

SCHEDULE 21

HANDBACK PROCEDURE

1. Independent Inspector

- 1.1 Not less than 54 months prior to the Expiry Date, the Parties shall agree upon and, in accordance with Ministry procurement policies, engage an independent and suitably qualified and experienced professional engineering firm (the “**Independent Inspector**”) to carry out inspections of the Bypass pursuant to this Schedule 21.
- 1.2 Project Co and the Ministry shall share equally the responsibility for the payment of all fees and costs of the Independent Inspector.
- 1.3 In the event of the Independent Inspector’s engagement being terminated otherwise than for full performance, the Parties shall liaise and cooperate with each other in order to appoint a replacement as soon as reasonably practicable, and in any event within 10 Business Days of the termination of the last Independent Inspector’s engagement.
- 1.4 In the event the Parties fail to agree upon the identity of the Independent Inspector either pursuant to Section 1.1 or Section 1.3 of this Schedule 21 by the specified deadline, then the Independent Inspector shall be selected as follows:
- (a) each Party shall within 10 Business Days thereafter select three independent and suitably qualified and experienced persons that would be acceptable to that Party as the Independent Inspector, and shall provide notice thereof to the other Party; and
 - (b) if the Parties have both selected a common person, then such common person shall be the Independent Inspector; or
 - (c) if the Parties fail to agree or jointly appoint the Independent Inspector within such 10 Business Day period, either Party may apply to the Court of the Queen’s Bench in Saskatchewan for appointment of the Independent Inspector, in which case the court shall appoint the Independent Inspector at the earliest opportunity from the list of potential Independent Inspectors submitted by the Parties or, if either or both Parties fail to submit their list of potential Independent Inspectors within 7 Business Days, the court may appoint such person as the Independent Inspector who meets the requirements set out in this Schedule 21 for qualifications and experience of the Independent Inspector.

2. Condition of Bypass on Expiry

- 2.1 Subject to the exceptions specified in Section 2.2 of this Schedule 21, on the Expiry Date:
- (a) the Bypass shall be in a condition which complies with Section 500.0 of Schedule 15-3 – Technical Requirements - OM&R and Handback; and
 - (b) the Site (including the ground soil located on the Site) shall be in a condition which is consistent with due performance by Project Co of its obligations under this Project Agreement, including, without limitation, the Environmental Protection Plan and, in

particular, does not deviate from the Pre-Existing Environmental Site Conditions by reason of any Contamination for which Project Co is responsible pursuant to this Project Agreement,

(collectively, the “**Handback Requirements**”).

2.2 For greater certainty, this Schedule 21 shall not apply to any Bypass Infrastructure to be maintained by the Ministry in accordance with this Project Agreement.

3. Bypass Inspections

3.1 The Parties shall cause the Independent Inspector to perform an inspection of the Bypass and to produce and deliver to each of the Parties a written report (an “**Bypass Condition Report**”) not less than 48 months prior to the Expiry Date that:

- (a) identifies the condition of the Bypass and each element of the Bypass (subject to the exceptions specified in Section 2.2 of this Schedule 21) in relation to the Handback Requirements described in Schedule 15-3 – OM&R and Handback;
- (b) assesses Project Co’s business case related to capital replacement (which, for greater certainty, will include consideration of energy consumption), and provides the Independent Inspector’s opinion on both the adequacy of Project Co’s proposed strategy and the consistency of Project Co’s proposed strategy with the Operation and Maintenance Plan and the Asset Management Plan as described in Schedule 15-3 – OM&R and Handback Sections 401 and 402 respectively;
- (c) identifies any works required to ensure the Bypass and each element of the Bypass (subject to the exceptions specified in Section 2.2 of this Schedule 21) will meet the Handback Requirements on the Expiry Date (the “**Handback Works**”), and specifying the Contract Year in which each of those Handback Works would be required;
- (d) specifies the Independent Inspector’s estimate of the costs that would be required to perform the Handback Works (the “**Handback Works Costs**”); and
- (e) details how the Handback Works Costs were calculated.

3.2 The Parties shall cause the Independent Inspector to perform another inspection of the Bypass and produce and deliver to each of the Parties an updated Bypass Condition Report (each a “**Revised Bypass Condition Report**”) at 24 months, 12 months and 3 months prior to the Expiry Date.

3.3 Within 30 days of delivery of the Bypass Condition Report and each Revised Bypass Condition Report, Project Co shall update the Operation and Maintenance Plan and the Asset Management Plan as described in Schedule 15-3 – OM & R and Handback Sections 401 and 402 respectively to include all Handback Works and all Handback Works Costs identified in either the Bypass Condition Report or any Revised Bypass Condition Report not already included in the then current Operation and Maintenance Plan and the Asset Management Plan as described in Schedule 15-3 – OM & R and Handback Sections 401 and 402 respectively, including a workplan consistent with the Independent Inspector’s recommendations, including a schedule of when any

required maintenance, rehabilitation or other work shall be completed so as to ensure that the Bypass is in the required condition at the Expiry Date.

- 3.4 Project Co shall carry out the Handback Works at its own cost notwithstanding that the actual cost of the Handback Works may be higher than the Handback Works Costs.
- 3.5 Either Party may dispute the Bypass Condition Report or any Revised Bypass Condition Report, including the Handback Works and the Handback Works Costs, in accordance with Schedule 22 - Dispute Resolution Procedure. In the event that a final determination in accordance with Schedule 22 - Dispute Resolution Procedure specifies Handback Works or Handback Works Costs which are different than those set out in either the Bypass Condition Report or any Revised Bypass Condition Report, then either the Bypass Condition Report or any Revised Bypass Condition Report, as the case may be, shall be deemed to be amended accordingly, as amended pursuant to Section 3.3 of this Schedule 21, and all deductions and payments permitted or required by Section 4 of this Schedule 21, shall be adjusted accordingly.

4. Payments To and From Escrow Account

- 4.1 Following the date for delivery of the Bypass Condition Report, for the purposes of Section 4.2 of this Schedule 21, the Parties shall review the amount of the Handback Works Costs and the level of capital expenditure Project Co has allocated to spend in the same period pursuant to the Financial Model (the “**Handback Rehabilitation Costs**”). Where the Handback Works Costs are greater than the Handback Rehabilitation Costs, the difference between the Handback Works Costs and the Handback Rehabilitation Costs shall be apportioned equally over the Payment Periods from the date the Bypass Condition Report is to be delivered hereunder to the Expiry Date (each instalment being the “**Handback Amount**”). If the Bypass Condition Report is delivered after the date for delivery hereunder, then the first instalment to be paid shall also include the amounts to be paid under the instalments that would have been payable prior to the date the Bypass Condition Report is delivered. Where the Handback Works Costs are amended pursuant to Section 3.3 or 3.5 of this Schedule 21, the Parties agree that the Handback Amount shall be adjusted accordingly.
- 4.2 Subject to Sections 4.3 and 4.5 of this Schedule 21, the Ministry may deduct the Handback Amount from each Monthly OM&R Payment, and pay into a separate interest bearing bank account, upon escrow terms acceptable to the Parties or in trust (the “**Escrow Account**”), the Handback Amount. If in any Payment Period, the Handback Amount is greater than the relevant Monthly OM&R Payment, the Ministry may deduct the difference between the Handback Amount and the Monthly OM&R Payment from the next Monthly OM&R Payment or from such other Payment Period as otherwise agreed between the Parties.
- 4.3 The Ministry shall not deduct any amount from a Monthly OM&R Payment as contemplated in Section 4.2 of this Schedule 21 if, at such time, the funds in the Escrow Account exceed the value (based on the Handback Works Costs) of all or any part of the Handback Works (as amended) yet to be performed.
- 4.4 Project Co may from time to time, but not more often than once in any month, make written request for release of funds from the Escrow Account. The Ministry shall consider such request within 10 Business Days and if the funds in the Escrow Account exceed the value (based on the

Handback Works Costs) of all or any part of the Handback Works (as amended) yet to be performed, then the Ministry shall pay the excess to Project Co from the Escrow Account within 10 Business Days thereafter, together with any interest that has accrued on such amount. Project Co shall include with its request all information reasonably required by the Ministry to evaluate such request.

4.5 Following the date of any Revised Bypass Condition Report, if the amount in the Escrow Account (being the deductions of the Handback Amount made since the Bypass Condition Report) together with the deductions to be made from the remaining Monthly OM&R Payments is less than the value (based on the Handback Works Costs) of the remaining Handback Works (as amended) yet to be performed, then the Ministry may deduct such shortfall, in equal instalments, from each remaining Monthly OM&R Payment until the Expiry Date, and pay each instalment into the Escrow Account and Section 4.4 of this Schedule 21 shall continue to apply until the Expiry Date.

4.6 As an alternative to the deductions permitted by Sections 4.2 and 4.5 of this Schedule 21 or the retention of any amount in the Escrow Account pursuant to the foregoing provisions of this Section 4 of this Schedule 21, Project Co may (and if, at any time, the amounts which the Ministry is permitted to deduct pursuant to Sections 4.2 and 4.5 of this Schedule 21 is greater than the remaining Monthly OM&R Payments, Project Co shall), within 5 Business Days of a written request from the Ministry, provide a bond or letter of credit (the “**Handback Security**”) in favour of the Ministry in an amount equal to the amounts which the Ministry is permitted to deduct pursuant to Sections 4.2 and 4.5 of this Schedule 21, in a form and from a surety or bank, as applicable, acceptable to the Ministry.

5. Project Co Not Relieved of Obligations

5.1 Notwithstanding:

- (a) any agreement of the Ministry to any Handback Works, Handback Works Costs or Handback Security;
- (b) any participation of the Ministry in any inspection under this Schedule 21; and
- (c) the complete or partial carrying out of the Handback Works,

Project Co shall not be relieved or absolved from any obligation to conduct any other inspection or to perform any other works to the extent otherwise required by this Project Agreement, including without limitation the OM&R Requirements.

6. Final Bypass Condition Report

6.1 The Parties shall cause the Independent Inspector to perform an inspection of the Bypass and to produce and deliver to each of the Parties a Bypass Condition Report within 30 Business Days after the Expiry Date (the “**Final Bypass Condition Report**”) that documents whether the Bypass met the Handback Requirements on the Expiry Date, as well as identifying any Handback Works and Handback Works Costs.

- 6.2 If the Final Bypass Condition Report identifies any Handback Works, the Ministry may withdraw from the Escrow Account or call upon the Handback Security an amount equivalent to such Handback Works Costs, and the Ministry shall pay any remaining funds in the Escrow Account (including any interest accrued) to Project Co and return any remaining Handback Security to Project Co.
- 6.3 Provided that the funds in the Escrow Account and/or the Handback Security is adequate to meet Project Co's obligations in respect of the Handback Works identified in the Final Bypass Condition Report, following any withdrawal from the Escrow Account or call upon the Handback Security in accordance with Section 6.2, Project Co shall have no further liability with respect to such Handback Works.
- 6.4 If no Handback Works are identified in the Final Bypass Condition Report, the Ministry shall, within 20 Business Days of receipt by the Ministry of the Final Bypass Condition Report, pay the funds in the Escrow Account (including any interest accrued) to Project Co and return the Handback Security to Project Co, unless the Ministry disputes the Final Bypass Condition Report, in which case the Escrow Account and Handback Security shall be dealt with as determined in accordance with Schedule 22 - Dispute Resolution Procedure.

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