

AGREEMENT

SUPPLY – RECURRING REQUIREMENTS

THIS AGREEMENT (this “**Agreement**”) made effective as of the ___ day of _____, 20__ (BC Hydro Reference # _____)

BETWEEN:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY, a British Columbia Crown Corporation having its head office at 333 Dunsmuir Street, Vancouver, B.C. V6B 5R3

(“**BC Hydro**”)

AND:

[INSERT FULL LEGAL NAME OF THE SUPPLIER], [insert details]

(the “**Supplier**”)

WHEREAS:

- A. BC Hydro intends to purchase Power Kiosks for Electric Vehicle Charging Stations for delivery to the Delivery Point(s) for use in connection with such project(s) as BC Hydro may require (each, a “**Project**”) and wishes to enter into a formal contract for the performance of Services; and
- B. the Supplier wishes to enter into a formal contract with BC Hydro for the performance of the Services.

NOW THEREFORE in consideration of the mutual covenants and conditions contained in the Contract, BC Hydro and the Supplier agree as follows:

1.0 THE SERVICES

1.1 Scope of Services

The services to be supplied under the Contract are the following, all as more particularly set out in the Contract Documents (the “**Services**” which will, as the context may require, refer to the services under a particular Purchase Order or all Purchase Orders collectively):

- (a) Supply and delivery of the Material ordered by BC Hydro pursuant to any Purchase Order in accordance with the Contract Documents; and
- (b) all other services required to be done for the completion and fulfillment of the Contract.

The Supplier will provide all labour, materials and equipment necessary for the complete performance of the Services. The Supplier will perform the Services in accordance with the requirements of the Contract Documents, including Appendix D – Scope of Services, Appendix G – Specifications and Appendix J – Drawings.

1.2 Initial Supply Schedule

Attached at Appendix F – Supply Schedule is the initial schedule for the performance of the Services. The Supplier will revise and expand the initial schedule as required in Appendix A – General Conditions (Supply – Recurring Requirements).

2.0 **INTERPRETATION**

2.1 Definitions

In this Agreement, unless the context otherwise requires, capitalized terms have the meanings set out in Appendix A – General Conditions (Supply – Recurring Requirements).

2.2 Contract Documents

The following are the “**Contract Documents**”:

- (a) this Agreement;
- (b) Appendix A – General Conditions (Supply – Recurring Requirements);
- (c) Appendix B – Supplementary General Conditions;
- (d) Appendix C – BC Hydro’s Policies and Procedures;
- (e) Appendix D – Scope of Services;
- (f) Appendix E – Schedule of Quantities and Prices;
- (g) Appendix F – Supply Schedule;
- (h) Appendix G – Specifications;
- (i) Appendix H – Quality Requirements;
- (j) Appendix I – Indigenous Engagement;
- (k) Appendix J – Drawings; and
- (l) all Purchase Orders issued pursuant to the terms of the Contract.

3.0 **PURCHASE ORDERS**

3.1 BC Hydro May Issue Purchase Order

BC Hydro may, by issuing a purchase order in a form determined by Hydro’s Representative (each, a “**Purchase Order**”), require the Supplier to provide the Services within the scope of services generally described in Appendix D – Scope of Services, Appendix E – Schedule of Quantities and Prices and Appendix F – Supply Schedule. If BC Hydro issues a Purchase Order to the Supplier pursuant to this Section 3.1, then the Supplier will perform the Services as described in the Purchase Order in accordance with the terms and conditions of the Contract Documents, including the applicable Purchase Order.

3.2 Purchase Order Price

As payment for the performance of the Services under a particular Purchase Order, BC Hydro will pay the Supplier the amount set out in the applicable Purchase Order, as may be adjusted in accordance with the Contract Documents (the “**Purchase Order Price**”), plus GST and PST where applicable.

3.3 Entire Compensation

The Purchase Order Price will be the entire compensation owing to the Supplier for the complete performance of the Services under a particular Purchase Order and this compensation will cover and include all profit and all costs of supervision, labour, material, equipment, transportation and delivery, overhead, financing, unrecoverable taxes and duties, and all other costs and expenses whatsoever incurred by the Supplier in performing those Services.

3.4 Resource Commitment

Notwithstanding Section 3.6, the Supplier will, for the duration of the Term, maintain or obtain those resources that from time to time it may require in order to provide the Services required under any Purchase Orders that may be issued by BC Hydro pursuant to this Agreement.

3.5 Non-Exclusivity

This Agreement does not grant the Supplier an exclusive right to perform any specific Services. BC Hydro may, at its election and in its sole discretion, itself perform or engage a third party to perform any of the Services, except as may have been expressly awarded to the Supplier under a specific Purchase Order, subject to BC Hydro’s rights under this Agreement and that Purchase Order.

3.6 No Minimum

Notwithstanding anything to the contrary in this Contract, BC Hydro does not guarantee, warrant nor make any representation that BC Hydro will issue any Purchase Order or that the Supplier will be awarded any minimum volume of Services under this Agreement or Purchase Orders. The Supplier will not be entitled to, and will not make a claim for damages, including Consequential Damages, on the basis that BC Hydro did not issue any or a sufficient number of Purchase Orders or on the basis that the Supplier was not awarded a sufficient volume of Services under this Agreement or Purchase Orders.

4.0 LIMITATION OF LIABILITY

For the purposes of GC.18.1(a), the amount is **N/A**.

5.0 TERM

5.1 Term

Unless terminated earlier in accordance with its terms, this MSA will be in effect from the Effective Date and will expire on the day before the fifth anniversary of the Effective Date (the "Term").

5.2 Extension of Term

BC Hydro may at its option extend the Term for an additional term of up to ten (10) years, through one or more sequential extensions, by giving written notice to the Supplier prior to expiration of the then current Term, and that additional term will be deemed part of the Term under the Contract. All other terms of the Contract will remain the same unless expressly amended in accordance with Section 9.0.

6.0 REPRESENTATIVES

For the purposes of GC.2.1 and GC.3.1, the following are the initial Representatives of the parties:

Hydro's Representative: **[insert name and contact details]**

Supplier's Representative: **[insert name and contact details]**

If no names or contact details are included in this Section 6.0 as of the Effective Date, then each party will promptly give written notice to the other party of their respective Representative in accordance with GC.2.1 and GC.3.1, as applicable. Either party may, at any time and from time to time, change its Representative in accordance with GC.2.1 and GC.3.1, as applicable.

7.0 NOTICES

7.1 Address for Notice

Any notice or communication required or permitted to be given under the Contract will be in writing. Any notice or communication required or permitted to be given under GC.9, GC.10, GC.11 or GC.12 will only be considered to have been sufficiently given when delivered by registered mail or by hand to the address of the applicable party set out below. Any other notice or communication required or permitted to be given under the Contract will be considered to have been sufficiently given when delivered by registered mail, by hand, by email or by other designated form of communication to the applicable party as set out below:

(a) if to BC Hydro:

[Insert appropriate full mailing address.]

Attention: Hydro's Representative, Re: Reference # **[insert reference from the first page of the Agreement]**.

Email: [insert email address];

[Other]: [Where another form of electronic communication (i.e., SharePoint) is to be used for notices, insert applicable details (i.e. link to the Project SharePoint site)]

(b) if to the Supplier:

[Insert appropriate full mailing address.]

Attention: Supplier's Representative, Re: Reference # [insert reference from the first page of the Agreement]

Email: [insert email address];

[Other]: [Where another form of electronic communication (i.e., SharePoint) is to be used for notices, insert applicable details (i.e., link to the Project SharePoint site)]

(c) to such other address as either party may, from time to time, designate in the manner set out above, provided that the Supplier may not change its address under this Section 7.1 to an address other than one in British Columbia without BC Hydro's prior written consent.

7.2 Delivery of Email

For the purposes of Section 7.1, unless otherwise agreed in writing between Hydro's Representative and the Supplier's Representative, a notice or communication delivered by email or other designated form of electronic communication is deemed to have been delivered when:

- (a) it enters an information processing system that the recipient has designated for the purpose of receiving notices and other communications under this Contract; and
- (b) it is in a form capable of being processed by that system.

An email or other electronic communication is deemed to be delivered under this Section 7.2 even if no individual with the recipient is aware of its delivery.

8.0 LANGUAGE

All documents to be given under the Contract will be provided in English and the Supplier's Representative and key personnel will be fluent in English.

9.0 AMENDMENTS

No amendment to the terms of the Contract will be binding on BC Hydro or the Supplier, unless made in writing and signed by an authorized representative of each party.

10.0 ENTIRE AGREEMENT, WAIVERS AND CONSENTS IN WRITING

The Contract Documents, and the instruments and documents to be executed and delivered pursuant to the Contract Documents, constitute the entire Contract between the parties, expressly superseding all prior agreements and communications (both oral and written) between the parties with respect to all matters contained in the Contract Documents and such instruments and documents, and contains all the representations and warranties of the respective parties. In addition:

- (a) no waiver of any provision of the Contract; and
- (b) no consent required pursuant to the Contract Documents,

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

11.0 ASSIGNMENT

Neither party may assign the Contract, in whole or in part, without the prior written consent of an authorized representative of the other party, which consent may not be unreasonably withheld. Notwithstanding the foregoing, BC Hydro may assign the Contract to any of its Affiliates or to any third party that amalgamates or merges with BC Hydro or which acquires all or substantially all of the assets of BC Hydro or which was, immediately prior to the assignment, a part of BC Hydro, conditional upon the successor covenanting and agreeing with the Supplier to be bound to the Supplier by the provisions of the Contract. Subject to the foregoing, the Contract will enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

12.0 FURTHER ASSURANCES

Each party 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 party may reasonably request for the purpose of giving effect to the Contract or for the purpose of establishing compliance with the representations, warranties and obligations of the Contract.

13.0 GOVERNING LAW

The Contract will be governed by and construed in accordance with the Laws of the Province of British Columbia and the federal Laws of Canada applicable in British Columbia.

14.0 COUNTERPARTS

This Agreement may be executed and delivered in several counterparts, including by facsimile (or other similar electronic means, including via pdf), each of which when so executed and delivered will be deemed to be an original and such counterparts together will be one and the same instrument.

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

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

Per: _____
Authorized Signatory

[INSERT FULL LEGAL NAME OF THE SUPPLIER]

Per: _____
Authorized Signatory

APPENDIX A – GENERAL CONDITIONS (SUPPLY – RECURRING REQUIREMENTS)

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GC.1 INTERPRETATION

1.1 Definitions

In the Contract, unless the context otherwise requires:

“Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control of, such Person, and a Person will be deemed to control another Person if such Person possesses, directly or indirectly, the power to direct or determine the direction of the management and policies of such other Person, whether through ownership of voting securities, by contract or otherwise;

“Agreement” means the form of agreement which is signed by the parties and included in the Contract Documents;

“BC Hydro” means the entity identified as “BC Hydro” on the first page of the Agreement;

“BC Hydro Property” means any design, facilities, property, equipment, including construction equipment and small tools, replacement parts, furnishings, materials and supplies of any kind provided to the Supplier by BC Hydro or by a third party at the direction of BC Hydro for the performance of the Services and whether or not incorporated into the Services or the Material;

“Change” has the meaning set out in GC.7.1;

“Change Directive” has the meaning set out in GC.7.2;

“Change Order” has the meaning set out in GC.7.1;

“Claim” means any claim, demand, action, cause of action, suit or proceeding, whether for damages, contribution, indemnity or any other relief;

“Claim Costs” means any and all losses, damages, costs, penalties and expenses arising from or related to a Claim, including actual legal (on a solicitor and his own client basis), accounting and expert costs and expenses incurred in the investigation, defence or settlement of a Claim;

“Component Base Price” means the base price of a component of the Material that may be escalated in accordance with the Contract Documents;

“Component Index” means the index applicable to a component of the Material as specified in Appendix E – Schedule of Quantities and Prices;

“Confidential Information” has the meaning set out in GC.14.1;

“Consequential Damages” has the meaning set out in GC.18.2;

“Contemplated Change” has the meaning set out in GC.7.3;

“Contract” means the agreement between BC Hydro and the Supplier as defined and described in the Contract Documents, as may be amended, supplemented or restated from time to time;

“Contract Documents” means the documents listed and described in Section 2.2 of the Agreement;

“Contract Price” means the aggregate of the Purchase Order Prices, exclusive only of GST, in connection with the performance of all the Services under the Contract;

“Dangerous Goods” has the meaning set out in the *Transportation of Dangerous Goods Act* (Canada);

“Default Costs” has the meaning set out in GC.9.3(c)(i);

“Delivery Point(s)” means the locations set out or described in the Contract Documents, including in any Purchase Order, where the Material is to be delivered;

“Deposit Application” has the meaning set out in GC.6.1;

“Dispute” has the meaning set out in GC.12.1;

“Dispute Notice” has the meaning set out in GC.12.3;

“Dispute Resolution Procedure” means the dispute resolution procedure set out in GC.12;

“Effective Date” means the effective date of the Contract as set out on the first page of the Agreement;

“Expiry Date” means the date of the expiry of the Term or the earlier termination of the Contract in accordance with the Contract Documents;

“First Tier Subcontractor” means a Subcontractor having a direct contract with the Supplier;

“FOIPPA” means the *Freedom of Information and Protection of Privacy Act* (British Columbia);

“Force Majeure” means an event beyond the reasonable control of a party and includes any work stoppage (including strike, lock-out, picket or other labour dispute) that is not described by GC.8.3, war, invasion, insurrection, civil or social unrest, riot, armed conflict, act of foreign enemy, revolution, terrorist act, interference by military authorities, nuclear explosion, contamination by ionizing radiation, epidemic or quarantine restriction, earthquake, tidal wave or other natural calamities, that prevents, delays or interrupts the performance of any obligation under the Contract, provided such event does not occur by reason of: (i) the negligence of the party claiming Force Majeure (or those for whom it is in law responsible); or (ii) any act or omission of the party claiming Force Majeure (or those for whom it is in law responsible) that is in breach of the provisions of the Contract, but Force Majeure does not include: (x) a party’s lack of funds; (y) the bankruptcy or insolvency of any Subcontractor; or (z) a shortage or unavailability of labour, equipment or materials unless such shortage or unavailability is caused by a Force Majeure;

“Good Industry Practice” means the standards, practices, methods and procedures to a good professional and commercial standard, conforming to Laws and exercising that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances;

“Governmental Authority” means any federal, provincial, territorial, regional, municipal or local authority, quasi-governmental authority, court, government, or self-regulatory organization,

commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing, having jurisdiction in any way over or in respect of any aspect of the performance of the Contract;

“**GST**” means the value added tax imposed in Canada pursuant to Part IX of the *Excise Tax Act* (Canada);

“**Hazardous Substance**” means any substance, mixture of substances, product, waste, organism, pollutant, material, chemical, contaminant, dangerous good, constituent or other material which is or becomes listed, regulated or addressed under any Law respecting the use, manufacture, importation, handling, transportation, storage, disposal and treatment of the substance, mixture of substances, product, waste, organism, pollutant, material, chemical, contaminant, dangerous good, constituent or other material;

“**Hydro’s Representative**” has the meaning set out in GC.3.1;

“**Indemnified Parties**” has the meaning set out in GC.17.1;

“**Indemnified Party**” has the meaning set out in GC.17.1;

“**Laws**” means all valid laws, including common law, federal, provincial, and municipal statutes, bylaws, and other local laws, orders, rules, regulations, approvals and policies of any Governmental Authority, including those related to occupational health and safety, fire, employment insurance, workers’ compensation, the transportation and handling of Hazardous Substances, the transportation and handling of dangerous goods, environmental protection, standards, building codes and other governmental requirements, work practices and procedures, that are applicable to the discharge of obligations set out in the Contract Documents, including the performance of the Services;

“**Lead Time**” has the meaning set out in Appendix F – Supply Schedule;

“**Material**” has the meaning set out in each particular Purchase Order;

“**Limited Licensee**” means a person who is permitted within the scope specified in their limited license to practice professional engineering under the *Engineers and Geoscientists Act* (British Columbia);

“**Optional Work**” means Services which may be described in Appendix D – Scope of Services and Appendix E – Schedule of Quantities and Prices that will be undertaken and included in the Services at the election of BC Hydro;

“**Permits**” means all permissions, consents, approvals, registrations, certificates, permits, licences, statutory agreements and authorizations required from any Governmental Authority, and all necessary consents and agreements from any third parties, needed to carry out the Services in accordance with the Contract Documents;

“**Person**” means any individual, sole proprietorship, corporation, company, partnership, unincorporated association, association, institution, entity, party, trust, joint venture, estate, cooperative or other judicial entity;

“Personal Information” means recorded information about an identifiable individual, other than contact information (as defined in FOIPPA), collected, created or otherwise acquired by the Supplier as a result of the Contract or any previous agreement between BC Hydro and the Supplier dealing with the same subject matter as the Contract;

“Prime Rate” means the floating annual rate of interest established by the Bank of Montreal from time to time as its reference rate of interest, to determine the interest rate it will charge for loans in Canadian dollars to its customers in Canada and designated as its “Prime Rate”;

“Professional Engineer” means a person who is registered or licensed as a professional engineer under the *Engineers and Geoscientists Act* (British Columbia);

“PST” means the retail sales tax imposed in British Columbia pursuant to the *Provincial Sales Tax Act* (British Columbia);

“Purchase Order” has the meaning set out in Section 3.1 of the Agreement;

“Purchase Order Price” has the meaning set out in Section 3.2 of the Agreement;

“Quotation” has the meaning set out in GC.7.3;

“Representative” means either Hydro’s Representative or the Supplier’s Representative, as the case may be;

“Services” has the meaning set out in Section 1.1 of the Agreement;

“Settlement Agreement” has the meaning set out in GC.12.5;

“Subcontractor” has the meaning set out in GC.5.7;

“Submittal” has the meaning set out in GC.5.14;

“Submittal Schedule” has the meaning set out in GC.5.14(a);

“Supplier” means the entity identified as “Supplier” on the first page of the Agreement;

“Supplier Duties” has the meaning set out in GC.22.5;

“Supplier Quality Plan” has the meaning set out in GC.5.4(a);

“Supplier Taxes” has the meaning set out in GC.22.5;

“Supplier’s Representative” has the meaning set out in GC.2.1;

“Supply Schedule” has the meaning set out in GC.5.5(a);

“Term” has the meaning set out in Section 5.1 of the Agreement; and

“Warranty Period” has the meaning set out in GC.19.3.

Any words or phrases defined elsewhere in the Contract will have the particular meaning assigned to such words or phrases.

1.2 Interpretation

Except as expressly set out otherwise in the Contract Documents or the context otherwise requires, the following will apply to the interpretation of the Contract:

- (a) where there is a reference in any Contract Document to:
 - (i) “Contractor”, it will be read as a reference to “the Supplier”; and
 - (ii) “Work”, it will be read as a reference to “the Services” as a whole or the applicable portion of the Services, as the context requires;
- (b) headings are for convenience and reference only and will not affect the interpretation of the Contract;
- (c) all dollar figures will mean Canadian dollars;
- (d) any notice or communication required or permitted to be given under the Contract will be in writing;
- (e) words importing the singular include the plural, and vice versa;
- (f) words importing gender include all genders;
- (g) where a reference is made to a “day”, “week”, “month” or “year”, the reference is to the calendar period;
- (h) where the date for any delivery or response falls on a Saturday, Sunday or statutory holiday observed in British Columbia, the date for such delivery or response will be extended to the next following day which is not a Saturday, Sunday or statutory holiday observed in British Columbia;
- (i) in the calculation of time, the first day will be excluded and the last day will be included;
- (j) the words in the Contract Documents will bear their natural or defined meaning;
- (k) the word “including” is deemed to be followed by “without limitation”;
- (l) any reference to a statute will include such statute and its corresponding regulations, together with all amendments made to such statute and regulations and in force from time to time, and any statute or regulation that may be passed which has the effect of amending, supplementing or superseding the statute referred to or such statute’s corresponding regulations; and
- (m) the parties confirm that they each have obtained independent legal advice, or elected not to obtain such advice, and accordingly agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party will not be applicable in the interpretation of the Contract.

1.3 Priority of Contract Documents

If there is any inconsistency or conflict between provisions of the Contract Documents, then:

- (a) the order of priority between the Contract Documents, from highest to lowest with the Agreement having the highest priority, is as follows:
 - (i) the Agreement;
 - (ii) individual Purchase Orders;
 - (iii) Appendix B – Supplementary General Conditions;
 - (iv) Appendix A – General Conditions (Supply – Recurring Requirements);
 - (v) Appendix D – Scope of Services;
 - (vi) Appendix G – Specifications;
 - (vii) Appendix J – Drawings;
 - (viii) Appendix E – Schedule of Quantities and Prices;
 - (ix) Appendix F – Supply Schedule;
 - (x) Appendix H – Quality Requirements;
 - (xi) Appendix I – Indigenous Engagement; and
 - (xii) Appendix C – BC Hydro’s Policies and Procedures;
- (b) drawings of a larger scale have priority over drawings of a smaller scale;
- (c) figured dimensions on a drawing will govern over scaled measurements on the same drawing; and
- (d) documents of a later date will always supersede a similar type of document of an earlier date.

GC.2 SUPPLIER’S REPRESENTATIVE

2.1 Appointment of Supplier’s Representative

The Supplier will, upon executing the Agreement, designate in writing an individual (the “**Supplier’s Representative**”) to be the Supplier’s representative and single point of contact with respect to the Contract. The Supplier will give prompt written notice of such appointment to Hydro’s Representative. If, for any reason, the appointed Supplier’s Representative’s appointment is discontinued, then the Supplier will, as soon as practicable, appoint a replacement and give prompt written notice to Hydro’s Representative of such replacement. If, at any time, Hydro’s Representative, acting reasonably, objects to the Supplier’s Representative, then the Supplier will give consideration to replacing the Supplier’s Representative with a Person acceptable to Hydro’s Representative. The Supplier’s

Representative may, at the Supplier's election, be an employee of the Supplier, or be a consultant or other third party.

2.2 Authority of Supplier's Representative

The Supplier's Representative will have full authority to act on behalf of and bind the Supplier under the Contract and be the Supplier's representative and agent to protect the Supplier's interests under the Contract. The Supplier's Representative may consult with other representatives of the Supplier before giving any response, direction or consent as may be required under the Contract.

2.3 Delegation of Supplier's Representative's Authority

The Supplier's Representative may, by written notice to Hydro's Representative with details of the nature and extent of the delegation, delegate to others some or all of the Supplier's Representative's authority under the Contract.

GC.3 HYDRO'S REPRESENTATIVE

3.1 Appointment of Hydro's Representative

BC Hydro will appoint an individual ("**Hydro's Representative**") to be BC Hydro's single point of contact with respect to the Contract. BC Hydro will give prompt written notice of such appointment to the Supplier. If, for any reason, the appointed Hydro's Representative's appointment is discontinued, then BC Hydro will, as soon as practicable, appoint a replacement and give prompt written notice to the Supplier of such replacement. If, at any time, the Supplier's Representative, acting reasonably, objects to Hydro's Representative, then BC Hydro will give consideration to replacing Hydro's Representative with a Person acceptable to the Supplier's Representative. Hydro's Representative may, at BC Hydro's election, be an employee of BC Hydro, or be a consultant or other third party.

3.2 Authority of Hydro's Representative

Hydro's Representative will have authority to act on behalf of BC Hydro only to the extent expressly set out in the Contract Documents, including as described in GC.3.4, but otherwise Hydro's Representative will not have the authority to execute or agree to any amendments to the Contract or to waive any of BC Hydro's rights under the Contract. Hydro's Representative's authority, as set out in the Contract Documents, will not relieve the Supplier of any of its duties, obligations or responsibilities under the Contract to perform the Services in accordance with the requirements of the Contract Documents, and Hydro's Representative will not be responsible for or have control of the performance of the Services. Hydro's Representative will not be responsible for or have control over the acts or omissions of the Supplier, Subcontractors, or their employees or other Persons engaged by or through them.

3.3 Delegation of Hydro's Representative's Authority

Hydro's Representative may, by written notice to the Supplier with details of the nature and extent of the delegation, delegate to others some or all of Hydro's Representative's authority under the Contract. The terms of a Purchase Order may contain the nature and extent of delegation specific to that Purchase Order.

3.4 Role of Hydro's Representative

The role of Hydro's Representative will be to:

- (a) provide administration of the Contract as described in the Contract Documents;
- (b) provide the Supplier with additional instructions in the form of specifications, drawings, samples, models or other written instructions, to supplement the previously issued Contract Documents, as may be necessary for the performance of the Services;
- (c) without derogating from or negating any of Hydro's Representative's other obligations set out in the Contract, act as BC Hydro's representative and agent to protect BC Hydro's interests under the Contract;
- (d) make all commercially reasonable efforts to respond promptly to the Supplier's requests for additional instructions, and, if it becomes apparent that a number of additional instructions will be required, then cooperate with the Supplier to establish a schedule for the issuance of such additional instructions;
- (e) in accordance with the requirements of the Contract Documents, review and take appropriate action upon receiving Submittals, including:
 - (i) shop drawings, product data and samples; and
 - (ii) written guarantees, warranties and manuals to be provided by the Supplier;
- (f) prepare, sign and issue Purchase Orders;
- (g) prepare, sign and issue Change Orders, Change Directives and Contemplated Changes in accordance with the requirements of GC.7;
- (h) review supporting documentation as required to determine the amounts owing to the Supplier under the Contract and perform the tasks relating to payment as required under GC.6;
- (i) perform inspections of the Material and the Services and the performance of the Services; and
- (j) undertake all other duties of Hydro's Representative as described in the Contract Documents.

3.5 Contract Interpretation

Hydro's Representative will be, in the first instance, the interpreter of the Contract Documents and the judge of the performance of BC Hydro and the Supplier. Hydro's Representative's interpretations and judgments will be consistent with the Contract Documents and, in making such interpretations and judgments, Hydro's Representative will act reasonably. With respect to interpretation of the Contract Documents:

- (a) either party may, at any time, by written request, refer any question relating to the Contract, including questions regarding claims relating to the performance of the

Services or questions regarding the interpretation of the Contract Documents, to Hydro's Representative for a written direction, instruction or decision;

- (b) Hydro's Representative will, within ten days of a written request, or such other period of time (longer or shorter) as reasonably required in the circumstances, deliver a written direction, instruction or decision to each of BC Hydro and the Supplier's Representative; and
- (c) if a party disputes a written direction, instruction or decision of Hydro's Representative, then the disputing party may deliver a Dispute Notice to have the Dispute dealt with pursuant to GC.12.

The Supplier will proceed with the performance of the Services without delay in accordance with any written direction, instruction or decision given by Hydro's Representative with respect to a requested interpretation, without prejudice to the Supplier's rights to dispute the written direction, instruction or decision, pursuant to GC.3.5(c).

GC.4 THE SERVICES

4.1 Performance of Services

The Supplier will perform the Services, including without limitation the supply and delivery of the Material ordered by BC Hydro pursuant to any Purchase Order, in accordance with the Contract Documents.

4.2 Purchase Order Not a Change Order

A Purchase Order will not constitute a Change Order under GC.7.

4.3 Design of Material

Except only, and to the extent, as may be expressly provided otherwise in Appendix B – Supplementary General Conditions, the Supplier will perform and be responsible for the complete design of the Material.

4.4 Packaging

The Supplier will take steps as required so that all the Material is properly prepared for shipment and securely packaged in such packing and containers or otherwise which will in every way be adequate and sufficient to withstand exposure to the elements and rough handling during shipment. Such packing will be sufficient to ensure safe arrival and off-loading at the Delivery Point(s) and to fully cover hazards, including extreme temperature. Any Material loss, damage or repair cost resulting from inadequate or defective packing will be the Supplier's sole responsibility.

4.5 Delivery

The Supplier will deliver the Material to the Delivery Point(s) Delivery Duty Paid (“**DDP**”) as per Incoterms 2020 ICC Publication No. 723.

4.6 Right to Reject Material

Notwithstanding the transfer of title pursuant to GC.4.8 or the transfer of risk of loss pursuant to GC.4.9, BC Hydro may reject any Material that is not in accordance with the Contract, including because the Material does not meet the requirements of Appendix G – Specifications, or because of damage to the Material resulting from improper packing, transportation or otherwise. BC Hydro will notify the Supplier in writing of the rejection of any of the Material. Any rejected Material, if BC Hydro has taken possession and control of the Material, will be held by BC Hydro at the sole risk of the Supplier and the Supplier will promptly remove or cause to be removed the rejected Material. The Supplier will be responsible for all costs of the removal and disposition of any rejected Material. Any costs or expenses incurred by BC Hydro on account of any rejected Material will, upon written demand by BC Hydro, be immediately due and payable by the Supplier, and BC Hydro may set-off such costs and expenses against any payment owing by BC Hydro to the Supplier.

Promptly after receiving a notice of rejection, the Supplier will deliver to Hydro's Representative in accordance with GC.5.14 a plan describing the steps the Supplier will take and implement to deliver Material that is in accordance with the Contract, and describing any impacts on the Supply Schedule.

4.7 Marketable Title

The Supplier warrants that it has or will at the time of the transfer of title as described in GC.4.8 have good and marketable title to the Material, free and clear of any and all liens, restrictions, reservations or Claims of any kind and that it will defend BC Hydro's title to the Material.

4.8 Transfer of Title

Title and all other property rights in and to all tangible personal property, and in and to all parts of tangible personal property that are or are intended to be part of the Material or are otherwise provided to the Delivery Point(s) by or on behalf of the Supplier under the Contract, including all consumables, products, materials, equipment, tools, supplies and other items, but not the risk of loss with respect to such tangible personal property, the risk of which will remain with the Supplier until such time as specified in GC.4.9, will pass to BC Hydro free and clear of all encumbrances at the earlier of the following:

- (a) the time, if any, when full payment (less holdbacks) is made by BC Hydro for specified tangible personal property in the payment; and
- (b) the time when BC Hydro takes possession and control of the tangible personal property.

4.9 Risk of Loss

Notwithstanding the transfer of title pursuant to GC.4.8, risk of loss with respect to the Material will remain with the Supplier and will not transfer to BC Hydro unless and until BC Hydro takes possession and control of the Material.

GC.5 EXECUTION OF THE SERVICES

5.1 Standard of Services

The Supplier will perform the Services in accordance with:

- (a) the Contract Documents;
- (b) Laws and Permits; and
- (c) Good Industry Practice.

If more than one standard, including building codes, other governmental requirements, work practices and procedures, and specifications, applies to the performance of the Services, then the standard(s) that produce the highest level of quality, safety, reliability, durability and performance will apply.

5.2 Documents at Manufacturing Facility

BC Hydro will provide the Supplier, without charge, one copy of the Contract Documents. The Supplier will, at all times, keep and maintain one copy of a complete set of the current Contract Documents and all drawings, record drawings, accepted shop drawings, revised or supplementary drawings or specifications and other design details, that have been issued by Hydro's Representative, the Supplier or any Subcontractor, at all locations where the Services, the Material or any major components are being fabricated or manufactured, in good order and available for review by Hydro's Representative.

5.3 Errors in Contract Documents

The Supplier will review the Contract Documents and promptly report to Hydro's Representative any discovered error, inconsistency or omission. If the Supplier discovers any error, inconsistency or omission in the Contract Documents, then the Supplier will not proceed with the supply of Material, or the Services affected by such error, inconsistency or omission without first receiving directions or clarifications from Hydro's Representative. If the Supplier has not received such directions or clarifications within seven days of written notice of the error, inconsistency or omission to Hydro's Representative, then the Supplier will be entitled to claim an adjustment to the Purchase Order Price or the time for the performance of the Services or both with respect to any delay after the seven-day period in receiving directions or clarifications. If the Supplier proceeds with such affected supply or Services after becoming aware of an error, inconsistency or omission, or, in any event, after the time when a qualified and experienced supplier should reasonably have become aware of the error, inconsistency or omission, without first receiving directions or clarifications from Hydro's Representative, then the Supplier will, at the Supplier's sole cost and expense, remove, replace or make good any supply or Services which fail to meet the requirements of the Contract Documents. Subject to the above provisions of this GC.5.3, in conducting such review, the Supplier will not be responsible or liable to BC Hydro to discover all errors, inconsistencies or omissions.

5.4 Supplier Quality Plan

The Supplier will:

- (a) within ten days of the Effective Date, or by such later date as Hydro's Representative may agree to in writing, prepare and submit to Hydro's Representative a quality control plan (the "**Supplier Quality Plan**") satisfactory to Hydro's Representative, acting reasonably, that is based on the attached Appendix H – Quality Requirements and covering all aspects of the performance of the Services;
- (b) perform all Services in compliance with the Supplier Quality Plan; and
- (c) revise and submit to Hydro's Representative an updated Supplier Quality Plan as required to reflect any changes to the Services, to the satisfaction of Hydro's Representative, acting reasonably,

provided that compliance with the Supplier Quality Plan will not relieve the Supplier of any of its duties, obligations or responsibilities under the Contract to perform the Services in accordance with the requirements of the Contract Documents.

5.5 Supply Schedule

The Supplier will:

- (a) within seven days of the Effective Date, or by such later date as Hydro's Representative may agree to in writing, prepare and submit to Hydro's Representative a revised and expanded supply schedule (the "**Supply Schedule**"), satisfactory to Hydro's Representative, acting reasonably, that is based on the attached Appendix F – Supply Schedule and complies with the milestone dates, if any, as set out in the Contract Documents, and that includes the planned order and duration of the major activities of the Services, including all critical path activities. The Supply Schedule will contain sufficient detail to permit Hydro's Representative to be able to understand and monitor the progress of the Services;
- (b) update the Supply Schedule to the satisfaction of Hydro's Representative, acting reasonably, on no less than a monthly basis (or as otherwise expressly required by the Supply Schedule) so as to incorporate any time adjustments as permitted under the Contract Documents; and
- (c) perform the Services in compliance with the then current Supply Schedule, as may be updated under GC.5.5(b). If, for any reason, the performance of the Services falls behind the schedule for the Services set out in the then current Supply Schedule, then:
 - (i) if, in accordance with the Contract Documents, the delay entitles the Supplier to an extension of the time for the performance of the Services, then the Supplier will, as part of the Services, include such extension in the next update to the Supply Schedule as provided under GC.5.5(b); or
 - (ii) if, in accordance with the Contract Documents, the delay does not entitle the Supplier to an extension of the time for the performance of the Services, then the

Supplier will, as part of the Services, take all such steps as are required to bring the Services back into conformity with the then current Supply Schedule.

Failure to comply with the requirements of this GC.5.5 will be deemed to be a default under the Contract to which the provisions of GC.9.1 will apply.

5.6 Lead Time

If the Supplier needs to adjust the Lead Time specified in Appendix F – Supply Schedule in any way, the Supplier will immediately notify Hydro's Representative in writing.

5.7 Subcontractors

The following will apply with respect to all subcontractors, sub-consultants, suppliers, manufacturers and vendors (each, a "**Subcontractor**" and the term "Subcontractor" will be deemed to include all further subcontractors, sub-consultants, suppliers, manufacturers and vendors engaged below a Subcontractor) engaged to perform a portion of the Services:

- (a) the Supplier will not, in the aggregate, subcontract more than 50% of the Services (such that no more than 50% of the Purchase Order Price will be in payment for Services performed by Subcontractor(s)) without the prior written consent of Hydro's Representative, which consent may be withheld at the sole discretion of Hydro's Representative;
- (b) unless the Contract Documents identify a specific Subcontractor, the Supplier will not directly or indirectly engage or permit the engagement of a Subcontractor to perform a material portion of the Services without the prior written consent of Hydro's Representative, which consent may be withheld at the sole discretion of Hydro's Representative;
- (c) if and to the extent the Contract Documents identify a specific Subcontractor, then the Supplier will not change any such specified Subcontractor without the prior written consent of Hydro's Representative, which consent may be withheld at the sole discretion of Hydro's Representative;
- (d) notwithstanding any approval or consent given by Hydro's Representative to the engagement of a Subcontractor, if any event occurs or circumstance arises in relation to a Subcontractor that would, if it occurred or arose with respect to the Supplier, entitle BC Hydro to terminate the rights of the Supplier pursuant to the Contract, then Hydro's Representative may, by written notice to the Supplier's Representative, require the Supplier to discharge or cause to be discharged the Subcontractor and to cancel and terminate or cause to be cancelled and terminated the applicable agreement with the Subcontractor, all without liability to BC Hydro;
- (e) notwithstanding any other provision in the Contract, and in addition to BC Hydro's rights described in GC.5.7(d), Hydro's Representative may, by written notice to the Supplier's Representative object to any Subcontractor engaged to perform a portion of the Services for any reason. Upon receipt of any such notice, the Supplier will immediately cause such Subcontractor to be removed from the performance of the Services and promptly replaced by a Subcontractor with suitable qualifications and experience. If Hydro's Representative exercises its authority under this GC.5.7(e), the Supplier will be entitled

to claim a Change pursuant to the provisions of GC.7.4, except that the Supplier's notice obligation under GC.7.4(a)(i) will be to give written notice of such claim to Hydro's Representative promptly upon the Supplier becoming aware of the identity of the replacement Subcontractor. Notwithstanding any other provision in this GC.5.7(e), the Supplier will retain all authority and control over its Subcontractors;

- (f) the Supplier will:
- (i) require all First Tier Subcontractors to perform their work in accordance with the Contract Documents;
 - (ii) make commercially reasonable efforts to have the terms and conditions of the Contract Documents incorporated into all agreements with all First Tier Subcontractors to the extent the terms and conditions of the Contract Documents are applicable to the Services being undertaken by such First Tier Subcontractors, including GC.5.7(d); and
 - (iii) the Supplier will be fully responsible for the acts, omissions, errors and defaults of a Subcontractor, its employees or other Persons engaged by or through that Subcontractor as if such acts, omissions, errors and defaults were those of the Supplier, and neither the engagement of a Subcontractor by the Supplier nor the approval or consent by Hydro's Representative of or to a Subcontractor will in any way reduce or amend or otherwise alter the Supplier's responsibility for the performance of the Services as set out in the Contract Documents; and
- (g) nothing in the Contract will be construed as creating any contractual relationship between BC Hydro and any Subcontractor or any other Persons engaged or through a Subcontractor.

5.8 Skilled Workers, Removal of Persons, and Revocation of Access

- (a) The Supplier will employ or engage, and cause all Subcontractors to employ or engage, a sufficient number of skilled and qualified workers to perform the Services in accordance with the Contract Documents.
- (b) Hydro's Representative may, by written notice to the Supplier's Representative, object to any person engaged by the Supplier or any Subcontractor for the performance of the Services who, as determined by Hydro's Representative in its sole discretion, has engaged in misconduct, is incompetent, presents a safety or regulatory compliance risk, or does not have adequate working knowledge of the safety rules and procedures applicable to the Site. Upon receipt of any such notice, the Supplier will immediately cause such person to be removed from the Site and the Project and promptly replaced by a person(s) with suitable qualifications and experience, at no extra cost or expense to BC Hydro. Notwithstanding the foregoing, the Supplier and the Subcontractors will retain all authority and control over their respective personnel.
- (c) In addition to the above, if any person engaged by the Supplier or any Subcontractor for the performance of the Services is removed from, or leaves, the Services for any reason, including by reason of illness, death, leave of absence, or termination of employment or engagement, after having been granted security clearance from BC Hydro for electronic

or physical access to security sensitive assets or information, the Supplier will immediately notify Hydro's Representative to revoke such access.

5.9 Indigenous Engagement

The Supplier will perform the Services in compliance with Appendix I – Indigenous Engagement.

5.10 BC Hydro Property

If BC Hydro provides any BC Hydro Property to the Supplier, then:

- (a) Hydro's Representative will, within seven days of providing such BC Hydro Property to the Supplier, provide the Supplier with a schedule of values showing the replacement value of such BC Hydro Property;
- (b) the Supplier will have care, custody and control of all such BC Hydro Property, but BC Hydro will retain ownership of all BC Hydro Property;
- (c) the Supplier will, at all times, maintain, and make available to Hydro's Representative upon request, a current inventory of all such BC Hydro Property and a description and the location of all such BC Hydro Property, in sufficient detail to permit Hydro's Representative to readily identify and verify the location and condition of all such BC Hydro Property; and
- (d) the Supplier will use such BC Hydro Property only for the performance of the Services, and only for the purposes expressly set out in the Contract Documents or for the purposes such BC Hydro Property is typically used.

5.11 Training

The Supplier will provide all training and related services as required under the Contract, including as set out in Appendix G – Specifications. BC Hydro will determine which of its staff will receive such training.

5.12 Manuals and Specifications

The Supplier will provide all manuals and specifications as required under the Contract, including as set out in Appendix G – Specifications.

5.13 Tests and Inspections

Hydro's Representative and Hydro's Representative's delegates will have access to the Material and the Services at all times, including at the location where the Material is being fabricated and the Services are being performed, for the purpose of testing and inspecting the Services so as to remain familiar with the progress and quality of all aspects of the Services, and to be able to determine that the Services are proceeding in conformance with the requirements of the Contract Documents. With respect to all such tests and inspections:

- (a) the Supplier will incorporate or cause to be incorporated all such testing and inspection rights in all applicable agreements with Subcontractors, and will take all necessary steps

- to facilitate such testing and inspection, including maintaining easy access to where the Material is to be tested and inspected;
- (b) Hydro's Representative will conduct, in a timely manner, any testing or inspections of the Services, including the Material that the Contract Documents require Hydro's Representative to conduct;
 - (c) if testing or inspections of the Services, including the Material, are required by the Contract Documents to be conducted by Hydro's Representative or are required by Law to be conducted by a Governmental Authority, the Supplier will, in accordance with the then current Supply Schedule but, in any event, with no less than 14 days' notice, notify Hydro's Representative and the applicable Governmental Authority in writing of the date on and the place at which any such testing or inspections can be conducted;
 - (d) Hydro's Representative will be entitled to observe all quality tests and inspections, results and data pertaining to the Services and the Material, including factory or other tests performed at any location, and the Supplier will give written notice to Hydro's Representative of such tests and inspections, results and data in accordance with GC.5.13(c);
 - (e) the Supplier will submit to Hydro's Representative copies of all certificates, inspection reports, reports and quality documentation (all in a format agreed by Hydro's Representative in writing) relating to the Services, promptly after receiving or preparing such certificates, reports and quality documentation;
 - (f) in addition to BC Hydro's right to reject the Material under GC.4.6, Hydro's Representative or its delegate has the authority to reject any of the Services or any of the Material that does not conform to the requirements of the Contract Documents, and the Supplier will, at its sole cost and expense, correct such non-compliant Services or Material, subject to the Supplier's right to dispute under GC.12;
 - (g) Hydro's Representative has the authority to stop the Services where such Services are not being performed in accordance with the Contract Documents, or where there is a threat, whether or not imminent, to the safety of anyone or anything at the affected area or to the environment;
 - (h) Hydro's Representative's authority to order testing, inspect, reject, or otherwise review the Services will be for the benefit of BC Hydro, and such authority will not give rise to any duty or responsibility on Hydro's Representative or BC Hydro to the Supplier, Subcontractors, or their agents, employees or other Persons performing any of the Services, to order testing, inspect, reject, or otherwise review the Services;
 - (i) the Supplier will pay for the cost of making any test or inspection, including the cost of samples, if the test or inspection is designated in the Contract Documents to be performed by the Supplier or is required by Law; and
 - (j) if the Supplier covers or permits to be covered Services or the Material that has been designated in the Contract Documents or by Law for tests, inspections or approvals, before such tests, inspections or approvals are made, given or completed, then Hydro's Representative may direct the Supplier to uncover such Services or Material, as required, so that such tests, inspections or approvals may be completed or given to the

satisfaction of Hydro's Representative, acting reasonably. The Supplier will uncover and make good such Services or Material and any other removed or damaged property at the Supplier's sole cost and expense.

The Supplier will perform or cause to be performed all tests and inspections as are called for or required under the Contract Documents, including any tests and inspections required by Law, for the performance of the Services. The tests and inspections required by the Contract Documents or by Law are for BC Hydro's benefit and acceptable test and inspection results will not relieve the Supplier of any of its duties, obligations or responsibilities under the Contract to perform the Services and to correct defects or deficiencies in the Services, all in accordance with the requirements of the Contract Documents.

5.14 Submittals

If the Supplier is required under the Contract Documents to submit drawings or other documents (each, a "**Submittal**") to Hydro's Representative, then:

- (a) within seven days of the Effective Date, or by such later date as Hydro's Representative may agree to in writing, the Supplier will prepare and submit a schedule (the "**Submittal Schedule**") satisfactory to Hydro's Representative, acting reasonably, setting out and describing:
 - (i) all submissions, drawings or other information that the Supplier is required under the Contract Documents to submit to BC Hydro, including:
 - (A) the subject matter and scope of information to be addressed in each Submittal;
 - (B) the background information, including information that may be proprietary to the Supplier or a Subcontractor, required in order for Hydro's Representative to understand and review the Submittal; and
 - (C) the form of each Submittal (such as a drawing or specification); and
 - (ii) the order and scheduling requirements of each Submittal in relation to the Supply Schedule, including reasonable times for review and comment on a Submittal by Hydro's Representative, such review times to be no less than 14 days after Hydro's Representative receives a Submittal, or shorter time as agreed by Hydro's Representative in writing;
- (b) either party's Representative may from time to time recommend to the other party's Representative that adjustments are required to update the Submittal Schedule so that it is consistent with the then current Supply Schedule, and the Representatives will cooperate to reach agreement on such adjustments. Upon such agreement, the Supplier will provide an updated Submittal Schedule;
- (c) Hydro's Representative will review a Submittal within the times described in the Submittal Schedule, or such other period of time (longer or shorter) as reasonably required in the circumstances, and return the Submittal to the Supplier stamped or otherwise noted with one of the following three notations:

- (i) “Acceptable” – which will be deemed to mean that Hydro’s Representative did not observe any aspect or element of the Submittal that did not comply with the Contract Documents;
- (ii) “Acceptable with Modifications” – which will be deemed to mean that, subject to the amendments or corrections as noted in writing by Hydro’s Representative, the Submittal is Acceptable, as defined in GC.5.14(c)(i); or
- (iii) “Not Acceptable” – which will be deemed to mean that Hydro’s Representative is of the opinion that the Submittal does not comply with the Contract Documents;

if a Submittal is noted as “Acceptable with Modifications” or “Not Acceptable”, then Hydro’s Representative will provide written justification for such notation;

- (d) if a Submittal is returned to the Supplier with the notation “Acceptable with Modifications” or “Not Acceptable”, then, subject to the Supplier’s rights under GC.12, the Supplier will promptly revise such Submittal, taking into account the comments provided by Hydro’s Representative, and resubmit the revised Submittal to Hydro’s Representative for further review;
- (e) any revised Submittal submitted to Hydro’s Representative pursuant to GC.5.14(d) will be reviewed by Hydro’s Representative in accordance with GC.5.14 within a further period of time equal to the original time Hydro’s Representative had for review and comment of the initial Submittal;
- (f) if the Submittal is, in accordance with applicable Law or Good Industry Practice, required to be prepared by or under the supervision of a qualified Professional Engineer or Limited Licensee, then Hydro’s Representative may require a Submittal be stamped by a qualified Professional Engineer or Limited Licensee with appropriate skill, qualification and knowledge indicating that the Submittal has been prepared in compliance with Laws, Permits, applicable design standards and Good Industry Practice;
- (g) except as expressly set out otherwise in the Contract Documents, Hydro’s Representative’s authority to review a Submittal will be for the benefit of BC Hydro, and such authority will not give rise to any duty or responsibility on Hydro’s Representative or BC Hydro to the Supplier, Subcontractors, or their agents, employees or other Persons performing any of the Services, to review the Services or the Material, and no such review, or authority to perform such review, will relieve the Supplier of any of its duties, obligations or responsibilities under the Contract to perform the Services and to correct any defects or deficiencies in the Services, all in accordance with the requirements of the Contract Documents; and
- (h) the Supplier will not proceed with the performance of any Services for which a Submittal was made unless and until the Submittal is returned to the Supplier with the notation “Acceptable”. If the Supplier proceeds with such Services prior to receiving the “Acceptable” notation and such Services are covered, then Hydro’s Representative may direct the Supplier to uncover and make good such Services at the Supplier’s sole cost and expense and the provisions of GC.5.13(j) will apply.

5.15 Electronic Data Site

If:

- (a) BC Hydro establishes an electronic data site to contain information relating to the Services; and
- (b) BC Hydro gives notice to the Supplier of such electronic data site and provides the Supplier with access to such electronic data site,

then the Supplier will be deemed to have received all such electronic information when posted, and, as part of the Services, during the performance of Services, the Supplier will monitor the electronic data site.

The Supplier will implement cybersecurity best practices in utilizing the electronic data site, and generally in its handling of electronic information under or relevant to the Contract, to ensure the integrity, confidentiality and availability of such information.

GC.6 CONTRACT PRICE AND PAYMENT

6.1 Direct Deposit Application Form

The Supplier will submit to Hydro's Representative, concurrently with the delivery of the Agreement, a completed Direct Deposit Application Form in the form provided by Hydro's Representative (the "**Deposit Application**"). The following will apply to the information contained on the Deposit Application:

- (a) BC Hydro will be entitled to rely on such information without further enquiry or investigation;
- (b) BC Hydro reserves the right (but not the obligation), in its sole discretion, to require the Supplier's Representative to provide evidence as to the accuracy of such information; and
- (c) the Supplier will, at no cost to BC Hydro, promptly provide such evidence to Hydro's Representative.

If, at any time, the Supplier requires to change any information contained on its completed Deposit Application, the Supplier's Representative must submit to Hydro's Representative a revised Deposit Application.

6.2 Invoices

Non-Evaluated Receipt Settlement ("ERS") Enabled Suppliers

Upon delivering the Material to BC Hydro in accordance with a Purchase Order, the Supplier's Representative will submit to BC Hydro an original invoice, with a copy of the invoice to Hydro's Representative. The Supplier will include the following documentation with each invoice:

- (a) copies of all reporting forms required by Appendix I – Indigenous Engagement, if any;
- (b) any supporting data and computations required by Hydro's Representative; and

- (c) any other documents required by Hydro's Representative, acting reasonably.

The original invoice will be submitted to BC Hydro's third-party invoice processing provider, currently the SAP Ariba Network ("Ariba"). The Supplier will use Ariba to transact all orders and invoicing under the Contract and may contact the BC Hydro Accounts Payable team at AccountsPayable@bchydro.com or at 604-663-3572 for setup assistance and for invoicing or payment inquiries. BC Hydro will pay any transaction fees that Ariba charges for the transaction of orders or invoicing under the Contract.

ERS Enabled Suppliers

If Supplier is ERS enabled by BC Hydro, then the above process does not apply. Upon delivery and acceptance of Material, an invoice will be automatically generated by BC Hydro and payment will be made in accordance with GC.6.4.

6.3 Submission of Invoice Not a Waiver

The Supplier's submission of an invoice under GC.6.2 will be without prejudice to the Supplier's rights to dispute under GC.12.

6.4 Payment

Payment will be made to the Supplier as follows:

- (a) for non-ERS enabled Suppliers, BC Hydro will pay the Supplier the amount for Material delivered and accepted (i) 30 days after receipt of the invoice, or (ii) upon acceptance of the Material by BC Hydro, whichever is later;
- (b) for ERS enabled Suppliers, BC Hydro will pay the Supplier 30 days after the invoice is generated by BC Hydro; and
- (c) Not Used
- (d) all amounts due and owing as determined in accordance with GC.6.4(a) will be paid:
 - (i) if the Purchase Order Price is in Canadian dollars and the Supplier has designated an account at a Canadian financial institution in its then current Deposit Application, by direct deposit using an Electronic Funds Transfer to that account; or
 - (ii) in any other case, either by wire transfer to the account the Supplier has designated in its then current Deposit Application or by cheque or bank draft, in BC Hydro's sole discretion.

Any fees charged by the receiving or any intermediary institution(s) related to accepting or processing an Electronic Funds Transfer or a wire transfer will be the responsibility of the Supplier.

6.5 Payment Not a Waiver

No payment made to the Supplier by BC Hydro will at any time constitute approval or acceptance of any Material or Services under the Contract, nor be considered a waiver by

BC Hydro of any of the terms of the Contract, nor relieve the Supplier of any of its duties, obligations or responsibilities under the Contract to perform the Services in accordance with the requirements of the Contract Documents.

6.6 Right of Set-Off

BC Hydro may set-off, as against any amounts due to the Supplier, any amount owing from the Supplier to BC Hydro, including liquidated damages and other amounts as payable under the Contract Documents, and including amounts payable under other agreements between BC Hydro and the Supplier or an Affiliate of the Supplier.

6.7 Limitation of Certificates

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

6.8 Waiver of Claims

As of the date of the Supplier's application for final payment under a Purchase Order, the Supplier expressly waives and releases the Indemnified Parties from any and all Claims which, as of the date of the application, the Supplier has or reasonably ought to have known the Supplier has against the Indemnified Parties, or any one of them, with respect to the Services performed under the Purchase Order, including those arising from the negligence of or breach of the Contract with respect to the Purchase Order by an Indemnified Party, or any other representative of BC Hydro, except for Claims set out in writing and delivered to Hydro's Representative prior to the delivery by the Supplier of the application and still unsettled.

6.9 Provisional Sums

If BC Hydro has included a provisional sum on Appendix E – Schedule of Quantities and Prices, then BC Hydro will pay any such sum or portion of such sum pursuant to a Change Order agreed by BC Hydro and the Supplier under GC.7.1.

GC.7 CHANGES

7.1 Changes

BC Hydro may, without invalidating the Contract, make changes to the Services by altering, adding to, or deducting from the Services (a "**Change**"), with adjustments, if any, to the Purchase Order price or the time for the performance of the Services or both as set out in GC.7. When the adjustments, if any, to the Purchase Order price or the time for the performance of the Services or both are agreed by BC Hydro and the Supplier, Hydro's Representative will issue a written approval (a "**Change Order**") setting out:

- (a) a description of the Services covered by the Change;
- (b) the price or method of valuation for such Services;

- (c) the total adjustment, if any, to the Purchase Order price (excluding only GST) on account of the Change and, for certainty, will be deemed to include all claims for compensation on account of all related costs, including all direct, indirect or “impact”, overhead, and all other costs, and all markups and profits, even if the Change Order does not specifically mention such items; and
- (d) the net effect on the time for the performance of the Services on account of the Change and, for certainty, will be deemed to include all effects on the time for the performance of the Services, and if there is no mention in the Change Order of a required adjustment to the time for the performance of the Services, then the Change Order will be interpreted to mean that the Supplier will complete the Services covered by the Change Order without any adjustment to the time for the performance of the Services.

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

7.2 Change Directive

If BC Hydro determines that the Supplier is to proceed with a Change prior to the issuance of a Change Order, then Hydro’s Representative may, without invalidating the Contract, sign and issue a written order (a “**Change Directive**”) instructing the Supplier to proceed with a defined Change. Notwithstanding that the parties have not reached agreement on any adjustment to the Purchase Order price or the time for the performance of the Services or both, upon receipt of a Change Directive, the Supplier will proceed with the Change without delay, without prejudice to the Supplier’s right to claim such adjustments. Any disputes relating to such adjustments will be resolved in accordance with GC.12, having regard to the provisions of GC.7.

7.3 Contemplated Change

Hydro’s Representative may, at any time, give the Supplier’s Representative a written request to provide price and schedule information (collectively, a “**Quotation**”) relating to a potential Change being considered by BC Hydro (a “**Contemplated Change**”), and the following will apply:

- (a) Quotation: Within seven days of a written request for a Quotation (or such longer time as is reasonable in the circumstances), the Supplier will, as part of the Services, prepare and deliver a written Quotation for a Contemplated Change to Hydro’s Representative;
- (b) Quotation to Cover all Costs and Time: Any Quotation submitted by the Supplier’s Representative for a Contemplated Change will, except as expressly set out otherwise in the Quotation, be interpreted to represent the proposed total adjustment to the Purchase Order Price (excluding only GST) and the net effect on the time for the performance of the Services on account of such Contemplated Change, and, for certainty, will be deemed to include:
 - (i) all claims for compensation on account of all related costs, including all direct, indirect or “impact”, overhead, and all other costs, and all markups and profits, even if the Quotation does not specifically mention such items; and

- (ii) all effects on the time for the performance of the Services, and if there is no mention in the Quotation of a required adjustment to the time for the performance of the Services, then the Quotation will be interpreted to mean that the Supplier will complete the Services as covered by the Quotation without any adjustment to the time for the performance of the Services.

If Hydro's Representative accepts the Quotation in response to a Contemplated Change or the parties otherwise agree to proceed with the Contemplated Change on terms different from those in the Quotation, then the Quotation or such other agreed to terms will be recorded in a Change Order, signed by the parties and issued pursuant to GC.7.1;

- (c) Third Party Costs to Prepare Quotation: If the Supplier requires third party consultants or contractors to prepare a Quotation, and if the Supplier wishes to be reimbursed for the costs of such third parties pursuant to GC.7.3(d), then the Supplier will only be entitled to make a claim for such costs if the Supplier obtains Hydro's Representative's prior written approval to retain such third parties;
- (d) Supplier's Costs to Prepare Quotation: If, following receipt of a Quotation:
 - (i) BC Hydro elects to proceed with the Contemplated Change, then all costs incurred by the Supplier to prepare the Quotation will be paid by the Supplier, and the Change Order issued with respect to the Contemplated Change will be deemed to be the entire compensation payable by BC Hydro for such Change; or
 - (ii) BC Hydro, for any reason, elects not to proceed with a Contemplated Change, then:
 - (A) if the Supplier retained third parties pursuant to GC.7.3(c), then BC Hydro will pay the Supplier for the reasonable and substantiated direct costs paid to all such third parties who were approved in advance by Hydro's Representative; and
 - (B) the Supplier will bear all other costs incurred by the Supplier to prepare the Quotation.

7.4 Claim for a Change

The following applies where the Supplier wishes to claim that a Change has occurred:

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

- (ii) the Supplier will maintain daily records of the resources used in connection with the claimed Change, including labour, equipment and materials prepared contemporaneously with the performance of the affected Services, and submit such records, together with the amount claimed for such Services, to Hydro's Representative on a rolling two business day basis;
- (b) upon receipt of a notice under GC.7.4(a)(i) from the Supplier, Hydro's Representative will promptly investigate the conditions giving rise to the claimed Change;
- (c) in no event will the Supplier be entitled to, nor will the Supplier make any claim for, an adjustment to the Purchase Order Price or the time for the performance of the Services on account of any circumstance, condition or event that entitles the Supplier to make a claim under GC.7.4:
 - (i) that occurs more than seven days prior to the notice delivered by the Supplier to Hydro's Representative as provided by GC.7.4(a)(i); or
 - (ii) notwithstanding GC.7.4(c)(i), to the extent BC Hydro is materially prejudiced by any delay in the Supplier complying with its obligations under GC.7.4(a)(i); and
- (d) in no event will the Supplier be entitled to, nor will the Supplier make any claim for, an adjustment to the Purchase Order Price on account of any circumstance, condition or event that entitles the Supplier to make a claim under GC.7.4 for which the Supplier has not kept, nor made available to Hydro's Representative, the records as required under GC.7.4(a)(ii).

If Hydro's Representative refuses the Supplier's request for a Change Order or Change Directive, then the Supplier may dispute such refusal under GC.12.

7.5 Valuation of a Change

The adjustment to the Purchase Order Price on account of any Change will be determined by one or more of the following methods, the choice of which will be determined by Hydro's Representative:

- (a) as set out in a Quotation and accepted by Hydro's Representative pursuant to GC.7.3;
- (b) by a lump sum as agreed by the parties; or
- (c) by applicable unit prices.

7.6 Net Valuation of Cost of a Change

In determining any adjustment to the Purchase Order price resulting from a Change, such adjustment will be determined on the basis of the Supplier's reasonable and substantiated direct costs and savings attributable to the Change. If the Change results in a net increase in the Supplier's reasonable and substantiated direct costs, then the Purchase Order price will be increased by an amount equal to the net increase in such costs. If the Change results in a net decrease in the Supplier's reasonable and substantiated direct costs, then the Purchase Order price will be decreased by an amount equal to the net decrease in such costs. For certainty, a

Change Order issued pursuant to GC.7.1 will be deemed to be a net adjustment as required by this GC.7.6.

7.7 Adjustments to Time for the Performance of the Services

Subject always to the Supplier's duties under GC.25.2, the time for the performance of the Services will be adjusted on account of a Change by the net amount of time reasonably required by the Supplier to accommodate and perform the Change, taking account of any impacts that require more time, and any impacts, including deletions of Services, that result in time savings, as follows:

- (a) as set out in a Quotation and accepted by Hydro's Representative pursuant to GC.7.3;
- (b) as otherwise agreed in writing by the parties; or
- (c) in the absence of an agreement, in accordance with GC.12.

7.8 No Change Without Written Order

Subject to GC.7.4 and except as expressly set out otherwise in the Contract Documents, the Supplier will not proceed with any Change prior to the receipt of a written Change Order or Change Directive. No claim for an adjustment to the Purchase Order Price or the time for the performance of the Services may be made without such written order. The Supplier will not be entitled to, nor will the Supplier rely on any oral representation (except in an emergency), meeting discussion or minutes, or other communication as approval for a Change.

7.9 Emergency

Notwithstanding any other provision in the Contract, Hydro's Representative may, in the event of an emergency, issue oral orders to the Supplier for any change required by reason of any emergency. The Supplier will proceed with such Change without delay, without prejudice to the Supplier's right to claim an adjustment to the Contract Price or the time for the performance of the Services or both. Hydro's Representative will confirm such orders in the form of a change Order or Change Directive as soon as practicable.

7.10 Optional Work

Optional Work may be included in the Services at the sole election of BC Hydro. Optional Work will only be included in the Services if Hydro's Representative so directs in writing delivered to the Supplier's Representative, and in such event:

- (a) Hydro's Representative will issue a Change Order or other document(s) as agreed to by the parties for the Optional Work; and
- (b) the Supplier will perform the Optional Work as part of the Services.

GC.8 DELAYS AND ACCELERATION

8.1 Delay by BC Hydro

If the Supplier is delayed in the performance of the Services by an act or omission of BC Hydro, or a Person for whom BC Hydro is in law responsible (including Hydro's Representative and any

other contractor engaged by BC Hydro, but excluding the Supplier and those engaged by or through the Supplier, including Subcontractors), contrary to the provisions of the Contract Documents, then, on written notice as required by GC.8.6 and subject to the Supplier's duties to mitigate under GC.25.2, the Supplier will be entitled to:

- (a) an extension of the time for the performance of the Services equal to the impact of such delay; and
- (b) reimbursement from BC Hydro for directly related out of pocket additional costs reasonably and necessarily incurred by the Supplier as a result of such delay. No payment will be owed by BC Hydro to the Supplier for Consequential Damages.

8.2 Delay by Supplier

If the Supplier is delayed in the performance of the Services by its own acts or omissions, or by a Person for whom the Supplier is in law responsible, then the Supplier will not be entitled to, nor will the Supplier make any claim for, an adjustment to the Purchase Order Price or the time for the performance of the Services, in either case, on account of such delay.

8.3 Labour Disputes

Any work stoppage, strike, lock-out, picket or other labour dispute by any personnel engaged by BC Hydro will be deemed to be a delay under GC.8.1. Any work stoppage, strike, lock-out, picket or other labour dispute by any personnel engaged by the Supplier or any Subcontractor, including any financial and jurisdictional disputes involving unionized and non-unionized workers, will be deemed to be a delay under GC.8.2.

8.4 Force Majeure

If either the Supplier or BC Hydro is delayed in the performance of any of their obligations under the Contract as a result of an event of Force Majeure, then the party claiming the delay will be excused from performance of such obligations, provided that party gives written notice in accordance with GC.8.6, and mitigates the effect of the delay in accordance with GC.25.2, as applicable. The party delayed by an event of Force Majeure will be entitled to an extension of the time for the performance of the affected obligations equal to the impact of the delay caused by the event of Force Majeure, but will not be entitled to, nor will such party make any claim for, reimbursement or the payment of any costs suffered by that party as a result of the event of Force Majeure.

8.5 Concurrent Delay

With respect to concurrent delays:

- (a) if two or more events occur concurrently that each entitle the Supplier to an extension of the time for the performance of the Services under the Contract Documents, then for the period of any concurrency the Supplier will be entitled to claim an extension with respect to only one of the concurrent events;
- (b) if an event as described in GC.8.1 occurs concurrently with an event as described in GC.8.4, then during the period of any concurrency the Supplier will be entitled to claim an extension with respect only to the event described in GC.8.4;

- (c) if an event as described in GC.8.1 occurs concurrently with an event as described in GC.8.2, then during the period of any concurrency the Supplier will not be entitled to claim, nor will the Supplier make any claim for, an extension with respect to the event described in GC.8.1; and
- (d) if an event as described in GC.8.4 occurs concurrently with an event as described in GC.8.2, then during the period of any concurrency the Supplier will not be entitled to claim, nor will the Supplier make any claim for, an extension with respect to the event described in GC.8.4.

8.6 Notice of Delay

With respect to any event of delay:

- (a) regardless of the cause of a delay, the party claiming delay will give written notice of the delay to the other party's Representative with sufficient detail to permit the other party's Representative to be able to understand the basis for the claim as well as the anticipated impact on the Purchase Order Price, if any, and the time for the performance of the Services, if any. Such notice will be given promptly after the party claiming delay is aware of an impact on the Purchase Order Price or the time for the performance of the Services, or, in any event, promptly after the time when the party claiming delay should reasonably have become aware of the impact on the Purchase Order Price or the time for the performance of the Services, provided, however, that in the case of a continuing cause of delay only one written notice of delay will be necessary;
- (b) if the Supplier gives notice of delay in accordance with GC.8.6(a), then, as part of the Services, the Supplier will keep and provide to Hydro's Representative records in the same detail and manner as described in GC.7.4(a)(ii);
- (c) upon receipt of a notice of delay from the Supplier, Hydro's Representative will promptly investigate the conditions giving rise to the claimed delay in order to satisfy himself as to the validity of the claimed delay;
- (d) in no event will the Supplier be entitled to, nor will the Supplier make any claim for, an adjustment to the Purchase Order Price or the time for the performance of the Services on account of any delay or portion of a delay:
 - (i) that occurs more than seven days prior to the notice delivered by the Supplier to Hydro's Representative as provided by GC.8.6(a); or
 - (ii) notwithstanding GC.8.6(d)(i), to the extent BC Hydro is materially prejudiced by any delay in the Supplier complying with its obligations under GC.8.6(a); and
- (e) in no event will the Supplier be entitled to, nor will the Supplier make any claim for, an adjustment to the Purchase Order Price on account of any delay costs for any delay or portion of a delay for which the Supplier has not kept, nor made available to Hydro's Representative, the records as required under GC.8.6(b).

8.7 Acceleration to Recover Supplier Delays

If, at any time, Hydro's Representative, acting reasonably, determines that the then current Supply Schedule is not being met due to an act, error or omission of the Supplier or any Subcontractor, then Hydro's Representative may deliver written notice to the Supplier directing the Supplier to accelerate the performance of the Services, at the Supplier's sole cost and expense, so as to bring the Services back into conformity with the then current Supply Schedule.

8.8 Acceleration for BC Hydro's Convenience

Hydro's Representative may, at any time, deliver written notice to the Supplier to accelerate the performance of the Services at BC Hydro's convenience and any such acceleration will be a Change under GC.7.

GC.9 SUPPLIER DEFAULT

9.1 Failure to Perform

If:

- (a) the Supplier should fail or neglect to undertake the performance of the Services properly and expeditiously; or
- (b) the Supplier should otherwise fail to comply with the requirements of the Contract to a substantial degree;

then Hydro's Representative may provide the Supplier with written notice stating the nature of the Supplier's default and instructing the Supplier to correct the default within seven days after receipt of such notice. If the Supplier cannot correct the default in such seven days, then the Supplier will be in compliance with Hydro's Representative's instructions if the Supplier:

- (c) takes all reasonable steps to begin to correct the default within such seven days;
- (d) provides Hydro's Representative with a schedule reasonably acceptable to Hydro's Representative for such correction; and
- (e) completes the correction in accordance with such schedule.

If the Supplier fails to correct the default in the time specified or subsequently agreed in writing, or, if, for any reason, the default cannot be corrected, then BC Hydro may, without prejudice to any of its other rights or remedies:

- (f) correct such default to the extent BC Hydro is able to correct the default and set-off from any payment then or thereafter due to the Supplier all additional costs reasonably incurred by BC Hydro to correct the default, including the cost of other suppliers and BC Hydro's own forces;
- (g) deduct any portion of the outstanding Services from the Contract as BC Hydro may, in its sole discretion, decide and proportionately adjust the relevant portion of the Purchase Order Price on account of such deduction and set-off from any payment then or

thereafter due to the Supplier all additional costs reasonably incurred by BC Hydro to complete the Services, including increased costs of material production, the costs of other suppliers, any administrative costs, the cost of BC Hydro's own forces and resources and the cost to BC Hydro of Hydro's Representative;

- (h) terminate any or all Purchase Orders under which the Supplier has failed to perform; or
- (i) terminate the Contract.

If the aggregate liability of the Supplier to BC Hydro exceeds the maximum aggregate liability as set out in GC.18.1 and no new agreement is reached between the parties regarding increasing the Supplier's maximum aggregate liability within seven days of the maximum aggregate liability being reached, then BC Hydro may, without prejudice to any of its other rights or remedies, terminate the Contract.

9.2 Bankruptcy

BC Hydro may, without prejudice to any of its other rights or remedies, terminate the Contract or any or all outstanding Purchase Orders by giving written notice to the Supplier or any other applicable Person, if:

- (a) the Supplier makes an assignment for the benefit of its creditors, is declared bankrupt or commits an act of bankruptcy, becomes insolvent, makes a proposal for relief under the *Bankruptcy and Insolvency Act (Canada)* or similar legislation in any jurisdiction, or becomes involved in any other type of insolvency proceedings being commenced by or against the Supplier under the *Bankruptcy and Insolvency Act (Canada)* or otherwise;
- (b) a receiver, receiver manager or other encumbrance holder takes possession of or is appointed over, or any distress, execution or other process is levied or enforced upon, the whole or any material part of the assets of the Supplier;
- (c) any arrangement or composition with or for the benefit of creditors is entered into by or in relation to the Supplier;
- (d) any proceedings with respect to the Supplier is commenced under the *Companies' Creditors Arrangement Act (Canada)*;
- (e) the Supplier ceases to carry on business; or
- (f) a petition is filed (and not being contested in good faith, using all commercially reasonable efforts), or a resolution is passed, or an order is made for the winding up, liquidation or dissolution of the Supplier.

9.3 Termination for Cause

If BC Hydro terminates the Contract or any or all Purchase Orders under GC.9.1 or GC.9.2, then BC Hydro will, while making all commercially reasonable efforts to mitigate costs and delays:

- (a) be entitled to take possession of the equipment and materials that BC Hydro has paid for, and to utilize such Material, subject to the rights of third parties, and complete the

Services, and any equipment and materials for which payment has been made or is anticipated to be made by BC Hydro to the Supplier, and to utilize such equipment and materials, subject to the rights of third parties, and complete the performance of the Services by whatever method BC Hydro may consider expedient;

- (b) be entitled to withhold any payments owing to the Supplier;
- (c) upon the Expiry Date, be entitled to retain from any amounts withheld from the Supplier:
 - (i) the total of any additional costs (the “**Default Costs**”) in excess of the Contract Price BC Hydro incurred because of the Supplier’s default to fulfil its demand for the Material, including the costs of other suppliers, any administrative costs, the cost of BC Hydro’s own forces and resources and the cost to BC Hydro of Hydro’s Representative; plus
 - (ii) the costs incurred with respect to corrections to any Services or Material completed by the Supplier prior to the termination during the Warranty Period, if the Supplier refuses to carry out corrections to such Services as required under GC.19.7; plus
 - (iii) a reasonable allowance to cover the cost to BC Hydro of undertaking any corrections referenced in subparagraph (ii) above during the remainder of the Warranty Period, after the Expiry Date,

and pay the balance of any amounts withheld from the Supplier, if any, to the Supplier. If the total of the amounts described in GC.9.3(c)(i), GC.9.3(c)(ii) and GC.9.3(c)(iii) exceeds the total of the payments BC Hydro has withheld, then such excess will be immediately due and owing by the Supplier to BC Hydro upon receipt of an invoice from BC Hydro for such excess; and

- (d) on expiry of the Warranty Period retain, from any amounts owing to the Supplier, the cost described in GC.9.3(c)(iii) and pay the balance, if any, to the Supplier. If the total of the costs of such corrections exceeds the amounts owing to the Supplier, then such excess will be immediately due and owing by the Supplier to BC Hydro upon receipt of an invoice from BC Hydro for such excess.

If the Contract or any or all Purchase Orders are terminated for any reason, including pursuant to GC.11.1, the Supplier’s obligations described in the Contract Documents as to quality, correction and warranty will continue in full force and effect after such termination with respect to the Material supplied and Services performed by the Supplier up to the time of termination.

GC.10 BC HYDRO DEFAULT

10.1 Failure to Perform

If BC Hydro fails to:

- (a) pay the Supplier payments when due in accordance with the provisions of the Contract or any particular Purchase Order;

- (b) provide the Supplier with adequate directions or instructions so as to prevent the Supplier from performing any of the Services in accordance with the Contract; or
- (c) resume the Contract, in whole or in part, within one year of the effective date of the suspension of the Contract under GC.11.1,

then the Supplier may provide Hydro's Representative with written notice stating the nature of BC Hydro's default and instructing BC Hydro to correct the default within 30 days after receipt of such notice. If BC Hydro cannot correct the default in such 30 days, then BC Hydro will be in compliance with the Supplier's instructions if BC Hydro:

- (d) takes all reasonable steps to begin to correct the default within such 30 days;
- (e) provides the Supplier with a schedule acceptable to the Supplier, acting reasonably, for such correction; and
- (f) completes the correction in accordance with such schedule.

If BC Hydro fails to correct the default in the time specified or subsequently agreed in writing, then the Supplier may, without prejudice to any of its other rights or remedies, terminate the particular Purchase Order under which BC Hydro has failed to perform.

10.2 Termination for Cause

If the Supplier terminates the Contract or a Purchase Order under GC.10.1, then BC Hydro will, in full satisfaction of all claims the Supplier may have, pay the Supplier:

- (a) all compensation owed in accordance with the Contract or the particular Purchase Order, as the case may be, for all Services completed in accordance with the Contract Documents up to the date of the termination; and
- (b) all third-party cancellation charges, if any, incurred by the Supplier to the date of termination, provided such charges could not have been reasonably avoided or mitigated by the Supplier.

For greater certainty, the Supplier will not be entitled to, nor will the Supplier make a claim for, Consequential Damages.

GC.11 SUSPENSION OR TERMINATION OF CONTRACT OTHER THAN FOR DEFAULT

11.1 Suspension or Termination for Convenience

BC Hydro may, by written notice to the Supplier's Representative, at any time at BC Hydro's convenience and in its sole discretion, suspend or terminate the Contract, in whole or in part, or any or all Purchase Orders stating the extent and effective date of such suspension or termination, and, upon receipt of such written notice, the Supplier will:

- (a) wind down all suspended or terminated Services in a manner such that BC Hydro receives the benefit of all completed Services;

- (b) with respect to the terminated portions of the Services, if any, on the written direction of Hydro's Representative deliver to BC Hydro in accordance with the Contract Documents, any Material for which the Supplier has received or receives payment from BC Hydro;
- (c) take any necessary action, including re-possession, to protect property in the Supplier's possession in which BC Hydro has or may acquire an interest, including any BC Hydro Property;
- (d) continue and complete performance of the continuing portion of the Services, if any, in accordance with the Contract Documents;
- (e) provide suggestions to BC Hydro as to the best methods of mitigating any Claims, costs or delays arising from the termination of portions of the Services;
- (f) provide all records and documents, as required by the Contract, to BC Hydro relating to the terminated portion of the Services; and
- (g) take any other action in relation to the termination of the Services which BC Hydro may reasonably direct.

11.2 Rights upon Termination for Convenience

In the event of termination under GC.11.1, BC Hydro will, in full satisfaction of all claims the Supplier may have, pay the Supplier:

- (a) all compensation owed in accordance with the Contract or the particular Purchase Order, as the case may be, for all Services completed in accordance with the Contract Documents up to the date of the termination; and
- (b) all third-party cancellation charges, if any, incurred by the Supplier to the date of termination, provided such charges could not have been reasonably avoided or mitigated by the Supplier.

For greater certainty, the Supplier will not be entitled to, nor will the Supplier make any claim for, Consequential Damages.

11.3 Obligations During Suspension

At any time after the commencement of a period of suspension, BC Hydro may give written direction to the Supplier to resume performance of the suspended Services, and, upon receipt of such direction, the Supplier will resume the Services within the time specified in such direction by Hydro's Representative, acting reasonably. In the event of suspension under GC.11.1, and provided that such suspension is not due to a default of the Supplier, BC Hydro will, in full satisfaction of all claims the Supplier may have, reimburse the Supplier for the Supplier's reasonable and substantiated direct costs incurred in complying with the requirements of this GC.11.3.

For greater certainty, the Supplier will not be entitled to, nor will the Supplier make any claim for, Consequential Damages.

11.4 Termination for Force Majeure

Either party may, on 14 days written notice to the other party, terminate the Contract if an event of Force Majeure has caused a suspension of the Contract for a period greater than two years. Any termination pursuant to this GC.11.4 will be deemed to be a termination under GC.11.1.

11.5 Purchase Orders Not Affected

The termination of a Purchase Order does not result in the termination of any other Purchase Order. For greater certainty, any other outstanding Purchase Orders may only be terminated in accordance with the provisions of those Purchase Orders or the Contract.

11.6 Contract Not Affected

The termination of a Purchase Order does not result in the termination of the Contract. For certainty, the Contract either expires or may only be terminated in accordance with the provisions of the Contract.

GC.12 DISPUTES

12.1 Dispute Resolution

Except as expressly set out otherwise in the Contract Documents, all disputes relating to or arising out of the Contract (each, a “**Dispute**”) will be resolved in accordance with GC.12.

12.2 Good Faith Efforts to Resolve any Dispute

Without in any way limiting the parties’ rights under the Contract, BC Hydro will encourage and support Hydro’s Representative and the Supplier will encourage and support the Supplier’s Representative to use good faith efforts to resolve any Dispute promptly upon becoming aware of the Dispute, and the Representatives will continue to use such efforts after the delivery of a Dispute Notice, including the early full disclosure and exchange of all documents and information that may be relevant to the Dispute.

12.3 Dispute Notice

A party with a Dispute may, at any time, deliver written notice to the other party, with a copy to Hydro’s Representative or the Supplier’s Representative, as applicable, describing the Dispute (the “**Dispute Notice**”). A Dispute Notice will include, at a minimum:

- (a) a summary of the facts relevant to the Dispute;
- (b) the applicable provisions of the Contract relevant to the Dispute or other basis for the claim upon which the disputing party relies;
- (c) additional supporting documentation, if any, as may be relevant to the dispute and available; and
- (d) a clear statement of the resolution to the Dispute being sought by the disputing party.

12.4 Initial Settlement Meeting

Within 45 days of delivery of a Dispute Notice, or such other time as the parties may agree in writing, the Dispute will, if not already settled, be referred to a representative(s) of each of the parties who, to the extent reasonably practicable, have not been previously involved in the events leading to the Dispute for a settlement meeting to occur within such 45 day period.

12.5 Additional Settlement Meetings

If a Dispute is not settled by a written agreement (a “**Settlement Agreement**”) signed by authorized representatives of both parties after an initial settlement meeting held in accordance with GC.12.4, then, without extending the time limit set out in GC.12.7(b), BC Hydro may, in its sole discretion, direct in writing that an additional settlement meeting or meetings be convened at which BC Hydro will be represented by a new representative(s). BC Hydro will give consideration to a request from the Supplier for an additional settlement meeting or meetings and for specific BC Hydro representatives to be in attendance at such meetings, but BC Hydro will not be obligated to agree to convene a requested additional settlement meeting nor to bring the requested individuals.

12.6 Representatives at Settlement Meetings

The parties will send representatives to the settlement meeting(s) as described in GC.12.4 and GC.12.5, in each case with authority to enter into a Settlement Agreement that is binding on the parties, and with instructions to use all commercially reasonable efforts to resolve the Dispute without delay. Except with the express written consent of the Supplier, BC Hydro’s representative(s), in the meetings held pursuant to GC.12.4 or GC.12.5, will include a person(s) other than Hydro’s Representative. Notwithstanding any other provision in GC.12, the parties may have any individuals in attendance at any settlement meeting, including their respective Representatives.

12.7 Ultimate Time for Settlement

If a Dispute is not:

- (a) referred to the parties’ representatives within the time period specified in GC.12.4; or
- (b) settled by a Settlement Agreement within 90 days after receipt of the Dispute Notice, or such other time as the parties may agree in writing,

then upon written notice of either party delivered to the other party, the unresolved Dispute will be submitted to arbitration pursuant to GC.12.8.

12.8 Arbitration

A Dispute submitted to arbitration will be finally resolved by arbitration before a single arbitrator in accordance with the Vancouver International Arbitration Centre Domestic Arbitration Rules. The seat of arbitration will be Vancouver, British Columbia, Canada. The language of the arbitration will be English. The arbitrator will conduct the arbitration in a cost-effective manner and on an expedited basis, having regard for the subject matter of the Dispute.

Arbitration proceedings, evidence at an arbitration proceeding and the decision of the arbitrator, will be treated as strictly confidential, and not disclosed to any third party without the prior written consent of the parties, and the parties will jointly instruct the arbitrator to maintain the strictest confidentiality of the proceedings, evidence and his or her decision. Notwithstanding the preceding sentence:

- (a) BC Hydro may disclose information with respect to a Dispute and the arbitration proceeding, including evidence at the arbitration proceedings and the decision of the arbitrator, to the British Columbia Utilities Commission, the Province of British Columbia and any Governmental Authority to the extent that BC Hydro considers disclosure necessary or desirable to support its position in any regulatory proceeding or otherwise in order to fulfill its duties to the British Columbia Utilities Commission, the Province of British Columbia, any Governmental Authority or its customers; and
- (b) a decision of the arbitrator may be filed in any court of competent jurisdiction and may be enforced by either party as a final judgment of such court as permitted by Law in the jurisdiction in which enforcement is sought.

12.9 No Influence

The parties expressly acknowledge that the Dispute Resolution Procedure is to encourage timely resolution of Disputes, and that for it to have the best opportunity for success the procedures should be respected and, accordingly, neither party will make efforts to influence the parties' representatives by making contact with senior representatives of the other party, or the government, or any third party for the purpose of attempting to influence the terms of a resolution of a Dispute, and, for certainty, the parties agree that any such contact will be a breach of the Contract.

12.10 Interest

Subject to any express direction in the arbitrator's decision, interest will be owing on any amount payable pursuant to the arbitrator's decision from the date specified for payment in the decision. Interest will be calculated at the Prime Rate established as of the date such amounts became payable, plus 1%, calculated monthly, interest accruing on interest.

12.11 Must Continue

Notwithstanding any Dispute, the parties will continue to fulfill their obligations pursuant to the Contract, without interruption to the performance of the Services by the Supplier, without prejudice to either party's rights relating to the Dispute.

12.12 Injunctions

Notwithstanding any other provision in GC.12 or any other provision of the Contract, a party may apply to court for injunctive relief if the party determines that, in the circumstances, such relief is required to protect its interests or the interests of the public.

GC.13 PROTECTION OF PERSONS, PROPERTY AND THE ENVIRONMENT

13.1 Hazardous Substances

The Supplier will not, and will ensure that the Subcontractors will not, use, store, transport, remove, dispose of or destroy any Hazardous Substances at the Delivery Point(s), except with the prior written approval of Hydro's Representative. All Hazardous Substances used, stored, transported, removed, disposed of or destroyed will be dealt with in accordance with Law and the Contract Documents.

13.2 Dangerous Goods

All Dangerous Goods used, stored, transported, removed, disposed of or destroyed will be dealt with in accordance with Law and the Contract Documents. The Supplier will bring to the Delivery Point(s) only those Dangerous Goods that are required for the performance of the Services. Dangerous Goods will not be brought to the Delivery Point(s) without the prior written approval of Hydro's Representative. The Supplier will make material safety data sheets for such goods immediately accessible by Subcontractors and Hydro's Representative at the Delivery Point(s) at all times.

13.3 Dangerous Goods Occurrence

If, during the performance of the Services or in the course of transporting Dangerous Goods to or from the Delivery Point(s), the Supplier is involved in a Dangerous Goods Occurrence, as defined in the *Transportation of Dangerous Goods Act* (Canada), the Supplier will immediately notify Hydro's Representative in writing.

13.4 No Asbestos Containing Materials

The Supplier represents and warrants that none of the goods, materials and/or equipment being supplied under the Contract includes or contains Asbestos Containing Materials. For purposes of this GC "Asbestos Containing Materials" means manufactured articles or other materials, other than vermiculite insulation, that contain a minimum 0.1% asbestos when tested in accordance with analytical methods (NIOSH method 9000, 9002, or EPA/600/R-93/116). All vermiculite material with any level of asbestos contamination are considered to be Asbestos Containing Materials. The foregoing representation and warranty does not apply to goods, materials and/or equipment supplied by BC Hydro.

GC.14 CONFIDENTIALITY

14.1 Confidential Information

For purposes of the Contract, "**Confidential Information**" means any technical, commercial or financial information of the disclosing party, or any other information expressly identified by the disclosing party in writing as proprietary or confidential, that is supplied (whether orally or in written, electronic or any other form) to, or otherwise obtained or acquired by, the receiving party as a result of or in connection with the Contract, either before or after the Effective Date, but excluding;

- (a) information that is, or subsequently becomes, publicly available other than through a breach of the Contract or through a breach of a confidentiality agreement which another Person has entered into concerning the Confidential Information;
- (b) information which the party already possessed before commencing the Services;
- (c) information which is rightfully received from a third party without breach of any obligation of confidence by such third party;
- (d) information which is independently developed without the use of the Confidential Information; and
- (e) the Supplier's name and address, the subject matter of the Contract, and the Contract Price or value of the Contract.

14.2 Confidentiality

Each of BC Hydro and the Supplier will treat all Confidential Information as confidential, will use commercially reasonable efforts to protect and prevent the publication, disclosure or dissemination of Confidential Information to third parties, and will only disclose Confidential Information to those of its personnel with a need to know the information.

For certainty and without limitation, the Supplier acknowledges and agrees that BC Hydro may at its sole discretion publish non-confidential Contract information, including the information referenced in GC.14.1(e).

14.3 Limited Use

Each of BC Hydro and the Supplier will use Confidential Information only for purposes related to the Services or, in the case of BC Hydro, for BC Hydro's own internal purposes including without limitation as permitted under GC.24.

14.4 Permitted Disclosure

Notwithstanding GC.14.2, disclosure of Confidential Information may be made by the parties and their respective personnel:

- (a) with the prior written consent of the disclosing party's Representative;
- (b) in confidence to the receiving party's professional advisors;
- (c) in the case of the Supplier, in confidence to Subcontractors and Affiliates who, in each case, need to know the applicable Confidential Information for the purposes of performing the Services, and who are bound by confidentiality and limited use obligations to the Supplier that are substantially similar to those found in this GC.14;
- (d) in the case of BC Hydro:
 - (i) in confidence to other contractors or third parties who, in each case, need to know the applicable Confidential Information for the purposes of performing work on the Project, or for any purpose listed in GC.24 including as reasonably necessary as part of a procurement process for such purposes;

- (ii) to any Governmental Authority, as required or requested by such Governmental Authority;
 - (iii) to the British Columbia Utilities Commission for the purpose of any regulatory application or submission to the British Columbia Utilities Commission; and
 - (iv) to any provincial ministry or to the Province of British Columbia;
- (e) pursuant to any arbitration proceeding conducted in accordance with GC.12; or
- (f) as otherwise required by Law, by Permits or permitted by the Contract Documents.

14.5 Legal or Regulatory Proceedings

If, other than pursuant to FOIPPA, a receiving party is required to disclose Confidential Information by Law (including professional obligation) a court order or similar proceeding (including a regulatory proceeding), (i) the receiving party will give the disclosing party's Representative as much notice as is reasonably possible in the circumstances prior to disclosing any such Confidential Information; and (ii) the receiving party will cooperate with the disclosing party in any application, proceeding or other action such party may undertake to obtain a protective order or other means of protecting the confidentiality of its Confidential Information. For any disclosures required under FOIPPA, the parties will comply with the relevant requirements of FOIPPA.

GC.15 RECORDS AND AUDIT

15.1 Retention of Documents

The Supplier will, during the performance of the Services and for a period of ten years after termination of the Contract, keep and maintain proper and accurate accounts and records, including all agreements with Subcontractors, invoices, statements, Permits, manifests, receipts, vouchers, calculations, reports, data, time and material costing records with respect to the Services undertaken on a time and materials or cost-plus basis, drawings, plans and other documents, including documentation evidencing contractual (including regulatory) compliance and substantiation of any statements made on any reporting forms required by Appendix I – Indigenous Engagement, if any, in hard or electronic form, in respect of the Services, in accordance with Good Industry Practice.

15.2 Audit

The Supplier will, upon reasonable written notice, make all information described in GC.15.1 available to Hydro's Representative and any of his or her nominees during the performance of the Services and for the ten year period described in GC.15.1 for review and audit. The Supplier will, upon written request from Hydro's Representative within such time period, and in any event prior to disposal of such information, provide Hydro's Representative with a copy of any such information in a form satisfactory to Hydro's Representative, acting reasonably.

15.3 Audit Not a Waiver

No audit conducted by Hydro's Representative or BC Hydro or any of their nominees will at any time constitute approval or acceptance of any Material or the Services under the Contract, nor

be considered a waiver by BC Hydro of any of the terms of the Contract, nor relieve the Supplier of any of its duties, obligations or responsibilities under the Contract to perform the Services in accordance with the requirements of the Contract Documents.

GC.16 INSURANCE

16.1 Supplier Provided Insurance Coverage

The Supplier will, at its sole cost and expense, obtain and/or maintain, or cause to be obtained and/or maintained, at all times during the performance of the Services (unless another period is indicated herein), the following insurance policies:

(a) Commercial general liability insurance:

- (i) in an amount of \$5,000,000 per occurrence and \$5,000,000 in the annual aggregate;
- (ii) with coverage not less than the insurance required by IBC Form 2100 or its equivalent replacement, and in any event, providing coverage for loss of, damage to, and loss of use of BC Hydro property arising out of or in connection with the performance of the Services by the Supplier under the Contract;
- (iii) maintained for not less than 24 months after completion of Services;
- (iv) with coverage to include: Hook Liability, Sudden and Accidental Pollution Liability, Explosion, Collapse and Underground Damage Liability, Forest Fire Fighting Expense Liability Attached Equipment Cross Liability;

(b) Automobile liability insurance:

- (i) in an amount of \$5,000,000 per occurrence for bodily injury, death and damage to property;
- (ii) in respect of all vehicles owned or leased by the Supplier (used directly or indirectly in the performance of the Services) that are required by law to be insured under a contract by a Motor Vehicle Liability Policy;

(c) if the Services include the use of aircraft, aircraft liability insurance:

- (i) in an amount of \$10,000,000 inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof and limits of not less than \$10,000,000 for aircraft passenger hazard;
- (ii) in respect of all owned and non-owned aircraft (if used directly or indirectly in the performance of the Services), including use of additional premises;

(d) if the Services include the use of watercraft, watercraft liability insurance:

- (i) in an amount of \$5,000,000 inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof and limits not less than \$5,000,000 for watercraft passenger hazard;

- (ii) in respect of all owned or non-owned watercraft (if used directly or indirectly in the performance of the Services);
- (e) if the Services require any single shipment of equipment, parts or materials valued over \$1,000,000, Marine Cargo/Inland Marine Cargo Insurance (as applicable):
 - (i) in an amount no less than the full replacement value of the insured property;
 - (ii) covering all insurable risks of loss or damage to the shipment, on terms not less than the Institute Cargo Clauses (“All Risks”) including War, Strikes, Riots and Civil Commotions;
 - (iii) coverage shall attach at the commencement of loading at the manufacturer’s facility and be maintained throughout the course of transport, including while the insured property is in trans-shipment, customs or interim storage, until arrival at and completion of unloading at the Site;
- (f) any other insurance that the Supplier deems necessary having regard to the policies of insurance which prudent Suppliers in similar circumstances would obtain and maintain in respect of services of similar complexity and magnitude to the Services.

16.2 Requirements for Supplier Insurance

The following provisions will apply to all insurance provided by the Supplier under the Contract:

- (a) except with the prior written consent of Hydro’s Representative, each policy of insurance provided by the Supplier will:
 - (i) be provided by insurers authorized to underwrite insurance in British Columbia with a minimum investment grade credit rating by at least one of: Standard & Poor’s, A.M. Best and DBRS;
 - (ii) be primary and not require the sharing of any loss or contribution by any insurer or BC Hydro or any other insured;
 - (iii) contain a provision that the insurers waive their rights of subrogation against BC Hydro and its shareholders, directors, officers, employees, and agents (excluding the insurance required by GC.16.1(b));
 - (iv) contain a severability of interest provision (excluding the insurance required by GC.16.1(b));
 - (v) contain a provision that the insurer will not cancel the policy without providing 30 days prior written notice to BC Hydro;
- (b) each policy of insurance provided by the Supplier under GC.16.1 (except under GC.16.1(b) and GC.16.1(e)) will:
 - (i) include BC Hydro and its shareholders, directors, officers, employees and agents as additional insureds; and

- (ii) contain a cross liability endorsement to the effect that the Supplier and BC Hydro and any other insured will each be entitled to indemnification under such policy as if each were insured under a separate policy and notwithstanding that the claim in respect of which indemnification is sought is made by any other insured;
- (c) if applicable, each policy of insurance provided by the Supplier under GC.16.1(e) will include BC Hydro as a loss payee as its interest appear;
- (d) the Supplier will submit to Hydro's Representative certificates of insurance for all insurance required to be provided by the Supplier under the Contract prior to commencing any Work, and thereafter not later than 30 days after the renewal of each insurance policy. Hydro's Representative may request, at any time:
 - (i) policy summaries that detail the extensions of coverage, sub-limits, and notable exclusions and endorsements of the insurance that have been required under the Contract; and
 - (ii) where BC Hydro reasonably believes that there is an inaccuracy in a certificate of insurance submitted by the Supplier, that the Supplier make available for inspection, but not for copying, in Vancouver, B.C., certified copies of the Supplier's insurance policies required under the Contract, excepting that the Supplier can redact the limits and the premiums from such copies,and the Supplier will provide the requested policy summaries or make the requested insurance policies available for inspection, as applicable, within 5 days of such request;
- (e) the Supplier will comply with and abide by the terms and conditions of the policies in connection with all the insurance provided by the Supplier and pay, when required, all premiums and any deductible or self-insured retention payable under the terms of those policies; and
- (f) the Supplier will immediately rectify anything which might prejudice cover under or the operation of any policies of insurance that the Supplier is required to obtain and maintain under the Contract and reinstate such policies if any such policy lapses or is terminated.

16.3 Minimum Amount No Limit on Recovery

The Supplier must maintain the types and amounts of insurance required under the Contract. However, the Supplier may choose to maintain policy limits or conditions more favorable than the insurance required herein and may also maintain types of insurance that are not specified herein.

16.4 BC Hydro's Right to Maintain

If, at any time, the Supplier fails to obtain and maintain the insurance required under the Contract, including obtaining and maintaining the required policy limits then, without limiting BC Hydro's rights in respect of any default that arises as a result of such failure, BC Hydro may, at its option, obtain and maintain such insurance or portion of such insurance. In such event, BC Hydro may withhold and set-off the cost of insurance premiums expended for such insurance from any payments due to the Supplier.

16.5 Subcontractor Insurance

The Supplier will determine the applicable insurance coverage to be obtained and maintained by each Subcontractor, provided that such insurance will be consistent with the insurance that a prudent supplier would require its subcontractors to maintain for services similar in scope and magnitude to the Services.

16.6 Deductibles

Deductibles under the policies required herein will not exceed \$100,000 without the approval of Hydro's Representative (after application for such by the Supplier). The Supplier will be responsible for all waiting periods and for the payment of all deductibles or self-insured retentions for the insurance policies required under the Contract, except to the extent that the requirement to pay such deductible or self-insured retention is caused by the errors, omissions or negligent acts of BC Hydro or any Person for whom BC Hydro is in law responsible (other than the Supplier and those engaged by or through the Supplier, including Subcontractors).

16.7 Liability of Supplier

Neither the provision of insurance by the Supplier in accordance with the Contract, nor the insolvency, bankruptcy or the failure of any insurance company to pay any claim thereunder, nor any review, approval or non-approval of any policy of insurance by BC Hydro will relieve the Supplier of any liability or obligation, or derogate from or diminish BC Hydro's rights under the Contract.

16.8 Notice of Occurrence and Claim

The Supplier will immediately notify Hydro's Representative, in writing, of any loss, claim or circumstance that has resulted in a material reduction, below the limits required under the Contract (but for clarity, not including the setting of reserves for a potential claim), of any of the policies of insurance required under the Contract, whether or not such occurrence or incident arises under the Contract, and of any other event in respect of which notice should be given by BC Hydro or the Supplier to the relevant insurers. Without limiting BC Hydro's rights under the Contract and such insurance policies, the Supplier will provide notice to the insurers of any losses, claims and circumstances in accordance with the requirements of such policies. In addition, both BC Hydro and the Supplier will provide to the other all such information and assistance as may be reasonably practicable in all the circumstances.

16.9 Claims Cooperation

With respect to any Claim against BC Hydro, whether insured or otherwise, the Supplier will cooperate with BC Hydro, BC Hydro's insurers, claims adjusters and other representatives to mitigate any impact of any investigations relating to the Claim on BC Hydro's operations, including the performance of the Services.

GC.17 INDEMNIFICATION

17.1 Supplier Indemnity

The Supplier will indemnify, save harmless and assume the defence of, BC Hydro, its directors, officers, employees, consultants and agents, including Hydro's Representative (each, an

“Indemnified Party” and, together, the **“Indemnified Parties”**) from and against all third party Claims, including Claim Costs, at any time suffered or incurred by, or brought or made against, the Indemnified Parties, or any one of them, relating to or arising out of the errors, omissions or negligent acts, willful misconduct, or fraudulent or criminal acts, or breach of the Contract, of or by the Supplier, the Supplier’s Affiliates or any Subcontractor, or those for whom such Persons may in law be responsible, except for the portion of any Claim arising from the negligence or willful misconduct of an Indemnified Party.

17.2 Conduct of Claims

Without limiting GC.17.1, if an Indemnified Party becomes a party to a Claim for which indemnity may be sought under GC.17.1, then the Supplier will conduct the defence of such Claim, at the Supplier’s sole cost and expense, and on such terms and conditions as BC Hydro may direct. Notwithstanding the preceding sentence, if the Supplier fails to commence or carry out such defence in a manner that is acceptable to BC Hydro, BC Hydro has the right, but not the obligation, upon prior written notice to the Supplier, to assume the defence of such Claim. BC Hydro may settle or resolve such Claim after consultation with the Supplier, without relieving the Supplier of its obligations under GC.17. If BC Hydro exercises its rights under this GC.17.2, then the Supplier will reimburse BC Hydro all of BC Hydro’s costs and expenses incurred as a result of such exercise.

17.3 Separate Counsel

Where the Supplier has conduct of the defence of a Claim under GC.17, each applicable Indemnified Party may retain its own counsel, at the Indemnified Party’s sole cost and expense, for the purpose of monitoring the Supplier’s conduct of the Claim.

17.4 Limitation on Settlement

Notwithstanding any other provision in the Contract, where the Supplier has conduct of the defence of a Claim, the Supplier will not conclude or agree to the settlement or resolution of such Claim without the prior written approval of Hydro’s Representative. Where the Supplier concludes or agrees to the settlement or resolution of a Claim without the prior written approval of Hydro’s Representative, the Supplier will be liable for the entire amount of such settlement or resolution, including any amount in excess of its indemnity obligations under the Contract, and will have no right to claim reimbursement, set-off or payment from BC Hydro, or any other Indemnified Party, with respect to any such excess amount.

17.5 Intellectual Property Indemnification

The following will apply with respect to any actual or alleged unauthorized disclosure, use or infringement of a third party’s patent or intellectual, proprietary or industrial property rights:

- (a) the Supplier will indemnify, hold harmless and assume the defence of, the Indemnified Parties in accordance with the provisions of GC.17, from and against all third party Claims, including Claim Costs, at any time suffered or incurred by, or brought or made against, the Indemnified Parties, or any one of them, relating to or arising out of any actual or alleged unauthorized disclosure, use or infringement of a third party’s patent or intellectual, proprietary or industrial property rights relating to or arising out of the performance of the Services, including the supply of the Material, or the actions or omissions of the Supplier, the Supplier’s Affiliates or Subcontractors, or those for whom

such Persons may in law be responsible, or otherwise asserted against the Indemnified Parties, or any one of them, and for any other consequences arising out of the breach by the Supplier of GC.24; and

- (b) without limiting the Supplier's obligations under GC.17.5(a), if any part of the Services or the Material uses any patent or intellectual, proprietary or industrial property rights or anything else which infringes the rights of others or which is alleged to infringe the rights of others, the Supplier will, at its own cost and expense, immediately:
 - (i) procure for BC Hydro a licence on the same terms as the licence described in GC. 24.1 with respect to such patent or intellectual, proprietary or industrial property rights;
 - (ii) replace or alter the infringing or allegedly infringing parts with non-infringing parts of equal or better quality so as to meet or exceed the requirements of the Contract; or
 - (iii) if permitted by BC Hydro in writing, forthwith refund the amount paid by BC Hydro to the Supplier under the Contract with respect to the infringing or allegedly infringing parts.

GC.18 LIMITATION OF LIABILITY

18.1 Limitation of Liability

Notwithstanding any other provision in the Contract, but subject to GC.18.2 and GC.18.3, the Supplier's maximum aggregate liability to the Indemnified Parties for Claims relating to or arising out of the Contract, whether or not terminated, and whether arising in contract, tort (including negligence), indemnity, by statute, as matters of strict or absolute liability, or from any other cause, will be limited to an amount equal to the greater of:

- (a) the amount specified in Section 4.0 of the Agreement, if any; and
- (b) the aggregate Contract Price for all Purchase Orders issued during the 12-month period preceding the date the Claim is made;

plus,

- (c) any insurance proceeds received or recoverable (or which would have been received or recoverable but for the default or other failure, act or omission on the part of the Supplier, the Supplier's Affiliates or any Subcontractor, or those for whom such Persons may in law be responsible) under any insurance policy obtained and maintained or required to be obtained and maintained under the Contract, up to the minimum required amount of the applicable policy under the Contract.

18.2 Consequential Damages

Neither party is liable to the other party for that other party's own:

- (a) special, contingent, exemplary, punitive, indirect, incidental or consequential loss or damage;

- (b) loss of anticipated revenue, overhead or profit;
- (c) loss of production, business or contracts;
- (d) loss by reason of shutdowns, non-operation or increased costs of operation; or
- (e) loss of business reputation or opportunities,

of any nature arising at any time or from any cause whatsoever relating to the Contract, and whether or not such losses or damages were foreseeable even if a party was advised of the possibility of them (collectively, “**Consequential Damages**”).

For certainty, nothing in this GC.18.2 will apply to, or be interpreted so as to, preclude, or otherwise limit:

- (f) recovery of liquidated damages specified as payable to BC Hydro pursuant to the Contract Documents, if any;
- (g) right of recovery of the following costs or expenses relating to, or arising out of the Supplier’s delay in the performance of the Services contrary to the provisions of the Contract or any breach of the Contract by the Supplier: (i) BC Hydro’s increased costs of construction or supply; (ii) the costs of Other Suppliers or other Persons; (iii) any administrative costs and expenses; (iv) the cost of BC Hydro’s own forces and resources; and (v) the cost of Hydro’s Representative; or
- (h) recovery of any of the types of loss or damage described in GC.18.2(a) through GC.18.2(e), if such losses or damages would be receivable or recoverable under any insurance policy obtained and maintained or required to be obtained and maintained under the Contract.

18.3 Exceptions to Limitation of Liability

Notwithstanding any other provision in the Contract, the limits on the Supplier’s liability under GC.18.1 and all other limitations of liability in favour of the Supplier specified in the Contract Documents will not apply to or limit the Supplier’s responsibility and liability for, and the Supplier will be fully liable for:

- (a) Claims and Claim Costs relating to or arising out of the recklessness or willful, fraudulent, criminal or intentional misconduct on the part of the Supplier, the Supplier’s Affiliates or any Subcontractor, or those for whom such Persons may in law be responsible;
- (b) third party Claims and Claim Costs relating to or arising out of personal injury, including death, property damage, or any actual or alleged unauthorized disclosure, use or infringement of intellectual property rights, howsoever caused (including by negligence) by the Supplier, the Supplier’s Affiliates or any Subcontractor, or those for whom such Persons may in law be responsible;
- (c) Claims and Claim Costs relating to or arising out of the breach of any confidentiality or privacy obligations under the Contract by the Supplier, the Supplier’s Affiliates or any Subcontractor, or those for whom such Persons may in law be responsible;

- (d) Claims and Claim Costs relating to or arising out of any breach of any Laws or Permits by the Supplier, the Supplier's Affiliates or any Subcontractor, or those for whom such Persons may in law be responsible; and
- (e) liquidated damages specified as payable to BC Hydro pursuant to the Contract Documents.

GC.19 WARRANTY

19.1 Warranty

The Supplier warrants that all Services, including the supply of the Material, will be performed in accordance with the Contract Documents, free from defects in material, workmanship and any design or engineering furnished by or on behalf of the Supplier.

19.2 Quality of Material

The Supplier warrants that the Material furnished by or on behalf of the Supplier for the Services will, except as expressly set out otherwise in the Contract Documents, be:

- (a) new and of recent manufacture;
- (b) first quality;
- (c) where such Material is not specified in the Contract Documents, fit for its intended purpose as reasonably inferred from the Contract Documents;
- (d) free from design defects, faults and faulty operation, including latent defects, provided that:
 - (i) if the Supplier obtains an equivalent warranty, including with respect to the Warranty Period described in GC.19.3, from the applicable third-party manufacturer of the Material; and
 - (ii) the Supplier complies with GC.19.5 to assign the manufacturer's warranty to BC Hydro,

then the Supplier will be deemed to have satisfied this GC.19.2(d);

- (e) compliant with the Contract Documents, including the specifications set out in Appendix G – Specifications; and
- (f) compliant with all Laws and Permits.

19.3 Length of Warranty

The warranty set out in GC.19.1 and GC.19.2 will expire 12 months after the earlier of the following (the "**Warranty Period**"):

- (a) BC Hydro using the Material; or
- (b) 180 days after BC Hydro takes possession and control of the Material,

except with respect to any matters for which a warranty claim has been made during such period. If any warranty claim is made pursuant to GC.19 and any part of the Services or the Material is re-performed, repaired or replaced, a new Warranty Period will commence for such re-performed, repaired or replaced Services or Material from the date such re-performed, repaired or replaced Service or Material is completed, unless such warranty work required only minor adjustment to and not replacement of a piece of Material, other material or a component.

19.4 Performance Guarantees

The Supplier will achieve all performance requirements as required under the Contract, including as set out in Appendix G – Specifications.

19.5 Assignment

Without limiting the generalities of GC.19.1, GC.19.2 or GC.19.3 the Supplier will assign to BC Hydro the guarantees and warranties (such that they may be enforceable directly by BC Hydro) provided by Subcontractors and other Persons performing services for or on behalf of the Supplier with respect to the Services, including the supply of the Material.

19.6 Defects

If defects, including latent defects, are discovered in the Services or the Material, then the Supplier will correct the defect or replace the Material promptly upon written notification from Hydro's Representative. The Supplier will be responsible for all costs associated with such corrections and replacements, including all costs incurred by BC Hydro in relation to the corrections and replacements (such as the costs to retain other contractors, costs of materials and equipment, administrative and supervisory costs and the cost of BC Hydro's own forces), and the Supplier will indemnify and save harmless the Indemnified Parties from any resulting damages. Other work removed or damaged due to such defects, or the corrections or replacements or making good such defects, will also be made good by the Supplier without additional payment by or cost to BC Hydro.

19.7 Failure to Remedy Defects

If the Supplier fails to remedy any defect or damage within a reasonable time, then a date may be fixed by Hydro's Representative on or by which the defect or damage is to be remedied. The Supplier will be given reasonable written notice of this date. If the Supplier fails to remedy the defect or damage by such date and the remedial work was to be executed at the cost of the Supplier under GC.19, then BC Hydro may, at its option:

- (a) carry out the work using BC Hydro's own forces or other suppliers, in a reasonable manner and at the Supplier's sole cost and risk. The Supplier will pay to BC Hydro, within 30 days after receipt of an invoice, the costs reasonably incurred by BC Hydro in remedying the defect or damage;
- (b) require Hydro's Representative to determine a reasonable reduction in the Contract Price; or
- (c) if the defect or damage deprives BC Hydro of substantially the whole benefit of the Services or the Material or both or any major part of the Services or the Material or both, terminate the Contract as a whole, or in respect of such major part which cannot be put

to the intended use. Without prejudice to any of its other rights and remedies under the Contract or otherwise, BC Hydro will then be entitled to recover all sums paid for the Services and the Material or for such part(s) (as the case may be), plus financing costs and the cost of dismantling such Services and Material or part(s) and returning the Material to the Supplier.

19.8 Removal of Defective Services

If the defect or damage cannot be remedied expeditiously and Hydro's Representative gives its written consent, then the Supplier may remove for the purposes of repair such items as are defective or damaged. This consent may require the Supplier to increase the amount of the performance bond, if any, by the full replacement cost of these items, or to provide other appropriate security.

19.9 BC Hydro Correction in Emergency

In the event of an emergency, BC Hydro may correct any defect or damage and the Supplier will promptly reimburse BC Hydro for all costs reasonably incurred by BC Hydro to correct the defect or damage.

GC.20 COMPLIANCE WITH LAWS AND BC HYDRO'S POLICIES AND PROCEDURES

20.1 Compliance with Laws

The Supplier, its employees and agents, and the Subcontractors, and their employees and agents, will be fully knowledgeable of and comply with all Laws.

20.2 Compliance with BC Hydro's Policies and Procedures

The Supplier will, and will cause its employees, agents and Subcontractors to, comply with the attached Appendix C – BC Hydro's Policies and Procedures, including all documents and other material referred to in Appendix C – BC Hydro's Policies and Procedures, in performing the Services, including in supplying the Material, or any part of the Services.

GC.21 PRIVACY

21.1 Compliance with FOIPPA

BC Hydro is subject to FOIPPA and, accordingly, in order for BC Hydro to comply with the requirements of FOIPPA, the Supplier will, prior to or at the same time as providing BC Hydro or Hydro's Representative with copies of, or access to copies of, any records containing Personal Information of the Supplier's or any Subcontractor's employees, obtain the written authorization, in a form prescribed by BC Hydro, of each affected individual to the indirect collection, retention, use and, if required by BC Hydro, disclosure of his or her Personal Information by BC Hydro. Upon request, at any time, from Hydro's Representative, the Supplier will provide, within five days of such request, evidence satisfactory to Hydro's Representative, acting reasonably, that such authorization has been obtained.

21.2 Default

The Supplier's failure to comply with its obligations under GC.21 will be deemed to be a default under the Contract to which the provisions of GC.9.1 will apply.

GC.22 TAXES AND DUTIES

22.1 Tax Included in Purchase Order Price

The Purchase Order Price (and any part of the Purchase Order Price) paid or payable by BC Hydro to the Supplier includes all applicable taxes, duties, levies and charges (excluding only GST, and PST if applicable) payable by or assessed on any of the Supplier, Subcontractors, or their employees or other Persons engaged by or through them by any and all Governmental Authorities in connection with the Services and includes all customs duties with respect to all imported equipment and materials.

22.2 GST and PST

GST, and PST where applicable, will be identified as a separate line item on all invoices, and will be payable by BC Hydro to the Supplier as a separate item in addition to the Purchase Order Price. GST and PST will be calculated on gross invoice value (inclusive of any holdbacks).

22.3 Input Tax Credits

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

22.4 PST Exemption

Where applicable, BC Hydro will provide the Supplier with the required certificate to support a PST exemption.

22.5 Payment of Taxes

Except as expressly set out otherwise in the Contract Documents, the Supplier is solely responsible for and will pay the applicable PST, GST and all other taxes, duties, levies and charges payable by or assessed on any of the Supplier, Subcontractors, or their employees or other Persons engaged by or through them by any Governmental Authorities in connection with the Services ("**Supplier Taxes**"). The Supplier will be solely responsible for and pay all customs duties with respect to all imported Material regardless of whether such Material is held in the name of the Supplier, a Subcontractor or BC Hydro at the time of import ("**Supplier Duties**"). For clarity, the foregoing does not derogate from the Supplier's right to collect any applicable GST or PST from BC Hydro pursuant to GC.22.2.

22.6 GST Flow-Through

Where the Supplier is a non-resident of Canada, and is not registered for GST and wishes to recover from BC Hydro GST the Supplier has paid as the importer of record on the importation

of goods supplied under this Contract, the Supplier will provide to BC Hydro such evidence satisfactory to the Minister of National Revenue of Canada as may be necessary to establish that the GST has been paid on importation of goods supplied under this Contract.

22.7 Tax Indemnity

The Supplier will indemnify and hold harmless the Indemnified Parties, or any one of them, from and against any liability and costs incurred by them in respect of any Supplier Taxes or Supplier Duties, or any other related charges, including any related interest, fines, or penalties and any related reporting obligations and costs incurred as a consequence of such. The Supplier will be registered with all Governmental Authorities in accordance with Law and will comply with all of its obligations to collect and remit any such Supplier Taxes and Supplier Duties.

Notwithstanding any other provision in the Contract, BC Hydro may, in its sole discretion, withhold from any monies owed to the Supplier, whether such monies are owed under and pursuant to the Contract or otherwise, such amounts as are payable by the Supplier in respect of Supplier Taxes or Supplier Duties for which BC Hydro becomes or may become liable.

22.8 Tax Exemptions and Refunds

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

GC.23 SUPPLIER'S REPRESENTATIONS AND WARRANTIES

23.1 Supplier's Corporate Representations and Warranties

The Supplier hereby covenants with, and represents and warrants to BC Hydro that, as of the Effective Date, the following representations and warranties are true:

- (a) that unless otherwise disclosed to BC Hydro in writing before the Effective Date and agreed by BC Hydro in writing, the Supplier's performance of the Services will not create any conflict of interest in relation to any services provided by the Supplier to any other party prior to or subsequent to the Expiry Date;
- (b) it is an entity duly created and organized, validly subsisting and in good standing under the Laws of the jurisdiction of its creation and is validly subsisting and in good standing under the Laws of the jurisdiction in which the Services will be performed, and, if different, where the Delivery Point(s) is located, and has all requisite power and authority to execute, deliver and perform its obligations under the Contract; and
- (c) the Contract has been duly authorized, executed, and delivered by the Supplier and constitutes a legal, valid, and binding obligation of the Supplier, enforceable against the Supplier in accordance with its terms.

23.2 Supplier's Performance Representations and Warranties

The Supplier acknowledges that BC Hydro is relying on the Supplier's skill, knowledge and expertise in performing the Services in accordance with the Contract Documents. The Supplier

hereby represents and warrants, with respect to the Services performed by the Supplier and the Subcontractors, that:

- (a) the Supplier and the Subcontractors have the necessary qualified personnel, with the skills and expertise, to perform and to complete the Services and are experienced, ready and willing to perform the Services in accordance with the Contract Documents; and
- (b) the Supplier has, or will obtain, all required permits, licences and authorizations necessary to carry on its business and to be obtained by it to perform the Services.

23.3 Supplier's Performance Representations and Warranties

The Supplier represents and warrants that, to the best of its knowledge, none of the goods, materials and/or equipment supplied to BC Hydro, or used in the performance of the Supplier's obligations, under the Contract have been produced by means involving forced labour or the exploitation of children, and that it adopts responsible business practices and uses reasonable efforts to ensure the foregoing. Upon request, the Supplier will provide BC Hydro with reasonable evidence of its related due diligence measures. The Supplier will also promptly notify BC Hydro of any suspected or actual instances of forced labour or child labour within its supply chains as relevant to the Contract.

GC.24 INTELLECTUAL PROPERTY

24.1 Grant of Licence

The Supplier hereby grants to BC Hydro an irrevocable, perpetual, nonexclusive, fee-free, royalty-free, assignable license to use, practice, produce, reproduce, or publish, and to permit others on behalf of BC Hydro to use, practice, produce, reproduce, or publish, any intellectual property rights owned by, controlled by, licensed to or used by the Supplier to the extent such intellectual property rights are incorporated into the Submittals, the Services or the Material, for the purpose of and to the extent necessary for:

- (a) the operation, maintenance, repair, refurbishment or alteration of the Services or the Material or any part of the Services or the Material; and
- (b) in the circumstances where the Services are incomplete due to the default of the Supplier, the completion of the Services, including the completion of the Material; and
- (c) any design, installation, operation, maintenance, repair, refurbishment or alteration of work, equipment, products or materials that are adjacent to or connected to the Services or the Material, but solely as required for establishing interfaces with the Supplier's Services or the Material; and
- (d) any BC Hydro procurement process for any of the above (BC Hydro having the right to publish the Submittals as part of the relevant procurement documents).

24.2 Third Party Intellectual Property

The Supplier will make each third party with whom it deals and who may be affected by GC.24.1 aware of GC.24.1 and will cause each such third party to comply with such provision so as to

enable the Supplier to fulfill its obligations under such provision, prior to or upon entering into any contract or agreement with such third party.

24.3 Royalty and Patent Fees

The Supplier will be solely responsible for and will pay all royalties, patent fees, license fees and other charges payable on the items or things furnished by or on behalf of the Supplier in connection with the Services.

GC.25 MISCELLANEOUS

25.1 International Sale of Goods

The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods does not and will not apply to the Contract.

25.2 Duty to Mitigate

In all cases where the Supplier is entitled to receive from BC Hydro any additional compensation, damages, or extensions of time, the Supplier will use both all commercially reasonable efforts and all due diligence to mitigate and reduce the amount required under the Contract to be paid by BC Hydro to the Supplier or the amount of the extension of the time for the performance of the Services. This obligation will be taken into account in the determination of the Supplier's entitlement to an extension of time for the performance of the Services and reimbursement of costs or both.

In all cases where BC Hydro is entitled to receive from the Supplier any compensation, damages or other relief, but not in any other case, BC Hydro will use commercially reasonable efforts to mitigate and reduce the amount required to be paid by the Supplier to BC Hydro under the Contract, provided that such obligation will not require BC Hydro to:

- (a) take any action which is contrary to the public interest, as determined by BC Hydro in its discretion;
- (b) take any action which is contrary to BC Hydro's interest as an electric utility;
- (c) undertake any mitigation measure that might be available arising out of its status as a statutory body, but which measure would not normally be available to a private commercial party; or
- (d) alter the amount of any deductions it is entitled to make in accordance with the Contract.

25.3 Change of Law

If any Law that is directly applicable to the design or the manner of the performance of the Services is amended after the Effective Date and before the Expiry Date, and such amendment unavoidably results in a material increase in the costs incurred by the Supplier to perform the Services, including any increase in Supplier Duties or Supplier Taxes, then such amendment will entitle the Supplier to claim a Change pursuant to the provisions of GC.7.4, except that the Supplier's notice obligation under GC.7.4(a)(i) will be to give written notice of such claim to Hydro's Representative promptly upon the Supplier becoming aware of such amendment, or, in

any event, promptly after the date when the Supplier should reasonably have become aware of such amendment. In the event of any decrease in Supplier Taxes or Supplier Duties after the Effective Date and before the Expiry Date, BC Hydro will be entitled to the benefit of such decrease and may adjust the Contract Price and any amount payable to the Supplier accordingly.

25.4 Severability

Each provision of the Contract is severable. If any provision of the Contract is to any extent invalid or unenforceable, the remainder of the Contract will not be affected, and each remaining provision of the Contract will be separately valid and will be enforceable.

25.5 Joint and Several Liability

Where the Supplier is a joint venture, partnership or consortium:

- (a) each member of such entity agrees to be jointly and severally liable for the obligations of the Supplier; and
- (b) the Supplier will not change its composition or legal status without the prior written consent of BC Hydro.

25.6 Independent Contractor

The relationship between BC Hydro and the Supplier under the Contract is that of the Supplier being an independent contractor, notwithstanding any other provision in the Contract or anything arising out of the actions of the parties. BC Hydro and the Supplier expressly deny that it is their intention to create any partnership, joint venture, agency or other relationship. Unless otherwise agreed in writing, the Supplier is not the agent of BC Hydro in any capacity whatsoever under the Contract, and has no authority to act as an agent of BC Hydro.

25.7 Third Persons

Except as expressly set out otherwise in the Contract Documents, nothing in the Contract, expressed or implied, is intended or will be construed to confer upon or to give any Person which is not a party to the Contract any rights or remedies under or by reason of the Contract.

25.8 Public Communications

The Supplier acknowledges that BC Hydro will not provide any endorsement of the Supplier or the Material supplied or Services performed pursuant to the Contract. The Supplier will not erect any sign or advertising, use any BC Hydro trademark, logo or device in any sign or advertisement or make any public announcement or disclosure, whether for publication in the press, radio, television, or any other medium, regarding the existence of the Contract, the Material or the Services without the prior written consent of BC Hydro, which consent may be arbitrarily withheld.

25.9 Attornment

Subject to GC.12, for the purposes of any legal actions or proceedings brought by a party against the other party, the parties hereby irrevocably accept and submit to the exclusive

jurisdiction of the courts of the Province of British Columbia and acknowledge such courts' competence and the convenience and propriety of the venue and agree to be bound by any judgment of such courts and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

25.10 Rights and Remedies Cumulative

All rights and remedies under the Contract (other than those which are expressly specified in the Contract Documents as exclusive rights and remedies) are cumulative and are in addition to and not in substitution for any other rights or remedies available under the Contract or Law or at equity.

25.11 Survival

All representations and warranties of the Supplier to BC Hydro and all provisions of:

- (a) Section 13.0 of the Agreement;
- (b) GC.14;
- (c) GC.15;
- (d) GC.17, and each other provision of the Contract providing for indemnification of a party by the other party;
- (e) GC.18;
- (f) GC.19;
- (g) GC.24;
- (h) GC.25, with the exception of GC.25.3, which will not survive the termination, suspension, cancellation or expiration of the Contract; and
- (i) each other provision of the Contract which either expressly in accordance with its terms or by its nature survives the termination, suspension, cancellation, completion or expiration of the Contract,

including each other provision necessary for the interpretation or enforcement of such provisions, will continue as valid and enforceable obligations of the parties notwithstanding any termination, suspension, cancellation, completion or expiration of the Contract.

APPENDIX B – SUPPLEMENTARY GENERAL CONDITIONS

SGC.1 INTELLECTUAL PROPERTY

1.1 Ownership

As between BC Hydro and the Supplier:

- (a) BC Hydro will be and remain the sole owner of:
- (i) all intellectual property in existence on the Effective Date that is owned by BC Hydro or an Affiliate of BC Hydro or used by BC Hydro or an Affiliate of BC Hydro under licence from any Person other than the Supplier;
 - (ii) intellectual property discovered, invented, created or acquired by BC Hydro, any Affiliate of BC Hydro, the Supplier, any Subcontractor, or any of their respective employees and other personnel on or after the Effective Date (excluding intellectual property under SGC.1.1(b)(ii));
 - (iii) the Material (subject to GC.4.8) and the Submittals, including all intellectual property rights therein (excluding any Embedded Supplier IP, as defined in SGC.1.3); and
 - (iv) any and all modifications to any of the foregoing, or to the Embedded Supplier IP, made by BC Hydro, the Supplier or any Subcontractor, either alone or jointly with each other and any other Person, including all intellectual property rights in such modifications (collectively, the “**BCH Modifications**”);
- (collectively, the “**BC Hydro Intellectual Property**”); and
- (b) the Supplier will be and remain the sole owner of:
- (i) intellectual property in existence on the Effective Date that is owned by the Supplier or used by the Supplier under license from any Person, including any Affiliate of the Supplier, any Subcontractor or any other Person, but excluding BC Hydro and its Affiliates;
 - (ii) intellectual property discovered, invented, created or acquired by the Supplier or any Subcontractor on or after the Effective Date that is not a deliverable of the Services under the Contract; and
 - (iii) any and all modifications to any of the foregoing made by the Supplier or any Subcontractor, other than as a deliverable of the Services under the Contract, including all Intellectual Property Rights in such modifications;
- (collectively, the “**Supplier Intellectual Property**”).

For greater clarity, “modifications” include any changes, alterations, enhancements, improvements, customizations and derivative works.

For further clarity, BC Hydro's rights as owner of the BC Hydro Intellectual Property include, without limitation, the right to share such BC Hydro Intellectual Property with third parties for the purpose of procuring services similar to the Services from such third parties.

1.2 Assignment and Waiver by Supplier

- (a) The Supplier hereby irrevocably and unconditionally:
- (i) assigns, and agrees to assign, to BC Hydro all of the Supplier's worldwide right, title and interest in and to anything stated to be owned by BC Hydro pursuant to SGC.1.1(a), free and clear of all liens, claims, charges or encumbrances; and
 - (ii) waives, and agrees to waive, in favour of BC Hydro and its successors, assigns and licensees any and all non-transferable rights (including all moral rights and rights of authorship and attribution) throughout the world in, to or associated with each item stated to be owned by BC Hydro pursuant to SGC.1.1(a).

The Supplier will execute and deliver to BC Hydro, upon request, all transfers, assignments, documents and instruments as may be necessary to give effect to the foregoing assignment and will otherwise cooperate with BC Hydro to give effect to, record and register BC Hydro's ownership as set out in SGC.1.1(a).

- (b) The Supplier will be responsible for obtaining from all Supplier personnel, and from its Subcontractors and licensors and their respective personnel such transfers, and such waivers of moral rights and other non-transferrable rights, as may be necessary for the Supplier to carry out its obligations pursuant to SGC.1.2(a) and to give effect to SGC.1.1(a).

1.3 Embedded IP

BC Hydro's ownership of the Material and the Submittals, including the intellectual property rights therein, does not include any Supplier Intellectual Property that is embedded, incorporated or included in the Material or the Submittals (collectively, "**Embedded Supplier IP**"). The ownership of Embedded Supplier IP will at all times remain with the Supplier. Supplier hereby grants to BC Hydro a license in respect of such Embedded Supplier IP as set out in GC.24.

APPENDIX C – BC HYDRO’S POLICIES AND PROCEDURES

The following are BC Hydro’s Policies and Procedures which may be amended at any time and from time to time.

The Supplier is responsible to obtain and to comply with the most current form of such policies and procedures.

1. Contractor standards for ethical conduct
<https://www.bchydro.com/content/dam/BCHydro/customer-portal/documents/corporate/accountability-reports/openness-accountability/bch-contract-standards-for-ethical-conduct.pdf>
2. Contractor Safety Standards (Life Saving Rules, Safety Practice Regulations and Occupational Safety and Health Standards)
<https://www.bchydro.com/work-with-us/suppliers/doing-business-with-bchydro/contractor-safety.html>
3. BC Hydro Contractor Alcohol and Drug Policy Minimum Requirements & Testing Implementation Information Sheet For Contractors
<https://www.bchydro.com/content/dam/BCHydro/customer-portal/documents/corporate/safety/SafeHub-1301-alcohol-drug-policy-requirements.pdf>
<https://www.bchydro.com/content/dam/BCHydro/customer-portal/documents/corporate/safety/SafeHub-1302-alcohol-drug-testing-info-sheet.pdf>

APPENDIX D – SCOPE OF SERVICES

[Note to Proponents: This Appendix will be completed prior to contract award based on Attachment A – Scope of Services in the RFP document and the successful proponent's proposal, as such may be negotiated between the parties.]

APPENDIX E – SCHEDULE OF QUANTITIES AND PRICES

[Note to Proponents: This Appendix will be completed based on responses set out in Schedule 3 – Schedule of Prices in the RFP response]

Price Escalation Mechanism:

Prices will stay fixed in the first twelve (12) months of the Contract.

After the first twelve (12) months, any price revisions proposed by the Supplier will be subject to BC Hydro's agreement and may not exceed:

1. the national annual average Consumer Price Index published by Statistics Canada;

OR

2. five percent (5%);

whichever is lower.

APPENDIX F – SUPPLY SCHEDULE

[Note to Proponents: This Appendix will be completed during commercial discussions]

In this Appendix F – Supply Schedule:

“**Lead Time**” for the Material will be as set out in the table below.

Material	Lead Time

Logistics

Shipping and logistics to deliver as per GC4.5 to Powertech Labs 12388-88th Avenue, Surrey, BC V3W 7R7 or another BC Hydro facility BC Hydro may designate from time to time under a Purchase Order (the “**Delivery Point**”).

APPENDIX G – SPECIFICATIONS

Refer to Appendix D – Scope of Services and individual Purchase Orders.

APPENDIX H – QUALITY REQUIREMENTS

Refer to Appendix D – Scope of Services and individual Purchase Orders.

APPENDIX I – INDIGENOUS ENGAGEMENT

I.1 Definitions

In this Appendix, unless the context otherwise requires:

“**Indigenous**” means First Nation, Metis or Inuit;

“**Statement of Indigenous Principles**” means the statement of BC Hydro’s commitments to First Nations and Indigenous individuals, a copy of which is available at <https://www.bchydro.com/content/dam/BCHydro/customer-portal/documents/corporate/community/indigenous-principles-2017-update.pdf> or by contacting Hydro’s Representative.

I.2 Opportunities and Benefits to Indigenous People

BC Hydro is committed to respecting and supporting the interests of First Nations and Indigenous individuals in British Columbia. BC Hydro has its Statement of Indigenous Principles, which Supplier hereby acknowledges. Supplier will support BC Hydro in the fulfilment of the Statement of Indigenous Principles by complying with all express obligations contained in the Contract regarding First Nations and Indigenous individuals. Where no such express obligations are included in the Contract, Supplier is nonetheless strongly encouraged to, wherever practicable, provide meaningful opportunities and benefits to First Nations and Indigenous individuals in British Columbia (particularly for those in whose traditional territory the Services are performed).

I.3 Indigenous Awareness Course

Supplier is encouraged to have its managers, supervisors and key front-line staff complete BC Hydro’s 30-minute web-based Indigenous Awareness Course “INDIG-101: Awareness of our Principles”. The intent of this course is to: 1) inform suppliers about BC Hydro’s approach and business reasons for advancing reconciliation with Indigenous people; 2) inform suppliers of the expectation that they and their personnel act in ways that are aligned with BC Hydro’s Statement of Indigenous Principles and contribute to reconciliation; and 3) create understanding of the role suppliers play in advancing BC Hydro’s approach while delivering work for BC Hydro. Quiz results are not recorded or shared with BC Hydro.

The INDIG-101 course has been uploaded to UDUTU, the contractor training management system.

- (a) Please access UDUTU here:
<https://lms.udutu.ca/LMSPortal/Account/LogOn?OrgCode=BCH>
- (b) Login or register as a learner.
- (c) Navigate to INDIG-101 under your Training Activities.
- (d) If you have any issues, please contact Contractortraining@bchydro.com.

APPENDIX J – DRAWINGS

Refer to Appendix D – Scope of Services and individual Purchase Orders.