

JOHN HART GENERATING STATION REPLACEMENT PROJECT

Schedule 17

Lenders' Remedies Agreement

SCHEDULE 17

LENDERS' REMEDIES AGREEMENT

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SCHEDULE 17

LENDERS' REMEDIES AGREEMENT

THIS AGREEMENT is dated as of February 25, 2014

BETWEEN:

British Columbia Hydro and Power Authority

(**"BC Hydro"**)

AND:

[REDACTED]

(the **"Collateral Trustee"**), on its own behalf and as agent for the Senior Creditors

AND:

InPower BC General Partnership

(**"Project Co"**)

WHEREAS:

- A. BC Hydro and Project Co have entered into the Project Agreement (defined below);
- B. Project Co has entered into the Senior Financing Agreements for the purpose of, *inter alia*, financing certain costs to be incurred and expenditures to be made by Project Co in connection with the Project Agreement; and
- C. It is a condition precedent to the obligations of the Senior Creditors under the Common Terms and Intercreditor Agreement that this Agreement be executed and delivered by the parties.

NOW THEREFORE in consideration of the mutual promises and agreements of the parties herein expressed and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

1. DEFINITION AND INTERPRETATION

1.1 Definition

Unless otherwise specified or the context otherwise requires, capitalized but otherwise undefined terms in this Agreement will have the respective meanings given to such terms in the Project Agreement, and:

“Agent’s Withdrawal Notice” has the meaning set out in Section 3.4;

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

“Antecedent Liabilities” means, as at any time:

- (a) all amounts due and payable by Project Co to BC Hydro under the Project Agreement at such time; and
- (b) all obligations which should have, but have not, been performed and outstanding liabilities of Project Co under the Project Agreement, in each case at such time;

“Appointed Representative” means the Senior Creditors’ Representative identified in a Step-In Notice;

“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;

“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;

“Common Terms Finance Parties” has the meaning set out in the Common Terms and Intercreditor Agreement;

“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;

“Deficiency” has the meaning set out in Section 9.4(b);

“Discharged Obligations” has the meaning set out in Section 6.4;

“Discharged Rights” has the meaning set out in Section 6.4;

“Event of Default” has the meaning set out in the Common Terms and Intercreditor Agreement;

“Indenture Trustee” means [REDACTED], and its successors and assigns;

“Indicative Notice” means either an Indicative Step-In Notice or an Indicative Transfer Notice given in accordance with Section 3.3;

“Indicative Notice Period” means:

- (a) where an Indicative Step-In Notice has been given, the period commencing on the date of delivery of such Indicative Step-In Notice and ending on the earlier of:
 - (1) the Step-In Date;
 - (2) the date of delivery of an Agent’s Withdrawal Notice; and
 - (3) 60 days following the date of delivery of such Indicative Step-In Notice;
- (b) where an Indicative Transfer Notice has been given, the period commencing on the date of delivery of such Indicative Transfer Notice and ending on the earlier of:
 - (1) the date on which any transfer in accordance with Section 6.1 becomes effective;
 - (2) the date of delivery of an Agent’s Withdrawal Notice; and
 - (3) 60 days following the date of delivery of such Indicative Transfer Notice.

“Indicative Step-In Notice” has the meaning given to it in Section 3.3;

“Indicative Transfer Notice” has the meaning given to it in Section 3.3;

“Insolvency Law” means any of the *Bankruptcy and Insolvency Act (Canada)*, the *Companies’ Creditors Arrangement Act (Canada)* and the *Winding-Up and Restructuring Act (Canada)* and any other applicable insolvency or other similar law of any jurisdiction, including any applicable law of any jurisdiction permitting a debtor to obtain a stay or a compromise of the claims of its creditors against it;

“Insolvency Officer” means any trustee, receiver, receiver and manager, liquidator, sequestrator, administrator or other custodian in connection with the insolvency of Project Co or any of its assets;

“Insolvency Proceedings” means:

- (a) any:
 - (1) formal step (including petition, proposal, application, convening of a meeting or other proceeding) taken with a view to or for the purpose of considering;
 - (2) appointment of an Insolvency Officer in connection with;
 - (3) order or resolution passed in connection with; or

(4) formal agreement reached regarding,

a dissolution, bankruptcy, receivership, winding-up, liquidation, administration or other similar proceedings or any other proceeding seeking a stay of proceedings, reorganisation, debt arrangement, compromise of the claims of creditors or any distribution of assets in respect of Project Co (whether voluntary or involuntary) made or commenced by any party under any Insolvency Law; or

(b) any distress, attachment, sequestration or execution or other similar process affecting any of the assets of Project Co or any other similar process or event occurring in relation to Project Co's assets in any other jurisdiction;

"Insurance Trust Account" has the meaning given to it in the Insurance Trust Agreement;

"Insurance Trust Agreement" shall have the meaning given in the Project Agreement;

"Lenders" has the meaning given to it in the Project Agreement;

"Lender's Step-In Notice" has the meaning given in Section 9.1(a);

"Liability Report" has the meaning given in Section 3.5;

"Material Antecedent Liabilities" means Antecedent Liabilities that are:

(a) financial liabilities; or

(b) non-financial liabilities, the breach of which will trigger any remedy of BC Hydro under Section 9.1 [*Project Co's Obligation to Indemnify*] or Section 12 [*Project Co Events of Default*] of the Project Agreement;

"Notice Period" means:

(a) in respect of a Project Co Event of Default, the Termination Notice Period; and

(b) in respect of an Event of Default, the Indicative Notice Period;

"Project Agreement" means the agreement dated February 25, 2014 between Project Co and BC Hydro relating to the design, construction, financing, maintenance of and provision of services for the Facility;

"Project Documents" means, collectively, the Project Agreement and any other agreement (other than this Agreement) entered into from time to time by BC Hydro and Project Co (with or without other parties) in connection with the Project; and **"Project Document"** means any one of the foregoing;

"Reported Antecedent Liabilities" means the Antecedent Liabilities identified in the Liability Report;

“Revocation of Termination Notice” means a written notice from BC Hydro to the Collateral Trustee revoking a Termination Notice;

“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;

“Senior Creditors” shall have the meaning given in the Common Terms and Intercreditor Agreement;

“Senior Creditors’ Representative” means:

- (a) the Collateral Trustee, or any Senior Creditor;
- (b) a receiver or receiver and manager of Project Co appointed under or in connection with the Security Documents; or
- (c) any other Person approved by BC Hydro (such approval not to be unreasonably withheld or delayed);

“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 Discharge Date” means the date on which all amounts due and owing to the Senior Creditors under the Senior Financing Agreements have been fully and irrevocably paid or discharged (whether or not as a result of enforcement) and the Senior Creditors are under no further obligation to advance under the relevant Senior Financing Agreement;

“Step-In Date” means 5 Business Days after delivery of a Step-In Notice;

“Step-In Notice” means a notice given by the Collateral Trustee to BC Hydro pursuant to Section 4;

“Step-In Period” means, subject to Section 4.3, the period from the Step-In Date up to and including the earliest of:

- (a) the Step-Out Date;
- (b) the date of any transfer under Section 6;
- (c) the date of any termination under Section 4.5; and
- (d) the Expiry Date;

“Step-Out Date” means the date that is 20 Business Days after the date of a Step-Out Notice;

“Step-Out Notice” means a notice from the Collateral Trustee or Appointed Representative to BC Hydro pursuant to Section 5;

“Suitable Substitute Project Co” means a Person approved by BC Hydro in accordance with Sections 6.2 and 6.3 as:

- (a) having the legal capacity, power and authority to become a party to and perform the obligations of Project Co under the Project Agreement; and
- (b) employing or contracting for the services of persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of Project Co under the Project Agreement;

“Termination Notice” means a notice given by BC Hydro to the Collateral Trustee under Section 3; and

“Termination Notice Period” means the period beginning on the date of giving of a Termination Notice and ending on the earlier of:

- (a) the Step-In Date;
- (b) the date of service of a Revocation of Termination Notice; and
- (c) the proposed Termination Date (subject to the minimum notice requirements under Section 3.1(a)) set out in the Termination Notice.

1.2 Construction and Interpretation

This Agreement will be interpreted according to the following provisions, save to the extent that 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 in this Agreement to “**Section**” is to a section of this Agreement;
- (d) each reference to an agreement, document or other instrument include (subject to all relevant approvals and any other provision of this Agreement expressly concerning such agreement, document or other instrument) a reference to that agreement, document 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) each reference to time of day is a reference to Pacific Standard time or Pacific Daylight Saving time, as the case may be;
- (g) words importing the singular include the plural and vice versa;
- (h) words importing a particular gender include all genders;
- (i) 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;
- (j) 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 party does not mean a party to this Agreement;
- (k) all monetary amounts are expressed in Canadian Dollars;

- (l) the words “include”, “includes” and “including” are to be construed as meaning “include without limitation”, “includes without limitation” and “including without limitation”, respectively;
- (m) any consent contemplated to be given under this Agreement must be in writing;
- (n) 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;
- (o) the expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of the Senior Creditors, the Collateral Trustee, the Appointed Representative or any other Senior Creditors’ Representative, 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, 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;
- (p) all accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with Canadian generally accepted accounting principles, consistently applied;
- (q) 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; and
- (r) 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.

1.3 Governing Law

This Agreement will be deemed to be made pursuant to the laws of the Province of British Columbia and the laws of Canada applicable therein and will be governed by and construed in accordance with such laws.

1.4 Attornment

For the purposes of any legal actions or proceedings brought by any party hereto against the other party, the parties hereby irrevocably submit to the exclusive jurisdiction of the courts of the Province of British Columbia and acknowledge their competence and the convenience and propriety of the venue and agree to be bound by any judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

2. CONSENT TO SECURITY

2.1 Consent

BC Hydro acknowledges notice of, and consents to, the security interest granted by Project Co in favour of the Common Terms Finance Parties under the Common Terms and Intercreditor Agreement and Security Documents over:

- (a) Project Co's rights under the Project Agreement and all other Project Documents;
- (b) Project Co's assets; and
- (c) Project Co's rights to Insurance Proceeds and Insurance Receivables.

2.2 No Notice of Other Security

BC Hydro confirms that as of the date of this Agreement it has not received written notice of any other security interest granted over Project Co's rights described in Section 2.1 other than pursuant to the Common Terms and Intercreditor Agreement and Security Documents.

2.3 BC Hydro Obligations

Except as specifically provided for in this Agreement and the Insurance Trust Agreement, BC Hydro has no obligations (whether express, implied, collateral or otherwise) to the Collateral Trustee or the Senior Creditors in connection with this Agreement, the Project Agreement or the Project. All of the obligations and liabilities given, undertaken or arising on the part of BC Hydro under this Agreement are given solely to the Collateral Trustee on behalf of the Senior Creditors and do not confer any rights on or in favour of Project Co or any Affiliate of Project Co or any other Person.

2.4 BC Hydro's Rights not Prejudiced

The parties acknowledge that nothing in the Senior Financing Agreements, this Agreement or any other agreement between any of them (including any giving by the Collateral Trustee of a notice hereunder) will, except as between the Senior Creditors, the Collateral Trustee and BC Hydro as expressly set out in this Agreement, affect the rights of BC Hydro under the Project Agreement (but an exercise by BC Hydro of those rights will not preclude a proper exercise by the Collateral Trustee of its rights under this Agreement). For greater certainty and without limiting the generality of the foregoing, nothing in this Agreement will limit, and BC Hydro will be entitled at all times in accordance with the provisions thereof to exercise BC Hydro's rights under Section 11.1(a) [*BC Hydro's Step-in Rights*] of the Project Agreement and the related exercise of its rights under Section 11.2 [*BC Hydro's Rectification Rights*] of the Project Agreement.

3. NOTICES

3.1 Termination Notice

BC Hydro will not terminate or deliver any notice terminating the Project Agreement without giving to the Collateral Trustee written notice (a "**Termination Notice**") stating:

- (a) that a Project Co Event of Default has occurred and the proposed Termination Date, which will be not sooner than 90 days after the Termination Notice; and
- (b) the grounds for termination in reasonable detail.

3.2 Notice of Event of Default

Concurrently with delivery by it to Project Co of any notice of an Event of Default, the Collateral Trustee will provide a copy of such notice to BC Hydro, together with reasonable details of such Event of Default.

3.3 Indicative Notice

Without prejudice to the Collateral Trustee's rights under the Security Documents, at any time upon the occurrence of an Event of Default, and where relevant to such Event of Default the continuance of such Event of Default, the Collateral Trustee may give notice to BC Hydro of its intention to nominate a Senior Creditors' Representative to step-in in accordance with Section 4.1 (an "**Indicative Step-In Notice**") or to effect a transfer in accordance with Section 6.1 (an "**Indicative Transfer Notice**").

3.4 Agent's Withdrawal Notice

If at any time after the giving of an Indicative Notice or a Termination Notice, the Collateral Trustee has determined that it is not, or is no longer, considering appointing a Senior Creditors' Representative or effecting a transfer of Project Co's rights and liabilities under the Project Agreement to a Suitable Substitute Project Co in accordance with this Agreement, the Collateral

Trustee will give notice (an “**Agent’s Withdrawal Notice**”) to BC Hydro and thereafter the provisions of this Agreement will not be applicable with respect to the event that led to such Indicative Notice or Termination Notice and BC Hydro will be at liberty to take any and all action available to it under the Project Agreement and other Project Documents.

3.5 Notice of Antecedent Liabilities

Unless an Agent’s Withdrawal Notice has been given, not later than 30 days after the date of delivery by BC Hydro of a Termination Notice or the date of delivery by the Collateral Trustee of an Indicative Notice, as the case may be, BC Hydro will give the Collateral Trustee a notice (the “**Liability Report**”) containing details of:

- (a) any Material Antecedent Liabilities accrued and outstanding as of the date of delivery of the Termination Notice or Indicative Notice, as the case may be; and
- (b) any financial liabilities of which BC Hydro is aware (after reasonable enquiry) that will fall due under the Project Agreement on or after the date of delivery of the Termination Notice or Indicative Notice, as the case may be, and on or prior to:
 - (1) in the case of a Termination Notice, the proposed Termination Date set out in that notice; and
 - (2) in the case of an Indicative Notice, 60 days after the date of delivery of the Indicative Notice.

3.6 Subsequent BC Hydro Notice of Liabilities

After the delivery of the Liability Report, unless an Agent’s Withdrawal Notice has been given, BC Hydro will, promptly upon becoming aware of them, notify the Collateral Trustee in writing of any additional Material Antecedent Liabilities arising on or after the date of delivery of the Termination Notice or Indicative Notice, as the case may be, and prior to the end of the Termination Notice Period or the Indicative Notice Period, as the case may be.

3.7 No Right to Terminate

BC Hydro will not terminate or deliver any notice terminating the Project Agreement during any Notice Period, provided however that until the expiry of that period BC Hydro will be entitled to require Project Co to remedy any Project Co Event of Default and will be entitled to exercise all rights under the Project Agreement other than termination of the Project Agreement.

4. STEP-IN

4.1 Step-In Notice

Subject to Section 4.3 and without prejudice to the Collateral Trustee's rights under the Security Documents, the Collateral Trustee may give BC Hydro a notice (a "**Step-In Notice**") at any time during an Indicative Notice Period or a Termination Notice Period, as the case may be.

4.2 Contents of Step-In Notice

In the Step-In Notice, the Collateral Trustee will:

- (a) state that it intends to exercise its step-in rights under this Agreement; and
- (b) identify the Appointed Representative.

4.3 One Step-In Period

There will be not more than one Step-In Period following any one Indicative Notice or Termination Notice.

4.4 Appointed Representative Rights

On the Step-In Date, the Appointed Representative will assume jointly and severally with Project Co the rights of Project Co under the Project Agreement, which rights are conditional on and may be exercised subject to performance of Project Co's obligations under the Project Agreement. During the Step-In Period, BC Hydro will deal with the Appointed Representative and not Project Co. No Appointed Representative will be liable to BC Hydro or Project Co for any liabilities or obligations of Project Co. An Appointed Representative who is also an Insolvency Officer will not, and will not be required to, assume or have any personal liability for any liabilities or obligations of Project Co.

4.5 BC Hydro Right to Terminate

BC Hydro will not terminate the Project Agreement in whole or in part during the Step-In Period except as set out in this Section 4.5. BC Hydro will be entitled to terminate the Project Agreement during the Step-In Period by written notice to Project Co, the Collateral Trustee and the Appointed Representative:

- (a) if the Reported Antecedent Liabilities that are financial liabilities have not been paid to BC Hydro on or before the Step-In Date or, if the due date for payment thereof is after the Step-In Date, have not been paid by the due date;
- (b) if amounts, of which BC Hydro was not aware (having made reasonable enquiry) at the time of the Liability Report, subsequently become payable and are not discharged by:

- (1) if notice of the liability is given to the Collateral Trustee at least 20 Business Days prior to the Step-In Date, the Step-In Date or, if the due date for payment thereof is after the Step-In Date, the due date;
 - (2) if notice of the liability is given to the Collateral Trustee within 20 Business Days before the Step-In Date and such liability is material (as stated by BC Hydro, acting reasonably, when it gives such notice or by the Collateral Trustee, acting reasonably, by notice to BC Hydro within five Business Days of receipt of the notice from BC Hydro), 20 Business Days after the Step-In Date or, if later, the due date; or
 - (3) otherwise, 20 Business Days after delivery of the notice or, if later, the due date;
- (c) on grounds arising after the Step-In Date in accordance with the terms of the Project Agreement (other than a Project Co Insolvency Event), provided that for the purposes of termination under the Project Agreement, any Deductions and Default Points that arose prior to the Step-In Date will not be taken into account during the Step-In Period;
 - (d) on grounds arising prior to the Step-In Date (whether or not continuing at the Step-In Date) in accordance with the terms of the Project Agreement but only if the Appointed Representative is not using all reasonable efforts to remedy the relevant Antecedent Liabilities which are non-financial liabilities; or
 - (e) if the Service Commencement Date does not occur on or before the date that is 6 months after the Service Commencement Longstop Date.

5. STEP-OUT

5.1 Step-Out Notice

The Collateral Trustee or the Appointed Representative may at any time during the Step-In Period deliver to BC Hydro a Step-Out Notice which specifies the Step-Out Date.

5.2 Expiry of Step-In Period

Upon the termination or expiry of the Step-In Period:

- (a) the rights of BC Hydro against the Appointed Representative and the rights of the Appointed Representative against BC Hydro will be cancelled; and
- (b) BC Hydro will no longer deal with the Appointed Representative and will deal with Project Co in connection with the Project Agreement.

5.3 Project Co Remains Bound

Subject to Section 6.4, Project Co will continue to be bound by the terms of the Project Agreement notwithstanding the occurrence of an Indicative Notice, a Step-In Notice, a Step-In Period, a Step-Out Notice, a Step-Out Date, any action by the Collateral Trustee, Appointed Representative or the Senior Creditors or any provision of this Agreement, and for greater certainty Project Co will be liable for any obligations and liabilities arising prior to the expiry of the Step-in Period from actions or inactions of the Collateral Trustee, the Appointed Representative, or Senior Creditors. Project Co will remain liable for any unpaid amounts due and payable to BC Hydro by Project Co under the Project Agreement provided that Project Co will not be required to discharge such liability during the Step-in Period.

6. SENIOR CREDITOR REPLACEMENT OF PROJECT CO

6.1 Project Co Transfer Notice

Subject to Section 6.2, at any time:

- (a) during a Termination Notice Period;
- (b) during an Indicative Notice Period; or
- (c) during a Step-In Period,

the Collateral Trustee may, on 30 Business Days' notice to BC Hydro and any Appointed Representative, take any action available to it to cause the transfer of Project Co's rights and liabilities under the Project Agreement to a Suitable Substitute Project Co in accordance with the provisions of Section 6.4.

6.2 BC Hydro Consent

BC Hydro will notify the Collateral Trustee as to whether any Person to whom the Collateral Trustee proposes to transfer Project Co's rights and liabilities under the Project Agreement is a Suitable Substitute Project Co, not later than 20 Business Days after the date of receipt from the Collateral Trustee of all information reasonably required by BC Hydro to decide whether the proposed transferee is a Suitable Substitute Project Co and if BC Hydro fails to notify the Collateral Trustee within such period, the proposed transferee will be deemed to be a Suitable Substitute Project Co.

6.3 Withholding of Consent

BC Hydro will not unreasonably withhold or delay its decision on whether the proposed transferee is a Suitable Substitute Project Co and it will, without limitation, be reasonable for BC Hydro to withhold its consent:

- (a) if there are unremedied breaches under the Project Agreement and there is no remedial program reasonably acceptable to BC Hydro in respect of the breaches; or
- (b) based on any of the factors set out in Section 16.3 [*Factors BC Hydro May Consider*] of the Project Agreement with respect to any transfer, including any assignment, to such Person or Change in Control resulting from the transfer.

6.4 Terms of Transfer

Upon the transfer referred to in Section 6.1 becoming effective:

- (a) Project Co and BC Hydro will be released from their obligations under the Project Agreement to each other, including with respect to indemnification under the Project Agreement whether arising prior to or after such transfer (the **"Discharged Obligations"**);
- (b) the Suitable Substitute Project Co and BC Hydro will assume obligations which are substantially similar to the Discharged Obligations, but owed to or assumed by the Suitable Substitute Project Co instead of Project Co;
- (c) the rights of Project Co against BC Hydro under the Project Agreement and vice versa (the **"Discharged Rights"**) will be cancelled;
- (d) the Suitable Substitute Project Co and BC Hydro will acquire rights against each other which differ from the Discharged Rights only insofar as they are exercisable by or against the Suitable Substitute Project Co instead of Project Co;
- (e) any subsisting ground for termination of the Project Agreement by BC Hydro will be deemed to have no effect and any subsisting Termination Notice will be automatically revoked;
- (f) BC Hydro will enter into a lenders' remedies agreement with the Suitable Substitute Project Co and a representative of Senior Creditors lending to the Suitable Substitute Project Co on substantially the same terms as this Agreement;
- (g) any Default Points that arose prior to that time will not be taken into account after the transfer for the purposes of Sections 11.1(b) [*BC Hydro's Step-in Rights*] and 12.1(i) [*Project Co Events of Default*] of the Project Agreement;
- (h) any Forced Outages on Generating Units that arose prior to that time will not be taken into account after the transfer for the purposes of Sections 11.1(c) [*BC Hydro's Step-in Rights*] and 12.1(j) [*Project Co Events of Default*] of the Project Agreement; and

- (i) any Bypass System Non-Availability Events that arose prior to that time will not be taken into account after the transfer for the purposes of Sections 11.1(d) [*BC Hydro's Step-in Rights*] and 12.1(k) [*Project Co Events of Default*] of the Project Agreement.

7. INSURANCE

7.1 Acknowledgement in relation to Insurance Proceeds

The Collateral Trustee acknowledges that any Insurance Proceeds held in the Insurance Trust Account shall be held subject to the provisions of the Insurance Trust Agreement, and that the Collateral Trustee will not exercise any rights under the Senior Financing Agreements or take any other steps to prevent amounts being released from the Insurance Trust Account other than in accordance with the terms of the Insurance Trust Agreement.

8. COVENANTS

8.1 BC Hydro Covenants

BC Hydro agrees with the Collateral Trustee that BC Hydro will:

- (a) as soon as is reasonably practicable, at Project Co's or the Collateral Trustee's expense, take whatever action the Collateral Trustee, an Appointed Representative or a Suitable Substitute Project Co taking a transfer in accordance with Section 6 may reasonably require for perfecting any transfer or release under this Agreement, including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Collateral Trustee or Appointed Representative or Suitable Substitute Project Co reasonably requires;
- (b) not, prior to the Senior Debt Discharge Date, unless the Collateral Trustee has (acting reasonably) consented in writing:
 - (1) appoint an Insolvency Officer;
 - (2) commence any Insolvency Proceedings;
 - (3) sanction, by voting or failing to vote, any Insolvency Proceedings and will, if requested to do so by the Collateral Trustee, vote against any Insolvency Proceedings;
 - (4) without prejudice to its rights of set-off under the Project Agreement, including rights to take amounts owing by Project Co into account in calculating termination compensation payable, claim or prove as creditor or otherwise in competition with any Finance Party in respect of any monies owing to it by Project Co for or on account of Project Co's

liabilities under the Project Documents in the event of any Insolvency Proceedings; or

- (5) take any action authorising, or which might result in or is in furtherance of, any of the prohibited matters referred to in Sections 8.1(b)(1), (2), (3) or (4) [*BC Hydro Covenants*] of this Schedule above;
- (c) not take or fail to take any action (including amendments, waivers and enforcement action) with respect to any material agreement between BC Hydro and a third party, the effect of which would be reasonably likely to render BC Hydro unable to satisfy its obligations under the Project Agreement; and
- (d) not issue a Step-In Notice or Proposed Transfer Notice (as defined in the applicable Material Contract Party Collateral Agreement) under any Material Contract Party Collateral Agreement at any time that the Senior Creditors are validly exercising under any Senior Financing Agreement any step-in rights with respect to the relevant Material Contract.

8.2 Collateral Trustee Covenants

The Collateral Trustee will promptly:

- (a) deliver its pledged bond, if any, for cancellation upon payment by BC Hydro of the Termination Payment;
- (b) notify BC Hydro when it believes the Senior Debt Discharge Date will occur or has occurred, and in any event will so notify no later than 20 Business Days after its occurrence;
- (c) a reasonable time prior to the taking of any such action, having due regard to the circumstances, notify BC Hydro of any decision by the Senior Creditors to take action under Section 14.2 (*Rights and Remedies Upon Default*) of the Common Terms and Intercreditor Agreement, together with reasonable details of any such action;
- (d) unless notice is already provided under the above provisions, notify BC Hydro of any decision by the Senior Creditors to:
 - (1) appoint an Insolvency Officer;
 - (2) commence any Insolvency Proceedings;
 - (3) sanction, by voting or failing to vote, any Insolvency Proceedings; or

- (4) take any action authorizing, or which might result in or is in furtherance of, any of the matters referred to in Sections 8.2(d)(1), (2) or (3) [*Collateral Trustee Covenants*] of this Schedule above; and
- (e) upon request by BC Hydro, cause all security on any real or personal property comprised in the Facility to be promptly discharged and released on the date requested by BC Hydro (which will be on or after the Termination Date).

8.3 Project Co Covenant

Project Co acknowledges and consents to the arrangements set out in this Agreement and agrees not to do or omit to do anything that may prevent any party from enforcing its rights under this Agreement.

9. STEP-IN RIGHTS UNDER MATERIAL CONTRACTS

9.1 Priority of Step-In Rights under Material Contracts

Subject to Section 9.3, notwithstanding any provision in any Collateral Agreement, BC Hydro will not exercise any right it may have pursuant to a Collateral Agreement to step-in and assume or otherwise enforce (or cause a third party designated by BC Hydro to step-in and assume or otherwise enforce) Project Co's rights and obligations under any of the Material Contracts (including the issuance of a step-in notice by BC Hydro pursuant to any Collateral Agreement), or to transfer or assign a Material Contract

- (a) unless, within 60 days of delivery by BC Hydro to the Collateral Trustee of a copy of a Termination Notice as contemplated in Section 2.1 of the relevant Material Contract Party Collateral Agreement, BC Hydro has not received either (i) an Indicative Step-In Notice, or (ii) a copy of a step-in notice delivered under the terms of the lenders' direct agreement in respect of such Material Contract (a "**Lenders' Step-In Notice**"); or
- (b) during a Step-In Period.

9.2 Step-in from Termination Date

Subject to Section 9.4, from the Termination Date, provided that BC Hydro has (if applicable) complied with Section 3.7 and Section 4.5 in terminating the Project Agreement, BC Hydro will be free to exercise its rights under any Collateral Agreement to step-in and assume (or cause a third party designated by BC Hydro to step-in and assume) Project Co's rights and obligations under, or to transfer or assign, any Material Contract in accordance with a Collateral Agreement.

9.3 Release of Security

Subject to Section 9.4, the Collateral Trustee will release and discharge (or cause to be released and discharged) at no cost to BC Hydro, and as soon as reasonably possible, all security in

respect of each of the Material Contracts in respect of which any of Project Co's rights or obligations thereunder are assumed, transferred or assigned by or to BC Hydro (or by or to a third party designated by BC Hydro) pursuant to a Collateral Agreement.

9.4 Retention of Security for Deficiency

Until such time as any Deficiency has been determined and an amount equal to the Deficiency has been recovered by the Common Terms Finance Parties, the Common Terms Finance Parties will be entitled to retain the benefit of the security in respect of claims and losses that Project Co has as against the Material Contract Party under the relevant Material Contract (or as against any guarantor of such Material Contract) that arose prior to the date of the assumption, transfer or assignment of the relevant Material Contract (or guarantee in respect of such Material Contract) by or to BC Hydro (or by or to a third party designated by BC Hydro) provided that:

- (a) the Common Terms Finance Parties will not, and will not be entitled to, exercise any rights or enforce any security in respect of any such claim during the period from the date on which such assumption, transfer or assignment occurs to the Termination Date; and
- (b) the rights in relation to the security retained by the Common Terms Finance Parties pursuant to this Section 9.4 may only be exercised if and to the extent that the Termination Payment actually paid by BC Hydro pursuant to Section 1 [*Termination for BC Hydro Event of Default or at BC Hydro's Option*] or Section 2 [*Termination for Project Co Event of Default: Re-Bidding Process*] of Schedule 16 [Compensation on Termination] to the Project Agreement is less than the Senior Debt (the amount by which the Termination Payment is (or, in the reasonable opinion of the Collateral Trustee, is likely to be) less than the Senior Debt being herein referred to as the "**Deficiency**").

Any amounts recovered by the Common Terms Finance Parties pursuant to claims referred to in this Section 9.4, from the Termination Date to the date on which the Termination Payment and the amount of the Deficiency, if any, have been determined, will be held by the Collateral Trustee in a segregated account on terms satisfactory to the Collateral Trustee and BC Hydro, each acting reasonably, and, upon determination of the Termination Payment and the amount of the Deficiency, if any, such funds will be distributed to the Collateral Trustee, to the extent of the Deficiency, if any, and the balance of such funds will be paid to BC Hydro.

9.5 Assignment of Material Contracts by Common Terms Finance Parties

The Common Terms Finance Parties will not transfer or assign any Material Contract except to a Suitable Substitute Project Co in conjunction with a permitted transfer or assignment of the Project Agreement to that Suitable Substitute Project Co in accordance with Section 6.

10. ASSIGNMENT

10.1 Restriction on Assignment

No party to this Agreement may assign or transfer all or any part of its rights or obligations under this Agreement except as provided in this Section 10.

10.2 Assignment by Collateral Trustee

The Collateral Trustee may assign or transfer its rights and obligations under this Agreement to a successor Collateral Trustee in accordance with the Senior Financing Agreements without the consent of BC Hydro **provided that** the Collateral Trustee delivers to BC Hydro not less than 10 Business Days prior to such assignment or transfer a notice setting out such contact information regarding the assignee or transferee as BC Hydro may reasonably require and provided the assignee or transferee is not a Restricted Person. For purposes of this Section 10.2, the definition of Restricted Person will not include sub-paragraph (d) of that definition.

10.3 Assignment by Senior Creditor

Any Senior Creditor may assign or transfer its rights and obligations under the Senior Financing Agreements in accordance with the terms of the Senior Financing Agreements without the consent of BC Hydro provided the assignee or transferee is not a Restricted Person. For purposes of this Section 10.3, the definition of Restricted Person will not include sub-paragraph (d) of that definition.

10.4 Assignment by BC Hydro

BC Hydro will assign or transfer its rights and obligations under this Agreement to any permitted assignee of its interest in the Project Agreement concurrently with the assignment of the Project Agreement to such assignee and the Collateral Trustee and the Senior Creditors will co-operate with BC Hydro in completing the formalities of any transfer or assignment including by executing any additional documents as may be reasonably required by BC Hydro.

10.5 New Agreement

If Section 10.2 applies in relation to the Collateral Trustee, BC Hydro and Project Co will, upon request by the new Collateral Trustee, enter into a new lenders' remedies agreement with the new Collateral Trustee on substantially the same terms as this Agreement.

11. GENERAL

11.1 Term

This Agreement will remain in effect until the earlier of:

- (a) the Senior Debt Discharge Date; and

- (b) subject to compliance with Section 6.4(f) above, the date of transfer of Project Co's rights and liabilities under the Project Agreement to a Suitable Substitute Project Co pursuant to Section 6.

11.2 Conflict or Inconsistency

If there is any conflict or inconsistency between the provisions of this Agreement and the Project Agreement, as between the Collateral Trustee and BC Hydro the provisions of this Agreement will prevail.

11.3 Entire Agreement

Unless otherwise stated in this Agreement, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement. No party has relied on any representation except as expressly set out in this Agreement.

11.4 Waiver

The failure of any party to exercise any contractual right or remedy will not constitute a waiver thereof and no waiver will be effective, unless it is communicated in writing to the other party. A waiver of any right or remedy arising from a breach of this Agreement will not constitute a waiver of any right or remedy arising from any other breach of this Agreement.

11.5 Counterparts

This Agreement may be executed in any number of counterparts, all of which when taken together will constitute one and the same instrument.

11.6 Confidentiality

The Collateral Trustee will be bound to comply with the confidentiality obligations on the part of Project Co contained in the Project Agreement in relation to all information matters obtained from any other party under or in connection with the Project.

11.7 Notices

Any notice or communication required or permitted to be given under this Agreement will be in writing and will be considered to have been sufficiently given if delivered by hand or transmitted by electronic transmission or facsimile to the address or electronic mail address or fax number of each party set out below:

if to BC Hydro:

BC Hydro

[Redacted]

Attention: [Redacted]

Fax: [Redacted]

Email: [Redacted]

if to the Collateral Trustee:

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Attention: [Redacted]

Fax: [Redacted]

if to Project Co:

InPower BC General Partnership

[Redacted]

[Redacted]

Attention: [Redacted]

Copy to: [Redacted]

Fax : [Redacted]

Tel : [Redacted]

E-mail: [Redacted]

With an electronic copy to each of the following:

[Redacted]

[Redacted]

[Redacted]

[Redacted]

or to such other address or electronic mail address or fax number as any party may, from time to time, designate in the manner set out above. Any such notice or communication will be considered to have been received:

- (a) if delivered by hand during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and
- (b) if delivered by electronic mail or facsimile during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day provided that:
 - (1) the receiving party has, by electronic mail or by hand delivery, acknowledged to the notifying party that it has received such notice; or
 - (2) within 24 hours after sending the notice, the notifying party has also delivered a copy of such notice to the receiving party by hand delivery.

11.8 No Partnership or Agency

Nothing in this Agreement will be construed as creating a partnership or as constituting the Senior Creditors, the Collateral Trustee, the Appointed Representative, any other Senior Creditors' Representative or a Suitable Substitute Project Co as an agent of BC Hydro. No such person will hold itself out as having any authority or power to bind BC Hydro in any way.

11.9 Remedies Cumulative

The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

11.10 Disputes

Any dispute between any of the Parties with respect to any of the subject matters of this Agreement will be resolved in accordance with, and the Parties will comply with, the Dispute Resolution Procedure, and Schedule 19 [Dispute Resolution Procedure] of the Project Agreement is deemed to be incorporated, mutatis mutandis, in this Agreement.


12. ROLE OF COLLATERAL TRUSTEE

[REDACTED] has entered into this Agreement (and any document delivered in connection herewith) solely in its capacity as Collateral Trustee and agent for the Common Terms Finance Parties pursuant to the Common Terms and Intercreditor Agreement and in such capacity is herein and therein only referred to as the "**Collateral Trustee**" and not in its personal capacity. Whenever any reference is made in this Agreement (or in any document delivered in connection herewith), to an act to be performed by the Collateral Trustee, such

reference shall be construed and applied for all purposes as if it referred to an act to be performed by the Collateral Trustee and agent for the Common Terms Finance Parties pursuant to its appointment under the Common Terms and Intercreditor Agreement. Any and all of the representations, undertakings, covenants, indemnities, agreements and other obligations (in this section, collectively "**obligations**") made on the part of the Collateral Trustee herein are made and intended not as personal obligations of or by [REDACTED] or for the purpose or with the intention of binding [REDACTED] in its personal capacity, but are made and intended for the purpose of binding only the Collateral Trustee in its capacity as agent for the Common Terms Finance Parties and Collateral Trustee as set out in the Common Terms and Intercreditor Agreement and the property and assets of the trust created therein. No property or assets of [REDACTED], whether owned beneficially by it in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedures with regard to any of the Collateral Trustee's obligations hereunder **provided that** [REDACTED] has not acted with gross negligence, wilful misconduct, fraud or bad faith in the performance of its duties as Collateral Trustee hereunder. No recourse may be had or taken, directly or indirectly, against [REDACTED] in its personal capacity, or any incorporator, shareholder, officer, director, employee or agent of [REDACTED] or of any predecessor or successor of [REDACTED], with regard to the Collateral Trustee's obligations hereunder.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

Per: _____ 
Authorized Signatory

[REDACTED], as
Collateral Trustee

Per: _____ [REDACTED]
Authorized Signatory

Per: _____ [REDACTED]
Authorized Signatory

INPOWER BC GENERAL PARTNERSHIP, by its partners:

INPOWER BC1 PARTNER INC.

Per: _____ [REDACTED]

Per: _____ [REDACTED]

INPOWER BC2 PARTNER INC.

Per: _____ [REDACTED]

Per: _____ [REDACTED]