

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT ("Agreement") is made as of _____, 20__ (the "Effective Date")

BETWEEN:

having an office at

("Company")

[DRAFTING NOTE TO BE DELETED PRIOR TO EXECUTING AGREEMENT: IF THE COUNTERPARTY IS A LIMITED PARTNERSHIP, THE PARTY DESCRIPTION ABOVE WILL NEED TO REFLECT THAT STRUCTURE AND OTHER CHANGES MAY NEED TO BE MADE TO THE AGREEMENT – PLEASE CONTACT NMEOI ADMINISTRATOR]

AND:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY
having an office at
333 Dunsmuir Street
Vancouver, BC V6B 5R3

("BC Hydro")

WHEREAS:

- A. BC Hydro has issued a **North Montney Region Electrification Project Transmission-Service Load Customer Expression of Interest** dated March 18, 2021 (as may be amended from time to time) describing the process established by BC Hydro to solicit expressions of interest from potential customers (the "EOI Process") with respect to the supply of electricity from the proposed North Montney Region Electrification Project (the "Project");
- B. In connection with the EOI Process, BC Hydro intends to consider expressions of interest received in the EOI Process and evaluate the feasibility and potential design of the Project, and if determined feasible by BC Hydro, BC Hydro may develop and construct the Project (together with the EOI Process, the "NMRE Evaluation and Development Process");
- C. The Company intends to participate in the NMRE Evaluation and Development Process;
- D. In connection with the Company's participation in the NMRE Evaluation and Development Process (the "Purpose"), the parties may enter into business discussions and wish to share and exchange certain information that is non-public, confidential and/or proprietary in nature in connection with the Purpose, including without limitation in relation to the Proposal, all on the terms and conditions set out in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

1. **Definition of Confidential Information.** In this Agreement, the term “Confidential Information” means, subject to Section 2:

- (a) all information in any form disclosed by either party (the “Disclosing Party”) or its Representatives to the other party (the “Recipient”) or its Representatives on or after the Effective Date in connection with the Purpose, including without limitation and for greater certainty any such information owned by a third party and any draft or final non-public tariff documents developed by BC Hydro; and
- (b) all notes, compilations, working papers, studies, analyses and any other documents prepared by or for the Recipient or its Representatives that contain or are derived from, in whole or in part, information described in paragraph (a).

2. **Exclusions.** Confidential Information does not include information that the Recipient can clearly demonstrate:

- (a) is lawfully disclosed to the Recipient by a third person who, in the Recipient’s reasonable belief following due enquiry, has the right to make such disclosure without violating any confidentiality obligation to the Disclosing Party;
- (b) was developed independently by the Recipient, before disclosure to it by the Disclosing Party or its Representatives; or
- (c) is or comes into the public domain, other than through a violation of this Agreement by the Recipient.

For greater certainty, information disclosed under this Agreement will not be considered to be within the scope of any of the exclusions set out in this Section 2 merely because individual elements of the information are within one or more of the exclusions. Any combination of information or data that comprises part of the Confidential Information will not be within the scope of any exclusion solely because the individual parts of that information or data are in the public domain unless the combination itself is also in the public domain.

3. **Definition of Representatives.** In this Agreement, the term “Representatives” means:

- (a) for each of BC Hydro and the Company, their respective employees, officers, directors, agents, contractors, consultants or advisors;
- (b) for BC Hydro, its affiliates; and
- (c) for the Company, ***[INSERT NAME(S) OF SPECIFIED AFFILIATES OF THE COMPANY]***.

4. **Non-Disclosure.** Each Recipient will keep Confidential Information that it has received strictly confidential and will not disclose such Confidential Information to any third party, except:

- (a) a Recipient may disclose Confidential Information to its Representatives, but only on a ‘need to know’ basis as reasonably necessary in connection with the Purpose, and

provided such Representatives are informed of the confidential nature of the information and obliged in a manner consistent with this Agreement to maintain the confidentiality of the Confidential Information disclosed to them;

- (b) if required by law, court order, or a regulatory authority having jurisdiction, provided however that the Recipient will, to the extent that it is not legally prohibited from doing so, provide written notice to the Disclosing Party as soon as reasonably practicable after becoming aware of such requirement and in any event prior to making any such required disclosure, and the Recipient will limit its disclosure to that which it is required to make by the applicable law, order or regulatory authority;
 - (c) BC Hydro may disclose Confidential Information that it has received under this Agreement:
 - (i) to any ministers, deputy ministers, servants or employees of the Province of British Columbia or of Canada, in either case to the extent that BC Hydro considers disclosure is necessary or desirable for any purpose;
 - (ii) in any regulatory proceeding to the extent BC Hydro considers disclosure is necessary or desirable to support its position in such proceeding, or in connection with any other regulatory filing or reporting that may be required; or
 - (iii) to reliability organizations, reliability coordinators, balancing authorities, transmission operators or others to the extent that BC Hydro considers disclosure is necessary or desirable for operating reliability or compliance purposes, provided each of them is advised of the confidential nature of the information;
 - (d) as reasonably necessary in proceedings to enforce the terms of this Agreement; or
 - (e) with the prior written agreement of the Disclosing Party.
5. **Freedom of Information and Protection of Privacy Act.** Without limiting the generality of the exceptions set out in Section 4, the Company acknowledges that BC Hydro is subject to the British Columbia *Freedom of Information and Protection of Privacy Act* and associated regulations, and agrees that BC Hydro's obligations and the restrictions on use of Confidential Information under this Agreement are subject to the provisions of that legislation, as may be amended or replaced from time to time.
6. **Restricted Use.** Subject to the disclosures permitted under Section 4, each party will use, and direct its Representatives to use, Confidential Information that it has received under this Agreement only for the Purpose, and for no other purpose. A Recipient may not use the Confidential Information of the Disclosing Party, or permit it to be used, to reverse engineer, disassemble, decompile or design around the Disclosing Party's proprietary services, products and/or confidential intellectual property.
7. **Safeguarding.** Each party will exercise at least the same degree of care in safeguarding the Confidential Information that it has received under this Agreement against loss, theft and inadvertent disclosure as it does for its own Confidential Information, and in any event no less than a commercially reasonable degree of care.

8. **Ownership.** Each Disclosing Party retains its entire right, title and interest, including without limitation all intellectual property and other rights, in and to all of its Confidential Information. A Recipient acquires no ownership interest in any such Confidential Information, and any disclosure of such Confidential Information under this Agreement will not be construed as an assignment, grant, option, licence or other transfer of any such right, title or interest whatsoever to the Recipient or any of its Representatives. Each Recipient specifically acknowledges and agrees that it has no right, title or interest in or to the Confidential Information of the Disclosing Party. The Recipient will not remove any copyright, confidential, proprietary rights or intellectual property notices attached to or included in any Confidential Information received from the Disclosing Party and the Recipient will reproduce all such notices on any copies.
9. **Loss of Confidential Information.** A Recipient will, as soon as is reasonably practicable, notify the Disclosing Party in writing if any information comes to the attention of the Recipient or its Representatives which may indicate there was or is likely to be a breach of the Recipient's obligations of non-disclosure in this Agreement, or any misuse of any of the Confidential Information that it has received under this Agreement. The Recipient will use reasonable efforts to retrieve any lost or wrongfully disclosed Confidential Information and to prevent any further unauthorized disclosure or use.
10. **Return of Confidential Information.** Within 10 days of the Disclosing Party's written request, the Recipient will return to the Disclosing Party or destroy all of the Confidential Information in its and its Representatives' possession, subject to the following exceptions:
 - (a) If a Recipient (or any of its Representatives) is required by either applicable law or the rules or bylaws of a professional association to which it belongs and which has jurisdiction over it to retain copies of all, or any part, of the Confidential Information, it may retain one copy for archival purposes in accordance with such applicable law or rules and regulations or any written document retention policy.
 - (b) A Recipient and its Representatives may retain copies of the Confidential Information described in Section 1(b) and copies of any Confidential Information in routine back-up of electronic data processing systems until the ordinary course deletion of the information.If requested by the Disclosing Party, the Recipient will certify in writing that the Confidential Information has been destroyed or otherwise retained in accordance with the requirements of this Section 10.
11. **Term.** This Agreement commences on the Effective Date and expires on the earlier of:
 - (a) the date that is six years after the Effective Date of this Agreement; and
 - (b) the date which is 10 days after the date on which either party has provided written notice to the other party that the Purpose is concluded.
12. **Survival of Obligations.**
 - (a) Each party's obligations under this Agreement survive any destruction of the Confidential Information, and any retained Confidential Information will remain subject to the confidentiality requirements of and restrictions on use in this Agreement.

- (b) Each party's rights and obligations under this Agreement will survive for a period of six years from the date of the expiry of this Agreement, even after the return or destruction of each party's Confidential Information by the other party.
13. **Equitable Remedies.** Each party acknowledges that irreparable harm may result to the other party if it breaches its obligations under this Agreement and each party acknowledges that such a breach would not be adequately compensable by an award of damages. Accordingly, each party agrees that remedies for any such breach may include, in addition to other remedies and damages available in law or equity or under this Agreement, specific performance, injunctive relief or other equitable relief enjoining such breach.
14. **Liability.** Each Recipient will be responsible and liable to the Disclosing Party for any unauthorized disclosure or use of Confidential Information by its Representatives or by any third party to whom the Recipient or any of its Representatives discloses Confidential Information. In no event will either party be liable to the other party in connection with any breach of this Agreement for any indirect, incidental or consequential damages, including without limitation loss of profits. All Confidential Information is provided "as is" and without any warranty, express, implied, or otherwise, regarding its accuracy, completeness, performance or fitness for a particular purpose.
15. **No Waiver.** No implied waiver by any party will arise in the absence of a waiver in writing signed by that party. No failure or delay in exercising any right, power, or privilege under this Agreement will operate as a waiver, nor will any single or partial failure in exercising any right, power, or privilege preclude any other further exercise of that or any other right, power, or privilege.
16. **Relationship.** Nothing in this Agreement creates any relationship of partnership, co-venturer, or principal and agent between the parties. In addition, nothing in this Agreement obligates or compels either party to: a) disclose any Confidential Information to the other party; or b) to negotiate for or enter into any business or contractual arrangement or otherwise pursue the Purpose unless and until both parties execute a definitive written agreement with respect to such arrangement.
17. **Notices.** Any notice required or permitted to be given under this Agreement must be in writing and may be delivered by registered mail, by hand, by email or by other designated form of electronic communication, if to BC Hydro, Attention: **Manager, Business & Economic Development**, at **333 Dunsmuir, Vancouver, B.C., V6B 5R3, admin_BD@bchydro.com**], and if to Company, Attention: **[INSERT NAME]** at **[INSERT MAILING ADDRESS AND EMAIL ADDRESS - DELETE ALL INSTRUCTIONS]**, or to such other address as a party may designate by subsequent notice. A notice given by email or other designated form of electronic communication will be deemed to have been delivered (even if no individual with the recipient is aware of its delivery) when it enters an information processing system that the recipient has designated for the purpose of receiving notices under this Agreement and is in a form capable of being processed by that system.
18. **Governing Law.** This Agreement will be governed by and interpreted and construed under the laws of the Province of British Columbia and the laws of Canada applicable in the Province of British Columbia as if it were executed and to be performed wholly within the Province of British Columbia. Each of the parties submits to the exclusive jurisdiction of the courts of British Columbia. If a party is not incorporated or registered in British Columbia, it will appoint an agent

to receive service of process in British Columbia and notify the other party of the name and address of the appointed agent.

19. **Validity.** If any provision of this Agreement is declared or held to be invalid or unenforceable, that provision will be severed, and all other provisions will continue to be valid and enforceable.
20. **Assignment and Enurement.** This Agreement is not assignable by a party without the prior written consent of the other party, not to be unreasonably withheld. This Agreement ensures to the benefit of, and is binding upon, the parties and their respective successors and permitted assigns.
21. **Amendment.** This Agreement may not be modified except by an agreement signed by all parties.

22. **Counterparts.** This Agreement may be executed and delivered by electronic means and in several counterparts, each of which when executed and delivered will be deemed to be an original and all of which together will be one and the same agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

by its authorized signatory(ies):

BRITISH COLUMBIA HYDRO AND POWER
AUTHORITY
by its authorized signatory:

Signature
Print Name:
Title:

Signature
Print Name:
Title:

Signature
Print Name:
Title: