

SCHEDULE 5

DRAFT CONFIDENTIALITY AND COMPLIANCE AGREEMENT

This Confidentiality and Compliance Agreement (the “*Agreement*”) is made as of _____, 2009 [Note: *Date to be completed by BC Hydro at time of signing by BC Hydro.*]

BY AND BETWEEN

[INSERT FULL LEGAL NAME OF PROPONENT], of [INSERT FULL ADDRESS WITH POSTAL CODE]

(“*Proponent*”)

AND

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY, a British Columbia Crown Corporation, having an office at 333 Dunsmuir Street, Vancouver, British Columbia, V6B 5R3

(“*BC Hydro*”)

(the foregoing may be referred to individually as a “*Party*” or collectively as the “*Parties*”)

WHEREAS:

- A. BC Hydro has issued a Haida Gwaii/Queen Charlotte Islands – Request for Proposals dated _____ (as may be amended from time to time) for the supply of electrical energy solutions qualifying as clean or renewable electricity to displace the current diesel generated electricity on Haida Gwaii/Queen Charlotte Islands (the “*RFP*”);
- B. The Proponent has registered under the RFP and intends to participate in the procurement process therein described (the “*RFP Process*”);
- C. The Proponent may submit to BC Hydro a Proposal, and further information relative thereto; and
- D. BC Hydro may conduct discussions, which may include negotiations, with the Proponent after receipt of Proposals.

NOW THEREFORE, in consideration of the Parties entering into this Agreement and the mutual promises and agreements contained in this Agreement, the Parties agree as follows:

1. DEFINITIONS

1.1 **Definitions.** Capitalized terms used but not defined herein shall have the meanings given in the RFP.

1.2 **Confidential Information.** “*Confidential Information*” means the Proponent’s Proposal that the Proponent submits to BC Hydro, or any pre-submission or post-submission information regarding the

Proposal, the Project described therein, or related industrial facilities or businesses of the Proponent, whether or not designated expressly as confidential, that is disclosed or expressed, whether orally, in writing, electronically or by any other media, by the Proponent to BC Hydro during the course, or in furtherance, of the RFP Process, but excluding any executed and delivered EPA and/or other agreement(s) entered into between the Parties pursuant to the RFP Process, and also excluding information that:

- (a) is or becomes in the public domain, other than as a result of a breach of this Agreement by BC Hydro; or
- (b) is known to BC Hydro before disclosure to it by the Proponent, or becomes known to BC Hydro thereafter by way of disclosure to BC Hydro by any other person who is not under an obligation of confidentiality with respect thereto.

1.3 **Discussions.** “*Discussions*” means discussions, including negotiations, between BC Hydro and the Proponent occurring after submission of the Proponent’s Proposal and pertaining thereto until such discussions are terminated or an EPA and/or other agreement(s), if any, is entered into between the Parties pursuant to the RFP Process.

2. **CONFIDENTIALITY OBLIGATION**

2.1 **Confidentiality Obligation.** BC Hydro shall treat as confidential, and shall not disclose to any third person, Confidential Information, and both Parties shall treat as confidential and shall not disclose to any third person, all or any part of the Discussions, provided however that the foregoing obligations, and nothing in this Agreement, prevents or restricts:

- (a) disclosure of the fact that Discussions, if any, are occurring, or have occurred, and/or the fact that this Agreement exists and the general nature hereof;
- (b) in the case of BC Hydro, disclosure of the Discussions and/or Confidential Information:
 - (i) to any ministers, deputy ministers or servants or employees of the Province of British Columbia; and
 - (ii) to its directors, officers, employees and subsidiaries, consultants and advisors;

provided that each of the foregoing to whom Discussions and/or Confidential Information is disclosed is advised of the confidential nature thereof;

- (c) in the case of BC Hydro, disclosure of Discussions and/or Confidential Information in any regulatory proceeding, whether in respect of an EPA and/or other agreement(s) entered into with the Proponent pursuant to the RFP Process or in respect of other matters, to the extent that BC Hydro considers disclosure necessary or desirable to support its position in any such proceeding, provided that, to the extent reasonably practicable, BC Hydro gives reasonable notice to the Proponent before making the disclosure, and, to the extent requested by the Proponent, requests the relevant tribunal to treat all or any part of the disclosure as confidential or to limit its further disclosure;
- (d) in the case of BC Hydro, disclosure of:
 - (i) the Proponent’s questions in the Q&A process under the RFP; and

- (ii) the Proponent's participation in the RFP Process, or the location of any Project proposed by the Proponent;
- (e) in the case of BC Hydro, disclosure to British Columbia Transmission Corporation of the interconnection request application submitted to BC Hydro, and any information submitted, or to be submitted, to BC Hydro relative thereto, and any subsequent interconnection report resulting therefrom;
- (f) in the case of the Proponent, disclosure of Discussions to its directors, officers, employees and Affiliates, consultants and advisors, provided that each of the foregoing to whom Discussions are disclosed is advised of the confidential nature thereof;
- (g) without limiting BC Hydro's disclosure rights under subsection 2.1(c) above, disclosures required to be made by BC Hydro or the Proponent by an order of a court or tribunal or under any law, regulatory requirement or requirement of any stock exchange that is binding upon it, provided that, (i) to the extent reasonably practicable, the Party making such disclosure gives reasonable notice to the other Party before making the disclosure, and (ii) limits the disclosure to that required by the applicable order, law, or regulatory or stock exchange requirement;
- (h) disclosures in any legal proceedings for the enforcement of any agreement referenced in section 2.2; or
- (i) disclosures of the Discussions and/or Confidential Information by agreement or consent of both Parties, including pursuant to the Disclosure Statement.

2.2 **Disclosure of EPA.** Disclosure of any executed EPA and/or other agreement(s) entered into with the Proponent pursuant to the RFP Process, or any summary thereof or information contained therein, will be governed by the EPA and/or other agreement(s), if any.

2.3 **Freedom of Information and Protection of Privacy Act.** The Proponent acknowledges that BC Hydro is subject to the British Columbia *Freedom of Information and Protection of Privacy Act* and associated regulations, and agrees that BC Hydro's non-disclosure obligations under this Agreement are subject to the provisions of that legislation, as the same may be amended or replaced from time to time.

2.4 **Liability Exclusion.** In no event will either Party be liable to the other Party in connection with any breach of this Agreement for any indirect, incidental or consequential damages, including loss of profits.

2.5 **Term.** The obligations of the Parties under this section 2 expire upon the earlier of (i) full execution and delivery of an EPA and/or other agreement(s), if any, entered into between the Parties pursuant to the RFP Process (whereupon matters of confidentiality shall be governed exclusively by any such agreement), and (ii) three years after the date hereof.

3. COMPLIANCE OBLIGATION

The Proponent acknowledges and agrees that it is bound by, and will comply with, section 18 of the RFP in relation to its participation in the RFP.

4. **MISCELLANEOUS**

4.1 **Governing Law.** This Agreement shall be interpreted, governed and construed under the laws of the Province of British Columbia and the laws of Canada applicable therein as if it were executed and to be performed wholly within the Province of British Columbia.

4.2 **Equitable Relief.** Each Party agrees that in the event of a breach of this Agreement, or to prevent a breach or contemplated breach, by that Party, the other Party shall be entitled to equitable relief, including injunction and specific performance, in addition to all other remedies available at law or equity.

4.3 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes and cancels all prior agreements and communications relative to such subject matter.

4.4 **Amendments.** This Agreement shall not be modified, except by a written agreement dated after the date of this Agreement and signed by both Parties.

4.5 **Assignment.** This Agreement may not be assigned by either Party without the prior written consent of the other Party.

4.6 **Enurement.** This Agreement shall be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.

4.7 **Execution In Counterpart.** This Agreement may be executed in counterparts, and each counterpart shall for all purposes be an original, and all such counterparts shall together constitute one and the same Agreement. Execution by either Party of a facsimile copy of this Agreement will be deemed to constitute effective execution of this Agreement by that Party.

4.8 **Relationship.** Entering into this Agreement shall in no way be construed to:

- (a) preclude in any way either Party from pursuing any business opportunities;
- (b) establish any relationship between BC Hydro and the Proponent with respect to such business opportunities; or
- (c) establish any other relationship between BC Hydro and the Proponent with respect to the Project.

IN WITNESS WHEREOF, the Parties have entered into this Agreement effective as of the date first above written.

**BRITISH COLUMBIA HYDRO AND
POWER AUTHORITY**

By: _____

Name: _____

Title: _____

Full legal name of Proponent

Signature

Name: _____

Title: _____

DRAFT