

**STANDING OFFER PROGRAM**

**APPENDIX 6**

**LENDER CONSENT AGREEMENT**

(See section 8.4(c))

THIS AGREEMENT is made as of \_\_\_\_\_, 200\_,

AMONG:

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

(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, engineering, construction, operation and/or maintenance of the Seller’s Plant (as defined in the EPA);
- C. To secure the due payment of all principal, interest (including interest on overdue interest), premium (if any) and other amounts payable in respect of the Credit and the due performance of 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 “Lender 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 subsection 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; and
  - (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 as Schedule A.
3. **Buyer 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, except to the Lender;
  - (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 written 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 Lender 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 Lender 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 with the Buyer to be bound by the provisions of section 8.8 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, other than the Buyer, to whom it has granted a security interest in the EPA or the Seller's Plant.

5. **EPA Notices:** 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) shall not exercise any right it may have to terminate the EPA until the later of: (i) the date that is 45 days after the date on which the Buyer delivered to the Lender a copy of the Default or Termination Notice entitling the Buyer to terminate the EPA; and (ii) the date on which the Buyer is entitled to terminate the EPA;
- (c) shall not, provided that there is no other Buyer Termination Event under the EPA, terminate the EPA based on the Bankruptcy or Insolvency of the Seller if the Lender is promptly and diligently prosecuting to completion enforcement proceedings under the Lender Security until 30 days after the expiry of any court ordered period restricting the termination of the EPA; and
- (d) shall not exercise any right it may have under section 6.7 of the EPA to deduct any amounts owing by the Seller to the Buyer under the EPA from amounts owing by the Buyer to the Seller under the EPA until the date that is 15 days after the date the Buyer provides the Lender with a copy of the notice delivered by the Buyer to the Seller under section 6.7 of the EPA.

Nothing in this Agreement prevents or restricts: (i) 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 (ii) 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 Lender 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 the Lender 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 subsection 6.1(b) of this Agreement 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) Buyer 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 8.5 of the EPA.

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 Lender Security. The Lender shall give the Buyer prompt notice of the full and final discharge of all of the Lender 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 by facsimile and 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 each of the parties have duly executed this Agreement as of the day and year first above written.

**BRITISH COLUMBIA HYDRO AND  
POWER AUTHORITY**

**[COMPANY]**

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**[LENDER]**

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_

Title: \_\_\_\_\_