

**JOHN HART GENERATING STATION REPLACEMENT PROJECT**

*Schedule 18*

*Insurance Requirements*

## SCHEDULE 18

### INSURANCE REQUIREMENTS

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## SCHEDULE 18

### INSURANCE REQUIREMENTS

#### 1. CONSTRUCTION-RELATED INSURANCE REQUIREMENTS

##### 1.1 Wrap-Up Liability Insurance

During the Construction Period (and for Decommissioning Work), Project Co will take out, maintain in force, and extend, or will cause to be taken out, maintained and extended, commercial general liability insurance on a wrap-up basis (the “**Construction CGL Policy**”) which will include the following terms:

- (a) coverage in an amount of not less than [REDACTED] inclusive per occurrence for bodily injury, death, and damage to property, including loss of use thereof;
- (b) a deductible not exceeding [REDACTED] per occurrence;
- (c) include as named insureds BC Hydro, Project Co, and as additional insureds, the Project Contractors and all Sub-Contractors, but excluding suppliers whose only function is to supply or transport products to the Site, and not extending to any activities, works, jobs or undertakings of any of the insureds other than those directly related to the Design and Construction;
- (d) include Lender Endorsements substantially in the form set out in Appendix 18A [*Lender Endorsements*], including naming the Collateral Trustee, the Administrative Agent and the Indenture Trustee as additional insureds;
- (e) contain a waiver of subrogation against all insureds and all additional insureds under the policy; and
- (f) include coverage for:
  - (1) premises and operations liability;
  - (2) damage to existing structures;
  - (3) products or completed operations liability;
  - (4) blanket contractual liability;
  - (5) cross liability;
  - (6) contingent employer’s liability;
  - (7) personal injury liability;
  - (8) shoring, blasting, excavating, underpinning, demolition, pile-driving and caisson work, work below ground surface, tunnelling and grading, as applicable;

- (9) liability with respect to non-owned licensed vehicles;
- (10) broad form property damage;
- (11) broad form completed operations for a period of [REDACTED] months after Service Commencement with an aggregate limit of [REDACTED];
- (12) sudden and accidental pollution;
- (13) blanket tenant's legal liability with a sublimit of [REDACTED];
- (14) use of attached machinery;
- (15) loading and unloading of automobiles;
- (16) loss of use without damage to property;
- (17) hoist and collision liability;
- (18) intentional injury committed to protect persons or property;
- (19) watercraft;
- (20) voluntary medical payments with sublimits of [REDACTED] per person and [REDACTED] in the aggregate;
- (21) physical damage to non-owned auto with a sublimit of [REDACTED];
- (22) legal defence costs; and
- (23) forest fire fighting expenses with a sublimit of [REDACTED].

## 1.2 Course of Construction

From the commencement of Construction and thereafter during the Construction Period, Project Co will take out, maintain in force and extend, or will cause to be taken out, maintained and extended, course of construction insurance against "All Risks" of physical loss or damage (the "**Construction Property Policy**") covering all materials, property, structures and equipment purchased for, entering into or forming part of the Facility, including all Design and Construction and all existing structures at the Site which is in the care, custody, and control of Project Co, while located anywhere within Canada or the United States of America during construction, erection, installation and testing of the Facility which will include the following terms:

- (a) coverage in an amount of not less than [REDACTED] with the following sublimits (per occurrence unless specified otherwise):
  - (1) for property insured under the policy and stored at an off Site location or in transit in Canada or the United States of America, a limit of not less than the total of all values stored at any single location at any given time, or the value

of the largest single shipment to be transported by land to the Site if such transport by land is not covered by marine cargo insurance subject to standard insurance restrictions applying for disclosing named locations;

- (2) professional fees to establish quantum of any covered loss, [REDACTED];
- (3) fire fighting expense, [REDACTED];
- (4) debris removal and clean up, [REDACTED], whichever is higher;
- (5) expediting expense, [REDACTED], whichever is higher;
- (6) immediate repairs, [REDACTED];
- (7) costs of demolition and the increased cost to repair or replace resulting from the application of by-laws or ordinances, [REDACTED];
- (8) testing and commissioning, [REDACTED] days, any one item; and
- (9) for the peril of earthquake, [REDACTED] (annual aggregate).

(b) include coverage for:

- (1) off premises service interruption;
- (2) soft costs, having a waiting period of [REDACTED] days in respect of the Facility;
- (3) margin of profit;
- (4) interruption by civil authority or apparent civil authority;
- (5) escalation [REDACTED] of sum insured;
- (6) underground services, temporary buildings and structures, temporary boilers and pressure vessels, scaffolding, false work, forms, hoardings, excavation, site preparation, landscaping and similar work;
- (7) electronic data processing equipment and media, including the cost to restore or recreate data;
- (8) prevention of ingress or egress;
- (9) resultant damage from faulty materials, faulty workmanship, and design errors and omissions (LEG 2/96); and
- (10) damage to existing structures while they are being worked upon.

- (c) deductibles, per occurrence, not more than the following maximums and if more than one deductible applies, the highest one will apply:
- (1) for floods, maximum of [REDACTED];
  - (2) for testing and commissioning, maximum of [REDACTED];
  - (3) for earthquakes, the greater of [REDACTED] of the total insured value of the Facility at the time of the loss; and
  - (4) for all other insured perils, maximum of [REDACTED];
- (d) include, as named insureds BC Hydro, Project Co, the Project Contractors and all Sub-Contractors, as their interests may appear, and not extending to any activities, works, jobs or undertakings of any of the insureds, other than those directly related to the Design and Construction;
- (e) include Lender Endorsements substantially in the form set out in Appendix 18A [*Lender Endorsements*], including, without limitation, naming the Collateral Trustee as loss payee;
- (f) delay in start-up coverage:
- (1) in an amount sufficient to compensate Project Co for additional capital payments, additional interest for the extension of financing necessary for the completion of the Project, legal and accounting expenses, property taxes, insurance premiums, building permits and other miscellaneous costs, various incurred fees, fixed operational and maintenance expenses, additional commissions, advertising, margin of profit of Project Co, caused by the delay in Service Commencement resulting from any of the perils insured against under the Course of Construction Policy;
  - (2) having an indemnity period of no less than [REDACTED] months in respect of the Facility;
  - (3) having a waiting period of at least [REDACTED] days in respect of the Facility; and
  - (4) including only Project Co as named insured and the Collateral Trustee as loss payee;
- (g) exclusion for contractor's equipment of any description, except scaffolding and hoarding;
- (h) permit use and occupancy of the incomplete Facility by Project Co, the Project Contractors, the Sub-Contractors and BC Hydro prior to the Service Commencement Date for:
- (1) construction purposes;
  - (2) office purposes;

- (3) installing, testing and commissioning or storing of equipment or machinery;
  - (4) staff orientation and training; and
  - (5) partial operation of a part of the plant or one or several machine(s); and
- (i) contain a waiver of subrogation against all protected entities, including all additional insureds and those set out in Section 1.2(h) [Course of Construction Coverage] of this Schedule).

### 1.3 Other Construction Period Coverage

During the Construction Period, Project Co will take out, maintain in force and extend, or will cause to be taken out, maintained and extended, with respect to Design and Construction of the Facility:

- (a) automobile liability insurance which will include the following terms:
- (1) coverage in an amount of not less than [REDACTED] inclusive per occurrence;
  - (2) coverage for Project Co, the Project Contractors and all Sub-Contractors; and
  - (3) include coverage for third party property damage and bodily injury, including accident benefits, arising out of the use of any automobile in connection with the Project;
- (b) if aircraft or watercraft are used in connection with the Project, and except to the extent covered under the Construction CGL Policy, aircraft and watercraft, including owned and non-owned, liability insurance for bodily injury, death and damage to property, including loss of use thereof and including aircraft passenger hazard if applicable which will include the following terms:
- (1) coverage in an amount of not less than [REDACTED] inclusive per occurrence;
  - (2) coverage for Project Co, the Project Contractors and all Sub-Contractors;
  - (3) include BC Hydro as an additional insured;
  - (4) contain a waiver of subrogation against BC Hydro and all additional insureds; and
  - (5) a deductible not more than [REDACTED];
- (c) if ocean marine cargo is used to transport any of the materials, equipment or property supplied under or used during the Project, which are critical to achieve Service

Commencement, marine cargo insurance covering all such materials, equipment and other property, which will include the following terms:

- (1) coverage in an amount not less than the full replacement value of the shipment;
  - (2) coverage for Project Co, the Project Contractors and all Sub-Contractors;
  - (3) include BC Hydro as an additional named insured;
  - (4) subject to the conditions of the Institute Cargo Clauses (All Risks), including war and strikes extensions, and including transit and storage where applicable;
  - (5) if an entire vessel is chartered for shipping materials, equipment or property then charterer's liability insurance will also be provided in amounts sufficient to protect and indemnify BC Hydro, Project Co, the Project Contractors and all Sub-Contractors from and against all liability arising out of the chartering of such vessel;
  - (6) 30 days prior to such marine cargo being used, include delay in start-up coverage:
    - (i) in an amount sufficient to compensate Project Co for additional capital payments, additional interest for the extension of financing necessary for the completion of the Project, legal and accounting expenses, property taxes, insurance premiums, building permits and other miscellaneous costs, various incurred fees, fixed operational and maintenance expenses, additional commissions, advertising, margin of profit of Project Co, caused by the delay in Service Commencement resulting from any of the perils insured against under the Marine Cargo Policy;
    - (ii) having an indemnity period of no less than ■ months in respect of the Facility;
    - (iii) having a waiting period of ■ days in respect of the Facility; and
    - (iv) including only Project Co as named insured and the Collateral Trustee as loss payee;
  - (7) a deductible not more than ■;
- (d) "All Risks" insurance covering all construction equipment owned, leased or rented by Project Co, the Project Contractors or any Sub-Contractor for use during the Construction Period or for which any of them may be responsible, which will include the following terms:



- (1) coverage in an amount of not less than the replacement cost of such equipment;
  - (2) coverage for Project Co, the Project Contractors and all Sub-Contractors;
  - (3) contain a waiver of subrogation against BC Hydro and all additional insureds; and
  - (4) a deductible not more than [REDACTED];
- (e) workers' compensation insurance in accordance with Schedule 5 [*Design and Construction Protocols*];
- (f) environmental impairment liability insurance covering liability for bodily injury and property damage resulting from pollution conditions arising from or in the case of any known or pre-existing pollution conditions, exacerbated by construction operations during the Construction Period, [*and for Decommissioning Work*], which will include the following terms:
- (1) coverage in an amount of not less than [REDACTED];
  - (2) a deductible not more than [REDACTED];
  - (3) coverage for Project Co, the Project Contractors and all Sub-Contractors;
  - (4) on site and off site clean-up and remediation expense and restoration costs without the need for a third party claim;
  - (5) legal defence costs, civil fines and penalties where insurance coverage is allowable by law;
  - (6) coverage for non-owned disposal sites;
  - (7) inclusion of microbial matter in the definition of pollution conditions;
  - (8) inclusion of i) diminution of third-party property value and ii) natural resource damage in the definition of property damage;
  - (9) not restricted by any time element limitations;
  - (10) include BC Hydro as a named insured; and
  - (11) contain a waiver of subrogation against BC Hydro and all additional insureds; and
- (g) insurance required by Section 3.4 [*Additional, Elective and Supplemental Insurance*] of this Schedule.

## 1.4 Damage to Existing Property

BC Hydro acknowledges and agrees that the liability of Project Co, Project Contractors and Sub-Contractors for loss of, or damage to, property of BC Hydro existing on, or adjacent to the Site, at the Effective Date (i) that is not under the care, custody and control of Project Co, Project Contractors or Sub-Contractors on the date of loss or damage, and (ii) for which coverage is not provided under the Construction Property Policy, occurring during the Construction Period, including liability for loss of use of that property, is limited per occurrence to [REDACTED]. BC Hydro agrees to waive its insurers' rights of subrogation against Project Co, Project Contractors and Sub-Contractors under any policy of property insurance that BC Hydro may maintain covering such loss or damage to the extent that any subrogated claim would exceed the aforesaid limits.

## 2. SERVICE-RELATED INSURANCE REQUIREMENTS

### 2.1 Project Co's Commercial General Liability Policy

During the Services Period, Project Co will take out, maintain in force and extend, or will cause to be taken out, maintained and extended, commercial general liability insurance (the "**Project Co's Operating CGL Policy**"), which will include the following terms:

- (a) coverage in an amount of not less than [REDACTED] inclusive per occurrence for bodily injury, death, and damage to property, including loss of use thereof;
- (b) a deductible not more than [REDACTED] per occurrence;
- (c) include BC Hydro as an additional insured;
- (d) include as additional insured the Service Provider, but excluding suppliers whose only function is to supply or transport products to the Site, and not extending to any activities, works, jobs or undertakings of any of the insureds other than those directly related to the Services;
- (e) include Lender Endorsements substantially in the form set out in Appendix 18A [*Lender Endorsements*], including, without limitation, naming the Collateral Trustee, the Administrative Agent and the Indenture Trustee as additional insureds, but not extending to any activities, works, jobs or undertaking of any of the insureds other than those directly related to the Services;
- (f) contain a waiver of subrogation against BC Hydro and the Service Provider as additional insured;
- (g) include coverage for:
  - (1) products and completed operations liability;
  - (2) blanket written contractual liability;
  - (3) protective liability;

- (4) contingent employer's liability;
- (5) personal injury liability;
- (6) non-owned automobile liability;
- (7) cross liability and severability of interest;
- (8) employees and volunteers as additional insureds;
- (9) broad form property damage, endorsed to remove any exclusion limiting coverage when third party property is in the care, custody, control and/or possession of an insured;
- (10) legal defence costs;
- (11) sudden and accidental pollution; and
- (12) forest fire fighting liability.

## 2.2 BC Hydro's Commercial General Liability Insurance

During the Services Period, BC Hydro will take out, maintain in force and extend, or will cause to be taken out, maintained and extended, commercial general liability insurance on a Claims Made form ("**BC Hydro's Operating CGL Policy**") in respect of the Facility, which will include the following terms:

- (a) providing coverage for third party liability to BC Hydro, including but not limited to the operation of the Facility;
- (b) coverage in an amount of not less than [REDACTED] inclusive per occurrence for bodily injury, death, and damage to property, including loss of use thereof;
- (c) a self-insured retention of not more than [REDACTED] per occurrence;
- (d) include Project Co as an additional insured;
- (e) include as additional insured the Service Provider, but excluding suppliers whose only function is to supply or transport products to the Site, and not extending to any activities, works, jobs or undertakings of any of the insureds other than those directly related to the Services;
- (f) include Lender Endorsements substantially in the form set out in Appendix 18A [*Lender Endorsements*], including, without limitation, naming the Collateral Trustee, the Administrative Agent and the Indenture Trustee as additional insureds, but not extending to any activities, works, jobs or undertaking of any of the insureds other than those directly related to the Services;
- (g) contain a waiver of subrogation against Project Co and the Service Provider;

- (h) include coverage for:
- (1) products and completed operations liability;
  - (2) blanket written contractual liability;
  - (3) protective liability;
  - (4) contingent employer's liability;
  - (5) personal injury liability;
  - (6) non-owned automobile liability;
  - (7) cross liability and severability of interest;
  - (8) broad form property damage, endorsed to remove any exclusion limiting coverage when third party property is in the care, custody, control and/or possession of an insured;
  - (9) legal defence costs;
  - (10) sudden and accidental pollution; and
  - (11) forest fire fighting liability.

### 2.3 BC Hydro's All Risks Property Insurance

During the Services Period, BC Hydro will take out, maintain in force and extend, or will cause to be taken out, maintained and extended, all risks property insurance ("**BC Hydro's Operating Property Policy**") in respect of the Facility, which will include the following terms:

- (a) providing coverage for property damage to a portfolio of BC Hydro assets, including but not limited to the Facility;
- (b) coverage in an amount of not less than [REDACTED];
- (c) an annual aggregate self-insured retention of not more [REDACTED];
- (d) include as additional insureds Project Co and Project Contractors, as their interests may appear, as to the Project only;
- (e) include Lender Endorsements substantially in the form set out in Appendix 18A [*Lender Endorsements*], including naming the Collateral Trustee as loss payee, as to the Project only;
- (f) contain a waiver of subrogation against all named insureds and additional named insureds, except to the extent a loss is caused by, or results from, an error in Design or any other professional error or omission; and

- (g) include coverage for earthquake and flood.

## 2.4 Boiler and Machinery

During the Services Period, BC Hydro will take out, maintain in force and extend, or will cause to be taken out, maintained and extended, boiler and machinery insurance (the “**BC Hydro’s Boiler and Machinery Policy**”) (effective from the earlier of (a) the date on which testing and commissioning of any boiler and machinery is complete; and (b) the Service Commencement Date) covering all boilers, pressure vessels, electrical and mechanical machines included in the Facility on a comprehensive basis, which will include the following terms:

- (a) providing coverage for sudden and accidental breakdown of a portfolio of BC Hydro boilers, pressure vessels, electrical and mechanical machines, including but not limited to those in the Facility;
- (b) coverage to be in an amount of not less than [REDACTED];
- (c) a deductible of not more than [REDACTED] per occurrence;
- (d) include as additional insureds Project Co and Project Contractors, as their interests may appear, as to the Project only; and
- (e) include Lender Endorsements substantially in the form set out in Appendix 18A [*Lender Endorsements*], including, without limitation, naming the Collateral Trustee as loss payee, as to the Project only.

## 2.5 Self Insurance

BC Hydro may, in its sole discretion, choose not to purchase, in whole or in part, the insurance described in Sections 2.2 [*BC Hydro’s Commercial General Liability Insurance*], 2.3 [*BC Hydro’s All Risks Property Insurance*] and 2.4 [*Boiler and Machinery*] of this Schedule. Where BC Hydro chooses not to purchase such insurance, it will act as the insurer in respect of such coverage and will have all of the rights and obligations of an insurer as if such policies were in fact taken out. In such circumstances, BC Hydro will provide Project Co with policy wording for each such policy that is generally consistent with wording of a comparable policy maintained by a prudent owner of a project similar to the Project.

## 2.6 Other Services Period Coverage

During the Services Period, Project Co will take out, maintain in force and extend, or will cause to be taken out, maintained and extended:

- (a) workers’ compensation insurance coverage for all employees of Project Co, Project Contractors, and any Sub-Contractor engaged in the performance of the Services, in accordance with Laws and the requirements of any Governmental Authority;
- (b) when construction, rehabilitation, major repair or restoration work is being carried out by or on behalf of Project Co as part of the Services under this Agreement and the risks associated with such work are not insured by the insurance described in the policies

described in Section 1 [*Construction-Related Insurance Requirements*] or Section 2 [*Service-Related Insurance Requirements*] of this Schedule, Project Co will take out, maintain in force and extend, or will cause to be taken out, maintained and extended, such of the insurance described in Section 1 [*Construction-Related Insurance Requirements*] or Section 2 [*Service-Related Insurance Requirements*] of this Schedule in such amounts, as a prudent owner would reasonably require, as determined by BC Hydro, acting reasonably, at least 10 Business Days before the commencement of the applicable period during which the insurance is required. To the extent such work is undertaken pursuant to a Change Certificate and such work is not covered in the policies described in Section 1 [*Construction-Related Insurance Requirements*] or Section 2 [*Service-Related Insurance Requirements*] of this Schedule, the Change Certificate for such work will include such insurance coverage as BC Hydro, acting reasonably, considers necessary in the circumstances; and

(c) insurance required by Section 3.4 [*Additional, Elective and Supplemental Insurance*] of this Schedule.

### **3. GENERAL INSURANCE PROVISIONS**

#### **3.1 Insurance Representative**

Before commencing any Construction, Project Co will appoint an insurance representative who will communicate with BC Hydro and keep BC Hydro advised of all material matters of insurance, including claims, possible claims and policy changes or amendments. Project Co will at all times maintain such a representative throughout the Term. Such representative will be an individual located in Canada and Project Co will advise BC Hydro promptly of any change in such representative during the Term.

#### **3.2 Insurers and Terms of Policies**

Each of Project Co and BC Hydro will ensure that all policies for the insurance they are respectively required to obtain pursuant to this Schedule are obtained and maintained with Qualified Insurers licensed in Canada and, subject to this Schedule, are in such forms and contain such terms and conditions which are equal to or better than those that would be obtained and maintained by prudent owners and operators of projects of similar scope and magnitude to the Project and, in addition to the required inclusions or permitted exclusions for each policy specifically described in this Schedule, include such other inclusions and exclusions as such prudent owner or operator would require or permit.

#### **3.3 Liability Not Limited by Insurance**

Except to the extent otherwise expressly provided in this Agreement, none of the insurance coverage amounts or sublimits specified in this Schedule limit the liability of Project Co with respect to any obligations of Project Co to BC Hydro arising under this Agreement.

#### **3.4 Additional, Elective and Supplemental Insurance**

Project Co: (1) will obtain and maintain, or cause to be obtained and maintained, at its cost, all such other policies of insurance required by Law by Project Co in connection with the performance of its obligations

under this Agreement (“**Additional Insurance**”); and (2) may obtain and maintain all such other policies of insurance which Project Co deems necessary having regard to the policies of insurance which prudent owners and operators of projects of similar scope and magnitude to the Project would maintain and obtain, or cause to be obtained and maintained (“**Elective Insurance**”), including:

- (b) directors and officers liability and corporate indemnification insurance; and
- (c) professional errors and omissions insurance covering professional error and omissions for which the Design-Builder or any Design Professionals may be liable in connection with the Project.

Project Co may also obtain and maintain or cause to be obtained or maintained supplemental insurance in respect of the risks required to be insured by BC Hydro pursuant to Sections 2.3 and 2.4 of this Schedule 18, by supplementing or increasing the required limit amounts or by insuring against or decreasing the required deductible amounts for such insurance (the “**Supplemental Insurance**”). For greater clarity “*Mandatory Insurance*” includes the insurance policies that are required to be obtained and maintained by Project Co pursuant to Sections 1 [*Construction-Related Insurance Requirements*] and 2 [*Service-Related Insurance Requirements*] of this Schedule 18 and any Additional Insurance, but excluding Elective or Supplemental Insurance.

### **3.5 Particular Requirements of Policies**

Without limiting the generality of this Schedule and the provisions of Section 6 [*Insurance, Damage and Destruction*] of this Agreement:

- (a) each policy of insurance required under this Agreement will:
  - (1) bear an endorsement to the effect that the insurer will not effect any adverse material change or amendment to the policy or any cancellation of the policy without first giving at least 30 days prior written notice by registered mail to BC Hydro and each of the other named insureds and loss payees;
  - (2) contain an endorsement to the effect that the policy will not be invalidated and coverage thereunder will not be denied to any insureds by reason of any breach or violation of warranties, representations, declarations or conditions contained in the policy other than as a result of a negligent act, misrepresentation or omission of such insured;
  - (3) be primary and not require the sharing of any loss by any insurer of BC Hydro or any other named insured;
- (b) each policy of liability insurance required under this Agreement will contain a cross liability endorsement to the effect that Project Co and BC Hydro and the other insureds will each be entitled to indemnification under such policy as if each were alone insured under such policy and notwithstanding that the claim in respect of which indemnification is sought is made by any other insured; and

- (c) each policy of property insurance required under this Agreement must be on a stated amount co-insurance basis, other than:
  - (1) the contractor's equipment insurance described in Section 1.3(d) [*Other Construction Period Coverage*] of this Schedule, and;
  - (2) the Construction Property Policy.

### **3.6 Evidence of Insurance**

In respect of those policies of insurance:

- (a) required pursuant to this Schedule to be maintained by Project Co, upon the issue of and upon every renewal or extension of each such policy, except for policies required in Sections 1.3(a) and (b) [*Other Construction Period Coverage*] of this Schedule, and, in respect of Section 1.3(c) [*Other Construction Period Coverage*] of this Schedule, for shipments of less than [REDACTED], and otherwise upon request by BC Hydro, Project Co will deliver to BC Hydro a certificate of insurance of each such policy or other satisfactory evidence of adequate insurance; and
- (b) required pursuant to this Schedule to be maintained by BC Hydro, upon the issue of and upon every renewal or extension of each such policy, and otherwise upon request by Project Co, BC Hydro will deliver to Project Co a certificate of insurance of each such policy or other satisfactory evidence of adequate insurance.

No review or approval of any insurance certificate or insurance policy by either party will derogate from or diminish such party's rights under this Agreement.

### **3.7 Claims**

Project Co will:

- (a) maintain a written register of all claims and incidents that might reasonably result in a claim under any of the policies of insurance required by this Agreement and will allow BC Hydro to inspect such register at any time; and
- (b) notify BC Hydro within 5 Business Days after making any claim under any of the policies for the insurance required by this Agreement where the value of the claim exceeds [REDACTED] or, regardless of the value of the claim, the claim involves personal injury or death, accompanied by full particulars of the incident giving rise to the claim.

The parties agree to enter into the Insurance Trust Agreement in the form attached as Appendix 18B [*Insurance Trust Agreement*].



### **3.8 Project Co Deductibles and Self-Insured Retentions**

Subject to Section 3.9 [*BC Hydro Deductibles and Self-Insured Retentions*] of this Schedule, Project Co will be responsible for the deductible or self-insured retention portion of, or waiting period for, any claim made on any policy of insurance maintained pursuant to this Schedule.

### **3.9 BC Hydro Deductibles and Self-Insured Retentions**

BC Hydro will be responsible for the deductible or self-insured retention portion of, or waiting period for, any claim made on the policies of insurance maintained pursuant to this Schedule and made in respect of any:

- (a) Earthquake or flood, except to the extent that the flood or the flood damage or earthquake damage is caused by, attributable to or increased by the actions or inactions of or failure of Project Co or any Sub-Contractor to comply with the Project Agreement; or
- (b) Compensation Event.

### **3.10 No Indemnification for Insured Claims**

Project Co will not be entitled to claim compensation, indemnification or reimbursement from BC Hydro under this Agreement to the extent that Project Co:

- (a) is entitled to recover any such amounts under any insurance in force at the time of loss; or
- (b) would have been entitled to recover any such amounts under any insurance if it had complied with its obligation to take out and maintain, or cause to be taken out and maintained, insurance in accordance with this Agreement.

### **3.11 Compliance**

- (a) Project Co will comply with the terms, conditions and requirements of all policies for the insurance required by this Schedule and will not do, or omit to do, or permit to be done or omitted by any Project Co Person, anything on or with respect to the Facility or the Lands that could reasonably be expected to result in the cancellation of any insurance required by this Schedule, or that would reasonably be expected to entitle any insurer to refuse to pay any claim under the policy for any such insurance.
- (b) BC Hydro will not do, or permit to be done by any BC Hydro Person, anything on or with respect to the Facility or the Lands that could reasonably be expected to result in the cancellation of any insurance required by this Schedule, or that would entitle any insurer to refuse to pay any claim under the policy for any such insurance.
- (c) BC Hydro and Project Co will, and Project Co will cause the Project Contractors and the Sub-Contractors to:

- (1) comply with all insurance policy warranties, terms and conditions made known to them; and
- (2) take any and all special precautions necessary to prevent fires occurring in or about the Facility as required by the terms of the Construction Property Policy.

### **3.12 Failure to Insure**

Subject to Section 6.15 [*Consequences of Risks Becoming Uninsurable*] of this Agreement and Section 2.5 [*Self Insurance*] of this Schedule, if either party (the “**Non-Insuring Party**”) fails or refuses to obtain or maintain in force any insurance required to be effected by it under this Schedule, or to provide evidence of such insurance and renewals in relation thereto as and when required and in accordance with this Schedule, the other party (the “**Insuring Party**”) will, without prejudice to any of its other rights under this Agreement or otherwise, have the right itself to procure such insurance, in which event any amounts paid by the Insuring Party for that purpose together with all reasonable costs incurred by the Insuring Party in procuring such insurance will become due and payable by the Non-Insuring Party to the Insuring Party.

### **3.13 Project Contractors and Sub-Contractors**

Project Co will determine the applicable insurance coverage to be obtained by Project Contractors and Sub-Contractors, provided that such insurance coverages will be consistent with insurance that prudent sub-contractors would be required to maintain for projects of similar scope and magnitude to the Project.

## **4. INSURANCE PAYMENT**

### **4.1 Project Co Premiums**

Other than as set out in Section 4.2 [*BC Hydro Premiums*] of this Schedule, Project Co will pay all premiums payable under the policies of insurance required to be maintained by Project Co pursuant to this Schedule.

### **4.2 BC Hydro Premiums**

BC Hydro will pay all premiums under the policies of insurance required to be maintained by BC Hydro pursuant to this Schedule.

### **4.3 Increases in BC Hydro Premiums**

If and to the extent any increase in the amount of any premium payable in respect of any policy of insurance the premium for which is to be paid by BC Hydro pursuant to Section 4.2 [*BC Hydro Premiums*] of this Schedule is reasonably attributable to

- (a) the acts or omissions of Project Co or any Project Co Person,
- (b) claims caused by, attributable to or increased by the actions or inactions of or failure of Project Co or any Sub-Contractor to comply with the Project Agreement;

then Project Co will be responsible for and pay the amount of any such increase in accordance with the payment terms of Schedule 13 [*Performance and Payment Mechanisms*].

#### 4.4 Changes in Project Co Premiums

If and to the extent in the first year of the Service Period: (a) the actual cost of the Service Period Mandatory Insurance, or any Supplemental Insurance relating to the BC Hydro Operating Property Policy, differs from Project Co's estimated cost in the Financial Model, BC Hydro will be responsible for and pay Project Co a one-time adjustment ("the **Insurance Premium Adjustment**") in the amount of the cumulative change in the Advisen Property and General Liability Indices from the Advisen Premium Index over the same period.

Every year thereafter during the Services Period, if and to the extent: (a) the renewal premium differs by more than █ from the preceding year's premium when Project Co renews one or more of the Mandatory Insurance policies or any Supplemental Insurance relating to the BC Hydro Operating Property Policy; and (b) in that same year the change in the Advisen Property and General Liability Indices from the Advisen Premium Index (or other suitable premium index by one of the leading insurance brokerage firms in Canada mutually acceptable to BC Hydro and Project Co) increases by more than █ in the year during which a policy renewal by Project Co is made, BC Hydro will be responsible for and pay Project Co the incremental cost amount (the "**Insurance Premium Increase**") represented by lesser of: (i) the actual cost increase to Project Co in excess of █; or (ii) the increase in the Advisen Property and General Liability Indices from the Advisen Premium Index in excess of █, in that year.

Conversely, if and to the extent there is a decrease in the cost of the foregoing insurance by more than - █ in the period during which a policy renewal is made, Project Co will be responsible for and pay BC Hydro the full amount of realized reduction in premium cost ("the **Insurance Premium Credit**") represented by the greater of: (a) the actual decrease to Project Co in excess of █; or (b) the decrease in the Advisen Property and General Liability Indices from the Advisen Premium Index Indices in excess of █, in that year. Payments by BC Hydro or Project Co, as the case may be, shall be made in accordance with Schedule 13.

Project Co acknowledges that in form A5 of the Supplemental Financial Submission, Project Co committed to providing course of construction insurance with an annual aggregate limit of liability for earthquake of █. Prior to the Effective Date, Project Co notified BC Hydro that it has obtained earthquake coverage with an annual sublimit of liability of █. To the extent that there is a decrease in the cost of the foregoing insurance to Project Co because of the reduction in such earthquake coverage, BC Hydro will receive a credit for the full amount of such realized reduced costs against any payment owing by BC Hydro for an Insurance Premium Increase, as described above. At the end of the Term, any unused credits for such reduction in premium costs shall fully expire without any further right of set off or claim by BC Hydro for such savings.

## APPENDIX 18A

### LENDER ENDORSEMENTS

With respect to any policy of insurance noted in Schedule 18 [*Insurance Requirements*] as requiring these Lender Endorsements, Project Co and BC Hydro will use all reasonable efforts to have the underwriters of such policies include terms and endorsements substantially similar to those set out in this Appendix 18A with such changes and amendments as may reasonably be required in the context of the coverage provided under, and the wording contained in, each such policy.

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Notwithstanding any other provision of this Policy, the following endorsement shall apply:

#### Section I: Definitions

##### 1. In this endorsement:

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

**BC Hydro** means British Columbia Hydro and Power Authority;

**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;

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

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

**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;

**Common Terms Finance Parties** has the meaning given in the Common Terms and Intercreditor Agreement.

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

**Insurance Trust Account** means Account No. [REDACTED];

**Insured** means those parties so described in the policy declarations;

**Insurers** means the insurer or insurers underwriting this insurance policy;

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

**Project** means the project described in the declarations to this Policy;

**Project Co** means InPower BC General Partnership;

**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** means collectively, the Lenders and the Bondholders, and for greater certainty, being the parties to whom Senior Debt is owed; and

**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.

## **Section II: Policy formation/basis**

### **2. Separate Policy**

All the provisions of this Policy (except for those relating to limits of liability) shall operate as if there were a separate policy covering each Insured. Accordingly, the liability of the Insurers under this Policy to any one of the Insured shall not be conditional upon the due observance and fulfilment of any other Insured of the terms of this Policy and of any duties imposed upon it relating thereto and shall not be affected by any failure in such observance or fulfilment of any such other Insured.

### **3. Interest of the Common Terms Finance Parties and BC Hydro**

3.1 The Insurers acknowledge that the Common Terms Finance Parties and (in respect of third party liabilities) their respective officers, directors, employees, secondees and assigns are each additional insureds and/or loss payees under this Policy and that the premium specified in this Policy provides consideration for their being insured parties.

3.2 The Insurers acknowledge that BC Hydro and (in respect of third party liabilities) its officers, directors, employees, secondees and assigns are each additional insureds under the sections of this Policy relating to property damage and third party liability risks and that the premium specified in this Policy provides consideration for their being insured parties.

### **4. Liability for Premium**

Neither the Collateral Trustee, nor the Common Terms Finance Parties shall be liable for the payment of any premium under this Policy although they may choose to pay the premium.

### **5. Disclosure**

5.1 The Common Terms Finance Parties shall have no duty of disclosure to Insurers in relation to the Policy.

- 5.2 The Insurers acknowledge to the Common Terms Finance Parties alone that (i) they have received adequate information in order to evaluate the risk of insuring Project Co in respect of the risks hereby insured on the assumption that such information is not materially misleading, (ii) there is no information which has been relied on or is required by Insurers in respect of their decision to co-insure the Common Terms Finance Parties or their directors, officers, employees or agents, and (iii) in agreeing to enter into this Policy, they have not relied upon or taken into account any information supplied to them by any Finance Party. The acknowledgements provided by the Insurers in this clause 5.2 shall have no effect on any rights that Insurers might have had under or in relation to the Policy against any party (including Project Co) other than the Common Terms Finance Parties and the Collateral Trustee in the absence of such acknowledgements.
- 5.3 Non-disclosure or misrepresentation by one Insured shall not be attributable to any other Insured who did not actively participate in that non-disclosure or misrepresentation. Without prejudice to the protections afforded to the Insured by this endorsement, no one Insured represents or warrants the adequacy or accuracy of any information provided or representation made by or on behalf of any other Insured.

### **Section III: Rights to avoid/cancel or change Policy terms**

#### **6. Non-vitiation**

- 6.1 The Insurers undertake to each Insured including additional insured and loss payees that the Policy will not be invalidated as regards the rights and interests of such Insured and that the Insurers will not seek to avoid any liability under this Policy because of any act, neglect, error or omission made by any other Insured, including any failure by any other Insured to disclose any material fact, circumstance or occurrence, any misrepresentation by any other Insured or any breach or non-fulfilment by any other Insured of any condition, warranty or provision contained in the policy.
- 6.2 The Insurers agree that no Insured shall be penalised or prejudiced in any way by any unintentional or inadvertent misrepresentation, non-disclosure, want of due diligence or breach of any declaration, terms, condition or warranty of this Policy (together "**the Relevant Matter**"), but that this shall not apply as regards the individual Insured responsible for the Relevant Matter if that Insured fails to notify the Insurers or the brokers through whom the Policy was placed as soon as reasonably practicable after the management or managers of that Insured become aware or are made aware of the Relevant Matter.

#### **7. Cancellation**

- 7.1 The Insurers agree that they shall not seek to cancel or suspend the construction phases of this insurance except for non payment of premium.
- 7.2 The Insurers shall promptly notify the Collateral Trustee and BC Hydro in writing of any default in the payment of premium and shall give the Collateral Trustee and BC Hydro at least 30 days notice in writing before voiding this Policy for non-payment of premium, in order to give an opportunity for that premium to be paid within the notice period.

#### **8. Changes in cover**

The Insurers shall give the Collateral Trustee and BC Hydro at least 30 days notice in writing before any reduction in cover or increase in excess or deductible under this Policy takes effect. Nothing in this

clause shall give the Insurers any right which they do not otherwise have to reduce cover or increase any excess or deductible under this Policy.

## **9. Amendments to Endorsement**

During the term of this Policy, the provisions of this endorsement may only be amended by written agreement between Project Co, the Insurers and the Collateral Trustee, such amendment to be endorsed on the Policy.

## **Section IV: Claims**

### **10. Notice of claims**

10.1 Notice of claim by BC Hydro or the Common Terms Finance Parties or their Collateral Trustee or any other party entitled to indemnity under the Policy shall, in the absence of manifest error, be accepted by Insurers as a valid notification of claim on behalf of all other Insureds subject to the full terms of the Policy.

### **11. Claim Payments/Loss Payee**

Payments made in accordance with this Clause 11 shall, to the extent of the payment, discharge the Insurers' liability to pay Project Co or any other Insured.

11.1 In respect of course of construction, marine cargo, property and boiler and machinery risks only:

All claim payments or return premium shall be paid into the Insurance Trust Account or to such other account as the Collateral Trustee may specify in writing.

11.2 In respect of the insurance under this Policy of third party liability risks only:

All claim payments in respect of a third party liability shall be paid to person(s) whose claim(s) constitute the risk or liability insured against except in the case where the Insured has properly discharged its liability to such person(s), in which case the claim payment shall be paid to the Insurance Trust Account or such account as the Collateral Trustee directs in writing.

Any return premiums shall be paid to the Insurance Trust Account or such other account as the Collateral Trustee directs in writing.

### **12. Waiver of subrogation**

The Insurers waive all rights of subrogation howsoever arising which they may have or acquire against any Insured (including any additional insureds and/or loss payee) described within the appropriate Schedules arising out of any occurrence in respect of which any claim is admitted and is insured hereunder for the benefit of such Insured except against any:

- (i) such Insured (or officer, director, employee, agent or assign) who has caused or contributed to such an occurrence or claim by fraud, deliberate misrepresentation, deliberate non-disclosure or deliberate breach of policy condition; or

- (ii) consultant or equivalent professional party to the extent that their professional errors, omissions or activities not covered by this Policy have caused or contributed to a loss covered under this Policy; or
- (iii) supplier or manufacturer to the extent that their errors, omissions or activities not covered by this Policy have caused or contributed to a loss covered under this Policy; or
- (iv) such Insured to the extent that they are entitled to recover in respect of a loss under cover falling within sub-clause 13(a)–(e) below (or would be so insured if cover in the terms set out in this Policy had not been taken out).

### 13. Primary insurance

The Insurers agree that this insurance provides the primary cover for risks insured under this Policy. In the event that any risk insured under this Policy is also insured under any other policy of insurance effected by any Insured, the Insurers agree to indemnify the Insured as if such other policy of insurance did not exist except in respect of:

- (a) excess layers of third party cover effected specifically for the Project;
  - (b) any third party liability claim against the Insured which exceeds the applicable limit of indemnity under this Policy, in which case the liability of the Insurers for additional legal costs and expenses shall be limited to the proportion that the applicable limit of indemnity bears to the total claim against the Insured;
  - (c) any claim under this Policy to which a Marine 50/50 Clause applies, if any;
  - (d) any claim made under a Contingent Motor Liability extension to this Policy, if any; or
  - (e) any claim relating to a loss which is insured against (or would be insured but for a double insurance provision or similar or the application of a deductible) under:
    - (i) any other policy specifically effected for the construction or operational phase(s) of the Project; or
    - (ii) a latent or inherent defects policy or engineering or mechanical breakdown policy specifically effected for the Project;
- or a related business interruption insurance policy.

## Section V: Miscellaneous

### 14. Notice of Security Interest

The Insurers acknowledge that by an assignment contained in a general security agreement dated on or about \_\_\_\_\_ (the “**Assignment**”), Project Co assigned by way of security to the Common Terms Finance Parties all benefits and rights in respect of this insurance and all claims and returns of premiums in respect thereof to which the Insured is or may at a future time become entitled. The Insurers



confirm that they have not been notified of any other assignment of or security interest in Project Co's interest in this insurance.

**15. Notice**

15.1 All notices or other communications under or in connection with the Policy will be given by fax and post. Any such notice given by Insurers will be deemed to be given on the earlier of:

15.1.1 if by fax, when transmitted but only if the sender's fax machine confirms successful transmission; and

15.1.2 if by post, within 7 business days of release from the relevant Insurer's office.

15.2 The address and fax number of the Collateral Trustee for all notices under or in connection with the Policy are those notified from time to time by the Common Terms Finance Parties for this purpose to the insurance broker at the relevant time. The initial address and fax number of the Collateral Trustee:

Address: [Redacted]  
[Redacted]  
Fax No: [Redacted]  
Attention: [Redacted]

15.3 The address and fax number of BC Hydro for all notices under or in connection with the Policy are those notified from time to time by BC Hydro for this purpose to the insurance broker at the relevant time. The initial address and fax number of BC Hydro is as follows:

Address: BC Hydro  
[Redacted]  
[Redacted]  
Attention: [Redacted]  
Email: [Redacted]  
Fax No: [Redacted]

**16. Governing law & Jurisdiction**

The Policy shall be governed and interpreted in accordance with the Law of British Columbia. This endorsement overrides any conflicting provision in this Policy.

**Appendix 18B  
Insurance Trust Agreement**

**INSURANCE TRUST AGREEMENT**

**THIS AGREEMENT** is made as of the 25<sup>th</sup> day of February, 2014

**BETWEEN:**

**BRITISH COLUMBIA HYDRO AND POWER AUTHORITY**

("BC Hydro")

**AND:**

**COMPUTERSHARE TRUST COMPANY OF CANADA**, acting as Collateral  
Trustee for and on behalf of the Common Terms Finance Parties

(the "Collateral Trustee")

**AND:**

**INPOWER BC GENERAL PARTNERSHIP**

("Project Co")

**AND:**

**COMPUTERSHARE TRUST COMPANY OF CANADA**

(the "Insurance Trustee")

**WHEREAS:**

- A. BC Hydro and Project Co have entered into the Project Agreement.
- B. BC Hydro, the Collateral Trustee and Project Co have entered into the Lenders' Remedies Agreement.
- C. BC Hydro, the Collateral Trustee and Project Co have agreed that all amounts from time to time contained in the Insurance Trust Account are to be held in trust by the Insurance Trustee in accordance with the terms of this Insurance Trust Agreement, and that no releases, distributions or transfers of any funds from the Insurance Trust Account shall be made other than in accordance with the terms of this Insurance Trust Agreement.

**NOW THEREFORE** in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

## 1. DEFINITIONS

In this Insurance Trust Agreement, unless the context otherwise requires:

- (a) **“Administrative Agent”** means Alberta Treasury Branches, and its successors and assigns;
- (b) **“Assignment of Insurance”** means the assignment of insurance between Project Co and the Collateral Trustee dated as of the date hereof.
- (c) **“BC Hydro Event of Default”** has the meaning given in the Project Agreement.
- (d) **“Bank”** means Bank of Nova Scotia.
- (e) **“Business Day”** has the meaning given in the Project Agreement.
- (f) **“Change of Authorization Event”** has the meaning given in Section 7(a) of this Insurance Trust Agreement.
- (g) **“Change of Authorization Notice”** has the meaning given in Section 7(b)(ii) of this Insurance Trust Agreement.
- (h) **“Common Terms and Intercreditor Agreement”** has the meaning given in the Project Agreement.
- (i) **“Common Terms Finance Parties”** has the meaning given in the Common Terms and Intercreditor Agreement.
- (j) **“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.
- (k) **“Default Notice”** means a written notice given by the Collateral Trustee to the Insurance Trustee that an event of default under the Senior Financing Agreements has occurred and is continuing or by BC Hydro to the Insurance Trustee than an event of default under the Project Agreement has occurred and is continuing.
- (l) **“Default Period”** means the period commencing on the date upon which the Insurance Trustee receives a Default Notice and ending on the date upon which the Insurance Trustee receives written notice from the Collateral Trustee or BC Hydro as the case may be that the event of default which was the subject matter of the applicable Default Notice has been cured.

- (m) **“Facility”** has the meaning given in the Project Agreement.
- (n) **“Governmental Authority”** has the meaning given in the Project Agreement.
- (o) **“Insurance Policies”** has the meaning given in Section 4(a) of this Insurance Trust Agreement.
- (p) **“Insurance Proceeds”** means:
  - (i) all proceeds of any Insurance Policy that are paid over to the Insurance Trustee by any insurer, Project Co, the Collateral Trustee or BC Hydro; and
  - (ii) any amounts paid by BC Hydro or Project Co to the Insurance Trustee on the occurrence of an Uninsurable Risk (as defined in the Project Agreement), which would otherwise have been covered by an Insurance Policy.
- (q) **“Insurance Receivables”** has the meaning given in the Project Agreement.
- (r) **“Insurance Trust Account”** means Account No. [REDACTED].
- (s) **“Insurance Trust Agreement”** means this insurance trust agreement.
- (t) **“Lenders”** has the meaning given to it in the Project Agreement.
- (u) **“Lenders’ Remedies Agreement”** means the lenders’ remedies agreement made on or about the date hereof between BC Hydro, Project Co and the Collateral Trustee.
- (v) **“Order”** has the meaning given in Section 6(k) of this Insurance Trust Agreement.
- (w) **“Party”** means any of BC Hydro, Project Co, the Collateral Trustee or the Insurance Trustee, and **“Parties”** means all of BC Hydro, Project Co, the Collateral Trustee and the Insurance Trustee.
- (x) **“Project”** has the meaning given in the Project Agreement.
- (y) **“Project Agreement”** means the project agreement made on or about February 25th, 2014 between BC Hydro and Project Co.
- (z) **“Project Co Event of Default”** has the meaning given in the Project Agreement.
- (aa) **“Senior Financing Agreements”** has the meaning given in the Project Agreement.
- (bb) **“Senior Creditors”** has the meaning given in the Project Agreement.
- (cc) **“Service Commencement”** has the meaning given in the Project Agreement.

- (dd) **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.
- (ee) **“Termination Payment”** has the meaning given in the Project Agreement.
- (ff) **“Trust Property”** means all of the property held in trust by the Insurance Trustee pursuant to this Insurance Trust Agreement, including, without limitation, the Insurance Trust Account, and all amounts from time to time contained therein, the Insurance Policies and the Insurance Proceeds.

## 2. INTERPRETATION

This Insurance Trust Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Insurance Trust Agreement are for convenience of reference only, shall not constitute a part of this Insurance Trust Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Insurance Trust Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Insurance Trust Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Insurance Trust Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Insurance Trust Agreement shall bear their natural meaning.
- (g) References containing terms such as:

- (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Insurance Trust Agreement taken as a whole; and
  - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- (h) In construing this Insurance Trust Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach apply to the construction of this Insurance Trust Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (i) Where this Insurance Trust Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Insurance Trust Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Vancouver, British Columbia.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Insurance Trust Agreement they shall be construed and interpreted as synonymous and to read “shall”.

### **3. INSURANCE TRUST ACCOUNT**

- (a) Prior to the commencement of a Default Period, the Insurance Trust Account, and all amounts from time to time contained therein, including interest thereon, shall be held in trust by the Insurance Trustee for the benefit of Project Co. During a Default Period, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Insurance Trustee for the benefit of the Collateral Trustee and the Senior Creditors, provided that, upon receipt by the Insurance Trustee of a Change of Authorization Notice, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Insurance Trustee for the benefit of BC Hydro.

- (b) The Insurance Trustee shall not release, distribute or transfer any funds from the Insurance Trust Account other than in accordance with the terms of this Insurance Trust Agreement.
- (c) Notwithstanding any other provision of this Insurance Trust Agreement but without limiting Project Co's obligations under the Project Agreement, the Collateral Trustee, BC Hydro, and Project Co agree that, if any of them either receives any Insurance Proceeds from the Insurance Trust Account or has the right to direct the Insurance Trustee to advance funds in respect of any Insurance Proceeds from the Insurance Trust Account to third parties, such funds shall be directed, used or advanced only for one of the following purposes:
  - (i) the repair, reinstatement, restoration or replacement of the Facility or any other assets, materials or goods necessary or desirable for the carrying out of the Project in respect of which such Insurance Proceeds have been paid;
  - (ii) towards a Termination Payment in accordance with the Project Agreement; or
  - (iii) to BC Hydro if the relevant Insurance Proceeds arise from Insurance Receivables that are payable to BC Hydro or are assigned to BC Hydro under the Project Agreement.

For greater certainty, use of any Insurance Proceeds received in respect of a claim by Project Co for delay in start-up, soft costs insurance or business interruption insurance shall be applied in accordance with the terms of the Senior Financing Agreements so as to enable Project Co to carry out the Project.

#### **4. INSURANCE**

- (a) Project Co and BC Hydro shall each deliver, or cause to be delivered, to the Insurance Trustee originals of all property and asset related insurance policies that each of them is required to maintain under the Project Agreement, excluding any self-insurance by BC Hydro pursuant to Section 2.4 [*Self Insurance*] of Schedule 18 [*Insurance Requirements*] to the Project Agreement (collectively, the "**Insurance Policies**"), and the Insurance Trustee shall hold the Insurance Policies in trust for the benefit of each of the beneficiaries and loss payees, as the case may be, thereunder.
- (b) The Insurance Trustee shall distribute any Insurance Proceeds as follows:
  - (i) subject to the last paragraph of Section 3(c) and Section 4(c), in the case of the all risks course of construction (builders' risk), boiler and machinery insurance or property insurance policies that is required to be maintained under the Project Agreement:
    - (A) if the Insurance Trustee has not received a Default Notice and:

- (1) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds paid in respect of the same loss or claim, is less than [REDACTED], to Project Co to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; or
  - (2) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds paid in respect of the same loss or claim, is equal to or greater than [REDACTED], to the Collateral Trustee to reimburse Project Co for the costs of repairing, restoring or replacing the assets in respect of which such Insurance Proceeds have been paid; or
- (B) if the Insurance Trustee has received a Default Notice, to the Insurance Trust Account to be distributed by the Insurance Trustee in such amounts and to such persons as the Collateral Trustee may at any time or from time to time direct in writing, provided that, if the Insurance Trustee has received a Change of Authorization Notice, the Insurance Trustee shall release such Insurance Proceeds from the Insurance Trust Account in such amounts and to such parties as BC Hydro may at any time or from time to time direct in writing, in each case, to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; and
- (ii) in the case of any other Insurance Policies, as directed by the Collateral Trustee (acting on the instructions of the Senior Creditors pursuant to the terms of the Common Terms and Intercreditor Agreement), or, following receipt by the Insurance Trustee of a Change of Authorization Notice, as directed by BC Hydro, to be distributed to the parties entitled thereto.
- (c) Notwithstanding anything in this Insurance Trust Agreement, all losses under (i) all risks course of construction (builder's risk) including boiler and machinery insurance carried prior to Service Commencement; (ii) property insurance carried after Service Commencement; and (iii) the boiler and machinery insurance carried after Service Commencement, which in each case relate to the equipment purchased, owned or leased by BC Hydro, shall be payable solely to BC Hydro and shall not be payable to the Insurance Trustee or distributed pursuant to this Insurance Trust Agreement.
- (d) The Insurance Trustee shall distribute any excess Insurance Proceeds remaining after the distributions contemplated in Section 4(b)(ii) have been made, including, without limitation, any Insurance Proceeds held in the Insurance Trust Account:
- (i) if the Insurance Trustee has not received a Default Notice, as directed jointly by Project Co, BC Hydro, and the Collateral Trustee; and
  - (ii) if the Insurance Trustee has received a Default Notice, to such persons as the Collateral Trustee or, following receipt by the Insurance Trustee of a Change of



Authorization Notice, BC Hydro, may at any time or from time to time direct in writing.

- (e) In the case of any dispute over such direction, the Parties agree to resolve such dispute in accordance with the Dispute Resolution Provisions of the Project Agreement, a copy of which will be provided to the Insurance Trustee upon request.

## 5. ACCOUNT AGREEMENT

- (a) The Insurance Trustee hereby agrees to promptly provide to the Collateral Trustee all monthly statements and other information with respect to the Insurance Trust Account provided to the Insurance Trustee by the Bank pursuant to the relevant account agreement **provided that** the Insurance Trustee shall not be obliged to provide such monthly statements where the amount standing to the credit of the Insurance Trust Account is NIL. The Insurance Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as the Collateral Trustee may from time to time request in writing.
- (b) The Insurance Trustee hereby agrees to promptly provide to BC Hydro all monthly statements and other information with respect to the Insurance Trust Account provided to the Insurance Trustee by the Bank pursuant to the relevant account agreement **provided that** the Insurance Trustee shall not be obliged to provide such monthly statements where the amount standing to the credit of the Insurance Trust Account is NIL. The Insurance Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as BC Hydro may from time to time request in writing.

## 6. THE INSURANCE TRUSTEE

- (a) The Insurance Trustee shall not have any duty or obligation to manage, control, use, make any payment in respect of, register, record, insure, inspect, sell, dispose of or otherwise deal with any part of the Trust Property except as expressly provided by the terms of this Insurance Trust Agreement. The Insurance Trustee shall carry out all written directions given by the Collateral Trustee, BC Hydro or Project Co, as applicable, in accordance with this Insurance Trust Agreement and shall not be required to exercise any discretion in exercising any of its duties under this Insurance Trust Agreement in pursuance of such written directions. The Insurance Trustee shall not be bound to do or take any act, action or proceeding by virtue of the powers conferred on it hereby unless and until it shall have been required to do so under the terms hereof and has received instruction, advice or direction in writing from the Collateral Trustee, BC Hydro or Project Co, as applicable, as to the action to be taken (except with respect to actions specifically set out herein to be performed by the Insurance Trustee).
- (b) The Insurance Trustee will exercise its powers and carry out its obligations hereunder as insurance trustee honestly, in good faith and in the best interests of the beneficiaries hereunder and in connection therewith will exercise that degree of care, diligence, and skill that a reasonably prudent professional trustee would exercise in comparable

circumstances. Unless otherwise required by law, the Insurance Trustee will not be required to give bond surety or security in any jurisdiction for the performance of any duties or obligations hereunder. No provision of this Insurance Trust Agreement shall be construed to relieve the Insurance Trustee from liability for its own gross negligence, wilful misconduct, fraud or bad faith.

- (c) The Insurance Trustee will not be subject to any liability whatsoever, in tort, contract or otherwise in connection with the Trust Property or the carrying out of its duties under this Insurance Trust Agreement to the Collateral Trustee, the Senior Creditors, Project Co or any other person for any action taken or permitted by it to be taken, or for its failure to take any action, or for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Insurance Trustee (including, but not limited to, any act or provision of any present or future law or of any Governmental Authority, any act of God or war, or the unavailability of any wire or communication facility), provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with gross negligence, wilful misconduct, fraud or bad faith by the Insurance Trustee. The Insurance Trustee in doing anything or permitting anything to be done in respect of the Trust Property or the carrying out of its duties under this Insurance Trust Agreement is, and will be conclusively deemed to be, acting as trustee for the beneficiaries hereunder and not in any other capacity. Except to the extent provided in this Section 6(c), the Insurance Trustee will not be subject to any liability for debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust Property, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of its duties hereunder and resort will be had solely to the Trust Property for the payment or performance thereof, and no other property or assets of the Insurance Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Insurance Trust Agreement.
- (d) The Insurance Trustee shall not:
- (i) be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers hereunder, or in acting at the request or direction of the Collateral Trustee on behalf of the Senior Creditors, unless it shall have received adequate indemnity or security against such risk or liability satisfactory to it;
  - (ii) be under any duty to enquire as to the correctness of any amounts received by it on account of the proceeds of any insurance, nor shall it be under any obligation to take any steps to enforce the payment thereof to it; or
  - (iii) be responsible for the obtaining, placing or renewal of any policies of insurance or for the enforcement or observance of any such policy and shall only be responsible under the terms of this Insurance Trust Agreement with respect to money actually received from time to time by it representing the proceeds of any such insurance.

- (e) Notwithstanding the foregoing, the Insurance Trustee shall not be liable for any action or failure to act other than where such act or failure arises from or in connection with the gross negligence, wilful misconduct, fraud or bad faith by the Insurance Trustee or any of its directors, officers or employees, or the failure to comply with the standard of care referred to in Section 6(b).
- (f) Except as otherwise provided in Sections 6(c), 6(d) and 6(e):
  - (i) the Insurance Trustee may rely and shall be protected in acting or refraining from acting upon any signature, resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document reasonably believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties; and
  - (ii) the Insurance Trustee may exercise its powers and perform its duties by or through such attorneys, representatives, agents and employees as it shall appoint; and may consult with counsel, accountants and other skilled persons selected and employed or retained by it, and the Insurance Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the written advice of such counsel, accountants or other skilled persons (provided that such advice pertains to such matters as the Insurance Trustee may reasonably presume to be within the scope of such person's area of competency) and not contrary to any express provision in this Insurance Trust Agreement.
- (g) Project Co hereby agrees to pay, indemnify and hold harmless the Insurance Trustee from and against any and all loss, liability, cost, claim and expense incurred by the Insurance Trustee with respect to the performance of this Insurance Trust Agreement by the Insurance Trustee or any of the Insurance Trustee's directors, officers or employees, unless arising from its or their own gross negligence, wilful misconduct, fraud or bad faith.
- (h) Subject to the terms and conditions set forth in the Insurance Trustee fee letter, the Insurance Trustee shall receive from the Trust Property reasonable compensation for its services hereunder and shall be reimbursed by Project Co for its reasonable fees and expenses (including the disbursements and reasonable fees of counsel).
- (i) The Insurance Trustee agrees to look solely to Project Co, and not, except as expressly set forth herein, to the Collateral Trustee, the Senior Creditors or BC Hydro for any claim for indemnification which may arise under this Insurance Trust Agreement.
- (j) The Insurance Trustee shall be responsible for keeping all appropriate books and records relating to the receipt and disbursement of all money which it receives hereunder.
- (k) If at any time the Insurance Trustee is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any

way affects the Trust Property held by it hereunder (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of Trust Property) (each, an “**Order**”), the Insurance Trustee is authorized to comply therewith in any manner as it or legal counsel of its own choosing deems appropriate. The Insurance Trustee shall in no way be bound to call for further evidence (whether as to due execution validity or effectiveness, or the jurisdiction of any court, or as to the truth of any fact), and shall not be responsible for any loss that may be occasioned by its failing to do so. If the Insurance Trustee complies with any Order, the Insurance Trustee shall not be liable to any of the Parties hereto or to any other person or entity even though such Order may be subsequently modified or vacated or otherwise determined to have been without legal force or effect. If the Insurance Trustee is served with any Order, it shall forthwith and, in any event, within three (3) Business Days, deliver a copy of such Order to each of the Collateral Trustee, BC Hydro and Project Co.

- (l) Unless otherwise specifically set forth herein, the Insurance Trustee shall proceed as soon as practicable to collect any cheques or other collection items at any time deposited hereunder. All such collections shall be subject to the Insurance Trustee’s usual collection practices or terms regarding items received by the Insurance Trustee for deposit or collection. Except and to the extent provided herein, the Insurance Trustee shall not be required, or have any duty, to notify any person of any payment or maturity under the terms of any instrument deposited hereunder, nor to take any legal action to enforce payment of any cheque, note or security deposited hereunder, or to exercise any right or privilege which may be afforded to the holder of any such security.
- (m) In the event that the Insurance Trustee determines that any direction, instruction, notice or other communication given under this Insurance Trust Agreement by the Collateral Trustee, or, where the Insurance Trustee has received a Change of Authorization Notice, BC Hydro, is ambiguous or uncertain, the Insurance Trustee may, in its sole discretion, refrain from taking any action other than retaining possession of the Trust Property, unless the Insurance Trustee has received written instructions, signed by the Collateral Trustee or, if the Insurance Trustee has received a Change of Authorization Notice, BC Hydro, which resolve such ambiguity or uncertainty, provided that the Insurance Trustee shall, forthwith upon determining that such direction, instruction, notice or other communication is ambiguous or uncertain, seek clarification from the Collateral Trustee, or where the Insurance Trustee has received a Change of Authorization Notice, BC Hydro, to resolve such ambiguity or uncertainty.
- (n) Prior to receipt of a Change of Authorization Notice by the Insurance Trustee, any instruction, notice or other communication delivered to the Insurance Trustee by the Collateral Trustee shall be paramount to and supersede any direction, instruction, notice or other communication from any other Party to this Insurance Trust Agreement, and the Insurance Trustee shall comply with such direction, instruction, notice or other communication. After the Insurance Trustee has received a Change of Authorization Notice, any instruction, notice or other communication delivered to the Insurance Trustee by BC Hydro shall be paramount to and supersede any direction, instruction, notice or other communication from any other Party to this Insurance Trust Agreement, and the

Insurance Trustee shall comply with such direction, instruction, notice or other communication from BC Hydro.

- (o) Each of the Collateral Trustee and BC Hydro shall provide to the Insurance Trustee an incumbency certificate setting out the names and sample signatures of individuals authorized to give instructions to the Insurance Trustee hereunder. The Insurance Trustee shall be entitled to rely on each such incumbency certificate until a revised or replacement incumbency certificate is provided to the Insurance Trustee by the Collateral Trustee or BC Hydro, as applicable. The Insurance Trustee shall refuse to act upon any instruction given by the Collateral Trustee or BC Hydro which is signed by any person other than an individual named in the incumbency certificate provided to the Insurance Trustee by the Collateral Trustee or BC Hydro, as applicable, pursuant to this Section 6(o), as any such incumbency certificate may be amended, supplemented or replaced from time to time.
- (p) The Insurance Trustee shall be entitled to rely on, and act upon, any direction, instruction, notice or other communication provided to it hereunder which is sent to it by facsimile transmission, provided that any such direction, instruction, notice or other communication is signed by an individual named in the incumbency certificate delivered to the Insurance Trustee by the Collateral Trustee or BC Hydro, as applicable, pursuant to Section 6(o).
- (q) The parties hereto acknowledge that the Insurance Trustee shall have no responsibility for the adequacy or sufficiency of the Insurance Policies and shall have no obligation to review or analyze such Insurance Policies or keep them in good standing.

## 7. COLLATERAL TRUSTEE AND BC HYDRO'S RIGHTS TO DIRECT

- (a) Until the occurrence of (i) termination of the Project Agreement in accordance with the Lenders' Remedies Agreement and (ii) receipt by Project Co of any amounts to which it is entitled pursuant to Schedule 16 [*Compensation on Termination*] to the Project Agreement (a "**Change of Authorization Event**"), the Collateral Trustee shall, subject to Sections 3 and 4 of this Insurance Trust Agreement, have the exclusive right to direct the Insurance Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds. Nothing in this Section 7(a) shall modify the Project Agreement, including Schedule 16 [*Compensation on Termination*].
- (b) Upon the occurrence of a Change of Authorization Event:
  - (i) the Collateral Trustee shall cease to be entitled, and BC Hydro shall thenceforth be entitled, to direct the Insurance Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds; and
  - (ii) the Collateral Trustee and BC Hydro shall jointly provide notice to the Insurance Trustee (a "**Change of Authorization Notice**") that BC Hydro shall, as of the date of such Change of Authorization Event, have the exclusive right to direct the

Insurance Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds.

- (c) Notwithstanding the foregoing, no Change of Authorization Event shall occur and no Change of Authorization Notice shall be delivered to the Insurance Trustee where a BC Hydro Event of Default has occurred. Where a BC Hydro Event of Default has occurred, upon receipt by the Collateral Trustee and Senior Creditors of all amounts owing by BC Hydro to the Collateral Trustee and Senior Creditors under the Lenders' Remedies Agreement, the Insurance Trustee shall release all amounts in the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds to Project Co or as Project Co may otherwise direct from time to time.
- (d) The Collateral Trustee hereby agrees with and confirms to the other parties hereto that if a conflict or inconsistency exists in or between a provision of this Insurance Trust Agreement and a provision of the Assignment of Insurance, the provisions of this Insurance Trust Agreement shall prevail.
- (e) Notwithstanding any other provision of this Insurance Trust Agreement, and whether such losses or damages are foreseeable or unforeseeable, the Insurance Trustee shall not be liable under any circumstances whatsoever for any special, indirect, incidental, consequential, exemplary, aggravated or punitive losses or damages of any person.

## **8. TERMINATION**

- (a) Subject to the provisions of Section 8(b), this Insurance Trust Agreement shall remain in full force and effect and be binding in accordance with and to the extent of its terms until:
  - (i) the obligations of Project Co to the Collateral Trustee and the Senior Creditors under the Senior Financing Agreements have been paid and performed in full and the Senior Creditors have no further obligation to make any further advances or other credit accommodations under the Senior Financing Agreements;
  - (ii) the obligations of Project Co to BC Hydro have been paid and performed in full; and
  - (iii) the Insurance Trustee has fully discharged its obligations hereunder with respect to any Insurance Proceeds paid to it.
- (b) The Insurance Trustee may terminate this Insurance Trust Agreement at any time upon sixty (60) days prior written notice to the other Parties hereto, provided that no termination of this Insurance Trust Agreement by the Insurance Trustee shall be effective until such time as the Lender's Collateral Trustee, BC Hydro, and Project Co have entered into a replacement insurance trust agreement on the same terms and conditions as this Insurance Trust Agreement with a replacement insurance trustee satisfactory to the Collateral Trustee, the Senior Creditors and BC Hydro.

- (c) Notwithstanding any other provision of this Insurance Trust Agreement, the provisions of Section 6(c), Section 6(d) and Section 6(g), and all other provisions necessary for the interpretation and enforcement of the foregoing provisions, will survive the expiry or any earlier termination of this Insurance Trust Agreement

**9. ASSIGNMENT**

- (a) The Insurance Trustee shall not assign, transfer or otherwise dispose of any of its rights or obligations under this Insurance Trust Agreement without the prior written consent of the Collateral Trustee, BC Hydro and Project Co.

**10. NOTICES**

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Insurance Trust Agreement shall be in writing (whether or not "written notice" or "notice in writing" is specifically required by the applicable provision of this Insurance Trust Agreement) and served by sending the same by registered mail, facsimile, electronic mail or by hand, as follows:

If to BC Hydro: BC Hydro  
[Redacted]  
Attention: [Redacted]  
Email: [Redacted]  
Fax : [Redacted]

If to the Collateral Trustee: Computershare Trust Company of Canada  
[Redacted]  
Attention: [Redacted]  
Fax: [Redacted]

If to Project Co: InPower BC General Partnership  
[Redacted]  
Attention: [Redacted]  
Copy to: [Redacted]  
Fax : [Redacted]  
Tel : [Redacted]  
E-mail: [Redacted]

With an electronic copy to each of the following :

[REDACTED]

If to the Insurance Trustee      Computershare Trust Company of Canada

[REDACTED]  
Attention: [REDACTED]  
Fax: [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:

- (i) 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
- (ii) 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:
  - (A) the receiving party has, by electronic mail or facsimile or by hand delivery, acknowledged to the notifying party that it has received such notice; or
  - (B) 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.
- (b) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 10.

## 11. AMENDMENTS

This Insurance Trust Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Insurance Trust Agreement.



## **12. WAIVER**

- (a) No waiver made or given by a Party under or in connection with this Insurance Trust Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

## **13. FORCE MAJEURE**

No party shall be liable to any other party, or held in breach of this Insurance Trust Agreement, if prevented, hindered, or delayed in the performance or observance of any provision contained herein by reason of acts of God, riots, terrorism, acts of war, epidemics, earthquakes, or any other similar causes beyond the affected party's reasonable control and where such failure in performance is not caused directly or indirectly by the affected party (including but not limited to, mechanical, electronic or communication interruptions, disruptions or failures, unless caused by the negligent or willful misconduct of the affected party). Performance times under this Insurance Trust Agreement shall be extended for a period of time equivalent to the time lost because of any delay that is excusable under this Section, provided that the affected party shall take commercially reasonable steps to mitigate or remedy the event giving rise to the delay.

## **14. ANTI-MONEY LAUNDERING**

The Insurance Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Insurance Trustee, in its sole judgment, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline. Further, should the Insurance Trustee, in its sole judgment, determine at any time that its acting under this Insurance Trust Agreement has resulted in its being in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline, then it shall have the right to resign on 10 days' written notice to the other parties to this Insurance Trust Agreement, provided (i) that the Insurance Trustee's written notice shall describe the circumstances of such non-compliance; (ii) that if such circumstances are rectified to the Insurance Trustee's satisfaction within such 10 day period, then such resignation shall not be effective.

**15. RELATIONSHIP BETWEEN THE PARTIES**

The Parties are independent contractors. This Insurance Trust Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Insurance Trust Agreement, of principal and agent.

**16. ENTIRE AGREEMENT**

Except where provided otherwise in this Insurance Trust Agreement, this Insurance Trust Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Insurance Trust Agreement.

**17. SEVERABILITY**

Each provision of this Insurance Trust Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Insurance Trust Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Insurance Trust Agreement. If any such provision of this Insurance Trust Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Insurance Trust Agreement as near as possible to its original intent and effect.

**18. ENUREMENT**

This Insurance Trust Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

**19. GOVERNING LAW AND JURISDICTION**

- (a) This Insurance Trust Agreement shall be governed by and construed in accordance with the laws of British Columbia and the laws of Canada applicable therein and shall be treated in all respects as a British Columbia contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of British Columbia and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Insurance Trust Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

**20. FURTHER ASSURANCE**

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Insurance Trust Agreement.

**21. LANGUAGE OF AGREEMENT**

Each Party acknowledges having requested and being satisfied that this Insurance Trust Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en declare satisfaite.

**22. COUNTERPARTS**

This Insurance Trust Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form shall promptly forward to such Party an original signed copy of this Insurance Trust Agreement which was so faxed.

**IN WITNESS WHEREOF** the Parties have executed this Insurance Trust Agreement as of the date first above written.

**BRITISH COLUMBIA HYDRO AND POWER  
AUTHORITY**

Per: \_\_\_\_\_

Name: [REDACTED]

Title: [REDACTED]

**COMPUTERSHARE TRUST COMPANY OF  
CANADA**, acting as the Collateral Trustee  
hereunder

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

I/We have authority to bind the corporation.

**INPOWER BC GENERAL PARTNERSHIP, by its partners:**

**INPOWER BC1 PARTNER INC.**

Per: \_\_\_\_\_  
[Redacted]

Per: \_\_\_\_\_  
[Redacted]

**INPOWER BC2 PARTNER INC.**

Per: \_\_\_\_\_  
[Redacted]

Per: \_\_\_\_\_  
[Redacted]

**COMPUTERSHARE TRUST COMPANY OF  
CANADA**, acting as Insurance Trustee hereunder

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

I/We have authority to bind the corporation.