

EPC Contract
(Engineering, Procurement and Construction Contract)
in respect of RFP No. SSG2019

Between

PUC Distribution Inc.

- and -

Overland Contracting Canada Inc.

Effective Date: October 7, 2020

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Engineering, Procurement and Construction Contract

This *Contract* is made effective this 7th day of October, 2020

Between

Overland Contracting Canada Inc.
the “*Contractor*”

- and -

PUC Distribution Inc.
the “*Owner*”

Introduction:

A. The *Contractor* has agreed to perform the *Work* for the *Owner* as set out in this *Contract*, on the terms and conditions set forth in this *Contract*;

IN CONSIDERATION of the mutual covenants and conditions contained herein, the parties agree as follows:

Article 1 - Definitions and Appendices

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

- (a) *Affiliate* means an “affiliate” as such term is defined in the Business Corporations Act (Ontario);
- (b) *Appendix* or *Appendices*, as the case may be, means one or more of the schedules attached to and incorporated in this *Contract* as set forth in Section 1.2;
- (c) *As-Built Drawings* means the controlled and complete set of documents upon which the *Contractor* records each and every instance of differences between the *Work* as executed and the *Work* as designed and depicted in the documents issued by the *Contractor* for *Construction Work*;
- (d) *Balance of Work* means the *Work* other than the *Upfront Engineering Services*;
- (e) *Balance of Work Fixed Price* has the meaning given in Appendix B – Compensation;
- (f) *Change* means any change in, addition to, or deletion from Appendix A – SSG Scope of Work, the *Owner’s Requirements*, the *Owner’s Specified Materials and Subcontractors*, the *Milestones*, or the *Contract Time*;
- (g) *Change Directive* means a written instruction from the *Owner* directing a *Change*;

- (h) *Change of Control* means, with respect to the *Contractor*:
- (i) any change in ownership, whether beneficial or otherwise, of any of the shares or units of ownership of *Contractor*, or in the direct or indirect power to vote or transfer any of the shares or units of ownership of *Contractor*
 - (ii) any other change in respect of the power to elect a majority of the directors of *Contractor* or otherwise control the decisions made on behalf of *Contractor*; or
 - (iii) any other change of direct or indirect power or authority through any contractual right or other power or interest with or over *Contractor* to influence, direct, cause to change or prevent from changing the approval of a decision, direction of the management, actions or policies of *Contractor*;

where the effect of such change is to result in control of any of the following no longer being with the *Guarantor*: (A) the decisions made by or on behalf of *Contractor* or (B) the power or authority to influence, direct, cause to change or prevent from changing the approval of a decision, direction of the management, actions or policies of *Contractor*;
- (i) *Change Order* means a written order signed by both the *Contractor* and the *Owner* authorizing a *Change*;
- (j) *Change Quotation* means a written quotation from the *Contractor* for an adjustment in the *Contract Time*, *Milestones* or the *Compensation*, or both;
- (k) *Commissioning after Functional or Substantial Completion* means those commissioning duties of the *Owner* and of the *Contractor* that shall take place after *Functional Completion* or *Substantial Completion* and which are described in the *Owner's Requirements* and allocated to either the *Owner* or the *Contractor*;
- (l) *Commissioning before Functional or Substantial Completion* means those commissioning duties of the *Owner* and of the *Contractor* that shall take place before *Functional Completion* or *Substantial Completion* and which are described in the *Owner's Requirements* and allocated to either the *Owner* or the *Contractor*;
- (m) *Compensation* means the compensation which the *Owner* shall pay for performance of the *Work* in accordance with Appendix B – Compensation;
- (n) *Confidential Information* means all information relating to the *Work* and any process or technology relating thereto, and information relating to the nature of the *Contractor's* and the *Owner's* business and affairs, which either party directly or indirectly receives or acquires from the other party, or the other party's representative, either in writing or verbally, including information in the *Contract*, or through observation of the *Owner's Site*, the *Work Site*, the *Work* or work performed by *Other Contractors*, except information falling into any one or more of the following categories:

- (i) information which the receiving party can show was in its possession on a non-confidential basis before receipt or acquisition of the information from the other party;
 - (ii) information which is lawfully in the public domain at the time of the receiving party's receipt or acquisition of the information from the other party, other than from the *Owner's Requirements* or through the process of proposal calls or performing the *Work*;
 - (iii) information which, after the receiving party's receipt or acquisition of the information from the other party, becomes part of the public domain through no act of the receiving party or of any third party under an obligation of confidence with respect to such information, but only after such information becomes part of the public domain; or
 - (iv) information which, after receipt or acquisition of the information from the other party, is lawfully obtained by the receiving party from a third party, but only after such information is so received or acquired, and provided such third party is under no obligation of confidence with respect to such information.
- (o) *Construction Work* means delivery, fabrication, assembly, construction, testing, commissioning and correction, including professional and technical personnel, labour, supervision, administration, materials, transportation, supplies, tools, equipment, and such other work and materials necessary to be performed or supplied to meet the requirements of the *Contract*, including any work which is not expressly described in the *Contract* but which is nevertheless necessary for the proper execution of the *Work*, but does not include *Engineering Services*;
- (p) *Contemplated Change Notice* means a written notice from the *Owner* advising the *Contractor* that the *Owner* is contemplating a *Change*;
- (q) *Contract* means:
- (i) this Engineering, Procurement and Construction Contract;
 - (ii) *Change Orders* and *Change Directives*;
 - (iii) *Owner's Requirements*;
 - (iv) *Execution Plan*; and
 - (v) other documents which come into existence and are incorporated into the *Contract* pursuant to the terms of this *Contract*;
- (r) *Contract Time* means, as the context requires, the period of time:
- (i) from the date of the *Notice to Proceed with Upfront Engineering* to the *Scheduled Completion Date for Upfront Engineering*;

- (ii) from the date of the *Notice to Proceed with Balance of Work* to the *Scheduled Final Completion Date*; or
- (iii) from the date of the *Notice to Proceed with Upfront Engineering* or *Notice to Proceed with Balance of Work*, as applicable, to a *Milestone Date*;
- (s) *Contractor* means Overland Contracting Canada Inc.;
- (t) *Contractor's Representative* means that person identified as such in Section 48.2, or an approved replacement;
- (u) *Deficiency* means any portion of the *Work* that has not been performed in accordance with the *Owner's Requirements*, the *Contract* or the *Law*;
- (v) *Engineering Services* means those services described in the *Owner's Requirements* and provided by the *Contractor* for the design, planning and engineering of the *Project*, but does not include *Construction Work*;
- (w) *Engineering Submissions* means the drawings, reports, documents, plans, software, formulae, calculations, and other data prepared or obtained by the *Contractor* relating to the *Engineering Services* and requiring review by the *Owner* pursuant to the *Review Procedure*;
- (x) *Epidemic* means a virus, disease or contagion, including COVID-19, that results in delay to the *Work* or an increase in the price of labour, material, or equipment used in the performance of the *Work*; provided that the *Compensation*, the *Contract Time* and any schedule prepared by the *Contractor* hereunder shall, at the time it is agreed to or prepared, take into account any delay or price increase that may be reasonably expected to result from an *Epidemic*, to the best of *Contractor's* knowledge at such time;
- (y) *Event of Force Majeure* means any occurrence, other than the financial capability of a party or an event constituting a delay under Article 32 - Delays Caused by the Contractor or Article 33 - Delays not Caused by the Contractor, which prevents or delays a party from performing its obligations under the *Contract* (except an obligation to pay any amount) within the time required for the performance of such obligation and which is beyond the control and without the fault or negligence of the party relying on such occurrence, and which by the exercise of reasonable diligence that party could not, at the time the *Contract* was executed, have reasonably contemplated happening and which at the time of such occurrence, is beyond the reasonable control of the party required by the *Contract* to perform such obligation and such party is unable to reasonably prevent or provide against such occurrence;
- (z) *Execution Plan* means the programme developed by the *Contractor* for the *Work* in accordance with Section 5.2 and which shall be updated from time to time as may be required by the *Owner* and which shall include, but not be limited to:
 - (i) the organisation to be established by the *Contractor* for carrying out the *Work*, including, but not limited to, the identities and curriculum vitae of

Key Personnel, or if not yet identified, then the titles of the positions that will be held by *Key Personnel*;

- (ii) the sequences and methods for the performance of the *Work*; and
 - (iii) a detailed schedule with dates and critical path for the completion of *Milestones* by the *Milestone Dates*;
- (aa) *Facilities* means the physical works engineered, procured and constructed as a result of the *Work* being performed;
 - (bb) *Final Completion Notice* means that notice in the form contained in Appendix F – Forms issued by the *Owner* to the *Contractor* pursuant to Section 21.2 certifying completion and acceptance of the *Work* under the *Contract*;
 - (cc) *Fixed Price* has the meaning given to it in Appendix B – Compensation;
 - (dd) *Functional Completion* means that date when a *System*:
 - (i) has passed the required *Performance Tests* that are stipulated in the *Owner's Requirements* to be performed before *Functional Completion*; and
 - (ii) is certified by the *Owner's Representative* pursuant to Section 20.5 as being complete or ready to be put into service, or being used for the purpose intended and a *Functional Completion Certificate* is issued;
 - (ee) *Functional Completion Certificate* means that notice, in the form attached hereto as Appendix F – Forms, issued by the *Owner* to the *Contractor* pursuant to Section 20.5, certifying achievement of *Functional Completion* and identifying the date that the *Owner* takes over the *System*;
 - (ff) *Goods* means any goods, supplies, materials or equipment required as part of the *Work*, or to perform the *Work*, and which are supplied or fabricated by the *Contractor*;
 - (gg) *Guarantor* ██████████;
 - (hh) *Hazardous Material* means any substances which are hazardous to persons, animals, property or the environment and includes hazardous substances, hazardous waste, ozone depleting substances and dangerous goods, all as identified or defined under applicable law, as well as any prescribed product under the Nuclear Safety and Control Act (Canada);
 - (ii) *Key Personnel* means the *Contractor's* key personnel for the *Work* identified in Appendix H – Key Personnel , or if not determined before the execution of this *Contract*, identified in an organisational chart in accordance with Article 16 - Key Personnel and approved by the *Owner*;
 - (jj) *Law* means the common law, the law of equity and all federal or provincial statutes or municipal by-laws and all regulations, orders, directives, permits and licenses

thereunder, which apply to or otherwise affect the *Work*, the *Owner* or the *Contractor* with respect to the *Work*, or the property of the *Owner* or the *Contractor*, real or personal, including, but not limited to, all environmental, occupational, health and safety laws;

- (kk) *Liquidated Damages* mean the *Liquidated Damages for Performance* and the *Liquidated Damages for Delay*;
- (ll) *Liquidated Damages for Delay* mean those damages which shall be payable by the *Contractor* in the event the *Work* is not completed in the *Contract Time* and which shall be in accordance with the parameters set out in Article 22 - Liquidated Damages;
- (mm) *Liquidated Damages for Performance* mean those damages which shall be payable by the *Contractor* in the event the *Performance Guarantees* are not met and which shall be in accordance with the parameters set out in Article 22 - Liquidated Damages;
- (nn) *Maximum Price* means the amount set out in Appendix B – Compensation which represents the maximum amount the *Owner* will pay for performance of the *Balance of the Work*;
- (oo) *Milestone* means a milestone that the *Contractor* must meet as set forth in the *Owner's Requirements*;
- (pp) *Milestone Date* means the date by which a *Milestone* must be met as set forth in the *Owner's Requirements*;
- (qq) *Notice to Proceed* means, as the context requires, either of the *Notice to Proceed with Balance of Work* or *Notice to Proceed with Upfront Engineering*;
- (rr) *Notice to Proceed with Balance of Work* means the agreement between the parties for the *Contractor* to commence the *Balance of Work* and setting out such other terms as the parties may agree, including those set out in Article 4 - Notice to Proceed with Balance of Work;
- (ss) *Notice to Proceed with Upfront Engineering* means the notice to proceed, in the form set out in Appendix F – Forms, issued by the *Owner* authorizing the *Contractor* to commence the *Upfront Engineering Services*;
- (tt) *Other Contractors* means the contractors, consultants, or engineers retained by the *Owner*, to perform any work or services at, or related to, the *Owner's Site*, other than the *Contractor*;
- (uu) *Owner* means PUC Distribution Inc.;
- (vv) *Owner's Policies* means the policies of the *Owner* as attached in Appendix C – Owner's Policies;

- (ww) *Owner's Representative* means that person identified as such in Section 48.1 which may include a consultant hired by the *Owner*, if so designated, or that person's designated replacement;
- (xx) *Owner's Requirements* means the description of the scope, standards, design criteria, *Performance Requirements*, *Milestones* and the programme of work set out in Appendix A – SSG Scope of Work to be further developed by the *Parties* during the course of the *Upfront Engineering Services*, as amended by any *Changes*;
- (yy) *Owner's Site* means any portion of the *Work Site* which may have on it existing facilities, activities or operations of the *Owner* or its *Affiliates*;
- (zz) *Owner's Specified Materials and Subcontractors* means those materials, goods, products, processes, equipment and subcontractors specified in the *Owner Requirements* to be used in, or to be incorporated into, the *Work* by the *Contractor*, including any of the foregoing supplied by the *Owner*;
- (aaa) *Performance Guarantees* mean those *Performance Requirements* upon which *Liquidated Damages for Performance* will be assessed if not met;
- (bbb) *Performance Requirements* mean the performance requirements set out in the *Owner's Requirements*;
- (ccc) *Performance Tests* mean the performance tests set out in the *Owner's Requirements* for the purpose of determining achievement of the *Performance Requirements* for the *Work*, and such other tests as may be agreed between the *Owner* and *Contractor* in order to compare actual performance of the *Work* with the *Performance Requirements*;
- (ddd) *Pre-existing Hazardous Material* is any *Hazardous Material* present at the *Owner's Site* or a *Work Site* that was not brought onto such site by *Contractor*;
- (eee) *Previous Claims* has the meaning given to it in Section 42.1;
- (fff) *Project* means the Sault Smart Grid Project;
- (ggg) *Proprietary Information* means all inventions, discoveries, improvements and technical information not in the public domain, which the *Contractor*, *Subcontractors*, or their respective employees or agents who are performing the *Work*, may conceive of, reduce to practice or develop during the *Contract Time*, as a result of the *Owner's Requirements* or *Confidential Information*;
- (hhh) *Records* means the books, statements, records and accounts pertaining to the *Contract* and the performance of the *Work*, whether in paper or electronic form;
- (iii) *Review Procedure* means the procedure described as such and set out in the *Owner's Requirements*;

- (jjj) *Safety Plan* means the plan, as specified in the *Owner's Requirements*, which includes, but is not limited to, safety performance requirements, mitigation plans, training and orientation requirements, site safety and access rules, reporting and safety meeting frequency, site cleanliness requirements and other occupation health and safety requirements and compliance issues;
- (kkk) *Scheduled Completion Date for Upfront Engineering* means the date on which the *Upfront Engineering Services* are scheduled to be completed, which is the date that falls nine (9) months after the issuance of the *Notice to Proceed with Upfront Engineering*;
- (lll) *Scheduled Final Completion Date* means the date on which the *Work* is scheduled to achieve *Final Completion*, which will be set out in the *Notice to Proceed with Balance of Work*;
- (mmm) *Subcontractors* means any subcontractors, consultants, suppliers or vendors hired by the *Contractor* to perform any portion of the *Work* or supply any *Goods*;
- (nnn) *Substantial Completion* means that date when the *Work*:
- (i) has passed the required *Performance Tests* that are stipulated in the *Owner's Requirements* to be performed before *Substantial Completion*;
 - (ii) is certified by the *Owner's Representative* pursuant to Section 20.5 as being complete or ready to be put into service, or being used for the purpose intended and a *Substantial Completion Certificate* is issued; and
 - (iii) has achieved substantial performance of the work, as defined in the Construction Act (Ontario);
- (ooo) *Substantial Completion Certificate* means that notice, in the form attached hereto as Appendix F – Forms, issued by the *Owner* to the *Contractor* pursuant to Section 20.5, certifying achievement of *Substantial Completion* and identifying the date that the *Owner* takes over the *Work*;
- (ppp) *Suspended Work* means any *Work*, or portion thereof, which the *Owner* has suspended pursuant to Article 34 - Suspension;
- (qqq) *System* means any component system of the *Work*, or any part thereof as the context requires;
- (rrr) *Test Plan* means the plan for testing, which shall be prepared by either the *Owner* or the *Contractor* as specified in the *Owner's Requirements*;
- (sss) *Upfront Engineering Fixed Price* has the meaning given to it in Appendix B – Compensation;
- (ttt) *Upfront Engineering Services* mean those *Engineering Services* which are described under the section titled “Step 1 Engineering” in Appendix A – SSG Scope of Work

as well as the applicable project management activities which are described under the section titled “Project Management” in Appendix A – SSG Scope of Work and all other work and services required by this *Contract* to be performed as part of the *Upfront Engineering Services*, and which shall be sufficient for the parties to agree on the *Notice to Proceed with Balance of Work*, in accordance with the process described in Appendix B – Compensation;

- (uuu) *Warranty Item* means any *Deficiency* that is identified after a *Functional Completion Certificate* or the *Substantial Completion Certificate* is issued or is incorporated into a *Functional Completion Certificate* or the *Substantial Completion Certificate* to be remedied after *Functional Completion* or *Substantial Completion*;
- (vvv) *Warranty Period* commences on the date of *Functional Completion* or *Substantial Completion*, as applicable, and continues for 1 year from the date of *Substantial Completion* as stated in the *Substantial Completion Certificate*;
- (www) *Work* means all *Engineering Services*, project management, *Goods*, *Construction Work* and those duties allocated to the *Contractor* in the *Commissioning before Functional or Substantial Completion* and *Commissioning after Functional or Substantial Completion*, as may be necessary to fulfill the *Owner’s Requirements* and includes anything that is ancillary or necessary by implication to fulfill the *Owner’s Requirements*;
- (xxx) *Work Day* means any day, except for a Saturday, Sunday, a general holiday or a holiday which is observed in the construction industry in Ontario, or defined as a holiday in a collective agreement entered into by the *Owner* pertaining to the *Work Site*; and
- (yyy) *Work Site* means those lands where the *Project* is located and which are legally and municipally described as such in the *Owner’s Requirements*.

1.2 The following schedules attached hereto shall form part of and are incorporated in this *Contract*:

- (a) Appendix A – SSG Scope of Work
- (b) Appendix B – Compensation
- (c) Appendix C – Owner’s Policies
- (d) Appendix D – Warranty Items Procedure
- (e) Appendix E – Parent Guaranty
- (f) Appendix F – Forms
 - Key Employee Confidentiality, Proprietary Information and Consent Agreement
 - Statutory Declaration

- (g) Appendix G – Dispute Resolution Procedure
- (h) Appendix H – Key Personnel

Article 2 - Interpretation and Order of Precedence

- 2.1 Unless the context otherwise requires, words importing the singular shall include the plural and vice-versa and words importing gender shall include the masculine, feminine and neuter genders.
- 2.2 The headings and sub-headings of the *Contract* are used for convenience and ease of reference only and in no way define, limit, describe or interpret the scope or intent of the *Contract*.
- 2.3 If there is a conflict in the *Contract*, the order of precedence of documents, from highest to lowest, shall be:
 - (a) this *Contract*, excluding the *Appendices*;
 - (b) *Change Orders* and *Change Directives*;
 - (c) Appendix A – SSG Scope of Work;
 - (d) Appendix B – Compensation;
 - (e) Appendix C – Owner’s Policies; and
 - (f) all other *Appendices*.
- 2.4 The following shall, in all instances, apply:
 - (a) for documents revised by either party and approved by the *Owner*, the latest revision shall govern;
 - (b) figured dimensions on drawings shall govern, even though they may differ from scaled dimensions;
 - (c) drawings of larger scale shall govern over those of smaller scale of the same date; and
 - (d) specifications shall govern over drawings regardless of time.
- 2.5 Wherever this *Contract* requires an action to be performed or an obligation to be undertaken, such action or obligation shall be performed in a reasonable manner by the party taking the action or fulfilling its obligation unless its explicitly stated to be in the discretion of the party performing the action or having undertaken the obligation.

Article 3 - Owner’s Requirements

- 3.1 The *Owner’s Requirements* shall describe the scope of the *Work*. As part of the *Upfront Engineering Services*, the *Contractor* will further develop the *Owner’s Requirements* based

on the parameters set forth in Appendix A – SSG Scope of Work and input received from the *Owner*.

- 3.2 The *Owner's Requirements* shall specify the requirements of the *Safety Plan*, which shall be developed and implemented by the *Contractor*.
- 3.3 The *Owner's Requirements* shall specify the *Owner's Site* access requirements, which will be developed by the *Owner* and implemented by the parties.
- 3.4 Subject to Section 14.9, all conflicts with respect to the interpretation of the *Owner's Requirements* shall be resolved by the *Owner's Representative*.

Article 4 - Notice to Proceed with Balance of Work

- 4.1 The *Upfront Engineering Services* shall include all services required to facilitate parties' agreement on the *Notice to Proceed with Balance of Work* by the *Scheduled Completion Date for Upfront Engineering*. The *Notice to Proceed with Balance of Work* shall record the parties' agreement on the following matters, among others:
 - (a) *Owner's Requirements*;
 - (b) *Fixed Price*;
 - (c) any *Milestones* and corresponding *Milestone Dates*;
 - (d) *Contractor's* acceptance of site conditions as described under Section 5.5 and Section 5.6;
 - (e) *Owner's Site* and *Work Site* access to be provided to *Contractor*.

Article 5 - General Requirements of the Work

- 5.1 The scope of the *Work* includes correction of *Deficiencies* by the *Contractor* in accordance with the *Contract*.
- 5.2 As part of the *Upfront Engineering Services*, the *Contractor* shall prepare and submit to the *Owner* a detailed *Execution Plan* for the performance of all or any part of the *Work* required under the *Contract*. The *Contractor* shall control the progress of the *Work* to achieve compliance with the *Execution Plan*.
- 5.3 In the execution of the *Work* the *Contractor* shall comply with, and the completed *Work* shall comply with, the *Law* and the standards specified in the *Contract*.
- 5.4 References in the *Contract* to applicable codes, standards or regulations shall be understood to be references to the edition applicable on the date of the *Contract*, unless stated otherwise. If substantially changed or new applicable codes, standards or regulations come into force after the date of the *Contract*, the *Contractor* shall submit a *Change Quotation* for compliance to those new codes, standards or regulations to the *Owner's Representative*. Any *Change* in the *Work*, the *Contract Time* or the *Compensation* as a result shall be dealt with under Article 14 - Changes.

5.5 The *Contractor* will accept the *Owner's Site*, the *Work Site* and the obligation to perform the *Work* in the condition existing at the time of the execution of the *Notice to Proceed with Balance of Work*, and at that time, the *Contractor* will acknowledge that it has investigated and satisfied itself as to:

- (a) the nature of the *Work*; and
- (b) the magnitude of the *Work*.

Additionally, the *Contractor* will investigate the following conditions as part of the *Upfront Engineering Services*, and the *Notice to Proceed with Balance of Work* will include the *Contractor's* acceptance of the following conditions, which may be subject to commercially reasonable qualifications:

- (c) the location of and all conditions relating to the *Owner's Site* and the *Work Site*, including, but not limited to, accessibility, general character, surface conditions, utilities, roads, uncertainties of seasonal weather and all other physical, topographical and geographical conditions, but excluding subsurface or other concealed conditions unless disclosed by the *Owner* or described in the *Owner's Requirements*; and
- (d) all environmental risks, conditions, *Law* and restrictions applicable to the *Contractor* or the *Work* or that may affect the *Work*.

5.6 Additionally at the time of the execution of the *Notice to Proceed with Balance of Work*, the *Contractor* will accept the obligation to perform the *Balance of the Work* and acknowledge that it has investigated and accepts:

- (a) the general character, quality, quantity and availability of equipment and materials required to execute and complete the *Work*; and
- (b) all conditions affecting labour, including, availability, productivity and administrative practices, including those relating to safety, prevailing at or applicable to the *Work*.

5.7 The *Owner* reserves the right to award separate contracts to *Other Contractors* for work to be performed at or adjacent to the *Work Site* and to perform work with its own forces at or adjacent to the *Work Site*. In such event, the *Contractor* shall co-ordinate and schedule the *Work* with the work of the *Other Contractors* and the *Owner's* own forces, and the *Contractor* shall share access to and use of the *Work Site* to accommodate the work of *Other Contractors* and the *Owner's* own forces. If work performed by *Other Contractors* as directed by the *Owner* interferes with the *Work* performed by the *Contractor*, the *Contractor* may issue a *Change Quotation* in accordance with Section 14.9.

5.8 The *Contractor* shall co-operate fully with the *Owner*, *Other Contractors* and all other parties with whom the *Contractor* or *Owner* may be involved during the performance of the *Work*. The *Contractor* shall supervise its employees and *Subcontractors* and inspect their work to ensure that the *Work* conforms in each and every respect to the *Owner's Requirements* and in accordance with Section 11.1.

- 5.9 Approval of the *Engineering Services*, acceptance of any part of the *Goods* or the *Construction Work* by the *Owner*, or payment to the *Contractor*, or any one or more of them, shall not relieve the *Contractor* from its responsibilities under the *Contract*.
- 5.10 The *Contractor* shall provide the *Owner* with written reports detailing the status of the *Work* and all issues relating to the *Work*, in the form specified by the *Owner's Requirements* or as otherwise agreed to by the *Contractor* and the *Owner*, and shall attend meetings as required by the *Contract*, or as otherwise requested by the *Owner's Representative*.
- 5.11 The *Contractor* shall have those responsibilities for managing the *Work* as stipulated in the *Owner's Requirements*, including:
- (a) cost monitoring, scheduling and reporting to the *Owner*;
 - (b) scheduling the *Work* and monitoring and reporting on the progress of the *Work* relative to the *Milestones* to the *Owner*;
 - (c) coordination, scheduling and supervision of *Subcontractors*;
 - (d) coordination and management of transportation and related services for the *Work*;
 - (e) management of the *Work* to ensure the *Work* is performed in an efficient and coordinated manner; and
 - (f) preparation of reports and attendance at meetings with the *Owner*.
- 5.12 The *Contractor* shall ensure that no activities or actions are undertaken in the performance of the *Work*, or otherwise by the *Contractor*, which would adversely affect, restrict or limit in any way the continued operation of the *Owner's* other facilities which are in operation, unless required to perform the *Work*, done in accordance with the *Execution Plan* and authorized in writing by the *Owner's Representative*.
- 5.13 In the performance of the *Work*, the *Contractor* shall give due consideration to the interest and property of others wherever involved, and shall carry out and perform the *Work* in a manner which shall cause the minimum of inconvenience, injury, and damage to others.
- 5.14 The *Owner* shall provide, during the course of the *Upfront Engineering Services*, documents relating to the *Owner's Site*, and the *Contractor* shall abide by all such documents provided by the *Owner*, including, but not limited to, any special restrictions and conditions contained in any easement, regulatory board order, crossing agreement, or other permit relating to the *Work Site*.
- 5.15 The *Contractor* shall, in accordance with good industry practice and the *Owner's Requirements*, protect the *Work*, the *Work Site*, the property of the *Owner*, *Other Contractors* and neighbouring owners from damage during the prosecution of the *Work*, including providing off-hours *Work Site* security if required by the *Owner's Requirements*. The *Contractor* shall restore, at its expense, all *Work* and property at the *Work Site* damaged in the performance of the *Work* including, without limitation, any buildings, fences, hedges, roads, railroads, bridges, culverts, drainage ditches, irrigation ditches and

levees that may be located in the *Work Site* area. The *Contractor* shall also restore, at its expense all property of the *Owner*, *Other Contractors* and neighbouring owners damaged due to *Contractor's* negligence or failure to protect such property as required under the *Contract*.

- 5.16 Each of the parties shall promptly and fully inform each other of any errors, omissions or inconsistencies in the *Contract*, defects or *Deficiencies* in the *Work* and of any inconsistencies between the *Contract* and the *Law*, of which they become aware. The *Contractor* shall exercise reasonable care and diligence to prevent any actions or conditions which could result in any such inconsistencies, defect or *Deficiencies*. If the *Contractor* discovers any inconsistencies in the *Contract*, or between the *Contract* and the *Law*, or discovers any defects or *Deficiencies* in the *Work*, it shall resolve all such inconsistencies with the *Owner* before proceeding with the affected portion of the *Work*. If the *Contractor* discovers any inconsistencies in the *Contract*, or between the *Contract* and the *Law*, or discovers any defects or *Deficiencies* in the *Work*, and proceeds without resolution with the *Owner*, the *Contractor* shall proceed at the *Contractor's* own risk and expense and waives all rights to claim against the *Owner* for the same.
- 5.17 All documents and drawings prepared as part of the *Work* shall be in English.
- 5.18 The *Owner* shall have the right but not the obligation to use, at any time, and from time to time, any and all portions of the *Work* that have reached a stage of completion as to permit such occupancy, provided such occupancy does not unreasonably interfere with the operations of the *Contractor* hereunder or prevent an expeditious completion of the *Contract* by the *Contractor* hereunder. The *Contractor* agrees to permit such use and to use all reasonable efforts to facilitate the *Owner* in the occupancy of such available and useful portions of the *Work*.

Article 6 - Engineering Services

- 6.1 The *Contractor* shall perform the *Engineering Services* and be responsible for the design and engineering necessary to execute the *Work*. The *Engineering Services* shall be prepared under the supervision of the *Contractor's* qualified professional engineers licensed by Professional Engineers Ontario. All final plans, specifications, reports or documents of a professional nature shall be signed by and stamped or sealed with the stamp or seal of:
- (a) the professional member or licensee who prepared them or under whose supervision and control they were prepared; or
 - (b) the professional member or licensee who thoroughly reviewed and accepted professional responsibility for them.
- 6.2 The professional members and licensees referred to in Section 6.1 shall be available to meet with the *Owner's Representative* at all reasonable times during the *Contract Time* and *Warranty Period*.

- 6.3 The *Owner* shall have the right of inspection and review of the design drawings and specifications at all reasonable times. No inspection, or failure to inspect, by the *Owner* shall relieve the *Contractor* of the *Contractor's* obligations under the *Contract*.
- 6.4 Prior to commencement of the *Performance Tests*, the *Contractor* shall prepare, and submit to the *Owner's Representative*, operation and maintenance manuals in accordance with the *Owner's Requirements*. The *Work* shall not be considered to be completed for the purposes of achieving *Functional Completion* or *Substantial Completion* until such operation and maintenance manuals have been submitted to the *Owner's Representative*.
- 6.5 The *Contractor* shall:
- (a) prepare, and keep up-to-date, the *As-Built Drawings*;
 - (b) record the exact locations of each of these differences, sizes and details of the *Construction Work* as executed, with cross-references to relevant specifications and other requirements on the *As-Built Drawings*;
 - (c) keep the *As-Built Drawings* on the *Work Site*;
 - (d) during the *Contract Time*, provide the *Owner* with access to the *As-Built Drawings*; and
 - (e) upon completion of the *Work*, or at such other time as may be determined by the *Owner*, submit the *As-Built Drawings* and copies to the *Owner's Representative* in accordance with the *Owner's Requirements*.
- 6.6 The *Contractor* shall submit to the *Owner's Representative* the *Engineering Submissions* in accordance with the *Review Procedure* set out in the *Owner's Requirements* and in accordance with the *Execution Plan*.
- 6.7 No inspection, evaluation, review, approval, acceptance, consent, design reviews, commentaries, audits, objections or monitoring by the *Owner* in connection with the *Engineering Submissions* or any of the *Work* shall under any circumstances relieve or excuse the *Contractor* from any of its obligations to ensure its complete compliance with this *Contract*.

Article 7 - Owner's Specified Materials and Subcontractors

- 7.1 The parties agree that *Owner* is permitted to require *Contractor* to utilize *Owner's Specified Materials and Subcontractors* as those may be set out in the *Owner's Requirements* or a *Change Order* signed by both parties. After the issuance of the *Notice to Proceed with Balance of Work*, *Owner* retains the ability to direct *Contractor* to use *Owner's Specified Materials and Subcontractors* by way of a *Change Directive* but only in respect of materials, goods, products, processes and equipment, and not subcontractors. Where a *Change Directive* is issued directing the *Contractor* to use the *Owner's Specified Materials and Subcontractors*, the *Contractor* shall, within 5 *Work Days* of receipt of the *Change Directive*, or such longer period as the *Contractor* may reasonably require as agreed to by the *Owner*, review the *Owner's Specified Materials and Subcontractors* to

determine whether such materials are acceptable to perform the *Engineering Services* and *Construction Work* and can be made available for procurement without interfering with the achievement of the *Milestones* by the *Milestone Date* and issue a written notice of its determination to the *Owner*.

- 7.2 If the *Owner's Requirements* or a *Change Order* require the *Contractor* to use *Owner's Specified Materials and Subcontractors*, or if a *Change Directive* requires *Contractor* to use *Owner's Specified Materials and Subcontractors* and the *Contractor* either determines that the *Owner's Specified Materials and Subcontractors* are acceptable for the *Work* or fails to issue a written notice of its determination to the *Owner* within the time period specified above, then the *Owner's Specified Materials and Subcontractors* shall be used and incorporated in the *Work* in the same manner as those materials and pieces of equipment proposed by the *Contractor* and the *Contractor* shall take responsibility for the *Owner's Specified Materials and Subcontractors* and all warranty provisions that apply thereto.
- 7.3 If a *Change Directive* requires *Contractor* to use *Owner's Specified Materials and Subcontractors* and the *Contractor* determines that the *Owner's Specified Materials and Subcontractors* are not acceptable for the *Work*, then the *Contractor* shall give notice to the *Owner* that the *Owner's Specified Materials and Subcontractors* are not suitable for the *Work*, which notice will provide details of the reasons why the *Owner's Specified Materials and Subcontractors* are not acceptable for use or incorporation into the *Work*.
- 7.4 Where the *Contractor* has provided notice to the *Owner* that the *Owner's Specified Materials and Subcontractors* are not acceptable for the *Work*, the *Owner* shall promptly notify the *Contractor* of the *Owner's* decision as to whether or not to include the *Owner's Specified Materials and Subcontractors* in the *Work*.
- 7.5 If the *Owner* chooses to direct the *Contractor* to use the *Owner's Specified Materials and Subcontractors* by way of a *Change Directive* after the *Contractor* has notified the *Owner* that the *Owner's Specified Materials and Subcontractors* are not acceptable for the *Work*, then the *Owner* shall take full responsibility for the *Owner's Specified Materials and Subcontractors*, including any warranty claims and damages that may occur from the use or incorporation of the *Owner's Specified Materials and Subcontractors*.

Article 8 - Procurement of Goods

- 8.1 Unless specified in the *Owner's Requirements*, the *Contractor* shall procure *Goods* for its own account, not as agent for the *Owner*.
- 8.2 Where specified in the *Owner's Requirements*, the *Contractor* shall procure *Goods* using such selected vendor lists and *Owner's Specified Materials and Subcontractors* as directed by the *Owner*.
- 8.3 In accordance with the *Owner's Requirements*, the *Contractor* shall submit any required samples for the *Owner's Representative's* approval, together with any relevant information. The *Contractor* shall also submit for the *Owner's Representative's* approval, manufacturer's standard samples of materials (with relevant information) and any additional samples instructed by the *Owner's Representative*. All samples shall be labelled

as to origin and intended use in the *Work*. For each part of the *Work*, construction shall not commence prior to receipt of such approval to the relevant samples.

Article 9 - Construction Work

- 9.1 The *Contractor* shall perform the *Construction Work* in accordance with the *Contract*.
- 9.2 Except for those materials, services and equipment to be provided by the *Owner* and described in the *Owner's Requirements*, the *Contractor* shall supply or cause to be supplied all services, equipment and materials required for the proper execution and completion of the *Construction Work*.
- 9.3 Subject to Section 25.5, the *Contractor* shall take full responsibility for the adequacy, stability and safety of the *Work* and the *Work Site* operations under its control, of all methods of construction and of all of the *Construction Work*, unless the *Contractor* has received written instructions from the *Owner's Representative* absolving the *Contractor* of responsibility.

Article 10 - Commissioning

- 10.1 The duties of the *Owner* and of the *Contractor* in relation to *Commissioning before Functional or Substantial Completion* and *Commissioning after Functional or Substantial Completion*, together with the *Milestones* to be reached for commissioning, will be set out in the *Owner's Requirements*.

Article 11 - Contractor's Representations

- 11.1 The *Contractor* shall:
- (a) perform the *Work* in a professional, efficient and workmanlike manner, using only qualified, skilful and careful workers, in strict accordance with the *Contract* and in accordance with sound and currently accepted design, engineering, procurement, construction and commissioning practices normally employed in utility construction similar to the *Work*;
 - (b) perform the *Work* in a safe and environmentally sound manner in compliance with the *Law*;
 - (c) ensure that the title to any and all *Goods* shall, upon delivery to the *Work Site*, be free from any and all claims, liens, charges, encumbrances or security interests of any kind whatsoever;
 - (d) ensure equipment and materials furnished, manufactured or fabricated by the *Contractor*, or its *Subcontractors*, for incorporation into the *Work*, shall:
 - (i) be free from all defects or *Deficiencies*;
 - (ii) meet the specifications in the *Contract*; and

- (iii) shall be fit for the purpose for which the equipment and materials have been manufactured or fabricated and, if applicable, for its intended purpose as specified in the *Owner's Requirements*;
- (e) perform the *Work* to meet the *Owner's Requirements*;
- (f) comply with the *Contract*, including, but not limited to, all time schedules set out in, or called for by, the *Contract* or the *Execution Plan*; and
- (g) ensure the *Work* shall be fit for its intended purpose as specified in the *Owner's Requirements*.

11.2 The *Contractor* represents and warrants to the *Owner* that:

- (a) it has the experience, resources, personnel and capability to perform the *Work*;
- (b) it is duly incorporated and validly existing under the laws of the jurisdiction(s) of its incorporation and is registered to carry on business in the Province of Ontario;
- (c) it has all required permits, licenses and authorizations necessary to carry on its business; and
- (d) the *Contractor* has the right to use, employ and incorporate in the *Work* those things or ideas to which the *Contractor* gives the *Owner* a license under Section 28.4.

Article 12 - Contract Time

12.1 The *Contractor* shall:

- (a) commence the *Upfront Engineering Services* on receipt of the *Notice to Proceed with Upfront Engineering*;
- (b) complete the *Upfront Engineering Services* by the *Scheduled Completion Date for Upfront Engineering*;
- (c) commence the *Balance of Work*, in accordance with the *Notice to Proceed with Balance of Work*;
- (d) achieve *Final Completion* of all of the *Work* by the *Scheduled Final Completion Date*.

12.2 The *Contractor* shall, unless otherwise provided for in this *Contract* or altered by any *Change Order* or a *Change Directive*, achieve the *Milestones* by the *Milestone Dates* and perform the *Work* in accordance with the *Execution Plan*.

12.3 If a party fails to meet its obligations set out in this *Contract* in a timely manner, the other party may raise the failure of a timely action as provided for in Appendix G – Dispute Resolution Procedure; however, in such case the parties shall continue to perform the *Work* and their respective obligations under this *Contract* while the matter is being resolved.

- 12.4 The *Contractor* shall be entitled to receive a *Change Order* for a change in the *Contract Time*, including the *Scheduled Final Completion Date*, and an adjustment to the *Upfront Engineering Fixed Price* if the *Notice to Proceed with Upfront Engineering* is issued later than December 31, 2020. The *Upfront Engineering Fixed Price* will be adjusted by multiplying it by the Consumer Price Index, as published by Statistics Canada in Table: 18-10-0004-01 (“**CPI Index**”), for the month in which the *Notice to Proceed with Upfront Engineering* is issued and dividing it by the CPI Index for November 2020.
- 12.5 It shall be a condition precedent of the issuance of the *Notice to Proceed with Upfront Engineering* that the *Owner’s* ICM (Incremental Capital Module) application has concluded successfully in respect of rates and revenue recovery, as determined by the *Owner* in its sole discretion. The *Owner* will attest to the satisfaction of this condition precedent in the *Notice to Proceed with Upfront Engineering*, and the *Contract* may rely on such attestation without further inquiry.

Article 13 - Payment

- 13.1 As full and complete compensation for the *Work*, the *Owner* shall pay the *Contractor* the *Compensation* pursuant to the terms of Appendix B – Compensation which shall in no event exceed the *Compensation* payable in accordance with the *Contract*.
- 13.2 The *Contractor* shall prepare and submit invoices for all *Work* performed in accordance with Appendix B – Compensation.
- 13.3 Should either party fail to make payments as they become due under the terms of the *Contract* or in an award of arbitration or judgment of a court, interest at the rate of 4% per annum compounded semi-annually on any unpaid amounts shall also become due and be payable.

Article 14 - Changes

- 14.1 The *Owner* shall have the right, at any time, to make a *Change*.
- 14.2 When a *Change* is proposed by the *Owner*, then the *Owner* shall provide a *Contemplated Change Notice* to the *Contractor* describing the proposed *Change*.
- 14.3 The *Contractor*, upon receipt of a *Contemplated Change Notice*, shall within 10 *Work Days*, or such longer period as the *Contractor* may reasonably require as agreed to by the *Owner*, provide the *Owner’s Representative* with a *Change Quotation* which shall include a method of adjustment or an amount of adjustment to the *Compensation*, if any, and any adjustment in the *Contract Time* for the proposed *Change*.
- 14.4 Following receipt of a *Change Quotation*, the *Owner* shall within 10 *Work Days* either agree to the adjustments in the *Contract Time* and the *Compensation* or to the method to be used to determine the adjustments, or give the *Contractor* notice that the *Change Quotation* is not acceptable.
- 14.5 If the *Change Quotation* is agreed to, then the *Owner* shall issue a *Change Order* recording the *Change*, which shall be signed by the *Owner* and the *Contractor*. The value of the *Work*

performed as a result of a *Change Order* shall be included in invoices for payment given by the *Contractor* in accordance with the terms of payment in Appendix B – Compensation and shall identify those portions of the invoice charged for the *Change Order*. A *Change Order* shall constitute a final settlement of all matters relating to the *Change* in the *Work* which is the subject of the *Change Order*, including but not limited to all direct and indirect costs associated with such *Change* and any and all adjustments to the *Compensation*, the *Milestones* and *Milestone Dates* and the *Execution Plan*.

- 14.6 If the *Owner* requests the *Contractor* to provide a *Change Quotation* and subsequently elects not to proceed with the *Change*, the *Contractor* shall be reimbursed in accordance with Appendix B – Compensation, or as otherwise agreed between the parties, for its reasonable costs incurred including design and engineering services, and the *Owner* shall issue a *Change Order* for these costs.
- 14.7 If the *Owner* requires the *Contractor* to proceed with the *Change* before the *Owner* and the *Contractor* agree, or, if the *Owner* and the *Contractor* have failed to agree upon the adjustment in *Contract Time* and the *Compensation*, then the *Owner* shall issue a *Change Directive* directing the *Contractor* to proceed with the *Work*.
- 14.8 Upon receipt of a *Change Directive*, the *Contractor* shall proceed promptly with the *Change* and:
- (a) keep daily records of the time, materials and equipment employed in the *Change*, as well as original receipted bills covering costs of materials, including freight and haulage charges, and a copy of payroll records and shall submit such records to the *Owner's Representative* on a weekly basis;
 - (b) the *Compensation* shall be adjusted in accordance with the rates set forth in Appendix B – Compensation or, where no such rates are provided, the parties will use a transparent, open-book process to negotiate the adjustment to the *Compensation*, which shall, to the extent applicable, be based on the price breakdown provided in the *Cost Estimate for Balance of Work* on which the *Fixed Price* was based, or shall be settled in accordance with Appendix G – Dispute Resolution Procedure; and
 - (c) the *Contract Time* shall be adjusted by agreement between the parties, or shall be settled in accordance with Appendix G – Dispute Resolution Procedure.
- 14.9 If, during the performance of the *Work*, the *Contractor* is of the opinion that any instruction, interpretation, decision or direction from the *Owner* should have, but has not, resulted in a *Contemplated Change Notice* or *Change Directive* being issued, the *Contractor* shall give the *Owner* 10 *Work Days* notice with a *Change Quotation* requesting an adjustment in *Contract Time* and the *Compensation* required. If the *Contractor* does not issue a *Change Quotation* within the specified time, then the *Contractor* shall have no claim for any claim against the *Owner* attributable to that instruction, interpretation, decision or direction.
- 14.10 If the *Owner* receives a *Change Quotation* from the *Contractor* pursuant to Section 14.9, the *Owner* shall promptly consider the *Change Quotation* and immediately issue a *Change Order*, *Change Directive* or advise the *Contractor* in writing that the *Contractor's* request is denied. If the *Contractor* disputes the *Owner's* decision, the *Contractor* shall, before

proceeding with the *Work*, provide notice to the *Owner* disputing the *Owner's* decision, but in all cases, the *Contractor* shall proceed with the *Work*. In such event, the *Contractor* shall keep daily records in accordance with Section 14.8(a), in respect of the disputed work. The *Contractor's* entitlement to an adjustment in the *Contract Time* and the *Compensation* shall then be resolved in accordance with Appendix G – Dispute Resolution Procedure.

- 14.11 No modification, addition, deletion or other revision to the *Owner's Requirements* shall be binding on either party unless set out in a *Change Order*, required by a *Change Directive* or determined by Appendix G – Dispute Resolution Procedure. Neither the keeping of daily records in respect of disputed work nor the signing of those records by the *Owner's Representative* shall be considered an admission of entitlement to payment by the *Owner*. Such records, if signed by the *Owner*, shall only constitute the *Owner's* agreement that the time, materials and equipment were spent or employed in respect of the *Work* for which a *Change Directive* has been issued, or in respect of the *Work* in relation to which the *Contractor* has given notice of a dispute pursuant to Section 14.9.
- 14.12 The *Contractor* shall include in its *Change Quotation* all costs and changes in *Contract Time* reasonably expected to result from a *Change* including any impact costs or costs of acceleration.
- 14.13 If the *Contractor* encounters actual subsurface or other concealed physical conditions at the *Work Site* which are materially different from any representations of existing conditions made in the *Owner's Requirements*, then the *Contractor* shall provide notice to the *Owner* within 10 *Work Days* of encountering the conditions and shall allow the *Owner* the opportunity for inspection before the conditions are further disturbed. If the *Contractor* fails to provide such notice to the *Owner* within 45 days, then the *Contractor* shall have no claim for any additional costs or delays attributable to such subsurface or concealed physical conditions.
- 14.14 The *Owner* shall promptly investigate the conditions described by the *Contractor* pursuant to Section 14.13 and if the actual conditions encountered by the *Contractor* at the *Work Site* differ materially from the conditions represented in the *Owner's Requirements* so as to substantially increase the cost to the *Contractor* or impact the *Contract Time*, then the *Owner* shall issue a *Change Order* to cover the increased cost and *Contract Time*.

Article 15 - Personnel

- 15.1 All communications between the *Owner* and the *Contractor* and all documents of whatever kind submitted to the *Owner* by the *Contractor* and its *Subcontractors* shall be in the English language. All of the *Contractor's* and the *Subcontractors'* personnel that deal with or communicate with the *Owner* shall be fluent in the English language. All training and supervision of the *Owner's* operating personnel shall be in the English language.
- 15.2 The *Contractor* shall employ, or cause to be employed, only supervisory personnel who are appropriately qualified, trained and experienced in safety, efficiency and quality of work supervision, and if requested by the *Owner*, accredited or enrolled in a program for accreditation, in the manner specified by the *Owner* in the *Owner's Requirements*.

- 15.3 At the *Owner's* request, the *Contractor* shall reassign, replace or remove personnel who, in the *Owner's* opinion, acting in good faith, negatively affect the efficiency, safety or *Scheduled Substantial Completion Date* of the *Work* or who have committed a violation of the *Owner's Policies*.
- 15.4 The *Contractor* shall not employ, or continue to employ, non-Canadian workers in Canada, except in compliance with the Immigration Act (Canada) and regulations, as amended from time to time. The *Contractor* shall obtain and produce to the *Owner's Representative* valid and subsisting employment authorizations with respect to all non-Canadian workers to be used to perform the *Work*.
- 15.5 The *Contractor* shall not, at any time during the *Contract Time* and for 24 months thereafter solicit or recruit any of the *Owner's* employees who have been involved in the *Project* for any of the *Contractor's* purposes or those of any of its affiliates.

Article 16 - Key Personnel

- 16.1 If not agreed to before the execution of the *Contract*, the *Contractor* shall submit a proposed organisational chart for the *Owner's* approval, as part of the *Execution Plan*. The organisational chart shall show the *Key Personnel* and other supervisory and staff personnel who shall be executing the *Work*, together with their respective job titles.
- 16.2 The *Owner* shall identify any of the *Key Personnel* to which the *Owner* objects within 10 *Work Days* and if the *Owner* does not provide the *Contractor* with its objections to the *Key Personnel*, the *Owner* shall be deemed to have accepted the *Key Personnel*.
- 16.3 If the *Owner* objects to any of the *Key Personnel* in accordance with Section 16.2, then the *Contractor* will promptly prepare a new organisational chart identifying the *Key Personnel* for the *Owner's* approval. This process shall be repeated until the *Owner* approves the *Key Personnel*.
- 16.4 Once the *Owner* has approved the organizational chart identifying the *Key Personnel*, the *Contractor* shall within 10 *Work Days* arrange for each of the *Key Personnel* to complete and execute an agreement in the form of the Key Employee Confidentiality Proprietary Information and Consent Agreement, attached as part of Appendix F – Forms.
- 16.5 Subject to Section 16.6, the *Contractor* shall not, without the *Owner's* consent, make any changes to the *Key Personnel* or an organisational chart that has been approved by the *Owner*.
- 16.6 If any *Key Personnel* leave the *Contractor's* workforce, the *Contractor* shall forthwith replace such *Key Personnel* with personnel possessing those qualifications necessary for the proper performance of the functions to which assigned. Where the *Compensation* for *Work*, or part thereof, is based on a reimbursable basis, then the *Owner* shall have the right to determine if the replacement personnel is suitable to the *Owner*, and if not suitable, the *Contractor* shall provide further replacement personnel until the *Owner* determines that the replacement person is suitable to the *Owner*.

Article 17 - Subcontracts, Assignment and Change of Control

- 17.1 The *Contractor* shall use those *Subcontractors* designated in the *Owner's Requirements* for the performance of the *Work* for which they are designated. For all other parts of the *Work*, the *Contractor* shall provide notice to the *Owner* of its intention to subcontract the performance of any *Work* or the supply of equipment and materials and of the intended *Subcontractor* before entering into any subcontract. The *Owner* may for reasonable cause, and acting in good faith, object to the use of a proposed *Subcontractor* and require the *Contractor* to obtain another *Subcontractor*. Any reviews or approvals by the *Owner* pursuant to the provisions of this Article or elsewhere in this *Contract* shall not release or relieve the *Contractor* of any of its obligations under this *Contract* or create any contractual relations between the *Owner* and any *Subcontractor*. The *Contractor* shall require any *Subcontractor* to agree to be bound by the pertinent portions of this *Contract*, which shall at a minimum include Article 14 - Changes, Article 24 - Safety and Loss Management and Appendix G – Dispute Resolution Procedure and any obligation to which the *Contractor* is specifically required to bind its *Subcontractors*. The *Contractor* shall ensure that each contract with a *Subcontractor* is assignable to the *Owner* without the need to obtain the consent of the *Subcontractor*.
- 17.2 Prior to the commencement of the *Balance of Work* the *Contractor* shall provide the *Owner's Representative* with a list of the names and addresses of all *Subcontractors* and others who the *Contractor* proposes to perform any part of the *Work*. The *Contractor* shall provide the *Owner's Representative* with any proposed changes to this list during the *Contract Time*.
- 17.3 Subject to Article 7 - Owner's Specified Materials and Subcontractors, the *Contractor* shall be fully responsible for any part of the *Work* performed by *Subcontractors* and for the acts or omissions of *Subcontractors* and all persons either directly or indirectly employed by them, to the same extent as the *Contractor* is for its own acts or omissions. Without in any way limiting the *Contractor's* obligations pursuant to the provisions of this Article or elsewhere under this *Contract*, the *Contractor* shall secure compliance with and enforce, at its own expense, for the benefit of the *Owner*, each of the contracts concluded by the *Contractor* with *Subcontractors*. *Owner* agrees that, except with the consent of *Contractor* or in an emergency situation, it will not issue any directions or instructions regarding the *Work* to a *Subcontractor* who is an *Affiliate* of the *Owner*.
- 17.4 The *Contractor* shall not assign the *Contract*, or any part thereof, without the prior approval of the *Owner*.
- 17.5 The *Owner* may assign this *Contract* including all rights and obligations hereunder, at any time without the prior agreement of the *Contractor*, provided that the *Owner* shall remain liable for the *Owner's* obligations under this *Contract*, unless the *Contractor* provides its consent to release the *Owner*, which consent shall not be unreasonably withheld.
- 17.6 The *Contractor* shall enforce the warranty obligations of its *Subcontractors*, and upon the request of the *Owner*, shall assign any warranty to the *Owner*. All contracts between the *Contractor* and its *Subcontractors* shall provide that warranties given by the *Subcontractor* shall be given to both the *Contractor* and the *Owner* and the warranties may be enforced by either the *Contractor* or the *Owner*.

- 17.7 Notwithstanding Section 17.1, the *Owner* shall not have the right to object to the use of *Subcontractors* performing *Engineering Services* who are *Affiliates* of the *Contractor* and who are licensed to provide such services. The remaining provisions of this Article 17 - Subcontracts, Assignment and Change of Control shall apply equally to such *Subcontractors* as to other *Subcontractors*.
- 17.8 The *Contractor* shall request and use its commercially reasonable efforts to obtain for the benefit of the *Owner*, the warranties and guarantees that it is possible to secure from its *Subcontractors* at the direction of *Owner* and, as a minimum, shall obtain and provide to the *Owner* the warranties required by the *Contract*. The *Contractor* shall do all things and provide all assistance reasonably necessary to enable the *Owner* to enforce warranties and guarantees provided by its *Subcontractors*.
- 17.9 The *Contractor* shall not undergo any *Change of Control* without the consent of the *Owner*; provided that the *Owner's* consent shall not be required where the *Contractor* has given notice of the *Change of Control* within 10 *Work Days* of its occurrence, the entity acquiring control is a substantially similarly financially situated to the *Guarantor*, and the entity acquiring control has provided a guaranty in the substantially in the form of Appendix E – Parent Guaranty within 10 *Work Days* of the notice of the *Change of Control*. In the event that *Contractor* undergoes a *Change of Control* in contravention of this Section 17.9, *Owner* may give *Contractor* a notice of default under Section 36.3.
- 17.10 The *Contractor* shall provide notice of any change in ownership of shares or units of ownership of *Contractor* or any person with direct ownership of share or units in *Contractor*, or in the direct or indirect power to vote or transfer any of the shares or units of ownership of such person, within 5 *Work Days* of its occurrence, with details of the change in ownership, including the legal names of relevant persons and details of the ownership interest of relevant persons before and after the change in ownership.
- 17.11 Within 10 *Work Days* of receipt of the *Notice to Proceed with Upfront Engineering*, the *Contractor* will deliver to *Owner* a guaranty executed by the *Guarantor* in form set out in Appendix E – Parent Guaranty.

Article 18 - Inspection and Testing

- 18.1 The *Contractor* shall develop and provide to the *Owner*, for the *Owner's* review and approval, an *Inspection and Test Plan* in time to allow the *Owner* to perform the inspections contemplated by this Article 18 - Inspection and Testing. The *Contractor* shall follow the approved *Inspection and Test Plan*.
- 18.2 At all times during the progress of the *Work*, the *Owner* or its designate shall have the right to inspect or witness any part of the *Work*.
- 18.3 The *Contractor* shall inspect and be solely responsible for the inspection of all workmanship, materials and equipment furnished by itself or its *Subcontractors* in respect of the *Work*, to ensure conformity in each and every respect to the *Contract* and the *Law* and to ensure that good and proper construction practices are followed and that the *Work* is performed in a safe and environmentally sound manner.

- 18.4 If the *Law* requires testing of any part of the *Work*, the *Contractor* shall provide the *Owner* with sufficient advance notice of the arrangements for the test.
- 18.5 If the *Owner's Requirements* require any test to be witnessed by the *Owner*, the *Contractor* shall provide the *Owner's Representative* with sufficient advance notice of its readiness for the test and the *Owner* or its designate shall then promptly witness the test. If the *Owner* or its designate fails to witness the test when scheduled, any re-testing required by the *Owner* shall constitute a *Change*.
- 18.6 If any portion of the *Work* is closed or covered by the *Contractor* without the *Owner's* permission and before the *Owner* has been given the opportunity to witness a required test, then, if required by the *Owner*, that portion of the *Work* shall be opened or uncovered for testing and re-closed or recovered, all at the *Contractor's* expense and without increasing the *Contract Time*.
- 18.7 Any *Work* which must be tested shall not be considered ready for inspection by the *Owner* until the *Contractor* has satisfied itself and notified the *Owner's Representative*, that, in the *Contractor's* opinion, that portion of the *Work* can successfully pass the test.
- 18.8 Any inspection, testing or witnessing of any of the *Work* or tests by the *Owner*, or omission or failure on the part of the *Owner* to inspect or test any of the *Work* shall not be construed to be an acceptance of any such *Work*, or as relieving the *Contractor* of its responsibilities pursuant to the *Contract* or the *Law*.
- 18.9 The *Contractor* shall ensure that all tools, equipment, temporary facilities and other items used in accomplishing the *Work*, whether purchased, rented, manufactured or fabricated by, or under the direction of the *Contractor*, or otherwise provided by the *Contractor* or *Subcontractors*, are safe, environmentally sound and maintained in good condition, capable of performing their required functions. In the case of tools, meters and other devices which require calibration, the *Contractor* shall ensure that such calibration is performed on the frequency recommended by the manufacturer and in accordance with normal industry practice.
- 18.10 The *Owner* reserves the right to inspect all tools and equipment brought on to the *Work Site* at any time during the progress of the *Work*. The *Owner's Representative* may require the *Contractor* to supply a qualified, independent engineering evaluation or certification that any item in question is suitable for its intended purpose, or to reject any item and require replacement with a proper and suitable item which is satisfactory to the *Owner's Representative*. If any tool or item of equipment is deemed by the *Owner* to be unsafe, environmentally unsound or incapable of doing the work for which it is intended, then the *Contractor* shall repair or replace it with a safe, environmentally sound and suitable tool or item of equipment at the *Contractor's* expense.
- 18.11 The *Owner* may, at any time during the progress of the *Work*, conduct inspections or tests on any part thereof, to determine whether the *Work* is in accordance with the *Owner's Requirements*. Such tests shall be at the sole expense of the *Owner*, unless the result of a *Performance Test* determines that the *Work* is not in accordance with the *Owner's Requirements*, in which case the *Contractor* shall reimburse the *Owner* for such

Performance Test and redo or repair the *Work* ready for a new *Performance Test* to be performed by the *Owner*.

Article 19 - Performance Tests

- 19.1 If *Performance Tests* are specified in the *Owner's Requirements*, this Article shall apply.
- 19.2 *Performance Tests* may be stipulated in the *Owner's Requirements* to be performed before, after, or both before and after *Functional Completion* or *Substantial Completion* and shall be performed by that party specified in the *Owner's Requirements*.
- 19.3 Unless otherwise stipulated in the *Owner's Requirements* the *Contractor* shall carry out the *Performance Tests* in accordance with the *Test Plan*.
- 19.4 When the *Contractor* considers that the *Work*, or any *System*, will pass the *Performance Tests*, the *Contractor* shall notify the *Owner* that the *Contractor* may perform the *Performance Tests* on, or to, the *Work* or a *System*.
- 19.5 If the *Work* or a *System*, or part thereof, passes one or more *Performance Tests*, the *Owner* shall promptly give notice acknowledging the success of the same to the *Contractor*.
- 19.6 If the *Work* or a *System* or part thereof, fails to meet one or more *Performance Tests*, the *Owner* shall promptly provide a notice of such failure to the *Contractor* and the *Owner* may:
- (a) reject such *Work* or *System*, or part thereof, which has failed to pass a *Performance Test*; or
 - (b) conditionally accept such *Work* or *System*, or part thereof, on conditions which shall be stated in the notice to the *Contractor*.
- 19.7 If the *Work* or a *System*, or part thereof, fails one or more of the *Performance Tests*, then the *Contractor* shall:
- (a) reimburse the *Owner* for all the *Owner's* direct costs in performing such failed *Performance Tests*;
 - (b) prepare a report to the *Owner*, for the *Owner's* approval, proposing the alterations the *Contractor* will make to the *Work* or *System*, or part thereof, to bring the *Work* or *System* to a condition which the *Contractor* considers will pass the *Performance Tests*;
 - (c) redo or repair the *Work* or *System*, or part thereof, and repair any damage to the *Work* or *System* caused by the same in failing to meet the *Performance Test*, to make such *Work* or *System*, or part thereof, ready for a repeat of the failed *Performance Tests*.
- 19.8 If the *Work* or a *System*, or part thereof, fails to pass one or more *Performance Tests* as a result of actions or omissions by the *Owner*, the *Owner* shall promptly issue a *Change Order* providing a *Change* in the *Contract Time* or the *Compensation*, or both, as the case may be, to the *Contractor* for such *Performance Tests* and the *Contractor* shall proceed

with its obligations relating to the *Performance Tests* as set out in the *Owner's Requirements*.

- 19.9 If any revenue is generated from any of the *Performance Tests*, such revenue shall be to the account of the *Owner*.

Article 20 - Functional and Substantial Completion

20.1 If the *Work* is divided into *Systems*, the *Contractor* shall be entitled to apply for a *Functional Completion Certificate* for each *System*.

20.2 The *Contractor* may apply by notice to the *Owner's Representative* for a *Functional Completion Certificate* when, in the *Contractor's* opinion, a *System* is complete and ready for taking over by the *Owner*. Such notice shall include the *Deficiencies* which are acknowledged by the *Contractor*.

20.3 The *Contractor* may apply by notice to the *Owner's Representative* for the *Substantial Completion Certificate* when, in the *Contractor's* opinion, the whole of the *Work* is complete and ready for taking over by the *Owner*. Such notice shall include the *Deficiencies* which are acknowledged by the *Contractor*.

20.4 After receipt of the *Contractor's* application for a *Functional Completion Certificate* or for the *Substantial Completion Certificate*, the *Owner's Representative* shall, within 5 *Work Days* after the receipt of the same:

- (a) reject the application, giving reasons and specifying the *Work* required to be done by the *Contractor*, which reasons shall specify Category "A" *Deficiencies*, related to the *Work* or *System* for which the application is made, and which, if not remedied, will prevent the *Owner* from testing, commissioning or starting-up the *Facilities*, and the Category "B" *Deficiencies*, related to the *Work* or *System* for which the application is made, which will not prevent the *Owner* from testing, commissioning or starting-up the *Facilities*; or
- (b) issue the *Functional Completion Certificate* or the *Substantial Completion Certificate* to the *Contractor*, stating the date on which the *Work* or a *System* was completed in accordance with the *Contract*, attaching a list of Category "B" *Deficiencies*, related to the *Work* or *System* for which the application is made, and which if not remedied will not prevent the *Owner* from testing, commissioning or starting-up the *Facilities*, and the *Contractor* shall cease to be liable for, and shall relinquish care, custody and control of, such *Work* or *System* from the date of the *Functional Completion Certificate* or the *Substantial Completion Certificate* and responsibility shall pass to the *Owner*.

20.5 If the *Owner* determines that the *Work* does not meet *Substantial Completion*, or a *System* does not meet *Functional Completion*, the *Owner* shall provide a notice to the *Contractor* as specified in Section 20.4(a) and the *Owner's Representative* may:

- (a) order further repetition of *Performance Tests* specified to be performed before *Functional Completion* in the *Owner's Requirements*, or other tests necessary to determine *Functional Completion* or *Substantial Completion*; or
 - (b) issue a *Functional Completion Certificate* or the *Substantial Completion Certificate*, in which case, if the *Owner* so requires, the *Compensation* shall then be reduced by such amount as may be agreed by the *Owner* and the *Contractor* (in full satisfaction of such failure only), and the *Contractor* shall then proceed in accordance with the *Contractor's* other obligations under the *Contract*.
- 20.6 If the *Owner's Representative* fails either to issue a *Functional Completion Certificate* or the *Substantial Completion Certificate* or to reject the *Contractor's* application within the period of 14 days, the *Functional Completion Certificate* or *Substantial Completion Certificate* shall be deemed to have been issued on the date specified by the *Contractor* for *Functional Completion* or *Substantial Completion* in the notice in accordance with Section 20.2.
- 20.7 Where the *Contractor's* application for a *Functional Completion Certificate* or the *Substantial Completion Certificate* is rejected by the *Owner* in accordance with 20.4(a), the *Contractor* shall not re-apply for the *Functional Completion Certificate* or the *Substantial Completion Certificate* under Section 20.2 until the Category "A" *Deficiencies* are remedied.
- 20.8 If the *Contractor* is prevented from carrying out a *Performance Test* by a cause for which the *Owner* or one or more *Other Contractors* are responsible, the *Contractor* shall notify the *Owner* within 48 hours of such delay and if the *Contractor* is further prevented during the next 48 hours from doing so, the *Owner* shall issue a *Change Order* to compensate the *Contractor* for a *Change in Compensation* or *Contract Time*, as may be applicable.
- 20.9 After a *Functional Completion Certificate* or the *Substantial Completion Certificate* is issued, either for a *System* or the whole of the *Work*, the *Owner* may continue to identify *Deficiencies*. Where *Deficiencies* are identified after issuance of a *Functional Completion Certificate* or the *Substantial Completion Certificate*, the procedure for dealing with and resolving such *Deficiencies* shall be as set forth in Appendix D – Warranty Items Procedure.

Article 21 - Final Completion

- 21.1 It is a condition precedent to the issuance of a *Final Completion Notice* that the *Contractor* satisfy each of the following requirements:
- (a) the *Work* has been fully completed in accordance with the terms and conditions of this *Contract*;
 - (b) all *Deficiencies* with respect to the *Work* have been remedied to meet the requirements of the *Contract*;
 - (c) all obligations of the *Contractor* to other parties in relation to the *Work*, for which the *Owner* could in any way be held responsible, have been fully satisfied; and

- (d) the *Contractor* has delivered to the *Owner* the following:
- (i) a statutory declaration in the form included in Appendix F – Forms and modified as required to include the following:
 - (a) the amount of final sums payable;
 - (b) the date the *Contractor* completed the *Work*, to evidence the expiration of the term for filing liens; and
 - (c) the full payment of all payrolls and other similar indebtedness, and all other sums and obligations whatsoever incurred by the *Contractor* in carrying out the *Work*, including, without limitation, payments to *Subcontractors* or for materials or equipment;
 - (ii) a declaration that the *Contractor* is not aware of any lien having been preserved (by registration or otherwise) or any written notice of lien having been delivered in relation to the *Work* or the *Contract* other than those of which the *Contractor* has given written notice to the *Owner* and which the *Contractor* has removed, vacated or effected the withdrawal of in accordance with its obligations under the *Contract*;
 - (iii) a clearance certificate from the WSIB (Ontario);
 - (iv) any *As-Built Drawings* and operations manuals for which the *Contractor* is responsible;
 - (v) assignments of any warranties provided by manufacturers or suppliers of materials;
 - (vi) written evidence of good standing from union representatives, if any; and
 - (vii) a Release and Certificate of Final Payment, in the form provided in Appendix F – Forms, releasing all of the *Contractor's* claims against the *Work* and the *Owner* arising under or by virtue of this *Contract*, other than such claims, if any, as may be expressly identified by their nature and amount by the *Contractor* in the Release and Certificate of Final Payment, or as attached as an attachment thereto.

21.2 When conditions precedent set out in Section 21.1 have been met by the *Contractor*, the *Owner* shall issue to the *Contractor* a *Final Completion Notice*.

Article 22 - Liquidated Damages

22.1 *Liquidated Damages* shall be paid by the *Contractor* to the *Owner* in accordance with the *Notice to Proceed with Balance of Work*. *Liquidated Damages* will be agreed to by the parties in accordance with the following parameters:

- (a) The parties shall agree to *Liquidated Damages* as a genuine pre-estimate of the damages that the *Owner* will suffer due to the occurrence of the event triggering the payment of *Liquidated Damages*.
- (b) *Liquidated Damages for Delay* shall protect the *Owner* from losses associated with failure to complete the *Work* by the *Scheduled Final Completion Date* and thus not within the timeframe required under its funding arrangement with National Resources Canada. [REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

[REDACTED]

22.2 Subject to the *Contractor's* obligations pursuant to Section 32.1, any right of the *Owner* to claim injunctive relief and any express right of the *Owner* under this *Contract* to terminate this *Contract* or to perform any *Work* on the *Contractor's* behalf, *Liquidated Damages* shall be the *Owner's* sole remedy to claim from the *Contractor* for any damages due to failure to meet the *Scheduled Final Completion Date* or failure to meet *Performance Guarantees*.

22.3 In the event that the *Contractor* does not complete the *Work* or reach *Final Completion*, then the limit of the damages for delay or failure to meet *Performance Guarantees* that the *Owner* shall be entitled to is the aggregate limit of the *Liquidated Damages* set out in Section 22.1(d) whether such damages are payable as *Liquidated Damages* under this Article 22 or in the event of termination for cause under Article 36.

Article 23 - Warranty

23.1 If a defect in the *Facilities* is discovered during the *Warranty Period* and if the *Owner* has notified the *Contractor* in writing of such *Deficiency* promptly upon *Owner's* discovery but in any event no later than 30 days prior to the expiry of the *Warranty Period*, the *Contractor* shall, at its own risk and expense:

- (a) remedy without delay such defect such that it comports with the *Owner's Requirements* and the *Contractor's* obligations hereunder;

- (b) repair or replace any portion of the *Facilities* damaged as a result of such defect or damaged by the remedy of such defect;
 - (c) repair or replace all equipment, materials, supplies, or work performed by *Other Contractors*, damaged as a result of such defect, or damaged by the remedy of such defect; and
 - (d) repair or replace any property, including but not limited to land belonging to the *Owner*, or others, which is damaged as a result of the defect or damaged by the remedy of such defect.
- 23.2 Should the *Contractor* fail to remedy a defect, commence a remedy on a defect or provide an acceptable remedial plan to the *Owner*, in accordance with Section 23.1, within 14 days of the *Owner* providing a notice to the *Contractor* to remedy the same, the *Owner* may elect either to proceed with any activities necessary to remedy the defect or to accept the defect.
- 23.3 The *Contractor* further warrants any and all remedial work it performs in respect of defects appearing during the *Warranty Period* and, if longer, for a period of 12 months from completion of the remedial work. If this further warranty of remedial work expires more than 12 months after the expiry of the *Warranty Period*, any further remedial work shall be warranted only until the expiry of the further warranty and shall not be extended beyond such date by the preceding sentence.
- 23.4 The *Contractor* shall immediately advise the *Owner's Representative* of any defects in workmanship, defects, errors, omissions or mistakes in the *Work* that it discovers or becomes aware of during the *Contract Time* or the *Warranty Period*.
- 23.5 The *Contractor* shall perform its warranty obligations set forth in this Article 23 - Warranty in a manner that keeps disruptions to the *Owner's* continued operations at a minimum.
- 23.6 Neither acceptance of the *Work* by the *Owner*, nor payment for performance of the *Work*, shall relieve the *Contractor* from any responsibility for defects in the *Work*.
- 23.7 Except as set forth in this *Contract*, or any document executed in connection herewith, the parties disclaim all implied warranties and warranties imposed by *Law*, including warranties of merchantability and fitness for a particular purpose.
- 23.8 The *Owner* shall be liable to and shall indemnify the *Owner* for any and all reasonable losses, costs and expenses incurred by the *Owner* as a result of a breach of this Article 23 - Warranty, including any reasonable costs and expenses incurred by the *Owner* in remedying a defect under Section 23.2 and for any diminution of value of the *Work* where the *Owner* has elected to accept a defect under Section 23.2, and the *Owner* may retain and deduct such amount from payments or other monies due, or which may become due, to the *Contractor*, howsoever arising.

Article 24 - Compliance with Law

- 24.1 The *Contractor* shall act in accordance with all *Owner's Policies* and the *Law*.
- 24.2 Where there is a change in the *Law* or the *Owner's Policies* after the effective date of this *Contract*, the *Contractor* shall be responsible for ensuring that the *Work* complies with the *Law* and the *Owner's Policies*. If the *Contractor* considers such change in the *Law* or the *Owner's Policies* to have resulted in a *Change*, the *Contractor* may make a claim for such *Change* under Section 14.9.
- 24.3 The *Contractor* shall comply with and shall ensure that its employees and agents comply with and shall contractually require its *Subcontractors* and their respective employees and agents to comply with all applicable *Law* and *Owner's Policies* in connection with the *Work*.
- 24.4 The *Contractor* shall obtain from governmental authorities or other third parties, and pay for, those licenses, permits and approvals required by the *Law* and the *Contract* to perform the *Work*, except those licenses, permits and approvals required with respect to the land-use aspects of the *Work* to be performed on the *Work Site*, and except for any licenses, permits and approvals required by the *Contract* to be obtained by the *Owner* as stipulated in the *Owner's Requirements*.
- 24.5 Subject to Section 24.2, if the *Contractor* discovers any variance between the *Law* and any materials purchased or supplied by the *Contractor* or *Subcontractors*, the *Contractor* shall promptly notify the *Owner* before proceeding with the part of the *Work* affected, and shall make the necessary revisions to the materials to comply with the *Law*, at the *Contractor's* expense.

Article 25 - Safety and Loss Management

- 25.1 The *Owner* and the *Contractor* are committed to safety and the application of loss management principles in the conduct of their business. The parties recognize that excellence in safety and loss management can only be achieved through the active participation of everyone, including *Subcontractors* and their respective employees, consultants and agents.
- 25.2 The *Contractor* shall have the highest regard for safety, emergency procedures and loss management at all times during the performance of the *Work*. Accordingly, the *Contractor* shall at all times be responsible for safety and loss management in the performance of the *Work* and shall comply with all safety requirements specified in the *Contract*. Where the *Contractor* has control over the *Work Site*, the *Contractor* shall be responsible for protecting the employees of the *Owner*, the *Contractor*, *Other Contractors*, *Subcontractors*, visitors to the *Work Site* and the general public from injury or death and protecting the *Work Site*, the *Owner's* property and the property of third parties from loss or damage. Where the *Owner* requires control over the *Work Site* due to operational requirement, the *Owner* and *Contractor* will agree on *Work Site*-specific safety requirements and procedures, and each of them shall be responsible for compliance with such requirements and procedures by their respective employees and contractors.

- 25.3 The *Contractor* shall comply with the *Safety Plan* and any *Owner's Policies* relating to safety, emergency and loss management.
- 25.4 All employees of the *Contractor* and *Subcontractors* and all *Work Site* visitors must successfully complete any of the *Owner's* safety orientation courses and other similar courses stipulated in the *Owner's Requirements* before being allowed access to the *Work Site*, and it shall be the *Contractor's* responsibility to ensure that they have done so.
- 25.5 Subject to Section 25.6, *Contractor* shall be the “constructor”, as that term is defined in the Occupational Health and Safety Act (Ontario), for the *Work* as stipulated in the *Owner's Requirements*.
- 25.6 Where the *Contractor* is stipulated as the “constructor” for the purposes of the Occupational Health and Safety Act (Ontario) in the *Owner's Requirements*, the *Owner* may take over the role of “constructor” at any time as may be stipulated in the *Owner's Requirements*.
- 25.7 For all *Work* performed on the *Work Site*, the *Contractor* shall have an alcohol and drug policy that is at least equivalent to the requirements of the *Owner's Policies*.
- 25.8 The *Owner* shall have the right to enter or occupy the *Work* in whole or in part for any purpose prior to *Functional Completion* or *Substantial Completion*. Such entry or occupation shall not be considered as acceptance of the *Work* or in any way relieve the *Contractor* from responsibility to complete the *Contract*. In exercising such right, where the *Contractor* is the “constructor” for the purposes of the Occupational Health and Safety Act (Ontario), the *Owner* shall comply with the *Contractor's* safety requirements and programs in such entry or occupation.

Article 26 - Work Area and Clean Up

- 26.1 The *Contractor* shall be responsible for keeping all its working and storage areas clean, orderly and secure.
- 26.2 The *Owner* is not responsible for theft, loss or damage to the *Contractor's* tools, equipment or materials howsoever caused, except where caused by the negligent act or omission of the *Owner* or those for whom in *Law* it is responsible.
- 26.3 The *Contractor* shall not, and shall ensure that its *Subcontractors* do not, use, transport, or store *Hazardous Material* at the *Work Site* except with the prior approval of the *Owner's Representative*. All *Hazardous Material* used, transported or stored shall be dealt with in accordance with, and the *Contractor* shall comply with, the *Law*, the *Contract* and the *Owner's Policies*.
- 26.4 During the performance of the *Work*, the *Contractor* shall comply fully with the *Contract* and the *Owner's Policies* regarding clean up. The *Contractor* shall clean up, remove and dispose of all surplus materials, containers, trash and debris resulting from the *Work*. Upon completion of the *Work*, or earlier termination of the *Contract*, the *Contractor* shall promptly clean up and remove all equipment, tools and surplus materials from the *Work*

Site as specified by the *Owner* and shall leave the *Work Site* clean and ready for the *Owner's* use and occupancy.

- 26.5 Notwithstanding anything in this *Contract* to the contrary, but subject to *Contractor's* compliance with Section 26.7, title to, ownership of, and legal responsibility and liability for *Pre-existing Hazardous Material* shall at all times remain with *Owner*. The *Owner* shall indemnify and save the *Contractor* harmless from all claims and demands, including legal fees on a solicitor-and-own-client (indemnity) basis arising out of *Pre-existing Hazardous Material*.
- 26.6 *Owner* shall, at *Owner's* sole expense and risk, arrange for handling, storage, transportation, treatment, and delivery for disposal of *Pre-existing Hazardous Material*. *Owner* shall be solely responsible for obtaining a disposal site for such material. *Owner* shall look to the disposal facility and transporter for any responsibility or liability arising from improper disposal or transportation of such material. *Owner* shall complete and execute any forms or certificates relating to regulated activities, including generation, storage, handling, treatment, transportation, or disposal of *Pre-existing Hazardous Material*.
- 26.7 If the *Contractor* encounters *Pre-existing Hazardous Material* at the *Work Site*, or has reasonable grounds to believe that *Pre-existing Hazardous Material* is present at the *Work Site*, the *Contractor* shall:
- (a) take all reasonable steps, including stopping the *Work*, to ensure that no person's exposure to any *Hazardous Material* exceeds any applicable time-weighted levels prescribed by *Law*, and
 - (b) immediately report the circumstances to the *Owner* in writing.

Article 27 - Title and Responsibility

- 27.1 Except for any proprietary processes of the *Contractor* listed in Appendix A – SSG Scope of Work, all of the *Work* shall belong to the *Owner*, and accordingly the *Contractor* shall have no proprietary right or interest in the *Work*. The *Contractor* shall not use, copy or disclose any of the *Owner's Requirements* or the *Work* for any purpose other than performing the *Work*. Subject to the foregoing, the *Contractor* may retain for its own records a copy of the plans and specifications.
- 27.2 Notwithstanding Section 27.1, where a technology, process or work method belongs to, or is developed by the *Contractor* or *Subcontractor*, the proprietary rights to that technology, process or work method shall remain with the *Contractor* or *Subcontractor*, except where it has been created or developed or ownership of it has been acquired (a) during the term of this Contract and within the scope of the *Work*, (b) for the purposes of the Project or the *Work* or (c) based on the *Owner's Requirements* or *Confidential Information* provided by the *Owner*. Where proprietary rights remain with a party other than the *Owner*, then the *Owner* and its assignees shall, and are hereby granted, the right and irrevocable license without charge to have, retain and use information in respect thereof, for the purpose of the *Work* and the operation, repair, maintenance, re-building or renovation of the *Work* or any portion thereof. Nothing contained in this *Contract* shall be construed as limiting or

depriving *Contractor* of its rights to use its basic knowledge and skills to design or carry out other projects or work for itself or others, whether or not such other projects or work are similar to the work to be performed pursuant to this *Contract*.

- 27.3 Notwithstanding Section 27.1, or any other provision of the *Contract*, the *Contractor* shall be responsible for possession of the *Engineering Services* until received by the *Owner*. If the *Engineering Services*, or any part thereof is lost, damaged or destroyed prior to receipt by the *Owner*, then the *Engineering Services*, or portion thereof, as applicable, shall be promptly redone and replaced by the *Contractor*, at its expense, unless the loss, damage, or destruction was caused by the *Owner* or persons for whom in *Law* it is responsible.
- 27.4 Notwithstanding Section 27.1, the design and engineering, including drawings, specifications, and computer software, prepared by *Contractor* as part of the *Work* are not intended to be modified or represented to be suitable for reuse on extensions of the *Project* or any other project. Any such modification or reuse without prior written approval, and verification or adaptation by *Contractor* for the specific purpose intended, will be a breach of the license granted by *Contractor* under Section 28.4, and will be at *Owner's* sole risk and without liability or legal exposure to *Contractor*.
- 27.5 The title to all *Work* completed or in the course of construction at the *Work Site* and all *Goods*, except tools and equipment owned or rented by the *Contractor* or *Subcontractors* and not intended to be incorporated into the *Work*, shall become the property of the *Owner* upon the earlier of payment by the *Owner* on account thereof or delivery to the *Work Site*.
- 27.6 Notwithstanding the provisions of Section 27.5, until the *Owner* has issued a *Functional Completion Certificate*, a *Substantial Completion Certificate* or a *Final Completion Notice*, whichever is earlier, the *Contractor* shall retain all risk with respect to and be responsible for:
- (a) all items supplied by the *Contractor* or its *Subcontractors* which are to be incorporated into the *Work* or used in performance of the *Work*;
 - (b) all items supplied by the *Owner* to the *Contractor* for incorporation into the *Work* or for use in performing the *Work*;
 - (c) all temporary structures or facilities used in the performance of the *Work*; and
 - (d) any *Work* completed or in progress.
- 27.7 No materials, supplies or equipment incorporated into the *Work* shall be subject to any general security agreement, chattel mortgage, financing contract or other agreement by which an interest therein is retained by the seller, or any other party.
- 27.8 Any files delivered in electronic medium may not work on systems and software different than those with which they were originally produced. *Contractor* makes no warranty as to the compatibility of these files with any other system or software. Because of the potential degradation of electronic medium over time, in the event of a conflict between the sealed original drawings and the electronic files, the sealed original drawings will govern.

Article 28 - Patents and Licenses

- 28.1 The *Contractor* shall indemnify and save the *Owner* harmless from all claims costs and demands, including legal fees on a solicitor-and-own-client (indemnity) basis, arising out of any patent, trademark, copyright or industrial design infringement pertaining to any equipment, machinery, materials, compositions, processes, methods or designs supplied by the *Contractor*, or its *Subcontractors*, in the performance of the *Work*.
- 28.2 The *Owner* shall indemnify and save the *Contractor* harmless from all claims and demands, including legal fees on a solicitor-and-own-client (indemnity) basis arising out of any patent, trademark, copyright or industrial design infringement pertaining to any equipment, machinery, materials, compositions, processes, methods or designs supplied or specified for use by the *Owner* to the *Contractor* for use in connection with the *Work*.
- 28.3 The *Contractor* shall promptly give notice to the *Owner* if the *Contractor* has or acquires knowledge of any patent, trademark, copyright or industrial design or similar right under which an action could reasonably be expected to be maintained because of the use or purchase by the *Owner* of equipment, machinery, materials, compositions, processes, methods or designs incorporated or to be incorporated by the *Contractor* as part of the *Work*. Following notification to the *Owner*, the *Contractor* shall not incorporate any such equipment, machinery, materials, compositions, processes, methods or designs into any plans, drawings, specification or other documents, or use the same in connection with the *Work* without the *Owner's* prior approval.
- 28.4 The *Contractor* grants the *Owner* a non-exclusive, royalty-free, perpetual, irrevocable (except in the event of a breach of this license) license for the purpose of operating and maintaining the *Facilities*:
- (a) to use any and all patents, industrial designs, copyrights, designs, process and technology related to the *Work*, that the *Contractor* owns or controls; and
 - (b) to make, have made and use the equipment, machinery, materials, compositions, designs, methods and processes supplied by the *Contractor* under the *Contract*.
- 28.5 The rights granted to the *Owner* by the *Contractor* under Section 28.4 shall be assignable by the *Owner* to any party to whom the *Owner* may transfer all or part of title to the *Work* or the *Project*.
- 28.6 The *Owner* shall be entitled, at its own expense, to participate in or conduct the defence of any claim with respect to which it is entitled to indemnity under Section 28.1 or in respect of which it is required to indemnify the *Contractor* under Section 28.2 and to settle any claim for which it has accepted responsibility but the *Owner* shall not be liable to indemnify any other party for payment of any settlement unless it has consented to the settlement.

Article 29 - Confidential Information and Publicity

- 29.1 Each party shall keep all *Confidential Information* in confidence and shall not disclose it to others without the prior approval of the other party. The *Contractor* shall not use the *Confidential Information*, except in performance of the *Work*.

- 29.2 Notwithstanding Section 29.1, the *Contractor* may disclose *Confidential Information* to those of its employees, *Subcontractors* and their respective employees to whom disclosure is required in order for the *Contractor* to perform the *Work*, provided the *Contractor* shall ensure that its employees and agents comply with, and shall contractually require its *Subcontractors* and their respective employees and agents to comply with Section 29.1.
- 29.3 The *Contractor* shall not disclose any of the *Owner's Requirements* or the *Work* to others without the prior approval of the *Owner's Representative*, except as necessary to perform the *Work*.
- 29.4 Notwithstanding Section 29.1 or Section 29.3, *Confidential Information* may be disclosed by a party if that party is required to disclose the *Confidential Information* as a result of an arbitrator appointed under Appendix G – Dispute Resolution Procedure or an order of a court of competent jurisdiction. If disclosure is required by an arbitrator or an order of a court, the disclosing party shall provide the other party with immediate notice of such arbitration or court order and shall only disclose the minimum amount of *Confidential Information* to comply with the arbitration or court order.
- 29.5 The *Contractor* shall not use the *Owner's* name, or the names of any of its affiliates (as defined in the Business Corporations Act (Ontario) and the registered or unregistered trademarks of the *Owner* or its affiliates in any slogans or otherwise in any advertising or promotional materials or publicity releases, and shall not take, permit to be taken or use any photographs of the *Work Site*, without the prior approval of the *Owner's Representative*.

Article 30 - Proprietary Information

- 30.1 The *Contractor* shall keep and maintain adequate and current records of all *Proprietary Information*.
- 30.2 Subject to Section 27.1, the *Contractor* shall keep all *Proprietary Information* in confidence, shall not use it, or any part of it except in the performance of the *Work* and shall not disclose it to others, without the *Owner's* prior consent.

Article 31 - Force Majeure

- 31.1 Either the *Owner* or the *Contractor* may claim that an *Event of Force Majeure* has taken place, by giving the other party verbal notice within 5 *Work Days* of the knowledge that an *Event of Force Majeure* has affected or is likely to affect the *Work*, and, in addition, notice, together with a proposed plan of corrective action to resolve or minimize the effect of the *Event of Force Majeure*, within 10 *Work Days* of the *Event of Force Majeure*.
- 31.2 If the *Owner* has given a notice of an *Event of Force Majeure*, or the *Owner* agrees with a notice of an *Event of Force Majeure* issued by the *Contractor* that the *Work* or a portion thereof is affected by an *Event of Force Majeure*, then the *Owner* shall:
- (a) cause the *Contractor* to complete the *Work*, with such time adjustments to the *Contract Time* as are required by the *Event of Force Majeure*; or

- (b) suspend the *Work* or any portion thereof in accordance with Article 34 - Suspension;
or
 - (c) terminate the *Contract* or any portion thereof in accordance with Section 35.1 and Section 36.5(e).
- 31.3 If the *Owner* does not agree that the *Work* or any portion of the *Work* is affected as a result of an *Event of Force Majeure* for which the *Contractor* has given notice under Section 31.2, then the *Contractor* shall complete the *Work* in accordance with the *Execution Plan* and may request an adjustment to the *Contract Time* and the *Compensation* in the manner provided in Section 14.9.
- 31.4 If an *Event of Force Majeure* exists and continues for a period in excess of 180 continuous *Work Days* and results in substantially all of the *Work* being stopped or suspended during that period, the *Contractor* may terminate the *Contract* and the *Owner* shall pay the *Contractor* for the *Work* performed to the date of termination.
- 31.5 Any delay or failure on the part of either the *Owner* or the *Contractor* which is a result of an *Event of Force Majeure*, shall not constitute default hereunder or give rise to any claim for damages or result in any increase to the *Compensation*.

Article 32 - Delays Caused by the Contractor

- 32.1 If the *Contractor* is responsible for a delay in the progress of the *Work*, or fails to complete any portion of the *Work* within the time limits set forth in the *Execution Plan*, then the *Contractor* shall, at no additional cost to the *Owner*, provide a recovery plan and perform whatever acts are required or requested by the *Owner's Representative* to make up the lost time and to avoid any further delay in the performance of the *Work*, including, without limitation, work overtime, and acquire and use any necessary additional labour and equipment.

Article 33 - Delays not Caused by the Contractor

- 33.1 If the *Contractor* is delayed in the performance of the *Work* by an act or omission of the *Owner* or *Other Contractors*, contrary to the provisions of the *Contract*, or by an *Epidemic*, then the *Contract Time* shall be extended for such reasonable time as may be necessary to allow the *Contractor* to make up the delay and the *Compensation* shall be adjusted by such reasonable amount as may be necessary to compensate the *Contractor* for its increased costs.
- 33.2 If the *Contractor* is delayed in the performance of the *Work* by an order issued by a court or other public authority having jurisdiction, providing that such order was not issued as the result of an act or fault of the *Contractor* or any person employed or engaged by the *Contractor* directly or indirectly, then the *Contract Time* shall be extended as agreed by the parties or as resolved under Appendix G – Dispute Resolution Procedure.
- 33.3 If the *Contractor* is forced to shut down all or a portion of its operation by reason of:
- (a) any act or omission of the *Owner* or of any *Other Contractor*;

- (b) failure of the *Owner* to provide the *Work Site*; or
- (c) an error or omission in the *Owner's Requirements*; then

the *Contractor* shall give to the *Owner* notice of such shut-down, within 1 *Work Day* of such shut-down, indicating the number and classification of persons and number and description of equipment affected thereby.

- 33.4 In the event of a delay pursuant to Section 33.3, the *Contractor* shall be reimbursed by the *Owner* in accordance with the rates set out in Appendix B – Compensation or its reasonable costs incurred.
- 33.5 No claim for delay and no extension of time on account of delay shall be made by the *Contractor* unless notice of claim with a *Change Quotation* is given to the *Owner* not later than 10 *Work Days* after the commencement of delay, provided however, that in the case of a continuing cause of delay only one notice of claim shall be necessary.

Article 34 - Suspension

- 34.1 In addition to any other right that the *Owner* may have under the *Contract* or in *Law*, the *Owner* may, at any time or times, by notice to the *Contractor* specifying the effective date of the suspension, require the *Contractor* to suspend the *Work*, or any portion thereof.
- 34.2 Upon providing notice under Section 34.1, the *Owner* shall arrange to promptly discuss with the *Contractor* the specific requirements of the suspension and whether or not the *Owner* anticipates that demobilization, remobilization or idle equipment or personnel will occur as a result of the suspension.
- 34.3 Upon receiving notice, the *Contractor* shall discontinue the *Suspended Work*, place no further purchase orders or subcontracts with respect to the *Suspended Work*, and promptly make reasonable efforts to obtain suspension terms satisfactory to the *Owner* with respect to all purchase orders, subcontracts, supply contracts and rental agreements related to the *Suspended Work*. The *Contractor* shall continue to perform all other portions of the *Work* which have not been suspended by the *Owner*.
- 34.4 Where requested by the *Owner*, the *Contractor* shall advise the *Owner* of:
 - (a) the number of the *Contractor's* personnel made idle by the suspension;
 - (b) the labour costs resulting from the *Contractor's* personnel made idle by the suspension;
 - (c) transportation costs for the *Contractor's* personnel released during the suspension;
 - (d) the equipment made idle and associated equipment costs resulting from the suspension; and
 - (e) any other costing, labour, material or equipment information relating to the suspension that the *Owner* may require.

- 34.5 The *Owner* may at any time authorize resumption of the *Suspended Work* or any part thereof, by giving the *Contractor* reasonable notice specifying the part of the *Suspended Work* to be resumed and the effective date of such resumption. The *Contractor* shall resume the *Suspended Work* on the date and to the extent specified in the notice provided that if the date for resumption is more than 180 days after the date of suspension, the *Contractor* may, by *Change Quotation* given within 10 Work Days of receipt of the notice of resumption, request a *Change Order* deleting the *Suspended Work* from the *Contract*.
- 34.6 The *Contractor* shall use its employees, equipment and materials in such manner, and take such other steps as may be necessary or desirable to minimize the costs associated with the *Suspended Work*. During the period of *Suspended Work*, the *Contractor* shall secure and protect the *Suspended Work* and all materials and equipment to be used or incorporated therein.
- 34.7 In relation to *Suspended Work*, the *Owner* shall reimburse the *Contractor* for those costs, exclusive of profit, reasonably incurred by the *Contractor* as a direct result of the suspension of the *Work* in accordance with Appendix B – Compensation. The *Owner* shall not be liable for any damages or loss of profits on account of the *Suspended Work* or any part thereof, or the deletion of *Suspended Work* from the *Contract*.

Article 35 - Termination for Convenience

- 35.1 In addition to any other rights that the *Owner* may have under the *Contract* or in *Law*, the *Owner* may, at any time, terminate the *Contract*, the *Work* or any portion thereof by giving notice to the *Contractor* specifying the *Work* or portion thereof to be terminated and the effective date of the termination.
- 35.2 In addition to any other rights that the *Contractor* may have under the *Contract* or in *Law*, the *Contractor* may, at any time that is at least 90 days after the delivery a notice in accordance with Section 6.4 of Appendix B – Compensation, terminate the *Contract* with immediate effect by giving notice to the *Owner* specifying same.
- 35.3 Upon receipt of a notice under Section 35.1 or delivery of a notice under Section 35.2, the *Contractor* shall discontinue the *Work* in accordance with the notice, and shall take whatever steps are necessary or desirable to terminate the *Work* in a safe, cost effective and timely manner with due consideration to environmental impacts. The *Contractor* shall continue to perform all other portions of the *Work* not terminated, if any, in accordance with the *Contract*.
- 35.4 As full and final settlement of any damages that may be claimed by the *Contractor* as a result of a termination under this Article 35 - Termination for Convenience:
- (a) where the *Owner*'s ICM (Incremental Capital Module) application with respect to the *Project* has not been approved at the time of termination, the *Contractor* will not be entitled to any compensation or reimbursement;
 - (b) where *Owner*'s ICM (Incremental Capital Module) application with respect to the *Project* has been approved but the *Owner* has not issued the *Notice to Proceed with Upfront Engineering* at the time of termination, the *Owner* will reimburse the

Contractor for 50% of the amount attributed to SMARTStart line item in Table 2: Breakdown of Maximum Price in Appendix B – Compensation; and

- (c) in all other cases, the *Owner* shall reimburse the *Contractor* for those costs reasonably incurred by the *Contractor* as a direct result of the termination of the *Contract*, the *Work*, or any portion thereof.

Article 36 - Termination for Cause

36.1 Without limiting the generality of Section 35.1, the *Owner* may immediately terminate the *Contract* by written notice to the *Contractor* in any of the following circumstances:

- (a) if the *Contractor* becomes insolvent or makes a general assignment for the benefit of its creditors, enters into a plan of arrangement for the benefit of its creditors or otherwise acknowledges its insolvency or if a bankruptcy or receiving order is filed or made against the *Contractor*;
- (b) if an order is made or resolution is passed for the winding up or liquidation of the *Contractor*;
- (c) if a custodian, receiver, manager or other officer with similar powers is appointed in respect of the *Contractor* or any of the *Contractor's* property;
- (d) if the *Contractor* ceases to carry on business in the ordinary course; and
- (e) if a creditor takes possession of any of the *Contractor's* property or if a distress, execution or any similar process is levied or enforced against such property and remains unsatisfied by the *Contractor*.

36.2 Upon receipt of a notice pursuant to Section 36.1, the *Contractor* shall discontinue the *Work* in accordance with the notice, and shall take such steps as may be necessary or desirable to minimize the costs associated with the termination of the *Work*.

36.3 In addition to any rights the *Owner* may have at *Law*, if the *Contractor* is in default in carrying out any of the material terms, conditions, covenants or obligations of the *Contract*, or has made a material false representation, declaration or warranty, the *Owner* may give the *Contractor* notice of default.

36.4 Where the *Owner* gives the *Contractor* a notice of default pursuant to Section 36.3, the *Contractor* shall have 10 *Work Days* immediately following receipt of the notice, or such longer time as the *Owner* determines to be reasonable and has specified in the notice of default or has subsequently agreed upon in writing, to remedy such default, or commence to prosecute a remedy. If the *Contractor* fails to remedy the default, the *Owner* may by 10 *Work Days* notice to the *Contractor* terminate the whole or any part of the *Contract*.

36.5 In the event the *Contract* or any portion of the *Work* is terminated pursuant to Section 36.1 or Section 36.4:

- (a) the *Contractor* shall discontinue the *Work* in accordance with the notice and shall take such steps as may be necessary or desirable to minimize the costs to the *Owner* associated with the termination of the *Work* and the *Owner* shall not be liable for those costs incurred by the *Contractor* as a result of the termination of the *Work*;
- (b) the *Owner* shall have the right to take possession of the *Goods* and the *Contractor's* equipment, materials and plant and shall have the right to use the same to complete the *Work*;
- (c) the *Contractor* shall execute and deliver to the *Owner* all documents required by the *Owner*, and shall take all steps required by the *Owner*, to assign to and fully vest in the *Owner* the rights and benefits of the *Contractor* under existing agreements with the *Contractor's Subcontractors*, which are related to the *Work*.
- (d) the *Owner* may complete or have others complete the *Work* at the *Contractor's* expense (subject to Sections 42.3 and 42.4);
- (e) the *Owner* shall pay the *Contractor* for all *Work* satisfactorily performed to the date of termination, in accordance with Article 13 - Payment, less the sum of any monies already paid to the *Contractor* and any additional cost, loss or expense, including legal fees on a solicitor-and-own-client (indemnity) basis, that the *Owner* incurs, suffers or sustains, including (but subject to Sections 42.3 and 42.4) any amount the *Owner* must pay to obtain satisfactory completion of the *Work* by others;
- (f) the *Owner* shall not be liable for any penalties, damages or loss of profits as a result of the termination of the *Work* or the *Contract* by the *Owner*.

36.6 The *Contractor* may immediately terminate the *Contract* by written notice to the *Owner* in any of the following circumstances:

- (a) if the *Owner* becomes insolvent or makes a general assignment for the benefit of its creditors, enters into a plan of arrangement for the benefit of its creditors or otherwise acknowledges its insolvency or if a bankruptcy or receiving order is filed or made against the *Owner*;
- (b) if an order is made or resolution is passed for the winding up or liquidation of the *Owner*;
- (c) if a custodian, receiver, manager or other officer with similar powers is appointed in respect of the *Owner* or any of the *Owner's* property;
- (d) if the *Owner* ceases to carry on business in the ordinary course; and
- (e) if a creditor takes possession of any of the *Owner's* property or if a distress, execution or any similar process is levied or enforced against such property and remains unsatisfied by the *Owner*.

36.7 As full and final settlement of any damages that may be claimed by the *Contractor* as a result of such termination, the *Owner* shall reimburse the *Contractor* for those costs

reasonably incurred by the *Contractor* as a direct result of the termination of the *Contract*, the *Work*, or any portion thereof.

- 36.8 Subject to a legitimate dispute between the parties, or a dispute being pursued in accordance with Appendix G – Dispute Resolution Procedure, should the *Owner* be in material default of its obligations under this *Contract*, including the payment obligations of the *Owner* hereunder, the *Contractor* may provide a notice in 20 *Work Days* to the *Owner* that should the material default not be remedied, or the *Owner* commence to prosecute a remedy in relation to the material default, that the *Contractor* may suspend or terminate the *Contractor's* obligations under the *Contract*.
- 36.9 The rights and remedies provided in this Article 36 - Termination for Cause are in addition to the rights and remedies provided by the *Law*, or under any other provision of the *Contract*.

Article 37 - Taxes

- 37.1 The *Contractor* shall be responsible for the payment of:
- (a) all taxes imposed by reason of the performance or completion of the *Work* including but not limited to license, permit and registration fees and the *Contractor's* income, profit, franchise, business, and personal property taxes;
 - (b) all employment taxes and contributions imposed by the *Law* or required to be paid on behalf of the employees of the *Contractor* or its *Subcontractors*, including but not limited to taxes and contributions for income tax, workers' compensation, unemployment insurance, old age benefits, welfare funds, pensions and annuities and disability insurance;
 - (c) all taxes, other than property taxes, on the *Work Site* and arising out of the *Work*, to the date of *Substantial Completion*; and
 - (d) all customs, sales and excise taxes and duties owing with respect to any labour, machinery, materials and equipment to be supplied by the *Contractor* and used in performance of or incorporated into the *Work*, except for goods and services tax payable by the *Owner* with respect to payments due to the *Contractor*.
- 37.2 Any increase in taxes and charges described in Section 37.1(a) and Section 37.1(b) shall be the sole responsibility of the *Contractor*. In the event of an increase in taxes or charges described in Section 37.1(c), the *Contractor* shall be entitled to a *Change Order* altering the *Compensation* to account for the difference between the amount of tax that would have been payable by the *Contractor* as of the effective date of this *Contract* and the actual amount of tax that becomes payable as a result of the tax increase.
- 37.3 The *Contractor* shall indemnify and hold the *Owner* harmless from any liability resulting from the failure of the *Contractor* or its *Subcontractors* to make timely payments of the items referred to in this Section or such similar items for which the *Contractor* is responsible. Any interest, penalties or other liabilities arising from such failure shall be the sole responsibility of and be paid for by the *Contractor*.

37.4 The *Compensation* shall be exclusive of any Goods and Services Tax (“GST”), Harmonized Sales Tax (“HST”), or any similar taxes that may be assessed on the *Work*. Such taxes shall be payable to *Contractor* in addition to the *Compensation* otherwise payable under this *Contract* and they shall be stated in a separate line.

Article 38 - Workers’ Compensation

38.1 The *Contractor* shall ensure all its employees and representatives engaged in the performance of the *Work* are registered for workers’ compensation coverage in accordance with the statutory requirements of the Province of Ontario.

38.2 The *Contractor* shall at all times pay or cause to be paid any assessment or contribution required to be paid pursuant to the Workers’ Compensation Act (Ontario) and upon failure to do so, the *Owner*, in addition to any other rights it may have at *Law* or under the *Contract*, may retain the amount of such assessment or contribution from the *Compensation*.

38.3 The *Contractor* shall indemnify and save harmless the *Owner* from all workers’ compensation assessments due by the *Contractor* in relation to the *Work*.

Article 39 - Liens

39.1 The *Contractor* shall at all times reimburse, protect, indemnify and save free and harmless the *Owner*, the *Work Site* and the other lands and property of the *Owner* from and against all liens and claims made or liability incurred by the *Owner* on account of the *Work* performed or materials supplied by employees of the *Contractor* and *Subcontractors*, or on account of an exaggerated lien filed by the *Contractor*, including, without limitation, legal fees on a solicitor-and-own-client (indemnity) basis. The *Contractor* shall cause any such lien or claim which may be filed or made, to be released and discharged forthwith at the expense of the *Contractor*. If the *Contractor* fails to release or obtain the release and discharge of any such lien or claim, then the *Owner* may, but shall not be obliged to, discharge, release or otherwise deal with the lien or claim, and the *Contractor* shall pay any and all reasonable costs and expenses incurred by the *Owner* in so releasing, discharging or otherwise dealing with the claim or lien, including but not limited to, legal fees on a solicitor-and-own-client (indemnity) basis. Any amounts so paid by the *Owner* may be deducted from any amounts due to the *Contractor* whether under the *Contract* or otherwise.

Article 40 - Survival

40.1 If the *Contract* or any part of the *Work* is terminated pursuant to Article 35 - Termination for Convenience or Article 36 - Termination for Cause, then Article 23 - Warranty shall survive such termination, and the *Warranty Period*, with respect to the *Work* or a *System* which has received a *Functional Completion Certificate*, shall remain in effect notwithstanding the termination of this *Contract*.

40.2 Any terms, covenants, provisions or conditions of the *Contract* which expressly or by their nature survive the termination of the *Contract* shall continue in full force and effect subsequent to and notwithstanding such termination, and shall not be merged with the

termination, until such terms, covenants, provisions and conditions are satisfied or by their nature expire.

Article 41 - Liability and Indemnity for Third Party Claims

- 41.1 The *Contractor* shall be liable to and shall indemnify, and hold harmless the *Owner*, its officers, directors, employees, consultants and agents for all losses, damages and expenses, including legal fees on a solicitor-and-own-client (indemnity) basis, which they or any of them may incur as a result of claims, demands, actions or proceedings made or taken against them by persons not party to the *Contract* for:
- (a) any negligent acts or omissions in connection with the performance, purported performance or non-performance of the *Contract* or of the *Work* by the *Contractor* or its *Subcontractors* or their respective employees or agents;
 - (b) any acts or omissions of the *Owner*, *Other Contractors* or their respective employees or agents, while acting under the direction and control of the *Contractor*, its *Subcontractors* or their respective employees or agents;
 - (c) any liability, claims, damages, costs and expenses arising from the failure of the *Contractor* or its *Subcontractors*, or their respective employees or agents to comply with the *Law*; or
 - (d) *Previous Claims*.
- 41.2 The *Contractor* shall, at its sole expense, if requested by the *Owner*, defend those persons entitled to be indemnified pursuant to Section 41.1. The *Owner* shall have the right, if it so elects, to participate in any such defence at its own cost and the *Contractor* shall have the right to settle claims to a maximum of \$100,000 without first consulting with the *Owner* and thereafter only with the consent of the *Owner* which shall not be unreasonably withheld.
- 41.3 In the event that the *Contractor* fails to defend those persons entitled to be indemnified pursuant to Section 41.1, as required by Section 41.2, or to conduct such a defence in a commercially reasonable manner, then the *Owner* may settle the claim, demand, action or proceeding in such amount as it considers reasonable without prejudice to the rights of indemnity hereunder.
- 41.4 The *Owner* shall indemnify and hold harmless the *Contractor*, its *Subcontractors*, and their respective officers and directors from and against all claims, demands, losses, damages, expenses, actions and proceedings made or taken by persons not party to the *Contract* and which arise on account of and are attributable to the *Owner's* obligations hereunder, including, without limitation any action for which the *Owner* must indemnify the *Contractor* pursuant to Section 28.2 or Section 26.5.
- 41.5 In the event that the *Owner* accepts the responsibility to indemnify the *Contractor*, its *Subcontractors*, officers and directors pursuant to Section 41.3, then it shall be entitled to retain and instruct counsel to act for and on behalf of those persons and to settle, compromise and pay any claim, demand, action or proceeding; however, such settlement,

compromise or payment must be approved by *Contractor* or its *Subcontractors* (which approval shall not be unreasonably withheld). The *Contractor* shall and shall cause any indemnified party to reasonably co-operate in all respects in contesting any third party claim for which the *Owner* has accepted responsibility.

Article 42 - Limitations of Liability

- 42.1 The *Contractor* agrees that, as of the date hereof, there are no existing, current or contemplated claims, demands, suits, action or causes of action, whether arising in contract, tort or otherwise, from or involving the *Contractor* or its *Affiliates* against the *Owner* or its *Affiliates* (“Previous Claims”) and hereby irrevocably waives the right to make any such Previous Claim against the *Owner* or its *Affiliates*.
- 42.2 Subject to Section 42.4, except for *Liquidated Damages* and except to the extent to which coverage is provided by a project-specific policy or policies of insurance, as applicable, the *Contractor*, its *Subcontractors*, and their respective officers and directors shall not be liable to the *Owner*, or anyone claiming through or under it, whether by way of indemnity or by reason of breach of contract or in tort, including liability for negligence and breach of statutory duty, or on any other legal or equitable basis, for:
- (a) special, punitive, indirect, economic or consequential loss or damage;
 - (b) loss of use, whether complete or partial, of the *Work* or existing facilities of the *Owner* or third parties;
 - (c) loss of product;
 - (d) loss of revenue, overhead and profit; or
 - (e) loss of any contract that may be suffered by the *Owner*.
- 42.3 Subject to Section 42.4, except to the extent to which coverage is provided by project-specific policy or policies of insurance, the *Contractor's* total aggregate liability to the *Owner* shall be limited to the amount of the *Fixed Price*, or until agreement on the *Fixed Price*, the amount of the *Upfront Engineering Fixed Price*.
- 42.4 The limitations of liability set out in Sections 42.1 and 42.3 and the exclusion of remedies set out in 42.6 (and all other releases, waivers and limitations expressed in this *Contract* concerning liability and remedies) shall not apply to any liability of the *Contractor*, its *Subcontractors*, and their respective officers and directors or any right or remedy of *Owner* arising out of or under:
- (a) wilful misconduct;
 - (b) act or omission contrary to the *Law*;
 - (c) Section 28.1 (intellectual property infringement);
 - (d) Section 39.1 (liens);

- (e) Section 41.1 (third party claims);
 - (f) Section 45.3 (independent contract indemnity);
 - (g) obligations set out in this *Contract* to obtain and maintain any project-specific insurance;
 - (h) obligations relating to workers' compensation premiums;
 - (i) obligations to pay taxes.
- 42.5 Any and all rights and remedies of the parties as set forth in any provision of the *Contract* are cumulative and are in addition to any other rights and remedies of the parties under any other provision of the *Contract*.
- 42.6 Further, but without prejudice to any right to claim under any applicable policy of insurance:
- (a) the remedies set forth in the following provisions of *Contract* for failure of a party to satisfy certain obligations arising under this *Contract* are the exclusive remedies of the other party for any such failure, notwithstanding any remedy that would otherwise be available at law or equity: Article 22 - Liquidated Damages and Article 23 - Warranty; and
 - (b) the parties rights to terminate this *Contract* shall be limited to those rights set out in Article 35 - Termination for Convenience and Article 36 - Termination for Cause, notwithstanding any right to terminate that would otherwise be available at law or equity, and in no event shall this *Contract* be cancelled or rescinded.
- 42.7 To the extent a right or remedy is not expressly set forth in this *Contract* for a breach of an obligation arising under this *Contract*, the parties shall have any right or remedy available under the governing law of contracts.

Article 43 - Insurance Provided by Contractor

- 43.1 The *Contractor* shall, and shall ensure that its *Subcontractors* shall, without limiting any of the obligations or liabilities under the *Contract*, continuously carry during the performance of the relevant *Work* and any time the *Contractor* or its *Subcontractors* are on the *Work Site*, at their own expense and cost, the following insurance coverage with limits where applicable in amounts reasonably applicable to the individual *Subcontractor's* scope of work:
- (a) commercial general liability insurance covering *Contractor*, *Subcontractor* and *Owner* in respect of any operations in connection with the *Contract* on an occurrence basis with a combined single limit not less than \$10,000,000 inclusive of each accident or occurrence for bodily injury, including death, personal injury and damage

to property, including loss of use thereof and in the aggregate for products and completed operations; such coverage shall include but not be limited to the following:

- (i) blanket contractual liability;
 - (ii) sudden and accidental pollution liability;
 - (iii) products and completed operations including a provision that such coverage is to be maintained for a period not less than 24 months from the date of issuance of the *Substantial Completion Certificate*;
 - (iv) broad form completed operations;
 - (v) employers liability;
 - (vi) non-owned automobile liability;
 - (vii) broad form property damage;
 - (viii) blasting, pile driving, caisson work, underground work (XCU coverage);
and
 - (ix) cross liability and severability of interest; and
- (b) workers' compensation coverage for all employees engaged in the *Work* in accordance with the statutory requirements of the Province of Ontario;
 - (c) employer's liability coverage for all employees engaged on the *Work Site* and not covered by workers' compensation, in the amount of \$10,000,000;
 - (d) automobile liability insurance covering all licensed motor vehicles owned or leased having a limit of not less than \$5,000,000 inclusive per occurrence for bodily injury, death, and damage to property;
 - (e) if relevant for the *Work*, aircraft and watercraft liability insurance covering all owned or non-owned aircraft and watercraft if used directly or indirectly in the performance of the *Work* having a limit of \$10,000,000 inclusive per occurrence for bodily injury, death, and damage to property and \$10,000,000 for aircraft passenger hazard;
 - (f) property and contractor's equipment insurance covering property, equipment, tools and construction machinery owned, rented or leased by and to be used for the performance of the *Work*, excluding all machinery, materials and supplies at the *Work Site* or in transit thereto and intended to become a part of the finished *Work*, for the full replacement cost value of such property on an "all risks" basis;
 - (g) professional errors & omissions insurance in an amount of \$10,000,000 for each claim and in the annual aggregate for the *Project* covering the period from start of *Engineering Services* until *Substantial Completion* of the *Work* and for a further discovery period of two years from the issuance of the *Substantial Completion Certificate*;

- (h) network/information security liability insurance in an amount not less than \$1,000,000; such coverage shall include cyber liability for unauthorized access, security breach, etc., including but not limited to such occurrences caused by *Contractor*;
 - (i) environmental liability insurance with limits of not less than \$2,000,000 per occurrence and in the annual aggregate or limits carried, whichever are greater.
 - (j) course of construction and transit insurance to a limit of the value of the full replacement cost of the *Work* covering all risks of direct physical loss or damage to the *Work* and *Goods*, including temporary or off-site storage and project lay-down areas, and all temporary structures used in the erection of the *Work* including while in transit to and from the *Work Site* or in storage while at the *Work Site*, before and during erection and until completed and while awaiting tests and during testing and commissioning until issuance of a *Final Completion Notice*. *Owner* shall be named as an Additional Interest to the policy;
- 43.2 The Parties agree that that all insurance provided by the *Contractor* and its *Subcontractors* pursuant to Section 43.1 is primary and not contributory with, or in excess of, any other insurance carried by the *Owner*.
- 43.3 Where a claim is paid by the insurer in respect of losses for which coverage is provided under Section 43.1:
- (a) the *Contractor* shall be responsible for the deductibles relating to insurance proceeds under the insurance required pursuant to Sections 43.1(c), 43.1(d), 43.1(e), 43.1(f) and 43.1(g);
 - (b) the *Contractor* shall be responsible for the deductibles relating to insurance proceeds for damage to the *Work* until a *Substantial Completion Certificate* is issued;
 - (c) the *Owner* shall be responsible for the deductibles relating to insurance proceeds for damage to the *Work* after a *Substantial Completion Certificate* is issued;
 - (d) the *Owner* shall be responsible for the deductibles relating to insurance proceeds for damage to the *Owner's* property; and
 - (e) the negligent party or parties shall be responsible for the deductibles relating to insurance proceeds for damage to third parties.
- 43.4 *Contractor* and its *Subcontractors* shall satisfy themselves as to the coverage afforded by such policies and the adequacy thereof.
- 43.5 The *Compensation* shall include the cost of premiums for the insurance to be provided by the *Contractor*.
- 43.6 The *Contractor* shall, and shall ensure that its *Subcontractors* shall:
- (a) provide the *Owner* with certificates of insurance

- (i) for the policies described in Section 43.1(a), 43.1(b), and 43.1(g) within 10 *Work Days* of receipt of the *Notice to Proceed with Upfront Engineering* or prior to the commencement of the *Upfront Engineering Services*, whichever is earlier, and certificates of insurance evidencing renewal of these policies within 10 *Work Days* of their expiry date where such policies expire prior to *Substantial Completion*;
 - (ii) for the policies described in Section 43.1(c), 43.1(d), 43.1(e), 43.1(f), 43.1(h), 43.1(i) and 43.1(j) within 10 *Work Days* of receipt of the *Notice to Proceed with Balance of Work* or prior to the commencement of the *Balance of Work*, whichever is earlier, and certificates of insurance evidencing renewal of these policies within 10 *Work Days* of their expiry date where such policies expire prior to *Substantial Completion*; provided that the *Owner* may by *Change Order* or *Change Directive* require such policies to be in place earlier;
 - (b) place all policies with insurers which are licensed to provide insurance in the Province of Ontario with an A.M. Best or alternative rating acceptable to the *Owner* of no less than A-, and in a form acceptable to the *Owner*;
 - (c) ensure that such policies provide for at least 30 days' prior written notice to the *Owner* of cancellation or change that is material to the *Contract*;
 - (d) require that the dollar amount of the deductible in the project-specific policies for any one loss shall be subject to the approval of the *Owner*; and
 - (e) require that a waiver of subrogation in favour of the *Owner*, its officers, directors, employees, consultants and agents in respect of the insurance coverage required under Section 43.1(f).
- 43.7 If the *Contractor* or its *Subcontractors* fail to furnish the *Owner* with a certificate of insurance for each policy required to be obtained and continually carried, or if after furnishing the certificates of insurance, the policies lapse, are cancelled, or are materially changed, then in every case the *Owner* may, but shall not be obligated to, obtain and maintain such insurance in the name of the *Contractor* or any *Subcontractor*. The cost thereof (including *Subcontractor's* insurance costs) shall be payable by the *Contractor* to the *Owner* on demand, and the *Owner* may at its election deduct the cost from any monies which are due or may become due to the *Contractor*.
- 43.8 Neither the providing of insurance by the *Contractor* in accordance with the requirements of this Article 43 - Insurance Provided by Contractor, nor the insolvency, bankruptcy, or failure of any insurance company to pay any claim shall be held to relieve the *Contractor* from any other provisions of the *Contract* with respect to liability of the *Contractor*, or otherwise.
- 43.9 As part of the *Upfront Engineering Services*, the *Contractor* shall assist the *Owner* in finalizing the insurance required to be in put in place by the parties for the *Balance of the Work*. Any agreed changes to Article 43 - Insurance Provided by Contractor or Article 44

– Insurance Provided by Owner shall be documented in the *Notice to Proceed with Balance of Work*.

Article 44 - Insurance Provided by Owner

44.1 The *Owner* shall obtain and, during the progress of the *Balance of the Work*, maintain in force the following policies of insurance, with the *Owner* as named insured and with the *Contractor* and its *Subcontractors* as additional insureds:

- (a) general liability policy covering *Owner's* off-site works or off-project works with a \$2 million per incident/\$4 million aggregate limit
- (b) permanent property cover for *Owner's* existing property.

44.2 All insurance policies provided by the *Owner* shall be written to prohibit the insurer from obtaining subrogation or transfer of rights in respect of any claim under such policies against the *Contractor*, *Subcontractors*, or their employees, directors or officers who are employed in the performance of the *Work*.

44.3 The *Owner* shall:

- (a) provide the *Contractor* with certificates of insurance for the policies described in Section 44.1 within 10 *Work Days* of *Notice to Proceed with Balance of Work* or prior to the commencement of the *Balance of Work*, whichever is earlier, and certificates of insurance evidencing renewal of these policies within 10 *Work Days* of their expiry date where such policies expire prior to *Substantial Completion*; and
- (b) ensure that such policies provide for at least 30 days' prior written notice to the *Contractor* of cancellation or change that is material to the *Contract*.

44.4 The insurance protection provided by the *Owner* in accordance with Article 44 – Insurance Provided by Owner shall be primary with respect to any loss or damage which at the time of the occurrence is covered by the *Owner's* insurance policies.

Article 45 - Independent Contractor

45.1 For the purposes of the *Contract* and the *Work*, the *Contractor* shall be an independent contractor and not the agent or employee of the *Owner*.

45.2 All persons employed or retained by the *Contractor* in connection with the performance of its obligations shall be its employees or those of its *Subcontractors*, as the case may be.

45.3 The *Contractor* shall indemnify and hold harmless the *Owner*, against all claims, demands, losses, damages, expenses, actions and proceedings whatsoever, including legal fees on a solicitor-and-own-client (indemnity) basis, which may be incurred by the *Owner* as a result of any determination by any tribunal or court that any personnel provided by the *Contractor* pursuant to the terms of this *Contract* are for any purposes agents or employees of the *Owner*, except to the extent that the *Owner's Requirements* specify that the *Contractor* shall act as the *Owner's* agent in relation to the procurement of *Goods*.

45.4 The *Contractor* shall have no authority whatsoever to make any statement, representation or commitment of any kind, or to take any action, which may be binding on the *Owner*, except as provided for in this *Contract*, as authorized in writing by the *Owner* or in connection with the procurement of *Goods* where the *Owner's Requirements* specify that the *Contractor* shall act as the *Owner's* agent.

Article 46 - Conflict of Interest

46.1 The *Contractor* shall exercise reasonable care and diligence to prevent any actions or conditions which could result in a conflict with the *Owner's* interests. This obligation shall apply to the activities of the *Contractor* and its *Subcontractors* and their respective employees and agents, in their relations or dealings with the employees of the *Owner* and their families, and other third parties, arising from the *Contract* or the performance of the *Work*. The efforts made by the *Contractor* in this regard shall include, but shall not be limited to, establishing reasonable precautions to prevent *Subcontractors* and their respective employees from offering, or providing entertainment, gifts, loans, payments or other considerations to the *Owner's* employees, consultants and agents or their family members.

Article 47 - Audit Access

47.1 The *Contractor* shall preserve the *Records* in good order during the *Contract Time* and for a period of 7 years thereafter.

47.2 The *Contractor* shall permit authorized representatives of the *Owner* to review the *Records* at all reasonable times during the *Contract Time*, and for a period of two years thereafter for the purposes of:

- (a) determining the *Contractor's* compliance with all of the terms of the *Contract*, including, but not limited to:
 - (i) Article 14 - Changes and Article 32 - Delays Caused by the Contractor; and
 - (ii) the *Owner's Policies*; and
- (b) verifying of all *Work* performed and all reimbursable costs and other charges payable under the *Contract*.

47.3 Where the *Compensation* is not on a cost reimbursable basis, the *Contractor* may black-out any information in the *Records* relating to price before access is given to the *Owner*.

Article 48 - Representatives and Notices

48.1 The *Owner's Representative* is K. D. Bell The *Owner's Representative* has the authority to bind the *Owner* on all matters relating to the *Work* and the *Contract*, and all communications to or with the *Owner's Representative* shall be deemed to be communications to or with the *Owner*.

48.2 *Contractor's Representative* is Phil Carroll. The *Contractor* shall not change the *Contractor's Representative*, except with the prior approval of the *Owner*. The *Contractor's Representative* has the authority to bind the *Contractor* on all matters relating to the *Work* and the *Contract*, and all communications to or with *Contractor's Representative* shall be deemed to be communications to or with the *Contractor*.

48.3 Unless otherwise specifically indicated in the *Contract*, all notices, approvals, consents, authorizations and other communications required or permitted pursuant to the *Contract*, shall be in writing and shall be communicated to the *Contractor's Representative* or the *Owner's Representative*, as the case may be, and shall be delivered by personal delivery, courier or e-mail to the parties at the addresses and e-mail addresses shown below:

(a) *Contractor*:

Address: 11401 Lamar Ave.
Overland Park, KS 66211

Attention: Phil Carroll
E-mail: CarrollPW@bv.comwith

With a copy to:

Address: 50 Minthorn Blvd., Suite 501
Markham, ON L3T 7X8

Attention: Gary Johnson
E-mail: JohnsonGS@bv.com

(b) *Owner*:

Address: 500 Second Line East
Sault Ste. Marie, ON P6B 4K1

Attention: K. D. Bell
E-mail: kevin.bell@ssmpuc.com

48.4 Either party may change its contact information for the purposes of Section 48.3 by providing the other party with 10 days notice of such a change.

48.5 Invoices and all supporting documentation shall be mailed or delivered to the *Owner's Representative* at the address shown above.

48.6 E-mail, where such electronic transmission meets the minimum requirements set forth in the Electronic Commerce Act (Ontario) may be used for communication between the parties.

Article 49 - General

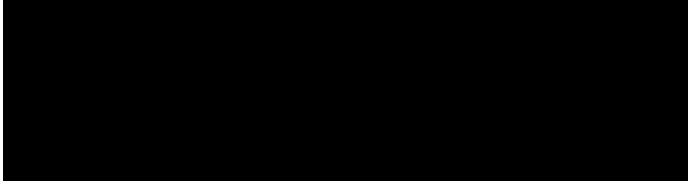
- 49.1 No failure or delay on the part of either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof.
- 49.2 No waiver of any right, power or privilege by a party shall limit or affect that party's rights with respect to any breach of the *Contract* by the other party.
- 49.3 Subject to Section 42.4, all releases, waivers and limitations expressed in this *Contract* concerning liability and remedies shall apply even in the event of the fault, tort (including negligence), strict liability, breach of contract or warranty, or other basis of liability of the party released, or whose liability is limited or against whom remedies have been limited, and shall extend to the officers, directors, partners, employees, licensors, agents, *Subcontractors* and *Affiliates* of such party.
- 49.4 Each of the parties hereto shall execute such further documents and give such further assurances as are required to give effect to the *Contract*.
- 49.5 If a court of competent jurisdiction determines that any provision of this *Contract* is invalid or unenforceable, such determination shall not affect the validity or enforceability of the remaining provisions of the *Contract*.
- 49.6 All of the covenants and agreements herein contained on the part of either party shall apply and enure to the benefit of and be binding upon their respective legal representatives, successors and assigns.
- 49.7 Each of the parties hereby represents and warrants that it has the power and authority to enter into the *Contract* and to perform all of its obligations hereunder.
- 49.8 The *Contract* constitutes the entire agreement between the parties with respect to the *Work* and supersedes and replaces all previous communications, representations and agreements, either written or verbal.
- 49.9 This *Contract* shall be governed by and construed in accordance with the laws of the Province of Ontario, and, subject to Appendix G – Dispute Resolution Procedure, the parties attorn to the jurisdiction of the Court of the Province of Ontario.
- 49.10 This *Contract* shall be executed by the parties, or their representatives, in person with original signatures, but may be executed in counterpart. Subsequent documents may be executed by the parties, or their representatives, and such execution may be by way of facsimile or electronic transfer.

TO EVIDENCE THEIR AGREEMENT, the parties have executed and delivered this *Contract*, by their duly authorized officers, as of the effective date indicated on the first page.

Owner: _____

Contractor: ~~Overland Contracting~~ Canada Inc.

Per: _____
Name:

Per: 

Per: _____
Name:

Per: _____
Name:

[apply corporate seal]

[apply corporate seal]



TO EVIDENCE THEIR AGREEMENT, the parties have executed and delivered this *Contract*, by their duly authorized officers, as of the effective date indicated on the first page.

Owner: PUC Distribution Inc.

Per:

Per:



Contractor: _____

Per: _____

Name: _____

Per: _____

Name: _____

[apply corporate seal]