

# JOHN HART GENERATING STATION REPLACEMENT PROJECT

## *Schedule 14*

### *Changes*

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CHANGES  
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## SCHEDULE 14

### CHANGES

#### 1. CHANGES

##### 1.1 Changes Required by BC Hydro

BC Hydro may at any time during the Term, without invalidating this Agreement, require Changes in accordance with this Schedule 14 *[Changes]*. Except to the extent that a Change Certificate expressly requires otherwise, Project Co will implement a Change in accordance with all the terms of this Agreement, including Schedule 5 *[Design and Construction Protocols]*, Schedule 6 *[Design and Construction and Specifications]* and Schedule 7 *[Services]*.

Except as expressly specified herein, the provisions of Schedule 2 *[Review Procedure, Consent Procedure and Other Submittals]* shall not apply to BC Hydro's review or consideration of any materials required to be submitted pursuant to this Schedule 14 *[Changes]*.

##### 1.2 No Entitlement to Perform a Change

Without prejudice to Project Co's rights under this Agreement, including Section 8.3 *[Project Co's Entitlements Upon Occurrence of a Compensation Event]*, BC Hydro may, at any time after giving notice to Project Co, perform, or engage any person to perform, any work on the Site or in the Facility that is not included in Project Co's obligations under this Agreement, and none of Project Co, the Project Contractors or the Sub-Contractors will have any right or entitlement to perform any such work. Project Co may submit a proposal to BC Hydro for the performance of such work, but nothing in this Agreement will obligate BC Hydro to consider or accept such proposal.

##### 1.3 Preliminary Change Instruction

BC Hydro may at any time during the Term issue to Project Co an instruction (a "**Preliminary Change Instruction**") describing a potential Facility Change or Services Change that BC Hydro is considering. A Preliminary Change Instruction will include sufficient description of the contemplated Change to permit Project Co to prepare a Change Report.

##### 1.4 Restrictions on Changes

BC Hydro will not at any time during the Term require, and Project Co may refuse to implement, a Change, Innovation Proposal or Minor Works which:

- (a) would be contrary to Law;
- (b) would render the insurance policies required under this Agreement void or voidable, unless BC Hydro agrees to provide replacement security satisfactory to Project Co acting reasonably;

- (c) would cause the revocation of any Permit required by Project Co to perform its obligations under this Agreement, where such Permit would not, using reasonable efforts, be capable of amendment or renewal;
- (d) would require a new Permit for Project Co to perform its obligations under this Agreement, which Permit would not, using reasonable efforts by Project Co or BC Hydro, as applicable, be obtainable;
- (e) would cause Project Co to be unable to obtain a Permit required by Project Co to perform its obligations under this Agreement, provided that such Permit was previously required but at the time of the Preliminary Change Instruction had not been obtained and such Permit would not, using reasonable efforts by Project Co or BC Hydro, as applicable, be obtainable;
- (f) would materially and adversely affect the risk allocation and payment regime under this Agreement with respect to Design, Construction or Services; or
- (g) would, if implemented, result in a change to the essential nature of the Facility.

If Project Co, acting reasonably, determines that a Change is unacceptable because it contravenes one or more of the above, then Project Co will promptly give notice to BC Hydro of its objection, with written reasons. If BC Hydro disagrees then it may deliver a Dispute Notice to Project Co, and the parties will cooperate to have the issue resolved in a timely manner pursuant to the Dispute Resolution Procedure.

## 1.5 Delivery of Change Report

- (a) Subject to Section 1.4 [*Restrictions on Changes*] of this Schedule:
  - (1) as soon as practicable and in any event, to the extent reasonably possible, within 15 Business Days after receipt of a Preliminary Change Instruction, or such other period as the parties agree acting reasonably, Project Co will, at its cost, prepare and deliver to BC Hydro a Change Report, signed by Project Co's Representative, for the contemplated Change described in the Preliminary Change Instruction; or
  - (2) notwithstanding Section 1.5(a)(1) [Delivery of Change Report] of this Schedule, if the Net Direct Change Value of the contemplated Change (comprised of a Facility Change or a Services Change or both) is likely to be more than [REDACTED], Index Linked, then Project Co may, at its election within 5 Business Days after receipt of the Preliminary Change Instruction for such contemplated Change, give notice to BC Hydro that it intends to first prepare and deliver preliminary estimates of the steps and costs required to prepare the Change Report and the Net Direct Change Value of the contemplated Change (the "**Preliminary Estimate**"), in which case:

- (A) within 15 Business Days after receipt of the Preliminary Change Instruction, or such other period as the parties agree acting reasonably, Project Co will, at its cost, prepare and deliver to BC Hydro:
- (i) a detailed outline of the steps reasonably required to prepare the Change Report;
  - (ii) a reasonable estimate of costs, if any, that Project Co would incur to retain third parties (such as design consultants and construction managers) required to prepare the Change Report, including any incremental costs incurred under management service contracts held by Project Co, but excluding the costs of Project Co's own staff and employees, and the staff and employees of a Project Contractor, or any of their Affiliates who are normally part of the general management, administration, and supervision of the Design, Construction or Services (the **"Change Report Preparation Costs"**);
  - (iii) a preliminary estimate of the Net Direct Change Value of the main elements of the contemplated Change;
  - (iv) a preliminary implementation schedule and work plan for the implementation of the contemplated Change; and
  - (v) a description of the impact of the contemplated Change on the Facility (or the Existing Facility) during implementation or in the use of the Facility (or the Existing Facility),

in sufficient detail and accuracy to permit BC Hydro to make an informed decision as to whether to proceed with the contemplated Change Report; and

- (B) Within 10 Business Days, or such other period as the parties agree acting reasonably, after receipt of a Preliminary Estimate, or at any time if Project Co fails to comply with the time requirements set out in this Section 1.5, BC Hydro may: (i) give notice to Project Co to proceed with preparation of the Change Report for the contemplated Change and Project Co will prepare and deliver the Change Report as soon as practicable and in any event, to the extent reasonably possible, within 15 Business Days after receipt of such notice, or such other period as the parties agree acting reasonably; (ii) withdraw the Preliminary Change Instruction; or (iii) dispute the reasonableness of the Preliminary Estimate, or any part thereof, in accordance with the Dispute Resolution Procedure.

- (3) If, after delivery of a Preliminary Estimate in accordance with Section 1.5(a)(2)(A) of this Schedule, Project Co prepares a Change Report in accordance with Section 1.5(a)(2)(B)(i) [Delivery of Change Report] of this Schedule, and BC Hydro elects not to proceed with the contemplated Change, then BC Hydro will pay to Project Co the reasonable and substantiated Change Report Preparation Costs, if any, incurred by Project Co to prepare the applicable Change Report.

## **1.6 Change Report Contents**

A Change Report will include:

- (a) if and to the extent a contemplated Change is a Facility Change:
  - (1) a description of the scope of the contemplated Change with respect to Design and Construction;
  - (2) a comparison of the scope of Design and Construction as a result of the contemplated Change as compared to the scope prior to the contemplated Change;
  - (3) subject to Section 1.14 [*Effect on the Project Schedule or Delays to Services*] of this Schedule, a description of any adjustments to the Project Schedule, including to the Target Commercial Operation Date for any Generating Unit, the Target Service Commencement Date, the Target Bypass System Completion Date or the Target Total Completion Date, which Project Co will require as a result of the implementation of the contemplated Change (including details of any corresponding adjustments required by any Project Contractor or any Sub-Contractors) and any compensation required under Section 1.11(b) [*Valuation of and Payment for Changes*] of this Schedule; and
  - (4) a description of any impact of the contemplated Change on the performance of the Services;
- (b) if and to the extent a contemplated Change is a Services Change:
  - (1) a description of the scope of the contemplated Change with respect to Services; and
  - (2) a comparison of the scope of Services as a result of the contemplated Change as compared to the scope prior to the Change; and
- (c) for all contemplated Changes (in addition to the requirements of Section 1.6(a) or 1.6(b) of this Schedule, as applicable):
  - (1) an estimate of the Net Direct Change Value of the contemplated Change, shown separately if requested by BC Hydro, and supported by quotations from the applicable Project Contractor and Sub-Contractors, together with the proposed

mark up on the Net Direct Change Value, calculated in accordance with Section 1.11(a)(2)(B) [Valuation of and Payment for Changes] of this Schedule.

- (2) any proposal(s) as to how the contemplated Change could be accomplished at no net cost;
- (3) a description of any changes to the Senior Financing Agreements that would be required to reflect a change in the risk profile of the Project arising from the contemplated Change;
- (4) a description of any changes to the Availability Payments that are required to account for the Net Direct Change Value of the contemplated Change;
- (5) identification of any amounts payable by BC Hydro to Project Co, if any, other than the Availability Payments;
- (6) Project Co's proposal as to how any increased costs to Project Co resulting from the contemplated Change might be funded;
- (7) the value of the loss or reduction of benefits resulting from the contemplated Change;
- (8) a description of any additional consents or approvals required, including amendments, if any, of any Permits required to implement the contemplated Change;
- (9) a description of any impact on the obligations of Project Co under any Material Contracts;
- (10) a description of the extent to which the contemplated Change would interfere with Project Co's ability to comply with any of its obligations under this Agreement, the Material Contracts, any Sub-Contracts and any Permits;
- (11) the name of the Sub-Contractor(s) (if any) which Project Co intends to engage for the purposes of implementing the contemplated Change, together with a description of the qualifications of any such Sub-Contractor(s) so as to demonstrate the ability of such Sub-Contractor(s) to implement the contemplated Change;
- (12) a description of any material impacts on, or adjustments to, the Performance Guarantees necessitated by the implementation of the contemplated Change;
- (13) a description of any further effects (including benefits and impairments) which, Project Co foresees as being likely to result from the contemplated Change;
- (14) a description of any actions that would be reasonably required by BC Hydro to implement the contemplated Change; and

- (15) a description of the steps Project Co will take to implement the contemplated Change, in such detail as is reasonable and appropriate in all the circumstances.

## **1.7 Justification and Supporting Documentation for Contemplated Change Estimates**

The Net Direct Change Value estimate included in a Change Report will include sufficient detail to allow evaluation by BC Hydro and will include such supporting information and justification as is necessary to demonstrate that:

- (a) Project Co has complied with the applicable requirements of Section 1.13 [*Competitive Procurement*] of this Schedule;
- (b) Project Co and its Project Contractors and Sub-Contractors have calculated the Net Direct Change Value in accordance with the requirements of this Agreement and have not included any other costs, expenses, fees, charges, margins or mark-ups;
- (c) the full amount of any and all expenditures that have been reduced or avoided (including any Capital Expenditure) have been fully taken into account;
- (d) Project Co has mitigated or will mitigate the impact of the contemplated Change, including on the Project Schedule, the performance of the Services and the direct costs to be incurred; and
- (e) the rates and charges included in the calculation of the Net Direct Change Value shall be market rates, prevailing at the time of the implementation of the Change, paid between arm's length contracting parties.

## **1.8 Agreement on a Change**

Following receipt by BC Hydro of a Change Report prepared in accordance with Section 1.6 [*Change Report Contents*] of this Schedule:

- (a) as soon as practicable, and in any event within twenty (20) Business Days after BC Hydro receives a Change Report, or such other period as the parties agree acting reasonably, BC Hydro will deliver to Project Co any requests for clarifications or amendments, and the parties' Representatives will meet and use all reasonable efforts to agree to the Change Report, including the costs, payments (including payment of the Net Direct Change Value and adjustments to Availability Payments, if any) and other information contained in the Change Report; and
- (b) where BC Hydro and Project Co agree to the Change Report, as the same may be clarified, modified or amended, BC Hydro will issue a Change Certificate in accordance with Section 1.9 [*Change Certificate*] of this Schedule.

BC Hydro may, in writing, modify a Preliminary Change Instruction at any time prior to the parties reaching an agreement on the Change Report for any matter relating to the Change Report or arising from the discussions in relation thereto, in which case Project Co will, as soon as practicable and in any



event not more than twenty (20) Business Days after receipt of such modification, or such other period as the parties agree acting reasonably, notify BC Hydro of any consequential changes to the Change Report.

## **1.9 Change Certificate**

- (a) A Change will come into effect by BC Hydro issuing to Project Co a Change Certificate signed by BC Hydro's Representative, provided that:
  - (1) if the parties have agreed on the Change Report, without amendment, the Change Certificate will come into effect upon BC Hydro's Representative signing and issuing the Change Certificate to Project Co; or
  - (2) subject to Section 1.10 *[Disagreement on Change Report]* of this Schedule, if the Change Report requires amendment the Change Certificate will come into effect upon BC Hydro's Representative and Project Co's Representative signing the Change Certificate.
- (b) Subject to Section 1.16 *[Change Directive]* of this Schedule and Section 1.4 *[Implementation]* of Appendix 14A *[Design Development Change Procedure]*, Project Co will not proceed with a Change prior to receiving a signed Change Certificate from BC Hydro.
- (c) A Change Certificate issued in accordance with this Section 1.9 will be binding upon BC Hydro and Project Co.
- (d) Subject to Section 1.4 *[Restrictions on Changes]* and Section 1.10(b) *[Disagreement on Change Report]* of this Schedule, upon receipt of a Change Certificate Project Co will implement the Change, without prejudice to Project Co's right to refer any question of valuation of the Change to the Dispute Resolution Procedure.
- (e) BC Hydro shall deliver a copy of each issued Change Certificate to the Independent Certifier.

## **1.10 Disagreement on Change Report**

If the parties do not agree on a Change Report, then BC Hydro may:

- (a) except in connection with a Change required pursuant to Section 1.15 *[Changes in Other Circumstances]* of this Schedule, elect not to proceed with the Change described in the Preliminary Change Instruction; or
- (b) issue a Change Certificate to Project Co stating BC Hydro's determination of the matters referred to in the Change Report, and if Project Co disagrees with all or any of the determinations set out in the Change Certificate, then Project Co may deliver to BC Hydro a Dispute Notice, and Project Co will, without prejudice to its rights with respect to

such Dispute, use all reasonable efforts to implement the Change as directed in the Change Certificate.

#### **1.11 Valuation of and Payment for Changes**

- (a) The value and method of valuation of a Change will be determined, at BC Hydro's discretion, by one or more of the following methods:
- (1) as a fixed cost Change, in accordance with the terms of the applicable Change Report, as the same may have been clarified, modified or amended in accordance with Section 1.8 *[Agreement on a Change]* of this Schedule; or
  - (2) on a cost reimbursable basis, calculated as follows:
    - (A) the Net Direct Change Value of the Change.

PLUS:

    - (B) a mark-up on the Net Direct Change Value of the Change, to cover all indirect, head office, supervision and management (including without duplication, any costs related to Project Co's management and oversight of the Project, site management, supervision of trade foremen, site overheads, and site establishment) and other costs and profit associated with the Change; provided that:
      - (i) the aggregate mark-up charged by Project Co, the Project Contractor(s) and all Sub-Contractor(s) directly engaged by Project Co or a Project Contractor to perform the Change shall not exceed ■■■ of the Net Direct Change Value;
      - (ii) no mark-up shall apply where the Net Direct Change Value is a negative number; and
      - (iii) the rates and charges included in the calculation of Net Direct Change Value shall be market rates, prevailing at the time of the implementation of the Change, paid between arm's length contracting parties.
- (b) If a Change causes a delay in Commercial Operation of one or more Generating Units, Service Commencement, Bypass System Completion or Total Completion, and if under Section 1.14 *[Effect on the Project Schedule or Delays to Services]* of this Schedule, Project Co is entitled to an adjustment of the Project Schedule (including the Target Commercial Operation Date for one or more Generating Units, the Target Service Commencement Date, the Target Bypass System Completion Date or the Target Total Completion Date) as a result of the Change, the Change will also include compensation calculated on the basis that Project Co will be placed in no better or worse position than it would have been in had the Change and the delay in the Commercial Operation Date for

such Generating Units, the Service Commencement Date, the Bypass System Completion Date or the Total Completion Date, as applicable, not occurred and taking into consideration the following (without duplication):

- (1) any net increase or decrease in the costs of Project Co performing its obligations under this Agreement resulting solely from the Change and the delay, including any increased financing costs caused by a reduction in the amortization schedule for the Senior Debt; and
- (2) the Availability Payments that would have otherwise been payable to Project Co,

except that Avoidable Costs will be deducted therefrom and no Indirect Losses will be taken into consideration. For greater certainty, Project Co will not be entitled to such compensation if: (i) the Change does not cause a delay in the Commercial Operation Date of one or more Generating Units, the Service Commencement Date, the Bypass System Completion Date or the Total Completion Date; or (ii) the Change relates to the performance of the Tunnel Work, unless the cumulative Tunnel Work Eligible Delay exceeds the Available Tunnel Float Balance.

- (c) No amount will be payable to Senior Creditors in connection with the consent to any Change unless such consent is required under the Senior Financing Agreements and the amounts payable are reasonable.
- (d) For greater certainty a Change may have a net cost, or a net saving, or may result in no net cost or saving.

#### **1.12 Defects or Deficiencies not a Change**

The cost of the correction of a Defect, deficiency or Nonconformity in the Project Work will not be included in the valuation of any Change.

#### **1.13 Competitive Procurement**

For all contemplated Changes Project Co will, unless otherwise agreed by BC Hydro, use all reasonable efforts, including utilizing appropriate competitive procurement methods, in accordance with applicable Law and Good Utility Practice, to minimize the cost of the work, equipment and materials required to implement the contemplated Change and to maximize potential related cost savings.

#### **1.14 Effect on the Project Schedule or Delays to Services**

Project Co will use all reasonable efforts, as described in Section 2.5 [*General Duty of Project Co to Mitigate*] of this Agreement, to minimize the effect of a Change on the Project Schedule (including the Target Commercial Operation Date for each Generating Unit, the Target Service Commencement Date, the Target Bypass System Completion Date and the Target Total Completion Date) and the performance of the Services and subject to the foregoing, the Project Schedule (including the Target Commercial Operation Date for each Generating Unit, the Target Service Commencement Date, the Target Bypass System Completion Date and the Target Total Completion Date) and the requirements for performance of

the Services shall be adjusted by such time as is reasonable in the circumstances to take account of the effect of the delay caused by the Change, but: (i) the Expiry Date will not be extended as a result of the Change; and (ii) where the Change relates to the performance of the Tunnel Work, the Project Schedule (including the Target Commercial Operation Date for each Generating Unit, the Target Service Commencement Date, the Target Bypass System Completion Date and the Target Total Completion Date) and the performance of the Services shall not be adjusted unless the cumulative Tunnel Work Eligible Delay exceeds the Available Tunnel Float Balance. Without limiting the generality of the foregoing, if under this Section Project Co is entitled to an adjustment of the Project Schedule, the implementation of a Change, to the extent Project Co has identified the effect on the Services and such effect has been documented in a Change Certificate, but without duplication of relief that may be provided in a Change Certificate, will constitute an Excusing Event.

#### **1.15 Changes in Other Circumstances**

BC Hydro will issue a Preliminary Change Instruction in respect of:

- (a) a BC Hydro decision regarding Facility reinstatement pursuant to Section 6.4(b) [*Project Co's Obligations – Material Damage or Destruction*]; and
- (b) a deemed Change pursuant to Section 8.8(a) [*Parties' Entitlements Upon Occurrence of a Change in Law*].

#### **1.16 Change Directive**

Subject to Section 1.4 [*Restrictions on Changes*] of this Schedule, but notwithstanding any other provision of this Schedule, BC Hydro may at any time issue a Change Directive to Project Co, signed by BC Hydro's Representative, directing Project Co to proceed with a contemplated Change in which case the following will apply:

- (a) Project Co will proceed with the Change and the valuation and the time extensions and payment of any adjustments will be made as soon as reasonably possible after the implementation thereof in the same manner as a Change for which a Preliminary Change Instruction, Change Report and Change Certificate would be issued hereunder;
- (b) if Project Co has not previously done so, Project Co will, within 30 days after the issuance of the Change Directive, or such other period as the parties agree acting reasonably, provide a Change Report in accordance with the requirements of this Schedule for a Change Report and Section 1.8(a) [*Agreement on a Change*] of this Schedule will apply;
- (c) pending a final determination as to any time extensions or valuation and payment of any adjustments for a Change or any other matters in the Change Report delivered by Project Co pursuant to Section 1.16(b) [Change Directive] of this Schedule, BC Hydro will pay Project Co amounts reasonably demonstrated by Project Co in writing from time to time to be payable for the Change, including reimbursement of Net Direct Change Value that Project Co reasonably incurs with respect to the Change, if any;

- (d) BC Hydro will fund all Changes implemented by way of a Change Directive as provided for in Section 5.2 [*Payments in Respect of Changes, Minor Works and Innovation Proposals*] of this Schedule; and
- (e) if the parties agree on the Change Report, BC Hydro will issue a signed Change Certificate stating the parties' agreed determination of the matters referred to in the Change Report. If the parties do not agree on a Change Report, then BC Hydro will issue a signed Change Certificate stating BC Hydro's determination of the matters referred to in the Change Report. If Project Co disagrees with all or any of the determinations set out in the Change Certificate, then Project Co may deliver to BC Hydro a Dispute Notice, and Project Co will, without prejudice to its rights with respect to such Dispute, continue to implement the Change as directed in the Change Directive.

BC Hydro may issue a Change Directive at any time in its discretion, including: (i) in the absence of a Preliminary Change Instruction; (ii) at any time following issuance of a Preliminary Change Instruction; (iii) if Project Co fails to provide a Change Report; (iv) if a Change Report or Change Certificate is not promptly agreed upon by the parties; or (v) if there is a Dispute in relation to a Preliminary Change Instruction, Change Report or Change Certificate (including a Dispute as to whether there is a Change). Notwithstanding the preceding sentence, BC Hydro may not issue a Change Directive where there is a Dispute as to whether Project Co is entitled to refuse to implement the relevant Change under Section 1.4 [*Restrictions on Changes*] of this Schedule.

## **2. MODIFICATIONS TO PROCESSES AND PROCEDURES**

### **2.1 Agreement to Modified Process**

Nothing in this Schedule shall limit the ability of the parties to mutually, in writing, modify, simplify or waive some or all of the processes and procedures outlined in this Schedule in respect of Changes.

### **2.2 Design Development Changes**

Where, in connection with the Design and Certification Procedure, the parties agree to utilize an alternate procedure for agreeing on and tracking Changes that:

- (a) on an individual basis, have an estimated Net Direct Change Value of less than [REDACTED], including "no cost" Changes;
- (b) on a cumulative basis, have an estimated Net Direct Change Value of less than [REDACTED], including "no cost" Changes;
- (c) do not result in a change in the Target Service Commencement Date;
- (d) do not result in a change in the Target Bypass System Completion Date;
- (e) do not result in a change in the Target Total Completion Date; and
- (f) would not fall within the scope of Section 1.4 [*Restrictions on Changes*] of this Schedule,

(each a "**Development Change**"),

the parties may, on an individual Change basis, agree to utilize the process in Appendix 14-A [*Design Development Change Procedure*] rather than the process set out in Section 1 [*Changes*] of this Schedule.

### **3. MINOR WORKS**

#### **3.1 Minor Works Rates**

Rates for Minor Works will be established and applied as follows:

- (a) not less than 45 days before the anticipated Service Commencement Date, and not less than 45 days before the commencement of each subsequent Contract Year, BC Hydro will identify categories of trades and workers that BC Hydro, acting reasonably, considers may be required during the applicable Contract Year;
- (b) not less than 30 days before the anticipated Service Commencement Date, and not less than 30 days before the commencement of each subsequent Contract Year, Project Co will submit to BC Hydro pursuant to the Review Procedure, a schedule of hourly rates (the "**Minor Works Rates**") to be applied in respect of any request by BC Hydro for Minor Works to be completed during the next occurring Contract Year;
- (c) the schedule of Minor Works Rates will cover trades and workers that BC Hydro has identified as those that may be required during the applicable Contract Year, and for greater certainty some of the identified trades and workers may be employees of a Project Contractor;
- (d) the Minor Works Rates will be based on the actual hourly cost that will be paid to the individual trades persons or workers (including allowance for all payroll burdens such as overtime premiums (when paid), vacation pay, pensions, statutory payments, workers' compensation insurance, union dues, tool money, medical insurance, and any other payments directly paid in the ordinary course), and shall include a mark up of ■■■ to cover all indirect, head office, supervision and management (including without duplication, all costs related to Project Co's management and oversight of the Project, site management, supervision of trade foremen, site overheads and site establishment) and other costs and profit, except that the Minor Works Rates will not be greater than the prevailing market rates paid by arm's length contracting parties; and
- (e) to the extent that the parties are unable to agree on the Minor Works Rates for the categories of trades and workers required under Section 3.1(a) [Minor Works Rates] of this Schedule then the cost of Minor Works will be valued as described in Section 3.5 [*Minor Works Disputes*] of this Schedule.

#### **3.2 Direction for Minor Works**

BC Hydro may at any time following the Service Commencement Date require Project Co to perform Minor Works as follows:

- (a) BC Hydro will issue a written request for performance of the Minor Works;
- (b) within 10 Business Days of a request in writing for Minor Works, Project Co will, at its own cost, prepare and deliver to BC Hydro:
  - (1) a written price estimate covering the full scope of the requested Minor Works:
    - (A) based on the applicable Minor Works Rates or, if and to the extent the Minor Works Rates are not applicable, at cost plus ■■■; and
    - (B) where materials, consumables or equipment are required to perform the Minor Works, based on the direct costs to be incurred by the entity that procures the materials, consumables and equipment, plus ■■■; and
  - (2) a written statement of the estimated duration of the Minor Works, with sufficient detail so that BC Hydro and Project Co can agree upon a convenient time for the performance of the Minor Works in a manner that minimizes and mitigates any inconvenience and disruption to the use and operation of the Facility;
- (c) a Preliminary Change Instruction and a Change Report will not be required for Minor Works;
- (d) upon further written direction from BC Hydro, Project Co will in a timely manner carry out the Minor Works in accordance with any schedule agreed between the parties and the requirements of Section 3.3 [*Project Co to Minimize Inconvenience*] of this Schedule;
- (e) the completed Minor Works will be a part of the completed Facility and accordingly, as required by this Agreement, and without further payment, except for an appropriate adjustment to the Availability Payment to reflect the effect, if any, on the cost of the Services, Project Co will be responsible for any Defect, deficiency or Nonconformity in the Project Work, and for all Services related to the completed Minor Works; and
- (f) where the implications to the Services of the Minor Works have not yet been fully agreed, the written direction from BC Hydro to carry out the Minor Works will be deemed to be a Change Directive.

Project Co will not be entitled to charge BC Hydro for preparing a written price quote in accordance with Section 3.2(b) [Direction for Minor Works] of this Schedule.

### **3.3 Project Co to Minimize Inconvenience**

Prior to commencing any Minor Works, Project Co will notify BC Hydro of the estimated duration of the Minor Works so that Project Co and BC Hydro can agree upon a convenient time for carrying out the Minor Works in a manner that minimizes and mitigates inconvenience and disruption to the use and operation of the Facility. Project Co will use all reasonable efforts to minimize the duration of any Minor Works, and will schedule Minor Works as reasonably requested by BC Hydro, including doing works outside normal operating hours.

### **3.4 Payment for Minor Works**

Project Co will as of the end of a calendar month invoice BC Hydro monthly for Minor Works completed in the calendar month using the rates and costs set out in Section 3.2(b)(1) [*Direction for Minor Works*] of this Schedule, supported by appropriate invoices and work records, and BC Hydro will pay Project Co by the later of the 20<sup>th</sup> day of the next calendar month, or 20 calendar days following receipt of the invoice, for Minor Works performed in the previous calendar month.

#### **3.4A Relief from Obligations**

Subject to its obligations under Section 3.3 [Project Co to Minimize Inconvenience] of this Schedule and its duty to mitigate, Project Co will be entitled to claim relief from its obligations under this Agreement to the extent required to undertake the Minor Works.

### **3.5 Minor Works Disputes**

Any Dispute arising in connection with Minor Works, including the price to be paid for Minor Works and the annual determination of the Minor Works Rates, will be resolved in accordance with the Dispute Resolution Procedure.

## **4. INNOVATION PROPOSALS**

### **4.1 Innovation and Value Engineering**

Project Co may at any time submit a proposal to BC Hydro (an “*Innovation Proposal*”) to implement modifications to the Facility or the Services, including through innovation or value engineering, for the purpose of achieving efficiencies, reducing the Availability Payments or the overall cost to BC Hydro of the Facility and the Services or realizing other benefits. An Innovation Proposal must:

- (a) be originated and initiated solely by Project Co without the involvement of BC Hydro or its consultants; and
- (b) offer savings, innovations, efficiencies or other benefits that are not otherwise called for or provided by this Agreement.

### **4.2 Content of Innovation Proposal**

An Innovation Proposal will:

- (a) set out all the information required in a Change Report as required under Section 1.6 [*Change Report Contents*] of this Schedule, modified to apply to an Innovation Proposal;
- (b) specify Project Co's reasons and justification for proposing the Innovation Proposal;
- (c) request BC Hydro to consult with Project Co with a view to BC Hydro deciding whether to agree to the Innovation Proposal and, if so, what consequential changes BC Hydro may require;



- (d) indicate any implications of the Innovation Proposal, including the differences between the existing and the proposed requirements of this Agreement, and the comparative advantages of each to Project Co and BC Hydro;
- (e) indicate whether a payment by BC Hydro in respect of direct costs or a variation to the Availability Payments is proposed and, if so, give a detailed estimate of such proposed payment or variation;
- (f) indicate Project Co's proposal with respect to the sharing of any savings, efficiencies or other benefits derived from the Innovation Proposal;
- (g) indicate if there are any dates by which a decision by BC Hydro must be made; and
- (h) include such other information and documentation as may be reasonably requested by BC Hydro to fully evaluate and consider the Innovation Proposal.

#### **4.3 Preliminary Information**

Prior to development of an Innovation Proposal, Project Co may, at its option, prepare and submit to BC Hydro preliminary information with respect to a potential Innovation Proposal. Where Project Co submits preliminary information with respect to a potential Innovation Proposal, Project Co's submission will include:

- (a) a proposal with respect to the sharing or allocation of the costs of developing the Innovation Proposal (if applicable);
- (b) any other information about the potential Innovation Proposal about which Project Co is seeking BC Hydro's preliminary input; and
- (c) sufficient information to permit BC Hydro to make informed decisions with respect to the potential Innovation Proposal.

Where Project Co submits preliminary information with respect to a potential Innovation Proposal BC Hydro's Representative will, within a reasonable period of time, evaluate and give consideration to the potential Innovation Proposal, including any proposal with respect to the sharing or allocation of development costs. BC Hydro may request clarification or additional information regarding the potential Innovation Proposal, and may request modifications to Project Co's proposal.

Notwithstanding anything else in this Section 4 [*Innovation Proposals*], unless BC Hydro, in its discretion, agrees to pay or share the costs of developing an Innovation Proposal, the costs of investigating and developing a potential Innovation Proposal will be borne entirely by Project Co.

#### **4.4 Evaluation of Innovation Proposal**

BC Hydro will evaluate and give consideration to an Innovation Proposal taking into account all relevant issues, including whether:

- (a) a change in the Availability Payments will occur;
- (b) the Innovation Proposal affects the quality or delivery of the Facility or the Services;
- (c) the Innovation Proposal will interfere with the relationship of BC Hydro with any third parties;
- (d) the financial strength of Project Co is sufficient to deliver the changed Facility or changed Services, as applicable;
- (e) the residual value of the Facility is affected;
- (f) the Innovation Proposal materially affects the risks or costs to which BC Hydro is exposed;
- (g) the proposed sharing of savings, efficiencies or other benefits derived from the Innovation Proposal is reasonable; and
- (h) any other matter BC Hydro, in its discretion, considers relevant.

BC Hydro may request clarification or additional information regarding the Innovation Proposal, and may request modifications to the Innovation Proposal.

#### **4.5 Acceptance and Implementation of Innovation Proposal**

Notwithstanding any potential cost savings, efficiencies or other benefits of an Innovation Proposal, BC Hydro is under no obligation to accept an Innovation Proposal and may in its discretion elect not to implement any Innovation Proposal. An Innovation Proposal that is accepted by BC Hydro will be implemented as a Change and Project Co will not implement an Innovation Proposal prior to the issuance of a Change Certificate.

#### **4.6 Sharing Benefits of an Innovation Proposal**

If an Innovation Proposal causes or will cause:

- (a) a decrease in the costs of Project Co, a Project Contractor or Sub-Contractor;
- (b) a decrease in the retained operational costs of BC Hydro; or
- (c) other benefit,

after taking into account the agreed implementation and reasonably allocated development costs (incurred by Project Co, Project Contractor(s), Sub-Contractor(s) or BC Hydro) of the Innovation Proposal and taking into account any other uses of the Innovation Proposal by Project Co, the net cost savings and other benefits will be shared by Project Co and BC Hydro in the amounts, or on the basis, agreed in the applicable Change Certificate.

BC Hydro's share of the net savings will be reflected in a reduction of the Availability Payments and Project Co's share of the net savings will be paid as provided for in Section 5.2 [*Payments in Respect of Changes, Minor Works, and Innovation Proposals*] of this Schedule.

## **5. RESPONSIBILITY AND PAYMENT FOR CHANGES**

### **5.1 Responsibility for Changes, Minor Works, Innovation Proposals**

Except as specifically provided in this Agreement, BC Hydro will bear no risk or liability whatsoever arising from any Change, Minor Works or Innovation Proposal, other than the liability to make payment in connection therewith. Notwithstanding the previous sentence, BC Hydro will pay to Project Co increased costs or any Direct Losses suffered by Project Co as a result of any particular design, materials, goods, workmanship or method of construction which BC Hydro specifies must be incorporated in a Change, Minor Works or Innovation Proposal and which is subsequently shown to be defective (other than as a result of the default or negligence of Project Co or any Project Co Person), if:

- (a) Project Co objected in writing to the incorporation of such item prior to the issue of the relevant Change Certificate; and
- (b) such objection was rejected by BC Hydro.

### **5.2 Payments in Respect of Changes, Minor Works and Innovation Proposals**

Payments between the parties and any adjustments to Availability Payments in respect of Changes, Minor Works and Innovation Proposals will be made in accordance with any agreed basis for payment set out in the Change Certificate. The basis for payment may at BC Hydro's discretion include progress draws, milestone payments, lump sum payments, time and materials or maximum amounts. If no basis for payment is included in the Change Certificate, payment will be made in accordance with Section 10 [*Lump Sum Payments and Availability Payment Adjustments*] of this Agreement.

If payments between the parties in respect of Changes, Minor Works and Innovation Proposals include an adjustment to payments (if any) during the Construction Period, Availability Payments or otherwise require an update to the Financial Model, Project Co will expeditiously update and will provide such updated Financial Model to BC Hydro, all in accordance with Section 10 [*Lump Sum Payments and Availability Payment Adjustments*] of this Agreement. BC Hydro may in its discretion waive or defer the requirements for Project Co to make such updates to the Financial Model in respect of Changes, Minor Works and Innovation Proposals. The updates to the Financial Model will be shown as of the relevant current date and, as applicable, the Base Date.

## APPENDIX 14-A

### DESIGN DEVELOPMENT CHANGE PROCEDURE

#### 1.1 Alternate Process

Where, during the Design process, a party identifies a potential Development Change, that party may present the potential Development Change to the other party in a form, and with such supporting information, as it considers to be appropriate to the nature and complexity of the potential Development Change.

Where a party presents a potential Development Change, the parties' respective Representatives will meet as soon as practicable to discuss the proposed Development Change and where:

- (a) the proposed Development Change meets the requirements of Section 2.2 [*Design Development Changes*] of Schedule 14 [*Changes*]; and
- (b) the parties reach agreement with respect to the value of the proposed Development Change and any contractual amendments required to implement the proposed Development Change,

Project Co will record the terms of the parties' agreement with respect to the applicable Development Change (a "**Development Change Record**"). The parties will involve the Design-Builder in this discussion and obtain the agreement of the Design-Builder to the Development Change Record. The parties may choose to involve the Service Provider in this discussion and, if so, will obtain the agreement of the Service Provider to the Development Change Record.

Promptly after preparing a Development Change Record, and in any event prior to implementation of the agreed Development Change, Project Co will concurrently deliver a copy of the Development Change Record to BC Hydro's Representative, the Independent Certifier and, to the extent the Service Provider has not previously agreed to the Development Change Record, the Service Provider.

#### 1.2 Opportunity to Object

If, within 5 Business Days after receipt of a Development Change Record:

- (a) BC Hydro's Representative objects to the Development Change Record on the basis that it is not an accurate representation of the parties' agreement;
- (b) the Service Provider objects to an agreed Development Change on the basis that it results in a material change in the cost of the Services; or
- (c) the Independent Certifier objects to an agreed Development Change on the basis that it does not meet the criteria in Section 2.2 [*Design Development Changes*] of Schedule 14 [*Changes*],

the relevant persons shall meet to discuss the Development Change and attempt to resolve the objection. If an objection cannot be resolved, then the proposed Change will be deemed not to be a Development

Change and will not be implemented by the parties; provided that either BC Hydro or Project Co shall be permitted to pursue such Development Change in accordance with the Change process or the Innovation Proposal process, as applicable, in accordance with Schedule 14 *[Changes]*. An objection to a proposed Development Change pursuant to this Section 1.2 *[Opportunity to Object]* of Appendix 14-A *[Design Development Change Procedure]* must be delivered concurrently to the parties' Representatives in writing.

Where, following discussions on a Development Change, the parties, the Design-Builder and the Service Provider agree on the terms of the Development Change, Project Co's Representative will record the terms of the Development Change (a "**Development Change Record Confirmation**"), which will be signed on behalf of the parties, the Design-Builder and the Service Provider.

### **1.3 Representatives**

BC Hydro's Representative and Project Co's Representative shall have authority to agree on the value of Development Changes and contractual amendments to implement such Development Changes.

### **1.4 Implementation**

Where, there are no objections to a proposed Development Change within the 5 Business Day period specified in Section 1.2 *[Opportunity to Object]* of this Appendix 14-A *[Design Development Change Procedure]*, the Development Change Record will become the Development Change Record Confirmation. Following the issuance of a Development Change Record Confirmation, the parties shall promptly proceed with implementation of the applicable Development Change on the terms set out in the applicable Development Change Record Confirmation. A Development Change Record Confirmation will be binding on all persons who sign it and on the Service Provider if it does not object within the 5 Business Day period specified in Section 1.2 *[Opportunity to Object]* of this Appendix 14-A *[Design Development Change Procedure]*.

### **1.5 Reconciliation**

No later than the 10<sup>th</sup> day of each month, Project Co's Representative will prepare and deliver to BC Hydro's Representative, for information only, a register of all Development Changes agreed during the prior month (the "**Development Change Register**").

### **1.6 Development Change Register**

Within 30 days after each of the Service Commencement Date and the Total Completion Date, BC Hydro will prepare and deliver to Project Co a consolidated Change Certificate encompassing all of the agreed Development Changes, as set out in the applicable Development Change Registers.

### **1.7 No Dispute**

The parties agree that a failure to reach agreement with respect to a proposed Development Change pursuant to the procedure set out in this Appendix 14-A *[Design Development Change Procedure]* shall not constitute a Dispute, and shall not be referred for resolution pursuant to the Dispute Resolution Procedure.