

JOHN HART GENERATING STATION REPLACEMENT PROJECT

Schedule 16

Compensation on Termination

SCHEDULE 16

COMPENSATION ON TERMINATION

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SCHEDULE 16

COMPENSATION ON TERMINATION

1. TERMINATION FOR BC HYDRO EVENT OF DEFAULT OR AT BC HYDRO'S OPTION

1.1 Calculation

If either BC Hydro or Project Co terminates this Agreement pursuant to Section 2.1(a) [*Term and Termination*], Section 6.6 [*BC Hydro Election Not to Reinstate*], Section 6.7(d) [*Insufficient Insurance*] or Section 13 [*BC Hydro Events of Default*], BC Hydro will pay to Project Co on the Termination Payment Date a Termination Payment equal to the greater of:

- (a) the amount which would be determined under Section 4.1 [*Calculation*] of this Schedule if it applied; and
- (b) the aggregate amount, without duplication, of:
 - (1) the Senior Debt as at the Termination Date with per diem interest on amounts falling within paragraph (a) of the definition of Senior Debt calculated at the non-default interest rate provided for such amounts in the Senior Financing Agreements for the period from (but excluding) the Termination Date until (and including) the Termination Payment Date;
 - (2) the Employee Payments and the Project Contractor Breakage Costs;
 - (3) any accrued but unpaid amounts owing and payable by BC Hydro to Project Co under this Agreement;
 - (4) any Insurance Receivables, if and to the extent Project Co has assigned them to BC Hydro; and
 - (5) an amount which when taken together with Distributions made on or before the Termination Date, including Distributions paid on or in respect of Units and fees, principal, interest and breakage costs paid or repaid on Junior Debt taking account of the actual timing of all such Distributions, gives a real internal rate of return on the equity capital subscribed and contributed in respect of then outstanding Units and principal amounts advanced under then outstanding Junior Debt equal to the Threshold Equity IRR

LESS, to the extent it is a positive amount, the aggregate of without double counting:

- (6) the aggregate of all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date that are secured in favour of the Senior Creditors;
- (7) the value of any amounts due and payable from third parties (but only when received from third parties) but excluding any claims under a Project Contract or claims against other third parties which have not been determined or have been determined but not yet paid provided that in such case Project Co will assign any such rights and claims under the Project Contracts or claims against other third parties to BC Hydro and give BC Hydro reasonable assistance in prosecuting such claims;
- (8) to the extent not taken into account in calculating the amount under (b) above, the amount of any Contingent Funding Liabilities that are triggered as a result of or in relation to a termination of this Agreement;
- (9) the market value of any other assets and rights of Project Co (other than those transferred to BC Hydro pursuant to this Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Agreement as at the Termination Date to the extent realised before the Termination Payment Date provided that no account will be taken of any liabilities and obligations of Project Co arising out of:
 - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
 - (B) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms.
- (10) any amounts, including hedging termination amounts and other breakage costs, payable by the Senior Creditors to Project Co as a result of a prepayment under the Senior Financing Agreements;
- (11) any amounts received by the Senior Creditors (or on their behalf) on or after the Termination Date and before the Termination Payment Date as a result of enforcing any other rights or security the Senior Creditors may have under the Senior Financing Agreements in respect of Senior Debt (net of the reasonable and proper costs incurred in such enforcement); and

- (12) any other amounts that BC Hydro is entitled to set-off or deduct under this Agreement.

To the extent that the assets and rights referred to in Section 1.1(b)(9) [Calculation] of this Schedule above are not realised and applied pursuant to that Section, Project Co will on payment of the amount due under this Section 1.1 assign such assets and rights to BC Hydro.

1.2 Notice to BC Hydro

As soon as practicable after termination of this Agreement pursuant to Section 2.1(a) [*Term and Termination*], Section 6.6 [*BC Hydro's Election Not to Reinstate*] or Section 13.3 [*Project Co's Options*] Project Co will, acting reasonably, notify BC Hydro of the Termination Payment as of an estimated Termination Payment Date and include in such notice the details and calculations of each component thereof, including a revised and up to date Financial Model and certificates from the Lenders as to the amounts owed to them. Project Co will provide to BC Hydro all such documents and information as may be reasonably required by BC Hydro to confirm the amount of the Termination Payment including Employee Information.

2. TERMINATION FOR PROJECT CO EVENT OF DEFAULT: RE-BIDDING PROCESS

2.1 BC Hydro Election

If BC Hydro terminates this Agreement in accordance with Section 12.4 [*BC Hydro's Termination Right*], BC Hydro may, within 20 Business Days after the Termination Date, give notice to Project Co electing to have this Section 2 of this Schedule apply if:

- (a) there is a Liquid Market as at the Termination Date; and
- (b) the Senior Creditors:
 - (1) either (i) have not exercised their rights under Section 4 [*Step-In*] of the Lenders' Remedies Agreement and have no further right to exercise such rights; or (ii) if they have exercised such rights, they have subsequently exercised their rights under Section 3.4 [*Agent's Withdrawal Notice*] of the Lenders' Remedies Agreement or their rights under Section 4 [*Step-In*] of the Lenders' Remedies Agreement have otherwise terminated in accordance with the Lenders' Remedies Agreement; or
 - (2) have not transferred Project Co's rights and obligations under this Agreement to a Suitable Substitute Project Co in accordance with the Lenders' Remedies Agreement and have no further right to do so, and have not demonstrated to BC Hydro's satisfaction, acting reasonably, that they have used all reasonable efforts to do so,

but otherwise BC Hydro will require a determination in accordance with Section 3 [*Project Co Event of Default: No Re-Bidding Process*] of this Schedule and the provisions of that Section will apply.

2.2 Re-Bidding Process

If Section 2 [*Termination for Project Co Event of Default: Re-Bidding Process*] of this Schedule applies, BC Hydro will:

- (a) use all reasonable efforts to:
 - (1) conduct the Re-Bidding Process so as to obtain the maximum Highest Compliant Bid Price; and
 - (2) implement and complete the Re-Bidding Process as soon as practicable after making the election under Section 2.1 [*BC Hydro Election*] of this Schedule; and
- (b) notify, as soon as practicable and acting reasonably, Project Co of the requirements and terms of the Re-Bidding Process, including the timing of the Re-Bidding Process and the criteria for a Compliant Bid and other matters which will be required to be taken into account by a Compliant Bid. Information provided to bidders during the Re-Bidding Process will include similar information to that provided to bidders in the original procurement process for the Project taking into consideration the relevance of such information and the status of the Project at the time of the Re-Bidding Process. All such references to bids and bidders include references to proposals and proponents and similar terms under other competitive projects.

2.3 Release of Information

Project Co hereby authorizes BC Hydro to release any information that is reasonably required under the Re-Bidding Process which would otherwise be subject to the restrictions in Section 17.1 [*Confidentiality*] and Section 17.2 [*Personal Information*].

2.4 Determination and Payment of Termination Payment

If Section 2 [*Termination for Project Co Event of Default: Re-Bidding Process*] of this Schedule applies and:

- (a) the Adjusted Highest Compliant Bid Price is a positive amount, BC Hydro will pay to Project Co on the Termination Payment Date a Termination Payment equal to the Adjusted Highest Compliant Bid Price; or

- (b) the Adjusted Highest Compliant Bid Price is less than zero, an amount by which the Adjusted Highest Compliant Bid Price is less than zero will be due and payable by Project Co to BC Hydro on the earliest to occur of the dates referred to in Sections 6.1(a)(1) and 6.1(a)(2) [*Termination Payment Date*] of this Schedule.

2.5 Notice to Project Co

As soon as practicable after receipt of the bids, BC Hydro will, acting reasonably, determine the Compliant Bids and will notify Project Co of the Adjusted Highest Compliant Bid Price and include in such notice the details and calculations of each component thereof.

2.6 New Project Agreement

Notwithstanding any Dispute relating to the Highest Compliant Bid Price, the Adjusted Highest Compliant Bid Price or the Re-Bidding Process, BC Hydro will be entitled to enter into a New Project Agreement with the New Project Co in accordance with the Re-Bidding Process.

2.7 Subsequent BC Hydro Election

At any time prior to receipt by BC Hydro of a Compliant Bid or at any time thereafter with the consent of Project Co, acting reasonably, BC Hydro may, by notice to Project Co, elect for the provisions of Section 3 [*Project Co Event of Default: No Re: Bidding Process*] of this Schedule to apply and on such notice:

- (a) the provisions of Section 3 [*Project Co Event of Default: No Re: Bidding Process*] of this Schedule will apply; and
- (b) BC Hydro will have no liability to Project Co in respect of any breach of the provisions of Section 2 [*Termination for Project Co Event of Default: Re-Bidding Process*] of this Schedule or in respect of making such election.

2.8 BC Hydro Decision Not to Complete

BC Hydro will not be obligated to accept the Compliant Bid with the Highest Compliant Bid Price or to enter into any New Project Agreement with the New Project Co., however if BC Hydro has received a Compliant Bid but decides not to accept it or to enter into a New Project Agreement, BC Hydro will notify Project Co of this decision, Section 2.4 [*Determination and Payment of Termination of Payment*] of this Schedule will continue to apply and the Termination Payment Date will be 30 days after BC Hydro so notifies Project Co.

2.9 Time Limit For Re-Bidding Process

Subject to Section 2.8 [*BC Hydro Decision Not to Complete*] of this Schedule, if BC Hydro makes an election under Section 2.1 [*BC Hydro Election*] of this Schedule but BC Hydro has not signed

a New Project Agreement with a New Project Co as contemplated by Section 2 [*Termination for Project Co Event of Default: Re-Bidding Process*] of this Schedule within 18 months after the Termination Date, the provisions of Section 3 [*Project Co Event of Default: No Re-Bidding Process*] of this Schedule will apply.

2.10 Appointment of Re-Bidding Process Monitor

Project Co may, at its own cost, appoint a Re-Bidding Process Monitor for the purpose of monitoring and reporting to Project Co and the Senior Creditors on BC Hydro's compliance with the Re-Bidding Process.

2.11 Role of Re-Bidding Process Monitor

The Re-Bidding Process Monitor will be entitled to attend all meetings relating to the Re-Bidding Process, inspect copies of all relevant documentation and make submissions to BC Hydro as to compliance with the Re-Bidding Process. BC Hydro will not be bound to consider or act upon such submissions. The Re-Bidding Process Monitor will not disclose Confidential Information to Project Co or the Senior Creditors or take any action which might materially delay or interfere with the Re-Bidding Process but will be entitled to advise Project Co and the Senior Creditors on whether it considers that BC Hydro has acted in accordance with the Re-Bidding Process and determined the Highest Compliant Bid Price.

2.12 Post-Termination Date Payment

If this Agreement is terminated in accordance with Section 12.4 [*BC Hydro's Termination Right*], during the period from the Termination Date to the Termination Payment Date BC Hydro will, on or before the later of:

- (a) 2 Business Days prior to each interest payment date under the Senior Financing Agreements; and
- (b) 3 Business Days after BC Hydro has received written notice from Project Co of the amount of interest payable by it on such interest payment date,

as an advance against the payment to be made pursuant to this Section 2 [*Termination for Project Co Event of Default: Re-Bidding Process*] pay to Project Co the interest payable on that interest payment date by Project Co to the Senior Creditors in the normal course (which, for greater certainty, does not include breach or default circumstances) under the Senior Financing Agreements. BC Hydro may withhold payment if BC Hydro has reasonable grounds to believe that the aggregate of that payment and all such previous payments would exceed the Termination Payment otherwise payable under this Section 2 [*Termination for Project Co Event of Default: Re-Bidding Process*]. All payments under this Section 2.12 will be deducted from the Termination Payment and any over-payment will be re-paid by Project Co no later than the Termination Payment Date.

3. PROJECT CO EVENT OF DEFAULT: NO RE-BIDDING PROCESS

3.1 Application for No Re-Bidding Process

The provisions of Section 3 [Project Co Event of Default: No Re-Bidding Process] of this Schedule will apply if:

- (a) BC Hydro terminates this Agreement in accordance with Section 12.4 [*BC Hydro Termination Right*] and does not, or is not entitled to, make an election under Section 2.1 [*BC Hydro Election*] of this Schedule; or
- (b) BC Hydro so elects under Section 2.7 [*Subsequent BC Hydro Election*] of this Schedule; or
- (c) Section 2.8 [*BC Hydro Decision Not to Complete*] of this Schedule requires it.

3.2 Determination of Adjusted Estimated Market Value

Project Co and BC Hydro will act reasonably in agreeing on the Adjusted Estimated Market Value which will be calculated as at the day following the Termination Payment Date, provided that in determining the Estimated Market Value (which will be determined by deducting the aggregate of the amounts referred to in Section 3.2(d) of this Schedule from the aggregate of the amounts referred to in Section 3.2(c) of this Schedule):

- (a) this Agreement will be assumed not to have been terminated and neither party is in default under its terms;
- (b) all forecast amounts will be calculated on a Nominal basis;
- (c) each of the following will be calculated and discounted at the Termination Date Discount Rate:
 - (1) all future Availability Payments which according to the Financial Model Project Co expected to receive from the Termination Date to the Expiry Date; and
 - (2) all amounts payable by BC Hydro to Project Co in respect of a Supervening Event or BC Hydro Change) and all other payments, other than any such amounts and payments that are reflected in the Availability Payments as set out in (1) above, which BC Hydro is required to make to Project Co prior to the Expiry Date which Project Co has not been paid in accordance with this Agreement, including Progress Payments not yet paid;

- (d) the total of all costs forecast to be reasonably incurred by BC Hydro as a result of termination and related to providing the Design, Construction and Services itself or by others from the Termination Date to the Expiry Date will be calculated and discounted at the Termination Date Discount Rate, such costs to include (without double counting):
- (1) all reasonable costs required to put the Facility in the condition required by this Agreement (including, in the case of termination prior to Service Commencement, the reasonable costs required to be expended to achieve Service Commencement) and to meet the level of performance for the Services, that will deliver the Availability Payments referred to in Section 3.2(c)(1) [*Determination of Adjusted Estimated Market Value*] of this Schedule;
 - (2) an amount equal to all Taxes deemed paid by Project Co to achieve the Base Case Project IRR; and
 - (3) the projected cost of operating, maintaining and performing life cycle rehabilitation for the Facility from the Termination Date to the Expiry Date, such costs to be determined on the basis that:
 - (A) the costs referred to in Section 3.2(d)(1) [*Determination of Adjusted Estimated Market Value*] of this Schedule put the Facility in the condition required by this Agreement and that the Facility meets the said level of performance for the Services; and
 - (B) in the case of termination prior to Service Commencement, costs in respect of Services will be in amounts contemplated by the Financial Model at the Effective Date; and

in each case such costs to be in substantially similar categories to those set out in the Financial Model at the Effective Date, but not (subject to Section 3.2(d)(3)(B) [*Determination of Adjusted Estimated Market Value*] of this Schedule above) necessarily of the same amounts as those costs set out in the Financial Model at the date of this Agreement, and to be forecast at a level that will deliver the Availability Payments referred to in Section 3.2(c)(1) [*Determination of Adjusted Estimated Market Value*] of this Schedule, with such costs to include a reasonable risk margin to cover a realistic and reasonable risk assessment of likely cost overruns.

The above determined amount will be adjusted upward or downward to the extent required under Section 5.1 [*Income Tax Gross-Up – Partnership Project Co*] of this Schedule.

3.3 Determination by Valuator

If BC Hydro and Project Co cannot agree on the Adjusted Estimated Market Value within 30 days after the date on which BC Hydro elected for the provisions of Section 3 [*Project Co Event of Default: No Re-Bidding Process*] of this Schedule to apply or they were deemed to apply, then either party may require, by notice to the other party, that the Adjusted Estimated Market Value be determined by a Valuator as of an estimated Termination Payment Date. If the parties cannot agree on the appointment of a Valuator within 5 Business Days of such notice, the appointment of the Valuator will be a Dispute and resolved, with a Valuator appointed, pursuant to the Dispute Resolution Procedure. BC Hydro and Project Co will each pay one-half of the fees of, and any costs and expenses incurred by, the Valuator. The parties will cooperate with, and provide all such information as may reasonably be required by, the Valuator to assist in the Valuator's determination of the Adjusted Estimated Market Value.

3.4 Determination and Payment of Termination Payment

If Section 3 [*Project Co Event of Default: No Re-Bidding Process*] of this Schedule applies and:

- (a) the Adjusted Estimated Market Value is a positive amount, BC Hydro will pay to Project Co on the Termination Payment Date a Termination Payment equal to the Adjusted Estimated Market Value; and
- (b) the Adjusted Estimated Market Value is less than zero, an amount equal to the amount by which the Adjusted Estimated Market Value is less than zero will be due and payable by Project Co to BC Hydro by the earliest of:
 - (1) 60 days after the parties have agreed or been deemed to have agreed the Adjusted Estimated Market Value; and
 - (2) 45 days after the amount of the Adjusted Estimated Market Value is determined under the Dispute Resolution Procedure.

4. NO-FAULT TERMINATION

4.1 Calculation

If Project Co or BC Hydro terminates this Agreement pursuant to Section 6.7(e) [*Insufficient Insurance*], 6.8 [*Economic Reinstatement Test During Construction*], 6.9 [*Uncollectible Insurance Receivables*], 6.15 [*Consequences of Risks Becoming Uninsurable*], 8.4 [*Project Co's Entitlements Upon Occurrence of a Relief Event*] or 8.6 [*Parties' Entitlements Upon Occurrence of a Force Majeure Event*], BC Hydro will pay to Project Co on the Termination Payment Date a Termination Payment equal to the aggregate of:

- (a) the Senior Debt as at the Termination Payment Date with per diem interest on amounts falling within paragraph (a) of the definition of Senior Debt calculated at

the non-default interest rate provided for such amounts in the Senior Financing Agreements for the period from (but excluding) the Termination Date until (and including) the Termination Payment Date;

- (b) any accrued but unpaid amounts owing and payable by BC Hydro to Project Co under this Agreement;
- (c) the amount, if any, by which the Junior Debt exceeds the amount of all Distributions made in respect of Junior Debt;
- (d) the amount, if any, by which the amount of capital contributed to Project Co by the Partners exceeds the amount of Distributions made by Project Co to its Partners; and
- (e) the Employee Payments and the Project Contractor Breakage Costs,

less:

- (f) the amount of any Distributions other than those referred to in (c) and (d) above.
- (g) any other amounts that BC Hydro is entitled to set-off or deduct under this Agreement.

If the aggregate of the amount calculated above is less than the Senior Debt plus the amount referred to in (e) above, then the Termination Payment will be increased so that it is equal to the aggregate of the Senior Debt plus the amount referred to in (e) above.

4.2 Notice to BC Hydro

As soon as practicable after termination of this Agreement as contemplated by this Section 4 [*No-Fault Termination*] of this Schedule, Project Co will, acting reasonably, notify BC Hydro of the Termination Payment as of an estimated Termination Payment Date and include in such notice the details and calculations of each component thereof, including a revised and up to date Financial Model and certificates from the Senior Creditors as to the amounts owed to them and will also provide to BC Hydro all such documents and information reasonably required by BC Hydro to confirm the amount of the Termination Payment including Employee Information.

5. ADJUSTMENTS AND DISPUTES

5.1 Income Tax Gross-Up - Partnership Project Co

For the purpose of this Section 5.1:

“Deemed Corporate Project Co” means a fictional fully taxable single purpose British Columbia resident corporation that (i) is, and has since the date of this Agreement been, a subsidiary of a

public corporation carrying on an active business with the same fiscal year end as Project Co; and (ii) has had the same revenues and expenses as Project Co and has taken all exemptions, relief, allowances, deductions, set offs and credits permitted under laws relating to Income Taxes (including any that would be available in relation to the Project) since the date of this Agreement so as to minimize its Income Tax payable; and

"Taxable Shareholder Portion" means:

- (a) 100% if Project Co is a taxable entity with respect to Income Tax; or
- (b) that percentage, measured as at the Termination Date, of the total equity interests of Project Co that are not owned, directly or indirectly, by persons (1) described in Section 149 of the *Income Tax Act (Canada)*, or the equivalent section if there are changes to the *Income Tax Act (Canada)*. and (2) not subject to the payment of Income Tax in respect of payments by Project Co from proceeds of the Termination Payment.

If a Termination Payment is payable by BC Hydro under Section 1 [*Termination for BC Hydro Event of Default or at BC Hydro's Option*] or Section 4 [*No-Fault Termination*] of this Schedule and such Termination Payment would, in the hands of a Deemed Corporate Project Co (if the Deemed Corporate Project Co were being paid the Termination Payment), be subject to Income Tax payable to a Governmental Authority within Canada that would not have been payable but for the fact that such amount is payable as compensation on termination, then BC Hydro will pay to Project Co the Taxable Shareholder Portion of the additional amount that would be required to be paid to the Deemed Corporate Project Co (if the Deemed Corporate Project Co were being paid the Termination Payment) to put it in the same position after Income Tax as it would have been in had the Termination Payment (or portion thereof) not been subject to any such Income Tax, taking account of any exemption, relief, allowances, deduction, setting off or credit in respect of Income Tax (whether available by choice or not) which would be available to the Deemed Corporate Project Co to reduce the Tax to which the Termination Payment, or any portion thereof, would be subject.

5.2 Time Related Adjustments

It is understood that the calculations of the Termination Payment pursuant to Sections 1 [*Termination for BC Hydro Event of Default or at BC Hydro's Option*], 3 [*Project Co Event of Default: No Re-Bidding Process*] and 4 [*No-Fault Termination*] of this Schedule are as of an estimated Termination Payment Date and that such estimated date may not be the actual Termination Payment Date for reasons including the existence of a Dispute. The parties will act reasonably in adjusting the amount of such calculated Termination Payment to reflect the actual Termination Payment Date.

5.3 Senior Debt

BC Hydro will be entitled to rely on one or more certificates of officers of the Senior Creditors or their agent(s) as conclusive evidence of the amount of the Senior Debt. The receipt of this amount by Project Co, the Senior Creditors or their agent(s) will discharge BC Hydro's obligation to pay any portion of compensation due to Project Co that is attributable to the Senior Debt.

5.4 Disputes

If:

- (a) BC Hydro does not agree with Project Co's determination of the Termination Payment under Section 1 [*Termination for BC Hydro Event of Default or at BC Hydro's Option*] or Section 4 [*No-Fault Termination*] of this Schedule, BC Hydro may, within 20 Business Days of the notice referred to in Section 1.2 [*Notice to BC Hydro*] or Section 4.2 [*Notice to BC Hydro*] of this Schedule as the case may be, refer the matter to the Dispute Resolution Procedure; or
- (b) Project Co does not agree with BC Hydro's determination of the Adjusted Highest Compliant Bid Price under Section 2 [*Termination for Project Co Event of Default: Re-Bidding Process*] of this Schedule or the Valuator's determination of the Adjusted Estimated Market Value under Section 3 [*Project Co Event of Default: No Re-Bidding Process*] of this Schedule, Project Co may, within 20 Business Days of the notice referred to in Section 2.5 [*Notice to Project Co*] of this Schedule or the Valuator's determination under Section 3.3 [*Determination by Valuator*] of this Schedule, refer the matter to the Dispute Resolution Procedure.

If either party does not refer the matter to the Dispute Resolution Procedure within the periods provided for in (a) or (b) above, as applicable, such party will be deemed to have agreed to the amount of the applicable determination of the Termination Payment as of the estimated Termination Payment Date.

6. PAYMENTS

6.1 Termination Payment Date

The Termination Payment Date will be determined as follows:

- (a) if the Termination Payment is determined pursuant to Sections 1 [*Termination for BC Hydro Event of Default or at BC Hydro's Option*], 3 [*Project Co Event of Default: No Re-Bidding Process*], or 4 [*No-Fault Termination*] of this Schedule, the Termination Payment Date will be:
 - (1) for any amount thereof that is agreed to or deemed agreed to by BC Hydro and Project Co on the earliest of:

- (A) the date advised by BC Hydro; and
 - (B) 60 days after such agreement or deemed agreement, as the case may be; or
- (2) if any portion of the Termination Payment is the subject of a Dispute, then any undisputed amount shall be paid by BC Hydro in accordance with Section 6.1(a)(1) [*Termination Payment Date*] of this Schedule and the Termination Payment Date for the disputed amount shall be 45 days after the amount of the Termination Payment is determined under the Dispute Resolution Procedure; and
- (b) if the Termination Payment is determined pursuant to Section 2 [*Termination for Project Co Event of Default: Re-Bidding Process*] of this Schedule, the Termination Payment Date will be the earliest of:
 - (1) 45 days after the Adjusted Highest Compliant Bid Price has been agreed or determined pursuant to the Dispute Resolution Procedure; and
 - (2) 30 days after the New Project Co has executed and delivered the New Project Agreement.

6.2 Tax Allocations

BC Hydro and Project Co will:

- (a) act reasonably and will co-operate with each other to determine the Income Tax treatment resulting from a Termination Payment and to allocate the Termination Payment to each of the non-fixed assets transferred to BC Hydro pursuant to Section 14.2 [*Transfer to BC Hydro of Assets, Contracts, etc.*] so as to minimize the amount of Taxes payable on such transfer;
- (b) failing agreement on such treatment or allocation, use the treatment or allocation determined by BC Hydro unless and until such time as a different treatment or allocation is determined under the Dispute Resolution Procedure or by Canada Revenue Agency (after all appeals have been exhausted); and
- (c) use the allocation agreed to in (a) above or determined in accordance with (b) above in their respective Tax filings and returns.

6.3 Liability for Sales Taxes

BC Hydro will be responsible for all applicable GST, PST and other similar Taxes payable by it under applicable Laws in connection with, and in addition to any consideration payable on, the transfers referred to in Section 14.2 [*Transfer to the BC Hydro of Assets, Contracts, etc.*] and will

pay all such Taxes directly to Project Co. Project Co shall remit such Taxes to the appropriate Governmental Authority.

6.4 GST Filings

If Section 182 of the *Excise Tax Act* (Canada) is applicable to any amount payable under this Schedule 16:

- (a) such payment will be increased by an amount such that after remitting the applicable GST/HST Project Co will be in the same position as it would have been if Section 182 of the *Excise Tax Act* (Canada) were not applicable, and BC Hydro and Project Co shall submit their respective GST/HST filings in respect of any period in which such payment is made on the basis that Section 182 of the *Excise Tax Act* (Canada) applies to such payment; and
- (b) the Estimated Market Value will be increased by an amount such that after remitting the applicable GST Project Co will be in the same position as it would have been if Section 182 of the *Excise Tax Act* (Canada) were not applicable.

6.5 Full Settlement

Any and all amounts paid by BC Hydro to Project Co under this Schedule or any agreement or determination that BC Hydro has no obligations to make any payment to Project Co under this Schedule will be in full and final settlement of each party's rights and claims against each other for termination of this Agreement and any Project Contract, whether under contract, tort, restitution or otherwise, but without prejudice to:

- (a) any antecedent liability of either party to the other that arose prior to the date of termination of this Agreement (but not from the termination itself) to the extent such liability has not already been taken into account in determining the Termination Payment; and
- (b) any liability of either party to the other that may arise after the date of termination of this Agreement (but not from the termination itself), including, for greater certainty, liabilities arising under the provisions of this Agreement which are intended by Section 17.12 [*Survival*] to survive termination, to the extent any such liability has not already been taken into account in determining the Termination Payment.