

**Richard Stout**  
Chief Regulatory Officer  
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02 December 2004

Mr. Dan Potts  
Executive Director  
Joint Industry Electricity Steering Committee  
Dan Potts Consulting  
5495 West Vista Court  
West Vancouver, BC V7W 3G8

Dear Mr. Potts:

**RE: British Columbia Hydro and Power Authority ("BC Hydro")  
Call for Tenders for Capacity on Vancouver Island  
Review of Electricity Purchase Agreement  
Project no. 3698354**

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At the British Columbia Utilities Commission Procedural Conference held earlier this week, the Commission accepted BC Hydro's proposal to provide intervenors upon request with the Quantitative Evaluation Model used to assess the competing tenders with certain conditions attached.

Further to your request to BC Hydro for a copy of this model and related materials used in the evaluation, we enclose a confidentiality agreement ("Agreement"), similar in content to the assurances undertaken by the bidders to the CFT. Please note Clause 6.3 of the Agreement requiring that the CD containing these materials be returned to BC Hydro upon completion of the CFT Review proceedings and that any copies of the materials installed on computers owned or operated by your counsel, consultant or your organization be destroyed.

We will provide you with the confidential materials upon receipt of a signed copy of the Agreement.

Yours sincerely,

  
for Richard Stout  
Chief Regulatory Officer

Enclosure (1)

c. Robert J. Pellatt  
British Columbia Utilities Commission

# BC HYDRO SPREADSHEET TOOLS AND MATERIALS CONFIDENTIALITY AGREEMENT

Effective Date: 02 December 2004

IMPORTANT NOTICE: THIS AGREEMENT GOVERNS THE INSTALLATION AND USE OF CERTAIN SPREADSHEET TOOLS AND RELATED MATERIALS (COLLECTIVELY THE "MATERIALS") MADE AVAILABLE BY BRITISH COLUMBIA HYDRO AND POWER AUTHORITY FOR USE UPON REQUEST BY THE INTERVENOR, THEIR COUNSEL AND CONSULTANTS IN CONNECTION WITH THE BRITISH COLUMBIA UTILITIES COMMISSION'S REVIEW PROCEEDINGS IN RESPECT OF BRITISH COLUMBIA HYDRO AND POWER AUTHORITY CALL FOR TENDERS FOR CAPACITY AND ASSOCIATED ENERGY SUPPLY ON VANCOUVER ISLAND. IT CONTAINS IMPORTANT TERMS, INCLUDING PROVISIONS THAT RESTRICT THE USE OF THE MATERIALS AND DISCLAIM, EXCLUDE AND LIMIT THE LIABILITY OF BRITISH COLUMBIA HYDRO AND POWER AUTHORITY AND OTHER PERSONS.

EACH TIME YOU INSTALL OR USE THE MATERIALS, YOU ACKNOWLEDGE AND SIGNIFY THAT YOU HAVE READ, UNDERSTOOD, AND AGREED THAT YOU ARE BOUND BY THIS AGREEMENT. IF YOU ARE NOT AUTHORIZED TO AGREE TO AND ACCEPT THIS AGREEMENT, OR IF YOU DO NOT AGREE WITH EACH PROVISION OF THIS AGREEMENT, NEITHER YOU NOR ANY OTHER PERSON MAY INSTALL OR USE THE MATERIALS AND YOU MUST PROMPTLY RETURN THE CD CONTAINING THE MATERIALS TO BRITISH COLUMBIA HYDRO AND POWER AUTHORITY, DELETE ALL COPIES OF THE MATERIALS INSTALLED ON COMPUTERS OWNED OR OPERATED BY YOU AND ADVISE, IN WRITING, BRITISH COLUMBIA HYDRO AND POWER AUTHORITY THAT YOU HAVE COMPLIED WITH THE FOREGOING.

## 1. GENERAL

This Agreement governs the installation and use of the following: the Tender Spreadsheet and the Portfolio Spreadsheet (collectively the "Spreadsheets") and Users Manual (the "Manual") for the Spreadsheets (collectively the "Materials"). The Materials are made available by British Columbia Hydro and Power Authority ("BC Hydro") for use solely in connection with the British Columbia Utilities Commission Call for Tenders for Capacity and Associated Energy Supply on Vancouver Island review proceedings (the "BCUC CFT Review Proceedings") and only by intervenors, their counsel and consultants who are participating in the BCUC CFT Review Proceedings and have accepted and agree to this Agreement. In this Agreement, the "Intervenor" means the intervenor, their counsel and consultants who is participating in the BCUC CFT Review Proceedings who has requested the Materials and who has agreed to install and use the Materials in accordance with this Agreement.

## 2. RESTRICTED USE

- 2.1. **Permitted Use.** Subject to the provisions of the Agreement, BC Hydro hereby grants to the Intervenor the non-exclusive, non-transferable, non-assignable, non-sublicensable, restricted, revocable and limited use, during the BCUC CFT Review Proceedings, to install and use a copy of the Materials, in object code form only, on one or more computers owned or operated on behalf of the Intervenor for the sole purpose of the Intervenor's use in connection with the BCUC CFT Review Proceedings. The Materials may not be used for any other purpose.
- 2.2. **Restrictions.** The Intervenor may not (a) copy (except to install the Materials), reproduce, translate, modify, enhance, or create derivative works from the materials; (b) license, sublicense, sell, resell, lend, lease, loan, transfer, assign, publish, transmit, publicly display or perform, distribute, rent or otherwise give or make available the Materials to or for the benefit of any other person; (c) commercially exploit the Materials in any way other than to use the Materials in connection with the BCUC CFT Review Proceedings; (d) remove, alter, obscure, destroy or attempt to circumvent any trademarks, notices, proprietary codes, means of identification or digital rights management information on, in or in relation to Materials; (e) use the Materials except as authorised in this Agreement; or (f) permit or assist any other person to use the Materials in a way that would constitute a breach of this Agreement.

## 3. OWNERSHIP

BC Hydro and its suppliers own and retain all right, title and interest (including intellectual property rights) in, to and associated with the Materials. The Materials are on loan to the Intervenor. The Intervenor will not acquire any

right, title or interest in, to or associated with the Materials. The Materials are protected by Canadian and international copyright and other intellectual property laws. All rights not expressly granted under the Agreement are reserved to BC Hydro.

#### 4. INTERVENOR OBLIGATIONS

- 4.1. **Technical Requirements.** The Intervenor is solely responsible and liable for: (a) the selection of the Materials to achieve the intended result; (b) obtaining, provisioning, configuring, maintaining, paying for, and protecting from loss and damage all computer equipment and services (including without limitation compatible computer software) necessary for the installation and use of the materials and all data used in association with the Materials; (c) providing a safe and suitable location and environment for the installation and use of the Materials; (d) the use, installation, implementation and operation of the Materials and the results obtained therefrom; (e) scanning for and preventing the receipt and transmission of viruses, Trojan horses, worms or other destructive or disruptive components; and (f) maintaining completed and current backup and archival copies of all data contained on the Intervenor's computer system prior to installing or using the Materials.
- 4.2. **Applicable Laws.** The Intervenor will comply with, and ensure that its use of the Materials complies with, all applicable local, state, provincial, national, and foreign laws and regulations, including without limitation all laws relating to data privacy, international communications and the exportation and transmission of technical data and other regulated materials.
- 4.3. **Confidentiality.** The Materials are BC Hydro's confidential information. The Intervenor will maintain the confidentiality of the Materials and will not provide a copy of the Materials or any part of them to any other person. The Intervenor will take every reasonable precaution to prevent the unauthorized use, disclosure, duplication or reproduction of the Materials.
- 4.4. **Responsibility for Representative.** The Intervenor is solely responsible and liable for all acts and omissions by all persons who access or use the Materials on the Intervenor's behalf, and will ensure that all such persons strictly comply with the restrictions and requirements set forth in the Agreement.

#### 5. DISCLAIMERS, REMEDY, INDEMNITY, AND LIABILITY EXCLUSIONS AND LIMITATIONS

- 5.1. **GENERAL DISCLAIMER. THE MATERIALS ARE PROVIDED AS IS AND WITH ALL FAULTS, AND WITHOUT ANY REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTEES OF ANY NATURE OR KIND WHATSOEVER, WHETHER EXPRESS, IMPLIED OR STATUTORY, OR ARISING FROM CUSTOM OR TRADE USAGE OR BY ANY COURSE OF DEALING OR COURSE OF PERFORMANCE, INCLUDING WITHOUT LIMITATION ANY REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTEES OF OR RELATING TO: ACCURACY; CAPACITY; COMPLETENESS; DELAYS; DURABILITY; ERRORS; FITNESS FOR A PARTICULAR PURPOSE; LACK OF NEGLIGENCE; VIRUSES OR OTHER HARMFUL COMPONENT, ERRORS, OR INTERRUPTED SERVICE; MERCHANTABILITY; NON-INFRINGEMENT; PERFORMANCE; RESULT; SUITABILITY; QUALITY; TIMELINESS; TITLE; OR WORKMANLIKE EFFORT; ALL OF WHICH ARE HEREBY DISCLAIMED BY BC HYDRO TO THE FULLEST EXTENT PERMITTED BY LAW. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BC HYDRO MAKES NO REPRESENTATION, WARRANTY OR CONDITION THAT: (A) THE MATERIALS WILL BE COMPATIBLE WITH THE INTERVENOR'S COMPUTER AND RELATED EQUIPMENT AND SOFTWARE; (B) THE MATERIALS WILL BE AVAILABLE OR WILL FUNCTION WITHOUT INTERRUPTION OR WILL BE FREE OF ERRORS OR THAT ANY ERRORS WILL BE CORRECTED; (C) THE MATERIALS WILL MEET THE INTERVENOR'S REQUIREMENTS; (D) DATA PROCESSED BY THE MATERIALS WILL BE ACCURATE, COMPLETE, SEQUENTIAL OR TIMELY; (E) CERTAIN OR ANY RESULTS MAY BE OBTAINED THROUGH THE USE OF THE MATERIALS; (F) THE USE OF THE MATERIALS WILL BE FREE OF ERRORS, VIRUSES, TROJAN HORSES, WORMS OR OTHER DESTRUCTIVE OR DISRUPTIVE COMPONENTS; OR (G) THE USE OF THE MATERIALS WILL NOT INFRINGE THE RIGHTS (INCLUDING INTELLECTUAL PROPERTY RIGHTS) OF ANY PERSON; AND BC HYDRO DISCLAIMS ANY AND ALL LIABILITY REGARDING SUCH MATTER TO THE FULLEST EXTENT PERMITTED BY LAW. THE INTERVENOR INSTALLS AND USES THE MATERIALS AT THE INTERVENOR'S OWN RISK. THE INTERVENOR IS AND WILL REMAIN SOLELY AND EXCLUSIVELY RESPONSIBLE FOR THE INTERVENOR'S INSTALLATION, USE, SERVICING, MAINTENANCE, REPAIR AND CORRECTION OF THE MATERIALS, AND THE CONTROL, SECURITY AND CONFIDENTIALITY OF THE INTERVENOR'S DATA.**

- 5.2. **EXCLUSIVE REMEDY.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IF THE INTERVENOR IS DISSATISFIED WITH THE MATERIALS, THE INTERVENOR'S SOLE AND EXCLUSIVE REMEDY IS TO TERMINATE THIS AGREEMENT AND CEASE USING THE MATERIALS.
- 5.3. **INDEMNIFICATION.** THE INTERVENOR WILL INDEMNIFY, DEFEND AND HOLD HARMLESS BC HYDRO FROM AND AGAINST ANY AND ALL CLAIMS AND PROCEEDINGS DIRECTLY OR INDIRECTLY ARISING FROM, CONNECTED WITH OR RELATING TO THE INTERVENOR'S USE OF THE MATERIALS OR ANY NEGLIGENCE MISCONDUCT, OR BREACH OF THIS AGREEMENT BY OR ON BEHALF OF THE INTERVENOR OR ANY PERSON FOR WHOM THE INTERVENOR IS RESPONSIBLE UNDER THE AGREEMENT OR OTHERWISE. IN THIS AGREEMENT, "CLAIMS" MEANS THIRD PARTY CLAIMS, COUNTERCLAIMS, COMPLAINTS, DEMANDS, CAUSES OF ACTION, LIABILITIES, OBLIGATIONS, DAMAGES, LEGAL FEES, COSTS, EXPENSES, AND DISBURSEMENTS, INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES AND COURT COSTS, OF ANY NATURE OR KIND, WHATSOEVER AND HOWSOEVER ARISING, WHETHER KNOWN OR UNKNOWN, WHETHER IN LAW OR IN EQUITY OR PURSUANT TO CONTRACT OR STATUTE; AND "PROCEEDINGS" MEANS THIRD PARTY ACTIONS, SUITS, PROCEEDINGS, AND HEARINGS OF ANY NATURE AND KIND IN ANY COURT OF LAW OR EQUITY OR BEFORE ANY ARBITRATOR OR OTHER BODY, BOARD OR TRIBUNAL.
- 5.4. **EXCLUSION OF LIABILITY.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW: (A) IN NO EVENT WILL BC HYDRO BE LIABLE TO THE INTERVENOR OR ANY OTHER PERSON FOR ANY DAMAGE OR LOSS, INCLUDING WITHOUT LIMITATION INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY LOSS OR DAMAGE, ARISING FROM, CONNECTED WITH, OR RELATING TO THE MATERIALS OR USE OF THE MATERIALS OR THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOSS OF DATA, INFORMATION, BUSINESS, MARKETS, SAVINGS, INCOME, PROFITS, USE, PRODUCTION, OR GOODWILL, ANTICIPATED OR OTHERWISE (INCLUDING WITHOUT LIMITATION BY REASON OF ANY EXPENDITURES, INVESTMENTS, LEASES OR COMMITMENTS MADE IN ANTICIPATION OF THE CONTINUANCE OR PERFORMANCE OF THIS AGREEMENT), OR ECONOMIC LOSS, UNDER ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY OR LAW OR EQUITY), REGARDLESS OF ANY NEGLIGENCE OR OTHER FAULT OR WRONGDOING (INCLUDING WITHOUT LIMITATION GROSS NEGLIGENCE) BY BC HYDRO OR ANY PERSON FOR WHOM BC HYDRO IS RESPONSIBLE, AND EVEN IF BC HYDRO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE BEING INCURRED.
- 5.5. **LIMITATION OF LIABILITY AND RELEASE.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT AND WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, UNDER NO CIRCUMSTANCES WILL BC HYDRO'S TOTAL, AGGREGATE LIABILITY TO THE INTERVENOR AND ANY OTHER PERSON ARISING FROM, CONNECTED WITH, OR RELATING TO THE MATERIALS OR USE OF THE MATERIALS OR THIS AGREEMENT EXCEED THE SUM OF ONE (\$1) DOLLAR, AND THE INTERVENOR HEREBY RELEASES, REMISES AND DISCHARGES BC HYDRO FROM ANY AND ALL OBLIGATIONS, LIABILITY, CLAIMS OR DEMANDS IN EXCESS OF THE LIMITATION SET FORTH IN THIS PARAGRAPH 5.5.
- 5.6. **DEFINITION.** IN THIS SECTION 5.6, "BC HYDRO" INCLUDES BC HYDRO AND ITS AFFILIATES AND SUPPLIERS AND EACH OF THEIR RESPECTIVE PAST, PRESENT AND FUTURE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUBCONTRACTORS, SERVICE PROVIDERS, SUCCESSORS, ASSIGNS, AND RELATED PERSONS.
- 5.7. **ADDITIONAL RIGHTS.** THE EXCLUSION OF CERTAIN WARRANTIES AND THE EXCLUSION OR LIMITATION OF CERTAIN LIABILITIES IS PROHIBITED BY LEGISLATION IN SOME JURISDICTIONS. SUCH LEGISLATIVE LIMITATIONS MAY APPLY TO THE INTERVENOR.

## 6. TERM AND TERMINATION

- 6.1. **Term.** This Agreement will have effect as of the Effective Date and remain in full force and effect until the completion or cessation of the Intervenor's involvement in the BCUC CFT Review Proceedings unless terminated earlier in accordance with the Agreement.
- 6.2. **Termination by Parties.** The Intervenor may in its discretion terminate this Agreement at any time by permanently deleting and destroying all copies of the Materials. BC Hydro may in its discretion terminate this Agreement at any time immediately upon delivery of notice of termination to the Intervenor if: (a) the Intervenor is in breach of the Agreement and does not remedy that breach within ten (10) days after receipt of notice from BC Hydro demanding that it do so; or (b) BC Hydro is notified of any proven or unproven Claim or Proceeding that the Materials or any part thereof infringes or violates any applicable laws or any rights (including without limitation intellectual or industrial property rights) of any other person.

- 6.3. **Post-Termination Obligations.** Immediately upon the completion of the BCUC CFT Review Proceedings or termination of this Agreement, the Intervenor will (a) cease using and permanently delete and destroy all copies of the Materials installed on the computers owned or operated by the Intervenor; (b) promptly return the CD containing the Materials to BC Hydro with a written confirmation that the Intervenor has complied with the foregoing.
- 6.4. **Survival.** Notwithstanding anything herein to the contrary, the following provisions of this Agreement, and all other provisions necessary to their interpretation or enforcement, will survive the expiration or termination of this Agreement and will remain in full force and effect and be binding upon the parties as applicable: sections 5 and 7 and paragraphs 4.3, 4.4, 6.3 and 6.4.
7. **GENERAL**
- 7.1. **Irreparable Harm by Disclosure.** The Intervenor acknowledges that substantial economic loss and irreparable damage to BC Hydro could occur if the Intervenor breaches any provision of this Agreement and that money damages may not be a sufficient remedy for such breach. Accordingly, the Intervenor agrees that in addition to any other remedy to which BC Hydro may be entitled, BC Hydro will be entitled to injunctive and preliminary relief to prevent breaches of the Agreement and will be entitled to specific performance of the Intervenor's obligations under the Agreement.
- 7.2. **Assignment.** This Agreement may not be assigned by the Intervenor without the prior written consent of BC Hydro.
- 7.3. **Enurement.** This Agreement will enure to the benefit of, and be binding upon, BC Hydro and the Intervenor and their respective successors and permitted assigns. Without limiting the generality of the foregoing, the protections afforded by section 5 of this Agreement enure to the benefit of BC Hydro's past, present and future directors, officers, employees, agents, representatives, subcontractors, service providers, successors, assigns, and related persons.
- 7.4. **No Waiver.** No failure or delay by BC Hydro in exercising any right, power or privilege under this Agreement or otherwise will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege under this Agreement or otherwise.
- 7.5. **Acknowledgement.** The Intervenor acknowledges and agrees that nothing in this Agreement will limit any fiduciary or other duties or obligations that the Intervenor has to BC Hydro, if any.
- 7.6. **Remedies.** Except as specifically provided herein, the specific rights and remedies of either party under this Agreement are cumulative and not exclusive of any other rights or remedies to which either party may be lawfully entitled under this Agreement or at law or equity, and the parties will be entitled to pursue any and all of their respective rights and remedies concurrently, consecutively and alternatively.
- 7.7. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable in whole or in part, such invalidity or unenforceability will attach only to such provision or part thereof and the remaining part of such provision and all other provisions of the Agreement will continue in full force and effect.
- 7.8. **Governing Law.** This Agreement and all related matters will be governed by and construed in accordance with British Columbia law. The parties each irrevocably attorn to the exclusive jurisdiction of the courts of the Province of British Columbia in respect of all matters arising under or relating to this Agreement.
- 7.9. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and cancels and supersedes any and all prior written or oral understandings and agreements between the parties with respect to the subject matter of this Agreement.

7.10. **Interpretation.** In this Agreement: (a) a reference to “this Agreement” and other similar terms refers to this Agreement as a whole, and not just to the particular provision in which those words appear; (b) headings in the Agreement are for reference only and do not define, limit or enlarge the scope or meaning of this Agreement or any of its provisions; (c) words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, societies, and corporations; (d) words importing the singular number only include the plural and vice versa; and (e) words importing any gender include all genders.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

BRITISH COLUMBIA HYDRO AND  
POWER AUTHORITY

NAME OF INTERVENOR/COUNSEL/  
CONSULTANT:

Per: \_\_\_\_\_

\_\_\_\_\_

Per: \_\_\_\_\_

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

\_\_\_\_\_  
Date