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December 21, 2020

Ms. Marija Tresoglavic
Acting Commission Secretary and Manager
Regulatory Support
British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC V6Z 2N3

Dear Ms. Tresoglavic:

**RE: British Columbia Utilities Commission (BCUC or Commission)
British Columbia Hydro and Power Authority (BC Hydro)
Electricity Purchase Agreement (EPA) Extension – Hluey Lake
Hydroelectric Facility**

BC Hydro writes, in respect of an Electricity Purchase Agreement (**EPA**) renewal it has recently entered into with MPT Hydro LP (**MPT Hydro**). This filing (the **Filing**) is submitted under section 71 of the *Utilities Commission Act*. In the Filing, BC Hydro seeks an Order from the BCUC that the EPA between BC Hydro and MPT Hydro effective November 1, 2020 (the **Hluey Lake EPA**) is in the public interest and is accepted for filing. A draft of the requested Order is included as Appendix A.

A copy of the Hluey Lake EPA is provided as Appendix B in the confidential version of the Filing. BC Hydro's Specimen EPA for hydro renewals (**Specimen EPA**) is included as Appendix C. A comparison of the renewed EPA between BC Hydro and MPT Hydro and the specimen EPA is included as Appendix D in the confidential version of this Filing.

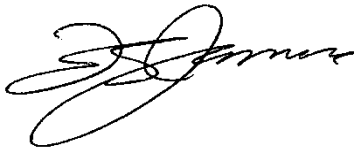
Confidentiality

BC Hydro is in the process of negotiating EPA renewals with various Independent Power Producers. BC Hydro is of the view that the public disclosure of key or specific commercial terms and conditions relating to the Hluey Lake EPA renewal, such as the pricing information and cost-effectiveness benchmarks is commercially sensitive and will harm BC Hydro's negotiating position with respect to further EPA renewals. BC Hydro has redacted commercially sensitive information from the public version of the Filing, as well as the renewed Hluey Lake EPA in its entirety (Appendix B), and its comparison to BC Hydro's Specimen EPA (Appendix D). As provided by section 42 of the B.C. *Administrative Tribunals Act* and section 1 of the BCUC's Confidential Filings Practice Directive, BC Hydro requests that the BCUC keep this information confidential.

December 21, 2020
Ms. Marija Tresoglavic
Acting Commission Secretary and Manager
Regulatory Support
British Columbia Utilities Commission
Electricity Purchase Agreement (EPA) Extension – Hluey Lake Hydroelectric
Facility

For further information, please contact Chris Sandve at 604-974-4641 or by email at bchydroregulatorygroup@bchydro.com.

Yours sincerely,



Fred James
Chief Regulatory Officer

st/ma

Enclosure

Copy to: BCUC Project No. 1598990 (BC Hydro
Fiscal 2020 to Fiscal 2021 Revenue
Requirements Application) Registered
Intervener Distribution List.

Iskut Band

Tahltan Band

Tahltan Central Government

Hluey Lake Hydro Electricity Purchase Agreement Renewal

PUBLIC

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1 Introduction

BC Hydro has executed an Electricity Purchase Agreement (**EPA**) renewal with MPT Hydro LP (**MPT Hydro**) for the Hluey Lake hydro project (**Hluey Lake**), with an effective date of November 1, 2020, for an initial term of 20 years. The Hluey Lake EPA renewal is the subject of this filing (**Filing**) which is being made pursuant to section 71 of the *Utilities Commission Act* (**UCA**).

The Hluey Lake EPA renewal provides for continued use of an existing, reliable clean or renewable resource at cost-effective pricing to meet the needs of BC Hydro's Dease Lake Non-Integrated Area (**Dease Lake NIA**).

In this Filing, BC Hydro requests an Order from the BCUC under section 71 of the UCA that the Hluey Lake EPA is in the public interest and is accepted for filing. A copy of the draft form of Order is attached as Appendix A and a copy of the Hluey Lake EPA, filed confidentially, is attached as Appendix B. This Filing fulfils the section 71 filing obligations of both parties to this EPA.

2 Regulatory Review

Under section 71 of the UCA, the BCUC may accept the Hluey Lake EPA for filing and grant the requested Order without a hearing.

In the case of this Filing and for the reasons set out below, BC Hydro believes that the BCUC can issue the requested Order without a hearing:

- The Hluey Lake EPA is at a lower, cost-effective energy price, and on more favourable terms than the original EPA;
- BC Hydro ratepayers' interests are financially better off under the terms of the EPA, in that the price paid for Hluey Lake generation is expected to be lower than BC Hydro's cost of diesel generation and is approximately 12 per cent lower than the original EPA;

-
- BC Hydro's only other alternative for electricity supply in the Dease Lake NIA is to run its stand-by diesel generators. This alternative would increase environmental impacts and be more costly as compared to continuing to receive supply from the Hluey Lake hydro project;
 - The Hluey Lake EPA is generally consistent with the commercial terms/conditions of recently filed EPA hydro renewals by BC Hydro, which have been accepted by the BCUC, as adjusted to reflect some of the unique circumstances related to this project in the Dease Lake Non-Integrated Area; and
 - The Hluey Lake EPA provides approximately 99 per cent of the energy supply for the Dease Lake NIA on a reliable and continuous basis.

Either party may terminate the Hluey Lake EPA renewal if BCUC acceptance is not issued by April 30, 2021, or such later date as BC Hydro may elect by notice to MPT Hydro.

3 Hluey Lake Project Background

The Hluey Lake hydro project is a storage hydro facility serving the Dease Lake NIA in northwestern B.C. The project has a plant nameplate capacity of 3 MW with estimated annual generation capability of approximately 20 GWh/year. A 21 km, 25 kV transmission line interconnects the facility to the point of interconnection at BC Hydro's Dease Lake diesel generating station.

The Dease Lake NIA has peak loads of approximately 1.6 MW. However, the average load of the community is much smaller, averaging 0.8 MW. Hluey Lake provides 99 per cent of the energy supply for the Dease Lake NIA, with BC Hydro's diesel generation station acting as backup. BC Hydro owns and operates (and will continue to do so for reliability purposes) the diesel station in Dease Lake for backup

and reliability purposes. Total energy supplied has averaged approximately 6.7 GWh/year over the past ten years.

4 Hluey Lake EPA Renewal

4.1 Original EPA

The original 20-year EPA for the Hluey Lake hydro project was executed with the Tahltan Nation Development Corporation on November 1, 1993 and the project has changed owners a number of times during the contract term. The Hluey Lake hydro project was ultimately completed by Manulife and its subsidiary on January 15, 2000 and is currently owned by MPT Hydro LP, a wholly owned subsidiary of Capstone Infrastructure Corporation.

The Hluey Lake EPA was to expire on January 31, 2020 and a six-month extension, and subsequently a further three-month extension, was agreed upon by the parties in order to continue negotiations on an EPA renewal. These extension agreements were accepted by the BCUC pursuant to BCUC Order Nos. G-119-20 and E-25-20, respectively. BC Hydro and MPT Hydro successfully completed negotiations and executed a renewal EPA with an effective date of November 1, 2020.

The original Hluey Lake EPA expired on October 31, 2020 immediately prior to the effective date of the Hluey Lake EPA renewal (attached as Appendix B).

4.2 Updated EPA Terms

The EPA renewal terms and conditions are generally based on the same specimen EPA as was used for other recent EPA hydro renewals, reflecting current contracting standards, including more robust contractual provisions consistent with recent EPAs within BC Hydro's IPP supply portfolio. A copy of the Specimen Hydro Electricity Purchase Agreement (Renewals), as revised in August 2016, (**Specimen EPA**) is attached for reference as Appendix C.

Key terms changed from the original Hluey Lake EPA, to align with the Specimen EPA, are: environmental attributes, Aboriginal consultation, revenue metering, and termination rights. BC Hydro also notes that the Specimen EPA includes an exclusivity provision in favour of BC Hydro.

All of these changes are to BC Hydro's benefit, and therefore to the benefit of BC Hydro ratepayers.

4.3 Project-Specific EPA Terms and Conditions

In addition to the contractual provisions contained in the specimen EPA for hydroelectric projects, the project-specific commercial terms applicable to the Hluey Lake EPA renewal are summarized in Table 1.

Table 1 Commercial Terms of the EPA Renewal

Description	EPA Section	Hluey Lake EPA Renewal
Seller	Page 1	MPT Hydro LP.
Effective Date	Page 1	November 1, 2020.
Term of EPA	2.1	20 years.
Option to Extend Term	2.2	BC Hydro, at its sole discretion, has option to extend the EPA for an additional 10 years [REDACTED]
Regulatory Condition Expiry Date	3.2	Either party may terminate the EPA if BCUC acceptance is not issued by April 30, 2021, or such later date as BC Hydro may elect by notice to MPT Hydro.
Energy	5.1	Expected generation of 6.7 GWh/year.
Product	N/A	Firm energy.
Planned Outages	4.10.2	Seller shall make its best efforts so Planned Outages do not occur during Winter Months (October, November, December, January, February and March).

Description	EPA Section	Hluey Lake EPA Renewal
Energy Profile	4.3	Seller will ensure its facility has load-following capability and will deliver electricity to follow actual demand of BC Hydro's Dease Lake customer load up to [REDACTED]
Energy Price	6.1	[REDACTED]
Liquidated Damages	10	[REDACTED]
Suspension	11	[REDACTED]

At the time that the original Hluey Lake expired, the energy price under the EPA was

[REDACTED]

[REDACTED]

The Hluey

Lake EPA renewal energy price is now

[REDACTED]

[REDACTED] Accordingly, the new energy price² has been simplified, provides greater price stability to BC Hydro and is approximately 12 per cent lower than the energy price under the original EPA.

5 Energy Supply Contract Considerations

The Hluey Lake EPA renewal is an “energy supply contract” under Part 5 of the UCA. Section 71(2.21) of the UCA describes the factors the BCUC must consider when assessing whether or not an energy supply contract filed by BC Hydro is in the public interest. The BCUC must consider whether the energy supply contract is in “the interests of persons in British Columbia who receive or may receive service from the authority” (i.e., is the Hluey Lake EPA in the interest of BC Hydro's ratepayers), British Columbia's energy objectives as specified in section 2 of the *Clean Energy Act*, BC Hydro's 2013 Integrated Resource Plan (**2013 IRP**),³ section 19 of the *Clean Energy Act*,⁴ and the price, quantity and availability of the energy to be supplied under the energy supply contract, as well as alternatives to the energy that is being acquired.

²

[REDACTED]

³ The 2013 IRP applies to BC Hydro's integrated system IRP and does not generally address NIAs. The local generation from the Hluey Lake IPP serves customers located in the Dease Lake NIA.

⁴ Section 19 imposes obligations on BC Hydro with regard to prescribed targets in relation to clean or renewable resources, and prescribed guidelines in planning for the construction of generation facilities or the purchase of energy. There are neither prescribed targets nor prescribed guidelines and so this factor is not applicable.

5.1 Interests of BC Hydro Ratepayers/Price, Quantity and Availability

The Hluey Lake EPA renewal provides for continued use of an existing, reliable clean or renewable resource at cost effective pricing.

The quantity and availability of energy to be supplied under the EPA is expected to be 6.7 GWh/year, as shown in Table 1 of this Filing, and the project has storage capability which allows load following of actual demand at the Dease Lake NIA. The Hluey Lake facility has reliably provided similar energy volumes for over 20 years and is expected to be capable of continued reliable operation.

As discussed above, the price of the energy being supplied under the Hluey Lake EPA is shown above in Table 1 of this Filing and is [REDACTED]

[REDACTED] over the term of the agreement. Moreover, the levelized⁵ energy price of \$ [REDACTED]/MWh⁶ for the Hluey Lake EPA renewal is below BC Hydro's avoided diesel costs of \$ [REDACTED]/MWh⁷, which is generally viewed as the upper benchmark of cost-effectiveness. BC Hydro is of the view that the levelized EPA energy price is reasonable relative to the estimated cost of service for the Hluey Lake IPP, given the risks borne by the IPP (as outlined in section 6(b) below).

Also, if the original EPA price and escalation terms were to be applied to the entire renewal term, the levelized energy price would be \$ [REDACTED]/MWh⁸ (2020\$). Accordingly,

⁵ The levelized cost of energy of an EPA is the present value of the unit cost of energy over the term of the EPA.

⁶ Assuming average annual energy of ~6.7 GWh/year.

⁷ BC Hydro's cost of diesel fuel is currently about \$ [REDACTED]

⁸ Assuming average annual energy of ~6.7 GWh/year.

the levelized energy price for this EPA renewal is approximately 12 per cent lower than the levelized energy price under the original EPA.

BC Hydro's only other alternative to serve its customers in the Dease Lake NIA is to operate its diesel generating station which is more costly and has environmental disadvantages compared to service from the Hluey Lake hydro project.

Table 2 below provides cost comparison of the EPA renewal to the original EPA and BC Hydro's diesel generating station costs.

Table 2 Cost Comparisons

Option	Estimated Levelized Energy Price (\$/MWh \$2020)	Estimated Total Cost (20 Year NPV, \$2020)	Considerations
EPA Renewal – COS + ROR	\$ [REDACTED] /MWh	[REDACTED]	As assessed and estimated by BC Hydro this represents the IPP's cost of service (COS) plus a reasonable rate of return (ROR).
Existing EPA	\$ [REDACTED] /MWh	[REDACTED]	Although this price remains below BC Hydro's cost of diesel generation, this option likely results in a higher rate of return for the IPP.
Revert to Diesel Generation	\$ [REDACTED] /MWh + station upgrades	[REDACTED]	Reverting to diesel as the prime energy source would present environmental concerns, potentially strand a clean energy facility, [REDACTED] [REDACTED] There are no other viable generation alternatives at present.

5.2 British Columbia's Energy Objectives

The Hluey Lake EPA, which enables the continuation of supply from an existing clean or renewable resource to displace diesel generation in the Dease Lake NIA (where such diesel generation would increase environmental impacts and be more costly as compared to continuing to receive supply from the Hluey Lake IPP) supports the following British Columbia energy objectives.⁹

- To generate at least 93 per cent of the electricity in B.C. from clean or renewable resources [objective 2(c)]:
 - ▶ Electricity purchased under the renewed Hluey Lake EPA helps BC Hydro meet the 93 per cent clean or renewable generation target;
- To use and foster the development in B.C. of innovative technologies that support energy conservation and efficiency and the use of clean or renewable resources [objective 2(d)]:
 - ▶ The Hluey Lake facility uses proven technologies that utilize clean or renewable hydro resources;
- To ensure the BC Hydro's rates remain among the most competitive of rates charged by public utilities in North America [objective 2(f)]:
 - ▶ The energy price for the renewed Hluey Lake EPA is cost-effective, expected to be lower than the cost of diesel generation, and is approximately 12 per cent lower than the original EPA energy price;
 - ▶ BC Hydro's option to extend the EPA, at its sole discretion, for an additional 10 years at the expiration of the 20-year term provides additional value to BC Hydro;

⁹ For those objectives where the Hluey Lake EPA neither advances nor conflicts with that objective, BC Hydro is of the view it is in alignment with such objective and thus has not included it in the objectives identified in this Filing.

-
- To reduce BC greenhouse gas emissions [objectives 2(g), (h) & (i)]:
 - ▶ Continued operation of the Hluey Lake facility will the displace the need for BC Hydro to operate its diesel generating station to supply the Dease Lake NIA;
 - ▶ The Hluey Lake Project has excess generating capacity which can meet the growth of demand at the Dease Lake NIA without the need of incremental diesel generation;
 - To encourage economic development and the creation and retention of jobs [objective 2(k)]:
 - ▶ The Hluey Lake EPA provides for the continued operation of the generation facility, job retention and economic benefits associated with ongoing operating and capital expenditures;
 - To foster the development of First Nation and rural communities through the use and development of clean or renewable resources [objective 2(l)]:
 - ▶ The local communities in the Dease Lake NIA will continue to obtain economic benefits (such as property taxes, employment and other contracting opportunities) from the ongoing operation from the Hluey Lake hydro facility;
 - To maximize the value, including the incremental value of the resources being clean or renewable resources, of British Columbia's generation and transmission assets for the benefit of British Columbia [objective 2(m)]:
 - ▶ The continued generation of clean or renewable electricity from the Hluey Lake facility will facilitate the optimization of existing assets within British Columbia; and
 - No use of nuclear [objective 2(o)]:
 - ▶ The Hluey Lake facility is a storage hydroelectric facility.

6 Risk Assessment

The risks associated with the Hluey Lake EPA are described below and are generally viewed as low for BC Hydro.

(a) Attrition

The attrition risk is considered to be very low given that the Hluey Lake facility has been operating reliably since 2000.

(b) Financial

The Hluey Lake IPP submitted forecasted capital and O&M costs for the facility, as well as a five-year history of these costs. At BC Hydro's request, the O&M and capital plans were reviewed by an independent third-party consulting firm retained by the IPP. The consultant found that the forecasted O&M costs are "generally consistent with good engineering practice and generally meet hydroelectric industry practice". As well, the capital plans appear to address facility needs for continued reliable operation and the estimated expenditures appear to be "adequate and appropriately conservative".

Based on a critical assessment of the financial submissions made by the IPP and its project-related risks, BC Hydro is of the view that the proposed EPA renewal price reasonably represents the cost of service for the Hluey Lake facility, including an acceptable rate of return given the risk borne by the IPP. Examples of the risks borne by the IPP include uncertainty regarding property tax increases, equipment failure, capital cost escalation, diversion restrictions, and reduced water flows. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This is consistent with the original EPA principles and is generally consistent with other NIA EPAs.

(c) Permitting/Environmental

The Ministry of Forests, Lands, Natural Resource Operations and Rural Development has confirmed that the IPP's provincial permits are in good-standing.

BC Hydro engaged an independent consulting firm to review material permits required for the Hluey Lake facility. The consultant concluded that the Hluey Lake facility has all material permits necessary for continued operation during the proposed renewal term with the exception of two Crown land leases (due to expire in 2025 and 2030) which will need to be renewed during the term of the EPA. BC Hydro has been advised by the consultant that the process to renew Crown land tenure is relatively routine.

(d) Technical

A consulting firm contracted by the Hluey Lake IPP conducted a condition assessment of the Hluey Lake facility and concluded that the facility "with prudent management, consistent with normal industry practice and the continuing application of the ongoing CAPEX plan, the hydroelectric facilities and the energy output should be sustainable for at least an additional [REDACTED] years."

(e) Network Upgrade Costs

As part of the EPA renewal process, BC Hydro has assessed whether existing transmission infrastructure, supporting the IPP interconnection, meets current

[REDACTED]

standards and requirements. Generally, these upgrades are minor, such as upgrades to the communications and protection systems or metering equipment. This is the case with the required Hluey Lake upgrades, and the network upgrade costs that BC Hydro is responsible for are estimated at \$ [REDACTED].¹¹

7 First Nations

A review of the consultative boundary maps by BC Hydro identifies the Hluey Lake facility as being within the consultative boundaries of the following First Nations:

- Tahltan Central Government;
- Iskut Band; and
- Tahltan Band.

BC Hydro is of the view that the Hluey Lake EPA renewal will not result in any new or incremental impacts on Aboriginal rights and title, and therefore it does not trigger the duty to consult. The Hluey Lake IPP has advised:

- They do not anticipate any changes to the physical footprint of the Hluey Lake facility and there will be no change to energy output of the facility or operations as a result of the Hluey Lake EPA;
- There are no environmental impacts that resulted from the original construction of the Hluey Lake facility that have the potential to worsen with the continued operation of the facility; and
- The Hluey Lake facility would not be decommissioned in the event the Hluey Lake EPA were not renewed.

¹¹ BC Hydro notes that the adjusted levelized energy price, including interconnection network upgrade costs [REDACTED] remains the same at [REDACTED] (2020\$).

In addition, any minor network upgrades that are required to be undertaken by BC Hydro in relation to the Hluey Lake EPA will not change the operations or physical footprint of the BC Hydro transmission system.

As noted in the section above, the status of Crown authorizations for the Hluey Lake facility is that the facility has the required permits to continue operations for the term of the Hluey Lake EPA with the exception of the noted Crown land leases that will expire and need to be renewed during the term of the EPA.

For the reasons stated herein, BC Hydro is therefore of the view that there are no potential new or incremental impacts of the renewal of the Hluey Lake EPA on Aboriginal rights and title and no consultation with First Nations is required.

8 Requested Order

BC Hydro seeks a determination that that the Hluey Lake EPA is in the public interest, and an order accepting it for filing under section 71 of the UCA. A draft order is attached as Appendix A.

Hluey Lake Hydro
Electricity Purchase Agreement Renewal

Appendix A

Draft Order



bcuc
British Columbia
Utilities Commission

Suite 410, 900 Howe Street
Vancouver, BC Canada V6Z 2N3
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TF: 1.800.663.1385
F: 604.660.1102

ORDER NUMBER

E-xx-xx

IN THE MATTER OF

the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

British Columbia Hydro and Power Authority
Section 71 Filing of Electricity Purchase Agreements Renewal
Hluey Lake

BEFORE:

Commissioner
Commissioner
Commissioner

on Date

ORDER

WHEREAS:

- A. On December 21, 2020, British Columbia Hydro and Power Authority (BC Hydro) filed with the British Columbia Utilities Commission (BCUC) pursuant to section 71 of the *Utilities Commission Act* (UCA) an Electricity Purchase Agreement (Hluey Lake EPA) between BC Hydro and MPT Hydro Ltd. for the Hluey Lake hydroelectric generating facility near Dease Lake, BC, with an effective date of November 1, 2020;
- B. BC Hydro requests an order from the BCUC that the Hluey Lake EPA is in the public interest and is accepted for filing;
- C. BC Hydro also requests that the BCUC hold the un-redacted version of BC Hydro's filing confidential as it contains information that is commercially sensitive, and the release of which may harm BC Hydro's negotiating position with respect to future EPA renewals;
- D. By Order G-61-12 dated May 17, 2012, the BCUC established "Rules for Energy Supply Contracts for Electricity" (Rules) to facilitate the review of energy supply contracts for electricity, pursuant to section 71 of the UCA;
- E. BC Hydro advised the BCUC that it provided a redacted copy of the filing to interveners in the BC Hydro Fiscal 2020 to Fiscal 2021 Revenue Requirements proceeding, the Tahltan Central Government, Iskut Band and Tahltan Band;

- F. The BCUC reviewed the Hluey Lake EPA and supporting information provided by BC Hydro in accordance with the criteria under section 71(2.21) of the UCA and requirements under the Rules, and finds that the Hluey Lake EPA is in the public interest and that a public hearing is not necessary for acceptance of the EPA.

NOW THEREFORE, pursuant to section 71 of the UCA and the BCUC's Rules for Energy Supply Contracts for Electricity, the BCUC orders as follows:

1. The Electricity Purchase Agreement dated November 1, 2020 between BC Hydro and MPT Hydro Ltd. in relation to the Hluey Lake hydroelectric facility is in the public interest and is accepted for filing under section 71 of the *Utilities Commission Act*.
2. The BCUC will hold confidential the un-redacted version of the Hluey Lake EPA and the un-redacted additional information provided in confidence to the BCUC in regard to the Hluey Lake EPA on the basis that disclosure of the commercially sensitive information may impair BC Hydro's ability to negotiate favourable EPAs on behalf of its customers in the future.

DATED at the City of Vancouver, in the Province of British Columbia, this (XX) day of (Month Year).

BY ORDER

(X. X. last name)
Commissioner

**Hluey Lake Hydro
Electricity Purchase Agreement Renewal**

**Appendix B
Electricity Purchase Renewal Agreement
(November 1, 2020)**

PUBLIC

CONFIDENTIAL

APPENDIX

FILED WITH BCUC

ONLY

**Hluey Lake Hydro
Electricity Purchase Agreement Renewal**

Appendix C

**Electricity Purchase Agreement
(BC Hydro Specimen Hydro Electricity
EPA Renewal Contract)**

BC HYDRO

SPECIMEN HYDRO ELECTRICITY PURCHASE AGREEMENT (RENEWALS)

Revised: August 2016

[Notes: This template EPA applies to existing run-of-river projects with the following characteristics:

- 1. Project is a small hydro project.*
- 2. Project has a direct interconnection to the BC Hydro System, and an Interconnection Agreement is in place from EPA execution.*
- 3. Energy available from EPA execution.*
- 4. Seller is a single corporation, rather than a joint venture, limited partnership or other entity.*
- 5. Original EPA has expired or been terminated prior to or concurrent with EPA execution.]*

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BC HYDRO

ELECTRICITY PURCHASE AGREEMENT

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

BETWEEN:

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

(“Seller”)

AND:

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

(“Buyer”).

The Parties agree as follows:

1. INTERPRETATION

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

2. TERM

2.1 Term - The term (“Term”) of this EPA commences on the Effective Date and continues until the [insert] anniversary of the Effective Date, unless it is terminated earlier as authorized under this EPA. *[Note: Seller and BC Hydro to confirm term.]*

3. REGULATORY

3.1 Regulatory Filing –

- (a) The Buyer will take all reasonable steps to secure BCUC Acceptance. The Seller will provide any assistance reasonably requested by the Buyer to secure BCUC Acceptance.
- (b) 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.

3.2 Termination - If BCUC Acceptance has not been issued on or before the Regulatory Condition Expiry Date, either Party may terminate this EPA at any time after the Regulatory Condition

Expiry Date by delivering notice of termination to the other Party, and such termination will be effective on the date that is 30 days after the date of delivery of such notice of termination, provided that a Party may not terminate this EPA under this section 3.2 if BCUC Acceptance is issued before the notice of termination is delivered to the other Party. If this EPA is terminated by either Party in accordance with this section 3.2, the Parties will have no further liabilities or obligations under, or in relation to, this EPA, except as set out in sections 10.4 and 10.6.

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.

3.4 Utility Regulation - The Seller will 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 and the performance by the Seller of its obligations under this EPA where such regulation as a “public utility” could reasonably be expected to have an adverse effect on the Buyer or the Buyer’s interests under this EPA.

4. SELLER’S PLANT

4.1 Ownership – The Seller will own the Seller’s Plant at all times during the Term.

4.2 Operation Costs and Liabilities - The Seller will be solely responsible for all costs, expenses, liabilities and other obligations associated with the design, engineering, construction, Interconnection, commissioning, operation, maintenance and decommissioning of the Seller’s Plant.

4.3 Standard of Operation - Except as otherwise consented to by the Buyer, the Seller will ensure that the location, design, engineering, construction, Interconnection, commissioning, operation and maintenance of the Seller’s Plant are and will be carried out at all times during the Term:

- (a) in accordance with the information in the Information Submittals in all material respects;
- (b) 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
- (c) by qualified and experienced individuals.

The Seller will make commercially reasonable efforts to operate the Seller’s Plant such that the amount of Eligible Energy delivered to the POI in any hour does not exceed the Hourly Limit.

4.4 Permits - The Seller will promptly obtain, comply with and maintain in full force and effect, all 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 Project and the Buyer will 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 10.1 occur as a result of the decision or action and the right to receive any Termination Payment payable by the Seller under section 10.6 as a result of such termination.

4.5 Project Changes – Without the Buyer’s prior consent, the Seller will not make any change to:

- (a) the Seller’s Plant as described in Appendix 2; or
- (b) any other aspects of the Seller’s Plant or the information in any Interconnection Review prior to the Effective Date where such change would increase the Buyer’s liability for any costs with respect to the Seller’s Plant or any other project.

The Seller acknowledges that the Buyer may require, as a condition of its consent to any change described in this section 4.5, that the Seller agree in writing to reimburse the Buyer for any incremental liability for any losses, costs and damages incurred by the Buyer or any third party (including any incremental Network Upgrade Costs), with respect to the Seller’s Plant or any other project, as a result of any change described in this section 4.5. The Buyer may also require the Seller to provide security to the Buyer to secure such reimbursement obligation. If the change requiring the Buyer’s consent is the result of the Seller’s agreement with a third party to interconnect a generating 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, costs, damages and risks associated with the interconnection.

4.6 Metering - The Seller will, at its cost, install, operate and maintain a Meter at a location approved by the Buyer at the Seller’s Plant that is tested and sealed according to any Measurement Canada standards. The Buyer may, at its cost, install a duplicate meter 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. The Seller will make equipment and telecommunications access available to the Buyer as required for any duplicate meter. All information collected or recorded by the meter(s) will be transmitted directly to the Buyer or provided by the Seller to the Buyer, as reasonably required by the Buyer. If the Seller’s Plant is rated 1.00 MVA or higher, the Seller will ensure that the Seller’s Plant is equipped with SCADA capability. 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).

4.7 Insurance - The Seller will, at its cost, obtain and maintain (i) policies of commercial general liability insurance with a per occurrence limit of liability not less than \$_____ applicable to the Project, and (ii) construction insurance (if construction is planned or undertaken by or on behalf of the Seller in connection with the Project) and, in respect of the Seller’s Plant, property insurance, 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. 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 1 MW - \$1,000,000

Greater than 1 MW up to and including 5 MW - \$2,000,000

Greater than 5 MW - \$3,000,000

Further, for Projects that are deemed 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 \$1,000,000.]

4.8 No Liability For Delay - The Buyer will have no liability under this EPA for delays in completion of (i) any Network Upgrades, or any other work undertaken by or on behalf of either Party under the Interconnection Agreement, or (ii) other work undertaken by the Buyer on the Seller's Plant side of the POI, in each case howsoever arising.

4.9 Outages

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

- (a) promptly in the case of any Forced Outage;
- (b) not less than 90 days in advance of any Planned Outage, and
- (c) promptly in the case of any changes to the duration, start time or end time of any Outage.

4.9.2 Coordination and Scheduling of Planned Outages

- (a) The Seller will make commercially reasonable efforts to coordinate any 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.
- (b) The Buyer may, by notice to the Seller, require the Seller to reschedule any Planned Outage. 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.

- 4.10 Operating Plans** - 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 Operating Plan for the 14-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). The Seller will promptly provide the Buyer with a revised Operating Plan upon the Seller becoming aware of any expected material change in the then current Operating Plan for that period. The Parties agree that the 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 Operating Plans are consistent with Good Utility Practice.

5. PURCHASE AND SALE OBLIGATIONS

- 5.1 Sale and Purchase of Energy** - During the Term, the Seller will sell and deliver all Energy to the Buyer at the POI and the Buyer will, subject to section 5.2, purchase and accept delivery of all Eligible Energy. The Buyer will pay for Eligible Energy in accordance with section 6.1. When the Seller is delivering Energy to the Buyer, the Seller will make commercially reasonable efforts to operate the Seller's Plant in a manner that ensures delivery of Energy at the POI at a uniform rate within each hour during which Energy is delivered.

- 5.2 Limit on Eligible Energy** - Notwithstanding any other provision in this EPA:

- (a) the Buyer will not be obligated in any hour after the Effective Date to purchase or accept delivery from the Seller at the POI of any Eligible Energy that is greater than the Hourly Limit;
- (b) no amount will be payable by the Buyer for Eligible Energy in any hour above the Hourly Limit regardless of whether the Buyer consented to or accepted delivery of Energy at the POI greater than the Hourly Limit; and
- (c) in determining the total amount of Eligible Energy for a year, month, hour or any other time period under this EPA for any purpose, the total amount of Eligible Energy in each hour of such time period will not exceed the Hourly Limit, even if the Seller delivered to the POI, or the Seller's Plant was capable of generating, more Energy than the Hourly Limit.

- 5.3 Environmental Attributes** - The Seller hereby transfers, assigns and sets over to the Buyer all right, title and interest in and to the Environmental Attributes.

- 5.4 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. 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. These prohibitions do not apply when the Buyer is in breach of its obligations under section 5.1. The Seller acknowledges and agrees that the exclusive rights conferred by this section are of fundamental importance, and that, without prejudice to any right to claim damages, compensation or an accounting of profits, the granting of an interim, interlocutory and permanent injunction is an appropriate remedy to restrain any breach or threatened breach by the Seller of the obligation set out in this section.

5.5 Custody, Control, Risk of and Title To Energy - Custody, control, risk of, and title to, all Energy (including any Energy exceeding the limits set out in section 5.2 even where the Buyer has not paid for such excess Energy) and all Environmental Attributes associated with such Energy pass from the Seller to the Buyer at the POI. The Seller will ensure that all Energy delivered to the Buyer under this EPA and all Environmental Attributes transferred to the Buyer under this EPA are free and clear of all liens, claims, charges and encumbrances.

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

5.7 BC Hydro System Constraint -

5.7.1 The Buyer will not be in breach or default of its obligations under section 5.1 or section 6.1 if the Buyer is not able to accept delivery of Energy at the POI as a result of a BC Hydro System Constraint. The Buyer will have no liability with respect to a BC Hydro System Constraint, except as set out in this section 5.7, if applicable.

5.7.2 If in any month the Seller is unable to deliver Energy at the POI solely as a result of a BC Hydro System Constraint that:

- (a) is not caused by an event beyond the reasonable control of the Buyer;
- (b) is not caused by the Seller, the Seller's Plant or anything on the Seller's side of the POI; and
- (c) occurs after any BC Hydro System Constraint has been in effect for more than 24 hours in the aggregate, whether or not continuous, in such month

then, notwithstanding that the Buyer is excused under section 5.7.1 from its obligations under section 5.1, but subject to sections 5.2 and 5.7.3, the Buyer will pay to the Seller in accordance with Article 6 an amount equal to the price payable for Eligible Energy under section 6.1 multiplied by that amount of Energy that could have been generated and delivered to the POI in each hour after the 24 hours has elapsed but for the occurrence of the BC Hydro System Constraint ("**Constraint Energy**"), less any costs the Seller avoided or, acting reasonably, could have avoided during the BC Hydro System Constraint.

5.7.3 The Buyer will not be required to pay for any Constraint Energy under this section 5.7:

- (a) during any period where the Seller's Plant would not have been operating;
- (b) during any period specified as an Outage in any Outage Notice, revised Outage Notice or in an Operating Plan;

- (c) during any period when either Party is or would be excused, in accordance with section 8.8 or 8.9, from its obligation to deliver or to accept delivery of Energy as a result of Force Majeure;
- (d) if the Seller has not provided the Buyer with an Operating Plan in accordance with section 4.10 for the period in which the BC Hydro System Constraint occurs; and
- (e) if the Seller has not provided the Buyer with:
 - i. a reasonably detailed statement of any Constraint Energy for which the Seller is claiming a right to be paid, and associated avoided or avoidable costs, and received the Buyer's approval of the amounts in such statement prior to issuing its final statement according to section 6.3.1; and
 - ii. a written attestation, in a form acceptable to the Buyer and signed by an authorized representative of the Seller, confirming that, during all periods of the BC Hydro System Constraint in which the Seller is claiming a right to be paid for Constraint Energy, the Seller was unable to deliver Energy at the POI solely as a result of the BC Hydro System Constraint.

5.7.4 The Buyer may request additional Records in support of the amount of any Constraint Energy and any costs the Seller avoided or, acting reasonably, could have avoided during the BC Hydro System Constraint.

5.8 Buyer Dispatch/Turn-Down Right -

5.8.1 The Buyer may at any time during the Term deliver notice to the Seller requiring the Seller to Dispatch/Turn-Down and the Seller will promptly comply with any such direction except to the extent that any operational, technical, regulatory or fuel storage constraint prevents or limits the Seller's ability to comply with such direction.

5.8.2 In respect of any period of a Dispatch/Turn-Down, but subject to sections 5.2, 5.8.3 and 5.8.5, the Buyer will pay to the Seller in accordance with Article 6 an amount equal to the price payable for Eligible Energy under section 6.1 multiplied by that amount of Energy that could have been generated and delivered to the POI in each hour but for the occurrence of the Dispatch/Turn-Down ("Dispatch/Turn-Down Energy"), less any costs the Seller avoided or, acting reasonably, could have avoided during the Dispatch/Turn-Down.

5.8.3 The Buyer will not be required to pay for any Dispatch/Turn-Down Energy:

- (a) during any period where the Seller's Plant would not have been operating;
- (b) during any period specified as an Outage in any Outage Notice, revised Outage Notice or in an Operating Plan;
- (c) during any period when either Party is or would be excused, in accordance with section 8.8 or 8.9, from its obligation to deliver or to accept delivery of Energy as a result of Force Majeure;

- (d) if the Seller has not provided the Buyer with an Operating Plan in accordance with section 4.10 for the period in which the Dispatch/Turn-Down occurs;
- (e) if the Buyer's requirement for the Seller to Dispatch/Turn-Down is the result of the operation of the Seller's Plant in a manner inconsistent with section 4.3; and
- (f) if the Seller has not provided the Buyer with:
 - i. a reasonably detailed statement of any Dispatch/Turn-Down Energy for which the Seller is claiming a right to be paid, and associated avoided or avoidable costs, and received the Buyer's approval of the amounts in such statement prior to issuing its final statement according to section 6.3.1; and
 - ii. a written attestation, in a form acceptable to the Buyer and signed by an authorized representative of the Seller, confirming that, during all periods of the Dispatch/Turn-Down in which the Seller is claiming a right to be paid for Dispatch/Turn-Down Energy, the Seller was unable to deliver Energy at the POI solely as a result of the Dispatch/Turn-Down.

5.8.4 The Buyer may request additional Records in support of the amount of any Dispatch/Turn-Down Energy and any costs the Seller avoided or, acting reasonably, could have avoided during the Dispatch/Turn-Down.

5.8.5 Where the Buyer requires the Dispatch/Turn-Down as result of a BC Hydro System Constraint, section 5.7 will apply for the purposes of determining the amount of Dispatch/Turn-Down Energy for which the Buyer is required to pay the Seller.

6. PRICE AND PAYMENT TERMS

6.1 Energy Price - Subject to section 5.1, section 5.2, section 5.7 and section 5.8, the price payable by the Buyer for each MWh of Eligible Energy from and following the Effective Date and prior to expiry of the Term or earlier termination of this EPA is \$[insert]/MWh, adjusted as follows: **[Note: The parenthetical will be completed with the Base Price set between the parties prior to execution of the EPA.]**

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

$$\text{Payment Price}_n = ([A] * \$[B]/\text{MWh} * \text{CPI}_{\text{January 1, } n} / \text{CPI}_{\text{January 1, } ______}) + ([C] * \$[D]/\text{MWh})$$

[Note: "A" and "C" (which must total 1) will be determined by the parties prior to execution of the EPA. "B" and "D" will be completed with the Base Price as described above. The blank in the subscript will be set as the year in which the EPA is signed.]

where:

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

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

6.2 No Further Payment - The amount payable by the Buyer as specified in section 6.1 is the full and complete payment and consideration payable by the Buyer for Eligible Energy and for the Environmental Attributes.

6.3 Statements and Payment -

6.3.1 Statements:

- (a) The Seller will, by the 15th day of each month, deliver to the Buyer a statement (i) for the preceding month, in respect of Delivered Energy that is Eligible Energy, and (ii) for the month that precedes the preceding month, in respect of Deemed Delivered Energy that is Eligible Energy. The statement will be in such form as the Buyer may require from time to time, and must indicate, among other things, (i) the amount of Delivered Energy that is Eligible Energy, (ii) the amount of Deemed Delivered Energy that is Eligible Energy, and any associated avoided or avoidable costs, pursuant to sections 5.7 and 5.8 that have been approved in advance by the Buyer, (iii) the price payable for the Eligible Energy, and (iv) any Final Amounts owing by either Party to the other Party. The statement must set out in reasonable detail the manner by which the statement and the amounts shown thereon were computed and be accompanied by sufficient data to enable the Buyer, acting reasonably, to satisfy itself as to the accuracy of the statement.
- (b) Either Party may give notice to the other Party of an error, omission or disputed amount on a statement within 36 months after the statement was first issued together with reasonable detail to support its claim. After expiry of that 36 month period, except in the case of willful misstatement, fraud or concealment, amounts on a previously issued statement will be considered accurate and amounts which were omitted will be considered to be nil, other than amounts disputed in accordance with this subsection within the 36 month period, which will be resolved in accordance with this EPA.
- (c) If the Buyer gives notice to the Seller of an error, omission or disputed amount on a statement as described in subsection 6.3.1(b), 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.

6.3.2 Payment:

- (a) Within 30 days after receipt of a statement delivered under section 6.3.1, and subject to section 6.5, 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 subsection 6.3.1(b).
- (b) 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 subsection 6.3.1(c).

- (c) The Parties will endeavor to resolve any error, omission or disputed amount on a statement within 30 days of the notice described in subsection 6.3.1(b).
- (d) Any amount required to be paid in accordance with this EPA, but not paid by either Party when due, will accrue interest at an annual rate equal to the Prime Rate plus 2%, compounded monthly. Any disputed amount that is found to be payable will be deemed to have been due within 30 days after the date of receipt of the statement which included or should have included the disputed amount.

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

6.5 Set-off - If the Buyer and the Seller each owe the other an amount under this EPA 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, provided that:

- (a) this section applies only to any purchase price for Eligible Energy owing by the Buyer to the Seller, and any Final Amount owing by either Party to the other Party; and
- (b) no Final Amount will be added to or deducted from the price owing by the Buyer to the Seller for Eligible Energy unless that amount remains unpaid 30 days after the Buyer gives notice to the Seller of the amount owing.

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

7. ENVIRONMENTAL ATTRIBUTES – CERTIFICATION AND ADMINISTRATION

7.1 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. Any failure by the Seller to promptly comply with its obligations in this section 7.1 is a "material default" for the purposes of this EPA, and the Buyer may terminate this EPA under subsection 10.1(i).

8. EPA ADMINISTRATION

8.1 Records - The Seller will prepare and maintain all Records, or duplicates of such Records, at the Seller's Plant or 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, for a period of not less than 7 years from the date on which each such Record is created. The Audit Parties may take copies of such Records for the purposes of an inspection or audit under section 8.2.

8.2 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 qualification of the Energy as Clean Energy;
- (d) the qualification of the Seller's Plant and the Energy for the Environmental Certification;
or
- (e) the liability of each of the Parties for Network Upgrade Costs,

the Seller will, on reasonable prior notice from the Buyer, provide the Audit Parties with prompt access during normal business hours to the Seller's Plant 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 Seller's Plant 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 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 the Environmental Attributes.

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

8.4 Assignment -

- (a) Requirement for Consent: The Seller may not Assign this EPA except with the prior consent of the Buyer, which consent may not be unreasonably withheld, conditioned or delayed. Any Assignment (other than an Assignment to a Facility Lender under subsection (b) of the definition of "Assignment" in Appendix 1, 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 Interconnection Agreement arising both before and after the

Assignment, and providing the representations and warranties set out in section 11.1 effective as at the time of Assignment.

- (b) Time for Request: Any request by the Seller for the Buyer's consent under subsection 8.4(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 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 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.
- (d) Costs: The Seller will reimburse the Buyer for all costs reasonably incurred by the Buyer in connection with any request by the Seller for the Buyer's consent pursuant to subsection 8.4(a).

8.5 Dispute Resolution -

- (a) Arbitration: Any dispute under or in relation to this EPA will be referred to and finally resolved by arbitration conducted by a single arbitrator in Vancouver, British Columbia and administered by the British Columbia International Commercial Arbitration Centre ("BCICAC") pursuant to its rules. Except as otherwise expressly provided in this EPA, the arbitrator will have the jurisdiction to grant equitable remedies, including interim or permanent injunctive relief. It will not be incompatible with this agreement to arbitrate for a Party to seek from the Supreme Court of British Columbia, or for that court to grant, interim measures of protection pending the outcome of arbitral proceedings. The decision of the arbitrator will be final and binding on the Parties.
- (b) Effect of Arbitration: All performance and payments required under this EPA will continue during any dispute under this EPA, provided that the Parties may, notwithstanding the foregoing, exercise any right to terminate this EPA in accordance with the terms of this EPA. Any payments or reimbursements required by an arbitration award will be due as of the date determined under subsection 6.3.2(d) or, where that subsection does not apply, as of the date determined in the award. Without duplication with subsection 6.3.2(d), 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 consultants and professional advisors who have a need to know such information; and (iv) in the case of the Buyer, to representatives of the Province of British Columbia.

8.6 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 1 and:

- (a) notices under sections 8.8 and 8.9, Article 9, section 10.1, and section 10.3 must be delivered by hand or by a courier service during normal business hours on a Business Day and a notice so delivered will be deemed to have been delivered on that Business Day;
- (b) all notices other than notices described in subsection 8.6(a) may be delivered by email during normal business hours on a Business Day and a notice so delivered will be deemed to have been delivered on that Business Day; and
- (c) either Party may change its address for notices under this EPA by notice to the other Party.

8.7 Confidentiality

8.7.1 Confidentiality Agreement - The Confidentiality Agreement continues in full force and effect in accordance with its terms, and section 2.4 thereof is amended to provide that the obligations thereunder will expire two years following the Effective Date.

8.7.2 Additional Confidentiality Obligation - Without limiting the effect of the Confidentiality Agreement, during the Term and for two years thereafter:

- (a) the Buyer will treat as confidential, and will not disclose to any third Person, Seller Confidential Information, and
- (b) the Seller will treat as confidential, and will not disclose to any third Person, Buyer Confidential Information.

8.7.3 Disclosure of Confidential Information - Notwithstanding the Confidentiality Agreement or section 8.7.2 above:

- (a) the Seller may disclose Buyer Confidential Information, and the Buyer may disclose Seller Confidential Information, in the following circumstances:
 - i. disclosures expressly authorized under this EPA or otherwise set out in this EPA;
 - ii. disclosures to enable a Party to fulfill its obligations under this EPA;
 - iii. disclosure in any arbitration or legal proceedings for the enforcement of this EPA;

- iv. 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;
 - v. subject to subsection 8.7.3(b)(iv), 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 but not limited to 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);
 - vi. 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
 - vii. disclosure with the consent of the Buyer, in the case of Buyer Confidential Information, or the Seller, in the case of Seller Confidential Information;
- (b) the Buyer may disclose Seller Confidential Information in the following circumstances:
- i. disclosure to the Buyer's Affiliates or to a third Person, and their respective employees, consultants and advisors, for the purpose of reselling or marketing any Energy or Environmental Attributes, including disclosure of the Seller Confidential Information by such Affiliate or third Person to those who have purchased or may purchase the Energy or Environmental Attributes;
 - ii. for purposes other than those described in subsection 8.7.3(a), to the Buyer's Affiliates and to any directors, officers, employees, consultants and advisors of any Affiliates, provided each of them is advised of the confidential nature of the information and agrees to respect such confidentiality;
 - iii. to any ministers, deputy ministers, servants or employees of the Province of British Columbia, provided each of them is advised of the confidential nature of the information and agrees to respect such confidentiality; or
 - iv. disclosure in any regulatory proceeding, whether related to this EPA or not, to the extent that the Buyer considers disclosure is necessary or desirable to

support its position in such proceeding. For greater certainty, subsection 8.7.2(a) does not apply to such disclosures.

8.7.4 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 legislation, as amended from time to time.

8.7.5 Exemption from Disclosure - The Parties confirm that Seller Confidential Information constitutes commercial and financial information of the Seller, which has been supplied, or may be supplied, in confidence and the disclosure of which could reasonably be expected to harm significantly the competitive position and/or interfere significantly with the negotiating position of the Seller. Accordingly, the Parties confirm their intention that, subject to section 8.7.4, all Seller Confidential Information disclosed by the Seller to the Buyer will be deemed to be confidential and exempt from disclosure to third Persons in accordance with section 21 of the *Freedom of Information and Protection of Privacy Act* (British Columbia), as amended from time to time.

8.8 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 promptly notify the other Party of the Force Majeure. 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. A Party will be deemed to have invoked Force Majeure from the later of:

- i. the date when the Party gives notice of the Force Majeure in accordance with this subsection 8.8(a); and
- ii. if such date is not a Business Day, the next following Business Day;

provided that if such notice is given by 17:00 PPT on the fifth Business Day following the later of:

- i. the day on which the Force Majeure occurs; and
- ii. the day when the Party knew, or reasonably ought to have known, of the occurrence of the Force Majeure;

the Party will be deemed to have invoked Force Majeure from the date on which the event of Force Majeure occurred.

(b) 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, provided notice is delivered in accordance with this section and the circumstances are, in fact, an event or circumstance of Force Majeure.

(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.

8.9 First Nations -

- (a) Notwithstanding the definition of Force Majeure in Appendix 1, and without limiting the application of the definition of Force Majeure to any circumstance that is not specifically described in this section 8.9(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 adequately consult with, and/or accommodate, any First Nations, in relation to this EPA, the Project, the Seller's Plant or the Interconnection of the Seller's Plant to the BC Hydro System, (which, for greater certainty, does not include any failure to consult with, and/or accommodate any First Nations, with respect to activities occurring on the Buyer's side of the POI or on the BC Hydro System), 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 commercially reasonable efforts to remedy the situation and remove, so far as possible and with reasonable dispatch, the Force Majeure to the extent that it is within the control of that Party to do so, provided that in the case of the Buyer, this obligation is subject to the Seller complying with, or having complied with, its obligation under section 9.2.1.
- (b) A Party may not invoke Force Majeure as a result of such binding order or decision referenced at subsection 8.9(a) if such order or decision results from a wilful act or omission of a Party as contemplated in subsection (d) of the definition of Force Majeure in Appendix 1, provided that the failure or alleged failure of the Buyer to have adequately consulted with, and/or accommodated, any First Nations may only be considered a wilful act or omission where the underlying event or circumstance giving rise to the duty to consult or accommodate was or is fully within the control of the Buyer and provided further that, for greater certainty, any activities of the Seller 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 Seller may not invoke Force Majeure as a result of such binding order or decision referenced at subsection 8.9(a) if such order or decision results from a failure by the Seller to comply with its obligations under Article 9 of this EPA.
- (d) The Buyer may not invoke Force Majeure as a result of such order or decision referenced at subsection 8.9(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 paragraph (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 subsection 8.9(d)(i).

9. ABORIGINAL CONSULTATION

9.1 Definitions: - For the purposes of this EPA, the following terms will have the following meanings, respectively:

(a) **"First Nations"** means:

- (i) for the purposes of this EPA (other than subsection 9.2.2), any band, band council, tribal council, aboriginal treaty nation and/or other aboriginal group or aboriginal governing body, however organized and established by aboriginal people within their traditional territory in British Columbia, that is identified by the Crown, before or after the Effective Date, as a band, band council, aboriginal treaty nation and/or other aboriginal group or aboriginal governing body with which consultation regarding any of the Potential Impacts is required in accordance with applicable Laws as a result of an application or request by the Seller or any Affiliate of the Seller for any Permit or tenure related directly to the Seller's Plant or any amendment, renewal, replacement, assignment or any other decision whatsoever by the Crown with respect to any Permit or tenure related directly to the Seller's Plant, and
- (ii) for the purposes of subsection 9.2.2, any band, band council, tribal council, aboriginal treaty nation and/or other aboriginal group or aboriginal governing body, however organized and established by aboriginal people within their traditional territory in British Columbia, whether or not identified by the Crown pursuant to the foregoing subsection (i) of this subsection 9.1(a),

(b) **"Order or Decision"** means:

- (i) any order or decision of any court of competent jurisdiction or any regulatory authority, including the BCUC; and

- (ii) a writ or any other document commencing legal proceedings with respect to the Buyer or any written communication threatening to issue a writ or otherwise commence legal proceedings with respect to the Buyer, alleging that there has been a failure to consult with First Nations in relation to Potential Impacts, and which has received a Verification;
- (c) **“Potential Impacts”** means any adverse impact or potential adverse impact on the established or potential aboriginal rights (including title) of a First Nations as a result of the following matters (and which, for greater certainty, does not in any circumstance include any matters arising on the Buyer’s side of the POI or on the BC Hydro System:
 - (i) this EPA;
 - (ii) the Project;
 - (iii) the interconnection of the Seller’s Plant to the BC Hydro System; or
 - (iv) any activities 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 directly related to the Seller’s Plant to enable the Seller to comply with its obligations under this EPA; and
- (d) **“Verification”** means that a lawyer, qualified to practice in British Columbia and acceptable to both the Buyer and Seller, has reviewed the writ or other document commencing legal proceedings or the written communication threatening to issue a writ or otherwise commencing legal proceedings, and verified in writing to both Parties that there is a reasonable prospect of an order or decision of a court of competent jurisdiction or regulatory authority, including the BCUC, in favour of the party who has commenced or threatened the writ or other legal proceedings. The Buyer and the Seller will each provide to the lawyer conducting such review such information and other assistance as may be requested by that lawyer to assist them in completing the review. If the Buyer and the Seller are unable to agree on an acceptable lawyer to provide the Verification within 15 days after the Buyer has provided the name of a proposed lawyer to the Seller, either Party may refer the matter to arbitration under section 8.5 and each of the Buyer and the Seller will, within 7 days after the dispute is referred by either Party to arbitration, submit a list of lawyers that would be acceptable to that Party and the Parties will ask the arbitrator to select the lawyer from the proposed lists that is, in the arbitrator’s opinion, after receiving any submissions from the Parties the arbitrator may request, the most qualified lawyer to provide the Verification. The Buyer and the Seller will each pay 50% of the costs of obtaining the Verification. Each Party acknowledges and agrees that any lawyer providing a Verification is jointly retained by the Parties and any communications between the Parties and the lawyer and any work product of the lawyer in subject to solicitor client privilege.

9.2 Order or Decision -

- 9.2.1** If the Buyer is or may be required by an Order or Decision to consult with and/or accommodate any First Nations in relation to Potential Impacts, then the Seller, if requested to do so by the

Buyer, by notice sent to the Seller as soon as practicable after the Buyer receives notice of the Order or Decision, will:

- (a) carry out that consultation to the extent the Seller is legally capable of doing so and in accordance with applicable Laws, or assist the Buyer if and to the extent requested by the Buyer in the consultation process;
- (b) take measures, to the extent (if any) required under the Order or Decision, or under applicable Laws, to address, prevent, mitigate, compensate or otherwise accommodate any Potential Impacts; and
- (c) provide regular written reports to the Buyer concerning the Seller's compliance with this subsection, or such other information and communications as may be reasonably requested by the Buyer.

9.2.2 Notwithstanding subsection 9.2.1, the Buyer hereby confirms that the responsibilities of the Seller in subsection 9.2.1 do not in any way whatsoever encompass or apply to the following matters:

- (a) any duty to consult or accommodate applicable to any Crown decision-maker or regulatory authority, which for greater certainty does not include the Buyer, that is considering or dealing with the Project in any way, including in connection with the consideration of the issuance of any of the Permits;
- (b) any measure of reconciliation or accommodation that the Buyer may offer or be required to provide to a First Nations related to land or resource use that is not associated with the Potential Impacts, including resource revenue sharing, or that is related to electricity policy, planning, regulation or export; and
- (c) any measure of reconciliation or accommodation that the Crown may offer or be required to provide to a First Nations related to land or resource use, including resource revenue sharing, or that is related to electricity policy, planning, regulation or export.

9.2.3 The Buyer will as soon as practicable notify the Seller of any written communication received by the Buyer that commences a legal proceeding with respect to the Buyer or that threatens to issue a writ or any other document commencing a legal proceeding with respect to the Buyer, with respect to which the Buyer intends to request the Seller to carry out its obligations under subsection 9.2.1. Any failure by the Buyer to notify the Seller as required under subsection 9.2.1 or this subsection 9.2.3 will not limit or otherwise affect the Seller's obligations under subsection 9.2.1 except to the extent the Buyer's failure to notify the Seller has a materially adverse effect on the Seller. For greater certainty, the covenant of the Buyer in section 13.10 applies to the obligations of the Seller in subsection 9.2.1 and section 9.3, and the Seller will reimburse the Buyer for all costs reasonably incurred by the Buyer in providing assistance to the Seller at the request of the Seller as contemplated under that section to assist the Seller to perform its obligations under subsection 9.2.1 and 9.3. Without limiting the generality of but subject to the foregoing (including the obligation to reimburse the Buyer for all costs reasonably incurred by the Buyer), for greater certainty, the Buyer will at the request of the Seller provide reasonable assistance to the Seller in the performance by the Seller of its obligations under subsections 9.2.1

and 9.3; including agreeing to reasonable amendments of this EPA as contemplated by section 9.3; provided however, that any proposed amendment of this EPA must be in the public interest.

9.2.4 At any time prior to the second anniversary of the Effective Date, the Buyer will not have any discussions with any First Nations with respect to the consultation or accommodation regarding the Project without first notifying the Seller of its intention to have such discussions and seeking the consent of the relevant First Nations for the Seller to participate in such discussions. The foregoing obligation does not extend to any properties or infrastructure owned by the Buyer.

9.3 Right to Termination - If a measure or measures required to be undertaken by the Seller in order to comply with its obligations under section 9.2 of this EPA would impose a commercially unreasonable cost or other obligation on the Seller, or would require the consent of the Buyer under any provision of this EPA or would require agreement by the Buyer to an amendment of this EPA in order to address any such adverse impacts on established and potentially existing aboriginal rights (including title) and if such consent or agreement to amend is not provided within 60 days after the Seller's request to the Buyer, then the Seller may terminate this EPA on notice to the Buyer, and such termination will be effective on the date that is 60 days after the date of delivery of such notice of termination unless, prior to that date, the Seller, by notice from the Buyer or otherwise, has been relieved of its obligation to take the measure or measures that would impose the commercially unreasonable cost or other obligation on the Seller or the consent or agreement to an amendment of this EPA has been provided, as applicable. A termination by the Seller under this section will, for all purposes of this EPA, be treated in the same manner as a termination by the Seller under subsection 10.3(c) of this EPA. If the Seller terminates this EPA pursuant to this section, the Seller will not be, or be deemed to be or have been, in breach of section 9.2 of this EPA for failure to implement the measure or measures that gave rise to the Seller's right to terminate this EPA under this section 9.3. For purposes of this section 9.3, "a commercially unreasonable cost or other obligation on the Seller" means a cost or obligation (i) to be borne by the Seller, (ii) that results, or can reasonably be expected to result, from the implementation of a measure or measures required under section 9.2, and (iii) that would impose upon the Seller a commercially unreasonable burden, having regard to all other financial benefits and burdens of this EPA to the Seller over the entire Term.

10. TERMINATION

10.1 Termination by Buyer - 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 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 does not deliver any Energy to the Buyer for a period of 730 continuous days for any reason whatsoever (including Force Majeure or a BC Hydro System Constraint), but excluding a BC Hydro System Constraint for which the Seller is entitled to receive payment under section 5.7; or
- (b) the Buyer is unable to accept delivery of Energy at the POI for a period of 730 continuous days due to Force Majeure invoked by the Buyer in accordance with section 8.8 or 8.9 or a BC Hydro System Constraint other than a BC Hydro System Constraint for which the Seller is entitled to receive payment under section 5.7; or

- (c) the Seller breaches section 5.4; or
- (d) any Interconnection Agreement or Interconnection Review that is completed, amended, revised or restated after the Effective Date contains information that is inconsistent with the description of the Seller's Plant at Appendix 2 and the Seller has not received the Buyer's consent under section 4.5 for the change to Appendix 2; or
- (e) the Seller is Bankrupt or Insolvent; or
- (f) the Seller, as a result of an act or omission of the Seller, ceases to be exempt from regulation as a "public utility" as defined in the UCA with respect to the Seller's Plant and the sale of Energy to 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; or
- (g) an amount due and payable by the Seller to the Buyer under this EPA remains unpaid for 30 days after its due date and such default has not been cured within 30 days after the Buyer has given notice of the default to the Seller; or
- (h) the Seller permits a third Person to interconnect an electric load or generation facility to the Seller's Plant without the advance written approval of the Buyer; or
- (i) the Seller is in material default of any of its covenants, representations and warranties or other obligations under this EPA (other than as set out above), unless within 30 days after the date of notice by 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 any purported Assignment of this EPA without the consent of the Buyer and any failure by the Seller to comply with section 4.3 in respect of subsection (e) of the "Project Standards" definition in Appendix 1, section 5.4 or section 7.1.

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

10.2 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 or land tenure agreement for the Seller's Plant is terminated or expires.

10.3 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 Buyer has not accepted delivery of Energy for a period of 180 continuous days due to an event described in section 5.7.1 or any event of Force Majeure and the Seller is not entitled to receive any payment pursuant to section 5.7 in respect of that period; or

- (b) the Seller's Plant has suffered Major Damage;
- (c) the Seller has been unable to deliver Energy to the POI for a period of 730 continuous days solely as a result of Force Majeure invoked by the Seller in accordance with section 8.8 or 8.9 or a BC Hydro System Constraint other than a BC Hydro System Constraint for which the Seller is entitled to receive payment under section 5.7; or
- (d) the Buyer is Bankrupt or Insolvent; or
- (e) except where an amount has been disputed in the manner specified in subsection 6.3.1(b), an amount due and payable by the Buyer to the Seller under this EPA remains unpaid for 30 days after its due date and such default has not been cured within 30 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.

10.4 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, 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), 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 6 with respect to any final billing and resolution of disputed amounts only;
 - ii. the Interconnection Agreement and Article 10 with respect to the satisfaction of residual obligations for the period prior to termination or that are specified to arise on termination;
 - iii. Article 12 and sections 8.5 and 8.7; and
 - iv. all provisions of this EPA with respect only to Environmental Attributes associated with Delivered Energy and Deemed Delivered Energy prior to the

expiry of the Term or earlier termination of this EPA; and

- (c) the Seller will remain bound by:
 - i. section 8.1; and
 - ii. section 8.2 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.

10.5 Buyer Payment on Seller Termination – If the Seller terminates this EPA under any of subsections 10.3(d), (e) or (f), the Buyer will pay to the Seller an amount equal to the positive amount if any by which the Seller's Financial Losses and Costs exceed its aggregate Gains. The Seller's Gains, Financial Losses and Costs will be determined by comparing the reasonably estimated quantities of Eligible Energy for the remaining Term and the price payable for those quantities under this EPA had it not been terminated to the relevant market prices for equivalent quantities of electricity 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 will 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, including with respect to quantity, place of delivery, length of term and each element of the eligibility requirements. The Seller will not be required to enter into a replacement transaction in order to determine the amount payable by the Buyer under this section. The Seller's Gains, Financial Losses and Costs will be discounted to the present value of those Gains, Financial Losses and Costs at the effective date of termination of this EPA (to take into account the time value of money for the period between the effective date of termination of this EPA and the date the Gains, Financial Losses and Costs would have occurred but for the termination of this EPA) using the Present Value Rate. If the Seller's aggregate Gains exceed its aggregate Financial Losses and Costs, if any, resulting from the termination of this EPA, the amount of the payment by the Buyer to the Seller under this section will be zero.

10.6 Seller Payment on Termination – If the Buyer terminates this EPA on or before the second anniversary of this EPA, or the Seller terminates this EPA under any of section 3.2 or subsections 10.3(a), (b) or (c) on or before the first anniversary of this EPA, the Seller will, within 30 days after receipt of an invoice from the Buyer, reimburse the Buyer for:

- (a) all Network Upgrade Costs incurred by the Buyer, or which the Buyer has become contractually obligated to pay, prior to the termination of this EPA including Network Upgrade Costs the Buyer would otherwise be responsible for under the Interconnection Agreement;
- (b) any incremental Network Upgrade Cost liability the Buyer will incur as a result of the termination of this EPA; and
- (c) any Network Upgrade Costs the Seller is responsible for under any reimbursement agreement pursuant to section 4.5.

10.7 Calculation and Payment - The Seller will calculate the amount of any payment owed by the Buyer under section 10.5 and will notify the Buyer of such amount and provide reasonable particulars with respect to its calculation within 120 days after the effective date of termination of this EPA, failing which the Seller will not be entitled to any payment under section 10.5. The Buyer will pay any amount owing by the Buyer under section 10.5 within 30 Business Days after the date of delivery of an invoice by the Seller to the Buyer. Any amounts owing by the Seller to the Buyer under this EPA will be netted against any amount owing by the Buyer to the Seller under section 10.5.

10.8 Exclusive Remedies - Subject to section 10.4, payment by the Buyer of the amount determined under section 10.5 is the exclusive remedy to which the Seller is entitled, and the Buyer's limit of liability, for termination of this EPA by the Seller pursuant to any of subsections 10.3(d), (e) or (f). Subject to section 10.4, termination of this EPA is the exclusive remedy to which the Buyer or the Seller, as the case may be, is entitled if the Buyer or the Seller elects to exercise its right to terminate this EPA under any of section 10.1, or subsection 10.3(a), (b), or (c). Subject to section 10.4, the actions contemplated by sections 3.1 and 3.2 are the exclusive remedies to which the Parties are entitled for termination of this EPA pursuant to section 3.2. For greater certainty, subject to section 10.4, the Seller will not be required to pay any termination payment on termination by the Buyer of this EPA. Neither Party will have any right to terminate this EPA except as expressly set out herein.

11. REPRESENTATIONS AND WARRANTIES AND LIABILITY LIMITATIONS

11.1 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 will (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) 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 sale of Energy and the performance by the Seller of its obligations under this EPA;
- (h) Permits – the Seller has all Permits legally required to own, operate, and maintain the Seller's Plant and perform the Seller's obligations set out in this EPA; and
- (i) Information Submittals – all information in the Information Submittals is true and correct in all material respects and there is no material information omitted from the Information Submittals that makes the information in the Information Submittals misleading or inaccurate in any material respect.

11.2 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.

11.3 Limit of Liability - The Buyer's liability for damages for any failure to take or pay for Eligible Energy under this EPA is limited to the price payable by the Buyer for that Eligible Energy under Article 6 and any interest thereon calculated under this EPA less the amount of any revenue received by the Seller from any third Person for that Eligible Energy.

11.4 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.

12. INDEMNITIES

12.1 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 or any other Person for whom the Seller is responsible at law where such wilful act or omission or negligence is in connection with the Project or the performance of, or the failure to perform, any of the Seller's obligations under this EPA.

12.2 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 while the Buyer or any such Person is at the Seller's Plant.

12.3 Indemnification Conditions - The right of a Party ("Indemnatee") 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 Indemnatee 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 Indemnatee, in the defence or settlement of the claim; and
- (b) the Indemnatee does not compromise or settle the claim without the prior consent of the Indemnitor.

12.4 Third Party Beneficiary Conditions - The Parties acknowledge that the Buyer holds the benefit of section 12.1 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 12.2 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.

13. GENERAL PROVISIONS

- 13.1 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.
- 13.2 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.
- 13.3 Enurement** - This EPA enures to the benefit of the Parties, their successors and their permitted assigns.
- 13.4 Entire Agreement** - This EPA contains the entire agreement between the Parties with respect to the purchase and sale of Energy and Environmental Attributes and supersedes all previous communications, understandings and agreements between the Parties with respect to the subject matter hereof, provided that this EPA will not supercede any obligations of the Parties under the Original EPA that by their nature survive expiry or termination of the Original EPA. There are no representations, warranties, terms, conditions, undertakings or collateral agreements express, implied or statutory between the Parties other than as expressly set out in this EPA.
- 13.5 Amendment** - This EPA may not be amended except by an agreement in writing signed by both Parties.
- 13.6 No Waiver** - Other than in respect of the specific matter or circumstance for which a waiver is given, and except as otherwise specified in this EPA, no failure by a Party to enforce, or require a strict observance and performance of, any of the terms of this EPA will constitute a waiver of those terms or affect or impair those terms or the right of a Party at any time to enforce those terms or to take advantage of any remedy that Party may have in respect of any other matter or circumstance.
- 13.7 Interconnection Notices** - Nothing in the 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 the Interconnection Agreement will constitute or be relied upon as a notice, consent, approval or communication or decision under this EPA.
- 13.8 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) based on conditions in effect at that time.
- 13.9 Commodity Contract/Forward Contract** - The Parties agree and intend that this EPA constitutes an "eligible financial contract" under the *Bankruptcy and Insolvency Act* (Canada) and *Companies' Creditors Arrangement Act* (Canada) and that this EPA and the transactions contemplated under this EPA constitute a "forward contract" within the meaning of section 556 of the United States Bankruptcy Code and that the Parties are "forward contract merchants" within the meaning of the United States Bankruptcy Code.

- 13.10 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.
- 13.11 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.
- 13.12 Counterparts** - This EPA may be executed in counterparts, each of which is deemed to be an original document and all of which are deemed one and the same document.

IN WITNESS WHEREOF each Party by its duly authorized representative(s) has signed this EPA effective as of the date set out on page one of this EPA.

For : **[SELLER NAME]**

Authorized Representative

Print Name and Office

Date

For: **BRITISH COLUMBIA HYDRO AND POWER AUTHORITY:**

Authorized Representative

Print Name and Office

Date

APPENDIX 1

DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

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

- 1.1 “Affiliate”** means, with respect to the Seller or any third Person, any Person directly or indirectly Controlled by, Controlling, or under common Control with, the Seller or the third Person, and 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.
- 1.2 “Assign” or “Assignment”** means to assign or dispose of this EPA or any direct or indirect interest in this EPA, in whole or in part, for all or part of the Term and, without limiting the foregoing, each of the following is deemed to be an Assignment of this EPA by the Seller:
- (a) any sale or other disposition of all or a substantial part of the Seller’s ownership interest in the Seller’s Plant, or of all or any interest of the Seller in this EPA or revenue derived from this EPA;
 - (b) any mortgage, pledge, charge or grant of a security interest in all or any part of the Seller’s Plant or the Seller’s ownership interest therein; and
 - (c) any change of Control, merger, amalgamation or reorganization of the Seller.
- 1.3 “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.
- 1.4 “Bankrupt or Insolvent”** means, with respect to a Person:
- (a) the Person has started proceedings to be adjudicated a voluntary bankrupt or consented to the filing of a bankruptcy proceeding against it; or
 - (b) the Person has filed a petition or similar proceeding seeking reorganization, arrangement or similar relief under any bankruptcy or insolvency law; or
 - (c) a receiver, liquidator, trustee or assignee in bankruptcy has been appointed for the Person or the Person has consented to the appointment of a receiver, liquidator, trustee or assignee in bankruptcy; or
 - (d) the Person has voluntarily suspended the transaction of its usual business; or
 - (e) a court of competent jurisdiction has issued an order declaring the Person bankrupt or

insolvent.

- 1.5 “**BC Hydro System**” means the 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, all as more particularly described in the Interconnection Agreement.
- 1.6 “**BC Hydro System Constraint**” means any outage, suspension, constraint or curtailment in the operation of the BC Hydro System preventing or limiting deliveries of Energy at the POI.
- 1.7 “**BCUC**” means the British Columbia Utilities Commission or any successor thereto.
- 1.8 “**BCUC Acceptance**” means that the BCUC has issued an order accepting for filing, or approving, this EPA under section 71 of the UCA as an energy supply contract either without conditions or subject to conditions that do not (i) require as a condition of acceptance for filing or approval a material alteration to any material term or condition of this EPA, or (ii) otherwise have an adverse effect on one or both of the Parties.
- 1.9 “**Business Day**” means any calendar day which is not a Saturday, Sunday or British Columbia statutory holiday.
- 1.10 “**Buyer**” means British Columbia Hydro and Power Authority and its successors and permitted assigns.
- 1.11 “**Buyer Confidential Information**” means technical or commercial information disclosed by the Buyer to the Seller that the Buyer directs, and clearly marks, as confidential, including this EPA whether or not so directed and marked, but excluding information that (i) is or becomes in the public domain, other than as a result of a breach of this EPA by the Seller, or (ii) is known to the Seller before disclosure to it by the Buyer, or becomes known to the Seller, thereafter by way of disclosure to the Seller by any other Person who is not under an obligation of confidentiality with respect thereto.
- 1.12 “**Buyer Indemnified Parties**” means the Buyer and its Affiliates, and their respective directors, officers, employees, agents, representatives, successors and permitted assigns.
- 1.13 “**Clean Energy**” means Energy that qualifies as energy generated by a clean or renewable resource under British Columbia’s *Clean Energy Act*, SBC 2010, c.22, as amended from time to time.
- 1.14 “**Confidentiality Agreement**” means the confidentiality agreement, a copy of which is attached as Appendix 3 to this EPA.
- 1.15 “**Constraint Energy**” has the meaning given in section 5.7.2.
- 1.16 “**Control**” of any Person means:
 - (a) with respect to any corporation or other Person having voting shares or the equivalent, the ownership or power to vote, directly or indirectly, shares, or the equivalent,

representing 50% or more of the power to vote in the election of directors, managers or Persons performing similar functions;

- (b) ownership of 50% or more of the equity or beneficial interest in that Person; or
- (c) the ability to direct the business and affairs of any Person by acting as a general partner, manager or otherwise.

1.17 “Costs” means brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred or that would reasonably be expected to be incurred by the Seller in entering into new arrangements which replace this EPA and legal fees, if any, incurred in connection with enforcing the Seller’s rights under this EPA.

1.18 “CPI” means the British Columbia Consumer Price Index, All Items (Not Seasonally Adjusted) as published by Statistics Canada or any successor agency thereto, adjusted or replaced in accordance with subsection 2.9(c) of this Appendix 1.

1.19 “Crown” means Her Majesty in the Right of the Province of British Columbia or Her Majesty in Right of the Government of Canada.

1.20 “Deemed Delivered Energy” means, in any hour after the Effective Date:

- (a) Constraint Energy in that hour for which the Buyer is required to pay the Seller pursuant to section 5.7; and
- (b) Dispatch/Turn-Down Energy in that hour for which the Buyer is required to pay the Seller pursuant to section 5.8.

1.21 “Delivered Energy” means, in each hour after the Effective Date, the amount of Energy delivered by the Seller at the POI in that hour as recorded by the Meter, or the duplicate revenue meter installed by the Buyer under section 4.6, if any, as adjusted for Line Losses.

1.22 “Dispatch/Turn-Down” means a turn down or shut off of the Seller’s Plant.

1.23 “Dispatch / Turn-Down Energy” has the meaning given in section 5.8.2.

1.24 “Effective Date” means the date set out on page one of this EPA.

1.25 “Eligible Energy” means, in any hour after the Effective Date, and subject to section 5.2, the total of:

- (a) Delivered Energy in that hour; and
- (b) Deemed Delivered Energy in that hour.

1.26 “Energy” means all electric energy expressed in MWh generated by the Seller’s Plant, excluding electricity required to service the Seller’s Plant.

1.27 “Environmental Attributes” means the following as attributable to Delivered Energy and Deemed Delivered Energy:

- (a) all attributes directly associated with, or that may be derived from, the Delivered Energy and Deemed Delivered Energy having decreased environmental impacts relative to certain other generation facilities or technologies including any existing or future credit, allowance, “green” tag, ticket, certificate or other “green” marketing attribute or proprietary or contractual right, whether or not tradeable;
- (b) any credit, reduction right, offset, allowance, allocated pollution right, certificate or other unit of any kind whatsoever, whether or not tradeable and any other proprietary or contractual right, whether or not tradeable, resulting from, or otherwise related to the actual or assumed reduction, displacement or offset of emissions at any location other than the Seller’s Plant as a result of the generation, purchase or sale of the Delivered Energy and Deemed Delivered Energy;
- (c) any credit, reduction right, off-set, allowance, allocated pollution right, certificate or other unit of any kind whatsoever whether or not tradeable resulting from or otherwise related to the reduction, removal, or sequestration of emissions at or from the Seller’s Plant; and
- (d) all revenues, entitlements, benefits and other proceeds arising from or related to the foregoing, but for certainty not including:
 - i. benefits or proceeds from environmental incentive programs offered by Governmental Authorities that do not require a transfer of the attributes in subsections (a) to (c) above; and
 - ii. 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 subsections (a) to (c) above.

1.28 “Environmental Certification” means any certification the Buyer requires the Seller to obtain under section 7.1.

1.29 “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.

1.30 “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 and any Person taking any mortgage, pledge, charge or grant of a security interest in all or any part of the Seller’s Plant.

1.31 “Final Amount” means an amount owing by either Party to the other Party under this EPA, including as a result of a breach of this EPA, where such amount is: (a) undisputed by the Party owing such amount; or (b) has been finally determined by an arbitration award under section 8.5 or by a court order and all rights of appeal in respect of such award or order have been exhausted or have expired.

1.32 “Financial Losses” means an amount equal to the present value of the economic loss (exclusive of Costs), if any, to the Seller resulting from the termination of this EPA, determined in a commercially reasonable manner and in the manner set out in section 10.5.

- 1.33** “**First Nations**” has the meaning given in section 9.1.
- 1.34** “**Force Majeure**” means any event or circumstance not within the control of the Party, or any of its Affiliates, claiming Force Majeure, but does not include:
- (a) any economic hardship or lack of money, credit or markets;
 - (b) an event or circumstance that is the result of a breach by the Party seeking to invoke Force Majeure of a Permit or of any applicable Laws;
 - (c) a mechanical breakdown or control system hardware or software failure, unless the Party seeking to invoke Force Majeure can demonstrate by clear and convincing evidence that the breakdown or failure was caused by a latent defect in the design or manufacture of the equipment, hardware or software, which could not reasonably have been identified by normal inspection or testing of the equipment, hardware or software;
 - (d) an event or circumstance caused by a breach of, or default under, this EPA or a wilful or negligent act or omission by the Party seeking to invoke Force Majeure;
 - (e) any BC Hydro System Constraint; or
 - (f) any acts or omissions of: (i) any Affiliate, employee, director, officer, agent or other representative of the Party invoking Force Majeure; (ii) any vendor, supplier, contractor, subcontractor, consultant or customer of or to the Party invoking Force Majeure; or (iii) any other Person for whom the Party invoking Force Majeure is responsible at law, unless the act or omission is 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.
- 1.35** “**Forced Outage**” means a partial or total interruption in the delivery of, or ability to deliver, Energy that is not a result of a Planned Outage or a Force Majeure invoked in accordance with this EPA.
- 1.36** “**Gains**” means an amount equal to the present value of the economic benefit (exclusive of Costs), if any, to the Seller resulting from the termination of this EPA, determined in a commercially reasonable manner and in the manner set out in section 10.5.
- 1.37** “**Good Utility Practice**” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the Western Electricity Coordinating Council region.
- 1.38** “**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 entities controlled by the Buyer or the Seller.

- 1.39 “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.
- 1.40 “Hourly Limit” means _____ MWh per hour, in any hour. *[Note: The blank in this section will be completed based on discussion between the Seller and BC Hydro.]*
- 1.41 “Indemnitee” has the meaning given in section 12.3.
- 1.42 “Indemnitor” has the meaning given in section 12.3.
- 1.43 “Information Submittals” means the documents and information in relation to the Seller’s Plant and the Project provided by the Seller to the Buyer in the period between *[insert]* and the Effective Date in connection with the negotiation and execution of this EPA, including provided documents and information in connection with First Nations, the Seller’s cost of service, Interconnection and Permits, and the condition assessment of the Seller’s Plant. *[Note: The blank in this section to be based on commencement of renewal discussions between the Seller and BC Hydro.]*
- 1.44 “Interconnection” means the facilities and procedures that enable the flow of electric power from the Seller’s Plant to the BC Hydro System and vice versa.
- 1.45 “Interconnection Agreement” means the Interconnection Agreement between the Seller and the Buyer dated *[insert]* in respect of the Interconnection, as amended from time to time. *[Note: The blank in this section will be completed based on Interconnection Agreement in place between Seller and BC Hydro as of the date of execution of the EPA.]*
- 1.46 “Interconnection Review” means the *[study]* in respect of the Interconnection dated *[insert]*, a copy of which is set forth in Appendix 4. *[Note: The blanks in this section will be completed based on date and nature of Interconnection Review.]*
- 1.47 “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
- 1.48 “Lender Consent Agreement” means a lender consent agreement in the form posted on the Buyer’s website as of the date the Seller submits the Lender Consent Agreement to the Buyer.
- 1.49 “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:
- (a) that are recorded by the Meter; and/or
 - (b) that are associated with or otherwise result from multiple interconnections on the Seller’s side of the POI, as estimated by the Buyer in accordance with Good Utility Practice.
- 1.50 “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.

- 1.51 **"Meter"** means a meter leased by the Buyer to the Seller that is: (a) capable of accurately measuring the quantity of Energy generated by the Seller's Plant and delivered to the POI in each hour independent of all other generation equipment or facilities and transmitting the information to the Buyer, and (b) capable of being remotely interrogated.
- 1.52 **"Network Upgrades"** means additions, modifications and upgrades to the BC Hydro System that are determined by the Buyer to be interconnection or transmission network upgrades under the applicable policies of the Buyer or under the Buyer's Open Access Transmission Tariff in effect from time to time.
- 1.53 **"Network Upgrade Costs"** means all costs incurred by the Buyer before or after the Effective Date for the design, engineering, procurement, construction, installation and commissioning of Network Upgrades under the Interconnection Agreement.
- 1.54 **"Operating Plan"** means an operating plan for the Seller's Plant that includes for the term of each operating plan, (a) a schedule of the 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.
- 1.55 **"Order or Decision"** has the meaning given in section 9.1.
- 1.56 **"Original EPA"** means Electricity Purchase Agreement dated *[insert date]*, as amended, supplemented or otherwise modified from time to time, under which the Seller sells, and the Buyer purchases, electricity from the Seller's Plant. *[Note: The parenthetical in this section will be completed based on the date of Original EPA between Seller and BC Hydro.]*
- 1.57 **"Outage"** means a Planned Outage or a Forced Outage.
- 1.58 **"Outage Notice"** means a notification of any Outage or revised notification of any 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 and that is in a format that may be prescribed by the Buyer from time to time as posted on the Buyer's website.
- 1.59 **"Party"** means: (a) the Buyer; or (b) the Seller, and **"Parties"** means both the Buyer and the Seller.
- 1.60 **"Permits"** means permits, certificates, licences, and other approvals required for the design, construction, ownership, operation, maintenance and decommissioning of the Seller's Plant and the delivery of Energy to the POI.
- 1.61 **"Person"** means an individual, body corporate, firm, partnership, joint venture, trust, legal representative or other legal entity.
- 1.62 **"Planned Outage"** means a partial or total interruption in the delivery of, or ability to deliver, Energy for purposes of scheduled inspection, repair and/or maintenance in the Seller's Plant.

- 1.63** “**Plant Capacity**” means the maximum electrical capacity of the Seller’s Plant expressed in MW as set out in Appendix 2 (as amended in accordance with section 4.5), being the numerical sum of the maximum electrical capacity of each individual generator that forms part of the Seller’s Plant, as established by documentation in respect of each generator that is satisfactory to the Buyer in its sole discretion. Where the capacity is expressed in MVA, the capacity will be multiplied by the power factor stipulated in the Interconnection Agreement to determine the capacity in MW.
- 1.64** “**POI**” or “**Point of Interconnection**” means the point at which the Seller’s Plant interconnects with the BC Hydro System, as described in Appendix 2.
- 1.65** “**Potential Impacts**” has the meaning given in section 9.1.
- 1.66** “**PPT**” means Pacific Prevailing Time, which means Pacific Daylight Time or Pacific Standard Time as applicable.
- 1.67** “**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%.
- 1.68** “**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.
- 1.69** “**Project**” means the financing, design, engineering, procurement, construction, commissioning, operation and maintenance of the Seller’s Plant.
- 1.70** “**Project Standards**” means:
- (a) all applicable Laws;
 - (b) the terms and conditions of all Permits, including land tenure agreements, issued in connection with the Seller’s Plant;
 - (c) Good Utility Practice;
 - (d) the description of the Seller’s Plant in Appendix 2;
 - (e) the requirement that Energy must qualify as Clean Energy;
 - (f) the terms and conditions of this EPA and the Interconnection Agreement; and
 - (g) 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.
- 1.71** “**PST**” means British Columbia provincial social service or sales taxes and similar or replacement assessments, if any.

1.72 “Records” means all records and logs required to properly administer this EPA, including:

- (a) Energy generation records and operating logs; *[Note: if the Plant consists of multiple generators, this will be amended to add “for each generator comprising part of the Seller’s Plant, and for the Seller’s Plant on an aggregated basis”]*
- (b) 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);
- (c) Meter readings;
- (d) maintenance reports;
- (e) invoice support records;
- (f) documents concerning compliance with Project Standards, but excluding any such documents that are protected by solicitor-client privilege;
- (g) any avoided or avoidable costs during the period of any BC Hydro System Constraint or Dispatch/Turn-Down; and
- (h) information relating to the Environmental Certification, information relating to the existence, nature and quality of Environmental Attributes, 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.

1.73 “Regulatory Condition Expiry Date” means the date that is 180 days after the Effective Date, or such later date as the Buyer, in its sole discretion, may from time to time elect by notice to the Seller.

1.74 “Seller” means the Party so identified on page one of this EPA, and its successors and permitted assigns.

1.75 “Seller Confidential Information” means any of the Seller’s confidential technical or financial information provided by the Seller to the Buyer in confidence with express written notice to the Buyer of the confidential nature of the information, but excluding:

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

- 1.76** “**Seller Indemnified Parties**” means the Seller and its Affiliates, and their respective directors, officers, employees, agents, representatives, successors and permitted assigns.
- 1.77** “**Seller’s Plant**” means the Seller’s Plant described in Appendix 2 and all rights, property, facilities, assets, equipment, materials, Permits and contracts required to design, engineer, procure, construct, commission, operate and maintain the plant described in Appendix 2 and to interconnect that plant to the BC Hydro System, whether real or personal and whether tangible or intangible including all land tenure and all books, Records and accounts with respect to the Seller’s Plant described in Appendix 2.
- 1.78** “**Term**” has the meaning given in Article 2.
- 1.79** “**UCA**” means the *Utilities Commission Act* (British Columbia).
- 1.80** “**Verification**” has the meaning given in section 9.1.

2. INTERPRETATION

- 2.1** **Headings** - The division of this EPA into Articles, sections, subsections, paragraphs and Appendices and the insertion of headings are for convenience of reference only and do not affect the interpretation of this EPA.
- 2.2** **Plurality and Gender** - Words in the singular include the plural and vice versa. Words importing gender include the masculine, feminine and neuter genders.
- 2.3** **Governing Law** - This EPA is made under, and will be interpreted in accordance with, the laws of the Province of British Columbia. Subject to section 8.5, any suit, action or proceeding (a “**Proceeding**”) arising out of or relating to this EPA may be brought in the courts of the Province of British Columbia at Vancouver, and those courts have non-exclusive jurisdiction in respect of any Proceeding and the Parties hereby irrevocably attorn to the jurisdiction of such courts in respect of any Proceeding.
- 2.4** **Industry Terms** - Technical or industry specific phrases or words not otherwise defined in this EPA have the well-known meaning given to those terms as of the date of this EPA in the industry or trade in which they are applied or used.
- 2.5** **Statutory References** - Reference to a statute means, unless otherwise stated, the statute and regulations, if any, under that statute, in force from time to time, and any statute or regulation passed and in force which has the effect of supplementing or superseding that statute or those regulations.
- 2.6** **Currency** - References to dollars or \$ means Canadian dollars, unless otherwise stated.
- 2.7** **Reference Indices** – Except as otherwise provided in section 2.9 of Appendix 1, 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 written agreement between the Parties, or failing agreement, by arbitration under section 8.5.

2.8 Conversions - If a value used in a calculation in this EPA must be converted to another unit of measurement for purposes of consistency or to achieve a meaningful answer, the value will be converted to that different unit for purposes of the calculation.

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

- (a) all payment calculations will be rounded to the nearest cent;
- (b) Energy will be expressed in MWh rounded to two decimal places; and
- (c) if Statistics Canada (or the then recognized statistical branch of the Government of Canada):
 - i. computes, at any time after the Effective Date, the CPI on a basis different to that employed at the Effective Date, then the CPI will be converted using the appropriate formula recommended by Statistics Canada (or the then recognized statistical branch of the Government of Canada);
 - ii. at any time ceases to publish or provide the CPI, then the provisions of section 2.7 of Appendix 1 will apply;
 - iii. has not published the CPI for a relevant period at the time the Seller is required to provide 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
 - iv. 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.

2.10 Additional Interpretive Rules - For the purposes of this EPA, except as otherwise expressly stated:

- (a) “this EPA” means this EPA as it may from time to time be supplemented or amended and in effect, and includes the Appendices attached to this EPA;
- (b) the words “herein”, “hereof” and “hereunder” and other words of similar import refer to this EPA as a whole and not to any particular section, subsection or other subdivision;

- (c) the word “including” or “includes” is not limiting whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto;
- (d) the words “year” and “month” refer to a calendar year and a calendar month;
- (e) any consent, approval or waiver contemplated by this EPA must be in writing and signed by the Party against whom its enforcement is sought, and may be given, withheld or conditioned in the unfettered discretion of the Party of whom it is requested;
- (f) all rights and remedies of either Party under this EPA are cumulative and not exclusive of any other remedies to which either Party may be lawfully entitled, and either Party may pursue any and all of its remedies concurrently, consecutively and alternatively; and
- (g) any notice required to be given, or other thing required to be done, under this EPA on or before a day that is not a Business Day, will be deemed to be given or done when required hereunder if given or done on or before the next following Business Day.

3. ADDRESSES FOR NOTICES

3.1 Notices to Buyer and Insurance - Except as noted below, all notices addressed to the Buyer will be delivered to the following address:

To: Business & Economic Development
 333 Dunsmuir Street, 17th floor
 Vancouver, B.C.
 V6B 5R3
 Attention: Director, Business & Economic Development
 Email: IPP.Contract@bchydro.com

Statements and Supporting Information

To: Business & Economic Development
 333 Dunsmuir Street, 17th floor
 Vancouver, B.C.
 V6B 5R3
 Attention: Manager, Commercial Operations & Planning
 Email: IPP.Contract@bchydro.com

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

[Note to Sellers: This information will be completed based on the information provided by Seller.]

APPENDIX 2

SELLER'S PLANT DESCRIPTION

1. **Location:** The Seller's Plant is located at: *[Insert.]*

The approximate latitude and longitude of the site of the power house forming part of the Seller's Plant is: *[Insert.]*

The Seller's Plant is located on property legally described as: *[Insert.]*

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

Type of Equipment	Description	Key Technical Parameters
Turbine		
Generator		
Transformer		
Transmission Line		
<i>[Insert other, as applicable.]</i>		

3. **Access Roads:** Access to the site on which the Seller's Plant is located is: *[Insert.]*
4. **POI and Interconnection Facilities:** As described in the Interconnection Review and the Interconnection Agreement.
5. **Plant Capacity:** The Plant Capacity is *[insert]* 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. **Interconnection Review:** The data and assumptions set forth in the Interconnection Review are attached as Schedule 2 to this Appendix 2 and Appendix 4.
8. **Energy Source:** The primary Energy Source used to generate Energy at the Seller's Plant is water which accounts for 100% of the annual Energy generated.

SCHEDULE 1

SITE LAYOUT

[Note: To be attached.]

SCHEDULE 2

INTERCONNECTION REVIEW

[Note: To be attached.]

APPENDIX 3

CONFIDENTIALITY AGREEMENT

[Note: To be attached.]

APPENDIX 4

INTERCONNECTION REVIEW

[Note: To be attached.]

Hluey Lake Hydro
Electricity Purchase Agreement Renewal

Appendix D

Electricity Purchase Agreement
(Blackline to Original EPA)

PUBLIC

CONFIDENTIAL

APPENDIX

FILED WITH BCUC

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