

JOHN HART GENERATING STATION REPLACEMENT PROJECT

Schedule 1

Definitions and Interpretation

DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

In this Agreement:

"200yr Flood Tailwater Level" has the meaning given in Section 1.1A-4 *[Water Levels and Floods]* Appendix 1.1A *[Design Parameters]* of Schedule 6 *[Design and Construction Specifications]*;

"Acceptable Letter of Credit" means an irrevocable standby letter of credit substantially in the form provided in Appendix 13H to Schedule 13. The letter of credit must be available for presentation in Vancouver (BC) Canada and shall be issued or confirmed by a domestic Canadian financial institution authorized to transact business of such nature and having a minimum credit rating of not less than Standard & Poor's A-, Moody's A3 or DBRS A (low). If the issuing financial institution is not a domestic Canadian financial institution, the Sovereign (Country) debt rating shall not be less than Standard & Poor's AA, Moody's Aa2 or DBRS AA and the financial institution must be acceptable to BC Hydro. For the purpose of this section, the lowest credit rating issued by the above referenced credit rating agencies for a specific financial institution shall be considered as that financial institution's credit rating and shall be maintained during the period for which the letter of credit is outstanding;

"Acceptance Criteria" has the meaning given in Appendix 7E *[Condition Assessment Evaluation]* to Schedule 7 *[Services]*;

"Acceptance Date" has the meaning given in Section 2.5(c) *[Construction Environmental Management Plan]* of Schedule 8 *[Environmental Obligations]*;

"Access Control Management System" or **"ACMS"** means the system described in Section 7.9-4 *[Access Control Management System]* of Schedule 6 *[Design and Construction Specifications]*;

"Achieved Common Conduit Head Loss" means the maximum Common Conduit head loss through the Power Tunnel at "Operating Regime No. 1" as specified in Table 13G-1 and determined in accordance with Appendix 13G *[Performance Verification Tests]* of Schedule 13 *[Performance and Payment Mechanisms]* and the results of the Performance Verification Tests;

"Achieved Generator Efficiency" means the minimum weighted average efficiency of the Generator in accordance with the specified weighting operating regimes specified in Table 13G-3 and determined in accordance with Appendix 13G *[Performance Verification Tests]* of Schedule 13 *[Performance and Payment Mechanisms]* and the results of the Performance Verification Tests;

"Achieved Performance" means collectively the Achieved Common Conduit Head Loss, Achieved Generator Efficiency, Achieved Plant Capacity, Achieved Plant Energy, and the Achieved Turbine Model Efficiency;

“Achieved Plant Capacity” means the minimum sum of the Generator power outputs of each Generating Unit at “Operating Regime No. 1” as specified in Table 13G-1 and determined in accordance with Appendix 13G [*Performance Verification Tests*] of Schedule 13 [*Performance and Payment Mechanisms*] and the results of the Performance Verification Tests;

“Achieved Plant Energy” means the minimum sum of the plant energy of each “Operating Regime” specified in Table 13G-1 and determined in accordance with Appendix 13G [*Performance Verification Tests*] of Schedule 13 [*Performance and Payment Mechanisms*] and the results of the Performance Verification Tests;

“Achieved Turbine Model Efficiency” means the efficiency value determined in Table 13G-2 and determined in accordance with Appendix 13G [*Performance Verification Tests*] of Schedule 13 [*Performance and Payment Mechanisms*] and the results of the Turbine Model Tests described in Section 4.1 [*Turbine Hydraulic Design and Model Tests*] of Schedule 6 [*Design and Construction Specifications*];

“Acquisition Notice” has the meaning given in Appendix 24A [*Protocol and Terms of Waste Rock Contracts*] of Schedule 24 [*First Nations*];

“AC Station Service System” means the system described in Section 7.3 [*AC Station Service System*] of Schedule 6 [*Design and Construction Specifications*];

“Additional Insurance” has the meaning given in Section 3.4 of the Schedule 18 [*Insurance Requirement*];

“Additional Irrecoverable Tax” means:

- (a) in the case of a transition from a segregated provincial sales tax (PST) and federal goods and services tax (GST) to a single harmonized sales tax (HST), HST;
- (b) in the case of a transition from a single harmonized sales tax (HST) back to a segregated provincial sales tax (PST) and federal goods and services tax (GST), PST and GST; and
- (c) in relation to a change in Tax Laws, any Tax enacted pursuant to Tax Laws,

incurred by Project Co, the Project Contractors or the Sub-Contractors in respect of the supply of any good or service to BC Hydro which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co, a Project Contractor or a Sub-Contractor in the course of carrying out the Project Work to the extent that Project Co, a Project Contractor or a Sub-Contractor is unable to recover, or be credited with, input tax credits, refunds, rebates or exemptions in an amount that Project Co, a Project Contractor or a Sub-Contractor would have recovered or been credited in respect of such taxes prior to the applicable Change in Law;

“Additional Recoverable Tax” means:

- (a) in the case of a transition from a segregated provincial sales tax (PST) and federal goods and services tax (GST) to a single harmonized sales tax (HST), HST;
- (b) in the case of a transition from a single harmonized sales tax (HST) back to a segregated provincial sales tax (PST) and federal goods and services tax (GST), PST and GST; and
- (c) in relation to a Change in Tax Laws, any Tax enacted pursuant to Tax Laws,

incurred by Project Co, a Project Contractors or a Sub-Contractors in respect of the supply of any good or service to BC Hydro which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co, a Project Contractor or a Sub-Contractor in the course of carrying out the Project Work to the extent that Project Co, a Project Contractor or a Sub-Contractor is able to recover, or be credited with, input tax credits, refunds, rebates or exemptions in an amount that Project Co, a Project Contractor or a Sub-Contractor would not have recovered or been credited in respect of such taxes prior to the applicable Change in Law;

“Adjusted Estimated Market Value” means the Estimated Market Value:

- (a) less an amount, without duplication, equal to the aggregate of:
 - (i) any Re-Bidding Costs; and
 - (ii) any other amounts that BC Hydro is entitled to set-off or deduct under this Agreement,
- (b) plus an amount, without duplication, equal to the aggregate of:
 - (i) any Insurance Proceeds and Insurance Receivables;
 - (ii) any accrued but unpaid amounts owing and payable by BC Hydro to Project Co under this Agreement;
 - (iii) all credit balances on any bank account held by or on behalf of Project Co on the date the Estimated Market Value is calculated; and
 - (iv) any other amounts that are owing to Project Co (and that Project Co is entitled to retain),

to the extent that any of the above amounts have not been included in calculating the Estimated Market Value and, in the case of (b)(i) and (b)(iii) above, BC Hydro has received or been assigned such amounts and is entitled to retain them;

“Adjusted Highest Compliant Bid Price” means the Highest Compliant Bid Price:

- (a) less an amount, without duplication, equal to the aggregate of:
 - (i) any Re-Bidding Costs; and
 - (ii) any other amounts that BC Hydro is entitled to set-off or deduct under this Agreement; and
 - (iii) the amount by which:
 - (A) all reasonable costs and expenses incurred by BC Hydro, during the period commencing on the day following the Termination Date and ending on the Termination Payment Date (or, as the case may be, the date on which it is agreed or determined that no Termination Payment is payable by BC Hydro under this Agreement), to carry out and perform (or to procure the carrying out and performance of), in the manner and to the standards contemplated by this Agreement, the obligations, responsibilities, activities and work that would, but for the termination of this Agreement, have been the responsibility and obligation of Project Co under this Agreement (including, without limitation, the rectification and mitigation of all defaults by Project Co occurring prior to such termination); exceeds
 - (B) the amount of the Availability Payments, if any, that would have been payable to Project Co but for the termination of this Agreement that relates directly to the provision of Services;
- (b) plus an amount, without duplication, equal to the aggregate of:
 - (i) any Insurance Proceeds and Insurance Receivables;
 - (ii) any accrued but unpaid amounts owing and payable by BC Hydro to Project Co under this Agreement;
 - (iii) all credit balances on any bank account held by or on behalf of Project Co on the date that the highest priced Compliant Bid is received or, if no Compliant Bid is received on the final date for submission of bids pursuant to the Re-Bidding Process; and
 - (iv) any other amounts that are owing to Project Co (and that Project Co is entitled to retain),

to the extent that any of the above amounts has not been taken into account in the relevant Compliant Bid and, in the case of (b)(i) and (b)(iii) above, BC Hydro has received or been assigned such amounts and is entitled to retain them;

“Administrative Agent” means Alberta Treasury Branches, and its successors and assigns;

"Advisory Opinion" means a written opinion or approval letter to BC Hydro or Project Co from Transport Canada pursuant to Section 10 of the *Navigable Waters Protection Act (Canada)* which confirms that the relevant parts of the Project Work will not result in increased interference with navigation with the result that no further authorization, approval, or licence or permit is required under this legislation to proceed with the Project Work;

“Affiliate” in respect of a Person means any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person where **“control”** means, with respect to the relationship between or among two or more Persons, the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee, personal representative or executor, by statute, contract, credit arrangement or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person. For greater certainty for the purposes of this Agreement, the Province and other Crown corporations owned or controlled by the Province (and not BC Hydro) shall not be considered to be Affiliates of BC Hydro;

“Agreement” means this agreement including any recitals, the DBSS, schedules and appendices to this agreement, as amended, supplemented or restated from time to time;

“AIF” means the all injury frequency and is the number of reportable incidents (includes disabling injuries and medical aids) multiplied by 200,000 divided by the number of hours worked;

“Allowable Capital Expenditure” means the Capital Expenditure incurred or saved by Project Co as a direct consequence of an Eligible Change in Law Event;

“Allowable Stresses” has the meaning given in Section 4.2-4.1 [*Allowable Stresses*] of Schedule 6 [*Design and Construction Specifications*];

"Annual Asset Management Report" means the report required pursuant to Section 6.3 [*Report Content*] of Schedule 7 [*Services*];

"Appendices" means the appendices that are attached to or expressly incorporated by reference to, and forming part of a Schedule to this Agreement;

“Applicant” has the meaning given in Section 8.1 [*Supervening Events*];

“Appropriate Persons” has the meaning given in Section 5.2(c) [*Design and Certification Procedure*] of Schedule 5 [*Design and Construction Protocols*];

"Arbitrator" has the meaning given in Section 1.6(b)(iii) *[Arbitration]* of Schedule 19 *[Dispute Resolution Procedure]*;

"As built Drawing" has the meaning given in Section 10.2.1 *[General]* of Schedule 5 *[Design and Construction Protocols]*;

"Asset Management Plan" means a plan required pursuant to Section 4.6(b) of Schedule 7 *[Services]*;

"Asset Register" has the meaning given in Section 8.2 *[Asset Register]* of Schedule 5 *[Design and Construction Protocols]*;

"Available Tunnel Float Balance" means the available number of days of Tunnel Float calculated in accordance with Section 6 *[Tunnel Work Eligible Delay]* of Schedule 4 *[Project Schedule]*.

"Availability Payments" means the payments paid or payable by BC Hydro to Project Co pursuant to Section 1.2 *[Obligation to Make Availability Payments]* of Schedule 13 *[Performance and Payment Mechanisms]*;

"Available" means, in respect of an Existing Unit, Generating Unit or the Bypass System, available for service. A Generating Unit is available for service if the Generating Unit is synchronized (on-line) or the Generating Unit is off-line but under remote control (Operating Authority held by the Remote Control Centre), with no lockout devices or isolation issued, and is capable of starting within 10 minutes. The Bypass System is available for service if it is fully functional, under automatic operation, and is able to achieve the Bypass System Response Time. An Existing Unit is available if it is on-line, or if it is off-line for a Permissible Existing Unit Planned Outage or for reasons unrelated to the performance, or non-performance, by Project Co of the Project Work;

"Avoidable Costs", when used in relation to an event or circumstance, means all costs and expenditures which:

- (a) are saved or avoided as a result of the event or circumstance or its effects; or
- (b) if Project Co acted reasonably and in accordance with this Agreement, would have been saved or avoided as a result of the event or circumstance or its effects;

"Backbone" means the redundant fibre-optic communications ring for the Facility;

"Background Check" means:

- (a) a Canadian Police Information Centre criminal record database search;
- (b) a search of all relevant databases maintained by Public Safety Canada; and

- (c) if the applicable individual has been domiciled in a country or countries other than Canada for greater than 6 consecutive months in the previous 10 years, a search of all relevant databases maintained by Interpol;

"Backup Diesel Generator" means the diesel generator set described in Section 7.3-3.4 [*Backup Diesel Generator*] of Schedule 6 [*Design and Construction Specifications*];

"Base Case Project IRR" means ■■■% being the Nominal internal rate of return for the Project calculated on an after tax basis at the level of Project Co in accordance with the Financial Model as shown in Cell C34 of the 'Summary output' sheet;

"Base Date" means December 1, 2013;

"Baseline" means a geotechnical parameter that is specifically identified in Appendix 1 [*Baseline Condition Exceedances*] to Schedule 28 [*Differing Site Conditions*];

"Baseline Condition Exceedance" means either:

- (a) that the actual geotechnical conditions encountered either in an individual location or on average (as applicable depending on the nature of the condition) exceed the Baseline for the Baselined Condition as described in Appendix 1 [*Baseline Condition Exceedances*] to Schedule 28 [*Differing Site Conditions*]; or
- (b) that Project Co encounters an extraordinarily unusual, discrete subsurface condition that would have been impossible or virtually impossible to discern from review and analysis of all available data, including the Disclosed Data, but without physical investigation;

"Baselined Condition" means a condition which is identified in Appendix 1 [*Baseline Condition Exceedances*] to Schedule 28 [*Differing Site Conditions*];

"Basis of Design Report" has the meaning given in Section 5.6 [*Basis of Design Report*] of Schedule 5 [*Design and Construction Protocols*];

"Battery Room" means the room, within the Powerhouse Building, described in Section 3.1-3.4(N) [*Designated Rooms and Areas*] of Schedule 6 [*Design and Construction Specifications*];

"BCH IP Purposes" means:

- (a) in respect of the Project Intellectual Property, Design IP and related IP Rights associated with the Design (and related Design Drawings and Design Data) and the Generator and Turbine and all components specified in Section 4.1 through 4.5 of Schedule 6, for the purpose only of the installation, operation, maintenance, inspection, repair, modification, upgrading, and subject to Section 4.15(e), the replacement of any and all of the Project Work and to reverse

engineer the Project Work and the Facility as permitted under this Agreement, at the Site; and

- (b) in respect of all other Project Intellectual Property, and in respect of the general knowledge obtained, gained or derived by BC Hydro Persons from the Project and the related Project Intellectual Property or IP Rights, for the purpose of supporting, assisting or facilitating the operations of BC Hydro and Affiliates, as a generator and supplier of electrical power to the customers of BC Hydro and its Affiliates, including all related administrative and systems support activities whether at the Site or at other locations at which BC Hydro operates.

For greater certainty, a BCH IP Purpose does not include, and BC Hydro Persons shall be restricted from, using Project Intellectual Property (including general knowledge derived therefrom) described in subparagraph (a) for the purpose of substantially duplicating or replicating the Design, Design Drawings or Design Data for the construction of a new or replacement generating facility at a location other than the Site or for the addition of new Generating Units at the Site. Permitted use of other Project Intellectual Property (and general knowledge acquired in respect of all Project Intellectual Property) at locations other than the Site includes use by BC Hydro Persons for the repair or modification only of any other BC Hydro generating facilities.

"BCH Works" means:

- (a) Early construction works (site preparation):
 - (i) Highway 28 access re-alignment;
 - (ii) Surge Tower Road widening;
 - (iii) Penstock Road widening, park access, parking lot, community site office and pedestrian bridge;
 - (iv) miscellaneous fencing around the site; and
 - (v) moving BC Hydro site staff out of the Existing Site Office Building;
- (b) [Not Used];
- (c) BC Hydro communication network upgrade, including expansion of the backhaul capacity of BC Hydro's existing digital microwave network to support added data transfer capabilities from the Facility;
- (d) [Not Used];
- (e) Installation of new lake level telemetry required prior to the decommissioning of the communication and intake power supply.

“BC Hydro” means British Columbia Hydro and Power Authority;

“BC Hydro Activities” means any activities carried on or to be carried on by BC Hydro, or other Persons permitted by BC Hydro, in relation to the Facility, the generation and transmission of electricity or the overall management of the Facility;

“BC Hydro DSC Representative” has the meaning given in Section 1.6 of Schedule 28 [*Differing Site Conditions*];

“BC Hydro Event of Default” has the meaning given in Section 13.1 [*BC Hydro Events of Default*];

“BC Hydro Fisheries Authorization” has the meaning given in Section 14.1 [*BC Hydro Role and Responsibilities*] of Schedule 8 [*Environmental Obligations*];

“BC Hydro Indemnified Person” means:

- (a) any contractor or subcontractor (of any tier) of BC Hydro;
- (b) any representative, agent or advisor (including legal and financial advisors) of BC Hydro or any Person referred to in (a) above, in each case acting in such capacity; and
- (c) any director, officer or employee of BC Hydro or of any Person referred to in (a) or (b) above, in each case acting in such capacity;

“BC Hydro Interpretative Master Site Plan” means the “John Hart Generating Station Replacement Project – Interpretative Master Siteplan” prepared by Aldrich Pears Associates (2012) and included in the Disclosed Data;

“BC Hydro IP” means the Intellectual Property and related IP Rights owned or used under license by or on behalf of BC Hydro that is incorporated, embedded or otherwise included in or with, or otherwise relates to: (i) an aspect of the Existing Facility that BC Hydro has authorized in writing to be relied upon or used in part or in whole by Project Co or Project Co Persons in the performance of the Project Work, including the ongoing provision of the Services during the Term; or (ii) any other information, data, items or materials provided by or on behalf of BC Hydro to Project Co or Project Co Persons for use in the performance of the Project Work (including the ongoing provision of the Services during the Term), and including the Design and Construction Requirements, the Design and Construction Specifications, and any contribution by or on behalf of BC Hydro to Design Data;

“BC Hydro Labour Pool” has the meaning given in Section 4.5 [*BC Hydro Labour Pool*] of Schedule 7 [*Services*];

"BC Hydro Non-Excusable Event" means any of the following:

- (a) any wrongful act, wrongful omission, negligent act, negligent omission or wilful misconduct; or
- (b) any breach in the due performance or observance of any of BC Hydro's obligations under this Agreement or any other BC Hydro Project Document,

of or by BC Hydro or any person for whom BC Hydro is in law responsible;

"BC Hydro Permits" has the meaning given in Section 4.19(a) *Regulatory Approvals and Permits*;

"BC Hydro Person" means:

- (a) any director, officer, employee or agent of BC Hydro;
- (b) any representative, advisor (including any legal and financial advisor) of BC Hydro or subcontractor (of any tier) of BC Hydro in any such Person's capacity as a provider of services directly or indirectly to BC Hydro in connection with the Project or the Facility, other than Project Co, Project Contractors or Sub-Contractors;
- (c) any invitee of BC Hydro or any of the BC Hydro Persons referred to in (a) or (b) above who enters upon the Site; or
- (d) any lessee or tenant of BC Hydro at the Facility;

"BC Hydro Policies" means the following policies, or portions of policies where only a portion is indicated, of BC Hydro as at the Financial Submission Date, copies of which have been provided to Project Co:

- (a) Contractor Code of Conduct;
- (b) Employee and Workplace Policy;
- (c) Records and Information Management Policy; and
- (d) Aboriginal Contract and Procurement Policy.

"BC Hydro Project Documents" means this Agreement, the Lenders' Remedies Agreement, the Collateral Agreements, the Insurance Trust Agreement and, when executed and delivered in accordance with this Agreement, the Independent Certifier Agreement and Referee Agreements;

"BC Hydro Public Safety Management Plan" means the plan developed by BC Hydro prior to the Effective Date to address identified public safety Hazards and requirements associated with

the Project and the Facility, as such plan is amended, revised or replaced from time to time in accordance with this Agreement, and includes the public safety management plan prepared by BC Hydro, dated March 2010 and included in the Disclosed Data;

"BC Hydro Required Testing" means the inspection and testing described in Section 9.7 *[BC Hydro Required Testing]* of Schedule 5 *[Design and Construction Protocols]*;

"BC Hydro Response" has the meaning set out in Section 14.6(b) *[Collection and Remittance of Taxes]* of Schedule 13 *[Performance and Payment Mechanism]*

"BC Hydro's Boiler and Machinery Policy" has the meaning given in Section 2.4 *[Boiler and Machinery]* of Schedule 18 *[Insurance Requirements]*;

"BC Hydro Security LAN" means a separated, partitioned and firewalled component of the Plant LAN providing connectivity between the Facility's security systems and the Security Command Centre;

"BC Hydro Security Standards" has the meaning given in Section 7.9-1.1(C) *[Intent]* of Schedule 6 *[Design and Construction Specifications]*;

"BC Hydro's Operating CGL Policy" has the meaning given in Section 2.2 *[BC Hydro's Commercial General Liability Insurance]* of Schedule 18 *[Insurance Requirements]*;

"BC Hydro's Operating Property Policy" has the meaning given in Section 2.3 *[BC Hydro's All Risks Property Policy]* of Schedule 18 *[Insurance Requirements]*;

"BC Hydro's Representative" means [REDACTED] or such substitute as may be appointed by BC Hydro pursuant to Section 1.2 *[Change of BC Hydro's Representative]* of Schedule 3 *[Roles and Representatives]*;

"BC Hydro Transmission System" has the meaning given in Section 1.1-3.4(A) *[Interconnection]* of Schedule 6 *[Design and Construction Specifications]*;

"BC Hydro Witness Point (W)" means a step in the Design or Construction which is designated in Schedule 9 *[Quality Management]* as a "Witness Point", where Project Co is required to provide BC Hydro's Representative with at least 30 days advance notice of, and an opportunity to inspect or witness, Project Co's performance of an inspection or test;

"BCICAC" has the meaning given in Section 1.4 *[Fast Track Referee Process]* of Schedule 19 *[Dispute Resolution Procedure]*;

"Beneficiary" has the meaning given in Section 9.2 *[Conduct of Third Person Claims]*;

"Blasting Specialist" means a Professional Engineer or Applied Science Technologist retained by Project Co and having the qualifications and experience specified in Section 2.1-3.6(B) *[Excavation - Blasting]* of Schedule 6 *[Design and Construction Specifications]*;

“Blocked Accounts Agreements” means the Blocked Accounts Agreement – General and the Blocked Account Agreement – Springing (each as defined in the Common Terms and Intercreditor Agreement);

“Bond Indenture” means the indenture dated as of the Pricing Date (as defined in the Common Terms and Intercreditor Agreement) between Project Co, as issuer, and the Indenture Trustee, as trustee, and any supplemental indenture thereto;

“Bond Underwriting Agreement” means the bond underwriting agreement dated as of February 25, 2014 between Project Co, as issuer, and Scotia Capital Inc. and National Bank Financial Inc., relating to the issuance, sale and distribution of the Senior Bonds;

“Bondholders” has the meaning given in the Common Terms and Intercreditor Agreement;

“Break Room” means the room, within the Powerhouse Building, described in Section 3.1-3.4(J) *[Designated Rooms and Areas]* of Schedule 6 *[Design and Construction Specifications]*;

“Bridging Period” means the period, during the Construction Period, commencing on the Commercial Operation Date of the first Generating Unit and ending on the Service Commencement Date;

“Bridging Period Outage Rectification Allowance” means the number of hours of cumulative Forced Outage time calculated and available for use pursuant to Section 4.2.1 *Bridging Period Outage Rectification Allowance* of Schedule 13 *[Performance and Payment Mechanism]* in the calculation of the Relevant Service Disruption Event amount during the Bridging Period;

“Building Information Modelling” or **“BIM”** means a 3D computer model that contains all physical features of the Facility, including all geometry, physical characteristics and product data needed to describe the Project Work. All drawings and schedules required for assessment, review and performance of the Project Work shall be extractions from this model;

“Buildings and Lands” means buildings, structures, roadways, fences, landscaping and other civil and site features, as further described in Appendix 7B *[Facility Services]* to Schedule 7 *[Services]*;

“Business Day” means a day other than a Saturday, Sunday or statutory holiday in British Columbia;

“Bypass Event” has the meaning given in Section 1.1-2.2 *[Bypass System]* of Schedule 6 *[Design and Construction Specifications]*;

“Bypass Flow” has the meaning given in Section 1.1-4.1 *[Facility Design Operating Conditions]* of Schedule 6 *[Design and Construction Specifications]*;

“Bypass System” has the meaning given in Section 1.1-2.2 *[Bypass System]* of Schedule 6 *[Design and Construction Specifications]*;

“Bypass System Completion” means that all of the conditions precedent to Bypass System Completion specified in Section 11.3.2 [*Conditions Precedent to Bypass System Completion*] of Schedule 5 [*Design and Construction Protocols*] have been achieved, as certified by the Independent Certifier;

“Bypass System Completion Date” means the later of:

- (a) the date on which all of the conditions precedent to Bypass System Completion that have not been waived by BC Hydro have been satisfied as certified by the Independent Certifier in accordance with Section 11.3.6 [*Certification of Bypass System Completion*] of Schedule 5 [*Design and Construction Protocols*]; and
- (b) the last Target Bypass System Completion Date;

“Bypass System Completion Deficiency Deadline” has the meaning given in Section 11.3.9 [*Correction of Bypass System Deficiencies*] of Schedule 5 [*Design and Construction Protocols*];

“Bypass System Deficiencies” has the meaning given in Section 11.3.5 [*Deficiency List*] of Schedule 5 [*Design and Construction Protocols*];

“Bypass System Facility” means the structure that encloses the Bypass System;

“Bypass System Non-Availability Event” means

- (a) the failure of the Bypass System to be Available (up to 80m³/s between September 22 and June 30, or up to 36 m³/s between July 1 and September 21, as such flows may be revised from time to time in accordance with GOO 4G-44), due to a Monthly Test Failure, equipment condition or maintenance activities; or
- (b) the failure of the Bypass System to meet the Bypass System Response Time;

“Bypass System NonAvailability Event Deduction (BSD)” means a deduction, of up to \$ [REDACTED], assessed upon the failure of the Bypass System to meet the Bypass System Response Time in accordance with Section 7.6 [*Calculation of Non-Availability Event Deductions for the Bypass System*] of Schedule 13 [*Performance and Payment Mechanism*].

“Bypass System Response” has the meaning given in Section 1.1-2.2 [*Bypass System*] of Schedule 6 [*Design and Construction Specifications*];

“Bypass System Response Time” has the meaning given in Section 1.1-2.2 [*Bypass System*] of Schedule 6 [*Design and Construction Specifications*];

“Campbell River System” has the meaning given in Section 1.1-1.1 [*Project Description*] of Schedule 6 [*Design and Construction Specifications*];

“Canadian GAAP” means the generally accepted accounting principles from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute, applicable as at the date on which such calculation is made or required to be made in accordance with generally accepted accounting principles, as such principles may be amended or varied by International Financial Reporting Standards then in effect in Canada, in any case consistently applied from one period to the next;

“Canyon View Trail” means the public use trail identified as such and further described in the BC Hydro Interpretative Master Site Plan;

“Capital Expenditure” means an expenditure related to the Project which is treated as a capital expenditure in accordance with Canadian GAAP;

“Cathodic Protection Drawings” means the drawings prepared by Corrosion Service Company Limited and included in the Disclosed Data in the data room on or before January 15, 2014.

“Certificate” means a Design Certificate, a Commissioning Certificate or a Construction Certificate as the context requires;

“Certificate of Bypass System Completion” means the certificate issued by the Independent Certifier pursuant to Section 11.3.6 [*Certification of Bypass System Completion*] of Schedule 5 [*Design and Construction Protocols*];

“Certificate of Commercial Operation” means a certificate issued by the Independent Certifier pursuant to Section 11.1.6 [*Certification of Commercial Operation*] of Schedule 5 [*Design and Construction Protocols*] confirming Commercial Operation of a Generating Unit;

“Certificate of Service Commencement” means the certificate issued by the Independent Certifier pursuant to Section 11.4.6 [*Certification of Service Commencement*] of Schedule 5 [*Design and Construction Protocols*];

“Certificate of Total Completion” means the certificate issued by the Independent Certifier pursuant to Section 11.5.7 [*Issuance of Certificate of Total Completion*] of Schedule 5 [*Design and Construction Protocols*];

“Change” means a Facility Change or a Services Change as the context requires;

“Change Certificate” means a certificate issued by BC Hydro describing and authorizing a Change, the value or method of valuation of the Change, and in the case of a Facility Change occurring prior to the Total Completion Date the adjustment, if any, to the Project Schedule (including the Target Commercial Operation Date for one or more Generating Units, the Target Service Commencement Date, the Target Bypass System Completion Date or the Target Total Completion Date);

“Change Directive” means a written instruction which is issued on a form designated as a “Change Directive Form” and signed by BC Hydro’s Representative directing Project Co to

immediately proceed with a Change, pending the finalization and issuance of a Change Certificate for that Change;

“Change in Control” means with respect to a Person any direct or indirect change in the ownership or control of any legal, beneficial or equitable interest in any or all of the shares, units or equity in the Person (including the control over the exercise of voting rights conferred on equity share capital, unit interests or equity interests or the control over the right to appoint or remove directors, a general partner or other managers), including changes arising from assignment or transfer of existing shares, units or equity, issuance of new shares, units or equity or amalgamation, merger consolidation, amendment of a limited partnership certificate or other reorganization, or any other direct or indirect change, which results in a Person or group of Persons, other than the equity holders of the entity immediately prior to the change, directly or indirectly:

- (a) controlling the composition of the majority of the board of directors of the entity or of a general partner or manager of the entity;
- (b) controlling the decisions made by or on behalf of the Person, including by controlling the voting power of the board of directors or by controlling the voting power of any class of shareholders or equity holders of any of the entity, a general partner of the entity or a manager of the entity or otherwise;
- (c) holding equity, either beneficially or otherwise, of that entity with a subscribed value (taking into account contributions to be made in the case of a limited partnership) of more than one half of the subscribed value (taking into account contributions to be made in the case of a limited partnership) or equity (either beneficially or otherwise) of that entity with more than one half of the voting rights; or
- (d) having the ability to direct or cause the direction of the management, actions or policies of the entity;

“Change in Hydro Facility Law” means any change in any Hydro Facility Law arising after the Financial Submission Date and in effect at any time during the Term;

“Change in Law” means the coming into effect in Canada after the Financial Submission Date of:

- (a) any new Law; or
- (b) any modification (including repeal) of any Law existing on such date,

which is binding on Project Co or BC Hydro, but excluding in each such case:

- (c) any lawful requirements of any Governmental Authority (unless resulting from a Change in Law);

- (d) any change in the interpretation of any legislation other than a judgment of a relevant court which changes binding precedent in British Columbia;
- (e) any new Law, or modification arising from or in any way connected to or having substantially the same effect as any Law, which as of the Financial Submission Date:
 - (1) had been introduced as a Bill in the Legislative Assembly of British Columbia or the Parliament of Canada or in a draft statutory instrument published or issued by a Governmental Authority; or
 - (2) had been published in the Canada Gazette or in a draft bill as part of a Governmental Authority discussion or consultation paper;

“Change in Legal Obligations” means any change in any Legal Obligations arising after the Financial Submission Date and in effect at anytime during the Term;

“Change in Tax Laws” means any change to Tax Laws arising on or after the Effective Date;

“Change Report” means a written report prepared by Project Co in response to a Preliminary Change Instruction, containing the information described in Section 1.6 *[Change Report Contents]* of Schedule 14 *[Changes]*;

“Change Report Preparation Costs” has the meaning given in Section 1.5(a)(2)(A)(ii) *[Delivery of Change Report]* of Schedule 14 *[Changes]*;

“Checking Team” means a group of engineers assigned to independently undertake a design check in accordance with the Design and Certification Procedure;

“City” means the City of Campbell River;

“City Works” means the replacement intake and watermain pipeline running from the John Hart Reservoir to the UV Treatment Plant. The City Works infrastructure will replace the existing water takeoff on the Existing Penstocks. The City Works will include a new water intake located on the south side of the John Hart Reservoir on a portion of District Lot 1124, Sayward District. The City Works will include a new 1200mm diameter watermain pipeline to be routed from the new intake over to and along Brewster Lake Road then east down Highway 28 to the intersection with Surge Tower Road;

“Claim” means any claim, demand, action, cause of action, suit or proceeding;

“Closed Circuit Television Video System” or **“CCTV”** means the system described in Section 7.9-6 *[Closed Circuit Television Video System (CCTV)]* of Schedule 6 *[Design and Construction Specifications]*;

“Collateral Agreement” means each or any of the agreements to be entered into between BC Hydro, a Material Contract Party and Project Co in the form set out in Schedule 22 *[Collateral Agreements]*, as amended, supplemented or replaced from time to time in accordance with this Agreement;

“Collateral Trustee” means Computershare Trust Company of Canada, and its successors and assigns;

“Commercial Operation” means that all of the conditions precedent to Commercial Operation of the applicable Generating Unit specified in Section 11.1.2 *[Conditions Precedent to Commercial Operation]* of Schedule 5 *[Design and Construction Protocols]* have been achieved, as certified by the Independent Certifier;

“Commercial Operation Date” for a particular Generating Unit means the later of:

- (a) the date on which all of the conditions precedent to Commercial Operation of the applicable Generating Unit that have not been waived by BC Hydro have been satisfied as certified by the Independent Certifier in accordance with Section 11.1.6 *[Certification of Commercial Operation]* of Schedule 5 *[Design and Construction Protocols]*; and
- (b) the last Target Commercial Operation Date for the applicable Generating Unit;

“Commercial Operation Deficiencies” has the meaning given in Section 11.1.5 *[Deficiency List]* of Schedule 5 *[Design and Construction Protocols]*;

“Commercial Operation Deficiency Deadline” has the meaning given in Section 11.1.9 *[Correction of Commercial Operation Deficiencies]* of Schedule 5 *[Design and Construction Protocols]*;

“Commissioning” means inspection and testing of the Facility, including all equipment, components, systems and sub-systems, for the purpose of verifying performance and compliance with the Project Requirements and that they are safe to place into service;

“Commissioning CEMP” has the meaning given in Section 2.5(a)(ii) *[Construction Environmental Management Plan]* of Schedule 8 *[Environmental Obligations]*;

“Commissioning Certificate” means a certificate in respect of the Commissioning as provided by Project Co pursuant to the Design and Certification Procedure;

“Commissioning Joint Committee” has the meaning given in Section 9.4.1 *[Commissioning Joint Committee]* of Schedule 5 *[Design and Construction Protocols]*;

“Commissioning Notice to Energize” means the document, the form of which is attached as Appendix 5N *[Commissioning Notice to Energize Form]* to Schedule 5 *[Design and Construction Protocols]*, signed by the Lead Test Engineer, Project Co's Representative and a principal of the

Designer, and accepted by BC Hydro's Representative in accordance with the Consent Procedure, allowing new equipment in relation to the Facility to be connected to the BC Hydro Transmission System, or if already connected to the BC Hydro Transmission System, allowing the new equipment to be energized from the BC Hydro Transmission System;

"Commissioning Notice to Operate" means the document, the form of which is attached as Appendix 5Q *[Commissioning Notice to Operate Form]* to Schedule 5 *[Design and Construction Protocols]*, signed by the Lead Test Engineer, Project Co Representative, Designer and the Independent Certifier;

"Commissioning Plan" has the meaning given in Section 9.4.2 *[Commissioning Plan]* of Schedule 5 *[Design and Construction Protocols]*;

"Commissioning Release Date" has the meaning given in Section 2.5(d)(ii) *[Construction Environmental Management Plan]* of Schedule 8 *[Environmental Obligations]*;

"Commissioning Schedule" has the meaning given in Section 9.4.4 *[Commissioning Schedule]* of Schedule 5 *[Design and Construction Protocols]*;

"Commissioning Test Report" has the meaning given in Section 9.9 *[Commissioning Test Report]* of Schedule 5 *[Design and Construction Protocols]*;

"Commissioning Work" means all of the work, activities and tasks required to completely and successfully commission the Facility, including all equipment, components, systems and sub-systems;

"Common Conduit" means the portion of the Water Conveyances conveying flow to the Generating Units from upstream of the Power Intake trashrack to one conduit diameter upstream of the first bifurcation of flow leading to the Generating Units. Specifically, a bifurcation leading to a Non-Power Flow System is not a bifurcation of flow leading to the Generating Units;

"Common Conduit Head Loss Guarantee" means [REDACTED]m;

"Common Terms and Intercreditor Agreement" means the common terms and intercreditor agreement dated February 25, 2014 between, inter alia, Project Co, the Partners, the Lenders, the Collateral Trustee, the Indenture Trustee, and the Administrative Agent in respect of the Senior Debt;

"Communications Manager" means the Key Individual identified by such title in Section 2.3 *[Key Individuals]* of Schedule 3 *[Roles and Representatives]*, or such replacement as may be designated by Project Co pursuant to Section 2.3 *[Key Individuals]* of Schedule 3 *[Roles and Representatives]*;

"Communications Room" means the room, within the Powerhouse Building, described in Section 3.1-3.4(H) *[Designated Rooms and Areas]* of Schedule 6 *[Design and Construction Specifications]*;

“Compensation Event” means any of the following events or circumstances if and to the extent that it interferes adversely with, or causes a failure of, the carrying out of the Design, the Construction or the Services, causes a Non-Availability Event or causes Direct Losses to Project Co or any Project Co Person:

- (a) breach by BC Hydro of any of its obligations under this Agreement;
- (b) breach of any representation or warranty by BC Hydro under this Agreement;
- (c) misconduct of BC Hydro or a BC Hydro Person;
- (d) a negligent act or omission of BC Hydro or a BC Hydro Person;
- (e) the existence of Undisclosed Environmental Liabilities;
- (f) a BC Hydro Permit is declared invalid or defective by a court of competent jurisdiction;
- (g) the existence as at the Effective Date of any Encumbrance enforceable against or affecting the Site or the Existing Facility, not caused or created by Project Co or a Project Co Person other than the Project Site Encumbrances;
- (h) the discovery of any human remains, relics or other articles or structures of historical, antiquarian or archaeological interest on or adjacent to the Site;
- (i) a claim asserting infringement of aboriginal rights, including duty to consult, or aboriginal treaty rights or aboriginal title by any first nation(s);
- (j) a Protest Action;
- (k) lawful or unlawful strike, lockout, work-to-rule or other dispute by the unionized Persons employed by BC Hydro or by the employees of any contractor, other than a Project Co Person, and engaged by BC Hydro to provide services in relation to the Project at the Site;
- (l) the actions referred to in Section 11.5 *[Allocation of Costs for BC Hydro Actions]* as constituting a Compensation Event;
- (m) the event referred to in Section 8.4(e)(2) *[Project Co’s Entitlements Upon Occurrence of a Relief Event]*;
- (n) the event referred to in Section 8.6(d)(2) *[Parties’ Entitlements Upon Occurrence of a Force Majeure Event]*;
- (o) Project Co’s compliance with a direction from BC Hydro under Section 3.3 *[BC Hydro’s Directive]* of Schedule 19 *[Dispute Resolution Procedure]* or Project Co’s

implementation of a Change Certificate under Section 1.10(b) [Disagreement on Change Report] of Schedule 14 [*Changes*] or Project Co's compliance with a direction from BC Hydro under section 7.7(c) [*Inspection*] of Schedule 5 [*Design and Construction Protocols*] when the matter in dispute is subsequently resolved or settled in Project Co's favour;

- (p) the execution of works, other than usual or reasonably expected works, on the Site or in respect of the Facility or Existing Facility not forming part of this Agreement by BC Hydro or any person permitted to execute such works by BC Hydro or any BC Hydro Person;
- (q) if part of the Facility or part of the portion of the Site on which the Facility is situated or any interest of Project Co or any Partner is expropriated by any Governmental Authority and such expropriation is not a BC Hydro Event of Default as set out in Section 13.1(c) [*BC Hydro Events of Default*];
- (r) the existence of any utilities on, in, under or over the Site that has not been disclosed by BC Hydro prior to the Financial Submission Date;
- (s) a court ruling or written direction from BC Hydro to Project Co to comply with provincial laws or municipal bylaws that BC Hydro is not subject to by virtue of Section 32 of the *Hydro and Power Authority Act* (British Columbia) or a Change in Law that makes BC Hydro subject to a provincial law or municipal bylaw to which it was previously not bound by virtue of Section 32 of the *Hydro and Power Authority Act* (British Columbia), but in each case only to the extent that this Agreement exempts Project Co from the application of such laws or municipal bylaws;
- (t) the occurrence of a material adverse impact to the stability of the Middle Earthfill Dam, caused by the existence, as at the Effective Date, of a defect or deficiency in the design or construction of the Middle Earthfill Dam, whether known, unknown, disclosed or undisclosed;
- (u) damage to the Facility resulting from power system disturbances on, or stability requirements of, the BC Hydro Transmission System;
- (v) damage to the Facility resulting from operation of the Facility by BC Hydro outside of the Facility Design Operating Conditions or the Generating Unit Operating Conditions;
- (w) an event described as a Compensation Event in Subsection 3.3(a) [*Fisheries Authorizations*] of Schedule 8 [*Environmental Obligations*];
- (x) an event described as a Compensation Event in Subsection 2.5(d) [*Construction Environmental Management Plan*] of Schedule 8 [*Environmental Obligations*];

- (y) any of the Disclosed Data exception events or circumstances that may constitute a Compensation Event in Section 4.12 *[Disclosed Data]*;
- (z) an event described as a Compensation Event in Subsection 4.17(d) *[Compliance with Laws]*;
- (aa) an event described as a Compensation Event in Subsection 4(h)(iii) or (iv) *[Review Procedure]* of Schedule 2 *[Review Procedure, Consent Procedure and Other Submittals]*;
- (bb) an event described as a Compensation Event in Subsection 5(g)(iv), (v) or (vi) *[Consent Procedure]* of Schedule 2 *[Review Procedure, Consent Procedure and Other Submittals]*;
- (cc) an event described as a Compensation Event in Subsection 7.7(a) *[Inspection]* of Schedule 5 *[Design and Construction Protocols]*;
- (dd) an event described as a Compensation Event in Subsection 9.4.5(c) *[Scheduling of Commissioning Work]* of Schedule 5 *[Design and Construction Protocols]*; or
- (ee) any other event which is expressly stated in this Agreement to constitute a Compensation Event;

except to the extent that any of such events arise, directly or indirectly, as a result of any wilful misconduct, negligent act or omission or non-compliance with the terms of this Agreement by Project Co or any Project Co Person;

“Completion of Tunneling” means the date upon which:

- (a) complete excavation and installation of temporary excavation support for all cut-and-cover structures and initial support for all bored tunnels and mined structures, within which the Tunnel Work is completed;
- (b) all cut-and-cover structures, bored tunnels and mined structures, within which the Tunnel Work is performed, are ready to receive permanent support and lining; and
- (c) the Final Design of all permanent support and lining has been submitted in accordance with Schedule 2 *[Review Procedure, Consent Procedure and Other Submittals]* and Schedule 5 *[Design and Construction Protocols]*.

“Completion Report” means a document(s) describing and providing confirmation of completion of all construction, testing or commissioning activities associated with the ST Waterpipe, including all certificates required to support the safe operation of the ST Waterpipe.

“Compliance Point” means each of the compliance points specified in Table 3.4.1 [*First Island Flow Split: Compliance Point Measurements*] of Schedule 6 [*Design and Construction Specifications*];

“Compliant Bid” means a bid, proposal or other submission pursuant to a competitive process which meets the reasonable criteria that BC Hydro requires the party making the submission to meet as part of the Re-Bidding Process, which unless otherwise agreed by Project Co and BC Hydro will include:

- (a) compliance with the New Project Agreement terms;
- (b) the financial ability to pay the proposed capital sum as a single, lump sum payment to be made as of the date of the New Project Agreement and the financial ability to comply with the New Project Agreement terms for the price proposed;
- (c) such party is experienced in maintaining and operating a facility similar to the Facility or providing services similar to the Design and Construction and/or Services, as applicable;
- (d) the technical solution proposed by such party is capable of delivery and such party is technically capable of delivering and maintaining the Project or the remainder thereof, as the case may be;
- (e) such party is not a Restricted Person; and
- (f) such party is not Project Co or any of its Affiliates;

“Comptroller of Water Rights” means the “comptroller” as defined in the *Water Act* (British Columbia);

“Compulsory Acquisition Laws” means all Laws authorizing the expropriation or other compulsory acquisition of land, including the *Expropriation Act* (British Columbia);

“Compulsory Acquisition Order” means any order or other process of any court or other relevant body or authority pursuant to a Compulsory Acquisition Law effecting the expropriation or other compulsory acquisition of land;

“Condition Assessment” means the assessment of the Facility carried out during years 4, 8 and 12 after Service Commencement in accordance with Appendix 7D [*Condition Assessment*] of Schedule 7 [*Services*];

“Condition Assessment Plan” means the plan described at Section 3 [*Facility Condition Assessment Plan*] of Appendix 7D [*Condition Assessment*] of Schedule 7 [*Services*];

"Condition Assessment Report" means the report providing a Condition Assessment in accordance with Section 6.3 [*Report Content*] of Schedule 7 [*Services*];

"Condition Assessment Retention" means amounts retained from the Availability Payments pursuant to Section 10 [*Condition Assessment Retention*] of Schedule 13 [*Performance and Payment Mechanisms*];

"Condition Assessment Retention Account" means the bank account established for the purposes set down in Section 10 [*Condition Assessment Retention*] of Schedule 13 [*Performance and Payment Mechanisms*];

"Condition-based Maintenance" means maintenance work triggered by the condition of the equipment as determined by Planned Maintenance tasks, tests performed to assess condition or operational readings;

"Condition Indicator Scores" means the scores identified in Appendix 7E [*Condition Assessment Evaluation*];

"Conduct Expectations Policy" means the BC Hydro policy by this name, a copy of which has been provided to Project Co;

"Confidential Information" means Personal Information, and information of a party that the party has designated as confidential at the time of disclosure and which is supplied, or to which access is granted, to or on behalf of the other party, whether before or after the Effective Date, either in writing, or in any other form, directly or indirectly and includes all analyses, compilations, studies and other documents whether prepared by or on behalf of a party which contain or otherwise reflect or are derived from such designated information;

"Confined Space" has the meaning given Section 9.1 of the *Occupational Health and Safety Regulation* (British Columbia);

"Consent Procedure" has the meaning given in Section 5 [*Consent Procedure*] of Schedule 2 [*Review Procedure, Consent Procedure and Other Submittals*];

"Consolidated Proceeding" has the meaning given in Section 2.3 [*Consolidation*] of Schedule 19 [*Dispute Resolution Procedure*];

"Consolidation Notice" has the meaning given in Section 2.3 [*Consolidation*] of Schedule 19 [*Dispute Resolution Procedure*];

"Constrained Plant Capacity" means the Plant Capacity as calculated using the Table 13G-1 [*Plant Capacity and Plant Energy Performance Verification Table*] in Appendix 13G [*Performance Verification Tests*] of Schedule 13 [*Performance and Payment Mechanisms*] as completed at the time of the Performance Verification Tests but with parameters adjusted to capture the impact of the relevant Project Co Operating Constraint. Between the Service Commencement Date and the Total Completion Date, when the Performance Verification Tests may not have been completed,

the Constrained Plant Capacity will be calculated using Table 13G-1 [*Plant Capacity and Plant Energy Performance Verification Table*] completed with parameters equal to the Plant Capacity Guarantee but with parameters adjusted to capture the impact of the relevant Project Co Operating Constraint;

“Constrained Plant Energy” means the Plant Energy as calculated using the Table 13G-1 [*Plant Capacity and Plant Energy Performance Verification Table*] in Appendix 13G [*Performance Verification Tests*] of Schedule 13 [*Performance and Payment Mechanisms*] as completed at the time of the Performance Verification Tests but with parameters adjusted to capture the impact of the relevant Project Co Operating Constraint. Between the Service Commencement Date and the Total Completion Date, when the Performance Verification Tests may not have been completed, the Constrained Plant Energy will be calculated using Table 13G-1 [*Plant Capacity and Plant Energy Performance Verification Table*] completed with parameters equal to the Plant Energy Guarantee but with parameters adjusted to capture the impact of the relevant Project Co Operating Constraint;

“Construction” means everything, other than Design and Services, required to achieve Total Completion, including the construction and Commissioning of the Facility, completion of the Decommissioning Work, Temporary Works and the supply of all labour and materials, construction equipment, management, supervision and support of any kind or nature whatsoever required for the construction of the Facility and the supply, installation, testing and Commissioning of all equipment, and completion of the Decommissioning Work;

“Construction CEMP” has the meaning given in Section 2.5(a)(i) [*Construction Environmental Management Plan*] of Schedule 8 [*Environmental Obligations*];

“Construction Certificate” means a certificate in respect of the Construction as provided by Project Co pursuant to the Design and Certification Procedure;

“Construction CGL Policy” has the meaning given in Section 1.1 [*Wrap-Up Liability Insurance*] of Schedule 18 [*Insurance Requirements*];

“Construction Community Liaison Committee” has the meaning given in Section 5.2(a) [*Construction Community Liaison Committee*] of Schedule 11 [*Communication and Consultation*];

“Construction Environmental Management Plan” or **“CEMP”** has the meaning given in Section 2.5 [*Construction Environmental Management Plan*] of Schedule 8 [*Environmental Obligations*];

“Construction Inspection and Test Plans” mean the Inspection and Test Plans prepared by Project Co for the Construction;

“Construction Manager” means the Key Individual identified by such title in Section 2.3 [*Key Individuals*] of Schedule 3 [*Roles and Representatives*], or such replacement as may be designated by Project Co pursuant to Section 2.3 [*Key Individuals*] of Schedule 3 [*Roles and Representatives*];

“Construction Period” means the period commencing on the Effective Date and ending on the Service Commencement Date;

“Construction Period Joint Committee” has the meaning given in Section 2(a) *[Construction Period Joint Committee]* of Schedule 5 *[Design and Construction Protocols]*;

“Construction Period Public Safety Management Plan” means the plan developed by Project Co to address identified public safety hazards and requirements associated for the period up to and including Total Completion, as such plan is amended, revised or replaced from time to time in accordance with the Agreement;

“Construction Period Security Program” has the meaning given in Section 10.2 *[Security Program]* of Schedule 12 *[Safety and Security]*;

“Construction Permits” means all permits associated with the construction, testing and commissioning of the ST Waterpipe and ST Roadwork, including those permits required from Fortis Gas (Road and pipeline), Ministry of Forests (Occupant Licence to Cut), BC Hydro (Transmission Right of Way crossing), Ministry of Environment (Wildlife Salvage Permit, Water Act S. 9 Notification), Department of Fisheries (DFO PRAF Notification), Vancouver Island Health Authority (Drinking Water PA via VIHA), Ministry of Transportation and Highways (MOT Intersection at Highway 28 - Road and MOT permit for pipeline) and for clarification does not include the ST Park Use Permits;

“Construction Property Policy” has the meaning given in Section 1.2 *[Course of Construction]* of Schedule 18 *[Insurance Requirements]*;

“Construction Quality Management Plan” or **“CQMP”** means the plan for the quality management of the Construction prepared by Project Co in accordance with Appendix 9D *[Construction Quality Management Plan]* to Schedule 9 *[Quality Management]*;

“Construction Records” means all documents of any kind which record the as-built features of the Facility;

“Construction Site” means the area designated as such on the plan attached as Appendix 10H *[Prime Contractor Designation Areas Plans]* to Schedule 10 *[Lands]*;

“Contamination Management Plan” means a plan that is described in Section 4.3 *[Contaminated Soils Management Plan]* of Schedule 8 *[Environmental Obligations]*;

“Contamination” has the meaning given in Section 4A *[Definition of “Contamination”]* of Schedule 8 *[Environmental Obligations]*;

“Contaminated Soil Baseline Procedure” has the meaning given in Section 4.1(h) *[Responsibility for Contamination]* of Schedule 8 *[Environmental Obligations]*

“Contaminated Soil Payment” means a payment by BC Hydro to Project Co calculated in accordance with the Contaminated Soil Baseline Procedure.

“Contaminated Soil Remittance Payment” means a payment by Project Co to BC Hydro calculated in accordance with the Contaminated Soil Baseline Procedure.

“Contingent Funding Liabilities” means direct or indirect liabilities or contingent liabilities, if any, of the Partners in respect of financial obligations owed to Project Co, to a Partner, to any party under the Junior Debt or the Senior Creditors under the Senior Financing Agreements, such as, for example, the amount a Partner has agreed to contribute to Project Co, promissory notes, obligations to fund reserve accounts, guarantees, letters of credit in respect of deferred equity, subordinated debt or equity bridge loans;

“Contracting Affiliate” means any Affiliate of Project Co that performs any Project Work or is a party to any Project Document;

“Contractor Code of Conduct” means the code of conduct, including the expected ethical conduct policy, adopted by BC Hydro for application to all contractors and suppliers who supply goods or services to BC Hydro, a copy of which has been provided to Project Co;

“Contract Year” means each of:

- (a) the period from the Effective Date to the next March 31st;
- (b) each subsequent period of 12 calendar months commencing on April 1st; and
- (c) the period from the April 1st immediately prior to the Termination Date to and including the Termination Date;

“Control Measure” means a design option, engineered control, system control, or barrier used to mitigate a Risk by reducing likelihood or mitigating consequences;

“Control Room” means the room, within the Powerhouse Building, described in Section 3.1-3.4(F) *[Designated Rooms and Spaces]* of Schedule 6 *[Design and Construction Specifications]*;

“Corrective Action” means action to eliminate the cause of an existing Nonconformity, defect or other undesirable situation to prevent its recurrence;

“Corrective Action Plan” means a plan for the implementation of a Corrective Action;

“Corrective Maintenance” means maintenance work performed in response to a breakdown or failure in the Facility while Generation Systems are in service, including occurrences when any equipment comprising the Generation Systems loses the ability to carry out its intended function and needs to be taken out of service for repair but has not created an Immediate Callout;

"**CPCN**" means a Certificate of Public Convenience and Necessity issued by the British Columbia Utilities Commission under the *Utilities Commission Act* that authorizes BC Hydro to proceed with the Project.

"**CPI**" means the All-items Consumer Price Index for Canada, not seasonally adjusted, as published by Statistics Canada, or its successor government department or agency, or such substitute index as is formally designated by the Government of Canada, or if no index is published or designated by the Government of Canada in substitution therefor, such substitute index as is agreed by BC Hydro and Project Co, and, failing such agreement, as determined in accordance with the Dispute Resolution Procedure, as most closely approximating the All-items Consumer Price Index for Canada. Whenever the Official Time Base (currently 2002=100) is changed or a substitute index is designated, historical value will be rebased through the use of a conversion factor as published by the Government of Canada or, in the absence of such publication, such conversation factor as is agreed by BC Hydro and Project Co, and, failing such agreement, as determined in accordance with the Dispute Resolution Procedure, to achieve comparability.

"**Credit Agreement**" means the credit agreement dated February 25, 2014 between, inter alia, Project Co, the Lenders and the Administrative Agent in respect of the senior facility;

"**Critical**" has the meaning given in Table 1 to Appendix 7B [*Facility Services*] to Schedule 7 [*Services*];

"**Crown Land Grant**" means the land grant or transfer from the provincial Crown to BC Hydro of the lands now legally described as PID: 029-135-567 District Lot 1725 Sayward District;

"**Cumulative Allowable Capital Expenditure**" means the cumulative amount of all the Allowable Capital Expenditures from time to time during the Term;

"**Dam(s)**" means collectively the three existing earthfill dams (North, Middle and South), the two existing concrete gravity dams (Main and Intake), the Spillway, and all operational hydraulic structures and water conveyance structures including all points of flow control upstream of the applicable turbine inlet valves;

"**Danger Zone**" means an area within the Site and adjacent lands with Hazards that may reasonably be expected to cause death or serious injury as a result of human exposure to those Hazards and includes Hazards created by the Construction, operation of the Facility and natural Hazards, whether or not such Hazards are temporary;

"**DBSS**" has the meaning given in Section 1.1-8.1 [*Responsibility for Design and Construction*] of Schedule 6 [*Design and Construction Specifications*];

"**DC Station Service System**" means the system described in Section 7.4 [*DC Station Service System*] of Schedule 6 [*Design and Construction Specifications*];

"**Debt**" of any Person at any date means, without duplication:

- (a) all obligations of such Person for borrowed money;
- (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business;
- (d) all obligations of such Person under leases which are or should be, in accordance with Canadian GAAP, recorded as capital leases in respect of which such Person is liable, except leases arising in the ordinary course of business;
- (e) all obligations of such Person to purchase securities or other property which arise out of or in connection with the sale of the same or substantially similar securities or property;
- (f) all deferred obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit or other similar instrument;
- (g) all Debt (as otherwise defined in this definition) of others secured by an Encumbrance on any asset of such Person, provided such Debt (as otherwise defined in this definition) is assumed by such Person; and
- (h) all Debt (as otherwise defined in this definition) of others guaranteed directly or indirectly by such Person or as to which such Person has an obligation substantially the economic equivalent of a guarantee;

"Decommissioning CEMP" has the meaning given in Section 2.5(a)(iii) *[Construction Environmental Management Plan]* of Schedule 8 *[Environmental Obligations]*;

"Decommissioning Payment" has the meaning given in Section 1.4 *[Obligation to make the Decommissioning Payment]* of Schedule 13 *[Performance and Payment Mechanism]*;

"Decommissioning Release Date" has the meaning given in Section 2.5(d)(iii) *[Construction Environmental Management Plan]* of Schedule 8 *[Environmental Obligations]*;

"Decommissioning Work" the Construction activities described in Section 1.4 *[Decommissioning and Demolition]* of Schedule 6 *[Design and Construction Specifications]*, and Section 5.3(b) *[Responsibility for Hazardous Substances]* and Section 8 *[Rehabilitation, Revegetation and Vegetation Management]* of Schedule 8 *[Environmental Obligations]*.

"Default Points" means those default points assigned to Project Co in accordance with Section 12.4 *[Assignment of Default Points]* of Schedule 13 *[Performance and Payment Mechanism]*;

"Default Points Balance" has the meaning given in Section 12.4(f) *[Assignment of Default Points]* of Schedule 13 *[Performance and Payment Mechanisms]*;

"Default Rate" on any day means **■**% per annum over the Prime Rate;

"Defect" means any defect or fault, including omission, in the Facility which occurs due to a failure by Project Co to comply with the Design and Construction obligations under this Agreement;

"Defect Retention" means an amount equal to 2 times the cost of remediation of all Total Completion Deficiencies as determined by the Independent Certifier together with the Outage costs calculated in accordance with Schedule 13 *[Performance and Payment Mechanisms]*;

"Deformation Monuments" means the monuments described in Section 2.2-3.3 *[Deformation Monuments]* of Schedule 6 *[Design and Construction Specifications]*;

"Derate" means a required reduction of Generating Unit capacity below 51 MVA resulting from the failure of a component of the Generating Unit, maintenance activities or any restriction, limitation or failure of any other equipment comprising the Facility as communicated using Appendix 5R *[Outages and Constraints Notification Form]* or 7H *[Outages and Constraints Notification Form]*;

"Derate Factor" has the meaning given in Section 7.3 *[Calculation of Non-Availability Event Deductions for the Generating Units]* of Schedule 13 *[Performance and Payment Mechanisms]*;

"Design" means everything required for the design and engineering of the Facility, except for any design that is expressly excluded from Project Co's responsibility under this Agreement;

"Design and Certification Procedure" has the meaning given in Section 5.2 *[Design and Certification Procedure]* of Schedule 5 *[Design and Construction Protocols]*;

"Design and Construction Requirements" means the standards, specifications, procedures, design criteria, design guidelines and other requirements applicable to all Design activities included within the Project Work and to all Construction activities, as set out in this Agreement as at the Effective Date and as amended, supplemented or replaced from time to time after the Effective Date in accordance with this Agreement;

"Design and Construction Specifications" mean the provisions of Schedule 6 *[Design and Construction Specifications]*;

"Design Basis Earthquake" or **"DBE"** has the meaning given in Section 1.1A-5 *[Seismic Loads]* of Appendix 1.1A *[Design Parameters]* to Schedule 6 *[Design and Construction Specifications]*;

"Design Basis Memorandum" or **"DBM"** has the meaning given in Section 5.7 *[Design Basis Memoranda]* of Schedule 5 *[Design and Construction Protocols]*;

“Design-Build Agreement” means the design and construction agreement between Project Co and the Design-Builder, a certified copy of which has been delivered by Project Co to BC Hydro, as amended, supplemented or replaced from time to time in accordance with this Agreement;

“Design-Build Director” means the Key Individual identified by such title in Section 2.3 [*Key Individuals*] of Schedule 3 [*Roles and Representatives*], or such replacement as may be designated by Project Co pursuant to Section 2.3 [*Key Individuals*] of Schedule 3 [*Roles and Representatives*];

“Design-Builder” means SNC-Lavalin Inc. or any assignee or replacement permitted under this Agreement;

“Design Certificate” means a certificate in respect of the Design or any other design activities in respect of the other Construction activities as provided by Project Co pursuant to the Design and Certification Procedure;

“Design Data” means all calculations, designs, design or construction information, standards, specifications, plans, drawings, graphs, sketches, models and other materials, including all eye readable or computer or other machine readable data and including all design submissions required under the Project Requirements, used, prepared or to be prepared by or on behalf of Project Co and/or any Project Co Person or BC Hydro relating to the Project Work or to any BC Hydro Change or the Proposal Extracts;

“Design Drawing” means a technical drawing used to fully and clearly define the requirements of an engineered item, excluding shop or fabrication details;

“Designer” means SNC-Lavalin Inc. or any assignee or replacement permitted under this Agreement;

“Design IP” means all Intellectual Property and related IP Rights supporting the development of, forming part of, incorporated into, or otherwise associated with the Design Work, other than the BC Hydro IP;

“Design Management Plan” means the Design Management Plan submitted by Project Co in accordance with Section 5.5 [*Design Management Plan*] of Schedule 5 [*Design and Construction Protocols*];

“Design Manager” means the Key Individual identified by such title in Section 2.3 [*Key Individuals*] of Schedule 3 [*Roles and Representatives*], or such replacement as may be designated by Project Co pursuant to Section 2.3 [*Key Individuals*] of Schedule 3 [*Roles and Representatives*];

“Design Quality Management Plan” of **“DQMP”** is the plan described in Appendix 9B [*Design Quality Management Plan*] of Schedule 9 [*Quality Management*];

“Design Service Life” means the period of time for which a piece of equipment, component, device or system is expected to function at its designated capacity without major repairs or performance of compounding unscheduled maintenance activities;

“Design Team” means the group of Professional Engineers within the Designer’s organization undertaking the design or assessment of the Project Work in connection with the Project Requirements;

“Design Work” means everything required for the design, architecture and engineering of the Facility, except for anything that is expressly excluded from Project Co’s responsibility under this Agreement;

“Development Change” has the meaning given in Section 2.2 *[Design Development Changes]* of Schedule 14 *[Changes]*;

“Development Change Record” has the meaning given in Section 1.1 *[Alternate Process]* of Appendix 14-A *[Design Development Change Procedure]*;

“Development Change Record Confirmation” has the meaning given in Section 1.2 *[Opportunity to Object]* of Appendix 14-A *[Design Development Change Procedure]*;

“Development Change Register” has the meaning given in Section 1.5 *[Reconciliation]* of Appendix 14-A *[Design Development Change Procedure]*;

“DFO” means the Department of Fisheries and Oceans of the Federal Government;

“Differing Site Conditions” means Baseline Condition Exceedances encountered by Project Co during construction of the Tunnel Work that causes an increase in Project Co’s cost or time required to complete the Tunnel Work;

“Direct Losses” means in respect of a condition, event, act or omission, without duplication, all damages, losses, liabilities, penalties, fines, assessments, claims, including by third parties, actions, costs, including increased Capital Expenditures, expenses, including the reasonable cost of legal or professional services, proceedings, demands and charges, whether arising under statute, contract or at common law, which result directly from such condition, event, act or omission:

- (a) net of related Insurance Proceeds and Insurance Receivables and any amount which the relevant party would have recovered in respect of such condition, event, act or omission if it had complied with the requirements of this Agreement or any policy of insurance maintained or required to be maintained under this Agreement;
- (b) excluding any Indirect Losses, except to the extent included in a third party claim (other than Indirect Losses of a third party caused by or resulting from any interruption, termination, failure or defect in the supply of electricity); and

- (c) in the case of Project Co, without limiting the foregoing:
 - (1) including the full amount of the related loss or reduction of any Availability Payments; and
 - (2) net of Avoidable Costs related to such event or omission,

and in calculating any amount of any additional capital expenditure, labour or similar cost claimed by Project Co as a Direct Loss, Project Co will be entitled to add to such amounts the mark-ups referred to in Section 1.11 [*Valuation of and Payment for Changes*] of Schedule 14 [*Changes*];

"Disclosed Data" means any information, data and documents made available or issued to Project Co or any Project Co Person in connection with the Project by or on behalf of BC Hydro, including any information relating to the Project Work, the Existing Facility, the BCH Works, the Site, the Facility or the requirements of any Governmental Authority, whether before or after the execution of this Agreement;

"Discriminatory Change in Tax Law" means a Change in Law which results in the imposition of Taxes or a change in Taxes which specifically apply to discriminate against:

- (a) the Project or a hydro-electric generation project procured and contracted on a public-private partnership basis that is similar to the basis on which the Project is contracted under this Agreement;
- (b) Project Co and its Partners or Persons that have contracted on similar hydro-electricity generation projects procured and contracted with BC Hydro or other statutory or public body on a public-private partnership basis that is similar to the basis on which the Project is contracted under this Agreement;
- (c) the design, provision, operation or maintenance of hydro-electric generation facilities and not to other types of facilities; or
- (d) Persons holding shares or other evidences of ownership in Persons whose principal business is contracting on other similar hydro-electricity generation projects procured and contracted on a public-private partnership basis that is similar to the basis on which the Project is contracted under this Agreement and not other Persons;

"Disposal Location" has the meaning given in Appendix 24A [*Protocol and Terms for Waste Rock Contracts*] Schedule 24 [*First Nations*];

"Disposal Notice" has the meaning given in Appendix 24A [*Protocol and Terms for Waste Rock Contracts*] Schedule 24 [*First Nations*];

"Dispute" means any disagreement, failure to agree or other dispute between BC Hydro and Project Co arising out of or in connection with this Agreement, including in respect of the

interpretation, breach, performance, validity or termination of this Agreement, whether in the law of contract or any other area of law;

"Dispute Notice" has the meaning given in Section 1.2 [*Dispute Notice and Response*] of Schedule 19 [*Dispute Resolution Procedure*];

"Dispute Resolution Procedure" has the meaning given in Section 1.1 [*Procedure*] of Schedule 19 [*Dispute Resolution Procedure*];

"Distribution" means, without duplication or double counting:

- (a) whether in cash or in kind, any:
 - (1) distribution to Partners or other distribution in respect of equity interests in Project Co;
 - (2) redemption or purchase of any equity interest in Project Co or reduction of partnership capital or the amount of a Partner's contribution stated in the limited partnership certificate or any other reorganization or variation to partnership capital;
 - (3) payment in respect of Junior Debt, whether of fees, principal, interest including capitalized interest and interest on overdue interest, breakage costs, or otherwise and whether or not such items are included or excluded from the definition of Junior Debt;
 - (4) payment, loan, contractual arrangement, including any management agreement or payment in respect thereof, or transfer of assets or rights, in each case to the extent made or entered into after the Effective Date and not in the ordinary course of business or not on commercially reasonable terms including to any current or former Partner, or any current or former Affiliate of any current or former Partner;
 - (5) conferral of any other benefit which is not conferred and received in the ordinary course of business or is not conferred or received on commercially reasonable terms, including to any current or former Partner, any current or former Affiliate of any current or former Partner or Project Co; and
 - (6) other payment to any current or former Partner, any current or former Affiliate of any current or former Partner or Project Co howsoever arising and whether made pursuant to the terms of an agreement or otherwise or by way of gift or in respect of any equity interest in Project Co or other securities of or interests in Project Co if, in any such case, such payment would not have been made were it not for the occurrence of any Refinancing or Change in Control; or

- (b) the early release of any reserves or any Contingent Funding Liabilities, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain,

and where any such Distribution is not in cash, the equivalent cash value of such Distribution will be calculated. A Distribution will be calculated in a manner that is consistent with the calculation of the Threshold Equity IRR in the Financial Model;

"Dormant State" has the meaning given in Section 7.7-21.4(D)(2)(a) *[Control Requirements]* of Schedule 6 *[Design and Construction Specifications]*;

"Draft Reinstatement Plan" has the meaning given in Section 6.4 *[Project Co's Obligations – Material Damage or Destruction]*;

"Draft Tube" means the component described in Section 4.2-4.9 *[Draft Tube and Pier Nose Cap]* of Schedule 6 *[Design and Construction Specifications]*;

"Drawdown Operating Conditions" has the meaning given in Section 1.1-4.1(D) *[Facility Design Operating Conditions]* of Schedule 6 *[Design and Construction Specifications]*;

"Drawings Extracts" means those drawings extracted from the Proposal attached to this Agreement in the folder 'Drawings Extracts' in electronic format in Appendix 1A *[Electronic Format of Proposal Extracts]*;

"Drinking Water Management Plan" means a plan that is delivered in accordance with Section 9.4 *[Reservoir Drinking Water Zones]* of Schedule 8 *[Environmental Obligations]*;

"DSC Determination Certificate" has the meaning given in Section 1.10 of Schedule 28 *[Differing Site Conditions]*;

"DSC Dispute Notice" has the meaning given in Section 1.11 of Schedule 28 *[Differing Site Conditions]*;

"DSC Eligible Costs" means the direct costs properly and reasonably incurred by Project Co solely attributable to the existence of Differing Site Conditions, which costs shall be limited to the following to the extent such are applicable:

- (a) additional labour, consumables, equipment, and utilities to progress the Construction related to the Tunnel Work;
- (b) changes to excavation means and methods related to the Tunnel Work;
- (c) additional material disposal costs in respect of the Tunnel Work; and
- (d) additional site management of the Construction related to the Tunnel Work;

provided Project Co has met the requirements of Schedule 28 [*Differing Site Conditions*] and demonstrated:

- (e) it could not reasonably have avoided the effects of the Differing Site Condition;
- (f) the Differing Site Condition has caused or will cause Project Co to incur costs that are additional to what was necessary for the proposed design in the Proposal Extracts for the Tunnel Work as such existed at the Effective Date, and that such costs were reasonable; and
- (g) it has complied with its mitigation obligations pursuant to Section 2.5 [General Duty of Project Co to Mitigate] of the Project Agreement.

"DSC Notice" has the meaning given in Section 1.8 of Schedule 28 [*Differing Site Conditions*];

"DSC Representatives" has the meaning given in Section 1.6 of Schedule 28 [*Differing Site Conditions*];

"EA" means the environmental assessment report submitted by BC Hydro to DFO in March 2012;

"EFC Zone" means the Elk Falls Canyon zone as set out in Figure 1 [Site Plan] attached to Section 2.1 [*Geotechnical Design Requirements*] of Schedule 6 [*Design and Construction Specifications*]

"Effective Date" means the date of this Agreement;

"Elective Insurance" has the meaning given in Section 3.4 of the Schedule 18 [*Insurance Requirement*];

"Eligible Change in Law Event" means the occurrence of a:

- (a) Relevant Change in Law;
- (b) Relevant Works Change in Law;
- (c) Discriminatory Change in Tax Law;
- (d) Tax Recoverability Change in Law (including Change in Tax Laws);
- (e) Change in Hydro Facility Laws; or
- (f) Change in Legal Obligations.

"Eligible Costs" means all costs properly and reasonably invoiced by the Design-Builder to Project Co for the Design and Construction, excluding the Decommissioning Work, and which are due and owing by Project Co (but inclusive of amounts properly withheld in accordance with

Section 3.9 [Compliance with *Builders Lien Act* (British Columbia) of Schedule 10 [*Lands*], in respect of such Design and Construction), excepting the following:

- (a) HST, GST or PST for which Project Co, the Design-Builder or a third party is eligible for a rebate, an input tax credit or refund;
- (b) financing or other costs of Project Co; and
- (c) proposal development costs not incurred by the Design-Builder for the Design and Construction.

“Elk Falls Day Use Area” means the public day use area marked as such in the BC Hydro Interpretative Master Site Plan;

“Emergency Planning Guide (Excerpts)” has the meaning given in Section 6 [*Generation Emergency Plan (Excerpts) and the Emergency Planning Guide (Excerpts)*] of Appendix 5P [*Manuals*] to Schedule 5 [*Design and Construction Protocols*];

“Emergency Response Plan” has the meaning given in Section 3.4 [*Emergency Response Planning*] of Schedule 12 [*Safety and Security*];

“EMP” means the construction environmental management plan for the Watermain Work and ST Roadwork in form and content consistent with the sample provided in the Disclosed Data.

“Employee Information” means written details related to employees employed by Project Co or any of the Project Contractors or Sub-Contractors whose work (or any part of it) is work undertaken for the purposes of the Project, including:

- (a) the staffing plan and total number of such employees;
- (b) the employment costs for such employees;
- (c) the amount or severance payable to such employees used in the calculation of any Employee Payment and all relevant information used in determining such amounts; and
- (d) any other information that BC Hydro may reasonably require in relation to the calculation of Employee Payments in respect of Project Co or any relevant Project Contractor or Sub-Contractors;

“Employee Payments” means any liability that has been reasonably incurred by Project Co arising as a result of termination of this Agreement under collective agreements, employment agreements or under any other agreements with employees of Project Co, including severance, whether accrued or not, vacation pay and sick pay accrued but excluding any Distribution;

“Encumbrance” means any mortgage, lien, pledge, judgment, execution, charge, security interest, restriction, covenant, restrictive covenant, easement, right of way, encroachment, condition, right of re-entry, lease, licence, permit to use or occupy land, crossing agreement, assignment, option, right to acquire, right of first refusal or pre-emption, trust, title defect, claim or encumbrance of any nature whatsoever, whether registered or registerable, and whether or not created by statute;

“End of Term” means the day prior to the Expiry Date;

“Engineer of Record” means a Professional Engineer employed or engaged by Project Co or a Project Co Person to sign and seal maintenance programs and updates to Design Drawings or As Built Drawings during the Services Period.

“Energy Management Plan” means the plan required pursuant to Section 4.6 [*Asset Management Plan*] of Schedule 7 [*Services*];

“Environmental Authority” means a Governmental Authority exercising its authority under Environmental Laws;

“Environmental Best Management Practices” has the meaning given in Section 1.5 [*Standard of Performance and Environmental Best Management Practices*] of Schedule 8 [*Environmental Obligations*];

“Environmental Consequence Table” means the table in Appendix 8F [*Environmental Consequence Table*] of Schedule 8 [*Environmental Obligations*];

“Environmental Director” means the Key Individual identified by such title in Section 2.3 [*Key Individuals*] of Schedule 3 [*Roles and Representatives*], or such replacement as may be designated by Project Co pursuant to that section and who meets the requirements specified in Section 2.1.1 [*Environmental Director*] of Schedule 8 [*Environmental Obligations*];

“Environmental Flow Release” means the operating conditions for the Environmental Flow Release System;

“Environmental Flow Release System” or **“EFRS”** has the meaning given in Section 1.1-2.5 [*Environmental Flow Release System*] of Schedule 6 [*Design and Construction Specifications*];

“Environmental Incident” means an incident that must be reported under BC Hydro’s “Standard for Environmental Incident Reporting”, as amended from time to time;

“Environmental Laws” means:

- (a) all requirements and provisions under or prescribed by any and all applicable Laws;

- (b) all applicable rules, regulations, orders-in-council, codes, protocols, guidelines, policies, procedures, concessions, grants, franchises, licences, permits, approvals, plans, authorizations, agreements and any other governmental requirements, promulgated under or pursuant to any Laws; and
- (c) all applicable judicial, administrative or regulatory judgments, orders, decisions, certificates and exemptions, including those rendered by any Governmental Authority;

relating to environmental assessment, the protection of the natural environment, the protection of plant, animal and human health, and the protection of land, water and air resources, including those relating to occupational health, management of waste, safety and transportation of dangerous goods, and the safety requirements and procedures that would, in the ordinary and usual course of the operation, management, repair, maintenance and rehabilitation of similar facilities in British Columbia by any person, be recognized, followed and implemented by such person, and includes without limitation the *Canadian Environmental Protection Act* (Canada), the *Fisheries Act* (Canada), the *Transportation of Dangerous Goods Act* (Canada), the *Canada Water Act* (Canada), and the *Environmental Management Act* (British Columbia);

“Environmental Manager” means the Key Individual identified by such title in 2.3 [*Key Individuals*] of Schedule 3 [*Roles and Representatives*], or such replacement as may be designated by Project Co pursuant to that section and who meets the requirements specified in Section 2.1.2 [*Environmental Manager*] of Schedule 8 [*Environmental Obligations*];

“Environmental Monitor” has the meaning given in Section 2.3 [*Environmental Monitor*] of Schedule 8 [*Environmental Obligations*];

“Environmental Monitoring Plan” has the meaning given in Section 2.4(d) [*Environmental Plans and Reports*] of Schedule 8 [*Environmental Obligations*];

“Environmental Quality Management Plan” or **“EQMP”** means the plan for the quality management of Project Co’s Environmental Obligations prepared by Project Co in accordance with Appendix 9F [*Environmental Quality Management Plan*] to Schedule 9 [*Quality Management*];

“Environmental Reference Documents” has the meaning given in Section 1.1 [*Environmental Reference Documents*] of Schedule 8 [*Environmental Obligations*];

“Environmental Work Plan” means a plan that is delivered in accordance with Section 2.4(c) [*Environmental Plans and Reports*] of Schedule 8 [*Environmental Obligations*];

“Equity IRR” means Project Co's Nominal blended equity internal rate of return calculated on an after tax basis at the level of Project Co in accordance with the Financial Model as shown in Cell C36 of the ‘Summary output’ sheet, having regard to Distributions made and projected to be made;

“Equivalent” means any software, design, methodology, configuration, standard, material or equipment which is inconsistent or conflicts with the applicable Project Requirements but has equal or better qualities and performance as the software, design, methodology, configuration, standard, material or equipment specified in this Agreement;

“Escort” means a Project Co Person who has: (i) successfully completed a Background Check; and (ii) obtained a category of WPP training under the applicable BC Hydro SPRs equal to or higher than the level required for work to be performed by the Escorted Person;

“Escorted Person” means a person performing Security Sensitive Work who must be accompanied by an Escort;

“Essential Station Service System” or **“ESS”** means the component of the AC Station Service System described in Section 7.3-3.1 *[General]* of Schedule 6 *[Design and Construction Specifications]*;

“Estimated Market Value” means the amount (calculated as at the day following the Termination Date) determined to be the Fair Market Value of a New Project Agreement pursuant to Section 3.2 *[Determination of Adjusted Estimated Market Value]* or 3.3 *[Determination by Valuator]* of Schedule 16 *[Compensation on Termination]*;

“Excluded Event” means a Non-Availability Event, that is:

- (a) directly attributable to a BC Hydro Non-Excusable Event;
- (b) directed by a Governmental Authority having jurisdiction, in response to some event or circumstance not caused or permitted to occur by Project Co;
- (c) directed by BC Hydro, in response to some event or circumstance not caused or permitted to occur by Project Co;
- (d) directly attributable to a Compensation Event; or
- (e) required solely to permit the conduct of work by or on behalf of a Utility Work supplier, other than Utility Work;

“Excusing Event” means any of the following events or circumstances if it occurs (a) during the Bridging Period and causes a Non-Availability Event; or (b) on or after the Service Commencement Date and interferes adversely with, or causes a failure of, the performance of the Services or causes an Non-Availability Event:

- (a) the carrying out by Project Co of Minor Works required by BC Hydro in accordance with this Agreement;
- (b) failure by any utility company, local authority or other like body to perform works or provide services required to be provided by them in a reasonably timely

manner or any unreasonable interference with the Services by any such body as a result of maintenance or other work;

- (c) failure of plant or utilities which BC Hydro is responsible for providing to the Facility under this Agreement,
- (d) compliance by Project Co with an order or direction by police, fire officials or any comparable public authority having the legal authority to make such order or give such direction;
- (e) a Change in Law;
- (f) without prejudice to any obligation of Project Co to provide stand-by power facilities in accordance with the Design and Construction Specifications, failure or shortage of power;
- (g) an event described as an Excusing Event in Section 1.14 [*Effect on the Project Schedule or Delays to Services*] of Schedule 14 [*Changes*];
- (h) an event described as an Excusing Event in Section 4.20 [*Change in Law, Permits, Legal Obligations and BC Hydro Policies*]; or
- (i) any other event which is expressly stated in this Agreement to constitute an Excusing Event,

except to the extent that any of such events arise or are contributed to, directly or indirectly, as a result of any wilful misconduct, negligent act or omission or non-compliance with the terms of this Agreement by Project Co or any Project Co Person;

“Exempt Refinancing” means:

- (a) a change in taxation or change in accounting treatment pursuant to changes in Laws or Canadian GAAP or International Financial Reporting Standards;
- (b) the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters that are solely in respect of:
 - (1) breach of representations, warranties, covenants or undertakings;
 - (2) movement of monies between the Project Accounts (as defined in the Senior Financing Agreements) in accordance with the terms of the Senior Financing Agreements;
 - (3) late or non-provision of information or consents;
 - (4) amendments to Project Contracts;

- (5) approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Senior Financing Agreements);
 - (6) restrictions imposed by the Senior Creditors on the dates at which the financing provided by the Senior Creditors under the Senior Financing Agreements can be advanced to Project Co under the Senior Financing Agreements, and which are given as a result of any failure by Project Co to ensure that the Design and the Construction are carried out in accordance with the Project Schedule and which are notified in writing by Project Co or the Senior Creditors to BC Hydro prior to being given;
 - (7) changes to milestones for drawdown set out in the Senior Financing Agreements and which are given as a result of any failure by Project Co to ensure that the Design and the Construction are carried out in accordance with the Project Schedule and which are notified in writing by Project Co or the Senior Creditors to BC Hydro prior to being given;
 - (8) failure by Project Co to obtain any consents from Governmental Authorities required by the Senior Financing Agreements; or
 - (9) voting by the Senior Creditors and the voting arrangements between the Senior Creditors in respect of the levels of approval required by them under the Senior Financing Agreements;
- (c) an amendment, variation or supplement of an agreement approved by BC Hydro as part of any Change;
 - (d) a sale of Junior Debt or Units in Project Co by Partners or, in the case of Junior Debt, Affiliates of Partners or securitization of the existing rights or interests attaching to Junior Debt or Units in Project Co;
 - (e) a Qualifying Bank Transaction;
 - (f) a conversion of Units into Junior Debt or of Junior Debt into Units, provided that the total principal amount of all Junior Debt outstanding immediately following the conversion plus amounts paid to Project Co by way of subscription for Units outstanding immediately following the conversion does not exceed the total amounts paid to Project Co by way of subscription for Units outstanding immediately prior to the conversion plus the total principal amount of all Junior Debt outstanding immediately prior to the conversion; or
 - (g) an application by Project Co for, and the making of, advances to Project Co under the Senior Financing Agreements in accordance with the Initial Senior Financing Agreements, provided that if any such advance is made under any

Committed Standby Facility, such advance must be made solely for the purpose of funding any cost overruns, increased expenses or loss of revenue which Project Co incurs, and provided that such funds must not be used in substitution for other sources of committed funding designated for those purposes;

"Exhibit" means the exhibits that are attached to or expressly incorporated by reference to, and forming part of a Schedule to this Agreement;

"Existing Facility Site" means the area designated as "Existing Facilities Site" on the plan attached as Appendix 10H *[Prime Contractor Designation Areas Plans]* to Schedule 10 *[Lands]*;

"Existing Facility" means the John Hart Generating Station, including the Existing Powerhouse, Existing Penstocks, Existing Intake, Existing Surge Towers, Existing Tailrace, Existing Intake Control Building (Concrete), Existing Intake Control Building (Steel), Existing Intake Gates, Existing Site Office Building, Existing Units, Substation, Dams, Spillway and all associated buildings, structures, facilities, systems, monitoring instruments and other infrastructure, as it existed on the Effective Date;

"Existing Facility Baseline Report" means the baseline report issued by Project Co pursuant to Section 1.2-2.2 *[Existing Facility Baseline Report; Preconstruction Video]* of Schedule 6 *[Design and Construction Specifications]*;

"Existing Intake" means the structures and components used to support the transition of the water from the Reservoir into the Existing Penstock, including gates, trashracks, Existing Intake Control Building (Concrete), Existing Intake Control Building (Steel), controls, power supplies, telemetry, batteries and all other auxiliaries contained in and on the structures;

"Existing Intake Control Building (Concrete)" means the structure primarily made of concrete at the Existing Intake that contains the communication, hydraulic systems, control and protection equipment to operate and monitor the equipment for the Existing Intake operating gate;

"Existing Intake Control Building (Steel)" means the structure primarily made of steel on the downstream side of the Existing Intake that contains the communication, telemetry, and control and protection equipment to monitor the equipment for the Existing Intake;

"Existing Intake Gate" means one of six full-flow shut off gates used to safely isolate the Existing Penstocks in both emergencies and for maintenance;

"Existing Penstocks" means the three existing woodstave and steel penstocks connecting the Existing Intake to the Existing Powerhouse;

"Existing Powerhouse" means the structure and its contents that is currently used to produce hydro electrical power at the Site and is identified as the all substructures and superstructures between the transition from the Existing Penstocks into the existing turbine inlet valves to the Existing Tailrace, including the Existing Units, and all supporting auxiliaries contained in such structures;

"Existing Site Office Building" means the existing administrative office building and shops complex located adjacent to the Existing Powerhouse;

"Existing Surge Towers" means the three existing surge towers located on the Site and connected to the Existing Penstocks;

"Existing Tailrace" means the existing channel downstream of the draft tube discharge at the Existing Powerhouse;

"Existing Unit" means machinery and equipment in the Existing Facility making up a complete and independent hydro-electric generator including water passages, turbine, exciter, generator and generator output transformer;

"Expiry Date" means 15 years from the Target Service Commencement Date;

"External Quality Audit" means either or both:

- (a) a second party Quality Audit conducted by parties having an interest in the relevant organization, such as customers; and
- (b) a third person Quality Audit conducted by an external independent organization such as a certification or registration body;

"Facility" means the hydro-electricity generating facilities, including the Power Intake, Water Conveyances, Generating Units, Powerhouse, any modifications to the Dams, any modifications or improvements to other portions of the Existing Facility (to the extent incorporated into the design of the Facility), and all associated buildings, structures, tunnels, shafts, roads and infrastructure and all other civil, structural, mechanical, electrical, instrumentation and other equipment and systems to be designed, constructed, procured or otherwise provided by Project Co pursuant to this Agreement;

"Facility Black Start" means bringing a Generating Unit back on-line under the following conditions: (i) all Generating Units shutdown; and (ii) no external power sources available;

"Facility Change" means a change, including an addition, deletion, alteration, substitution or otherwise, to Project Co's Design or Construction obligations under this Agreement or a Renovation;

"Facility Condition Assessment Plan" means the plan required pursuant to Appendix 7D [*Condition Assessment*] of Schedule 7 [*Services*];

"Facility Design Operating Conditions" has the meaning given in Section 1.1-4.1 [*Facility Design Operating Conditions*] of Schedule 6 [*Design and Construction Specifications*];

"Facility Maintenance" means maintenance work performed on components of the Facility itself that are not associated with the Generation Systems or the integral auxiliary systems, including

all IT Support Systems. Examples of Facility Maintenance include painting, snow removal, and janitorial services;

“Facility Manual” has the meaning given in Section 2 *[Facility Manual]* of Appendix 5P *[Manuals]* to Schedule 5 *[Design and Construction Protocols]*;

“Facility Model” has meaning set out in Section 5.13(a) *[Models and Mock-Ups]* of Schedule 5 *[Design and Construction Protocols]*;

“Facility Protection and Control System” or **“Facility P&C System”** means the system described in Section 7.7 *[Facility Protection and Control System]* of Schedule 6 *[Design and Construction Specifications]*;

“Facility Services” means the provisions of Appendix 7B *[Facility Services]* to Schedule 7 *[Services]*;

“Facility Users” means BC Hydro, BC Hydro Persons, or BC Hydro’s visitors, contractors or consultants;

“Failure or Request for Services Category” has the meaning given in Appendix 7B *[Facility Services]* of Schedule 7 *[Services]*;

“Fair Market Value” means the amount at which an asset or a liability would be exchanged in an arm’s length transaction between informed and willing parties, other than in a forced or liquidation sale;

“Final Design” means the final design in respect of a component of the Project Work produced by Project Co in accordance with Schedule 5 *[Design and Construction Protocols]* and Schedule 6 *[Design and Construction Specifications]*;

“Final Design and Construction Report” has the meaning given in Section 10.4 *[Final Design and Construction Report]* of Schedule 5 *[Design and Construction Protocols]*;

“Final Design Submission Report” has the meaning given in Section 5.17.1 *[Final Design Submission Report]* of Schedule 5 *[Design and Construction Protocols]*;

“Final Handback Asset Management Report” means the report described in Section 6.3(f) *[Report Content]* of Schedule 7 *[Services]*;

“Final Plan” has the meaning given in Section 6.1.2(c)(iv) *[Specific Requirements]* of Schedule 9 *[Quality Management]*;

“Final Turbine Model Tests” mean the final Turbine Model tests performed in a qualified test facility, and witnessed by BC Hydro, in accordance with Section 4.1 *[Turbine Hydraulic Design and Model Tests]* of Schedule 6 *[Design and Construction Specifications]*

"Final Turbine Model Test Report" means the report to be prepared in accordance with Section 4.1-5.4 [Turbine Model Test Report] of Schedule 6 [Design and Construction Specifications].

"Financial Close" means the time when the Project Agreement and all financing and other agreements related to the Project have been executed and delivered and all conditions to the effectiveness of the Project Agreement and Project financing agreements have been satisfied;

"Financial Model" means Project Co's financial model for the Project attached as Schedule 15 [Financial Model], a copy of which is attached to this Agreement in electronic format, as updated or amended from time to time in accordance with the terms of this Agreement;

"Financial Submission Date" means October 28, 2013 the date on which the Supplemental Financial Submission was submitted by the Preferred Proponent to BC Hydro;

"Financial Submissions Extracts" means those portions of the financial submissions extracted from the Proposal attached to this Agreement in the folder 'Financial Submissions' in electronic format in Appendix 1A [Electronic Format of Proposal Extracts];

"Fire Alarm System" has the meaning given in Section 6.3-3.6 [Fire Detection and Alarm System] of Schedule 6 [Design and Construction Specifications];

"Fire Protection Room" means the room, within the Powerhouse Building, described in Section 3.1-3.4(O) [Designated Rooms and Areas] of Schedule 6 [Design and Construction Specifications];

"First Aid Room" means the room, within the Powerhouse Building, described in Section 3.1-3.4(K) [Designated Rooms and Areas] of Schedule 6 [Design and Construction Specifications];

"First Nations Requirements" has the meaning given in Section 1.1 [Project Participation] of Schedule 24 [First Nations];

"Fisheries Authorizations" means all authorizations required to be obtained (whether in the name of either or both Project Co and BC Hydro) under subsection 35(2) or any other provisions of the *Fisheries Act* (Canada) in respect of the Project and the Project Work, but does not include the BC Hydro Fisheries Authorization;

"Fisheries Release Date" has the meaning given in Section 3.3 [Fisheries Authorizations] in Schedule 8 [Environmental Obligations];

"Flood Operating Conditions" has the meaning given in Section 1.1-4.1(C) [Facility Design Operating Conditions] of Schedule 6 [Design and Construction Specifications];

"FN Responsible Person" means the person designated to assume responsibility for First Nations matters for Project Co pursuant to Section 2.3 [Designated First Nation Responsible Person] of Schedule 24 [First Nations];

"FOIPPA" means the *Freedom of Information and Protection of Privacy Act* (British Columbia);

"Forced Derate" means a Derate that occurs and which does not meet the required conditions of a Planned Derate;

"Forced Outage" means an Outage that occurs and which does not meet the required conditions of a Planned Outage;

"Forced Outage Response Plan" means the plan described in Section 5.7 [*Immediate Callout and Forced Outage Response Plan*] of Schedule 7 [*Services*];

"Force Majeure Event" means the occurrence after the Effective Date of:

- (a) war, civil war, armed conflict or terrorism;
- (b) nuclear, radioactive, chemical or biological contamination, except to the extent that such contamination arises or is contributed to, directly or indirectly, as a result of any wilful misconduct, negligent act or omission or non-compliance with the terms of this Agreement by Project Co or a Project Co Person;
- (c) earthquake or tidal wave;
- (d) flood, except to the extent that such flood arises or is contributed to, directly or indirectly, as a result of any wilful misconduct, negligent act or omission or non-compliance with the terms of this Agreement by Project Co or a Project Co Person; or
- (e) pressure waves caused by devices traveling at supersonic speeds,

which directly causes a party to be unable to comply with all or a material part of its obligations under this Agreement;

"Fortis Gas Bridge" means the pipeline bridge crossing the Campbell River and identified as such in the BC Hydro Interpretative Master Site Plan;

"Generating Unit" means all machinery and equipment making up a complete and independent hydro-electric generator including the water passages, Turbine, Generator, Unit Transformer, protection and control system and replacements thereof, but excluding the Existing Units;

"Generating Unit Non-Availability Event" means a Derate or an Outage pertaining to a Generating Unit. A Non-Availability Event will not be triggered if the Generating Unit is operating outside the Facility Design Operating Conditions. The following are excluded from the definition of Generating Unit Non-Availability Event for the purposes of Schedule 13 [*Performance and Payment Mechanisms*]:

- (a) Outages scheduled for the performance of the Performance Verification Tests in accordance with Appendix 13G *[Performance Verification Tests]* of Schedule 13 *[Performance and Payment Mechanisms]*;
- (b) Outages caused by power system disturbances on, or stability requirements of, the BC Hydro Transmission Systems connected to the Facility or lightning strike on the Facility, except to the extent that such Outages would have been avoided if Project Co had complied with the requirements of this Agreement and that the Generating Unit is made Available in the minimum time possible if Project Co had complied with the requirements of this Agreement; and
- (c) Outages and Derates resulting from construction or maintenance activities for which Project Co is not responsible pursuant to the terms of this Agreement.

"Generating Unit Operating Conditions" means the conditions set out in Section 1.1-4.2 *[Generating Unit Operating Conditions]* of Schedule 6 *[Design and Construction Specifications]*;

"Generation Emergency Plan" has the meaning given Section 6.3(b) *[Leave to Commence Operation]* of Schedule 5 *[Design and Construction Protocols]*;

"Generation Emergency Plan (Excerpts)" has the meaning given in Section 6 *[Generation Emergency Plan (Excerpts) and the Emergency Planning Guide (Excerpts)]* of Appendix 5P *[Manuals]* to Schedule 5 *[Design and Construction Protocols]*;

"Generation Operating Order" or **"GOO"** has the meaning given in General Operating Order 1G-01 v.4 "Policy and Procedures for Generation Operating Orders", included in the Disclosed Data;

"Generation System" means equipment that is directly connected to the production of electricity or could affect the performance or operation of the Generating Units. Auxiliary equipment that can be isolated without affecting Generating Units including Powerhouse Sumps, Debris Booms, the Bypass System, active HTMS and large Gate and Valves are all part of Generation Systems. Other auxiliary equipment that can be isolated without affecting the performance of the Generating Unit such as service water, instrument air, lighting, septic, cranes, HVAC will not be considered Generation Systems;

"Generator" means all generator components specified in Section 4.4 *[Generators]* of Schedule 6 *[Design and Construction Specifications]*;

"Generator Efficiency Guarantee" means [REDACTED] at unity power factor;

"Generator Floor" means the floor level in the Powerhouse Building nearest the stator base;

"Generator Output System" means the system described in Section 7.2 *[Generator Output System]* of Schedule 6 *[Design and Construction Specifications]*;

“Geotechnical Instrumentation Manual” has the meaning given in Section 4 *[Geotechnical Instrumentation Manual]* of Appendix 5P *[Manuals]* to Schedule 5 *[Design and Construction Protocols]*;

“Good Utility Practice” means using standards, practices, methods and procedures to a good electric utility standard within the WECC region for projects of similar size or nature, conforming to Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances;

“Governmental Authority” means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, including the British Columbia Utilities Commission and any successor thereto, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing, having jurisdiction in any way over or in respect of any aspect of the performance of this Agreement or the Project, but does not include BC Hydro;

“Governor HMI” has the meaning given in 4.3-4.3 *[Local Interface Requirements]* of Schedule 6 *[Design and Construction Specifications]*;

“Ground Grid” means the component of the Grounding System described in Section 7.5-3.2 *[Ground Grid]* of Schedule 6 *[Design and Construction Specifications]*;

“Grounding System” means the system described in Section 7.5 *[Grounding System]* of Schedule 6 *[Design and Construction Specifications]*;

“GST” means the Goods and Services Tax as provided for in Part IX of the *Excise Tax Act* (Canada);

“Guaranteed Maximum Hydraulic Downthrust” means under steady state operating conditions means a value to be determined in turbine model testing [REDACTED];

“Guaranteed Maximum Hydraulic Upthrust” means under steady state operating conditions means a value to be determined in turbine model testing [REDACTED];

“Guaranteed Maximum Runaway Speed” means the value to be determined in turbine model testing and [REDACTED];

“Guaranteed Maximum Wicket Gate Leakage” means [REDACTED]
[REDACTED]
[REDACTED];

“Handback” means the final sign-off and acceptance of the Facility, returning to BC Hydro control for all aspects of maintenance and asset management at the End of Term;

"Handback Amount" means Project Co's estimate of the cost of carrying out the Handback Work;

"Handback Certification" means the process for certification of Handback as defined in Appendix 7F [*Handback Requirements*] of Schedule 7 [*Services*];

"Handback Certificate" means the certificate issued in accordance with Section 4 [*Handback Certification*] of Appendix 7F [*Handback Requirements*] to Schedule 7 [*Services*];

"Handback Plan" means the plan required pursuant to Section 2 [*Handback Plan*] of Appendix 7F [*Handback Requirements*] of Schedule 7 [*Services*];

"Handback Requirements" has the meaning given in Appendix 7F [*Handback Requirements*] to Schedule 7 [*Services*];

"Handback Survey" means the survey required pursuant to Section 5 [*Handback Survey*] of Appendix 7D [*Condition Assessment*];

"Handback Work" means the work to be completed to fulfill the Handback Requirements;

"Has Knowledge", "Have Knowledge" or "Having Knowledge" means:

- (a) for an individual, when information is acquired by the individual;
- (b) for a corporation, when information has come to the attention of:
 - (1) a director or officer of the corporation; or
 - (2) a senior employee of the corporation with responsibility for matters to which the information relates,
- (c) for a partnership other than a limited partnership, when any partner Has Knowledge under the other Sections of this definition or under this Section (c) or Section (d) below for any partner that is itself a partnership or when any member of a director-level or officer-level or similar position of the partnerships or a senior employee of the partnership with responsibility for matters to which the information relates; or
- (d) for a limited partnership, when any general partner Has Knowledge under the other Sections of this definition or under this Section (d) or Section (c) above for any partner that is itself a partnership or when any member of a director-level or officer-level or similar position of the partnerships or a senior employee of the partnership with responsibility for matters to which the information relates, under circumstances in which a reasonable person would take cognizance of it;
- (e) for BC Hydro, when information has come to the attention of:

- (1) a director or officer of BC Hydro; or
- (2) a senior employee of BC Hydro with responsibility for matters to which the information relates,

under circumstances in which a reasonable person would take cognizance of it;

"HADD" has the meaning given in Section 3.1(f) [*General Requirements*] of Schedule 8 [*Environmental Obligations*];

"Hazard" means a source of potential harm, or a situation with a potential for causing harm, in terms of personal injury or damage to health, the environment, property and other things of value; or some combination thereof;

"Hazard Log" has the meaning given in Section 4.4.4(C)(a) [*Safe Design Procedures*] of Schedule 5 [*Design and Construction Protocols*];

"Hazardous Substance" means any hazardous waste, hazardous product, contaminant, toxic substance, deleterious substance, dangerous good, pollutant, waste, reportable substance, and any other substance, in respect of which the storage, manufacture, handling, disposal, treatment, generation, use, transport, remediation or Release into, or presence in, the environment is prohibited, controlled or regulated under Environmental Laws;

"Haz Waste Soil" means soil that is a hazardous waste as defined in the B.C. *Hazardous Waste Regulations*, B.C. Reg. 63/88;

"Heading Inflow" means the total inflow entering the applicable tunnel within 5 m of the face of the tunnel excavation, including Probe Hole Inflow, but excluding any volume of water that is introduced to the applicable tunnel for construction purposes.

"Highest Compliant Bid Price" means the price offered by the Person making the Compliant Bid (if any) with the highest bid price;

"High Pressure Reference Section" has the meaning given in Section 4.1-5.1 [*Turbine Model Manufacturing and Homology*] of Schedule 6 [*Design and Construction Specifications*];

"High Public-Use Season" means the annual period beginning May 1 and ending October 15;

"High Voltage" or **"HV"** means a voltage greater than 35kV;

"Holding Company" means, with respect to a corporation, another corporation of which the first corporation is a "subsidiary" as defined in the *Business Corporations Act* (British Columbia) as at the date of this Agreement;

"Hourly Derate Amount" means the amount for each hour of Derate calculated in accordance with Appendix 13F [*Hourly Derate Amount*] of Schedule 13 [*Performance and Payment Mechanisms*];

"Hourly Non-Availability Event Deduction" has the meaning given in Section 7.3 [*Calculation of Non-Availability Event Deductions for the Generating Units*] of Schedule 13 [*Performance and Payment Mechanisms*];

"Hourly Service Disruption Event Amount" means the amount for each hour of a Service Disruption Event calculated in accordance with Appendix 13E [*Hourly Non-Availability Event Deductions & Hourly Service Disruption Event Amounts*] of Schedule 13 [*Performance and Payment Mechanisms*];

"H&S Conviction" has the meaning given in Section 12.1(g) [*Project Co Events of Default*];

"HST" means a harmonized federal and provincial government goods and services and sales tax that may replace in the future during the Term in whole or in part the PST in force in British Columbia on the Effective Date;

"Human Factors Principles" means the principles set out in Appendix 1.3A [*Human Factor Design Principles*] of Schedule 6 [*Design and Construction Specifications*];

"Hydraulic Transient Management System" or **"HTMS"** has the meaning given in Section 1.1-2.3 [*Hydraulic Transient Management System*] of Schedule 6 [*Design and Construction Specifications*];

"Hydro Facility Laws" means the *Fisheries Act (Canada)*, the *Navigable Waters Act (Canada)*, the *Water Act (British Columbia)* and Environmental Laws;

"Hydro Facility Permits" means the Fisheries Authorizations, the Advisory Opinion, and the Leaves to Commence;

"Identified First Nations" means the K'omoks First Nation, We Wai Kai First Nation and Campbell River First Nation;

"IL Soil" means soil that is not suitable for wildlands land use based on the numeric standards specified in the B.C. *Contaminated Sites Regulation*, B.C. Reg. 375/96, but is not Waste Quality Soil;

"Immediate Callout" means an immediate need for service to the Facility and all work activities associated with supporting and responding to an NFRS that identifies the requirement for an immediate Response and Rectification, including a Forced Outage rectification which may include diligent required follow through with investigations, testing, repairs, planning, isolations and return to service of the Generating Unit(s);

"Immunity Direction" has the meaning given in Section 4.17(b) [*Compliance with Laws*];

"Income Tax" means any tax imposed on the income of a Person by any Canadian (whether federal, provincial or otherwise) Governmental Authority;

"Indemnifier" has the meaning given in Section 9.2 [*Conduct of Third Person Claims*];

"Indenture Trustee" means Computershare Trust Company of Canada, and its successors and assigns;

"Independent Certifier" has the meaning given in Section 1 [*Appointment*] of Schedule 29 [*Independent Certifier*];

"Independent Certifier Agreement" means the agreement to be entered into by BC Hydro, Project Co and the Independent Certifier pursuant to Section 1 [*Appointment*] of Schedule 29 [*Independent Certifier*];

"Independent Engineer" means the individual retained by BC Hydro in accordance with the requirements of the Water License;

"Independent Environmental Monitor" means the individual retained by BC Hydro in accordance with the requirements of the Water Licence.

"Independent Laboratory" means the Laboratoire de Machines Hydrauliques of the Ecole Polytechnique Fédérale de Lausanne, Lausanne, Switzerland.

"Index Linked", with respect to an amount at any time, means that the amount is adjusted as at each April 1st commencing April 1, 2014 by:

- (a) multiplying it by the Inflation Index as at the immediately preceding January; and
- (b) dividing it by the Inflation Index as at the Base Date;

"Indirect Losses" means loss of revenue, loss of profits, loss of use, loss of contract, loss of goodwill, loss of production, loss of business, loss of business opportunity, exemplary or punitive damages or any consequential loss or indirect loss of any nature, (but does not include any losses, including loss of revenue or loss of profit of Project Co, under, or in connection with, this Agreement or of any Project Contractor under any Project Contract or Sub-Contractor under any Sub-Contract (except to the extent any such losses arose from a source other than the Project) claimed, suffered or allegedly suffered by:

- (a) in the case of Project Co, Project Co or any Project Co Person, other than a Person who is a Project Co Person solely by virtue of being an invitee of Project Co or any Project Co Person; or
- (b) in the case of BC Hydro, BC Hydro or any BC Hydro Person (other than a Person who is a BC Hydro Person solely by virtue of being an invitee of BC Hydro or any of BC Hydro Persons) or an BC Hydro Indemnified Person;

"Inflation Index" has the meaning given in Section 11.1 *[Calculation of Inflation Index]* of Schedule 13 *[Performance and Payment Mechanisms]*;

"Inflow Design Flood" or **"IDF"** means a flood condition having the peak daily flood flows and Reservoir elevation specified for the IDF return period in Section 1.1A-4 (I.) (2) *[Flood Flows]* of Appendix 1.1A *[Design Parameters]* to Schedule 6 *[Design and Construction Specifications]*;

"Inflow Design Flood Reservoir Level" has the meaning given in Section 1.1A-4(B) *[Reservoir Operating Levels]* of Appendix 1.1-A *[Design Parameters]* to Schedule 6 *[Design and Construction Specifications]*;

"Inflow Design Flood Tailwater Level" has the meaning given in Section 1.1A-4(C) *[Tailwater Levels]* of Appendix 1.1-A *[Design Parameters]* to Schedule 6 *[Design and Construction Specifications]*;

"Infringement Claim" has the meaning given in Section 9.2(g) *[Conduct of Third Person Claims]*;

"Initial Date" has the meaning given in Section 2.3(a) *[Anniversary and Anniversary Date Definition]* of Schedule 11 *[Communication and Consultation]*;

"Initial DSC Notice" has the meaning given in Section 1.7 of Schedule 28 *[Differing Site Conditions]*;

"Initiating Party" has the meaning given in Section 1.2 *[Dispute Notice and Response]* of Schedule 19 *[Dispute Resolution Procedure]*;

"Injury Severity Rating" means the number of days lost due to injury multiplied by 200,000 divided by the number of hours worked;

"Innovation Proposal" has the meaning given in Section 4.1 *[Innovation and Value Engineering]* of Schedule 14 *[Changes]*;

"Inspection and Test Plan" means a plan that identifies all quality activities to be performed by Project Co, as further defined in Quality Management Plans in Schedule 9 *[Quality Management]* Appendices;

"Installation Manual" has the meaning given in Section 1 *[Installation Manuals]* of Appendix 5P *[Manuals]* to Schedule 5 *[Design and Construction Protocols]*;

"Insurance Premium Adjustment" has the meaning given in Section 4.4 *[Changes in Project Co Premiums]* of Schedule 18 *[Insurance]*;

"Insurance Premium Credit" has the meaning given in Section 4.4 *[Changes in Project Co Premiums]* of Schedule 18 *[Insurance]*;

"Insurance Premium Increase" has the meaning given in Section 4.4 *[Changes in Project Co Premiums]* of Schedule 18 *[Insurance]*;

“Insurance Proceeds” means the amount of any insurance proceeds received by a Person in respect of a claim made under any policy of insurance required to be maintained under this Agreement, other than:

- (a) any policy of insurance maintained by BC Hydro solely for the benefit of BC Hydro;
- (b) for the purposes of Sections 6.7 [*Insufficient Insurance*]; 6.10 [*Application of Insurance Proceeds if No Termination*] and 6.11 [*Application of Insurance Proceeds in Case of Termination*], insurance proceeds received by Project Co or the Collateral Trustee from the delay in start-up insurance described in Section 1.2(f) [*Course of Construction*] of Schedule 18 [*Insurance Requirements*];

“Insurance Receivables” means the amount of any insurance proceeds which a Person is entitled to receive pursuant to policies of insurance required to be maintained under this Agreement other than:

- (a) any policy of insurance maintained by BC Hydro solely for the benefit of BC Hydro;
- (b) for the purposes of Sections 6.7 [*Insufficient Insurance*]; 6.10 [*Application of Insurance Proceeds if No Termination*] and 6.11 [*Application of Insurance Proceeds in Case of Termination*], insurance proceeds received by Project Co or the Collateral Trustee from the delay in start-up insurance described in Section 1.2(f) [*Course of Construction*] of Schedule 18 [*Insurance Requirements*];

“Insurance Trust Account” means

[REDACTED];

“Insurance Trust Agreement” means the agreement to be entered into between BC Hydro, the Collateral Trustee, Project Co and the Insurance Trustee in the form set out in Appendix 18B [*Insurance Trust Agreement*], as amended, supplemented or replaced from time to time;

“Insurance Trustee” means Computershare Trust Company of Canada, and its successors and assigns;

“Insuring Party” has the meaning given in 3.12 [*Failure to Insure*] of Schedule 18 [*Insurance Requirements*];

“Intake Dam” means the concrete gravity dam through which the Existing Intake is connected to the Reservoir;

“Intellectual Property” means any and all discoveries, derivations, developments, designs, enhancements, ideas and concepts, improvements, innovations, inventions, blueprints, contributions, findings, useful arts, processes, manufactures, computer software and other computer code of all types, layouts, interfaces, applications, tools, hardware, equipment, routines,

data and databases, machines, manufactures, manufacturing techniques, compositions of matter, industrial designs, know-how, show-how, shop rights, formulae, integrated circuit topographies and integrated circuit topography products, semiconductor designs, mask works, methods and methodologies (including business methods), systems, processes, plans, studies, analyses, memoranda, reports, notes, drawings, specifications, and other technologies, works of authorship, and creations, in any form and recorded on any media, whether or not protected by IP Rights.

“Interconnection Requirements” has the meaning given in Tariff Supplement No. 79;

“Interconnection Submittal Requirements” means the requirements set out in Appendix 5G *[Interconnection Submittal Requirements]* of Schedule 5 *[Design and Construction Protocols]*;

“Interested Parties” means those persons who may be affected by the carrying out of the Project Work or who are duly authorized by Law to review or otherwise take an interest in the Project Work, including the Governmental Authorities;

“Interim Dam Safety Risk Management Plan” or **“IDSRMP”** has the meaning given in Section 4.3.1 *[Preparation and Submission]* of Schedule 5 *[Design and Construction Protocol]*;

“Interim Design” means an interim design for a component of the Project Work produced by Project Co in accordance with Schedule 5 *[Design and Construction Protocols]*;

“Internal Quality Audit” means a first party Quality Audit of an organization’s own processes conducted by or on behalf of the relevant organization;

“Intrusion Detection System” or **“IDS”** means the system described in Section 7.9-5 *[Intrusion Detection System]* of Schedule 6 *[Design and Construction Specifications]*;

“IP Licences” means the licences or sublicences regarding Intellectual Property and related IP Rights being granted or provided by Project Co, including licenses and related maintenance and support agreements for computer software (including Third Party Technology), and similar agreements relating to the Project Work, the Facility, the Services and the IT Support Systems;

“IP Rights” means any and all intangible, intellectual, proprietary and industrial property rights of any nature and kind whatsoever, whether or not registered or registerable, including: (i) copyrights, moral rights, rights of authorship and attribution, neighbouring rights, and other rights in works of authorship; (ii) patents and patent applications; (iii) database rights; (iv) rights in respect of industrial designs, integrated circuit topographies, and mask works; (v) rights in respect of trademarks, trade names, service marks, slogans, domain names, URLs or logos; (vi) rights protected by trade secrets and confidentiality obligations; and all applications and registrations (including renewals, extensions, continuations, divisions, reissues and restorations) relating to any such rights (where applicable) now or hereafter in force and effect throughout all or any part of the world.

“Isolation” means the processes and procedures, consistent with WCB Regulations and the BC Hydro SPR, that should reasonably be taken to address situations whereby the energization or startup of equipment, or the release of a hazardous energy source, could be reasonably foreseen to cause personal injury or harm to the health and safety of the public, through safely isolating, grounding/bonding, physically blocking, or locking-out such equipment prior to the start of work;

“IT Support Systems” means all automated or computer supported operating, monitoring, control, protection and detection systems comprising the Project Work and more specifically the support systems described in Schedules 5 [*Design and Construction Protocols*], 6 [*Design and Construction Specifications*], 7 [*Services*] and 8 [*Environmental Obligations*] and listed in the IP Licences section of Schedule 21 [*Completion Documents*], including the Environmental Flow Release System; Hydraulic Transient Management System; Intrusion Detection System; Non Power Flow System; Plant Control System; Siren Warning System; PAM; and others;

“Janitor Room” means the room, within the Powerhouse Building, described in Section 3.1-3.4(M) [*Designated Rooms and Areas*] of Schedule 6 [*Design and Construction Specifications*];

“JHT Substation Operating One-line” or **“One-line Diagram”** means the electrical schematic diagram that displays high-voltage equipment and displays or lists the isolating devices for primary sources of energy in the Substation;

“Job Planning” means all preparation activities associated with preparing for Site work including but not limited to environmental planning, safety planning, materials planning, resource planning, tools preparation, equipment preparation and personnel planning;

“John Hart Joint Operating Order” has the meaning given in Section 9.6.2(g) [*Water-up Water Conveyances*] of Schedule 5 [*Design and Construction Protocols*];

“Joint Committee” means the Services Period Joint Committee, Commissioning Joint Committee or Construction Period Joint Committee, as applicable;

“Joint Operating Order” has the meaning given in General Operating Order 1G-01 v.4 "Policy and Procedures for Generation Operating Orders";

“Junior Debt” means indebtedness issued by Project Co to any of its Partners or Affiliates of Partners which ranks subordinate in all respects to the Senior Debt, excluding:

- (a) all amounts not actually paid to Project Co by cash advance, rights entitling Project Co to a cash advance, or other consideration;
- (b) all fees, including commitment fees, standby fees or other fees, paid or to be paid by Project Co, other than to any Partner or any Affiliate of a Partner; and
- (c) capitalized interest, and interest on overdue interest;

“Key Individuals” means Project Co's Representative and each of the individuals specified by Project Co in Section 2.3 [*Key Individuals*] of Schedule 3 [*Roles and Representatives*], as changed from time to time in accordance with Section 2.2 [*Change of Project Co's Representative*] or Section 2.3 [*Key Individuals*] of Schedule 3 [*Roles and Representatives*];

“Key Systems Assets” means the following assets or support systems:

- (a) Rotating machines and controllers of:
 - (i) Excitation system;
 - (ii) Governor system;
 - (iii) Unit Control System;
 - (iv) Turbine;
 - (v) Generator;
 - (vi) Hydraulic Transient Management System (HTMS);
 - (vii) Unit Transformer; and
 - (viii) Circuit breaker; and
- (b) Facility:
 - (i) Penstock Rupture Detection System (PRDS);
 - (ii) River Warning System;
 - (iii) Plant LAN;
 - (iv) Environmental Flow Release System (EFRS) , including actuators and controls;
 - (v) Bypass System, including actuators and controls;
 - (vi) LLO System, including actuators and controls;
 - (vii) INOG System, including actuators and controls;
 - (viii) INMG;
 - (ix) Building Information Modelling and associated data; and
 - (x) Supervisory Interface Processor (SIP)

"Labour Agreements" means the collective agreements between BC Hydro and the IBEW dated March 31, 2012 and COPE dated November 20, 2012 respectively, and as filed in the Disclosed Data;

"Land License" means the license granted in Section 3.3 [*Provision of Lands*];

"Land Rights" means an estate or interest in or right over or relating to any land, including an air space parcel, foreshore and land covered by water, whether legal, equitable, contractual, irrevocable, revocable, permanent, temporary or otherwise, including a leasehold estate, a statutory right of way, an easement, a license or a permit, but excluding any fee simple interest, at any time and from time to time held by BC Hydro pursuant to the Project Site Agreements;

"Lands" means those portions of the lands legally described as follows:

- (a) PID: 006-595-863 District Lot 1124, Sayward District;
- (b) PID: 009-678-425 District Lot 1471, Sayward District; and
- (c) PID: 029-135-567 District Lot 1725 Sayward District,

that are highlighted in: (i) green; and (ii) white with green dots on the Appendix 10C [*Site Plan*] to Schedule 10 [*Lands*];

"Law" or **"Laws"** means all laws, including the common law, statutes, regulations, treaties, judgments and decrees and all official directives, by-laws, rules, consents, approvals, authorizations, guidelines, orders and policies of any Governmental Authority having the force of law from time to time, including, for greater certainty, Environmental Laws, those related to the issuance of Permits, and any building codes;

"Lead Test Engineer" means the Key Individual identified by such title in Section 9.1 [*Lead Test Engineer*] of Schedule 5 [*Design and Construction Protocols*] and Section 2.3 [*Key Individuals*] of Schedule 3 [*Roles and Representatives*], or such replacement as may be designated by Project Co pursuant to that section;

"Leave to Commence" means a Leave to Commence Construction or a Leave to Commence Operation, as applicable;

"Leave to Commence Construction" means the written authorizations that are required under the Water License to be obtained from the Comptroller of Water Rights before commencing Construction of specified portions of the Project Work;

"Leave to Commence Operation" means the written authorization that is required under the Water License to be obtained from the Comptroller of Water Rights before each Generating Unit enters commercial operation;

"Legal Obligations" means, as applicable, the requirements of all Permits or all BC Hydro Permits, Tariff Supplement 79 and the associated Terms and Conditions for Modifications (TCM) included in the Disclosed Data and the Technical Interconnection Requirements (TIR) included in the Disclosed Data;

"Lender Endorsements" has the meaning given in Appendix 18A [*Lender Endorsements*] of Schedule 18 [*Insurance Requirements*];

"Lenders" means the financial institutions from time to time party to the Credit Agreement as Lenders and any successors or assigns thereto or any replacements therefor from time to time under the Credit Agreement;

"Lenders' Remedies Agreement" means the agreement between BC Hydro, the Collateral Trustee and Project Co in the form set out in Schedule 17 [*Lenders' Remedies Agreement*], as amended, supplemented or replaced from time to time in accordance with this Agreement;

"Liability Payment" has the meaning given in Section 9.3 [*General Obligation to Pursue Third Person Recovery*];

"Liquid Market" means that there are sufficient willing parties (being at least two parties each of whom is capable of submitting a Compliant Bid in a Re-Bidding Process and each of whom deals with BC Hydro at arm's length) in the market for agreements in Canada for the provision of services under public private partnerships or other basis similar to this Agreement for the price that is likely to be achieved through a competitive process to be a reliable indicator of the Fair Market Value of a New Project Agreement, provided that any entity controlled and established by the Senior Creditors specifically for the purposes of this Project will not be counted for the purpose of determining whether there are sufficient willing bidders in the market;

"Local Operating Order" or **"LOO"** means has the meaning given in General Operating Order 1G-01 v.4 "Policy and Procedures for Generation Operating Orders";

"Location Drawings" mean the ST Roadwork Location Drawings and the ST Waterpipe Location Drawings, as filed in the Disclosed Data;

"Losses" means any and all damages, losses, loss of revenue (including lost Availability Payments), loss of profit, liabilities, charges, judgments, court orders, penalties, fines, assessments, costs and expenses (including legal and other professional charges and expenses on a full indemnity basis and including reasonable costs of mitigation) of any nature and kind whatsoever and howsoever arising, whether under statute or contract, at common law, in equity, in connection with judgments or criminal or quasi criminal proceedings, or otherwise, and whether direct, indirect or consequential, and **"Loss"** will be construed accordingly;

"Lower Gallery Floor" means the lowest accessible floor level in the Powerhouse Building below the centerline of the spiral case;

“Low Level Outlet” or **“LLO”** has the meaning given in Section 1.1-2.4 [*Low Level Outlet*] of Schedule 6 [*Design and Construction Specifications*];

“Low Pressure Reference Section” has the meaning given in Section 4.1-5.1 [*Turbine Model Manufacturing and Homology*] of Schedule 6 [*Design and Construction Specifications*];

“Low Public-Use Season” means the annual period beginning October 16 and ending April 30;

“Low Voltage” or **“LV”** means a voltage less than 1kV;

“LTIF” means lost time injury frequency and is the number of lost time (disabling) injuries X 200,000 divided by the number of hours worked;

“Main Dam” means the concrete gravity dam that retains the Reservoir and houses the Spillway;

“Main Entrance” has the meaning given in Section 3.1-3.4(C) [*Designated Rooms and Areas*] of Schedule 6 [*Design and Construction Specifications*];

“Main Floor” means the Powerhouse floor nearest the ground level on which the Service Bay is located;

“Major Equipment Supplier” means the Person supplying the Generators and Turbines for the Project;

“Maintenance Plan and Schedule” has the meaning given in Schedule 7 [*Services*];

“Mandatory Insurance” has the meaning given in Section 3.4 of the Schedule 18 [*Insurance Requirement*];

“Marketable Power” means that electrical power that is produced after all requirements of section 9.6.8 [*Marketable Power Test*] of Schedule 5 [*Design and Construction Protocols*] have been satisfied in full and the Marketable Power Test for that Generating Unit, or as applicable the Facility as a whole, has been successfully passed;

“Marketable Power Test” has the meaning given in section 9.6.8 [*Marketable Power Test*] of Schedule 5 [*Design and Construction Protocols*];

“Material Contract Party” means a party to a Material Contract, other than Project Co;

“Material Contracts” means:

- (a) the Project Contracts;
- (b) any agreement for products, services or management to Project Co between Project Co and a Contracting Affiliate, current or former Affiliate of Project Co or a current or former Partner of Project Co; and

- (c) any replacement contract and/or amending agreement to any of the foregoing made in accordance with this Agreement;

"Maximum Availability Payments" means the payments calculated in accordance with Section 6.2 [Maximum Availability Payments] of Schedule 13 [Performance and Payment Mechanisms];

"Maximum Design Earthquake" or **"MDE"** has the meaning given in Section 1.1A-5 [Seismic Loads] of Appendix 1.1A [Design Parameters] to Schedule 6 [Design and Construction Specifications];

"Maximum Normal Bypass Flow" has the meaning given in Section 1.1A-4 [Water Levels and Flows] of Appendix 1.1A [Design Parameters] to Schedule 6 [Design and Construction Specifications];

"Maximum Normal Operating NSHE" means gravitational acceleration x [(Maximum Normal Reservoir Operating Level) – (Minimum Normal Tailwater Level for Powerhouse Flow (i.e., 1 Generating Unit flow) = 24 m³/s and Elk Canyon flow = 4 m³/s) – (Water Conveyance head loss for Powerhouse Flow (i.e., 1 Generating Unit flow) = 24 m³/s) – (velocity head loss at the Low Pressure Reference Section)];

"Maximum Normal Operating Tailwater Level" has the meaning given in Section 1.1A-4 [Water Levels and Flows] of Appendix 1.1A [Design Parameters] to Schedule 6 [Design and Construction Specifications];

"Maximum Normal Powerhouse Flow" has the meaning given in Section 1.1A-4 [Water Levels and Flows] of Appendix 1.1A [Design Parameters] to Schedule 6 [Design and Construction Specifications];

"Maximum Normal Reservoir Operating Level" has the meaning given in Section 1.1A-4 [Water Levels and Flows] of Appendix 1.1A [Design Parameters] to Schedule 6 [Design and Construction Specifications];

"Maximum Normal Tailwater Level" has the meaning given in Section 1.1A-4 [Water Levels and Flows] of Appendix 1.1A [Design Parameters] to Schedule 6 [Design and Construction Specifications];

"Maximum Operating NSHE" means gravitational acceleration x [(Maximum Reservoir Operating Level) – (Tailwater Level for Powerhouse Flow = 0 m³/s and Elk Canyon flow = 4 m³/s) – (Water Conveyance head loss for Powerhouse Flow = 0 m³/s) – (velocity head loss at the Low Pressure Reference Section)];

"Mean Time Between Failure" or **"MTBF"** means the predicted elapsed time between inherent failures of a system during operation. MTBF is calculated as the arithmetic mean (average) time between failures of a system;

“Mean Time to Repair” or **“MTTR”** means the measure of maintainability of repairable items, as represented by the average time required to repair a failed component or device;

“Measured Operational Air Gap” has the meaning given in Section 4.4-5.2(A) [*Air Gap*] of Schedule 6 [*Design and Construction Specifications*];

“Measured Stationary Air Gap” has the meaning given in Section 4.4-5.2(A) [*Air Gap*] of Schedule 6 [*Design and Construction Specifications*];

“MED Zone” means the Middle Earthfill Dam zone as set out in Figure 1 [Site Plan] attached to Section 2.1 [*Geotechnical Design Requirements*] of Schedule 6 [*Design and Construction Specifications*];

“Medium Voltage” or **“MV”** means a voltage between 1kV and 35kV, inclusive;

“Men’s Washroom” means the room, within the Powerhouse Building, described in Section 3.1-3.4(l)(2) [*Designated Rooms and Areas*] of Schedule 6 [*Design and Construction Specifications*];

“Microwave Station” means the structures and components used to support the communication equipment for the Existing Facility and the surrounding area. The Microwave Station is located next to Existing Surge Tower #1 within a fenced compound;

“Middle Earthfill Dam” means the earthfill dam located between the Intake Dam and the Main Dam, as shown on the drawing entitled “Campbell River-John Hart Dam Rehabilitation Earthfill Dam Excavation and Fill Replacement Plans & Details 502-C02-00166” included in the Disclosed Data;

“Millennium Trail” means the public use trail identified as such and further described in the BC Hydro Interpretative Master Site Plan;

“Mineral Rights” means any rights or interests of the Province in and to minerals as that term is defined in the *Mineral Tenure Act* (British Columbia), petroleum, natural gas or similar substances as defined in the *Petroleum and Natural Gas Act* (British Columbia) existing on or under the Site, or any such interests or rights to any Site Materials reserved in law to the Province by statute, a Provincial Crown grant or otherwise;

“Minimum Flow Setpoint” has the meaning given in Section 7.7-21.4(B) [*Control Requirements*] of Schedule 6 [*Design and Construction Specifications*];

“Minimum Normal Operating NSHE” means gravitational acceleration x [(Minimum Normal Reservoir Operating Level) – (Maximum Normal Tailwater Level for Powerhouse Flow = 124 m³/s and Elk Canyon flow = 10 m³/s) – (Water Conveyance head loss for Powerhouse Flow = 124 m³/s) – (velocity head loss at the Low Pressure Reference Section)];

“Minimum Normal Operating Tailwater Level” has the meaning given in Section 1.1A-4 *[Water Levels and Flows]* of Appendix 1.1A *[Design Parameters]* to Schedule 6 *[Design and Construction Specifications]*;

“Minimum Normal Powerhouse Flow” has the meaning given in Section 1.1A-4 *[Water Levels and Flows]* of Appendix 1.1A *[Design Parameters]* to Schedule 6 *[Design and Construction Specifications]*;

“Minimum Normal Reservoir Operating Level” has the meaning given in Section 1.1A-4 *[Water Levels and Flows]* of Appendix 1.1A *[Design Parameters]* to Schedule 6 *[Design and Construction Specifications]*;

“Minimum Operating NSHE” means gravitational acceleration x [(Reservoir Drawdown Level) – (Tailwater Level for Powerhouse Flow = 124 m³/s and Elk Canyon flow = 126 m³/s) – (Water Conveyance head loss for Powerhouse Flow = 124 m³/s) – (velocity head loss at the Low Pressure Reference Section);

“Minor Works” means a Change that is requested by BC Hydro at any time after the Service Commencement Date with a value that does not exceed \$ [REDACTED], Index Linked, unless otherwise agreed by BC Hydro;

“Minor Works Rates” has the meaning given in Section 3.1(b) *[Minor Works Rates]* of Schedule 14 *[Changes]*;

“MOE” means the Ministry of Environment of the Province of British Columbia;

“Monthly Bypass Test” means the monthly functional testing of the Bypass System in accordance with the MPS;

“Monthly Facility Performance Scorecard” means the report to be provided in accordance with Section 6.3 *[Report Content]* of Schedule 7 *[Services]*;

“Monthly Low Level Outlet Test” means the monthly functional testing of the Low Level Outlet in accordance with the MPS;

“Monthly Retention” has the meaning given in Section 10.3 *[Monthly Retention]* of Schedule 13 *[Performance and Payment Mechanisms]*

“Monthly Test Failure” means any of:

- (a) a failure of the Monthly Bypass Test; or
- (b) a failure of the Monthly Low Level Outlet Test;

“MRS” means the Mandatory Reliability Standards that BC Hydro is required to comply with by orders of the BCUC, as these may be applicable to the Facility and the Project Work;

“Municipalities” means the City of Campbell River;

“Net Direct Change Value” means net direct costs reasonably incurred or saved to implement a Change as follows:

- (a) Design: the net direct incremental costs of any Design incurred or saved by the entity that retains the design personnel, based on the addition or reduction in the number of design consultant’s hours required to undertake the Change;
- (b) Construction Labour: the net direct incremental costs incurred or saved by the entity that engages the construction labour, based on the addition or reduction in the number of labour and direct labour-supervision hours required to undertake the Change (including allowance for all payroll burdens such as overtime premiums (when paid), vacation pay, pensions, statutory payments, workers’ compensation insurance, union dues, tool money, medical insurance, and any other payments directly paid in the ordinary course, and including any severance and termination costs directly resulting from the Change);
- (c) Materials and Equipment: the net direct incremental costs incurred or saved by the entity that procures the materials, consumables and equipment, for the supply and delivery of such materials, consumables and equipment (including the cost of any associated testing, commissioning, spare parts, manuals and software, and including any related design and engineering), less the salvage value on such items used but not consumed and which remain the property of Project Co;
- (d) Procurement Cost: the net direct incremental costs incurred or saved by the procuring entity to obtain and evaluate quotations, proposals, tenders or other competitive submissions and to award a contract for work required for the Change in accordance with Section 1.13 [*Competitive Procurement*] of Schedule 14 [*Changes*], and the supervision and management of such contract;
- (e) Services Labour: if a Change materially affects the cost of the Services, the net direct incremental costs incurred or saved by the entity that provides the Services labour, based on the addition or reduction in the number of labour and direct labour supervision hours required to undertake the Change (including allowance for all payroll burdens such as overtime premiums (when paid), vacation pay, pensions, statutory payments, workers’ compensation insurance, union dues, tool money, medical insurance, and any other payments directly paid in the ordinary course); and
- (f) Miscellaneous: all other additional net direct costs or savings pertaining to the Change, including project management, services provided by professional advisors, wastage, disposal, insurance, bonding, financing and Permits (including

amendment or renewal of a Permit, or obtaining new Permits), calculated at the direct cost or saving to the entity that directly incurs or saves such costs,

all without addition of any mark-ups except as otherwise expressly provided for under this Agreement. The Net Direct Change Value of a Change can be positive or negative;

"Net Present Value" means the aggregate of the discounted values, calculated as of the estimated date of the Refinancing, of each of the relevant projected Distributions, in each case discounted using the Threshold Equity IRR;

"Net Specific Hydraulic Energy" or **"NSHE"** as defined in Clause 1.3.3.6.2 of the IEC Publication 60193;

"New Facilities Site" means the area encompassing the Facility to be designated as such on the Site Plan;

"New Park Use Permits" means the park use permit number 106559 dated May 21, 2013 between Her Majesty the Queen in Right of the Province of British Columbia, represented by the Minister responsible for the *Park Act* (British Columbia) and British Columbia Hydro and Power Authority concerning certain road improvements;

"New Project Agreement" means an agreement on substantially the same terms and conditions as this Agreement (including any agreements entered into pursuant to this Agreement as at the Termination Date) but with the following amendments:

- (a) if this Agreement is terminated prior to the Service Commencement Date, the extension of the applicable Target Commercial Operation Dates, the Target Service Commencement Date, the Service Commencement Longstop Date, the Target Bypass System Completion Date, the date for completion of the Performance Verification Tests, the Target Total Completion Date and the Total Completion Longstop Date by such reasonable period as is agreed by BC Hydro and the New Project Co to meet such extended Target Commercial Operation Dates, Target Service Commencement Date, Service Commencement Longstop Date, Target Bypass System Completion Date, date for completion of the Performance Verification Tests, Target Total Completion Date and Total Completion Longstop Date;
- (b) any accrued NPE Points and Default Points will be cancelled;
- (c) the term of such agreement will be equal in length to the term from the Termination Date until the date on which the Services Period would otherwise have expired;
- (d) BC Hydro may not terminate such agreement for reasons which arose prior to the Termination Date so long as the New Project Co is using all reasonable

efforts to remedy any breach of this Agreement that arose prior to the Termination Date and which is capable of being remedied; and

- (e) any other amendments as may be specified by BC Hydro that do not adversely affect any compensation which would otherwise be payable to Project Co pursuant to Schedule 16 *[Compensation on Termination]*;

"New Project Co" means the Person who has entered into or who will enter into the New Project Agreement with BC Hydro;

"NFRS" has the meaning given in Appendix 7C *[Notification of Failure and Request for Services]* to Schedule 7 *[Services]*;

"NFRS Contact" has the meaning given in Appendix 7C *[Notification of Failure and Request for Services]* to Schedule 7 *[Services]*;

"NFRS Services" means the requirements described in Appendix 7C *[Notification of Failure and Request for Services]* to Schedule 7 *[Services]*;

"Nominal" means calculated in nominal terms at current prices recognizing adjustment for indexation in respect of forecast inflation;

"Nominal Design Operational Air Gap" has the meaning given in Section 4.4-5-2(A) *[Air Gap]* of Schedule 6 *[Design and Construction Specifications]*;

"Nominal Design Stationary Air Gap" has the meaning given in Section 4.4-5.2 *[Air Gap]* of Schedule 6 *[Design and Construction Specifications]*;

"Nominated Forced Outage" means a Forced Outage to which Project Co has elected to apply an Outage Rectification Allowance pursuant to Section 7.5 *[Outage Rectification Allowance]* of Schedule 13 *[Performance and Payment Mechanism]*;

"Non-Availability Event" means either a Bypass System Non-Availability Event, a Monthly Test Failure, or a Generating Unit Non-Availability Event;

"Non-Availability Event Deduction" means a deduction for a Non-Availability Event;

"Nonconformity" means the non-fulfilment of a requirement (a need or expectation that is stated, generally implied or obligatory), as described in ISO 9001, the occurrence of any Defect or any failure by Project Co to perform any of its obligations under this Agreement in respect of any aspect of the Project Work, including the following:

- (a) defective workmanship or repairs not in compliance with the requirements of this Agreement;

- (b) use of materials and/or equipment not in compliance with the requirements of this Agreement;
- (c) deficient, incomplete and/or illegible Quality Records;
- (d) inadequate and/or ineffective defect identification processes;
- (e) failure to achieve documented response time requirements;
- (f) failure to comply with Quality Management System processes;
- (g) failure to take Corrective Action or Preventive Action against any such Nonconformity within the required time; and
- (h) failure to meet Project Co's reporting obligations under this Agreement;

"Nonconformity Report" means a document issued by either BC Hydro's Representative or Project Co pursuant to Section 6.1 [*Nonconformity Reporting Process*] of Schedule 9 [*Quality Management*] detailing the description of an identified Nonconformity and the proposed rectification and action taken or to be taken to deal with such Nonconformity;

"Nonconformity Tracking System" means a system to track Nonconformity Reports issued by the BC Hydro's Representative or Project Co as set out in Section 6.2 [*Nonconformity Report Tracking System*] of Schedule 9 [*Quality Management*];

"Non-Insuring Party" has the meaning set out in Section 3.12 [*Failure to Insure*] of Schedule 18 [*Insurance Requirements*];

"Non-Performance Event" or **"NPE"** means a failure by Project Co to meet a specific Performance Measure;

"Non-Performance Event Amount" means an amount for a Non-Performance Event;

"Non-Power Flow Systems" means the systems described in Section 5.1 [*Non-Power Flow Systems*] of Schedule 6 [*Design and Construction Specifications*];

"Normal Operating Conditions" has the meaning given in Section 1.1-4.1(B) [*Facility Design Operating Conditions*] of Schedule 6 [*Design and Construction Specifications*];

"Notice of Completion" has the meaning as set out in Section 4.21 [*Watermain Work and ST Roadwork*];

"Notice of Intention to Arbitrate" has the meaning given in Section 1.6(a) [*Arbitration*] of Schedule 19 [*Dispute Resolution Procedure*];

“Notice of Testing” has the meaning as set out in Section 4.21 [*Watermain Work and ST Roadwork*];

“Notification of Failure” means a report of a Non-Availability Event by means of a NFRS Report;

“Notification of Failure or Request for Service Report” or **“NFRS Report”** means a request for Services, a report of a Non-Availability Event, or any other enquiry or report made to the NFRS Contact by a Facility User;

“NPE” see “Non-Performance Event”;

“NPE Points” means those points assigned to Project Co in accordance with Section 12.1 [*Assignment of NPE Points*] of Schedule 13 [*Performance and Payment Mechanisms*];

“NPE Points Balance” has the meaning given in Section 12.2(b)(2) [*Calculation of NPE Points Balance*] of Schedule 13 [*Performance and Payment Mechanisms*];

“NPE Points (Default) Balance” has the meaning given in Section 12.3(b) [*Calculation of NPE Points (Default) Balance*] of Schedule 13 [*Performance and Payment Mechanisms*];

“NRS” means Natural Resource Specialist;

“OBE” means “Operating Base Earthquake”;

“Occupational Health and Safety Management Program” or **“OHSMP”** – means the occupational health and safety program developed by Project Co to address occupational health and safety hazards associated with the performance of the Project Work. The OHSMP includes all of the Safety Management Plans and Safe Work Procedures and Project Co’s Construction Period Security Program;

“Oil Storage Room” means the room, within the Powerhouse Building, described in Section 3.1-3.4(P) [*Designated Rooms and Areas*] of Schedule 6 [*Design and Construction Specifications*];

“O&M Manual” has the meaning given in Section 3 [*O&M Manuals*] of Appendix 5P [*Manuals*] to Schedule 5 [*Design and Construction Protocols*];

“OMS Manual” has the meaning given in Section 6.3(a) [*Leave to Commence Operation*] of Schedule 5 [*Design and Construction Protocols*];

“OMS Manual (Excerpts)” has the meaning given in Section 5 [*OMS Manual (Excerpts)*] of Appendix 5P [*Manuals*] to Schedule 5 [*Design and Construction Protocols*];

“Operating Authority” means as the right to control a portion of the power system to establish conditions required for, and to issue, safety protection guarantees;

“Operating Basis Earthquake” or **“OBE”** has the meaning given in Section 1.1A-5 [*Seismic Loads*] of Appendix 1.1A [*Design Parameters*] to Schedule 6 [*Design and Construction Specifications*];

“Operating Constraint” means a constraint on the range of Reservoir Level, Tailwater Level or Powerhouse Flow from the Normal Operating Conditions, or a constraint on a Generating Unit’s ability to meet the Generating Unit Operating Conditions;

“Operating Instruction” means a written instruction to the Remote Control Centre which is used in the operations planning and dispatch of the Generating Units. In absence of any Operating Instructions, Generating Units may be dispatched by BC Hydro at any point within the Facility Design Operating Conditions and within the Generating Unit Operating Conditions;

“Operating Order” means a Local Operating Order, Joint Operating Order, Generation Operating Order; System Operating Order or a Transmission Operating Order;

“Operating Responsibility” means the right to exercise control over the operation of the Facility including the equipment within the power system, including assessment of system risk and the direction, coordination and execution of operating activities;

“Operation” means the process and activities for the Facility to produce and supply power into the BC Hydro Transmission System including energy planning, river system planning, network planning, reservoir shaping, flow discharge control, unit dispatch, unit output settings and control;

“Operational Environmental Management Plan” or **“OEMP”** has the meaning given in Section 14.4(a) [*Operational Environmental Management Plan*] of Schedule 8 [*Environmental Obligations*];

“Operations Area” has the meaning given in Section 4A(b) [*Definition of “Contamination”*] of Schedule 8 [*Environmental Obligations*];

“Original Performance Guarantee Payment” means an amount calculated in accordance with Section 5.1 [*Calculations of Performance Guarantee Payments*] in Schedule 13 [*Performance and Payment Mechanisms*];

“OSH” means Occupational Safety and Health Specialist;

“OSH Standards” means the BC Hydro OSH Standards included in the Disclosed Data;

“Outage” means a Generating Unit(s) or Existing Unit(s) not being Available due to: (i) the failure of a component of the Generating Unit or Existing Unit; (ii) performance of Construction activities or maintenance activities; or (iii) any other restriction, limitation or failure of any other equipment comprising the Facility;

“Outages and Constraints Notification Form” means the form provided in Appendix 5R [*Outages and Constraints Notification Form*] of Schedule 5 [*Design and Construction Protocols*]

during Bridging Period, and Appendix 7H *[Outages and Constraints Notification Form]* of Schedule 7 *[Services]* post Service Commencement. In absence of any Outages and Constraints Notification Forms or Generation Constraints Schedules, as applicable, Generating Units may be dispatched by BC Hydro at any point within the Facility Design Operating Conditions and within the Generating Unit Operating Conditions;

"Outage Rectification Allowance" has the meaning given in Section 7.5 *[Outage Rectification Allowance]* of Schedule 13 *[Performance and Payment Mechanism]*;

"Outputs Summary Sheet" means the sheet labelled as such in the Financial Model;

"Outstanding BCH Permits" has the meaning given in Section 4.19(b) *[Regulatory Approvals and Permits]*;

"PAM Remote Input/Output" or **"PIO"** means the panel that acts as I/O expansion for the PAM PLCs and that houses additional PAM PLC I/O equipment;

"Panel" has the meaning given in Section 1.4(a) *[Fast Track Referee Process]* of Schedule 19 *[Dispute Resolution Procedure]*;

"Park Boundary Adjustment" means the adjustments to the boundaries of Elk Falls Provincial Park as described in Order in Council No. 187;

"Partners" means [REDACTED];

"Partner Loan" means any funds contributed to Project Co by a Partner or an Affiliate of a Partner in relation to the Project;

"Paying Party" has the meaning given in Section 9.3 *[General Obligation to Pursue Third Person Recovery]*;

"Peaking Operation" has the meaning given in Generation Operating Order, GOO 4G-44;

"Penstock" has the meaning given in Section 1.1-2.1(D) *[Water Conveyances]* of Schedule 6 *[Design and Construction Specifications]*;

"Penstock Design Pressure" means the maximum pressure which the Penstocks are designed to safely withstand;

"Performance Guarantee Payment" means the payment calculated in accordance with Section 5.1 *[Calculation of Performance Guarantee Payment]* of Schedule 13 *[Performance and Payment Mechanism]*;

"Performance Guarantees" means collectively the Plant Capacity Guarantee, the Plant Energy Guarantee, the Common Conduit Head Loss Guarantee, the Turbine Model Efficiency Guarantee, and the Generator Efficiency Guarantee;

“Performance Indicators” are identified in Section 4 *[Performance Indicators]* of Appendix 7B *[Facility Services]*;

“Performance Measure” means a requirement identified as a Performance Measure in Appendix 13D *[Assignment of NPE Points]* to Schedule 13 *[Performance and Payment Mechanisms]*;

“Performance Remediation Work” means work proposed to be carried out by Project Co pursuant to Section 5.2 *[Performance Remediation Work]* of Schedule 13 *[Performance and Payment Mechanisms]*.

“Performance Verification Tables” means tables 13G-1, 13G-2, 13G-3, 13-G4 in Appendix 13G *[Performance Verification Tests]* of Schedule 13 *[Performance and Payment Mechanisms]*, which shall be used in Performance Verification Tests by Project Co to represent Achieved Performance;

“Performance Verification Tests” means the tests carried out pursuant to Appendix 13G *[Performance Verification Tests]* of Schedule 13 *[Performance and Payment Mechanisms]*;

“Permanent Access Roads” the roads serving all permanent facilities constructed as part of the Project Work;

“Permissible Existing Unit Planned Outage” means a Planned Outage of one or more Existing Units which occurs within the times stated in Appendix 13C *[Existing Unit Outage Windows]* of Schedule 13 *[Performance and Payment Mechanisms]*;

“Permissible Planned Outage Threshold” means:

- (a) In relation to Planned Outages of a single Generating Unit after the Service Commencement Date, an aggregate of 45 days in any calendar year provided that the Planned Outage occurs between July 15 and September 7 (inclusive) and provided that at least 1 remaining Generating Unit is Available during the Planned Outage. The duration of any Planned Outage for 2 Generating Units between July 15 and September 7 (inclusive) would contribute towards this threshold and to the extent that it falls within the threshold will result in a Non-Availability Event Deduction based on Planned Outage for a single Generating Unit; and
- (b) In relation to a Power Tunnel outage after the Service Commencement Date, which results in a Planned Outage across all three Generating Units, an aggregate of 5 days in any period of 4 consecutive calendar years. The Planned Outage must occur between August 16 and September 15 (inclusive);

“Permits” means all permissions, consents, approvals, certificates, permits, licences, statutory agreements, zoning and by-law amendments and variances, and authorizations required from any Governmental Authority, and all necessary consents and agreements from any third parties, needed to carry out the Project Work in accordance with this Agreement;

“Permitted Debt” means:

- (a) trade or other similar indebtedness incurred in the ordinary course of business (unless being contested in good faith and with appropriate proceedings with an adequate reserve therefor in accordance with Canadian GAAP having been placed on Project Co’s books and records);
- (b) Taxes and governmental charges, salaries, related employee payments and trade payables;
- (c) contingent liabilities relating to the endorsement of negotiable instruments received in the normal course of business or incurred with respect to any Permit, Project Contract or this Agreement; and
- (d) Debt incurred by way of Partner Loans,

but does not include any Senior Debt;

“Persistent Breach” means a breach or series of breaches by Project Co of any term, covenant or undertaking to BC Hydro, other than a breach for which NPE Points could be made, which, due to the fact that such breach has:

- (a) continued for 60 Business Days or more after notice thereof from BC Hydro to Project Co; or
- (b) occurred 3 or more times in the previous 12 months,

and demonstrates either a persistent inability, or a persistent unwillingness, to comply with its obligations under this Agreement;

“Person” means an individual, legal personal representative, corporation, body corporate, firm, partnership, trust, trustee, syndicate, joint venture, limited liability company, association, unincorporated organization, union or Governmental Authority;

“Person Year” means 2,080 hours of employment less vacation and statutory holiday entitlement;

“Personal Information” means ‘personal information’ as defined in the *Freedom of Information and Protection of Privacy Act*, (British Columbia), which is collected, acquired, obtained by Project Co or BC Hydro in relation to or in the course of providing the Design, the Construction or the Services under this Agreement, and includes any information about an identifiable individual other than contact information, which is the name, position name or title, business telephone number, business address, business email or business fax number of the individual, or as otherwise defined in the *Freedom of Information and Protection of Privacy Act*, (British Columbia);

“PIC” means the Person-in-Charge as defined in the BC Hydro SPRs;

“**PIO**” see “PAM Remote Input/Output”;

“**Planned Derate**” means a Derate that has been scheduled with BC Hydro in accordance with the procedures outlined in Schedule 7 *[Services]*, provided that during the Construction Period the required notice shall be 5 days;

“**Planned Maintenance**” means preventive, predictive, scheduled or routine maintenance work, including inspections, performed to reduce the risk of failure;

“**Planned Outage**” means an Outage that has been scheduled with BC Hydro in accordance with the procedures outlined in Schedule 7 *[Services]*, provided that during the Construction Period the required notice period shall be 5 days;

“**Plant**” means plant, goods, products, commodities, materials, supplies, machinery, equipment, apparatus and other tangible property:

- (a) intended to form part of the Facility or actually forming part of the Facility; or
- (b) intended to be incorporated into or permanently affixed to real property forming part of the Site or acts Incorporated into or permanently affixed to real property forming part of the Site;

“**Plant Capacity Guarantee**” means [REDACTED];

“**Plant Control System**” means a collection of individual control sub-systems, including the Generating Unit, Bypass System, Spillway, Power Intake, station service and Substation control systems, and common communications and SCADA equipment, including RTU, SIP, Plant LAN, interconnected on the Plant LAN;

“**Plant Energy Guarantee**” means [REDACTED];

“**Plant Flow Setpoint**” has the meaning given in Section 7.7-21.4(D)(1) *[Control Requirements]* of Schedule 6 *[Design and Construction Specifications]*;

“**Plant LAN**” means the local area network described in Section 7.8-2(C) *[Design Principles]* of Schedule 6 *[Design and Construction Specifications]*;

“**Post-Disaster Facility**” has the meaning given in Part 4 of the BC Building Code;

“**Potential Incident**” means an incident, which if left unresolved has the potential to become a Security Incident;

“**Power Intake**” has the meaning given in Section 1.1-2.1(B) *[Water Conveyances]* of Schedule 6 *[Design and Construction Specifications]*;

"Power Intake Maintenance Gate" or **"INMG"** means the component described in Section 5.3-6.3 *[Power Intake Maintenance Gate]* of Schedule 6 *[Design and Construction Specifications]*;

"Power Intake Operating Gate" or **"INOG"** means the component described in Section 5.3-6.1 *[Power Intake Operating Gate]* of Schedule 6 *[Design and Construction Specifications]*;

"Power Intake Structure" has the meaning given in Section 3.3-1.1B *[Intent]* of Schedule 6 *[Design and Construction Specifications]*;

"Power System Safety Protection" or **"PSSP"** means the BC Hydro Power System Safety Protection policy, rules and requirements of Section 600 of the SPR;

"Power Tunnel" has the meaning given in Section 1.1-2.1(C) *[Water Conveyances]* of Schedule 6 *[Design and Construction Specifications]*;

"Powerhouse" has the meaning given in Section 1.1-2.6 *[Powerhouse]* of Schedule 6 *[Design and Construction Specifications]*;

"Powerhouse Building" means the structure described in Section 3.1 *[Powerhouse Building]* of Schedule 6 *[Design and Construction Specifications]*;

"Powerhouse Crane" means the component described in Section 5.4 *[Powerhouse Crane]* of Schedule 6 *[Design and Construction Specifications]*;

"Powerhouse Flow" means the volume of water being discharged through the Draft Tubes for each of the Facility Design Operating Conditions;

"Powerhouse Maintenance Shop" means the shop described at Section 3.1-3.4(R) *[Designated Rooms and Areas]* of Schedule 6 *[Design and Construction Specifications]*;

"Powerhouse Yard" means the paved and gravel area immediately surrounding the Powerhouse Building used for staging maintenance activities, parking, storage and access to the Powerhouse;

"Preliminary Change Instruction" has the meaning given in Section 1.3 *[Preliminary Change Instruction]* of Schedule 14 *[Changes]*;

"Preliminary Consideration Procedure" has the meaning given in Section 3 *[Preliminary Consideration]* of Schedule 2 *[Review, Procedure, Consent Procedure and Other Submittals]*;

"Preliminary Estimate" has the meaning given in Section 1.5(a)(2) *[Delivery of Change Report]* of Schedule 14 *[Changes]*;

"Pre-Refinancing Equity IRR" means the Equity IRR calculated immediately prior to the Refinancing but without taking into account the effect of the Refinancing and using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing;

“Preventive Action” means action to eliminate the cause of a potential Nonconformity or other undesirable situation in order to prevent its occurrence;

“Pricing Date” shall have the meaning given in the Common Terms and Intercreditor Agreement;

“Pricing Proposal” has the meaning given in Section 4.21(l) [*Watermain Work and ST Roadwork*];

“Prime Rate” means the annual rate of interest announced by Canadian Imperial Bank of Commerce (or its successor), or any other Canadian chartered bank agreed to by the parties, from time to time as its “prime” rate then in effect for determining interest rates on Canadian dollar commercial loans made by it in Canada;

“Principal Insured Risk” means a risk that would be insured against by the insurance policies referred to in any of Sections 1 [*Construction Related Insurance Requirements*] and 2 [*Operation and Maintenance Related Insurance Requirements*] of Schedule 18 [*Insurance Requirements*], and for greater certainty, for the purposes of this Agreement the insurance policies that relate to or that are relevant to such risks shall be deemed to include the Mandatory Insurance and the Supplemental Insurance, but not the Elective Insurance;

“Probe Hole Inflow” means the inflow, as measured at the collar of the probe hole, that originates from a probe hole drilled in accordance with the requirements of Section 2.1-3.4 D [*Excavation Underground*] of Schedule 6 [*Design and Construction Specifications*], but excluding any volume of water that is introduced into the applicable probe hole for construction purposes;

“Professional Engineer” means a professional engineer registered or licensed to practice in the province of British Columbia;

“Progress Payment” means a payment from BC Hydro to Project Co required under Section 1.1 [*Obligation to make Progress Payments*] of Schedule 13 [*Performance and Payment Mechanism*];

“Project” means the design, construction, financing, testing, commissioning, maintenance and life cycle rehabilitation of the Facility, the decommissioning and disposal of designated portions of the Existing Facility, the remediation and revegetation of the Lands and all other works and ancillary services in accordance with this Agreement;

“Project Agreement” means this Agreement;

“Project Closing Agenda” has the meaning given to it in Section 2 [*Documents to be Delivered by Project Co*] of Schedule 21 [*Completion Documents*];

“Project Co” means InPower BC General Partnership;

“Project Co Contamination” has the meaning given in Section 4.1(b) [*Responsibility for Contamination*] of Schedule 8 [*Environmental Obligations*];

"Project Co DSC Representative" has the meaning given in Section 1.6 of Schedule 28 [*Differing Site Conditions*];

"Project Co Event of Default" has the meaning given in Section 12.1 [*Project Co Events of Default*];

"Project Co Hazardous Substances" has the meaning given in Section 5.3(d) [*Responsibility for Hazardous Substances*] of Schedule 8 [*Environmental Obligations*];

"Project Co Insolvency Event" means any of the following events:

- (a) a receiver, receiver manager or other encumbrance holder taking possession of or being appointed over, or any distress, execution or other process being levied or enforced upon, the whole or any material part of the assets of Project Co; or
- (b) any proceedings with respect to Project Co being commenced under the *Companies' Creditors Arrangement Act* (Canada) and if such proceedings are commenced against Project Co and are disputed by Project Co, such proceedings are not discontinued, withdrawn, dismissed or otherwise remedied within 30 Business Days of such proceedings being instituted; or
- (c) Project Co making an assignment for the benefit of its creditors, being declared bankrupt or committing an act of bankruptcy, becoming insolvent, making a proposal or otherwise taking advantage of provisions for relief under the *Bankruptcy and Insolvency Act* (Canada) or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against Project Co under the *Bankruptcy and Insolvency Act* (Canada) or similar legislation in any jurisdiction and, if proceedings are commenced against Project Co and are disputed by Project Co, such proceedings are not stayed, dismissed or otherwise remedied within 30 Business Days of such proceedings being instituted; or
- (d) Project Co ceasing to carry on business;

"Project Co Material Breach" means:

- (a) a failure by Project Co to pay any amount due and owing to BC Hydro under this Agreement that is in excess of \$[REDACTED] on the due date, which amount is not being disputed in good faith, and Project Co has not remedied such failure to pay within 10 Business Days following notice from BC Hydro;
- (b) subject to Sections 6.14 and 6.18 of the Agreement a failure by Project Co to:
 - (1) maintain the policies of insurance required to be maintained by Project Co under this Agreement;

- (2) maintain such policies on the terms required under this Agreement, including a failure to comply with its obligation under Schedule 18 *[Insurance Requirements]* to name BC Hydro as an insured party; or
 - (3) provide evidence to BC Hydro as required by the terms of this Agreement that such policies have been taken out, maintained, paid for and renewed in accordance with the terms of this Agreement;
- (c) a Persistent Breach;
- (d) except as provided for in (a) through (c) above, a breach, or series of breaches, by Project Co of any agreement, covenant or undertaking made to BC Hydro, other than a breach for which a NPE Points or Default Points could be made, or any representation or warranty made by Project Co to BC Hydro in this Agreement, or any ancillary certificate, statement or notice issued hereto, being incorrect when made, the consequence of which is:
 - (1) a risk to the safety of the public;
 - (2) a risk of material liability of BC Hydro to third Persons;
 - (3) an adverse effect on the performance of the Design, the Construction or the Services and as a result thereof that BC Hydro is reasonably likely to be materially deprived of the benefit of this Agreement; or
 - (4) any material provision of this Agreement being unenforceable against Project Co; or
- (e) a breach by Project Co of Section 5 *[Financing of the Project]*, other than a breach described in Section 12.1(h) *[Project Co Events of Default]*;
- (f) any other fact or circumstance designated as a "Project Co Material Breach" under this Agreement;

"Project Contract" means an agreement between Project Co and one or more Project Contractors for or relating to the provision of all or part of the Project Work, each as amended, supplemented or replaced from time to time in accordance with this Agreement and the Collateral Agreements;

"Project Contractor" means each of the Design-BUILDER, the Service Provider and the Major Equipment Supplier, and any substitute contractor or supplier for any such contractor or supplier engaged directly or indirectly by Project Co as may be permitted by this Agreement, and **"Project Contractors"** means any 2 or more of them;

"Project Contractor Breakage Costs" means the amount payable by Project Co to a Project Contractor under the terms of a Project Contract as a direct result of the termination of such

Project Contract as a consequence of the termination of this Agreement but reduced (without duplication) to the extent that:

- (a) Project Co, the Project Contractors and any Sub-Contractors fail to take all reasonable steps to mitigate such amount;
- (b) such amount relates to any agreements or arrangements entered into by Project Co, the Project Contractors or the Sub-Contractors other than in the ordinary course of business and on commercial arm's length terms
- (c) such amount is a Distribution; and
- (d) such amount includes any loss of overhead or profit of the Project Contractors or their Sub-Contractors relating to any period or costs after the Termination Date (except to the extent they are properly included in any reasonable commercial breakage fee set out in the applicable Project Contract or Sub-Contract);

"Project Co Operating Constraint" means an Operating Constraint caused and imposed by Project Co and that was not considered in the calculation of the Plant Energy Guarantee or Plant Capacity Guarantee. Planned Derates, Forced Derates, Planned Outages and Forced Outages are excluded from the definition of Project Co Operating Constraint;

"Project Co Operating Constraint Deduction" means a deduction for a Project Co Operating Constraint;

"Project Co Person" means:

- (a) any director, officer, employee or agent of Project Co in each case acting as such;
- (b) any Project Contractor, any Sub-Contractor, any Contracting Affiliate and any representative, advisor (including any legal and financial advisor) or contractor of Project Co, in any such Person's capacity as a provider of services, work or materials, directly or indirectly to Project Co in connection with the Project; or
- (c) any invitee of Project Co or any of the Project Co Persons referred to in (a) or (b) above who enters upon the Site;

"Project Co's Environmental Obligations" has the meaning given in Section 1.2(a) [*Project Co's Environmental Obligations*] of Schedule 8 [*Environmental Obligations*];

"Project Co's Operating CGL Policy" has the meaning given in Section 2.1 [*Project Co Comprehensive General Liability Policy*] of Schedule 18 [*Insurance Requirements*];

“Project Co’s Representative” means [REDACTED] or such substitute as may be appointed by Project Co pursuant to Section 2.2 *[Change of Project Co’s Representative]* of Schedule 3 *[Roles and Representatives]*;

“Project Co’s Rights” has the meaning given in Section 8.13 *[Equivalent Project Relief]*;

“Project Documents” means:

- (a) this Agreement;
- (b) the constating documents for Project Co;
- (c) the Senior Financing Agreements;
- (d) the Lenders’ Remedies Agreement;

and all other documents executed and delivered by or on behalf of the parties pursuant to Schedule 21 *[Completion Documents]*;

“Project Environmental Commitments” has the meaning given in Section 1.2(c)(3) *[Project Co’s Environmental Obligations]* of Schedule 8 *[Environmental Obligations]*;

“Project Intellectual Property” means the Intellectual Property created, brought into existence, acquired, licensed or otherwise used by Project Co, any Project Co Person, any Contracting Affiliate or any other third party, directly or indirectly, in connection with or for the production or performance of the Project Work or for the performance of Project Co’s obligations under this Agreement to the extent encompassed in the deliverables, including Intellectual Property incorporated, embedded or otherwise included in or with any Project Work, the Design IP, the Facility, the IT Support Systems, or any other item provided as part of Project Work, except that Project Intellectual Property does not include: (i) the Financial Model; (ii) any BC Hydro IP; or (iii) any Third Party Technology, or (iv) any internal documentation or information not required to be delivered hereunder, unless such internal documentation or information is essential to a proper understanding and use of the applicable Intellectual Property and related deliverable;

“Project PI” has the meaning given in Section 1(a)(i) *[Purpose]* of Schedule 25 *[Privacy Protection]*;

“Project Public Safety Management Plans” means the Construction Period Public Safety Management Plan and the Services Period Public Safety Management Plan;

“Project Requirements” means all standards, specifications, procedures, design criteria, design guidelines and other requirements applicable to the Project Work, including the Design, the Construction, the Services and all other design activities, all as set out in this Agreement as at the Effective Date and as amended, supplemented or replaced from time to time after the Effective Date in accordance with this Agreement, and includes the Design and Construction

Requirements and the requirements of Schedule 7 [*Services*] and Schedule 8 [*Environmental Obligations*];

"Project Risk Premium" means

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED];

"Project Schedule" means the schedule to be submitted by Project Co pursuant to, and as subsequently amended from time to time in accordance with Section 2 [*Project Schedule*] of Schedule 4 [*Project Schedule*];

"Project Site Agreements" means those agreements and instruments setting out terms and conditions for the Land Rights described in the column titled "Land Rights" in Appendix 10A [*Specified Project Co Lands*] to Schedule 10 [*Lands*] and any amendments thereto, but does not include any Compulsory Acquisition Orders;

"Project Site Encumbrances" means:

- (a) any Encumbrances described in Appendix 10B [Certain Project Site Encumbrances] to Schedule 10 [*Lands*];
- (b) any Encumbrances disclosed in the Disclosed Data, including: (i) the proposed permission to enter in favour of The Rotary Club of Campbell River, substantially in the form disclosed in the Disclosed Data as at January 15, 2014; and (ii) the proposed statutory right of way in favour of the City concerning the City's existing water pipelines under District Lot 1725 Sayward District, substantially in the form disclosed in the Disclosed Data as at January 15, 2014;
- (c) any Encumbrances registered in the Land Title Office or Integrated Land and Resource Registry against title to any Lands or Land Rights;
- (d) any permit issued in replacement for a statutory right of way registered in the Land Title Office against title to any Lands that is cancelled on cancellation of a certificate of title in the Land Title Office or Integrated Land and Resource Registry for any parcel of Lands; and
- (e) any other Encumbrances which do not adversely affect, financially or otherwise, the Land License and the ability of Project Co to perform the Project Work as contemplated by this Agreement;

"Project Work" means all activities of or required of Project Co, and/or Project Co Persons, in connection with the performance of any obligations of Project Co under this Agreement, and the conduct of all work and operations of Project Co, and/or Project Co Persons or in relation to the Project, the Facility including, without limitation, the Design, the Construction, the Services, the Commissioning Work, Decommissioning Work and Reinstatement Works;

"Proper Application" has the meaning given in Section 4.19(g) [*Regulatory Approvals and Permits*];

"Proponents" shall mean the pre-qualified parties to whom RFP was sent;

"Proposal" means:

- (a) the technical submittal dated April 26, 2013, as supplemented on August 30, 2013; and
- (b) the financial submittal dated September 6, 2013 as supplemented on October 28, 2013,

each submitted by Project Co to BC Hydro in response to the RFP, together with all amendments and supplements to such technical proposal and financial proposal;

"Proposal Extracts" means the Drawings Extracts, Supplemental Financial Submissions Extracts, Financial Submissions Extracts, Supplemental Technical Submissions Extracts and Technical Submissions Extracts attached to this Agreement in electronic format in Appendix 1A [*Electronic Format of Proposal Extracts*];

"Proposed Plan" has the meaning given in Section 6.1.2(c)(ii) [*Specific Requirements*] of Schedule 9 [*Quality Management*];

"Protection, Alarm and Monitoring" or **"PAM"** means the panel containing 2 PLCs, an Ethernet switch, and a touchscreen HMI, and which provides functionality for redundant non-electrical Generating Unit protection, digital alarm annunciation, digital user interface to the Generating Unit including display of analog and discrete quantities, GPS time synchronized sequence of events recording, communication of Generating Unit quantities to OI and the SIP, and which accepts Generating Unit instrumentation as hardwired inputs, and digitizes these quantities for use by itself and for communication to other devices;

"Protective Devices" includes the penstock earthquake protection scheme, the penstock rupture detection scheme, the high forebay protection, and the Dolphin pool ADAS system, each as described in LOO 3G-JHT-06;

"Protest Action" means any civil disobedience, protest action, riot, civil commotion, blockade or embargo, including any action taken or threatened to be taken, by any Person or Persons protesting or demonstrating against:

- (a) the carrying out of any part of the Project (including the construction of the Facility); or
- (b) the construction or operation of utility owned and operated hydroelectric generation facilities in general, occurring after the Effective Date,

but excluding any lawful or unlawful strike, lockout, go-slow or labour or other industrial relations dispute or job action;

“Prototype” means the full size Turbine components homologous to the Turbine Model, for installation and operation in the Generating Unit and is comprised of the turbine runner, spiral case, wicket gates, stay vanes;

“Province” means the Her Majesty the Queen in Right of the Province of British Columbia;

“PST” means the retail sales tax payable on certain property or services acquired or imported into British Columbia levied under the *Provincial Sales Tax Act* (British Columbia), or if applicable the *Social Service Tax Act* (British Columbia);

“PST Baseline Form” means the tables provided as 'Form A-9 Construction' sheet and 'Form A-9 Services' sheet in the Financial Model;

“PST Statement” has the meaning set out in Section 14.6(a) [*Collection and Remittance of Taxes*] of Schedule 13 [*Performance and Payment Mechanism*];

“Public Safety Incident” means: (i) an interaction between a member of the public and a Hazard associated with the Project in a Danger Zone or Warning Zone; or (ii) the occurrence of a Public Safety Near-Miss;

“Public Safety Near-Miss” means: (i) the presence of a member of the public in a Danger Zone; or (ii) a member of the public escaping injury from a Hazard associated with the Project in a Warning Zone, in each case whether or not an injury to the member of the public occurs;

“Public Safety Reference Documents” means:

- (a) the BC Hydro Public Safety Management Plan;
- (b) the BC Hydro Occupational Safety and Health Standards 701;
- (c) the BC Hydro Signage Policy and Standards, setting out BC Hydro policy regarding the form, content and placement requirements for signage at the Site and in relation to the Project;
- (d) the BC Hydro Public Safety Fencing policy and standards, setting out BC Hydro policy and standards regarding the use of fencing at BC Hydro work sites for the purpose of restricting, controlling and/or otherwise managing the access to and use of BC Hydro lands;
- (e) the provisions of the EA setting out BC Hydro's requirements or commitments in respect of public access and use of the Site and adjacent lands; and

- (f) the Canadian Dam Association Guidelines for Booms and Buoys, setting out the requirements for the design and placement of booms and buoys,

each of which is included in the Disclosed Data;

“Public Safety Root Cause Report” has the meaning given in Section 5.1 [*Stop Work Orders*] of Schedule 23 [*Public Safety and Public Use*];

“Public Sector Employees” means those unionized Persons employed by BC Hydro and engaged at the Facility whose labour relations are governed by the *Public Sector Employees Act* (British Columbia);

“Public Use Trails” means the Canyon View Trail, Station View Trail, Upper Station View Trail, Millennium Trail, Woodstave Road Trail, and any temporary alternative routes to any of the foregoing;

“Public Utility” has the meaning given in the *Utilities Commission Act* (British Columbia);

“Qualified” has the meaning given in Part 1 of the *Occupational Health and Safety Regulation* (British Columbia);

“Qualified Governmental Entity” means any of the following:

- (a) any wholly owned or controlled Affiliate of BC Hydro, where the duties, obligations and liabilities of that Affiliate are guaranteed by BC Hydro;
- (b) the Province or any ministry or department of the Province; and
- (c) any person having the legal capacity, power and authority to become a party to and to perform BC Hydro’s obligations under this Agreement and the other Project Documents, the duties, obligations and liabilities of which are guaranteed by the Province or any ministry or department of the Province;

“Qualified Insurers” means reputable insurers of good standing in Canada, the United States, the United Kingdom, Europe or Australia having a credit rating of (1) A- or better with AM BEST or (2) the equivalent thereof by any other recognized insurance rating agency;

“Qualifying Bank Transaction” means:

- (a) the disposition by a Senior Creditor to a Qualifying Institution of any of its rights or interests in the Senior Financing Agreements;
- (b) the grant by a Senior Creditor to a Qualifying Institution of any rights of participation in respect of the Senior Financing Agreements; or

- (c) the disposition or grant by a Senior Creditor to a Qualifying Institution of any other form of benefit or interest in either the Senior Financing Agreements or the revenues or assets of Project Co, whether by way of security or otherwise;

“Qualifying Institution” means any of the following, provided it is not a Restricted Person, and provided none of its Affiliates is a Restricted Person for any reason other than by reason of section (d) of the definition of Restricted Person:

- (a) a bank listed in Schedule I, II or III of the *Bank Act* (Canada);
- (b) a Canadian trust company, insurance company, investment company, pension fund or other institution which manages at least \$ [REDACTED] in securities, including entities wholly owned by any of the foregoing;
- (c) a bank regulated by the Board of Governors of the Federal Reserve System of the United States, a U.S. bank, saving and loan institution, insurance company, investment company, employee benefit plan or other institution that has or manages at least \$ [REDACTED] in assets and would be a “qualified institutional buyer” under U.S. securities legislation, including entities wholly owned by any of the foregoing;
- (d) an institution which is recognised or permitted under the law of any member state of the European Economic Area (“**EEA**”) to carry on the business of a credit institution pursuant to Council Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other EEA member state and which has or manages at least \$ [REDACTED] in assets, including the assets of entities wholly owned by any such institution;
- (e) an institution which is recognized or permitted under the law of any member state of the Organization for Economic Cooperation and Development (in this definition, the “**OECD**”) to carry on within the OECD member states the business of a credit institution, insurance company, investment company or pension fund and which has or manages at least \$ [REDACTED] in assets, including entities wholly owned by any such institution; or
- (f) any other institution consented to in writing by BC Hydro as a “Qualifying Institution”.

“Qualifying Refinancing” means any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing;

“Quality Audit” means a systematic, independent and documented process for obtaining audit evidence and evaluating it objectively to determine the extent to which audit criteria are fulfilled;

“Quality Audit Plans” means Project Co’s audit plans defining the Internal Quality Audits and External Quality Audits that Project Co shall perform or cause to be performed on its own processes and the processes of its Project Contractors and Sub-Contractors;

“Quality Director” means the Key Individual identified by such title in Section 2.3 [*Key Individuals*] of Schedule 3 [*Roles and Representatives*], or such replacement as may be designated by Project Co pursuant to Section 2.3 [*Key Individuals*] of Schedule 3 [*Roles and Representatives*];

“Quality Documentation” means all documentation required in accordance with Schedule 9 [*Quality Management*] which together constitutes and describes the Quality Management System, including the Quality Manual, Quality Management Plans and Quality Audit Plans;

“Quality Management Plan” or **“QMP”** means each detailed quality management plan of Project Co detailing which procedures and associated resources shall be applied by whom and when for each aspect of the Project Work required in accordance with this Agreement, including the Design Quality Management Plan, the Supply Quality Management Plan, the Construction Quality Management Plan, the Services Quality Management Plan and environmental and safety management plans;

“Quality Management System” means Project Co’s management system that establishes the organizational structure, procedures, processes, systems, management plans and resources for determining and implementing the Quality Policy in the performance of the Project Work in accordance with this Agreement;

“Quality Manager” means the Key Individual identified by such title in Section 2.3 [*Key Individuals*] of Schedule 3 [*Roles and Representatives*], or such replacement as may be designated by Project Co pursuant to Section 2.3 [*Key Individuals*] of Schedule 3 [*Roles and Representatives*];

“Quality Manual” means Project Co’s quality manual meeting the requirements set out in Appendix 9A [*Quality Manual*] to Schedule 9 [*Quality Management*] and:

- (a) outlining the Quality Management System for all aspects of the Project Work, and for the complete organization (including Project Co and its Project Contractors and Sub-Contractors) involved in performing the Project Work;
- (b) establishing Quality Policy and Quality Objectives; and
- (c) outlining the means by which Project Co shall establish, implement, control and continually improve processes to achieve the Quality Policy and the Quality Objectives;

“Quality Objectives” means the objectives related to quality that are measurable and consistent with the Quality Policy and which are to be formally expressed and recorded in the Quality Manual in accordance with Schedule 9 [*Quality Management*], provided that, alternatively, each

Quality Management Plan may have its own Quality Objectives which are directly related to applicable Quality Policy expressed or recorded in the Quality Manual;

"Quality Policy" means the overall intentions and direction of Project Co related to quality applicable to the overall organization, (including Project Co and its Project Contractors and Sub-Contractors), involved in performing the Project Work which are to be formally expressed and recorded in the Quality Manual and as further defined in ISO 9000, in accordance with Schedule 9 *[Quality Management]*, provided that, alternatively, each Quality Management Plan may have its own Quality Policies which are directly related to applicable Quality Objectives expressed or recorded in the Quality Manual;

"Quality Records" has the meaning given in Section 5.8 *[Quality Records]* of Schedule 9 *[Quality Management]*;

"Ramp-Up Factor" has the meaning given in Section 6.1 *[Calculation of Availability Payments]* of Schedule 13 *[Performance and Payment Mechanisms]*;

"Range of NSHEs" means the range of NSHEs described in Section 4.1-3.4(A) *[Turbine Model Hydraulic Efficiency Tests]* of Schedule 6 *[Design and Construction Specifications]*;

"Rated Flow" means the maximum Turbine flow at Rated Turbine Power Output, which is 41.3 m³/s;

"Rated Operating NSHE" means the average of the Minimum Normal Operating NSHE and the Maximum Normal Operating NSHE;

"Rated Speed" means [REDACTED];

"Rated Turbine Power Output" means the maximum Turbine power output at Rated Operating NSHE;

"Re-Bidding Costs" means the reasonable costs incurred by BC Hydro in connection with the Re-Bidding Process or the calculation of the Estimated Market Value;

"Re-Bidding Process" means the process by which BC Hydro requests bids from parties interested in entering into a New Project Agreement, evaluates the responses from such of those parties that submit Compliant Bids and enters into a New Project Agreement with a New Project Co in accordance with Section 2 *[Termination for Project Co Event of Default: Re-Bidding Process]* of Schedule 16 *[Compensation on Termination]*;

"Re-Bidding Process Monitor" means a third party appointed by Project Co pursuant to Section 2.10 *[Appointment of Re-Bidding Process Monitor]* of Schedule 16 *[Compensation on Termination]*;

"Receiving Party" has the meaning given in Section 9.3 *[General Obligation to Pursue Third Person Recovery]*;

"Reception Zone" means the area described in Section 7.9-1.1(F) *[Intent]* of Schedule 6 *[Design and Construction Specifications]*;

"Records Management Protocol" has the meaning given in Section 2(a) *[Records Management Protocol]* of Schedule 20 *[Records and Reports]*;

"Rectification" means, following the receipt of an NFRS Report, implementing and taking all steps and actions set out in a Rectification Plan to rectify or correct the Facility Defects or deficiencies identified in the corresponding NFRS Report according to applicable Performance Requirements;

"Rectification Period" means the period of time for the completion of a Rectification pursuant to Section 4 *[Performance Indicators]* of Appendix 7B *[Facility Services]*;

"Rectification Plan" means the plan described in Section 5.8 *[Rectification Plans]* of Schedule 7 *[Services]* in response to an NFRS;

"Rectification Plan Outline" has the meaning given to this term in Section 4.6(b)(vii) *[Asset Management Plan Components]* of Schedule 7 *[Services]*;

"Red legged frog breeding habitat" has the meaning given in Section 10.2 *[REA 1 Red Legged Frog Breeding Habitat]* of Schedule 8 *[Environmental Obligations]*.

"Referee" has the meaning given in Section 1.4 *[Fast Track Referee Process]* of Schedule 19 *[Dispute Resolution Procedure]*;

"Referee Agreement" has the meaning given in Section 1.4 *[Fast Track Referee Process]* of Schedule 19 *[Dispute Resolution Procedure]*;

"Referee Notice" has the meaning given in Section 1.4 *[Fast Track Referee Process]* of Schedule 19 *[Dispute Resolution Procedure]*;

"Reference Concept" means the design, based on the Project Requirements that has been prepared by BC Hydro and included in the Disclosed Data as background information only;

"Refinancing" means:

- (a) Project Co incurring, creating, assuming or permitting to exist any Debt other than Permitted Debt;
- (b) any transaction in which BC Hydro, with the consent or at the request of agreement of Project Co, grants rights to any Person under an agreement similar to the Lenders' Remedies Agreement or any other agreement that provides for step-in rights or similar rights to such Person, other than the Lenders' Remedies Agreement entered into on the Effective Date;

- (c) any amendment, variation, novation, supplement or replacement of any Senior Debt or Senior Financing Agreement;
- (d) the exercise of any right, or the grant of any waiver or consent, under any Senior Financing Agreement;
- (e) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Senior Financing Agreements or Senior Debt or the creation or granting of any other form of benefit or interest in the Senior Financing Agreements, the Senior Debt or the contracts, revenues or assets of Project Co whether by way of security or otherwise; or
- (f) any other arrangement put in place by Project Co or another Person which has an effect which is similar to any of (a) through (e) above or which has the effect of limiting Project Co's ability to carry out any of the actions referred to in (a) through (e) above,

but excluding any financing pursuant to Section 10.2 [*Financing of Lump Sum Payment Amounts*];

"Refinancing Gain" means an amount equal to the greater of zero and $[(A - B) - C]$, where:

A = the Net Present Value of Distributions (calculated on an after tax basis at the level of Project Co in a manner consistent with the Financial Model) immediately prior to the Refinancing (taking into account all effects (including the costs expenses of BC Hydro pursuant to Section 5.8 [*BC Hydro's Expenses*]) of the Refinancing and using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made over the remaining term of this Agreement following the Refinancing;

B = the Net Present Value Distributions (calculated on an after tax basis at the level of Project Co in a manner consistent with the Financial Model) projected immediately prior to the Refinancing (but taking into account only those effects of the Refinancing that were fully reflected in the Financial Model as of the Effective Date and no other effects (including the costs and expenses of BC Hydro pursuant to Section 5.8 [*BC Hydro's Expenses*]) of the Refinancing, and using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made over the remaining term of this Agreement following the Refinancing; and

C = any adjustment required to raise the Pre-Refinancing Equity IRR to the Threshold Equity IRR calculated as a single payment to be paid as a Distribution on the date of the Refinancing;

"Reinstatement Plan" has the meaning given in Section 6.4 [*Project Co's Obligations –Material Damage or Destruction*];

“Reinstatement Works” has the meaning given in Section 6.4 [*Project Co's Obligations –Material Damage or Destruction*];

“Release” includes any spill, leak, deposit, pumping, pouring, emission, emptying, discharging, injecting, escape, leaching, migration, disposal, dumping or other form of release of a Hazardous Substance, or permitting of any of the foregoing;

“Relevant Change in Law” means a Change in Law (other than a Discriminatory Change in Tax Law) arising after the Financial Submission Date:

- (a) which specifically applies to:
 - (1) the Project or a hydro-electric generation project procured and contracted on a public-private partnership basis that is similar to the basis on which the Project is procured and contracted under this Agreement;
 - (2) Project Co, its Partners, Project Contractors or Persons that have contracted on similar hydro-electricity generation projects procured and contracted with BC Hydro or other statutory or public body on a public-private partnership basis that is similar to the basis on which the Project is contracted under this Agreement; or
 - (3) Persons holding shares or other evidences of ownership in Persons whose principal business is contracting on other similar hydro-electricity generation projects procured and contracted on a public-private partnership basis that is similar to the basis on which the Project is procured and contracted under this Agreement and not other Persons; or
- (b) which principally affects or principally relates to the provision or operation of hydro-electric generation facilities, or
- (c) which affects the Hydro and Power Authority Act,

and compliance with which would require a variation in the design, quality, scope, methodology or cost of the Design, the Construction or the Services;

“Relevant Non-Availability Event” means a Non-Availability Event, other than an Excluded Event;

“Relevant Service Disruption Event” means a Service Disruption Event, other than an Excluded Event;

“Relevant Works Change in Law” means a Change in Law, other than a Relevant Change in Law or a Discriminatory Change in Tax Law, which causes Project Co to incur Capital Expenditures to perform works affecting either the Project Work or the Facility (being any work of

alteration, addition, demolition or extension or variation in the quality or function of the Facility) which is not work which Project Co would otherwise be required to perform under this Agreement;

“Reliability Centered Maintenance Principles” means the reliability principles described in BC Hydro’s Strategic Asset Management Manual;

“Relief Event” means any of the following events or circumstances if and to the extent it interferes adversely with, or causes a failure of, the carrying out of the Design, the Construction or the Services or causes an Non-Availability Event:

- (a) fire, explosion, lightning, storm (including snow storm), flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation, earthquake or any act of God similar to the foregoing, in each case to the extent it does not constitute a Force Majeure Event;
- (b) during the Construction Period, failure by any utility company, local authority or other like body to perform works or provide services required to be provided by them in a reasonably timely manner or any unreasonable interference with the Construction by any such body as a result of maintenance and other work;
- (c) lawful or unlawful strike, lockout, work-to-rule, job action or other labour dispute generally affecting the construction, building maintenance or facilities management industry or a significant sector thereof;
- (d) any delay of more than 3 days in respect of any critical path matter in the Project Schedule caused by compliance by Project Co with an order or direction by police, fire officials, medical health officer or any comparable public authority having the legal authority to make such order or give such direction;
- (e) a Change in Law during the Construction Period;
- (f) unreasonable delay in the payment of any Insurance Receivables;
- (g) accidental loss or damage to the Facility or any roads servicing the Site;
- (h) blockade or embargo to the extent it does not constitute a Force Majeure Event;
- (i) failure or shortage of fuel or transport;
- (j) Tunnel Work Eligible Delays that exceed the Available Tunnel Float Balance are determined to have been incurred;
- (k) an event described as a Relief Event in Section 4.20 [*Change in Law, Permits, Legal Obligations and BC Hydro Policies*]; and
- (l) any other event which is stated in this Agreement to constitute a Relief Event

except to the extent that any of such events arise or are contributed to, directly or indirectly, as a result of any wilful misconduct, negligent act or omission or non-compliance with the terms of this Agreement by Project Co or any Project Co Person;

"Remaining Useful Life" means the criteria in Appendix 7E [*Condition Assessment Evaluation*] of Schedule 7 [*Services*];

"Remittance Payment" means a payment from Project Co to BC Hydro required under section 2.1 [*Obligation to make Remittance Payments*] of Schedule 13 [*Performance and Payment Mechanisms*];

"Remote Control Centre" means a facility operated by BC Hydro that remotely controls electrical transmission and generation dispatch for more than one BC Hydro transmission and generation facility;

"Remote Terminal Unit" or **"JHN Remote Terminal Unit"** or **"RTU"** means the GE D20 remote terminal unit supplied by BC Hydro;

"Renovation" means an alteration of the Facility, or an addition, re-construction or demolition of a portion of the Facility, undertaken at any time after the Service Commencement Date, but excluding the Decommissioning Work;

"Repeat Nonconformity" has the meaning given in Section 12.4(c)(2) [*Assignment of Default Points*] of Schedule 13 [*Performance and Payment Mechanisms*];

"Replacement Work" has the meaning given in Section 4.15(e) [*Intellectual Property and IP Rights*];

"Representative" means, as the case may be, the BC Hydro Representative or the Project Co Representative;

"Request for Services" means a request for Services by means of a NFRS Report;

"Requirements of Interested Parties" means the lawful requirements of Interested Parties, whether established pursuant to Laws, the provisions of this Agreement or otherwise, as disclosed or described in the Disclosed Data or which, as of the Financial Submission Date, Project Co otherwise had knowledge of, could have discovered through the exercise of reasonable due diligence, or could have reasonably anticipated from an analysis of all relevant information available to Project Co (including the Disclosed Data) as at the Financial Submission Date, having regard to the opportunity afforded Project Co to conduct such due diligence and analysis before the Financial Submission Date;

"Reservoir" means the John Hart Reservoir;

"Reservoir Drawdown Level" has the meaning given in Section 1.1A-4 [*Water Levels and Flows*] of Appendix 1.1-A [*Design Parameters*] to Schedule 6 [*Design and Construction Specifications*];

“Reservoir Level” means the elevation of the water in the Reservoir under each of the Facility Design Operating Conditions;

“Reservoir Operating Level” has the meaning given in Section 1.1A-4 *[Water Levels and Flows]* of Appendix 1.1-A *[Design Parameters]* to Schedule 6 *[Design and Construction Specifications]*;

“Residual Hazard” means a Hazard that remains after implementation of Treatment;

“Residual Risk” means the Risk that remains after implementation of Treatment;

“Respond” and **“Response”** means with respect to any Services, the appropriate personnel arriving at the portion of the Site where the required Services are to be performed, including making the location and all affected locations safe, in accordance with Good Utility Practice, and initiating the consideration of and where necessary the preparation of a plan for a Rectification of the Facility Defects, or deficiencies identified in the NFRS Report;

“Responding Party” has the meaning given in Section 1.6(b)(ii) *[Arbitration]* of Schedule 19 *[Dispute Resolution Procedure]*;

“Response Time” means the period of time following receipt of an NFRS Report by Project Co during which Project Co must Respond, and as indicated as a “Response Time” for the relevant Services in the Table of Performance Indicators in Appendix 7B *[Facility Services]* to Schedule 7 *[Services]*;

“Restricted Environmental Areas” means the areas described in Section 10.1 *[Restricted Environmental Areas]* of Schedule 8 *[Environmental Obligations]*;

“Restricted Person” means any person who (or any member of a group of persons acting together, any one of which):

- (a) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada for reasons other than its trade or economic policies;
- (b) is or has been involved in the illegal manufacture, sale, distribution or promotion of narcotic substances or arms, or is or has been involved in the promotion, support or carrying out of terrorism;
- (c) in the case of an individual, he or she (or in the case of a legal entity, any of the members of the board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence (other than a suspended sentence) for any criminal offence (other than minor traffic offences or misdemeanours) less than 5 years prior to the date at which the determination of whether the person falls within this definition is being made;

- (d) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;
- (e) is subject to any claim of BC Hydro or the Province of British Columbia in any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the determination of whether the person falls within this definition is being made and which (in respect of any such pending claim, if it were to be successful) would, in BC Hydro's view, in either case, be reasonably likely to materially affect the ability of Project Co to perform its obligations under this Agreement; and
- (f) has been convicted of an offence under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), or has been convicted of the commission of a money laundering offence or a terrorist activity financing offence under the *Criminal Code* (Canada);

"Retention Amount" means the amount to be retained pursuant to Section 10.2 [*Retention Amount*] of Schedule 13 [*Performance and Payment Mechanisms*];

"Return to Service Certificate" means the certificate required in Schedule 7 [*Services*];

"Review Procedure" has the meaning given in Section 4 [*Review Procedure*] of Schedule 2 [*Review Procedure, Consent Procedure and Other Submittals*];

"RFP" means the request for proposals for the John Hart Generation Station Replacement Project RFP # EC12-1164 released on June 27, 2012 as amended from time to time;

"Risk" means the likelihood of, and severity of consequences resulting from, the occurrence of a particular Undesirable Event;

"River Warning System" or "RWS" means the system described in Section 7.7-5.5 [*River Warning System*] of Schedule 6 [*Design and Construction Specifications*];

"Routine" has the meaning given in Table 1 to Appendix 7B [*Facility Services*] to Schedule 7 [*Services*];

"Safe Design Plan" has the meaning given in Section 4.4.2 [*Safe Design Plan*] of Schedule 5 [*Design and Construction Protocols*];

"Safe Design Policy" has the meaning given in Section 4.4.1 [*Acknowledgement*] of Schedule 5 [*Design and Construction Protocols*];

"Safe Design Report" has the meaning given in Section 4.4.5 [*Safe Design Report*] of Schedule 5 [*Design and Construction Protocols*];

“Safety Manager” means the Key Individual identified by such title in Section 2.3 [*Key Individuals*] of Schedule 3 [*Roles and Representatives*], or such replacement as may be designated by Project Co pursuant to Section 2.3 [*Key Individuals*] of Schedule 3 [*Roles and Representatives*];

“Safety Management Plan” or **“SMP”** means a safety management plan developed by Project Co to address identified health and safety requirements associated with a specified component of the Project Work;

“Safety Minimum Requirements” or **“SMR”** – means the minimum standards of health and safety for a specified component of the Project Work, as determined by the applicable safety policies, standards, procedures and safe work practice documents issued by BC Hydro from time to time;

“Safety Practice Regulations” or **“SPR”** means the BC Hydro Safety Practice Regulations document included in the Disclosed Data;

“Safety Regulations” means:

- (a) *Workers Compensation Act* (British Columbia);
- (b) *Occupational Health and Safety Regulation* (British Columbia);
- (c) Canadian Labour Code;
- (d) *Transportation of Dangerous Goods Act* (Canada);
- (e) *Hazardous Products Act* (Canada);
- (f) *Hazardous Materials Information Review Act* (Canada);
- (g) *Controlled Products Regulation* (Canada);
- (h) *Canada Occupational Health and Safety Regulations* (Canada);
- (i) *Safe Working Practices Regulations* (Canada);
- (j) Workplace Hazardous Materials Information System (WHMIS),
- (k) *Safety Standards Act* (British Columbia)
- (l) National Fire Code
- (m) Canadian Electrical Safety Association Standard
- (n) ANSI/AIHA Z10-2005 (American National Standard for Occupational Health and Safety Management Systems);

- (o) CAN/CSA Z1000-06 (Occupational Health and Safety Management);
- (p) CAN/CSA ISO 19011:03;
- (q) OHSAS 18001-1:2007; and
- (r) BC Hydro's: (i) Local Operating Orders ("LOOs"); (ii) Safety Practice Regulations ("SPRs"); (iii) Occupational Safety & Health Standards ("OSH Standards"); (iv) System Operating Orders ("SOOs"); (v) Power System Safety Protection ("PSSP"); and (vi) Worker Protection Practices ("WPP"), and lockout procedures as may be applicable to the Site;

"Safe Work Procedures" or **"SWP"** means a set of written instructions identifying the health and safety hazards associated with the performance of a specific job or task forming part of the Project Work;

"Schedule" means a schedule to this Agreement;

"SCR" means the report dated September 28, 2012, entitled "Subsurface Condition Report – Power Tunnel".

"SDI" means an confined space that is protected by a single isolating device;

"SDI Certificates" means the certificates submitted by Project Co pursuant to Section 4.5 *[Confined Spaces]* of Schedule 5 *[Design and Construction Protocols]* in the form provided in Appendix 5B *[Confined Space and SDI Certificates]*;

"Security Command Centre" means the facility operated by BC Hydro that remotely monitors the security and access control for more than one BC Hydro transmission and generation facility;

"Security Documents" means any security agreements that may be granted in favour of the Collateral Trustee from time to time pursuant to or in connection with the Common Terms and Intercreditor Agreement or any other Senior Financing Agreement;

"Security Incident" means a breach of applicable security protocols, as set out in the Construction Period Security Program or the Total Completion Security Program, as applicable;

"Security Sensitive Work" means:

- (a) any part of the Project Work that requires or permits a Project Co Person to have:
 - (i) unrestricted access to a material part of the design of the Plant LAN;
 - (ii) unrestricted access to a material part of the protection and control or telecommunications designs for the Facility;

- (iii) unrestricted access to a material part of the BC Hydro Transmission System design; or
 - (iv) cyber access to:
 - (A) the Plant LAN;
 - (B) protection and control or telecommunication system controls; or
 - (C) the BC Hydro Transmission System;
- (b) any part of the Services that requires or permits a Project Co Person to have unrestricted access to:
 - (i) the Generation Systems;
 - (ii) the Powerhouse; or
 - (iii) the Power Intake; or
- (c) any part of the Project Work that BC Hydro designates as “Security Sensitive Work” by giving not less than 90 Business Days advance written notice;

“Security Zone” means the area described in Section 7.9-1.1(F) *[Intent]* of Schedule 6 *[Design and Construction Specifications]*;

“Senior Bonds” means, collectively, the senior bonds certified and delivered on the Settlement Date (as defined in the Common Terms and Intercreditor Agreement) and any other bonds certified and delivered by the Indenture Trustee under and pursuant to the Bond Indenture (including any supplemental indenture thereto) from time to time, and “Senior Bond” means any one of them;

“Senior Creditors” collectively, the Lenders and the Bondholders and for greater certainty, being the parties to whom Senior Debt is owed;

“Senior Debt” means:

- (a) all amounts outstanding, including interest and default interest accrued, from Project Co to the Senior Creditors under the Senior Financing Agreements, provided that default interest will not include any increased interest, fees or penalty amounts payable by Project Co for any reason other than a failure by Project Co to pay any amount when due;
- (b) cost of early termination of interest rate or currency hedging arrangements and other breakage costs or make-whole amounts payable by Project Co to the Senior Creditors as a result of a prepayment under the Senior Financing Agreements; and

- (c) all other fees, costs and expenses for which Project Co is responsible under the Senior Financing Agreements;

“Senior Debt Service Amount” means, for any period, the principal and interest payable by Project Co to the Senior Creditors in the normal course, which, for greater certainty, does not include breach or default circumstances, under the Senior Financing Agreements;

“Senior Financing Agreements” means:

- (a) the Common Terms and Intercreditor Agreement;
- (b) the Credit Agreement;
- (c) the Bond Indenture;
- (d) the Senior Bonds;
- (e) the Bond Underwriting Agreement
- (f) each of the Security Documents;
- (g) the Lenders’ Remedies Agreement;
- (h) the Design-Builder direct agreement dated on or about the date hereof between Project Co, the Collateral Trustee and the Design-Builder (entitled “Lenders’ DB Direct Agreement”);
- (i) the Service Provider direct agreement dated on or about the date hereof between Project Co, the Collateral Trustee and the Service Provider (entitled “Lenders’ SP Direct Agreement”);
- (j) the Senior Creditors’ Major Equipment Supplier direct agreement dated on or about the date hereof between Project Co, the Design-Builder, the Collateral Trustee and IMPSA with respect to the supply of Turbines, Generators and Turbine Inlet Valves;
- (k) the Blocked Accounts Agreements;
- (l) the Insurance Trust Agreement; and
- (m) any other document or agreement which the Collateral Trustee, BC Hydro and Project Co may from time to time agree (in writing) is a Senior Financing Agreement,

in each case, as amended from time to time in accordance with the terms of this Agreement;

"Sequence of Events Recorder" or **"SER"** means the sequence of events recorder described in Section 7.7-5.4 [*Facility Sequence of Events Recorder (SER)*] of Schedule 6 [*Design and Construction Specifications*];

"Service Bay" means the interior area of the Powerhouse set aside to locate, store and/or work on components free of any other equipment or machinery;

"Service Commencement" means that all of the conditions precedent to Service Commencement specified in Section 11.4.2 [*Conditions Precedent to Service Commencement*] of Schedule 5 [*Design and Construction Protocols*] have been achieved, as certified by the Independent Certifier;

"Service Commencement Date" means the later of:

- (a) the date on which all of the conditions precedent to Service Commencement that have not been waived by BC Hydro have been satisfied as certified by the Independent Certifier in accordance with Section 11.4.6 [*Certification of Service Commencement*] of Schedule 5 [*Design and Construction Protocols*]; and
- (b) the last Target Service Commencement Date;

"Service Commencement Deficiencies" has the meaning given in Section 11.4.5 [*Service Commencement*] of Schedule 5 [*Design and Construction Protocols*];

"Service Commencement Deficiency Deadline" has the meaning given in Section 11.4.9 [*Correction of Service Commencement Deficiencies*] of Schedule 5 [*Design and Construction Protocols*];

"Service Commencement Longstop Date" means October 10, 2019, as adjusted in accordance with this Agreement;

"Service Disruption Event" means a Planned Outage or Forced Outage relating to the Existing Units or new Generating Units or a Planned Derate or Forced Derate relating to new Generating Units prior to the Service Commencement Date (as opposed to a Non-Availability Event, which means an Outage or a Derate post Service Commencement);

"Service Disruption Event Amount" means an amount for a Service Disruption Event;

"Service Disruption Payment" means a payment for a Service Disruption Event;

"Service Plans" means all plans required to support Services activities including the Asset Management Plan, Maintenance Plan and Schedule, Immediate Callout and Force Outage Plan, Condition Assessment Plan, Handback Plan and Energy Management Plan;

"Service Provider" means SLI-IMPSPA Service Provider General Partnership or any assignee or replacement permitted under this Agreement;

“Service Reports” means all reports required to support Services activities including the Asset Management Annual Report, 4-year Condition Assessment Report, 8-year Condition Assessment Report, 12-year Condition Assessment Report, Weekly Facility Activity Report, Monthly Facility Performance Scorecard, Mandatory Reliability Standards (MRS) Reports Data, Annual Asset Management Report, Handback Report, and Maintenance Plan and Schedule;

“Services” means all work to be performed and services to be provided by Project Co after the Service Commencement Date as specified in Schedule 7 [*Services*] of this Agreement, but excluding the Decommissioning Work;

“Services Agreement” means the services agreement between Project Co and the Service Provider, a certified copy of which has been delivered by Project Co to BC Hydro, as amended, supplemented or replaced from time to time in accordance with this Agreement;

“Services Change” means a change, including an addition, deletion, alteration, substitution or otherwise, to Project Co's Services obligations under this Agreement;

“Services Director” means the Key Individual identified by such title in Section 2.3 [*Key Individuals*] of Schedule 3 [*Roles and Representatives*], or such replacement as may be designated by Project Co pursuant to Section 2.3 [*Key Individuals*] of Schedule 3 [*Roles and Representatives*];

“Services Period” means the period of time from the Service Commencement Date to the Termination Date;

“Services Period Joint Committee” has the meaning given in Section 2.2 [*Services Period Joint Committee*] of Schedule 7 [*Services*];

“Services Period Public Safety Management Plan” means the plan developed by Project Co to address identified public safety hazards and requirements associated with the Services Period of the Project, as such plan is amended, revised or replaced from time to time in accordance with the Agreement;

“Services Quality Management Plan” means the plan for the quality management of the Services prepared by Project Co. as set out in Appendix 9E [*Services Quality Management Plan*] to Schedule 9 [*Quality Management*];

“Severable Work” means a Change which is physically independent of and can be completed without material interference to the Design and Construction activities;

“Siren Warning System” means the siren warning system for flood or flow warnings at the Site, as such system is upgraded in accordance with Schedule 23 [*Public Safety and Public Use*];

“Site” means the Lands and the lands related to the Land Rights;

“Site Amendments” has the meaning given in Section 3.5(b) [*Additions or Changes*] of Schedule 10 [*Lands*];

"Site Interpretive Plan" has the meaning given in Section 1.6 [*Site Interpretive Plan*] of Schedule 23 [*Public Safety and Public Use*];

"Site Materials" means all materials, including soil, aggregates, gravel, rocks, coal, minerals or other deposits, excavated, arising or produced in connection with the carrying out of the Project Work on the Site;

"Site Performance Tests" means the tests as described in Section 3 [*Stage Two: Site Performance Tests*] of Appendix 13G [*Performance Verification Tests*] of Schedule 13 [*Performance and Payment Mechanisms*];

"Site Plan" means the plan attached as Appendix 10C [*Site Plan*] to Schedule 10 [*Lands*];

"Site Release Date" has the meaning given to it in Section 2.5(d)(i) [*Construction Environmental Management Plan*] of Schedule 8 [*Environmental Obligations*];

"Soccer Field" has the meaning given in Section 6 [*Former Switchyard/Soccer Field*] of Schedule 8 [*Environmental Obligations*];

"Specified NSHE Range" means the Maximum Operating NSHE, Minimum Operating NSHE and Rated Operating NSHE;

"Spillway" means the structure and components used to provide the controlled release of flows from the Reservoir over the Main Dam including ogee, gates, channel, and controls;

"Spillway and Substation Site" means the area designated as such on the plan attached as Appendix 10H [*Prime Contractor Designation Areas Plans*] to Schedule 10 [*Lands*];

"Spillway Discharge" means the volume of water being discharged through the Spillway Gates under each of the Facility Design Operating Conditions;

"Spillway Gates" means the operating gates which control the flow of water over the Spillway;

"Spiral Case Design Pressure" means the maximum pressure which the spiral case is designed to safely withstand;

"SPR" means the BC Hydro Safety Practice Regulations;

"SSW Request" has the meaning given in Section 11.2 [*Referral to BC Hydro*] of Schedule 12 [*Safety and Security*];

"ST Design Specifications" means the specifications for the ST Roadwork (as applicable to the Watermain Work) and the ST Waterpipe included in the Disclosed Data;

"ST Park Use Permits" means those park use permits required for the construction and commissioning of the ST Waterpipe and the ST Roadwork;

“ST Price” has the meaning set forth in Section 4.21(l) [*Watermain Work and ST Roadwork*];

“ST Roadwork” means the work being completed as part of the BCH Works as described in the data room materials between Highway 28 and the south property line of BC Hydro’s property District Lot 1124, Sayward District as shown in Appendix 10C [*Site Plan*] to Schedule 10 [*Lands*];

“ST Roadwork Location Drawings” means the design drawings provided in the Disclosed Data that illustrate the alignment, design and right of way location of the ST Roadwork;

“ST Waterpipe” means the section of 1200 mm dia. steel watermain approximately 950m in length that is to be located from Highway 28, along Surge Tower Road terminating at the edge of the City’s lease property (Plan 84283) for the UV Treatment Plant as shown on the ST Waterpipe Location Drawing;

“ST Waterpipe Location Drawings” means the design drawings provided in the Disclosed Data that illustrate the alignment, design and right of way location of the ST Waterpipe.

“ST Window” means the time period commencing on the Effective Date and ending on December 31, 2015;

“ST Work Schedule” means Project Co’s work plans and construction schedule, including key milestones, for the performance of the Watermain Work, which schedule will be coordinated with and incorporate the City’s reasonable access and construction requirements for the City Works;

“Standing Referee” has the meaning given in Section 1.4 [*Fast Track Referee Process*] of Schedule 19 [*Dispute Resolution Procedure*];

“Station HMI” means the HMI dedicated for displaying of non-Generating Unit specific Facility alarms, targets and measured instrumentation data;

“Station View Trail” means the public use trail identified as such and further described in the BC Hydro Interpretative Master Site Plan;

“Strategic Stakeholder Engagement and Communications Plan” means the plan dated November 13, 2013, as amended, supplemented or replaced by BC Hydro from time to time as contemplated in Section 3.1 [Strategic Stakeholder Engagement and Communications Plan] of Schedule 11 [Communication and Consultation];

“Sub-Contract” means any contract entered into by a Project Contractor (except Project Contracts), or a sub-contractor of a Project Contractor of any tier, with one or more Persons in connection with the carrying out of Project Co’s obligations under this Agreement, as amended or replaced from time to time;

“Sub-Contractor” means any Person that enters into a Sub-Contract;

"Submittal" has the meaning given in Section 1 *[Submittal Requirements]* of Schedule 2 *[Review Procedure, Consent Procedure and Other Submittals]*;

"Submittal Schedule" has the meaning given in Section 5.5.1(s) *[Submission of Design Management Plan]* of Schedule 5 *[Design and Construction Protocols]*;

"Substantial Completion" means the stage in the progress of the Project Work, as certified by the Independent Certifier, when:

- (a) the Facility, or the applicable components thereof, is sufficiently complete, in accordance with the requirements of, and to the standards required by, this Agreement so that BC Hydro can safely, securely and reliably use the Facility, or the applicable components thereof, for its intended purpose;
- (b) the cost to complete the Facility, or the applicable components thereof, including correction of all applicable Defects, is less than 1% of the total capital cost of the Facility, or the applicable components thereof; and
- (c) all other conditions specified in this Agreement to be satisfied on or before Substantial Completion of the Facility, or the applicable component thereof, have been satisfied;

"Substation" means the component described at Section 1.1-2.9 *[Substation]* of Schedule 6 *[Design and Construction Specifications]*;

"Substation Control Building" means the structure located in the Substation that contains the communication, control and protection equipment to operate and monitor the equipment in the Substation;

"Substitute" means any software, design, methodology, configuration, standard, material or equipment which:

- (a) is of, or will result in, less than equal quality and performance as the software, design, methodology, configuration, equipment and materials specified in this Agreement; and
- (b) will reduce the cost of the Project Work;

"Subsurface Condition Report – Power Tunnel" means the reported titled "Subsurface Condition Report – Power Tunnel" and dated September 28, 2012;

"Suitable Substitute Project Co" has the meaning given in the Lenders' Remedies Agreement;

"Supervening Event" means any of a Compensation Event, Relief Event, Excusing Event, Force Majeure Event or Eligible Change in Law Event;

“Supervening Event Notice” has the meaning given in Section 8.2(a) *[Procedures Upon the Occurrence of a Supervening Event]*;

“Supervisory Interface Processor” or **“SIP”** means the panel that houses a hot-standby redundant PLC that facilitates communications between Generating Unit equipment and the RTU and control building equipment;

“Supplemental Financial Submissions Extracts” means those portions of the supplemental financial submissions extracted from the Proposal attached to this Agreement in the folder ‘Supplemental Financial Submissions’ in electronic format in Appendix 1A *[Electronic Format of Proposal Extracts]*;

“Supplemental Insurance” has the meaning given in Section 3.4 of the Schedule 18 *[Insurance Requirement]*;

“Supplemental Technical Submissions Extracts” means those portions of the supplemental technical submissions extracted from the Proposal attached to this Agreement in the folder ‘Supplemental Technical Submissions’ in electronic format in Appendix 1A *[Electronic Format of Proposal Extracts]*;

“Supplied Goods” means all equipment, parts, and all other tangible personal property of any kind or description (but not consumables) to be supplied by a Project Co Person for incorporation or installation into the Project Work or Facility;

“Supply” mean the provision of Supplied Goods;

“Supply Inspection and Test Plan” mean the Inspection and Test Plans prepared by Project Co for the Supply;

“Supply Quality Management Plan” has the meaning given in Appendix 9C *[Supply Quality Management Plan]* to Schedule 9 *[Quality Management]*;

“Supporting Role Construction Period Stakeholder Engagement and Communications Plan” has the meaning given in Section 3.3 *[Construction Period – Supporting Role and Plan]* of Schedule 11 *[Communications and Consultation]*;

“Supporting Role Services Period Stakeholder Engagement and Communications Plan” has the meaning given in Section 3.4 *[Services Period – Supporting Role and Plan]* of Schedule 11 *[Communications and Consultation]*;

“Support Systems” means the elevator, fire protection, heating and ventilation, security equipment, service water systems, septic systems and other equipment not directly related to the production of electricity that support the operation of the Facility, as further described in Appendix 7B *[Facility Services]* to Schedule 7 *[Services]*;

“Surge Tank” means a tank or structure designed to contain hydraulic transients as part of the Hydraulic Transient Management System;

“Surge Tower Road” means the area marked as such in Appendix 10C of the Site Plans;

“Surveillance Quality Audit” means Quality Audits conducted by or on behalf of BC Hydro as contemplated in Section 4.3.2(b) *[Types of Quality Audits]* of Schedule 9 *[Quality Management]*;

“Sustained Tunnel Inflow” means the total inflow, occurring from the perimeter of the tunnel(s) within which the Tunnel Work is performed, that enters the applicable tunnel(s) from locations that are more than 5 metres back from the face of the tunnel excavation(s). Specifically, the Sustained Tunnel Inflow does not include the Heading Inflow or any volume of water that is introduced to the applicable tunnel(s) for construction purposes.

“Synchronous Speed” means the rotational speed of the Generating Units when generating into the BC Hydro Transmission System. The Synchronous Speed of the Generating Units shall not exceed 300rpm;

“System Operating Order” has the meaning given in General Operating Order 1G-01 v.4 "Policy and Procedures for Generation Operating Orders";

“Tailrace” has the meaning given in Section 1.1-2.8A *[Tailrace]* of Schedule 6 *[Design and Construction Specifications]*;

“Tailrace PUP” means the park use permit that Project Co will be required to obtain in BC Hydro’s name from BC Parks under the *Park Act* (British Columbia) in order for Project Co to proceed with work on the Tailrace and the temporary river bed work;

“Tailwater” means the water contained within the open, surface Tailrace channel(s);

“Tailwater Level” means the elevation of the Tailwater under each of the Facility Design Operating Conditions;

“Target Bypass System Completion Date” means February 1, 2019, as set out in Schedule 4 *[Project Schedule]*, as the same may be adjusted in accordance with this Agreement;

“Target Commercial Operation Date” means May 2, 2018, July 21, 2018 and October 10, 2018 for the first, second and third Generating Unit respectively, as set out in Schedule 4 *[Project Schedule]*, as the same may be adjusted in accordance with this Agreement;

“Target Service Commencement Date” means October 10, 2018, as set out in Schedule 4 *[Project Schedule]*, as the same may be adjusted in accordance with this Agreement;

“Target Total Completion Date” means August 13, 2019, as set out in Schedule 4 *[Project Schedule]*, as the same may be adjusted in accordance with this Agreement;

"Tariff Supplement 79" means the BC Hydro tariff supplement No 79 on file with the British Columbia Utilities Commission;

"Tax" or **"Taxes"** means, from time to time, all taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges of any nature imposed by any Governmental Authority (including income, capital (including large corporations), withholding, consumption, sales, use, transfer, goods and services or other value-added, excise, customs, anti-dumping, countervail, net worth, stamp, registration, franchise, payroll, employment, health, education, business, school, property, local improvement, development, education development and occupation taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and charges) together with all fines, interest, penalties on or in respect of, or in lieu of or for non-collection of, those taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges;

"Tax Laws" means any provincial sales tax (PST) laws (including the *Provincial Sales Tax Act* (British Columbia) or, if applicable, the *Social Service Tax Act* (British Columbia), any federal goods and services tax (GST) laws, or any single harmonized sales tax (HST) laws (and including any regulations made thereunder) or any other similar retail sales or consumption taxes;

"Tax Recoverability Change of Law" means either:

- (a) a Change in Law arising after the Financial Submission Date relating to a transition from the segregated provincial sales tax (PST) and federal goods and services tax (GST) in effect on the Effective Date to a single harmonized sales tax (HST) during the Term or any subsequent transition from a single harmonized sales tax (HST) back to a segregated provincial sales tax (PST) and federal goods and services tax (GST) during the Term; or
- (b) a Change in Tax Laws.

"Technical Appraisal Form" or **"TAF"** means a technical appraisal form substantially in the format attached as Appendix 5C [*Sample Contents for a TAF*] to Schedule 5 [*Design and Construction Protocols*], and submitted by Project Co to BC Hydro's Representative in accordance with the Design and Certification Procedure;

"Technical Submissions Extracts" means those portions of the technical submissions extracted from the Proposal attached to this Agreement in the folder 'Technical Submissions' in electronic format in Appendix 1A [*Electronic Format of Proposal Extracts*];

"Telecommunication System" means the system described in Section 7.8 [*Telecommunications*] of Schedule 6 [*Design and Construction Specifications*];

"Temporary Access Roads" means access roads not required for performance of the Services or Operation of the Facility after completion of the Construction and Decommissioning Work;

"Temporary Works" means all works and things of a temporary nature of every kind required in or about the execution and completion of the Project Work;

"Term" has the meaning given in Section 2.1 *[Term and Termination]*;

"Termination Date" means the earlier of the Expiry Date or the date of earlier termination referred to in Section 2.1 *[Term and Termination]*;

"Termination Date Benchmark Canada Bond Yield" means the yield to maturity on a benchmark Government of Canada Bond of the same maturity as the average life of the outstanding Senior Debt, Junior Debt and equity on the Termination Date;

"Termination Date Discount Rate" means a discount rate equal to the Project Risk Premium plus the Termination Date Benchmark Canada Bond Yield;

"Termination Payment" means the amount owing by BC Hydro to Project Co pursuant to Schedule 16 *[Compensation on Termination]*;

"Termination Payment Date" means the date on which BC Hydro must make the Termination Payment as provided for in Schedule 16 *[Compensation on Termination]*;

"Third Party License Agreement" means a licence agreement, and if applicable related maintenance and support agreements, between a Project Co Person and another Person in relation to Third Party Technology;

"Third Party Technology" means technology, software or other Intellectual Property that is sourced or obtained from a Person other than a Project Contractor or Material Contract Party;

"Threat and Risk Assessment" has the meaning given in Section 4.1 *[Threat and Risk Assessment]* of Schedule 5 *[Design and Construction Protocols]*;

"Threshold Equity IRR" means [REDACTED] % being the Equity IRR as set out in Cell C36 of the 'Summary output' sheet in the Financial Model;

"Total Completion" means that all of the conditions precedent to Total Completion specified in Section 11.5.2 *[Conditions Precedent to Total Completion]* of Schedule 5 *[Design and Construction Protocols]* have been achieved, as certified by the Independent Certifier;

"Total Completion Date" means the later of:

- (a) the date on which all of the conditions precedent to Total Completion that have not been waived by BC Hydro have been satisfied as certified by the Independent Certifier in accordance with Section 11.5.7 *[Issuance of Certificate of Total Completion]* of Schedule 5 *[Design and Construction Protocols]*; and
- (b) the last Target Total Completion Date;

"Total Completion Deficiencies" has the meaning given in Section 11.5.5 *[Deficiency List]* of Schedule 5 *[Design and Construction Protocols]*;

"Total Completion Longstop Date" means August 13, 2020, as adjusted in accordance with this Agreement;

"Total Completion Security Program" has the meaning given in Section 10.2 *[Security Program]* of Schedule 12 *[Safety and Security]*;

"Tracking State" has the meaning given in Section 7.7-21.4(D)(2)(b) *[Control Requirements]* of Schedule 6 *[Design and Construction Specifications]*;

"Traffic Incident" includes motor vehicle collisions, emergency road repairs and road debris in the vicinity of the Project;

"Traffic Management Plan" has the meaning given in Section 2.1 *[Traffic Management Plan]* of Schedule 23 *[Public Safety and Public Use]*;

"Transfer Restriction Date" has the meaning given in Section 16.1(d)(i) *[Limitations on Assignment of Project by Project Co]*;

"Transmission Operating Order" has the meaning given in General Operating Order 1G-01 v.4 "Policy and Procedures for Generation Operating Orders";

"Transmission System" - means system described in Section 7.6 *[Transmission System]* of Schedule 6 *[Design and Construction Specifications]*;

"Treatment" means the process of selection and implementation of Control Measures to eliminate or mitigate a Hazard;

"Tunnel Float" means 180 days, as at the Effective Date;

"Tunnel Work" means all work and activities below elevation 46.5, of or required of Project Co in connection with the Design and Construction of those portions of:

- (a) the Power Tunnel between the Power Intake and the first division of the Power Tunnel downstream of the Power Intake, which are either: (i) fully confined within bedrock; or (ii) are shown to be fully confined within bedrock pursuant to Figure 2 in Part 2 of Schedule 6; and
- (b) the Tailrace between the Generating Units discharge and 50m upstream of the point at which the Tailrace(s) discharge enters the lower Campbell River, which are either: (i) fully confined within bedrock; or (ii) are shown to be fully confined within bedrock pursuant to Figure 2 in Part 2 of Schedule 6, (if any).

Tunnel Work shall not include any work or activities in connection with the Design or Construction of the Powerhouse, Bypass Facility or any access tunnels or adits;

"Tunnel Work Eligible Delay" means a critical path delay to the Tunnel Work to the extent resulting from, or caused by, a Facility Change or a Supervening Event or the existence of a Baseline Condition Exceedance;

"Turbine" means all Francis turbine components in accordance with IEC Publication 61364 and all components specified in Section 4.2 *[Turbine]* of Schedule 6 *[Design and Construction Specifications]*;

"Turbine Floor" means the floor level in the Powerhouse Building above, and nearest to the centerline of the spiral cases;

"Turbine Inlet Valve" or **"TIV"** means the shut-off valve upstream of each Turbine spiral case;

"Turbine Model" has the meaning given in Section 4.1 *[Turbine Hydraulic Design and Model Tests]* of Schedule 6 *[Design and Construction Specifications]*;

"Turbine Model Efficiency Guarantee" ■■■■■ %;

"Turbine Model Tests" means the tests as described in Section 2 *[Stage One: Turbine Model Tests]* of Appendix 13G *[Performance Verification Tests]* of Schedule 13 *[Performance and Payment Mechanism]*;

"Undesirable Event" means the realization or release of a Hazard through an unplanned event.

"Undisclosed Environmental Liabilities" means:

- (a) Contamination at or adjacent to the Site other than Project Co Contamination; and
- (b) Hazardous Substances in structures and equipment forming part of the Existing Facility other than Project Co Hazardous Substances;

"Uninsurable" means, in relation to a risk:

- (a) Mandatory Insurance or Supplemental Insurance placed by Project Co is not available in respect of the Project with Qualified Insurers; or
- (b) the insurance premium payable or the terms and conditions for insuring such risk at the levels and on the terms required by this Agreement are such that contractors, concessionaires, owners or others having a substantially similar interest in a project such as the Project in Canada are not generally insuring against such risk with Qualified Insurers;

“Uninsurable Risk” has the meaning given in Section 6.15 [*Consequences of Risks Becoming Uninsurable*];

“Unisex Washroom” means the room, within the Powerhouse Building, described in Section 3.1-3.4(l)(1) [*Designated Rooms and Areas*] of Schedule 6 [*Design and Construction Specifications*];

“Unit Bay” means a structural unit, within that Powerhouse Building, that contains one hydroelectric Generating Unit;

“Unit Control Cabinet” or **“UCC”** means the panel that contains a PLC, a touchscreen HMI, a power meter, an emergency stop button, and a master control transfer switch and is used to implement and execute Generating Unit control functions;

“Unit Control System” means a collection of control devices dedicated to operation of a single Generating Unit that contains all required components for Generating Unit operation, including Generating Unit controller, governor system controller, excitation system controller, electrical and non-electrical protection, Unit HMIs, Unit DC Distribution Panel, synchronizing equipment, Plant LAN, and all other ancillary system control equipment;

“Unit DC Distribution Panel” means the 125V DC distribution panel used to supply protection and control circuits associated with a single Generating Unit;

“Unit HMI” means the HMI dedicated for issuing of Generating Unit control commands and displaying of Generating Unit specific alarms, targets, statuses and measured instrumentation data relevant to operator for operation of one Generating Unit;

“Units” means units or other equity interests of any class in the capital of Project Co;

“Unit Transformer” means the step-up transformers connected to a Generator;

“Upper Station View Trail” means the public use trail identified as such and further described in the BC Hydro Interpretative Master Site Plan;

“Urgent” has the meaning given in Table 1 to Appendix 7B [*Facility Services*] to Schedule 7 [*Services*];

“Utility Agreements” means any agreement entered into by BC Hydro with a utility company in connection with the construction, installation, operation, repair, preservation, relocation and/or maintenance of utilities in, on, under, over or adjacent to the Facility or any part thereof, and includes any site or other permits issued thereunder or pursuant thereto, all as amended, supplemented or replaced from time to time;

“Utility Work” means temporary and permanent installation, protection, removal and relocation works relating to Utilities carried out in connection with or as part of the Project Work, including installation, protection, removal and relocation of poles, pole lines, conduits, gas pipes, oil pipes, sewers and tile lines, and related and ancillary works;

“UV Treatment Plant” means the City of Campbell River’s existing water treatment facility located on a leased parcel of land with BC Hydro’s property District Lot 1124, Sayward District, as identified on Appendix 10C [*Site Plan*] to Schedule 10 [*Lands*];

“Valuator” means a firm of chartered accountants as represented by a fully qualified member of the Canadian Institute of Chartered Business Valuators;

“WA Change Approval” means the approval from the Comptroller of Water Rights to a BC Hydro application to further amend or modify the Water Licence to reflect the Facility design and construction plans proposed by Project Co and to update the description of the works relevant to or underlying and supporting the Water Licence;

“Warning Zone” means an area within Site or adjacent lands with hazards arising from the Project, including Project traffic, operation of the Facility and natural Hazards, where the most likely outcome of human exposure to such Hazards is minor injury or stranding;

“Waste Material” means the excavated Site Material arising from the Tunnel Work, including excavated rock, which Project Co or its designated Project Contractor or Sub-Contractor has determined is surplus Site Material and not required to complete the Project Work;

“Waste Quality Soil” means soil that is not suitable for industrial land use based on the numeric standards specified in the *Contaminated Sites Regulation*, B.C. Reg. 375/96, but is not Haz Waste Soil;

“Water Conveyances” has the meaning given in Section 1.1-2.1 [*Water Conveyances*] of Schedule 6 [*Design and Construction Specifications*];

“Water Licence” has the meaning given in Section 6.1(a) [*General*] of Schedule 5 [*Design and Construction Protocols*];

“Watermain Design Report” means the 90% completed draft report prepared by McElhanney and provided as part of the Disclosed Data by BC Hydro in the data room on or before January 15, 2014;

“Watermain Work” has the meaning set out in Section 4.21(a) [*Watermain Work and ST Roadwork*];

“WECC” means the Western Electricity Coordinating Council, or any successor thereto or replacement thereof;

“WECC Test Data and Model Variation” has the meaning given in Section 9.8 [*WECC Testing*] of Schedule 5 [*Design and Construction Protocols*];

“Weekly Facility Activity Report” means the report required pursuant to Section 6.3 [*Report Content*] of Schedule 7 [*Services*];

"Women's Washroom" means the room, within the Powerhouse Building, described in Section 3.1-3.4(l)(3) [*Designated Rooms and Areas*] of Schedule 6 [*Design and Construction Specifications*];

"Woodstave Road Trail" means the public use trail defined as such and further described in Schedule 23 [*Public Safety and Public Use*] on Drawing 502-S23-00010 [*Public and Construction Access*] and 502-S23-00011 [*Government Agency Access*];

"Work Completion Certificate" has the meaning given in Section 4.3 [*Project Co Responsibilities*] of Schedule 7 [*Services*];

"Work Method Statements" has the meaning given in Section 4.6 [*Asset Management Plan*] of Schedule 7 [*Services*];

"Worker Protection Practices" or **"WPP"** means the policy, rules and requirements in Section 700 of the SPR;

"Works Schedule" means the detailed schedule for Design, investigation, Construction, testing, Commissioning Work, Decommissioning Work and related activities within the Design and Construction of the Facility, to be submitted by Project Co pursuant to, and as subsequently amended from time to time in accordance with, Section 3 [*Works Schedule*] of Schedule 4 [*Project Schedule*];

2. COMMON ACRONYMS

The following acronyms are used in the Agreement and are listed here for convenience:

"APEGBC" means the Association of Professional Engineers and Geoscientists of British Columbia;

"BCBC" means the British Columbia Building Code;

"CCD" means Charge Coupled Device;

"CFD" means Computational Fluid Dynamics;

"CN" means Control;

"CT" means Current Transformer;

"DDC" means Direct Digital Controls;

"DTM" means Digital Terrain Model;

"DVS" means Digital Video Streamer/Servers;

"EMP" means Environmental Management Plan;

"EXC" means Exciter;

"FEA" means Finite Element Analysis;

"FOV" means Field of View;

"GOAAL" means Generation Operating Asset Architectural Logic;

"GOV" means Governor;

"GPR" means Ground Potential Rise;

"HMI" means Human-Machine Interface;

"HPU" means Hydraulic Power Unit;

"HV" means High Voltage (above 35kV);

"HVAC" means Heating, Ventilation, and Air Conditioning;

"IBEW" means International Brotherhood of Electrical Workers;

"IED" means Intelligent Electronic Devices;

"IR" means Infrared;

"LAN" means Local Area Network;

"LIDAR" means Light Detection and Ranging;

"LV" means Low Voltage (under 1kV);

"MB+" means Modbus Plus;

"MCC" means Motor Control Center;

"MV" means Medium Voltage (1 - 35 kV);

"NERC" means North American Electric Reliability Corporation;

"OEM" means Original Equipment Manufacturer

"OI" means Operational Information;

"OSH" means BC Hydro's Occupational Safety and Health standards;

"P&C" means Protection and Controls;

"PAM" means Non-electrical (mechanical) Protection, Alarm and Metering;

"PEP" means Personal Protective Equipment;

"PI" means Process Information;

"PIO" means PAM Remote Input/Output Panel;

"PLC" means Programmable Logic Controller;

"PN" means Protection;

"PY" means Primary;

"QC" means Quality Control;

"RTD" means Resistive Temperature Device;

"RTU" means Remote Terminal Unit;

"SBPV" means Synchronous Bypass Pressure-Relief Valves;

“SCADA” means Supervisory Control and Data Acquisition;

“SER” means Sequence of Event Recorder;

“SIP” means Supervisory Interface Processor;

“SOO” means a System Operating Order;

“SPR” means BC Hydro’s Safety Practice Regulations;

“SSA” means Speed Switch Assembly;

“SWC” means Surge Withstand Capability;

“SY” means Standby;

“TAF” means Technical Appraisal Form;

“UCB” means Unit Control Board;

“UCC” means Unit Control Cabinet;

“ULC” means Underwriters Lab Canada;

“VMS” means Video Management System;

“VT” means Voltage Transformer;

3. INTERPRETATION

This Agreement will be interpreted according to the following provisions, except to the extent the context or the express provisions of this Agreement otherwise require:

- (a) the parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same;
- (b) the table of contents, headings and sub-headings, marginal notes and references to them in this Agreement are for convenience of reference only, do not constitute a part of this Agreement, and will not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Agreement;
- (c) each reference to a Part, Section, Schedule or Appendix is a reference to a Part of, Section of, Schedule to or Appendix to a Schedule to this Agreement; each Appendix is uniquely designated by using the number of the Schedule to which the Appendix is attached following by an alphabetical designator in sequence. A Schedule includes all of the Appendices attached to that Schedule;
- (d) each reference to an agreement, document, standard, principle or other instrument includes, subject to all relevant approvals and any other provision of this Agreement expressly concerning such agreement, document, standard, principle or other instrument, a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned;
- (e) each reference to a statute or statutory provision, including any subordinate legislation, includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, orders, codes of practice, instruments or other subordinate legislation made under the relevant statute;
- (f) wherever "day" is used with all lower case letters it means calendar day of 24 hours measured from midnight to the next midnight..
- (g) each reference to time of day is a reference to Pacific Standard time or Pacific Daylight Saving time, as the case may be;
- (h) words importing the singular include the plural and vice versa;
- (i) words importing a particular gender include all genders;
- (j) each reference to a public organization is deemed to include a reference to any successor(s) to such public organization or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such public organization;

- (k) unless the context otherwise requires, each reference to “parties” means the parties to this Agreement and each reference to a “party” means any one of the parties to this Agreement, provided however that a reference to a third Person does not mean a party to this Agreement;
- (l) all monetary amounts are expressed in Canadian Dollars;
- (m) whenever this Agreement obliges a party (the “**Payor**”) to pay any amount to the other party (the “**Payee**”) in respect of any costs, expenses, fees, charges, liabilities, losses, claims or other sums incurred by the Payee:
 - (1) such obligation will be construed as applying only to so much of such sums as have been properly incurred on an arm’s length commercial basis or, where not incurred on an arm’s length commercial basis, including when the payment is made to an Affiliate of the Payee, so much of them as are proper and reasonable; and
 - (2) the Payee will, when requested by the Payor, provide supporting evidence of such costs, expenses, fees, charges, liabilities, losses, claims or other sums;
- (n) BC Hydro will not be imputed with knowledge of any fact, matter or thing unless that fact, matter or thing is within the actual knowledge of those of its employees or agents, including the BC Hydro’s Representative, who have responsibilities in connection with the conduct of the Project Work or the Project;
- (o) without limiting the extent of its actual knowledge, Project Co will for all purposes of this Agreement be deemed to have such knowledge in respect of the Design, the Construction and the Services as is held, or ought reasonably to be held, by those employees or agents of Project Co, or any Project Contractor or Sub-Contractor, who have responsibilities in connection with the carrying out of the Design, the Construction or the Services to which the fact, matter or thing relates or is applicable;
- (p) each requirement for a thing or action to be “in accordance with” or “in compliance with” any standard, code or specification or other requirement or stipulation means that such thing or action is to exceed or at least equal that standard, code, specification or other requirement or stipulation;
- (q) the words “include”, “includes” and “including” are to be construed as meaning “include without limitation”, “includes without limitation” and “including without limitation”, respectively;
- (r) when a party has “discretion”, it means that party has the sole, absolute and unfettered discretion, with no requirement to act reasonably or provide reasons unless specifically required under the provisions of this Agreement;
- (s) any consent contemplated to be given under this Agreement must be in writing;
- (t) general words are not given a restrictive meaning;

- (1) if they are introduced by the word “other”, by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing; or
 - (2) by reason of the fact that they are followed by particular examples intended to be embraced by those general words;
- (u) words or abbreviations which have well-known trade meanings are used in accordance with those meanings;
- (v) the expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of either party, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party’s obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent Person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that Person’s own benefit, provided that the foregoing will not require BC Hydro to:
 - (1) take any action which is contrary to the public interest, as determined by BC Hydro in its discretion; or
 - (2) undertake any mitigation measure that might be available arising out of its status as a public body that would not normally be available to a private commercial party;
- (w) the expressions “by Project Co” and “by or through Project Co” and expressions of like import are synonymous and mean by Project Co or by anyone employed by or through Project Co, including Project Co and all contractors, sub-contractors and suppliers of any tier and their respective officers, employees, consultants and agents;
- (x) all accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with Canadian GAAP, consistently applied;
- (y) where this Agreement requires the calculation of something that is calculated in the Financial Model, including Net Present Value of Distributions and Equity IRR but not including Payments and deductions, the calculation will be done in a manner consistent with the calculation methodology in the Financial Model;
- (z) if the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act will be extended to the next Business Day;
- (aa) each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality will not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such provision of this Agreement is held to be invalid, unenforceable or illegal,

the Parties will promptly endeavour in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as nearly as possible to its original intent and effect; and

- (bb) each release, waiver of liability and indemnity in this Agreement expressed to be given in favour of a party is and will be interpreted as having been given in favour of and may be enforced by that party and, in the case of BC Hydro, by the BC Hydro Indemnified Persons, and, in the case of Project Co, by Project Co Persons.

4. PRIORITY OF AGREEMENTS, SCHEDULES AND PROPOSAL EXTRACTS

4.1 The Proposal Extracts are hereby incorporated by reference into and shall form part of this Project Agreement for the purposes of determining or interpreting the performance obligations of Project Co hereunder. In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this Agreement, including the Proposal Extracts, the following provisions will apply:

- (a) the provisions establishing the higher levels of safety, reliability, durability, performance, quality and service will prevail over provisions establishing lower levels of safety, reliability, durability, performance, quality and service;
- (b) specific drawings, specified electrical and mechanical equipment (including the technical data, quantities, dimensions, software, calculations and the suppliers thereof), design methods and installation methodologies identified in the preliminary design submittals, plans and reports that have been prepared and submitted to BC Hydro which have been accepted by BC Hydro in accordance with Schedule 2 [Review Procedure, Consent Procedure and Other Submittals] subsequent to the submission of the Proposal Extracts shall replace drawings, technical data, quantities, dimensions, software, calculations, specified electrical and mechanical equipment, methodologies, plans and reports contained in the Proposal Extracts and such will completely supersede in their entirety the older or original drawings, technical data, quantities, dimensions, software, calculations, specified electrical and mechanical equipment, methodologies, plans and reports except as otherwise provided in the Project Agreement, provided that:
 - (i) valued items in the Proposal Extracts may only be modified in accordance with the Consent Procedure;
 - (ii) drawings that Project Co submits to BC Hydro that are intended to replace drawings, equipment or methodology as above contained in the Proposal Extracts are clearly indicated to replace an identified drawing, equipment and methodology;
 - (iii) in no event shall such submissions contemplated in this Section establish or result in lower levels of safety, reliability, durability, performance, quality and service than those described in the Proposal Extracts; and
 - (iv) Project Co shall have the right to replace drawings, specified electrical and mechanical equipment (including technical data, quantities,

dimensions, software, calculations, and suppliers thereof), methodologies, plans and reports as above as long as the conditions stated in this Section 4.1(b) are satisfied;

- (c) other provisions of this Agreement will prevail over the provisions of the Proposal Extracts; provided however that in determining whether an ambiguity, conflict or inconsistency exists between the Proposal Extracts and any other provisions in this Agreement, to the extent that the Proposal Extracts includes additional requirements for higher standards of quality or performance or additional requirements for more extensive scope of design, work or services than otherwise required, no such ambiguity, conflict or inconsistency will be deemed to exist and Project Co's obligations hereunder will include compliance with all such additional requirements;
- (d) if the ambiguity, conflict or inconsistency is between a provision of general application and a provision that applies only to a specific part of the Project Work, including Design, Construction, Decommissioning Work, or Services, the provision that applies to the specific part of the Design, Construction, Decommissioning Work, or Services shall prevail for that specific part of the Design, Construction, Decommissioning Work, or Services;
- (e) the main body of this Agreement and any of the Schedules hereto other than Schedule 22 [Collateral Agreement] or Schedule 17 [Lenders' Remedies Agreement], the provisions of the main body of this Agreement will prevail;
- (f) this Agreement and any Collateral Agreement or the Lenders' Remedies Agreement, as between BC Hydro and Project Co the provisions of such Collateral Agreement or the Lenders' Remedies Agreement will prevail, and among such agreements, the Lenders' Remedies Agreement will be paramount; and
- (g) if there are ambiguities, conflicts or inconsistencies between or among any of the Proposal Extracts, the Proposal Extracts shall prevail in the following order of priority from highest to lowest:
 - (i) the Drawings Extracts;
 - (ii) the Supplemental Financial Submissions Extracts;
 - (iii) the Financial Submissions Extracts;
 - (iv) the Supplemental Technical Submissions Extracts; and
 - (v) the Technical Submissions Extracts.

4.2 Notwithstanding that deficiencies may exist in the Proposal Extracts, Project Co continues to be fully bound to perform all of its obligations under the Agreement. BC Hydro is not responsible for identifying deficiencies in the Proposal Extracts and irrespective of whether BC Hydro has identified or has failed to identify any such deficiencies, Project Co is not relieved in any way from meeting all of the requirements of the Agreement.

4.3 Except for those parts of the Proposal which are incorporated by reference into this Agreement by the Proposal Extracts, the Proposal shall be superseded entirely by this Agreement and rendered null and void, and shall not be relied upon or used by Project Co, BC Hydro or anyone else (including anyone pursuant to Schedule 19 [Dispute Resolution Procedure] or any arbitral body or any court) in any way to interpret or qualify the Project Work, any obligations or liabilities of Project Co, or anything else contained in this Agreement.

4.4 Subject to Section 4.4(c) of this Schedule:

- (a) the construction (including civil, electrical, mechanical or other construction) methodologies and sequences described in the Proposal Extracts are based on preliminary designs. The actual construction methodologies and sequences will be developed to suit the final designs and actual Site Conditions;
- (b) Project Co shall be entitled to substitute the construction equipment described in the construction methodologies and sequences with equipment of equivalent specification and capacity; and
- (c) for greater certainty, in no event shall the developments or substitutions contemplated by Section 4.4(a) or Section 4.4(b) of this Schedule establish lower levels of safety or environmental protection than the methodologies, sequences and construction equipment described in the Proposal Extracts.

5. FINANCIAL MODEL

Except where expressly referred to, the Financial Model and its contents will not be used to interpret, and will not affect the meaning of, this Agreement.

Appendix 1A
Electronic Format of Proposal Extracts