

Note: Due to a technical issue, sections 5.8b and 9.2b did not appear in the original PDF version of this Specimen EPA. This issue has been corrected in this PDF version of the file.

BC HYDRO

AND



ELECTRICITY PURCHASE AGREEMENT

BC Hydro - DRAFT FOR DISCUSSION PURPOSES

Please note that this template EPA is provided solely for the purpose of advancing our confidential and without prejudice discussions. It is not an offer and does not create any legally binding obligations, rights or liabilities. We do not have authority to enter into the agreements and any draft documents which may be circulated will remain subject to BC Hydro's review and approval in its absolute and unfettered discretion. No agreement will exist between us regarding these matters until we settle, and both parties have signed and delivered, final agreements reflecting or resulting from our discussions, which may be subject to additional conditions.

[Notes: This template EPA applies to existing projects with the following characteristics:

- 1. Project is a small hydro project with an existing EPA.*
- 2. Project has a direct interconnection to the BC Hydro System, and an Interconnection Agreement is in place from EPA execution.*
- 3. Energy will be available under this EPA after the date of expiry of the existing EPA (assuming execution of this EPA prior to expiry of existing EPA).*
- 4. Seller is a single corporation, rather than a joint venture, limited partnership or other entity.*
- 5. There are no other parties interconnected to the BC Hydro system at the POI.]*

| | | |
|------|---|----|
| 1. | INTERPRETATION | 1 |
| 1.1 | DEFINITIONS | 1 |
| 1.2 | INTERPRETATION..... | 14 |
| 2. | TERM | 16 |
| 2.1 | Term | 16 |
| 3. | REGULATORY | 16 |
| 3.1 | Regulatory Filing..... | 16 |
| 3.2 | Termination | 16 |
| 3.3 | Exemptions..... | 17 |
| 3.4 | Utility Regulation..... | 17 |
| 4. | SELLER’S PLANT | 17 |
| 4.1 | Ownership | 17 |
| 4.2 | Operation Costs and Liabilities..... | 17 |
| 4.3 | Standard of Operation | 17 |
| 4.4 | Hourly Limit | 18 |
| 4.5 | Permits | 18 |
| 4.6 | Changes to Seller’s Plant | 18 |
| 4.7 | Metering..... | 19 |
| 4.8 | Insurance..... | 20 |
| 4.9 | No Liability For Delay | 21 |
| 4.10 | Operating Plans | 21 |
| 4.11 | Outages | 21 |
| 5. | PURCHASE AND SALE OBLIGATIONS | 22 |
| 5.1 | Sale and Purchase of Energy | 22 |
| 5.2 | Limitations on Delivery and Acceptance Obligations – | 22 |
| 5.3 | Environmental Attributes..... | 24 |
| 5.4 | Exclusivity | 24 |
| 5.5 | Custody, Control, Risk of and Title To Energy | 24 |
| 5.6 | Line Losses..... | 24 |
| 5.7 | Curtailment Right - Emergency Condition..... | 24 |
| 5.8 | Deemed Energy | 25 |
| 6. | PRICE AND PAYMENT TERMS | 27 |
| 6.1 | Payment for Delivered Energy | 27 |
| 6.2 | Payment for Deemed Energy | 27 |
| 6.3 | No Further Payment..... | 28 |
| 6.4 | Statements and Payment..... | 29 |
| 6.5 | Billing Guideline..... | 30 |
| 6.6 | Taxes..... | 31 |
| 6.7 | Set-off..... | 31 |
| 7. | ENVIRONMENTAL ATTRIBUTES – CERTIFICATION AND ADMINISTRATION | 31 |
| 7.1 | Environmental Certification and Administration | 31 |
| 8. | EPA ADMINISTRATION | 31 |
| 8.1 | Records..... | 31 |
| 8.2 | Inspection and Audit Rights | 32 |

| | | |
|-------|--|----|
| 8.3 | Seller Consents | 32 |
| 8.4 | Assignment | 33 |
| 8.5 | Dispute Resolution | 33 |
| 8.6 | Notices..... | 34 |
| 8.7 | Confidentiality | 34 |
| 8.8 | Force Majeure | 37 |
| 8.9 | First Nations | 38 |
| 9. | ABORIGINAL CLAIMS | 39 |
| 9.1 | Notification of Aboriginal Claim | 39 |
| 9.2 | Obligation to Consult | 39 |
| 9.3 | Seller Termination for Aboriginal Claim | 39 |
| 9.4 | Buyer Termination for Aboriginal Claim..... | 40 |
| 10. | TERMINATION | 40 |
| 10.1 | Termination by Buyer..... | 40 |
| 10.2 | Notice of Termination Event | 41 |
| 10.3 | Termination by the Seller | 41 |
| 10.4 | Effect of Termination | 42 |
| 10.5 | Seller Termination Payment..... | 43 |
| 11. | REPRESENTATIONS AND WARRANTIES AND LIABILITY LIMITATIONS | 44 |
| 11.1 | Seller’s Representations..... | 44 |
| 11.2 | Buyer’s Representations | 45 |
| 11.3 | Limit of Liability | 45 |
| 11.4 | Consequential Damages..... | 45 |
| 12. | INDEMNITIES | 46 |
| 12.1 | Seller Indemnity | 46 |
| 12.2 | Buyer Indemnity..... | 46 |
| 12.3 | Indemnification Conditions | 46 |
| 12.4 | Third Party Beneficiary Conditions..... | 46 |
| 13. | GENERAL PROVISIONS..... | 47 |
| 13.1 | Electric Service to the Seller | 47 |
| 13.2 | Independence..... | 47 |
| 13.3 | Enurement..... | 47 |
| 13.4 | Entire Agreement | 47 |
| 13.5 | Amendment | 47 |
| 13.6 | No Waiver..... | 47 |
| 13.7 | Interconnection Notices..... | 47 |
| 13.8 | Future Agreements | 48 |
| 13.9 | Further Assurances..... | 48 |
| 13.10 | Severability | 48 |
| 13.11 | Counterparts | 48 |

APPENDIX A ADDRESSES FOR NOTICES 1
APPENDIX B SELLER’S PLANT DESCRIPTION 1
APPENDIX C ENERGY PRICE 1
APPENDIX D CONFIDENTIALITY AGREEMENT 1

BC HYDRO

ELECTRICITY PURCHASE AGREEMENT

THIS ELECTRICITY PURCHASE AGREEMENT (“EPA”) is made as of <*>, <*> (the “Effective Date”)

BETWEEN:

<*> (“Seller”)

AND:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY, a corporation continued under the *Hydro and Power Authority Act* R.S.B.C. 1996, c. 212, with its head office at 333 Dunsmuir Street, Vancouver, BC V6B 5R3

(“Buyer”)

WHEREAS:

- A. The Seller and the Buyer are parties to the Former EPA, which will expire on *[insert date]*.
- B. Under its 2022 EPA Renewal Program, the Buyer will continue to procure energy generated from a clean or renewable resource from certain facilities, including the Seller’s Plant.
- C. The Seller wishes to sell to the Buyer, and the Buyer wishes to purchase from the Seller, certain Energy from the Seller’s Plant, including associated Environmental Attributes, on the terms and conditions set forth in this EPA.

The Parties agree as follows:

1. INTERPRETATION

1.1 DEFINITIONS

The following words and expressions used in this EPA have the following meaning:

- (a) “**Aboriginal Claim**” means a legal claim or proceeding or written threat of a legal claim or proceeding where such threat, claim or proceeding alleges Potential Impacts which breach any First Nation’s rights under Section 35 of the *Constitution Act, 1982*.
- (b) “**Affiliate**” means, with respect to the Seller or any third Person, any Person directly or indirectly Controlled by, Controlling, or under common Control with, the Seller or the third Person, and with respect to the Buyer, any Person directly or indirectly Controlled by the Buyer and, if at any time the Buyer is not Controlled, directly or indirectly, by the Province of British Columbia, will include any Person directly or indirectly Controlling, or under common Control, with the Buyer.
- (c) “**Assign**” or “**Assignment**” means to assign or dispose of this EPA or any direct or indirect interest in this EPA, in whole or in part, for all or part of the Term and, without limiting

the foregoing, each of the following is deemed to be an Assignment of this EPA by the Seller:

- (i) any sale or other disposition of all or a substantial part of the Seller's ownership interest in the Seller's Plant, or of all or any interest of the Seller in this EPA or revenue derived from this EPA;
 - (ii) any mortgage, pledge, charge or grant of a security interest in all or any part of the Seller's Plant or the Seller's ownership interest therein or of all or any interest of the Seller in this EPA or revenue derived from this EPA; and
 - (iii) any change of Control, merger, amalgamation or reorganization of the Seller.
- (d) **"Audit Parties"** means the Buyer and its Affiliates, representatives, consultants, advisors, and any third Person with whom the Buyer or any of its Affiliates has entered into a contract for the sale and purchase of Environmental Attributes and their Affiliates, representatives, consultants and advisors.
- (e) **"Bankrupt or Insolvent"** means, with respect to a Person:
- (i) the Person has started proceedings to be adjudicated a voluntary bankrupt or consented to the filing of a bankruptcy proceeding against it;
 - (ii) the Person has filed a petition or similar proceeding seeking reorganization, arrangement or similar relief under any bankruptcy or insolvency law;
 - (iii) a receiver, liquidator, trustee or assignee in bankruptcy has been appointed for the Person or the Person has consented to the appointment of a receiver, liquidator, trustee or assignee in bankruptcy;
 - (iv) the Person has voluntarily suspended the transaction of its usual business; or
 - (v) a court of competent jurisdiction has issued an order declaring the Person bankrupt or insolvent.
- (f) **"BC Hydro System"** means the generation, transmission, distribution, protection, control and communication facilities owned, controlled or operated by the Buyer in British Columbia, and includes all additions and modifications thereto and repairs or replacements thereof.
- (g) **"BC Hydro System Constraint"** means any outage, suspension, constraint or curtailment for any reason whatsoever in the operation of the BC Hydro System, or disconnection of the Seller's Plant from the BC Hydro System, during the Energy Delivery Period preventing or limiting deliveries of Energy at the POI.
- (h) **"BCUC"** means the British Columbia Utilities Commission or any successor thereto.
- (i) **"BCUC Acceptance"** means that the BCUC has issued an order accepting for filing, or approving, this EPA under section 71 of the UCA as an energy supply contract either

without conditions or subject to conditions that do not (i) require as a condition of acceptance for filing or approval a material alteration to any material term or condition of this EPA, or (ii) otherwise have an adverse effect on one or both of the Parties.

- (j) **“Business Day”** means any day except a Saturday, a Sunday, or a day that is recognized as a “paid holiday” for British Columbia government employees as published by the Province of British Columbia from time to time (including any day Monday through Friday that is a paid holiday for British Columbia government employees due to a holiday occurring on a Saturday or Sunday).
- (k) **“Buyer”** means the Party so identified on page one of this EPA, and its successors and assigns.
- (l) **“Buyer Confidential Information”** means:
 - (i) technical or commercial information disclosed by the Buyer to the Seller;
 - (ii) all information that is or was [**“Confidential Information”** under/to be treated as confidential under Article <*> of] the Former EPA [**Note: This will be revised to reflect the confidentiality provisions in the Former EPA.**] as a result of disclosure by the Buyer or its representatives (notwithstanding the expiry or termination of the Former EPA), and all information that is or was “Confidential Information” under the Confidentiality Agreement as a result of disclosure by the Buyer or its representatives; and
 - (iii) this EPA whether or not so directed and marked;but excluding information that:
 - (iv) is or becomes in the public domain, other than as a result of a breach of this EPA by the Seller; or
 - (v) is known to the Seller before disclosure to it by the Buyer, or becomes known to the Seller thereafter, in either case by way of disclosure to the Seller by any other Person who is not under an obligation of confidentiality with respect thereto.
- (m) **“Buyer Indemnified Parties”** means the Buyer, its Affiliates and the Province of British Columbia, and their respective directors, officers, employees, agents, representatives, successors and permitted assigns.
- (n) **“Clean Energy”** means Energy that qualifies as energy generated by a Clean or Renewable Resource.
- (o) **“Clean or Renewable Resource”** means a “clean or renewable resource” as defined under the Clean Energy Act, SBC 2010, c.22, as amended or replaced from time to time.
- (p) **“Commencement Date”** means <*>. [**Note: The blank in this section will be the date after the expiry date of the Former EPA.**]

- (q) **“Confidentiality Agreement”** means the confidentiality agreement dated <*> between the Buyer and Seller, a copy of which is attached as Appendix D to this EPA.
- (r) **“Constraint Energy”** means, for any hour during a BC Hydro System Constraint, the lesser of:
- (i) that amount of Energy that could have been generated and delivered to the POI in that hour but for the occurrence of a BC Hydro System Constraint less any amount of Delivered Energy in the hour; and
 - (ii) the Hourly Limit less any amount of Delivered Energy in that hour (which if a negative number will be deemed to be zero),
- except that Energy that could have been generated and delivered to the POI in an hour during a BC Hydro System Constraint resulting from an Emergency Condition is not Constraint Energy. *[Note: For storage hydro projects, this will also need to exclude any extra water that was stored (and related future energy generation) as a result of the BC Hydro System Constraint.]*
- (s) **“Control”** of any Person means:
- (i) with respect to any corporation or other Person having voting shares or the equivalent, the ownership or power to vote, directly or indirectly, shares, or the equivalent, representing 50% or more of the power to vote in the election of directors, managers or Persons performing similar functions;
 - (ii) ownership of 50% or more of the equity or beneficial interest in that Person; or
 - (iii) the ability to direct the business and affairs of any Person by acting as a general partner, manager or otherwise.
- (t) **“Costs”** means brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred or that would reasonably be expected to be incurred by the Buyer in entering into new arrangements which replace this EPA and legal fees, if any, incurred in connection with enforcing the Buyer’s rights under this EPA.
- (u) **“Curtailed Request”** has the meaning given to that term in section 5.8(a).
- (v) **“Deemed Energy”** means, in any hour during the Energy Delivery Period:
- (i) the amount of Turn-Down Energy in that hour for which the Buyer is required to pay the Seller pursuant to section 5.8(c); and
 - (ii) the amount of Constraint Energy in that hour for which the Buyer is required to pay the Seller pursuant to section 5.8(d).
- (w) **“Delivered Energy”** means, in any hour during the Energy Delivery Period, the amount of Energy delivered by the Seller at the POI in that hour as recorded by the Meter, or the

duplicate revenue meter(s) installed by the Buyer under section 4.7(b), if any, as adjusted for Line Losses.

- (x) **“Economic Losses”** means an amount equal to the present value of the economic loss, exclusive of Costs, if any, to the Buyer resulting from the termination of this EPA, determined in a commercially reasonable manner and as described in section 10.5.
- (y) **“Effective Date”** means the date set out on page one of this EPA.
- (z) **“Emergency Condition”** means a condition or situation that in the judgment of the Buyer is imminently likely to:
 - (i) endanger life or property; or
 - (ii) cause a material adverse effect on the security or reliability of, or damage to, the BC Hydro System.
- (aa) **“Emergency Request”** has the meaning given in section 5.7(a).
- (bb) **“Energy”** means all electric energy expressed in MWh generated by the Seller’s Plant, excluding electric energy required to service the Seller’s Plant.
- (cc) **“Energy Delivery Period”** means the period of time from the Commencement Date until the end of the Term.
- (dd) **“Energy Price”** means, for an hour, the amount calculated as provided in Appendix C.
- (ee) **“Energy Source”** has the meaning given to it in Appendix B.
- (ff) **“Environmental Attributes”** means any and all environmental attributes, aspects, characteristics, claims, credits, benefits, emissions reductions, reporting rights, offsets, additionality or allowances, howsoever entitled or designated, resulting from, attributable to or associated with Delivered Energy, the generation thereof by Seller’s Plant, the use thereof in substitution for other forms of energy or fuel and any avoided emission of pollutants, whether now or hereafter recognized or designated as such, including the following:
 - (i) all attributes directly associated with, or that may be derived from, the Delivered Energy having decreased emissions or environmental impacts relative to certain other generation facilities or technologies including any existing or future credit, allowance, “green” tag, ticket, certificate or other “green” marketing attribute or proprietary or contractual right, whether or not tradeable;
 - (ii) any credit, reduction right, offset, allowance, allocated pollution right, certificate or other unit of any kind whatsoever, whether or not tradeable and any other proprietary or contractual right, whether or not tradeable, resulting from, or otherwise related to the actual or assumed reduction, displacement or offset of emissions at any location other than the Seller's Plant as a result of the generation, purchase or sale of the Delivered Energy;

- (iii) any credit, reduction right, offset, allowance, allocated pollution right, certificate or other unit of any kind whatsoever whether or not tradeable resulting from or otherwise related to the reduction, removal, or sequestration of emissions at or from the Seller's Plant; and
- (iv) all revenues, entitlements, benefits, rewards and other proceeds arising from or related to the foregoing, but for certainty not including:
 - (A) benefits or proceeds from environmental incentive programs offered by Governmental Authorities that do not require a transfer of the attributes in paragraphs (i) to (iii) above; and
 - (B) benefits or proceeds from social programs, including programs relating to northern or rural development, employment or skills training, or First Nations, that do not require a transfer of the attributes in paragraphs (i) to (iii) above.

For the purposes of this definition, "emissions" includes pollutants to the air, soil or water whether a gas, chemical or other substance attributable to the generation of energy and the delivery of energy, and include, without limitation, any of the same arising out of legislation or regulation concerned with oxides of nitrogen, sulfur, or carbon, methane, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and any other greenhouse gas (being a gas that absorbs and emits radiation within the thermal infrared range, whether now or hereafter recognized as such), with particulate matter, soot or mercury, or implementing the United Nations Framework Convention on Climate Change (the "UNFCCC") or the Kyoto Protocol to the UNFCCC or crediting "early actions" with a view thereto, or laws or regulations involving or administered by a U.S. or Canadian environmental protection authority or agency; and "credit" includes carbon credits, portfolio credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags, tradable renewable credits, ECOLOGO® and Green-e® products certifications and credits, environmental air quality credits and emissions reduction credits.

- (gg) "**Environmental Certification**" means any certification the Buyer requires the Seller to obtain under section 7.1.
- (hh) "**Excess Energy**" means in each hour during the Energy Delivery Period, the amount of Delivered Energy that exceeds the Hourly Limit.
- (ii) "**Exemption**" means a lawful exemption from the requirement under section 71 of the UCA that this EPA be filed thereunder as an "energy supply contract" as defined therein.
- (jj) "**Facility Lender**" means any lender(s) providing any debt financing or debt hedging facilities for the design, engineering, construction and/or operation of the Seller's Plant and any successors or assigns thereto, or any Person taking any mortgage, pledge, charge or grant of a security interest in all or any part of the Seller's Plant.
- (kk) "**Final Amount**" means an amount owing by either Party to the other Party under this EPA, including as a result of a breach of this EPA, where such amount is: (a) undisputed

by the Party owing such amount; or (b) has been finally determined by an arbitration award under section 8.5 or by a court order and all rights of appeal in respect of such award or order have been exhausted or have expired.

- (ll) **“First Nation”** means any band, band council, tribal council, aboriginal treaty nation and/or other aboriginal group or governing body, however organized, that is established by aboriginal people within their asserted traditional territory in British Columbia.
- (mm) **“Force Majeure”** means any event or circumstance not within the control of the Party invoking Force Majeure, or of any of its Affiliates, but does not include:
 - (i) any economic hardship or lack of money, credit or markets for any reason whatsoever;
 - (ii) an event or circumstance that is the result of a breach by the Party seeking to invoke Force Majeure of a Permit or of any applicable Laws;
 - (iii) a mechanical breakdown or control system hardware or software failure;
 - (iv) an event or circumstance caused by a breach of, or default under, this EPA or a wilful or negligent act or omission by the Party seeking to invoke Force Majeure;
 - (v) a BC Hydro System Constraint, unless the BC Hydro System Constraint is caused or required as a result of an event or circumstance that is itself Force Majeure; or
 - (vi) any acts or omissions of: (i) any Affiliate, employee, director, officer, agent or other representative of the Party invoking Force Majeure; (ii) any vendor, supplier, contractor, subcontractor, consultant or customer of or to the Party invoking Force Majeure; or (iii) any other Person for whom the Party invoking Force Majeure is responsible at law, unless the act or omission is caused by an event or circumstance that would constitute Force Majeure if the Person described above was a party to this EPA in place of a Party invoking Force Majeure.
- (nn) **“Forced Outage”** means an Outage that is not:
 - (i) a Planned Outage;
 - (ii) a BC Hydro System Constraint unless attributable to the Seller or the Seller’s Plant; or
 - (iii) disconnection of the Seller’s Plant from the BC Hydro System by BC Hydro unless for reasons attributable to the Seller or the Seller’s Plant.
- (oo) **“Former EPA”** means the Electricity Purchase Agreement dated <*>, as amended, supplemented or otherwise modified from time to time. ***[Note: This definition may be modified to include any short-term agreements entered into since the date of the original EPA.]***

- (pp) **“Gains”** means an amount equal to the present value of the economic benefit, exclusive of Costs, if any, to the Buyer resulting from the termination of this EPA, determined in a commercially reasonable manner and as described in section 10.5.
- (qq) **“Good Utility Practice”** means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the WECC region.
- (rr) **“Governmental Authority”** means any federal, provincial, local or foreign government or any of their boards or agencies, or any regulatory authority other than the Buyer and the Seller and entities Controlled by the Buyer or the Seller.
- (ss) **“GST”** means the goods and services tax imposed under the *Excise Tax Act* (Canada) as that Act may be amended or replaced from time to time.
- (tt) **“Hourly Limit”** means **<*>** MWh per hour, in any hour, measured at the POI, unless increased or waived by the Buyer for a period of time specified in writing by the Buyer from time to time in its sole discretion (which increase or waiver may be revoked by the Buyer at any time by notice to the Seller).
- (uu) **“Indemnitee”** has the meaning given in section 12.3.
- (vv) **“Indemnitor”** has the meaning given in section 12.3.
- (ww) **“Information Submittals”** means the documents and information in relation to the Seller’s Plant provided by the Seller to the Buyer in the period between **<*>** and the Effective Date in connection with the negotiation and execution of this EPA, including all documents and information (including photos) provided in connection with: the description of the Seller’s Plant in Appendix A; First Nations, the Seller’s cost of service, Interconnection and Permits; and the condition assessment of the Seller’s Plant. **[Note: The blank in this section to be based on commencement of renewal discussions between the Seller and BC Hydro.]**
- (xx) **“Interconnection”** means the facilities and procedures that enable the flow of electric power from the Seller’s Plant to the BC Hydro System and vice versa.
- (yy) **“Interconnection Agreement”** means the interconnection agreement between the Seller and the Buyer dated **<*>** in respect of the Interconnection, as amended or replaced from time to time. **[Note: The blank in this section will be completed based on the Interconnection Agreement in place between Seller and BC Hydro as of the Effective Date of the EPA.]**

- (zz) **“Laws”** means any and all statutes, laws (including common law), ordinances, rules, regulations, codes, orders, bylaws, policies, directions, standards, guidelines, protocols and other lawful requirements of any Governmental Authority in effect from time to time.
- (aaa) **“Lender Consent Agreement”** means a lender consent agreement in the Buyer’s standard form from time to time.
- (bbb) **“Line Losses”** means all losses of Energy associated with the transmission of Energy and other electricity, if applicable, on the Seller’s side of the POI that are recorded by the Meter.
- (ccc) **“Major Damage”** means damage to the Seller’s Plant caused by Force Majeure where the cost to repair the damage exceeds the net present value (using the Present Value Rate) of the expected revenues under this EPA for the remainder of the Term less the net present value (using the Present Value Rate) of the estimated operating and maintenance costs for the Seller’s Plant for the remainder of the Term.
- (ddd) **“Meter”** means a meter or meters (as the Buyer determines in its sole discretion may be required) leased by the Buyer to the Seller that is/are: (a) capable of accurately measuring the quantity of Energy delivered to the POI in each hour independent of all other generation equipment or facilities and transmitting the information to the Buyer; (b) capable of being remotely interrogated by the Buyer; and (c) tested and sealed according to any Measurement Canada standards.
- (eee) **“Network Upgrades”** means additions, modifications and upgrades to the BC Hydro System that are determined by the Buyer to be interconnection or transmission network upgrades under the applicable policies of the Buyer or under the Buyer’s Open Access Transmission Tariff in effect from time to time.
- (fff) **“Network Upgrade Costs”** means all costs incurred by the Buyer [before or] after the Effective Date for the design, engineering, procurement, construction, installation and commissioning of Network Upgrades under the Interconnection Agreement. *[Note: The square bracketed words will only be required for those EPAs with previously identified interconnection deficiencies. BC Hydro will remove these words for EPAs where this is not applicable for the Seller’s Plant.]*
- (ggg) **“Operating Plan”** means an operating plan for the Seller’s Plant prepared in accordance with the guidelines provided by the Buyer from time to time, that includes for the term of each operating plan: (a) a schedule of the expected generation output of the Seller’s Plant and expected total deliveries of Energy at the POI in each month, (b) a schedule of any Planned Outages of the Seller’s Plant expected by the Seller, and (c) such other information concerning the operations of the Seller’s Plant as the Buyer may from time to time request. *[Note: This definition and all provisions relating to an Operating Plan will only be required if the Plant Capacity of the Seller’s Plant is greater than 25MW.]*
- (hhh) **“Outage”** means a partial or total interruption in the ability of the Seller’s Plant to generate or deliver Energy that is not caused by Force Majeure.

- (iii) **“Outage Notice”** means a notification of any Outage or revised notification of any Outage required to be delivered by the Seller to the Buyer under this EPA that describes the timing, frequency, nature and duration of the Outage and that is in a format that may be prescribed by the Buyer from time to time.
- (jjj) **“Party”** means the Buyer or the Seller, and **“Parties”** means both of them.
- (kkk) **“Payment Suspension Period”** has the meaning given in section 5.2(d).
- (lll) **“Permits”** means permits, certificates, licences, land tenures, and other approvals required for the design, construction, ownership, operation, maintenance and/or decommissioning of the Seller’s Plant and the delivery of Energy to the POI.
- (mmm) **“Person”** means an individual, body corporate, firm, partnership, joint venture, trust, legal representative or other legal entity.
- (nnn) **“Planned Outage”** means a partial or total interruption in the delivery of, or ability to deliver, Energy for purposes of scheduled inspection, repair and/or maintenance of the Seller’s Plant.
- (ooo) **“Plant Capacity”** means the maximum electrical capacity of the Seller’s Plant expressed in MW as set out in Appendix B (as may be amended during the Term in accordance with section 4.6).
- (ppp) **“POI”** means the point at which the Seller’s Plant interconnects with the BC Hydro System, as described in Appendix B.
- (qqq) **“Potential Impacts”** means any adverse or potentially adverse impact on the established or potential aboriginal rights (including title) of a First Nation as a result of:
 - (i) this EPA or the Former EPA;
 - (ii) the Seller’s Plant;
 - (iii) the Interconnection; or
 - (iv) any activities directly related to the Seller’s Plant that enable the Seller to comply with its obligations under this EPA that are carried out by the Seller, any Affiliate, consultant or contractor of the Seller, or any other Person for whom the Seller is responsible at law.
- (rrr) **“PPT”** means Pacific Prevailing Time, which means Pacific Daylight Time or Pacific Standard Time as applicable.
- (sss) **“Present Value Rate”** means the annual yield on a Government of Canada bond having a term and maturity date that most closely matches the remaining Term (as at the date of the applicable calculation) and expiry date of this EPA, plus 3%.

- (ttt) **“Prime Rate”** means the floating prime interest rate announced from time to time by the main branch of Bank of Montreal in Vancouver, British Columbia, or any successor thereto, expressed as an annual rate, as the reference rate it will use to determine rates of interest payable on Canadian dollar commercial loans made in Canada.
- (uuu) **“Proceeding”** has the meaning given in section 1.2(d).
- (vvv) **“Project Standards”** means:
- (i) all applicable Laws;
 - (ii) the terms and conditions of all Permits;
 - (iii) Good Utility Practice;
 - (iv) the description of the Seller’s Plant in Appendix B;
 - (v) the obligations in section 4.7 related to metering;
 - (vi) the requirement that Energy must qualify as Clean Energy;
 - (vii) the terms and conditions of this EPA and the Interconnection Agreement, including all associated operating orders; and
 - (viii) the Contractor Standards for Ethical Conduct applicable to Buyer contracts, as it may be amended, revised or restated from time to time, that is posted on the Buyer’s website.
- (www) **“PST”** means British Columbia provincial social service or sales taxes and similar or replacement assessments, if any.
- (xxx) **“Records”** means all records and logs required to properly administer this EPA, including:
- (i) Energy generation records and operating logs for each generator comprising part of the Seller’s Plant, and for the Seller’s Plant on an aggregated basis;
 - (ii) a log of all Outages of the Seller’s Plant and other reductions in Energy output (specifying the date, time, duration and reasons for each such Outage and each reduction in Energy output);
 - (iii) Meter readings;
 - (iv) maintenance reports;
 - (v) invoice support records;
 - (vi) documents concerning compliance with Project Standards, but excluding any such documents that are protected by solicitor-client privilege;

- (vii) all evidence of any avoided or avoidable costs during any Turn-Down Period or BC Hydro System Constraint; and
- (viii) information relating to the Environmental Certification, information relating to the existence, nature and quality of Environmental Attributes, information (including any reports and studies) relating to any environmental testing conducted with respect to the Seller's Plant and generation of Energy at the Seller's Plant, information required for the purposes of any Environmental Attributes or energy certification or tracking system, and any other information the Buyer requires to enable it or any of its Affiliates to obtain and realize the benefit of the Environmental Attributes,

all consistent with Good Utility Practice.

(yyy) **"Regulatory Condition Expiry Date"** means the date that is 180 days after the Effective Date, or such later date as the Buyer, in its sole discretion, may from time to time elect by notice to the Seller.

(zzz) **"Seller"** means the Party so identified on page one of this EPA, and its successors and permitted assigns.

(aaaa) **"Seller Confidential Information"** means:

- (i) any of the Seller's confidential technical or financial information disclosed by the Seller to the Buyer; and
- (ii) all information that is or was [**"Confidential Information" under/to be treated as confidential under Article <*> of**] the Former EPA [**Note: This will be revised to reflect the confidentiality provisions in the Former EPA.**] as a result of disclosure by the Seller (notwithstanding the expiry or termination of the Former EPA), and all information that is or was "Confidential Information" under the Confidentiality Agreement as a result of disclosure by the Seller, and

but excluding:

- (iii) this EPA; and
- (iv) information that (A) is or becomes in the public domain, other than as a result of a breach of this EPA by the Buyer, or (B) is known to the Buyer before disclosure to it by the Seller, or becomes known to the Buyer thereafter, in either case by way of disclosure to the Buyer by any other Person who is not under an obligation of confidentiality with respect thereto.

(bbbb) **"Seller Indemnified Parties"** means the Seller and its Affiliates, and their respective directors, officers, employees, agents, representatives, successors and permitted assigns.

(cccc) **"Seller's Plant"** means the Seller's Plant described in Appendix B and all rights, property, facilities, assets, equipment, materials, Permits and contracts required to design, engineer, procure, construct, commission, operate and maintain the plant described in

Appendix B and to interconnect that plant to the BC Hydro System, whether real or personal and whether tangible or intangible, including all books, Records and accounts with respect to the Seller's Plant described in Appendix B.

(dddd) **"Seller Termination Payment"** means the amount payable by the Seller to the Buyer pursuant to section 10.5.

(eeee) **"Term"** has the meaning given in section 2.1.

(ffff) **"Turn-Down Energy"** means, in any hour during a Turn-Down Period, the lesser of:

- (i) the amount of Energy that could have been generated and delivered to the POI in that hour but for the Seller's compliance with the directions in a Curtailment Request less any amount of Delivered Energy in the hour; and
- (ii) the Hourly Limit less the amount of Delivered Energy in the hour (which if a negative number will be deemed to be zero),

and for greater certainty, neither:

- (iii) Energy that could have been generated and delivered to the POI in an hour but for the Seller's compliance with the directions in an Emergency Request; nor
- (iv) Energy that could have been generated and delivered to the POI in an hour during a BC Hydro System Constraint but for the Seller's compliance with the directions in a Curtailment Request,

is Turn-Down Energy for the purposes of this EPA. ***[Note: For storage hydro projects, this will also need to exclude any extra water that was stored (and related future energy generation) as a result of the Turn-Down Period.]***

(gggg) **"Turn-Down Period"** means a period of time during the Energy Delivery Period in which the Seller turns down or shuts off the Seller's Plant pursuant to and in accordance with a Curtailment Request other than during a BC Hydro System Constraint, and for greater certainty, does not include any ramp-down or ramp-up periods, or any delay in restarting the Seller's Plant for any reason, before or after the end of the period of time specified in the Curtailment Request.

(hhhh) **"UCA"** means the *Utilities Commission Act* (British Columbia).

(iiii) **"WECC"** means the Western Electricity Coordinating Council or any successor organization of which the Buyer is a member.

1.2 INTERPRETATION

- (a) **Headings** - The division of this EPA into Articles, sections, paragraphs and Appendices and the insertion of headings are for convenience of reference only and do not affect the interpretation of this EPA.
- (b) **Appendices** - The following is a list of the Appendices to this EPA:
- | | |
|------------|----------------------------|
| Appendix A | Addresses for Notice |
| Appendix B | Seller's Plant Description |
| Appendix C | Energy Price |
| Appendix D | Confidentiality Agreement |
- (c) **Plurality and Gender** - Words in the singular include the plural and vice versa. Words importing gender include the masculine, feminine and neuter genders.
- (d) **Governing Law** - This EPA is made under, and will be interpreted in accordance with, the laws of the Province of British Columbia. Subject to section 8.5, any suit, action or proceeding (a "**Proceeding**") arising out of or relating to this EPA may be brought in the courts of the Province of British Columbia at Vancouver, and those courts have exclusive jurisdiction in respect of any Proceeding and the Parties hereby irrevocably attorn to the jurisdiction of such courts in respect of any Proceeding.
- (e) **Industry Terms** - Technical or industry specific phrases or words not otherwise defined in this EPA have the well-known meaning given to those terms as of the date of this EPA in the industry or trade in which they are applied or used.
- (f) **Statutory References** - Reference to a statute means, unless otherwise stated, the statute and regulations, if any, under that statute, in force from time to time, and any statute or regulation passed and in force which has the effect of supplementing or superseding that statute or those regulations.
- (g) **Currency** - References to dollars or \$ means Canadian dollars, unless otherwise stated.
- (h) **Reference Indices** – Except as otherwise provided in section 1.2(j)(iii) of this EPA and section 2 of Appendix C, if any rating, index, tariff or price quotation referred to in this EPA ceases to be published, or if the basis therefor is changed materially, there will be substituted an available replacement index, tariff or price quotation that most nearly, of those then publicly available, approximates the intent and purpose of the index, tariff or quotation that has so ceased or changed. This EPA will be amended as necessary to accommodate such replacement index, tariff or price quotation, all as determined by written agreement between the Parties, or failing agreement, by arbitration under section 8.5.

- (i) **Conversions** - If a value used in a calculation in this EPA must be converted to another unit of measurement for purposes of consistency or to achieve a meaningful answer, the value will be converted to that different unit for purposes of the calculation.
- (j) **Payment Calculations** - All payments under this EPA will be calculated applying the following principles:
 - (i) all payment calculations will be rounded to the nearest cent;
 - (ii) Energy will be expressed in MWh rounded to two decimal places;
 - (iii) if Statistics Canada (or the then recognized statistical branch of the Government of Canada):
 - (A) computes, at any time after the Effective Date, the CPI on a basis different to that employed at the Effective Date, then the CPI will be converted using the appropriate formula recommended by Statistics Canada (or the then recognized statistical branch of the Government of Canada);
 - (B) at any time ceases to publish or provide the CPI, then the provisions of section 1.2(h) will apply;
 - (C) has not published the CPI for a relevant period at the time the Seller is required to provide the Buyer with an invoice, the Seller will prepare the invoice based on the CPI in effect at the time the invoice is issued and when the CPI for the relevant period is published, the Seller will recalculate the invoice amounts in the next succeeding invoice and will include a credit or debit, without interest, in the next succeeding invoice based on the results of the recalculation; or
 - (D) recalculates the CPI within 36 months after an invoice affected by that CPI calculation has been issued, then the Seller will recalculate the invoice amounts for the relevant period in the next succeeding invoice and will include a credit or debit, without interest, in the next succeeding invoice based on the results of the recalculation; and
 - (iv) US dollars will be converted to Canadian dollars using the Bank of Canada daily average exchange rate for the day during which the payment obligations were incurred.
- (k) **Additional Interpretive Rules** - For the purposes of this EPA, except as otherwise expressly stated:
 - (i) “this EPA” means this EPA as it may from time to time be supplemented or amended and in effect, and includes the Appendices attached to this EPA;
 - (ii) the words “herein”, “hereof” and “hereunder” and other words of similar import refer to this EPA as a whole and not to any particular section, paragraph or other subdivision;

- (iii) the word “including” or “includes” is not limiting whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto;
- (iv) the word “month” refers to a calendar month;
- (v) any consent, approval or waiver contemplated by this EPA must be in writing and signed by the Party against whom its enforcement is sought, and may be given, withheld or conditioned in the unfettered discretion of the Party of whom it is requested;
- (vi) all rights and remedies of either Party under this EPA are cumulative and not exclusive of any other remedies to which either Party may be lawfully entitled, and either Party may pursue any and all of its remedies concurrently, consecutively and alternatively; and
- (vii) any notice required to be given, or other thing required to be done, under this EPA on or before a day that is not a Business Day, will be deemed to be given or done when required hereunder if given or done on or before the next following Business Day.

2. TERM

2.1 Term

- The term (“**Term**”) of this EPA commences on the Effective Date and, unless it is terminated earlier as authorized under this EPA, continues until the [**Pricing Option A: fifth/Pricing Option B: twentieth**] anniversary of the Commencement Date, *[Note: To be customized for each Seller/EPA.]* provided that the Term will be extended by the number of days in any period or periods after the Effective Date when the Buyer or the Seller (or both) has suffered and invoked Force Majeure in accordance with this EPA, and provided further that such extensions for Force Majeure will in aggregate not be greater than 364 days.

3. REGULATORY

3.1 Regulatory Filing

- (a) The Buyer will take reasonable steps to secure BCUC Acceptance. The Seller will provide any assistance reasonably requested by the Buyer to secure BCUC Acceptance.
- (b) The Buyer will file this EPA with the BCUC under section 71 of the UCA as an energy supply contract in accordance with the Buyer’s usual filing practices within a reasonable period of time following the Effective Date.

3.2 Termination

- If BCUC Acceptance has not been issued on or before the Regulatory Condition Expiry Date, the Buyer may terminate this EPA at any time after the Regulatory Condition Expiry Date by delivering notice of termination to the Seller, and such termination will be effective on the date that is 30

days after the date of delivery of such notice of termination, provided that the Buyer may not terminate this EPA under this section 3.2 if BCUC Acceptance is issued before the notice of termination is delivered to the Seller. If this EPA is terminated by the Buyer in accordance with this section 3.2, the Parties will have no further liabilities or obligations under, or in relation to, this EPA, except as set out in section 10.4.

3.3 Exemptions

- Sections 3.1 and 3.2 are of no effect if an Exemption exists before termination of this EPA under section 3.2. Nothing in this EPA obliges either Party to seek an Exemption, and the Parties acknowledge that they have entered into this EPA with the expectation that there will not be an Exemption of any kind.

3.4 Utility Regulation

- The Seller will not take any action that would cause the Seller to cease to be exempt, or omit to take any action necessary for the Seller to continue to be exempt, from regulation as a “public utility”, as defined in the UCA, with respect to the Seller’s Plant, the sale of Energy and the performance by the Seller of its obligations under this EPA where such regulation as a “public utility” could reasonably be expected to have an adverse effect on the Buyer or the Buyer’s interests under this EPA.

4. SELLER’S PLANT

4.1 Ownership

– The Seller will be the sole owner and the operator of the Seller’s Plant at all times during the Term.

4.2 Operation Costs and Liabilities

- The Seller will be solely responsible for all costs, expenses, liabilities and other obligations associated with the design, engineering, construction, Interconnection, commissioning, operation, maintenance and decommissioning of the Seller’s Plant.

4.3 Standard of Operation

- Except as otherwise consented to by the Buyer, the Seller will ensure that the location, design, engineering, construction, Interconnection, commissioning, operation, maintenance and decommissioning of the Seller’s Plant are and will be carried out at all times during the Term:

- (a) in accordance with the information in the Information Submittals in all material respects;
- (b) in compliance with the Project Standards, provided that if the requirements for Clean Energy are amended or replaced after the Effective Date, the Seller will make commercially reasonable efforts to operate the Seller’s Plant in a manner that allows the Energy to continue to qualify as Clean Energy under the new requirements; and
- (c) by qualified and experienced individuals.

4.4 Hourly Limit

- When the Seller is delivering Energy to the Buyer during the Energy Delivery Period, the Seller will make commercially reasonable efforts to operate the Seller's Plant:

- (a) such that the amount of Delivered Energy in any hour does not exceed the Hourly Limit; and
- (b) in a manner that ensures delivery of Energy at the POI at a uniform rate within each hour during which Energy is delivered.

4.5 Permits

- The Seller will promptly obtain, comply with and maintain in full force and effect, all Permits, and will promptly notify the Buyer if it receives any notice or becomes aware of any actual or anticipated cancellation or suspension of any of the Permits. The Seller acknowledges that this EPA and the terms and conditions of this EPA are not intended to, and do not, fetter the discretion of any Governmental Authority with respect to any decision or action by that Governmental Authority with respect to the Seller's Plant. Notwithstanding the foregoing, any failure by the Seller to comply with its obligations in this section 4.5 resulting in the cancellation or suspension of a Permit is a "material default" for the purposes of this EPA, and the Buyer may terminate this EPA under section 10.1(k) in addition to any other rights and remedies available to it under this EPA resulting from any such failure, cancellation or suspension, including the right to receive any amount payable by the Seller under section 10.5.

4.6 Changes to Seller's Plant

- (a) Without the Buyer's prior written consent, the Seller will not make any change to:
 - (i) the Seller's Plant as described in Appendix B; or
 - (ii) any other aspects of the Seller's Plant or the information in the Interconnection Agreement where such change would increase the Buyer's liability for any costs with respect to the Seller's Plant or any other project or otherwise increase the Buyer's risk.
- (b) The Seller will provide the Buyer with reasonable notice of any proposed change described in section 4.6(a), including any other information at a sufficient level of detail regarding the proposed change required to permit the Buyer to make any determinations or decisions provided for in this section 4.6, including any information relevant to Potential Impacts of the proposed change.
- (c) The Seller acknowledges that the Buyer may require, as a condition of its consent to any change described in this section 4.6:
 - (i) that the Seller agree in writing to reimburse the Buyer or a third party as directed by the Buyer if the Buyer determines in its sole discretion that the Buyer or any

third party has incurred or is likely to incur any incremental liability for any losses, costs and damages (including any incremental Network Upgrade Costs) with respect to the Seller's Plant or any other project as a result of any change described in this section 4.6;

- (ii) that the Seller provide security to the Buyer to secure such reimbursement obligation;
 - (iii) that this EPA be amended by written agreement to accommodate the impacts of the proposed change and to make any other changes that the Buyer determines are necessary to accommodate the change; and/or
 - (iv) any other terms and conditions that the Buyer reasonably requires relating to Potential Impacts of the proposed change[, **which may include a termination right for the Buyer in the event of an Aboriginal Claim arising in connection with the proposed change**]. *[Note to Draft: The square bracketed language will be included only if BC Hydro agrees to delete section 9.4.]*
- (d) If the change requiring the Buyer's consent is the result of the Seller's agreement with a third party to interconnect a facility to the Seller's Plant and transmit electricity via the Seller's Plant to the POI, the Buyer will require as a condition of consent that the Seller agree to be responsible for any incremental losses of Energy, costs, damages and risks associated with the proposed indirect interconnection and will require that this EPA and the Interconnection Agreement be amended to incorporate any other changes that the Buyer determines are necessary to accommodate the third party interconnection.

4.7 Metering

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- (a) The Seller will, at its cost:
 - (i) operate and maintain the Meter at a location approved by the Buyer at the Seller's Plant;
 - (ii) supply and install any other metering device or communications equipment required by the Buyer;
 - (iii) supply and install current transformers and voltage transformers that have been approved by Measurement Canada on an unconditional and final basis; and
 - (iv) ensure that the Seller's Plant is equipped with correctly commissioned SCADA and telemetry capability, in accordance with the Buyer's Technical Interconnection Requirements published on the Buyer's website (as may be updated by the Buyer from time to time),

and will ensure that all such equipment and capability is functional at all times and is in good operating condition, including by removing or promptly repairing any equipment that interferes with or adversely impacts the Meter from time to time. Without limiting

the foregoing, the Seller will, at its cost, comply with all revenue metering requirements and metering guidelines published by the Buyer on its website from time to time and work with the Buyer to make amendments to the Project Interconnection Requirements set out in the Interconnection Agreement to ensure that they accurately reflect the equipment and other requirements specified in paragraphs (i) through to (iv) above, including any upgrades, alterations or modifications made to the same during the Term.

- (b) The Buyer may, at its cost, install a duplicate meter(s) at the Seller's Plant at a location agreed to by the Seller, acting reasonably. The Seller will allow the Buyer to access the Seller's Plant to install, inspect and maintain any such duplicate meter(s). The Seller will make equipment and telecommunications access available to the Buyer as required for any duplicate meter.
- (c) All information collected or recorded by the Meter will be electronically transmitted directly to the Buyer or provided by the Seller to the Buyer, as reasonably required by the Buyer.
- (d) If there is any dispute regarding the accuracy of the Meter, either Party may give notice to the other Party of the dispute. In that case the Parties will resolve the matter in accordance with the *Electricity and Gas Inspection Act* (Canada).

4.8 Insurance

- The Seller will, at its cost, obtain and maintain (i) commercial general liability insurance with a limit of liability not less than \$_____, per occurrence and in the aggregate, applicable to the design, engineering, construction, Interconnection, commissioning, operation, maintenance and decommissioning of the Seller's Plant, and (ii) construction insurance (if construction is planned or undertaken by or on behalf of the Seller) and property insurance in respect of the Seller's Plant, with limits of liability and deductibles consistent with those a prudent owner of a facility similar to the Seller's Plant would maintain and those the Facility Lender may require. All commercial general liability policies must include the Buyer, its directors, officers, employees and agents as additional insureds and must contain a cross liability and severability of interest clause[, **and must include coverage for forest fire fighting expense liability with a sublimit of \$1,000,000**]. All policies of insurance must include a waiver of subrogation in favour of the Buyer. All policies of insurance must be placed with insurers that have a minimum rating of A- (or equivalent) by A.M. Best Company and are licensed to transact business in the Province of British Columbia and must be endorsed to provide to the Buyer 30 days' prior written notice of cancellation, non-renewal or any material amendment that results in a reduction in coverage. The Seller will give the Buyer a copy of the insurance certificate(s) for the insurance required to be maintained by the Seller under this section not more than 30 days after the effective date of coverage and promptly upon renewal thereafter. The Seller will be responsible for the full amount of all deductibles under all insurance policies required to be maintained by the Seller under this section.

[Note: Policy limit for commercial general liability insurance will be based on Plant Capacity as follows:

Up to and including 1 MW - \$1,000,000

Greater than 1 MW up to and including 5 MW - \$2,000,000

Greater than 5 MW - \$3,000,000

Further, for projects that are deemed by the Buyer to be in a zone where there is a risk of forest fire, such policy will include coverage for forest fire fighting expense liability at a sublimit of \$1,000,000.]

4.9 No Liability For Delay

- The Buyer will have no liability under this EPA for delays in completion of (i) any Network Upgrades, or any other work undertaken by or on behalf of either Party under the Interconnection Agreement, or (ii) other work undertaken by the Buyer on either its side or the Seller's Plant side of the POI, in each case howsoever arising.

4.10 Operating Plans

- On or before September 30 in each year during the Term (or such other date or dates in any year during the Term as the Buyer may from time to time request), the Seller will provide to the Buyer its Operating Plan for the 16-month period commencing on November 1 of the same year (or for such other period and/or commencing on such other date during the Term, as the Buyer may from time to time request). The Seller will promptly provide the Buyer with a revised Operating Plan upon the Seller becoming aware of any expected material change in the then current Operating Plan for that period. The Parties agree that the Operating Plan is provided for planning purposes and does not guarantee or limit the quantity or timing of Seller's delivery of Energy to the POI. The Seller will ensure that all Operating Plans are consistent with Good Utility Practice. *[Note: This provision will only be required if the Plant Capacity of the Seller's Plant is greater than 25MW.]*

4.11 Outages

(a) Notice of Outages

The Seller will notify the Buyer of any Outages, or changes in any Outages, by delivering to the Buyer an Outage Notice:

- (i) promptly in the case of any Forced Outage (notwithstanding any Emergency Condition, Turn-Down Period or BC System Constraint that may be in effect);
- (ii) not less than 30 days in advance of any Planned Outage, and
- (iii) promptly in the case of any changes to the duration, start time or end time of any Outage.

(b) Coordination and Scheduling of Planned Outages

- (i) The Seller shall ensure that no Planned Outage occurs during the months of November, December, January, February or March except with the consent of

the Buyer, which consent shall not be unreasonably withheld, delayed or conditioned if the Seller is required to conduct a Planned Outage during any of those months by reason of Laws or Permits. **[Note: Buyer will advise if this provision applies to each Seller's EPA.]**

- (ii) The Seller will make commercially reasonable efforts to coordinate any Planned Outages with the Buyer's maintenance schedule or other requirements where such schedule or requirements are publicly available or otherwise notified to the Seller.
- (iii) The Buyer may, by notice to the Seller, require the Seller to reschedule any Planned Outage, provided that the rescheduling required by the Buyer does not require that the Seller violate any Laws or Permits. On such notice, the Seller will promptly provide the Buyer with a reasonable cost estimate, with supporting detail and reasonable contingency allowance, of the costs it expects to incur as a direct result of rescheduling the Planned Outage. Upon review of the Seller's cost estimate, the Buyer may withdraw its requirement that the Seller reschedule the Planned Outage. If the Buyer does not withdraw the requirement, the Seller will reschedule the Planned Outage as required by the Buyer provided that rescheduling is consistent with Good Utility Practice and does not have a materially adverse effect on the operation of the Seller's Plant. The Buyer will compensate the Seller for costs reasonably incurred by the Seller as a result of the rescheduling, provided those costs do not exceed the cost estimate provided by the Seller to the Buyer in advance of the Planned Outage.

5. PURCHASE AND SALE OBLIGATIONS

5.1 Sale and Purchase of Energy

- During the Energy Delivery Period, subject to section 5.2, the Seller will sell and deliver all Energy to the Buyer at the POI and the Buyer will purchase and accept delivery at the POI of all Delivered Energy from the Seller. The Buyer will pay for Delivered Energy in accordance with section 6.1.

5.2 Limitations on Delivery and Acceptance Obligations –

- (a) **Limitations on Delivery Obligations** - Notwithstanding any other provision in this EPA, the obligations of the Seller under section 5.1 are excused during the occurrence of:
 - (i) Force Majeure invoked by the Seller in accordance with section 8.8 or 8.9;
 - (ii) any BC Hydro System Constraint for reasons that are not attributable to the Seller, the Seller's Plant or anything on the Seller's side of the POI;
 - (iii) disconnection of the Seller's Plant from the BC Hydro System by the Buyer for reasons that are not attributable to the Seller, the Seller's Plant or anything on the Seller's side of the POI; and
 - (iv) during any period specified as an Outage in any Outage Notice [**or Operating Plan**].

- (b) **Limitations on Acceptance Obligations** Except as otherwise specified in this EPA, the obligations of the Buyer under section 5.1 are excused during the occurrence of:
- (i) Force Majeure invoked by the Buyer in accordance with section 8.8 or 8.9;
 - (ii) an Emergency Condition;
 - (iii) any BC Hydro System Constraint;
 - (iv) a Turn-Down Period;
 - (v) disconnection of the Seller's Plant from the BC Hydro System for reasons not attributable to the Buyer; and
 - (vi) any failure by the Seller, the Seller's Plant, or Energy to comply with the Project Standards in the applicable hour.
- (c) **Excess Energy** - Notwithstanding any other provision in this EPA, the Buyer will not be obligated in any hour during the Energy Delivery Period to purchase or accept delivery from the Seller at the POI of any Excess Energy, and no amount will be payable by the Buyer for any Excess Energy regardless of whether the Buyer consented to or accepted delivery of such Excess Energy.
- (d) **Suspension of Payments** - If:
- (i) the Seller has not, within 180 days following notice from the Buyer, and to the Buyer's reasonable satisfaction, resolved any non-compliance with the obligations in section 4.7, including any failure by the Seller to undertake upgrade work identified by the Buyer following any review by the Buyer of the Seller's compliance with revenue metering requirements and revenue metering guidelines as required under section 4.7;
 - (ii) the Meter or SCADA system have not electronically transmitted information directly to the Buyer, or are transmitting only intermittently, for a continuous period of 60 days; or
 - (iii) the Seller has not, within 180 days following notice from the Buyer, and to the Buyer's reasonable satisfaction, resolved any known outstanding Interconnection deficiencies identified by the Buyer[, **including any known outstanding deficiencies identified prior to the Effective Date,**] *[Note: The square bracketed language will only be required for those EPAs with previously identified interconnection deficiencies. BC Hydro will remove these words for EPAs where this is not applicable for the Seller's Plant]* and required to be addressed to ensure compliance with the Interconnection Agreement and repaid to the Buyer any costs incurred by the Buyer in connection with such upgrades or changes,

then the Buyer will have no obligation to make payments for any Delivered Energy thereafter until such time as the issue has been rectified to the Buyer's satisfaction (the "**Payment Suspension Period**"). The Buyer will resume payments to the Seller under this

EPA following the end of the Payment Suspension Period, and will repay any payments that were withheld under this section 5.2(d) during the Payment Suspension Period, without any interest payable, within 60 days of the end of the Payment Suspension Period.

5.3 Environmental Attributes

- The Seller hereby transfers, assigns and sets over to the Buyer all right, title and interest in and to the Environmental Attributes. The Seller agrees and covenants not to make any statement or take any other action that would result in a double claim, double issuance, double sale or double counting of the Environmental Attributes.

5.4 Exclusivity

- The Seller will not at any time during the Term commit, sell or deliver any Energy or any Environmental Attributes, or any environmental attributes associated with Energy other than Delivered Energy, to any Person other than the Buyer under this EPA without the prior written consent of the Buyer. The Seller will not use any Energy or use, apply, claim or retire Environmental Attributes or any environmental attributes associated with Energy other than Delivered Energy for any purpose whatsoever except for sale to the Buyer under this EPA. The Seller acknowledges and agrees that the exclusive rights conferred by this section are of fundamental importance, and that, without prejudice to any right to claim damages, compensation or an accounting of profits, the granting of an interim, interlocutory and permanent injunction is an appropriate remedy to restrain any breach or threatened breach by the Seller of the obligation set out in this section.

5.5 Custody, Control, Risk of and Title To Energy

- Custody, control, risk of, and title to, all Delivered Energy (including Excess Energy) pass from the Seller to the Buyer at the POI. Custody, control, risk of, and title to, all Environmental Attributes pass from the Seller to the Buyer simultaneously with transfer of title to the Delivered Energy. The Seller will ensure that all Delivered Energy (including Excess Energy) and all Environmental Attributes transferred to the Buyer under this EPA are free and clear of all liens, claims, charges and encumbrances.

5.6 Line Losses

- The Seller will be responsible for all Line Losses, costs and liabilities relating to the transmission of Energy and other electricity, if applicable, on the Seller's side of the POI.

5.7 BC Hydro Right - Emergency Condition

(a) The Buyer may at any time during the Energy Delivery Period request that the Seller to turn down or shut off the Seller's Plant to respond to an Emergency Condition (an "Emergency Request").

- (b) If the Buyer provides an Emergency Request, the Seller will promptly comply with any direction to turn down or shut off the Seller's Plant in the Emergency Request.
- (c) The Buyer will have no obligation to pay to the Seller any amounts in respect of Energy that could have been delivered to the POI:
 - (i) during any period specified in an Emergency Request;
 - (ii) during any period in which there is a BC Hydro System Constraint caused by an Emergency Condition; or
 - (iii) during any ramp-down or ramp-up periods, or any delay in restarting the Seller's Plant for any reason, immediately before or after a period of time referred to in paragraphs (i) or (ii),

but that, in any case, was not delivered due to the Seller's compliance with the direction in the Emergency Request or as a result of the applicable BC Hydro System Constraint.

5.8 Deemed Energy

- (a) In addition to the Buyer's rights under section 5.7, the Buyer may at any time during the Energy Delivery Period request that the Seller to turn down or shut off the Seller's Plant for any reason whatsoever (a "**Curtailment Request**"). The Seller will promptly comply with any direction to turn down or shut off the Seller's Plant in the Curtailment Request, except to the extent that any operational, technical, regulatory or fuel storage constraint prevents or limits the Seller's ability to comply with such direction.
- (b) The Buyer will have no liability with respect to a Curtailment Request or BC Hydro System Constraint except as set out in this section 5.8, if applicable.
- (c) Subject to sections 5.7(c), 5.8(d) and 5.8(e), for any hour during a Turn-Down Period when the Seller has turned down or shut off the Seller's Plant as directed in the applicable Curtailment Request, the Buyer will pay the Seller in accordance with section 6.2 an amount equal to the Energy Price multiplied by the amount of Turn-Down Energy in that hour less any costs the Seller avoided or, acting reasonably, could have avoided in respect of that hour, including water rental fees that would have been payable had the Seller been able to deliver Energy to the Buyer the POI in that hour.
- (d) If for any month during the Energy Delivery Period the Seller is unable to deliver Energy at the POI solely as a result of one or more BC Hydro System Constraints:
 - (i) that are each caused by an event within the reasonable control of the Buyer;
 - (ii) none of which are caused by, or required as a result of, an Emergency Condition or Force Majeure;

- (iii) none of which are caused by the Seller, the Seller's Plant or anything on the Seller's side of the POI; and
- (iv) that have been in effect for more than 72 hours in the aggregate in the month, and as a result the Seller has been unable to deliver Energy for more than 72 hours in aggregate in the month,

then, notwithstanding that the Buyer is excused from its obligations under section 5.1, but subject to sections 5.7(c) and 5.8(e), the Buyer will, for each hour in the remaining hours of the month after the 72 hours in aggregate have elapsed in which the Seller remains unable to deliver Energy at the POI as a result of a BC Hydro System Constraint that meets all of the requirements of paragraphs (i) - (iii), pay the Seller in accordance with section 6.2 an amount equal to the Energy Price multiplied by the amount of Constraint Energy in that hour less any costs the Seller avoided or, acting reasonably, could have avoided in respect of that hour, including water rental fees that would have been payable had the Seller been able to deliver Energy to the Buyer the POI in that hour. For greater certainty:

- (v) where the Buyer issues a Curtailment Request and requires the Seller to turn down or shut off the Seller's Plant as a result of a BC Hydro System Constraint, section 5.8(c) will not apply, and this section 5.8(d) will apply for purposes of determining the amount of Constraint Energy (if any) for which the Buyer may be required to pay the Seller;
 - (vi) no amount will be payable for any Constraint Energy that the Seller could have delivered in the month during the initial aggregate 72 hours described in paragraph (iv); and
 - (vii) the calculation of the 72 aggregate hours in a month restarts at 12:00 a.m. on the first day of each month, even if there is a BC Hydro System Constraint that meets all of the requirements of paragraphs (i) - (iii) and that is continuing from the end of the previous month.
- (e) The Buyer will not be required to pay for any Deemed Energy under this section 5.8:
- (i) during any period where the Seller's Plant would not have been operating;
 - (ii) during any period specified as an Outage in any Outage Notice [**or Operating Plan**];
 - (iii) during any period when either Party is or would be excused, in accordance with section 8.8 or 8.9, from its obligation to deliver or to accept delivery of Energy as a result of Force Majeure;
 - (iv) if the Seller has not provided the Buyer with an Operating Plan in accordance with section 4.10 for the period in which the BC Hydro System Constraint occurs; ***[Note: This provision will only be required if the Plant Capacity of the Seller's Plant is greater than 25MW.]***

- (v) if the Buyer's requirement for the Seller to turn down or shut off the Seller's Plant, or the BC Hydro System Constraint, as applicable, is the result of the operation of the Seller's Plant in a manner inconsistent with section 4.3 [**or with an Operating Plan provided under section 4.10**];
- (vi) during any ramp-down or ramp-up period, or any delay in restarting the Seller's Plant for any reason, before or after either a Turn-Down Period specified in a Curtailment Request or a BC Hydro System Constraint, as applicable; or
- (vii) if the Seller has not provided the Buyer with:
 - (A) a reasonably detailed statement of any Turn-Down Energy or Constraint Energy for which the Seller is claiming a right to be paid and associated avoided or avoidable costs (including back-up calculations, computational and invoicing models and other supporting documentation in electronic format), and received the Buyer's approval of the amount of Turn-Down Energy or Constraint Energy in such statement prior to issuing its final statement according to section 6.4(a)(ii); and
 - (B) written attestation, in a form acceptable to the Buyer and signed by an authorized representative of the Seller, confirming that, during all periods of the Turn-Down Period or BC Hydro System Constraint in which the Seller is claiming a right to be paid for Turn-Down Energy or Constraint Energy, as applicable, the Seller was unable to deliver Energy at the POI solely as a result of compliance with the direction in the Curtailment Request or the BC Hydro System Constraint, as applicable.
- (f) The Buyer may request additional Records in support of the amount of any Turn Down-Energy or Constraint Energy, and any costs the Seller avoided or, acting reasonably, could have avoided during the applicable Turn-Down Period or BC Hydro System Constraint.

6. PRICE AND PAYMENT TERMS

6.1 Payment for Delivered Energy

- Subject to section 6.3, the Buyer will satisfy its obligation to purchase Delivered Energy under section 5.1 by paying to the Seller for each hour during the Energy Delivery Period:

- (a) the Energy Price, multiplied by
- (b) the amount of Delivered Energy in the hour less any Excess Energy in the hour.

6.2 Payment for Deemed Energy

- Subject to section 6.3, the Buyer will satisfy its obligation to purchase Deemed Energy under section 5.8 by paying to the Seller:

- (a) in each hour during a Turn-Down Period when an amount is payable under section 5.8(c):

- (i) the Energy Price, multiplied by
- (ii) the Turn-Down Energy in the hour,

less any costs the Seller avoided or, acting reasonably, could have avoided in respect of that hour, including water rental fees that would have been payable had the Seller been able to deliver Energy to the Buyer the POI in that hour; and

- (b) when an amount is payable under section 5.8(d), beginning in the 73rd hour in the month in which a BC Hydro System Constraint is in effect and for each remaining hour during the month in which a BC Hydro System Constraint that meets all of the requirements of paragraphs (i) - (iii) is in effect:

- (i) the Energy Price, multiplied by
- (ii) the Constraint Energy in the hour,

less any costs the Seller avoided or, acting reasonably, could have avoided in respect of that hour, including water rental fees that would have been payable had the Seller been able to deliver Energy to the Buyer the POI in that hour.

The amounts of Turn-Down Energy or Constraint Energy (if any) in any hour will be determined using methodology satisfactory to the Buyer, acting reasonably, based on the best available information, including readings of the Meter before and after the occurrence of the Turn-Down Period or BC Hydro System Constraint, as applicable, and readings of any equipment that measures the Energy Source for the period while the Turn-Down Period or BC Hydro System Constraint, as applicable, was in effect.

6.3 No Further Payment

- The amounts payable by the Buyer as specified in sections 6.1 and 6.2 are the full and complete payment and consideration payable by the Buyer for Delivered Energy, Deemed Energy and the Environmental Attributes. For greater certainty, the Buyer has no obligation under this EPA to pay the Seller for:

- (a) any Excess Energy; or
- (b) any Energy that was, or that could have been, generated and delivered to the Buyer under this EPA but that the Buyer is excused from accepting under section 5.2(b), except:
 - (i) as expressly provided in section 5.8; and
 - (ii) for any Delivered Energy in an hour:
 - (A) during an Emergency Condition that is subject to an Emergency Request to turn down but not shut off generation at the Seller's Plant, provided that the Delivered Energy is generated and delivered only in compliance with the terms of the Emergency Request;

- (B) during a Turn-Down Period provided that the Delivered Energy is generated and delivered only in compliance with the terms of the applicable Curtailment Request or to the extent otherwise permitted under section 5.8(a); or
- (C) during a BC Hydro System Constraint that does not fully prevent the Seller from generating and delivering Energy to the POI, provided that the Delivered Energy is generated and delivered only in compliance with the terms of any applicable Curtailment Request.

6.4 Statements and Payment

(a) Statements

- (i) The Seller will, by the 15th day of each month during the Energy Delivery Period (beginning in the second month of the Energy Delivery Period), deliver to the Buyer a statement, for the preceding month, in respect of Delivered Energy. The statement will be in such form, supported in an electronic format, as the Buyer may require from time to time, and must indicate, among other things:
 - (A) the amount of Delivered Energy in each hour of the preceding month, specifying the amount of Delivered Energy in the hour that is Excess Energy (if any);
 - (B) the price and aggregate amount payable for all Delivered Energy described in the statement pursuant to section 6.1;
 - (C) any Final Amounts owing by either Party to the other Party at that time; and
 - (D) a certification by a senior officer of the Seller that all Delivered Energy in the month is Clean Energy.
- (ii) The Seller will, by the 15th day of each month during the Energy Delivery Period (beginning in the third month of the Energy Delivery Period), deliver to the Buyer a statement, for the month that precedes the preceding month, in respect of Deemed Energy. The statement will be in such form, supported in an electronic format, as the Buyer may require from time to time, and must indicate, among other things:
 - (A) the amount of Deemed Energy in the month prior to the preceding month, and any associated avoided or avoidable costs pursuant to section 5.8 that have been approved in advance by the Buyer;
 - (B) the price and aggregate amount payable for all Deemed Energy described in the statement pursuant to section 6.2, applicable.
- (iii) Any statement delivered under this section 6.4(a) must set out in reasonable detail the manner by which the statement and the amounts shown thereon were

computed, and be accompanied by sufficient data, including the use of e-meter data and any computational and invoicing models to support the statement details, which indicate (among other things) the amount of Deemed Energy in each hour of the month, to enable the Buyer, acting reasonably, to satisfy itself as to the accuracy of the statement.

- (iv) Either Party may give notice to the other Party of an error, omission or disputed amount on a statement within 36 months after the statement was first issued together with reasonable detail to support its claim. After expiry of that 36 month period, except in the case of willful misstatement, fraud or concealment, amounts on a previously issued statement will be considered accurate and amounts which were omitted will be considered to be nil, other than amounts disputed in accordance with this section within the 36 month period, which will be resolved in accordance with this EPA.
- (v) If the Buyer gives notice to the Seller of an error, omission or disputed amount on a statement as described in section 6.4(a)(iv), the Buyer may direct the Seller to promptly produce new statements for the relevant month(s). The new statements will show the undisputed amount and disputed amount each in a separate statement or will otherwise separate the amounts in a single statement in a manner acceptable to the Buyer.

(b) Payment

- (i) Within 30 days after receipt of a statement delivered under section 6.4(a), and subject to section 6.7, the Buyer will pay to the Seller the amount set out in the statement, except to the extent the Buyer in good faith disputes all or part of the statement by notice to the Seller as described in section 6.4(a)(iv).
- (ii) If the Buyer disputes any portion of a statement, the Buyer must pay the undisputed net amount payable by the Buyer pursuant to the statement or, if applicable, the new statement of the undisputed amount described in section 6.4(a)(v), in each case in accordance with section 6.4(b)(i).
- (iii) The Parties will endeavor to resolve any error, omission or disputed amount on a statement within 30 days of the notice described in section 6.4(a)(iv).
- (iv) Any amount required to be paid in accordance with this EPA, but not paid by either Party when due, will accrue interest at an annual rate equal to the Prime Rate plus 2%, compounded monthly. Any disputed amount that is found to be payable will be deemed to have been due within 30 days after the date of receipt of the statement which included or should have included the disputed amount.

6.5 Billing Guideline

- The Seller shall comply with any reasonable written billing guideline, including any requirements issued by the Buyer with respect to the form of statements pursuant to section 6.4, provided that

any such billing guideline shall not vary the express terms of this EPA. If there is any conflict between a billing guideline and this EPA, this EPA shall govern.

6.6 Taxes

- All dollar amounts in this EPA do not include any value added, consumption, commodity or similar taxes applicable to the purchase by the Buyer of Delivered Energy, Deemed Energy and Environmental Attributes, including GST, PST and any successor thereto, which, if applicable, will be added to each statement and paid by the Buyer.

6.7 Set-off

- If the Buyer and the Seller each owe the other an amount under this EPA or under any other agreement between them in the same month, then such amounts with respect to each Party will be aggregated and the Parties may discharge their obligations to pay through netting, in which case the Party, if any, owing the greater aggregate amount will pay to the other Party the difference between the amounts owed. Except as otherwise expressly provided herein, each Party reserves all rights, counterclaims and other remedies and defences which such Party has, or may be entitled to, arising from or related to this EPA.

7. ENVIRONMENTAL ATTRIBUTES – CERTIFICATION AND ADMINISTRATION

7.1 Environmental Certification and Administration

- Without limiting the Seller's obligation to deliver Energy in compliance with the Project Standards, the Seller will, at the Buyer's request, use commercially reasonable efforts to apply for, and diligently pursue and maintain, any certification, licensing or approval offered by any Governmental Authority or independent certification agency that is identified by the Buyer evidencing that the Seller's Plant and the Delivered Energy has Environmental Attributes, and the Buyer will reimburse the Seller for any certification, audit and licensing fees charged by the applicable Governmental Authority or independent certification agency for such certification, licensing or approval that the Buyer requires the Seller to obtain. The Buyer may elect to manage, or have its Affiliate manage, all or a portion of any certification, licensing or approval process with a Governmental Authority or independent certification agency, in which case the Seller will use commercially reasonable efforts to cooperate and provide timely assistance and information to the Buyer or its Affiliate, as applicable. Notwithstanding the transfer of ownership of Environmental Attributes to the Buyer under this EPA, the Seller will remain responsible for compliance with any applicable environmental laws, or associated programs administered by a Governmental Authority, in respect of the Environmental Attributes. Any failure by the Seller to promptly comply with its obligations in this section 7.1 is a "material default" for the purposes of this EPA, and the Buyer may terminate this EPA under section 10.1(g).

8. EPA ADMINISTRATION

8.1 Records

- The Seller will prepare and maintain all Records, or duplicates of such Records, for a period of not less than 7 years from the date on which each such Record is created, even if such period of time extends beyond the end of the Term. The Seller will maintain all such Records or duplicates

at the Seller's Plant or, only following the expiry of the Term or the earlier termination of this EPA, at such other location as may be agreed in writing between the Parties. The Audit Parties may take copies of such Records for the purposes of an inspection or audit under section 8.2.

8.2 Inspection and Audit Rights

- For the sole purpose of verifying:

- (a) compliance with this EPA;
- (b) the accuracy of statements, supporting information and calculations delivered by the Seller to the Buyer under this EPA;
- (c) the qualification of the Energy as Clean Energy;
- (d) the qualification and subsequent verification of the Seller's Plant and the Energy for the Environmental Certification(s);
- (e) the qualification of any Environmental Attributes for any applicable program and the quantification of Environmental Attributes; or
- (f) the liability of each of the Parties for Network Upgrade Costs,

the Seller will, on reasonable prior notice from the Buyer, provide the Audit Parties with prompt access during normal business hours to the Seller's Plant and all Records, including any Seller Confidential Information, to enable the Audit Parties to conduct an inspection or audit thereof. The Audit Parties will exercise any access and audit rights under this section in a manner that minimizes disruption to the operation of the Seller's Plant. Any review, inspection or audit by any of the Audit Parties may not be relied upon by the Seller, or others, as confirming or approving those matters. Where the Buyer requires the Seller to provide access to the Seller's Plant and/or Records relating to the Seller's Plant to a third Person with whom the Buyer or any of its Affiliates has entered into a contract for the sale and purchase of Environmental Attributes or any Affiliate, representative, consultant or advisor to any such third Person, the Buyer will first obtain from the third Person an agreement to maintain the confidentiality of any Seller Confidential Information to which such Person may have access and to limit the use of such Seller Confidential Information as required to verify or use the Environmental Attributes.

8.3 Seller Consents

- The Seller must promptly provide any consents required to enable any of the Audit Parties to make enquiries with any Governmental Authority or any Person administering the Environmental Certification concerning any or all of the following: (a) the qualification of Energy as Clean Energy; (b) the qualification of the Seller's Plant and the Energy for Environmental Certification, the status of the Environmental Certification and copies of any audits, inspections or reports prepared in connection with the Environmental Certification; and (c) compliance by the Seller with Laws and Permits applicable to the Seller's Plant.

8.4 Assignment

- (a) **Requirement for Consent:** The Seller may not Assign this EPA except with the prior consent of the Buyer, which consent may not be unreasonably withheld, conditioned or delayed. Any Assignment (other than an Assignment to a Facility Lender as described in section 1.1(c)(ii) or an Assignment arising as a result of a change of Control of the Seller) is subject to the assignee entering into and becoming bound by this EPA, assuming all the obligations and liabilities of the Seller under this EPA and the Interconnection Agreement, curing any financial or non-financial defaults of the Seller under this EPA prior to the Assignment, and providing the representations and warranties set out in section 11.1 effective as at the time of Assignment.
- (b) **Time for Request:** Any request by the Seller for the Buyer's consent under section 8.4(a) must be delivered to the Buyer not less than 30 days before the date of the proposed Assignment. A request under this section must be accompanied by such information as reasonably required by the Buyer to assess the request for consent including the name, address and ownership structure of the assignee, details of any consultation with First Nations that may be impacted by the Seller's Plant or the Assignment with respect to the proposed Assignment, a list of the directors and officers of the assignee and information concerning the assignee's operations, experience and financial status.
- (c) **Assignment to Facility Lender:** If the Seller seeks consent to Assign this EPA to a Facility Lender, the Buyer may require, as a condition of its consent to the Assignment, that the Seller and the Facility Lender enter into a Lender Consent Agreement with the Buyer.
- (d) **Costs:** The Seller will reimburse the Buyer for all costs reasonably incurred by the Buyer in connection with any request by the Seller for the Buyer's consent pursuant to section 8.4(a).

8.5 Dispute Resolution

- (a) **Arbitration:** Any dispute under or in relation to this EPA will be referred to and finally resolved by arbitration conducted by a single arbitrator in Vancouver, British Columbia and administered by the Vancouver International Arbitration Centre pursuant to its rules. Except as otherwise expressly provided in this EPA, the arbitrator will have the jurisdiction to grant equitable remedies, including interim or permanent injunctive relief. It will not be incompatible with this agreement to arbitrate for a Party to seek from the Supreme Court of British Columbia, or for that court to grant, interim measures of protection pending the outcome of arbitral proceedings. The decision of the arbitrator will be final and binding on the Parties.
- (b) **Effect of Arbitration:** All performance and payments required under this EPA will continue during any dispute under this EPA, provided that the Parties may, notwithstanding the foregoing, exercise any right to terminate this EPA in accordance with the terms of this EPA. Any payments or reimbursements required by an arbitration

award will be due as of the date determined under section 6.4(b)(iv) or, where that section does not apply, as of the date determined in the award. Without duplication with section 6.4(b)(iv), any payments or reimbursements required by an arbitration award will bear interest at an annual rate equal to the Prime Rate plus 2% compounded monthly from the date such payment was due until the amount is paid.

- (c) **Confidentiality:** The Parties will maintain in confidence the fact that an arbitration has been commenced, all documents and information exchanged during the course of the arbitration proceeding, and the arbitrator's award, provided that each of the Parties will be entitled to disclose such matters: (i) as required by applicable Law or for regulatory purposes (including pursuant to the rules of any stock exchange on which the shares of the Seller or its Affiliates are traded); (ii) as required to enforce any arbitration award; (iii) to that Party's Affiliates, consultants and professional advisors who have a need to know such information; and (iv) in the case of the Buyer, to representatives of the Province of British Columbia.

8.6 Notices

– Any notice, consent, waiver, declaration, request for approval or other request, statement or bill that either Party may be required or may desire to give to the other Party under this EPA must be in writing addressed to the other Party at the address for that Party stated in Appendix A and:

- (a) notices under sections 8.8 and 8.9, Article 9, section 10.1, and section 10.3 must be delivered by hand or by a courier service during normal business hours on a Business Day with a copy of the notice by email during normal business hours on the same Business Day, and a notice so delivered will be deemed to have been delivered on that Business Day;
- (b) BC Hydro may deliver Emergency Requests under section 5.7(a) or Curtailment Requests under section 5.8(a) to the Seller:
- (i) by telephone at any time with a follow-up email during normal business hours on a Business Day, in each case to the telephone number (if applicable) and email address indicated in Appendix A for the Seller, and a request so delivered will be deemed to have been delivered on the day and in the hour of the telephone call; or
- (ii) by any other method specified in this section 8.6;
- (c) all notices other than notices described in section 8.6(a) may be delivered by email during normal business hours on a Business Day and a notice so delivered will be deemed to have been delivered on that Business Day; and
- (d) either Party may change its address for notices under this EPA by notice to the other Party.

8.7 Confidentiality

- (a) **Confidentiality Agreement** - The Confidentiality Agreement continues in full force and effect in accordance with its terms, and [section <*>] [*Note: This will be revised to include*

the section reference in the Confidentiality Agreement.] thereof is amended to provide that the obligations thereunder will expire two years following the end of the Term.

(b) **Additional Confidentiality Obligation** – Without limiting the effect of the Confidentiality Agreement, during the Term and for two years after the end of the Term:

- (i) the Buyer will treat as confidential, and will not disclose to any third Person, Seller Confidential Information, and
- (ii) the Seller will treat as confidential, and will not disclose to any third Person, Buyer Confidential Information.

(c) **Disclosure of Confidential Information** - Notwithstanding the Confidentiality Agreement or section 8.7(b) above:

- (i) the Seller may disclose Buyer Confidential Information, and the Buyer may disclose Seller Confidential Information, in the following circumstances:
 - (A) disclosures expressly authorized under this EPA or otherwise set out in this EPA;
 - (B) disclosures to enable a Party to fulfill its obligations under this EPA;
 - (C) disclosure in any arbitration or legal proceedings for the enforcement of this EPA;
 - (D) disclosure to the Party's directors, officers, employees, Facility Lenders, consultants and advisors, provided each of them is advised of the confidential nature of the information and agrees to respect such confidentiality;
 - (E) subject to section 8.7(c)(ii)(D), disclosure required to be made by a Party by an order of a court, a regulatory agency or a tribunal or under any law, regulatory requirements or any requirement of any stock exchange that is binding upon a Party, provided that the Party intending to make the disclosure:
 - (I) to the extent reasonably practicable, gives reasonable notice to the other Party before making the disclosure; and
 - (II) limits the disclosure to that required by the applicable order Laws or regulatory or stock exchange requirement;

and provided further that in the case of disclosure of any Buyer Confidential Information that is required or proposed to be made by the Seller:

- (III) the Seller makes all reasonable efforts to resist and limit such exposure including applying to the court, tribunal or other regulatory entity to do so; and
 - (IV) the Seller will indemnify and hold harmless the Buyer from all reasonable costs and expenses (including full legal costs and expenses) incurred by or on behalf of the Buyer in connection with resisting, limiting, reviewing and responding to such disclosure (which may include taking measures to oppose or restrict the disclosure);
- (F) disclosure to a third Person if such information was known by that third Person before disclosure by the Buyer or Seller, as the case may be, provided the third Person did not know of the information as a result of a breach of the non-disclosure obligations in this EPA or the Confidentiality Agreement; or
- (G) disclosure with the consent of the Buyer, in the case of Buyer Confidential Information, or the Seller, in the case of Seller Confidential Information; and
- (ii) the Buyer may disclose Seller Confidential Information in the following circumstances:
 - (A) disclosure to the Buyer's Affiliates or to any third Person or Governmental Authority (whether directly or by the Buyer's Affiliates), and their respective employees, consultants and advisors, for the purpose of using, reselling or marketing any Energy or Environmental Attributes, including disclosure of Seller Confidential Information by such Affiliate or third Person to those who have purchased or may purchase the Energy or Environmental Attributes;
 - (B) for purposes other than those described in section 8.7(c)(ii)(A), to the Buyer's Affiliates and to any directors, officers, employees, consultants and advisors of any Affiliates, provided such persons either have a legal duty to maintain confidentiality or have provided written assurances of confidentiality to such Affiliate;
 - (C) to any ministers, deputy ministers, servants or employees of the Province of British Columbia or Canada, in either case to the extent that the Buyer considers disclosure is necessary or desirable for any purpose, provided each of them is advised of the confidential nature of the information;
 - (D) in any regulatory proceeding to the extent the Buyer 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, provided that the Buyer files any such Seller Confidential Information on a confidential basis in accordance with the applicable regulator's policies and procedures for confidential filings; or

- (E) to reliability organizations, reliability coordinators, balancing authorities, transmission operators or others to the extent that the Buyer 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.

For greater certainty, section 8.7(c)(i) does not apply to such disclosures.

- (d) **Freedom of Information and Protection of Privacy Act** - The Seller acknowledges that the Buyer is subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia) and agrees that the Buyer's non-disclosure obligations under this EPA are subject to the provisions of that legislation, as amended from time to time.

8.8 Force Majeure

- (a) If there is a Force Majeure affecting a Party's ability to perform an obligation under this EPA, and that Party wishes to declare a Force Majeure, that Party will promptly notify the other Party of the Force Majeure. The notice of Force Majeure must identify the nature of the Force Majeure, the date the Force Majeure commenced, the expected duration of the Force Majeure, and the particular obligations affected by the Force Majeure. If the applicable circumstances are, in fact, an event or circumstance of Force Majeure, a Party will be deemed to have invoked Force Majeure from the later of:

- (i) the date when the Party gives notice of the Force Majeure in accordance with this section 8.8(a); and
- (ii) if such date is not a Business Day, the next following Business Day;

provided that if such notice is given by 17:00 PPT on the fifth Business Day following the later of:

- (iii) the day on which the Force Majeure occurs; and
- (iv) the day when the Party knew, or reasonably ought to have known, of the occurrence of the Force Majeure;

the Party will be deemed to have invoked Force Majeure from the date on which the event of Force Majeure occurred.

- (b) Subject to section 8.8(a), neither Party will be in default of any obligation under this EPA if a Party is unable to perform that obligation due to an event or circumstance of Force Majeure.
- (c) Subject to any limitations expressly set out in this EPA, the time for performance of such obligation will be extended by the number of days that Party is unable to perform such obligation as a result of the event or circumstance of Force Majeure. The Party invoking Force Majeure will promptly respond to any inquiry from the other Party regarding the efforts being undertaken to remove the Force Majeure and will give prompt notice of the end of the Force Majeure.

8.9 First Nations

- (a) Notwithstanding the definition of Force Majeure in section 1.1(mm), and without limiting the application of the definition of Force Majeure to any circumstance that is not specifically described in this section 8.9(a), any order or decision of any court of competent jurisdiction or any regulatory authority, including the BCUC, that is binding on the Buyer and/or the Seller, the compliance with which would prevent the Buyer and/or the Seller from performing all or any of its obligations under this EPA, which is based in whole or in part on any failure or alleged failure of the Buyer to adequately consult with, and/or accommodate, any First Nations, in relation to this EPA, the Former EPA, the Seller's Plant or the Interconnection of the Seller's Plant to the BC Hydro System (which, for greater certainty, does not include any failure to consult with, and/or accommodate any First Nations, with respect to activities occurring on the Buyer's side of the POI or on the BC Hydro System), will be an event of Force Majeure that may be invoked by the Party or Parties so prevented, provided that the Party or Parties so prevented will use commercially reasonable efforts to remedy the situation and remove, so far as possible and with reasonable dispatch, the Force Majeure to the extent that it is within the control of that Party to do so, provided that in the case of the Buyer, this obligation is subject to the Seller complying with, or having complied with, its obligations under section 9.2.
- (b) A Party may not invoke Force Majeure as a result of such binding order or decision referenced at section 8.9(a) if such order or decision results from a wilful act or omission of a Party as contemplated in section 1.1(mm)(iv), provided that the failure or alleged failure of the Buyer to have adequately consulted with, and/or accommodated, any First Nations may only be considered a wilful act or omission where the underlying event or circumstance giving rise to the duty to consult or accommodate was or is fully within the control of the Buyer and provided further that, for greater certainty, any activities of the Seller will not be considered to be within the control of the Buyer regardless of any consent, waiver, declaration or approval under this EPA or the Former EPA, including any further amendment of this EPA that the Buyer may provide in respect of the Seller's activity.
- (c) The Seller may not invoke Force Majeure as a result of such binding order or decision referenced at section 8.9(a) if such order or decision results from a failure by the Seller to comply with its obligations under Article 9 of this EPA.
- (d) The Buyer may not invoke Force Majeure as a result of such order or decision referenced at section 8.9(a) if:
 - (i) the Buyer has received notice in writing from the Seller that the Seller is attempting to resolve, cure, fulfill or remedy, as the case may be, at its own initiative and at its own expense, the issues, orders or obligations raised or required by the order or decision;
 - (ii) the Buyer is not incurring additional expense, risk or liability as a result of the Seller taking the steps described in section 8.9(a) and the Buyer has received written confirmation from the Seller that the Buyer will not be subject to any liability to the Seller for breach of this EPA as a result of the Buyer's compliance

with that portion of the order or decision that prohibits the Buyer from performing its obligations under this EPA while at the same time not being able to invoke Force Majeure as a result of this provision;

- (iii) the Seller is at all times moving expeditiously and in good faith to resolve, cure, fulfill or remedy the issues, orders or obligations raised in the order or decision; and
- (iv) the Buyer would not be in breach of the order or decision as a result of the Seller taking the steps described in section 8.9(d)(i).

9. ABORIGINAL CLAIMS

9.1 Notification of Aboriginal Claim

- If the Buyer or Seller receives or obtains evidence of an Aboriginal Claim, it will notify the other Party as soon as reasonably practicable.

9.2 Obligation to Consult

- If the Buyer receives, obtains evidence or becomes aware of an Aboriginal Claim at any time during the Term, it may direct the Seller, at the Seller's cost, to:

- (a) consult with the First Nation(s) making the Aboriginal Claim, or, if requested by the Buyer, assist the Buyer in the consultation process;
- (b) take any measures the Seller deems necessary to address, prevent, mitigate, compensate or otherwise accommodate any Potential Impacts provided the measures are consented to in advance by the Buyer and the First Nation(s) making the Aboriginal Claim; and
- (c) provide regular written reports to the Buyer concerning the Seller's compliance with this section, as may be reasonably requested by the Buyer,

provided that the Buyer's rights under this section 9.2 will only apply to those Aboriginal Claims, or those portions of Aboriginal Claims, that do not relate to consultation and accommodation of Potential Impacts arising from the Former EPA or the design, engineering, construction, interconnection, commissioning, operation and maintenance of the Seller's Plant prior to the Commencement Date.

9.3 Seller Termination for Aboriginal Claim

-If, after consultation with the First Nation(s) making the Aboriginal Claim as directed by the Buyer under section 9.2, it becomes clear that the measure(s) necessary for the Seller to:

- (a) resolve the Aboriginal Claim or relevant portion of the Aboriginal Claim subject to the Seller's obligation to consult under section 9.2; or
- (b) address, prevent, mitigate, compensate or otherwise accommodate any Potential Impacts (excluding Potential Impacts arising from the Former EPA or the design,

engineering, construction, interconnection, commissioning, operation and maintenance of the Seller's Plant prior to the Commencement Date),

would:

- (c) impose a commercially unreasonable cost on the Seller; or
- (d) would require the consent of the Buyer under this EPA or agreement by the Buyer to amend the EPA in order to address any Potential Impacts and such consent or agreement to amend is not provided within 60 days after the Seller's request to the Buyer,

then the Seller may terminate this EPA on notice to the Buyer. Such termination will be effective 30 days after the date of delivery of such notice of termination unless otherwise agreed by the Parties. A termination by the Seller under this section will, for all purposes of this EPA, be treated in the same manner as a termination by the Seller under section 10.3 of this EPA.

9.4 Buyer Termination for Aboriginal Claim

At any time during the Term, if the Buyer receives, or obtains evidence or becomes aware of, an Aboriginal Claim, the Buyer may, at its sole discretion, terminate this EPA on notice to the Seller. Such termination will be effective 30 days after the date of delivery of such notice of termination unless otherwise agreed by the Parties. The termination of this EPA is the exclusive remedy to which the Seller or the Buyer are entitled if the Buyer elects to terminate this EPA under this section. ***[Note to Draft: This provision will be included in the EPA unless and until B.C. Hydro is satisfied that the duty to consult and if necessary accommodate any applicable First Nation(s) in relation to this EPA, the Seller's Plant or the Interconnection of the Seller's Plant to the BC Hydro System has been met.]***

10. TERMINATION

10.1 Termination by Buyer

- In addition to:

- (a) any other right to terminate this EPA expressly set out in this EPA; and
- (b) all other rights and remedies the Buyer may have under this EPA, or at law or in equity in respect of any of the following events,

the Buyer may terminate this EPA by notice to the Seller if:

- (c) the Interconnection Agreement is terminated at any time; or
- (d) any Interconnection Agreement that is executed, amended or revised after the Effective Date contains information that is inconsistent with the description of the Seller's Plant at Appendix B and the Seller has not received the Buyer's consent under section 4.6 for the change to Appendix B; or

- (e) the Seller does not deliver any Energy to the Buyer for a period of 365 continuous days and the Seller's failure to deliver is not solely as a result of a BC Hydro System Constraint for which the Seller is entitled to receive payment under section 5.8(d), compliance with an Emergency Request or Curtailment Request, or Force Majeure declared by the Seller under sections 8.8 or 8.9, unless the Seller demonstrates to the reasonable satisfaction of the Buyer that the Seller is working diligently and expeditiously to cure the failure to deliver and the failure is cured within a further reasonable period of time; or
- (f) the Buyer is unable to accept delivery of Energy at the POI for a period of 365 continuous days due to Force Majeure invoked by the Buyer in accordance with section 8.8 or 8.9, a BC Hydro System Constraint other than a BC Hydro System Constraint for which the Seller is entitled to receive payment under section 5.8, or an Emergency Condition; or
- (g) the Seller is Bankrupt or Insolvent; or
- (h) the Seller, as a result of an act or omission of the Seller, ceases to be exempt from regulation as a "public utility" as defined in the UCA with respect to the Seller's Plant and the sale of Energy to the Buyer under this EPA, and the loss of such exemption could reasonably be expected to have an adverse effect on the benefit to the Buyer of this EPA; or
- (i) an amount due and payable by the Seller to the Buyer under this EPA remains unpaid for 60 days after its due date and such default has not been cured within 60 days after the Buyer has given notice of the default to the Seller; or
- (j) the Seller interconnects, or permits a third Person (including an Affiliate) to interconnect, an electric load or generation facility to the Seller's Plant, or on the Seller's side of the POI, in either case without the advance written approval of the Buyer; or
- (k) the Seller is in material default of any of its covenants, representations and warranties or other obligations under this EPA (other than as set out above), unless within 30 days after the date of notice by the Buyer to the Seller of the default the Seller has cured the default or, if the default cannot be cured within that 30 day period, the Seller demonstrates to the reasonable satisfaction of the Buyer that the Seller is working diligently and expeditiously to cure the default and the default is cured within a further reasonable period of time. A "material default" includes any purported Assignment of this EPA without the consent of the Buyer and any failure by the Seller to comply with section 4.3(b), section 5.4 or section 7.1.

Any termination pursuant to this section will be effective immediately upon delivery of the notice of termination to the Seller.

10.2 Notice of Termination Event

- The Seller will notify the Buyer promptly if the Seller is Bankrupt or Insolvent or if there is a material risk that the Seller will become Bankrupt or Insolvent or if the Seller has defaulted under any agreement with a Facility Lender or if any Permit for the Seller's Plant is terminated or expires.

10.3 Termination by the Seller

- In addition to any other right to terminate this EPA expressly set out in any other provision of this EPA and in addition to all other rights and remedies the Seller may have under this EPA or at law or in equity in respect of any of the following events, the Seller may terminate this EPA by notice to the Buyer if:

- (a) the Buyer has not accepted delivery of Energy for a period of 365 continuous days due to Force Majeure declared by the Buyer under sections 8.8 or 8.9, a BC Hydro System Constraint and the Seller is not entitled to receive any payment pursuant to section 5.8 in respect of that period, or an Emergency Condition; or
- (b) the Seller's Plant has suffered Major Damage;
- (c) the Buyer is Bankrupt or Insolvent; or
- (d) except where an amount has been disputed in the manner specified in section 6.4(a)(iv), an amount due and payable by the Buyer to the Seller under this EPA remains unpaid for 60 days after its due date and such default has not been cured within 60 days after the Seller has given notice of the default to the Buyer; or
- (e) the Buyer is in material default of any of its covenants, representations and warranties or other obligations under this EPA (other than as set out above), and such default has not been cured within 30 days after the Seller has given notice of the default to the Buyer or, if the default cannot be cured within that 30 day period, the Buyer fails to demonstrate to the reasonable satisfaction of the Seller that the Buyer is working diligently and expeditiously to cure the default or the default is not cured within a further reasonable period of time.

Any termination pursuant to this section will be effective immediately upon delivery of the notice of termination to the Buyer.

10.4 Effect of Termination

- Upon expiry of the Term or earlier termination of this EPA in accordance with its terms:

- (a) the Parties may pursue and enforce any rights and remedies permitted by law or equity in respect of any prior breach or breaches of this EPA (including any such breach that led to termination of this EPA), and may enforce any liabilities and obligations that have accrued under this EPA prior to the expiry of the Term or the date of termination or that are stated to arise on termination of this EPA (including any claims by the Buyer for amounts payable by the Seller under the Interconnection Agreement), subject to any express restrictions on remedies and limitations or exclusions of liability set out in this EPA;
- (b) both Parties will remain bound by:
 - (i) Article 6 with respect to any final billing and resolution of disputed amounts only;

- (ii) the Interconnection Agreement and Article 10 with respect to the satisfaction of residual obligations for the period prior to termination or that are specified to arise on or after termination, including section 10.5;
 - (iii) Article 12 and sections 8.5 and 8.7; and
 - (iv) all provisions of this EPA with respect to Environmental Attributes associated with Delivered Energy delivered, or environmental attributes associated with any other Energy generated, during the Energy Delivery Period and prior to the expiry of the Term or earlier termination of this EPA; and
- (c) the Seller will remain bound by (and the Buyer and Audit Parties will continue to have rights under):
- (i) section 8.1; and
 - (ii) section 8.2 for a period of 36 months following expiry of the Term or earlier termination of this EPA;

and, in all such cases, both Parties will remain bound by any other provisions necessary for the interpretation and enforcement of the foregoing provisions.

10.5 Seller Termination Payment

- If the Buyer terminates this EPA under sections 10.1(c), 10.1(d), 10.1(e) other than in the event of Force Majeure declared by the Buyer, 10.1(g), 10.1(h), 10.1(i), 10.1(j), or 10.1(k), then the Seller will pay to the Buyer, within 30 days after the delivery of the invoice referred to in paragraph (e) below, an amount equal to the greater of:

- (a) the positive amount, if any, by which the Buyer's Economic Losses and Costs exceed the aggregate of the Buyer's Gains; and
- (b) \$4,000/MW multiplied by the Plant Capacity, multiplied by the number of full or partial years (pro-rated for partial years) remaining in the Term on the effective date of termination,

plus any Network Upgrade Costs that are payable by the Seller and remain unpaid at the time of termination.

For the purposes of calculating the Gains, Economic Losses and Costs of the Buyer pursuant to this section 10.5, the following conditions shall apply:

- (c) the Buyer's Gains, Economic Losses and Costs shall be determined by comparing the value of the remaining Term, the Plant Capacity, the historical average generation of the Seller's Plant during normal operating conditions, and the Energy Price under this EPA had it not been terminated to the relevant market prices for equivalent quantities for the remaining Term either quoted by a *bona fide* arm's length third Person or which are reasonably expected to be available in the market under a replacement contract for this EPA. Market prices shall be adjusted for differences between the product subject to the market prices

and a product, inclusive of Environmental Attributes, equivalent to that specified under this EPA available from a generator meeting the specifications set forth in Appendix A, including with respect to place of delivery and length of term and each element of those specifications;

- (d) the Buyer will not be required to enter into a replacement transaction in order to determine the amount payable by the Seller;
- (e) the Buyer will determine the amount of any Seller Termination Payment owed by the Seller, and shall notify the Seller of such amount and provide reasonable particulars with respect to its determination within 120 days after the effective date of termination of this EPA, failing which the Buyer shall not be entitled to any Seller Termination Payment under this section 10.5; and
- (f) the Buyer's Gains, Economic Losses and Costs shall be discounted to the date of termination of this EPA using the Present Value Rate applicable at the date of termination of this EPA.

11. REPRESENTATIONS AND WARRANTIES AND LIABILITY LIMITATIONS

11.1 Seller's Representations

- The Seller represents and warrants to the Buyer, and acknowledges that the Buyer is relying on those representations and warranties in entering into this EPA, as follows:

- (a) Corporate Status - the Seller is duly incorporated, organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, is registered or otherwise lawfully authorized to carry on business in British Columbia, and has full power, capacity and authority to own its assets and to carry on its business as now conducted and to enter into and to perform its obligations under this EPA;
- (b) Bankruptcy - no actions are threatened, or have been taken or authorized by the Seller or any other Person to initiate proceedings for, or in respect of, the bankruptcy, insolvency, liquidation, dissolution or winding-up of the Seller or to appoint a receiver, liquidator, trustee or assignee in bankruptcy in respect of the Seller;
- (c) Ownership – the Seller is the sole owner and the operator of the Seller's Plant;
- (d) Interconnection Agreement – the Interconnection Agreement is in full force and effect;
- (e) Assets - no appropriation, expropriation or seizure of all or any portion of the Seller's Plant, or any of its material properties or assets, is pending or threatened;
- (f) No Conflict - neither the signing of this EPA, nor the carrying out of the Seller's obligations under this EPA will (i) constitute or cause a breach of, default under, or violation of, the constating documents or bylaws of the Seller, any permit, franchise, lease, license, approval or agreement to which the Seller is a party, or any other covenant or obligation binding on the Seller or affecting any of its properties, (ii) cause a lien or encumbrance to attach to the Seller's Plant, other than a security interest granted in respect of financing

the design, construction or operation of the Seller's Plant, or (iii) result in the acceleration, or the right to accelerate, any obligation under, or the termination of, or the right to terminate, any Permit, franchise, lease, license, approval or agreement related to the Seller's Plant;

- (g) Binding Obligation - this EPA constitutes a valid and binding obligation of the Seller enforceable against the Seller in accordance with its terms;
- (h) Authorization, Execution and Delivery - this EPA has been duly authorized, executed and delivered by the Seller;
- (i) Exemption From Regulation – the Seller is exempt from regulation as a “public utility”, as defined in the UCA, with respect to the Seller's Plant, the sale of Energy and the performance by the Seller of its obligations under this EPA;
- (j) Permits – the Seller has all Permits legally required to own, operate, and maintain the Seller's Plant and perform the Seller's obligations set out in this EPA; and
- (k) Information Submittals – all information in the Information Submittals is true and correct in all material respects and there is no material information omitted from the Information Submittals that makes the information in the Information Submittals misleading or inaccurate in any material respect.

11.2 Buyer's Representations

- The Buyer represents and warrants to the Seller, and acknowledges that the Seller is relying on those representations and warranties in entering into this EPA, as follows:

- (a) Corporate Status - the Buyer is a corporation continued under the *Hydro and Power Authority Act*, R.S.B.C. 1996, c.212, is validly existing and is in good standing under the laws of British Columbia, is lawfully authorized to carry on business in British Columbia, and has full corporate power, capacity and authority to enter into and to perform its obligations under this EPA;
- (b) Binding Obligation - this EPA constitutes a valid and binding obligation of the Buyer enforceable against the Buyer in accordance with its terms; and
- (c) Authorization, Execution and Delivery - this EPA has been duly authorized, executed and delivered by the Buyer.

11.3 Limit of Liability

- The Buyer's liability for damages for any failure to accept delivery or pay for Energy as and when required under this EPA is limited to the price payable by the Buyer for that Energy under Article 6 and any interest thereon calculated under this EPA less the amount of any revenue received by the Seller from any third Person for that Energy.

11.4 Consequential Damages

- Neither Party will be liable to the other Party for any special, incidental, exemplary, punitive or consequential damages with respect to, arising out of, relating to or in any way connected with a Party's performance or non-performance under this EPA.

12. INDEMNITIES

12.1 Seller Indemnity

- The Seller will indemnify, defend and hold harmless the Buyer Indemnified Parties from and against all claims, demands, actions, causes of action, suits, orders and proceedings made or brought against any of the Buyer Indemnified Parties:

- (a) with respect to any emissions from the Seller's Plant; or
- (b) for personal injury, including death, to third Persons and for damage to property of third Persons, to the extent caused or contributed to by the wilful act or omission or negligence of the Seller, any contractor or subcontractor or supplier to the Seller or any director, officer, employee or agent of the Seller or any other Person for whom the Seller is responsible at law.

12.2 Buyer Indemnity

- The Buyer will indemnify, defend and hold harmless the Seller Indemnified Parties from and against all claims, demands, actions, causes of action, suits, orders and proceedings made or brought against any of the Seller Indemnified Parties for personal injury, including death, to third Persons and for damage to property of third Persons, to the extent caused or contributed to by the wilful act or omission or negligence of the Buyer, any contractor or subcontractor or supplier to the Buyer or any director, officer, employee or agent of the Buyer or any other Person for whom the Buyer is responsible at law, in each case while the Buyer or any such Person is at the Seller's Plant.

12.3 Indemnification Conditions

- The right of a Party ("**Indemnitee**") to be indemnified by the other Party ("**Indemnitor**") under any indemnity contained in this EPA in respect of a claim by a third Person is subject to the conditions that:

- (a) the Indemnitee gives the Indemnitor prompt notice of such claim, the right to select and instruct counsel, and all reasonable cooperation and assistance, including the availability of documents and witnesses within the control of the Indemnitee, in the defence or settlement of the claim; and
- (b) the Indemnitee does not compromise or settle the claim without the prior consent of the Indemnitor.

12.4 Third Party Beneficiary Conditions

- The Parties acknowledge that the Buyer holds the benefit of section 12.1 for itself, and on behalf of the Buyer Indemnified Parties, which are not party to this EPA, and the Seller holds the benefit

of section 12.2 for itself, and on behalf of the Seller Indemnified Parties, which are not party to this EPA. The Parties further acknowledge that each of the Buyer Indemnified Parties and the Seller Indemnified Parties may enforce those sections respectively for their own benefit by action taken directly against the Seller or the Buyer respectively, and/or such actions may be taken by the Buyer or the Seller against the other for the benefit of their respective indemnified parties.

13. GENERAL PROVISIONS

13.1 Electric Service to the Seller

- If at any time the Buyer makes electric service available to the Seller's Plant, then that service will be provided under and in accordance with the Buyer's electric tariff applicable at the relevant time, and not under this EPA.

13.2 Independence

- The Parties are independent contractors, and nothing in this EPA or its performance creates a partnership, joint venture or agency relationship between the Parties.

13.3 Enurement

- This EPA enures to the benefit of the Parties, their successors and their permitted assigns.

13.4 Entire Agreement

- This EPA contains the entire agreement between the Parties with respect to the purchase and sale of Energy and Environmental Attributes and supersedes all previous communications, understandings and agreements between the Parties with respect to the subject matter hereof, provided that this EPA will not supersede the Former EPA, the Interconnection Agreement or any obligations of the Parties under the Former EPA that by their nature survive expiry or termination of the Former EPA. There are no representations, warranties, terms, conditions, undertakings or collateral agreements express, implied or statutory between the Parties with respect to the subject matter of this EPA other than as expressly set out in this EPA.

13.5 Amendment

- This EPA may not be amended except by an agreement in writing signed by both Parties.

13.6 No Waiver

- Other than in respect of the specific matter or circumstance for which a waiver is given, and except as otherwise specified in this EPA, no failure by a Party to enforce, or require a strict observance and performance of, any of the terms of this EPA will constitute a waiver of those terms or affect or impair those terms or the right of a Party at any time to enforce those terms or to take advantage of any remedy that Party may have in respect of any other matter or circumstance. A waiver given under this EPA will not constitute an amendment of the terms of the EPA.

13.7 Interconnection Notices

- Nothing in the Interconnection Agreement and no exercise of any right thereunder, restricts or otherwise affects any right, obligation or liability of either Party under this EPA, except to the extent set out expressly herein, and no notice, consent, approval or other communication or decision under or in relation to the Interconnection Agreement will constitute or be relied upon as a notice, consent, approval or communication or decision under this EPA.

13.8 Future Agreements

– At the end of the Term, the Buyer will have no obligation to extend the Term or to enter into a new electricity purchase agreement with the Seller. In the event the Parties wish to enter into a new agreement at the end of the Term, the Parties expect to negotiate the terms (including the energy price) based on conditions in effect at that time.

13.9 Further Assurances

- Each Party will, upon the reasonable request of the other Party, do, sign or cause to be done or signed all further acts, deeds, things, documents and assurances required for the performance of this EPA including, in the case of the Seller, completing any registration process required in respect of Environmental Attributes as requested by the Buyer.

13.10 Severability

- Any provision of this EPA which is illegal or unenforceable will be ineffective to the extent of the illegality or unenforceability without invalidating the remaining provisions of this EPA.

13.11 Counterparts

- This EPA may be delivered by electronic transmission and may be executed in counterparts, each of which is deemed to be an original document and all of which are deemed one and the same document.

IN WITNESS WHEREOF each Party by its duly authorized representative(s) has signed this EPA as of the Effective Date.

<*>

Authorized Representative

Print Name and Office

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

Authorized Representative

Print Name and Office

APPENDIX A

ADDRESSES FOR NOTICES

Notices to Buyer and Insurance - All notices addressed to the Buyer will be delivered to the following address:

To: IPP Portfolio Management
333 Dunsmuir Street, 17th floor
Vancouver, B.C.
V6B 5R3
Attention: Manager, IPP Portfolio Management
Email: IPP.Contract@bchydro.com

Statements and Supporting Information

To: IPP Portfolio Management
333 Dunsmuir Street, 17th floor
Vancouver, B.C.
V6B 5R3
Attention: Commercial and Business Operations Manager
Email: IPP.Contract@bchydro.com

Notices to Seller - Except as noted below, all notices addressed to the Seller will be delivered to the following address:

To: <*>

The Buyer may also (at its option) deliver Emergency Requests under section 5.7(a) or Curtailment Requests under 5.8(a) to the following (as provided in section 8.6(b)):

To: <*>
Telephone Number: <*>
Email: <*>

APPENDIX B

SELLER'S PLANT DESCRIPTION

[Note: Seller must provide BC Hydro with 1) photographs of nameplates for the Seller's revenue metering equipment, transformers, generators, and inverters, 2) associated modeling information for all such equipment, and 3) a letter from an independent professional engineer (P.Eng.) certifying that the Seller's revenue metering equipment is compliant with BC Hydro's revenue metering standards published on BC Hydro's external webpage, specifically, Requirements for Complex Metering, currently located at: (<https://app.bchydro.com/accounts-billing/electrical-connections/distribution-standards/LA-RM-Complex-RM.html>),]

1. **Location:** The Seller's Plant is located at: <*>

The approximate latitude and longitude of the site of the power house forming part of the Seller's Plant is: <*>

The Seller's Plant is located on property legally described as: <*>

2. **Principal Equipment:** The Seller's Plant includes the following principal equipment:

| Type of Equipment | Description | Key Technical Parameters |
|---------------------------------------|-------------|--------------------------|
| Turbine | | |
| Generator | | |
| Transformer | | |
| Transmission/Distribution Line | | |
| <i>[Insert other, as applicable.]</i> | | |

3. **Access Roads:** Access to the site on which the Seller's Plant is located is <*>

4. **POI and Interconnection Facilities:** The POI means the point at which the Seller's Plant interconnects with the BC Hydro System, as described in the Interconnection Agreement.

5. **Plant Capacity:** The Plant Capacity is <*> MW.

6. **Site Layout:** A depiction of the layout of the key facilities in the Seller's Plant is attached as Schedule 1 hereto.

7. **Electricity Distribution and Generation System:** A depiction of the electricity distribution and generation system at the Seller's Plant, including all metering points, is attached as Schedule 2 to this Appendix B.

8. **Energy Source:** The primary energy source used to generate Energy at the Seller's Plant is water, which accounts for 100% of the annual Energy generated.

SCHEDULE 1

SITE LAYOUT

Please see attached.

[NTD: To be attached.]

SCHEDULE 2

ELECTRICITY DISTRIBUTION AND GENERATION SYSTEM

Please see attached.

[NTD: To be attached.]

APPENDIX C

ENERGY PRICE

[Note: Only the Energy Price for the option selected by the Seller will be included in Appendix C; the other Energy Price option will be deleted.]

ENERGY PRICE - OPTION A

1. Definitions - In this Appendix C, the following words and expressions have the following meanings:

- (a) **“Applicable Mid-C Price”** means, for an On-Peak Hour, the Mid-C On-Peak Price, and for an Off-Peak Hour, the Mid-C Off-Peak Price.
- (b) **“BC Losses”** means, for an hour, allowances for transmission losses (determined in accordance with section 5 and 7 of this Appendix and expressed in percentages) associated with transmitting an amount of non-firm electricity within the BC Hydro System equivalent to the amount of Delivered Energy and/or Deemed Energy during the relevant On-Peak Hour or Off-Peak Hour as the case may be.
- (c) **“BPA”** means the Bonneville Power Administration, or its successor.
- (d) **“BPA Losses”** means, for an hour, allowances for transmission losses (determined in accordance with sections 6 and 7 of this Appendix and expressed in percentages) associated with transmitting an amount of non-firm electricity between Mid-C and the U.S./Canadian border equivalent to the amount of Delivered Energy and/or Deemed Energy during the relevant On-Peak Hour or Off-Peak Hour as the case may be.
- (e) **“BPA Wheeling”** means wheeling charges (determined in accordance with sections 6 and 7 of this Appendix) and all other transmission-related fees and charges from BPA from time to time associated with transmitting an amount of non-firm electricity between Mid-C and the U.S./Canadian border equivalent to the amount of Delivered Energy and/or Deemed Energy during the relevant On-Peak Hour or Off-Peak Hour as the case may be.
- (f) **“ICE Mid-C Off-Peak Index Price”** means the Mid-C Off-Peak Index, being the volume-weighted “average” price for Mid-C day ahead transactions in Off-Peak hours in that day (or days where the index covers more than one day), as published in the ICE (Intercontinental Exchange) Day Ahead Power Price Report.
- (g) **“ICE Mid-C On-Peak Index Price”** means the Mid-C Peak Index, being the volume-weighted “average” price for Mid-C day ahead transactions in On-Peak hours in that day (or days where the index covers more than one day), as published in the ICE (Intercontinental Exchange) Day Ahead Power Price Report.
- (h) **“Mid-C”** means the Mid-Columbia electricity region.
- (i) **“NERC Holidays”** means any off-peak days or holidays established from time to time

by the North American Electric Reliability Council or any successor thereto.

(j) **“Net Aggregate Power Flow”** means, for an hour, the total net power flow at:

(i) the BC-AB intertie in the hour; and

(ii) the BC-US intertie in the hour,

in each case determined for an hour based on the net scheduled flow published by BC Hydro on its publicly available website from time to time, which is currently available at: <https://www.bchydro.com/energy-in-bc/operations/transmission/transmission-system/actual-flow-data/historical-data.html>.

If the total net power flow measured at both the BC-AB intertie and the BC-US intertie in an hour is an amount flowing out of British Columbia, the Net Aggregate Power Flow will be in “net export position”, and if the net power flow measured at both the BC-AB intertie and the BC-US intertie in that hour is an amount flowing in to British Columbia, the Net Aggregate Power Flow will be in “net import position”.

(k) **“Off-Peak Hours”** means all hours other than On-Peak Hours.

(l) **“Off-Peak Price”** means the ICE Mid-C Off-Peak Index Price (in US\$/MWh) for that hour.

(m) **“On-Peak Hours”** means hours ending 0700 - 2200 (6:00 a.m. - 10 p.m.) PPT Monday through Saturday inclusive, but excluding all hours on any day that is recognized as a “paid holiday” for British Columbia government employees as published by the Province of British Columbia from time to time (including any day Monday through Friday that is a paid holiday for British Columbia government employees due to a holiday occurring on a Saturday or Sunday).

(n) **“On-Peak Price”** means the ICE Mid-C Off-Peak Index Price (in US\$/MWh) for that hour.

2. **ICE Mid-C Prices** - For purposes of the calculations in this Appendix C, it is assumed that the ICE Mid-C On-Peak Index Price and the ICE Mid-C Off-Peak Index Price are determined in the manner specified in the “ICE Futures U.S. Rulebook Subchapter 18B – Power Futures Contracts” for those indices and published by ICE in the ICE Day Ahead Power Report for transactions reported at the Mid-C hub. In the event that the ICE Mid-C On-Peak Index Price and the ICE Mid-C Off-Peak Index Price referred to in this Appendix C are no longer published, the Seller and the Buyer shall mutually agree on data from an alternate source within 60 days. If the Parties cannot agree then the matter will be resolved by arbitration in accordance with section 8.5 of this EPA. Seller will be responsible, at its cost, to obtain and maintain any subscription that may be required to access the index prices used to calculate the Energy Price under this EPA.

3. **Other Capitalized Terms** - Capitalized terms in this Appendix C which are not defined in this Appendix C have the meaning given to those terms in section 1.1 of this EPA.

4. Formula - The Energy Price, for an hour during the Energy Delivery Period, will be the lesser of US\$80/MWh and the applicable amount determined as follows:

(a) when the Net Aggregate Power Flow during the hour is in net export position:

$$\text{Applicable Mid-C Price} \times (1 - \text{BC Losses}) \times (1 - \text{BPA Losses}) - \text{BPA Wheeling}$$

(b) when the Net Aggregate Power Flow during the hour is in net import position:

$$\text{Applicable Mid-C Price} \times (1 + \text{BPA Losses}) + \text{BPA Wheeling}$$

(c) when the Net Aggregate Power Flow during the hour is not in net import position or in net export position:

$$\text{Applicable Mid-C Price} \times (1 - \text{BC Losses}),$$

provided that if the applicable Energy Price as calculated above is a negative number, or if the Applicable Mid-C Price is zero or a negative number, the Energy Price in that hour will be deemed to be zero.

5. Determination of BC Losses. Until section 7 of this Appendix is applicable, energy loss factors within the BC Hydro System will be those loss factors set out in Schedule 1 to this Appendix C.

6. Determination of BPA Losses and BPA Wheeling. - Until section 7 of this Appendix is applicable, wheeling charges between Mid-C and the U.S./Canadian border will be the rate established for short-term, hourly non-firm point-to-point transmission service in the BPA Open Access Transmission Tariff - Transmission, Ancillary and Control Area Service Rates (as at the date of this EPA such rate is US\$5.65 per MWh, comprised of US\$4.74 per MWh for transmission and US\$0.91 per MWh for scheduling, system control and dispatch service) or in such other tariff or rate schedule as may be applicable to such transmission and ancillary services from time to time. Until section 7 of this Appendix is applicable, energy losses from Mid-C to the U.S./Canadian border will be those losses established for non-firm point-to-point transmission service in the BPA Open Access Transmission Tariff (as at the date of this EPA, the loss factor is 1.95% from September 1 - May 31 and 2.31% from June 1 - August 31) or in such other tariff or rate schedule as may be applicable to such transmission from time to time.

7. Change in Transmission Rate System - If at any time during the Term, a transmission rate system develops under which transmission rates are calculated across the U.S./Canadian border with no distinct rates for the Canadian portion and the U.S. portion of the transmission, the Parties will determine an appropriate method of calculating the BC Losses, BPA Losses and BPA Wheeling and such determination shall not be limited by the use of non-firm point-to-point transmission service in the calculation of BC Losses, BPA Losses and BPA Wheeling. If the Parties are unable to agree on the appropriate method of calculating such amounts, then the matter will be determined by arbitration in accordance with section 8.5 of this EPA. Until the Parties have agreed on the appropriate calculation method or until the method has been determined by arbitration, rates applicable immediately prior to introduction of the new transmission rate system shall continue to apply. Any payments or reimbursements required as a result of the agreement on, or determination of, the new calculation

method will be made by the applicable Party within 30 days after the date of the agreement or determination.

ENERGY PRICE - OPTION B

1. Definitions - In this Appendix C, the following words and expressions have the following meanings:
 - (a) “**BC Losses**” means, for an hour, allowances for transmission losses (determined in accordance with section 5 of this Appendix and expressed in percentages) associated with transmitting an amount of non-firm electricity within the BC Hydro System equivalent to the amount of Delivered Energy and/or Deemed Energy during the relevant On-Peak Hour or Off-Peak Hour as the case may be.
 - (b) “**CPI**” means the monthly British Columbia Consumer Price Index, All Items (Not Seasonally Adjusted) as published by Statistics Canada or any successor agency thereto, as may be adjusted or replaced in accordance with section 1.2(j)(iii) of the EPA.
 - (c) “**Off-Peak Hours**” means all hours other than On-Peak Hours.
 - (d) “**On-Peak Hours**” means hours ending 0700 - 2200 (6:00 a.m. - 10 p.m.) PPT Monday through Saturday inclusive, but excluding all hours on any day that is recognized as a “paid holiday” for British Columbia government employees as published by the Province of British Columbia from time to time (including any day Monday through Friday that is a paid holiday for British Columbia government employees due to a holiday occurring on a Saturday or Sunday).
 - (e) “**Time of Delivery Factor**” is, for an hour, the applicable percentage from the Time of Delivery table attached as Schedule 2 to this Appendix C for an On-Peak Hour or Off-Peak Hour, as applicable.
2. Other Capitalized Terms - Capitalized terms in this Appendix C which are not defined in this Appendix C have the meaning given to those terms in section 1.1 of this EPA.
3. Formula - The Energy Price in effect for an hour during any calendar year during the Energy Delivery Period will be determined as follows:

\$58.00/MWh, multiplied by

1 + {0.5 x [(CPI for December of the preceding calendar year/CPI for December 2022)-1]}, multiplied by **[Note: For EPAs with a Commencement Date prior to January 1, 2023, this will need to be customized.]**

(1 - BC Losses), multiplied by

applicable Time of Delivery Factor
4. Determination of BC Losses. Energy loss factors within the BC Hydro System will be those losses set out in Schedule 1 to this Appendix C.

SCHEDULE 1

BC LOSSES

Project specific line losses based on location of Seller's Plant in the BC Hydro system

| Region | Energy Losses |
|-------------------------|----------------------|
| Lower Mainland | 0.00% |
| Peace River | 11.87% |
| Central Interior | 7.70% |
| Selkirk | 4.48% |
| North Coast | 7.41% |
| Vancouver Island | -3.80% |
| East Kootenay | 6.86% |
| Kelly Lake Nicola | 4.27% |
| Revelstoke Ashton Creek | 4.48% |

SCHEDULE 2

TIME OF DELIVERY FACTOR

| Month | On-Peak | Off-Peak |
|--------------|----------------|-----------------|
| Jan | 131% | 99% |
| Feb | 104% | 83% |
| Mar | 89% | 74% |
| Apr | 63% | 59% |
| May | 38% | 50% |
| Jun | 79% | 67% |
| Jul | 131% | 99% |
| Aug | 142% | 108% |
| Sep | 129% | 102% |
| Oct | 123% | 93% |
| Nov | 137% | 101% |
| Dec | 150% | 109% |

APPENDIX D

CONFIDENTIALITY AGREEMENT

[Note to Draft: To be attached.]