

JOHN HART GENERATING STATION REPLACEMENT PROJECT

Schedule 29

Independent Certifier

SCHEDULE 29

INDEPENDENT CERTIFIER

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Appendix 29A – Independent Certifier Agreement

SCHEDULE 29

INDEPENDENT CERTIFIER

1. APPOINTMENT

The parties will cooperate to jointly appoint a person (or firm of persons) (the “**Independent Certifier**”), who:

- (a) is qualified and experienced with respect to the design, construction, operation and maintenance of projects in British Columbia similar to the Project;
- (b) is qualified and experienced with respect to the measurement and assessment of performance of projects in British Columbia similar to the Project;
- (c) is qualified and experienced with respect to occupational health and safety matters associated with the design, construction, operation and maintenance of projects in British Columbia similar to the Project;
- (d) has demonstrated experience in performing evaluations using the hydroAMP methodology; and
- (e) is independent from both BC Hydro and Project Co (and who will be impartial to the parties),

to provide certification services for the benefit of the parties throughout the Term. The parties will enter into an agreement with the Independent Certifier on the terms generally as set out in Appendix 29A [*Independent Certifier Agreement*]. The parties confirm that Project Co may also appoint the Independent Certifier to provide certification services in respect of the Design-Build Agreement and the Services Agreement and to act as the Senior Creditors’ technical advisor.

2. INDEPENDENT CERTIFIER SERVICES

The services to be provided by the Independent Certifier are described in the Independent Certifier Agreement.

3. CHANGES IN TERMS

Neither BC Hydro nor Project Co shall without the other’s prior approval (not to be unreasonably withheld or delayed):

- (a) waive, settle, compromise or otherwise prejudice any rights or claims which the other may from time to time have against the Independent Certifier; or
- (b) vary the terms of the Independent Certifier Agreement or the services performed or to be performed by the Independent Certifier.

4. PERFORMANCE OF OBLIGATIONS

Each of BC Hydro and Project Co shall perform its respective obligations arising under or in connection with the Independent Certifier Agreement.

5. COOPERATION

BC Hydro and Project Co agree to cooperate with each other generally in relation to all matters within the scope of, or in connection with, the Independent Certifier and the Independent Certifier Agreement. All instructions and representations issued or made by either BC Hydro or Project Co to the Independent Certifier shall be simultaneously copied to the other for information only and both BC Hydro and Project Co shall be entitled to attend all inspections performed by, or meetings involving, the Independent Certifier.

6. INFORMATION

Project Co and BC Hydro shall provide the Independent Certifier with any information the Independent Certifier reasonably requires for the purpose of providing the services described in the Independent Certifier Agreement.

7. APPOINTMENT AND REPLACEMENT

If within 20 Business Days of the Effective Date the Independent Certifier has not been appointed, or if for any reason during the Term the Independent Certifier is unable or unwilling to continue to perform the Independent Certifier services or if the Independent Certifier's appointment has been terminated by BC Hydro and Project Co, then:

- (a) within 5 Business Days of the date that is 20 Business Days after the Effective Date (or within 5 Business Days of the date of termination of the Independent Certifier's appointment, if applicable), Project Co will provide the names of 3 candidates acceptable to Project Co for consideration by BC Hydro;
- (b) within 10 Business Days of receiving the candidate names, BC Hydro will notify Project Co of the candidate(s) acceptable to BC Hydro, and the parties will cooperate to enter into a contract with an acceptable candidate generally in the form set out in Appendix 29A [*Independent Certifier Agreement*]; and
- (c) if none of the candidates are acceptable to BC Hydro, acting reasonably, or if for any reason an Independent Certifier is not appointed within 40 Business Days of the Effective Date (or within 20 Business Days of the date of termination of the Independent Certifier's appointment, if applicable), then either party may immediately apply to the British Columbia International Commercial Arbitration Centre for the selection of an Independent Certifier, providing the other party the opportunity to participate in the selection and appointment process.

8. MONTHLY INSPECTIONS AND REPORT

Throughout the period from the Effective Date to the Total Completion Date, the parties will require the Independent Certifier to:

- (a) consult with the Design-Builder and others involved in the Design; and
- (b) conduct inspections of the Construction,

as the Independent Certifier determines is required for the purposes of the Independent Certifier's functions under this Agreement, and, no later than 3 Business Days after receiving each monthly report pursuant to Section 13.1 *[Monthly Reports for Progress Payments]* of Schedule 13 *[Performance and Payment Mechanisms]*, prepare and deliver to BC Hydro and Project Co a monthly written report containing a description of:

- (c) the Design and Construction completed in the previous month, including verification of any progress percent completion certified by Project Co as forming part of the Progress Payment;
- (d) verification of sufficient and adequate evidence to demonstrate that all payment criteria for the applicable Progress Payment have been met, together with any supporting documentation reasonably required.
- (e) the progress of the Design and Construction relative to the updated Works Schedule, with an overview analysis of any variances and confirmation of the, then current, Available Tunnel Float Balance; and
- (f) any elements of the Facility that for any reason vary from the requirements of this Agreement, with particular reference to Schedule 5 *[Design and Construction Protocols]* and Schedule 6 *[Design and Construction Specifications]*.

9. PERIODIC INSPECTIONS

Throughout the Services Period, the parties will require the Independent Certifier to:

- (a) consult with BC Hydro, the Service Provider and others involved in the Services; and
- (b) conduct inspections of the Generation Systems and the Facility,

as the Independent Certifier determines is required for the purposes of the Independent Certifier's functions under this Agreement.

10. PAYMENT CERTIFICATES

The Independent Certifier will prepare and deliver to BC Hydro and Project Co a certificate certifying the Progress Payment, and any other amounts payable by BC Hydro pursuant to this Agreement in respect of the performance of the Project Work, no later than 3 Business Days after receiving the monthly report pursuant to Section 13.1 *[Monthly Reports for Progress Payments]* of Schedule 13 *[Performance and Payment Mechanisms]* (or such other time as may be applicable in the case of payment under Section 1.1 *[Obligation to make Progress Payments]* of Schedule 13 *[Performance and Payment Mechanisms]*). BC Hydro and Project Co specifically agree to the following with respect to the preparation and delivery of the payment certificates by the Independent Certifier:

- (a) the Independent Certifier will review all applications for Progress Payments and the supporting documentation submitted by Project Co in support of the application for payment, in accordance with Section 13.1 *[Monthly Reports for Progress Payments]* of Schedule 13 *[Performance and Payment Mechanisms]*, to determine whether the Progress Payment amount claimed is properly claimed and payable in accordance with the criteria set out in the Independent Certifier Agreement.
- (b) the payment certificates will certify Progress Payment amounts payable in accordance with the criteria set out in the Independent Certifier Agreement, and any other amounts payable by BC Hydro pursuant to this Agreement in respect of the performance of the Project Work, during the applicable month (or portion thereof, as the case may be);
- (c) if the Independent Certifier does not agree with the application for Progress Payment, the Independent Certifier may amend the application for payment, provided that if the Independent Certifier amends the application for payment it will identify any amounts which are not certified, and the reasons for amending the application;
- (d) the Independent Certifier will not have or assume any responsibility whatsoever for any of the Project Work and nothing in this Section or the parties' agreement with the Independent Certifier will in any way whatsoever relieve Project Co of its obligations for the Project Work under this Agreement; and
- (e) the Independent Certifier will have no role in monitoring or in giving any directions or instructions, with respect to any aspect of the Project Work.

11. COMPLETION CERTIFICATION

The parties will require the Independent Certifier to perform the obligations of the Independent Certifier described in Section 11 *[Completion]* of Schedule 5 *[Design and Construction Protocols]*.

12. CERTIFICATION OF PERFORMANCE VERIFICATION TESTS

The parties will require the Independent Certifier to perform the obligations of the Independent Certifier described in Appendix 13G [*Performance Verification Tests*] of Schedule 13 [*Performance and Payment Mechanisms*].

13. CONDITION ASSESSMENT EVALUATION

The parties will require the Independent Certifier to perform the obligations of the Independent Certifier described in Appendix 7D [*Condition Assessment*] of Schedule 7 [*Services*] and in Section 10.2 [*Retention Amount*] of Schedule 13 [*Performance and Payment Mechanisms*].

14. PERMITTED ACCESS

Project Co will give the Independent Certifier access to the Project Work as the Independent Certifier reasonably requests in order to be fully informed as to the progress of the Project Work and the performance of the Facility, including:

- (a) access to drawings, specifications, schedules, records, and other documents or data relating to the Project Work, including such information that is being produced by or in the possession of the Design-BUILDER, the Major Equipment Suppliers, the Service Provider or others;
- (b) access to materials and Plant located off-Site;
- (c) access to the Site and the work in progress; and
- (d) access to the Site and the Facility, including all monitoring and recording equipment, as necessary to:
 - (1) verify the performance of the Project Work;
 - (2) inspect the Project Work and certify Commercial Operation of each Generating Unit, Bypass System Completion, Service Commencement and Total Completion; and
 - (3) certify: (i) that the Performance Verification Tests were conducted in accordance with the requirements of Appendix 13G [*Performance Verification Tests*] of Schedule 13 [*Performance and Payment Mechanisms*]; and (ii) the accuracy of the Performance Verification Test results,

and Project Co will:

- (e) permit the Independent Certifier to attend all Design and Construction meetings during the period between the Effective Date and the Total Completion Date, except to the extent Project Co and BC Hydro expressly otherwise agree;
- (f) permit the Independent Certifier to attend and observe all Commissioning activities and the performance of the Performance Verification Tests; and
- (g) keep the Independent Certifier fully informed as to the progress of the Project Work, including giving notice in accordance with Good Utility Practice of any part of the Project Work before it becomes covered up or unavailable for inspection.

BC Hydro will give the Independent Certifier access to the Site and the Facility as the Independent Certifier reasonably requests in order to perform the Independent Certifier's functions under this Agreement.

15. NO RESPONSIBILITY FOR PROJECT WORK

Nothing in this Agreement (including this Schedule) or the Independent Certifier Agreement will be interpreted as giving the Independent Certifier any responsibility or authority for any aspect of the Project Work, or as relieving Project Co of its responsibility for the Project Work, as set out in this Agreement, and none of Project Co, the Design-BUILDER, the Major Equipment Suppliers nor any Sub-Contractor will be entitled to rely on any review, acceptance, approval or confirmation that the Independent Certifier may give with respect to the Project Work.

JOHN HART REPLACEMENT PROJECT

APPENDIX 29A

INDEPENDENT CERTIFIER AGREEMENT

APPENDIX 29A

INDEPENDENT CERTIFIER AGREEMENT

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APPENDIX 29A

INDEPENDENT CERTIFIER AGREEMENT

THIS AGREEMENT is made as of the ▼ day of ▼, 20__

AMONG:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

("BC Hydro")

AND:

INPOWER BC GENERAL PARTNERSHIP

("Project Co")

AND:

▼

(the "Independent Certifier")

WHEREAS:

- A. BC Hydro and Project Co have entered into the Project Agreement;
- B. BC Hydro and Project Co wish to appoint the Independent Certifier, and the Independent Certifier wishes to accept such appointment, to perform certain services in connection with the Project Agreement; and
- C. BC Hydro, Project Co and the Independent Certifier wish to enter into this Agreement in order to record the terms by which the Independent Certifier will perform such services.

NOW THEREFORE in consideration of the mutual promises and agreements of BC Hydro, Project Co and the Independent Certifier herein expressed and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, BC Hydro, Project Co and the Independent Certifier covenant and agree as follows:

1. Definitions

1.1 Definitions

In this Agreement including the recitals and Schedules, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Agreement) will have meanings given to them in the Project Agreement and the following terms will have the following meanings:

“Fee” means the fees payable by the PA Parties to the Independent Certifier for the Functions, as such fees are specified and made payable in Schedule 2 of this Agreement;

“Functions” means:

- (a) all of the functions and obligations conferred on the Independent Certifier under the Project Agreement;
- (b) all of the functions and obligations conferred on the Independent Certifier under this Agreement, including the functions described in Schedule 1 of this Agreement; and
- (c) all other things or tasks which the Independent Certifier is required to do to comply with its obligations under this Agreement;

“Functions Variation” means any change to the Functions;

“Intellectual Property” means any and all intellectual property rights throughout the world, whether subsisting now or in the future, including rights of any kind in inventions, patents, copyright, trademarks, service marks, industrial designs, integrated circuit topography rights, applications for registration of any of the foregoing, and know-how, trade secrets, confidential information and trade or business names;

“PA Parties” means, collectively, BC Hydro and Project Co;

“Project Agreement” means that certain agreement entitled “Project Agreement” and made between BC Hydro and Project Co as of the 25th day of February, 2014 with respect to the design, construction, financing, and services for the Facility, as the same may be amended, supplemented or replaced from time to time; and

“Project Material” means all material:

- (a) provided to the Independent Certifier or created by or required to be created by any PA Party; and
- (b) provided by or created by or required to be created by the Independent Certifier as part of, or for the purpose of, performing the Functions,

including documents, equipment, reports, technical information, plans, charts, drawings, calculations, tables, schedules and data (stored and recorded by any means).

2. Interpretation

2.1 Interpretation

The division of this Agreement into Sections, the insertion of headings and the provision of a table of contents are for convenience only, do not form a part of this Agreement and will not be used to affect the construction or interpretation of this Agreement. The word “including” will not be construed as limiting the general term or statement immediately preceding. Unless otherwise specified:

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- (a) each reference in this Agreement to “**Section**” and “**Schedule**” is to a Section of, and a Schedule to, this Agreement;
- (b) each reference to a statute is deemed to be a reference to that statute and any successor statute, and to the regulations made under that statute and any successor statute, as amended or re-enacted from time to time;
- (c) words importing the singular include the plural and vice versa and words importing gender include all genders;
- (d) references to time of day or date mean the local time or date in Vancouver, British Columbia;
- (e) all references to amounts of money mean lawful currency of Canada; and
- (f) an accounting term has the meaning assigned to it, and all accounting matters will be determined, in accordance with Canadian GAAP consistently applied.

2.2 Obligations and Exercise of Rights by the PA Parties

The obligations of the PA Parties under this Agreement will be several. Except as specifically provided for in this Agreement, the rights of the PA Parties under this Agreement will be jointly exercised by each of the PA Parties.

3. Role of the Independent Certifier

3.1 Engagement

The PA Parties hereby appoint the Independent Certifier, and the Independent Certifier hereby accepts such appointment, to carry out the Functions in accordance with this Agreement. The Independent Certifier will perform the Functions in accordance with this Agreement.

3.2 Acknowledgement by Independent Certifier

The Independent Certifier hereby acknowledges in favour of the PA Parties that it has received a copy of the Project Agreement.

3.3 Standard of Care

The Independent Certifier will exercise the standard and skill, care and diligence in the performance of the Functions that would be expected of an expert professional experienced in providing services in the nature of the Functions for projects similar to the Project.

3.4 Duty of Independent Judgment

In exercising the Functions, the Independent Certifier will act:

- (a) impartially, honestly and independently;
- (b) reasonably and professionally; and
- (c) in a timely manner:
 - (i) in accordance with the times prescribed in this Agreement or the Project Agreement, as applicable; or
 - (ii) where no times are prescribed, within five Business Days or such earlier time so as to enable the PA Parties to perform their respective obligations under the Project Agreement.

Although the Independent Certifier should take account of any opinions or representations made by the PA Parties, the Independent Certifier will not be bound to comply with any opinions or representations made by either of them in connection with any matter on which the Independent Certifier is required to exercise its professional judgment.

The Independent Certifier acknowledges that, as set out under the Project Agreement:

- (d) the certifications issued by the Independent Certifier with respect to the Performance Verification Tests and the Achieved Performance will be final and binding on the PA Parties; and
- (e) the Condition Assessment Reports issued by the Independent Certifier with respect to the condition assessment evaluations of the Generation Systems, and the Handback Survey reports issued by the Independent Certifier with respect to the condition assessment evaluation of the Support Systems, Buildings and Lands, will be final and binding on the PA Parties.

The Independent Certifier will use its best skill and judgment in providing the Functions and making any certifications and condition assessments. A PA Party may dispute any other decision made by the Independent Certifier, including any list of Defects and Nonconformities or list of incomplete Design and Construction that must be completed prior to Commercial Operation of a Generating Unit, Service Commencement, Bypass System Completion or Total Completion and any list of Nonconformities and incomplete Project Work that must be completed prior to Handback.

3.5 Authority to Act

The Independent Certifier:

- (a) is an independent consultant and is not, and will not purport to be, a partner, joint venturer or agent of any PA Party;

- (b) other than as may be expressly set out in the Project Agreement, has no authority to give any directions to a PA Party or its officers, employees, contractors, consultants or agents; and
- (c) has no authority to waive or alter any terms of the Project Agreement, nor to discharge or release a PA Party from any of its obligations under the Project Agreement unless jointly agreed in writing by the PA Parties.

3.6 Knowledge of the PA Parties' Requirements

The Independent Certifier warrants that:

- (a) it has and will be deemed to have informed itself fully of the requirements of the Project Agreement;
- (b) it will inform itself fully of the requirements of such other documents and materials as may become relevant from time to time to the performance of the Functions;
- (c) without limiting Sections 3.6(a) or 3.6(b), it has and will be deemed to have informed itself fully of all time limits and other requirements for any Function which the Independent Certifier carries out under the Project Agreement and this Agreement;
- (d) it has and will be deemed to have informed itself fully of the nature of the work necessary for the performance of the Functions and the means of access to and facilities at the Facility and Site including restrictions on any such access or protocols that are required; and
- (e) it has satisfied itself as to the correctness and sufficiency of its proposal for the Functions and that the Fee covers the cost of complying with all of the obligations under this Agreement and of all matters and things necessary for the due and proper performance and completion of the Functions.

3.7 Co-ordination by Independent Certifier

The Independent Certifier will:

- (a) fully co-operate with the PA Parties;
- (b) carefully co-ordinate the Functions with the work and services performed by the PA Parties;
- (c) without limiting its obligations under Sections 3.4 and 3.7(b), perform the Functions so as to avoid unreasonably interfering with, disrupting or delaying the work and services performed by the PA Parties; and
- (d) provide copies to all PA Parties of all reports, communications, certificates and other documentation that it provides to any PA Party.

3.8 Conflict of Interest

The Independent Certifier warrants that:

- (a) at the date of signing this Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement; and
- (b) if, during the term of this Agreement, any such conflict or risk of conflict of interest arises, the Independent Certifier will notify the PA Parties immediately in writing of that conflict or risk of conflict and take such steps as may be required by each of the PA Parties to avoid or mitigate that conflict or risk.

3.9 Independent Certifier Personnel

- (a) Subject to Section 3.9(b) and 3.9(c), the Independent Certifier will use the partners, directors or employees described in Schedule 3 of this Agreement in connection with the performance of the Functions and such persons' services will be available for so long as may be necessary to ensure the proper performance by the Independent Certifier of the Functions. Such persons will have full authority to act on behalf of the Independent Certifier for all purposes in connection with this Agreement.
- (b) None of the persons listed in Schedule 3 will be removed or replaced unless he/she ceases to work as a partner in or director or employee of the Independent Certifier or he/she is unable to work because of death or illness. The Independent Certifier will notify the PA Parties of any such circumstances and will be responsible for finding a replacement who will previously have been approved in writing by the PA Parties.
- (c) Where the Independent Certifier considers that the partners, directors or employees described in Schedule 3 of this Agreement do not possess all of the experience or expertise necessary for the proper performance of the Functions, the Independent Certifier shall provide prompt written notice to the PA Parties detailing:
 - (i) the specific Functions for which the partners, directors or employees described in Schedule 3 of this Agreement do not possess the necessary experience or expertise;
 - (ii) the specific experience or expertise required for the proper performance of the applicable Functions;
 - (iii) the persons or firms proposed to be retained by the Independent Certifier (each a "**Subconsultant**"), including details of their relevant expertise and experience, the terms of their proposed engagement and the Subconsultant's proposed compensation terms.

The Independent Certifier shall not engage the services of a Subconsultant without first obtaining the written approval of the PA Parties, such approval not to be unreasonably withheld. The Independent Certifier agrees that

- (iv) the terms of this Agreement shall in all events be binding upon the Independent Certifier regardless of the existence of any inconsistent or contrary terms in any agreement between the Independent Certifier and any Subconsultant whether or not and without regard to the fact that the PA Parties may have directly or indirectly had notice of any such inconsistent term;
- (v) the Independent Certifier shall require each Subconsultant to comply with the terms and conditions of this Agreement to the extent applicable to the specific Functions performed by the Subconsultant; and
- (vi) the Independent Certifier is responsible and liable for the Functions performed by, and for the acts and omissions of, each Subconsultant and its personnel to the same degree as if the Functions were performed by, or the acts or omissions were those of, the Independent Certifier or its partners, directors or employees.

No agreement between the Independent Certifier and a Subconsultant creates any contractual or other legal relationship between any of the PA Parties and the Subconsultant.

4. Role of the PA Parties

4.1 Assistance

The PA Parties agree to co-operate with and provide reasonable assistance to the Independent Certifier to familiarize the Independent Certifier with all necessary aspects of the Project to enable the Independent Certifier to carry out its obligations under this Agreement.

4.2 Instructions in Writing

All instructions to the Independent Certifier by the PA Parties will be given in writing.

4.3 Information and Services

The PA Parties will each make available to the Independent Certifier, as soon as practicable from time to time, all information, documents and particulars necessary for the Independent Certifier to carry out the Functions, including such information, documents and particulars required in order for the Independent Certifier to:

- (a) determine the progress of the Project Work;
- (b) determine whether or not the conditions for issuance of each Commissioning Notice to Operate have been satisfied;

- (c) determine whether or not the criteria for Commercial Operation, Service Commencement, Bypass System Completion and Total Completion have been achieved;
- (d) certify: (i) that the Performance Verification Tests were conducted in accordance with the requirements of Appendix 13G [*Performance Verification Tests*] of Schedule 13 [*Performance and Payment Mechanisms*] of the Project Agreement; and (ii) the Achieved Performance; and
- (e) determine whether or not the criteria for Handback have been achieved,

and will provide copies of all such information, documents and particulars to the other PA Party.

4.4 Additional Information

If any information, documents or particulars are reasonably required to enable the Independent Certifier to perform the Functions and have not been provided by Project Co or BC Hydro, as the case may be, then:

- (a) the Independent Certifier will give notice in writing to Project Co's Representative or BC Hydro's Representative, as the case may be, of the details of the information, documents or particulars demonstrating the need and the reasons why they are required; and
- (b) Project Co or BC Hydro, as the case may be, will arrange the provision of the required information, documents or particulars.

4.5 Right to Enter and Inspect

Upon giving reasonable notice to Project Co's Representative, the Independent Certifier (and any person authorized by it) may enter and inspect the Site, Existing Facility, Facility and work in progress at any reasonable time in connection with the exercise or proposed exercise of rights under this Agreement, subject to:

- (a) observance of the reasonable rules of Project Co and BC Hydro as to safety and security for the Site, Existing Facility, Facility and work in progress;
- (b) not causing unreasonable delay to the carrying out of the Project Work or the BC Hydro Activities by reason of its presence at the Site, Existing Facility or Facility; and
- (c) not causing any damage to the Site, Existing Facility, Facility or work in progress.

4.6 PA Parties Not Relieved

Neither PA Party will be relieved from performing or observing its obligations, or from any other liabilities, under the Project Agreement as a result of either the appointment of, or any act or omission by, the Independent Certifier.

4.7 PA Parties not Liable

On no account will a PA Party be liable to another PA Party for any act or omission by the Independent Certifier whether under or purportedly under a provision of the Project Agreement, this Agreement or otherwise, provided that any such act or omission will not extinguish, relieve, limit or qualify the nature or extent of any right or remedy of either PA Party against or any obligation or liability of either PA Party to the other PA Party which would have existed regardless of such act or omission.

5. Suspension

5.1 Notice

The Functions (or any part) may be suspended at any time by the PA Parties:

- (a) if the Independent Certifier fails to comply with its obligations under this Agreement, immediately by the PA Parties giving joint notice in writing to the Independent Certifier; or
- (b) in any other case, by the PA Parties giving seven days joint notice in writing to the Independent Certifier.

5.2 Costs of Suspension

The Independent Certifier will:

- (a) subject to the Independent Certifier complying with Section 8, be entitled to recover the extra costs incurred by the Independent Certifier by reason of a suspension directed under Section 5.1(b) valued as a Functions Variation under Section 8; and
- (b) have no entitlement to be paid any costs, expenses, losses or damages arising from a suspension under Section 5.1(a).

5.3 Recommencement

The Independent Certifier will immediately recommence the carrying out of the Functions (or any part) on receipt of a joint written notice from the PA Parties requiring it to do so.

6. Insurance and Liability

6.1 Independent Certifier's Professional Indemnity Insurance

- (a) The Independent Certifier will, at its cost, have in place:
 - (i) professional errors and omissions insurance:
 - (A) in the amount of [REDACTED] per claim and in the aggregate, a deductible of not more than [REDACTED] per claim and from an insurer and on terms satisfactory to each of the PA Parties;

- (B) with a term and extended reporting period from the date of this Agreement until the expiration of 3 years from the cessation of the Functions; and
 - (C) covering liability which the Independent Certifier might incur as a result of a breach by it of its obligations or any breach of a duty owed by the Independent Certifier in a professional capacity to the PA Parties, or either of them, under or in connection with this Agreement or the provision of the Functions; and
 - (ii) at all times during the term of this Agreement, comprehensive general liability insurance in the amount of [REDACTED] per claim and in the aggregate, no deductible for personal injury or bodily injury, a deductible of not more than [REDACTED] per occurrence for property damage, naming BC Hydro as an additional insured and from an insurer and on terms satisfactory to each of the PA Parties.
- (b) The Independent Certifier will:
- (i) ensure that each of the insurance policies described in Section 6.1(a):
 - (A) bears an endorsement to the effect that the insurer will not affect any adverse material change or amendment to the policy or any cancellation of the policy without first giving at least 30 days prior written notice by registered mail to BC Hydro; and
 - (B) is obtained and maintained with reputable and Qualified Insurers licensed in British Columbia; and
 - (ii) provide copies of each of the insurance policies described in Section 6.1(a) to each of the PA Parties upon request.

6.2 Workers' Compensation Insurance

The Independent Certifier will, at its own cost and at all times during the term of this Agreement, insure its liability (including its common law liability) as required under any applicable workers compensation statute or regulation in relation to its employees engaged in the Functions.

7. Payment for Services

7.1 Fee

- (a) In consideration of the Independent Certifier performing the Functions in accordance with this Agreement, the PA Parties will pay the Independent Certifier the Fee.
- (b) The Fee includes all taxes (except for Goods and Services Tax), disbursements and expenses (including accommodation, car rental, equipment and travel expenses), overheads and profit to perform the Functions.

7.2 Payment of Fee

- (a) The PA Parties will each pay half the Fee to the Independent Certifier in accordance with the payment schedule specified in Schedule 2. The obligation on Project Co and BC Hydro to each pay half of the Fee to the Independent Certifier is not subject to joint and several liability and neither BC Hydro nor Project Co will have any liability whatsoever for the non payment by the other of any fees or costs payable by such other party under this Agreement.
- (b) Project Co acknowledges and agrees that if any amount due and payable by Project Co to the Independent Certifier is outstanding, the Independent Certifier will not have any obligation to Project Co to make any certification under the Project Agreement.

8. Functions Variations

8.1 Notice of Functions Variation

- (a) If the Independent Certifier believes, other than a “Functions Variation Order” under Section 8.3, that any direction by the PA Parties constitutes or involves a Functions Variation it will:
 - (i) within 7 days after receiving the direction and before commencing work on the subject matter of the direction, give notice to the PA Parties that it considers that the direction constitutes or involves a Functions Variation; and
 - (ii) within 21 days after giving the notice under Section 8.1(a)(i), submit a written claim to each of BC Hydro's Representative and Project Co's Representative which includes detailed particulars of the claim, the amount of the claim and how it was calculated.
- (b) Regardless of whether the Independent Certifier considers that such a direction constitutes or involves a Functions Variation, the Independent Certifier will continue to perform the Functions in accordance with this Agreement and all directions, including any direction in respect of which notice has been given under this Section.

8.2 No Adjustment

If the Independent Certifier fails to comply with Section 8.1, the Fee will not be adjusted as a result of the relevant direction.

8.3 Functions Variation Procedure

- (a) BC Hydro's and Project Co's Representatives may jointly issue a document titled “Functions Variation Price Request” to the Independent Certifier which will set out details of a proposed Functions Variation which the PA Parties are considering.

- (b) Within 7 days after the receipt of a "Functions Variation Price Request", the Independent Certifier will provide each of BC Hydro's and Project Co's Representatives with a written notice in which the Independent Certifier sets out the effect which the proposed Functions Variation will have on the Fee.
- (c) Each of BC Hydro's and Project Co's Representatives may then jointly direct the Independent Certifier to carry out a Functions Variation by written document titled "Functions Variation Order" which will state either that:
 - (i) the Fee is adjusted as set out in the Independent Certifier's notice; or
 - (ii) the adjustment (if any) to the Fee will be determined under Section 8.4.

8.4 Cost of Functions Variation

- (a) Subject to Section 8.2, the Fee will be adjusted for all Functions Variations or suspensions under Section 5.1(b) carried out by the Independent Certifier by:
 - (i) the amount (if any) stated in the "Functions Variation Order" in accordance with Section 8.3(c);
 - (ii) if Section 8.4(a)(i) is not applicable, an amount determined pursuant to the fee schedule for Functions Variations in Schedule 2; or
 - (iii) where such rates or prices are not applicable, a reasonable amount to be agreed between the PA Parties and the Independent Certifier or, failing agreement, determined by BC Hydro's and Project Co's Representatives jointly, acting reasonably.
- (b) Any reductions in the Fee will be calculated on the same basis as any increases.

9. TERM AND TERMINATION

9.1 Term

Subject to earlier termination, this Agreement will commence on the date of this Agreement and continue in full force until:

- (a) 60 days after the Termination Date; or
- (b) such later date as may be mutually agreed between the PA Parties and the Independent Certifier.

9.2 Notice of Breach

If the Independent Certifier commits a breach of this Agreement, the PA Parties may give written notice to the Independent Certifier:

- (a) specifying the breach; and
- (b) directing its rectification in the period specified in the notice being a period not less than 7 days from the date of service of the notice.

9.3 Termination for Breach

If the Independent Certifier fails to rectify the breach within the period specified in the notice issued under Section 9.2, the PA Parties may, without prejudice to any other rights of the PA Parties or either of them, immediately terminate this Agreement.

9.4 Termination for Financial Difficulty

The PA Parties may, without prejudice to any other rights which the PA Parties or either of them may have, terminate this Agreement immediately if:

- (a) events have occurred or circumstances exist which, in the opinion of the PA Parties, may result in or have resulted in insolvency or the control of the Independent Certifier passing to another body or corporation; or
- (b) the Independent Certifier has communications with its creditors with a view to entering into, or enters into, any form of compromise, arrangement or moratorium of any debts whether formal or informal, with its creditors.

9.5 Termination for Convenience

Notwithstanding anything to the contrary in this Agreement, the PA Parties may at any time terminate this Agreement upon 30 days written notice to the Independent Certifier.

9.6 Independent Certifier's Rights upon Termination for Convenience

Upon a termination under Section 9.5, the Independent Certifier will:

- (a) be entitled to be reimbursed by the PA Parties for the value of the Functions performed by it to the date of termination; and
- (b) not be entitled to any damages or other compensation in respect of the termination and (without limitation) any amount in respect of:
 - (i) the lost opportunity to earn a profit in respect of the Functions not performed at the date of termination; and
 - (ii) any lost opportunity to recover overheads from the turnover which would have been generated under this Agreement but for it being terminated.

9.7 Procedure upon Termination

Upon completion of the Independent Certifier's engagement under this Agreement or earlier termination of this Agreement (whether under Sections 9.3, 9.4 or 9.5 or otherwise) the Independent Certifier will:

- (a) co-operate with the PA Parties;
- (b) hand to the PA Parties all Project Material and all other information concerning the Project held or prepared by the Independent Certifier; and
- (c) as and when required by the PA Parties, meet with them and such other persons nominated by them with a view to providing them with sufficient information to enable the PA Parties to execute the Project or the persons nominated to provide the Functions.

9.8 Effect of Termination

Except as otherwise expressly provided in this Agreement, termination of this Agreement will be without prejudice to any accrued rights and obligations under this Agreement as at the date of termination (including the right of Project Co and BC Hydro to recover damages from the Independent Certifier).

9.9 Survival

Termination of this Agreement will not affect the continuing rights and obligations of Project Co or BC Hydro and the Independent Certifier under Sections 6, 7, 9.6, 9.7, 9.8, 10, 11.7, 11.8 and this Section 9.9 or under any other Section which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

10. INDEMNITY

10.1 Indemnity

The Independent Certifier will indemnify and save harmless the PA Parties, and each of them, and their respective employees, agents, officers and directors from and against any and all losses incurred or suffered by any of them by reason of, resulting from, in connection with, or arising out of:

- (a) the breach of any representation, warranty, covenant, term, duty or obligation of the Independent Certifier set out in or arising under this Agreement or the Project Agreement; or
- (b) any act or omission of the Independent Certifier in connection with the subject matters of this Agreement.

11. General

11.1 Entire Agreement

This Agreement and the Project Agreement constitute the entire agreement between the PA Parties and the Independent Certifier and supersede all communications, arrangements and agreements, either oral, written, made or entered into prior to the date of this Agreement between the PA Parties and the Independent Certifier with respect to the subject matter of this Agreement.

11.2 Negation of Employment

- (a) The Independent Certifier, its officers, employees, servants and agents and any other persons engaged by the Independent Certifier in the performance of the Functions will not by virtue of this Agreement or the performance of the Functions become in the service or employment of the PA Parties for any purpose.
- (b) The Independent Certifier will be responsible for all matters requisite as employer or otherwise in relation to such officers, employees, servants and agents and other persons who are engaged by the Independent Certifier.

11.3 Waiver

Failure by any PA Party or the Independent Certifier to enforce a provision of this Agreement will not be construed as a waiver by that PA Party or the Independent Certifier of any right in respect of that provision, or any other provisions of this Agreement.

11.4 Notices

Any document which is to be or may be issued or given to or served upon Project Co, BC Hydro or the Independent Certifier under this Agreement will be deemed to have been sufficiently issued or given to or served if:

- (a) it is delivered or sent by commercial courier, upon receipt;
- (b) if delivered by electronic mail or facsimile during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day provided that:
 - (i) the receiving party has, by electronic mail, facsimile or by hand delivery, acknowledged to the notifying party that it has received such notice; or
 - (ii) within 24 hours after sending the notice, the notifying party has also delivered a copy of such notice to the receiving party by hand delivery.

to the addresses set out below:

(i) if to BC Hydro:

[REDACTED]

Attention:

Fax:

E-mail:

(ii) if to Project Co:

InPower BC General Partnership

[REDACTED]

Attention:

Copy to :

Fax :

Tel :

E-mail:

With an electronic copy to each of the following:

[REDACTED]

(iii) if to Independent Certifier:



Fax No.:

Attention:

- (c) Any party may change its address for notice by notice given to the other parties in accordance with this Section.

11.5 Transfer and Assignment

(a) The Independent Certifier:

- (i) will not assign, transfer, mortgage, charge or encumber any right or obligation under this Agreement without the prior written consent of the PA Parties, which each PA Party may give or withhold in its absolute discretion; and

- (ii) agrees that any assignment, transfer, mortgage, charge or encumbrance will not operate to release or discharge the Independent Certifier from any obligation or liability under this Agreement.
- (b) For the purposes of this Section, an assignment will be deemed to have occurred where there is a Change in Control of the Independent Certifier after the date of this Agreement.
- (c) Each of the PA Parties may assign, transfer, mortgage, charge or encumber any right or obligation under this Agreement in accordance with the terms of the Project Agreement.

11.6 Governing Laws and Attornment

This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein without regard to conflicts of law principles that would apply a different body of law, and BC Hydro, Project Co and the Independent Certifier hereby irrevocably submit and attorn to the exclusive jurisdiction of the courts of that Province and all courts competent to hear appeals therefrom with respect to any action, suit, proceeding or dispute in connection with this Agreement.

11.7 Confidentiality

- (a) The Independent Certifier will ensure that:
 - (i) neither it nor any of its officers, employees, servants, Subconsultants and agents disclose, or otherwise make public, any Project Material or any other information or material acquired in connection with or during the performance of the Functions without prior written approval of the PA Parties; and
 - (ii) no Project Material is used, copied, supplied or reproduced for any purpose other than for the performance of the Functions under this Agreement.
- (b) The PA Parties may at any time require the Independent Certifier to give and to arrange for its officers, employees, servants, Subconsultants and agents engaged in the performance of the Functions to give written undertakings, in the form of confidentiality agreements on terms required by the PA Parties, relating to the non disclosure of confidential information, in which case the Independent Certifier will promptly arrange for such agreements to be executed and delivered.

11.8 Project Material

- (a) The PA Parties and the Independent Certifier agree that the Independent Certifier does not and will not have any rights, including any Intellectual Property, in any Project Material provided to the Independent Certifier or created or required to be created by any PA Party.
- (b) All title and ownership, including all Intellectual Property, in and to the Project Material created or required to be created by the Independent Certifier as part of, or for the

purposes of performing the Functions, is hereby assigned jointly to BC Hydro and Project Co on creation, or where such title, ownership and Intellectual Property cannot be assigned before creation of the Project Material, it will be assigned to BC Hydro and Project Co on creation. In addition, to the extent that copyright may subsist in such Project Material so created by the Independent Certifier, the Independent Certifier hereby waives all past, present and future moral rights therein and the Independent Certifier will ensure that any agent, Subconsultant or employee of Independent Certifier will have waived all such moral rights.

- (c) The Independent Certifier will do all such things and execute all such documents as reasonably requested by either of the PA Parties in order to confirm or perfect the assignment of Intellectual Property in the Project Material referred to in Section 11.8(b).

11.9 Time of the Essence

Time will be of the essence of this Agreement and of the transactions contemplated by this Agreement.

11.10 Amendment

No change or modification of this Agreement will be valid unless it is in writing and signed by each party to this Agreement.

11.11 Severability

If any provision of this Agreement will be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality will not prejudice or affect the validity, enforceability or legality of the remaining provisions of this Agreement.

11.12 Enurement

Subject to the restrictions on transfer contained in this Agreement, this Agreement will enure to the benefit of and be binding on the parties and their respective heirs, executors, administrators, successors and assigns.

11.13 Counterparts

This Agreement may be executed in any number of counterparts and all counterparts taken together will constitute one and the same instrument.

[remainder of this page intentionally left blank]

[signature pages to follow]

IN WITNESS WHEREOF BC Hydro, Project Co and the Independent Certifier have executed this Agreement.

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

By:

Name:

[REDACTED]

Title: Executive Vice-President, Generation

INPOWER BC GENERAL PARTNERSHIP, BY ITS PARTNERS:

INPOWER BC1 PARTNER INC.

By:

Name: [REDACTED]
Title:

By:

Name: [REDACTED]
Title:

INPOWER BC2 PARTNER INC.

By:

Name: [REDACTED]
Title:

By:

Name: [REDACTED]
Title:

[INDEPENDENT CERTIFIER]:

By: _____

Name:

Title:

By: _____

Name:

Title:

SCHEDULE 1

FUNCTIONS

The Independent Certifier will, subject to the provisions of the Project Agreement, provide the services as set out below. In the event of a conflict between any provision of this Agreement, including this Schedule 1, and a provision of the Project Agreement, the Project Agreement will prevail.

1. GENERAL

1.1 The Independent Certifier will do everything expressed in, or reasonably to be implied from, the Project Agreement as the functions of the Independent Certifier. The Independent Certifier acknowledges that the following descriptions are a high level overview of its functions and it is responsible for fulfilling all of the Independent Certifier's functions under the Project Agreement, whether described herein or not. Without limiting the generality of the foregoing, these obligations include, but are not limited to, those described in the main body of the Project Agreement and Schedules 5 [*Design and Construction Protocols*], 6 [*Design and Construction Specifications*], 7 [*Services*], 13 [*Performance and Payment Mechanisms*] and 29 [*Independent Certifier*] of the Project Agreement.

1.2 Without limiting the other provisions of this Agreement and the Project Agreement, and without prejudice to the generality of Section 1.1 of this Schedule, in order for the Independent Certifier to perform in accordance with the standards required of the Independent Certifier under this Agreement, the Independent Certifier shall, amongst other things, provide the following services and perform the following functions:

(a) throughout the period from the Effective Date to the Total Completion Date, the Independent Certifier will:

(i) consult with the Design-Builder and others involved in the Design; and

(ii) conduct inspections of the Construction,

as the Independent Certifier determines is required for purposes of the Independent Certifier's functions under the Project Agreement, and will no later than 3 Business Days after receiving each monthly report pursuant to Section 13.1 [*Monthly Reports for Progress Payments*] of Schedule 13 [*Performance and Payment Mechanisms*] of the Project Agreement prepare and deliver to BC Hydro and Project Co a monthly written report containing a description of:

(iii) the Design and Construction completed in the previous month;

(iv) the progress of the Design and Construction relative to the updated Works Schedule, with an overview analysis of variances and confirmation of the, then current, Available Tunnel Float Balance; and

- (v) any elements of the Facility that for any reason vary from the requirements of the Project Agreement, with particular reference to the requirements of Schedule 5 *[Design and Construction Protocols]* and Schedule 6 *[Design and Construction Specifications]* of the Project Agreement.
- (b) throughout the Services Period, the Independent Certifier will:
- (i) consult with BC Hydro, the Service Provider and others involved in the Services; and
 - (ii) conduct inspections and Conditions Assessments of the Generation Systems and the Facility,
- as the Independent Certifier determines is required for purposes of the Independent Certifier's functions under the Project Agreement
- (c) The Independent Certifier will, promptly after the end of each month during the period between the Effective Date and the Total Completion Date and promptly upon request by Project Co in relation to a payment under Section 3.1 *[Calculation of Progress Payments]* of Schedule 13 *[Performance and Payment Mechanisms]* of the Project Agreement, or any other provision of this Agreement entitling Project Co to payment for performance of the Project Work, prepare and deliver to BC Hydro and Project Co a certificate certifying the Eligible Costs incurred by Project Co, and any other amounts payable by BC Hydro pursuant to this Agreement in respect of the performance of the Project Work, during that applicable month (or portion thereof, as the case may be).
- (d) The Independent Certifier will:
- (i) in accordance with Section 11.1.5 *[Deficiency List]* of Schedule 5 *[Design and Construction Protocols]* of the Project Agreement, with respect to an application for a Certificate of Commercial Operation for each Generating Unit, cooperate with Project Co and BC Hydro to prepare the complete list of Commercial Operation Deficiencies;
 - (ii) in accordance with Section 11.4.5 *[Deficiency List]* of Schedule 5 *[Design and Construction Protocols]* of the Project Agreement, with respect to an application for the Certificate of Service Commencement, cooperate with Project Co and BC Hydro to prepare the complete list of Service Commencement Deficiencies;
 - (iii) in accordance with Section 11.3.5 *[Deficiency List]* of Schedule 5 *[Design and Construction Protocols]* of the Project Agreement, with respect to an application for the Certificate of Bypass System Completion, cooperate with Project Co and BC Hydro to prepare the complete list of Bypass System Deficiencies; and
 - (iv) in accordance with Section 11.5.5 *[Deficiency List]* of Schedule 5 *[Design and Construction Protocols]* of the Project Agreement, with respect to an application for the Certificate of Total Completion, cooperate with Project Co and BC Hydro to prepare the complete list of Total Completion Deficiencies and prepare a reasonable estimate of the cost (including Outage costs calculated in accordance with Schedule

13 *[Performance and Payment Mechanisms]* of the Project Agreement) to correct all such Total Completion Deficiencies and complete any outstanding Design and Construction required for Total Completion.

2. COMMERCIAL OPERATION

The Independent Certifier will fulfil its obligations in respect of Commercial Operation in accordance with Section 11.1 *[Requirements for Commercial Operation of a Generating Unit]* of Schedule 5 *[Design and Construction Protocols]* of the Project Agreement, including, but not limited to:

No later than 5 Business Days after application by Project Co for a Certificate of Commercial Operation for a Generating Unit and satisfaction of the other requirements in Section 11.1.4 *[Inspection for Commercial Operation]* of Schedule 5 *[Design and Construction Protocols]* of the Project Agreement, the Independent Certifier will, in cooperation with Project Co's Representative and BC Hydro's Representative, make an inspection of the Facility, verify completion of all requirements for Commercial Operation of the applicable Generating Unit and review the basis for Project Co's application for Commercial Operation of the applicable Generating Unit. Within 5 Business Days after commencement of the inspection under Section 11.1.4 *[Inspection for Commercial Operation]* of Schedule 5 *[Design and Construction Protocols]* of the Project Agreement:

- (a) issue the Commissioning Notice to Operate and the Certificate of Commercial Operation for the applicable Generating Unit, stating the applicable Commercial Operation Date, to BC Hydro and Project Co and sign the draft form of Commissioning Notice to Operate confirming that: (i) the Generating Unit and all associated equipment, components, systems and sub-systems are safe to operate despite the identified Defects; and (ii) the Generating Unit and all associated equipment, components, systems and sub-systems meet the applicable Project Requirements, subject to correction of the applicable Commercial Operation Deficiencies; or
- (b) notify Project Co and BC Hydro's Representative of its decision not to sign the draft Commissioning Notice to Operate and issue the Certificate of Commercial Operation for the applicable Generating Unit and state the reasons in detail for such decision, including what further work may be required to achieve Commercial Operation of the applicable Generating Unit.

3. SERVICE COMMENCEMENT

The Independent Certifier will fulfil its obligations in respect of Service Commencement in accordance with Section 11.4 *[Service Commencement]* of Schedule 5 *[Design and Construction Protocols]* of the Project Agreement, including, but not limited to:

No later than 5 Business Days after application by Project Co for a Certificate of Service Commencement and satisfaction of the other requirements in Section 11.4.4 *[Inspection for Service Commencement]* of Schedule 5 *[Design and Construction Protocols]* of the Project Agreement, the Independent Certifier will, in cooperation with Project Co's Representative and BC Hydro's Representative, make an inspection of the Facility, verify completion of all requirements for Service Commencement and review the basis for Project Co's application for Service Commencement. Within 5 Business Days after commencement of

the inspection under Section 11.4.4 [*Inspection for Service Commencement*] of Schedule 5 [*Design and Construction Protocols*] of the Project Agreement:

- (a) issue the Certificate of Service Commencement for the Facility, stating the Service Commencement Date, to BC Hydro and Project Co and sign the draft form of Commissioning Notice to Operate confirming that: (i) the Facility is safe to operate despite any identified Defects; and (ii) the Facility meets the applicable Project Requirements, subject to correction of the Service Commencement Deficiencies; or
- (b) notify Project Co and BC Hydro's Representative of its decision not to sign the draft Commissioning Notice to Operate and issue the Certificate of Service Commencement and state the reasons in detail for such decision, including what further work may be required to achieve Service Commencement.

4. BYPASS SYSTEM COMPLETION

The Independent Certifier will fulfil its obligations in respect of Bypass System Completion in accordance with Section 11.3 [*Requirements for Bypass System Completion*] of Schedule 5 [*Design and Construction Protocols*] of the Project Agreement, including, but not limited to:

No later than 5 Business Days after application by Project Co for a Certificate of Bypass System Completion and satisfaction of the other requirements in Section 11.3.4 [*Inspection for Bypass System Completion*] of Schedule 5 [*Design and Construction Protocols*] of the Project Agreement, the Independent Certifier will, in cooperation with Project Co's Representative and BC Hydro's Representative, make an inspection of the Facility, verify completion of all requirements for Bypass System Completion and review the basis for Project Co's application for Bypass System Completion. Within 5 Business Days after commencement of the inspection under Section 11.3.4 [*Inspection for Bypass System Completion*] of Schedule 5 [*Design and Construction Protocols*] of the Project Agreement:

- (a) issue the Certificate of Bypass System Completion, stating the Bypass System Completion Date, to BC Hydro and Project Co and sign the draft form of Commissioning Notice to Operate confirming that: (i) the Bypass System and all associated equipment, components, systems and sub-systems are safe to operate despite any identified Defects; and (ii) the Bypass System and all associated equipment, components, systems and sub-systems meet the applicable Project Requirements, subject to correction of the Bypass System Deficiencies; or
- (b) notify Project Co and BC Hydro's Representative of its decision not to sign the draft Commissioning Notice to Operate and issue the Certificate of Bypass System Completion and state the reasons in detail for such decision, including what further work may be required to achieve Bypass System Completion.

5. TOTAL COMPLETION

The Independent Certifier will fulfil its obligations in respect of Total Completion in accordance with Section 11.5 [*Requirements for Total Completion*] of Schedule 5 [*Design and Construction Protocols*] of the Project Agreement, including, but not limited to:

No later than 5 Business Days after application by Project Co for a Certificate of Total Completion and satisfaction of the other requirements in Section 11.5.4 [*Inspection for Total Completion*] of Schedule 5 [*Design and Construction Protocols*] of the Project Agreement, the Independent Certifier will, in cooperation with Project Co's Representative and BC Hydro's Representative, make an inspection of the Facility, verify completion of all requirements for Total Completion and review the basis for Project Co's application for Total Completion. Within 5 Business Days after commencement of the inspection under Section 11.5.4 [*Inspection for Total Completion*] of Schedule 5 [*Design and Construction Protocols*] of the Project Agreement:

- (a) issue the Certificate of Total Completion, stating the Total Completion Date, to BC Hydro and Project Co; or
- (b) notify Project Co and BC Hydro's Representative of its decision not to issue the Certificate of Total Completion and state the reasons in detail for such decision, including what further work may be required to achieve Total Completion.

6. PERFORMANCE GUARANTEE EVALUATION

No later than 10 Business Days after completion of the Performance Verification Tests, the Independent Certifier will prepare and submit to the PA Parties a written report certifying:

- (a) that all test equipment used in connection with the Performance Verification Tests was accurately calibrated;
- (b) that all of the Performance Verification Tests were properly executed;
- (c) that all data from the Performance Verification Tests was accurately measured and recorded; and
- (d) the measurement and calculation of the Achieved Performance,

all in accordance with the requirements of Appendix 13G [*Performance Verification Tests*] of Schedule 13 [*Performance and Payment Mechanisms*] of the Project Agreement.

7. CONDITION ASSESSMENT EVALUATIONS

- (a) No later than 20 Business Days after receipt of written request from Project Co, the Independent Certifier will, in cooperation with Project Co's Representative and BC Hydro's Representative, make an inspection of the Facility to determine the condition of the Generation Systems and/or the Support Systems, Buildings and Lands, as applicable.

- (b) Within a further 30 Business Days after such inspection and review, the Independent Certifier will prepare and submit to the PA Parties:
- (i) a Condition Assessment Report with respect to the condition of the Generating Systems;
 - (ii) where applicable, a Handback Survey report with respect to the condition of the Support Systems, the Buildings and the Lands; and
 - (iii) a detailed assessment of the defect rectification cost, including materials, labour and Outage requirements (based on the Outage rates set out in Schedule 13 *[Performance and Payment Mechanisms]* of the Project Agreement.

SCHEDULE 2

FEE

SCHEDULE 3

INDEPENDENT CERTIFIER PERSONNEL

