenses per Appendix A SSG Scope of Work. The engineering would be developed by Contractor to a level of completion that provides enough information to estimate the Balance of the Work (Engineering, Purchase equipment, Construction) for a firm price. A project execution plan would also be finalized during the Upfront Engineering to confirm the scope and deliverables for the Balance of the Work for the fixed Maximum Price.
- The Balance of the Work scope will be developed using the engineering packages from Upfront Engineering consisting of design drawings, bill of materials & specifications. Contractor will develop a fixed Maximum Price for the Balance of the Work using the Open to Closed Book Approach. Owner would have full review and participation as the firm price is developed including the following:
 - **Engineering:** Contractor to complete the remaining engineering as identified within the scope of work. Price for this work would be based upon mutually agreed hours, rates and expenses.
 - **Procurement & Equipment Purchase:** Contractor to select equipment and costs from Owner approved suppliers on a competitive bid basis managed by Contractor. Owner would pay Contractor for the actual equipment costs plus an agreed Contractor's Fee. The price would also include Contractor's hours to purchase and manage the suppliers and equipment using the agreed upon rates.
 - **Construction & Subcontractors:** Contractor to select subcontractor services and costs from 2-3 approved Owner approved subcontractors on a competitive bid basis managed by Contractor. Owner would pay Contractor for the actual costs plus an agreed management fee percentage. Services would also include Contractor hours to manage & execute the construction using the agreed upon hours and rates
 - **Miscellaneous Costs:** This includes project related costs, such as insurance, taxes, testing equipment, permit applications, travel and other general costs. These costs would be a direct pass thru from Contractor to Owner and would not include a mark-up or management fee.

Once the firm scope and price is agreed upon between Owner and Contractor, the books would be closed and Contractor would deliver the Balance of the Work for a firm price.

The Open to Close Book process provides the necessary level of collaboration allowing changes in scope to be evaluated prior to beginning the implementation phase of the Balance of the Work

After submission of the Balance of the Work , Contractor and Owner will meet to discuss and review the Work. If Owner has any comments regarding the Work and Price, or finds any inconsistencies or inaccuracies in the information presented, there will be an opportunity for the Contractor to address.

If Owner accepts the Balance of the Work, its basis shall be set forth in a Notice to Proceed for the Balance of the Work per the Contract .