



This is the 1st Affidavit
of Bruce Chow in this case and was made
on January 19, 2018

No. S-174308
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL SERVICES INC.

PLAINTIFF

AND:

WEDGEMOUNT POWER LIMITED PARTNERSHIP, WEDGEMOUNT POWER (GP) INC., WEDGEMOUNT POWER INC., THE EHRHARDT 2011 FAMILY TRUST, POINTS WEST HYDRO POWER LIMITED PARTNERSHIP by its general partner POINTS WEST HYDRO (GP) INC., CALAVIA HOLDINGS LTD., SWAHEALY HOLDING LIMITED, BRENT ALLAN HARDY, DAVID JOHN EHRHARDT, 28165 YUKON INC., PARADISE INVESTMENT TRUST and SUNNY PARADISE INC.

DEFENDANTS

AFFIDAVIT

I, BRUCE CHOW, of 333 Dunsmuir Street, 17th Floor, in the City of Vancouver, in the Province of British Columbia, make oath and say as follows:

1. I am the Manager, Power Acquisitions, Contracts and Evaluation at British Columbia Hydro and Power Authority (“BCH”), a stakeholder in these proceedings, and as such have personal knowledge of the facts and matters hereinafter deposed to, or where I do not possess such personal knowledge, I have stated the source of my information and belief, and in all such cases do verily believe it to be true.
2. BCH is a Crown corporation owned by the government of British Columbia. BCH is responsible for generating and purchasing electricity that is provided to its customers. As part of this mandate BCH acquires power from independent power producers (“IPPs”).
3. In order to be awarded an electricity purchase agreement pursuant to BCH’s Standing Offer Program (“SOP”), an IPP must meet a number of eligibility requirements, including, but

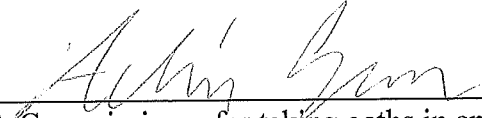
not limited to, having all material permits and a completed and valid interconnection system impact study. Under BCH's power acquisition programs, including the SOP, the IPP is responsible for the development of its project, and a project cannot achieve commercial operation until it is connected to the BCH grid. The SOP rules in place at the time of Wedgemount's application provided that the target commercial operation date (the "**Target COD**"), as defined in the electricity purchase agreement, submitted by an IPP must be within three years of signing an electricity purchase agreement.

4. Under the SOP, BCH entered into an electricity purchase agreement with Wedgemount Power Limited Partnership, a limited partnership IPP represented by its general partner Wedgemount Power (GP) Inc. ("**Wedgemount**") with respect to the Wedgemount Creek IPP project (the "**Project**"). Attached and marked as **Exhibit "A"** is a true copy of the electricity purchase agreement dated March 6, 2015 (the "**EPA**") between BCH and Wedgemount, in redacted form. The EPA provides that the commercial operation date for the Project must occur within two years of the Target COD, being September 30, 2015, the date selected by Wedgemount.
5. Pursuant to the terms of the EPA, BCH has the right to terminate the EPA if, among other things, the Project doesn't reach commercial operation by September 30, 2017 or if Wedgemount is insolvent or declared bankrupt.
6. As of January 19, 2018, the Project has not reached commercial operation.
7. Based on information received from members of BCH's interconnection group, I understand that the Receiver has yet to finalize the distribution line routing and point of interconnection to the BCH system and has yet to receive all of the required permitting and stakeholder approvals to proceed to the next steps in the interconnection process. As such, the timeline for completion of the interconnection studies and commercial operation of the Project is uncertain and will not occur in the near future.
8. On May 12, 2017, Deloitte Restructuring Inc. was appointed as receiver and manager (the "**Receiver**") over the assets and property of Wedgemount and Wedgemount Power Inc., including the Project.

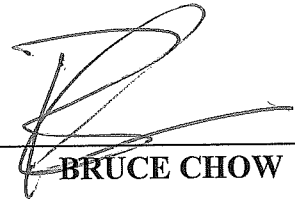
9. Based on a review of notes and summaries of a call between BCH and the Receiver on May 18, 2017, and discussions with BCH staff that participated in that call, I understand that BCH confirmed that the Project needed to achieve commercial operation by September 30, 2017 and that at no time during the May 18, 2017 call did BCH waive its termination rights under the EPA. Throughout the receivership, BCH has reserved its termination rights and maintained that its termination rights for the EPA have not been waived. Attached and marked as **Exhibit "B"** is a true copy of a letter dated September 29, 2017 from BCH to the Receiver, in redacted form.
10. Once BCH exercises its termination rights in accordance with the terms of the EPA for Wedgemount failing to reach commercial operation by the date specified in the EPA or its insolvency, the termination has immediate effect. There is no provision allowing Wedgemount to cure either default.
11. On June 12, 2015, BCH, Wedgemount and Travelers Capital Corporation (as agent for Wedgemount's lenders) (the "**Agent**") entered into a lender consent agreement (the "**Lender Agreement**") with respect to the Project. Attached and marked as **Exhibit "C"** is a true copy of the Lender Agreement, in redacted form.
12. Pursuant to the Lender Agreement, BCH agreed that it would provide the Agent with notice of termination at the same time as it is provided to Wedgemount and that it would not terminate the EPA solely as a result of Wedgemount's insolvency (if the lenders were promptly and diligently enforcing their security) until 30 days after the expiry of any court order period restricting the termination of the EPA. BCH also agreed that, where the EPA required BCH to deliver a notice of termination that would entitle BCH to terminate, those termination rights would be effective 45 days after issuing its notice of termination. The Lender Agreement does not contain any provision allowing Wedgemount or the Agent to cure defaults (unless the defaults are curable under the EPA).
13. BCH has considered its options with respect to the EPA and determined that it is not in the best interests of BCH or its ratepayers to proceed with the EPA. Accordingly, BCH has decided to terminate the EPA in accordance with its terms.

14. I make this affidavit in support of an application by BCH to obtain leave pursuant to the receivership order to allow BCH to terminate the EPA.

SWORN BEFORE ME at the City of)
Vancouver, in the Province of British)
Columbia, this 19th day of January 2018)


_____)

A Commissioner for taking oaths in and for)
the Province of British Columbia)



BRUCE CHOW

ADRIAN GREER
Articling Student
BORDEN LADNER GERVAIS LLP
1200 Waterfront Centre, 200 Burrard Street
P.O. Box 48600, Vancouver, Canada V7X 1T2
604-640-4238

This is Exhibit "A" referred to in the affidavit of Bruce Chow sworn before me at Vancouver this 19th day of January A.D. 2015
Alan Burns
A Commissioner for taking Affidavits within British Columbia

**BC HYDRO
ELECTRICITY PURCHASE AGREEMENT
STANDING OFFER PROGRAM**

THIS ELECTRICITY PURCHASE AGREEMENT ("EPA") is made as of March 6, 2015 (the "Effective Date")

BETWEEN:

Wedgemount Power Limited Partnership a limited partnership represented by its General Partner **Wedgemount Power (GP) Inc.**, a corporation incorporated under the laws of the Province of British Columbia with its head office at 5403 Buckingham Avenue, Burnaby, BC V5E 1Z9

("Seller")

AND:

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

("Buyer").

The Parties agree as follows:

1. INTERPRETATION

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

2. TERM

2.1 The term ("Term") of this EPA commences on the Effective Date and continues until the anniversary of COD, unless it is terminated earlier as authorized under this EPA.

3. CONSTRUCTION AND OPERATION

3.1 **Construction and Operation Costs and Liabilities** - Except as set out in Appendix 3, the Seller shall be responsible for all costs, expenses, liabilities and other obligations associated with the design, engineering, construction, Interconnection, commissioning, operation, maintenance and decommissioning of the Seller's Plant.

3.2 **Standard of Construction and Operation** - The Seller shall own the Seller's Plant and shall ensure that the Seller's Plant is operated by qualified and experienced individuals. The Seller

represents, warrants and covenants that the location, design, engineering, construction, Interconnection, commissioning, operation and maintenance of the Seller's Plant, are and, except as otherwise consented to by the Buyer, shall be carried out at all times during the Term in compliance with: (a) the information in the Application in all material respects; and (b) the Project Standards as defined in Appendix 1, provided that if the requirements for Clean Energy are amended or replaced after the Effective Date, the Seller shall make commercially reasonable efforts to operate the Seller's Plant in a manner that allows the Delivered Energy to continue to qualify as Clean Energy under the new requirements.

3.3 Project Changes - Without limiting any other section of this EPA under which the Buyer's consent is required, the Seller shall not make any change to:

- (a) those aspects of the Seller's Plant described in sections 1 - 3 of Appendix 2; or
- (b) any other aspects of the Seller's Plant or the information in any interconnection study completed for the Seller's Plant prior to the Effective Date where such change would increase the Buyer's liability for Network Upgrade Costs or any other costs with respect to the Seller's Plant or any other project,

in either case without the Buyer's prior consent, such consent not to be unreasonably withheld, conditioned or delayed. The Seller shall not make any change to the Plant Capacity without the Buyer's prior consent. The Seller acknowledges that the Buyer may require as a condition of its consent to any change described in this section, or any other change to the Seller's Plant for which the Buyer's consent is required under any other section of this EPA, that the Seller agree in writing to reimburse the Buyer for any incremental liability for Network Upgrade Costs with respect to the Seller's Plant or any other project, and any other losses, costs and damages incurred by the Buyer as a result of any change described in this section. The Buyer may also require the Seller to provide security to the Buyer to secure such reimbursement obligation.

3.4 Development Reports - The Seller shall deliver a Development Report to the Buyer on each January 1, April 1, July 1 and October 1 after the Effective Date until COD.

3.5 Network Upgrades - The Parties' obligations with respect to Network Upgrade Costs and Network Upgrade Security are set out in Appendix 3.

3.6 Revenue Metering Equipment - The Seller shall ensure that a Revenue Meter is installed, operated and maintained at a location approved by the Buyer, acting reasonably. The Revenue Meter must be tested and sealed according to Measurement Canada standards by a facility that is accredited by Measurement Canada. The Revenue Meter must be capable of accurately measuring the quantity of Energy generated by the Seller's Plant and delivered to the POI independent of all other generation equipment or facilities. If there is any dispute regarding the accuracy of the Revenue Meter, either Party may give notice to the other Party of the dispute. In that case the Parties will resolve the matter in accordance with the *Electricity and Gas Inspection Act* (Canada). The Buyer may, at its cost, install a duplicate revenue meter at the Seller's Plant at a location agreed to by the Seller, acting reasonably. The Seller shall allow the Buyer to access the Seller's Plant to install, inspect and maintain any such duplicate meter. The Seller shall make equipment and telephone access available to the Buyer as required for the duplicate revenue meter. If the Seller's Plant is rated 1.00 MVA or higher, the Seller shall ensure that the Seller's Plant is equipped with SCADA capability.

- 3.7 Insurance** - The Seller shall obtain, maintain and pay for (i) policies of commercial general liability insurance with a per occurrence limit of liability not less than \$3,000,000 applicable to the Project, and (ii) construction insurance and, in respect of the Seller's Plant, property insurance, with limits of liability and deductibles consistent with those a prudent owner of a facility similar to the Seller's Plant would maintain and those the Facility Lender requires. All commercial general liability policies must include the Buyer, its directors, officers, employees and agents as additional insureds and must contain a cross liability and severability of interest clause. All policies of insurance must include a waiver of subrogation in favour of the Buyer. All policies of insurance must be placed with insurers that have a minimum rating of A- (or equivalent) by A.M. Best Company and are licensed to transact business in the Province of British Columbia and must be endorsed to provide to the Buyer 30 days' prior written notice of cancellation, non-renewal or any material amendment that results in a reduction in coverage. The Seller shall give the Buyer a copy of the insurance certificate(s) for the insurance required to be maintained by the Seller under this section 3.7 not more than 30 days after the effective date of coverage and promptly upon renewal thereafter. The Seller shall be responsible for the full amount of all deductibles under all insurance policies required to be maintained by the Seller under this section 3.7.
- 3.8 Early COD** - Except with the Buyer's prior consent, COD may not occur earlier than 90 days prior to Target COD. The Buyer shall not be required to incur any incremental expense or other liability of any kind to enable COD to occur prior to Target COD.
- 3.9 Change in Target COD** - If the Estimated Interconnection Facilities Completion Date is later than 90 days prior to the Target COD, and unless otherwise agreed by the Parties in writing, the Target COD shall be postponed to the Estimated Interconnection Facilities Completion Date plus 90 days.
- 3.10 No Liability For Delay** - The Buyer shall have no liability under this EPA for delays in completion of (i) any Network Upgrades, or (ii) other work undertaken by the Distribution Authority or the Transmission Authority on the Seller's Plant side of the POI, in each case howsoever arising.
- 3.11 Buyer Target COD Deferral** - The Buyer may at any time not later than 365 days after the Effective Date deliver written notice to the Seller that the Buyer may require the Seller to extend the Target COD to the date specified in the notice, provided that date is not more than 365 days after the Target COD then in effect under this EPA. Within 30 days after receipt of a notice under this section, the Seller shall deliver to the Buyer an estimate of all costs that are reasonably likely to be incurred by the Seller, after taking reasonable mitigation measures, solely as a result of a deferral of Target COD under this section together with all information required to verify the cost estimate. The Seller shall provide any additional information reasonably requested by the Buyer to verify the cost estimate and shall permit the Buyer and any third party retained by the Buyer to verify the cost estimate complete access to the Seller's books, records, contracts and other documents as required to verify the cost estimate. Within 45 days after receiving a complete and accurate cost estimate, the Buyer shall provide written notice to the Seller to either: (i) defer the Target COD to the date specified in the notice, provided that date is not more than 365 days after the Target COD then in effect under this EPA, or (ii) maintain the Target COD then in effect under this EPA without deferral under this section. If the Buyer does not deliver a notice as required under this section, the Buyer will be deemed to have elected to maintain the Target COD then in effect under this EPA without deferral. If the Buyer delivers a notice to defer the Target COD in accordance with this section, the Target COD shall be postponed to the date specified in the deferral notice. If the Target COD is postponed under this

section, the Buyer shall reimburse the Seller for all costs reasonably incurred by the Seller solely as a result of the postponement of the Target COD under this section, after taking all reasonable mitigation measures to limit or avoid those costs. Any payment by the Buyer to the Seller under this section shall be due within 30 days after delivery by the Seller to the Buyer of an invoice setting out the details of such costs in reasonable detail together with all supporting information and documents required to verify the amounts in the invoice.

3.12 First Nations Consultation

3.12.1 For the purposes of this EPA, the following terms shall have the following meanings, respectively:

(a) **“First Nations”** means:

- (i) for the purposes of this EPA (other than subsection 3.12.3), any band, band council, tribal council, aboriginal treaty nation and/or other aboriginal group or aboriginal governing body, however organized and established by aboriginal people within their traditional territory in British Columbia, that is identified by the Crown, before or after the Effective Date, as a band, band council, aboriginal treaty nation and/or other aboriginal group or aboriginal governing body with which consultation regarding any of the Potential Impacts is required in accordance with applicable Laws as a result of an application or request by the Seller or any Affiliate of the Seller for any Permit or tenure related directly to the Seller’s Plant or any amendment, renewal, replacement, assignment or any other decision whatsoever by the Crown with respect to any Permit or tenure related directly to the Seller’s Plant, and
- (ii) for the purposes of subsection 3.12.3, any band, band council, tribal council, aboriginal treaty nation and/or other aboriginal group or aboriginal governing body, however organized and established by aboriginal people within their traditional territory in British Columbia, whether or not identified by the Crown pursuant to the foregoing subsection (i) of this subsection 3.12.1(a),

(b) **“Order or Decision”** means:

- (i) any order or decision of any court of competent jurisdiction or any regulatory authority, including the BCUC; and
- (ii) a writ or any other document commencing legal proceedings with respect to the Buyer or any written communication threatening to issue a writ or otherwise commence legal proceedings with respect to the Buyer, alleging that there has been a failure to consult with First Nations in relation to Potential Impacts, and which has received a Verification;

(c) **“Potential Impacts”** means any adverse impact or potential adverse impact on the established or potential aboriginal rights (including title) of a First Nation as a result of the following matters (and which, for greater certainty, does not in any circumstance include any matters arising on the Buyer’s side of the Point of Interconnection or on the Transmission System):

- (i) this EPA;

- (ii) the Project;
 - (iii) the interconnection of the Seller's Plant to the Transmission System; or
 - (iv) any activities carried out by the Seller, any Affiliate, consultant or contractor of the Seller, or any other Person for whom the Seller is responsible at law directly related to the Seller's Plant to enable the Seller to comply with its obligations under the EPA; and
- (d) **"Verification"** means that a lawyer, qualified to practice in British Columbia and acceptable to both the Buyer and Seller, has reviewed the writ or other document commencing legal proceedings or the written communication threatening to issue a writ or otherwise commencing legal proceedings, and verified in writing to both parties that there is a reasonable prospect of an order or decision of a court of competent jurisdiction or regulatory authority, including the BCUC, in favour of the party who has commenced or threatened the writ or other legal proceedings. The Buyer and the Seller shall each provide to the lawyer conducting such review such information and other assistance as may be requested by that lawyer to assist them in completing the review. If the Buyer and the Seller are unable to agree on an acceptable lawyer to provide the Verification within 15 days after the Buyer has provided the name of a proposed lawyer to the Seller, either Party may refer the matter to arbitration under section 7.5 and each of the Buyer and the Seller shall, within 7 days after the dispute is referred by either Party to arbitration, submit a list of lawyers that would be acceptable to that Party and the Parties shall ask the arbitrator to select the lawyer from the proposed lists that is, in the arbitrator's opinion, after receiving any submissions from the Parties the arbitrator may request, the most qualified lawyer to provide the Verification. The Buyer and the Seller shall each pay 50% of the costs of obtaining the Verification. Each Party acknowledges and agrees that any lawyer providing a Verification is jointly retained by the Parties and any communications between the Parties and the lawyer and any work product of the lawyer in subject to solicitor client privilege.

3.12.2 If, prior to the second anniversary of COD, the Buyer is or may be required by an Order or Decision to consult with and/or accommodate any First Nations in relation to Potential Impacts, then the Seller, if requested to do so by the Buyer, by notice sent to the Seller as soon as practicable after the Buyer receives notice of the Order or Decision, shall:

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

3.12.3 Notwithstanding subsection 3.12.2, the Buyer hereby confirms that the responsibilities of the Seller in subsection 3.12.2 do not in any way whatsoever encompass or apply to the following matters, whether arising prior to or after the second anniversary of COD:

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

3.12.4 The Buyer will as soon as practicable notify the Seller of any written communication received by the Buyer that commences a legal proceeding with respect to the Buyer or that threatens to issue a writ or any other document commencing a legal proceeding with respect to the Buyer, with respect to which the Buyer intends to request the Seller to carry out its obligations under subsection 3.12.2. Any failure by the Buyer to notify the Seller as required under subsection 3.12.2 or subsection 3.12.4 shall not limit or otherwise affect the Seller's obligations under subsection 3.12.2 except to the extent the Buyer's failure to notify the Seller has a materially adverse effect on the Seller. For greater certainty, the covenant of the Buyer in section 10.9 applies to the obligations of the Seller in subsections 3.12.2 and 3.13, and the Seller shall reimburse the Buyer for all costs reasonably incurred by the Buyer in providing assistance to the Seller at the request of the Seller as contemplated under that section to assist the Seller to perform its obligations under subsections 3.12.2 and 3.13. Without limiting the generality of but subject to the foregoing (including the obligation to reimburse the Buyer for all costs reasonably incurred by the Buyer), for greater certainty, the Buyer will at the request of the Seller provide reasonable assistance to the Seller in the performance by the Seller of its obligations under subsections 3.12.2 and 3.13; including agreeing to reasonable amendments of the EPA as contemplated by section 3.13; provided however, that any proposed amendment of the EPA must be in the public interest.

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

3.13 Right to Terminate - If a measure or measures required to be undertaken by the Seller in order to comply with its obligations under section 3.12 of this EPA would impose a commercially unreasonable cost or other obligation on the Seller, or would require the consent of the Buyer under any provision of this EPA or would require agreement by the Buyer to an amendment of the EPA in order to address any such adverse impacts on established and potentially existing aboriginal rights (including title) and if such consent or agreement to amend is not provided within 60 days after the Seller's request to the Buyer, then the Seller may terminate this EPA on notice to the Buyer, and such termination will be effective on the date that is 60 days after the date of delivery of such notice of termination unless, prior to that date, the Seller, by notice from the Buyer or otherwise, has been relieved of its obligation to take the measure or measures that would impose the unreasonable cost or obligation on the Seller or the consent or agreement to an amendment of the EPA has been provided, as applicable. A termination by the Seller under this

section shall, for all purposes of this EPA, be treated in the same manner as a termination by the Seller under subsection 8.3(d) of this EPA. If the Seller terminates the EPA pursuant to this section, the Seller shall not be, or be deemed to be or have been, in breach of section 3.12 of this EPA for failure to implement the measure or measures that gave rise to the Seller's right to terminate the EPA under this section. For purposes of this section 3.13, "a commercially unreasonable cost or other obligation on the Seller" means a cost or obligation (i) to be borne by the Seller, (ii) that results, or can reasonably be expected to result, from the implementation of a measure or measures required under section 3.12, and (iii) that would impose upon the Seller a commercially unreasonable burden, having regard to all other financial benefits and burdens of the EPA to the Seller over the entire Term.

3.14 Planned Outages - The Seller shall:

- (a) give the Buyer not less than 90 days' prior notice of any Planned Outage, or such shorter period to which the Buyer may consent, such consent not to be unreasonably withheld, delayed or conditioned, and such notice shall state the start date and hour and the end date and hour for the Planned Outage. Notwithstanding the foregoing, at any time prior to 48 hours before the start of a Planned Outage that will be more than 7 days long, the Seller may change the proposed start time for the Planned Outage by not more than 24 hours and at any time prior to 48 hours before the end of the Planned Outage, the Seller may change the proposed end time of the Planned Outage on notice to, and without the consent of, the Buyer, provided that if as a result of such notice from the Seller the Planned Outage starts later or ends earlier than originally scheduled, there will be no deemed Delivered Energy under section 4.7 during the period between the originally scheduled start time and the revised start time and/or between the originally scheduled end time and the revised end time of the Planned Outage;
- (b) in accordance with the Buyer's written instructions, use the Buyer's web-based application or other system for communicating Planned Outages to the Buyer;
- (c) make commercially reasonable efforts to coordinate all Planned Outages with the Buyer's requirements as notified to the Seller; and
- (d) make commercially reasonable efforts to coordinate all Planned Outages with the Transmission Authority's maintenance schedule where such schedule is publicly available or otherwise notified to the Seller.

Not less than 30 days before a Planned Outage is scheduled to commence, the Buyer may request the Seller to reschedule that Planned Outage. Within 14 days after receipt of such a request, the Seller shall provide the Buyer with an estimate, together with reasonable supporting detail, including a reasonable contingency allowance, of the costs, if any, the Seller expects to incur, acting reasonably, as a result of rescheduling the Planned Outage in accordance with the Buyer's request. Within 7 days after receipt of such cost estimate, the Buyer shall notify the Seller if the Buyer requires the Seller to reschedule the Planned Outage, and upon receipt of such notice from the Buyer, the Seller shall adjust the schedule for the Planned Outage as required by the Buyer, provided that the rescheduling is consistent with Good Utility Practice and does not have a materially adverse effect on the operation of the Seller's Plant or on any facility that is a thermal host for the Seller's Plant. The Buyer shall reimburse the Seller for all costs reasonably incurred by the Seller as a result of such rescheduling, but not exceeding the estimate delivered by the Seller to the Buyer under this section 3.14.

3.15 Notice of Outages - Other than for a Planned Outage for which notice has been given pursuant to section 3.14, the Seller shall promptly notify the Buyer of any outage, or any anticipated outage of the Seller's Plant.

4. PURCHASE AND SALE OBLIGATIONS

4.1 Pre-COD Energy - The Buyer shall make commercially reasonable efforts to accept delivery of Energy at the POI prior to COD, provided that the Buyer shall not be required to take any steps or to incur any incremental expense or other liability of any kind to enable delivery of Energy to the POI prior to 90 days before the Target COD.

4.2 Post-COD Sale and Purchase of Energy - From and after COD for the remainder of the Term, the Seller shall sell and deliver all Energy to the Buyer at the POI and the Buyer shall purchase and accept delivery of all Delivered Energy. The Buyer shall pay for all Delivered Energy after COD in accordance with section 5.2. Notwithstanding the foregoing, the Buyer shall have no obligation to take or pay for any Energy that is generated as a result of an increase in the Plant Capacity made without the consent of the Buyer in accordance with section 3.3. When the Seller is delivering Energy to the Buyer, the Seller shall make commercially reasonable efforts to operate the Seller's Plant in a manner that ensures delivery of Energy at the POI at a uniform rate within each hour during which Energy is delivered.

4.3 Transmission Outages - The Buyer will not be in breach or default of its obligations under section 4.1, section 4.2 or section 5.2 if the Buyer is not able to accept delivery of Energy at the POI as a result of a Distribution/Transmission Constraint or Disconnection. The Buyer shall have no liability with respect to a Distribution/Transmission Constraint or Disconnection, except as set out in section 4.7, if applicable.

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

4.5 Exclusivity - The Seller shall not at any time during the Term commit, sell or deliver any Energy or any Environmental Attributes to any Person, other than the Buyer under this EPA. The Seller shall not use any Energy or use, apply, claim or retire Environmental Attributes for any purpose whatsoever except for sale to the Buyer under this EPA. These prohibitions do not apply when the Buyer is in breach of its obligations under section 4.2. The Seller acknowledges and agrees that the exclusive rights conferred by this section are of fundamental importance, and that, without prejudice to any right to claim damages, compensation or an accounting of profits, the granting of an interim, interlocutory and permanent injunction is an appropriate remedy to restrain any breach or threatened breach by the Seller of the obligation set out in this section.

4.6 Custody, Control, Risk of and Title To Energy - Custody, control, risk of, and title to, all Energy passes from the Seller to the Buyer at the POI. The Seller shall ensure that all Energy delivered to the Buyer under this EPA and all Environmental Attributes transferred to the Buyer under this EPA are free and clear of all liens, claims, charges and encumbrances. The Seller is responsible for all transmission losses and costs relating to the transmission of Energy from the Seller's Plant to the POI.

4.7 Distribution/Transmission System Constraint or Disconnection - If in any month after COD the Seller is unable to deliver Energy at the POI solely as a result of a Distribution/Transmission Constraint or Disconnection that exceeds 30 continuous minutes in duration and such Distribution/Transmission Constraint or Disconnection:

- (a) is not caused by an event beyond the control of the Buyer or the Transmission Authority;
- (b) is not caused by the Seller or the Seller's Plant; and
- (c) occurs after Distribution/Transmission Constraints or Disconnections have been in effect for more than 24 hours in the aggregate, whether or not continuous, in that month;

then, notwithstanding that the Buyer is excused under section 4.3 from its obligations under section 4.2, the Buyer shall pay to the Seller an amount equal to the price payable for post-COD Delivered Energy under section 5.2 multiplied by the amount of Energy, not exceeding ■ MWh, that could have been generated and delivered at the POI in each hour after the 24 hours has elapsed but for the occurrence of the Distribution/Transmission Constraint or Disconnection less any costs the Seller avoided or, acting reasonably, could have avoided during the Distribution/Transmission Constraint or Disconnection. The Seller shall maintain accurate and complete records of all avoided or avoidable costs and shall report all such costs to the Buyer and provide the Buyer with all information required to calculate such costs. The Buyer or its designated representative may audit such costs and in that event the provisions of section 7.2 apply. The Buyer will not be required to pay for any Energy under this section during any period specified as a maintenance period in an Energy schedule delivered pursuant to section 7.7 or during any other period where the Seller's Plant would otherwise not have been operating. For greater certainty, the provisions of this section will not apply during any period when the Buyer is or would be excused, in accordance with section 7.9, from its obligation to accept delivery of Energy as a result of Force Majeure.

4.8 Buyer Dispatch/Turn-Down Right -

- (a) The Buyer may at any time during the Term deliver notice to the Seller requiring the Seller to turn down or shut off the Seller's Plant (a "Dispatch/Turn-Down") and the Seller shall forthwith comply with any such direction except to the extent that any operational, technical, regulatory or fuel storage constraint prevents or limits the Seller's ability to comply with such direction.
- (b) Energy, not exceeding ■ MWh, that could have been generated and delivered to the POI in each hour as Delivered Energy but for a direction from the Buyer pursuant to subsection 4.8(a) shall be deemed to be Delivered Energy and the Buyer shall pay to the Seller an amount equal to the price payable for post-COD Delivered Energy under section 5.2 multiplied by that amount of Energy less any costs the Seller avoided or, acting reasonably, could have avoided during the period of the Dispatch/Turn-Down.
- (c) There shall be no deemed Delivered Energy pursuant to this section in any hour specified as a maintenance period in any Energy schedule delivered pursuant to section 7.7 or during any other hour when the Seller's Plant would otherwise not have been operating if there had been no Dispatch/Turn-Down notice or in any period when the Buyer is excused under section 7.9 from its obligations under section 4.2 and 5.2.

5. PRICE AND PAYMENT TERMS

- 5.1 Pre-COD Energy - No price is payable by the Buyer for Energy delivered to the POI prior to COD.

5.2 Post-COD Energy Price - Subject to section 4.2, the price payable by the Buyer for each MWh of Delivered Energy after COD and prior to expiry of the Term is [REDACTED]/MWh, adjusted as follows:

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

$$\text{Payment Price}_n = (.5 * [REDACTED] / \text{MWh} * \text{CPI}_{\text{January 1, } n} / \text{CPI}_{\text{January 1, 2015}}) + (.5 * [REDACTED] / \text{MWh})$$

Where:

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

$\text{CPI}_{\text{January 1, } n}$ = the CPI for December in the year immediately prior to the year for which the relevant calculation is being conducted; and

- (b) for each hour, the price determined pursuant to subsection (a) for Delivered Energy during that hour will be adjusted to an amount (expressed in \$/MWh) equal to the percentage of that price applicable for that hour as set out in the table in Appendix 4.

5.3 No Further Payment - The amount payable by the Buyer as specified in section 5.2 is the full and complete payment and consideration payable by the Buyer for Energy delivered by the Seller to the Buyer under this EPA and for the Environmental Attributes transferred by the Seller to the Buyer under this EPA.

5.4 Statements and Payment -

5.4.1 Statements:

- (a) The Seller shall, by the 15th day of each month after COD, deliver to the Buyer a statement for the preceding month. The statement must indicate, among other things, the amount of Delivered Energy for that month (including any deemed Delivered Energy and any associated avoided or avoidable costs pursuant to section 4.7), the price payable for the Delivered Energy, and any Final Amounts owing by either Party to the other Party. The statement must set out in reasonable detail the manner by which the statement and the amounts shown thereon were computed and be accompanied by sufficient data to enable the Buyer, acting reasonably, to satisfy itself as to the accuracy of the statement.
- (b) Either Party may give notice to the other Party of an error, omission or disputed amount on a statement within 36 months after the statement was first issued together with reasonable detail to support its claim. After expiry of that 36 month period, except in the case of willful misstatement, fraud or concealment, amounts on a previously issued statement will be considered accurate and amounts which were omitted will be considered to be nil, other than amounts disputed in accordance with this subsection within the 36 month period, which will be resolved in accordance with this EPA.

5.4.2 Payment:

- (a) Within 30 days after receipt of a statement delivered under subsection 5.4.1, and subject to section 5.6, the Buyer shall pay to the Seller the amount set out in the statement, except to the extent the Buyer in good faith disputes all or part of the statement by notice to the Seller in compliance with subsection 5.4.1(b). If the Buyer disputes any portion of a statement, the Buyer must nevertheless pay the undisputed net amount payable by the Buyer pursuant to the statement.
- (b) Any amount required to be paid in accordance with this EPA, but not paid by either Party when due, will accrue interest at an annual rate equal to the Prime Rate plus 2%, compounded monthly. Any disputed amount that is found to be payable will be deemed to have been due within 30 days after the date of receipt of the statement which included or should have included the disputed amount.

5.5 Taxes - All dollar amounts in this EPA do not include any value added, consumption, commodity or similar taxes applicable to the purchase by the Buyer of Delivered Energy and Environmental Attributes, including GST, PST and any successor thereto, which, if applicable, will be added to each statement and paid by the Buyer.

5.6 Set-off - If the Buyer and the Seller each owe the other an amount under this EPA in the same month, then such amounts with respect to each Party shall be aggregated and the Parties may discharge their obligations to pay through netting; in which case the Party, if any, owing the greater aggregate amount shall pay to the other Party the difference between the amounts owed, provided that:

- (a) this section applies only to any purchase price for Delivered Energy owing by the Buyer to the Seller, any Final Amount owing by either Party to the other Party, and any amount owing by the Seller to the Buyer under Appendix 3 of this EPA; and
- (b) no Final Amount or amount owing by the Seller to the Buyer under Appendix 3 of this EPA shall be added to or deducted from the price owing by the Buyer to the Seller for Delivered Energy unless that amount remains unpaid 30 days after the Buyer gives notice to the Seller of the amount owing.

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

6. ENVIRONMENTAL ATTRIBUTES – CERTIFICATION AND ADMINISTRATION

6.1 EcoLogo^M Certification - Without limiting the Seller's obligation to comply with subparagraph (e) of the definition of Project Standards in Appendix 1, if required by the Buyer, the Seller shall use commercially reasonable efforts to obtain EcoLogo^M Certification for the Seller's Plant and all the Delivered Energy and shall use commercially reasonable efforts to maintain EcoLogo^M Certification for such period during the remainder of the Term as the Buyer may specify. The Seller shall notify the Buyer forthwith if the Seller fails to obtain EcoLogo^M Certification as required hereunder or if, at any time during the period of the Term specified by the Buyer, the Seller does not have EcoLogo^M Certification. If the Buyer requires the Seller to obtain EcoLogo^M Certification, the Buyer shall be responsible for all certification, audit and licensing fees required to obtain EcoLogo^M Certification, unless the Seller requires EcoLogo^M

Certification to comply with subparagraph (e) of the definition of the Project Standards in Appendix 1, or the Seller fails to obtain or maintain EcoLogo^M Certification, in either of which cases the Seller shall be responsible for all such fees.

6.2 Alternate Certification - The Seller shall, at the Buyer's request and at the Buyer's cost, use commercially reasonable efforts to apply for, and diligently pursue and maintain, any certification, licensing or approval offered by any Governmental Authority or independent certification agency evidencing that the Seller's Plant and the Delivered Energy has Environmental Attributes as an addition or an alternative to the EcoLogo^M Certification. Any failure by the Seller to use commercially reasonable efforts pursuant to this section 6.2 is a "material default" for the purposes of this EPA, and the Buyer may terminate this EPA under subsection 8.1(i).

7. EPA ADMINISTRATION

7.1 Records - The Seller shall prepare and maintain all Records, or duplicates of such Records, at the Seller's Plant or following the expiry of the Term or the earlier termination of this EPA, at such other location as may be agreed in writing between the Parties, for a period of not less than 7 years from the date on which each such Record is created. The Audit Parties may take copies of such records for the purposes of an inspection or audit under section 7.2.

7.2 Inspection and Audit Rights - For the sole purpose of verifying: (a) compliance with this EPA; (b) the accuracy of invoices and other statements or calculations delivered by the Seller to the Buyer under this EPA; (c) the qualification of the Energy as Clean Energy; (d) the qualification of the Seller's Plant and the Energy for the Environmental Certification; or (e) the liability of each of the Parties for Network Upgrade Costs, the Seller shall, on reasonable prior notice from the Buyer, provide the Buyer and its Affiliates, representatives, consultants, advisors and any third party with whom the Buyer or any of its Affiliates has entered into a contract for the sale and purchase of Environmental Attributes and their Affiliates, representatives, consultants and advisors (the "Audit Parties") with prompt access during normal business hours to the Seller's Plant and all records relating to the Seller's Plant, including any Seller Confidential Information, to enable the Audit Parties to conduct an inspection or audit thereof. The Audit Parties shall exercise any access and audit rights under this section in a manner that minimizes disruption to the operation of the Seller's Plant. Any review, inspection or audit by any of the Audit Parties may not be relied upon by the Seller, or others, as confirming or approving those matters. Where the Buyer requires the Seller to provide access to the Seller's Plant and/or records relating to the Seller's Plant to a third Person with whom the Buyer or any of its Affiliates has entered into a contract for the sale and purchase of Environmental Attributes or any Affiliate, representative, consultant or advisor to any such third Person, the Buyer shall first obtain from the third Person an agreement to maintain the confidentiality of any Seller Confidential Information to which such Person may have access and to limit the use of such Seller Confidential Information as required to verify the Environmental Attributes.

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

7.4 Assignment

- (a) **Requirement for Consent:** The Seller may not Assign this EPA except with the prior consent of the Buyer, which consent may not be unreasonably withheld, conditioned or delayed. Any Assignment (other than an Assignment to a Facility Lender) is subject to the assignee entering into and becoming bound by this EPA, assuming all the obligations and liabilities of the Seller under the EPA arising both before and after the Assignment, providing any Network Upgrade Security as applicable at the time of Assignment, and providing the representations and warranties set out in the Application and in section 9.1 effective as at the time of Assignment, subject in the case of the representation and warranty in subsection 9.1(c) to such exceptions as the Buyer consents to acting reasonably.
- (b) **Time for Request:** Any request by the Seller for the Buyer's consent under subsection 7.4(a) must be delivered to the Buyer not less than 30 days before the date of the proposed Assignment. A request under this section must be accompanied by such information as reasonably required by the Buyer to assess the request for consent including the name, address and ownership structure of the assignee, a list of the directors and officers of the assignee and information concerning the assignee's operations, experience and financial status.
- (c) **Assignment to Facility Lender:** If the Seller seeks consent to Assign this EPA to a Facility Lender, the Buyer may require, as a condition of its consent to the Assignment, that the Seller and the Facility Lender enter into a Lender Consent Agreement with the Buyer.
- (d) **Costs:** The Seller shall reimburse the Buyer for all costs reasonably incurred by the Buyer in connection with any request by the Seller for the Buyer's consent pursuant to subsection 7.4(a).

7.5 Dispute Resolution -

- (a) **Arbitration:** Any dispute under or in relation to this EPA will be referred to and finally resolved by arbitration conducted by a single arbitrator in Vancouver, British Columbia and administered by the British Columbia International Commercial Arbitration Centre ("BCICAC") pursuant to its rules. Except as otherwise expressly provided in this EPA, the arbitrator shall have the jurisdiction to grant equitable remedies, including interim or permanent injunctive relief. It shall not be incompatible with this agreement to arbitrate for a party to seek from the Supreme Court of British Columbia, or for that court to grant, interim measures of protection pending the outcome of arbitral proceedings. The decision of the arbitrator will be final and binding on the Parties.
- (b) **Effect of Arbitration:** All performance and payments required under this EPA will continue during any dispute under this EPA, provided that the Parties may, notwithstanding the foregoing, exercise any right to terminate this EPA in accordance with the terms of this EPA. Any payments or reimbursements required by an arbitration award will be due as of the date determined under subsection 5.4.2(b) or, where that subsection does not apply, as of the date determined in the award. Without duplication with subsection 5.4.2(b), any payments or reimbursements required by an arbitration award will bear interest at an annual rate equal to the Prime Rate plus 2% compounded monthly from the date such payment was due until the amount is paid.

- (c) **Confidentiality:** The Parties shall maintain in confidence the fact that an arbitration has been commenced, all documents and information exchanged during the course of the arbitration proceeding, and the arbitrator's award, provided that each of the Parties shall be entitled to disclose such matters: (i) as required by applicable Law or for regulatory purposes (including pursuant to the rules of any stock exchange on which the shares of the Seller or its Affiliates are traded); (ii) as required to enforce any arbitration award; (iii) to that Party's consultants and professional advisors who have a need to know such information; and (iv) in the case of the Buyer, to representatives of the Government of British Columbia.
- 7.6 Notices** - Any notice, consent, waiver, declaration, request for approval or other request, statement or bill that either Party may be required or may desire to give to the other Party under this EPA must be in writing addressed to the other Party at the address for that Party stated in Appendix 1 and:
- (a) notices under section 7.9, section 8.1, section 8.3 and section 4 of Appendix 3 must be delivered by hand or by a courier service during normal business hours on a Business Day and a notice so delivered will be deemed to have been delivered on that Business Day;
- (b) all notices other than notices described in subsection 7.6(a) may be delivered by email during normal business hours on a Business Day and a notice so delivered will be deemed to have been delivered on that Business Day; and
- (c) either Party may change its address for notices under this EPA by notice to the other Party.
- 7.7 Energy Schedules** - By September 15 of each year, the Seller shall deliver to the Buyer a schedule of the expected total deliveries of Energy to the POI in each month during the 12 month period commencing on October 1 of the year in which the schedule is delivered and a schedule of the maintenance outages expected for the Seller's Plant during that period. The Energy schedules are provided for planning purposes only and do not constitute a guarantee by the Seller that Energy will be delivered in accordance with the schedules and do not limit the amount of Energy the Seller may deliver during the periods covered by the schedules. The Seller shall deliver a revised schedule to the Buyer promptly upon becoming aware of any expected material change in a delivered Energy schedule.
- 7.8 Confidentiality**
- 7.8.1 Confidentiality and Compliance Agreement** - The Standing Offer Confidentiality and Compliance Agreement continues in full force and effect in accordance with its terms.
- 7.8.2 Additional Confidentiality Obligation** - Without limiting the effect of the Standing Offer Confidentiality Agreement, during the Term and for two years thereafter (i) the Buyer shall treat as confidential, and shall not disclose to any third Person, Seller Confidential Information, and (ii) the Seller shall treat as confidential, and shall not disclose to any third Person, Buyer Confidential Information, provided however that nothing in the foregoing obligations, and nothing in this EPA, prevents or restricts:
- (a) disclosures that are expressly authorized under any section of this EPA, or as otherwise set out in this EPA;

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- (b) disclosures that are necessary to enable either Party to fulfill its obligations under this EPA;
- (c) in the case of the Buyer, disclosure of Seller Confidential Information:
 - (i) to any ministers, deputy ministers, servants or employees of the Province of British Columbia; and
 - (ii) to its directors, officers, employees and Affiliates, consultants and advisors;provided that each of the foregoing to whom Seller Confidential Information is disclosed is advised of the confidential nature thereof;
- (d) in the case of the Buyer, disclosure of Seller Confidential Information in any regulatory proceeding, whether in respect of this EPA or in respect of other matters, to the extent that the Buyer considers disclosure necessary or desirable to support its position in any such proceeding, provided that, to the extent reasonably practicable, the Buyer gives reasonable notice to the Seller before making the disclosure, and, to the extent requested by the Seller, requests the relevant tribunal to treat all or any part of the disclosure as confidential or to limit its further disclosure;
- (e) in the case of the Buyer, disclosure to any Person or any Governmental Authority of any Seller Confidential Information with respect to:
 - (i) the Seller's Plant that the Buyer is required to disclose to verify qualification of the output of the Seller's Plant as Clean Energy or to provide confirmation to any such Person or Governmental Authority that the output from the Seller's Plant qualifies as Clean Energy; or
 - (ii) the Energy and/or the Seller's Plant that the Buyer is required to disclose to enable the Buyer to obtain or realize the full benefit to the Buyer of the Environmental Attributes, including sales of Environmental Attributes to third Persons;
- (f) in the case of the Buyer, disclosures to a third Person of any Seller Confidential Information that was known by that third Person before disclosure thereof by the Buyer, including information that originated from that third Person or that the Seller or any other Person has given the third Person, in either case as indicated on the face of any document or as acknowledged by the Seller in any discussions with the Buyer;
- (g) in the case of the Seller, disclosure of the Buyer Confidential Information to its directors, officers, employees, consultants and advisors, provided that each of the foregoing to whom Buyer Confidential Information is disclosed is advised of the confidential nature thereof and undertakes in writing to respect such confidentiality on the terms of the EPA, provided that the Seller shall give to the Buyer, at its request, a copy of each undertaking;
- (h) without limiting the Buyer's disclosure rights under subsection 7.8.2(d) above, disclosures required to be made by a Party by an order of a court or tribunal or under any law, regulatory requirement or requirement of any stock exchange that is binding upon it, provided that (i) to the extent reasonably practicable, the Party making such

disclosure gives reasonable notice to the other Party before making the disclosure, and (ii) limits the disclosure to that required by the applicable order, law, or regulatory or stock exchange requirement;

- (i) disclosures in any legal proceedings for the enforcement of this EPA; or
- (j) disclosures of the Seller Confidential Information or the Buyer Confidential Information, as the case may be, by written agreement or consent of both Parties.

7.8.3 Freedom of Information and Protection of Privacy Act - The Seller acknowledges that the Buyer is subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia) and agrees that the Buyer's non-disclosure obligations under this EPA are subject to the provisions of that legislation, as amended from time to time.

7.8.4 Exemption from Disclosure - The Parties confirm that Seller Confidential Information constitutes commercial and financial information of the Seller, which has been supplied, or may be supplied, in confidence and the disclosure of which could reasonably be expected to harm significantly the competitive position and/or interfere significantly with the negotiating position of the Seller. Accordingly, the Parties confirm their intention that, subject to section 7.8.3, all Seller Confidential Information disclosed by the Seller to the Buyer shall be deemed to be confidential and exempt from disclosure to third Persons in accordance with section 21 of the *Freedom of Information and Protection of Privacy Act* (British Columbia), as amended from time to time.

7.9 Force Majeure -

- (a) Neither Party will be in breach or default as to any obligation under this EPA if that Party is unable to perform that obligation due to an event or circumstance of Force Majeure, of which notice is given promptly to the other Party identifying the nature of the Force Majeure, its expected duration and the particular obligations affected by the Force Majeure. Subject to any limitations expressly set out in this EPA, the time for performance of such obligation will be extended by the number of days that Party is unable to perform such obligation as a result of the event or circumstance of Force Majeure. The Party invoking Force Majeure shall promptly respond to any inquiry from the other Party regarding the efforts being undertaken to remove the Force Majeure and shall give prompt notice of the end of the Force Majeure.
- (b) Notwithstanding the definition of Force Majeure in Appendix 1, and without limiting the application of the definition of Force Majeure to any circumstance that is not specifically described in this section 7.9, any order or decision of any court of competent jurisdiction or any regulatory authority, including the BCUC, that is binding on the Buyer and/or the Seller, the compliance with which would prevent the Buyer and/or the Seller from performing all or any of its obligations under this EPA, which is based in whole or in part on any failure or alleged failure of the Buyer to adequately consult with, and/or accommodate, any First Nation, in relation to this EPA, the Project, the Seller's Plant or the interconnection of the Seller's Plant to the Distribution System or the Transmission System, as applicable (which, for greater certainty, does not include any failure to consult with, and/or accommodate any First Nation, with respect to activities occurring after COD on the Buyer's side of the Point of Interconnection or on the Transmission System), shall be an event of Force Majeure that may be invoked by the Party or Parties so prevented, provided that the Party or Parties so prevented shall use

commercially reasonable efforts to remedy the situation and remove, so far as possible and with reasonable dispatch, the Force Majeure to the extent that it is within the control of that Party to do so, provided that in the case of the Buyer, this obligation is subject to the Seller complying with, or having complied with, its obligation under section 3.12.2.

- (c) A Party may not invoke Force Majeure as a result of such binding order or decision referenced at subsection 7.9(b) if such order or decision results from a wilful act or omission of a Party, provided that the failure or alleged failure of the Buyer to have adequately consulted with, and/or accommodated, any First Nation may only be considered a wilful act or omission where the underlying event or circumstance giving rise to the duty to consult or accommodate was or is fully within the control of the Buyer and provided further that, for greater certainty, any activities of the Seller will not be considered to be within the control of the Buyer regardless of any consent, waiver, declaration or approval under the EPA, including any further amendment of the EPA that the Buyer may provide in respect of the Seller's activity.
- (d) The Seller may not invoke Force Majeure as a result of such binding order or decision referenced at subsection 7.9(b) if such order or decision results from a failure by the Seller to comply with its obligations under section 3.12 of this EPA.
- (e) The Buyer may not invoke Force Majeure as a result of such order or decision referenced at subsection 7.9(b) if:
 - (i) the Buyer has received notice in writing from the Seller that the Seller is attempting to resolve, cure, fulfill or remedy, as the case may be, at its own initiative and at its own expense, the issues, orders or obligations raised or required by the order or decision;
 - (ii) the Buyer is not incurring additional expense, risk or liability as a result of the Seller taking the steps described in paragraph (a) and the Buyer has received written confirmation from the Seller that the Buyer will not be subject to any liability to the Seller for breach of this EPA as a result of the Buyer's compliance with that portion of the order or decision that prohibits the Buyer from performing its obligations under this EPA while at the same time not being able to invoke Force Majeure as a result of this provision;
 - (iii) the Seller is at all times moving expeditiously and in good faith to resolve, cure, fulfill or remedy the issues, orders or obligations raised in the order or decision; and
 - (iv) the Buyer would not be in breach of the order or decision as a result of the Seller taking the steps described in subsection 7.9(e)(i).

8. TERMINATION

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

- (a) COD does not occur by the second anniversary of Target COD for any reason

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whatsoever (including Force Majeure), provided that the Buyer may terminate the EPA under this provision only if the Buyer delivers a termination notice prior to COD; or

- (b) at any time after COD, the Seller does not deliver any Energy to the Buyer for a period of 730 continuous days for any reason whatsoever (including Force Majeure or a Distribution/Transmission Constraint or Disconnection), but excluding a Distribution/Transmission Constraint or Disconnection for which the Seller is entitled to receive payment under section 4.7; or
- (c) at any time after COD, the Buyer is unable to accept delivery of Energy at the POI for a period of 730 continuous days due to Force Majeure invoked by the Buyer in accordance with section 7.9 or a Distribution/Transmission Constraint or Disconnection other than a Distribution/Transmission Constraint or Disconnection for which the Seller is entitled to receive payment under section 4.7; or
- (d) the Seller breaches section 4.5; or
- (e) the Seller fails to complete any application, payment, filing, study, document or other step in the process for interconnecting the Seller's Plant to the Transmission System or the Distribution System in accordance with the requirements of, and within the time limits, including any cure periods, specified by the Transmission Authority or Distribution Authority, as applicable, and such failure results in a loss of the interconnection queue position for the Seller's Plant or otherwise could reasonably be expected to have an adverse impact on the Buyer; or
- (f) any one of the Seller or the General Partner is Bankrupt or Insolvent; or
- (g) the Seller or the General Partner, as a result of an act or omission of the Seller or the General Partner, ceases to be exempt from regulation as a "public utility" as defined in the UCA with respect to the Seller's Plant and the sale of Energy to the Buyer under this EPA, and the loss of such exemption could reasonably be expected to have an adverse effect on the benefit to the Buyer of this EPA; or
- (h) an amount due and payable by the Seller to the Buyer under this EPA remains unpaid for 15 days after its due date and such default has not been cured within 15 days after the Buyer has given notice of the default to the Seller; or
- (i) any one of the Seller or the General Partner is in material default of any of its covenants, representations and warranties or other obligations under this EPA (other than as set out above), unless within 30 days after the date of notice by the Buyer to the Seller of the default the Seller has cured the default or, if the default cannot be cured within that 30 day period, the Seller demonstrates to the reasonable satisfaction of the Buyer that the Seller is working diligently and expeditiously to cure the default and the default is cured within a further reasonable period of time. A "material default" includes any purported Assignment of this EPA without the consent of the Buyer and any failure by the Seller to comply with section 3.2 in respect of subsection (e) of the "Project Standards" definition in Appendix 1, section 4.5, section 6.1 or section 6.2.

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

- 8.2 Notice of Termination Event** - The Seller shall notify the Buyer promptly if the Seller is Bankrupt or Insolvent or if there is a material risk that the Seller will become Bankrupt or Insolvent or if the Seller has defaulted under any agreement with a Facility Lender or if any Permit or land tenure agreement for the Seller's Plant is terminated or expires.
- 8.3 Termination by the Seller** - In addition to any other right to terminate this EPA expressly set out in any other provision of this EPA and in addition to all other rights and remedies the Seller may have under this EPA or at law or in equity in respect of any of the following events, the Seller may terminate this EPA by notice to the Buyer if:
- (a) the Seller has not been able to achieve COD for a period of 180 days after Target COD solely as a result of a delay in completion of Interconnection Network Upgrades where such delay is not attributable directly or indirectly in whole or in part to the Seller or the Seller's Plant; or
 - (b) after COD, the Buyer has not accepted delivery of Energy for a period of 180 continuous days due to an event described in section 4.3 or any event of Force Majeure and the Seller is not entitled to receive any payment pursuant to section 4.7 in respect of that period; or
 - (c) the Seller's Plant has suffered Major Damage;
 - (d) the Seller has been unable to achieve COD for a period of 730 days after Target COD or has been unable to deliver Energy to the POI for a period of 730 continuous days after COD in either case solely as a result of Force Majeure invoked by the Seller in accordance with section 7.9 or a Distribution/Transmission Constraint or Disconnection other than a Distribution/Transmission Constraint or Disconnection for which the Seller is entitled to receive payment under section 4.7; or
 - (e) the Buyer is Bankrupt or Insolvent; or
 - (f) except where an amount has been disputed in the manner specified in subsection 5.4.1(a), an amount due and payable by the Buyer to the Seller under this EPA remains unpaid for 15 days after its due date and such default has not been cured within 15 days after the Seller has given notice of the default to the Buyer; or
 - (g) the Buyer is in material default of any of its covenants, representations and warranties or other obligations under this EPA (other than as set out above), and such default has not been cured within 30 days after the Seller has given notice of the default to the Buyer or, if the default cannot be cured within that 30 day period, the Buyer fails to demonstrate to the reasonable satisfaction of the Seller that the Buyer is working diligently and expeditiously to cure the default or the default is not cured within a further reasonable period of time.

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

- 8.4 Effect of Termination** - Upon expiry of the Term or earlier termination of this EPA in accordance with its terms:
- (a) the Parties may pursue and enforce any rights and remedies permitted by law or equity

in respect of any prior breach or breaches of the EPA, and may enforce any liabilities and obligations that have accrued under this EPA prior to the expiry of the Term or the date of termination or that are stated to arise on termination of this EPA (including any claims by the Buyer for amounts payable by the Seller under Appendix 3), subject to any express restrictions on remedies and limitations or exclusions of liability set out in this EPA; and

- (b) both Parties will remain bound by Article 5 and Appendix 3 with respect to the satisfaction of residual obligations for the period prior to termination or that are specified to arise on termination, and sections 7.5 and 7.8 and all provisions of the EPA with respect to Environmental Attributes but only with respect to Environmental Attributes associated with Delivered Energy prior to termination of this EPA; and
- (c) the Seller will remain bound by sections 7.1 and 7.2 for a period of 36 months following expiry or termination of this EPA

and, in all such cases, both Parties will remain bound by any other provisions necessary for the interpretation and enforcement of the foregoing provisions.

8.5 Buyer Payment on Seller Termination - If the Seller terminates this EPA under any of subsections 8.3(e), (f) or (g), the Buyer shall pay to the Seller an amount equal to the positive amount if any by which the Seller's Losses and Costs exceed its aggregate Gains. The Seller's Gains, Losses and Costs shall be determined by comparing the reasonably estimated quantities of Delivered Energy for the remaining Term and the price payable for those quantities under this EPA had it not been terminated to the relevant market prices for equivalent quantities of electricity for the remaining Term either quoted by a bona fide arm's length third party or which are reasonably expected to be available in the market under a replacement contract for this EPA. Market prices will be adjusted for differences between the product subject to the market prices and a product, inclusive of Environmental Attributes, equivalent to that specified under this EPA available from a generator meeting the eligibility requirements for the Buyer's Standing Offer Program in effect at the Effective Date, including with respect to quantity, place of delivery, length of term and each element of the eligibility requirements. The Seller shall not be required to enter into a replacement transaction in order to determine the amount payable by the Buyer under this section. The Seller's Gains, Losses and Costs will be discounted to the present value of those Gains, Losses and Costs at the effective date of termination of the EPA (to take into account the time value of money for the period between the effective date of termination of the EPA and the date the Gains, Losses and Costs would have occurred but for the termination of the EPA) using the Present Value Rate. If the Seller's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this EPA, the amount of the payment by the Buyer to the Seller under this section shall be zero. If the termination of this EPA by the Seller occurs prior to COD, the Buyer's liability for any payment under this section will be 115% of the Development Costs less the net realizable value of the assets forming part of the Seller's Plant at the date of termination.

8.6 Calculation and Payment - The Seller shall calculate the amount of any payment owed by the Buyer under section 8.5 and shall notify the Buyer of such amount and provide reasonable particulars with respect to its calculation within 120 days after the effective date of termination of this EPA, failing which the Seller will not be entitled to any payment under section 8.5. The Buyer shall pay any amount owing by the Buyer under section 8.5 within 30 Business Days after the date of delivery of an invoice by the Seller to the Buyer. Any amounts owing by the Seller

to the Buyer under this EPA will be netted against any amount owing by the Buyer to the Seller under section 8.5.

- 8.7 Exclusive Remedies** - Subject to section 8.4, payment by the Buyer of the amount determined under section 8.5 is the exclusive remedy to which the Seller is entitled, and the Buyer's limit of liability, for termination of this EPA by the Seller pursuant to any of subsections 8.3(e), (f) or (g). Subject to section 8.4, termination of this EPA is the exclusive remedy to which the Buyer or the Seller as the case may be is entitled if the Buyer or the Seller elects to exercise its right to terminate this EPA under any of section 8.1, subsection 8.3(a), (b), (c), or (d) or section 4 of Appendix 3 as applicable. For greater certainty, subject to section 8.4, the Seller shall not be required to pay any termination payment on termination by the Buyer of this EPA. Neither Party will have any right to terminate this EPA except as expressly set out herein.
- 9. REPRESENTATIONS AND WARRANTIES AND LIABILITY LIMITATIONS**
- 9.1 Seller's Representations** - The Seller and the General Partner as to itself only represent and warrant to the Buyer, and acknowledges that the Buyer is relying on those representations and warranties in entering into this EPA, as follows:
- (a) **Binding Obligation** - this EPA constitutes a valid and binding obligation of the Seller and the General Partner enforceable against the Seller and the General Partner in accordance with its terms;
 - (b) **Authorization, Execution and Delivery** - this EPA has been duly authorized, executed and delivered by the Seller and the General Partner; and
 - (c) **Application** - all information in the Application is true and correct in all material respects and there is no material information omitted from the Application that makes the information in the Application misleading or inaccurate in any material respect. The representations and warranties by the Seller and the General Partner in the Application are true and correct.
- 9.2 Buyer's Representations** - The Buyer represents and warrants to the Seller, and acknowledges that the Seller is relying on those representations and warranties in entering into this EPA, as follows:
- (a) **Corporate Status** - The Buyer is a corporation continued under the *Hydro and Power Authority Act*, R.S.B.C. 1996, c.212, is validly existing and is in good standing under the laws of British Columbia, is lawfully authorized to carry on business in British Columbia, and has full corporate power, capacity and authority to enter into and to perform its obligations under this EPA;
 - (b) **Binding Obligation** - this EPA constitutes a valid and binding obligation of the Buyer enforceable against the Buyer in accordance with its terms; and
 - (c) **Authorization, Execution and Delivery** - this EPA has been duly authorized, executed and delivered by the Buyer.
- 9.3 Limit of Liability** - The Buyer's liability for damages for any failure to take or pay for Delivered Energy under this EPA is limited to the price payable by the Buyer for that Delivered Energy under Article 5 and any interest thereon calculated under this EPA less the amount of

any revenue received by the Seller from any third Person for that Delivered Energy.

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

10. GENERAL PROVISIONS

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

- 10.2 **Independence** - The Parties are independent contractors, and nothing in this EPA or its performance creates a partnership, joint venture or agency relationship between the Parties.

- 10.3 **Enurement** - This EPA enures to the benefit of the Parties, their successors and their permitted assigns.

- 10.4 **Entire Agreement** - This EPA contains the entire agreement between the Parties with respect to the purchase and sale of Energy and Environmental Attributes and supersedes all previous communications, understandings and agreements between the Parties with respect to the subject matter hereof including, without limitation, the documents related to the Standing Offer Program and all questions and answers and any other communications of any kind whatsoever by the Buyer in connection therewith or relating thereto, except only those representations, warranties and covenants contained in the Application which shall remain in effect notwithstanding this EPA. There are no representations, warranties, terms, conditions, undertakings or collateral agreements express, implied or statutory between the Parties other than as expressly set out in this EPA, except only those representations, warranties and covenants contained in the Application which shall remain in effect notwithstanding this EPA.

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

- 10.6 **No Waiver** - Other than in respect of the specific matter or circumstance for which a waiver is given, and except as otherwise specified in this EPA, no failure by a Party to enforce, or require a strict observance and performance of, any of the terms of this EPA will constitute a waiver of those terms or affect or impair those terms or the right of a Party at any time to enforce those terms or to take advantage of any remedy that Party may have in respect of any other matter or circumstance.

- 10.7 **Interconnection Agreement and Distribution and Transmission Authorities** - Nothing in the Interconnection Agreement and no exercise of any right thereunder, restricts or otherwise affects any right, obligation or liability of either Party under this EPA, except to the extent set out expressly herein, and no notice, consent, approval or other communication or decision under or in relation to the Interconnection Agreement shall constitute or be relied upon as a notice, consent, approval or communication or decision under this EPA. For the purposes of the interpretation and application of this EPA, the Distribution Authority and the Transmission Authority shall be treated in all instances as though they are entirely separate legal entities from the Buyer.

- 10.8 **Commodity Contract/Forward Contract** - The Parties agree and intend that this EPA

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constitutes an "eligible financial contract" under the *Bankruptcy and Insolvency Act* (Canada) and *Companies' Creditors Arrangement Act* (Canada) and that this EPA and the transactions contemplated under this EPA constitute a "forward contract" within the meaning of section 556 of the United States Bankruptcy Code and that the Parties are "forward contract merchants" within the meaning of the United States Bankruptcy Code.

- 10.9 Further Assurances** - Each Party shall, upon the reasonable request of the other Party, do, sign or cause to be done or signed all further acts, deeds, things, documents and assurances required for the performance of this EPA including, in the case of the Seller, completing any registration process required in respect of Environmental Attributes as requested by the Buyer.
- 10.10 Severability** - Any provision of this EPA which is illegal or unenforceable will be ineffective to the extent of the illegality or unenforceability without invalidating the remaining provisions of this EPA.
- 10.11 Counterparts** - This EPA may be executed in counterparts, each of which is deemed to be an original document and all of which are deemed one and the same document.

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

For **WEDGEMOUNT POWER LIMITED PARTNERSHIP A LIMITED PARTNERSHIP REPRESENTED BY ITS GENERAL PARTNER WEDGEMOUNT POWER (GP) INC.**



Authorized Representative

David Eberhardt, Director
Print Name and Office

Jan 29/15
Date

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



Authorized Representative

Jessica McDonald, President + CEO
Print Name and Office

March 6/15
Date

APPENDIX 1**DEFINITIONS AND INTERPRETATION****1. DEFINITIONS**

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

- 1.1** “**Affiliate**” means, with respect to the Seller or the General Partner or any third party, any Person directly or indirectly Controlled by, Controlling, or under common Control with, the Seller, the General Partner or the third party, and with respect to the Buyer, any Person directly or indirectly Controlled by the Buyer and, if at any time the Buyer is not Controlled, directly or indirectly, by the Province of British Columbia, shall include any Person directly or indirectly Controlling, or under common Control, with the Buyer.
- 1.2** “**Application**” means the application and all supporting documents and information with respect to the Seller’s Plant filed by the Seller with the Buyer in the Standing Offer Program.
- 1.3** “**Assign**” or “**Assignment**” means to assign or dispose of this EPA or any direct or indirect interest in this EPA, in whole or in part, for all or part of the Term and, without limiting the foregoing, each of the following is deemed to be an Assignment of this EPA by the Seller:
- (a) any sale or other disposition of all or a substantial part of the Seller’s ownership interest in the Seller’s Plant, or of all or any interest of the Seller in this EPA or revenue derived from this EPA;
 - (b) any mortgage, pledge, charge or grant of a security interest in all or any part of the Seller’s Plant or the Seller’s ownership interest therein; and
 - (c) any change of Control, merger, amalgamation or reorganization of the Seller.
- 1.4** “**Audit Parties**” has the meaning given in section 7.2.
- 1.5** “**Bankrupt or Insolvent**” means, with respect to a Person (which in the case of the Seller includes either or both of the Seller or the General Partner):
- (a) the Person has started proceedings to be adjudicated a voluntary bankrupt or consented to the filing of a bankruptcy proceeding against it; or
 - (b) the Person has filed a petition or similar proceeding seeking reorganization, arrangement or similar relief under any bankruptcy or insolvency law; or
 - (c) a receiver, liquidator, trustee or assignee in bankruptcy has been appointed for the Person or the Person has consented to the appointment of a receiver, liquidator, trustee or assignee in bankruptcy; or
 - (d) the Person has voluntarily suspended the transaction of its usual business; or
 - (e) a court of competent jurisdiction has issued an order declaring the Person bankrupt or insolvent.

- 1.6 “BCUC” means the British Columbia Utilities Commission or any successor thereto.
- 1.7 “Business Day” means any calendar day which is not a Saturday, Sunday or British Columbia statutory holiday.
- 1.8 “Buyer” means British Columbia Hydro and Power Authority and its successors and permitted assigns, but for the purposes of the interpretation and application of this EPA it excludes the Distribution Authority and the Transmission Authority.
- 1.9 “Buyer Confidential Information” means technical or commercial information disclosed by the Buyer to the Seller that the Buyer directs, and clearly marks, as confidential, including this EPA whether or not so directed and marked, and any communications by the Buyer with any lawyer providing a Verification and all work product of the lawyer providing a Verification, but excluding information that (i) is or becomes in the public domain, other than as a result of a breach of this EPA by the Seller, or (ii) is known to the Seller before disclosure to it by the Buyer, or becomes known to the Seller, thereafter by way of disclosure to the Seller by any other person who is not under an obligation of confidentiality with respect thereto.
- 1.10 “Clean Energy” means Energy that qualifies as energy generated by a clean or renewable resource under British Columbia’s *Clean Energy Act*, SBC 2010, c.22, as amended from time to time.
- 1.11 “COD” or “Commercial Operation Date” means the date that is the later of:
- (a) 90 days prior to Target COD, unless the Buyer has consented to an earlier date pursuant to section 3.8; and
 - (b) the date on which all of the following conditions have been satisfied in respect of the Seller’s Plant:
 - (i) the Seller has obtained all Permits required for the construction, commissioning, and operation of the Seller’s Plant and all such Permits are in full force and effect;
 - (ii) the Seller is not: (A) Bankrupt or Insolvent; (B) in default of any payment obligation or requirement to post security under this EPA; (C) in material default of any of its other covenants, representations, warranties or obligations under this EPA; or (D) in material default under any Permit or Law applicable to the construction, commissioning or operation of the Seller’s Plant or under any land tenure agreement for the site on which the Seller’s Plant is located or under the Interconnection Agreement;
 - (iii) a Revenue Meter has been installed in accordance with section 3.6;
 - (iv) the Seller has delivered to the Buyer:
 - (A) a Declaration of Compatibility-Generator (Operating), or such other document(s) of similar effect as may be substituted therefor, in respect of the Plant Capacity issued by the Distribution Authority/Transmission Authority to the Seller under the Interconnection Agreement,

(B) proof of registration by the Seller with Measurements Canada as an energy seller with respect to the Seller's Plant, and

(C) a COD Certificate;

and for purposes of this EPA, COD will be deemed to have occurred at 24:00 PPT on the later of the dates set out above.

1.12 "COD Certificate" means a certificate in the form attached as Appendix 5.

1.13 "Control" of any Person means:

- (a) with respect to any corporation or other Person having voting shares or the equivalent, the ownership or power to vote, directly or indirectly, shares, or the equivalent, representing 50% or more of the power to vote in the election of directors, managers or persons performing similar functions;
- (b) ownership of 50% or more of the equity or beneficial interest in that Person; or
- (c) the ability to direct the business and affairs of any Person by acting as a general partner, manager or otherwise.

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

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

1.16 "Crown" means Her Majesty in the Right of the Province of British Columbia or Her Majesty in Right of the Government of Canada.

1.17 "Delivered Energy" means in each month after COD the amount of Energy delivered by the Seller at the POI in that month as recorded by the Seller's metering equipment described in section 3.6, or where that equipment is not functioning correctly, the duplicate revenue meter installed by the Buyer under section 3.6, if any.

1.18 "Development Costs" means all costs reasonably incurred or committed by the Seller after the Effective Date for the development of the Seller's Plant and all costs reasonably incurred, or that are reasonably likely to be incurred by the Seller, after taking reasonable mitigation measures, to terminate all contractual commitments with respect to the development of the Seller's Plant and to otherwise cease development of the Seller's Plant, but excluding any lost profits, loss of opportunity costs or damages and all other special, incidental, indirect or consequential losses.

1.19 "Development Report" means a report in the form attached as Appendix 8, describing the progress of the financing, design, engineering, construction, Interconnection, and commissioning of the Seller's Plant.

1.20 "Dispatch/Turn-Down" has the meaning given in subsection 4.8(a).

- 1.21 **“Distribution Authority”** means the Person or Persons who is or are responsible for the planning, asset management and operation of the Distribution System, in whole or in part, including an independent system operator.
- 1.22 **“Distribution System”** means the distribution, protection, control and communication facilities in British Columbia that are or may be used in connection with, or that otherwise relate to, the transmission of electrical energy at 35 kilovolts or less, and includes all additions and modifications thereto and repairs or replacements thereof.
- 1.23 **“Distribution/Transmission Constraint or Disconnection”** means any disconnection of the Seller’s Plant from the Distribution System or the Transmission System, as applicable, or any outage, suspension, constraint or curtailment in the operation of the Distribution System or the Transmission System preventing or limiting deliveries of Energy at the POI or any direction from the Distribution Authority or the Transmission Authority to reduce generation of the Seller’s Plant as a result of any outage, suspension, constraint or curtailment in the operation of the Transmission System or Distribution System.
- 1.24 **“EcoLogo^M Certification”** means certification pursuant to Environment Canada’s Environmental Choice^M program confirming that the Seller’s Plant and all or part of the Energy complies with the “Guideline on Renewable Low-Impact Electricity” as amended from time to time and is therefore entitled to the EcoLogo^M designation.
- 1.25 **“Effective Date”** means the date set out on page one hereof.
- 1.26 **“Energy”** means all electric energy expressed in MWh generated by the Seller’s Plant, excluding electricity required to service the Seller’s Plant.
- 1.27 **“Environmental Attributes”** means the following as attributable to Energy delivered to the Buyer under this EPA:
- (a) all attributes directly associated with, or that may be derived from, the Energy delivered to the Buyer under this EPA having decreased environmental impacts relative to certain other generation facilities or technologies including any existing or future credit, allowance, “green” tag, ticket, certificate or other “green” marketing attribute or proprietary or contractual right, whether or not tradeable;
 - (b) any credit, reduction right, offset, allowance, allocated pollution right, certificate or other unit of any kind whatsoever, whether or not tradeable and any other proprietary or contractual right, whether or not tradeable, resulting from, or otherwise related to the actual or assumed reduction, displacement or offset of emissions at any location other than the Seller’s Plant as a result of the generation, purchase or sale of the Energy delivered to the Buyer under this EPA;
 - (c) On-Site Emission Reduction Rights; and
 - (d) all revenues, entitlements, benefits and other proceeds arising from or related to the foregoing, but for certainty not including:
 - (i) benefits or proceeds from environmental incentive programs offered by Governmental Authorities that do not require a transfer of the attributes in (a) to (c) above; and

- (ii) benefits or proceeds from social programs, including programs relating to northern or rural development, employment or skills training, or First Nations, that do not require a transfer of the attributes in subsections (a) to (c) above.

1.28 “**Environmental Certification**” means either or both of the following:

- (a) EcoLogo^M Certification; or
- (b) any alternate certification the Buyer requires the Seller to obtain under section 6.2.

1.29 “**Estimated Interconnection Facilities Completion Date**” means the most recent estimated date for completing the Interconnection Network Upgrades, as set forth in the Final Interconnection Study Report.

1.30 “**Facility Lender**” means any lender(s) providing any debt financing or debt hedging facilities for the design, engineering, construction and/or operation of the Seller’s Plant and any successors or assigns thereto and any Person taking any mortgage, pledge, charge or grant of a security interest in all or any part of the Seller’s Plant.

1.31 “**Final Amount**” means an amount owing by either Party to the other Party under this EPA, including as a result of a breach of this EPA, where such amount is: (a) undisputed by the Party owing such amount; or (b) has been finally determined by an arbitration award under section 7.5 or by a court order and all rights of appeal in respect of such award or order have been exhausted or have expired.

1.32 “**Final Interconnection Study Report**” means the final report issued to the Seller by the Distribution Authority or the Transmission Authority, as applicable, in respect of the interconnection of the Seller’s Plant, consisting of a system impact study report and a facilities study report.

1.33 “**First Nations**” has the meaning given in subsection 3.12.1.

1.34 “**Force Majeure**” means any event or circumstance not within the control of the Party, or any of its Affiliates, claiming Force Majeure, but does not include:

- (a) any economic hardship or lack of money, credit or markets;
- (b) an event or circumstance that is the result of a breach by the Party seeking to invoke Force Majeure of a Permit or of any applicable Laws;
- (c) a mechanical breakdown or control system hardware or software failure, unless the Party seeking to invoke Force Majeure can demonstrate by clear and convincing evidence that the breakdown or failure was caused by a latent defect in the design or manufacture of the equipment, hardware or software, which could not reasonably have been identified by normal inspection or testing of the equipment, hardware or software;
- (d) an event or circumstance caused by a breach of, or default under, this EPA or a wilful or negligent act or omission by the Party seeking to invoke Force Majeure;
- (e) any Distribution/Transmission Constraint or Disconnection; or

- (f) any acts or omissions of: (i) any Affiliate, employee, director, officer, agent or other representative of the Party invoking Force Majeure; (ii) any vendor, supplier, contractor, subcontractor, consultant or customer of or to the Party invoking Force Majeure; or (iii) any other Person for whom the Party invoking Force Majeure is responsible at law, unless the act or omission is caused by an event or circumstance that would constitute Force Majeure if the person described above was a party to this EPA in place of a Party invoking Force Majeure.
- 1.35 **“Gains”** means an amount equal to the present value of the economic benefit (exclusive of Costs), if any, to the Seller resulting from the termination of this EPA, determined in a commercially reasonable manner and in the manner set out in section 8.5.
- 1.36 **“General Partner”** means the party so identified on page one of this EPA, and its successors and permitted assigns.
- 1.37 **“Good Utility Practice”** means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the Western Electricity Coordinating Council region.
- 1.38 **“Governmental Authority”** means any federal, provincial, local or foreign government or any of their boards or agencies, or any regulatory authority other than the Buyer and the Seller and entities controlled by the Buyer or the Seller.
- 1.39 **“GST”** means the goods and services tax imposed under the *Excise Tax Act* (Canada) as that Act may be amended or replaced from time to time.
- 1.40 **“Interconnection”** means the facilities and procedures that enable the flow of electric power from the Seller’s Plant to the Transmission System or the Distribution System and vice versa.
- 1.41 **“Interconnection Agreement”** means the agreement between the Seller and the Distribution or Transmission Authority, the Standard Generator Interconnection Agreement, as applicable, which enables the flow of electric power from the Seller’s Plant to the Distribution System or the Transmission System, as applicable, and vice versa, as amended or replaced from time to time.
- 1.42 **“Interconnection Network Upgrades”** has the meaning given in Appendix 3.
- 1.43 **“Laws”** means any and all statutes, laws (including common law), ordinances, rules, regulations, codes, orders, bylaws, policies, directions, standards, guidelines, protocols and other lawful requirements of any Governmental Authority in effect from time to time.
- 1.44 **“Lender Consent Agreement”** means a lender consent agreement in the form attached as Appendix 7.
- 1.45 **“Losses”** means an amount equal to the present value of the economic loss (exclusive of Costs), if any, to the Seller resulting from the termination of this EPA, determined in a commercially reasonable manner and in the manner set out in section 8.5.

- 1.46 “**Major Damage**” means damage to the Seller’s Plant caused by Force Majeure where the cost to repair the damage exceeds the net present value (using the Present Value Rate) of the expected revenues under the EPA for the remainder of the Term less the net present value (using the Present Value Rate) of the estimated operating and maintenance costs for the Seller’s Plant for the remainder of the Term.
- 1.47 “**MW**” means megawatt.
- 1.48 “**MWh**” means megawatt-hour.
- 1.49 “**Network Upgrades**” has the meaning given in Appendix 3.
- 1.50 “**Network Upgrade Costs**” has the meaning given in Appendix 3.
- 1.51 “**Network Upgrade Security**” has the meaning given in Appendix 3.
- 1.52 “**On-Site Emission Reduction Rights**” means any credit, reduction right, off-set, allowance, allocated pollution right, certificate or other unit of any kind whatsoever whether or not tradeable resulting from or otherwise related to the reduction, removal, or sequestration of emissions at or from the Seller’s Plant.
- 1.53 “**Order or Decision**” has the meaning given in subsection 3.12.1.
- 1.54 “**Party**” means: (a) the Buyer and its successors and permitted assigns; or (b) the Seller and its successors and permitted assigns, and “**Parties**” means both the Buyer and the Seller and their respective successors and permitted assigns, provided that the Distribution Authority and the Transmission Authority shall be deemed not to be a “Party”, whether or not owned or operated by the Buyer.
- 1.55 “**Permits**” means permits, certificates, licences, and other approvals required for the design, construction, ownership, operation, maintenance and decommissioning of the Seller’s Plant and the delivery of Energy to the POI.
- 1.56 “**Person**” means an individual, body corporate, firm, partnership, joint venture, trust, legal representative or other legal entity.
- 1.57 “**Planned Outage**” means an outage for purposes of scheduled inspections, repair and/or maintenance in the Seller’s Plant.
- 1.58 “**Plant Capacity**” means the electrical capacity of the Seller’s Plant as set out in Appendix 2.
- 1.59 “**POI**” or “**Point of Interconnection**” means the point at which the Seller’s Plant interconnects with the Distribution System or the Transmission System, as applicable, as described in Appendix 2.
- 1.60 “**PPT**” means Pacific Prevailing Time, which means Pacific Daylight Time or Pacific Standard Time as applicable.
- 1.61 “**Present Value Rate**” means the annual yield on a Government of Canada bond having a term and maturity date that most closely matches the remaining Term (as at the date of the applicable calculation) and expiry date of the EPA, plus 3%.

- 1.62 **“Prime Rate”** means the floating prime interest rate announced from time to time by the main branch of Bank of Montreal in Vancouver, or any successor thereto, expressed as an annual rate, as the reference rate it will use to determine rates of interest payable on Canadian dollar commercial loans made in Canada.
- 1.63 **“Project”** means the financing, design, engineering, procurement, construction, commissioning, operation and maintenance of the Seller’s Plant.
- 1.64 **“Project Standards”** means:
- (a) all applicable Laws;
 - (b) the terms and conditions of all Permits, including land tenure agreements, issued in connection with the Seller’s Plant;
 - (c) Good Utility Practice;
 - (d) the description of the Seller’s Plant in Appendix 2;
 - (e) the requirement that Energy must qualify as Clean Energy;
 - (f) the terms and conditions of this EPA and the Interconnection Agreement; and
 - (g) the Code of Conduct Guidelines Applicable to the Buyer Contracts attached as Appendix 10.
- 1.65 **“PST”** means British Columbia provincial social service or sales taxes and similar or replacement assessments, if any.
- 1.66 **“Records”** means all records and logs required to properly administer this EPA, including:
- (a) Energy generation records and operating logs;
 - (b) a log of all outages of the Seller’s Plant and other reductions in Energy output (specifying the date, time, duration and reasons for each such outage and each reduction in Energy output);
 - (c) meter readings,
 - (d) maintenance reports;
 - (e) invoice support records;
 - (f) documents concerning compliance with Permits and applicable Laws, but excluding any such documents that are protected by solicitor-client privilege;
 - (g) records related to Development Costs;
 - (h) all information the Buyer requires to verify qualification of the output from the Seller’s Plant as Clean Energy; and

- (i) information relating to the Environmental Certification, information relating to the existence, nature and quality of Environmental Attributes, information required for the purposes of any Environmental Attributes or energy certification or tracking system, and any other information the Buyer requires to enable it or any of its Affiliates to obtain and realize the benefit of the Environmental Attributes,

all consistent with Good Utility Practice.

- 1.67 **“Revenue Meter”** means a revenue meter leased by the Buyer to the Seller that is: (a) capable of being remotely interrogated; and (b) calibrated to measure on an hourly basis the quantity of Energy delivered by the Seller to the POI after adjusting for any line losses associated with the transmission of Energy from the Seller’s Plant to the POI.
- 1.68 **“Seller”** means the Party so identified on page one of this EPA, and its successors and permitted assigns.
- 1.69 **“Seller Confidential Information”** means any of the Seller’s confidential technical or financial information provided by the Seller to the Buyer in confidence with express written notice to the Buyer of the confidential nature of the information and any communications by the Seller with any lawyer providing a Verification and all work product of the lawyer providing the Verification, but excluding:
- (a) this EPA; and
- (b) information that (i) is or becomes in the public domain, other than as a result of a breach of this EPA by the Buyer, or (ii) is known to the Buyer before disclosure to it by the Seller, or becomes known to the Buyer thereafter by way of disclosure to the Buyer by any other Person who is not under an obligation of confidentiality with respect thereto.
- 1.70 **“Seller’s Plant”** means the Seller’s Plant described in Appendix 2 and all rights, property, facilities, assets, equipment, materials, Permits and contracts required to design, engineer, procure, construct, commission, operate and maintain the plant described in Appendix 2 and to interconnect that plant to the Distribution System or the Transmission System, as applicable, whether real or personal and whether tangible or intangible including all land tenure and all books, records and accounts with respect to the Seller’s Plant described in Appendix 2.
- 1.71 **“Standing Offer Confidentiality and Compliance Agreement”** means the confidentiality and compliance agreement, a copy of which is attached as Appendix 9 to this EPA.
- 1.72 **“Standing Offer Program”** means the Buyer’s power procurement program described as the Standing Offer Program.
- 1.73 **“Target COD”** means September 30, 2015, as revised pursuant to either or both of sections 3.9 and 3.11, if applicable.
- 1.74 **“Term”** has the meaning given in Article 2.
- 1.75 **“Transmission Authority”** means such Person or division of a Person, which for greater certainty may be a division of the Buyer, that carries out the interconnection and grid operation functions that British Columbia Transmission Corporation carried out prior to July 5, 2010.

1.76 “**Transmission System**” means the transmission, substation, protection, control and communication facilities: (a) owned by the Buyer or by the Transmission Authority; and (b) operated by the Transmission Authority in British Columbia, and includes all additions and modifications *thereto and repairs or replacements thereof*.

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

1.78 “**Verification**” has the meaning given in subsection 3.12.1.

2. INTERPRETATION

2.1 **Headings** - The division of this EPA into Articles, sections, subsections, paragraphs and Appendices and the insertion of headings are for convenience of reference only and do not affect the interpretation of this EPA.

2.2 **Plurality and Gender** - Words in the singular include the plural and vice versa. Words importing gender include the masculine, feminine and neuter genders.

2.3 **Governing Law** - This EPA is made under, and will be interpreted in accordance with, the laws of the Province of British Columbia. Subject to section 7.5, any suit, action or proceeding (a “Proceeding”) arising out of or relating to this EPA may be brought in the courts of the Province of British Columbia at Vancouver, and those courts have non-exclusive jurisdiction in respect of any Proceeding and the Parties hereby irrevocably attorn to the jurisdiction of such courts in respect of any Proceeding.

2.4 **Industry Terms** - Technical or industry specific phrases or words not otherwise defined in this EPA have the well known meaning given to those terms as of the date of this EPA in the industry or trade in which they are applied or used.

2.5 **Statutory References** - Reference to a statute means, unless otherwise stated, the statute and regulations, if any, under that statute, in force from time to time, and any statute or regulation passed and in force which has the effect of supplementing or superseding that statute or those regulations.

2.6 **Currency** - References to dollars or \$ means Canadian dollars, unless otherwise stated.

2.7 **Reference Indices** - If any index, tariff or price quotation referred to in this EPA ceases to be published, or if the basis therefor is changed materially, there will be substituted an available replacement index, tariff or price quotation that most nearly, of those then publicly available, approximates the intent and purpose of the index, tariff or quotation that has so ceased or changed. This EPA shall be amended as necessary to accommodate such replacement index, tariff or price quotation, all as determined by written agreement between the Parties, or failing agreement, by arbitration under section 7.5.

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

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

- (a) all payment calculations will be rounded to the nearest cent;
- (b) Energy will be expressed in MWh rounded to two decimal places; and
- (c) if Statistics Canada (or the then recognized statistical branch of the Canadian Government):
 - (i) computes, at any time after the Effective Date, the CPI on a basis different to that employed at the Effective Date, then the CPI will be converted using the appropriate formula recommended by Statistics Canada (or the then recognized statistical branch of the Canadian Government);
 - (ii) at any time ceases to publish or provide the CPI, then the provisions of section 2.7 of Appendix I will apply;
 - (iii) has not published the CPI for a relevant period at the time the Seller is required to provide the Buyer with an invoice, the Seller shall prepare the invoice based on the CPI in effect at the time the invoice is issued and when the CPI for the relevant period is published, the Seller shall recalculate the invoice amounts in the next succeeding invoice and shall include a credit or debit, without interest, in the next succeeding invoice based on the results of the recalculation; or
 - (iv) recalculates the CPI within 36 months after an invoice affected by that CPI calculation has been issued, then the Seller shall recalculate the invoice amounts for the relevant period in the next succeeding invoice and shall include a credit or debit, without interest, in the next succeeding invoice based on the results of the recalculation.

2.10 General Partner - All references to "Seller" herein include the General Partner, unless the contrary is expressly indicated. Acts or omissions of the General Partner in relation to this EPA are deemed to be acts or omissions of the Seller.

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

- (a) "this EPA" means this EPA as it may from time to time be supplemented or amended and in effect, and includes the Appendices attached to this EPA;
- (b) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this EPA as a whole and not to any particular section, subsection or other subdivision;
- (c) the word "including" or "includes" is not limiting whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto;
- (d) the words "year" and "month" refer to a calendar year and a calendar month;
- (e) any consent, approval or waiver contemplated by this EPA must be in writing and signed by the Party against whom its enforcement is sought, and may be given, withheld or conditioned in the unfettered discretion of the Party of whom it is requested, unless otherwise expressly stated;

- (f) all rights and remedies of either Party under this EPA are cumulative and not exclusive of any other remedies to which either Party may be lawfully entitled, and either Party may pursue any and all of its remedies concurrently, consecutively and alternatively; and
- (g) any notice required to be given, or other thing required to be done, under this EPA on or before a day that is not a Business Day, shall be deemed to be given or done when required hereunder if given or done on or before the next following Business Day.

3. ADDRESSES FOR NOTICES

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

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

Invoices and Statements

To: IPP Invoicing
333 Dunsmuir Street, 14th floor
Vancouver, B.C.
V6B 5R3
Attention: Manager, Business Support Services
Email: IPP.Invoicing@bchydro.com

Network Upgrade Security

To: BC Hydro Distribution Generator Interconnections
6911 Southpoint Drive, Edmonds B03
Burnaby, B.C.
V3N 4X8
Attention: Manager, Generator Interconnections
Email: distribution.generators@bchydro.com

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

To: **Wedgemount Power Limited Partnership**
5403 Buckingham Avenue
Burnaby, B.C. V5E 1Z9
Attention: Mr. David Ehrhardt
Email: dehrhardt@telus.net

REDACTED – APPENDIX 2

Seller's Plant Description

REDACTED- APPENDIX 3

Network Upgrades

REDACTED – APPENDIX 4

Delivery Time Adjustment Table

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REDACTED – APPENDIX 5

COD Certificate

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REDACTED – APPENDIX 6

Sample Form Letter of Credit

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REDACTED – APPENDIX 7

Sample Form Lender Consent Agreement

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REDACTED – APPENDIX 8

Sample Form Development Progress Report

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REDACTED – APPENDIX 9

Standing Offer Confidentiality and Compliance Agreement

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REDACTED – APPENDIX 10

Code of Conduct Guidelines

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REDACTED – APPENDIX 11

Interconnection Study (November 2014)

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Joanne McKenna
Manager, Distributed Generation
P 604 623-4162
E Joanne.McKenna@bchydro.com

This is Exhibit "B" referred to in the
affidavit of Bruce Chan
sworn before me at Vancouver
this 17th day of January A.D. 2017.

Adrian Gane
A Commissioner for taking Affidavits
within British Columbia

BY EMAIL

pachambers@deloitte.ca
mmckie@deloitte.ca

September 29, 2017

Deloitte Restructuring Inc.
2800 – 1055 Dunsmuir Street
Vancouver, BC
V7X 1P4

Attention: Melinda McKie and Paul Chambers

Dear Sirs/Mesdames:

Re: Receivership (the "Receivership") of Wedgemount Power Limited Partnership et al ("Wedgemount")

We are in receipt of your letter dated September 27, 2017 ("Deloitte Letter"). BC Hydro does not agree with certain aspects of the Deloitte Letter; but without going into specifics at this time, we are writing in response to the Deloitte Letter and to follow up on the meeting held on September 25, 2017 (the "September 25 Meeting") between representatives of British Columbia Hydro and Power Authority ("BC Hydro") and Deloitte Restructuring Inc., as court appointed receiver of Wedgemount (the "Receiver") pursuant to the Order of Mr. Justice Steeves pronounced May 12, 2017 in Vancouver Registry Action No. S-174308 (the "Receivership Order").

As you are aware, Wedgemount and BC Hydro are party to an Electricity Purchase Agreement made as of March 6, 2015 (the "EPA"). While BC Hydro has been aware of the Receivership generally, and has had some contact with the Receiver with respect to the project interconnection options and studies, we have not been closely involved in, nor advised of, the Receivership process to date aside from an initial phone call with the Receiver on May 18, 2017 (the "May 2017 Call"), in which BC Hydro confirmed that the Project needed to achieve COD by September 30, 2017. At no time during the May 2017 Call did we waive our termination rights under the EPA.

You advised at the September 25 Meeting that in July, the Receiver commenced a marketing and sale process for certain assets of Wedgemount (the "Sale Process"). We learned from you that the Receiver has set up a data room that includes the EPA and other agreements between BC Hydro and Wedgemount, and that potential bidders who signed non-disclosure agreements ("NDAs") with the Receiver have been granted access to that data room. You further advised that the Receiver expects

binding offers for Wedgemount's assets by October 2, 2017, with the successful bidder then having a week or so to conduct further diligence after having been selected by the Receiver.

We were very surprised to learn about the Sale Process given the obvious importance to us of the sale of the EPA and the need for BC Hydro's involvement throughout the Sale Process (which has not occurred). The EPA is Wedgemount's principal asset and its purchase will be the foundation of any binding offers submitted to the Receiver. You heard some immediate concerns from us at the September 25 Meeting. On further reflection, our concerns have expanded and we believe that the Sale Process as currently constituted has significant flaws that may potentially result in negative outcomes for BC Hydro, the Receiver, and potential bidders. We believe it is important that we set out our concerns for you now, so that there is no misunderstanding as to BC Hydro's position and no surprises for the Receiver or any potential bidders in the Sale Process. This letter is not intended to be technical in any way and is not meant to present an exhaustive list of BC Hydro's concerns, but it is intended to precipitate an urgent discussion to see whether a workable Sale Process can be achieved.

First, we note that that EPA has confidentiality provisions that cannot be addressed by interested bidders signing an NDA with the Receiver. The EPA cannot be disclosed without BC Hydro's consent, which was neither sought nor granted. Populating the data room with the EPA, and giving access to it to bidders, is a breach of the EPA and constitutes a default under the EPA. BC Hydro is a regulated entity; it takes its confidentiality agreements very seriously and insists on them being honoured. We have not seen the form of NDA; we do not know who or how many people have had access to the data room and the EPA, nor what use they might otherwise make of the information found there, notwithstanding whatever restrictions the form of NDA imposes on them.

We have not seen the bid package that was sent to prospective bidders. We do not know what the Receiver is offering to sell, or on what terms, or what is said about BC Hydro's involvement, or what qualifications have been communicated to bidders about what they would be buying. BC Hydro will need to see the complete bid package as soon as possible so that we can assess whether it raises any additional issues for us.

Critically, any assignment of the EPA or any related agreements cannot be achieved without BC Hydro's consent. Any assignment to a successful bidder would have to be on terms acceptable to BC Hydro, taking into account (among other things) the need to cure all existing defaults, and the requirement to address the changing circumstances between the time that the EPA was entered into and the present date. Amendments to the EPA may be required before it can be assigned. It is unknown whether a successful bidder and BC Hydro could agree on the terms of any consent to the assignment. The bids could change, or the identity of the successful bidder could change, if interested parties were aware of all of the circumstances of the EPA and the requirements of BC Hydro in connection with an assignment.

The Receiver has embarked on the Sales Process without sufficient consultation with BC Hydro regarding the EPA. A Sale Process that results in an accepted bid that subsequently results in a complex and material negotiation with BC Hydro, raises the prospect of an unsuccessful Sale Process in which both the successful and unsuccessful bidders view it as a "bait and switch" that results in a non-sale. Furthermore, as discussed in the September 25 Meeting, is it not BC Hydro's practice to negotiate with any party other than the "Seller" under the EPA, which is currently the Receiver. It would be problematic for BC Hydro to negotiate with a prospective bidder who was not yet a party to the EPA. All these issues need to be addressed.

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Perhaps most importantly, as we raised in the September 25 Meeting, BC Hydro has an impending termination right under the EPA as a result of Wedgemount not reaching COD within two years of the September 30, 2015 Target COD under the EPA. By email dated September 11, 2017 (the "September 2017 Email"), the first communication from the Receiver to the undersigned since the May 2017 Call, the Receiver asked BC Hydro to confirm the Receiver's presumption that the termination provision under the EPA is not applicable. By telephone call September 20, 2017, BC Hydro confirmed that its termination right crystallizes on September 30, 2017, and that BC Hydro would not be waiving that right. We are concerned that prospective bidders may not be aware of BC Hydro's impending termination right.

As noted above, there are material, serious and complex issues that need to be addressed before any Sale Process can be completed. To be clear, BC Hydro reserves, has not waived, and will not waive any of its rights or remedies under the EPA or any of its other agreements with Wedgemount, and it has not waived and will not waive any existing or future defaults, other than on terms acceptable to it in its sole discretion. BC Hydro is not in a position to provide any assurance at this time that it will not exercise any termination rights that it has under the EPA. Subject to the terms of the Receivership Order, BC Hydro will insist on strict compliance with the terms of the EPA going forward and in connection with any proposed assignment of the EPA. BC Hydro's intention is that this letter will lead to immediate discussions with the Receiver, and to BC Hydro being informed about the Sale Process as appropriate, assuming a practical path forward can be found.

We look forward to your reply at your earliest convenience.



Joanne McKenna
Manager, Distributed Generation

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This is Exhibit "C" referred to in the affidavit of Bruce Chan sworn before me at Vancouver this 19th day of January A.D. 2015
Arthur Gano
A Commissioner for taking Affidavits within British Columbia

LENDER CONSENT AGREEMENT
WEDGEMOUNT HYDROELECTRIC PROJECT

(See section 7.4 (c) of the Electricity Purchase Agreement)

THIS AGREEMENT is made as of June 12, 2015

AMONG:

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

(the "Buyer")

AND:

WEDGEMOUNT POWER LIMITED PARTNERSHIP, a limited partnership formed under the laws of the Province of British Columbia and acting and represented by its general partner, WEDGEMOUNT POWER (GP) INC., a corporation incorporated under the laws of the Province of [British Columbia] (the "General Partner") having an address at [5403 Buckingham Avenue, Burnaby, British Columbia V5E 1Z9]

(the "Seller")

AND:

TRAVELERS CAPITAL CORPORATION, having an address at 501 - 4180 Lougheed Highway, Burnaby, British Columbia, V5C 6A7

(the "Agent").

WHEREAS:

A. The Buyer and the Seller entered into an Electricity Purchase Agreement made as of March 6, 2015 (as further amended, modified, restated and/or supplemented from time to time; the "EPA");

B. Pursuant to a credit agreement to be entered into among the Seller, as borrower, the lenders from time to time party thereto (the "Lenders") and the Agent, as agent for the Lenders (as amended, modified, restated, renewed and/or supplemented from time to time, the "Credit Agreement"), the Seller will obtain certain credit facilities (the "Credit") from the Lenders for

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the purposes of financing the design, construction, operation and maintenance of the Seller's Plant (as defined in the EPA);

C. To secure the due payment of all principal, interest (including interest on overdue interest), premium (if any) and other amounts payable in respect of the Credit and the due performance of all other obligations, present and future, of the Seller under the Credit Agreement and the other Finance Documents (as defined in the Credit Agreement), the Seller and the General Partner have granted or will grant certain security to and in favour of the Agent, as administrative agent for and on behalf of the Lenders, including, without limitation, assignments by way of security of, and grant of security interest in, all of the right, title and interest of the Seller and the General Partner under the EPA and security on the Seller's Plant (as defined in the EPA) (collectively, the "Agent Security"); and

D. The Agent, for and on behalf of the Lenders, has requested the Buyer to enter into this Agreement confirming certain matters.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and of the sum of \$10 and other good and valuable consideration now paid by each of the Seller and the Agent to the Buyer (the receipt and sufficiency of which are hereby acknowledged by the Buyer), the parties covenant and agree that:

1. **Additional Definitions:** In this Agreement, including the recitals:
 - (a) "Assumption Notice" means a notice given by the Agent to the Buyer pursuant to subsection 6.1(a) of this Agreement;
 - (b) "Default or Termination Notice" means a notice given to the Seller by the Buyer under the EPA that, with or without the lapse of time, entitles, or shall entitle, the Buyer to terminate the EPA, subject to rights, if any, of the Seller to cure the default or other circumstance in respect of which the notice is given;
 - (c) "Receiver" means a receiver, manager or receiver-manager appointed or designated by, or on the initiative of, the Agent; and
 - (d) words and phrases defined in the EPA, and not otherwise defined herein, when used herein have the meanings given in the EPA.
2. **EPA Amendments:** The Buyer and the Seller acknowledge and agree that the EPA is in full force and effect, and that the EPA, as originally executed, has not been amended.
3. **Buyer Confirmations Concerning the EPA:** The Buyer confirms to the Agent that:
 - (a) the EPA has been duly authorized, executed and delivered by the Buyer;
 - (b) the Buyer has not received any notice of assignment by the Seller or the General Partner of all or any part of their right, title and interest in and to the EPA, except to the Agent;

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- (c) the Buyer has not given any Default or Termination Notice;
 - (d) the Buyer is not aware of any default or other circumstance that would entitle the Buyer to give a Default or Termination Notice, provided however that the Buyer has not undertaken any investigation or due diligence in respect of this confirmation; and
 - (e) the Buyer shall not enter into any agreement with the Seller to materially amend or replace the EPA, or enter into any agreement with the Seller to terminate the EPA, without giving the Agent not less than 30 days' prior written notice.

4. **Assignment of EPA to Agent:**

4.1 *Buyer Acknowledgement:* The Buyer acknowledges receipt of notice of, and consents to, the assignment by the Seller and the General Partner to the Agent of all the right, title and interest of the Seller and the General Partner in and to the EPA made pursuant to and in accordance with the Agent Security.

4.2 *Agent Acknowledgement:* The Agent acknowledges that:

- (a) it has received a copy of the EPA; and
- (b) the assignment by the Seller and the General Partner to the Agent of the EPA pursuant to the Agent Security is subject in all respects to the terms and conditions of the EPA and this Agreement.

4.2 *Confidentiality:* The Agent covenants and agrees with the Buyer to be bound by the provisions of section 7.8 of the EPA regarding confidentiality, as if an original signatory thereto.

4.3 *Seller Representation:* Each of the Seller and the General Partner represents and warrants to the Buyer that the Agent is the only person to whom it has granted a security interest in the EPA or the Seller's Plant.

5. **EPA Notices:** The Buyer covenants and agrees with the Agent that, except as hereinafter otherwise permitted, the Buyer:

- (a) shall give the Agent a copy of any Default or Termination Notice concurrently with, or promptly after, any such notice is given to the Seller;
- (b) shall not exercise any right it may have to terminate the EPA until the later of: (i) the date that is 45 days after the date on which the Buyer delivered to the Agent a copy of the Default or Termination Notice entitling the Buyer to terminate the EPA; and (ii) the date on which the Buyer is entitled to terminate the EPA;
- (c) shall not, provided that there is no other Buyer termination event under the EPA, terminate the EPA based on either or both of the Seller and the General Partner becoming Bankrupt or Insolvent if the Agent is promptly and diligently prosecuting to completion enforcement proceedings under the Agent Security

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until 30 days after the expiry of any court order period restricting the termination of the EPA; and

- (d) shall not exercise any right it may have under section 5.6 of the EPA to deduct any amounts owing by the Seller to the Buyer under the EPA from amounts owing by the Buyer to the Seller under the EPA until the date that is 15 days after the date the Buyer provides the Agent with a copy of the notice delivered by the Buyer to the Seller under section 5.6 of the EPA.

Nothing in this Agreement prevents or restricts: (i) the exercise by the Buyer of any other right or remedy that it may be entitled to exercise under or in relation to the EPA; or (ii) the right of the Agent, without any obligation to do so, to cure, or cause the cure of, any default of the Seller or the General Partner under the EPA that would be curable by the Seller or the General Partner, whether or not an Assumption Notice is given.

6. Realization by Agent:

6.1 *Assumption Notice and/or Sale:* If the Seller or the General Partner has defaulted under the Credit Agreement or the Agent Security and the Agent has elected to take possession of the Seller's Plant, either by a Receiver or in any other way, pursuant to the Security, the Agent shall either:

- (a) give the Buyer written notice (an "Assumption Notice") stating that the Agent is assuming the EPA, whereupon:
 - (i) the Agent shall be entitled to all the rights and benefits, and shall have assumed, and shall perform and discharge, all the obligations and liabilities, of the Seller or the General Partner under the EPA, and the Agent shall be a party to, and bound by, the EPA as if an original signatory thereto in the place and stead of the Seller;
 - (ii) notwithstanding subparagraph (i), the Agent shall not be liable to the Buyer for defaults of the Seller or the General Partner occurring before the Assumption Notice is given, except to the extent that such defaults continue thereafter; provided however that the Buyer may at any time before or after such notice is given exercise any rights of set-off in respect of any such prior default under or in relation to the EPA which the Buyer would otherwise be entitled to exercise; or
- (b) give written notice to the Buyer that the Agent wishes to cause the Seller or the General Partner to assign all of the Seller's or the General Partner's right, title and interest in and to the EPA and the Seller's Plant to a third person or persons, subject however to the Seller and the assignee complying with all provisions of the EPA relative to such assignment.

The Buyer agrees that if the Agent enters the Seller's Plant for the purpose of viewing or examining the state of repair, condition or operation thereof such shall not constitute taking possession thereof.

6.2 *Agent Liability and Release:* The Agent assumes no liability to the Buyer under the EPA unless and until the Agent gives an Assumption Notice. Thereafter, if the Agent completes an assignment to a third person or persons pursuant to and in accordance with the applicable provisions of the EPA, the Agent shall be released from all liability and obligations of the Seller or the General Partner to the Buyer under the EPA accruing from and after completion of that assignment.

6.3 *Seller and the General Partner not Released:* Nothing in this Agreement, and neither the giving of an Assumption Notice, nor any assignment pursuant to sub-section 6.1(b) of this Agreement releases the Seller or the General Partner from its obligations and liabilities to the Buyer under and in relation to the EPA.

6.4 *Receiver Included:* References in this section 6 to the Agent include a Receiver.

7. **Notices:** Any notice required or permitted to be given under this Agreement must be in writing and may be given by personal delivery, or by transmittal by facsimile, addressed to the respective parties as follows:

(a) Buyer at:

British Columbia Hydro and Power Authority
333 Dunsmuir Street, 17th Floor
Vancouver, British Columbia, V6B 5R3

Attention: Director, Business Development & Contract Management
Facsimile No.: 604-623-4335
Email: IPP.Contract@bchydro.com

(b) Seller at:

Wedgemount Power Limited Partnership
5403 Buckingham Avenue
Burnaby, British Columbia V5E 1Z9

Attention: Mr. David Ehrhardt
Email: dehrhardt@telus.net
Facsimile No.: 604-649-1200

(c) Agent at:

Travelers Capital Corporation
501 - 4180 Lougheed Highway
Burnaby, British Columbia V5C 6A7

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Attention: Mark Bohn
Facsimile No.: (844) 211-8877

Notices given by facsimile shall be deemed to be received on the Business Day next following the date of transmission.

8. **Choice of Law:** This Agreement is governed by British Columbia law, and the laws of Canada applicable therein.

9. **Jurisdiction:** Each party to this Agreement attorns irrevocably and unconditionally to the courts of the Province of British Columbia, and to courts to which appeals therefrom may be taken, in connection with any action, suit or proceeding commenced under or in relation to this Agreement. Notwithstanding the foregoing, the Agent acknowledges that upon an Assumption Notice being given, the Agent shall become party to, and bound by, the agreements to arbitrate contained in section 7.5 of the EPA.

10. **Termination:** This Agreement, and all rights and liabilities among the parties hereunder shall terminate upon the full and final discharge of all of the Agent Security. The Agent shall give the Buyer prompt notice of the full and final discharge of all of the Agent Security.

11. **Amendment:** This Agreement may be amended only by an instrument in writing signed by each of the parties hereto.

12. **Enurement:** This Agreement enures to the benefit of, and is binding upon, the parties hereto, and their respective successors and permitted assigns.


13. **Counterparts:** This Agreement may be executed by facsimile and in any number of counterparts, each of which is deemed an original, and all of which together constitute one and the same document.

14. **Effective Date:** This Agreement is not binding upon any party unless and until executed and delivered by all parties, whereupon this Agreement will take effect as of the day first above written.

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


BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

By: 
(Signature)

Name: Bruce Chow

Title: Mgr. - Contract Mgt.

TRAVELERS CAPITAL CORPORATION

By: 
(Signature)

Name: Mark Bohn
Managing Partner

Title: _____

WEDGEMOUNT POWER LIMITED PARTNERSHIP acting and represented by its general partner **WEDGEMOUNT POWER (GP) INC.**

By: 
(Signature)

Name: BRETT HARRIS

Title: Director

No. S-174308
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL SERVICES INC.

PLAINTIFF

AND:

WEDGEMOUNT POWER LIMITED PARTNERSHIP, WEDGEMOUNT POWER (GP) INC., WEDGEMOUNT POWER INC., THE EHRHARDT 2011 FAMILY TRUST, POINTS WEST HYDRO POWER LIMITED PARTNERSHIP by its general partner POINTS WEST HYDRO (GP) INC., CALAVIA HOLDINGS LTD., SWAHEALY HOLDING LIMITED, BRENT ALLAN HARDY, DAVID JOHN EHRHARDT, 28165 YUKON INC., PARADISE INVESTMENT TRUST and SUNNY PARADISE INC.

DEFENDANTS

AFFIDAVIT

BORDEN LADNER GERVAIS LLP
1200 - 200 Burrard Street
Vancouver, BC V7X 1T2
Telephone: (604) 687-5744
Attn: Magnus Verbrugge/Lisa Hiebert
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