

BC HYDRO

STANDARD ELECTRICITY PURCHASE AGREEMENT

FOR CUSTOMER-BASED GENERATION

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BC HYDRO

**STANDARD ELECTRICITY PURCHASE AGREEMENT
FOR CUSTOMER-BASED GENERATION**

THIS ELECTRICITY PURCHASE AGREEMENT (“EPA”), is made as of • , 2003.

BETWEEN:

_____, a company incorporated under the
laws of _____ with its office at _____

(“Seller”)

[Note: The standard EPA is based on the Seller being a company. If the Seller consists of a partnership, joint venture, or consortium or otherwise comprises more than one legal entity, then this form will be modified accordingly. Modifications will include a provision under which entities comprising the Seller are jointly and severally, and not severally only, liable to the Buyer under this EPA, except that persons who hold an equity interest in the Seller of 20% or less as members of a joint venture or similar entity may limit their liability to a 20% several share, provided that one or more other persons hold an equity interest greater than 20%, each of whom will be jointly and severally, and not severally, liable under the EPA. Modifications will also include representations and warranties of the type set out in Section 18.1 particular to each entity, recognition that bankruptcy or insolvency of one entity comprising the Seller means that the Seller is “Bankrupt or Insolvent” for purposes of this EPA and other necessary modifications to reflect the character and multiplicity of entities comprising the Seller.]

AND:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY, with
its Head Office at 333 Dunsmuir Street, Vancouver, B.C. V6B 5R3.

(“Buyer”)

WHEREAS:

A. ~~The Generation division~~Distribution business unit of British Columbia Hydro and Power Authority is responsible for power procurement, including the purchase of electricity from independent power producers. ~~The Transmission Authority is a division of the Buyer (referred to as the Transmission / Distribution division) and is responsible for interconnection of independent power producers’ generation plants to the transmission / distribution system. The Generation division and the Transmission / Distribution division of British Columbia Hydro and Power Authority operate as separate business units and will be treated as though they were separate and non-affiliated entities for the purposes of interpreting and applying this EPA, the Interconnection Agreement and the Facilities Agreement.~~

B. The Buyer issued a request for qualifications on May 31, 2002 and a call for tenders on September 6, 2002 for the sale of electricity to the Buyer from customer-based generation plants.

C. A Qualification Statement was submitted in respect of the Project in response to the Buyer's request for qualifications on or about • and Tender Forms were submitted in response to the Buyer's Call for Tenders on or about •.

D. The Seller intends to carry out the Project for the purpose of generating electrical energy some, or all, of which will be available for sale to the Buyer.

E. The Seller desires to sell, and the Buyer desires to purchase, electrical energy generated by the Seller's Plant on the terms, conditions and exceptions set forth in this EPA.

1. INTERPRETATION

1.1 **Definitions** – Appendix 1 sets out or references the definitions applicable to certain words and expressions used in this EPA.

1.2 **Appendices** – Attached to and forming part of this EPA are the following appendices:

Appendix 1	-	Definitions
Appendix 2	-	Contracted Capacity
Appendix 3	-	Price
Appendix 4	-	Liquidated Damages
Appendix 5	-	Seller's Plant Data
Appendix 6	-	Sample Form of Letter of Credit
Appendix 7	-	Sample Form of Guarantee
Appendix 8	-	Sample Form of Consent Agreement
Appendix 9	-	Calculation of GHG Intensity of Seller's Plant
Appendix 10	-	Special Terms and Conditions
Appendix 11	-	Green Criteria and Obligations

[Note: Appendices 10 and 11 will be included if or to the extent applicable to particular Projects.]

1.3 **Headings** – The division of this EPA into Articles, Sections, subsections, paragraphs and Appendices and the insertion of headings are for convenience of reference only and do not affect the interpretation of this EPA.

1.4 **Plurality and Gender** – Words in the singular include the plural and vice versa. Words importing gender include the masculine, feminine and neuter genders.

1.5 **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 20.7, 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 non-exclusive jurisdiction in respect of any Proceeding.

1.6 **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.

1.7 **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.

1.8 **Currency** – References to dollars or \$ means Canadian dollars, unless otherwise stated.

1.9 **Reference Indices** – If any 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 available, approximates the intent and purpose of the index, tariff or quotation that has so ceased or changed, as determined by written agreement between the Parties, or failing agreement, by arbitration under Section 20.7.

1.10 **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.

1.11 **Additional Interpretive Rules** – For the purposes of this EPA, except as otherwise expressly stated:

- (a) “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;
- (b) 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, subsection or other subdivision;
- (c) 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;
- (d) 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 or withheld in the unfettered discretion of the Party of whom it is requested, unless otherwise expressly stated;
- (e) unless otherwise expressly stated in this EPA, 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 shall be entitled to pursue any and all of its remedies concurrently, consecutively and alternatively; and
- (f) the provisions of Appendix 10, if any, govern over the other provisions of this EPA, and all provisions of this EPA are mutually explanatory of one another.

2. TERM

2.1 **Term** – The term (“Term”) of this EPA commences on the date of this EPA as set out on page one and continues until the • anniversary of COD, unless it is terminated earlier as authorized under this EPA.

3. CONDITIONS SUBSEQUENT AND INITIAL PERIOD

3.1 **Termination for Failure of Conditions Subsequent** – Either Party, by notice to the other Party, may terminate this EPA if the following conditions are not satisfied or waived on or before the Initial Period Expiry Date:

- (a) the Seller has obtained, or caused to be obtained, all Material Permits;
- (b) the Seller or another Person or Persons (in this subsection called the “owner”) , has acquired, or holds the right to acquire, title or other long term tenure to the site of the Seller’s Plant for a term not less than the Term, on terms permitting the Seller to construct and operate the Seller’s Plant during the Term as contemplated hereunder, and in the case of the owner having acquired or having the right to acquire such title or tenure: (i) the Seller and the owner have entered into an agreement permitting the Seller to construct and operate the Seller’s Plant during the Term as contemplated hereunder, and (ii) the Buyer, the Seller and the owner have entered into an agreement which contains such amendments to this EPA and other terms and conditions as the Buyer, acting reasonably, may require to ensure that the benefit of this EPA to the Buyer is fully preserved;
- (c) the Seller is lawfully exempt from regulation as a “public utility”, as defined in the UCA with respect to the Seller’s Plant, the sale of Electricity and the performance by the Seller of its obligations under this EPA;
- (d) the Seller and the Transmission Authority have entered into:
 - (i) a new, or an amended, Interconnection Agreement for the interconnection of the Seller’s Plant to the Transmission Authority’s System; and
 - (ii) a Facilities Agreement;
- (e) the Seller has arranged financing for amounts which, together with equity investments, are sufficient to fund the design, construction and commissioning of the Project, on terms satisfactory to the Seller; and
- (f) the Seller has given notice to the Buyer that it has satisfied each condition in this Section 3.1, and has provided to the Buyer copies of the documents required to demonstrate satisfaction of the conditions in subsections 3.1(a), (b) and (c).

3.2 **Reasonable Efforts and Waivers** – The Seller shall use all commercially reasonable efforts to satisfy, as soon as practicable, the conditions in Section 3.1. The conditions set out in subsection 3.1(d) and (e) are solely for the benefit of the Seller and may be waived only by the Seller. All other conditions are for the mutual benefit of the Parties and may only be waived jointly by the Parties. If a condition in

Section 3.1 is satisfied or waived after the Initial Period Expiry Date and prior to that time this EPA has not been terminated, then neither Party will thereafter have the right to terminate this EPA as a result of that condition not being satisfied or waived on or before the Initial Period Expiry Date. If this EPA is terminated under Section 3.1, the provisions of Sections 13.2 or 13.3 and 15.3 apply.

3.3 Extension of Initial Period – If, despite the Seller using all commercially reasonable efforts, one or more of the conditions in Section 3.1 is not satisfied or waived by the date that is 180 days after the commencement of the Term, and if the Seller provides to the Buyer before that date a written request to extend the Initial Period with respect only to those conditions that have not been satisfied or waived prior to that date and a written plan setting out the means by which the Seller intends to satisfy such conditions and the Buyer is satisfied, acting reasonably, that the Seller has a reasonable prospect of satisfying such conditions, the Buyer shall agree to extend the Initial Period with respect only to those conditions for a further 90 days from the date that is 180 days after the commencement of the Term. If, despite the Seller using all commercially reasonable efforts, one or more of the conditions in Section 3.1 is not satisfied or waived by the expiry of that 90 day extension, and if the Seller provides to the Buyer before that date a written request to extend the Initial Period with respect only to those conditions that have not been satisfied or waived prior to that date and a written plan setting out the means by which the Seller intends to satisfy such conditions and the Buyer is satisfied, acting reasonably, that the Seller has a reasonable prospect of satisfying such conditions, the Buyer shall agree to extend the Initial Period with respect only to those conditions for a further 90 days from the date that is 270 days after the commencement of the Term.

3.4 BCUC – Either Party may terminate this EPA if:

- (a) at any time before the Initial Period Expiry Date, the BCUC issues an order relating to this EPA pursuant to the UCA, all rights of review and appeal in respect thereof have been exercised or expired, and the terms of such order are not acceptable to either or both Parties could reasonably be expected to have an adverse effect on the Party seeking to terminate the EPA; or
- (b) at any time before the Initial Period Expiry Date, a proceeding has commenced pursuant to the UCA relating to this EPA and is pending on the Initial Period Expiry Date and that proceeding could reasonably be expected to have a material an adverse effect on the benefit of this EPA to the Party seeking to terminate the EPA under this Section 3.4.

A Party entitled to terminate this EPA under this Section 3.4 may do so by giving notice to terminate to the other Party within 30 days after the right to terminate arises under subsection 3.4(a) or 3.4(b) as the case may be. If a Party does not terminate within that 30 day period, it is deemed to have waived that right to terminate. If this EPA is terminated under this Section 3.4, the provisions of Sections 13.2 and 15.3 apply.

3.5 Increase in Contracted Capacity – The Seller, by notice to the Buyer given before the earlier of (i) fulfillment or waiver of the conditions in Section 3.1, and (ii) the Initial Period Expiry Date, may indicate the Seller's intent to increase the Contracted Capacity by a percentage not exceeding 20% and/or amend the monthly profile for delivery of the Contracted Capacity specified in Part II of Appendix 2 provided that in the case of a proposed amendment to the monthly delivery profile, the numbers proposed to be inserted in the revised Part II of Appendix 2 must average to 100% when weighted by the number of days in the month. Immediately following delivery of such notice, the Seller shall make application to the Transmission Authority to complete such studies as may be required to determine any additional costs

(including interconnection and system benefit costs and energy losses) resulting from the proposed increase in Contracted Capacity and/or amendment to the monthly delivery profile and the Seller shall be responsible for all such additional costs. The Seller shall, by notice to the Buyer given by the date that is 180 days after the date of delivery of the notice of intent to increase the Contracted Capacity, and/or amend the monthly delivery profile (i) withdraw the notice of intent to increase the Contracted Capacity and/or amend the monthly delivery profile or (ii) confirm the increase in the Contracted Capacity up to the maximum amount specified in this Section 3.5 and/or amend the monthly delivery profile subject to the limitations set out in this Section 3.5 in which case each amount of average annual Contracted Capacity set out in Part I of Appendix 2 will be deemed to be increased by the percentage specified in the Seller's notice and/or the monthly delivery profile set out in Part II of Appendix 2 will be deemed to be amended to reflect the delivery profile specified in the Seller's notice. The Seller shall include with its notice a copy of Appendix 2, ~~Part I,~~ revised to reflect the result of the notice. If the Seller fails to give the notices required by this Section 3.5, the Contracted Capacity shall be the amount specified in Appendix 2 of this EPA and the monthly delivery profile shall be as specified in Part II of Appendix 2 of this EPA. No proposed change in the Contracted Capacity will take effect until the Seller has delivered to the Buyer additional Development Security to reflect the increase in Contracted Capacity, calculated in the manner set out in Section 13.1.

4. PROJECT DEVELOPMENT

4.1 **Project Implementation** – The Seller shall diligently carry out and complete the Project.

4.2 **Location and Construction of Seller's Plant** – The Seller shall cause the Project to be located and constructed in accordance with the description in Appendix 5.

4.3 **Development Reports** – On each of January 1, April 1, July 1 and October 1, commencing with the earliest of those dates after the commencement of the Term and continuing until COD, the Seller shall deliver to the Buyer a report on the progress of Project development, including the status of:

- (a) the financing for the Project;
- (b) the Interconnection Agreement and Facilities Agreement;
- (c) all Permit applications and any regulatory activities relative to the Project and operation of the Seller's Plant;
- (d) the land tenure for the Seller's Plant;
- (e) the design, engineering, equipment procurement, construction and commissioning of the Project; and
- (f) the expected COD.

4.4 **Delay in COD** – If the Seller expects that COD will be achieved at a date other than the Target COD, the Seller shall give notice to the Buyer as soon as reasonably practicable and, in any event, not later than in the next report required under Section 4.3, and the Seller shall state the reasons for the change in the expected COD.

4.5 **Target COD** – Notwithstanding the foregoing, the “Target COD”, as that term is defined and used in this EPA, is not subject to change for any reason including Force Majeure.

5. COD

5.1 **Efforts to Achieve COD** – The Seller shall use all commercially reasonable efforts to achieve COD by the Target COD. If, despite such efforts, the Seller is not able to achieve COD by the Target COD, the Seller shall continue to use all commercially reasonable efforts to achieve COD at the earliest date practicable thereafter.

5.2 **Requirements for COD** – COD is the commencement of the hour immediately following the hour of the day in which all of the following have occurred:

- (a) the Seller’s Plant has generated Electricity for 72 continuous hours at an uninterrupted rate not less than 95% of Plant Capacity;
- (b) the Seller is not in material default under this EPA, any Permit, the Interconnection Agreement or the Facilities Agreement; and
- (c) the Seller has delivered to the Buyer:
 - (i) unless previously delivered by the Seller, fully executed copies of the Interconnection Agreement and the Facilities Agreement;
 - (ii) Declaration of Compatibility-Generator (Operating), or such other document of similar effect as may be substituted therefor, issued by the Transmission Authority to the Seller under the Interconnection Agreement;
 - (iii) data from the Metering Equipment sufficient to demonstrate compliance by the Seller with subsection 5.2(a);
 - (iv) the Long-Term Operating Plan;
 - (v) the Annual Operating Plan for the period from COD to October 31 next following COD or to the date that is 90 days after COD, whichever is later;
 - (vi) the Operating Security; and
 - (vii) copies of all Permits required to operate the Seller’s Plant.

provided that a COD Certificate is delivered within 15 days after the date on which the last of the requirements set out above is satisfied. If a COD Certificate is not delivered by that date, COD will occur at 12:00 p.m. on the date of delivery to the Buyer of the COD Certificate.

5.3 **Buyer Right to Observe** – The Buyer may have its representatives present at the Seller’s Plant to observe the 72 hour test of the Seller’s Plant under subsection 5.2(a). The Seller shall provide reasonable advance notice to the Buyer of any proposed testing under subsection 5.2(a).

5.4 **COD Disputes** – The Buyer may, by notice to the Seller within 15 days after the date of delivery to the Buyer of a COD Certificate, contest the COD Certificate on the grounds that the Seller has not satisfied the requirements for COD in Section 5.2. If the Buyer does not deliver a notice to the Seller contesting the COD Certificate within that 15 day period, COD will be deemed to have occurred as provided in section 5.2.

6. OPERATION OF SELLER’S PLANT

6.1 **Owner and Operator** – The Seller, or the “owner” described in subsection 3.1(b), shall own the Seller’s Plant and the Seller shall operate the Seller’s Plant using qualified and experienced persons who are employees of the Seller or of the Seller’s contract operator.

6.2 **Customer Involvement** – The Seller shall make all commercially reasonable efforts to ensure that the Customer remains involved with the Seller’s Plant as described in Appendix 5 until the 5th anniversary of COD.

6.3 **Modification to Seller’s Plant** – The Seller shall not make, without the Buyer’s prior consent, any modification or addition, or series of modifications or additions, to the Seller’s Plant which is likely to have a materially adverse effect on the quality or reliability of deliveries of the Contracted Capacity to the Buyer, provided that the Buyer will not unreasonably withhold its consent to any modification or addition required to comply with any change in laws or policy described in subsection (rr)(i) of Appendix 1.

6.4 **Standard of Operation** – The Seller shall design, construct, interconnect to the Transmission Authority’s System, commission, operate and maintain the Seller’s Plant in compliance with: (i) all applicable laws; (ii) the terms and conditions of all Permits and land tenure agreements issued to the Seller in connection with the Seller’s Plant; (iii) Good Operating Practice; (iv) the BC Hydro Code of Conduct Guidelines attached to the CFT; and (v) the terms and conditions of this EPA, the Interconnection Agreement and the Facilities Agreement. Without limiting Section 7.2 but subject to subsection 7.8(a); the Seller shall make commercially reasonable efforts to operate the Seller’s Plant in a manner that ensures (i) ~~the Seller shall operate the Seller’s Plant in a manner that ensures~~ delivery at the POD of a consistent amount of Electricity within each hour commencing at COD and continuing throughout the remainder of the Term; and (ii) ~~the Seller shall make commercially reasonable efforts to operate the Seller’s Plant in a manner that ensures~~ delivery at the POD on an instantaneous basis from COD throughout the remainder of the Term of an amount of Eligible Electricity equal to not more than 110% of the Contracted Capacity and not less than 90% of the Contracted Capacity.

6.5 **Planned Outages** – The Seller shall ensure that no Planned Outage occurs during the Winter Months without the Buyer’s prior consent. The Seller shall make reasonable efforts to coordinate all Planned Outages with the Buyer’s requirements. The Buyer may require the Seller to reschedule any Planned Outage, provided that the rescheduling is consistent with Good Operating Practice and does not have a materially adverse effect on the operation of the Seller’s Plant.

6.6 **Records Maintenance** – During the Term and following expiry of the Term until such time as both Parties have fulfilled all outstanding obligations and resolved all outstanding disputes under this EPA, the Seller shall prepare and maintain all records required to properly administer this EPA, including Electricity generation records and operating logs, a log book of all Outages and other reductions in Electricity output (specifying the date, time, duration and reasons for each Outage and each reduction in Electricity output), relay target reports, steam flow records, if applicable, maintenance reports, invoice



support records, documents concerning compliance with Permits and applicable laws, fuel source data sufficient to calculate the GHG Intensity LDs and all other records and logs consistent with Good Operating Practice.

6.7 **Reports to the Buyer** – The Seller shall deliver at the times specified below the following documents, reports, plans and notices to the Buyer:

- (a) **Long Term Operating Plan** – Not less than 60 days prior to Target COD, the Seller shall provide to the Buyer an operating plan for the Seller’s Plant for the Term commencing at COD, including the long term major maintenance schedule. The Seller shall promptly provide the Buyer with copies of any amendments or modifications to the Long Term Operating Plan. The Long Term Operating Plans are intended to assist the Buyer in planning activities and are not guarantees of the timing of Planned Outages;
- (b) **Annual Operating Plan** – On or before August 31 in each year during the Term, the Seller shall provide to the Buyer an operating plan for the Seller’s Plant for the 12 month period commencing on the next succeeding November 1. The plan shall include the expected deliveries of Contracted Capacity on a monthly basis and a schedule of Planned Outages for that 12 month period. Annual Operating Plans are intended to assist the Buyer in planning activities and are not guarantees of the timing of deliveries of Contracted Capacity or Planned Outages;
- (c) **Notice of Forced Outages and Maintenance Outages** - The Seller shall promptly notify the Buyer of any Forced Outage or Maintenance Outage of the Seller’s Plant;
- (d) **Notice of Planned Outages** - The Seller shall give the Buyer not less than 60 days prior notice of any amendment of its Annual Operating Plan, including any change in scheduling, or cancellation of, a Planned Outage; and
- (e) **Interconnection Agreement and Facilities Agreement Defaults**– The Seller shall give promptly to the Buyer a copy of any notice of a breach of, or default under, the Interconnection Agreement or the Facilities Agreement, whether given or received by the Seller.

7. PURCHASE AND SALE OF ELECTRICITY

7.1 **Pre-COD Purchase of Electricity** – Subject to subsection 7.8(b), in each hour prior to COD, the Buyer will accept delivery at the POD of, and, subject to subsection 7.8(a), the Seller will deliver to the Buyer at the POD, all Pre-COD Eligible Electricity. No price is payable by the Buyer for any Pre-COD Eligible Electricity, except only as set out in Appendix 3, Part II, Section 2.2.

7.2 **Post-COD Sale of Electricity** – Subject to subsection 7.8(a), in each hour during the Term after COD, the Seller shall deliver Electricity to the POD for sale to the Buyer, at the Contracted Capacity for that hour.

7.3 **Post-COD Purchase of Electricity** – Subject to subsection 7.8(b) and subsection 11.1(b), in each hour during the Term after COD, the Buyer shall purchase, and accept delivery at the POD of, all Eligible Electricity delivered by the Seller to the POD during that hour.

7.4 **Disposition of Surplus Electricity** – If the Contracted Capacity for any hour during the Term is less than the Plant Capacity and the Seller intends to consume Electricity or to sell Electricity to any Person other than the Buyer, the Seller, at its cost, shall obtain all permits, licenses and other approvals of any government or governmental agency, including regulatory approvals, all additional interconnection facilities, all additional metering facilities, all interconnection agreements, and all transmission facilities or services, including wheeling agreements, required to enable it to lawfully generate and use, or sell and deliver to third Persons, any Electricity in excess of the Contracted Capacity. The Seller shall not take, or omit to take, any action that would cause the Seller to cease to be exempt from regulation as a “public utility”, as defined in the UCA, with respect to the Seller’s Plant, the sale of Electricity and the performance by the Seller of its obligations under this EPA or that would cause the owner of the transmission line from the Seller’s Plant to the POD to be regulated as a “public utility” at any time during the Term where either such designation as a “public utility” could reasonably be expected to have an adverse effect on the Buyer.

7.5 **Delivery Priorities** - If the Contracted Capacity for any hour during the Term is less than the Project Capacity and if in that hour the Metered Electricity is greater than GBL but less than the Plant Capacity for any reason other than:

- (a) an Outage, other than a Planned Outage carried out in contravention of Section 6.5;
- (b) a Force Majeure invoked by the Seller in accordance with Article 10;
- (c) a Hardship Event in respect of which the Seller has properly invoked relief in accordance with Article 11; or
- (d) suspension, constraint or curtailment in the operation of the Transmission ~~Authority’s~~ System preventing or limiting physical deliveries of Contracted Capacity hereunder or disconnection of the Seller’s Plant from the ~~Transmission–Authority’s~~ System by the Transmission Authority, in either case for reasons that are not attributable to the Seller,

then the Seller shall not deliver any Electricity generated during that hour in excess of the GBL to any Person (including the Seller) other than the Buyer, unless the Seller delivers the Contracted Capacity for that hour to the Buyer at the POD.

7.6 **Partial Recall** – The Seller, by notice (“Recall Notice”) to the Buyer, may elect to reduce the Contracted Capacity, subject to the following conditions:

- (a) the Recall Notice must specify the date (“Recall Date”) on which the reduction will take effect, which may be not earlier than COD and not earlier than 365 days after the Recall Notice is given;
- (b) the Recall Notice is irrevocable and may be given only once during the Term;
- (c) from and after the Recall Date and at all times during the balance of the Term, the quantity of Electricity specified as the Contracted Capacity in all columns and rows of the

table set out in Part I of Appendix 2 will be deemed to be amended so that the Contracted Capacity is 80% of the amounts specified therein, and the balance of any Electricity generated at any time in excess of the Contracted Capacity, as adjusted pursuant to the Recall Notice, may be used by the Seller or sold to third Persons (which may include the Buyer under any separate agreement);

- (d) the price payable by the Buyer for Eligible Electricity delivered after the Recall Date will be reduced as set out in Appendix 3, Part III, section 3.4;
- (e) the Seller, prior to the Recall Date, shall give the Buyer reasonable evidence that the Seller has complied with Section 7.4;
- (f) the amount of the Operating Security which the Seller is required to provide under Section 13.4 will be adjusted effective on the Recall Date to reflect the revised Contracted Capacity; and
- (g) from and after the Recall Date, the CFT Adjusted Bid Price will be reduced by the Recall Adjustment Amount.

7.7 Custody, Control, Risk and Delivery of Electricity – Custody, control and risk of, and title to, Eligible Electricity passes from the Seller to the Buyer at the POD. Deliveries of Eligible Electricity to an Electrical Host to service the Electrical Host’s electricity requirements will be deemed to be deliveries of Eligible Electricity to the Buyer at the POD for purposes of this EPA.

7.8 Limitations

- (a) The obligations of the Seller under Section 7.2 are subject to:
 - (i) Force Majeure invoked by the Seller in accordance with Article 10;
 - (ii) a Hardship Event in respect of which the Seller has properly invoked relief in accordance with Article 11; and
 - (iii) suspension, constraint or curtailment in the operation of the Transmission Authority’s System preventing or limiting physical deliveries of Contracted Capacity hereunder, or disconnection of the Seller’s Plant from the Transmission Authority’s System by the Transmission Authority, in either case for reasons that are not attributable to the Seller.
- (b) The obligations of the Buyer under Sections 7.1 and 7.3 are subject to:
 - (i) Force Majeure invoked by the Buyer in accordance with Article 10;
 - (ii) suspension, constraint or curtailment in the operation of the Transmission Authority’s System preventing or limiting physical deliveries of Contracted Capacity hereunder, provided that:
 - (A) transmission is impacted by an event of Force Majeure or a Forced Outage, or

- (B) the suspension, constraint or curtailment is implemented ~~by the Transmission Authority~~ pursuant to a filed tariff governing transmission service or any other legally enforceable right
 - (1) for reasons not attributable to the actions of the Buyer as a generator and supplier of electricity or network transmission user (unless and to the extent that such actions would themselves be excused for reasons of Force Majeure or Forced Outage), or
 - (2) for reasons not attributable to the failure of the Buyer to arrange for adequate firm transmission capacity to perform its obligations throughout the Term;
- (iii) disconnection by the Transmission Authority of the Seller's Plant from the Transmission Authority's System pursuant to the Interconnection Agreement, a filed tariff governing transmission service or any other legally enforceable right; and
- (iv) the right of the Buyer to refuse to accept deliveries of Contracted Capacity from the Seller in accordance with Article 14 and Section 11.5.

7.9 **Price** – Subject to subsections 7.8(b) and 11.1(b), the Buyer shall pay for Eligible Electricity at the EPA Price determined in accordance with Appendix 3. That price includes full and total payment and consideration for the acquisition or retention by the Buyer of Off-Site Emission Reduction Rights pursuant to Section 7.10. The Buyer is not obliged to pay for any Electricity delivered hereunder in excess of the Eligible Electricity.

7.10 Off-Site Emission Reduction Rights

- (a) The Seller acknowledges that the Buyer is entitled to the Off-Site Emission Reduction Rights at no additional cost to the Buyer. The Seller, upon the reasonable request of the Buyer, shall do, sign or cause to be done or signed all further acts, deeds, things, documents and assurances required to give effect to this Section 7.10. The Seller shall within 30 days after a request by the Buyer (such request not to be made more than once in each calendar year during the Term) provide to the Buyer a calculation of the Actual GHG Intensity of the Seller's Plant calculated in the manner set out in Appendix 9. To the extent that Emission Reduction Rights cannot be lawfully allocated between those arising at the Seller's Plant and those arising elsewhere or between the Buyer and other purchasers or users of the Electricity, all Emission Reduction Rights will be wholly the property of the Buyer. The Seller is solely responsible for compliance with all regulatory or other legal requirements with respect to all emissions from the Seller's Plant, including greenhouse gas emissions. The Buyer has no responsibility or liability of any kind whatsoever with respect to any such emissions.
- (b) The Seller shall ensure that all marketing materials produced by or for the Seller, all public announcements or statements by the Seller and all other communications by the Seller in any form whatsoever, including oral communications, contain no false or misleading statements concerning the ownership of the Contracted Capacity, Eligible Electricity or the Off-Site Emission Reduction Rights or the destination, end user or

recipient of the Contracted Capacity or Eligible Electricity. The Seller acknowledges that damages are not an adequate remedy to the Buyer for a breach by the Seller of this Section 7.10 and that the Buyer shall be entitled to an injunction to prevent any breach by the Seller of this Section 7.10 and to an order requiring the Seller to take such other actions as may be required to remedy the effects of any breach of this section.

7.11 Revenue Metering Equipment

- (a) The Seller, at its cost, shall install revenue metering equipment of a type and at a location approved by the Buyer which location shall be as close as technically practical to the Seller's generator terminals and at a location such that the metering equipment will record the total amount of Electricity generated by the Seller's Plant. The Seller shall ensure that the revenue metering equipment is capable of being remotely interrogated and is sufficient to accurately meter the quantity of Eligible Electricity to be purchased and sold hereunder. The Seller shall maintain that equipment at its cost. That equipment will be used for determining the quantity of Eligible Electricity delivered under this EPA. The Seller shall ensure that the meter is calibrated to measure the quantity of Eligible Electricity at the POD. The *Electricity and Gas Inspection Act* (Canada) will govern the metering under this EPA. If at any time the Buyer is dissatisfied with the condition or registration of all or part of the metering equipment or if there is any dispute regarding the accuracy of the metering equipment, then the Buyer may give notice to the Seller of the Buyer's dissatisfaction or of the dispute, in which case the Buyer and the Seller will proceed to rectify the matter in accordance with the *Electricity and Gas Inspection Act* (Canada).
- (b) The Seller, at its cost, shall at any time during the Term at the request of the Buyer install steam meters of a type and at a location approved by the Buyer to measure the Seller's Plant steam flows and steam conditions. The Seller shall maintain that equipment at its cost.
- (c) The Buyer may at any time during the Term on not less than ~~15~~30 days prior notice to the Seller install a duplicate meter at the Seller's Plant and the Seller shall allow the Buyer to access the Seller's Plant for such purpose and hereby grants to the Buyer a license of occupation for such equipment and for access to such equipment, provided that the Buyer agrees that it will not register such license of occupation against title to the land on which the Seller's Plant is located. The Seller shall make transformers, transformer connections and telephone access available to the Buyer if the Buyer elects to install a duplicate meter. Any duplicate meter and metering equipment installed by the Buyer will remain the property of the Buyer and the Seller shall not tamper with, remove or move such meter or metering equipment.

7.12 Sale of Green Rights

- (a) The Seller shall not at any time during the Term sell any Green Rights to any Person other than the Buyer without first complying with this Section 7.12.
- (b) If the Seller determines to sell all or any portion of the Green Rights, the Seller shall give a notice (a "Sale Notice") to the Buyer offering to sell to the Buyer all the Green Rights for all the Eligible Electricity (the "Offered Green Rights"), the price for the Offered

Green Rights (expressed in \$/MWh of Eligible Electricity) and all other material terms and conditions applicable to the sale of the Offered Green Rights, including the date for completion of the sale and purchase (the “Completion Date”) and the entity that has certified, licensed or otherwise approved the Seller’s Plant or the Electricity as “green” or “green energy” or otherwise giving rise to Green Rights (the “Certification Agency”).

- (c) Following delivery of a Sale Notice to the Buyer, the Seller shall provide all information reasonably requested by the Buyer to enable the Buyer to determine whether or not the Buyer wishes to acquire the Offered Green Rights, including any information required to assess whether the Seller’s Plant or the Eligible Electricity would be considered as “green” or “green energy” by the Buyer or any entity other than the Certification Agency.
- (d) The Buyer shall, within 30 days after the date of receipt of all information the Seller is required to provide under this Section 7.12, deliver a notice to the Seller advising whether or not the Buyer elects to acquire the Offered Green Rights. If the Buyer fails to deliver a notice within the time specified, the Buyer shall be deemed to have elected not to acquire the Offered Green Rights.
- (e) If the Buyer elects to acquire the Offered Green Rights, the Seller shall from and after the Completion Date comply with all requirements of the Certification Agency required to maintain the Offered Green Rights (the “Certification Agency Green Criteria”) and shall be deemed to have transferred the Offered Green Rights to the Buyer. From and after the Completion Date, the EPA Price for all Eligible Electricity delivered after the Completion Date during the remainder of the Term will be increased by the amount specified in the Sale Notice as the purchase price for the Offered Green Rights for so long as the Seller continues to comply with the Certification Agency Green Criteria and those Certification Agency Green Criteria will be deemed to be incorporated into and form a part of this EPA.
- (f) If the Buyer elects or is deemed to have elected not to acquire the Offered Green Rights, the Seller shall have the right for a period of 6 months after the date on which the Buyer rejects or is deemed to have rejected the offer in the Sale Notice, to sell the Offered Green Rights to any Person for a price that is not less than the price specified in the Sale Notice and otherwise on the same terms and conditions as specified in the Sale Notice. If a binding agreement of purchase and sale for the Offered Green Rights is not entered into by the Seller within that 6 month period or if such a binding agreement of purchase and sale is entered into within that 6 month period but is terminated, then the Seller shall have no right to complete that sale of the Offered Green Rights nor any other sale of all or any portion of the Offered Green Rights without giving a new notice to the Buyer under this Section 7.12.

8. STATEMENTS AND PAYMENT

8.1 Statements

- (a) In each calendar month after the calendar month in which Eligible Electricity is first delivered to the Buyer, the Seller, at its convenience, shall deliver to the Buyer a statement prepared by the Seller for the preceding calendar month. The statement must indicate the amount of Metered Electricity and the amount of Eligible Electricity in each

hour during that month, the price payable by the Buyer for that Eligible Electricity determined pursuant to Appendix 3, the Monthly Capacity Factor LDs for that month, if any, and, on the statement delivered in January of each year, the Annual Capacity Factor LDs and the GHG Intensity LDs, if any, and set out in reasonable detail the manner by which the statement and the amounts shown thereon were computed. The statement must be accompanied by sufficient data to enable the Buyer, acting reasonably, to satisfy itself as to the accuracy of the statement. The data must include a reading of the Metering Equipment read locally or interrogated remotely by electronic means.

- (b) Either Party may advise 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, 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 within the 36 month period, which will be resolved in accordance with this EPA.

8.2 **Payment**

- (a) Within 15 days after receipt of a statement delivered pursuant to subsection 8.1(a) and subject to Section 13.10, the Buyer shall pay to the Seller or, if the LDs exceed the amount payable by the Buyer for Eligible Electricity, the Seller shall pay to the Buyer, the amount set out in the statement, except to the extent the Party required to make payment in good faith disputes all or part of the statement by notice to the other Party in compliance with subsection 8.1(b). If a Party disputes any portion of a statement, that Party must nevertheless pay the undisputed portion of the statement. The Party receiving payment may dispute the amount paid by notice to the other Party in accordance with subsection 8.1(b).
- (b) 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 3% until the amount is paid.

8.3 **GST and PST** – All dollar amounts in this EPA do not include GST and PST, which, if applicable, will be added to each statement.

8.4 **Billing Guideline** – The Seller shall comply with any reasonable written billing guideline issued by the Buyer during the Term of which the Seller has received notice setting out requirements for invoices issued to the Buyer under electricity purchase agreements, provided that any such billing guideline shall not vary the express terms of this EPA. Any such billing guideline will be deemed to be incorporated into and be a part of this EPA. If there is any conflict between a billing guideline and this EPA, this EPA will govern.

8.5 **Set-off** – If the Buyer and the Seller each owe the other an amount under this EPA, in the same month, then such amounts with respect to each Party may 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 shall pay to the other Party the difference between the amounts owed. Except as otherwise expressly provided herein, each Party reserves all rights, setoffs, counterclaims and other remedies and defences which such Party has or may be entitled to arising from or related to this EPA.

9. INSURANCE/DAMAGE AND DESTRUCTION

9.1 **Insurance** – The Seller shall place and maintain from the Commencement of Construction and thereafter during the Term commercial general liability insurance. The liability policy or policies must have a liability limit and deductible that is consistent with the limits and deductibles that a reasonable and prudent owner and operator of generating facilities similar to the Seller’s Plant, and its lenders, would normally require in a similar policy.

9.2 **Insurance Provisions** – Commercial general liability policies must include the Buyer, its directors, officers, employees and agents as additional insureds and must contain cross liability and severability of interest clauses. All policies must be endorsed to provide to the Buyer not less than 30 days’ prior notice of cancellation, non-renewal or material amendment. The Seller shall give the Buyer a copy of the insurance certificate for each policy required to be maintained by the Seller under this Article 9.

9.3 **Damage or Destruction of the Seller’s Plant** – For the purpose of this Section 9.3 “major damage” with respect to the Seller’s Plant means total destruction, damage constituting a total constructive loss for insurance purposes, or damage that cannot reasonably be repaired within 12 months after the occurrence thereof. If the Seller’s Plant suffers any damage, other than major damage with respect to which the Seller has invoked Force Majeure in accordance with Article 10, then the Seller shall proceed diligently and expeditiously to repair the damage and resume deliveries of Contracted Capacity hereunder. If the Seller’s Plant suffers major damage, then the Seller may at its option exercisable by notice to the Buyer within ~~60~~120 days after the occurrence thereof, either (i) proceed to diligently and expeditiously repair the major damage and resume deliveries of Contracted Capacity hereunder, or (ii) where the Seller has invoked Force Majeure in accordance with Article 10 with respect to the major damage, terminate this EPA. If the Seller fails to give notice exercising its option within such ~~60~~120 day period, it will be deemed to have exercised the option described in (i) above. Nothing in this section limits the rights of either Party to terminate this EPA under any other section of this EPA, except that if the Seller has elected to proceed to repair major damage, then provided that the Seller continues diligent efforts to repair the major damage and resume deliveries of Contracted Capacity hereunder, the Buyer may not exercise its right to terminate this EPA under Section 15.1 (d), unless any Force Majeure occasioned by the major damage continues for not less than 730 days after the date of the notice invoking Force Majeure.

10. FORCE MAJEURE

10.1 Invoking Force Majeure and Notice

- (a) Neither Party will be in breach or default as to any obligation under this EPA if that Party is unable to perform that obligation due to an event or circumstance of Force Majeure, of which notice is given as required in this Section 10.1.
- (b) If there is a Force Majeure affecting a Party’s ability to perform an obligation under this EPA, that Party shall promptly notify the other Party of the Force Majeure. The notice must identify the nature of the Force Majeure, its expected duration and the particular obligations affected by the Force Majeure. The affected Party shall provide reports to the other Party with respect to the Force Majeure at such intervals as the other Party may reasonably request while the Force Majeure continues. A Party will be deemed to have invoked Force Majeure from the date when that Party gives notice of the Force Majeure

in accordance with this subsection 10.1(b). The Party invoking Force Majeure shall give prompt notice of the end of the Force Majeure.

- (c) The Party invoking Force Majeure shall use all commercially reasonable efforts, including sourcing goods and services from alternative suppliers or using alternative methods, to remove the Force Majeure as soon as possible, provided that settlement of strikes, lockouts and other labour disturbances will be wholly within the discretion of the Party involved. The Parties acknowledge that the foregoing does not oblige or permit the Seller to provide electricity from any generating source other than the Seller's Plant. The Party invoking Force Majeure shall promptly respond to any inquiry from the other Party regarding the efforts being undertaken to remedy the situation.

10.2 Exclusions – A Party may not invoke Force Majeure:

- (a) for a Hardship Event or any other economic hardship or for lack of money, credit or markets; or
- (b) if the Force Majeure is the result of a breach by the Party seeking to invoke Force Majeure of a permit, certificate, license or approval or of any applicable laws, regulations or orders; or
- (c) for a mechanical breakdown, unless the Party seeking to invoke Force Majeure can demonstrate by clear and convincing evidence that the mechanical breakdown was caused by a latent defect in the design or manufacture of the equipment which could not reasonably have been identified by normal inspection or testing of the equipment; or
- (d) if the Party seeking to invoke Force Majeure has failed to use all commercially reasonable efforts to prevent or remedy the situation and remove, so far as possible and with reasonable dispatch, the Force Majeure; or
- (e) if the Force Majeure was 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.

10.3 Lack of Energy Source – The Seller may not invoke Force Majeure if its failure or inability to generate and deliver Contracted Capacity hereunder is caused by the cost or unavailability of any Energy Source for any reason, including natural causes, unless: (i) unavailability of the Energy Source is caused by an event or circumstance that constitutes force majeure under a contract of carriage, to which the Seller is a party, for the transportation of the Energy Source to the Seller's Plant; or (ii) if the Energy Source is water, the Seller can demonstrate by clear and convincing evidence that the unavailability of the Energy Source is caused by a significant landslide, earthquake or other similar event resulting in a significant reduction in the flow of water to the Seller's Plant.

11. ECONOMIC HARDSHIP

11.1 Relief for Economic Hardship

- (a) If a Hardship Event occurs, the Seller may turn down the Seller's Plant (including a shut down of the Seller's Plant) to the extent required to accommodate the inability to generate and deliver the Contracted Capacity or to alleviate the material adverse economic effect

as described in subsection (rr)(vi) of Appendix 1. During the continuance of the Hardship Event, on 5 days' notice to the Buyer, the Seller may adjust the output from the Seller's Plant as may be required for the foregoing purposes.

- (b) For the period specified in subsection 11.6(a), for purposes of calculating LDs, the Contracted Capacity will:
 - (i) except in the case of a Hardship Event described in subsection (rr)(iv) of Appendix 1, be reduced by a percentage equal to the percentage by which the Seller's Plant has been turned down in accordance with subsection 11.1(a), and
 - (ii) in the case of a Hardship Event described in subsection (rr)(iv) of Appendix 1, be reduced by the lesser of (i) a percentage equal to the percentage by which the Seller's Plant has been turned down in accordance with subsection 11.1(a) and (ii) the percentage specified in the notice delivered by the Seller pursuant to subsection 11.2(b)(v) or any subsequent notice under subsection 11.1(a) taking into account the fact that during such a Hardship Event, Eligible Electricity may include GBL,

and the Seller will not be in breach or default of its obligation to sell and deliver to the Buyer the balance of the Contracted Capacity as required hereunder, provided that the Seller has complied with this Article 11, and subject to the conditions, exclusions and limitations herein set out.

- (c) Until the date that is 5 days after the date of a notice delivered under subsection 11.5, the Buyer shall have no obligation to pay for any Eligible Electricity that exceeds 110% of the Contracted Capacity as reduced in accordance with subsection 11.1(b).
- (d) For greater certainty, notwithstanding the occurrence of a Hardship Event, the Contracted Capacity remains the same for all purposes of this EPA except only as otherwise expressly provided in this Section 11.1.

11.2 Notice and Evidence of Economic Hardship - The Seller's right to relief under Section 11.1 is conditional upon the Seller:

- (a) giving notice to the Buyer of the potential occurrence of a Hardship Event as soon the Seller is aware or would reasonably be expected to be aware of the potential occurrence of a Hardship Event; and
- (b) giving to the Buyer notice of the occurrence of a Hardship Event together with reasonable particulars and evidence thereof, including:
 - (i) a description and evidence of the Hardship Event;
 - (ii) evidence of when the Hardship Event took effect and its probable duration, to the extent known or reasonably determinable;

- (iii) evidence that the Seller has exercised prudence and diligence to avoid and to mitigate the Hardship Event and its impact on the Seller, including prudence and diligence in contracting and in the enforcement of contracts;
- (iv) the impact of the Hardship Event on the Seller's ability to generate and deliver the Contracted Capacity and/or the materially adverse economic effect on the Seller of generating and delivering the Contracted Capacity, during the continuance of the Hardship Event;
- (v) the amount by which the Seller proposes to turn down the Seller's Plant expressed as a percentage relative to the Plant Capacity and, in the case of a Hardship Event described in subsection (rr)(iv) of Appendix 1, the amount, expressed as a percentage, that the Seller proposes as the reduction in the Seller's Contracted Capacity for purposes of calculating LDs during the continuance of the Hardship Event taking into account the fact that during a Hardship Event, Eligible Electricity may include GBL; and
- (vi) the date on which the Seller will turn down the Seller's Plant, and the expected duration of the turn down to the extent known or reasonably determinable.

11.3 Access to Further Information – The Seller shall give promptly to the Buyer at its request further or other information known to the Seller in addition to that contained in its notice under Section 11.2 reasonably necessary to enable the Buyer to verify the occurrence and continuance of the Hardship Event, including its impact on the Seller, including operating and maintenance records, contracts for procurement and delivery of the thermal Energy Source, if any, and other goods and services, financial records and other data relevant to the Hardship Event and its impact on the Seller. Information contained in the Seller's notice under section 11.2 and all such further information is "confidential information" for purposes of Section 20.8.

11.4 Reports during Continuance of Hardship Event – The Seller shall on the first day of each calendar month during the continuance of the Hardship Event provide to the Buyer written reports and evidence sufficient to confirm such continuance, its impact on the Seller, measures taken, or planned to be taken, by the Seller to terminate the Hardship Event or to mitigate its impact on the Seller, and any change in the probable duration of the Hardship Event to the extent known or reasonably determinable.

11.5 Notice of Change in Deliveries and Notice of Cessation of Hardship Event - The Seller shall give notice to the Buyer of the date on which the Hardship Event has ceased, or will cease, as soon as that date is known to the Seller or is reasonably determinable.

11.6 Conditions of Relief for Economic Hardship – The Seller's right to relief under Section 11.1 for the occurrence of a Hardship Event is subject to the following conditions, exclusions and limitations:

- (a) relief shall take effect on the later of (i) 15 days after proper and complete notice is given under Section 11.2 and (ii) the date of the proposed turndown of the Seller's Plant given in that notice, and the relief shall cease to have effect on the date when the Hardship Event ceases to exist;
- (b) the Seller is not entitled to relief if the duration of the Hardship Event is less than 90 continuous days, unless otherwise agreed in writing by the Buyer;

- (c) the Seller shall exercise all commercially reasonable efforts to terminate, or mitigate the impact on the Seller, of the Hardship Event, including exploring, at the Buyer's request, measures proposed by the Buyer;
- (d) the Seller may not rely in whole or in part on a Hardship Event described in subsection (rr)(ii) of Appendix 1 until the third anniversary of COD;
- (e) the Seller shall reduce all Electricity deliveries from the Seller's Plant (including Electricity consumption by the Seller, other than Station Service) during Hardship Hours by a percentage equal to the percentage of the turndown in the Seller's Plant during those Hardship Hours;
- (f) during a Hardship Event the Seller may continue to make deliveries of steam to the steam host for the Seller's Plant but only to the extent such deliveries are consistent with the steam load anticipated at the time of construction of the Seller's Plant, unless otherwise agreed in writing by the Buyer;
- (g) if the inability of the Seller to generate and deliver the Contracted Capacity hereunder or the materially adverse economic effect upon the Seller is caused by a Hardship Event together with other events or circumstances, the Seller may rely upon the Hardship Event for relief only if the Hardship Event is the predominant cause of the inability or hardship; and
- (h) the burden of establishing that a Hardship Event has occurred, including its impact on the Seller, its continuation and its duration is upon the Seller.

11.7 **Failure to Comply with Conditions** – If the Seller breaches or otherwise fails to comply with any of the conditions set out in this Article 11 in respect of a Hardship Event, the Seller may not thereafter seek any further relief under Section 11.1 with respect to that Hardship Event.

12. LIQUIDATED DAMAGES

12.1 **Liquidated Damages** – Subject to Section 12.2 the Seller shall be liable to pay to the Buyer LDs as follows:

- (a) annually, GHG Intensity LDs, if any,
- (b) monthly, Monthly Capacity Factor LDs, if any, and
- (c) annually, Annual Capacity Factor LDs, if any

in each case calculated in accordance with Appendix 4.

12.2 **Liability Limited** – Except in the case of a Deliberate Breach, the liability of the Seller for payment of:

- (a) Annual Capacity Factor LDs in any year is limited to an amount equal to \$3,000/MWh/h of the average annual Contracted Capacity for that year as shown in Part I of Appendix 2; and

- (b) Monthly Capacity Factor LDs in any month is limited to an amount equal to \$1,000/MWh/h of the average annual Contracted Capacity for the year in which the month occurs as shown in Part I of Appendix 2 multiplied by the applicable percentage for that month as shown in Part II of Appendix 2.

12.3 Exclusive Remedies for Buyer – Except in the case of a Deliberate Breach, payment by the Seller of the LDs are the exclusive remedies to which the Buyer is entitled (i) for the Seller’s failure to achieve the Target GHG Intensity or (ii) if the Monthly Delivered Electricity divided by the Monthly Contracted Electricity is less than 90%; or (iii) if the Annual Delivered Electricity divided by the Annual Contracted Electricity is less than 80%; or (iv) for any other failure to comply with Section 7.2 or the last sentence of Section 6.4, provided that the foregoing does not limit or otherwise affect any right to terminate the EPA or any right to receive a Termination Payment expressly set out in this EPA.

12.4 Exclusive Remedies for Seller - Except in the case of a Deliberate Breach, the Seller’s exclusive remedy for the Buyer’s failure to take or pay for Eligible Electricity is a claim for the price that would have been payable by the Buyer for that Eligible Electricity pursuant to Section 7.2 plus interest on that amount at the rate specified in subsection 8.2(b).

13. SECURITY

13.1 Development Security – The Parties acknowledge that the Seller has delivered to the Buyer, concurrently with execution and delivery of this EPA, the Development Security. The Seller shall maintain the Development Security until COD, including delivery of the Operating Security. The Development Security secures the obligations of the Seller under this EPA to be performed on or before COD, including the obligation to deliver the Operating Security, but is not a limitation of the Seller’s liability in respect of any breach of, or default under, this EPA. Subject to adjustment pursuant to Section 3.5, the Development Security is and shall be maintained in the aggregate amount of \$ ●, which amount has been calculated by multiplying the maximum average annual Contracted Capacity shown in Part I of Appendix 2 by \$20,000/MW; and is currently comprised of ~~cash in the amount of \$~~, ~~and/or~~ a letter of credit in ~~the~~that amount ~~of \$~~J.

13.2 Return or Release of Development Security - If this EPA is terminated by either Party pursuant to Section 3.1 on or before the Initial Period Expiry Date, other than by the Buyer in circumstances where the Seller has failed to use commercially reasonable efforts to satisfy the conditions therein set out, or if this EPA is terminated by either Party pursuant to Section 3.4, then the Buyer shall promptly return or release the Development Security to the Seller, without interest and without deduction, except that the Buyer may retain \$5,000 on account of its administrative costs, except in the case of a termination under Section 3.4. When COD occurs, the Buyer shall return or release the Development Security to the Seller, without interest or deduction, against delivery to the Buyer of the Operating Security. If this EPA is terminated by the Buyer under subsection 15.1(c) due to the Seller becoming subject to regulation, or by the Seller under subsection 15.2(c) for a Buyer Default or under Section 9.3 due to the occurrence of “major damage” as therein defined with respect to which the Seller has invoked Force Majeure in accordance with Article 10, or by either Party under subsection 15.1(d) or subsection 15.2(a), as the case may be, for prolonged Force Majeure, or by either Party under subsection 15.1(e) or 15.2(b) as the case may be for a prolonged Hardship Event, or by the Seller under subsection 15.2(d) due to the Seller becoming subject to regulation as a “public utility” under the UCA, then the Buyer shall return or release the Development Security to the Seller, without interest or deduction.

13.3 Application or Enforcement of the Development Security – If the Buyer terminates this EPA under Section 3.1 in circumstances where the Seller has failed to use commercially reasonable efforts to satisfy the conditions therein set out, or under Section 15.1, other than subsection 15.1(c), (d) or (e), before the occurrence of COD, including delivery of the Operating Security, then the Buyer may retain or enforce the Development Security and apply the proceeds thereof on account of amounts owing to the Buyer in respect of the Termination Payment.

13.4 Operating Security - Immediately upon the achievement of all other conditions of COD specified in Section 5.2, the Seller shall deliver to the Buyer and thereafter maintain the Operating Security to secure the obligations of the Seller under this EPA from and after COD. The Operating Security shall be an amount determined at COD and on each anniversary of COD thereafter as follows: \$2,000/MW times the average annual Contracted Capacity as shown in Part I of Appendix 2 for the year commencing at the date of the calculation times the number of years remaining in the Term. The Operating Security may be satisfied by one, or a combination, of ~~cash~~, letter of credit, covenant or guarantee, provided that the requirements of Sections 13.5 and 13.6 are satisfied, but is not a limitation of the liability of the Seller for any breach of, or default under, this EPA.

13.5 ~~Cash or Letter of Credit~~ – ~~Cash forming part of the Development Security or the Operating Security must be paid by way of bank draft or certified cheque drawn on a Canadian bank.~~ Letters of ~~Credit~~credit forming part of the Development Security or the Operating Security must be issued or confirmed by a Canadian bank with a credit rating not less than Standard & Poor's A-, Moody's A3 or DBRS A(low) and in the form set out in Appendix 6. Letters of credit must be for a term of not less than one year, must provide that they will be renewed, unless the issuing or confirming bank advises otherwise, and must be renewed or replaced not later than 90 days before the expiry date thereof.

13.6 Guarantees and Seller Covenants – Guarantees forming part of the Operating Security must be issued by an entity having a credit rating at the commencement of the Term no less than Standard & Poor's BB-, Moody's Ba3 or DBRS BB(low) and must be in the form of the Guarantee set out in Appendix 7. If the Seller is relying on the Seller's covenant to provide the Operating Security, the Seller must demonstrate that, at the commencement of the Term, it had a credit rating not less than the credit rating specified in this Section 13.6 for a Guarantor, provided however that such reliance in no way constitutes a limitation of the liability of the Seller under or in relation to this EPA.

13.7 Return or Release of Operating Security – If this EPA is terminated by the Buyer under subsection 15.1(c) due to the Seller becoming subject to regulation, or by the Seller under subsection 15.2(c) for a Buyer Default or under Section 9.3 due to the occurrence of “major damage” as therein defined with respect to which the Seller has invoked Force Majeure in accordance with Article ~~40~~10 or under subsection 15.2(d) due to the Seller becoming subject to regulation as a “public utility” under the UCA, or by either Party under subsection 15.1(d) or subsection 15.2(a), as the case may be, for prolonged Force Majeure, or by either Party under subsection 15.1(e) or 15.2(b) as the case may be for a prolonged Hardship Event, or upon expiry of the Term and discharge of all outstanding obligations of the Seller hereunder, then the Buyer shall return or release the Operating Security to the Seller, without interest or deduction, other than prior deductions, if any, properly made hereunder. Following the annual recalculation of the amount of the Operating Security, the Buyer shall at the written request of the Seller, forthwith return or release to the Seller, cash or letter of credit security then held by the Buyer in an amount sufficient to reduce the aggregate value of the security then held by the Buyer to the amount required hereunder.

13.8 **Application or Enforcement of the Operating Security** – If the Seller fails to pay LDs when due, or if Buyer terminates this EPA under section 15.1, other than subsection 15.1(c), (d) or (e), then the Buyer may retain or enforce the Operating Security and apply the proceeds thereof on account of amounts owing to the Buyer on account of the LDs and/or the Termination Payment, as the case may be.

13.9 **Substitutions and Replenishment** – The Seller may at any time, or from time to time, on reasonable notice to the Buyer substitute one form of security for another form, whether ~~cash~~, letter of credit or guarantee, provided that the aggregate amount of the Development Security or the Operating Security, as the case may be, valued as herein provided, is maintained at the amount specified herein. If the Buyer applies or enforces any security forming part of the Development Security or the Operating Security, as the case may be, other than on termination of this EPA, as permitted hereunder, then the Seller shall forthwith on the written request of the Buyer provide additional security, whether in ~~cash~~, the form of a letter of credit or guarantee, sufficient to replenish or maintain the aggregate amount of the Development Security or the Operating Security, as the case may be, at the amount specified herein.

13.10 **Right to Withhold Payment** – If at any time during the Term the Seller has failed to provide the Operating Security at the level specified in Section 13.4, the Buyer shall be entitled to withhold payment of any amount owing by the Buyer to the Seller under this EPA until such time as the Seller has delivered the required amount of Operating Security to the Buyer. Any amounts withheld by the Buyer in accordance with this Section 13.10 will not bear interest.

14. SUSPENSION

14.1 Suspension

- (a) Subject to subsection 14.1(b), the Buyer may refuse to accept delivery of any Eligible Electricity from the Seller if there occurs a Seller Default described in Appendix 1, subsections (v), (vi), (vii), or (viii) or if the Seller is in material default under the Interconnection Agreement or the Facilities Agreement.
- (b) The right of the Buyer to refuse to accept deliveries of Eligible Electricity under subsection 14.1(a) is subject to:
 - (i) the Buyer giving the Seller notice of the Buyer’s intent to refuse to accept deliveries; and
 - (ii) within 30 days or in the case of a default under the Interconnection Agreement or the Facilities Agreement, the period specified for the Seller to remedy a default under those agreements, after such notice, the Seller having failed to cure to the satisfaction of the Buyer, acting reasonably, the cause of the proposed suspension, provided that if the Seller is working diligently to cure the cause and if the cause cannot reasonably be cured within that notice period, then after the expiry of a reasonable time to cure the cause.
- (c) The Buyer is not required to pay the Seller for any Eligible Electricity, or any Contracted Capacity capable of being generated, during any period when the Buyer has suspended accepting deliveries of Eligible Electricity in accordance with this Article 14.

14.2 **Resuming Deliveries** – The Buyer shall resume accepting deliveries of Eligible Electricity when the Seller has demonstrated to the Buyer, acting reasonably, that the Seller has cured the cause for the suspension under Section 14.1, and the Seller will resume delivering the Contracted Capacity to the Buyer at that time.

15. TERMINATION

15.1 **Termination by the Buyer** – In addition to any other right to terminate this EPA expressly set out in any other provision of this EPA, the Buyer may terminate this EPA by notice to the Seller if:

- (a) the Seller has not carried out Significant Construction by the Target COD; or
- (b) COD does not occur by the date that is 365 days after the Target COD, plus the number of days, not exceeding a further 365, during which COD is delayed due to Force Majeure invoked by the Seller in accordance with Article 10, provided that the Buyer shall only be entitled to terminate the EPA under this provision if the Buyer delivers a termination notice prior to COD; or
- (c) at any time during the Term, except in the case of a breach by the Seller of Section 7.4, the Seller becomes subject to regulation as a “public utility” as defined in the UCA with respect to the Seller’s Plant, the sale of Electricity, or the performance of the Seller’s obligations under this EPA with the result that the benefit of the EPA to the Buyer is materially and adversely affected; or
- (d) subject to Section 9.3, the Buyer has received a notice from the Seller invoking Force Majeure and the Force Majeure has not been removed within 365 days after the date of the notice invoking Force Majeure;
- (e) the cumulative number of Hardship Hours exceeds the equivalent of 730 days; or
- (f) a Seller Default occurs,

and such termination will be effective immediately upon delivery of the notice of termination to the Seller.

15.2 **Seller Right to Terminate** – In addition to any other right to terminate this EPA expressly set out in any other provision of this EPA, the Seller may terminate this EPA by notice to the Buyer if:

- (a) the Buyer gives a notice to the Seller invoking Force Majeure in accordance with Article 10 and the Force Majeure has not been removed within 365 days after the date of the notice invoking Force Majeure;
- (b) the cumulative number of Hardship Hours exceeds the equivalent of 730 days;~~or~~
- (c) a Buyer Default occurs;~~;~~ or
- (d) at any time during the Term the Seller becomes subject to regulation as a “public utility” as defined in the UCA with respect to the Seller’s Plant, the sale of Electricity, or the performance of the Seller’s obligations under this EPA, due solely to reasons other than

any act or omission of the Seller, with the result that the benefit of the EPA to the Seller is materially and adversely affected.

and such termination shall be effective immediately upon delivery of the notice of termination to the Buyer.

15.3 Effect of Termination – If this EPA is terminated pursuant to Article 3, Section 9.3 or this Article 15:

- (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 the EPA, and may enforce any liabilities and obligations that have accrued under this EPA prior to the date of termination, subject to any express limitations or exclusions of liability set out in this EPA; and
- (b) both Parties will remain bound by Section 7.10, Section 8.5, Article 12, Article 13, Article 15, Sections 20.7 and 20.8 and the Seller will remain bound by Section 6.6, Article 19 and, for a period of 36 months following termination of this EPA, Article 17 and by any other provisions necessary for the interpretation and enforcement of those provisions.

15.4 Payment on Termination – If the Buyer terminates this EPA under subsection 15.1(a), (b) or (f), subject to Section 15.8, the Seller shall pay to the Buyer the Termination Payment. If the Seller terminates this EPA under subsection 15.2(c), subject to Section 15.8, the Buyer shall pay to the Seller the Termination Payment.

15.5 Calculation of Termination Payment – “Termination Payment” means the positive amount, if any, by which a Terminating Party’s Losses and Costs exceed its Gains resulting from the termination of the EPA. For purposes of determining the Termination Payment, a Terminating Party’s Gains, Losses and Costs shall be determined by comparing the value of (i) the Contracted Capacity for the remainder of the Term and the price payable for Eligible Electricity under this EPA had it not been terminated to (ii) the equivalent quantities and relevant market prices for the remaining Term either quoted by a bona fide arm’s length third party offer or which are reasonably expected to be available in the market under a replacement contract for this EPA provided that the market prices will be adjusted for differences between the Contracted Capacity and the electricity subject to the market prices with respect to firmness, place of delivery, greenness and GHG intensity. In calculating a Terminating Party’s Gains, Losses and Costs it will be assumed that the Seller has not exercised, and had the EPA not been terminated would not exercise, the Recall Option, unless the Seller has delivered a Recall Notice to the Buyer not later than 365 days prior to the date of delivery of the notice of termination of the EPA. A Terminating Party’s Gains and Losses will be discounted to the present value of those Gains and Losses at the effective date of termination of the EPA (to take into account the time value of money for the period(s) between the effective date of termination of the EPA and the date the Gains and Losses would have occurred but for the termination of the EPA) using the Present Value Rate applicable at the effective date of termination of the EPA. It is expressly agreed that a Terminating Party shall not be required to enter into a replacement transaction in order to determine the Termination Payment. If the Terminating Party’s Gains exceed its Losses and Costs, if any, resulting from the termination of this EPA, the amount of the Termination Payment will be zero.

15.6 Notice and Payment – The Terminating Party shall determine the Termination Payment owed to it and shall notify the other Party of that amount and provide reasonable particulars with respect to its

determination. The non-Terminating Party, within 15 days after receipt of such notice, shall pay the Termination Payment. At the time for payment of the Termination Payment, each Party shall pay to the other Party all additional amounts payable by it pursuant to this EPA, but all such amounts will be netted and aggregated with any Termination Payment.

15.7 **Termination Payment Definitions** – For purposes of calculating a Termination Payment:

- (a) “**Costs**” means, with respect to a Party, brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred or that would reasonably be expected to be incurred by that Party in entering into new arrangements which replace this EPA and legal fees, if any, incurred in connection with enforcing its rights under this EPA.
- (b) “**Gains**” means, with respect to a Party, an amount equal to the present value of the economic benefit (exclusive of Costs), if any, to such Party resulting from the termination of this EPA determined in a commercially reasonable manner.
- (c) “**Losses**” means, with respect to a Party, an amount equal to the present value of the economic loss (exclusive of Costs), if any, to that Party resulting from the termination of this EPA determined in a commercially reasonable manner.
- (d) “**Present Value Rate**” means the yield on a Government of Canada bond having a maturity date that most closely matches the date on which the Term would have expired but for the termination of the EPA plus 2.00%.

15.8 **Liability Limited** – Except in the case of a Deliberate Breach, the liability of the Buyer or the Seller, as the case may be, for payment of the Termination Payment is limited to an amount equal to \$3,000/MWh/h of average annual Contracted Capacity for the year in which termination occurs as shown in Part I of Appendix 2 multiplied by the number of years, including that year, remaining in the Term.

15.9 **Exclusive Remedies** – Payment by the Seller of the Termination Payment is the exclusive remedy to which the Buyer is entitled for termination of the EPA pursuant to subsections 15.1(a), (b) or (f). Payment by the Buyer of the Termination Payment is the exclusive remedy to which the Seller is entitled for termination of this EPA pursuant to subsection 15.2(c).

16. ASSIGNMENT

16.1 **Assignment** – A Party may not 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 except:

- (a) with the consent of the other Party, such consent not to be unreasonably withheld or delayed, or
- (b) to an Affiliate, on notice to, but without the consent of, the other Party, provided that the assignor, and any guarantor of the assignor, will remain liable for the obligations of the assignee under this EPA, unless otherwise agreed in writing by the other Party.

Notice of intent to assign, and where applicable a request for consent to assign, must be given by the assignee to the other Party not less than 35 days before the date of assignment, and, except in the case of assignment to a lender, must be accompanied by a proposed form of assignment and assumption

agreement, and, in the case of an assignment pursuant to subsection 16.1(a), other than to a lender, evidence of the capability of the assignee as required by subsection 16.2(b). If the consent of the other Party to an assignment, other than to a lender, is required hereunder, the other Party shall give its consent, or notice of the withholding of consent accompanied by written reasons therefor, within 28 days after receipt of the foregoing notice, request and evidence, as applicable, failing which such consent is deemed to be given. Consent to an assignment to a lender will not be given or be deemed to be given until full execution and delivery of the agreement contemplated by Section 16.3. Any sale or other disposition of all or a substantial part of the Seller's ownership interest, if any, in the Seller's Plant, or of all or any interest of the Seller in this EPA or revenue derived from this EPA, and any mortgage, pledge, charge or grant of a security interest in all or any part of the Seller's ownership interest, if any, in the Project Assets and any change of Control, merger, amalgamation or reorganization of the Seller is deemed to be an assignment of this EPA by the Seller for the purpose of this Article 16, including without limitation, Section 16.2.16.2, provided that where Control is transferred to an Affiliate or where the Seller merges or amalgamates with an Affiliate or enters into a reorganization with an Affiliate, subsection 16.1(b) shall apply.

16.2 Preconditions to Assignment – Without limiting subsection 16.1(a), any assignment pursuant to Section 16.1 (other than an assignment to a lender) is subject to:

- (a) the assignee entering into and becoming bound by this EPA, assuming all the obligations and liabilities of the assignor under the EPA arising both before and after the assignment of the EPA, providing the Development Security or the Operating Security, as applicable at the time of assignment and providing the representations and warranties set out in Section 18.1 effective as at the time of assignment;
- (b) except for an assignment under subsection 16.1(b), the assignee demonstrating to the reasonable satisfaction of the other Party its capability (financial and otherwise) to fulfill the obligations of the assignor under this EPA or, in the case of a change of Control, merger, amalgamation or reorganization of the Seller, the parties to that transaction demonstrating to the reasonable satisfaction of the other Party to this EPA, the continued ability of the Seller or the Buyer, as the case may be to perform its obligations under this EPA and, in the case only of an assignment of 100% of the assignor's interest in the Project Assets, the Seller's Plant, or this EPA or revenue derived from this EPA, upon such demonstration and concurrently with the agreement and provision of security required under subsection 16.2(a), the assignor shall be released from all future obligations and liabilities under the EPA and securities provided by it will be returned or released;
- (c) except for an assignment under subsection 16.1(b), the other Party, acting reasonably, being satisfied that the proposed assignment would have no material adverse impact on it or its business or reputation; and
- (d) except for an assignment after the fifth anniversary of COD, the Customer continues to have the customer involvement described in Appendix 5.

16.3 Assignment to Lender– If the Seller intends to assign this EPA to a lender or lenders, the Seller acknowledges that the Buyer is entitled to require, as a condition of the Buyer's consent to such assignment, that the Seller and the lender enter into an agreement with the Buyer substantially in the form attached as Appendix 8.

16.4 **No Implied Consent to Exercise of Conversion Rights** – Unless otherwise expressly acknowledged in writing by the Buyer, no consent given by the Buyer to any assignment referenced in this Article 16 implies or constitutes a consent to the exercise by the assignee, or any Affiliate of the assignee, whether or not a lender, of any right to purchase, or to convert any security or other property issued or assigned to it to, any other security or property interest, which right, if exercised at the time it was acquired, would require the consent of the Buyer under this Article 16, and the exercise of any such right will require the further consent of the Buyer.

16.5 **Costs** – The assignor shall reimburse the other Party for all costs reasonably incurred in connection with an assignment.

16.6 **No Assignment Before COD** – The Seller shall not assign or otherwise dispose of any interest in this EPA prior to COD, except (i) to an Affiliate as permitted under subsection 16.1(b), or (ii) to a lender as permitted under subsection 16.1(a) and Section 16.3, or (iii) with the prior consent of the Buyer.

17. INSPECTION

For the sole purpose of verifying compliance with this Agreement, of verifying the accuracy of invoices and other statements or calculations delivered by the Seller to the Buyer under this EPA and of verifying the Seller's right to rely on any relief claimed by the Seller under this EPA, on reasonable prior written notice to the Seller, the Seller shall provide the Buyer and the Buyer's representatives and advisors with prompt access during normal business hours to the Seller's Plant and to the records relating to the Seller's Plant including all records required to be maintained by the Seller under Section 6.6. The Buyer and the Buyer's representatives and advisors may take copies of all such records, all of which are confidential information under Section 20.8. The Buyer shall exercise any access under this Article 17 in a manner that minimizes disruption to the operation of the Seller's Plant. Any review, inspection or audit by the Buyer of the Seller's Plant, its design, construction, operation, maintenance, repair, records or other activities of the Seller may not be relied upon by the Seller, or others, as confirming or approving those matters.

18. REPRESENTATIONS AND WARRANTIES

18.1 **By Seller** – 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 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) **No Litigation** – The Seller is not subject to any order, judgment or decree, litigation, investigation or proceeding, or claim which would interfere with the ability of the Seller

to comply with this EPA and no facts, circumstances or conditions exist which might reasonably give rise to such claim, investigations, proceedings or litigation;

- (d) Assets – There is no appropriation, expropriation or seizure of any of the assets of the Seller pending or threatened;
- (e) 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 memorandum or articles of incorporation 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;
- (f) Binding Obligation – This EPA constitutes a valid and binding obligation of the Seller enforceable against the Seller in accordance with its terms;
- (g) Authorization, Execution and Delivery – This EPA has been duly authorized, executed and delivered by the Seller; and
- (h) Bid Documents – All material information in the Bid Documents is true and correct and there is no material information omitted from the Bid Documents which makes the information in the Bid Documents misleading or inaccurate.

18.2 **By Buyer** – 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 duly incorporated, organized, validly existing and in good standing under the laws of British Columbia, 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 have been taken or authorized by the Buyer or any other Person to initiate proceedings for, or in respect of, the bankruptcy, insolvency, liquidation, dissolution or winding-up of the Buyer or to appoint a receiver, liquidator, trustee or assignee in bankruptcy in respect of the Buyer;
- (c) No Litigation – The Buyer is not subject to any order, judgment or decree, litigation, investigation or proceeding, or claim which would interfere with the ability of the Buyer to comply with this EPA and no facts, circumstances or conditions exist which might reasonably give rise to such claim, investigations, proceedings or litigation;
- (d) Assets – There is no appropriation, expropriation or seizure of any of the assets of the Buyer pending or threatened;

- (e) No Conflict – Neither the signing of this EPA nor the carrying out of the Buyer’s obligations under this EPA will: (i) constitute or cause a breach of, default under, or violation of, the *Hydro and Power Authority Act* (British Columbia), any permit, franchise, lease, license, approval or agreement to which the Buyer is a party, or any other covenant or obligation binding on the Buyer or affecting any of its properties;
- (f) Binding Obligation – This EPA constitutes a valid and binding obligation of the Buyer enforceable against the Buyer in accordance with its terms; and
- (g) Authorization, Execution and Delivery - This EPA has been duly authorized, executed and delivered by the Buyer.

19. INDEMNITY

The Seller shall indemnify, defend and hold the Buyer and its shareholder(s), directors, officers, employees, agents, representatives, successors and permitted assigns (the “Indemnified Parties”) harmless from and against all losses, damages, costs, expenses, liabilities, actions, causes of action, demands, proceedings, claims, expenses, orders, fines and penalties (including all reasonable legal fees and expenses on a solicitor and own client basis) which any of the Indemnified Parties suffer, incur, or are subject to or liable for, as a result of any act or omission (whether negligent or not) of the Seller, any of its Affiliates or their employees, agents or contractors in connection with the design, construction, interconnection to the Transmission Authority’s System, commissioning, financing, operation, maintenance, modification, repair, decommissioning, closure or otherwise of the Seller’s Plant, except to the extent caused by the negligence of the Buyer or the breach of this EPA by the Buyer.

20. GENERAL PROVISIONS

20.1 **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.

20.2 **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.

20.3 **Enurement** – This EPA enures to the benefit of the Parties, their successors and their permitted assigns.

20.4 **Notices** – Any notice, consent, waiver, request for approval or other request, statement or bill (a “notice”) 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 stated in subsection 20.4(c) or (d); and:

- (a) may be delivered by hand or by a courier service during normal business hours on a Business Day, in which case the notice will be deemed to have been delivered on that Business Day; or
- (b) may be sent by facsimile, in which case, if the printed confirmation of transmission indicates the transmission occurred during normal business hours on a Business Day, the notice will be deemed to have been delivered on that Business Day and otherwise the

notice will be deemed to have been delivered on the next Business Day after the date of transmission set out in the printed confirmation of transmission.

- (c) subject to subsection 20.4(e), the address and FAX number of the Buyer for notices is:

Manager, ~~Supply Investments~~Energy Acquisition
6911 Southpoint Drive
333 Dunsmuir St.
~~Burnaby~~Vancouver, B.C.
V3N 4X8B 5R3
Fax: (604) ~~528-8149~~

- (d) subject to subsection 20.4(e), the address and FAX number of the Seller for notices is:

•
Fax: •

- (e) either Party may change its address or FAX number for notices under this EPA by notice to the other Party.

20.5 Entire Agreement and Amendment – This EPA contains the entire agreement between the Parties with respect to the purchase and sale of Electricity and supersedes all previous communications, understandings and agreements between the Parties with respect to the subject matter hereof including, without limitation, the Request for Qualifications issued by the Buyer on May 31, 2002 and the Call for Tenders issued by the Buyer on September 6, 2002 and all addenda, questions and answers and other communications by the Buyer in connection therewith or relating thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements express, implied or statutory between the Parties other than as expressly set out in this EPA. This EPA may not be amended, except by an agreement in writing signed by both Parties.

20.6 No Waiver – 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.

20.7 Dispute Resolution – If any dispute arises under or in relation to this EPA that dispute will be referred to and finally resolved by arbitration by a single arbitrator under the domestic rules of the British Columbia International Commercial Arbitration Centre (“BCICAC”). The arbitration will take place at Vancouver, British Columbia. If at the time a dispute arises the BCICAC does not exist, the dispute will be finally settled by arbitration by a single arbitrator under such rules as the Parties may agree in writing, or failing agreement, by a single arbitrator appointed under the Commercial Arbitration Act (British Columbia) and such rules as that arbitrator may establish or adopt. The arbitrator will have jurisdiction and power to make interim, partial or final awards ordering specific performance, injunction and any other equitable remedy. The Parties are entitled to seek interim measures of protection from the courts pending completion of any arbitration. All performance required under this EPA by the Parties and payments required under this EPA will continue during the dispute resolution proceedings contemplated by this Section 20.7, provided that this Section may not be interpreted or applied to delay or restrict the exercise of any right to suspend performance under or terminate this EPA pursuant to the express terms hereof. Any payments or reimbursements required by an arbitration award will be effective as of the date

determined in the award, and, without duplication with subsection 8.2(b), will bear interest at the Prime Rate plus 3%.

20.8 Confidentiality

- (a) Subject to subsection 20.8(d), during the Term and for 5 years thereafter, each Party shall treat as confidential and will not cause or permit the publication, release or disclosure of all or part of this EPA, any information acquired from the other Party in connection with the settlement of the EPA, or any other information identified herein as confidential (“confidential information”), except to the extent that publication, release or disclosure (i) is necessary to enable a Party to fulfill its obligations under this EPA, (ii) is required by law, (iii) is made with the prior consent of the other Party, or if (iv) such information has entered the public domain other than through the actions of the Party disclosing the information. Nothing in this Section 20.8 shall restrict or prevent the Buyer from publishing or otherwise disclosing (i) the Project name, location, Contracted Capacity, technology type, prices under this EPA, and the name of the Seller and the Customer, (ii) any sample standard form electricity purchase agreement or pricing information on which this EPA may be based, or (iii) information necessary to enable the Buyer to realize the full benefit of the Green Rights and the Emission Reduction Rights and information relating generally to the Buyer’s green and alternative energy program. The Seller may disclose confidential information to lenders and potential lenders and their employees and advisers in connection with the financing of the Seller’s Plant, provided that such disclosure is in accordance with normal lending practices and the lenders and potential lenders to whom the disclosure is made provide a written, binding undertaking to the Parties to keep the confidential information disclosed to them strictly confidential to the same extent as if they were parties to this EPA. The Buyer may disclose confidential information to representatives of the Government of British Columbia who have a need to have knowledge of the confidential information and who have been informed by the Buyer of the need to maintain the confidentiality of information disclosed to them.
- (b) 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 may be subject to the provisions of that legislation.
- (c) The Parties acknowledge that confidential information constitutes commercial and financial information of the Seller and the Buyer, which has been supplied in confidence and the disclosure of which could reasonably be expected to harm significantly the competitive position and/or interfere significantly with the negotiating position of the Seller and further could reasonably be expected to harm the financial or economic interests of the Buyer. Accordingly, the Parties confirm their intention that all confidential information disclosed to each other shall be deemed to be confidential and exempt from disclosure to third persons in accordance with Section 21 of the *Freedom of Information and Protection of Privacy Act* of British Columbia, as amended from time to time.
- (d) If this EPA is filed with any regulatory agency, the Party filing the same shall use all reasonable efforts to secure confidential treatment of this EPA, and the other Party shall

support those efforts by evidence and argument as reasonably necessary before that regulatory agency.

20.9 **Public Announcements** – Without limiting the obligations of the Parties under Section 20.8, if a Party wishes to make any public announcement concerning the development of the Seller's Plant or this EPA, that Party shall give the other Party reasonable prior notice thereof and a reasonable opportunity to review and comment upon the contents thereof. The Party wishing to make the announcement shall endeavour to accommodate reasonable comments received from the other Party in the interest of avoiding inaccurate or misleading announcements.

20.10 **Interconnection Agreement and Facilities Agreement** – ~~Notwithstanding that the Seller is party to the Interconnection Agreement and the Facilities Agreement with the Transmission Authority, which is a business unit of British Columbia Hydro and Power Authority, nothing~~Nothing in the Interconnection Agreement or the Facilities 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 or the Facilities Agreement shall constitute or be relied upon as a notice, consent, approval or communication or decision under this EPA, and this EPA shall be interpreted and applied as though the Transmission Authority were a third party ~~and not part of the Buyer~~, including for purposes of determining whether or not a Force Majeure has occurred and for purposes of determining under subsection 7.8(b) the reasonable management measures the Buyer could take to relieve congestion on the Transmission Authority's System.

20.11 **Commodity Contract** – This EPA constitutes a commodity contract for the purposes of subsection 65.1(8) of the *Bankruptcy and Insolvency Act* (Canada).

20.12 **Notice of Bankruptcy or Insolvency** – If a Party becomes Bankrupt or Insolvent or is at material risk of becoming Bankrupt or Insolvent, that Party shall forthwith provide a notice to the other party to that effect.

20.13 **Further Assurances** – Each Party shall, 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.

20.14 **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.

20.15 **Counterparts** – This EPA 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 date of this EPA.

For •

Authorized Representative

Print Name and Office

Date

For **BRITISH COLUMBIA HYDRO AND POWER AUTHORITY:**

Authorized Representative

Print Name and Office

Date

APPENDIX 1

DEFINITIONS

References in an Appendix to a Section or subsection mean a Section or subsection of the EPA agreement, and not an Appendix, unless otherwise stated. The following words and expressions wherever used in this EPA have the following meaning:

- (a) **“Actual GHG Intensity”** has the meaning given in Appendix 4.
- (b) **“AEE”** has the meaning given in Appendix 4.
- (c) **“Affiliate”** means, with respect to the Seller, any Person directly or indirectly Controlled by, Controlling, or under common Control with, the Seller and with respect to the Buyer, any Person directly or indirectly Controlled by the Buyer.
- (d) **“Annual Capacity Factor LDs”** means the LDs so specified in Appendix 4, Section 3.
- (e) **“Annual Contracted Electricity”** has the meaning given in Appendix 4.
- (f) **“Annual Delivered Electricity”** has the meaning given in Appendix 4.
- (g) **“Annual Operating Plan”** means each plan delivered by the Seller to the Buyer under Section 6.7(b).
- (h) **“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; or
 - (ii) the Person has filed a petition or similar proceeding seeking reorganization, arrangement or similar relief under any bankruptcy law; or
 - (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; or
 - (iv) the Person has voluntarily suspended the transaction of its usual business; or
 - (v) a court has issued an order declaring the Person bankrupt or insolvent.
- (i) **“BCUC”** means the British Columbia Utilities Commission or any successor thereto.
- (j) **“Bid Documents”** means the Qualification Statement and the Tender Forms described in Recital C and all documents and supporting and related information provided by the Seller to the Buyer with, or in connection with, such submissions, whether concurrently with or after the date of such submissions.

- (k) “**Business Day**” means any calendar day which is not a Saturday, Sunday or other day on which the main branch of Bank of Montreal in Vancouver is not open for business.
- (l) “**Buyer**” means, subject to Recital A and Section 20.10, British Columbia Hydro and Power Authority and its successors and permitted assigns.
- (m) “**Buyer Default**” means:
- (i) the Buyer is Bankrupt or Insolvent;
 - (ii) except where an amount has been disputed in the manner specified in subsection 8.1(b), 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 30 days after the Seller has given notice of the default to the Buyer; or
 - (iii) 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 period of reasonable time.
- (n) “**CFT**” means the Call For Tender issued by the Buyer on September 6, 2002 for the sale of electricity to the Buyer from customer-based generation plants, including all addenda thereto.
- (o) “**CFT Adjusted Bid Price**” means \$____/MWh as adjusted pursuant to subsection 7.6(g) and Appendix 3 *[This amount will be the Bid Price set out in the Tender Form after applying the Bid Price adjustments used for bid comparison purposes in the CFT.]*
- (p) “**COD**” means the time when the Seller has satisfied the requirements in Section 5.2.
- (q) “**COD Certificate**” means a certificate signed by a senior officer of the Seller certifying that the requirements for COD set out in Section 5.2 have been met by the Seller.
- (r) “**Contracted Capacity**” means for any hour during the Term, the Contracted Capacity expressed in MWh/h for that hour determined in the manner set out in Appendix 2, subject to adjustment in accordance with Section 3.5, Section 7.6 and, for purposes of calculating LDs, subject to adjustment in accordance with Sections 11.1 and 11.5.
- (s) “**CPI**” means, subject to Section 1.9, the Consumer Price Index for Canada, All Items (Not Seasonally Adjusted) as published by Statistics Canada.
- (t) “**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, or (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.

- (u) **“Costs”** has the meaning given in Section 15.7.
- (v) **“Customer”** means • and its successors any entity that replaces • and that meets the “customer involvement” requirement set out in title to the facility to which Electricity from the Seller’s Plant flows prior to reaching the POD. “Mandatory Criteria” in the CFT/[The name to be inserted in the bullet will be the name on Tender Form – Attachment E]
- (w) **“DBRS”** means Dominion Bond Rating Service.
- (x) **“Deliberate Breach”** means:
 - (i) for the purpose of Section 12.2, a breach by the Seller of its obligation to deliver Electricity resulting from any wilful or grossly negligent act or omission by the Seller which is not excused by Force Majeure or relief under Section 11 in respect of a Hardship Event, in circumstances where the Seller’s Plant is (or would, but for the wilful or grossly negligent act or omission of the Seller, have been) physically capable of generating and delivering Electricity in excess of GBL, including a failure to deliver Electricity due to a Planned Outage of the Seller’s Plant taken contrary to Section 6.5; ~~and~~
 - (ii) for the purpose of Section 15.8, a Buyer Default or a Seller Default, as the case may be, constituting a repudiation of the EPA by the Buyer or by the Seller, respectively, and in the case of a Seller Default, a default described in subsection (gggg)(i) or (ii) of Appendix 1 or a breach of Section 7.2 or the last sentence of Section 6.4 resulting from any wilful or grossly negligent act or omission by the Seller which is not excused by Force Majeure or relief under Section 11 in respect of a Hardship Event, in circumstances where the Seller’s Plant is (or would, but for the wilful or grossly negligent act or omission of the Seller, have been) physically capable of generating and delivering Electricity in excess of GBL, including a failure to deliver Electricity due to a Planned Outage of the Seller’s Plant taken contrary to Section ~~6.5-6.5~~; and
 - (iii) for the purpose of Section 12.4, a Buyer Default described in subsection (m)(ii) of Appendix 1 constituting a repudiation of the EPA by the Buyer;
- (y) **“Development Security”** means the security described in Section 13.1;
- (z) **“Electrical Host”** means a facility located between the Seller’s Plant and the POD where the Seller’s Plant is providing Electricity to the facility and the ~~facility~~ Seller’s Plant does not have an independent connection to the Transmission ~~Authority’s~~ System;
- (aa) **“Electricity”** means electricity generated by the Seller’s Plant, net of Station Service.
- (bb) **“Eligible Electricity”** means, in each hour, the amount of Metered Electricity delivered, or deemed pursuant to Section 7.7 to be delivered, by the Seller at the POD in that hour, but subject to the following limitations:
 - (i) subject to subsection (v) below, if such Metered Electricity is equal to or less than GBL, Eligible Electricity is zero;

- (ii) subject to subsections (iv) and (v) below, if such Metered Electricity is greater than GBL, but less than or equal to the Plant Capacity, then Eligible Electricity is the product of A and B, where A is equal to the Metered Electricity minus GBL, and B is equal to the Contracted Capacity divided by the Project Capacity;
 - (iii) if such Metered Electricity is greater than the Plant Capacity, then Eligible Electricity is equal to the lesser of (1) 110% of Contracted Capacity, and (2) the product of A and B, where A and B have the values given in the preceding subsection (ii);
 - (iv) where Section 7.5 applies, Eligible Electricity is all Metered Electricity delivered by the Seller at the POD in that hour minus GBL but not exceeding 110% of the Contracted Capacity;
 - (v) where the Seller has properly invoked relief under Article 11 in respect of a Hardship Event described in subsection (rr)(iv) of Appendix 1 and Metered Electricity is less than or equal to Plant Capacity, Eligible Electricity is equal to the lesser of (1) 110% of Contracted Capacity; and (2) the product of A and B, where A is equal to the Metered Electricity and B is equal to the Contracted Capacity divided by the Project Capacity; and
 - (vi) where the Seller has been excused from delivery of the Contracted Capacity pursuant to subsection 7.8(a)(iii) but, based on subsection 7.8(b)(ii), the Buyer is not excused from its obligation to pay for Eligible Electricity, then Eligible Electricity is the amount, not exceeding 110% of the Contracted Capacity, the Seller could have delivered, or been deemed under Section 7.7 to have delivered, to the POD but for the occurrence of the event described in subsection 7.8(a)(iii).
- (cc) **“Emission Reduction Rights”** means any credit, reduction right, offset, allocated pollution right, emission reduction allowance or other proprietary or contractual right whether or not tradeable resulting from or otherwise related to the generation, purchase or sale of the Electricity.
- (dd) **“Energy Source”** means the source of energy used to generate Electricity at the Seller’s Plant, as specified in Appendix 5.
- (ee) **“Facilities Agreement”** means the agreement between the Seller and the Transmission Authority setting out the commercial terms and conditions applicable to the interconnection of the Seller’s Plant to the Transmission Authority’s System.
- (ff) **“Force Majeure”** means, subject to the exclusions in Sections 10.2 and 10.3, any event or circumstance not within the reasonable control of the Party claiming Force Majeure and includes:
- (i) acts of God, including wind, ice and other storms, lightning, floods, earthquakes, volcanic eruptions and landslides;
 - (ii) strikes, lockouts and other industrial disturbances;

- (iii) epidemics, war (whether or not declared), blockades, acts of public enemies, acts of sabotage, civil insurrection, riots and civil disobedience;
 - (iv) acts or omissions of federal, provincial or local governments or any of their boards or agencies, other than the Buyer or entities Controlled by the Buyer, including delays in regulatory process, and orders of a regulatory authority or court of competent jurisdiction; and
 - (v) explosions and fires.
- (gg) “**Force Majeure Hours**” has the meaning given in Appendix 4.
 - (hh) “**Forced Outage**” means an Outage, which is not caused by a Force Majeure, and which results from an unplanned component failure or other condition, which requires under Good Operating Practice within 72 hours, a generator or other component to be removed from service or the load on a generator or reliance on the component to be reduced.
 - (ii) “**GBL**” means Generator Baseline and is the amount set out in Appendix 5.
 - (jj) “**GHG Intensity Factor**” has the meaning given in Appendix 4.
 - (kk) “**GHG Intensity LDs**” means the LDs so specified in Appendix 4.
 - (ll) “**Gains**” has the meaning given in section 15.7.
 - (mm) “**Good Operating Practice**” means any of the practices, methods and acts engaged in, or approved by, a significant portion of the electric 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 Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be practices, methods or acts generally accepted in the WSCC region.
 - (nn) “**Green Rights**” means all right, title, interest and benefit in and to any credit, allowance, “green” tag, ticket, certificate or other “green” marketing attribute or proprietary or contractual right, whether or not tradeable, resulting from the generation, delivery or purchase of Eligible Electricity during the Term.
 - (oo) “**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.
 - (pp) “**Guarantor(s)**” means the Person or Persons that issue a guarantee to satisfy all or part of the Operating Security required hereunder.
 - (qq) “**HLH**” means 6:00 a.m. to 10:00 p.m. PPT Monday through Saturday excluding Holidays Days.

(rr) **“Hardship Event”** means one or more of the following events or circumstances:

- (i) Change in Laws or Policy: a change in the federal laws of Canada, the laws of the Province of British Columbia or laws of a local government having jurisdiction in the location where the Seller’s Plant is situated, including changes in tax laws, whether as to rates or otherwise, where such change in laws has come into force or a change in policy announced publicly in written form by the Government of Canada, the Government of the Province of British Columbia, or such local government where such change in policy has come into effect and been implemented; or
- (ii) Fuel Shortage or Price Increase: if the Project includes thermal generation, a lack of availability of the thermal Energy Source due to diminished supply, or an increase in the delivered cost to the Seller of the thermal Energy Source, including an increase in such delivered cost resulting from an inability of the Seller to contract for secure supply of the thermal Energy Source over a reasonable term due to a deterioration in the creditworthiness of the Seller and the Guarantor and their Affiliates; or
- (iii) Cogeneration Host Shutdown: if the Project consists of a cogeneration facility, a curtailment or shutdown in production at the thermal host facility for reasons not attributable to the Seller or the Seller’s Plant or a process change at the thermal host facility that significantly reduces the thermal host facility’s steam requirements for reasons not attributable to the Seller or the Seller’s Plant; or
- (iv) Electricity Host Shutdown: a shutdown of the Electricity Host for reasons that are not attributable to the Seller or the Seller’s Plant;

provided that in each case:

- (v) the event or circumstance did not exist on or before the *[Tender Closing Date]*, and none of the Seller, the Customer or their respective Affiliates had specific knowledge, or ought reasonably to have had specific knowledge, on or before the *[Tender Closing Date]* that the particular event or circumstance was scheduled or likely to occur, and the event or circumstance is beyond the reasonable control of the Seller or, except in the case of a Hardship Event described in (iii) or (iv) above, any Guarantor, or their respective Affiliates; and
- (vi) the Seller is unable to generate and deliver the Contracted Capacity under this EPA, or such generation and delivery would have a materially adverse economic effect on the long-term viability of the operation by the Seller of the Seller’s Plant, in either case due to the occurrence of the event or circumstance; and
- (vii) the event or circumstance or its impact on the Seller and duration is not caused or contributed to by the Seller having failed to conduct its business with reasonable prudence and diligence, including prudence and diligence in contracting for goods and services, including, in the case of thermal generation, the Energy Source, whether in the course of mitigation or otherwise without regard to the availability of relief under Section 11, and prudence and diligence in the enforcement of contracts with third Persons,

and further provided that a Hardship Event continues for so long as the effect described in subsection (vi) continues notwithstanding that the event or circumstance giving rise to that effect has ceased.

- (ss) **“Hardship Hours”** means those hours during which the Seller’s Plant is operating at less than the Plant Capacity in circumstances where the Seller has properly invoked relief against a Hardship Event in accordance with Article 11.
- (tt) **“Holiday Days”** means British Columbia statutory holidays.
- (uu) **“Initial Period”** means the period expiring on the Initial Period Expiry Date.
- (vv) **“Initial Period Expiry Date”** means the date that is 180 days after the commencement of the Term as extended pursuant to Section 3.3 or as further extended by written agreement between the Parties.
- (ww) **“Interconnection Agreement”** means the agreement between the Seller and the Transmission Authority setting out the terms and conditions of interconnection of the Seller’s Plant to the Transmission Authority’s ~~Technical~~ System, as amended or replaced from time to time.
- (xx) **“LDs”** means liquidated damages.
- (yy) **“LD Factor”** has the meaning given in Appendix 4.
- (zz) **“LLH”** means all hours other than HLHs.
- (aaa) **“Long-Term Operating Plan”** means the plan referred to in subsection 6.7(a) as amended by the Seller from time to time.
- (bbb) **“Losses”** has the meaning given in Section 15.7.
- (ccc) **“Maintenance Outage”** means an Outage, which is not caused by a Force Majeure, and which results from the removal of a generator or other component from service, or a reduction of load on a generator, in order to perform work on specific components that can be deferred such that it does not constitute a Forced Outage but, in accordance with Good Operating Practice, requires a generator or other component to be removed from service before the next Planned Outage.
- (ddd) **“Material Permits”** means permits, certificates, licenses and other approvals required for the Project and for the design, construction and operation of the Seller’s Plant including environmental approvals other than any permits, certificates, licenses or other approvals that are not required for the commencement of construction and are of such a nature that they can reasonably be expected to be obtained in the ordinary course during construction or thereafter.
- (eee) **“Metered Electricity”** means Electricity, expressed in MWh, as recorded by the Metering Equipment.

- (fff) **“Metering Equipment”** means the metering equipment described in Section 7.11.
- (ggg) **“Monthly Capacity Factor LDs”** means the LDs so specified in Appendix 4, Section 2.
- (hhh) **“Monthly Contracted Electricity”** has the meaning given in Appendix 4.
- (iii) **“Monthly Delivered Electricity”** has the meaning given in Appendix 4.
- (jjj) **“Non-Winter Months”** means all months other than Winter Months.
- (kkk) **“Off-Site Emission Reduction Rights”** means any Emission Reduction Rights (i) resulting from the actual or assumed displacement of emissions from generating facilities owned or operated by the Buyer or from which the Buyer or any of its Affiliates purchases electricity, wherever located, as a result of the purchase by the Buyer of Eligible Electricity during the Term or (ii) otherwise resulting or arising in any manner whatsoever from the purchase by the Buyer of Eligible Electricity during the Term.
- (lll) **“Operating Security”** means the security described in Section 13.4.
- (mmm) **“Outage”** means a Planned Outage, a Maintenance Outage or a Forced Outage.
- (nnn) **“Party”** means (i) the Buyer and its successors and permitted assigns, or (ii) the Seller and its successors and permitted assigns, and **“Parties”** means both the Buyer and the Seller and their respective successors and permitted assigns, provided that the Transmission Authority shall be deemed not to be a **“Party”**, whether or not owned or operated by British Columbia Hydro and Power Authority.
- (ooo) **“Permits”** means permits, certificates, licenses, and other approvals required for the design, construction or operation of the Seller’s Plant, including environmental approvals.
- (ppp) **“Person”** means an individual, body corporate, firm, partnership, joint venture, legal representative or other legal entity.
- (qqq) **“Planned Outage”** means an Outage, which is scheduled more than 30 days in advance in accordance with Good Operating Practice for purposes of inspection and/or general overhaul of one or more major equipment groups.
- (rrr) **“Planned Outage Hours”** has the meaning given in Appendix 4.
- (sss) **“Plant Capacity”** means the aggregate nameplate capacity of all electrical generators in the Seller’s Plant upon completion of the Project, as specified in Appendix 5.
- (ttt) **“POD”** means the point at which the Seller’s Plant interconnects with the Transmission Authority’s System.
- (uuu) **“Pre-COD Eligible Electricity”** means that amount of Metered Electricity delivered or deemed pursuant to Section 7.7 to be delivered, by the Seller, at the POD in each hour prior to COD in excess of GBL but not exceeding 110% of the Contracted Capacity for year 1 as specified in Appendix ~~2.2~~ except for any such Metered Electricity that Powerex Corp. may

elect to purchase from the Seller at such price as may be agreed between the Seller and Powerex Corp. to a maximum of \$20/MWh.

- (vvv) **“Present Value Rate”** has the meaning given in Section 15.7.
- (www) **“PPT”** stands for Pacific Prevailing Time which means Pacific Daylight or Standard Time as applicable.
- (xxx) **“Prime Rate”** means the floating prime interest rate announced from time to time by Bank of Montreal, Vancouver Main Branch, 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.
- (yyy) **“Project”** means the project described in Appendix 5.
- (zzz) **“Project Assets”** means the Seller’s Plant and all rights, property, assets, equipment, materials and contracts required to construct, operate and maintain the Seller’s Plant, whether real or personal and whether tangible or intangible, including equipment and other warranties, Permits, supply and other contracts, the goodwill in and right to use the name by which the Seller’s Plant is commonly known, the books, records and accounts with respect to the Seller’s Plant, and all land tenure and land tenure agreements with respect to the Seller’s Plant.
- (aaaa) **“Project Capacity”** means the Plant Capacity minus the GBL.
- (bbbb) **“PST”** means provincial social services or sales taxes and similar or replacement assessments, if any.
- (cccc) **“Recall Adjustment Amount”** has the meaning given in Appendix 3.
- (dddd) **“Recall Date”** has the meaning given in Section 7.6.
- (eeee) **“Recall Notice”** has the meaning given in Section 7.6.
- (ffff) **“Seller”** means the Party so identified on page one of this EPA, and its successors and permitted assigns.
- (gggg) **“Seller Default”** means any one of the following:
- (i) the Monthly Delivered Electricity divided by the Monthly Contracted Electricity is less than 90% in 6 or more months in any 24 month period after the first anniversary of COD;
 - (ii) the Annual Delivered Electricity divided by the Annual Contracted Electricity is less than 80% in any 3 consecutive years during the Term after the first anniversary of COD;
 - (iii) a suspension under Section 14.1 has continued for more than 365 days from the date of commencement of the suspension;

- (iv) the Seller is Bankrupt or Insolvent;
 - (v) the Interconnection Agreement and/or the Facilities Agreement is terminated for any reason attributable to the Seller, unless a new Interconnection Agreement and/or Facilities Agreement is entered into between the Seller and the Transmission Authority within 30 days of the date of termination of the Interconnection Agreement and/or the Facilities Agreement;
 - (vi) the Seller's Plant is disconnected from the Transmission Authority's System for reasons attributable to the Seller (i) more than twice or (ii) for a period of more than 360 hours in aggregate duration (whether or not continuous), in either case in any continuous period of 365 days, unless within 30 days after the date of notice by the Buyer to the Seller of the default, the Seller has cured the cause of the disconnection, or where the cause 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 cause and the cause is cured within a further period of reasonable time;
 - (vii) 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 30 days after the Buyer has given notice of the default to the Seller; or
 - (viii) 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), including failure to use commercially reasonable efforts to satisfy the conditions subsequent set out in Section 3.1, failure to deliver the Operating Security, any purported assignment which does not comply with Article 16, any act or omission by the Seller that causes the Seller to cease to be exempt from regulation as a public utility as defined in the UCA contrary to ~~section 7.4~~ 7.4 where the regulation of the Seller as a public utility could reasonably be expected to have an adverse effect on the Buyer and any breach by the Seller of subsection 7.10(b), 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 period of reasonable time.
- (hhhh) **"Seller's Plant"** means the Seller's plant described in Appendix 5.
- (iiii) **"Significant Construction"** means, with respect to the Project, that the Seller's construction contractor has mobilized its equipment on the worksite and has performed site work having a value of not less than the lesser of \$1,000,000 and 50% of the total Project costs with the intent of continuing to perform work at the site.
- (jjjj) **"Station Service"** means electricity required to service the Seller's Plant including electricity required for fuel processing.
- (kkkk) **"Target COD"** means the date so specified in Appendix 5, which date is not subject to change under this EPA, whether for Force Majeure or otherwise.

- (llll) **“Target GHG Intensity”** has the meaning given in Appendix 4.
- (mmmm) **“Term”** has the meaning given in Section 2.1.
- (nnnn) **“Terminating Party”** means a Party that terminates this EPA in accordance with the provisions of this EPA and that is entitled, under Section 15.4, to receive a Termination Payment.
- (oooo) **“Termination Payment”** has the meaning given in Section 15.5.
- (pppp) **“Transmission Authority”** means the Person or Persons who ~~own and/or~~ operate the ~~electricity transmission system in British Columbia~~ Transmission System, in whole or in part, including an independent system operator ~~or other Person having responsibility for operation of the electricity transmission system in British Columbia~~.
- (qqqq) **“Transmission Authority’s System”** means the ~~physical~~ transmission and distribution system ~~owned and/or operated by the Transmission Authority~~ that interconnects, or affects the interconnection, or is affected by the interconnection, with the Seller’s Plant.
- (rrrr) **“Transmission Constraint Hours”** has the meaning given in Appendix 4.
- (ssss) **“UCA”** means the *Utilities Commission Act* (British Columbia).
- (tttt) **“WECC”** means the Western Electricity Coordinating Council or any successor organization of which the Buyer is a member.
- (uuuu) **“Winter Months”** means November, December, January and February.

APPENDIX 2

CONTRACTED CAPACITY

The Contracted Capacity for each hour in each month of each year during the Term is the amount expressed in MWh/h, equal to the applicable percentage (in Part II of this Appendix 2) of the applicable amount in Part I of this Appendix 2 where Year 1 commences at COD.

Part I

Average Annual Contracted Capacity

[Note – Right hand column of table to be completed only by bidders electing to take the Hydrology Adjustment and who have no GBL. The right hand column will not be included in the EPA for those bidders that do not elect to take the Hydrology Adjustment or for any bidders that have any GBL.]

Year	Average Annual Contracted Capacity (MWh/h)	<u>Where there is no GBL only, years in which the Contracted Capacity represents the expected full output of the Seller's Plant (Mark with an "X")</u>
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		

19		
20		

Part II

Monthly Percentage of Average Annual Contracted Capacity (Note that the numbers inserted in this Table must average to 100% when weighted by the number of days in the month).

Month	Percentage of Amount Stated in Part I
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

APPENDIX 3

PRICE

Part I – Definitions

In this Appendix 3:

- (a) “**Bid Price**” means \$●/MWh. [*The number to be inserted in this bullet is the Bid Price from the Tender without regard to the adjustments used for bid comparison purposes in the CFT.*]
- (b) “**EPA Adjusted Bid Price**” means the Bid Price as adjusted pursuant to Sections 3.2 (CPI Adjustments) and 3.4 (Recall Option Adjustment) of this Appendix.
- (c) “**EPA Price**” means the EPA Adjusted Bid Price as adjusted pursuant to Section 3.3 (Delivery Time Adjustment) of this Appendix.
- (d) “**Recall Adjustment Amount**” means, subject to any adjustments pursuant to Section 3.2 (CPI Adjustment) of this Appendix, \$2.00/MWh.

Part II – Pre-COD Price

2.1 No price is payable by the Buyer for any Metered Electricity before COD, except as set out in Section 2.2 of this Appendix.

2.2 The price payable by the Buyer for Pre-COD Eligible Electricity generated during the 72 continuous hour period specified in subsection 5.2(a) and delivered to the POD is \$20.00/MWh. If the Seller’s Plant does not satisfy the requirements of Section 5.2, no price is payable by the Buyer for Pre-COD Eligible Electricity generated during the period specified in subsection 5.2(a).

Part III – Post-COD Price

3.1 **Price** – The price payable by the Buyer for each MWh of Eligible Electricity delivered to the POD after COD is the EPA Price.

3.2 CPI Adjustments

- (a) If COD occurs on or before September 30, 2006 then the Bid Price, the Recall Adjustment Amount, the GHG Intensity Factor and the CFT Adjusted Bid Price will be adjusted effective as of January 1 in each year in accordance with the following formula:

$$\text{Bid Price}_{\text{Jan 1, year N}} = \text{Bid Price} \times \text{CPI Adjustment}_{\text{Jan 1, year N}}$$

$$\text{Recall Adjustment Amount}_{\text{Jan 1, year N}} = \text{Recall Adjustment Amount} \times \text{CPI Adjustment}_{\text{Jan 1, year N}}$$

$$\text{GHG Intensity Factor}_{\text{Jan 1, year N}} = \text{GHG Intensity Factor} \times \text{CPI Adjustment}_{\text{Jan 1, year N}}$$

$$\text{CFT Adjusted Bid Price}_{\text{Jan 1, year N}} = \text{CFT Adjusted Bid Price} \times \text{CPI Adjustment}_{\text{Jan 1, year N}}$$

Where:

$$\text{CPI Adjustment}_{\text{Jan 1, year N}} = \text{Max} \{ \text{CPI Adjustment}_{\text{Jan 1, year N-1}}, 0.5 \times (1 + [\text{CPI}_{\text{Jan 1, year N}} / \text{CPI}_{\text{Jan 1, 2003}}]) \}$$

where N = 1 is Jan 1, 2004; N = 2 is Jan 1, 2005, etc.

and where $\text{CPI Adjustment}_{\text{Jan 1, year 0}} = 1$

(b) If COD occurs after September 30, 2006 then:

(i) the Bid Price and the CFT Adjusted Bid Price will be adjusted effective as of January 1 in each year in accordance with the following formula:

$$\text{Bid Price}_{\text{Jan 1, year N}} = \text{Bid Price} \times \text{CPI Adjustment}_{\text{Jan 1, year N}}$$

$$\text{CFT Adjusted Bid Price}_{\text{Jan 1, year N}} = \text{CFT Adjusted Bid Price} \times \text{CPI Adjustment}_{\text{Jan 1, year N}}$$

Where:

$$\text{CPI Adjustment}_{\text{Jan 1, year N}} = \text{Max} \{ \text{CPI Adjustment}_{\text{Jan 1, year N-1}}, 0.5 \times (3 - [\text{CPI}_{\text{COD}} / \text{CPI}_{\text{September 30, 2006}}]) \times 0.5 \times (1 + [\text{CPI}_{\text{Jan 1, year N}} / \text{CPI}_{\text{Jan 1, 2003}}]) \}$$

where N = 1 is Jan 1, 2004; N = 2 is Jan 1, 2005, etc.

and where $\text{CPI Adjustment}_{\text{Jan 1, year 0}} = 1$, and

(ii) the Recall Adjustment Amount and the GHG Intensity Factor will be adjusted effective as of January 1 in each year in accordance with the following formula:

$$\text{Recall Adjustment Amount}_{\text{Jan 1, year N}} = \text{Recall Adjustment Amount} \times \text{CPI Adjustment}_{\text{Jan 1, year N}}$$

$$\text{GHG Intensity Factor}_{\text{Jan 1, year N}} = \text{GHG Intensity Factor} \times \text{CPI Adjustment}_{\text{Jan 1, year N}}$$

Where:

$$\text{CPI Adjustment}_{\text{Jan 1, year N}} = \text{Max} \{ \text{CPI Adjustment}_{\text{Jan 1, year N-1}}, 0.5 \times (1 + [\text{CPI}_{\text{Jan 1, year N}} / \text{CPI}_{\text{Jan 1, 2003}}]) \}$$

where N = 1 is Jan 1, 2004; N = 2 is Jan 1, 2005, etc.

and where $\text{CPI Adjustment}_{\text{Jan 1, year 0}} = 1$

3.3 **Delivery Time Adjustment** – For each hour during the Term, the EPA Adjusted Bid Price applicable to Eligible Electricity delivered to the POD during that hour will be adjusted to an amount (expressed in \$/MWh) equal to the percentage of the EPA Adjusted Bid Price expressed in the following table:

Month	HLH	LLH
January	117%	98%
February	108%	105%
March	106%	103%
April	103%	85%
May	98%	67%
June	98%	68%
July	105%	82%
August	107%	90%
September	106%	98%
October	105%	98%
November	112%	104%
December	116%	93%

3.4 **Recall Option Adjustment** – If the Seller delivers a Recall Notice in accordance with Section 7.6, the Bid Price as adjusted pursuant to Section 3.2 of this Appendix prior to the Recall Date will be reduced by the Recall Adjustment Amount for all deliveries of Eligible Electricity to the POD after the Recall Date.

Part IV – No Further Payments

4.1 The amounts payable by the Buyer specified in this Appendix 3 are the full and complete payment and consideration payable by the Buyer for all Eligible Electricity under this EPA, and all Off-Site Emission Reduction Rights.



APPENDIX 4

LIQUIDATED DAMAGES

1. Annual GHG Intensity LDs

GHG Intensity LDs, if any, will be calculated and be payable for each year of the Term commencing with the year ending on the first anniversary of COD, as follows:

GHG Intensity LDs = the product of AEE and the lesser of:

- (i) the GHG Intensity Factor, and
- (ii) the product of \$8.333/tonnes CO₂e and the greater of:
 - (i) Actual GHG Intensity minus Target GHG Intensity, and
 - (ii) zero

Where:

- Annual Eligible Electricity (“AEE”) means Eligible Electricity, expressed in MWh, delivered, or deemed pursuant to Section 7.7 to be delivered, to the Buyer at the POD in the year other than Eligible Electricity under subsection (bb)(vi) of Appendix 1,
- “GHG Intensity Factor” means \$ •/MWh, as adjusted under Appendix 3, *[Note that the number to be inserted in this bullet is the number that was the Seller’s GHG Intensity Adjustment in the tender process.]*
- “Actual GHG Intensity” means the actual GHG intensity of the Seller’s Plant for the year, expressed in tonnes CO₂e/MWh, and calculated using the methodology in Appendix 9,
- “Target GHG Intensity” means • tonnes CO₂e/MWh. *[Note that the number to be inserted in this bullet is the number that was determined to be the Seller’s GHG Intensity Target in the tender process.]*

2. Monthly Capacity Factor LDs

Monthly Capacity Factor LDs, if any, will be payable for each month of the Term, commencing on the first anniversary of COD, as follows:

Monthly Capacity Factor LDs = the greater of 0 and [90% of Monthly Contracted Electricity – Monthly Delivered Electricity] times the LD Factor

Where:

- “Monthly Contracted Electricity” means Electricity expressed in MWh, calculated as the product of (1) Contracted Capacity for that month, and (2) the number of hours in that month, other than

(i) all Force Majeure Hours, (ii) all Transmission Constraint Hours, and (iii) in the case of Non-Winter Months, all Planned Outage Hours,

- “Monthly Delivered Electricity” means Electricity expressed in MWh, calculated as the Eligible Electricity delivered, or deemed pursuant to Section 7.7 to be delivered, to the Buyer at the POD under this EPA in that month,
- “LD Factor” = the greater of (i) zero and (ii) $A - B$ where:

A = the hourly weighted average of the Mid-C Index prices in the applicable month based on the percentage of On-Peak hours and Off-Peak hours and Sunday and NERC holiday hours, in the month as defined in the On-Peak Index, Off-Peak Index and Sunday and NERC Holiday Index plus all wheeling charges, allowances for transmission losses, associated hourly ancillary services and all other transmission-related fees and charges from time to time associated with transmitting an amount of non-firm electricity from Mid-C to the U.S./Canadian border equivalent to the amount of electricity subject to Monthly Capacity Factor LDs determined under the Bonneville Power Administration Open Access Transmission Tariff for hourly non-firm point-to-point service or such other tariff or rate schedule as may be applicable to such transmission service from time to time. Amounts quoted in U.S. dollars will be converted to Canadian dollars using the average of the Bank of Canada daily “noon rates” for that month, and

B = the CFT Adjusted Bid Price.

- “Force Majeure Hours” means the number of hours in the month during which the Seller has invoked Force Majeure in accordance with Article 10.
- “Mid-C” means the Mid-Columbia electricity region.
- “Mid-C Index” means the On-Peak Index, the Off-Peak Index and the Sunday and NERC Holidays Index
- “Off-Peak Index” means the Dow Jones Mid-C Daily Firm Off-Peak Index for the hours ending 0100 - 0600 and the hours ending 2300 – 2400 Pacific Prevailing Time, for Monday through Saturday excluding NERC holidays;
- “On-Peak Index” means the Dow Jones Mid-C Daily Firm On-Peak Index for the hours ending 0700 – 2200 Pacific Prevailing Time, for Monday through Saturday excluding NERC holidays
- “Planned Outage Hours” means the number of hours in the month during which the Seller’s Plant is subject to a Planned Outage, other than as prohibited under Section 6.5.
- “Sunday and NERC Holidays Index” means the Dow Jones Firm Sunday and NERC Holidays Index for the hours ending 0100 – 2400 Pacific Prevailing Time, for Sundays and NERC holidays.
- “Transmission Constraint Hours” means the number of hours in the month during which there is a suspension, constraint or curtailment in the operation of the Transmission Authority’s System

preventing or limiting physical deliveries of Contracted Capacity hereunder, or in which the Seller's Plant is disconnected from the Transmission Authority's System by the Transmission Authority, in either case for reasons that are not attributable to the Seller.

3. Annual Capacity Factor LDs

Annual Capacity Factor LDs, if any, will be payable for each year of the Term, commencing on the first anniversary of COD, as follows:

Annual Capacity Factor LDs = the greater of (i) 0 and (ii) [80% of Annual Contracted Electricity minus Annual Delivered Electricity] times the LD Factor, minus PMLDs

Where:

- Annual Contracted Electricity means Electricity expressed in MWh, calculated as the product of (1) the average annual Contracted Capacity for the relevant year as stated in Part I of Appendix 2, and (2) the number of hours in that year, other than (i) all Force Majeure Hours, and (ii) all Transmission Constraint Hours.
- Annual Delivered Electricity means Electricity expressed in MWh, calculated as the Eligible Electricity delivered, or deemed pursuant to Section 7.7 to be delivered, to the Buyer at the POD under this EPA in that year,
- LD Factor = the greater of (i) zero and (ii) A - B where:
 - A = the average of the average monthly prices for the year determined in accordance with Section 2 of this Appendix 4 plus all wheeling charges, allowances for transmission losses, associated hourly ancillary services and all other transmission-related fees and charges from time to time associated with transmitting an amount of non-firm electricity from Mid-C to the U.S./Canadian border equivalent to the amount of electricity subject to the Annual Capacity Factor LDs determined under the Bonneville Power Administration Open Access Transmission Tariff for hourly non-firm point-to-point service or such other tariff or rate schedule as may be applicable to such transmission service from time to time. Amounts quoted in U.S. dollars will be converted to Canadian dollars using the average of the monthly average Bank of Canada daily "noon rates" determined in accordance with Section 2 of this Appendix 4, and
 - B = the CFT Adjusted Bid Price.
- "PMLDs" means the amount of Monthly Capacity Factor LDs previously paid by the Seller to the Buyer for that year.
- "Force Majeure Hours", "Planned Outage Hours", "Mid-C" and "Transmission Constraint Hours", have the meaning given in Section 2 of this Appendix 4.

4. **Contracted Capacity** – The Parties acknowledge that for purposes of calculating LDs for months or years in which a Recall Date occurs, notwithstanding subsection 7.6(c) the Contracted Capacity for periods prior to the Recall Date is unamended and is amended for periods after the Recall date. LDs will be calculated pro rata on the basis of the number of days in the relevant period.

5. **Changes in Transmission Rate Systems** - For purposes of section 2 and 3 of this Appendix 4, 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 transmission-related fees and charges and losses from Mid-C to the U.S./Canadian border. If the Parties are unable to agree on the appropriate method of calculating such amounts, the matter will be determined by arbitration in accordance with Section 20.7.

6. **Change in Reference Price Index** - If at any time during the Term a liquid competitive market for wholesale electricity sales has developed in British Columbia in which the Buyer is permitted to participate and there is a generally recognized published index of prices for sales in such market which has been published for not less than twelve calendar months and which quotes prices for firm electricity delivered in HLH and LLH then either Party may give written notice to the other Party requiring that the prices published in that index be substituted for the Dow Jones Mid-Columbia Electricity Price Index for purposes of calculating the Monthly Capacity Factor LDs and the Annual Capacity Factor LDs. If the Parties cannot agree on whether the requirements for substitution of an index have been satisfied or on the method of application of the substituted index then the matter will be determined by arbitration in accordance with Section 20.7.

APPENDIX 5

1. **Description of Project**

[Note that this description will be completed based on the description in Attachment B to the Tender Form.]

2. **Description of Seller's Plant** (after completion of the Project)

The Seller's Plant is the generating plant, transmission lines and associated facilities and infrastructure as constructed or modified in accordance with the Project (including the facilities and equipment generating the GBL) and as required for the generation and delivery of the Contracted Capacity by the Seller to the Buyer at the POD and includes the following:

General Description:

Energy Source:

Key Facilities and Equipment:

Nameplate Capacity (MW) of all the electrical generators in the Seller's Plant:

[Note that this description will be completed based on the description in Attachment B to the Tender Form.]

3. **Target COD** – _____. *[This date will be the date set out in the Tender Form for Target COD.]*

4. **GBL** is ___ MW *[The GBL will be the number determined by BC Hydro after review of the CBG Generator Baseline (GBL) Application which number will be provided to the Seller prior to submission of the Tender Forms]*

5. **Customer Involvement:** *[This section will be completed based on the information in Attachment E to the Tender Forms.]*

APPENDIX 6

SAMPLE FORM OF LETTER OF CREDIT

[Issuing Bank Name & Address]

Date Of Issue: [], 20__

Irrevocable Standby Letter of Credit

[Number]

Applicant:

[]

Beneficiary:

British Columbia Hydro and Power Authority

Amount:

Advising Bank: Bank of Montreal

International Operations, Vanc. BC

Maximum []

S.W.I.F.T.: BOMCA8V

At the request of and for the account of [], we, Bank of [], hereby establish in your favour our irrevocable standby Letter Of Credit ([Number]) in the aggregate amount of [].

This credit is available with Bank of Montreal, by negotiation, against presentation of following documents:

- (1) Your signed written demand specifying the amount claimed (not exceeding []), and certifying that such amount is due to you by [] who have defaulted in their obligations under the terms of an Electricity Purchase Agreement.
- (2) This original credit must be presented with your demand for payment for endorsement purposes.

Charges for advising this credit by the Advising Bank are for the Beneficiary's account.

Partial Drawings Are Allowed.

This credit expires on [], 20__, at the counters of Bank of Montreal, International Operations, Vancouver, BC, . However, it is a condition of this credit that it will be automatically extended for a further

APPENDIX 7

SAMPLE FORM OF GUARANTEE

GUARANTEE

This Guarantee ("Guarantee") dated as of the ____ day of _____, 200__ is made and entered into by _____, a _____ corporation (the "Guarantor").

WITNESSETH:

WHEREAS, _____ (the "Company") has entered into an electricity purchase agreement with British Columbia Hydro and Power Authority (the "Guaranteed Party") dated _____ as from time to time modified, amended and supplemented (the "EPA"); and

WHEREAS, Guarantor will directly or indirectly benefit from the EPA.

NOW THEREFORE, in consideration of the premises, Guarantor hereby covenants and agrees with the Guaranteed Party as follows:

1. GUARANTEE. Subject to the provisions hereof, Guarantor hereby irrevocably and unconditionally guarantees the timely payment when due of the obligations of Company under the EPA (the "Obligations") to the Guaranteed Party in accordance with the EPA to a maximum amount (the "Guarantee Amount") equal to the amount of the Operating Security (as defined in the EPA) less the amount of any ~~cash or~~ letter of credit provided by the Company to the Guaranteed Party as part of the Operating Security. If Company fails to pay any Obligations, Guarantor shall forthwith pay to the Guaranteed Party the amount due in the same currency and manner provided for in the EPA to a maximum of the Guarantee Amount. This Guarantee shall constitute a guarantee of payment and not of collection. Guarantor shall have no right of subrogation with respect to any payments it makes under this Guarantee until all of the Obligations of Company to the Guaranteed Party are paid in full. Guarantor's liability hereunder shall be and is specifically limited to payments expressly required to be made in accordance with the EPA (even if such payments are deemed to be damages) and, except to the extent specifically provided in the EPA, in no event shall Guarantor be subject hereunder to consequential, exemplary, equitable, loss of profits, punitive, tort or any other damages or, subject to Section 9 hereof, costs.
2. DEMANDS AND NOTICE. If Company fails to pay any Obligations, the Guaranteed Party may make a demand upon the Guarantor (hereinafter referred to as a "Payment Demand"). A Payment Demand shall be in writing and shall briefly specify in reasonable detail what amount Company has failed to pay and an explanation of why such payment is due, with a specific statement that the Guaranteed Party is calling upon Guarantor to pay under this Guarantee. A Payment Demand satisfying the foregoing requirements shall be deemed sufficient notice to Guarantor that it must pay the Obligations. A single written Payment Demand shall be effective as to any specific failure to pay during the continuance of such failure to pay, until Company or Guarantor has cured such failure to pay, and additional written Payment Demands concerning such failure to pay shall not be required until such failure to pay is cured.

3. **TERM.** This Guarantee shall remain in full force and effect so long as there may be Obligations under the EPA or until it is earlier terminated by the written agreement of the Guaranteed Party. When this Guarantee is terminated in accordance with the foregoing, Guarantor shall have no further liability hereunder.
4. **REPRESENTATIONS AND WARRANTIES.** Guarantor represents and warrants that:
- (a) it is a corporation duly organized and validly existing under the laws of _____ and has the corporate power and authority to execute, deliver and carry out the terms and provisions of this Guarantee;
 - (b) none of the execution, delivery and performance of this Guarantee violates or conflicts with any law applicable to it, any provision of its constating documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
 - (c) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guarantee;
 - (d) this Guarantee constitutes a valid and legally binding agreement of Guarantor enforceable against Guarantor in accordance with its terms, except as the enforceability of this Guarantee may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity;
 - (e) there is not pending or, to its knowledge, threatened against it any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Guarantee or its ability to perform its obligations under this Guarantee; and
 - (f) the Guarantor is familiar with the business of the Company.
5. **SETOFFS AND COUNTERCLAIMS.** Guarantor reserves to itself all rights, set-offs, counterclaims and other defences to which Company is or may be entitled to arising from or out of the EPA, except for defences arising out of the bankruptcy, insolvency, dissolution or liquidation of Company. Any indebtedness from the Guaranteed Party at any of its offices or places of business to the Guarantor (including, but not limited to, all account balances, whether provisional or final and whether or not collected or available) may be set off and applied toward the payment of the Obligations due and payable from the Guarantor. For the purpose of the prior sentence, the Guaranteed Party is authorized to purchase with the moneys acquired upon such setoff such other currencies as may be necessary to effect such application.
6. **EFFECT OF BANKRUPTCY BY COMPANY.** The Guarantor's obligation to pay under this Guarantee shall not be affected in any way by the institution with respect to the Company of a bankruptcy, reorganization, moratorium or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights or a petition for the Company's winding-

up or liquidation, including any discharge of any of the Obligations as a result of any bankruptcy or insolvency proceeding.

7. AMENDMENT. No term or provision of this Guarantee shall be amended, modified, altered, waived, or supplemented except in a writing signed by the Guarantor and Guaranteed Party.
8. WAIVERS. The liability of Guarantor hereunder shall be continuing and, subject to the terms of this Guarantee, absolute and unconditional, and shall not be affected by, and Guarantor hereby waives: (i) notice of acceptance of this Guarantee; (ii) presentment and demand concerning the liabilities of Guarantor, except as set forth in section 2; (iii) any right to require that any action or proceeding be brought against Company or any other person, or except as expressly hereinabove set forth, to require that the Guaranteed Party seek enforcement of any performance against Company or any other person, prior to any action against Guarantor under the terms hereof; (iv) defences based on: (i) any lack of validity, legality, or enforceability of the EPA, other than as a consequence of the failure of the Guaranteed Party to perform its obligations under the EPA, (ii) any lack or limitation of power, incapacity, or disability on the part of the Company, or any other irregularity, defect, or informality on the part of the Company in relation to any Obligation, ~~or (iii) any change in the existence, structure, constitution, name, objects, powers, business, control, or ownership of the Guarantor, the Company or the Guaranteed Party, or (iv) any merger, amalgamation, reorganization, winding-up or change of control of the Company or the Guarantor.~~

Except as to applicable statutes of limitation, no delay of the Guaranteed Party in the exercise of, or failure to exercise, any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from any obligations hereunder.

Guarantor consents to the renewal, compromise, extension, acceleration or other changes in the time of payment of or other changes in the terms of the Obligations, or any part thereof or any changes or modifications to the terms of the EPA.

9. EXPENSES. Subject to the limitations of the Guaranteed Amount, the Guarantor shall pay for or reimburse the Guaranteed Party for any and all out-of-pocket expenses (including without limitation all reasonable fees and disbursements of legal counsel) incurred in connection with the successful enforcement of its rights under this Guarantee.
10. ASSIGNMENT. The Guarantor shall not assign this Guarantee without the express written consent of the Guaranteed Party. The Guaranteed Party shall be entitled to assign its rights under this Guarantee in its sole discretion.
11. NOTICE. Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder by any party to another (herein collectively called "Notice") shall be in writing and delivered personally or mailed by certified or registered mail, postage prepaid and return receipt requested, or by telegram or telecopier, as follows:

To Guaranteed Party: British Columbia Hydro and Power Authority

<address; attention; fax no.>

To Guarantor: [NAME OF GUARANTOR]

<address; attention; fax no.>

Notice given by personal delivery or mail shall be effective upon actual receipt. Notice given by telegram or telecopier shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours. All Notices by telegram or telecopier shall be confirmed promptly after transmission in writing by certified or registered mail or personal delivery.

12. MISCELLANEOUS.

- (a) THIS GUARANTEE SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE PROVINCE OF BRITISH COLUMBIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS.
- (b) This Guarantee shall be binding upon Guarantor, its successors and assigns and enure to the benefit of and be enforceable by the Guaranteed Party, its successors and assigns.
- (c) The Guarantee embodies the entire agreement and understanding between Guarantor and the Guaranteed Party and supersedes all prior agreements and understandings relating to the subject matter hereof.
- (d) The headings in this Guarantee are for purposes of reference only, and shall not affect the meaning hereof.
- (e) If any payment of Company in respect of Obligations is rescinded or must otherwise be returned for any reason whatsoever, the Guarantor shall remain liable hereunder in respect of such Obligations as if such payment had not been made.

EXECUTED as of the day and year first above written on the date set forth below.

[NAME OF GUARANTOR]

By: _____
 Name: _____
 Title: _____
 Date: _____

APPENDIX 8

SAMPLE FORM OF CONSENT AGREEMENT

(See Section 16.3)

THIS AGREEMENT is made as of the ___ day of _____, _____

AMONG:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY, a corporation established pursuant to an Act of the Province of British Columbia and continued under the *Hydro and Power Authority Act, R.S.B.C. 1996, c.212*, having an office at 6911 Southpoint Drive, Burnaby, British Columbia, V3N 4X8,

(“the Buyer”)

AND:

[COMPANY], a company under the laws of _____ having an address at _____,

(the **“Company”**)

AND:

[LENDER], a _____ under the laws of _____, having an address at _____,

(the **“Lender”**)

WHEREAS:

- A. The Buyer and the Company entered into an Electricity Purchase Agreement made as of _____ (as amended from time to time, the **“EPA”**);
- B. The Company has obtained certain credit facilities (the **“Credit”**) from the Lender for the purposes of financing the design, construction, operation and maintenance of the Seller’s Plant;
- C. To secure the due payment and performance of all principal, interest (including interest on overdue interest), premium (if any) and other amounts payable in respect of the Credit and all other obligations of the Company under the Credit, the Company has granted certain security to and in favour of the Lender, including an assignment of the right, title and interest of the Company under the EPA and security on the Seller’s Plant (collectively, the **“Security”**); and
- D. The Lender has requested the Buyer to enter into this Agreement confirming certain matters.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and of the sum of \$10 and other good and valuable consideration now paid by each of the Company and the Lender to the Buyer (the receipt and sufficiency of which are hereby acknowledged by the Buyer), the parties covenant and agree that:

1. **Additional Definitions:** In this Agreement, including the recitals:
 - (a) **“Assumption Notice”** means a notice given by the Lender to the Buyer pursuant to section 6.1(a) of this Agreement;
 - (b) **“Default or Termination Notice”** means a notice given to the Company by the Buyer under the EPA that, with or without the lapse of time, entitles, or will entitle, the Buyer to terminate the EPA, subject to rights, if any, of the Company to cure the default or other circumstance in respect of which the notice is given;
 - (c) **“Receiver”** means a receiver, manager or receiver-manager appointed or designated by, or on the initiative of, the Lender;
 - (d) words and phrases defined in the EPA, and not otherwise defined herein, when used herein have the meanings given in the EPA.

2. **EPA Amendments:** the Buyer and the Company acknowledge and agree that the EPA is in full force and effect, and that the EPA, as originally executed, has been amended only by the documents attached hereto.

3. **BC Hydro Confirmations Concerning the EPA:** the Buyer confirms to the Lender that:
 - (a) the EPA has been duly authorized, executed and delivered by the Buyer;
 - (b) the Buyer has not received any notice of assignment by the Company of all or any part of their right, title and interest in and to the EPA;
 - (c) the Buyer has not given any Default or Termination Notice;
 - (d) the Buyer is not aware of any default or other circumstance that would entitle the Buyer to give a Default or Termination Notice, provided however that the Buyer has not undertaken any investigation or due diligence in respect of this confirmation; and
 - (e) the Buyer shall not enter into any agreement with the Company to materially amend the EPA, or enter into any agreement with the Company to terminate the EPA, without giving the Lender not less than 30 days' prior notice.

4. **Assignment of EPA to Lender:**
 - 4.1 *Buyer Acknowledgement:* the Buyer acknowledges receipt of notice of, and consents to, the assignment by the Company to the Lender of all the right, title and interest of the Company in and to the EPA made pursuant to and in accordance with the Credit and the Security.

4.2 *Lender Acknowledgement:* The Lender acknowledges that:

- (a) it has received a copy of the EPA; and
- (b) the assignment by the Company to the Lender of the EPA pursuant to the Credit and the Security is subject in all respects to the terms and conditions of the EPA and this Agreement.

4.3 *Confidentiality:* The Lender covenants and agrees to be bound by the provisions of Section 20.8 of the EPA regarding confidentiality, as if an original signatory thereto.

4.4 *Company Representation:* The Company represents and warrants to the Buyer that the Lender is the only person to whom it has granted a security interest in the EPA or the Seller's Plant.

5. **Default or Termination Notices:** ~~the~~The Buyer covenants and agrees with the Lender that, except as hereinafter otherwise permitted, the Buyer:

- (a) shall give the Lender a copy of any Default or Termination Notice concurrently with, or promptly after, any such notice is given to the Company;
- (b) the Buyer shall not exercise any right it may have to terminate the EPA unless it has complied with paragraph (a) above with respect to the default or other circumstance entitling the Buyer to terminate and, in the case of a default or other circumstance that the Company is entitled to cure under the EPA, until the expiry of the time within which such cure may be effected under the EPA, plus 30 days, during which extended period, the default or other circumstance has not been cured.

Nothing in this Agreement prevents or restricts (i) termination of the EPA upon failure of any condition for which notice is not required under the EPA, (ii) the exercise by the Buyer of any other right or remedy that it may be entitled to exercise under or in relation to the EPA, or (iii) the right of the Lender to cure, or cause the cure of, any default of the Company under the EPA that would be curable by the Company, whether or not an Assumption Notice is given.

6. **Realization by Lender:**

6.1 *Assumption Notice and/or Sale:* If the Company has defaulted under the Credit or the Security and the Lender has elected to take possession of the Seller's Plant, either by a Receiver or in any other way, pursuant to either the Credit or the Security, the Lender shall either:

- (a) give the Buyer written notice (an "**Assumption Notice**") stating that the Lender is assuming the EPA, whereupon:
 - (i) the Lender shall be entitled to all the rights and benefits, and shall have assumed, and shall perform and discharge, all the obligations and liabilities, of the Company under the EPA, and the Lender shall be a party to, and bound by, the EPA as if an original signatory thereto in the place and stead of the Company;
 - (ii) notwithstanding subparagraph (i), the Lender shall not be liable to the Buyer for defaults of the Company occurring before the Assumption Notice is given, except

to the extent that such defaults continue thereafter; provided however that the Buyer may at any time before or after such notice is given exercise any rights of set-off in respect of any such prior default under or in relation to the EPA which the Buyer would otherwise be entitled to exercise; or

- (b) give written notice to the Buyer that the Lender wishes to cause the Company to assign all of the Company's right, title and interest in and to the EPA and the Seller's Plant to a third person or persons, subject however to the Company and the assignee complying with all provisions of the EPA relative to such assignment.

the Buyer agrees that if the Lender enters the Seller's Plant for the purpose of viewing or examining the state of repair, condition or operation thereof such shall not constitute taking possession thereof.

6.2 *Lender Liability and Release:* The Lender assumes no liability to the Buyer under the EPA unless and until the Lender gives an Assumption Notice. Thereafter, if the Lender completes an assignment to a third person or persons pursuant to and in accordance with the applicable provisions of the EPA, the Lender shall be released from all liability and obligations of the Company to the Buyer under the EPA accruing from and after completion of that assignment.

6.3 *Company not Released:* Nothing in this Agreement, and neither the giving of an Assumption Notice, nor any assignment pursuant to section 6.1(b) releases the Company from its obligations and liabilities to the Buyer under and in relation to the EPA.

6.4 *Receiver Included:* References in this section 6 to the Lender include a Receiver.

7. **Notices:** Any notice required or permitted to be given under this Agreement must be in writing and may be given by personal delivery, or by transmittal by facsimile, addressed to the respective parties as follows:

- (a) BC Hydro at:
British Columbia Hydro and Power Authority

Attention: _____
Facsimile No.: _____
- (b) **[Company]** at:

Attention: _____
Facsimile No.: _____
- (c) **[Lender]** at:

Attention: _____
Facsimile No.: _____

Notices given by facsimile shall be deemed to be received on the business day next following the date of transmission.

8. **Choice of Law:** This Agreement is governed by British Columbia law, and the laws of Canada applicable therein.

9. **Jurisdiction:** Each party to this Agreement attorns irrevocably and unconditionally to the courts of the Province of British Columbia, and to courts to which appeals therefrom may be taken, in connection with any action, suit or proceeding commenced under or in relation to this Agreement. Notwithstanding the foregoing, the Lender acknowledges that upon an Assumption Notice being given, the Lender will become party to, and bound by, the agreements to arbitrate contained in Section 20.7 of the EPA and Part V of Appendix 11 of the EPA, if applicable.

10. **Termination:** This Agreement, and all rights and liabilities among the parties hereunder shall terminate upon the full and final discharge of all of the Security. The Lender shall give the Buyer prompt notice of the full and final discharge of all of the Security.

11. **Amendment:** This Agreement may be amended only by an instrument in writing signed by each of the parties hereto.

12. **Enurement:** This Agreement enures to the benefit of, and is binding upon, the parties hereto, and their respective successors and permitted assigns.

13. **Counterparts:** This Agreement may be executed in any number of counterparts, each of which is deemed an original, and all of which together constitute one and the same document.

14. **Effective Date:** This Agreement is not binding upon any party unless and until executed and delivered by all parties, whereupon this Agreement will take effect as of the day first above written.

IN WITNESS WHEREOF this Agreement has been executed by each of the parties as of the day year first above written.

BRITISH COLUMBIA HYDRO AND POWER [COMPANY]
AUTHORITY

By: _____
(Signature)

By: _____
(Signature)

Name: _____

Name: _____

Title: _____

Title: _____

[LENDER]

By: _____
(Signature)

Name: _____

Title: _____

APPENDIX 9

CALCULATION OF ACTUAL GHG INTENSITY OF SELLER'S PLANT

The Actual GHG Intensity of the Seller's Plant will be determined as follows:

1. Start with total annual fuel input to the Seller's Plant.
2. If the Seller's Plant cogenerates steam and electricity, estimate the annual fuel input that is attributable to electricity production by estimating the fuel input that would be necessary to meet the facility's annual steam requirement in a non-cogeneration configuration. The difference between this amount and the total annual fuel input to the Seller's Plant is the annual fuel input that is attributable to electricity production.
3. Calculate annual GHG emissions associated with the annual fuel input that is attributable to electricity production in metric tonnes of carbon dioxide equivalent (CO₂e). Use Environment Canada's GHG emission factors¹. GHGs include CO₂, CH₄ and N₂O. CH₄ and N₂O are to be converted into CO₂e using Global Warming Potential factors of 21 and 310 respectively.²

If the fuel input is biomass (woodwaste), note that biomass is considered CO₂ neutral, but not CH₄ or N₂O neutral, for GHG accounting purposes, therefore GHG intensity for biomass-fired electricity should be based only on emissions of CH₄ and N₂O.
4. Estimate total annual electricity production by the Seller's Plant, whether consumed onsite or sold to BC Hydro or others, in megawatt-hours (MWh).
5. Calculate the ratio of annual GHG emissions to annual electricity production, in tonnes CO₂e/MWh. This ratio is the Actual GHG Intensity.

¹ http://www.ec.gc.ca/pdb/ghg/ghg_docs/Emission_Factors.pdf

² So one tonne of CH₄ equals 21 tonnes of CO₂e and one tonne of N₂O equals 310 tonnes of CO₂e.

APPENDIX 10

SPECIAL TERMS AND CONDITIONS

All Hydro-electric projects that elected to be subject to the Hydrology Adjustment in the CFT process:

1. Section 5.2(a) is deleted and replaced with the following:
 - (a) the Seller's Plant has generated Electricity for 72 continuous hours at the maximum capacity that the then available Energy Source will permit, provided that the minimum hourly amount generated shall not be less than 20% of the Plant Capacity;

2. Section 6.3 is deleted and replaced with the following:

6.3 Modification to Seller's Plant – The Seller shall not make, without the Buyer's prior consent, any modification or addition, or series of modifications or additions, to the Seller's Plant which (i) is likely to have a materially adverse effect on the quality or reliability of deliveries of the Contracted Capacity to the Buyer, or (ii) will result in the Plant Capacity being increased by more than 10%, provided that the Buyer will not unreasonably withhold its consent to any modification or addition required to comply with any change in laws or policy described in subsection (rr)(i) of Appendix 1.

3. The last sentence of Section 6.4 is deleted and replaced with the following:

Without limiting Section 7.2 but subject to subsection 7.8(a), (i) the Seller shall operate the Seller's Plant in a manner that ensures delivery at the POD of a consistent amount of Electricity within each hour commencing at COD and continuing throughout the remainder of the Term; and (ii) the Seller shall make commercially reasonable efforts to operate the Seller's Plant in a manner that ensures delivery at the POD on an instantaneous basis from COD throughout the remainder of the Term of an amount of Eligible Electricity equal to not more than 110% of the Plant Capacity and not less than 90% of the Contracted Capacity.

34. Section 7.8(a) is amended by adding the following as subsection 7.8(a)(iv) and deleting the "and" after subsection 7.8(a)(ii) and inserting the word "and" after subsection 7.8(a)(iii):
 - (iv) a Hydrology Limitation.

45. Section 18.1 is amended by adding the following as ~~subsection~~subsections 18.1(i), 18.1(j) and 18.1(k) and deleting the "and" after subsection 18.1(g) ~~and inserting the word "and" after subsection 18.1(h):~~
 - (i) the Seller has completed such hydrology studies as are reasonably necessary to determine a reasonable Contracted Capacity based on average water flows;
 - (j) the Contracted Capacity set out in Appendix 2 is reasonable based on the hydrology studies available to the Seller as at the date of this EPA; and

(k) for all years where the Seller has indicated in Appendix 2 that it will be selling to the Buyer all Electricity to a maximum of 110% of Plant Capacity:

(i) the average annual Contracted Capacity set out in Part I of Appendix 2 is a reasonable estimate for the average annual capacity, expressed in MWh/h, that the Seller's Plant is expected to generate based on the expected average annual water flow; and

(ii) each monthly percentage set out in Part II of Appendix 2 is a reasonable estimate of the percentage of the amount stated in Part I of Appendix 2 expected to be generated in that month based on the expected average water flow for that month.

56. The following definition is added to Appendix 1:

"Hydrology Limitation" means lack of water flow where such lack of water flow is due to (i) natural causes or events, (ii) restrictions on water flow imposed on the Seller or the Seller's Plant by any government or governmental authority having jurisdiction with respect to the Seller's Plant, or (iii) the diversion or lack of use of water by any local government or governmental authority for the purpose of meeting public demand for water distribution.

~~6.~~ The following definition is added to Section 2 of Appendix 4:

~~"Hydrology Limitation Hours" means that number of hours in the month during which the Seller delivers less than the Contracted Capacity due solely to a Hydrology Limitation.~~

~~7.~~ The definition of "Monthly Contracted Electricity" in Section 2 of Appendix 4 is deleted and replaced with the following:

~~"Monthly Contracted Electricity" means Electricity expressed in MWh, calculated as the product of (1) Contracted Capacity for that month, and (2) the number of hours in that month, other than (i) all Force Majeure Hours, (ii) all Transmission Constraint Hours, (iii) all Hydrology Limitation Hours, and (iv) in the case of Non Winter Months, all Planned Outage Hours.~~

~~8.~~ The definition of "Annual Contracted Electricity" in Section 3 of Appendix 4 is deleted and replaced with the following:

~~"Annual Contracted Electricity" means Electricity, expressed in MWh, calculated as the product of (1) the average annual Contracted Capacity for the relevant year as stated in Part I of Appendix 2, and (2) the number of hours in that year, other than (i) all Force Majeure Hours, (ii) all Transmission Constraint Hours and (iii) all Hydrology Limitation Hours.~~

9. The words "Hydrology Limitation Hours" are added to the last bullet in Section 3 of Appendix 4.

~~Hydro-electric projects that elected to be subject to the Hydrology Adjustment in~~ In each year of the Term whether commencing on COD or any anniversary thereof in respect of which the CFT process and that are selling Seller has indicated in Appendix 2 that in that year it is selling to the Buyer all Electricity to a maximum of 110% of the ~~full~~ Plant Capacity ~~to BC Hydro~~:

1. ~~Section 6.3 is deleted and replaced with the following:~~

~~6.3 — **Modification to Seller’s Plant** — The Seller shall not make, without the Buyer’s prior consent, any modification or addition, or series of modifications or additions, to the Seller’s Plant which (i) is likely to have a materially adverse effect on the quality or reliability of deliveries of the Contracted Capacity to the Buyer, or (ii) will result in the Plant Capacity being increased by more than 10%.~~

2. ~~From the commencement of the Term to and including the day immediately prior to a Recall Date, the definition of “Eligible Electricity” in Appendix 1 is deleted and replaced with the following:~~

~~“Eligible Electricity” means, in each hour, the amount of Metered Electricity ~~minus GBL~~ delivered, or deemed pursuant to Section 7.7 to be delivered, by the Seller at the POD in that hour, but subject to the following limitations:~~

~~(i) — except where the Seller has properly invoked relief under Article 11 in respect of a Hardship Event described in subsection (rr)(iv) of Appendix 1, if such Metered Electricity is equal to or less than GBL, Eligible Electricity is zero;~~

~~(i) if Metered Electricity is greater than the Plant Capacity, then Eligible Electricity is the lesser of (i) Metered Electricity ~~minus GBL~~; and (ii) 110% of the Plant Capacity;~~

~~(iii) — where the Seller has properly invoked relief under Article 11 in respect of a Hardship Event described in subsection (rr)(iv) of Appendix 1 subject to subsection (ii) above, Eligible Electricity is equal to the Metered Electricity; and~~

~~(ii) where the Seller has been excused from delivery of the Contracted Capacity pursuant to subsection 7.8(a)(iii) but, based on subsection 7.8(b)(ii), the Buyer is not excused from its obligation to pay for Eligible Electricity, the Eligible Electricity is the amount, not exceeding 110% of the Plant Capacity, the Seller could have delivered, or been deemed under Section 7.7 to have delivered, to the POD but for the occurrence of the event described in subsection 7.8(a)(iii).~~

38. ~~From~~ In each year of the Term other than those years described in Section 7 above, and at all times from and after a Recall Date, ~~section 2 of this Appendix 10 is deleted and~~ the definition of “Eligible Electricity” ~~is in Section 7 above is deleted and~~ replaced with the following:

“Eligible Electricity” means, in each hour, the amount of Metered Electricity delivered or deemed pursuant to Section 7.7 to be delivered, by the Seller at the POD in that hour, but subject to the following limitations:

- (i) subject to subsection (v) below, if such Metered Electricity is equal to or less than GBL, Eligible Electricity is zero;
- (ii) subject to subsections (iv) and (v) below, if such Metered Electricity is greater than GBL, but less than or equal to the Plant Capacity, then Eligible Electricity is the product of A and B, where A is equal to the Metered Electricity minus GBL, and B is equal to the Contracted Capacity divided by the Project Capacity;
- (iii) if such Metered Electricity is greater than the Plant Capacity, then Eligible Electricity is equal to the lesser of (1) 110% of Plant Capacity, and (2) the product of A and B, where A and B have the values given in the preceding subsection (ii);
- (iv) where Section 7.5 applies, Eligible Electricity is all Metered Electricity delivered by the Seller at the POD in that hour minus GBL but not exceeding 110% of the Contracted Capacity;
- (v) where the Seller has properly invoked relief under Article 11 in respect of a Hardship Event described in subsection (rr)(iv) of Appendix 1 and Metered Electricity is less than or equal to Plant Capacity, Eligible Electricity is equal to the product of A and B where A is equal to the Metered Electricity and B is equal to the Contracted Capacity divided by the Project Capacity; and
- (vi) where the Seller has been excused from delivery of the Contracted Capacity pursuant to subsection 7.8(a)(iii) but, based on subsection 7.8(b)(ii), the Buyer is not excused from its obligation to pay for Eligible Electricity, then Eligible Electricity is the amount, not exceeding 110% of the Contracted Capacity, the Seller could have delivered, or been deemed under Section 7.7 to have delivered, to the POD but for the occurrence of the event described in subsection 7.8(a)(iii). The definition of “Pre-COD Eligible Electricity” is deleted and replaced with the following:

9. If the Seller has indicated in Appendix 2 that in year 1 commencing at COD the Seller will be selling to the Buyer all Electricity to a maximum of 110% of Plant Capacity, the definition of Pre-COD Eligible Electricity is deleted and replaced with the following:

4.——“**Pre-COD Eligible Electricity**” means that amount of Metered Electricity delivered or deemed pursuant to Section 7.7 to be delivered, by the Seller at the POD in each hour prior to COD ~~in excess of GBL~~ but not exceeding 110% of the Plant Capacity; except for any such Metered Electricity that Powerex Corp. may elect to purchase from the Seller at such price as may be agreed between the Seller and Powerex Corp. to a maximum of \$20/MWh.

~~For Hydroelectric projects that elected to be subject to the Hydrology Adjustment and that are selling less than the full Plant Capacity to BC Hydro~~

1. ~~Section 6.3 is deleted and replaced with the following:~~

~~6.3 **Modification to Seller's Plant**—The Seller shall not make, without the Buyer's prior consent, any modification or addition, or series of modifications or additions, to the Seller's Plant which (i) is likely to have a materially adverse effect on the quality or reliability of deliveries of the Contracted Capacity to the Buyer, or (ii) will result in the Plant Capacity being increased by more than 10%.~~

2. ~~The definition of Eligible Electricity~~

10. The following definition is added to Section 2 of Appendix 4:

“Hydrology Limitation Hours” means that number of hours in the month during which the Seller delivers less than the Contracted Capacity due solely to a Hydrology Limitation.

11. The definition of “Monthly Contracted Electricity” in Section 2 of Appendix 4 is deleted and replaced with the following:

“Monthly Contracted Electricity” means Electricity expressed in MWh, calculated as the product of (1) Contracted Capacity for that month, and (2) the number of hours in that month, other than (i) all Force Majeure Hours, (ii) all Transmission Constraint Hours, (iii) all Hydrology Limitation Hours, and (iv) in the case of Non-Winter Months, all Planned Outage Hours.

12. The definition of “Annual Contracted Electricity” in Section 3 of Appendix 4 is deleted and replaced with the following:

“Annual Contracted Electricity” means Electricity, expressed in MWh, calculated as the product of (1) the average annual Contracted Capacity for the relevant year as stated in Part I of Appendix 2, and (2) the number of hours in that year, other than (i) all Force Majeure Hours, (ii) all Transmission Constraint Hours and (iii) all Hydrology Limitation Hours.

13. The last bullet in Section 3 of Appendix 4 is deleted and replaced with the following:

“**Eligible Electricity**” means, in each hour, the amount of Metered ~~Force Majeure~~, “Planned Outage Hours”, “Hydrology Limitation Hours”, “Mid-C” and “Transmission Constraint Hours”, have the meaning given in Section 2 of this Appendix 4.”

14. Notwithstanding any other provision of this EPA to the contrary, prior to a Recall Date in all years where the Seller has indicated in Appendix 2 that it will sell to the Buyer all Electricity delivered or deemed pursuant to Section 7.7 to be delivered by the to 110% of the Plant Capacity to the Buyer, the Seller at the POD in that hour, but subject to the following limitations:

(i) ~~subject to subsection (v) if such Metered shall not sell any Electricity is equal to or less than GBL, Eligible to any Person other than the Buyer except for Electricity is zero;~~

- ~~(ii) — subject to subsections (iv) — in excess of 110% of the Plant Capacity and (v), if such Metered, prior to COD, Electricity is greater than GBL, but less than or equal to the Plant Capacity, then Eligible Electricity is the product which is excepted from the definition of A and B, where A is equal to the Metered Electricity minus GBL, and B is equal to the Contracted Capacity divided by the Project Capacity;~~
- ~~(iii) — if such Metered Electricity is greater than the Plant Capacity, then Eligible Electricity is equal to the lesser of (1) 110% of Plant Capacity, and (2) the product of A and B, where A and B have the values given in the preceding subsection (ii); and~~
- ~~(iv) — where Section 7.5 applies, Eligible Electricity is all Metered Electricity delivered by the Seller at the POD in that hour minus GBL but not exceeding 110% of the Contracted Capacity;~~
- ~~(v) — where the Seller has properly invoked relief under Article 11 in respect of a Hardship Event described in subsection (rr)(iv) of Appendix 1 and Metered Electricity is less than or equal to the Plant Capacity, Eligible Electricity is the product of A and B where A is equal to the Metered Electricity and B is equal to the Contracted Capacity divided by the Project Capacity; and~~
- ~~(vi) — where the Seller has been excused from delivery of the Contracted Capacity pursuant to subsection 7.8(a)(iii) but, based on subsection 7.8(b)(ii), the Buyer is not excused from its obligation to pay for Eligible Electricity, then Eligible Electricity is the amount, not exceeding 110% of the Contracted Capacity, the Seller could have delivered, or been deemed under Section 7.7 to have delivered, to the POD but for the occurrence of the event described in subsection 7.8(a)(iii). Pre-COD Eligible Electricity.~~

For all projects where there is an Electrical Host

1. Section 3.1 is amended by adding the following sentence at the end of Section 3.1.

“In addition, the Buyer, by notice to the Seller, may terminate this EPA if the following condition is not satisfied or waived on or before the Initial Period Expiry Date:

- (g) the Buyer and the Customer have entered into a new or an amended Electricity Sale Agreement on terms and conditions satisfactory to the Buyer.

2. The following sentence is added after the second sentence in Section 3.2:

“The condition set out in subsection 3.1(g) is solely for the benefit of the Buyer and may be waived only by the Buyer.

3. Section 6.5 is amended by adding the words “or on the Electrical Host” at the end of the Section.

For Projects that did not receive a GHG Intensity Adjustment for bid comparison purposes

1. Section 1 of Appendix 4 is deleted except for the definition of “Actual GHG Intensity”.

For all Projects where there is a steam host

1. Add the following as subsection 6.7(f) and delete the “and” at the end of subsection 6.7(d) and add the word “and” at the end of subsection 6.7(e):

6.7(f) **Heat and Mass Balance** – On or before COD the Seller shall provide to the Buyer: (i) a heat and mass balance for the period after construction of the Project for the Seller’s Plant and any electrical and thermal facilities connected to the Seller’s Plant; and (ii) a heat and mass for the period prior to construction of the Project for any electrical and thermal facilities existing prior to construction of the Project that are connected to the Seller’s Plant.
2. Section 6.5 is amended by adding the words “or on the facility that is the steam host for the Seller’s Plant” at the end of the Section.

APPENDIX 11

CBG GREEN CRITERIA AND OBLIGATIONS [Use Only For Green Projects]

Part I – Definition:

In this Appendix 11, the following words and expressions have the following meanings:

- (a) **“CBG Green Criteria”** means in this Appendix and elsewhere in the EPA or its Appendices, the Low Impact Principles, Social Responsibility Principles and Descriptors set out in Exhibit A to this Appendix 11 and includes the CEMP and the Operations EMS.
- (b) **“Compliance Evidence”** means Permits, reports, test results, opinions and confirmations from regulatory authorities and qualified experts and other documentary evidence establishing compliance by the Seller and the Seller’s Facility with the CBG Green Criteria.
- (c) **“CEMP”** means a construction environmental management plan for the construction of the Project which includes processes and systems to ensure compliance during construction with all applicable laws and the Low Impact Principles, Social Responsibility Principles and Descriptors set out in Exhibit A to this Appendix 11 and which describes measures to minimize, to the extent practicable, adverse environmental impacts associated with construction of the Project.
- (d) **“Green Reduction Amount”** means, subject to any adjustments pursuant to Section 3.2 of Appendix 3, \$5.00/MWh.
- (e) **“Operations EMS”** means an environmental management system for the operation of the Seller’s Facility which includes processes and systems to ensure compliance with the Low Impact Principles, Social Responsibility Principles, and Descriptors set out in Exhibit A and applicable environmental approvals and legislation and which includes setting environmental policy, identifying potential significant environmental impacts; setting environmental objectives, targets and operational controls; documenting general roles and responsibilities; establishing and maintaining procedures to identify the potential for, and response to, accidents and emergency situations; providing for regular audits and initiation of corrective action regarding non-compliance findings and providing for continual improvement of environmental performance through monitoring, reporting and management review.
- (f) **“Seller’s Facility”** means _____.

Part II – Compliance

2.1 **Compliance Evidence** – The Compliance Measure/Evidence set out in Exhibit A to this Appendix 11 is a guideline only. Within 60 days after execution and delivery of this EPA, the Buyer shall provide to the Seller further guidance as to the nature and scope of the CEMP and Operations EMS that the Buyer requires the Seller to provide pursuant to sections 2.2 and 2.3 of this Appendix.

2.2 **Pre-construction Submissions by Seller** – On or before the expiry of the Initial Period, the Seller shall prepare and deliver to the Buyer (i) a CEMP, and (ii) any Compliance Evidence not previously delivered to the Buyer. The Seller shall not undertake any site preparation or other

construction work at the site of the Seller's Facility unless and until a CEMP and all Compliance Evidence have been delivered to, and approved by, the Buyer, acting reasonably. The Buyer shall advise the Seller by notice of the Buyer's approval, or reasons for disapproval, of the CEMP, and whether or not in the opinion of the Buyer, the documents submitted as Compliance Evidence establish satisfactory compliance with the CBG Green Criteria, in each case as soon as reasonably practicable after delivery of the relevant documents to the Buyer.

2.3 **Operations EMS** – Not later than 90 days before first generation of Electricity at the Seller's Plant, the Seller shall prepare and deliver to the Buyer an Operations EMS for review by the Buyer. The Seller shall not operate the Seller's Plant unless and until an Operations EMS has been delivered to, and approved by, the Buyer, acting reasonably. The Buyer shall notify the Seller of the Buyer's approval, or reasons for disapproval, of the Operations EMS as soon as practicable after delivery of the Operations EMS to the Buyer.

2.4 **Revisions** – The Seller shall promptly deliver to the Buyer for its review any material revisions to the CEMP or the Operations EMS, none of which will be implemented without the prior consent of the Buyer, such consent not to be withheld or delayed unreasonably.

2.5 **Compliance** – The Seller shall design, construct, interconnect to the Transmission Authority's System, commission, operate, repair, improve and maintain the Seller's Facility, including all equipment, infrastructure and other parts thereof to and including the POD, in compliance with the CBG Green Criteria, and with the CEMP and the Operations EMS, each as applicable and as amended from time to time and approved by the Buyer, acting reasonably. The Seller shall not make any material modifications to the Seller's Facility which may have a material adverse impact on compliance with the CBG Green Criteria, except with the prior consent of the Buyer. The Seller shall on an annual basis provide to the Buyer the evidence required under the Operations EMS to demonstrate compliance with the Green Criteria.

2.6 **No Reliance on Buyer's Approval** – Any review, inspection, approval, audit or communication made by the Buyer in relation to the compliance or non-compliance of the Seller or the Seller's Facility with the CBG Green Criteria is relevant only to compliance by the Seller with this EPA, and does not constitute, and may not be published or relied upon by the Seller as, a "green" or other environmentally-related approval or certification concerning the Seller's Facility or the Electricity for any other purpose.

2.7 **Independent Certification** – The Seller, at the Buyer's written request, shall, at the Seller's cost, apply for and diligently pursue and maintain any certification, licensing or approval offered by any government, governmental agency or authority or independent certification agency evidencing that the Seller's Facility and the Electricity, including the Eligible Electricity, is "green" or otherwise meets specified environmentally-related and socially-related standards. The Seller will not be required to apply for any such certification, licensing or approval where the Seller can demonstrate by clear and convincing evidence that the net costs to the Seller of pursuing and maintaining such certification, licensing or approval would have a material adverse financial impact on the Seller. It is further acknowledged that any failure or inability of the Seller or of the Seller's Facility to qualify for such certification, licensing or approval will not give rise to any liability of the Seller hereunder.

Part III - Audit

3.1 **Seller's Audit** - By the first anniversary of COD, and not less frequently than every 3 years thereafter, the Seller shall perform, or cause to be performed, an audit of the operation and maintenance of

the Seller's Facility, its employees and related documentation to determine whether the Seller and the Seller's Facility comply with the CBG Green Criteria as approved by the Buyer. Those audits may be performed by employees of the Seller who have the necessary expertise to conduct the audits, or by a third party who has the necessary expertise to conduct the audits. The Seller shall provide to the Buyer a copy of the final audit report and a corrective action plan addressing the audit findings within 30 days after completion of the final audit report and shall implement the corrective action plan within a reasonable period of time.

3.2 Buyer Audit Right - The Buyer may at any time during the Term, but is not required to, conduct or to have a third party with the necessary expertise conduct, at the Buyer's expense, an audit of the operation and maintenance of the Seller's Facility, its employees and related documentation to determine whether the Seller and the Seller's Facility comply with the CBG Green Criteria. The Buyer shall provide to the Seller a copy of the audit report promptly following completion of the audit. If the audit report discloses non-compliance with the CBG Green Criteria, the Seller shall promptly prepare and deliver to the Buyer a corrective action plan addressing such non-compliance issues and shall implement the corrective action plan within a reasonable period of time.

Part IV – Failure to Comply with CBG Green Criteria

4.1 Notice – If the Seller, or the Seller's Facility, fails at any time to comply with the CBG Green Criteria, or any of section 2.7, section 3.2 or Part VI of this Appendix 11 the Buyer may give notice thereof to the Seller. The notice must include reasonable particulars of non-compliance.

4.2 Cure Right and Green Reduction Amount – If the Seller fails to cure any non-compliance of which notice is given pursuant to Section 4.1 of this Appendix 11 within 15 days after delivery of the notice, or if the non-compliance cannot reasonably be cured within 15 days, then, for so long as the Seller diligently and expeditiously pursues a cure of the non-compliance, within a further reasonable period not exceeding 180 days, then upon the expiry of the cure period, the EPA Adjusted Bid Price specified in Part III of Appendix 3 for Eligible Electricity thereafter will be automatically reduced by an amount equal to the Green Reduction Amount. For greater certainty, notwithstanding any payment reductions under this section, the Buyer will throughout the remainder of the Term have the right to Off-Site Emission Reduction Rights as more particularly provided in Section 7.10 and will continue to be entitled to the Green Rights in accordance with Section 6.1 of this Appendix 11.

4.3 Restoration of Price – If the price specified in Part III of Appendix 3 has been reduced under Section 4.2 of this Appendix, and thereafter the Seller demonstrates to the reasonable satisfaction of the Buyer that the Seller and the Seller's Facility comply with the CBG Green Criteria or that the Initial Seller has complied with section 2.7, section 3.2 or Part VI of this Appendix 11, other than as a result of expenditures by the Buyer under Section 4.4 of this Appendix, then the EPA Adjusted Bid Price specified in Part III of Appendix 3 for Eligible Electricity thereafter will not be reduced by an amount equal to the Green Reduction Amount. Without limiting the foregoing, the Buyer may require the Seller, at its own cost, to carry out an audit of the Seller's Facility and provide a final audit report to the Buyer establishing compliance with the CBG Green Criteria pursuant to this Section.

4.4 Cure by the Buyer – If the Seller fails to cure any non-compliance with the CBG Green Criteria of which notice is given pursuant to Section 4.1 of this Appendix, then in addition to applying the payment reductions specified in Section 4.2 of this Appendix, the Buyer, in its sole and unfettered discretion, may direct the Seller to cure the non-compliance by implementing measures that are technologically feasible and not inconsistent with Good Operating Practice, Permits or applicable laws,

and the Seller shall comply promptly and diligently with that direction. The Buyer shall reimburse the Seller for reasonable direct capital and incremental operating costs incurred by the Seller resulting from such compliance within 30 days after submission of an invoice and supporting documentation reasonably satisfactory to the Buyer to evidence such costs. The Seller shall maintain accurate and complete records of such costs, and shall permit the Buyer access thereto, and the right to take copies of such records for the purpose of verifying the accuracy of the Seller's statement. For greater certainty, notwithstanding the performance and completion of compliance measures under this Section 4.4, the payment reductions under Section 4.2 of this Appendix will continue in effect thereafter and the Buyer will continue thereafter to have the right to Off-Site Emission Reduction Rights as more particularly provided in Section 7.10 and to the Green Rights in accordance with Section 6.1 of this Appendix.

4.4 **Termination** – If:

- (b) the Seller or the Seller's Facility is not in compliance with the CBG Green Criteria or section 2.7, section 3.2 or Part VI of this Appendix 11; and
- (c) notice thereof is given in accordance with Section 4.1; and
- (d) in the case of the CBG Green Criteria (i) the non-compliance constitutes a violation of applicable laws, or (ii) a direction is given under Section 4.4 of this Appendix 11; and
- (e) the Seller fails to comply promptly and diligently therewith, then the Seller will be in material default of its obligations under this EPA, and the Buyer may terminate the EPA under Section 15.1(f).

4.6 **Compliance Dispute** – If a dispute arises as to whether the Seller or the Seller's Facility complies with the CBG Green Criteria, or as to whether the Seller is in compliance with section 2.7, section 3.2 or Part VI of this Appendix 11 that dispute will be resolved in accordance with Part V of this Appendix. The remedies set out or referenced in this Part IV will be stayed pending resolution of the dispute, provided that any payment reduction or restoration that may be awarded on resolution of the dispute will be retroactive to the date on which the payment reduction or restoration would otherwise take effect under Section 4.2 or 4.3 of this Appendix.

4.7 **Exclusive Remedies** – The remedies set out or referenced in this Part IV are the sole and exclusive remedies available to the Buyer for any failure of the Seller or the Seller's Facility to comply with the Green Criteria.

Part V – Dispute Resolution

5.1 **Objective** - The objective of this Part V is to provide an informal, fair, efficient and binding process for the resolution, through a standing panel of qualified and experienced persons, of disputes pertaining to compliance with the CBG Green Criteria or section 2.7, section 3.2 or Part VI of this Appendix 11 under this EPA, as well as under certain other electricity purchase agreements between the Buyer and independent power producers.

5.2 **Green Criteria Dispute Resolution Panel** - the Buyer shall establish a list consisting of not less than 3 persons ("Adjudicators") selected by the Buyer from time to time after consultation with the Independent Power Association of British Columbia, or such other industry association, if any, as may from time to time represent the interests of independent power producers in British Columbia. The Buyer

shall designate annually one Adjudicator as chair of the persons serving as Adjudicators (“Chair”). The Chair shall serve for a term of one year, and is eligible for reappointment as Chair. Persons will be selected for appointment as Adjudicators who, by scientific or technical education, professional qualification and experience, have the knowledge, skill and independence from the Parties, to fairly resolve disputes referred to them under this Part V. The Buyer may from time to time appoint additional Adjudicators, or with the consent of the Chair may remove Adjudicators, provided that no Adjudicator shall be so removed when a dispute referred to that Adjudicator is pending. Upon request, the Buyer shall provide the Seller with the names and qualifications of the Chair and each other Adjudicator.

5.3 Green Criteria Dispute – For purposes only of this Part V, “Green Criteria Dispute” means a dispute between the Buyer and the Seller only as to whether or not the Seller, or the Seller’s Facility, is in compliance with the CBG Green Criteria, including a dispute as to the interpretation, or application to the Seller or the Seller’s Facility, of the CBG Green Criteria, or section 2.7, section 3.2 or Part VI of this Appendix 11 and does not include any other dispute under or relating to this EPA. For greater certainty, “Green Criteria Dispute” does not include a dispute as to the adequacy or appropriateness of the CBG Green Criteria, or as to the exercise of any right or remedy dependent upon whether or not the Seller is in compliance with the CBG Green Criteria.

5.4 Reference of Disputes - If a Green Criteria Dispute arises, that dispute shall be referred to an Adjudicator or Adjudicators for final and binding resolution in accordance with this Part V. Either Party may give notice to the Chair, with a copy to the other Party, of the dispute, including a brief statement of the nature thereof. The Chair, after informal consultation with the Parties, shall appoint one Adjudicator, or if warranted by the nature and complexity of the dispute, three Adjudicators, to resolve the dispute. The Chair may appoint himself or herself as an Adjudicator in respect of any dispute. The Chair shall endeavour to determine whether any potential Adjudicator has, or may have, a conflict of interest in respect of a particular appointment, and if any such conflict of interest exists, that Adjudicator shall not be appointed to resolve the particular dispute. The decision of the Chair on any question of conflict of interest affecting an Adjudicator is final and binding on the Parties. The Chair shall notify the Parties of the Adjudicator(s) appointed and the fee, or basis for calculating the fee, to be charged to the Parties by the Adjudicator. If three Adjudicators are appointed, the decision of the majority governs.

5.5 Optional Mediation - The Chair, in his or her discretion and before appointing an Adjudicator under Section 4.4 of this Appendix 11, may appoint one Adjudicator to conduct, within 15 days after such appointment, an informal, expedited mediation between the Buyer and the Seller for the purpose of settling the Green Criteria Dispute by written agreement between the Parties. If mediation fails to achieve settlement by agreement within the aforesaid time, the Chair shall appoint an Adjudicator or Adjudicators, other than the Adjudicator appointed to mediate the dispute, in accordance with Section 5.4 of this Appendix 11 to resolve the dispute.

5.6 Process and Decision - The Adjudicator(s) shall proceed expeditiously to hear and resolve the dispute, and shall endeavour to achieve a resolution of the dispute within 45 days after appointment. The Adjudicator(s) shall follow any procedural guidelines that the Chair may prescribe from time to time, and otherwise shall adopt such procedures as the Adjudicator(s) consider appropriate. It is the intent of the Parties that procedures for resolution of Green Criteria Disputes be informal, provided that the each Party be afforded a reasonable opportunity to present evidence and argument. The Adjudicator(s) may resolve the dispute on documents, and without a hearing, and any hearing will be conducted in an informal manner. Legal rules of evidence need not be applied by the Adjudicator(s). The decision of the Adjudicator(s) will be made in writing, with brief written reasons, and will be delivered to the Parties, with a copy to the Chair. Decisions and reasons will be available to other Adjudicators in the interest of

promoting consistency in the interpretation and application of the CBG Green Criteria as between the Buyer and the Seller, and in respect of other electricity purchase agreements.

5.7 **Costs** - The fees and expenses of the Adjudicator(s) will be borne equally by the Parties to a Green Criteria Dispute, unless the Adjudicator(s) determines that one Party has acted in bad faith or capriciously in relation to the dispute, in which case a greater portion or all of such costs may be awarded against that Party. All other costs and expenses incurred by a Party in participating in the dispute resolution process will be borne by that Party. Any costs and expenses of the Chair in administering the dispute resolution process (other than costs or expenses of the Chair when acting as an Adjudicator) will be borne by the Buyer.

5.8 **Final and Binding Decision** - The decision of the Adjudicator(s) on any Green Criteria Dispute is final and binding, and not subject to arbitration under Section 19.7, or to rehearing or appeal. The rules of the British Columbia International Commercial Arbitration Centre do not apply to the resolution of any Green Criteria Dispute. This Part IV is deemed to be a submission to arbitration for the purposes of the *Commercial Arbitration Act* (British Columbia).

Part VI – Green Rights

6.1 **Acquisition of Green Rights** – The Seller acknowledges that the Buyer is entitled to the Green Rights at no additional cost to the Buyer. The Seller, upon reasonable request of the Buyer, shall do, sign or cause to be done or signed all further acts, deeds, things, documents and assurances required to give effect to this Section.

6.2 **Marketing** – The Seller shall ensure that all marketing materials produced by or for the Seller, all public announcements or statements by the Seller and all other communications by the Seller in any form whatsoever including oral communications contain no false or misleading statements concerning the ownership of the Contracted Capacity and the Green Rights or the end user of the Contracted Capacity. The Seller acknowledges that damages will not adequately compensate the Buyer for a breach by the Seller of this Section 6.2 and the Seller acknowledges that the Buyer will be entitled to an injunction to restrain a breach by the Seller of this Section 6.2 and to an order requiring the Seller to take such other actions as may be required to remedy the effects of any breach of this Section.

6.3 **Representations and Warranties** – The Seller hereby represents and warrants to the Buyer, and acknowledges that the Buyer is relying on those representations and warranties in entering into this EPA, that the Seller is the legal and beneficial owner of the Green Rights free and clear of all liens, claims, charges and encumbrances of any kind whatsoever and no other Person has any agreement or right of any kind whatsoever to purchase or otherwise acquire or to claim or otherwise make any use whatsoever of the Green Rights. The Seller acknowledges that any misrepresentation by the Seller under this Section 6.3 will be considered a “Seller Default” for purposes of this EPA.

6.4 **Remedies** – The Seller acknowledges that a breach by the Seller of this Part VI will be considered a “Seller Default” for purposes of this EPA.

Part VII – Miscellaneous Amendments

7.1 Section 1.5 is deleted and replaced with the following:

1.5 Governing Law – This EPA is made under, and shall be interpreted in accordance with the laws of the Province of British Columbia. Subject to Section 19.7 if applicable, and, Part V of Appendix 11, if applicable, any suit, action or proceeding (a “Proceeding”) arising out of this EPA may be brought in the courts of the Province of British Columbia at Vancouver, and those courts will have non-exclusive jurisdiction in respect of any Proceeding.

7.2 Section 1.11(f) is deleted and replaced with the following:

(f) the provisions of Appendix 10, if any, and of Part VII of Appendix 11 govern over the other provisions of this EPA, and all provisions of this EPA are mutually explanatory of one another.

7.3 The second sentence of Section 7.9 is deleted and replaced with the following:

That price includes full and total payment and consideration for the acquisition or retention by the Buyer of Green Rights and Off-Site Emission Reduction Rights.

7.4 Section 8.1(a) is revised to include the words “the Green Reduction Amount, if any,” after the words “the amount payable by the Buyer for Eligible Electricity pursuant to Appendix 3”.

7.5 Section 7.12 is deleted.

7.6 Subsection 15.3(b) is deleted and replaced with the following:

(b) both Parties will remain bound by Section 7.10, Section 8.5, Article 12, Article 13, Article 15, Sections 20.7 and 20.8 and Part V of Appendix 11 and the Seller will remain bound by Section 6.6, Article 19, and Sections 2.6, 6.2, 6.3 and 6.4 of Appendix 11 and, for a period of 36 months following termination of this EPA, Article 17 and by any other provisions necessary for the interpretation and enforcement of those provisions.

7.7 The first sentence of Section 19.7 is deleted and replaced with the following:

If any dispute arises under or in relation to this EPA, other than a dispute regarding compliance or non-compliance with the CBG Green Criteria as provided in Part V of Appendix 11, that dispute will be referred to and finally resolved by arbitration by a single arbitrator under the domestic rules of the British Columbia International Commercial Arbitration Center (“BCICAC”).

7.8 Appendix 3 is amended by:

(a) deleting Part I, paragraph (b) and replacing it with the following:

“EPA Adjusted Bid Price” means the Bid Price as adjusted pursuant to Sections 3.2 (CPI Adjustments) and 3.4 (Recall Option Adjustment) of this Appendix, and, if applicable, by Sections 4.2 and 4.3 (Green Reduction Amount) of Appendix 11.”

- (b) adding the “Green Reduction Amount” as an amount subject to the CPI Adjustment in subsection 3.2(a) and subsection 3.2(b)(ii) of that Appendix and the following formula is added to subsection 3.2(b)(i):

$$\text{Green Reduction Amount}_{\text{Jan 1, year N}} = \text{Green Reduction Amount} \times \text{CPI Adjustment}_{\text{Jan 1, year N}}$$

and adding the following formula to subsection 3.2(b)(ii):

$$\text{Green Reduction Amount}_{\text{Jan 1, year N}} = \text{Green Reduction Amount} \times \text{CPI Adjustment}_{\text{Jan 1, year N}}$$

- (c) deleting Section 4.1 of that Appendix and replacing it with the following:

4.1 The amounts payable by the Buyer specified in this Appendix 3 are the full and complete payment and consideration payable by the Buyer for all Eligible Electricity under this EPA, and all Green Rights and Off-Site Emission Reduction Rights.

EXHIBIT A TO APPENDIX 11

[Applicable Green Criteria to be attached.]