

BC HYDRO

STANDARD FORM ELECTRICITY PURCHASE AGREEMENT

STANDING OFFER PROGRAM

ISSUED: _____, ~~2007~~ April 11, 2008

THIS ELECTRICITY PURCHASE AGREEMENT (“EPA”) is made as of •, 20__ (the “Effective Date”)

BETWEEN:

_____ a corporation incorporated under the laws of _____ with its head office at _____

(“Seller”)

AND:

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

(“BC Hydro”).

The Parties agree as follows:

1. INTERPRETATION

The definitions and certain principles of interpretation that apply to this EPA are set out in Appendix 1.

[Note to Developers: The EPA has been drafted based on a Seller’s Plant that consists of a new electricity generation facility that is interconnected directly to ~~either the Distribution System or the Transmission System~~. The Project EPA for a particular ~~project~~ Project will be based on the information in the Application for that Project. Revisions applicable to certain types of Projects are described in Appendix 5. ~~The revisions described in Appendix 5 are not intended to be exhaustive~~ Any terms used in the Notes to Developers in this EPA and that are not defined in Appendix 1 have the meaning given to those terms in Appendix A to the Standing Offer Program Rules.]

2. TERM

The term (“Term”) of this EPA commences on the Effective Date and continues until the _____ anniversary of COD, unless it is terminated earlier as authorized under this EPA.

[Note to Developers: The blank in this section will be completed based on the term selected by the Developer in the Application.]

3. REGULATORY REVIEW

3.1 Regulatory Review Termination - Either Party may terminate this EPA if, within 120 days after the date on which the EPA is filed with the BCUC, either (a) the BCUC has not accepted the EPA for filing as an energy supply contract under section 71 of the UCA either subject to nor (b) the BCUC has accepted the EPA for filing as an energy supply contract under section 71 of the UCA, but that acceptance is subject to conditions ~~or subject to conditions that do not (a) require as a condition of acceptance for filing that require~~ a material alteration to ~~any~~ a material term or condition of the EPA, or ~~(b)~~ otherwise have an adverse effect on the Party seeking to terminate the EPA.

3.2 Regulatory Filing - BC Hydro on behalf of itself and the Seller shall file the EPA with the BCUC within a reasonable time after the Effective Date.

3.3 Termination - A Party entitled to terminate under section 3.1 must do so by giving notice to terminate to the other Party at any time after the right to terminate arises under section 3.1 and prior to the earlier of:

- (a) if no decision has been issued by the BCUC by the date that is 120 days after the date on which the EPA is filed with the BCUC, the date of issuance of the BCUC's order with respect to the EPA; and
- (b) in all other cases, by the date that is 15 days after the later of (i) the date of issuance of the BCUC order or (ii) the public release of Reasons for Decision relating thereto if such Reasons are released after the date of issuance of the BCUC order.

3.4 Effect of Termination - If this EPA is terminated by either Party in accordance with sections 3.1 and 3.3, the following provisions apply:

- (a) on or before the 30th day following the date of termination, BC Hydro shall return to the Seller any Network Upgrade Security previously delivered to BC Hydro after deducting any amount to which BC Hydro is entitled but which has not been paid in accordance with Appendix 3 of this EPA; and
- (b) except as set out in section 9.4, the Parties shall have no further liabilities or obligations under, or in relation to, this EPA.

4. CONSTRUCTION AND OPERATION

4.1 Construction and Operation Costs and Liabilities - Except as set out in Appendix 3, the Seller shall be responsible for all costs, expenses, liabilities and other obligations associated with the design, engineering, construction, Interconnection, commissioning, operation, maintenance and decommissioning of the Seller's Plant.

4.2 Standard of Construction and Operation - The Seller shall own the Seller's Plant. The Seller represents, warrants and covenants that the location, design, engineering, construction, Interconnection, commissioning, operation and maintenance of the Seller's Plant, are and, except as otherwise consented to by BC Hydro, shall be carried out at all times during the Term in compliance with: (a) the information in the Application in all material respects; (b) all applicable Laws, Permits and land tenure agreements for the Seller's Plant; (c) the requirements in effect at the Effective Date for the Energy from the Seller's Plant to be considered Clean Energy; (d) Good Utility Practice; (e) the terms and conditions of this EPA and the Interconnection Agreements; and (f) the Code of Conduct in Appendix 7.

4.3 Project Changes - Without limiting any other section of this EPA under which BC Hydro's consent is required, the Seller shall not make any change to:

- (a) those aspects of the Seller's Plant described in sections 1 - 3 of Appendix 2, or
- (b) any other aspects of the Seller's Plant or the information in the interconnection study filed with the Seller's Application where such change would increase BC Hydro's liability for Interconnection Network Upgrade Costs with respect to the Seller's Plant or any other project,

in either case without BC Hydro's prior consent, such consent not to be unreasonably withheld, conditioned or delayed. The Seller shall not make any change to the Plant Capacity without BC Hydro's prior consent. The Seller acknowledges that BC Hydro may require as a condition of its consent to any change described in this section, or any other change to the Seller's Plant for which BC Hydro's consent is required under any other section of this EPA, that the Seller agree in writing to reimburse BC Hydro for any incremental liability for ~~Interconnection~~ Network Upgrade Costs with respect to the Seller's Plant or any other project, and any other losses, costs and damages incurred by BC Hydro as a result of any change described in this section. BC Hydro may also require the Seller to provide security to BC Hydro to secure such reimbursement obligation.

4.4 Development Reports - The Seller shall deliver a Development Report to BC Hydro on each January 1, April 1, July 1 and October 1 after the Effective Date until COD.

4.5 Network Upgrades - The Parties' obligations with respect to Network Upgrade Costs and Network Upgrade Security are set out in Appendix 3.

4.6 Revenue Metering Equipment - The Seller shall ensure that a Revenue Meter is installed, operated and maintained at a location approved by BC Hydro, acting reasonably. The Revenue Meter must be capable of accurately measuring the quantity of Energy generated by the Seller's Plant and delivered to the POI independent of all other generation equipment or facilities. If there is any dispute regarding the accuracy of the Revenue Meter, either Party may give notice to the other Party of the dispute. In that case the Parties will resolve the matter in accordance with the *Electricity and Gas Inspection Act* (Canada). BC Hydro may, at its cost, install a duplicate revenue meter at the Seller's Plant at a location agreed to by the Seller, acting reasonably. The Seller shall allow BC Hydro to access the Seller's Plant to install, inspect and maintain any such duplicate meter. The Seller shall make equipment and telephone access available to BC Hydro as required for the duplicate revenue meter. If the Seller's Plant is rated 1.00 MVA or higher, the Seller shall ensure that the Seller's Plant is equipped with ~~electronic meters and~~ SCADA capability.

4.7 Insurance - The Seller shall at its cost obtain and thereafter maintain during the Term insurance covering such risks and in such amounts as would a prudent owner of a facility the same as or similar to the Seller's Plant. Such insurance shall include commercial general liability insurance with a per occurrence limit of liability not less than \$2,000,000 applicable to the Seller's Plant separate from all other projects and operations of the Seller. All commercial general liability policies must include BC Hydro, its directors, officers, employees and agents as additional insureds and must include a cross liability and severability of interest clause. The Seller shall provide evidence of such insurance to BC Hydro on request.

4.8 Early COD - Except with BC Hydro's prior consent, COD may not occur earlier than 90 days prior to Target COD. BC Hydro shall not be required to incur any incremental expense or other liability of any kind to enable COD to occur prior to Target COD.

4.9 Change in Target COD - Within 60 days after the Seller receives the ~~design portion of the Interconnection Design/Impact Facilities Study~~ from the Distribution Authority or ~~receives the Interconnection Facilities Study from the~~ Transmission Authority, as applicable, either Party may notify the other Party of a change in the Target COD to the date that is 90 days after the estimated date for completion of the Interconnection Facilities as set out in the ~~design portion of the Interconnection Design/Impact Study or in the~~ Interconnection Facilities Study, ~~as applicable~~, provided that such date may not be earlier than the Target COD specified in the Application. Upon delivery of a valid notice under this section, the Target COD shall be deemed to be the date specified in the notice.

5. PURCHASE AND SALE OBLIGATIONS

5.1 Pre-COD Energy - BC Hydro shall make commercially reasonable efforts to accept delivery of Energy at the POI prior to COD, provided that BC Hydro shall not be required to take any steps or to incur any incremental expense or other liability of any kind to enable delivery of Energy to the POI prior to 90 days before the Target COD.

5.2 Post-COD Sale and Purchase of Energy - From and after COD for the remainder of the Term, the Seller shall sell and deliver all Energy to BC Hydro at the POI and BC Hydro shall purchase and accept delivery of all Delivered Energy. BC Hydro shall pay for all Delivered Energy after COD in accordance with section 6.2. Notwithstanding the foregoing, BC Hydro shall have no obligation to take or pay for any Energy that is generated as a result of an increase in the Plant Capacity made without the consent of BC Hydro in accordance with section 4.3.

5.3 Transmission Outages - BC Hydro will not be in breach or default of its obligations under section 5.1 or section 5.2 if BC Hydro is not able to accept delivery of Energy at the POI as a result of a Distribution/Transmission Constraint. BC Hydro shall have no liability with respect to a Distribution/Transmission Constraint, except as set out in section 5.7 or section 5.8, if applicable.

5.4 Environmental Attributes - The Seller hereby transfers, assigns and sets over to BC Hydro all right, title and interest in and to the Environmental Attributes.

5.5 Exclusivity - The Seller shall not at any time during the Term commit, sell or deliver any Energy or any Environmental Attributes to any Person, other than BC Hydro under this EPA. The Seller shall not use or apply any Energy or Environmental Attributes for any purpose whatsoever except for sale to BC Hydro under this EPA. These prohibitions do not apply when BC Hydro is in breach of its obligations under section 5.2. The Seller acknowledges and agrees that the exclusive rights conferred by this section are of fundamental importance, and that, without prejudice to any right to claim damages, compensation or an accounting of profits, the granting of an interim, interlocutory and permanent injunction is an appropriate remedy to restrain any breach or threatened breach by the Seller of the obligation set out in this section.

5.6 Custody, Control and Risk of Energy - Custody, control and risk of, and title to, all Energy passes from the Seller to BC Hydro at the POI. The Seller shall ensure that all Energy delivered to BC Hydro under this EPA and all Environmental Attributes transferred to BC Hydro under this EPA are free and clear of all liens, claims, charges and encumbrances. The Seller is responsible for all transmission losses and costs relating to the transmission of Energy from the Seller's Plant to the POI.

5.7 Interconnection Delays - If on or after the date that is 120 days after Target COD, the Seller's Plant has satisfied all requirements for COD, other than those requirements that depend on completion of Interconnection Facilities and if the Seller cannot achieve COD solely as a result of a delay in completion of Interconnection Facilities and such delay is solely caused by BC Hydro or the Distribution

Authority or the Transmission Authority, then from and after 24:00 PPT on the later of: (a) 120 days after Target COD and (b) the date on which all other conditions for COD were satisfied, BC Hydro shall pay to the Seller an amount equal to the price payable for post-COD Delivered Energy under section ~~6.16.2~~ multiplied by the amount of Energy, not exceeding ~~the Plant Capacity~~ _____, that could have been generated and delivered at the POI but for the delay described above less any costs the Seller avoided or, acting reasonably, could have avoided during the delay in completion of the Interconnection Facilities. The Seller shall maintain accurate and complete records of all avoided or avoidable costs and shall report all such costs to BC Hydro and provide BC Hydro with all information required to calculate such costs. BC Hydro or its designated representative may audit such costs and in that event the provisions of section 8.2 apply. Except for the payments provided for pursuant to this section, the Seller shall have no other rights or remedies against BC Hydro, and BC Hydro shall have no other liability, with respect to any delay in completion of the Interconnection Facilities. If within 30 days after completion of the Interconnection Facilities, the Seller's Plant satisfies the requirements for COD, COD will be deemed to have occurred on the date on which BC Hydro's payment obligations commenced under this section. If the Seller's Plant fails to satisfy the requirements for COD within 30 days after completion of the Interconnection Facilities, the Seller shall within 30 days after receipt of an invoice from BC Hydro, refund to BC Hydro all payments made by BC Hydro to the Seller under this section. For greater certainty, this section will not apply if a delay in completion of Interconnection Facilities is due, ~~in whole or in part~~, to Force Majeure, Transmission/Distribution Force Majeure or any act or omission of the Seller, including any change made to the Seller's Plant whether or not consented to by BC Hydro.

[Note to Developers: The blank in this section will be completed with the Plant Capacity multiplied by 1 hour.]

5.8 Distribution/Transmission System Outages - If in any month after COD the Seller is unable to deliver Energy at the POI solely as a result of a Distribution/Transmission Constraint that exceeds 30 continuous minutes in duration and such Distribution/Transmission Constraint:

- (a) is not caused by a Transmission/Distribution Force Majeure;
- (b) is not caused by the Seller or the Seller's Plant; and
- (c) occurs after Distribution/Transmission Constraints have been in effect for more than 24 hours in the aggregate, whether or not continuous, in that month;

then, notwithstanding that BC Hydro is excused under section 5.3 from its obligations under section 5.2, BC Hydro shall pay to the Seller an amount equal to the price payable for post-COD Delivered Energy under section ~~6.16.2~~ multiplied by the amount of Energy, not exceeding ~~the Plant Capacity~~ _____, that could have been generated and delivered at the POI in each hour after the 24 hours has elapsed but for the occurrence of the Distribution/Transmission Constraint less any costs the Seller avoided or, acting reasonably, could have avoided during the Distribution/Transmission Constraint. The Seller shall maintain accurate and complete records of all avoided or avoidable costs and shall report all such costs to BC Hydro and provide BC Hydro with all information required to calculate such costs. BC Hydro or its designated representative may audit such costs and in that event the provisions of section 8.2 apply. BC Hydro will not be required to pay for any Energy under this section during any ~~Planned Outage (including any~~ period specified as a maintenance period in an Energy schedule delivered pursuant to section 8.7) or during any other period where the Seller's Plant would otherwise not have been operating. For greater certainty, the provisions of this section will not apply during any period when BC Hydro is or would be excused, in accordance with section 8.9, from its obligation to accept delivery of Energy as a result of Force Majeure.

[Note to Developers: The blank in this section will be completed with the Plant Capacity multiplied by 1 hour.]

6. PRICE AND PAYMENT TERMS

6.1 Pre-COD Energy - No price is payable by BC Hydro for Energy delivered to the POI prior to COD.

6.2 Post-COD Energy Price - Subject to section 5.2, the price payable by BC Hydro for each MWh of Delivered Energy after COD and prior to expiry of the Term is \$_____/MWh, adjusted as follows:

[Note to Developers: The blank above will be completed with the escalated Base Price as set out in section 4.1 of the Program Rules.]

- (a) effective as of January 1 in each year after the Effective Date in accordance with the following formula:

$$\text{Payment Price}_n = (.5 * \$ \text{_____} / \text{MWh} * \text{CPI}_{\text{January 1 } n} / \text{CPI}_{\text{January 1 } \text{____}}) + (.5 * \$ \text{___} / \text{MWh})$$

[Note to Developers: The first blank above will be completed with the escalated Base Price as described above. The blank in the subscript will be completed with the year in which the EPA is signed.]

Where:

n = the year for which the relevant calculation is being conducted

CPI_{January 1 n} = the CPI for December in the year immediately prior to the year for which the relevant calculation is being conducted; and

- (b) for each hour, the price determined pursuant to subsection (a) for Delivered Energy during that hour will be adjusted to an amount (expressed in \$/MWh) equal to the percentage of that price applicable for that hour as set out in the table in Appendix 4.

6.3 Environmental Attributes - Subject to section 7.5, for each MWh of Delivered Energy in respect of which the Seller has delivered confirmation of Environmental Certification to BC Hydro in accordance with this section, BC Hydro shall pay the Seller for the Environmental Attributes associated with that Energy a price of ~~\$3.05~~3.10/MWh adjusted effective as of January 1 in each year after January 1, ~~2007~~2008 in accordance with the following formula:

$$\text{\$3.10/MWh} * \text{CPI}_{\text{January 1 n}} / \text{CPI}_{\text{January 1, 2007}}$$

Where $\text{CPI}_{\text{January 1 n}}$ has the meaning given in subsection 6.2(a).

Notwithstanding the foregoing, BC Hydro shall not be required to pay for any Environmental Attributes for any Energy that is generated as a result of an increase in the Plant Capacity without the consent of BC Hydro in accordance with section 4.3. As a condition of payment under this section, the Seller must deliver to BC Hydro a certificate issued by the administrator of the Environmental Certification program certifying the amount (MWh) of Delivered Energy that qualified for the Environmental Certification.

6.4 No Further Payment - The amounts payable by BC Hydro as specified in section 6.2 and section 6.3 are the full and complete payment and consideration payable by BC Hydro for Energy delivered by the Seller to BC Hydro under this EPA and for the Environmental Attributes transferred by the Seller to BC Hydro under this EPA.

6.5 Statements and Payment

(a) Statements:

- (i) The Seller shall, by the 15th day of each month after COD, deliver to BC Hydro a statement for the preceding month. The statement must indicate, among other things, the amount of Delivered Energy for that month (including any deemed Delivered Energy and any associated avoided or avoidable costs pursuant to section 5.8), the price payable for the Delivered Energy, any Delivered Energy for that month in respect of which the Seller has delivered a certificate pursuant to section 6.3 and any Final Amounts owing by either Party to the other Party. The statement must set out in reasonable detail the manner by which the statement and the amounts shown thereon were computed and be accompanied by sufficient data to enable BC Hydro, acting reasonably, to satisfy itself as to the accuracy of the statement.
- (ii) Either Party may give notice to 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, except in the case of willful misstatement, fraud or concealment, 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 in accordance with this subsection within the 36 month period, which will be resolved in accordance with this EPA.

(b) Payment:

- (i) Within 30 days after receipt of a statement delivered under subsection 6.5(a), and subject to section 6.7, BC Hydro shall pay to the Seller the amount set out in the statement, except to the extent BC Hydro in good faith disputes all or part

of the statement by notice to the Seller in compliance with subsection 6.5(a)(ii). If BC Hydro disputes any portion of a statement, BC Hydro must nevertheless pay the undisputed net amount payable by BC Hydro pursuant to the statement.

- (ii) 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 2%, compounded monthly. Any disputed amount that is found to be payable will be deemed to have been due within 30 days after the date of receipt of the statement which included or should have included the disputed amount.

6.6 Taxes - All dollar amounts in this EPA do not include any value added, consumption, commodity or similar taxes applicable to the purchase by BC Hydro of Delivered Energy and Environmental Attributes, including goods and services tax and provincial sales tax, which, if applicable, will be added to each statement and paid by BC Hydro.

6.7 Set-off - If BC Hydro and the Seller each owe the other an amount under this EPA in the same month, then such amounts with respect to each Party shall 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, provided that:

- (a) this section applies only to any purchase price for Delivered Energy or Environmental Attributes owing by BC Hydro to the Seller, any Final Amount owing by either Party to the other Party, and any amount owing by the Seller to BC Hydro under section 5.7 or Appendix 3 of this EPA; and
- (b) no Final Amount or amount owing by the Seller to BC Hydro under section 5.7 or Appendix 3 of this EPA shall be added to or deducted from the price owing by BC Hydro to the Seller for Delivered Energy unless that amount remains unpaid 30 days after BC Hydro gives notice to the Seller of the amount owing.

Except as otherwise expressly provided herein, each Party reserves all rights, counterclaims and other remedies and defences which such Party has, or may be entitled to, arising from or related to this EPA.

7. ENVIRONMENTAL ATTRIBUTES – CERTIFICATION AND ADMINISTRATION

7.1 Mandatory EcoLogo^M Certification - If at the Effective Date EcoLogo^M Certification is required for any or all of the Energy to be considered Clean Energy, the Seller shall obtain EcoLogo^M Certification by the first anniversary of COD and shall maintain EcoLogo^M Certification for as long as EcoLogo^M Certification is required for the Energy to be considered Clean Energy. The Seller shall notify BC Hydro forthwith if the Seller fails to obtain EcoLogo^M Certification by the date specified in this section or if at any time the Seller's Plant does not have EcoLogo^M Certification as required pursuant to this section. If the Seller fails to obtain or maintain EcoLogo^M Certification as required by this section, and the Seller has failed to cure such default within 30 days after receipt of written notice from BC Hydro, BC Hydro may withhold payment of any amount owing by BC Hydro to the Seller under this EPA until 10 days after the Seller has delivered evidence of EcoLogo^M Certification as required by this section to BC Hydro. Any amounts withheld by BC Hydro in accordance with this section will not bear interest.

7.2 Optional EcoLogo^M Certification - Except where EcoLogo^M Certification is required pursuant to section 7.1, the Seller may elect whether or not to obtain EcoLogo^M Certification for the Seller's

Plant. If the Seller elects to obtain EcoLogo^M Certification for the Seller's Plant and all or a portion of the Energy, sections 7.3 and 6.3 apply.

7.3 Environmental Certification Fees - Except as set out in this section, BC Hydro shall reimburse the Seller for all certification, audit and licensing fees paid by the Seller to obtain the Environmental Certification, but excluding any fees to obtain ~~the~~any letter from TerraChoice Environmental Marketing ~~required to be~~ filed by the Seller with the Application. BC Hydro shall reimburse the Seller for such fees within 30 days after receipt of an invoice, together with reasonable supporting information, for such fees. BC Hydro shall not be required to pay for any audit or other certification process in which the Seller's Plant and all or part of the Energy does not qualify for the Environmental Certification, or for any audit or recertification process following a loss of the Environmental Certification by the Seller's Plant.

7.4 Alternate Certification - The Seller shall at BC Hydro's request and at BC Hydro's cost use commercially reasonable efforts to apply for and diligently pursue and maintain any certification, licensing or approval offered by any Governmental Authority or independent certification agency evidencing that the Seller's Plant and the Energy has Environmental Attributes as an addition to or as an alternative to the EcoLogo^M Certification.

7.5 Direction by BC Hydro - BC Hydro may direct the Seller to take all steps required to obtain the Environmental Certification by implementing measures that are technologically feasible and not inconsistent with Good Utility Practice, Permits or applicable Laws. The Seller shall comply promptly and diligently with that direction. Except where the failure to obtain or maintain the Environmental Certification results from a breach of Laws or Permits or constitutes a breach of section 7.1, BC Hydro shall reimburse the Seller for reasonable direct capital and reasonable incremental operating costs incurred by the Seller resulting solely from compliance with BC Hydro's direction within 30 days after submission of an invoice and reasonable supporting documentation necessary to evidence such costs. The Seller shall maintain accurate and complete records of such costs, and BC Hydro or its designated representative may audit such costs and in that event the provisions of section 8.2 apply. The Seller shall provide to BC Hydro within 60 days after receipt of a written request from BC Hydro, an estimate, together with supporting detail and rationale, of the reasonable direct capital and reasonable incremental operating costs the Seller would expect to incur in complying with a direction from BC Hydro under this section. If BC Hydro reimburses the Seller's costs under this section, then notwithstanding the grant or reinstatement of the Environmental Certification, BC Hydro will not be required to make any payment to the Seller under section 6.3 for the remainder of the Term and BC Hydro will continue to have title to the Environmental Attributes.

8. EPA ADMINISTRATION

8.1 Records - The Seller shall prepare and maintain at the Seller's Plant all records required to properly administer this EPA, including Energy generation records and operating logs, meter readings, maintenance reports, invoice support records, documents concerning compliance with Permits and applicable Laws, information relating to the Environmental Certification, information relating to the qualification of the Energy as Clean Energy, information relating to the existence, nature and quantity of Environmental Attributes, information required for the purposes of any Environmental Attributes or energy certification or tracking system, any other information BC Hydro requires to enable it or any of its ~~affiliates~~Affiliates to obtain and realize the benefit of the Environmental Attributes and all other records and logs consistent with Good Utility Practice. The Audit Parties may take copies of such records for the purposes of an inspection or audit under section 8.2. The Seller shall keep each such record for at least 7 years from the date on which the record was created.

8.2 Inspection and Audit Rights - For the sole purpose of verifying: (a) compliance with this EPA; (b) the accuracy of invoices and other statements or calculations delivered by the Seller to BC Hydro under this EPA; (c) the qualification of the Energy as Clean Energy; (d) the qualification of the Seller's Plant and the Energy for the Environmental Certification; or (e) the liability of each of the Parties for Network Upgrade Costs, the Seller shall, on reasonable prior notice from BC Hydro, provide BC Hydro and its [affiliates/Affiliates](#), representatives, consultants, advisors and any third party with whom the BC Hydro or any of its [affiliates/Affiliates](#) has entered into a contract for the sale and purchase of Environmental Attributes and their [affiliates/Affiliates](#), representatives, consultants and advisors (the "**Audit Parties**") with prompt access during normal business hours to the Seller's Plant and all records relating to the Seller's Plant, including any Confidential Information, to enable the Audit Parties to conduct an inspection or audit thereof. The Audit Parties shall exercise any access and audit rights under this section in a manner that minimizes disruption to the operation of the Seller's Plant. Any review, inspection or audit by any of the Audit Parties may not be relied upon by the Seller, or others, as confirming or approving those matters. Where BC Hydro requires the Seller to provide access to the Seller's Plant and/or records relating to the Seller's Plant to a third Person with whom BC Hydro or any of its [affiliates/Affiliates](#) has entered into a contract for the sale and purchase of Environmental Attributes or any [affiliate/Affiliate](#), representative, consultant or advisor to any such third Person, BC Hydro shall first obtain from the third Person an agreement to maintain the confidentiality of any Confidential Information to which such Person may have access and to limit the use of such Confidential Information as required to verify the Environmental Attributes.

8.3 Seller Consents - The Seller shall promptly provide any consents required to enable any of the Audit Parties to make enquiries with any Governmental Authority or any Person administering the Environmental Certification concerning any or all of the following: (a) the qualification of the Energy as Clean Energy; (b) the qualification of the Seller's Plant and the Energy for Environmental Certification, the status of the Environmental Certification and copies of any audits, inspections or reports prepared in connection with the Environmental Certification; and (c) compliance by the Seller with Laws and Permits applicable to the Seller's Plant.

8.4 Assignment

- (a) **Requirement for Consent:** The Seller may not Assign this EPA except with the prior consent of BC Hydro, which consent may not be unreasonably withheld, conditioned or delayed. Any Assignment (other than an Assignment to a Facility Lender) is subject to the assignee entering into and becoming bound by this EPA, assuming all the obligations and liabilities of the Seller under the EPA arising both before and after the Assignment, providing any Network Upgrade Security as applicable at the time of [assignment/Assignment](#), and providing the representations and warranties set out in the Application and in section 10.1 effective as at the time of [assignment/Assignment](#), subject in the case of the representation and warranty in subsection 10.1(c) to such exceptions as BC Hydro consents to acting reasonably.
- (b) **Time for Request:** Any request by the Seller for BC Hydro's consent under subsection 8.4(a) must be delivered to BC Hydro not less than 30 days before the date of the proposed Assignment. A request under this section must be accompanied by such information as reasonably required by BC Hydro to assess the request for consent including the name, address and ownership structure of the assignee, a list of the directors and officers of the assignee and information concerning the assignee's operations, experience and financial status.

- (c) **Assignment to Facility Lender:** If the Seller seeks consent to Assign this EPA to a Facility Lender, BC Hydro may require, as a condition of its consent to the Assignment, that the Seller and the Facility Lender enter into a Lender Consent Agreement with BC Hydro. If the Seller seeks consent to Assign this EPA to a Facility Lender, the Seller may require that BC Hydro enter into a Lender Consent Agreement with the Seller and the Facility Lender, provided that BC Hydro will not be required to enter into any form of Lender Consent Agreement other than the form attached as Appendix 6 to this EPA.
- (d) **Costs:** The Seller shall reimburse BC Hydro for all costs reasonably incurred by BC Hydro in connection with any request by the Seller for BC Hydro's consent pursuant to subsection 8.4(a).

8.5 Dispute Resolution

- (a) **Arbitration:** Any dispute under or in relation to this EPA will be referred to and finally resolved by arbitration conducted by a single arbitrator in Vancouver, British Columbia and administered by the British Columbia International Commercial Arbitration Centre (“**BCICAC**”) pursuant to its rules. Except as otherwise expressly provided in this EPA, the arbitrator shall have the jurisdiction to grant equitable remedies, including interim or permanent injunctive relief. It shall not be incompatible with this agreement to arbitrate for a party to seek from the Supreme Court of British Columbia, or for that court to grant, interim measures of protection pending the outcome of arbitral proceedings. The decision of the arbitrator will be final and binding on the Parties.
- (b) **Effect of Arbitration:** All performance and payments required under this EPA will continue during any dispute under this EPA, provided that the Parties may, notwithstanding the foregoing, exercise any right to terminate this EPA in accordance with the terms of this EPA. Any payments or reimbursements required by an arbitration award will be due as of the date determined under subsection 6.5(b)(ii) or, where that subsection does not apply, as of the date determined in the award. Without duplication with subsection 6.5(b)(ii), any payments or reimbursements required by an arbitration award will bear interest at an annual rate equal to the Prime Rate plus 2% compounded monthly from the date such payment was due until the amount is paid.
- (c) **Confidentiality:** The Parties shall maintain in confidence the fact that an arbitration has been commenced, all documents and information exchanged during the course of the arbitration proceeding, and the arbitrator's award, provided that each of the Parties shall be entitled to disclose such matters: (i) as required by applicable Law or for regulatory purposes (including pursuant to the rules of any stock exchange on which the shares of the Seller or its Affiliates are traded); (ii) as required to enforce any arbitration award; (iii) to that Party's consultants and professional advisors who have a need to know such information; and (iv) in the case of BC Hydro, to representatives of the Government of British Columbia.

8.6 Notices - Any ~~Notice~~[notice, consent, waiver, declaration, request for approval or other request, statement or bill 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 for that Party stated in Appendix 1 and:

- (a) notices under section 8.9, section 9.1, section 9.3 and section 4 of Appendix 3 must be delivered by hand or by a courier service during normal business hours on a Business

Day and a notice so delivered will be deemed to have been delivered on that Business Day;

- (b) all notices other than notices described in subsection 8.6(a) may be delivered by email during normal business hours on a Business Day and a notice so delivered will be deemed to have been delivered on that Business Day; and
- (c) either Party may change its address for notices under this EPA by notice to the other Party.

8.7 Energy Schedules - By September 15 of each year, the Seller shall deliver to BC Hydro a schedule of the expected total deliveries of Energy to the POI in each month during the 12 month period commencing on October 1 of the year in which the schedule is delivered and a schedule of the maintenance outages expected for the Seller's Plant during that period. The Energy schedules are provided for planning purposes only and do not constitute a guarantee by the Seller that Energy will be delivered in accordance with the schedules and do not limit the amount of Energy the Seller may deliver during the periods covered by the schedules. The Seller shall deliver a revised schedule to BC Hydro promptly upon becoming aware of any expected material change in a delivered Energy schedule.

8.8 Confidentiality

- (a) Without limiting any other confidentiality agreement between the Parties, during the Term and for 5 years thereafter, BC Hydro shall treat as confidential and will not cause or permit the publication, release or disclosure of any Confidential Information except to the extent that publication, release or disclosure: (i) is expressly authorized under any section of this EPA; (ii) is necessary to enable BC Hydro to fulfil its obligations under this EPA; (iii) is required by law or for regulatory purposes; (iv) is necessary, in BC Hydro's reasonable opinion, for BC Hydro to adequately pursue or defend any legal or regulatory proceeding; (v) is made with the prior consent of the Seller; or (vi) if such information has entered the public domain other than through the actions of BC Hydro. BC Hydro may also disclose Confidential Information to consultants and advisors to BC Hydro who have a need to know the Confidential Information and representatives of the Government of British Columbia, who in either case have been informed by BC Hydro of the need to maintain the confidentiality of the Confidential Information disclosed to them.
- (b) The Seller acknowledges that BC Hydro is subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia) and agrees that BC Hydro's non-disclosure obligations under this EPA are subject to the provisions of that legislation.

8.9 Force Majeure - 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 promptly to the other Party identifying the nature of the Force Majeure, its expected duration and the particular obligations affected by the Force Majeure. Subject to any limitations expressly set out in this EPA, the time for performance of such obligation will be extended by the number of days that Party is unable to perform such obligation as a result of the event or circumstance of Force Majeure. The Party invoking Force Majeure shall promptly respond to any inquiry from the other Party regarding the efforts being undertaken to remove the Force Majeure and shall give prompt notice of the end of the Force Majeure.

9. TERMINATION

9.1 Termination by BC Hydro - In addition to any other right to terminate this EPA expressly set out in any other provision of this EPA and in addition to all other rights and remedies BC Hydro may have under this EPA or at law or in equity in respect of any of the following events, BC Hydro may terminate this EPA by notice to the Seller if:

- (a) COD does not occur by the second anniversary of Target COD for any reason whatsoever (including Force Majeure), other than a delay in completion of Interconnection Facilities for which the Seller is entitled to receive payment under section 5.7, provided that BC Hydro may terminate the EPA under this provision only if BC Hydro delivers a termination notice prior to COD; or
- (b) at any time after COD, the Seller does not deliver any Energy to BC Hydro for a period of 730 continuous days for any reason whatsoever (including Force Majeure or a Transmission/Distribution Constraint), but excluding a Distribution/Transmission Constraint for which the Seller is entitled to receive payment under section 5.8; or
- (c) at any time after COD, ~~the Buyer~~[BC Hydro](#) is unable to accept delivery of Energy at the POI for a period of 730 continuous days due to Force Majeure invoked by ~~the Buyer~~[BC Hydro](#) in accordance with section 8.9 or a Distribution/Transmission Constraint other than a Distribution/Transmission Constraint for which the Seller is entitled to receive payment under section 5.8; or
- (d) the Seller breaches section 5.5; or
- (e) the Seller fails to complete any application, payment, filing, study, document or other step in the process for interconnecting the Seller's Plant to the Transmission System or the Distribution System in accordance with the requirements of, and within the time limits, including any cure periods, specified by the Transmission Authority or Distribution Authority, as applicable, and such failure results in a loss of the interconnection queue position for the Seller's Plant or otherwise could reasonably be expected to have an adverse impact on BC Hydro; or
- (f) the Seller is Bankrupt or Insolvent; or
- (g) the Seller, as a result of an act or omission of the Seller, ceases to be exempt from regulation as a "public utility" as defined in the UCA with respect to the Seller's Plant and the sale of Energy to BC Hydro under this EPA, and the loss of such exemption could reasonably be expected to have an adverse effect on the benefit to BC Hydro of this EPA; or

- (h) an amount due and payable by the Seller to BC Hydro under this EPA remains unpaid for 15 days after its due date and such default has not been cured within 15 days after BC Hydro has given notice of the default to the Seller; or
- (i) 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), unless within 30 days after the date of notice by BC Hydro 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 BC Hydro that the Seller is working diligently and expeditiously to cure the default and the default is cured within a further reasonable period of time. A “material default” includes any purported Assignment of this EPA without the consent of BC Hydro and any breach by the Seller of its obligations under any of subsection 4.2(c), section 7.1 or section 7.5.

Any termination pursuant to this section shall be effective immediately upon delivery of the notice of termination to the Seller.

9.2 Notice of Termination Event - The Seller shall notify BC Hydro promptly if the Seller is Bankrupt or Insolvent or if there is a material risk that the Seller will become Bankrupt or Insolvent or if the Seller has defaulted under any agreement with a Facility Lender.

9.3 Termination by the Seller - In addition to any other right to terminate this EPA expressly set out in any other provision of this EPA and in addition to all other rights and remedies the Seller may have under this EPA or at law or in equity in respect of any of the following events, the Seller may terminate this EPA by notice to BC Hydro if:

- (a) the Seller has not been able to achieve COD for a period of 180 days after Target COD solely as a result of a delay in completion of Interconnection Facilities where such delay is not attributable directly or indirectly in whole or in part to the Seller or the Seller’s Plant and where the Seller is not entitled to receive payment under section 5.7 in respect of that delay; or
- (b) after COD, BC Hydro has not accepted delivery of Energy for a period of 180 continuous days due to an event described in section 5.3 or any event of Force Majeure and the Seller is not entitled to receive any payment pursuant to section 5.8 in respect of that period; or
- (c) the Seller’s Plant has suffered Major Damage;
- (d) the Seller has been unable to achieve COD for a period of 730 days after Target COD or has been unable to deliver Energy to the POI for a period of 730 continuous days after COD in either case solely as a result of Force Majeure invoked by the Seller in accordance with section 8.9 or a Transmission /Distribution Constraint other than a Transmission/Distribution Constraint for which the Seller is entitled to receive payment under section 5.8; or
- (e) BC Hydro is Bankrupt or Insolvent; or
- (f) except where an amount has been disputed in the manner specified in subsection 6.5(a)(ii), an amount due and payable by BC Hydro to the Seller under this EPA remains

unpaid for 15 days after its due date and such default has not been cured within 15 days after the Seller has given notice of the default to BC Hydro; or

- (g) BC Hydro 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 BC Hydro or, if the default cannot be cured within that 30 day period, BC Hydro fails to demonstrate to the reasonable satisfaction of the Seller that BC Hydro is working diligently and expeditiously to cure the default or the default is not cured within a further reasonable period of time.

Any termination pursuant to this section shall be effective immediately upon delivery of the notice of termination to BC Hydro.

9.4 Effect of Termination - Upon expiry of the Term or earlier termination of this EPA in accordance with its terms:

- (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 expiry of the Term or the date of termination or that are stated to arise on termination of this EPA (including any claims by BC Hydro for amounts payable by the Seller under Appendix 3), subject to any express restrictions on remedies and limitations or exclusions of liability set out in this EPA; and
- (b) both Parties will remain bound by Article 6 and Appendix 3 with respect to the satisfaction of residual obligations for the period prior to termination or that are specified to arise on termination; and
- (c) the Seller will remain bound by sections 8.1 and 8.2 for a period of 36 months following expiry or termination of this EPA

and, in all such cases, both Parties will remain bound by any other provisions necessary for the interpretation and enforcement of the foregoing provisions.

9.5 BC Hydro Payment on Seller Termination - If the Seller terminates this EPA under any of subsections 9.3(e), (f) or (g), BC Hydro shall pay to the Seller an amount equal to the positive amount if any by which the Seller's Losses and Costs exceed its aggregate Gains. The Seller's Gains, Losses and Costs shall be determined by comparing the reasonably estimated quantities of Delivered Energy for the remaining Term and the price payable for those quantities under this EPA had it not been terminated (including the price payable for any Environmental Attributes associated with those quantities) to the relevant market prices for equivalent quantities of electricity and Environmental Attributes for the remaining Term either quoted by a bona fide arm's length third party or which are reasonably expected to be available in the market under a replacement contract for this EPA. Market prices will be adjusted for differences between the product subject to the market prices and the product specified under this EPA including with respect to quantity, delivery commitment, place of delivery, length of term, and the scope of, and generation resource giving rise to, Environmental Attributes. The Seller shall not be required to enter into a replacement transaction in order to determine the amount payable by BC Hydro under this section. The Seller's Gains, Losses and Costs will be discounted to the present value of those Gains, Losses and Costs at the effective date of termination of the EPA (to take into account the time value of money for the period between the effective date of termination of the EPA and the date the

Gains, Losses and Costs would have occurred but for the termination of the EPA) using the Present Value Rate. If the Seller's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this EPA, the amount of the payment by BC Hydro to the Seller under this section shall be zero. If the termination of this EPA by the Seller occurs prior to COD, BC Hydro's liability for any payment under this section will be ~~the lesser of the amount determined as set out above and~~ 115% of the Development Costs less the net realizable value of the assets forming part of the Seller's Plant at the date of termination.

9.6 Calculation and Payment - The Seller shall determine the amount of any payment owed by BC Hydro under section 9.5 and shall notify BC Hydro of such amount and provide reasonable particulars with respect to its determination within 120 days after the effective date of termination of this EPA, failing which the Seller will not be entitled to any payment under section 9.5. BC Hydro shall pay any amount owing by BC Hydro under section 9.5 within 30 Business Days after the date of delivery of an invoice by the Seller to BC Hydro. Any amounts owing by the Seller to BC Hydro under this EPA will be netted against any amount owing by BC Hydro to the Seller under section 9.5.

9.7 Exclusive Remedies - Subject to section 9.4, payment by BC Hydro of the amount determined under section 9.5 is the exclusive remedy to which the Seller is entitled, and BC Hydro's limit of liability, for termination of this EPA by the Seller pursuant to any of subsections 9.3(e), (f) or (g). Subject to section 9.4, termination of this EPA is the exclusive remedy to which BC Hydro or the Seller as the case may be is entitled if BC Hydro or the Seller elects to exercise its right to terminate this EPA under any of Article 3, section 9.1, subsection 9.3(a), ~~subsection 9.3(b), subsection 9.3(c), subsection 9.3~~or (d) or section 4 of Appendix 3 as applicable. For greater certainty, subject to section 9.4, the Seller shall not be required to pay any termination payment on termination by BC Hydro of this EPA. Neither Party will have any right to terminate this EPA except as expressly set out herein.

10. REPRESENTATIONS AND WARRANTIES AND LIABILITY LIMITATIONS

10.1 Seller's Representations - The Seller represents and warrants to BC Hydro, and acknowledges that BC Hydro is relying on those representations and warranties in entering into this EPA, as follows:

- (a) **Binding Obligation** - this EPA constitutes a valid and binding obligation of the Seller enforceable against the Seller in accordance with its terms;
- (b) **Authorization, Execution and Delivery** - this EPA has been duly authorized, executed and delivered by the Seller; and
- (c) **Application** - all information in the Application is true and correct in all material respects and there is no material information omitted from the Application that makes the information in the Application misleading or inaccurate in any material respect. The representations and warranties by the Seller in the Application are true and correct.

10.2 BC Hydro's Representations - BC Hydro 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** - BC Hydro is a corporation continued under the *Hydro and Power Authority Act*, R.S.B.C. 1996, c.212, is validly existing and is in good standing under the laws of British Columbia, is lawfully authorized to carry on business in British Columbia, and has full corporate power, capacity and authority to enter into and to perform its obligations under this EPA;

- (b) **Binding Obligation** - this EPA constitutes a valid and binding obligation of BC Hydro enforceable against BC Hydro in accordance with its terms; and
- (c) **Authorization, Execution and Delivery** - this EPA has been duly authorized, executed and delivered by BC Hydro.

10.3 Limit of Liability - BC Hydro's liability for damages for any failure to take or pay for Delivered Energy or Environmental Attributes under this EPA is limited to the price payable by BC Hydro for that Delivered Energy and those Environmental Attributes under Article 6 and any interest thereon calculated under this EPA less the amount of any revenue received by the Seller from any third Person for that Delivered Energy and those Environmental Attributes.

10.4 Consequential Damages - Neither Party shall be liable to the other Party for any special, incidental, exemplary, punitive or consequential damages arising out of a Party's performance or non-performance under this EPA, whether based on or claimed under contract, tort, strict liability or any other theory at law or in equity.

11. GENERAL PROVISIONS

11.1 Electric Service to the Seller - If at any time BC Hydro makes electric service available to the Seller's Plant, then that service will be provided under and in accordance with BC Hydro's electric tariff applicable at the relevant time, and not under this EPA.

11.2 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.

11.3 Enurement - This EPA enures to the benefit of the Parties, their successors and their permitted assigns.

11.4 Entire Agreement - This EPA contains the entire agreement between the Parties with respect to the purchase and sale of Energy and Environmental Attributes and supersedes all previous communications, understandings and agreements between the Parties with respect to the subject matter hereof including, without limitation, the documents related to the Standing Offer Program and all questions and answers and any other communications of any kind whatsoever by BC Hydro 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.

11.5 Amendment - This EPA may not be amended except by an agreement in writing signed by both Parties.

11.6 No Waiver - Other than in respect of the specific matter or circumstance for which a waiver is given, and 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 in respect of any other matter or circumstance.

11.7 Interconnection Agreements - Nothing in the Interconnection Agreements 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 Agreements shall constitute or be

relied upon as a notice, consent, approval or communication or decision under this EPA. This EPA shall be interpreted and applied as though the Distribution Authority were a third party.

11.8 Commodity Contract/Forward Contract - The Parties agree and intend that this EPA constitutes a commodity contract for the purposes of subsection (h) of the definition of “eligible financial contract” in each of section 65.1(8) of the *Bankruptcy and Insolvency Act* (Canada) and section 11.1(1) of the *Companies’ Creditors Arrangement Act* (Canada) and that this EPA and the transactions contemplated under this EPA constitute a “forward contract” within the meaning of section 556 of the United States Bankruptcy Code and that the Parties are “forward contract merchants” within the meaning of the United States Bankruptcy Code.

11.9 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 including, in the case of the Seller, completing any registration process required in respect of Environmental Attributes as requested by BC Hydro.

11.10 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.

11.11 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 effective as of the date set out on page 1 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 AND INTERPRETATION

1. DEFINITIONS

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

- 1.1 “Affiliate” means, with respect to the Seller or any third party, any Person directly or indirectly Controlled by, Controlling, or under common Control with, the Seller or the third party, and with respect to BC Hydro, any Person directly or indirectly Controlled by BC Hydro and, if at any time BC Hydro is not Controlled, directly or indirectly, by the Province of British Columbia, shall include any Person directly or indirectly Controlling, or under common Control, with BC Hydro.
- 1.2 “Application” means the application and all supporting documents and information with respect to the Seller’s Plant filed by the Seller with BC Hydro in the Standing Offer Program.
- 1.23 “Assign” or “Assignment” means to 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 and, without limiting the foregoing, each of the following is deemed to be an Assignment of this EPA by the Seller:
- (a) any sale or other disposition of all or a substantial part of the Seller’s ownership interest in the Seller’s Plant, or of all or any interest of the Seller in this EPA or revenue derived from this EPA;
 - (b) any mortgage, pledge, charge or grant of a security interest in all or any part of the Seller’s Plant or the Seller’s ownership interest therein; and
 - (c) any change of Control, merger, amalgamation or reorganization of the Seller.
- 1.34 “Audit Parties” has the meaning given in section 8.2.
- 1.45 “Bankrupt or Insolvent” means, with respect to a Person:
- (a) the Person has started proceedings to be adjudicated a voluntary bankrupt or consented to the filing of a bankruptcy proceeding against it; or
 - (b) the Person has filed a petition or similar proceeding seeking reorganization, arrangement or similar relief under any bankruptcy or insolvency law; or
 - (c) 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
 - (d) the Person has voluntarily suspended the transaction of its usual business; or
 - (e) a court of competent jurisdiction has issued an order declaring the Person bankrupt or insolvent.

- 1.56 “BCUC” means the British Columbia Utilities Commission or any successor thereto.
- 1.67 “Business Day” means any calendar day which is not a Saturday, Sunday or British Columbia statutory holiday.
- 1.78 “Clean Energy” means ~~energy~~Energy that is determined by the Ministry of Energy, Mines and Petroleum Resources or any successor Ministry thereto to be clean, renewable or high efficiency cogeneration electricity based on the policies of that Ministry in effect from time to time.
- 1.89 “COD” or “Commercial Operation Date” means the date that is the later of:
- (a) 90 days prior to Target COD, unless BC Hydro has consented to an earlier date pursuant to section 4.8; and
 - (b) the date on which all of the following conditions have been satisfied in respect of the Seller’s Plant:
 - (i) the Seller has obtained all Permits required for the construction, commissioning, and operation of the Seller’s Plant and all such Permits are in full force and effect;
 - (ii) the Seller is not: (A) Bankrupt or Insolvent; (B) in material default of any of its covenants, representations, warranties or obligations under this EPA; or (C) in material default under any Permit or Law applicable to the construction, commissioning or operation of the Seller’s Plant or under any tenure agreement for the site on which the Seller’s Plant is located or under the Interconnection Agreements;
 - (iii) a Revenue Meter has been installed in accordance with section 4.6;
 - (iv) the Seller has delivered to BC Hydro:
 - (A) a Declaration of Compatibility-Generator (Operating), or such other document(s) of similar effect as may be substituted therefor, issued by the Distribution Authority/Transmission Authority to the Seller under the Interconnection Agreements for the Seller’s Plant;
 - (B) proof of registration by the Seller with Measurements Canada as an energy seller with respect to the Seller’s Plant, and
 - (C) a COD Certificate,

and for purposes of this EPA, COD will be deemed to have occurred at 24:00 PPT on the later of the dates set out above.

- 1.910 “COD Certificate” means a certificate in the form of the COD Certificate ~~(version 1.0)~~ on the Standing Offer Website.
- 1.4011 “Confidential Information” means any of the Seller’s confidential technical or financial information provided by the Seller to BC Hydro in confidence with express written notice to the BC Hydro of the confidential nature of the information.
- 1.4112 “Control” of any Person means:

- (a) 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;
 - (b) ownership of 50% or more of the equity or beneficial interest in that Person; or
 - (c) the ability to direct the business and affairs of any Person by acting as a general partner, manager or otherwise.
- 1.4213 “**Costs**” means brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred or that would reasonably be expected to be incurred by the Seller in entering into new arrangements which replace this EPA and legal fees, if any, incurred in connection with enforcing the Seller’s rights under this EPA.
- 1.4314 “**CPI**” means the [British Columbia](#) Consumer Price Index ~~for Canada~~, All Items (Not Seasonally Adjusted) as published by Statistics Canada or any successor agency thereto, adjusted or replaced in accordance with subsection 2.9(c) of this Appendix.
- 1.4415 “**Delivered Energy**” means in each month after COD the amount of Energy delivered by the Seller at the POI in that month as recorded by the Seller’s metering equipment described in section 4.6, or where that equipment is not functioning correctly, the ~~back-up~~duplicate revenue meter installed by BC Hydro under section 4.6, if any.
- 1.4516 “**Development Costs**” means all costs reasonably incurred or committed by the Seller after the Effective Date for the development of the Seller’s Plant and all costs reasonably incurred, or that are reasonably likely to be incurred by the Seller, after taking reasonable mitigation measures, to terminate all contractual commitments with respect to the development of the Seller’s Plant and to otherwise cease development of the Seller’s Plant, but excluding any lost profits, loss of opportunity costs or damages and all other special, incidental, indirect or consequential losses.
- 1.4617 “**Development Report**” means a report in the form of the ~~Standing Offer~~ Development Report Form posted on the Standing Offer Website, describing the progress of the financing, design, engineering, construction, Interconnection, and commissioning of the Seller’s Plant.
- 1.4718 “**Direct Assignment Facilities**” means additions, modifications and upgrades to the ~~Transmission System or~~ Distribution System that are determined by the ~~Transmission Authority (as to the Transmission System) or the~~ Distribution Authority (as to the Distribution System) to be “direct assignment facilities” under the applicable policies of the Distribution Authority ~~and the Transmission Authority in effect from time to time~~.
- 1.4819 “**Distribution Authority**” means the Person or Persons who is or are responsible for the planning, asset management and operation of the Distribution System, in whole or in part, including an independent system operator.
- 1.4920 “**Distribution System**” means the distribution, protection, control and communication facilities in British Columbia that are or may be used in connection with, or that otherwise relate to, the transmission of electrical energy at 35 kilovolts or less, and includes all additions and modifications thereto and repairs or replacements thereof.

- 1.2021 **“Distribution/Transmission Constraint”** means any disconnection of the Seller’s Plant from the Distribution System/Transmission System or any outage, suspension, constraint or curtailment in the operation of the Distribution System or the Transmission System preventing or limiting deliveries of Energy at the POI or any direction from the Distribution Authority or the Transmission Authority to reduce generation of the Seller’s Plant as a result of any outage, suspension, constraint or curtailment in the operation of the Transmission System or Distribution System.
- 1.2122 **“EcoLogo^M Certification”** means certification pursuant to Environment Canada’s Environmental Choice^M program confirming that the Seller’s Plant and all or part of the Energy complies with the “Guideline on Renewable Low-Impact Electricity” as amended from time to time and is therefore entitled to the EcoLogo^M designation.
- 1.2223 **“Effective Date”** means the date set out on page one hereof.
- 1.2324 **“Energy”** means all electric energy expressed in MWh generated by the Seller’s Plant, excluding electricity required to service the Seller’s Plant.
- 1.2425 **“Environmental Attributes”** means:
- (a) all attributes associated with, or that may be derived from, the Energy and/or the Seller’s Plant having decreased environmental impacts relative to certain other generation facilities or technologies including any existing or future credit, allowance, “green” tag, ticket, certificate or other “green” marketing attribute or proprietary or contractual right, whether or not tradeable;
 - (b) any credit, reduction right, offset, allowance, allocated pollution right, certificate or other unit of any kind whatsoever, whether or not tradeable and any other proprietary or contractual right, whether or not tradeable, resulting from, or otherwise related to the actual or assumed reduction, displacement or offset of emissions at any location other than the Seller’s Plant as a result of the generation, purchase or sale of the Energy;
 - (c) On-Site Emission Reduction Rights; and
 - (d) all revenues, entitlements, benefits and other proceeds arising from or related to the foregoing.
- 1.2526 **“Environmental Certification”** means either or both of the following:
- (a) EcoLogo^M Certification; or
 - (b) any alternate certification BC Hydro requires the Seller to obtain under section 7.4.
- 1.2627 **“Facility Lender”** means any lender(s) providing any debt financing or debt hedging facilities for the design, engineering, construction and/or operation of the Seller’s Plant and any successors or assigns thereto.
- 1.2728 **“Final Amount”** means an amount owing by either Party to the other Party under this EPA (including as a result of a breach of this EPA) where such amount is: (a) undisputed by the Party owing such amount; or (b) has been finally determined by an arbitration award under section 8.5

or by a court order and all rights of appeal in respect of such award or order have been exhausted or have expired.

1.2829 **“Force Majeure”** means any event or circumstance not within the control of the Party claiming Force Majeure, but does not include:

- (a) any economic hardship or lack of money, credit or markets;
- (b) an event or circumstance that is the result of a breach by the Party seeking to invoke Force Majeure of a Permit or of any applicable Laws;
- (c) a mechanical breakdown unless the Party seeking to invoke Force Majeure can demonstrate 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;
- (d) an event or circumstance 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;
- (e) any Distribution/Transmission Constraint; or
- (f) any acts or omissions of: (i) any ~~affiliate~~Affiliate, employee, director, officer, agent or other representative of the Party invoking Force Majeure; (ii) any vendor, supplier, contractor, subcontractor, consultant or customer of or to the Party invoking Force Majeure; or (iii) any other Person for whom the Party invoking Force Majeure is responsible at law, unless the act or omission is not within the control of the third Person and is not due to an event described in the preceding subparagraphs (a) to (e) inclusive.

1.2930 **“Gains”** means an amount equal to the present value of the economic benefit (exclusive of Costs), if any, to the Seller resulting from the termination of this EPA, determined in a commercially reasonable manner and in the manner set out in section 9.5.

1.3031 **“Good Utility Practice”** means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility 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 Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the Western Electricity Coordinating Council region.

1.3132 **“Governmental Authority”** means any federal, provincial, local or foreign government or any of their boards or agencies, or any regulatory authority other than BC Hydro and the Seller and entities controlled by BC Hydro or the Seller.

1.3233 **“Interconnection”** means the facilities and procedures that permit the flow of electric power from the Seller’s Plant to the Transmission System or the Distribution System and vice versa.

1.3334 **“Interconnection Agreements”** means the agreement or agreements between the Seller and the Distribution Authority/Transmission Authority which provide for the design, construction, implementation and operation of the facilities that permit the flow of electric power from the

Seller's Plant to the Distribution System/Transmission System and vice versa, and the payments associated with the construction of such facilities, including any facilities agreement or facilities letter, all as amended or replaced from time to time.

- 1.3435 “**Interconnection Facilities**” means Direct Assignment Facilities and Interconnection Network Upgrades.
- 1.3536 “**Interconnection Facilities Study**” means the study prepared by the Distribution Authority as the basis for entering into a facilities letter with the Seller for the interconnection of the Seller's Plant to the Distribution System.
- 1.37 “**Interconnection Network Upgrades**” has the meaning given in Appendix 3.
- 1.3638 “**Interconnection Network Upgrade Costs**” has the meaning given in Appendix 3.
- 1.3739 “**Laws**” means any and all statutes, laws (including common law), ordinances, rules, regulations, codes, orders, bylaws, policies, directions, standards, guidelines, protocols and other lawful requirements of any Governmental Authority.
- 1.3840 “**Lender Consent Agreement**” means a lender consent agreement in the form of the Lender Consent Agreement (~~version 1.0~~) on the Standing Offer Website.
- 1.3941 “**Losses**” means an amount equal to the present value of the economic loss (exclusive of Costs), if any, to the Seller resulting from the termination of this EPA, determined in a commercially reasonable manner and in the manner set out in section 9.5.
- 1.4042 “**Major Damage**” means damage to the Seller's Plant caused by Force Majeure where the cost to repair the damage exceeds the net present value (using the Present Value Rate) of the expected revenues under the EPA for the remainder of the Term less the net present value (using the Present Value Rate) of the estimated operating and maintenance costs for the Seller's Plant for the remainder of the Term.
- 1.4143 “**Revenue Meter**” means a revenue meter leased by BC Hydro to the Seller that is: (a) capable of being remotely interrogated; and (b) calibrated to measure on an hourly basis the quantity of Energy delivered by the Seller to the POI after adjusting for any line losses associated with the transmission of Energy from the Seller's Plant to the POI.
- 1.4244 “**MW**” means megawatt.
- 1.4345 “**MWh**” means megawatt-hour.
- 1.4446 “**Network Upgrade Costs**” has the meaning given in Appendix 3.
- 1.4547 “**Network Upgrade Security**” has the meaning given in Appendix 3.
- ~~1.46 “**Notice**” means any notice, consent, waiver, declaration, request for approval or other request, statement or bill that either Party may be required or may desire to give to the other Party under this EPA.~~
- 1.4748 “**On-Site Emission Reduction Rights**” means any credit, reduction right, off-set, allowance, allocated pollution right, certificate or other unit of any kind whatsoever whether or not tradeable

resulting from or otherwise related to the reduction, removal, or sequestration of emissions at or from the Seller's Plant.

1. ~~48~~49 **“Party”** means: (a) BC Hydro and its successors and permitted assigns; or (b) the Seller and its successors and permitted assigns, and “Parties” means both BC Hydro and the Seller and their respective successors and permitted assigns, provided that the Distribution Authority shall be deemed not to be a “Party”, whether or not owned or operated by ~~British Columbia~~BC Hydro ~~and Power Authority~~.
1. ~~49~~50 **“Permits”** means permits, certificates, licences, and other approvals required for the design, construction, ownership, operation, maintenance and decommissioning of the Seller's Plant and the delivery of Energy to the POI.
1. ~~50~~51 **“Person”** means an individual, body corporate, firm, partnership, joint venture, trust, legal representative or other legal entity.
1. ~~51~~52 **“Plant Capacity”** means the electrical capacity of the Seller's Plant as set out in Appendix 2.
1. ~~52~~53 **“POI”** or **“Point of Interconnection”** means the point at which the Seller's Plant interconnects with the Distribution System/Transmission System as described in Appendix 2.
1. ~~53~~54 **“PPT”** means Pacific Prevailing Time, which means Pacific Daylight Time or Pacific Standard Time as applicable.
1. ~~54~~55 **“Present Value Rate”** means the annual yield on a Government of Canada bond having a term and maturity date that most closely matches the remaining Term (as at the date of the applicable calculation) and expiry date of the EPA, plus 3%.
1. ~~55~~56 **“Prime Rate”** means the floating prime interest rate announced from time to time by the main branch of Bank of Montreal in Vancouver, or any successor thereto, 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.
1. ~~56~~57 **“Seller”** means the Party so identified on page one of this EPA, and its successors and permitted assigns.
1. ~~57~~58 **“Seller's Plant”** means the Seller's plant described in Appendix 2 and all rights, property, facilities, assets, equipment, materials, Permits and contracts required to design, engineer, procure, construct, commission, operate and maintain the plant described in Appendix 2 and to interconnect that plant to the Distribution System/Transmission System, whether real or personal and whether tangible or intangible including all land tenure and all books, records and accounts with respect to the Seller's plant described in Appendix 2.
1. ~~58~~59 **“Standing Offer Program”** means BC Hydro's power procurement program described as the Standing Offer Program for the purchase by BC Hydro of electrical energy from generating plants with a nameplate capacity of greater than 0.05 MW but not more than 10 MW.
1. ~~59~~60 **“Standing Offer Website”** means the website with respect to the Standing Offer Program located at [www.bchydro.com/standing offer](http://www.bchydro.com/standing_offer).
1. ~~60~~61 **“Target COD”** means _____, as revised pursuant to section 4.9.

[Note to Developers: The blank above will be taken from the Application.]

1. ~~61~~62 “**Term**” has the meaning given in ~~section 2.1.~~Article 2.
1. ~~62~~63 “**Transmission Authority**” means the British Columbia Transmission Corporation or any successor thereto.
1. ~~63~~64 “**Transmission/Distribution Force Majeure**” means an event that is beyond the control of the Distribution Authority and/or Transmission Authority and is not due to an event described in subparagraph (a), (b), (c), (d) or (f) of the definition of “Force Majeure”.
1. ~~64~~65 “**Transmission System**” means the transmission, substation, protection, control and communication facilities: (a) owned by BC Hydro or by the Transmission Authority; and (b) operated by the Transmission Authority in British Columbia, and includes all additions and modifications thereto and repairs or replacements thereof.
1. ~~65~~66 “**UCA**” means the *Utilities Commission Act* (British Columbia).

2. INTERPRETATION

2.1 **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.

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

2.3 **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 8.5, 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 and the Parties hereby irrevocably attorn to the jurisdiction of such courts in respect of any Proceeding.

2.4 **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.

2.5 **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.

2.6 **Currency** - References to dollars or \$ means Canadian dollars, unless otherwise stated.

2.7 **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 publicly available, approximates the intent and purpose of the index, tariff or quotation that has so ceased or changed. This EPA shall be amended as necessary to accommodate such replacement index, tariff or price quotation, all as determined by written agreement between the Parties, or failing agreement, by arbitration under section 8.5.

2.8 **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.

2.9 **Payment Calculations** - All payments under this EPA will be calculated applying the following principles:

- (a) all payment calculations will be rounded to the nearest cent;
- (b) Energy will be expressed in MWh rounded to two decimal places; and
- (c) if Statistics Canada (or the then recognized statistical branch of the Canadian Government):
 - (i) computes, at any time after the Effective Date, the CPI on a basis different to that employed at the Effective Date, then the CPI will be converted using the appropriate formula recommended by Statistics Canada (or the then recognized statistical branch of the Canadian Government);
 - (ii) at any time ceases to publish or provide the CPI, then the provisions of section 2.7 of Appendix 1 will apply;
 - (iii) has not published the CPI for a relevant period at the time the Seller is required to provide BC Hydro with an invoice, the Seller shall prepare the invoice based on the CPI in effect at the time the invoice is issued and when the CPI for the relevant period is published, the Seller shall recalculate the invoice amounts in the next succeeding invoice and shall include a credit or debit, without interest, in the next succeeding invoice based on the results of the recalculation; or
 - (iv) recalculates the CPI within 36 months after an invoice affected by that CPI calculation has been issued, then the Seller shall recalculate the invoice amounts for the relevant period in the next succeeding invoice and shall include a credit or debit, without interest, in the next succeeding invoice based on the results of the recalculation.

2.10 **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) the words “year” and “month” refer to a calendar year and a calendar month;

- (e) 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, withheld or conditioned in the unfettered discretion of the Party of whom it is requested, unless otherwise expressly stated;
- (f) 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 may pursue any and all of its remedies concurrently, consecutively and alternatively; and
- (g) any notice required to be given, or other thing required to be done, under this EPA on or before a day that is not a Business Day, shall be deemed to be given or done when required hereunder if given or done on or before the next following Business Day.

3. ADDRESSES FOR NOTICES

3.1 **Notices to BC Hydro**– Except as noted below, all notices addressed to BC Hydro shall be delivered to the following address:

~~Manager, Contract Management~~
Contracts & Evaluations, Power Acquisitions
333 Dunsmuir Street, 10th floor
Vancouver, B.C.
V6B 5R3
Attention: (Note to Developers: name to be inserted in Project EPA)
Email: IPP.Contract@bchydro.com

Invoices and Statements

To: CC & C Finance, IPP Invoicing
333 Dunsmuir Street, ~~16~~9th floor
Vancouver, B.C.
V6B 5R3
Attention: (Note to Developers: name to be inserted in Project EPA)
Email: IPP.Invoicing@bchydro.com

Insurance and Network Upgrade Security

To: ~~Distribution Line of Business, Finance~~
~~6911 Southpoint Drive, E16~~
~~Burnaby, B.C.~~
~~V3N 4X8~~
~~Attention: (name to be inserted in Project EPA)~~
Copy to: ~~Contract management~~

Insurance

~~To: Title Manager, Contract Management~~

To: Contracts & Evaluations, Power Acquisitions

333 Dunsmuir Street, 10th floor

Vancouver, B.C.

V6B 5R3

Attention: (Note to Developers: name to be inserted in Project EPA)

Email: IPP.Contract@bhydro.com

3.2 **Notices to Seller** - All notices addressed to the Seller shall be delivered to the following address:

[Complete]

APPENDIX 2

SELLER'S PLANT DESCRIPTION

1. Location:
2. Fuel:
3. Point of Interconnection:
4. Plant Capacity:
5. General Description:

APPENDIX 3

NETWORK UPGRADES

1. Definitions

In this Appendix 3 or elsewhere in the EPA, the following words and expressions have the following meanings:

- (a) “**Base Case**” means the base power flow, short circuit and stability data bases used for the most recent dated interconnection study filed with the Seller’s Application.
- (b) “**Interconnection Network Upgrades**” means additions, modifications and upgrades to the Transmission System or Distribution System that are determined by the Transmission Authority (as to the Transmission System) or the Distribution Authority (as to the Distribution System) to be interconnection network upgrades under the applicable policies of the Distribution Authority or under the Transmission Authority’s OATT in effect from time to time.
- (c) “**Interconnection Network Upgrade Costs**” means all costs incurred by the Transmission Authority and/or the Distribution Authority for the design, engineering, procurement, construction, installation and commissioning of Interconnection Network Upgrades.
- (d) “**Letter of Credit Failure**” means:
 - (i) a failure to renew or substitute the Network Upgrade Security by no later than 60 days prior to the expiry thereof; or
 - (ii) the issuer of the Network Upgrade Security fails to maintain a credit rating of at least the minimum rating specified in this Appendix; or
 - (iii) the issuer of the Network Upgrade Security fails to comply with or perform its obligations under the Network Upgrade Security; or
 - (iv) the issuer of the Network Upgrade Security disaffirms, disclaims, repudiates, terminates, rejects, in whole or in part, or challenges the validity of, the Network Upgrade Security; or
 - (v) the Network Upgrade Security fails or ceases to be in full force and effect for purposes of this EPA (whether or not in accordance with its terms) prior to the date specified in this Appendix for return of the Network Upgrade Security to the Seller.
- (e) “**OATT**” means Open Access Transmission Tariff.
- (f) “**Network Upgrades**” means both Interconnection Network Upgrades and Transmission Network Upgrades.
- (g) “**Network Upgrade Threshold**” means \$_____. *[Note to Developers: This blank will be completed with a total dollar value based on the Network Upgrade*

Threshold (as defined in the Program Rules) and the size of the Seller’s Plant as set out in the interconnection studies for the Seller’s Plant.]

- (h) “**Network Upgrade Costs**” means all Interconnection Network Upgrade Costs and Transmission Network Upgrade Costs.
- (i) “**Network Upgrade Security**” means a letter of credit in an amount described in subsection 3(d) of this Appendix, in the form of the Network Upgrade Security set out on the Standing Offer Website, with such modifications as approved by BC Hydro in writing, and issued by a Canadian bank or financial institution with a long-term credit rating not less than Standard & Poor’s A-, Moody’s A3, or Dominion Bond Rating Service A (low) (or other ~~credit rating~~ financial institution as approved by BC Hydro in writing) and where the issuing office of the bank or financial institution is not located in Vancouver, the letter of credit must be advised by a branch in Vancouver, Canada.
- (j) “**Transmission Network Upgrades**” means additions, modifications and upgrades to the Transmission System or Distribution System that are determined by the Transmission Authority (as to the Transmission System) or the Distribution Authority (as to the Distribution System) to be transmission network upgrades under the applicable policies of the Distribution Authority or under the Transmission Authority’s OATT in effect from time to time.
- (k) “**Transmission Network Upgrade Costs**” means all costs incurred by the Transmission Authority and/or the Distribution Authority for the design, engineering, procurement, construction, installation and commissioning of Transmission Network Upgrades.

2. Network Upgrades

- (a) **BC Hydro’s Obligation** - Except as otherwise set out in this EPA, BC Hydro shall pay (i) all Interconnection Network Upgrade Costs up to an amount not exceeding the Network Upgrade Threshold; and (ii) all Interconnection Network Upgrade Costs in excess of the Network Upgrade Threshold to the extent those costs are solely attributable to, and would not have been incurred but for, a change in the Base Case after the Effective Date, and where ~~that~~ the change in the Base Case is not attributable, directly or indirectly, in whole or in part to the Seller or the Seller’s Plant; and (iii) all Transmission Network Upgrade Costs.
- (b) **Seller’s Obligation** - The Seller shall pay all Interconnection Network Upgrade Costs in excess of the Network Upgrade Threshold, except for those costs for which BC Hydro is responsible pursuant to subsection 2(a) of this Appendix. The Seller shall pay any Interconnection Network Upgrade Costs for which the Seller is responsible under this Appendix within 15 days after receipt of an invoice for such costs from BC Hydro.
- (c) **Payment on Termination** – If this EPA is terminated by BC Hydro under any section of this EPA on or before the date that is 90 days after COD or by the Seller under subsection 9.3(a), (c) or (d) on or before COD, the Seller shall within 15 days after receipt of an invoice from BC Hydro reimburse BC Hydro for: (i) all Interconnection Network Upgrade Costs incurred by BC Hydro, or which BC Hydro has become contractually obligated to pay, prior to the termination of the EPA including, for greater certainty, Interconnection Network Upgrade Costs BC Hydro would otherwise be responsible for

under subsection 2(a) of this Appendix; (ii) any incremental Interconnection Network Upgrade Cost liability BC Hydro will incur as a result of the termination of the EPA up to a maximum amount not exceeding the required amount of the Network Upgrade Security; and (iii) any Network Upgrade Costs the Seller is responsible for under any reimbursement agreement pursuant to section 4.3 of this EPA or section 7 of this Appendix, provided that the Seller will not be required to reimburse BC Hydro for amounts under subsection (ii) where the EPA is terminated by either Party under Article 3.

3. Network Upgrade Security

The following terms and conditions apply to the Network Upgrade Security:

- (a) The Seller shall deliver the Network Upgrade Security to BC Hydro after receipt by the Seller of the ~~design portion of the Interconnection Design/Impact Study or the Interconnection Facilities Study, as applicable,~~ and prior to entering into any Interconnection Agreement with the Distribution Authority or Transmission Authority as applicable.
- (b) BC Hydro shall return the Network Upgrade Security, less the amount of any draws on the Network Upgrade Security BC Hydro is entitled to make under this EPA, within 10 Business Days after the date that is 90 days after COD.
- (c) BC Hydro may draw on the Network Upgrade Security in an amount equal to the amount of any Interconnection Network Upgrade Costs or liabilities the Seller has failed to pay to the BC Hydro under section 2 of this Appendix and for any Network Upgrade Costs the Seller is responsible for under any reimbursement agreement pursuant to section 4.3 of this EPA or section 7 of this Appendix. The Seller shall within 5 Business Days after any such draw, replenish the amount of the Network Upgrade Security to comply with the requirements of subsection 3(d) of this Appendix.
- (d) The required amount of the Network Upgrade Security from time to time shall be equal to the full amount of the Interconnection Network Upgrade Costs estimated from time to time by the Distribution Authority and the Transmission Authority less the amount of any Interconnection Network Upgrade Costs previously paid by the Seller under section 2 of this Appendix and the Seller shall increase the amount of the Network Upgrade Security as necessary to comply with this section within 5 Business Days after delivery to the Seller of a revised estimate of the Interconnection Network Upgrade Costs prepared by the Distribution Authority or the Transmission Authority. The Seller acknowledges that BC Hydro may request a revised Interconnection Network Upgrade Cost estimate from the Transmission Authority or the Distribution Authority at any time.
- (e) The Seller shall notify BC Hydro of any Letter of Credit Failure forthwith. If a Letter of Credit Failure occurs, the Seller shall deliver replacement Network Upgrade Security in the amount and form required under this EPA within 5 Business Days after the Letter of Credit Failure occurred.
- (f) BC Hydro may draw on the Network Upgrade Security if a Letter of Credit Failure occurs. BC Hydro may hold the proceeds of such draw until the Seller delivers replacement Network Upgrade Security in the required form and amount.

- (g) If the Seller has failed to maintain the Network Upgrade Security at the level required hereunder, subject to any cure period specified in this Appendix, BC Hydro may withhold payment of any amount owing by BC Hydro to the Seller under this EPA until 5 days after the date when the Seller has delivered the required amount of Network Upgrade Security to BC Hydro. Any amounts withheld by BC Hydro in accordance with this subsection will not bear interest.

4. **EPA Termination**

In addition to any other right to terminate this EPA expressly set out in any other provision of this EPA, BC Hydro may terminate this EPA by notice to the Seller if:

- (a) the Seller has failed to deliver the Network Upgrade Security to BC Hydro as required under subsection 3(a) of this Appendix within 5 Business Days after notice from BC Hydro; or
- (b) the Seller has failed to replenish or increase the amount of the Network Upgrade Security as required under subsection 3(c) or subsection 3(d) of this Appendix; or
- (c) if a Letter of Credit Failure has occurred and the Seller has failed to deliver a replacement Network Upgrade Security within 5 Business Days after the Letter of Credit Failure occurred.

5. **Consent to Disclosure of Information**

The Seller hereby consents to the Distribution Authority and the Transmission Authority disclosing to BC Hydro on request:

- (a) all information with respect to Network Upgrades, including any information provided by the Seller to the Transmission Authority or the Distribution Authority that relates to, or affects, Network Upgrades, including any Interconnection applications, studies and reports and all information, data and calculations relating to such applications, studies and reports;
- (b) all metering data collected by, or provided to, the Transmission Authority or the Distribution Authority with respect to the Seller's Plant;
- (c) copies of any notice of a breach of, or default under, any of the Interconnection Agreements given or received by the Transmission Authority or Distribution Authority; and
- (d) any other information provided by the Seller to the Transmission Authority or the Distribution Authority or vice versa that is relevant to the administration of this EPA.

6. **Requirement to Provide Interconnection Studies**

The Seller shall provide to BC Hydro a copy of all interconnection studies completed by the Transmission Authority or the Distribution Authority with respect to the Interconnection of the Seller's Plant to the Transmission System or the Distribution System, as applicable, promptly on receipt by the Seller of any such reports. The Seller shall comply with the requirements of subsection 3(d) of this Appendix based on the estimated Interconnection Network Upgrade Costs as set out in each such report.

7. Advancement of Network Upgrades

The Seller shall not request the Distribution Authority or Transmission Authority to complete any study or work or take any other step of any kind whatsoever that would change the position of the Seller's Plant in the ~~interconnection~~interconnection queue or otherwise affect the validity of any interconnection study for the Seller's Plant without the prior consent of BC Hydro. The Seller acknowledges that BC Hydro may as a condition of its consent require that the Seller agree to reimburse BC Hydro for any incremental liability for Network Upgrade Costs with respect to the Seller's Plant or any other project incurred by BC Hydro as a result of such study, work or other step and that the Seller provide security to BC Hydro to secure such reimbursement obligation.

APPENDIX 4

DELIVERY TIME ADJUSTMENT TABLE

1. **Definitions:** In this Appendix 4, the following words and expressions have the following meanings:

(c) “**HLH**” or “**Heavy Load Hours**” means the hours commencing at 06:00 PPT and ending at 22:00 PPT Monday through Saturday inclusive but excluding British Columbia statutory holidays.

(b) “**LLH**” or “**Light Load Hours**” means all hours other than Heavy Load Hours.

2. **Adjustment Table:**

	HLH	LLH
January	125%	106%
February	126%	110%
March	114%	106%
April	103%	95%
May	92%	76%
June	90%	72%
July	91%	72%
August	95%	81%
September	96%	88%
October	108%	97%
November	109%	102%
December	122%	102%

~~*[Final percentages to be confirmed prior to BCUC decision with respect to BC Hydro’s application under section 45(6.1) of the Utilities Commission Act with respect to the Standing Offer Program.]*~~

APPENDIX 5

DESCRIPTION OF SPECIAL TERMS AND CONDITIONS

The following is a description of some of the revisions that will be made to the Standard Form EPA for the Standing Offer Program depending on the nature of the Developer and the project type, location and/or configuration. This is not an exhaustive list of possible amendments to the Standard Form EPA. In several of the cases noted below there may be additional substantive revisions required depending on the exact configuration of the project and there will likely be a number of consequential changes to the EPA. [Capitalized terms used in this Appendix that are not defined in Appendix 1 have the meaning given to those terms in Appendix A to the Standing Offer Program Rules.](#)

~~Multiple Generators (Direct Connection to the Transmission System or Distribution System)~~

~~The following changes apply where the Seller's Plant consists of an additional generator added to an existing electricity generation facility:~~

- ~~• Section 4.2 — The total nameplate capacity of the "Common Generating Facility" (See Program Rules for definition) may not exceed 10 MW.~~
- ~~• It may be necessary to establish a generator baseline based on the energy generated by the existing generation facility if the proposed location of the revenue meter for the Seller's Plant is such that the meter will measure output from any of the existing generators. BC Hydro will only purchase energy under this EPA where the meter shows energy deliveries in excess of the generator baseline. If the proposed location of the revenue meter is such that the meter will measure output from any existing generators, the Seller will be required to ensure that all energy measured by the meter is Clean Energy.~~

~~Additional Generation from Existing Generator (Direct Connection to the Transmission System or Distribution System)~~

~~The following changes apply where the Seller's Plant consists of incremental generation from an existing generator:~~

- ~~• Section 4.2 — The nameplate capacity of the total generating unit may not exceed 10 MW.~~
- ~~• A generator baseline will be established based on prior commitments to third parties for the existing generation. BC Hydro will only purchase energy under this EPA where the meter shows energy deliveries in excess of the generator baseline.~~
- ~~• If the prior commitments for the existing generation are terminated or expire, the total output from the generator will be included in the Delivered Energy under this EPA.~~

New Generator Added to Existing Generation (Direct Interconnection to the Transmission System or Distribution System)

Generation from Existing Generator (Direct Interconnection to the Transmission System or Distribution System)

Projects Located Behind a Customer Load (See Program Rules for definition of "Behind a Customer Load")

The following changes apply where the Seller's Plant ~~has no direct connection to the Transmission System or Distribution System but is located Behind a Customer Load~~: consists of any of the project types listed above:

- If the proposed location of the Revenue Meter is such that the Revenue Meter will measure output from any existing generators:
 - The Seller will be required to ensure that all energy delivered to BC Hydro is Clean Energy.
 - Plant Capacity in Appendix 5 will be changed to "Project Capacity". Project Capacity will be a specified number of MW to a maximum of 10 MW.
 - If a portion of the electricity from the existing generation facility is under contract to BC Hydro or a third party, a generator baseline for each month will be established based on the amount of contracted electricity. In that case, BC Hydro will only purchase energy under the EPA where the Revenue Meter shows energy deliveries in excess of the generator baseline.
 - The maximum amount of energy BC Hydro will purchase is limited to 110% of the Project Capacity.
 - The generator baseline will be adjusted upon expiry or earlier termination of any contractual commitments reflected in the generator baseline.
- The following additional changes apply to a project located Behind a Customer Load:
 - ~~In this case, the~~ The POI is the point at which the BC Hydro customer interconnects with the Transmission System or Distribution System.
 - ~~In this case, the revenue meter must be a bi-directional meter located at the POI. BC Hydro will pay for energy generated by the Seller's Plant only when the meter at the POI shows that power has been injected into the Transmission System or Distribution System (ie. after the electrical load of the BC Hydro customer has been fully served by the Seller's Plant).~~
 - ~~BC Hydro will pay for power injected to the Transmission System or the Distribution System to a maximum of 10 MW.~~
 - ~~Section 4.2 The nameplate capacity of all generators connected to the BC Hydro customer must not exceed 10 MW and the Seller will be required to ensure that all energy produced by all such generators is Clean Energy. If after the Effective Date the energy generated by any such generator does not qualify as Clean Energy, the Seller will be required to install a meter at the generator that was the subject of the Application and BC Hydro will pay for energy only when that meter shows that energy was generated by that generator and the meter at the POI shows that power was injected to the Transmission System or Distribution System.~~
 - ~~Where there is existing generation behind the customer load and that existing generation is committed for sale to a third party it will be necessary to establish a generator baseline based on the existing contractual commitments. BC Hydro will only purchase energy under this EPA where the meter shows energy deliveries in excess of the generator baseline.~~ A generator baseline for each month

will be established based on the historical generation of the existing generation facility and, if a portion of the electricity from the Common Generation Facility is under contract to a third party, the existing contracted electricity. The generator baseline will not be adjusted to reflect variations in the customer's energy consumption.

Projects ~~eonnected~~interconnected to the Transmission System or Distribution System Through a Privately-Owned Transmission or Distribution Line

The following changes apply where the Seller's Plant is ~~eonnected~~interconnected to the Transmission System or the Distribution System through a privately owned transmission or distribution line:

- The EPA will be amended to reflect the fact that the Interconnection Agreements may be between the owner of the private line and the Distribution Authority or the Transmission Authority.
- COD requirements will include a requirement that the Seller not be in default under any agreement with the owner of the private line and that the owner of the private line is not in default under any agreements between the owner of the private line and the Transmission Authority or the Distribution Authority.
- The Seller will be required to covenant to comply with the terms and conditions of its agreements with the private line owner during the term of the EPA.
- The Seller will covenant to deliver a consent from the owner of the private line to disclosure by the Transmission Authority or the Distribution Authority of all information relating to the private line and the interconnection of that line to the Transmission System or the Distribution System.
- Disconnection of the private line from the Distribution System or the Transmission System will excuse BC Hydro from its obligation to accept delivery at the POI.
- Losses associated with any other generating facility ~~eonnected~~interconnected to the private line in addition to the Seller's Plant will be accounted for in the meter calibration process.

Projects ~~eonnected~~interconnected to the Distribution System or Transmission System through a Public Utility Transmission/Distribution System owned and operated by a Third Party, other than BCTC

The following changes apply where the Seller's Plant is ~~eonnected~~interconnected to the Distribution System or the Transmission System through a public utility transmission/distribution system owned and operated by a third party, other than BCTC:

- The term "POI" will be ~~replaced with "POD" or "Point of Delivery" which will be defined as~~ a specified point where the public utility transmission/ distribution system interconnects with the Distribution System or the Transmission System.
- Appendix 3 will be deleted and any remaining relevant provisions from that Appendix will be incorporated in the main body of the Project EPA.

Fuel Attestation

The following changes apply where the Seller's Plant is capable of using alternate fuel sources to generate Energy:

- In the case of Projects that are capable of using alternate fuel sources to generate energy, the Seller will be required to deliver to BC Hydro, on each anniversary of COD, written confirmation from the Seller together with supporting documents (including third party audits and/or certifications(s)) as requested by BC Hydro, acting reasonably, to confirm the fuel types and quantities used in the Seller's Plant during the immediately preceding 12 month period and the Seller shall ensure that all fuel used by the Seller is such that the energy will be considered Clean Energy. Breach of these requirements is a "material default" for purposes of subsection 9.1(i) of the EPA.
- If the Seller fails to comply with the foregoing requirements, BC Hydro may suspend accepting deliveries of that portion of the Energy in respect of which confirmation has not been provided to BC Hydro and BC Hydro may suspend payments under the EPA for any portion of the Energy for which confirmation has not been provided until such time as the Seller delivers the required confirmation and/or switches to a fuel that will ensure that the energy delivered to BC Hydro under the EPA will be considered Clean Energy.

High Efficiency Co-Generation Projects

The following changes apply where the Seller's Plant is a High Efficiency Co-generation project:

- If the Seller's Plant uses natural gas or oil to generate electricity for delivery to BC Hydro pursuant to the EPA, the Seller will be required to deliver to BC Hydro, on each anniversary of COD, written confirmation from the Seller together with supporting documents (including third party audits and/or certification(s)) as requested by BC Hydro, acting reasonably, to confirm that the Seller has complied with Policy Action No. 18 (zero net greenhouse gas (GHG) emissions) and Policy Action No. 19 (zero net GHG emissions by 2016) of the 2007 Energy Plan, as applicable, with respect to fuel used to generate the electricity in excess of the generator baseline for sale to BC Hydro under the EPA. Breach of these requirements is a "material default" for purposes of subsection 9.1(i) of the EPA.
- If the Seller's Plant uses coal to generate electricity for delivery to BC Hydro pursuant to the EPA, the Seller will be required to deliver to BC Hydro, on each anniversary of COD, written confirmation from the Seller together with supporting documents (including third party audits and/or certification(s)) as requested by BC Hydro, acting reasonably, to confirm that the Seller has complied with Policy Action No. 20 (zero GHG emissions) of the 2007 Energy Plan, with respect to fuel used to generate the electricity in excess of the generator baseline for sale to BC Hydro under the EPA. Breach of these requirements is a "material default" for purposes of subsection 9.1(i) of the EPA.
- If the Seller fails to comply with the foregoing requirements, BC Hydro may suspend accepting deliveries of that portion of the Energy in respect of which confirmation has not been provided to BC Hydro and BC Hydro may suspend payments under the EPA for any portion of the Energy for which confirmation has not been provided until such time as the Seller delivers the required confirmation and/or switches to a fuel that will ensure that the energy delivered to BC Hydro under the EPA will be considered Clean Energy. ~~Breach of these requirements is a "material default" for purposes of subsection 9.1(h) of the EPA.~~

Seller is a Joint Venture or Partnership

The following changes apply where the Seller is a joint venture or partnership:

- The partners or joint venture participants will be jointly and severally liable for all obligations under the EPA.

CPI Data Not Available

The following changes apply where the ~~Project~~ EPA is executed prior to the date on which the CPI data required to adjust the base price as indicated in section 4.1 of the Program Rules is available:

- The EPA will include a provision for adjustment of the price specified in section 6.2 to be consistent with the escalated base price for the year in which the EPA is signed upon the relevant CPI data becoming available.

EcoLogo^M Certification

If the Seller's Application included an EcoLogo^M confirmation letter and the Seller elects not to proceed with final EcoLogo^M Certification where EcoLogo^M Certification is not required pursuant to section 7.1 of the EPA, BC Hydro may request the Seller to obtain a letter from the Ministry of Energy, Mines and Petroleum Resources by not later than 365 days after COD confirming that the Energy from the Seller's Plant is Clean Energy. Failure to deliver such a letter by the date specified herein will entitle BC Hydro to terminate the EPA.

Projects ~~Connected~~ Interconnected to the Transmission System

The following changes apply where the Seller's Plant is connected to the Transmission System:

- Section 5.7 is deleted and replaced with the following:

BC Hydro shall have no liability with respect to any delay in completion of Interconnection Facilities.
- Definitions such as "Direct Assignment Facilities", "Interconnection Facilities" and "Interconnection Facilities Study" will be revised to reflect the equivalent terminology used by BCTC.

~~APPENDIX 6~~ APPENDICES

~~LENDER CONSENT AGREEMENT~~

[~~NTD~~ Note to Developers: The most recent form of Lender Consent Agreement, COD Certificate, and Development Report available as a Reference Document on the Standing Offer Program website will be attached as a Schedule to the Project EPA.]