

BC HYDRO

AND



ELECTRICITY PURCHASE AGREEMENT

BC Hydro - DRAFT FOR DISCUSSION PURPOSES

Please note that this specimen EPA is provided solely for the purpose of advancing our confidential and without prejudice discussions. It is not an offer and does not create any legally binding obligations, rights or liabilities. We do not have authority to enter into the agreements and any draft documents which may be circulated will remain subject to BC Hydro's review and approval in its absolute and unfettered discretion. No agreement will exist between us regarding these matters until we settle, and both parties have signed and delivered, final agreements reflecting or resulting from our discussions, which may be subject to additional conditions.

Notes to Proponents:

1. *If the Seller's Plant has an indirect interconnection to the BC Hydro System, amendments required to accommodate the indirect interconnection are noted in **GREEN**. Additional amendments may be required to accommodate a Seller's Plant located outside of the BC Hydro service territory (for example, amendments to the definitions of "Delivered Energy", "Line Losses" and "POI"), which will be determined on a case-by-case basis to follow in consideration of the specifics of the indirect interconnection as described in the Seller's Proposal.*
2. *If the Energy Source for the Seller's Plant is biomass, amendments required to accommodate biomass are noted in **PURPLE**.*
3. *If the Seller is not a corporation, amendments will be required to reflect that the Seller is a joint venture, limited partnership or other entity.*
4. *To the extent that the Interconnection on the Seller's side of the POI is jointly owned by the Seller and one or more other Persons, further changes will be required to this form of EPA.*
5. *If the Seller's Plant has an Energy Source that is not hydro, wind, solar or biomass, additional amendments may be required to this form of EPA.*
6. *To the extent that the Seller's Plant will be an expansion of an existing plant that is subject to an EPA with BC Hydro, changes may be required to this EPA and amendments will be required to the existing EPA and other existing agreements between BC Hydro and the Seller or other plant owner, which will be determined on a case-by-case basis to follow in consideration of the Seller's Proposal and the agreements governing the existing plant.*

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BC HYDRO

ELECTRICITY PURCHASE AGREEMENT

THIS ELECTRICITY PURCHASE AGREEMENT (“EPA”) is made as of _____, 20____ *[Note: Date of signing by Buyer.]* (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

(“Buyer” or “BC Hydro”)

WHEREAS:

- A. The Buyer initiated a competitive process on ●, 202● to acquire clean or renewable electricity generated by projects located in British Columbia.
- B. The Seller submitted a Proposal in that process.
- C. The Seller wishes to sell to the Buyer, and the Buyer wishes to purchase from the Seller, Energy and associated Environmental Attributes, on the terms and subject to conditions set out in this EPA.

The Parties agree as follows:

1. INTERPRETATION

1.1 Definitions

The following words and expressions used in this EPA have the following meaning:

- (a) “**Aboriginal Claim**” means a legal claim or proceeding where such claim or proceeding alleges Potential Impacts which breach any First Nation’s rights under Section 35 of the *Constitution Act, 1982*.

- (b) **“Affiliate”** means:
- (i) with respect to the Seller or any third Person, any Person directly or indirectly Controlled by, Controlling, or under common Control with, the Seller or the third Person; and
 - (ii) with respect to the Buyer, any Person directly or indirectly Controlled by the Buyer and, if at any time the Buyer is not Controlled, directly or indirectly, by the Province of British Columbia, will include any Person directly or indirectly Controlling, or under common Control, with the Buyer.
- (c) **“Annual Operating Plan”** has the meaning given in section 6.7(b).
- (d) **“Assign”** or **“Assignment”** means to assign or dispose of 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 by the Seller:
- (i) 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;
 - (ii) 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 or of all or any interest of the Seller in this EPA or revenue derived from this EPA; and
 - (iii) any change of Control, merger, amalgamation or reorganization of the Seller.
- (e) **“Audit Parties”** means the Buyer and its Affiliates, representatives, consultants, advisors, and any third Person with whom the Buyer or any of its Affiliates has entered into a contract for the sale and purchase of Environmental Attributes and their Affiliates, representatives, consultants and advisors.
- (f) **“Auxiliary Fuel”** means, subject to any conditions imposed by the Buyer from time to time, any combustible fuel consented to by the Buyer as an “Auxiliary Fuel”, other than Clean or Renewable Resources.
- (g) **“Auxiliary Fuel Annual Energy Threshold”** means, for a Contract Year, 3% of the aggregate amount of Delivered Energy in the Contract Year.
- (h) **“Auxiliary Fuel Energy Overage”** means, for a Contract Year, the amount by which Energy in the Contract Year generated from Auxiliary Fuel, as determined by the Buyer, exceeds the Auxiliary Fuel Annual Energy Threshold, and in respect of which the Buyer has paid amounts to the Seller under section 8.2.
- (i) **“Auxiliary Fuel Energy Overage Credit”** means, with respect to any Contract Year in which there is an Auxiliary Fuel Energy Overage, the amount (in dollars) equal to the Auxiliary Fuel Energy Overage multiplied by the Energy Price.

- (j) **“Bankrupt or Insolvent”** means, with respect to a Person:
 - (i) the Person has started proceedings to be adjudicated a voluntary bankrupt or consented to the filing of a bankruptcy proceeding against it;
 - (ii) the Person has filed a petition or similar proceeding seeking reorganization, arrangement or similar relief under any bankruptcy or insolvency law;
 - (iii) a receiver, liquidator, trustee or assignee in bankruptcy has been appointed for the Person or the Person has consented to the appointment of a receiver, liquidator, trustee or assignee in bankruptcy;
 - (iv) the Person has voluntarily suspended the transaction of its usual business; or
 - (v) a court of competent jurisdiction has issued an order declaring the Person bankrupt or insolvent.
- (k) **“BC Hydro System”** means the generation, transmission, distribution, protection, control and communication facilities owned, controlled or operated by the Buyer in British Columbia, and includes all additions and modifications thereto and repairs or replacements thereof.
- (l) **“BC Hydro System Constraint”** means any outage, suspension, constraint or curtailment for any reason whatsoever in the operation of the BC Hydro System, or **an indirect disconnection by the Buyer of the Seller’s Plant from the BC Hydro System as a result of a disconnection of the Third Party System from the BC Hydro System**, during the Energy Delivery Period preventing or limiting deliveries of Energy at the POI.
- (m) **“BCUC”** means the British Columbia Utilities Commission or any successor thereto.
- (n) **“BCUC Acceptance”** means the issuance by the BCUC of an order accepting this EPA for filing as an energy supply contract under section 71 of the UCA.
- (o) **“Business Day”** means any day except a Saturday, a Sunday, or a day that is recognized as a “paid holiday” for British Columbia government employees as published by the Province of British Columbia from time to time (including any day Monday through Friday that is a paid holiday for British Columbia government employees due to a holiday occurring on a Saturday or Sunday).
- (p) **“Buyer”** means the Party so identified on page one of this EPA, and its successors and assigns.
- (q) **“Buyer Confidential Information”** means:
 - (i) technical or commercial information disclosed by the Buyer to the Seller;
 - (ii) all information that is or was “Confidential Information” under the Confidentiality Agreement as a result of disclosure by the Buyer or its representatives; and

(iii) this EPA whether or not so directed and marked;

but excluding information that:

(iv) is or becomes in the public domain, other than as a result of a breach by the Seller of this EPA or the Confidentiality Agreement; or

(v) is known to the Seller before disclosure to it by the Buyer, or becomes known to the Seller thereafter, in either case by way of disclosure to the Seller by any other Person who is not under an obligation of confidentiality with respect thereto.

(r) **“Buyer Indemnified Parties”** means the Buyer, its Affiliates and the Province of British Columbia, and their respective directors, officers, employees, agents, representatives, successors and permitted assigns.

(s) **“Buyer Termination Event”** means any of the events listed in sections 15.1(a) through 15.1(q).

(t) **“Buyer Termination Payment”** has the meaning given in section 15.7.

(u) **“Capacity Commitment Period”** means, after COD, each period beginning in the first hour of November 1 and ending at the end of the last hour of the following February 28, provided that if COD occurs between November 1 and February 28, the first Capacity Commitment Period will be from COD until the following February 28. *[Note: This definition will only be included for Sellers that made a capacity commitment in their Proposal.]*

(v) **“Clean Energy”** means Energy that qualifies as energy generated by a Clean or Renewable Resource.

(w) **“Clean or Renewable Resource”** means a “clean or renewable resource” as defined under the *Clean Energy Act*, SBC 2010, c.22, as amended or replaced from time to time.

(x) **“COD”** means the date on which the Seller’s Plant achieves commercial operation pursuant to section 5.2.

(y) **“COD Certificate”** means a certificate in the form set out in Appendix D, completed and accompanied by attachments reasonably satisfactory to the Buyer and signed by a senior officer of the Seller.

(z) **“COD Delay LDs”** has the meaning given in section 11.1.

(aa) **“COD Test Requirements”** means all applicable test requirements for the Energy Source(s), as described in Appendix E.

(bb) **“Committed Level of First Nations Equity Ownership”** means _____. *[Note: The Committed Level of First Nations Equity Ownership will be the level of First Nations Equity Ownership that the Seller specified and committed to in the Proposal.]*

- (cc) **“Confidentiality Agreement”** means the confidentiality agreement dated ● between the Buyer and Seller. *[Note: Date of existing confidentiality agreement to be inserted.]*
- (dd) **“Constraint Energy”** means, for any hour during a BC Hydro System Constraint, the lesser of:
- (i) the amount of Energy that could have been generated and delivered to the POI in that hour but for the occurrence of a BC Hydro System Constraint, less any amount of Delivered Energy in the hour; and
 - (ii) the Hourly Limit less any amount of Delivered Energy in that hour (which if a negative number will be deemed to be zero),
- except that Energy that could have been generated and delivered to the POI in an hour during a BC Hydro System Constraint resulting from or arising in connection with an Emergency Condition is not Constraint Energy. *[Note: For storage hydro projects or projects with battery storage, this will also need to exclude any extra water or energy that was stored (and related future energy generation) as a result of the BC Hydro System Constraint.]*
- (ee) **“Construction Insurance”** means all insurance customarily maintained by prudent owners in connection with the construction of a facility similar to the Seller’s Plant, including course of construction insurance.
- (ff) **“Contract Year”** means:
- (i) the period from COD until the next following December 31;
 - (ii) each following one year period during the Term from January 1 until December 31; or
 - (iii) the period from the last January 1 of the Term until the last day of the Term. *[Note: This definition will also be included for EPAs with Sellers that made a capacity commitment in their Proposal.]*
- (gg) **“Control”** of any Person means:
- (i) with respect to any corporation or other Person having voting shares or the equivalent, the ownership or power to vote, directly or indirectly, shares, or the equivalent, representing 50% or more of the power to vote in the election of directors, managers or Persons performing similar functions;
 - (ii) ownership of 50% or more of the equity or beneficial interest in that Person; or
 - (iii) the ability to direct the business and affairs of any Person by acting as a general partner, manager or otherwise.
- (hh) **“Costs”** means brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred or that would reasonably be expected to be incurred by a

Party in entering into new arrangements which replace this EPA and legal fees, if any, incurred in connection with enforcing the Party's rights under this EPA.

- (ii) **"CPI"** means the monthly British Columbia Consumer Price Index, All Items (Not Seasonally Adjusted) as published by Statistics Canada or any successor agency thereto, as may be adjusted or replaced in accordance with section 1.2(j)(iii) of the EPA.
- (jj) **"Curtailment Request"** has the meaning given in section 7.10(a).
- (kk) **"Deemed Energy"** means, in any hour during the Energy Delivery Period:
 - (i) the amount of Turn-Down Energy in that hour for which the Buyer is required to pay the Seller pursuant to section 7.10(c); and
 - (ii) the amount of Constraint Energy in that hour for which the Buyer is required to pay the Seller pursuant to section 7.10(d).
- (ll) **"Deliberate Breach"** means:
 - (i) any failure by the Seller to achieve COD by the Guaranteed COD Termination Date resulting from any wilful or negligent act or omission of the Seller;
 - (ii) any breach of or default under any provision of this EPA by the Seller resulting from any wilful or negligent act or omission by the Seller;
 - (iii) a Buyer Termination Event constituting a repudiation of the EPA by the Seller; or
 - (iv) any sale or transfer by the Seller of Energy or environmental attributes associated with Energy to any Person other than the Buyer, except if and to the extent that such sale or transfer is expressly permitted under this EPA.
- (mm) **"Delivered Energy"** means, in any hour, the amount of Energy delivered at the POI in that hour as recorded by the Meter, or the duplicate revenue meter(s) installed by the Buyer under section 6.5(b), if any, as adjusted for Line Losses.
- (nn) **"Delivered Energy Environmental Attributes"** means Environmental Attributes associated with Delivered Energy (including Test Energy and Excess Energy).
- (oo) **"Delivery Shortfall LDs"** has the meaning given in section 11.2. *[Note: This definition will only be included for Sellers that made a capacity commitment in their Proposal.]*
- (pp) **"Designated Capacity Commitment"** means, for every On-Peak Hour during a Capacity Commitment Period, ● MWh. *[Note: This definition will only be included for Sellers that made a capacity commitment in their Proposal. The Designated Capacity Commitment from the Seller's Proposal will be inserted in this definition.]*
- (qq) **"Development Costs"** means all costs reasonably incurred or committed by the Seller after the date of issuance of the RFP 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 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.

- (rr) **"Development Report"** has the meaning given in section 4.3.
- (ss) **"Early Engineering and Procurement Agreement"** means any agreement between the Seller and the Buyer authorizing the Buyer to begin certain interconnection activities in respect of the Seller's Plant.
- (tt) **"Economic Losses"** means an amount equal to the present value of the economic loss, exclusive of Costs, if any, to the relevant Party resulting from the termination of this EPA, determined in accordance with sections 15.5 and 15.7, respectively.
- (uu) **"Effective Date"** means the date set out on page one of this EPA.
- (vv) **"Emergency Condition"** means a condition or situation that in the judgment of the Buyer is imminently likely to:
 - (i) endanger life or property; or
 - (ii) cause a material adverse effect on the security or reliability of, or damage to, the BC Hydro System or any other system connected to the BC Hydro System.
- (ww) **"Emergency Request"** has the meaning given in section 7.9(a).
- (xx) **"Energy"** means all electric energy expressed in MWh generated by the Seller's Plant, excluding electric energy required to service the Seller's Plant.
- (yy) **"Energy Delivery Period"** means the period of time from COD until the end of the Term.
- (zz) **"Energy Price"** means, for an hour:
 - (i) subject to section 11.3, \$●/MWh; **[Note: This will be the bid price specified in the Proposal.]** multiplied by
 - (ii) $(CPI_Y / CPI_{Jan\ 1,\ 2024})$; multiplied by
 - (iii) $[0.7 + (0.3 \times CPI_{Jan\ 1,\ N} / CPI_Y)]$, multiplied by
 - (iv) the applicable Time of Delivery Factor,where "Y" = the first day of the month in which the earlier of COD and Guaranteed COD occurs; and

"N" = the calendar year in which the hour for which the Energy Price is being calculated occurs.
- (aaa) **"Energy Source"** has the meaning given to it in Appendix B.

- (bbb) **“Environmental Attributes”** means any and all environmental attributes, aspects, characteristics, claims, credits, benefits, emissions reductions, reporting rights, offsets, additionality or allowances, howsoever entitled or designated, resulting from, attributable to or associated with Energy, the generation thereof by Seller’s Plant, the use thereof in substitution for other forms of energy or fuel and any avoided emission of pollutants, whether now or hereafter recognized or designated as such, including the following:
- (i) all attributes directly associated with, or that may be derived from, the Energy having decreased emissions or 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;
 - (ii) 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;
 - (iii) any credit, reduction right, offset, 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; and
 - (iv) all revenues, entitlements, benefits, rewards and other proceeds arising from or related to the foregoing, but for certainty not including:
 - (A) benefits or proceeds from environmental incentive programs offered by Governmental Authorities that do not require a transfer of the attributes in paragraphs (i) to (iii) above; and
 - (B) benefits or proceeds from social programs, including programs relating to northern or rural development, employment or skills training, or First Nations, that do not require a transfer of the attributes in paragraphs (i) to (iii) above.

For the purposes of this definition, “emissions” includes pollutants to the air, soil or water whether a gas, chemical or other substance attributable to the generation of energy and the delivery of energy, and include, without limitation, any of the same arising out of legislation or regulation concerned with oxides of nitrogen, sulfur, or carbon, methane, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and any other greenhouse gas (being a gas that absorbs and emits radiation within the thermal infrared range, whether now or hereafter recognized as such), with particulate matter, soot or mercury, or implementing the United Nations Framework Convention on Climate Change (the “UNFCCC”) or the Kyoto Protocol to the UNFCCC or crediting “early actions” with a view thereto, or laws or regulations involving or administered by a U.S. or Canadian environmental protection authority or agency; and “credit” includes carbon

credits, portfolio credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags, tradable renewable credits, ECOLOGO® and Green-e® products certifications and credits, environmental air quality credits and emissions reduction credits.

- (ccc) **“Environmental Certification”** means any certification, licensing or approval the Buyer requires the Seller to obtain under section 10.1.
- (ddd) **“Equity Ownership”** means, with respect to any Person, the right to receive or the opportunity to participate in any payment or return from, and an exposure to loss or a risk of loss by, the business activities of such Person in relation to this EPA and the Seller’s Plant, by means, directly or indirectly, of an equity interest in a corporation, limited partnership interest in a limited partnership, partnership interest in a partnership, or other similar ownership interest.
- (eee) **“Estimated Interconnection Facilities Completion Date”** means the Buyer’s most recent estimated date for completing the Network Upgrades, as set forth in the Interconnection Facilities Study Report.
- (fff) **“Excess Energy”** means, in any hour during the Energy Delivery Period, the amount of Delivered Energy that exceeds the Hourly Limit.
- (ggg) **“Exemption”** means a lawful exemption from the requirement under section 71 of the UCA that this EPA be filed thereunder as an “energy supply contract” as defined therein.
- (hhh) **“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, or any Person taking any mortgage, pledge, charge or grant of a security interest in all or any part of the Seller’s Plant or this EPA.
- (iii) **“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: (a) is undisputed by the Party owing such amount; or (b) has been finally determined by an arbitration award under section 14.5(a) or by a court order and all rights of appeal in respect of such award or order have been exhausted or have expired.
- (jjj) **“First Nation”** means any band, band council, tribal council, Aboriginal treaty nation and/or other Aboriginal group or governing body, however organized, that is established by Aboriginal people within their traditional territory in British Columbia and which represents the collective rights of the nation under Section 35 of the *Constitution Act, 1982*.
- (kkk) **“First Nations Equity Ownership”** means, from time to time during the Term, the aggregate percentage of the Equity Ownership of the Seller that is at that time held, directly or indirectly, by Project First Nations.
- (III) **“Force Majeure”** means any event or circumstance not within the control of the Party invoking Force Majeure, or of any of its Affiliates, but does not include:

- (i) any economic hardship or lack of money, credit or markets for any reason whatsoever, including in relation to the Third Party Owner or the Third Party System;
- (ii) a mechanical breakdown or control system hardware or software failure, including any such breakdown or failure of any component of the Third Party System;
- (iii) any refusal, failure or delay of any Governmental Authority in granting any Material Permit to the Seller or any Third Party Permit, whether or not on terms and conditions that permit the Seller to perform its obligations under this EPA;
- (iv) 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 or, for the Seller, that is a result of a breach by the Third Party Owner of a Third Party Permit or any applicable Laws;
- (v) 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;
- (vi) for the Seller, any Third Party System Outage, disconnection of the Seller's Plant from the Third Party System, or disconnection of the Third Party System from the BC Hydro System;
- (vii) for the Seller, any event or circumstance caused by a breach of, or default under, any of the Indirect Interconnection Arrangements by the Seller or the Third Party Owner;
- (viii) a BC Hydro System Constraint, unless the BC Hydro System Constraint:
 - (A) is caused or required as a result of an event or circumstance that is itself Force Majeure; or
 - (B) for the Buyer only, is attributable, in whole or in part, to any event or circumstance on the Seller's Side of the POI;
- (ix) any acts or omissions of:
 - (A) any Affiliate, employee, director, officer, agent or other representative of the Party invoking Force Majeure;
 - (B) any vendor, supplier, contractor, subcontractor, consultant or customer of or to the Party invoking Force Majeure; or
 - (C) any other Person for whom the Party invoking Force Majeure is responsible at law; or
 - (D) for the Seller, any Third Party Owner or any Affiliate, employee, director, officer, agent, representative, vendor, supplier, contractor,

subcontractor, consultant or customer of the Third Party Owner, or any other Person for whom the Third Party Owner is responsible at law,

unless, in any case, the act or omission is caused by an event or circumstance that would constitute Force Majeure if the Person described above was a party to this EPA in place of a Party invoking Force Majeure; or

- (x) any failure of or constraint on the supply of Fuel, unless the failure or constraint is caused by an event or circumstance that would itself constitute Force Majeure under this EPA.
- (mmm) **“Force Majeure Days”** means, with respect to a relevant milestone under this EPA, the number of days the Seller is delayed in achieving the relevant milestone solely as a result of Force Majeure invoked by the Seller in accordance with section 14.8.
- (nnn) **“Forced Outage”** means an Outage that is not a Planned Outage.
- (ooo) **“Fuel”** means any Clean or Renewable Resource and any Auxiliary Fuel used to generate Energy at the Seller’s Plant.
- (ppp) **“Fuel Plan”** means the Seller’s plan for the supply and consumption of Fuel, as specified in Appendix J, and any subsequent plan approved by the Buyer in accordance with sections 4.8, 6.4 or 6.8 of this EPA.
- (qqq) **“Gains”** means an amount equal to the present value of the economic benefit, exclusive of Costs, if any, to the relevant Party resulting from the termination of this EPA, determined as described in sections 15.5 and 15.7, respectively.
- (rrr) **“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 region of the Western Electricity Coordinating Council (or any successor organization of which the Buyer is a member).
- (sss) **“Governmental Authority”** means any federal, provincial, local or foreign government or any of their boards or agencies, or any regulatory authority other than the Buyer and the Seller and Persons Controlled by the Buyer or the Seller.
- (ttt) **“GST”** means the goods and services tax imposed under the *Excise Tax Act* (Canada) as that Act may be amended or replaced from time to time.
- (uuu) **“Guaranteed COD”** means _____, or such later date as determined pursuant to section 5.6. *[Note: The Guaranteed COD from the Seller’s Proposal will be inserted in this definition.]*

- (vvv) “**Guaranteed COD Termination Date**” has the meaning given in section 15.1(b).
- (www) “**Hourly Limit**” means, subject to section 4.7, _____ MWh measured at the POI in any hour, unless increased or waived by the Buyer for a period of time specified in writing by the Buyer from time to time in its sole discretion (which increase or waiver may be revoked by the Buyer at any time by notice to the Seller). *[Note: The Hourly Limit inserted in this definition will be the Plant Capacity from the Seller’s Proposal multiplied by one hour.]*
- (xxx) “**Indemnitee**” has the meaning given in section 18.3.
- (yyy) “**Indemnitor**” has the meaning given in section 18.3.
- (zzz) “**Indirect Interconnection**” means the facilities and procedures that enable the flow of electric power from the Seller’s Plant, *over the Third Party System*, to the BC Hydro System and vice versa.
- (aaaa) “**Indirect Interconnection Arrangements**” means:
- (i) *the Third Party Interconnection Agreement, including any amendments to the Third Party Interconnection Agreement that the Buyer requires to accommodate the Indirect Interconnection;*
 - (ii) *the Wheeling Agreement;*
 - (iii) *[any amendments required by the Buyer to the electricity purchase agreement dated ● between the Buyer and the Third Party Owner to accommodate the Indirect Interconnection;] [Note: Square bracketed language to be included only for EPAs with the Third Party Owner that exist on the Effective Date.]*
 - (iv) *any exemptions or other regulatory arrangements that may be required or otherwise obtained, and that in any case have been approved in advance by the Buyer, in connection with the potential regulation of the Third Party Owner as a “public utility”, as defined in the UCA, with respect to the transmission of Energy over the Third Party System to the POI and delivery of Energy at the POI, and the performance by the Third Party Owner of its obligations under the other arrangements specified in this section 1.1(aaaa);*
 - (v) *any amendments required by the Buyer to any agreement between the Buyer and the Third Party Owner for the supply of electricity by the Buyer to the Third Party Owner over the Third Party System; and*
 - (vi) *all other commercial and regulatory arrangements among the Buyer and the Third Party Owner or the Seller (or both, if required by the Buyer), to accommodate the Indirect Interconnection, including any amendments to any other agreements between the Buyer and the Third Party Owner, that are in the Buyer’s determination required to permit the Indirect Interconnection and the delivery of Energy to POI.*

- (bbbb) **“Interconnection Agreement”** means the agreement to be entered into between the Seller and the Buyer to enable the Interconnection. *[Note: This definition to be deleted for an Indirect Interconnection.]*
- (cccc) **“Interconnection Facilities Study Report”** means the report issued to the Seller by the Buyer in respect of the equipment, engineering, procurement and construction required to connect the Seller’s Plant, over the Third Party System, to the BC Hydro System.
- (dddd) **“Interconnection Security”** means the security provided by the Seller to the Buyer in accordance with the Interconnection Agreement or the OATT, as applicable. *[Note: This definition, and all uses of term Interconnection Security, to be deleted for an Indirect Interconnection.]*
- (eeee) **“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 in effect from time to time.
- (ffff) **“LDs”** means any COD Delay LDs or Delivery Shortfall LDs payable by the Seller to the Buyer. *[Note: The reference to “Delivery Shortfall LDs” will only be included for Sellers that made a capacity commitment in their Proposal.]*
- (gggg) **“Letter of Credit Failure”** means:
- (i) the Seller fails to renew or replace the Performance Security by no later than 30 days prior to the expiry thereof;
 - (ii) the Seller fails to amend or replace the Performance Security as required under section 12.1(a) by no later than 30 days prior to the requirement to amend or replace such Performance Security arises or fails to replenish the Performance Security under section 12.5 by the time specified therein;
 - (iii) the issuer of the Performance Security:
 - (A) fails to maintain a credit rating of at least the minimum rating specified in section 12.4(a);
 - (B) fails to comply with or perform its obligations under the Performance Security; or
 - (C) disaffirms, disclaims, repudiates, terminates, rejects, in whole or in part, or challenges the validity of, the Performance Security; or
 - (iv) the Performance Security 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 Article 12 for return of the Performance Security to the Seller.

- (hhhh) **“Line Losses”** means all losses of Energy associated with the transmission of Energy and other electricity, if applicable, on the Seller’s Side of the POI that are recorded by the Meter at the POI.
- (iiii) **“Long Term Operating Plan”** has the meaning given in section 6.7(a).
- (jjjj) **“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 this 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.
- (kkkk) **“Material Permits”** means the following if and as required for the Seller's Plant:
- (i) environmental assessment certificate and/or decision statement;
 - (ii) any forest license or other right to harvest timber;
 - (iii) air emissions permit;
 - (iv) any permit, license or approval required with respect to the discharge of any type of waste from the Seller's Plant;
 - (v) water license;
 - (vi) zoning appropriate for the Seller's Plant;
 - (vii) any subdivision approval required to create separate legal title to the site on which the Seller's Plant is or shall be located;
 - (viii) any permits or approval required with respect to the storage of fuel at the Seller's Plant;
 - (ix) any permit, approval or authorization required for impacts to fish and fish, migratory birds, or species at risk;
 - (x) any permit, approval, or authorization for impacts to navigation or aviation;
 - (xi) any permit required for infrastructure or works in a federal or provincial park or protected area; and
 - (xii) any land tenure agreement for the Seller's Plant, including any lease, license of occupation, certificate of title, easement or similar agreement or instrument required with respect to the Seller's Plant, including all access roads to the Seller's Plant,

each on terms and conditions that permit the Seller to comply with its obligations under this EPA.

- (llll) **“Maximum Power Injection Limit”** means the maximum power injection limit:
- (i) specified in the **Third Party** Interconnection Agreement (including any associated operating orders); or
 - (ii) if not specified in the **Third Party** Interconnection Agreement, **specified in the Indirect Interconnection Arrangements between the Buyer and the Third Party Owner or otherwise** determined by the Buyer in the interconnection process.
- (mmmm) **“Meter”** means a meter or meters (as the Buyer determines in its sole discretion may be required) leased by the Buyer to the Seller that is/are: (a) capable of accurately measuring the quantity of Energy delivered to the POI in each hour independent of all other generation equipment or facilities and transmitting the information to the Buyer; (b) capable of being remotely interrogated by the Buyer; and (c) tested and sealed according to any Measurement Canada standards.
- (nnnn) **“Network Upgrade Costs”** means the costs associated with the design, engineering, construction and commissioning of Network Upgrades.
- (oooo) **“Network Upgrades”** means those additions, modifications and upgrades to the BC Hydro System, identified in the study processes that are required to accommodate the **Indirect** Interconnection.
- (pppp) **“OATT”** means the Buyer’s Open Access Transmission Tariff, as filed with and accepted by the BCUC, as amended and refiled from time to time.
- (qqqq) **“Off-Peak Hours”** means all hours other than On-Peak Hours.
- (rrrr) **“On-Peak Hours”** means hours ending 0700 - 2200 (6:00 a.m. - 10 p.m.) PPT Monday through Saturday inclusive, but excluding all hours on any such day that is recognized as a “paid holiday” for British Columbia government employees as published by the Province of British Columbia from time to time (including any day Monday through Friday that is a paid holiday for British Columbia government employees due to a holiday occurring on a Saturday or Sunday).
- (ssss) **“Operating Plan”** means an operating plan for the Seller’s Plant prepared in accordance with the guidelines provided by the Buyer from time to time, that includes for the term of each operating plan: (a) a schedule of the expected generation output of the Seller’s Plant and expected total deliveries of Energy at the POI in each month, (b) a schedule of any Planned Outages of the Seller’s Plant expected by the Seller, and (c) such other information concerning the operations of the Seller’s Plant as the Buyer may from time to time request.
- (tttt) **“Outage”** means a partial or total interruption in the ability of the Seller’s Plant to generate or deliver Energy that is not caused solely by Force Majeure.
- (uuuu) **“Outage Notice”** means a notification of any Forced Outage **or Third Party System Outage** or revised notification of any Planned or Forced Outage **or Third Party System Outage** required to be delivered by the Seller to the Buyer under this EPA that describes

the timing, frequency, nature and duration of the Outage or Third Party System Outage, as applicable, and that is in a format that may be prescribed by the Buyer from time to time.

(vvvv) “**Party**” means the Buyer or the Seller, and “**Parties**” means both of them.

(www) “**Payment Suspension Period**” has the meaning given in section 7.4(d).

(xxxx) “**Performance Security**” means a letter of credit in the form specified in section 12.4 in an amount equal to \$60,000/MW multiplied by the Plant Capacity.

(yyyy) “**Permits**” means permits, certificates, licences, land tenures, and other approvals required for the design, construction, ownership, operation, maintenance and/or decommissioning of the Seller’s Plant and the delivery of Energy to the POI, including Material Permits.

(zzzz) “**Person**” means an individual, body corporate, firm, partnership, joint venture, trust, legal representative or other legal entity.

(aaaa) “**Planned Islanding Capability**” means the ability of a generator to electrically energize, in a safe, controlled and reliable manner, a portion of the BC Hydro System, including loads, that is separated from the rest of the BC Hydro System. *[Note: This definition will be deleted for indirect interconnections.]*

(bbbbb) “**Planned Outage**” means an Outage for purposes of scheduled inspection, repair and/or maintenance of the Seller’s Plant.

(cccc) “**Plant Capacity**” means the maximum electrical capacity of the Seller’s Plant expressed in MW as set out in Appendix B (as may be amended during the Term in accordance with section 4.8 or 6.4).

(ddddd) “**POI**” means the point at which the Seller’s Plant indirectly interconnects with the BC Hydro System, being the point where the Third Party System interconnects with the BC Hydro System, as described in Appendix B.

(eeee) “**Potential Impacts**” means any adverse or potentially adverse impact on the established or potential aboriginal rights (including title) or treaty rights of a First Nation as a result of:

- (i) this EPA;
- (ii) the Seller’s Plant;
- (iii) the Indirect Interconnection or the Third Party System; or
- (iv) any activities directly related to the Seller’s Plant or the Third Party System that enable the Seller to comply with its obligations under this EPA that are carried out by the Seller, any Affiliate, consultant or contractor of the Seller or any other Person for whom the Seller is responsible at law, or by the Third Party

Owner, any Affiliate, consultant or contractor of the Third Party Owner or any other Person for whom the Third Party Owner is responsible at law.

- (fffff) “**PPT**” means Pacific Prevailing Time, which means Pacific Daylight Time or Pacific Standard Time as applicable.
- (ggggg) “**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 this EPA, plus 3%.
- (hhhhh) “**Prime Rate**” means the floating prime interest rate announced from time to time by the main branch of Bank of Montreal in Vancouver, British Columbia, 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.
- (iiii) “**Proceeding**” has the meaning given in section 1.2(d).
- (jjjjj) “**Project Assets**” means the Seller’s Plant and all rights, property, assets, equipment, materials and contracts required to design, engineer, procure, construct, commission, operate and maintain the Seller’s Plant, whether real or personal and whether tangible or intangible, including equipment and other warranties, Permits, supply and other contracts, the goodwill in and right to use the name by which the Seller’s Plant is commonly known, and the books, records and accounts with respect to the Seller’s Plant.
- (kkkkk) “**Project First Nation**” means a First Nation identified by the “Contacts for First Nations Consultative Areas” public map, which is an online tool accessible through the Province of British Columbia website and located at: <http://catalogue.data.gov.bc.ca/dataset/first-nations-consultative-areas-report-public-map-service> (or any successor website administered by the Province of British Columbia intended to provide equivalent comprehensive public information regarding First Nations’ interests), who may have Aboriginal interests within the area that the Seller’s Plant is situated.
- (lllll) “**Project Standards**” means:
- (i) all applicable Laws;
 - (ii) the terms and conditions of all Permits;
 - (iii) Good Utility Practice;
 - (iv) the description of the Seller’s Plant in Appendix B;
 - (v) the obligations in section 6.5 related to metering;
 - (vi) the requirement that Energy generated in a Contract Year in excess of the Auxiliary Fuel Annual Energy Threshold must qualify as Clean Energy;

- (vii) the requirement that Energy generated from Auxiliary Fuel, excluding Start-Up Fuel, used in any Contract Year must not exceed the Auxiliary Fuel Annual Energy Threshold for that Contract Year;
 - (viii) the terms and conditions of this EPA and the Third Party Interconnection Agreement, including all associated operating orders, and all other Indirect Interconnection Arrangements; and
 - (ix) the Contractor Standards for Ethical Conduct applicable to Buyer contracts, as it may be amended, revised or restated from time to time, that is posted on the Buyer's website.
- (mmmmm) "Proposal" means the proposal submitted by the Seller pursuant to the RFP.
- (nnnnn) "Proposal Documents" means the Proposal and all documents and information provided by the Seller to the Buyer in connection with such Proposal, whether concurrently with or after the date of submission of the Proposal to the Buyer.
- (ooooo) "Proposal First Nations" means the following Project First Nation[s]:
_____. *[Note: The name(s) of the Project First Nation(s) identified in the Proposal as holder(s) of an Equity Ownership in the Seller that contributes to the Seller's Committed Level of First Nations Equity Ownership will be inserted into this definition.]*
- (ppppp) "PST" means British Columbia provincial social service or sales taxes and similar or replacement assessments, if any.
- (qqqqq) "Records" means all records and logs required to properly administer this EPA, including:
- (i) Energy generation records and operating logs for each generator comprising part of the Seller's Plant, and for the Seller's Plant on an aggregated basis;
 - (ii) records of the source location, volume and content of all Fuel used to generate Energy, including information in relation to fuel heat content;
 - (iii) records of the total Energy generated in each Contract Year from each of Auxiliary Fuel and Start-Up Fuel, and records of any Auxiliary Fuel Energy Overage or Auxiliary Fuel Energy Overage Credit in any Contract Year;
 - (iv) a log of all Outages of the Seller's Plant and other reductions in Energy output (specifying the date, time, duration and reasons for each such Outage and each reduction in Energy output);
 - (v) Meter readings;
 - (vi) maintenance reports, including all records referred to in section 6.14;
 - (vii) invoice support records;

- (viii) documents concerning compliance with Project Standards, but excluding any such documents that are protected by solicitor-client privilege;
- (ix) records related to Development Costs;
- (x) all evidence of any avoided or avoidable costs during any Turn-Down Period or BC Hydro System Constraint; and
- (xi) information relating to the Environmental Certification, information relating to the existence, nature and quality of Environmental Attributes, information (including any reports and studies) relating to any environmental testing conducted with respect to the Seller's Plant and generation of Energy at the Seller's Plant, information required for the purposes of any Environmental Attributes or energy certification or tracking system, and any other information the Buyer requires to enable it or any of its Affiliates to obtain and realize the benefit of the Environmental Attributes,

all consistent with Good Utility Practice.

(rrrrr) **"RFP"** means the "[2024 Call for Power – Request for Proposals]" issued by the Buyer on ●, 202●, together with all [Addenda] thereto, and all other documents and forms referenced therein as forming part of the RFP. *[Note: Definition will be conformed to actual title and date of RFP.]*

(sssss) **"Seller"** means the Party so identified on page one of this EPA, and its successors and permitted assigns.

(ttttt) **"Seller Confidential Information"** means:

- (i) any of the Seller's confidential technical or financial information disclosed by the Seller to the Buyer; and
- (ii) all information that is or was "Confidential Information" under the Confidentiality Agreement as a result of disclosure by the Seller,

but excluding:

- (iii) this EPA; and
- (iv) information that (A) is or becomes in the public domain, other than as a result of a breach by the Buyer of this EPA or of the Confidentiality Agreement, or (B) is known to the Buyer before disclosure to it by the Seller, or becomes known to the Buyer thereafter, in either case by way of disclosure to the Buyer by any other Person who is not under an obligation of confidentiality with respect thereto.

(uuuuu) **"Seller Early Termination Payment"** has the meaning given in section 15.5(b).

(vvvvv) **“Seller Indemnified Parties”** means the Seller and its Affiliates, and their respective directors, officers, employees, agents, representatives, successors and permitted assigns.

(wwwww) **“Seller Material Permit Termination Payment”** has the meaning given in section 15.5(a).

(xxxxx) **“Seller Termination Payment”** means the Seller Material Permit Termination Payment or the Seller Early Termination Payment.

(yyyyy) **“Seller’s Plant”** means:

- (i) before COD, the Seller’s Plant as described in Appendix B (as may be updated from time to time in accordance with section 4.8(c)), and in any applicable study data, and in the description on which the study processes that are required to accommodate the **Indirect** Interconnection are based, 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 B and to interconnect that plant to the BC Hydro System **by way of an interconnection to the Third Party System (which, for greater certainty does not include the Third Party System)**, whether real or personal and whether tangible or intangible, including all books, Records and accounts with respect to the Seller’s Plant as described in Appendix B (as may be updated from time to time in accordance with section 4.8(c)) and in any applicable study data, and in the description on which the study processes that are required to accommodate the **Indirect** Interconnection are based; and
- (ii) after COD, the Seller’s Plant described in Appendix B (as may be updated from time to time in accordance with section 6.4(e)) 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 B and to interconnect that plant to the BC Hydro System **by way of an interconnection to the Third Party System (which, for greater certainty does not include the Third Party System)**, whether real or personal and whether tangible or intangible, including all books, Records and accounts with respect to the Seller’s Plant described in Appendix B (as may be updated from time to time in accordance with section 6.4(e)),

in each case as may be modified in accordance with this EPA.

(zzzzz) **“Seller’s Side of the POI”** means any facilities or activities located between the POI and the Seller’s Plant and, if applicable, beyond the Seller’s Plant and for greater certainty does not include: (i) any facilities or activities on the Buyer’s side of the POI or (ii) any Meters or associated equipment/duplicate meter installed by the Buyer wherever located.

(aaaaa) **“Start-up Fuel”** means that quantity of Auxiliary Fuel, expressed in GJ, that is used in a “black start” or “cold start” of generation facilities, from the time when Fuel is first combusted until the time when generation is stabilized.

- (bbbbbb) “Term” has the meaning given in section 2.1.
- (cccccc) **NOT USED.**
- (ddddd) “Test Energy” means Delivered Energy during any successful test conducted pursuant to section 5.2(b) that meets all of the applicable COD Test Requirements.
- (eeeeee) “Test Energy Price” means, \$40.00/MWh.
- (fffff) “Third Party Interconnection Agreement” means the interconnection agreement [to be entered into] between the Third Party Owner and the Buyer [dated _____, 20____] in respect of the facilities and procedures that enable the flow of electric power from the Third Party System to the BC Hydro System and vice versa, as amended or replaced from time to time. *[Note: If the Third Party Owner is a BC Hydro load customer, the Third Party Owner will be required to sign an interconnection agreement in BC Hydro’s standard form. If the Third Party Owner is an IPP/generator, the Third Party Owner will be required to sign an interconnection agreement in BC Hydro’s applicable standard form and, if the Third Party Owner is a party to an EPA with BC Hydro in respect of energy delivered at the POI, the EPA will also need to be amended to accommodate the indirect interconnection of the Seller’s Plant. If the Third Party Owner is not a load customer or generator, and will own and operate the Third Party System only, the Third Party Owner will be required to sign an interconnection agreement in BC Hydro’s standard form (or if there is an existing interconnection agreement with the Third Party Owner, replace the existing agreement, if not already in BC Hydro’s standard form, or otherwise amend the existing agreement as required by BC Hydro to accommodate the indirect interconnection of the Seller’s Plant).]*
- (ggggg) “Third Party Owner” means _____, the Person that is the sole owner and operator of the Third Party System, and includes any successors in title to the owner of the Third Party System. *[Note: Third Party Owner name to be inserted.]*
- (hhhhh) “Third Party Permits” means permits, certificates, licences, land tenures, and other approvals required for the design, construction, ownership, operation, maintenance and/or decommissioning of that portion of the Third Party System required to transmit Energy from the Seller’s Plant to the POI, including any such approval required to transmit Energy to the POI.
- (iiiiii) “Third Party System” means the transmission infrastructure (including transmission, substation, protection, control and communication facilities, as applicable) that is directly connected to the BC Hydro System and that indirectly connects the Seller’s Plant to the POI.
- (jjjjj) “Third Party System Outage” means any partial or total interruption in the ability of the Third Party System to transmit Energy over the Third Party System and deliver that Energy to the POI.

(kkkkkk) **“Time of Delivery Factor”** means, for an hour, the applicable percentage from the Time of Delivery table attached as Appendix C for an On-Peak Hour or Off-Peak Hour, as applicable.

(llllll) **“Turn-Down Energy”** means, in any hour during a Turn-Down Period, the lesser of:

- (i) the amount of Energy that could have been generated and delivered to the POI in that hour but for the Seller’s compliance with the directions in a Curtailment Request less any amount of Delivered Energy in the hour; and
- (ii) the Hourly Limit less the amount of Delivered Energy in the hour (which if a negative number will be deemed to be zero),

and for greater certainty, energy that could have been generated and delivered to the POI in an hour either:

- (iii) but for the Seller’s compliance with the directions in an Emergency Request; or
- (iv) during a BC Hydro System Constraint but for the Seller’s compliance with the directions in a Curtailment Request,

is not Turn-Down Energy for the purposes of this EPA. **[Note: For storage hydro projects or projects with battery storage, this will also need to exclude any extra water or energy that was stored (and related future energy generation) as a result of the applicable Curtailment Request.]**

(mmmmmm) **“Turn-Down Period”** means a period of time during the Energy Delivery Period in which the Seller turns down or shuts off the Seller’s Plant pursuant to and in accordance with a Curtailment Request other than during a BC Hydro System Constraint, and for greater certainty, does not include any ramp-down or ramp-up periods, or any delay in restarting the Seller’s Plant for any reason, before or after the end of the period of time specified in the Curtailment Request.

(nnnnnn) **“UCA”** means the *Utilities Commission Act* (British Columbia).

(oooooo) **“WDCS Notice”** has the meaning given in paragraph 6 of Appendix I.

(pppppp) **“Wheeling Agreement”** means the agreement(s) between the Seller and the Third Party Owner dated _____, 20____, pursuant to which the Third Party Owner will transmit Test Energy and all Energy generated during the Energy Delivery Period over the Third Party System from the Seller’s Plant to the POI.

(qqqqqq) **“Wind Data Collection System”** means the data collection system(s) for the Seller’s Plant described in paragraph 1(a) of Appendix I.

1.2 Interpretation

- (a) **Headings** - The division of this EPA into Articles, sections, paragraphs and Appendices and the insertion of headings are for convenience of reference only and do not affect the interpretation of this EPA.
- (b) **Appendices** - The following is a list of the Appendices to this EPA:
- | | |
|------------|---|
| Appendix A | Addresses for Notice |
| Appendix B | Seller's Plant Description |
| Appendix C | Time of Delivery Factor Table |
| Appendix D | COD Certificate |
| Appendix E | COD Test Requirements |
| Appendix F | Form of Development Report |
| Appendix G | Form of Statutory Declaration |
| Appendix H | Form of Letter from Project First Nation(s) |
| Appendix I | Wind Data Collection System |
| Appendix J | Fuel Plan |
- (c) **Plurality and Gender** - Words in the singular include the plural and vice versa. Words importing gender include the masculine, feminine and neuter genders.
- (d) **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 14.5, 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 exclusive jurisdiction in respect of any Proceeding and the Parties hereby irrevocably attorn to the jurisdiction of such courts in respect of any Proceeding.
- (e) **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.
- (f) **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.
- (g) **Currency** - References to dollars or \$ means Canadian dollars, unless otherwise stated.

- (h) **Reference Indices** – Except as otherwise provided in section 1.2(j)(iii) of this EPA, if any rating, 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 will be amended as necessary to accommodate such replacement index, tariff or price quotation, all as determined by the Buyer.
- (i) **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.
- (j) **Payment Calculations** - All payments under this EPA will be calculated applying the following principles:
 - (i) all payment calculations will be rounded to the nearest cent;
 - (ii) Energy will be expressed in MWh rounded to two decimal places;
 - (iii) if Statistics Canada (or the then recognized statistical branch of the Government of Canada):
 - (A) 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 Government of Canada);
 - (B) at any time ceases to publish or provide the CPI, then the provisions of section 1.2(h) will apply;
 - (C) has not published the CPI for a relevant period at the time the Seller is required to provide the Buyer with an invoice, the Seller will 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 will recalculate the invoice amounts in the next succeeding invoice and will include a credit or debit, without interest, in the next succeeding invoice based on the results of the recalculation; or
 - (D) recalculates the CPI within 36 months after an invoice affected by that CPI calculation has been issued, then the Seller will recalculate the invoice amounts for the relevant period in the next succeeding invoice and will include a credit or debit, without interest, in the next succeeding invoice based on the results of the recalculation.
- (k) **Additional Interpretive Rules** - For the purposes of this EPA, except as otherwise expressly stated:

- (i) “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;
- (ii) 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, paragraph or other subdivision;
- (iii) 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;
- (iv) the word “month” refers to a calendar month;
- (v) 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;
- (vi) 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
- (vii) 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, will be deemed to be given or done when required hereunder if given or done on or before the next following Business Day.

2. TERM

2.1 Term

The term (“**Term**”) of this EPA commences on the Effective Date and, unless it is terminated earlier as authorized under this EPA, continues until the 30th anniversary of COD, provided that the Term will be extended by the number of days in any period or periods after COD when the Buyer or the Seller (or both) has invoked Force Majeure in accordance with this EPA as a result of an inability of the Buyer to accept, or of the Seller to generate and deliver, Energy, in either case solely as a result of the event or circumstance of Force Majeure, and provided further that such extensions for Force Majeure will in aggregate not be greater than 730 days.

3. REGULATORY

3.1 Regulatory Filing

- (a) The Buyer will file this EPA with the BCUC under section 71 of the UCA as an energy supply contract in accordance with the Buyer’s usual filing practices within a reasonable period of time following the Effective Date.

- (b) The Buyer will take reasonable steps to secure BCUC Acceptance. The Seller will provide any assistance reasonably requested by the Buyer to secure BCUC Acceptance. For greater certainty, neither Party will be obligated to agree to amendments to this EPA that may be required to secure BCUC Acceptance in order to satisfy its obligations in this section 3.1(b).
- (c) The Parties must not take, and must ensure that none of their respective Affiliates take, any action inconsistent with the performance by the Parties of their obligations under this section 3.1.

3.2 Termination

- (a) If BCUC Acceptance has not been issued on or before the date that is 180 days after the date on which BC Hydro files the EPA with the BCUC under section 3.1(a) (or such later date as the Buyer, in its sole discretion, may from time to time elect by notice to the Seller), the Buyer may terminate this EPA at any time after that date by delivering notice of termination to the Seller, and such termination will be effective on the date of delivery of such notice of termination, provided that the Buyer may not terminate this EPA under this section 3.2 if BCUC Acceptance is issued before the notice of termination is delivered to the Seller.
- (b) If this EPA is terminated by the Buyer in accordance with this section 3.2:
 - (i) within 30 days following the date of termination, the Buyer shall return the Performance Security to the Seller; and
 - (ii) the Parties will have no further liabilities or obligations under, or in relation to, this EPA, except as set out in section 15.4.

3.3 Exemptions

Sections 3.1 and 3.2 are of no effect if an Exemption exists before termination of this EPA under section 3.2. Nothing in this EPA obliges either Party to seek an Exemption, and the Parties acknowledge that they have entered into this EPA with the expectation that there will not be an Exemption of any kind.

4. DEVELOPMENT

4.1 Development and Construction of the Seller's Plant

The Seller shall:

- (a) design, engineer, construct and commission the Seller's Plant, and indirectly interconnect the Seller's Plant to the BC Hydro System through the Third Party System in a manner that enables transmission and delivery of Energy to the POI, all in compliance with the Project Standards;
- (b) ensure that all equipment and materials installed in or at the Seller's Plant or in connection with the Indirect Interconnection comply with the Project Standards; and

- (c) commence the work described in section 4.1(a) by the date that is 30 days after BCUC Acceptance or Exemption, as applicable, and shall thereafter diligently and continuously carry out such activities.

The Seller shall ensure that the Seller's Plant is designed, engineered and constructed to operate throughout the Term in accordance with the requirements of this EPA.

4.2 Permits

The Seller shall promptly obtain, comply with and maintain in full force and effect, all Permits and will promptly notify the Buyer if it receives any notice or becomes aware of any actual or anticipated cancellation or suspension of any of the Material Permits. The Seller shall on request promptly provide to the Buyer copies of all Material Permits. The Seller acknowledges that this EPA and the terms and conditions of this EPA are not intended to, and do not, fetter the discretion of any Governmental Authority with respect to any decision or action by that Governmental Authority with respect to the Seller's Plant, and the Buyer shall be entitled to exercise any rights and remedies available to it under this EPA resulting from any such decision or action, including the right to terminate this EPA if any of the circumstances described in section 15.1 occur as a result of the decision or action and the right to receive any Seller Termination Payment payable under section 15.5 as a result of such termination. Additionally, any failure by the Seller to comply with its obligations in this section 4.2 resulting in the cancellation or suspension of a Material Permit is a "material default" for the purposes of this EPA, and the Buyer may terminate this EPA under section 15.1(q) in addition to any other rights and remedies available to it under this EPA resulting from any such failure, cancellation or suspension, including the right to receive any Seller Termination Payment payable under section 15.5.

4.3 Development Reports

On each January 1, April 1, July 1 and October 1 after the Effective Date and continuing until COD, the Seller shall deliver to the Buyer a report in the form attached to this EPA as Appendix F describing the progress of development of the Seller's Plant (each, a "**Development Report**").

4.4 Interconnection Facilities Study Report

The Seller will provide to the Buyer, no later than the earlier of the time required by the OATT, if applicable, or 30 days after the Effective Date, all information, payments and security necessary for the Buyer to complete the Interconnection Facilities Study Report, and will thereafter diligently and continuously carry out such activities as may be necessary or required to complete the Interconnection Facilities Study Report in order for the Seller's Plant to achieve COD as specified in and required by this EPA.

4.5 Access to Seller's Plant during Development

After the Effective Date, the Seller shall permit the Buyer and its representatives full access to the lands on which the Seller's Plant will be constructed for the purpose of satisfying itself that the Seller's Plant is being designed, engineered, constructed and commissioned in compliance with the Project Standards.

4.6 Buyer Cost Responsibilities

Except as otherwise set out in the OATT or the **Third Party** Interconnection Agreement, the Buyer shall be responsible for paying all costs incurred by the Buyer for the design, engineering, procurement, construction and commissioning of the Network Upgrades, all as described in the Interconnection Facilities Study Report or, once executed or amended as required by this EPA, the **Third Party** Interconnection Agreement.

4.7 Hourly Limit Adjustment

If, at any time after the Effective Date, the Maximum Power Injection Limit is less than the Plant Capacity, the Hourly Limit will be reduced to the Maximum Power Injection Limit for any period of time that the Maximum Power Injection Limit is less than the Plant Capacity.

4.8 Changes to Seller's Plant before COD

- (a) Subject to section 4.8(b), the Seller shall not, before COD, make any change to the Seller's Plant unless it has given reasonable prior notice to the Buyer in writing and provided any additional information or other details requested by the Buyer that the Buyer deems necessary to consider the potential change.
- (b) The Seller shall not, before COD, make any material change to the Seller's Plant, including any change in the Plant Capacity, the POI, **the Fuel Plan**, or the information that was provided to the Buyer for purposes of the preliminary report issued to the Seller by the Buyer to evaluate the feasibility of the proposed **Indirect** Interconnection or that is, once in effect, contained in the **Third Party** Interconnection Agreement, without the prior written consent of the Buyer. In considering whether to give consent to the proposed change, the Buyer will be entitled to take into consideration whether and to what extent such change would increase the Buyer's liability for any costs with respect to the BC Hydro System, the Seller's Plant or any other project or otherwise increase the Buyer's risk, including the scope and magnitude of Network Upgrades that may be triggered by the proposed change. The Parties acknowledge that the Buyer may require, as a condition of any such consent, that:
 - (i) the Seller obtain at its sole cost, a study report prepared by the Buyer confirming that the change is technically feasible and containing an estimate of the incremental cost, if any, of completing Network Upgrades;
 - (ii) the Seller will **ensure that the Third Party Owner will** comply with all requirements of, and obtain all approvals of the change that may be required under, the **Third Party** Interconnection Agreement or the OATT, as applicable, including any requirements relating to the Interconnection Security or applicable to a Material Modification as defined under the OATT;
 - (iii) the Seller provide a legally binding written commitment to pay to the Buyer the amount of the incremental costs incurred, or to be incurred, by the Buyer as a result of the change or to provide security in respect of some or all of such costs;

- (iv) that this EPA and/or the Indirect Interconnection Arrangements be amended by written agreement to accommodate the impacts of the proposed change, including relating to Potential Impacts of the proposed change, and to make any other changes that the Buyer determines are necessary to accommodate the change, all at the Seller's cost, which may include amendments to this EPA to incorporate: (A) a requirement that the Seller notify the Buyer of any Aboriginal Claim; and (B) commitments by the Seller to consult with the First Nation(s) making any Aboriginal Claim or assist the Buyer in the consultation process, take measures to address any Potential Impacts, and report to the Buyer regarding such consultation and measures;
 - (v) a proposed revised Fuel Plan containing information of the type and detail set out in the then existing Fuel Plan, any proposed variations from the then existing Fuel Plan, and such other planning data relating to the Fuel as the Buyer may request; and/or
 - (vi) any other terms and conditions that the Buyer reasonably requires relating to potential impacts of the proposed change.
- (c) If the Seller makes a change to the Seller's Plant prior to COD that is not material, or if the Buyer consents to a change to the Seller's Plant under section 4.8(b) and the Seller complies with any conditions of that consent, the Parties will update and replace Appendix B to reflect the details of the change.

5. COMMERCIAL OPERATION DATE

5.1 Guaranteed COD

Without limiting section 11.1, the Seller shall ensure that the Seller's Plant achieves COD by the Guaranteed COD plus 365 days.

5.2 Requirements for COD

Subject to section 5.4, COD shall occur at 24:00 PPT on the day on which all of the following conditions for achievement of commercial operation of the Seller's Plant have been satisfied:

- (a) the Seller has obtained all Material Permits and all Third Party Permits required to permit transmission of Energy to the POI have been obtained, and all such Material Permits and all Third Party Permits are in full force and effect;
- (b) the Seller's Plant has successfully completed a test that meets all applicable COD Test Requirements;
- (c) the Interconnection Agreement has been executed and delivered by the Parties and is in effect, and the Seller is in compliance with its obligations under the Interconnection Agreement; *[Note: this section will be deleted for indirect interconnections.]*
- (d) the Seller has completed and tested the Wind Data Collection System, and all other requirements specified in Appendix I as being required prior to COD have been

completed; **[Note: This section will only be included if the Energy Source for the Seller's Plant is wind.]**

- (e) all of the Indirect Interconnection Arrangements:
 - (i) have been executed and delivered by the relevant parties;
 - (ii) have not been amended without the Buyer's prior written consent;
 - (iii) each of the Seller and the Third Party Owner are in compliance with their respective obligations thereunder; and
 - (iv) the Buyer has confirmed the satisfaction of the foregoing to the Seller in writing;
- (f) the Seller is not:
 - (i) Bankrupt or Insolvent;
 - (ii) in default of any payment obligation or requirement to post security under this EPA;
 - (iii) in material default of any of its other covenants, representations, warranties or obligations under this EPA, other than those defaults in respect of which the Seller has paid all LDs owing under this EPA; or
 - (iv) in material default under any Material Permit;and
- (g) the Seller has delivered to the Buyer:
 - (i) a Declaration of Compatibility-Generator (Operating), or such other document(s) of similar effect as may be substituted therefor, in respect of the Plant Capacity issued by the Buyer under the Third Party Interconnection Agreement, completed and executed by both Parties;
 - (ii) copies of all Material Permits in a form sufficient to demonstrate the Seller's compliance with section 5.2(a);
 - (iii) data from the Meters and other equipment and systems described in section 6.5 demonstrating compliance by the Seller with section 5.2(b);
 - (iv) proof of registration by the Seller with Measurement Canada as an electricity seller with respect to the Seller's Plant;
 - (v) a COD Certificate;
 - (vi) the Long Term Operating Plan;

- (vii) a statutory declaration made by the President and/or CEO (or equivalent) of the Seller, in the form attached as Appendix G, confirming that, at the time of COD, the First Nations Equity Ownership will be at least 25% of the Equity Ownership of the Seller and every Proposal First Nation will hold Equity Ownership;
- (viii) a letter from every Proposal First Nation and from any other Project First Nation that holds Equity Ownership in the Seller at COD, in substantially the form attached as Appendix H, confirming the level of Equity Ownership held by the applicable Project First Nation, which letter(s) collectively demonstrate that, at the time of COD, the First Nations Equity Ownership will be at least 25% of the Equity Ownership of the Seller and each Proposal First Nation will hold Equity Ownership of the Seller;
- (ix) the Annual Operating Plan for the period from COD to December 31 next following COD or if COD occurs after September 30, for the period from COD to December 31 in the year following COD; and
- (x) the WDCS Notice. *[Note: This item will only be included if the Energy Source for the Seller's Plant is wind.]*

5.3 Buyer Right to Observe

The Seller shall provide not less than 10 days' prior notice to the Buyer of the commencement of any proposed testing under section 5.2(b) and the Buyer may attend and observe each test under that section. If the Seller has given notice to the Buyer in accordance with this section, the Seller shall not be required to give a notice to the Buyer of any further tests which are commenced within 72 hours of the prior test under section 5.2(b). The Seller shall provide a new notice in accordance with this section 5.3 in respect of any test that commences more than 72 hours after the end of an unsuccessful test under section 5.2(b).

5.4 Early COD

Except with the Buyer's prior written consent, COD may not occur earlier than 180 days prior to the Guaranteed COD.

5.5 No Liability for Delay

- (a) Other than any postponement of the Guaranteed COD pursuant to section 5.6(a)(ii) due to delay in the completion of Network Upgrades, the Buyer will have no liability for delays in completion of any Network Upgrades or any other work undertaken by or on behalf of either Party or the Third Party Owner under the Third Party Interconnection Agreement or, if any, the Early Engineering and Procurement Agreement, howsoever arising.
- (b) The Buyer will have no liability for delays in completion of any other work undertaken by the Buyer on either side of the POI, howsoever arising.

5.6 Postponement of Guaranteed COD

- (a) Subject to section 5.6(c), if after the Effective Date:
 - (i) the Buyer determines that the Estimated Interconnection Facilities Completion Date is so late as to make the Guaranteed COD unachievable, the Buyer may, by written notice to the Seller, designate a later date for Guaranteed COD, provided that this paragraph will not apply if the Seller or the Third Party Owner has caused or contributed to any delay in the interconnection study process, including any delay in providing the Buyer with the information, payments or security specified in section 4.4 or failure by the Seller to diligently and continuously carry out the activities necessary or required to complete the Interconnection Facilities Study Report as described in section 4.4; or
 - (ii) the completion of Network Upgrades will be delayed beyond Guaranteed COD and the delay is solely attributable to the Buyer, the Guaranteed COD will be postponed by the length of the delay.
- (b) Subject to section 5.6(c), the Buyer will postpone the Guaranteed COD by the number of Force Majeure Days prior to Guaranteed COD, up to a maximum of 365 Force Majeure Days.
- (c) The maximum postponement of the Guaranteed COD under this EPA, in aggregate and for any reason, will be two years plus up to 365 Force Majeure Days.

6. OPERATION OF SELLER'S PLANT

6.1 Ownership

The Seller will be the sole owner and the operator of the Seller's Plant at all times during the Term.

6.2 Operation Costs and Liabilities

The Seller will be solely responsible for all costs, expenses, liabilities and other obligations associated with the design, engineering, construction, Indirect Interconnection, commissioning, operation, maintenance and decommissioning of the Seller's Plant.

6.3 Standard of Operation

- (a) Except as otherwise consented to by the Buyer, the Seller will ensure that the location, design, engineering, construction, Indirect Interconnection, commissioning, operation, maintenance and decommissioning of the Seller's Plant are and will be carried out at all times during the Term:
 - (i) in accordance with the information in the Proposal Documents and in Appendix B, in each case in all material respects;

- (ii) in compliance with the Project Standards, provided that if the requirements for Clean Energy are amended or replaced after the Effective Date, the Seller will make commercially reasonable efforts to operate the Seller's Plant in a manner that allows the Energy to continue to qualify as Clean Energy under the new requirements; and
 - (iii) by qualified and experienced individuals.
- (b) When the Seller is delivering Energy to the Buyer, the Seller will make commercially reasonable efforts to operate the Seller's Plant:
 - (i) such that the amount of Delivered Energy in any hour does not exceed the Hourly Limit; and
 - (ii) in a manner that ensures delivery of Energy at the POI at a uniform rate within each hour during which Energy is delivered.

6.4 Changes to Seller's Plant after COD

- (a) Without the Buyer's prior written consent, the Seller will not make any change, at or after COD, to:
 - (i) the Seller's Plant as described in Appendix B; or
 - (ii) any other aspects of the Seller's Plant or the information in the **Third Party Interconnection Agreement** where such change would increase the Buyer's liability for any costs with respect to the BC Hydro System, the Seller's Plant or any other project or otherwise increase the Buyer's risk.
- (b) The Seller will provide the Buyer with reasonable notice of any proposed change described in section 6.4(a), including:
 - (i) **if required by the Buyer, a report setting out with reference to the Fuel Plan:**
 - (A) **a description of the type and volume of Fuel consumed in the previous Contract Year, together with such additional information relating to the Fuel as the Buyer may reasonably require;**
 - (B) **a report of all material variances in the previous Contract Year between the Fuel Plan and the Seller's actual procurement and consumption of Fuel;**
 - (C) **the total Clean or Renewable Resources, Auxiliary Fuel and Start-up Fuel (all expressed in GJ) used to generate Energy in the previous year; and**
 - (D) **any other information as reasonably required by the Buyer;**
 - (ii) **a proposed Fuel Plan for the remainder of the Term containing information of the type and detail set out in the then existing Fuel Plan, any proposed**

variations from the then existing Fuel Plan, and such other planning data relating to the Fuel as the Buyer may reasonably request; and

- (iii) any other information at a sufficient level of detail regarding the proposed change required to permit the Buyer to make any determinations or decisions provided for in this section 6.4, including any information relevant to Potential Impacts of the proposed change.
- (c) The Seller acknowledges that the Buyer may require, as a condition of its consent to any change described in this section 6.4:
 - (i) that the Seller agree in writing to reimburse the Buyer or a third party as directed by the Buyer if the Buyer determines in its sole discretion that the Buyer or any third party has incurred or is likely to incur any incremental liability for any losses, costs and damages (including any incremental Network Upgrade Costs) with respect to the BC Hydro System, the Seller's Plant or any other project as a result of any change described in this section 6.4;
 - (ii) that the Seller provide security to the Buyer to secure such reimbursement obligation;
 - (iii) all requirements of, and all approvals of the change required under, the Third Party Interconnection Agreement or the OATT, as applicable, have been complied with or obtained, as applicable, including any requirements relating to the Interconnection Security;
 - (iv) that this EPA and/or the Indirect Interconnection Arrangements be amended by written agreement to accommodate the impacts of the proposed change, including relating to Potential Impacts of the proposed change, and to make any other changes that the Buyer determines are necessary to accommodate the change, all at the Seller's cost, which may include amendments to this EPA to incorporate: (A) a requirement that the Seller notify the Buyer of any Aboriginal Claim; and (B) commitments by the Seller to consult with the First Nation(s) making any Aboriginal Claim or assist the Buyer in the consultation process, take measures to address any Potential Impacts, and report to the Buyer regarding such consultation and measures;
 - (v) a proposed revised Fuel Plan containing information of the type and detail set out in the then existing Fuel Plan, any proposed variations from the then existing Fuel Plan, and such other planning data relating to the Fuel as the Buyer may request; and/or
 - (vi) any other terms and conditions that the Buyer reasonably requires relating to potential impacts of the proposed change.
- (d) If the change requiring the Buyer's consent is the result of the Seller's agreement with a third party to interconnect a facility to the Seller's Plant and transmit electricity via the Seller's Plant to the POI, the Buyer will require as a condition of consent that the Seller agree to be responsible for any incremental losses of Energy, Environmental Attributes,

costs, damages and risks associated with the proposed indirect interconnection and will require that this EPA and the **Third Party Interconnection Agreement, and potentially other Indirect Interconnection Arrangements**, be amended to incorporate any other changes that the Buyer determines are necessary to accommodate the third party interconnection, all at the Seller's cost.

- (e) If the Buyer consents to a change to the Seller's Plant under section 6.4(a) and the Seller complies with any conditions of that consent, the Parties will update and replace Appendix B to reflect the details of the change.

6.5 Metering

[Note: Further amendments to the metering requirements in this EPA may be required for indirect interconnections, depending on the specifics of the indirect interconnection scenario.]

- (a) The Seller will, at its cost, ensure that:
 - (i) the Meter is operated and maintained by the Seller **or the Third Party Owner** at any location(s) approved by the Buyer at the Seller's Plant, **on the Third Party System** or at the POI, all in accordance with the requirements of **the Third Party Owner and the requirements of** this section;
 - (ii) any other metering device or communications equipment required by the Buyer is supplied and installed by the Seller **or the Third Party Owner**;
 - (iii) current transformers and voltage transformers that have been approved by Measurement Canada on an unconditional and final basis have been supplied and installed by the Seller **or the Third Party Owner**; and
 - (iv) the Seller's Plant **and the Third Party System** is equipped with correctly commissioned SCADA and telemetry capability, in accordance with the Buyer's Technical Interconnection Requirements published on the Buyer's website (as may be updated by the Buyer from time to time),

and will ensure that all such equipment and capability is functional at all times and is in good operating condition, including by ensuring that any equipment that interferes with or adversely impacts the Meter from time to time is removed or promptly repaired. Without limiting the foregoing, the Seller will ensure, at its cost, that all revenue metering requirements and metering guidelines published by the Buyer on its website from time to time are complied with and **that the Third Party Owner will** work with the Buyer to make amendments to the Project Interconnection Requirements set out in the **Third Party Interconnection Agreement** to ensure that they accurately reflect the equipment and other requirements specified in paragraphs (i) through to (iv) above, including any upgrades, alterations or modifications made to the same during the Term.

- (b) The Buyer may, at its cost, install a duplicate meter(s) at the Seller's Plant at a location agreed to by the Seller, acting reasonably. The Seller will allow the Buyer to access the Seller's Plant to install, inspect and maintain any such duplicate meter(s). The Seller will

make equipment and telecommunications access available to the Buyer as required for any duplicate meter.

- (c) All information collected or recorded by the Meter will be electronically transmitted directly to the Buyer or provided by the Seller to the Buyer, as reasonably required by the Buyer.
- (d) If there is any dispute regarding the accuracy of the 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).
- (e) The Seller acknowledges and agrees that the Buyer will have no responsibility for the costs of any additional meters or associated equipment or changes to existing metering systems required in connection with the Indirect Interconnection, whether located at the Seller's Plant, the Third Party System or elsewhere.

6.6 Insurance

The Seller will, on or before the date specified in section 4.1 for the commencement of the activities necessary to construct the Seller's Plant, obtain and maintain at its cost (i) commercial general liability insurance with a limit of liability not less than \$_____, per occurrence and in the aggregate, applicable to the design, engineering, construction, Indirect Interconnection, commissioning, operation, maintenance and decommissioning of the Seller's Plant, and (ii) Construction Insurance and property insurance in respect of the Seller's Plant, with limits of liability and deductibles consistent with those a prudent owner of a facility similar to the Seller's Plant would maintain and those the Facility Lender may require. All commercial general liability policies must include the Buyer, its directors, officers, employees and agents as additional insureds and must contain a cross liability and severability of interest clause[, and must include coverage for forest fire fighting expense liability with a sublimit of \$2,000,000]. All policies of insurance must include a waiver of subrogation in favour of the Buyer. All policies of insurance must be placed with insurers that have a minimum rating of A- (or equivalent) by A.M. Best Company and are licensed to transact business in the Province of British Columbia and must be endorsed to provide to the Buyer 30 days' prior written notice of cancellation, non-renewal or any material amendment that results in a reduction in coverage. The Seller will give the Buyer a copy of the insurance certificate(s) for the insurance required to be maintained by the Seller under this section not more than 30 days after the effective date of coverage and promptly upon renewal thereafter. The Seller will be responsible for the full amount of all deductibles under all insurance policies required to be maintained by the Seller under this section.

[Note: Policy limit for commercial general liability insurance will be based on Plant Capacity as follows:

Up to and including 50 MW - \$5,000,000

Greater than 50 MW - \$10,000,000

Further, for projects that are deemed by the Buyer to be in a zone where there is a risk of forest fire, such policy will include coverage for forest fire fighting expense liability at a sublimit of \$2,000,000.]

6.7 Operating Plans and Schedules

- (a) **Long Term Operating Plan** - By the date specified in section 5.2, the Seller shall provide to the Buyer a proposed Operating Plan for the Seller's Plant for a five-year period commencing at COD and ending on December 31 of the year in which the fifth anniversary of COD occurs, including the long-term major maintenance schedule (the "Long Term Operating Plan"). On or before September 30 in each year during the Term after the year in which COD occurs, the Seller shall provide the Buyer with a proposed updated Long Term Operating Plan for the five-year period commencing on the next succeeding January 1 or to the end of the Term, whichever is less. The Seller shall promptly provide the Buyer with copies of any proposed amendments or modifications to the Long Term Operating Plan. Each Long Term Operating Plan must be consistent with Good Utility Practice and is intended to assist the Buyer in planning activities.
- (b) **Operating Plan** - On or before September 30 in each year during the Term (or such other date or dates in any year during the Term as the Buyer may from time to time request), the Seller will provide to the Buyer its proposed Operating Plan for the 16-month period commencing on November 1 of the same year, or for such other period and/or commencing on such other date during the Term, as the Buyer may from time to time request (each, an "Annual Operating Plan"). The Seller will promptly provide the Buyer with a proposed revised Annual Operating Plan upon the Seller becoming aware of any expected change in the then current Annual Operating Plan for that period. Every Annual Operating Plan, and any changes made to an approved Annual Operating Plan, will be subject to the Buyer's prior written approval. The Parties agree that the Annual Operating Plan is provided for planning purposes and does not guarantee or limit the quantity or timing of Seller's delivery of Energy to the POI. The Seller will ensure that all Annual Operating Plans are consistent with Good Utility Practice and include all Planned Outages of the Seller's Plant and any known Third Party System Outages for the period of the plan, and that all such Planned Outages comply with the requirements set out in section 6.13.
- (c) **Energy Schedules** - After COD:
 - (i) on each Thursday by 12:00 PPT, the Seller shall deliver to the Buyer a schedule of the expected deliveries of Energy in each hour of each day for the next succeeding week commencing at 00:00 PPT on Monday, and
 - (ii) on each day by 12:00 PPT, the Seller shall deliver to the Buyer a schedule of the expected deliveries of Energy for the next succeeding 24 hour period commencing at 00:00 PPT,

provided that such schedules are provided for planning purposes only and do not constitute a guarantee by the Seller that Energy shall 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 the

Buyer forthwith upon becoming aware of any expected material change in a previously delivered Energy schedule. For greater certainty, delivery of a schedule of deliveries under this section does not relieve the Seller of any delivery obligations or limitations on delivery of Energy under this EPA.

6.8 Fuel Plan

The Seller may revise the Fuel Plan at any time with the Buyer's prior consent, such consent not to be unreasonably withheld, delayed or conditioned. The Seller shall give prompt and due consideration to any revisions to the Fuel Plan that the Buyer may reasonably request.

6.9 Annual Fuel Report

- (a) Not less than 60 days following the end of each Contract Year, the Seller shall deliver to the Buyer a report in the form requested by the Buyer setting out with reference to the Fuel Plan:
 - (i) a description of the source location, type and volume of Fuel consumed in the previous Contract Year, together with such additional information relating to the Fuel as the Buyer may reasonably require;
 - (ii) a report of all material variances in the previous Contract Year between the Fuel Plan and the Seller's actual procurement and consumption of Fuel, and a brief explanation of the causes or reasons for any such material variances;
 - (iii) the total Clean or Renewable Resources, Auxiliary Fuel and Start-up Fuel (all expressed in GJ) used to generate Energy in the previous year;
 - (iv) the amount of the Auxiliary Fuel Energy Overage Credit (if any) for the Contract Year; and
 - (v) any other information as reasonably required by the Buyer.

6.10 Other Reports to the Buyer

- (a) **Reporting on Clean Energy** - The Seller shall within 10 Business Days after a request from the Buyer, provide to the Buyer all information the Buyer requires to verify qualification of the output from the Seller's Plant as Clean Energy.
- (b) **Reporting on Environmental Certification** – The Seller shall within 10 Business Days after a request from the Buyer, provide to the Buyer:
 - (i) all information the Buyer requires to verify the quantity of Energy generated by the Seller's Plant, qualification of the Seller's Plant and all or part of the Energy for the Environmental Certification, if any, the status of the Environmental Certification, if any, and the existence, nature and quantity of Environmental Attributes;

- (ii) any information required for the purposes of any Environmental Attribute or energy tracking system as directed by the Buyer; and
 - (iii) any other information the Buyer requires to enable the Buyer or its Affiliates to obtain or realize the full benefit of the Environmental Attributes, including sales of Delivered Energy Environmental Attributes to third Persons.
- (c) **Reporting on Environmental Impacts** – The Seller shall deliver to the Buyer not later than February 28 in each year after COD, or in accordance with any other periodic reporting requirement prescribed by Laws or terms and conditions of Permits, environmental impact reports that comply with this section, and any reasonable written guidelines issued by the Buyer from time to time relative to the form and content of such reports. Environmental impact reports shall provide annual data concerning the impact of the operation of the Seller's Plant on the environment, including greenhouse gas emissions, and the air and water quality, land use, biota and habitat impacts. *If requested by the Buyer, data relative to greenhouse gas emissions will include Fuel use by Fuel type, heat rate, and energy content of fuel and other related data.*
- (d) **Reporting on First Nations Equity Ownership -**
 - (i) The Seller will, on each of the first, second and third anniversaries of COD, deliver to the Buyer a statutory declaration made by the Seller in the form attached as Appendix G confirming that, on the applicable anniversary date:
 - (A) one or more Project First Nations hold, in aggregate, at least 25% of the Equity Ownership of the Seller; and
 - (B) each of the Proposal First Nations continues to hold Equity Ownership of the Seller,and including a specification of the percentage of the Equity Ownership of the Seller held by each of the Proposal First Nation(s) and any other Project First Nations on the applicable anniversary date. Any failure by the Seller to deliver a statutory declaration as required by this section 6.10(d)(i) will be considered to be a "material default" for the purposes of section 15.1(q).
 - (ii) The Seller will, on each of the first, second and third anniversaries of COD, deliver to the Buyer a letter from each of the Proposal First Nation(s) and from any other Project First Nation that holds Equity Ownership of the Seller on the relevant anniversary, in substantially the form attached as Appendix H, confirming the level of Equity Ownership of the Seller held by the applicable Project First Nation, which letter(s) must collectively demonstrate that the First Nations Equity Ownership on the relevant anniversary will be at least 25% of the Equity Ownership of the Seller and that each of the Proposal First Nations continues to hold Equity Ownership of the Seller.

6.11 Exemption from Utility Regulation

The Seller shall not take any action that would cause the Seller to cease to be exempt, or omit to take any action necessary for the Seller to continue to be exempt, from regulation as a “public utility”, as defined in the UCA, with respect to the Seller’s Plant, the sale of Energy or Environmental Attributes, **the transmission of Energy over the Third Party System to the POI**, and the performance by the Seller of its obligations under this EPA.

6.12 Islanding

Subject to the provisions of this section 6.12, at any time after the Effective Date and prior to completion by the Seller of the final engineering design for the Seller’s Plant, the Seller shall, at the request of the Buyer, provide all information and cooperation required to enable the Buyer to undertake, at the Buyer’s cost, any studies the Buyer considers necessary to determine the ability of the Seller’s Plant to provide Planned Islanding Capability and the estimated cost of providing, operating and maintaining such Planned Islanding Capability. The Seller shall provide the Buyer with not less than 120 days prior notice of the anticipated date of completion of the final engineering design for the Seller’s Plant, and the Buyer shall advise the Seller within 60 days after receipt of such notice if the Buyer intends to undertake any studies pursuant to this section. The Buyer shall, within 30 days after receipt of an invoice together with reasonable supporting information, reimburse the Seller for all reasonable costs incurred by the Seller, that the Seller would not otherwise have incurred, to provide the Buyer with information required for any studies pursuant to this section. The Buyer may on notice to the Seller within 30 days after receipt of all studies commissioned by the Buyer under this section advise the Seller that the Buyer wishes to enter into negotiations with the Seller with respect to the Seller’s Plant providing Planned Islanding Capability, including any amendments required to this EPA as a result thereof. Upon receipt of such notice the Parties shall negotiate in good faith to determine the terms and conditions on which the Seller will provide such Planned Islanding Capability.

[Note: This section will be deleted for indirect interconnections.]

6.13 Outages

(a) Notice of Outages

The Seller will notify the Buyer of any Outages, or changes in any Outages, by delivering to the Buyer an Outage Notice:

- (i) promptly in the case of any Forced Outage (notwithstanding any Emergency Condition, Turn-Down Period or BC Hydro System Constraint that may be in effect);
- (ii) not less than 30 days in advance of any proposed change to a Planned Outage described in an approved Operating Plan that is in effect (which change will be subject to the prior written consent of the Buyer); and
- (iii) promptly in the case of any changes to the duration, start time or end time of any Outage.

(b) Coordination and Scheduling of Planned Outages

- (i) The Seller shall ensure that no Planned Outage occurs during the months of November, December, January, February or March except with the consent of the Buyer, which consent shall not be unreasonably withheld, delayed or conditioned if the Seller is required to conduct a Planned Outage during any of those months by reason of applicable Laws or Permits.
- (ii) The Seller will make commercially reasonable efforts to coordinate any changes to Planned Outages with the Buyer's maintenance schedule or other requirements where such schedule or requirements are publicly available or otherwise notified to the Seller.
- (iii) The Buyer may, by notice to the Seller, require the Seller to reschedule any Planned Outage, provided that the rescheduling required by the Buyer does not require that the Seller violate any Laws or Permits. On such notice, the Seller will promptly provide the Buyer with a reasonable cost estimate, with supporting detail and reasonable contingency allowance, of the costs it expects to incur as a direct result of rescheduling the Planned Outage. Upon review of the Seller's cost estimate, the Buyer may withdraw its requirement that the Seller reschedule the Planned Outage. If the Buyer does not withdraw the requirement, the Seller will reschedule the Planned Outage as required by the Buyer provided that rescheduling is consistent with Good Utility Practice and does not have a materially adverse effect on the operation of the Seller's Plant. The Buyer will compensate the Seller for costs reasonably incurred by the Seller as a result of the rescheduling, provided those costs do not exceed the cost estimate provided by the Seller to the Buyer in advance of the Planned Outage.
- (iv) For payment and all other purposes of this EPA, all Planned Outages shall be deemed to start at the beginning of the hour in which the Planned Outage actually commences and to end at the start of the hour immediately following the hour in which the Planned Outage actually terminates.

(c) Third Party System Outages

The Seller will work with the Third Party Owner to ensure that there are no planned Third Party System Outages during the months of November, December, January, February or March, except with the prior written consent of the Buyer. The Seller will also ensure that the Third Party Owner is obligated to provide the Seller with at least 90 days notice of all planned Third Party System Outages and prompt notice of all other Third Party System Outages or changes to Third Party System Outages. Upon receipt of any such notice from the Third Party Owner, the Seller will provide prompt notice to the Buyer of the details of the applicable Third Party System Outage, in the form of an Outage Notice.

6.14 Regular Safety Equipment and Telecommunications Maintenance

Without limiting any other provision in this EPA, the Seller shall conduct adequate and regular maintenance in accordance with Good Utility Practice and the Buyer's Technical Interconnection Requirements published on the Buyer's website (as may be updated by the Buyer from time to

time), at least every two years during the Term, of all protection and safety devices and associated telecommunications equipment at the Seller's Plant. The Seller will provide the Buyer with a sealed maintenance report describing all such maintenance work for each two-year period during the Term within 60 days of the end of each such two-year period.

6.15 Wind Data Collection

The Buyer and the Seller will be subject to, and will comply with their respective commitments (if any) in Appendix I. **[Note: This section will only be included if the Energy Source for the Seller's Plant is wind.]**

6.16 Indirect Interconnection Arrangements

- (a) The Seller acknowledges and agrees that it will be solely responsible under this EPA for all costs relating to the Indirect Interconnection and the Indirect Interconnection Arrangements, including the Buyer's costs of preparing and entering into any Indirect Interconnection Arrangements, and that under no circumstances will the Buyer be responsible for any costs relating to the Indirect Interconnection Arrangements, including the costs of any studies or changes that may be required to the Third Party System to accommodate the Indirect Interconnection.
- (b) The Seller will:
 - (i) comply with and maintain the Wheeling Agreement during the Term and will not materially amend, replace, assign, terminate or permit the termination of the Wheeling Agreement; and
 - (ii) comply with and maintain any other Indirect Interconnection Arrangements to which it is a party during the Term, and will not materially amend, replace, assign, terminate or permit the termination of any such arrangements,without, in either case, providing prior written notice to the Buyer at least 30 days in advance of the proposed amendment, replacement, assignment or termination, it being acknowledged and agreed for the purposes of this EPA that a material amendment of the Wheeling Agreement or any other Indirect Interconnection Arrangement to which the Seller is a party will include any amendment that impacts the Seller's right to utilize the Third Party System to transmit Energy from the Seller's Plant to, and deliver Energy at, the POI.
- (c) Without limiting paragraph (b), the Seller will ensure, at all times during the Energy Delivery Period, that it has all necessary rights under the Indirect Interconnection Arrangements to which it is a party to utilize the Third Party System to transmit the full amount of the maximum generation output of the Seller's Plant over the Third Party System to the POI in all hours of the Energy Delivery Period.

6.17 Disclosure of Information by Third Party Owner

The Seller consents to the Third Party Owner disclosing to the Buyer on its request:

- (a) any studies that the Third Party Owner may have and applications that may be filed in respect thereof from time to time with respect to the Seller's Plant, including the interconnection of the Seller's Plant to the Third Party System;
- (b) all metering data collected by, or provided to, the Third Party Owner with respect to the Seller's Plant;
- (c) copies of any notice of a breach of, or default under, the Third Party Interconnection Agreement given or received by the Third Party Owner and particulars of any such breach or default; and
- (d) any other information provided by the Seller to the Third Party Owner, or by the Third Party Owner to the Seller, that is relevant to the administration of this EPA.

The Seller shall promptly on request by the Buyer provide to the Buyer written confirmation of the foregoing consent, which the Buyer may deliver to the Third Party Owner.

7. PURCHASE AND SALE OBLIGATIONS

7.1 Test Energy

The Buyer will make commercially reasonable efforts to accept delivery at the POI of all Test Energy, excluding any Excess Energy. For greater certainty, the Buyer will have no obligation to accept, or if accepted to pay for, any Delivered Energy prior to COD other than Test Energy. The Buyer will pay for Test Energy and associated Delivered Energy Environmental Attributes in accordance with section 8.1.

7.2 Sale and Purchase of Energy

Subject to section 7.4, during the Energy Delivery Period, the Seller will sell to the Buyer all Energy and Environmental Attributes and deliver all Energy to the Buyer at the POI, and the Buyer will purchase from the Seller all Delivered Energy and Delivered Energy Environmental Attributes and accept delivery from the Seller at the POI of all Delivered Energy. The Buyer will pay for Delivered Energy and Delivered Energy Environmental Attributes during the Energy Delivery Period in accordance with section 8.2.

7.3 Capacity Commitment

Without limiting the Seller's obligation in section 7.2, and subject to sections 7.4(a)(i), 7.4(a)(ii), 7.4(a)(iii) and 7.4(a)(iv), the Seller will deliver and sell to the Buyer at the POI, in every On-Peak Hour in every Capacity Commitment Period, Energy in at least the amount of the Designated Capacity Commitment. *[Note: This section will only be included for Sellers that made a capacity commitment in their Proposal.]*

7.4 Limitations on Delivery and Acceptance Obligations

- (a) **Limitations on Delivery Obligations** - Notwithstanding any other provision in this EPA, the obligations of the Seller under sections 7.1 and 7.2 are excused during the occurrence of:

- (i) Force Majeure invoked by the Seller in accordance with section 14.8 or 14.9 where the Seller is unable to perform the relevant obligation solely as a result of the event or circumstance of Force Majeure;
 - (ii) during an Emergency Condition that is subject to an Emergency Request, but only to the extent of the limitations in the Emergency Request;
 - (iii) any BC Hydro System Constraint for reasons that are not attributable to the Seller, the Seller's Plant, the Third Party Owner, the Third Party System, or anything on the Seller's Side of the POI;
 - (iv) disconnection of the Seller's Plant from the BC Hydro System by the Buyer for reasons that are not attributable to the Seller, the Seller's Plant, the Third Party Owner, the Third Party System, or anything on the Seller's Side of the POI; and
 - (v) during any period specified as a Planned Outage in an approved Operating Plan that is in effect and complies with the requirements of section 6.13, or any such revised period approved by the Buyer.
- (b) **Limitations on Acceptance Obligations** - Except as otherwise specified in this EPA, the obligations of the Buyer under sections 7.1 and 7.2 are excused during the occurrence of:
 - (i) Force Majeure invoked by the Buyer in accordance with section 14.8 or 14.9 where the Buyer is unable to perform the relevant obligation solely as a result of the event or circumstance of Force Majeure;
 - (ii) an Emergency Condition;
 - (iii) any BC Hydro System Constraint;
 - (iv) a Turn-Down Period;
 - (v) any disconnection of the Seller's Plant from the BC Hydro System, including due to a disconnection of the Third Party System from the BC Hydro System, unless for reasons solely attributable to the Buyer;
 - (vi) any Third Party System Outage; and
 - (vii) any failure by the Seller, the Seller's Plant, or Energy to comply with the Project Standards in the applicable hour.
- (c) **Excess Energy** - Notwithstanding any other provision in this EPA, the Buyer will not be obligated in any hour during the Energy Delivery Period to accept delivery from the Seller at the POI of any Excess Energy, and no amount will be payable by the Buyer for any Excess Energy or any Delivered Energy Environmental Attributes associated with Excess Energy, regardless of whether the Buyer consented to or accepted delivery of such Excess Energy.

(d) **Suspension of Payments - If:**

- (i) the Seller has not, within 180 days following notice from the Buyer, and to the Buyer's reasonable satisfaction, resolved any non-compliance with:
 - (A) the obligations in section 6.5, including any failure by the Seller to undertake upgrade work identified by the Buyer following any review by the Buyer of the Seller's compliance with revenue metering requirements and revenue metering guidelines as required under section 6.5; or
 - (B) the Seller's obligations (if any) in section 6.15; ***[Note: This paragraph (B) will only be included if the Energy Source for the Seller's Plant is wind.]***
- (ii) the Meter has not electronically transmitted information directly, or is transmitting only intermittently, to the Buyer for a continuous period of 60 days;
- (iii) the SCADA or telecommunication system have not electronically transmitted information directly, or are transmitting intermittently, to the Buyer for a continuous period of 10 days; or
- (iv) within 180 days following notice from the Buyer, any known defaults under the **Third Party** Interconnection Agreement, including any **Indirect** Interconnection deficiencies identified by the Buyer and required to be addressed to ensure compliance with the **Third Party** Interconnection Agreement, have not been resolved to the Buyer's reasonable satisfaction, and any costs incurred by the Buyer in connection with resolving such defaults including any required upgrades or changes, have not been repaid,

then the Buyer will have no obligation to make payments for any Delivered Energy, Deemed Energy or Delivered Energy Environmental Attributes thereafter until such time as the issue has been rectified to the Buyer's satisfaction (the "**Payment Suspension Period**"). The Buyer will resume payments to the Seller under this EPA following the end of the Payment Suspension Period, and will repay any payments that were withheld under this section 7.4(d) during the Payment Suspension Period, without any interest payable, within 60 days of the end of the Payment Suspension Period.

7.5 Delivered Energy Environmental Attributes

The Seller hereby transfers, assigns and sets over to the Buyer all right, title and interest in and to the Delivered Energy Environmental Attributes. The Seller agrees and covenants not to make any statement or take any other action that would result in a double claim, double issuance, double sale or double counting of the Delivered Energy Environmental Attributes.

7.6 Exclusivity

The Seller will not at any time during the Term commit, sell or deliver any Energy or any Environmental Attributes, to any Person other than the Buyer under this EPA without the prior

written consent of the Buyer. The Seller will not use any Energy or use, apply, claim or retire Environmental Attributes for any purpose whatsoever except for sale to the Buyer under this EPA. 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.

7.7 Custody, Control, Risk of and Title To Energy

Custody, control, risk of, and title to, all Delivered Energy (including Excess Energy) pass from the Seller to the Buyer at the POI. Custody, control, risk of, and title to, all Delivered Energy Environmental Attributes pass from the Seller to the Buyer simultaneously with transfer of title to the Delivered Energy (including Excess Energy). The Seller will ensure that all Delivered Energy (including Excess Energy) and all Delivered Energy Environmental Attributes transferred to the Buyer under this EPA are free and clear of all liens, claims, charges and encumbrances.

7.8 Line Losses

The Seller will be responsible for all Line Losses, and all costs and liabilities relating to the transmission of Energy and other electricity, if applicable, on the Seller's Side of the POI.

7.9 BC Hydro Right - Emergency Condition

- (a) The Buyer may at any time during the Energy Delivery Period request that the Seller turn down or shut off the Seller's Plant to respond to an Emergency Condition (an "**Emergency Request**").
- (b) If the Buyer provides an Emergency Request, the Seller will promptly comply with any direction to turn down or shut off the Seller's Plant in the Emergency Request.
- (c) The Buyer will have no obligation to pay to the Seller any amounts in respect of Energy that could have been delivered to the POI:
 - (i) during any period specified in an Emergency Request;
 - (ii) during any period in which there is a BC Hydro System Constraint caused by an Emergency Condition; or
 - (iii) during any ramp-down or ramp-up periods, or any delay in restarting the Seller's Plant for any reason, immediately before or after a period of time referred to in paragraphs (i) or (ii),

but that, in any case, was not delivered due to the Seller's compliance with the direction in the Emergency Request or as a result of the applicable BC Hydro System Constraint.

7.10 Deemed Energy

- (a) In addition to the Buyer's rights under section 7.9, the Buyer may at any time during the Energy Delivery Period request that the Seller turn down or shut off the Seller's Plant for any reason whatsoever (a "**Curtailment Request**"). The Seller will promptly comply with any direction to turn down or shut off the Seller's Plant in the Curtailment Request, except to the extent that any operational, technical, regulatory or fuel storage constraint at the Seller's Plant prevents or limits the Seller's ability to comply with such direction. **[For greater certainty, it will not be considered a constraint at the Seller's Plant that prevents or limits the Seller's ability to comply with a Curtailment Request for the purposes of this section if water would be spilled (concurrently with or following the applicable Turn-Down Period) as a result of compliance with the Curtailment Request.]** *[Note: The square bracketed language will only be included for hydro projects.]*
- (b) The Buyer will have no liability with respect to a Curtailment Request or BC Hydro System Constraint except as set out in this section 7.10, if applicable.
- (c) Subject to sections 7.9(c), 7.10(d) and 7.10(e), for any hour during a Turn-Down Period when the Seller has turned down or shut off the Seller's Plant as directed in the applicable Curtailment Request, the Buyer will pay the Seller in accordance with section 8.3 an amount equal to the Energy Price multiplied by the amount of Turn-Down Energy in that hour less any costs the Seller avoided or, acting reasonably, could have avoided in respect of that hour, including any costs, rents, royalties or fees relating to the Energy Source that would have been payable had the Seller been able to deliver Energy to the Buyer the POI in that hour (for example, water rental fees).
- (d) If for any month during the Energy Delivery Period the Seller is unable to deliver Energy at the POI solely as a result of one or more BC Hydro System Constraints:
 - (i) that are each caused by an event within the reasonable control of the Buyer;
 - (ii) none of which are caused by, or required as a result of, an Emergency Condition or Force Majeure;
 - (iii) none of which are caused by the Seller, the Seller's Plant, the Third Party Owner, the Third Party System, or anything on the Seller's Side of the POI; and
 - (iv) that have been in effect for more than 24 hours in the aggregate in the month, and as a result the Seller has been unable to deliver Energy for more than 24 hours in aggregate in the month,

then, notwithstanding that the Buyer is excused from its obligations under section 7.2, but subject to sections 7.9(c) and 7.10(e), the Buyer will, for each hour in the remaining hours of the month after the 24 hours in aggregate have elapsed in which the Seller remains unable to deliver Energy at the POI as a result of a BC Hydro System Constraint that meets all of the requirements of paragraphs (i) - (iii), pay the Seller in accordance with section 8.3 an amount equal to the Energy Price multiplied by the amount of Constraint Energy in that hour less any costs the Seller avoided or, acting reasonably, could have avoided in respect of that hour, including water rental fees that would have

been payable had the Seller been able to deliver Energy to the Buyer the POI in that hour. For greater certainty:

- (v) where the Buyer issues a Curtailment Request and requires the Seller to turn down or shut off the Seller's Plant as a result of a BC Hydro System Constraint, section 7.10(c) will not apply, and this section 7.10(d) will apply for purposes of determining the amount of Constraint Energy (if any) for which the Buyer may be required to pay the Seller;
 - (vi) no amount will be payable for any Constraint Energy that the Seller could have delivered in the month during the initial aggregate 24 hours described in paragraph (iv); and
 - (vii) the calculation of the 24 aggregate hours in a month restarts at 12:00 a.m. on the first day of each month, even if there is a BC Hydro System Constraint that meets all of the requirements of paragraphs (i) - (iii) and that is continuing from the end of the previous month.
- (e) The Buyer will not be required to pay for any Deemed Energy under this section 7.10:
- (i) during any period where the Seller's Plant:
 - (A) would not have been operating, including as a result of a disconnection of the Seller's Plant from the Third Party System for any reason, or a disconnection of the Third Party System from the BC Hydro System unless for reasons solely attributable to the Buyer; or
 - (B) would have been unable to operate the Seller's Plant or generate Energy in compliance with the Project Standards;
 - (ii) during any period specified as an Outage in any Outage Notice or Operating Plan;
 - (iii) during any period when either Party is or would be excused, in accordance with section 14.8 or 14.9, from its obligation to deliver or to accept delivery of Energy as a result of Force Majeure;
 - (iv) if the Seller has not provided the Buyer with an Operating Plan in accordance with section 6.7 or a Fuel Plan for the period in which the BC Hydro System Constraint occurs;
 - (v) if the Buyer's requirement for the Seller to turn down or shut off the Seller's Plant, or the BC Hydro System Constraint, as applicable, is the result of the operation of the Seller's Plant in a manner inconsistent with section 6.3 or with an Operating Plan provided under section 6.7;
 - (vi) during any ramp-down or ramp-up period, or any delay in restarting the Seller's Plant for any reason, before or after either a Turn-Down Period specified in a Curtailment Request or a BC Hydro System Constraint, as applicable;

- (vii) during any Third Party System Outage, however caused;
- (viii) if the Buyer's requirement for the Seller to turn down or shut off the Seller's Plant, or the BC Hydro System Constraint, as applicable, is the result, in whole or in part, of the operation of the Third Party System;
- (ix) during any period when the Third Party System is disconnected from the BC Hydro System (unless for reasons solely attributable to the Buyer), or during any period when the Seller's Plant is disconnected from the Third Party System;
- (x) if the Seller has not provided the Buyer with:
 - (A) a reasonably detailed statement of any Turn-Down Energy or Constraint Energy for which the Seller is claiming a right to be paid and associated avoided or avoidable costs (including back-up calculations, computational and invoicing models and other supporting documentation in electronic format), and received the Buyer's approval of the amount of Turn-Down Energy or Constraint Energy in such statement prior to issuing its final statement according to section 8.6(a)(iii); and
 - (B) written attestation, in a form acceptable to the Buyer and signed by an authorized representative of the Seller, together with any supporting evidence reasonably requested by the Buyer, confirming that, during all periods of the Turn-Down Period or BC Hydro System Constraint in which the Seller is claiming a right to be paid for Turn-Down Energy or Constraint Energy, as applicable, the Seller was unable to deliver Energy at the POI solely as a result of compliance with the direction in the Curtailment Request or the BC Hydro System Constraint, as applicable, and that the Seller's Plant and the Third Party System were fully operational and not in an Outage or Third Party System Outage, respectively,

where avoidable costs are calculated as:

- (C) the amount equal to: (I) the average heat rate applicable to the conversion of Fuel to Energy in that month (in GJ/MWh), multiplied by (II) the average unit cost of the Fuel in that month (in \$/GJ), multiplied by (III) the amount of the Turn Down-Energy or Constraint Energy in the month (in MWh) for which the Buyer is claiming a right to be paid; plus
 - (D) the amount of any other costs the Seller avoided, or could have avoided through commercially reasonable efforts, as a result of not generating Energy equal to such Turn Down Energy or Constraint Energy.
- (f) The Buyer may request additional Records in support of the amount of any Turn Down-Energy or Constraint Energy, and any costs the Seller avoided or, acting reasonably, could have avoided during the applicable Turn-Down Period or BC Hydro System Constraint.

8. PRICE AND PAYMENT TERMS

8.1 Payment for Test Energy

Subject to section 8.5, the Buyer will satisfy its obligation to purchase Test Energy and associated Delivered Energy Environmental Attributes under section 7.1 by paying to the Seller:

- (a) the Test Energy Price, multiplied by
- (b) the aggregate amount of Test Energy less any Excess Energy.

8.2 Payment for Delivered Energy after COD

Subject to section 8.5, the Buyer will satisfy its obligation to purchase Delivered Energy and Delivered Energy Environmental Attributes during the Energy Delivery Period under section 7.2 by paying to the Seller for each hour during the Energy Delivery Period:

- (a) the Energy Price, multiplied by
- (b) the amount of Delivered Energy in the hour less any Excess Energy in the hour.

8.3 Payment for Deemed Energy

Subject to section 8.5, the Buyer will satisfy its obligation to purchase Deemed Energy under section 7.10 by paying to the Seller:

- (a) in each hour during a Turn-Down Period when an amount is payable under section 7.10(c):
 - (i) the Energy Price, multiplied by
 - (ii) the Turn-Down Energy in the hour,

less any costs the Seller avoided or, acting reasonably, could have avoided in respect of that hour, including water rental fees that would have been payable had the Seller been able to deliver Energy to the Buyer the POI in that hour; and
- (b) when an amount is payable under section 7.10(d), beginning in the 25th hour in the month in which a BC Hydro System Constraint is in effect and for each remaining hour during the month in which a BC Hydro System Constraint that meets all of the requirements of sections 7.10(d)(i) - (iii) is in effect:
 - (i) the Energy Price, multiplied by
 - (ii) the Constraint Energy in the hour,

less any costs the Seller avoided or, acting reasonably, could have avoided in respect of that hour, including water rental fees that would have been payable had the Seller been able to deliver Energy to the Buyer the POI in that hour.

The amounts of Turn-Down Energy or Constraint Energy (if any) in any hour will be determined using methodology satisfactory to the Buyer, acting reasonably, based on the best available information, including readings of the Meter before and after the occurrence of the Turn-Down Period or BC Hydro System Constraint, as applicable, and readings of any equipment that measures the Energy Source for the period while the Turn-Down Period or BC Hydro System Constraint, as applicable, was in effect.

8.4 COD Incentives

- (a) If, at COD, the Guaranteed COD (including any adjustments under this EPA prior to COD) is between October 1, 2028 and September 30, 2029, and if Seller achieves COD before September 30, 2029, the Buyer will pay to the Seller, for each month beginning in the month in which COD occurs and ending on September 30, 2029, \$5/MWh multiplied by the amount of Delivered Energy in the applicable month, excluding any Excess Energy and any Delivered Energy prior to COD.
- (b) If, at COD, the Guaranteed COD (including any adjustments under this EPA prior to COD) is between October 1, 2028 and September 30, 2030, and if Seller achieves COD before September 30, 2030, the Buyer will pay to the Seller, for each month beginning in the month in which COD occurs and ending on September 30, 2030, \$2/MWh multiplied by the amount of Delivered Energy in the applicable month, excluding any Excess Energy and any Delivered Energy prior to COD.
- (c) For greater certainty, no amounts will be payable to the Seller under this section 8.4 for any amount of Deemed Energy during an applicable month, or any Delivered Energy that the Buyer is not obligated to accept or purchase pursuant to section 7.4, section 8.5 or section 8.6(a)(vii) during an applicable month.

8.5 No Further Payment

The amounts payable by the Buyer as specified in sections 8.1, 8.2 and 8.3 are the full and complete payment and consideration payable by the Buyer for Delivered Energy (including Test Energy and any Excess Energy accepted by the Buyer), Deemed Energy and the Delivered Energy Environmental Attributes. For greater certainty, the Buyer has no obligation under this EPA to pay the Seller for:

- (a) any Excess Energy; or
- (b) any Energy delivered to the Buyer at the POI prior to COD other than Test Energy;
- (c) any Energy that was, or that could have been, generated and delivered to the Buyer under this EPA but that the Buyer is excused from accepting under section 7.4(b), except:
 - (i) as expressly provided in section 7.10; and
 - (ii) for any Delivered Energy in an hour:

- (A) during an Emergency Condition that is subject to an Emergency Request to turn down but not shut off generation at the Seller's Plant, provided that the Delivered Energy is generated and delivered only in compliance with the terms of the Emergency Request;
- (B) during a Turn-Down Period provided that the Delivered Energy is generated and delivered only in compliance with the terms of the applicable Curtailment Request or to the extent otherwise permitted under section 7.10(a); or
- (C) during a BC Hydro System Constraint that does not fully prevent the Seller from generating and delivering Energy to the POI, provided that the Delivered Energy is generated and delivered only in compliance with the terms of any applicable Curtailment Request.

8.6 Statements and Payment

(a) Statements

- (i) The Seller will, by the 15th day of the first full month after COD, deliver to the Buyer a statement, for the preceding month, in respect of Test Energy. The statement will be in such form, supported in an electronic format, as the Buyer may require from time to time, and must indicate, among other things:
 - (A) the aggregate amount of Test Energy, specifying the amount of Test Energy in the hour that is Excess Energy (if any);
 - (B) the Test Energy Price and aggregate amount payable pursuant to section 8.1 for Test Energy, excluding any Excess Energy; and
 - (C) a certification by a senior officer of the Seller that all Test Energy in the month is Clean Energy.
- (ii) The Seller will, by the 15th day of each month after COD (beginning in first full month after COD), deliver to the Buyer a statement, for the preceding month, in respect of Delivered Energy. The statement will be in such form, supported in an electronic format, as the Buyer may require from time to time, and must indicate, among other things:
 - (A) the amount of Delivered Energy in each hour of the preceding month, specifying the amount of Delivered Energy in the hour that is Excess Energy (if any);
 - (B) the price and aggregate amount payable pursuant to section 8.2 for all Delivered Energy described in the statement (excluding any Excess Energy), including, only in the statements for months prior to and including September 2030, any amounts payable under sections 8.4(a) or 8.4(b), respectively;

- (C) any Final Amounts owing by either Party to the other Party at that time, including a calculation of the amount of any LDs payable in respect of the prior month; and
 - (D) a certification by a senior officer of the Seller that all Delivered Energy in the month is Clean Energy.
- (iii) The Seller will, by the 15th day of each month after COD (beginning in the second full month after COD), deliver to the Buyer a statement, for the month that precedes the preceding month, in respect of Deemed Energy. The statement will be in such form, supported in an electronic format, as the Buyer may require from time to time, and must indicate, among other things:
 - (A) the amount of Deemed Energy in the month prior to the preceding month, and any associated avoided or avoidable costs pursuant to section 7.10 that have been approved in advance by the Buyer;
 - (B) the price and aggregate amount payable for all Deemed Energy described in the statement pursuant to section 8.3, applicable.
- (iv) Any statement delivered under this section 8.6(a) 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, including the use of e-meter data and any computational and invoicing models to support the statement details, which indicate (among other things) the amount of Deemed Energy in each hour of the month, to enable the Buyer, acting reasonably, to satisfy itself as to the accuracy of the statement.
- (v) 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 section within the 36 month period, which will be resolved in accordance with this EPA.
- (vi) If the Buyer gives notice to the Seller of an error, omission or disputed amount on a statement as described in section 8.6(a)(v), the Buyer may direct the Seller to promptly produce new statements for the relevant month(s). The new statements will show the undisputed amount and disputed amount each in a separate statement or will otherwise separate the amounts in a single statement in a manner acceptable to the Buyer.
- (vii) For greater certainty, the Seller will not be entitled to issue any statement for amounts described in this EPA other than in accordance with the timelines set in this section 8.6 for the relevant amounts, and the Buyer will have no obligation to pay the Seller any amounts for Test Energy, Delivered Energy or Deemed Energy unless the relevant amount of Test Energy, Delivered Energy or Deemed

Energy was included in the statement required for the applicable month as specified in this section 8.6.

(b) Payment

- (i) Within 30 days after receipt of a statement delivered under section 8.6(a), and subject to sections 8.10 and 8.11, the Buyer will pay to the Seller the amount set out in the statement, except to the extent the Buyer in good faith disputes all or part of the statement by notice to the Seller as described in section 8.6(a)(v).
- (ii) If the Buyer disputes any portion of a statement, the Buyer must pay the undisputed net amount payable by the Buyer pursuant to the statement or, if applicable, the new statement of the undisputed amount described in section 8.6(a)(vi), in each case in accordance with section 8.6(b)(i).
- (iii) The Parties will endeavor to resolve any error, omission or disputed amount on a statement within 30 days of the notice described in section 8.6(a)(v).
- (iv) 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.

8.7 Billing Guideline

The Seller shall comply with any reasonable written billing guideline, including any requirements issued by the Buyer with respect to the form of statements pursuant to section 8.6, provided that any such billing guideline shall not vary the express terms of this EPA. If there is any conflict between a billing guideline and this EPA, this EPA shall govern.

8.8 Auxiliary Fuel Energy Overage Credit

The Seller shall pay to the Buyer, on or before March 1 in a Contract Year, the Auxiliary Fuel Energy Overage Credit arising in the previous Contract Year. The Seller may satisfy its obligation to pay any Auxiliary Fuel Energy Overage Credit by showing such Auxiliary Fuel Energy Overage Credit as a credit owing to the Buyer in the statement delivered to the Buyer pursuant to section 8.6(a)(ii) in the third month following the end of the Contract Year. Without limiting the application of section 7.4(b)(vii) or the Buyer's right under section 15.1(q) to terminate this EPA in the event of a material default, payment by the Seller of the Auxiliary Fuel Energy Overage Credit in this section 8.8 is the exclusive remedy to which the Buyer is entitled under this EPA in respect of amounts paid by the Buyer under this EPA for Energy which is not Clean Energy.

8.9 Taxes

All dollar amounts in this EPA do not include any value added, consumption, commodity or similar taxes applicable to the purchase by the Buyer of Delivered Energy, Deemed Energy and

Delivered Energy Environmental Attributes, including GST, PST and any successor thereto, which, if applicable, will be added to each statement and paid by the Buyer.

8.10 Set-off

If the Buyer and the Seller each owe the other an amount under this EPA or under any other agreement between them in the same month, then such amounts with respect to each Party will 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 will pay to the other Party the difference between the amounts owed. 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.

8.11 Extension of Payment Deadline on Seller Assignment

If the Seller Assigns this EPA to any other Person, the Buyer's deadlines for payment under this Article 8 for any amounts payable by the Buyer to the assignee as Seller for the first three months following the Assignment will be extended, without any interest payable or other liability, for 90 days from the date upon which the Seller notifies the Buyer in accordance with this EPA of the completion of the Assignment and provides all payment details for the assignee that are required by the Buyer to make payments to the assignee using its payment system.

9. MAJOR DAMAGE

9.1 Major Damage caused by Force Majeure

- (a) Major Damage - If the Seller's Plant suffers Major Damage caused by Force Majeure in respect of which the Seller has invoked Force Majeure in accordance with Section 14.8, then the Seller may at its option exercisable by notice to the Buyer within 120 days after the occurrence thereof, either:
 - (i) proceed diligently and expeditiously to repair the Major Damage and restore the Seller's Plant to at least the condition in which it was in immediately prior to the Major Damage and resume deliveries of Energy hereunder; or
 - (ii) terminate this EPA, and in that event, the provisions of section 15.4 will apply. If the Seller fails to give notice exercising its option within such 120-day period, it shall be deemed to have exercised the option described in paragraph (i). Nothing in this section limits the rights of either Party to terminate this EPA under any other section of this EPA.
- (b) Non-Major Damage - If the Seller's Plant is damaged or destroyed, in whole or in part, by any cause or peril, then, except in the case of Major Damage caused by Force Majeure in respect of which the Seller has invoked Force Majeure in accordance with Section 14.8, the Seller shall within 30 days after the date of the damage or destruction provide notice to the Buyer setting out the date by which the Seller, acting reasonably, can resume delivering Energy to the Buyer which date shall be not more than 365 days after the date of occurrence of the damage or destruction. The Seller shall diligently and expeditiously repair the Seller's Plant and restore the same to at least the condition

in which it was immediately prior to the damage or destruction and shall complete such work not later than the date specified in the notice delivered by the Seller to the Buyer under this section.

10. ENVIRONMENTAL ATTRIBUTES – CERTIFICATION AND ADMINISTRATION

10.1 Environmental Certification and Administration

Without limiting the Seller's obligation to deliver Energy in compliance with the Project Standards, the Seller will, at the Buyer's request, 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 that is identified by the Buyer evidencing that the Seller's Plant and the Delivered Energy has Environmental Attributes, and the Buyer will reimburse the Seller for any certification, audit and licensing fees charged by the applicable Governmental Authority or independent certification agency for such certification, licensing or approval that the Buyer requires the Seller to obtain. The Buyer may elect to manage, or have its Affiliate manage, all or a portion of any certification, licensing or approval process with a Governmental Authority or independent certification agency, in which case the Seller will use commercially reasonable efforts to cooperate and provide timely assistance and information to the Buyer or its Affiliate, as applicable. Notwithstanding the transfer of ownership of Delivered Energy Environmental Attributes to the Buyer under this EPA, the Seller will remain responsible for compliance with any applicable environmental laws, or associated programs administered by a Governmental Authority, in respect of the Environmental Attributes. Any failure by the Seller to promptly comply with its obligations in this section 10.1 is a "material default" for the purposes of this EPA, including section 15.1(q).

11. LIQUIDATED DAMAGES AND ENERGY PRICE REDUCTION

11.1 COD Delay

If the Seller fails to achieve COD on or before the Guaranteed COD, the Seller will pay liquidated damages to the Buyer (the "**COD Delay LDs**"), calculated as follows:

COD Delay LDs = \$70/MW-day, multiplied by

 the Plant Capacity, multiplied by

 the number of days in the period between:

- (a) Guaranteed COD; and
- (b) the earlier of COD and the date on which the Buyer's right to terminate this EPA under either section 15.1(b) or 15.1(c) arises (whether or not the Buyer exercises that right), less the number of Force Majeure Days during that period.

The Seller shall pay any COD Delay LDs owing by the Seller to the Buyer within 30 days following the date specified in paragraph (b) above.

11.2 Delivery Shortfalls – Capacity Commitment

[Note: This section will only be included for Sellers that made a capacity commitment in their Proposal.] Following the end of each Capacity Commitment Period, the Buyer will assess the Seller's performance of its obligations in section 7.3 during the entire Capacity Commitment Period. If the Seller failed to deliver the full amount of the Designated Capacity Commitment in at least 95% of the individual Eligible Hours (as defined below) during the Capacity Commitment Period, the Seller shall pay liquidated damages to the Buyer for that Capacity Commitment Period (the "**Delivery Shortfall LDs**"), calculated as follows:

Delivery Shortfall LDs: = \$58,000/MWh; multiplied by

$\text{CPI}_{\text{Jan 1, N}} / \text{CPI}_{\text{Jan 1, 2024}}$; multiplied by

the Designated Capacity Commitment less the Deemed Delivered Capacity Commitment for the Capacity Commitment Period,

where:

"**Eligible Hour**" means any On-Peak Hour during a Capacity Commitment Period other than an On-Peak Hour in which the Seller is unable to deliver Energy to the POI solely as a result of: (a) Force Majeure invoked by the Seller under section 14.8 or 14.9; (b) compliance with an Emergency Request delivered by the Buyer under this EPA; or (c) a BC Hydro System Constraint attributable solely to the Buyer.

"**N**" means the calendar year of the last day of the applicable Capacity Commitment Period.

"**5th Percentile Hours**" means, for a Capacity Commitment Period, the lowest 5% of all Eligible Hours in the Capacity Commitment Period, when considering only the amount of Delivered Energy that BC Hydro is obligated under this EPA to accept in all Eligible Hours during the Capacity Commitment Period; each such Eligible Hour in the lowest 5% of all Eligible Hours is a "5th Percentile Hour".

"**Deemed Delivered Capacity Commitment**" means, for a Capacity Commitment Period, the amount of Delivered Energy that the Buyer is obligated under this EPA to accept in the 5th Percentile Hour during the Capacity Commitment Period with the highest amount of Delivered Energy that the Buyer is obligated under this EPA to accept relative to all other 5th Percentile Hours.

Any LDs owing by the Seller to the Buyer pursuant to this section 11.2 shall be payable on the 15th day of the second month following the end of the Capacity Commitment Period in which the delivery shortfall occurred.

11.3 First Nations Equity Ownership Energy Price Reduction

If:

- (a) a statutory declaration provided by the Seller pursuant to section 5.2(g)(vii) or section 6.10(d)(i) indicates that, on the effective date of the statutory declaration:
 - (i) the First Nations Equity Ownership is less than the Committed Level of First Nations Equity Ownership; and/or
 - (ii) any one or more of the Proposal First Nations does not hold Equity Ownership of the Seller;

or,

- (b) the Seller fails to deliver a statutory declaration when required under and in accordance with the requirements of section 6.10(d)(i),

the Energy Price will be reduced in every hour:

- (c) beginning in the first hour of the day after the statutory declaration referred to in paragraph (a) is delivered or after the day on which the statutory declaration referred to in paragraph (b) was required, whichever is applicable; and
- (d) ending at the end of the day that is the earlier of:
 - (i) the date on which the Buyer receives a statutory declaration that meets the requirements of section 6.10(d)(i) and confirms that, on the effective date of the statutory declaration, the First Nations Equity Ownership is equal to or greater than the Committed Level of First Nations Equity Ownership and every Proposal First Nation holds Equity Ownership in the Seller; and
 - (ii) the fourth anniversary of COD,

by multiplying the amount referred to in section 1.1(zz)(i) by 0.95.

11.4 Exclusive Remedies for Buyer

Except in the case of Deliberate Breach:

- (a) payment by the Seller of the LDs in this Article 11 is the exclusive remedy to which the Buyer is entitled for:
 - (i) any delay in achieving COD on or before the Guaranteed COD; or
 - (ii) the Seller's failure to comply, in whole or in part, with its obligations in section 7.3, ***[Note: This paragraph (ii) will only be included for EPAs for Sellers that made a capacity commitment in their Proposal.]***

and

- (b) the reduction of the Energy Price referred to in section 11.3 is the exclusive remedy to which the Buyer is entitled if a statutory declaration provided by the Seller pursuant to section 5.2(g)(vii) or section 6.10(d)(i) indicates that, on the effective date of the statutory declaration, the First Nations Equity Ownership is less than the Committed Level of First Nations Equity Ownership or any one or more Proposal First Nations does not hold Equity Ownership in the Seller, or if the Seller fails to deliver a statutory declaration when required under and in accordance with the requirements of section 6.10(d)(i),

provided that the foregoing does not limit or otherwise affect any right to receive interest on LDs, any right to terminate the EPA, or any right to receive a Seller Termination Payment, in each case as expressly set out in this EPA, or the exercise of any other right or remedy expressly set out in this EPA, including any rights under section 8.10 or Article 12.

11.5 Exclusive Remedies for Seller

The Seller's exclusive remedy for the Buyer's failure to take or pay for Delivered Energy (including Test Energy) and Delivered Energy Environmental Attributes is the right to recover the price payable by the Buyer for the Delivered Energy and Delivered Energy Environmental Attributes pursuant to Article 8 and any interest on any such amount owing by the Buyer to the Seller, provided that the foregoing does not limit or otherwise affect any right to terminate the EPA, any rights under section 8.10, or any right to receive a Buyer Termination Payment expressly set out in this EPA. Notwithstanding any other provision of this EPA, the Seller acknowledges that its sole and exclusive remedies against the Buyer with respect to, arising out of, relating to or in way connected with the EPA, the transactions contemplated under this EPA and/or the Seller's Plant are those contractual rights set out in this EPA and the Seller shall not have any other claims against the Buyer with respect to, arising out of, relating to or in any way connected with this EPA, the transactions contemplated under this EPA or the Seller's Plant, whether based on tort, statute or any other theory of law or in equity.

12. PERFORMANCE SECURITY

12.1 Delivery

- (a) The Parties acknowledge that the Seller has delivered the Performance Security to the Buyer concurrently with execution and delivery of this EPA. The Seller shall maintain the Performance Security until the time provided in section 12.2 and shall amend or replace the Performance Security to ensure that the Performance Security at all times complies with the requirements set forth in section 12.4.
- (b) The Performance Security does not limit the Seller's liability in respect of any breach of, or default under, this EPA.

12.2 Return of Performance Security

The Buyer shall return or release the Performance Security to the Seller, without deduction, other than prior deductions, if any, properly made hereunder, on the date that is 180 days after COD. No interest will be payable by the Buyer in connection with the Performance Security.

12.3 Enforcement

- (a) If:
- (i) the Seller fails to pay any LDs owing by the Seller to the Buyer;
 - (ii) the Seller fails to pay any Seller Termination Payment owing by the Seller to the Buyer; or
 - (iii) the Seller fails to pay any other Final Amount owing by the Seller to the Buyer,
- and, in each case, the Seller fails to cure such failure to pay within 15 days after notice from the Buyer to the Seller, then the Buyer may enforce the Performance Security and apply the proceeds thereof on account of amounts owing to the Buyer in respect of any or all of the foregoing.

12.4 Form

The Seller shall maintain the Performance Security in the form of a letter of credit that is:

- (a) issued or confirmed by a branch of a domestic Canadian financial institution having a minimum credit rating not less than Standard & Poor's A-, Moody's A3 or Dominion Bond Rating Service A (low). If the issuing financial institution is not a domestic Canadian financial institution, the sovereign country's debt rating should not be less than Standard & Poor's AA, Moody's Aa2 or Dominion Bond Rating Service AA and the financial institution must be acceptable to the Buyer. The Buyer, at its discretion, may accept a sovereign debt rating of Standard & Poor's AA-, Moody's Aa3 or Dominion Bond Rating Service AA (low) if the issuing bank has a rating of not less than Standard & Poor's A, Moody's A2 or Dominion Bond Rating Service A. If such credit rating agencies publish differing credit ratings for the same financial institution, the lowest credit rating of any of the credit rating agencies shall apply for purposes of this section 12.4(a). The letter of credit issuer or the confirming bank must meet these minimum standards at all times during the validity period of the letter of credit;
- (b) available for presentation in Vancouver, British Columbia;
- (c) in the standard form of letter of credit in use by the Buyer at that time; and
- (d) for a term of not less than one year and providing that it is renewed automatically, unless the issuing or confirming institution specifies otherwise as specified in the form of letter of credit.

12.5 Replenishment

If the Buyer draws on the Performance Security as permitted hereunder, then the Seller shall within three Business Days after such draw provide additional security in the form specified in section 12.4 sufficient to replenish or maintain the aggregate amount of the Performance Security at the amount required hereunder.

12.6 Right to Withhold Payment

If the Seller has failed to maintain the Performance Security in the amount required under this EPA, subject to the cure period specified in section 12.5, the Buyer will be entitled to withhold payment of any amount owing by the Buyer to the Seller under this EPA until five days after the date when the Seller has delivered the required amount of Performance Security to the Buyer. Any amounts withheld by the Buyer in accordance with this section 12.6 will not bear interest.

12.7 Letter of Credit Failure

The Buyer will be entitled to enforce the Performance Security in the event of a Letter of Credit Failure and for the purposes of the written demand required under the Performance Security, the relevant amount of the Performance Security shall be deemed to be an amount due to the Buyer. The Buyer shall be entitled to hold the proceeds of such enforcement until such time as the Seller delivers replacement Performance Security in the amount and in the form required under this EPA. Upon receipt of such replacement security, the Buyer shall return the proceeds of enforcement of the original Performance Security to the Seller without interest after deducting any amounts the Buyer is entitled to deduct under this EPA. The Seller shall notify the Buyer promptly of any Letter of Credit Failure.

13. SUSPENSION

13.1 General Buyer Suspension

Subject to section 13.2, if a Buyer Termination Event occurs and is continuing, the Buyer may, upon notice to the Seller, suspend performance and payment by the Buyer under this EPA, provided that:

- (a) such suspension may not continue for longer than 90 days;
- (b) the suspension shall not affect the Buyer's obligation to make any payment owing to the Seller in respect of performance by the Seller of its obligations under this EPA prior to the date of suspension by the Buyer; and
- (c) the suspension of performance shall not limit any rights the Buyer may have under the EPA to terminate the EPA as a result of the occurrence of the Buyer Termination Event.

13.2 Buyer Suspension for Material Non-Compliance

Notwithstanding the time limitations set in section 13.1, if at any time after COD there is an ongoing event of material non-compliance with a Material Permit or a **Third Party Permit**, or if a Material Permit or **Third Party Permit** is suspended or cancelled, the Buyer may, upon notice to the Seller, suspend performance and payment by the Buyer under this EPA, provided that:

- (a) such suspension may not continue for longer than 365 days;
- (b) the suspension shall not affect the Buyer's obligation to make any payment owing to the Seller in respect of performance by the Seller of its obligations under this EPA prior to the date of suspension by the Buyer; and

- (c) the suspension of performance shall not limit any rights the Buyer may have under the EPA to terminate the EPA as a result of the material non-compliance.

13.3 Resuming Deliveries

The Buyer's right to suspend performance pursuant to this Article 13 shall cease when the Seller has demonstrated to the satisfaction of the Buyer, acting reasonably, that the Seller has cured the cause for the suspension.

14. EPA ADMINISTRATION

14.1 Records

The Seller will prepare and maintain all Records, or duplicates of such Records, for a period of not less than 7 years from the date on which each such Record is created, even if such period of time extends beyond the end of the Term. The Seller will maintain all such Records or duplicates at the Seller's Plant or, only following the expiry of the Term or the earlier termination of this EPA, at such other location as may be agreed in writing between the Parties. The Audit Parties may take copies of such Records for the purposes of an inspection or audit under section 14.2.

14.2 Inspection and Audit Rights

For the sole purpose of verifying:

- (a) compliance with this EPA;
- (b) the accuracy of statements, supporting information and calculations delivered by the Seller to the Buyer under this EPA;
- (c) the Development Costs;
- (d) the qualification of the Energy, other than Energy generated by Auxiliary Fuel to the extent permitted under this EPA, as Clean Energy;
- (e) the qualification and subsequent verification of the Seller's Plant and the Energy for the Environmental Certification(s); or
- (f) the qualification of any Environmental Attributes for any applicable program and the quantification of Delivered Energy Environmental Attributes.

the Seller will, on reasonable prior notice from the Buyer, provide the Audit Parties with prompt access during normal business hours to the Project Assets and all Records, including any Seller Confidential Information, to enable the Audit Parties to conduct an inspection or audit thereof. The Audit Parties will 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 the Buyer requires the Seller to provide access to the Project Assets and/or Records relating to the Seller's Plant to a third Person with whom the Buyer or

any of its Affiliates has entered into a contract for the sale and purchase of Delivered Energy Environmental Attributes or any Affiliate, representative, consultant or advisor to any such third Person, the Buyer will first obtain from the third Person an agreement to maintain the confidentiality of any Seller Confidential Information to which such Person may have access and to limit the use of such Seller Confidential Information as required to verify or use the Delivered Energy Environmental Attributes.

14.3 Seller Consents

The Seller must 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 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.

14.4 Assignment

- (a) Requirement for Consent - Subject to section 14.4(c), but notwithstanding any other provision of this EPA, the Seller is not permitted to Assign this EPA except with the prior consent of the Buyer, which consent may not be unreasonably withheld, conditioned or delayed, provided that if the Seller proposes to Assign this EPA prior to COD, the Buyer will be entitled to withhold its consent to the Assignment in its sole discretion. Any Assignment (other than an Assignment to a Facility Lender as described in section 1.1(d)(ii) or an Assignment arising as a result of a change of Control of the Seller) is subject to the assignee entering into and becoming bound by this EPA, assuming all the obligations and liabilities of the Seller under this EPA and the Seller's interest, rights and obligations under the Indirect Interconnection Arrangements and the Interconnection Agreement (including replacement of any Performance Security or Interconnection Security), **[Note: Delete references to Interconnection Agreement and Interconnection Security for an Indirect Interconnection, but retain reference to replacement of Performance Security.]** curing any financial or non-financial defaults of the Seller, including under any Permit, under this EPA prior to the Assignment, and providing the representations and warranties set out in section 16.1 effective as at the time of Assignment. For greater certainty, any assignee under any Assignment of this EPA prior to the third anniversary of COD will remain subject to all of the terms of this Agreement relating to Equity Ownership by Project First Nation(s).
- (b) Time for Request - Any request by the Seller for the Buyer's consent under section 14.4(a) must be delivered to the Buyer 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 the Buyer to assess the request for consent including the current ownership structure of the Seller, the name, address and ownership structure of the assignee, details of any consultation with First Nations that may be impacted by the Seller's Plant or the Assignment with respect to the proposed Assignment, a list of the directors and officers of the assignee and information concerning the assignee's operations, experience and financial status.

- (c) Assignment to Affiliate - The Seller may Assign this EPA to an Affiliate, on written notice to, but without the consent of, the Buyer, provided that the Seller will remain liable for the obligations of the assignee under this EPA and the Assignment will remain subject to all other requirements for Assignment set out in section 14.4(a).
- (d) Assignment to Facility Lender - If the Seller seeks consent to Assign this EPA to a Facility Lender, the Buyer 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 the Buyer in the Buyer's standard form from time to time.
- (e) Costs - The Seller will reimburse the Buyer for all costs reasonably incurred by the Buyer in connection with any Assignment.

14.5 Dispute Resolution

- (a) Arbitration - All disputes under or in relation to this EPA, including any such disputes arising, in whole or in part, in connection with any other agreements between the Buyer and the Seller referenced in this EPA, will be referred to and finally resolved by arbitration conducted by a single arbitrator and administered by the Vancouver International Arbitration Centre pursuant to its applicable rules. The place of arbitration will be Vancouver, British Columbia. All in-person hearings will take place in the City of Vancouver unless otherwise agreed by the Parties. Except as otherwise expressly provided in this EPA, the arbitrator will have the jurisdiction to grant equitable remedies, including interim or permanent injunctive relief. The language of the arbitration will be English. 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 section 8.6(b)(iv) or, where that section does not apply, as of the date determined in the award. Without duplication with section 8.6(b)(iv), 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 will 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 will 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 Affiliates, consultants and professional advisors who have a need to know such information, provided each of them is advised of the confidential nature of the information and agrees to respect such confidentiality; and (iv) in the case of the Buyer, to representatives of the Province of British Columbia.

14.6 Notices

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 must be in writing addressed to the other Party at the address for that Party stated in Appendix A and:

- (a) notices under sections 14.8 and 14.9, section 15.1, and section 15.3 must be delivered by hand or by a courier service during normal business hours on a Business Day with a copy of the notice by email during normal business hours on the same Business Day, and a notice so delivered will be deemed to have been delivered on that Business Day;
- (b) The Buyer may deliver Emergency Requests under section 7.9(a) or Curtailment Requests under section 7.10(a) to the Seller:
 - (i) by telephone at any time with a follow-up email during normal business hours on a Business Day, in each case to the telephone number (if applicable) and email address indicated in Appendix A for the Seller, and a request so delivered will be deemed to have been delivered on the day and in the hour of the telephone call; or
 - (ii) by any other method specified in this section 14.6;
- (c) all notices other than notices described in sections 14.6(a) and 14.6(b) 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
- (d) either Party may change its address for notices under this EPA by notice to the other Party.

14.7 Confidentiality

- (a) **Confidentiality Agreement** - The Confidentiality Agreement continues in full force and effect in accordance with its terms, and section ● **[Note: This will be revised to include the section reference in the Confidentiality Agreement.]** thereof is amended to provide that the obligations thereunder will expire two years following the end of the Term. To the extent of any conflict or inconsistency between this EPA and the Confidentiality Agreement, this EPA will prevail.
- (b) **Additional Confidentiality Obligation** – Without limiting the effect of the Confidentiality Agreement, during the Term and for two years after the end of the Term:
 - (i) the Buyer will treat as confidential, and will not disclose to any third Person, Seller Confidential Information, and
 - (ii) the Seller will treat as confidential, and will not disclose to any third Person, Buyer Confidential Information.

(c) **Disclosure of Confidential Information** - Notwithstanding the Confidentiality Agreement or section 14.7(b) above:

(i) the Seller may disclose Buyer Confidential Information, and the Buyer may disclose Seller Confidential Information, in the following circumstances:

- (A) disclosures expressly authorized under this EPA or otherwise set out in this EPA;
- (B) disclosures to enable a Party to fulfill its obligations under this EPA;
- (C) disclosure in any arbitration or legal proceedings for the enforcement of this EPA;
- (D) disclosure to the Party's directors, officers, employees, Facility Lenders, consultants and advisors, provided each of them is advised of the confidential nature of the information and agrees to respect such confidentiality;
- (E) subject to section 14.7(c)(ii)(D), disclosure required to be made by a Party by an order of a court, a regulatory agency or a tribunal or under any law, regulatory requirements or any requirement of any stock exchange that is binding upon a Party, provided that the Party intending to make the disclosure:
 - (I) to the extent reasonably practicable, gives reasonable notice to the other Party before making the disclosure; and
 - (II) limits the disclosure to that required by the applicable order Laws or regulatory or stock exchange requirement;

and provided further that in the case of disclosure of any Buyer Confidential Information that is required or proposed to be made by the Seller:

- (III) the Seller makes all reasonable efforts to resist and limit such exposure including applying to the court, tribunal or other regulatory entity to do so; and
- (IV) the Seller will indemnify and hold harmless the Buyer from all reasonable costs and expenses (including full legal costs and expenses) incurred by or on behalf of the Buyer in connection with resisting, limiting, reviewing and responding to such disclosure (which may include taking measures to oppose or restrict the disclosure);
- (F) disclosure to a third Person if such information was known by that third Person before disclosure by the Buyer or Seller, as the case may be, provided the third Person did not know of the information as a result of

- a breach of the non-disclosure obligations in this EPA or the Confidentiality Agreement; or
- (G) disclosure with the consent of the Buyer, in the case of Buyer Confidential Information, or the Seller, in the case of Seller Confidential Information; and
- (ii) notwithstanding section 14.7(c)(i), the Buyer may disclose Seller Confidential Information in the following circumstances:
- (A) disclosure to the Buyer's Affiliates or to any third Person or Governmental Authority (whether directly or by the Buyer's Affiliates), and their respective employees, consultants and advisors, for the purpose of using, reselling or marketing any Energy or Environmental Attributes, including disclosure of Seller Confidential Information by such Affiliate or third Person to those who have purchased or may purchase the Energy or Environmental Attributes;
 - (B) for purposes other than those described in section 14.7(c)(ii)(A), to the Buyer's Affiliates and to any directors, officers, employees, consultants and advisors of any Affiliates, provided such persons either have a legal duty to maintain confidentiality or have provided written assurances of confidentiality to such Affiliate;
 - (C) to any ministers, deputy ministers, servants or employees of the Province of British Columbia or Canada, in either case to the extent that the Buyer considers disclosure is necessary or desirable for any purpose, provided each of them is advised of the confidential nature of the information;
 - (D) in any regulatory proceeding to the extent the Buyer considers disclosure is necessary or desirable to support its position in such proceeding, or in connection with any other regulatory filing or reporting that may be required, provided that the Buyer files any such Seller Confidential Information on a confidential basis in accordance with the applicable regulator's policies and procedures for confidential filings; or
 - (E) disclosure by the Buyer or its Affiliates to reliability organizations, reliability coordinators, balancing authorities, transmission operators or others, such as imbalance markets, to the extent that the Buyer or any of its Affiliates consider disclosure is necessary or desirable for operating reliability or compliance purposes, provided each of them is advised of the confidential nature of the information.

For greater certainty, the restrictions and limitations on disclosure set out in section 14.7(c)(i) do not apply to disclosures under this section 14.7(c)(ii).

- (d) **Freedom of Information and Protection of Privacy Act** - The Seller acknowledges that the Buyer is subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia) and agrees that the Buyer's non-disclosure obligations under this EPA are subject to the provisions of that statute.

14.8 Force Majeure

- (a) If there is a Force Majeure affecting a Party's ability to perform an obligation under this EPA, and that Party wishes to declare a Force Majeure, that Party will notify the other Party of the Force Majeure as soon as reasonably practicable. The notice of Force Majeure must identify the nature of the Force Majeure, the date the Force Majeure commenced, the expected duration of the Force Majeure, and the particular obligations affected by the Force Majeure.
- (b) Subject to section 14.8(a), neither Party will be in default of any obligation under this EPA if a Party is unable to perform that obligation due to an event or circumstance of Force Majeure. For greater certainty:
 - (i) if the Buyer is unable to accept delivery of Energy as a result of an event or circumstance of Force Majeure, the Buyer will not be in default of its obligation to accept delivery of the Energy and will have no obligation to pay for the Energy that it was unable to accept; and
 - (ii) the Seller will not be considered to be unable to perform an obligation due to an event or circumstance of Force Majeure during any period where the Seller's Plant:
 - (A) would not have been operating, including as a result of a disconnection of the Seller's Plant from the Third Party System for any reason, or a disconnection of the Third Party System from the BC Hydro System unless for reasons solely attributable to the Buyer; or
 - (B) would have been unable to operate the Seller's Plant or generate Energy in compliance with the Project Standards;
- (c) 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 will promptly respond to any inquiry from the other Party regarding the efforts being undertaken to remove the Force Majeure and will give prompt notice of the end of the Force Majeure.

14.9 First Nations

- (a) Notwithstanding the definition of Force Majeure in section 1.1(III), and without limiting the application of the definition of Force Majeure to any circumstance that is not specifically described in this section 14.9(a), any order or decision of any court of competent jurisdiction or any regulatory authority, including the BCUC, that is binding on the Buyer and/or the Seller, the compliance with which would prevent the Buyer

and/or the Seller from performing all or any of its obligations under this EPA, which is based in whole or in part on any failure or alleged failure of the Buyer to fulfill its obligations to First Nations in respect of Potential Impacts, will be an event of Force Majeure that may be invoked by the Party or Parties so prevented, provided that the Party or Parties so prevented will use reasonable efforts to remedy the situation and remove the Force Majeure to the extent that it is within the control of that Party to do so.

- (b) A Party may not invoke Force Majeure as a result of such binding order or decision referenced at section 14.9(a) if such order or decision results from a wilful act or omission of a Party as contemplated in section 1.1(III)(v), provided that the failure or alleged failure of the Buyer may only be considered a wilful act or omission where the underlying event or circumstance giving rise to the obligation was or is fully within the control of the Buyer and provided further that, for greater certainty, any activities of the Seller, including any activities of the Seller upon which the Buyer has relied, will not be considered to be within the control of the Buyer regardless of any consent, waiver, declaration or approval under this EPA, including any further amendment of this EPA that the Buyer may provide in respect of the Seller's activity.
- (c) The Buyer may not invoke Force Majeure as a result of such order or decision referenced at section 14.9(a) if:
 - (i) the Buyer has received notice in writing from the Seller that the Seller is attempting to resolve, cure, fulfill or remedy, as the case may be, at its own initiative and at its own expense, the issues, orders or obligations raised or required by the order or decision;
 - (ii) the Buyer is not incurring additional expense, risk or liability as a result of the Seller taking the steps described in section 14.9(a) and the Buyer has received written confirmation from the Seller that the Buyer will not be subject to any liability to the Seller for breach of this EPA as a result of the Buyer's compliance with that portion of the order or decision that prohibits the Buyer from performing its obligations under this EPA while at the same time not being able to invoke Force Majeure as a result of this provision;
 - (iii) the Seller is at all times moving expeditiously and in good faith to resolve, cure, fulfill or remedy the issues, orders or obligations raised in the order or decision; and
 - (iv) the Buyer would not be in breach of the order or decision as a result of the Seller taking the steps described in section 14.9(c)(i).

15. TERMINATION

15.1 Termination by Buyer

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

- (a) the Seller has failed to obtain all Material Permits on or before Guaranteed COD, provided that the Buyer may terminate this EPA under this section only if the Buyer delivers a termination notice before the date on which the Seller has secured all Material Permits, and if the Seller has not already delivered a notice of termination under section 15.3(a);
- (b) COD does not occur by Guaranteed COD plus 365 days (the “**Guaranteed COD Termination Date**”), and the Seller cannot demonstrate by clear and convincing evidence acceptable to the Buyer, acting reasonably, that construction (as the case may be) of the Seller’s Plant is 80% complete by that date, provided that the Buyer may terminate this EPA under this section only if the Buyer delivers a termination notice before COD;
- (c) if COD does not occur by the Guaranteed COD Termination Date but the Seller has demonstrated by clear and convincing evidence acceptable to the Buyer, acting reasonably, that construction (as the case may be) of the Seller’s Plant is 80% complete by that date, and COD has still not occurred within a further 180 days after the Guaranteed COD Termination Date, provided that the Buyer may terminate this EPA under this section only if the Buyer delivers a termination notice before COD;
- (d) the Seller does not deliver any Energy to the Buyer for a period of 365 continuous days and the Seller’s failure to deliver is not solely as a result of a BC Hydro System Constraint for which the Seller is entitled to receive payment under section 7.10(d), compliance with an Emergency Request or Curtailment Request, or Force Majeure declared by the Seller under sections 14.8 or 14.9, unless the Seller demonstrates to the reasonable satisfaction of the Buyer that the Seller is working diligently and expeditiously to cure the failure to deliver and the failure is cured within a further reasonable period of time;
- (e) the Buyer is unable to accept delivery of Energy for a period of 365 continuous days due to Force Majeure invoked by the Buyer in accordance with section 14.8 or 14.9, a BC Hydro System Constraint other than a BC Hydro System Constraint for which the Seller is entitled to receive payment under section 7.10, or an Emergency Condition;
- (f) the Seller has failed to complete any step in the process for indirectly interconnecting the Seller’s Plant to the BC Hydro System via the Third Party System in accordance with the requirements and time limits specified by the Buyer, and such failure results in the loss of the Seller’s interconnection queue position in accordance with the OATT;
- (g) the Third Party Interconnection Agreement is terminated at any time;
- (h) any other Indirect Interconnection Arrangement is terminated at any time, or revised at any time other than in compliance with section 6.16;
- (i) the Third Party Interconnection Agreement is amended or revised to contain information that is inconsistent with the description of the Seller’s Plant in Appendix B and the Seller has not received the Buyer’s consent under section 4.8 or 6.4 for the change to Appendix B;

- (j) the Seller is in material default of any of its covenants, representations and warranties or other obligations under the Interconnection Agreement, unless within 30 days after the date of notice by the Buyer to the Seller of the default under this Interconnection Agreement the Seller has cured the default or, if the default cannot be cured within that 30-day period, the Seller demonstrates to the reasonable satisfaction of the Buyer that the Seller is working diligently and expeditiously to cure the default and the default is cured within a further reasonable period of time; **[Note: This provision will be deleted for indirect interconnections.]**
- (k) the Seller is Bankrupt or Insolvent;
- (l) 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, **the transmission of Energy over the Third Party System to the POI**, and the sale of Energy and Environmental Attributes to the Buyer under this EPA, and the loss of such exemption could reasonably be expected to have an adverse effect on the benefit to the Buyer of this EPA;
- (m) an amount due and payable by the Seller to the Buyer under this EPA remains unpaid for 60 days after its due date and such default has not been cured within 60 days after the Buyer has given notice of the default to the Seller;
- (n) a Letter of Credit Failure has occurred and the Seller has failed to cure that failure within 5 Business Days after the Letter of Credit Failure occurred;
- (o) the Seller interconnects, or permits a third Person (including an Affiliate) to interconnect, an electric load or generation facility to the Seller’s Plant, or on the Seller’s Side of the POI, in either case without the advance written approval of the Buyer;
- (p) the Seller’s Plant includes and the Seller stores any energy in the battery system other than Energy; or
- (q) 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 the Buyer to the Seller of the default the Seller has cured the default or, if the default cannot be cured within that 30 day period, the Seller demonstrates to the reasonable satisfaction of the Buyer that the Seller is working diligently and expeditiously to cure the default and the default is cured within a further reasonable period of time. A “material default” includes: (i) any purported Assignment of this EPA without the consent of the Buyer; (ii) any Deliberate Breach by the Seller of its obligations under section 7.2; (iii) **a failure by the Seller to operate the Seller’s Plant and generate Energy substantially in accordance with the Fuel Plan that is at that time in effect**; and (iv) any failure by the Seller to comply with sections 4.1(a), 4.1(b), 4.2 (in the circumstances set out in that section), 6.3(a)(ii), **6.9**, 6.10(d)(i), 6.14 (as well as any failure by the Seller to maintain and provide the Buyer with access to Records relating to protection and safety devices and associated telecommunication equipment as required by this EPA), 6.15, **6.16**, 7.6 or 10.1. **[A “material default” does not include any failure to deliver the Designated Capacity Commitment in any On-Peak Hour during a Capacity Commitment Period in respect of which the Seller has paid any Delivery**

Shortfall LDs owing under section 11.2, other than such a failure resulting from a Deliberate Breach.] *[Note: The square bracketed language will only be included for EPAs for Sellers that made a capacity commitment in their Proposal.]*

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

15.2 Notice of Termination Event

The Seller will notify the Buyer 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 or if any Permit for the Seller's Plant is terminated or expires.

15.3 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 the Buyer if:

- (a) the Seller, after using commercially reasonable efforts, has failed to obtain all Material Permits on terms satisfactory to the Seller, acting reasonably, on or before the date that is 90 days before the Guaranteed COD, provided that if the Seller has not given notice of termination pursuant to this section 15.3(a) within 15 days after such date, the Seller shall be deemed to have elected not to terminate this EPA and may not thereafter terminate this EPA under this section 15.3(a);
- (b) the Buyer has not accepted delivery of Energy at the POI for a period of 365 continuous days due to Force Majeure declared by the Buyer under sections 14.8 or 14.9, a BC Hydro System Constraint and the Seller is not entitled to receive any payment pursuant to section 7.10 in respect of that period, or an Emergency Condition;
- (c) the Seller's Plant has suffered Major Damage caused by Force Majeure and a right to terminate is available under section 9.1(a);
- (d) the Buyer is Bankrupt or Insolvent;
- (e) except where an amount has been disputed in the manner specified in section 8.6(a)(v), an amount due and payable by the Buyer to the Seller under this EPA remains unpaid for 60 days after its due date and such default has not been cured within 60 days after the Seller has given notice of the default to the Buyer; or
- (f) the Buyer is in material default of any of its covenants, representations and warranties or other obligations under this EPA (other than as set out above), and such default has not been cured within 30 days after the Seller has given notice of the default to the Buyer or, if the default cannot be cured within that 30 day period, the Buyer fails to demonstrate to the reasonable satisfaction of the Seller that the Buyer is working

diligently and expeditiously to cure the default or the default is not cured within a further reasonable period of time.

Any termination pursuant to this section will be effective immediately upon delivery of the notice of termination to the Buyer.

15.4 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 this EPA (including any such breach that led to termination of this 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 the Buyer for amounts payable by the Seller under the Interconnection Agreement) *[Note: Delete language in parentheses for indirect interconnections.]*, subject to any express restrictions on remedies and limitations or exclusions of liability set out in this EPA;
- (b) both Parties will remain bound by:
 - (i) Article 8 with respect to any final billing and resolution of disputed amounts only;
 - (ii) Article 15 with respect to the satisfaction of residual obligations for the period prior to termination or that are specified to arise on or after termination, including section 15.5 and 15.7;
 - (iii) Article 18 and sections 14.5 and 14.7;
 - (iv) all provisions of this EPA with respect to Environmental Attributes associated with any Energy generated during the Energy Delivery Period; and
 - (v) the Interconnection Agreement and any other agreements between the Parties that remain in effect on the date of termination of this EPA; *[Note: Delete reference to the Interconnection Agreement in this section for indirect interconnections.]*
- (c) the Seller will remain bound by (and the Buyer and Audit Parties will continue to have rights under):
 - (i) section 14.1; and
 - (ii) section 14.2 for a period of 36 months following expiry of the Term or earlier 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.

15.5 Seller Termination Payment

- (a) If the Seller terminates this EPA under section 15.3(a), the Seller will pay to the Buyer, within 30 days after termination, a termination payment in the amount of \$60,000/MW multiplied by the Plant Capacity (the “**Seller Material Permit Termination Payment**”).
- (b) If the Buyer terminates this EPA under any section of this EPA, excluding any termination under:
 - (i) section 3.2;
 - (ii) either of sections 15.1(b) or 15.1(c), when the right to terminate arose solely as the result of an event of Force Majeure invoked by the Seller that continued for greater than 365 Force Majeure Days; or
 - (iii) either of sections 15.1(d) or 15.1(e) when the right to terminate under the applicable section arose solely as the result of an event of Force Majeure,

then the Seller will pay to the Buyer, within 30 days after the delivery of the invoice referred to in paragraph (vi) below, an amount equal to the positive amount, if any, by which the Buyer’s Economic Losses and Costs exceed the aggregate of the Buyer’s Gains (the “**Seller Early Termination Payment**”). For the purposes of calculating the Gains, Economic Losses and Costs of the Buyer pursuant to this section 15.5(b), the following conditions shall apply:

- (iv) the Buyer’s Gains, Economic Losses and Costs shall be determined in a commercially reasonable manner by comparing the value of the remaining Term, estimated contract quantities based on the Plant Capacity and the Energy estimate during the Energy Delivery Period from the Proposal (attached as Appendix K), and the Energy Price payable under the EPA had it not been terminated, to the relevant market prices for equivalent quantities for the remaining Term either quoted by a *bona fide* arm’s length third Person or which are reasonably expected to be available in the market under a replacement contract for this EPA. Market prices shall be adjusted for differences between the product subject to the market prices and a product, inclusive of Environmental Attributes, equivalent to that specified under this EPA available from a generator meeting the specifications set forth in Appendix B, including with respect to place of delivery and length of term and each element of those specifications;
- (v) the Buyer will not be required to enter into a replacement transaction in order to determine the amount payable by the Seller;
- (vi) the Buyer will determine the amount of any Seller Early Termination Payment owed by the Seller, and shall notify the Seller 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 Buyer shall not be entitled to any Seller Termination Payment under this section 15.5; and

- (vii) the Buyer's Gains, Economic Losses and Costs shall be discounted to the date of termination of this EPA using the Present Value Rate applicable at the date of termination of this EPA.

For greater certainty, nothing in this section 15.5 limits the Seller's obligation to pay LDs under Article 11 for periods prior to or including the date of termination of this EPA.

15.6 Early Termination by Seller - Participation in Future Programs

If the Seller terminates this EPA under section 15.3(a), the Seller and its Affiliates may be, in relation to or in connection with the Seller's Plant, ineligible to participate in any future calls for power or power procurement or acquisition initiatives, programs or activities led, initiated or administered by the Buyer or the Province of British Columbia. If, after the Effective Date, the Seller wishes to sell, transfer or assign its interest in the Seller's Plant to any other Person, the Seller will inform the prospective transferee prior to agreeing to transfer such interest that the Buyer may not consider, approve or permit any applications or requests for participation by any Person, with respect to or in connection with the Seller's Plant, in any future calls for power or power procurement or acquisition initiatives, programs or activities in such circumstances.

15.7 Buyer Termination Payment

If the Seller terminates this EPA under sections 15.3(d), 15.3(e) or 15.3(f), then the Buyer will pay to the Seller, within 30 days after the delivery of the invoice referred to below, an amount equal to:

- (a) if termination occurred prior to COD:
 - (i) 115% of the Development Costs incurred by the Seller prior to the delivery of termination notice by the Buyer; less
 - (ii) the Net Realizable Value of the Project Assets, where "**Net Realizable Value**" means the amount that the Seller receives, or could reasonably be expected to receive, after the exercise of commercially reasonable efforts, from a disposition of the Project Assets, net of transaction costs, as of the date of termination; and
- (b) if termination occurred after COD, the positive amount, if any, by which the Seller's Economic Losses and Costs exceed the aggregate of the Seller's Gains (the "**Buyer Termination Payment**"). For the purposes of calculating the Gains, Economic Losses and Costs of the Seller pursuant to this section 15.7, the following conditions shall apply:
 - (i) the Seller's Gains, Economic Losses and Costs shall be determined in a commercially reasonable manner by comparing the value of the remaining Term, estimated contract quantities based on the Plant Capacity, the Energy estimate during the Energy Delivery Period from the Proposal (attached as Appendix K) and the actual amount and rate of generation of Energy from the Seller's Plant since COD, and the Energy Price under this EPA had it not been terminated, to the relevant market prices for equivalent quantities for the remaining Term either quoted by a *bona fide* arm's length third Person or which are reasonably expected to be available in the market under a replacement

contract for this EPA. Market prices shall be adjusted for differences between the product subject to the market prices and a product, inclusive of Environmental Attributes, equivalent to that specified under this EPA available from a generator meeting the specifications set forth in Appendix B, including with respect to place of delivery and length of term and each element of those specifications;

- (ii) the Seller will not be required to enter into a replacement transaction in order to determine the amount payable by the Buyer; and
- (iii) the Seller's Gains, Economic Losses and Costs shall be discounted to the date of termination of this EPA using the Present Value Rate applicable at the date of termination of this EPA.

The Seller will determine the amount specified in section 15.7(a) or the amount of any Buyer Termination Payment owed by the Buyer, as applicable, and shall notify the Buyer 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 shall not be entitled to any Buyer Termination Payment under this section 15.7.

16. REPRESENTATIONS AND WARRANTIES

16.1 Seller's Representations

The Seller represents and warrants to the Buyer, and acknowledges that the Buyer is relying on those representations and warranties in entering into this EPA, as follows:

- (a) **Corporate Status** - the Seller is duly incorporated, organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, is registered or otherwise lawfully authorized to carry on business in British Columbia, and has full power, capacity and authority to own its assets and to carry on its business as now conducted and to enter into and to perform its obligations under this EPA;
- (b) **Bankruptcy** - no actions are threatened, or have been taken or authorized by the Seller or any other Person to initiate proceedings for, or in respect of, the bankruptcy, insolvency, liquidation, dissolution or winding-up of the Seller or to appoint a receiver, liquidator, trustee or assignee in bankruptcy in respect of the Seller;
- (c) **Assets** - No appropriation, expropriation or seizure of all or any portion of the Seller's Plant, or any of its material properties or assets, is pending or threatened;
- (d) **No Conflict** - Neither the signing of this EPA, nor the carrying out of the Seller's obligations under this EPA shall: (i) constitute or cause a breach of, default under, or violation of, the constating documents or bylaws of the Seller, any permit, franchise, lease, license, approval or agreement to which the Seller is a party, or any other covenant or obligation binding on the Seller or affecting any of its properties, (ii) cause a lien or encumbrance to attach to the Seller's Plant, other than a security interest granted in respect of financing the design, construction or operation of the Seller's Plant; or (iii) result in the acceleration, or the right to accelerate, any obligation under,

or the termination of, or the right to terminate, any permit, franchise, lease, license, approval or agreement related to the Seller's Plant;

- (e) **Binding Obligation** - This EPA constitutes a valid and binding obligation of the Seller enforceable against the Seller in accordance with its terms;
- (f) **Authorization, Execution and Delivery** - This EPA has been duly authorized, executed and delivered by the Seller;
- (g) **Proposal Documents** - All material information in the Proposal Documents is true and correct in all material respects and there is no material information omitted from the Proposal Documents which makes the information in the Proposal Documents misleading or inaccurate in any material respect;
- (h) **Appendix B** – There is no material inconsistency between the description of the Seller's Plant set out in the **Third Party** Interconnection Agreement and the information contained in Appendix B;
- (i) **Exemption From Regulation** - The Seller is exempt from regulation as a "public utility", as defined in the UCA, with respect to the Seller's Plant, **the transmission of Energy over the Third Party System to the POI**, the sale of Energy and Environmental Attributes, and the performance by the Seller of its obligations under this EPA;
- (j) **Indirect Interconnection Arrangements** - Each of the Indirect Interconnection Arrangements to which the Seller is a party, including the Wheeling Agreement: (i) constitutes a valid and binding obligation of the Seller enforceable against it in accordance with its terms; (ii) has been duly authorized, executed and delivered by the Seller; (iii) is in full force and effect; and the Seller is not in default under the applicable agreement and the Seller is not aware of any facts or circumstances which may lead to termination of the applicable agreement by any of the parties thereto.

16.2 Buyer's Representations

The Buyer represents and warrants to the Seller, and acknowledges that the Seller is relying on those representations and warranties in entering into this EPA, as follows:

- (a) **Corporate Status** - the Buyer is 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 the Buyer enforceable against the Buyer in accordance with its terms; and
- (c) **Authorization, Execution and Delivery** - this EPA has been duly authorized, executed and delivered by the Buyer.

17. LIMITATIONS OF LIABILITY

17.1 Limit of Liability

The Buyer's liability for damages for any failure to accept delivery or pay for Test Energy, Delivered Energy and Delivered Energy Environmental Attributes as and when required under this EPA is limited to the price payable by the Buyer for that Test Energy, Delivered Energy and Delivered Energy Environmental Attributes under Article 8 and any applicable interest calculated under this EPA less the amount of any revenue received by the Seller from any third Person for that Test Energy, Delivered Energy and Delivered Energy Environmental Attributes.

17.2 Consequential Damages

Neither Party will be liable to the other Party for any special, incidental, exemplary, punitive or consequential damages with respect to, arising out of, relating to or in any way connected with a Party's performance or non-performance under this EPA.

18. INDEMNITIES

18.1 Seller Indemnity

The Seller will indemnify, defend and hold harmless the Buyer Indemnified Parties from and against all claims, demands, actions, causes of action, suits, orders and proceedings made or brought against any of the Buyer Indemnified Parties:

- (a) with respect to any emissions from the Seller's Plant; or
- (b) for personal injury, including death, to third Persons and for damage to property of third Persons, to the extent caused or contributed to by the wilful act or omission or negligence of the Seller, any contractor or subcontractor or supplier to the Seller or any director, officer, employee or agent of the Seller, **the Third Party Owner, any contractor or subcontractor or supplier to the Third Party Owner or any director, officer, employee or agent of the Third Party Owner**, or any other Person for whom the Seller **or the Third Party Owner** is responsible at law where such wilful act or omission or negligence is in connection with the Seller's Plant, **the transmission of Energy over the Third Party System to the POI**, or the performance of, or the failure to perform, any of the Seller's obligations under this EPA.

18.2 Buyer Indemnity

The Buyer will indemnify, defend and hold harmless the Seller Indemnified Parties from and against all claims, demands, actions, causes of action, suits, orders and proceedings made or brought against any of the Seller Indemnified Parties for personal injury, including death, to third Persons and for damage to property of third Persons, to the extent caused or contributed to by the wilful act or omission or negligence of the Buyer, any contractor or subcontractor or supplier to the Buyer or any director, officer, employee or agent of the Buyer or any other Person for whom the Buyer is responsible at law, in each case while the Buyer or any such Person is at the Seller's Plant.

18.3 Indemnification Conditions

The right of a Party (“**Indemnitee**”) to be indemnified by the other Party (“**Indemnitor**”) under any indemnity contained in this EPA in respect of a claim by a third Person is subject to the conditions that:

- (a) the Indemnitee gives the Indemnitor prompt notice of such claim, the right to select and instruct counsel, and all reasonable cooperation and assistance, including the availability of documents and witnesses within the control of the Indemnitee, in the defence or settlement of the claim; and
- (a) the Indemnitee does not compromise or settle the claim without the prior consent of the Indemnitor.

18.4 Third Party Beneficiary Conditions

The Parties acknowledge that the Buyer holds the benefit of section 18.1 for itself, and on behalf of the Buyer Indemnified Parties, which are not party to this EPA, and the Seller holds the benefit of section 18.2 for itself, and on behalf of the Seller Indemnified Parties, which are not party to this EPA. The Parties further acknowledge that each of the Buyer Indemnified Parties and the Seller Indemnified Parties may enforce those sections respectively for their own benefit by action taken directly against the Seller or the Buyer respectively, and/or such actions may be taken by the Buyer or the Seller against the other for the benefit of their respective indemnified parties.

19. GENERAL PROVISIONS

19.1 Electric Service to the Seller

If at any time the Buyer makes electric service available to the Seller’s Plant, then that service will be provided under and in accordance with the Buyer’s electric tariff applicable at the relevant time, and not under this EPA.

19.2 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.

19.3 Acknowledgement

The Seller hereby acknowledges, represents, warrants and agrees that it has obtained its own independent legal, financial, tax, technical and other advice on all issues relating to this EPA and all transactions contemplated under this EPA. This EPA shall be interpreted as would an agreement that has been negotiated and drafted by, and entered into between, commercially sophisticated parties dealing at arms length.

19.4 Enurement

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

19.5 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[, **provided that this EPA will not supersede the Interconnection Agreement**]. *[Note: Delete square bracketed reference to the Interconnection Agreement in this section for indirect interconnections.]* There are no representations, warranties, terms, conditions, undertakings or collateral agreements express, implied or statutory between the Parties with respect to the subject matter of this EPA other than as expressly set out in this EPA.

19.6 Amendment

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

19.7 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. A waiver given under this EPA will not constitute an amendment of the terms of the EPA.

19.8 Other Agreements and Notices

Nothing in any other agreement with the Buyer, including the **Third Party** Interconnection Agreement, and no exercise of any right thereunder, restricts or otherwise affects any right, obligation or liability of either Party under this EPA, except to the extent set out expressly herein, and no notice, consent, approval or other communication or decision under or in relation to such other agreement will constitute or be relied upon as a notice, consent, approval or communication or decision under this EPA. For the purposes of the interpretation and application of this EPA, the Seller acknowledges the division of responsibilities within BC Hydro, in that under this EPA BC Hydro is acting as the Buyer, while under other agreements BC Hydro will be acting in a different capacity with a mandate separate and distinct from this EPA.

19.9 Future Agreements

At the end of the Term, the Buyer will have no obligation to extend the Term or to enter into a new electricity purchase agreement with the Seller. In the event the Parties wish to enter into a new agreement at the end of the Term, the Parties expect to negotiate the terms (including the energy price) independently from the terms of the EPA and based on market conditions in effect at the time of the negotiation.

19.10 Further Assurances

Each Party will, 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 the Buyer.

19.11 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.

19.12 Counterparts

This EPA may be delivered by electronic transmission and may be executed in counterparts, each of which is deemed to be an original document and all of which are deemed one and the same document.

IN WITNESS WHEREOF each Party by its duly authorized representative(s) has signed this EPA as of the Effective Date.

[SELLER]

Authorized Representative

Print Name and Office

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

Authorized Representative

Print Name and Office

APPENDIX A

ADDRESSES FOR NOTICES

Notices to Buyer and Insurance - All notices addressed to the Buyer will be delivered to the following address:

To: IPP Portfolio Management
333 Dunsmuir Street, 17th floor
Vancouver, B.C.
V6B 5R3
Attention: Manager, IPP Portfolio Management
Email: IPP.Contract@bchydro.com

Statements and Supporting Information

To: IPP Portfolio Management
333 Dunsmuir Street, 17th floor
Vancouver, B.C.
V6B 5R3
Attention: Commercial and Business Operations Manager
Email: IPP.Contract@bchydro.com

Notices to Seller - Except as noted below, all notices addressed to the Seller will be delivered to the following address:

To: ●

The Buyer may also (at its option) deliver Emergency Requests under section 7.9(a) or Curtailment Requests under 7.10(a) to the following (as provided in section 14.6(b)):

To: ●
Telephone Number: ●
Email: ●

APPENDIX B

SELLER'S PLANT DESCRIPTION

SELLER'S PLANT *[Note: This Appendix B will be filled in based on the Seller's Proposal.]*

1. **Location:** The Seller's Plant is located at: ●

The approximate latitude and longitude of the site of the power house forming part of the Seller's Plant is: ●

The Seller's Plant is located on property legally described as: ●

2. **Principal Equipment:** The Seller's Plant includes the following principal equipment:

Type of Equipment	Description	Key Technical Parameters
Generators	Eg. Wind turbine generators located at the site of the Seller's Plant	Eg. X units with unit capacity of Y MW (for a total of Z MW) Z MW = Plant Capacity
Collector Substation	Eg. Substation consists of Z feeder positions connecting the wind turbines to ZZ 34.5 kV bus, station service transformer, step-up transformer, circuit breaker, control building and auxiliary equipment	
Inverter (for solar projects only))	Eg. DC to AC Inverters	Eg. AA inverters, each rated at BB MW AC DC to AC ratio not to exceed X.YZ
Transmission/Distribution Line		
Inverter		
<i>[Insert other, as applicable.]</i>		

3. **Access Roads:** Access to the site on which the Seller's Plant is located is ●

4. **POI and Interconnection Facilities:** The POI means the point at which the Seller's Plant indirectly interconnects with the BC Hydro System at the point of interconnection between the Third Party System and the BC Hydro System, as described in the Third Party Interconnection Agreement. The point of interconnection between the Seller and the Third Party System is located at ●.

5. **Plant Capacity:** The Plant Capacity is ● MW.

6. **Site Layout:** A depiction of the layout of the key facilities in the Seller's Plant is attached as Schedule 1 hereto.
7. **Electricity Distribution and Generation System:** A depiction of the electricity distribution and generation system at the Seller's Plant, including all metering points, is attached as Schedule 2 to this Appendix B.
8. **Energy Source:** The primary energy source used to generate Energy at the Seller's Plant is the following Fuel: ●, which accounts for at least ____% of the annual Energy generated.

SCHEDULE 1

SITE LAYOUT

Please see attached.

[Note: To be attached.]

SCHEDULE 2

ELECTRICITY DISTRIBUTION AND GENERATION SYSTEM

Please see attached.

[Note: To be attached.]

APPENDIX C

TIME OF DELIVERY FACTOR TABLE

Month	On-Peak	Off-Peak
Jan	134%	118%
Feb	126%	111%
Mar	126%	111%
Apr	114%	99%
May	45%	19%
Jun	45%	19%
Jul	105%	75%
Aug	113%	97%
Sep	110%	95%
Oct	118%	102%
Nov	125%	109%
Dec	134%	118%

APPENDIX D

COD CERTIFICATE

_____ PROJECT

TO: British Columbia Hydro and Power Authority (the “Buyer”)

RE: Electricity Purchase Agreement (“EPA”) made as of ●, 20● between the Buyer and ●
(the “Seller”) for the _____ Project

I, [***name of senior officer***], in my capacity as [***title of senior officer***] of the Seller, and not in my personal capacity, certify on behalf of the Seller that:

1. **Defined Terms** - Words and phrases having initial capitalized letters in this Certificate have the meanings given in the EPA.
2. **COD Requirements** - The Seller has satisfied the requirements for COD as set out in section 5.2 of the EPA. Attached to this Certificate is all evidence required to demonstrate that the Seller has satisfied all such requirements.
3. **No Material Default** - No event which constitutes a Buyer Termination Event under the EPA has occurred. The Seller has obtained all Material Permits and is not in material default under any Material Permit (and all Material Permits are in full force and effect) or [**the Interconnection Agreement/any of the Indirect Interconnection Arrangements to which it is a party**]. [***Note: Select the correct option based on the Interconnection type (direct vs. indirect).***]

Dated this _____, 2_____.

[***name of senior officer***]

[***title of senior officer***]

[***Note to Seller: Attach to the COD Certificate in tabbed format all documents and evidence required under section 5.2 of the EPA. Where documents have previously been provided to the Buyer, so indicate and attach a copy of the letter transmitting such documents to the Buyer.***]

APPENDIX E

COD TEST REQUIREMENTS

[Note: The EPA will include the set of COD Test Requirements set out below that correspond to the Energy Source of the Seller's Plant, together with any special requirements for the Seller's Plant specified in the Proposal or as otherwise determined by the Buyer. If the Seller's Plant is comprised of more than one Energy Source, the Seller's Plant will be required to meet the COD Test Requirements for all applicable Energy Sources.]

[If the Energy Source for the Seller's Plant is hydro, include the following:]

72-hour operating test - the Seller's Plant must operate in compliance with Project Standards for at least 54 hours in a continuous 72-hour period, during which period the hourly generation output cannot be zero for more than 18 hours.

[If the Energy Source for the Seller's Plant is wind, include the following:]

In a test period of 72 continuous hours, each wind turbine must generate Energy in compliance with Project Standards, and the Energy delivered for each turbine in any hour during such period must be:

- (a) no less than the greater of
 - (i) 50% of de-rated capacity of the respective wind turbine; and
 - (ii) the maximum Energy generation level supported by then available wind speed and power curve for the respective wind turbine model,for at least 54 hours, whether or not continuous, during such 72 hour period; and
- (b) no less than 100% of de-rated capacity of the respective wind turbine for at least 5 hours, whether or not continuous, during such 72 hour period;

If the Delivered Energy for any one or more turbines in any hour during such 72-hour period was zero, the Seller must also demonstrate to BC Hydro's satisfaction that this was attributable solely to the wind source, and for greater certainty that there was no (1) Outage of the Seller's Plant or (2) Third Party System Outage.

[If the Energy Source for the Seller's Plant is solar, include the following:]

The Seller's Plant must generate Energy over any continuous 5 day period during either Period 1 or Period 2 identified below, at or above each of the minimum generation outputs specified for the period. Given that solar generation differs by season, each period defines the expected minimum Energy generation:

- Duration: 5-days (note 1)
- Minimum Generation Volume: (note 2)
 - Period 1 (6 months of March to August inclusive): 20% of plant installed capacity (for example, 15 MW) x 15 hours per day x 5 days= 225MWh

- Period 2 (remaining 6 months): 10% of plant installed capacity (for example, 15 MW) x 6 hours per day x 5 days= 45MWh
- Minimum Daily Delivery: (note 2, 3)
 - Period 1 (6 months of March to August inclusive): 15 hours operating at 25% of installed capacity (for example, 15MW) for at least 2 of the 5 days= 75MWh
 - Period 2 (remaining 6 months): 6 hours operating at 15% of installed capacity (for example, 15MW) for at least 2 of the 5 days= 27MWh

Notes:

- Note 1 - Testing must be completed over a continuous 5-day period, but the 5-day period can be determined on a rolling basis (i.e., the test can be restarted at any point if a problem is encountered during the test). For example: if on day 4 of the test it is realized that the minimum daily delivery requirement cannot be met, one additional day may be added (day 6) and the first day of test results (day 1) will be eliminated. This can continue until the proponent completely fulfills the commitments of the test within a 5-day test period
- Note 2 - There will be no adjustment for losses
- Note 3 - Requirement does not need to be met in consecutive hours

[If the Energy Source for the Seller's Plant is biomass or geothermal, include the following:]

72-hour operating test - the Seller's Plant must operate in compliance with Project Standards for a continuous 72-hour period, during which period the hourly generation output cannot be less than the Hourly Limit in any hour.

APPENDIX F

FORM OF DEVELOPMENT REPORT

BC Hydro Quarterly Development Report

For the quarter ending: _____

Report Number: _____

Project Name: _____

Tasks:	Percentage of Completion					Comments – Seller to provide a discussion of the status of each activity including the work completed to date, the work remaining to be completed, any interdependencies between tasks and important upcoming milestones and potential issues, delays and roadblocks
	5%	25%	50%	75%	100%	
Permitting:						
Notice of Project						
Completion and Review of Site Profile (Stage 1 Preliminary Site Investigation) (Stage 2 Preliminary Site Investigation (if required))						
Archaeological Overview Assessment						
Approval of Right of Ways and Easements for Transmission Line						
Environmental Protection Plan for Construction (Plant Site and Transmission Line)						
Development Permit						
Zoning Amendment						
Building Permit						
Variance Permits (as required)						
Oversized Load Permits						
Electrical Permit						
Licences and Permits for						

Boiler, Pressure Vessels and Piping					
BC Fire Code Permits					
Sewerage System Registration					
Water Supply System Permit (Construction)					
Well Log and Installation & Reporting of Water Wells					
Air Emission Permit					
Refuse (Landfill) Permit					
Potable Water Permit					
Power Plant Operator Certificate					
Emergency Response Plan					
First Nation Equity Ownership:					
MOU					
Band Council Approval					
Ownership Agreement					
Financing:					
Construction					
Project Equity					
Long Term Financing					
Project Design:					
Preliminary					
Final					
Interconnection:					
Studies (Please describe the status of each interconnection study)					
Construction					
Major Equipment:					
Ordering					
Delivery					
Installation					

Construction:						
Road						
Powerhouse						
Other						

Seller to provide a project schedule that includes at minimum a baseline schedule with the key project tasks (identifying the start dates, duration of task and target completion dates) and any other activities that are on the critical path for the project. Seller should identify the critical path for the schedule and provide progress updates with the actual start and completion dates for each quarter.

Seller to provide a site map or general layout of turbines & feeders to be constructed on the project site and highlight the progress on construction completed for each quarter.

Key Project Tasks:	Target Date	Actual Date
Permitting Complete		
First Nation Equity Ownership Arrangement Complete		
Financing Complete		
Interconnection Agreement Signed		
Major Equipment Ordered		
Commence Construction		
Begin Commissioning		

COD:

Guaranteed COD: _____

Current Estimate: _____

Prepared by: _____

Submitted by: _____

APPENDIX G

FORM OF STATUTORY DECLARATION - FIRST NATIONS EQUITY OWNERSHIP

Statutory Declaration regarding First Nations Equity Ownership

CANADA)	IN THE MATTER OF an Electricity Purchase
)	Agreement ("EPA") dated <i>[insert date of EPA]</i>
PROVINCE OF)	between British Columbia Hydro and Power
BRITISH COLUMBIA)	Authority and <i>[insert name of Seller]</i>
)	
)	
TO WIT:)	

I, *[insert full name of declarant]*, of *[address]* in the Province of British Columbia, DO SOLEMNLY DECLARE THAT:

1. I am the *[insert office held, e.g. president, director, etc.]* of the Seller *[insert full legal name of Seller]* and have knowledge of the matters herein declared.
2. As of *[insert date of COD, or 1st, 2nd or 3rd anniversary as applicable]*, *[insert name of First Nation]* is a Proposal First Nation as defined in the EPA and holds *[insert total percentage amount of Equity Ownership of the Seller (as defined in the EPA) held by the First Nation, to two decimal places]*% of the total Equity Ownership of the Seller as defined and pursuant to the EPA.
3. *[repeat section 2 for each additional Proposal First Nation. If a Proposal First Nation does not hold Equity Ownership as of the applicable date, state that the Proposal First Nation does not hold Equity Ownership of the Seller as of that date]*
4. *[only include this section if a Project First Nation that was not a Proposal First Nation holds Equity Ownership of the Seller.]* As of *[insert date of COD, or 1st, 2nd or 3rd anniversary as applicable]*, *[insert name of First Nation]* is a Project First Nation as defined in the EPA and holds *[insert total percentage amount of Equity Ownership of the Seller (as defined in the EPA) held by the First Nation, to two decimal places]*% of the total Equity Ownership of the Seller as defined and pursuant to the EPA.
5. *[this section is not required for the statutory declaration required for COD]* Since the date of the previous declaration provided by the Seller pursuant to the EPA, no Proposal First Nation has disposed of Equity Ownership to any person other than a Project First Nation as defined in the EPA.
6. I make this declaration knowing that it is of the same force and effect as if made under oath.

$$\begin{array}{c}) \\) \\) \\) \\) \\) \\) \end{array}$$

[*name*]

APPENDIX H

FORM OF LETTER FROM PROJECT FIRST NATION(S)

To: British Columbia Hydro and Power Authority ("BC Hydro")

Re: **Attestation in Respect of First Nations Equity Ownership held by [insert name of First Nation] pursuant to the Electricity Purchase Agreement dated ● between BC Hydro and [insert full legal name of Seller] ("EPA")**

I **[insert full name of attestor]**, as representative of **[insert name of First Nation]**, located in **[insert name of city/town/region]**, British Columbia, hereby attest, on behalf of **[insert name of First Nation]** that the following information is true, accurate and complete on the date of this Attestation:

1. I am a duly elected or appointed official who represents the interests of **[insert name of First Nation]** and have the authority to bind **[insert name of First Nation]** for the purposes of the subject matter of this attestation.
2. The Seller's Plant as defined in the EPA is located within the territory of **[insert name of First Nation]**.
3. As of **[insert date of COD, or 1st, 2nd or 3rd anniversary as applicable]**, **[insert name of First Nation]** holds, directly or indirectly, **[insert total percentage amount of Equity Ownership of the Seller (as defined in the EPA) held directly or indirectly by the First Nation, to two decimal places]**% of the total Equity Ownership of **[insert full legal name of Seller]** as defined and pursuant to the EPA.

Attestor Signature: _____

(I have the authority to bind the First Nation in respect of this attestation)

Print name: _____

Print title: _____ of **[insert name of First Nation]**

Date Signed: _____

Witness Signature: _____

Print name: _____

Print title: _____

Date Signed: _____

APPENDIX I

WIND DATA COLLECTION SYSTEM

[Note: This schedule will only be included if the Energy Source for the Seller's Plant is wind.]

1. Definitions - In this Appendix I, the following words and expressions have the following meanings:
 - (a) **"Wind Data Collection System"** means the system that collects data from the SCADA system for the Seller's Plant and the Meteorological Tower and communicates this data to the control centre of the Buyer that is closest to the POI.
 - (b) **"Meteorological Tower"** means the meteorological tower located within and forming part of the Seller's Plant.
 - (c) **"Wind Turbines"** means the wind turbines forming part of the Seller's Plant as described in Appendix B.
2. The Wind Data Collection System and the Meteorological Tower must comply with the following requirements:
 - (a) The Wind Data Collection System will include a minimum of one Meteorological Tower located such that its measurements are representative of the prevailing upstream side of the Seller's Plant.
 - (b) The Meteorological Tower will be built in conformity with Good Utility Practice and with the standards set by IEC 61400-12-1 in effect on the Effective Date, which includes the following instrumentation:
 - (i) two cup anemometers at hub height (m/s);
 - (ii) one wind vane at approximately hub height (wind direction shall be vector averaged);
 - (iii) two cup anemometers between 20 and 30 metres below hub height (m/s);
 - (iv) one wind vane at between 20 and 30 metres below hub height;
 - (v) one temperature sensor (degrees Celsius); and
 - (vi) barometric pressure sensor (KPa).
 - (c) The Meteorological Tower will have a backup power source that is independent of the primary power source for the Meteorological Tower and that is capable of providing power to operate the Wind Data Collection System in accordance with this EPA until primary power is restored.
 - (d) The following SCADA data shall be provided to the Buyer for each feeder contained

within the Seller's Plant:

- (i) the electrical capacity of the Wind Turbines connected to the feeder, expressed in MW;
- (ii) the Energy generated by the Wind Turbines connected to the feeder, expressed in MW/h;
- (iii) the average wind speed of Wind Turbines connected to the feeder;
- (iv) the vector-averaged wind direction of Wind Turbines connected to the feeder; and
- (v) the turbine availability of the Wind Turbines connected to the feeder.

The data shall be provided this data with the same resolution as specified in Tables 7 in section 9.5 of the Buyer's Technical Interconnection Requirements for Power Generators in effect on the Effective Date.

- (e) The sampling rate for the instrumentation of the Meteorological Tower must be 0.25 Hz or better, and the data will be transmitted as raw data at the same frequency as the sampling rate, or as 10 minute averages, provided that if 10 minute averages are provided, then maximum, minimum and standard deviation values will also be provided.
 - (f) The communication system component of the Wind Data Collection System will consist of a data link that relays the Meteorological Tower data measurements to the control centre of the Buyer that is the closest to the POI.
3. The Buyer may conduct, at the Buyer's cost, a Wind Data Collection System design study with respect to the Seller's Plant to compare the Seller's proposed Wind Data Collection System as described in the Proposal to the Buyer's requirements for the Seller's Plant. The Seller will provide all data required for the study and otherwise fully cooperate with the Buyer with respect to the study.
 4. The Seller will construct a Wind Data Collection System prior to COD that conforms with the description in the Proposal or, if the Buyer has conducted a study referred to in paragraph 3, with the specifications resulting from that study.
 5. The Seller will test the Wind Data Collection System over the period of 72 continuous hours referenced in Appendix E to meet the requirements set forth in paragraph 6 and to confirm that the instruments are in good working condition, delivering accurate data measurements, and correlating well with other similar measurements, all in a manner reasonably satisfactory to the Buyer.
 6. The Seller will provide the Buyer with a notice (the "**WDCS Notice**") that confirms the completion of the construction and testing of the Wind Data Collection System described in paragraphs 4 and 5, and includes:

- (a) a complete description of the Meteorological Tower and its instrumentation, including UTM coordinates, mast/boom characteristics, and type and model, height, and orientation of each instrument, and the type and model of the nacelle anemometry;
 - (b) timeseries graphs of all measured meteorological variables over the period of 72 continuous hours described in Appendix E, including average wind speed and wind direction from the turbine SCADA system, showing accurate values and coinciding trends;
 - (c) scatter plots and correlation coefficients of ten minute-averaged values for all duplicated instruments located at the same height level, with correlation coefficients better than 0.95; and
 - (d) raw data for all measured variables over the period of 72 continuous hours described in Appendix E.
7. The Seller will operate and maintain the Wind Data Collection System and provide the Buyer and/or any contractor designated by the Buyer with real-time data access to meteorological data (including wind speed and wind direction, power output, and turbine availability) from the Wind Data Collection System for the purpose of wind power forecasting.
8. The Seller will ensure that all meteorological equipment included in the Wind Data Collection System is tested and calibrated in accordance with the manufacturer's recommendations when measurements are suspect or when maintenance has been performed that may have interrupted or otherwise adversely impacted the accuracy of the operational data. The Seller will maintain the data link between the Meteorological Tower and the control centre of the Buyer that is closest to the POI. The Seller will inform the Buyer whenever maintenance or repairs are being performed on any component of the Wind Data Collection System.
9. The Seller will promptly implement such changes to the Wind Data Collection System as the Buyer may reasonably request, provided that the Buyer will reimburse the Seller for reasonable incremental costs, if any, incurred by the Seller to implement any such changes to the Wind Data Collection System to the extent that the changes are additional to the Seller's obligations in this EPA, including the obligation to deliver Energy to the POI that complies with Project Standards.
10. For greater certainty, any data collected by the Seller and provided to the Buyer under the terms of this Appendix I will be considered Seller Confidential Information.

APPENDIX J

FUEL PLAN

APPENDIX K

ENERGY ESTIMATE DURING THE ENERGY DELIVERY PERIOD

Please see attached.

[Note: Energy estimate during the Energy Delivery Period from the Proposal to be attached.]