

CONFIDENTIALITY AGREEMENT

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

BETWEEN:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

having an office at
333 Dunsmuir Street
Vancouver, BC V6B 5R3

("BC Hydro")

AND:

[INSERT FULL LEGAL NAME OF THE DISCLOSING PARTY]

having an office at
[insert address]
[insert address]

("Disclosing Party")

WHEREAS:

- A. BC Hydro has issued a North Coast Expression of Interest dated February 15, 2023 (as may be amended from time to time) describing the process established by BC Hydro to solicit expressions of interest from potential customers (the "EOI Process") with respect to the supply of electricity from the North Coast region of B.C.
- B. The Disclosing Party intends to participate in the EOI Process;
- C. In connection with the Disclosing Party's participation in the EOI Process (the "Purpose"), the parties may enter into business discussions and the Disclosing Party may wish to share and exchange certain information that is non-public, confidential and/or proprietary in nature in connection with the Purpose, all on the terms and conditions set out in this Agreement.

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

1. **Definition of Confidential Information.** In this Agreement, the term "Confidential Information" means, subject to Section 2:
 - (a) all information in any form disclosed by the Disclosing Party or its Representatives to BC Hydro or its Representatives and marked as confidential on or after the Effective Date in connection with the Purpose, including without limitation any such information owned by a third party.

2. **Exclusions.** Confidential Information does not include information that:
 - (a) is lawfully disclosed to BC Hydro by a third person that BC Hydro reasonably believes has the right to make such disclosure without violating any confidentiality obligation to the Disclosing Party;
 - (b) was developed independently by BC Hydro, before disclosure to it by the Disclosing Party or its Representatives; or
 - (c) is or comes into the public domain, other than through a violation of this Agreement by BC Hydro.

3. **Definition of Representatives.** In this Agreement, the term “Representatives” means:
 - (a) for each of BC Hydro and the Disclosing Party, their respective employees, officers, directors, agents, contractors, consultants or advisors; and
 - (b) for BC Hydro, its affiliates.

4. **Non-Disclosure.** BC Hydro will keep Confidential Information that it has received strictly confidential and will not disclose such Confidential Information to any third party, except:
 - (a) BC Hydro may disclose Confidential Information to its Representatives, provided such Representatives are informed of the confidential nature of the information and obliged in a manner consistent with this Agreement to maintain the confidentiality of the Confidential Information disclosed to them;
 - (b) if required by law, court order, or a regulatory authority having jurisdiction, provided however that BC Hydro will, to the extent that it is not legally prohibited from doing so, provide written notice to the Disclosing Party as soon as reasonably practicable after becoming aware of such requirement;
 - (c) BC Hydro may disclose Confidential Information that it has received under this Agreement:
 - (i) to any ministers, deputy ministers, servants or employees of the Province of British Columbia or of Canada, in either case to the extent that BC Hydro considers disclosure is necessary for any purpose;
 - (ii) in any regulatory proceeding to the extent BC Hydro considers disclosure is necessary to support its position in such proceeding, or in connection with any other regulatory filing or reporting that may be required; or
 - (iii) to reliability organizations, reliability coordinators, balancing authorities, transmission operators or others to the extent that BC Hydro considers disclosure is necessary for operating reliability or compliance purposes, provided each of them is advised of the confidential nature of the information;
 - (d) as reasonably necessary in proceedings to enforce the terms of this Agreement; or

- (e) with the prior written agreement of the Disclosing Party.
5. ***Freedom of Information and Protection of Privacy Act.*** Without limiting the generality of the exceptions set out in Section 4, the Disclosing Party acknowledges that BC Hydro is subject to the British Columbia *Freedom of Information and Protection of Privacy Act* and associated regulations, and agrees that BC Hydro's obligations and the restrictions on use of Confidential Information under this Agreement are at all times subject to the provisions of that legislation, as may be amended or replaced from time to time.
 6. **Restricted Use.** Subject to the disclosures permitted under Section 4, BC Hydro will use, and direct its Representatives to use, Confidential Information that it has received under this Agreement only for the Purpose, and for no other purpose.
 7. **Safeguarding.** BC Hydro will protect and safeguard the Confidential Information with a commercially reasonable degree of care.
 8. **Ownership.** Disclosing Party retains its entire right, title and interest, including without limitation all intellectual property and other rights, in and to all of its Confidential Information. BC Hydro acquires no ownership interest in any such Confidential Information, and any disclosure of such Confidential Information under this Agreement will not be construed as an assignment, grant, option, licence or other transfer of any such right, title or interest whatsoever to BC Hydro or any of its Representatives.
 9. **Return of Confidential Information.** Within 30 business days of the Disclosing Party's written request (or otherwise as soon as reasonably practicable), BC Hydro will, at its option, return to the Disclosing Party or destroy all of the Confidential Information in its or its Representatives' possession, subject to the following exceptions:
 - (a) BC Hydro (or any of its Representatives) is required by either applicable law or the rules or bylaws of a professional association to which it belongs and which has jurisdiction over it to retain copies of all, or any part, of the Confidential Information, it may retain one copy for archival purposes in accordance with such applicable law or rules and regulations or any written document retention policy.
 - (b) BC Hydro and its Representatives may retain compilations, papers, decision notes, board materials, studies, analysis and other documents prepared by or for BC Hydro or its Representatives that contain or are derived from, in whole or in part, the Confidential Information.
 - (c) BC Hydro and its Representatives may retain copies of any Confidential Information in routine back-up of electronic data processing systems.
 10. **Term.** This Agreement commences on the Effective Date and expires on the earlier of:
 - (a) that date which is 3 year(s) after the Effective Date of this Agreement; and
 - (b) that date which is 10 days after the date on which either party has provided written notice to the other party that the Purpose is concluded.

11. Survival of Obligations.

- (a) Each party's obligations under this Agreement survive any destruction of the Confidential Information, and any retained Confidential Information will remain subject to the confidentiality requirements of and restrictions on use in this Agreement.
- (b) Each party's rights and obligations under this Agreement will survive for a period of six years from the date of the expiry of this Agreement, even after the return or destruction of the Disclosing Party's Confidential Information by BC Hydro.

12. Equitable Remedies. BC Hydro acknowledges and agrees that monetary damages might not be a sufficient remedy for any breach of this Agreement by BC Hydro or its Representatives and that in addition to all other remedies available at law, the Disclosing Party will be entitled to seek injunctive or other equitable relief as a remedy for any such breach.

13. Limitation of Liability. In no event will BC Hydro be liable to the Disclosing Party or to any other third party for any loss of use, revenue or profit or for any consequential, incidental, indirect, exemplary, special or punitive damages.

14. No Waiver. No implied waiver by BC Hydro will arise in the absence of a waiver in writing signed by BC Hydro. No failure or delay in exercising any right, power, or privilege under this Agreement will operate as a waiver, nor will any single or partial failure in exercising any right, power, or privilege preclude any other further exercise of that or any other right, power, or privilege.

15. Relationship. Nothing in this Agreement creates any relationship of partnership, co-venturer, or principal and agent between the parties. In addition, nothing in this Agreement obligates or compels either party to negotiate for or enter into any business or contractual arrangement or otherwise pursue the Purpose unless and until both parties execute a definitive written agreement with respect to such arrangement.

16. Notices. Any notice required or permitted to be given under this Agreement must be in writing and may be delivered by registered mail, by hand, by email or by other designated form of electronic communication,

- (a) if to BC Hydro, Attention: Manager, Business & Economic Development, at 333 Dunsmuir Street, 4th Floor, Vancouver, B.C., V6B 5R3, admin_BD@bchydro.com, and
- (b) if to the Disclosing Party, Attention: [insert name] at [insert mailing address and email address],

or to such other address as a party may designate by subsequent notice. A notice given by email or other designated form of electronic communication will be deemed to have been delivered (even if no individual with the recipient is aware of its delivery) when it enters an information processing system that the recipient has designated for the purpose of receiving notices under this Agreement and is in a form capable of being processed by that system.

17. Governing Law. This Agreement will be governed by and interpreted and construed under the laws of the Province of British Columbia and the laws of Canada applicable in the Province of British Columbia as if it were executed and to be performed wholly within the Province of British Columbia. Each of the parties submits to the exclusive jurisdiction of the courts of British

Columbia. If a party is not incorporated or registered in British Columbia, it will appoint an agent to receive service of process in British Columbia and notify the other party of the name and address of the appointed agent.

- 18. **Validity.** If any provision of this Agreement is declared or held to be invalid or unenforceable, that provision will be severed, and all other provisions will continue to be valid and enforceable.
- 19. **Assignment and Enurement.** This Agreement is not assignable by a party without the prior written consent of the other party, not to be unreasonably withheld. This Agreement enures to the benefit of, and is binding upon, the parties and their respective successors and permitted assigns.
- 20. **Amendment.** This Agreement may not be modified except by an agreement signed by all parties.
- 21. **Counterparts.** This Agreement may be executed and delivered by electronic means and in several counterparts, each of which when executed and delivered will be deemed to be an original and all of which together will be one and the same agreement.

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

**BRITISH COLUMBIA HYDRO AND POWER
AUTHORITY**

**[INSERT FULL LEGAL NAME OF THE
DISCLOSING PARTY]**

By: _____
Authorized Signature

By: _____
Authorized Signature

Print Name: _____

Print Name: _____

Title: _____

Title: _____

By: _____
Authorized Signature

Print Name: _____

Title: _____