



This is the 1st affidavit
of M. Hay in this case and was
made on March 12th 2018

No. S174308
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 HOLDINGS LIMITED
BRENT ALLAN HARDY
DAVID JOHN EHRHARDT
28165 YUKON INC.
PARADISE INVESTMENT TRUST
SUNNY PARADISE INC.**

DEFENDANTS

AFFIDAVIT

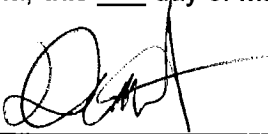
I, Michèle Hay, Legal Assistant, of 2300 – 550 Burrard Street, Vancouver, BC V6C 2B5
SWEAR THAT:

1. I am employed with the law firm of Gowling WLG (Canada) LLP, counsel for the Plaintiff, Industrial Alliance Insurance and Financial Services Inc., and as such, I have personal knowledge of the facts and matters hereinafter deposed to, save and except where the same are stated to be based on information and belief, and where so stated I verily believe them to be true.

2. Attached hereto as **Exhibit "A"** is a copy of a printout from the following website <https://www.bchydro.com/work-with-us/selling-clean-energy/standing-offer-program/program-documents.html> (the **"BC Hydro Website"**) dated March 8, 2018.

3. Attached hereto as **Exhibit "B"** is a copy of the standard form Electricity Purchase Agreement dated March 9, 2016, as posted on the BC Hydro Website.

SWORN BEFORE ME at the City of
Vancouver, in the Province of British
Columbia, this 12 day of March, 2018.



A Commissioner for Affidavits in and for
the Province of British Columbia

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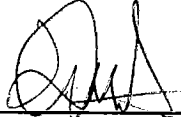


MICHELE HAY

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1

The attached is **Exhibit "A"**
referred to in the affidavit #1
of Michèle Hay sworn before
me at Vancouver, British Columbia.
this 12th day of March, 2018



A Commissioner for taking Affidavits in
the Province of British Columbia

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SOP: Program documents

Prior to submitting an application package, we strongly encourage you to carefully review the Standing Offer Program documents.

Having trouble with any PDF forms on this page? See instructions below.

<p>Standing Offer Program Documents outlining the program, rules and requirements</p>	<ul style="list-style-type: none"> • Program rules – April 13, 2016 [PDF, 1.8 MB] • Contractor standards for ethical conduct – March 4, 2016 [PDF, 53 KB] • Illustration of Pricing Region – August 23, 2016 [PDF, 240 KB]
<p>Interconnection Documents required to initiate the interconnection process</p>	<ul style="list-style-type: none"> • Distribution interconnection request • Transmission interconnection request • Distribution generation interconnection practices – August 23, 2016 [PDF, 245 KB]
<p>Electricity Purchase Agreement Standard Form EPA and related documentation</p>	<ul style="list-style-type: none"> • Standard Form EPA – March 9, 2016 [PDF, 694 KB] • COD Certificate – March 9, 2016 [PDF, 116 KB] • Sample Form Development Progress Report – March 9, 2016 [PDF, 29 KB] • Sample Form Lender Consent Agreement – March 9, 2016 [PDF, 149 KB] • Statement of Project Changes Form – March 8, 2016 [PDF, 1.0 MB]
<p>Application package Application submission documentation</p>	<ul style="list-style-type: none"> • Pre-application meeting form – March 8, 2016 [PDF, 1.0 MB] • Application form – August 25, 2016 [PDF, 2.5 MB] • Exhibit 2 Conflict of Interest Statement Form – March 9, 2016 [PDF, 1.1 MB] • Project clusters and/or common generation facilities - supplementary information – March 4, 2016 [PDF, 1.0 MB] • Exhibit 9 Completed Prototype Generation Technology Certification – March 4, 2016 [PDF, 1.0 MB] • Exhibit 18 Interconnection Disclosure Consent Form – March 4, 2016 [PDF, 1.0 MB] • Confidentiality and Compliance Agreement – March 8, 2016 [PDF, 2.1 MB]

STANDING OFFER PROGRAM

Who can apply

How to apply

Program documents

Available energy volume

Current applications

Program background

SOP Optimization

Frequently asked questions

For more info

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The attached is **Exhibit "B"**
referred to in the affidavit #1
of Michèle Hay sworn before
me at Vancouver, British Columbia.
this 12th day of March, 2018



A Commissioner for taking Affidavits in
the Province of British Columbia

BC HYDRO

STANDARD FORM ELECTRICITY PURCHASE AGREEMENT

STANDING OFFER PROGRAM

Revised: March 2016

[Note to Developers: The following is a summary of certain key terms and conditions of the Standard Form EPA. Developers are encouraged to carefully review the Standard Form EPA prior to submitting an Application. If there is any conflict between this summary and the Standard Form EPA, the Standard Form EPA governs.]

Capitalized terms used in the following summary that are not defined in Appendix 1 to the Standard Form EPA have the meaning given to those terms in the Glossary to the Standing Offer Program Rules.

- 1. The Developer is required to sell all Energy from the Project to BC Hydro during the EPA Term. However, if the Project is Behind a Customer Load, the Developer is required to sell all Energy from the Project on a Net-of-Load basis during the EPA Term.*
- 2. The Developer can select an EPA Term of twenty (20) to forty (40) years from COD (in whole years only) for a new, greenfield Project or ten (10) to forty (40) years for a new Project that is Behind a Customer Load (i.e. customer-based generation).*
- 3. The Target COD specified in the Developer's Application to the Standing Offer Program must be within 3 years after signing the EPA. The Target COD may be adjusted to reflect the interconnection schedule as indicated in the interconnection studies, including any studies completed after the EPA is signed. Actual COD should not occur less than 6 months after the EPA is signed.*
- 4. The Developer is required to deliver the Energy from the Project to the POI. For Projects with an Indirect Interconnection, the Developer will be required to deliver the Energy to a specified Point of Interconnection on the Transmission System or Distribution System.*
- 5. BC Hydro pays for the quantity of Energy delivered to the POI after COD that qualifies as Clean Energy. Fifty percent of the price is adjusted for escalation effective as of January 1 in each year of the EPA Term. The price is also adjusted based on the time of delivery of the Energy.*
- 6. The Developer is required to transfer title to BC Hydro for any Environmental Attributes associated with the Energy sold to BC Hydro under the EPA. The payment for the Environmental Attributes is included in the price payable by BC Hydro for the Energy delivered under the EPA.*
- 7. There is no requirement to deliver a specified quantity of Energy to BC Hydro at specified times. BC Hydro accepts Energy if and when it is delivered to the POI. However, the EPA provides BC Hydro with the right to terminate the EPA in certain circumstances, including, among others, a failure to achieve COD within 2 years after the Target COD, or a failure to deliver any Energy for a continuous period of 2 years.*

8. There are no liquidated damages payable under the EPA and the Developer is not required to provide performance security. However, the Developer is required to provide BC Hydro with security for Network Upgrades under BC Hydro’s standard generator interconnection agreements.

9. The Standard Form EPA has been drafted based on a Seller’s Plant that consists of a new electricity generation facility that is interconnected directly to BC Hydro’s Distribution System and does not use an auxiliary fuel. The EPA for a particular Project will be based on the information in the Application for that Project.

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BC HYDRO
STANDARD FORM ELECTRICITY PURCHASE AGREEMENT
STANDING OFFER PROGRAM

Revised: March 2016

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

BETWEEN:

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

(“Seller”)

AND:

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

(“Buyer”).

The Parties agree as follows:

1. INTERPRETATION

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

2. TERM

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.

[Note to Developers: The blank in this section will be completed based on the term selected by the Developer in the Application and accepted by BC Hydro.]

3. CONSTRUCTION AND OPERATION

3.1 Construction and Operation Costs and Liabilities

Except as provided in section 3.5, the Seller will 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

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

- (a) in accordance with the information in the Application in all material respects;
- (b) in compliance with the Project Standards provided that if the requirements for Clean Energy are amended or replaced after the Effective Date, the Seller will make commercially reasonable efforts to operate the Seller's Plant in a manner that allows the Energy to continue to qualify as Clean Energy under the new requirements; and
- (c) by qualified and experienced individuals.

3.3 Project Changes

Without the Buyer's prior consent, the Seller will not make any change to:

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

The Seller acknowledges that the Buyer may require, as a condition of its consent to any change described in this section, that the Seller agree in writing to reimburse the Buyer for any incremental liability for any losses, costs and damages incurred by the Buyer or any third party, with respect to the Seller's Plant or any other project, 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. If the change requiring the Buyer's consent is the result of the Seller's agreement with a third party to interconnect a generating facility to the Seller's Plant and transmit electricity via the Seller's Plant to the POI, the Buyer will require as a condition of consent that the Seller agree to be responsible for any Line Losses, costs, damages and risks associated with the interconnection.

3.4 Development Progress Reports

The Seller will deliver a Development Progress 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

- (a) Except as otherwise set out in this EPA, the Buyer will pay:
 - i) all Interconnection Network Upgrade Costs up to an amount not exceeding the Network Upgrade Threshold;
 - ii) all Interconnection Network Upgrade Costs in excess of the Network Upgrade Threshold to the extent those costs are solely attributable to, and would not have been incurred but for, a change in the Base Case after the Effective Date, and where the change in the Base Case is not attributable, directly or indirectly, in whole or in part to the Seller or the Seller’s Plant; and
 - iii) all Transmission Network Upgrade Costs.
- (b) The Seller will pay all Interconnection Network Upgrade Costs in excess of the Network Upgrade Threshold, except for those costs for which the Buyer is responsible under this section.

3.6 Metering

The Seller will ensure that a meter is installed at the Seller’s Plant, and the meter is tested and sealed according to any Measurement Canada standards. The Buyer may, at its cost, install a duplicate meter at the Seller’s Plant at a location agreed to by the Seller, acting reasonably. The Seller will allow the Buyer to access the Seller’s Plant to install, inspect and maintain any such duplicate meter. The Seller will make equipment and telecommunications access available to the Buyer as required for any duplicate meter. All information collected or recorded by the meter(s) will be transmitted directly to the Buyer or provided by Seller to Buyer, as reasonably required by the Buyer. If the Seller’s Plant is rated 1.00 MVA or higher, the Seller will ensure that the Seller’s Plant is equipped with SCADA capability. If there is any dispute regarding the accuracy of the Meter, either Party may give notice to the other Party of the dispute. In that case, the Parties will resolve the matter in accordance with the *Electricity and Gas Inspection Act* (Canada).

3.7 Insurance

The Seller will, at its cost, obtain and maintain (i) policies of commercial general liability insurance with a per occurrence limit of liability not less than \$_____ applicable to the Project, and (ii) construction insurance and, in respect of the Seller’s Plant, property insurance, with limits of liability and deductibles consistent with those a prudent owner of a facility similar to the Seller’s Plant would maintain and those the Facility Lender may require. All commercial general liability policies must include the Buyer, its directors, officers, employees and agents as additional insureds and must contain a cross liability and severability of interest clause. All policies of insurance must include a waiver of subrogation in favour of the Buyer. All policies of insurance must be placed with insurers that have a minimum rating of A- (or equivalent) by A.M. Best Company and are licensed to transact business in the Province of British Columbia and must be endorsed to provide to the Buyer 30 days’ prior written notice of cancellation, non-renewal or any material amendment that results in a reduction in coverage. The Seller will give the Buyer a copy of the insurance certificate(s) for the insurance required to be maintained by

the Seller under this section not more than 30 days after the effective date of coverage and promptly upon renewal thereafter. The Seller will be responsible for the full amount of all deductibles under all insurance policies required to be maintained by the Seller under this section.

[Note to Developers: Policy limit for commercial general liability insurance will be based on Plant Capacity as follows:

Up to and including 1 MW - \$1,000,000

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

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

Further, for Projects that are deemed to be in a zone where there is a risk of forest fire, such policy will include coverage for forest fire fighting expense liability at a sublimit of \$1,000,000.]

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 will 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 date for completing the Interconnection Network Upgrades, described in the Interconnection Study Report, is later than 90 days prior to the Target COD and the Seller requests in writing that the Target COD be postponed, the Buyer may, in its discretion, agree to postpone the Target COD to the estimated date for completing the Interconnection Network Upgrades plus 90 days, if the Seller is not responsible for any delay in undertaking and completing the Interconnection Study Report or the date for completing the Interconnection Network Upgrades.

3.10 No Liability For Delay

The Buyer will have no liability under this EPA for delays in completion of (i) any Network Upgrades, or (ii) other work undertaken by the Buyer on the Seller’s Plant side of the POI, in each case howsoever arising.

3.11 Outages

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

- (a) promptly in the case of a Forced Outage or a Maintenance Outage;
- (b) not less than 90 days in advance of any Planned Outage, and

- (c) promptly in the case of any changes to the duration, start time or end time of any Outage.

3.11.2 Coordination and Scheduling of Outages

- (a) The Seller will make commercially reasonable efforts to coordinate any Planned Outages or Maintenance Outages with the Buyer's maintenance schedule or other requirements where such schedule or requirements are publicly available or otherwise notified to the Seller.
- (b) The Buyer may, by notice to the Seller, require the Seller to reschedule any Planned Outage. On such notice, the Seller will promptly provide the Buyer with a reasonable cost estimate, with supporting detail and reasonable contingency allowance, of the costs it expects to incur as a direct result of rescheduling the Planned Outage. Upon review of the Seller's cost estimate, the Buyer may withdraw its requirement that the Seller reschedule the Planned Outage. If the Buyer does not withdraw the requirement, the Seller will reschedule the Planned Outage as required by the Buyer provided that rescheduling is consistent with Good Utility Practice and does not have a materially adverse effect on the operation of the Seller's Plant. The Buyer will compensate the Seller for costs reasonably incurred by the Seller as a result of the rescheduling, provided those costs do not exceed the cost estimate provided by the Seller to the Buyer in advance of the Planned Outage.

3.12 Annual Operating Plan

On or before September 30 in each year during the Term, the Seller will provide to the Buyer its Annual Operating Plan, including any required update to the then current Annual Operating Plan, for the 14-month period commencing on the November 1 of the same year. The Seller will promptly provide the Buyer with a revised Annual Operating Plan from time to time upon the Seller becoming aware of any expected material change in the original Annual Operating Plan for that period. The Parties agree the Annual Operating Plan is provided for planning purposes and does not guarantee or limit the quantity or timing of Seller's delivery of Energy to the POI.

4. PURCHASE AND SALE OBLIGATIONS

4.1 Pre-COD Energy

The Buyer will make commercially reasonable efforts to accept delivery of Energy at the POI prior to COD, provided that the Buyer will 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 will sell and deliver all Energy to the Buyer at the POI and the Buyer will, subject to section 4.3, purchase and accept delivery of all Delivered Energy. The Buyer will pay for Delivered Energy from and after COD in accordance with section 5.2. When the Seller is delivering Energy to the Buyer, the Seller will make

commercially reasonable efforts to operate the Seller's Plant in a manner that ensures delivery of Energy at the POI at a uniform rate within each hour during which Energy is delivered.

4.3 Limit on Delivered Energy

Notwithstanding the foregoing provisions of this Article 4:

- (a) the Buyer will not be obligated at any time to purchase or accept delivery from the Seller at the POI of any Energy generated in excess of the Hourly Limit or as a result of an increase in the Plant Capacity made without the consent of the Buyer;
- (b) no amount will be payable by the Buyer for Delivered Energy in excess of the Hourly Limit, whether prior to or after COD, and regardless of whether the Buyer consented to and accepted delivery of Energy at the POI greater than such amounts; and
- (c) in determining the total amount of Delivered Energy for a year, month, hour or any other time period under this EPA for any purpose, the amount of Delivered Energy in each hour of such time period will not exceed the Hourly Limit, even if the Seller delivered to the POI, or the Seller's Plant was capable of generating, Energy in excess of such amounts.

4.4 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 will have no liability with respect to a Distribution/Transmission Constraint or Disconnection, except as set out in section 4.9, if applicable.

4.5 Environmental Attributes

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

4.6 Exclusivity

The Seller will not at any time during the Term commit, sell or deliver any Energy or any Environmental Attributes to any Person, other than the Buyer under this EPA. The Seller will not use any Energy or use, apply, claim or retire Environmental Attributes for any purpose whatsoever except for sale to the Buyer under this EPA. These prohibitions do not apply when the Buyer is in breach of its obligations under section 4.2.

4.7 Custody, Control, Risk of and Title To Energy

Custody, control, risk of, and title to, all Energy (including any Delivered Energy exceeding the limits set out in section 4.3 even where the Buyer has not paid for such excess Delivered Energy) and any associated Environmental Attributes pass from the Seller to the Buyer at the POI. The Seller will ensure that all Energy delivered to the Buyer under this EPA and all Environmental

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Attributes transferred to the Buyer under this EPA are free and clear of all liens, claims, charges and encumbrances.

4.8 Line Losses

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

4.9 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:

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

then, notwithstanding that the Buyer is excused under section 4.4 from its obligations under section 4.2, the Buyer will pay to the Seller an amount equal to the price payable for Delivered Energy under section 5.2 multiplied by the amount of Deemed Energy 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.

4.9.2 The Seller will maintain accurate and complete Records of all avoided or avoidable costs and will report all such costs to the Buyer and provide the Buyer with all information required to calculate such costs.

4.9.3 The Buyer will not be required to pay for any Deemed Energy under this section:

- (a) during any period specified as an Outage in any Outage Notice, revised Outage Notice or in the Annual Operating Plan or during any other period where the Seller's Plant would otherwise not have been operating;
- (b) during any period when either Party is or would be excused, in accordance with section 7.8, from its obligation to deliver or to accept delivery of Energy as a result of Force Majeure;
- (c) if the Seller has not provided the Buyer with an Annual Operating Plan in accordance with section 3.12 for the year in which the Distribution/Transmission Constraint or Disconnection occurs, and
- (d) if the Seller has not provided the Buyer with a reasonably detailed draft statement of any Deemed Energy and associated avoided or avoidable costs and received the Buyer's

approval of the amounts in such draft statement prior to issuing its final statement according to section 5.4.1.

4.9.4 The Buyer may request additional Records in support of the amount of any Deemed Energy and any costs the Seller avoided or, acting reasonably, could have avoided during the Distribution/Transmission Constraint or Disconnection. The Buyer may require the Seller to attest, in writing, as to the Seller’s eligibility for payment for Deemed Energy under this section 4.9 prior to Buyer paying the Seller for the Deemed Energy.

4.10 Buyer Dispatch/Turn-Down Right

- (a) The Buyer may at any time during the Term deliver notice to the Seller requiring the Seller to Dispatch/Turn-Down and the Seller will promptly comply with any such direction except to the extent that any operational, technical, regulatory or fuel storage constraint prevents or limits the Seller’s ability to comply with such direction.
- (b) The Buyer will pay the Seller an amount equal to the price payable for post-COD Delivered Energy under section 5.2 multiplied by that amount of Deemed Energy less any costs the Seller avoided or, acting reasonably, could have avoided during the period of the Dispatch/Turn-Down.
- (c) There will be no Deemed Energy pursuant to this section in any hour specified as an Outage in any Outage Notice, revised Outage Notice, in the Annual Operating Plan 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 either Party is excused under section 7.8 from its obligations to deliver or to accept delivery of Energy under section 4.2 and 5.2 as a result of Force Majeure.
- (d) There will be no Deemed Energy pursuant to this section where the Buyer’s requirement for the Seller to Dispatch/Turn Down is the result of the operation of the Seller’s Plant in a manner inconsistent with section 3.2 or the Project Standards.
- (e) Where the Buyer requires the Dispatch/Turn-Down as result of a Distribution/Transmission Constraint or Disconnection, section 4.9 will apply.

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 and section 4.3, the price payable by the Buyer for each MWh of Delivered Energy after COD and prior to expiry of the Term is \$_____/MWh, adjusted as follows:

[Note to Developers: The blank above will be completed with the escalated Base Price as set out in the Standing Offer Program Rules.]

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

$$\text{Payment Price}_n = (.5 * \$ \underline{\hspace{2cm}} / \text{MWh} * \text{CPI}_{\text{January 1, } n} / \text{CPI}_{\text{January 1, } \underline{\hspace{1cm}}}) + (.5 * \$ \underline{\hspace{1cm}} / \text{MWh})$$

[Note to Developers: The first and third blanks above will be completed with the escalated Base Price as described above. The blank in the subscript will be completed with the year in which the EPA is signed.]

Where:

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

CPI_{January 1, n} = the CPI for December in the year immediately prior to the year for which the relevant calculation is being conducted; 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 3.

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 Delivered Energy and for the Environmental Attributes.

5.4 Statements and Payment

5.4.1 Statements

- (a) The Seller will, 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 Energy and any associated avoided or avoidable costs pursuant to sections 4.9 and 4.10 that, in the case of section 4.9, have been approved in advance by the Buyer), 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.

- (c) If the Buyer gives notice to the Seller of an error, omission or disputed amount on a statement as described in subsection 5.4.1(b), the Buyer may direct the Seller to promptly produce new statements for the relevant month(s). The new statements will show the undisputed amount and disputed amount each in a separate statement or will otherwise separate the amounts in a single statement in a manner acceptable to the Buyer.

5.4.2 Payment

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

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 will be aggregated and the Parties may discharge their obligations to pay through netting, in which case the Party, if any, owing the greater aggregate amount will pay to the other Party the difference between the amounts owed, provided that:

- (a) this section applies only to any purchase price for Delivered Energy owing by the Buyer to the Seller, and any Final Amount owing by either Party to the other Party; and
- (b) no Final Amount or amount owing by the Seller to the Buyer under the Interconnection Agreement will 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 deliver Energy in compliance with the Project Standards, if required by the Buyer, the Seller will use commercially reasonable efforts to obtain EcoLogo^M Certification for the Seller’s Plant and all the Delivered Energy and will use commercially reasonable efforts to maintain EcoLogo^M Certification for the period specified by the Buyer during the remainder of the Term. The Seller will notify the Buyer immediately if the Seller fails to obtain EcoLogo^M Certification as required under this EPA or if, at any time during the period 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 will be responsible for the certification, audit and licensing fees actually required to obtain EcoLogo^M Certification, unless the Seller fails to obtain or maintain EcoLogo^M Certification, in either of which case the Seller will be responsible for all fees.

6.2 Alternate Certification

The Seller will, 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 9.1(k).

7. EPA ADMINISTRATION

7.1 Records

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

7.2 Inspection and Audit Rights - For the sole purpose of verifying:

- (a) compliance with this EPA;
- (b) the accuracy of statements, supporting information and calculations delivered by the Seller to the Buyer under this EPA;
- (c) the qualification of the Energy as Clean Energy;

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

the Seller will, on reasonable prior notice from the Buyer, provide the Audit Parties with prompt access during normal business hours to the Seller's Plant and all records 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 will exercise any access and audit rights under this section in a manner that minimizes disruption to the operation of the Seller's Plant. Any review, inspection or audit by any of the Audit Parties may not be relied upon by the Seller, or others, as confirming or approving those matters. Where the Buyer requires the Seller to provide access to the Seller's Plant and/or records relating to the Seller's Plant to a third Person with whom the Buyer or any of its Affiliates has entered into a contract for the sale and purchase of Environmental Attributes or any Affiliate, representative, consultant or advisor to any such third Person, the Buyer will first obtain from the third Person an agreement to maintain the confidentiality of any Seller Confidential Information to which such Person may have access and to limit the use of such Seller Confidential Information as required to verify the Environmental Attributes.

7.3 Seller Consents

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

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, under subsection 1.5(b) of Appendix 1, 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 and Interconnection Agreement arising both before and after the Assignment, providing any security for network upgrades required under the Interconnection Agreement if applicable at the time of Assignment, and providing the representations and warranties set out in the Application and in section 10.1 effective as at the time of Assignment, subject in the case of the representation and warranty in subsection 10.1(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, details of any

consultation with First Nations that may be impacted by the Seller's Plant or the Assignment with respect to the proposed Assignment, list of the directors and officers of the assignee and information concerning the assignee's operations, experience and financial status.

- (c) **Assignment to Facility Lender:** If the Seller seeks consent to Assign this EPA to a Facility Lender, the Buyer may require, as a condition of its consent to the Assignment, that the Seller and the Facility Lender enter into a Lender Consent Agreement with the Buyer.
- (d) **Costs:** The Seller will reimburse the Buyer for all costs reasonably incurred by the Buyer in connection with any request by the Seller for the Buyer's consent pursuant to subsection 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 will have the jurisdiction to grant equitable remedies, including interim or permanent injunctive relief. It will not be incompatible with this agreement to arbitrate for a Party to seek from the Supreme Court of British Columbia, or for that court to grant, interim measures of protection pending the outcome of arbitral proceedings. The decision of the arbitrator will be final and binding on the Parties.
- (b) **Effect of Arbitration:** All performance and payments required under this EPA will continue during any dispute under this EPA, provided that the Parties may, notwithstanding the foregoing, exercise any right to terminate this EPA in accordance with the terms of this EPA. Any payments or reimbursements required by an arbitration award will be due as of the date determined under subsection 5.4.2(d) or, where that subsection does not apply, as of the date determined in the award. Without duplication with subsection 5.4.2(d), any payments or reimbursements required by an arbitration award will bear interest at an annual rate equal to the Prime Rate plus 2% compounded monthly from the date such payment was due until the amount is paid.
- (c) **Confidentiality:** The Parties will maintain in confidence the fact that an arbitration has been commenced, all documents and information exchanged during the course of the arbitration proceeding, and the arbitrator's award, provided that each of the Parties will be entitled to disclose such matters: (i) as required by applicable Law or for regulatory purposes (including pursuant to the rules of any stock exchange on which the shares of the Seller or its Affiliates are traded); (ii) as required to enforce any arbitration award; (iii) to that Party's consultants and professional advisors who have a need to know such information; and (iv) in the case of the Buyer, to representatives of the Province of British Columbia.

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 7.8, Article 8, section 9.1, and section 9.3 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 Confidentiality

7.7.1 Confidentiality and Compliance Agreement - The Confidentiality and Compliance Agreement continues in full force and effect in accordance with its terms.

7.7.2 Additional Confidentiality Obligation - Without limiting the effect of the Standing Offer Confidentiality and Compliance Agreement, during the Term and for two years thereafter:

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

7.7.3 Disclosure of Confidential Information - Notwithstanding the Standing Offer Confidentiality and Compliance Agreement or section 7.7.2 above:

- (a) the Seller may also disclose Buyer Confidential Information and the Buyer may disclose Seller Confidential information in the following circumstances:
 - (i) disclosures expressly authorized under this EPA or otherwise set out in this EPA;
 - (ii) disclosures to enable a Party to fulfill its obligations under the EPA;
 - (iii) disclosure in any arbitration or legal proceedings for the enforcement of the EPA;
 - (iv) disclosure to the Party’s directors, officers, employees, Facility Lenders, consultants and advisors, provided each of them is advised of the confidential nature of the information and agrees to respect such confidentiality;
 - (v) subject to subsection 7.7.3(b)(iv), disclosure required to be made by a Party by

an order of a court, a regulatory agency or a tribunal or under any law, regulatory requirements or any requirement of any stock exchange that is binding upon a Party, provided that (i) to the extent reasonably practicable, the Party intending to make such disclosure gives reasonable notice to the other Party before make the disclosure, and (ii) limits the disclosure to that required by the applicable order, Laws or regulatory or stock exchange requirement;

- (vi) disclosure to a third Person if such information was known by that third Person before disclosure by the Buyer or Seller, as the case may be, provided the third Person did not know of the information as a result of a breach of the non-disclosure obligations in this EPA or the Standing Offer Confidentiality and Compliance Agreement, or
 - (vii) disclosure with the consent of the Buyer, in the case of Buyer Confidential Information, or the Seller, in the case of Seller Confidential Information.
- (b) the Buyer may disclose Seller Confidential Information in the following circumstances:
- (i) disclosure to the Buyer's Affiliates or to a third Person, and their respective employees, consultants and advisors, for the purpose of reselling or marketing any Energy or Environmental Attributes, including disclosure of the Seller Confidential Information by such Affiliate or third Person to those who have purchased or may purchase the Energy or Environmental Attributes;
 - (ii) for purposes other than those described in subsection 7.7.3(a), to the Buyer's Affiliates and to any directors, officers, employees, consultants and advisors of any Affiliates, provided each of them is advised of the confidential nature of the information and agrees to respect such confidentiality;
 - (iii) to any ministers, deputy ministers, servants or employees of the Province of British Columbia, provided each of them is advised of the confidential nature of the information and agrees to respect such confidentiality, or
 - (iv) disclosure in any regulatory proceeding, whether related to this EPA or not, to the extent that the Buyer considers disclosure is necessary or desirable to support its position in such proceeding. For greater certainty, subsection 7.7.2(a) does not apply to such disclosures.

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

7.7.5 Exemption from Disclosure - The Parties confirm that Seller Confidential Information constitutes commercial and financial information of the Seller, which has been supplied, or may be supplied, in confidence and the disclosure of which could reasonably be expected to harm significantly the competitive position and/or interfere significantly with the negotiating position of the Seller. Accordingly, the Parties confirm their intention that, subject to section 7.7.4, all Seller Confidential Information disclosed by the Seller to the Buyer will be deemed to be

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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.

7.8 Force Majeure

- (a) If there is a Force Majeure affecting a Party's ability to perform an obligation under this EPA, and that Party wishes to declare a Force Majeure, that Party will promptly notify the other Party of the Force Majeure. The notice of Force Majeure must identify the nature of the Force Majeure, the date the Force Majeure commenced, the expected duration of the Force Majeure, and the particular obligations affected by the Force Majeure. If, (i) a notice of Force Majeure is provided in accordance with this section, (ii) the event in question is in fact an event of Force Majeure as defined in this EPA, and (iii) the event of Force Majeure commenced on the commencement date in the notice of Force Majeure, then the Force Majeure will be deemed to have been invoked as of the commencement date stated in the notice.
- (b) Neither Party will be in default of any obligation under this EPA if a Party is unable to perform that obligation due to an event or circumstance of Force Majeure, provided notice is delivered in accordance with this section and the circumstances are, in fact, an event or circumstance of Force Majeure.
- (c) Subject to any limitations expressly set out in this EPA, the time for performance of such obligation will be extended by the number of days that Party is unable to perform such obligation as a result of the event or circumstance of Force Majeure. The Party invoking Force Majeure will promptly respond to any inquiry from the other Party regarding the efforts being undertaken to remove the Force Majeure and will give prompt notice of the end of the Force Majeure.

8. ABORIGINAL CLAIMS

8.1 Notification of Aboriginal Claim

If the Buyer or Seller receives or obtains evidence of an Aboriginal Claim, it will notify the other Party as soon as practicable.

8.2 Obligation to Consult

If the Buyer receives, obtains evidence or becomes aware of an Aboriginal Claim, it may direct the Seller, at the Seller's cost, to:

- (a) consult with the First Nation(s) making the Aboriginal Claim, or, if requested by the Buyer, assist the Buyer in the consultation process;
- (b) take any measures the Seller deems necessary to address, prevent, mitigate, compensate or otherwise accommodate any Potential Impacts provided the measures are consented to in advance by the Buyer and the First Nation(s) making the Aboriginal Claim; and



- (c) provide regular written reports to the Buyer concerning the Seller's compliance with this subsection, as may be reasonably requested by the Buyer.

8.3 Seller Termination for Aboriginal Claim

At any time prior to COD, if:

- (a) within 60 days of the Buyer receiving, obtaining evidence or becoming aware of an Aboriginal Claim, the Buyer does not make a direction to the Seller as contemplated in section 8.2; or
- (b) the Buyer notifies the Seller in writing that it will not make a direction to the Seller as contemplated in section 8.2; or
- (c) after consultation with the First Nation(s) making the Aboriginal Claim it becomes clear that the measure(s) necessary for the Seller to resolve the Aboriginal Claim or to address, prevent, mitigate, compensate or otherwise accommodate any Potential Impacts would, in the Seller's discretion, impose a commercially unreasonable cost on the Seller, or would require the consent of the Buyer under this EPA or agreement by the Buyer to amend the EPA in order to address any Potential Impacts and 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. Such termination will be effective 30 days after the date of delivery of such notice of termination unless otherwise agreed by the Parties. A termination by the Seller under this section will, for all purposes of this EPA, be treated in the same manner as a termination by the Seller under subsection 9.3(d) of this EPA and the termination of this EPA is the exclusive remedy to which the Buyer or the Seller may be entitled to if the Seller elects to terminate this EPA under this section.

8.4 Buyer Termination for Aboriginal Claim

At any time prior to COD, if the Buyer receives, obtains evidence or becomes aware of an Aboriginal Claim, the Buyer may, at its sole discretion, terminate this EPA on notice to the Seller. Such termination will be effective 30 days after the date of delivery of such notice of termination unless otherwise agreed by the Parties. If the Buyer terminates this EPA pursuant to this section, the Buyer will pay the Seller an amount equal to 115% of the Seller's Development Costs less the net realizable value of the assets forming part of the Seller's Plant at the date of termination. This payment is the exclusive remedy to which the Seller is entitled and the Buyer's limit of liability for the termination of this EPA by the Buyer pursuant to this section.

9. TERMINATION

9.1 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:

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- (a) COD does not occur by the second anniversary of Target COD for any reason 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 4.9; 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 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 4.9; or
- (d) the Seller breaches section 4.6; 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 Buyer, 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 any third party; or
- (f) any Interconnection Agreement or Interconnection Study Report completed after the Effective Date contains information that is inconsistent with the description of the Seller’s Plant in Appendix 2 and the Seller has not received the Buyer’s consent under section 3.3 for the change to Appendix 2; or
- (g) the Seller is Bankrupt or Insolvent; or
- (h) the Seller, as a result of an act or omission of the Seller, ceases to be exempt from regulation as a “public utility” as defined in the *Utilities Commission Act* 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
- (i) 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
- (j) the Seller permits a third Person to interconnect an electric load or generation facility to the Seller’s Plant without the advance written approval of the Buyer; or
- (k) the Seller is in material default of any of its covenants, representations and warranties or other obligations under this EPA (other than as set out above), unless within 30 days after the date of notice by the Buyer to the Seller of the default the Seller has cured the default or, if the default cannot be cured within that 30 day period, the Seller

demonstrates to the reasonable satisfaction of the Buyer that the Seller is working diligently and expeditiously to cure the default and the default is cured within a further reasonable period of time. A “material default” includes any purported Assignment of this EPA without the consent of the Buyer and any failure by the Seller to comply with section 3.2 in respect of subsection (e) of the “Project Standards” definition in Appendix 1, section 4.6, section 6.1 or section 6.2.

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

9.2 Notice of Termination Event

The Seller will notify the Buyer promptly if the Seller is Bankrupt or Insolvent or if there is a material risk that the Seller will become Bankrupt or Insolvent or if the Seller has defaulted under any agreement with a Facility Lender or if any Permit or land tenure agreement for the Seller’s Plant is terminated or expires.

9.3 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 4.4 or any event of Force Majeure and the Seller is not entitled to receive any payment pursuant to section 4.9 in respect of that period; or
- (c) the Seller’s Plant has suffered major damage 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; or
- (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 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 4.9; 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(b), an amount due and payable by the Buyer to the Seller under this EPA remains unpaid for 30 days after its due date and such default has not been cured within 30 days after the Seller has given notice of the default to the Buyer; or
- (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 will be effective immediately upon delivery of the notice of termination to the Buyer.

9.4 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 the Interconnection Agreement), 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 section 3.5 and any Interconnection Agreement 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 7.7 and all provisions of this 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.

9.5 Buyer Payment on Seller Termination

If the Seller terminates this EPA under any of subsections 9.3(e), (f) or (g), the Buyer will pay to the Seller an amount equal to the positive amount if any by which the Seller's Financial Losses and Costs exceed its aggregate Gains. The Seller's Gains, Financial Losses and Costs will be determined by comparing the reasonably estimated quantities of 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 Person or which are reasonably expected to be available in the market under a replacement contract for this EPA. Market prices will be adjusted for differences between the product subject to the market prices and a product, inclusive of Environmental Attributes, equivalent to that specified under this EPA available from a generator meeting the eligibility requirements for the 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 will not be required to enter into a replacement transaction in order to determine the amount payable by the Buyer under this section. The Seller's Gains, Financial Losses and Costs will be discounted to the present value of those Gains, Financial Losses and Costs at the effective date of termination of this EPA (to take into account the time value of money for the period between the effective date of termination of this EPA and the date the Gains, Financial Losses and Costs would have occurred but for the termination of this EPA) using the Present Value Rate. If the Seller's aggregate Gains exceed its aggregate Financial Losses and Costs, if any, resulting from the termination of this EPA, the amount of the payment by the Buyer to the Seller under this section will be zero. 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.

9.6 Seller Payment on Termination

If the Buyer terminates this EPA on or before 90 days after COD or the Seller terminates this EPA on or before COD, under any of subsections 9.3(a), (c) or (d), the Seller will, within 30 days after receipt of an invoice from the Buyer, reimburse the Buyer for:

- (a) all Interconnection Network Upgrade Costs incurred by the Buyer, or which the Buyer has become contractually obligated to pay, prior to the termination of the EPA including Interconnection Network Upgrade Costs the Buyer would otherwise be responsible for under section 3.5;
- (b) any incremental Interconnection Network Upgrade Cost liability the Buyer will incur as a result of the termination of this EPA up to a maximum amount not exceeding the amount of security required under any Interconnection Agreement, and
- (c) any Network Upgrade Costs the Seller is responsible for under any reimbursement agreement pursuant to section 3.3 of this EPA

9.7 Calculation and Payment

The Seller will calculate the amount of any payment owed by the Buyer under section 9.5 and will notify the Buyer of such amount and provide reasonable particulars with respect to its calculation within 120 days after the effective date of termination of this EPA, failing which the Seller will not be entitled to any payment under section 9.5. The Buyer will pay any amount owing by the Buyer under section 9.5 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 9.5.

9.8 Exclusive Remedies

Subject to section 9.5, payment by the Buyer of the amount determined under section 9.5 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 9.3(e), (f) or (g). Subject to section 9.4, 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 9.1, subsection 9.3(a), (b), (c), or (d). For greater certainty, subject to section 9.4, the Seller will not be required to pay any termination payment on termination by the Buyer of this EPA. Neither Party will have any right to terminate this EPA except as expressly set out herein.

10. REPRESENTATIONS AND WARRANTIES AND LIABILITY LIMITATIONS

10.1 Seller's Representations

The Seller represents and warrants to the Buyer, and acknowledges that the Buyer is relying on those representations and warranties in entering into this EPA, as follows:

- (a) **Binding Obligation** - this EPA constitutes a valid and binding obligation of the Seller enforceable against the Seller in accordance with its terms;
- (b) **Authorization, Execution and Delivery** - this EPA has been duly authorized, executed and delivered by the Seller; 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 in the Application are true and correct.

10.2 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.

10.3 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.

10.4 Consequential Damages

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

11. GENERAL PROVISIONS

11.1 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.

11.2 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.

11.3 Enurement

This EPA enures to the benefit of the Parties, their successors and their permitted assigns.

11.4 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 will 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 will remain in effect notwithstanding this EPA.

11.5 Amendment

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

11.6 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.

11.7 Interconnection Notices

Nothing in the Interconnection Agreement and no exercise of any right thereunder, restricts or otherwise affects any right, obligation or liability of either Party under this EPA, except to the extent set out expressly herein, and no notice, consent, approval or other communication or decision under or in relation to the Interconnection Agreement will constitute or be relied upon as a notice, consent, approval or communication or decision under this EPA.

11.8 Future Agreements

At the end of the Term, the Buyer will have no obligation to extend the Term or to enter into a new electricity purchase agreement with the Seller. In the event the Parties wish to enter into a new agreement at the end of the Term, the Parties expect to negotiate the terms (including the energy price) based on conditions in effect at that time.

11.9 Commodity Contract/Forward Contract

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

11.10 Further Assurances

Each Party will, upon the reasonable request of the other Party, do, sign or cause to be done or signed all further acts, deeds, things, documents and assurances required for the performance of this EPA including, in the case of the Seller, completing any registration process required in respect of Environmental Attributes as requested by the Buyer.

11.11 Severability

Any provision of this EPA which is illegal or unenforceable will be ineffective to the extent of the illegality or unenforceability without invalidating the remaining provisions of this EPA.

11.12 Counterparts

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

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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 : **[DEVELOPER NAME]**

Authorized Representative

Print Name and Office

Date

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

Authorized Representative

Print Name and Office

Date

APPENDIX 1

DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

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

- 1.1 “Aboriginal Claim”** means a legal claim or proceeding or written threat to commence a legal claim or proceeding where such claim or threat alleges a breach of any First Nation’s rights under section 35 of the *Constitution Act*, 1982 by the Standing Offer Program, this EPA, the Seller’s Plant, any works related to the interconnection of the Seller’s Plant to the Transmission System or Distribution System, or any authorization granted by the Province of British Columbia relating to the Seller’s Plant and its operations.
- 1.2 “Affiliate”** means, with respect to the Seller or any third Person, any Person directly or indirectly Controlled by, Controlling, or under common Control with, the Seller or the third Person, and with respect to the Buyer, any Person directly or indirectly Controlled by the Buyer and, if at any time the Buyer is not Controlled, directly or indirectly, by the Province of British Columbia, will include any Person directly or indirectly Controlling, or under common Control, with the Buyer.
- 1.3 “Annual Operating Plan”** means a 14 month operating plan for the Seller’s Plant that includes for term of each operating plan, (a) a schedule of the expected total deliveries of Energy at the POI in each month and (b) a schedule of any Planned Outages of the Seller’s Plant expected by the Seller. The Annual Operating Plan will be consistent with Good Utility Practice.
- 1.4 “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.
- 1.5 “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.
- 1.6 “Audit Parties”** means the Buyer and its Affiliates, representatives, consultants, advisors and any third Person with whom the Buyer or any of its Affiliates has entered into a contract for the sale and purchase of Environmental Attributes and their Affiliates, representatives, consultants and advisors.

- 1.7 “Bankrupt or Insolvent”** means, with respect to a Person:
- (a) the Person has started proceedings to be adjudicated a voluntary bankrupt or consented to the filing of a bankruptcy proceeding against it; or
 - (b) the Person has filed a petition or similar proceeding seeking reorganization, arrangement or similar relief under any bankruptcy or insolvency law; or
 - (c) a receiver, liquidator, trustee or assignee in bankruptcy has been appointed for the Person or the Person has consented to the appointment of a receiver, liquidator, trustee or assignee in bankruptcy; or
 - (d) the Person has voluntarily suspended the transaction of its usual business; or
 - (e) a court of competent jurisdiction has issued an order declaring the Person bankrupt or insolvent.
- 1.8 “Base Case”** means the base power flow, short circuit and stability data models used by the Buyer for the most recent dated interconnection study prior to the Effective Date.
- 1.9 “Business Day”** means any calendar day which is not a Saturday, Sunday or British Columbia statutory holiday.
- 1.10 “Buyer”** means British Columbia Hydro and Power Authority and its successors and permitted assigns.
- 1.11 “Buyer Confidential Information”** means technical or commercial information disclosed by the Buyer to the Seller that the Buyer directs, and clearly marks, as confidential, including this EPA whether or not so directed and marked, but excluding information that (i) is or becomes in the public domain, other than as a result of a breach of this EPA by the Seller, or (ii) is known to the Seller before disclosure to it by the Buyer, or becomes known to the Seller, thereafter by way of disclosure to the Seller by any other Person who is not under an obligation of confidentiality with respect thereto.
- 1.12 “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.
- 1.13 “COD”** means the commercial operation date which is 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 of this EPA; 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;

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- ii. the Seller's Plant has been fully constructed in accordance with the Project Standards;
- iii. 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;
- iv. a Meter has been installed in accordance with section 3.6 of this EPA;
- v. the Seller's Plant has generated Energy for not less than 54 hours whether or not continuous, during a period of 72 continuous hours in compliance with Project Standards, and delivered such Energy to the POI in an amount not less than 20% of the Hourly Limit in each of hour for not less than 54 hours and where each generator in the Seller's Plant generates Energy for a period of not less than 24 hours during the 72 hour period;
- vi. 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, with no material deficiencies, in respect of the Plant Capacity issued by the Buyer 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.

1.14 "COD Certificate" means a certificate in the form posted on the Buyer's website as of the date the Seller submits the COD Certificate to the Buyer.

1.15 "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.

- 1.16** “**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.
- 1.17** “**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.
- 1.18** “**Deemed Energy**” means Energy, not exceeding the Hourly Limit, that could have been, but was not, generated and delivered to the Buyer at the POI in each hour but for a Distribution/Transmission Constraint or Disconnection in accordance with section 4.9 or direction from the Buyer to Dispatch/Turn-Down in accordance with section 4.10.
- 1.19** “**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 Meter, or the duplicate revenue meter installed by the Buyer under section 3.6 of this EPA, if any, as adjusted for Line Losses.
- 1.20** “**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.
- 1.21** “**Development Progress Report**” means a report describing the progress of the financing, design, engineering, construction, Interconnection, and commissioning of the Seller’s Plant, that is substantially in the form of the Sample Development Progress Report posted on the Buyer’s website as of the date the Seller submits the Development Progress Report to the Buyer.
- 1.22** “**Dispatch/Turn-Down**” means for the Seller to turn down or shut off the Seller’s Plant.
- 1.23** “**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.
- 1.24** “**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 Buyer 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.
- 1.25** “**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.

- 1.26** “**Effective Date**” means the date set out on page one of this EPA.
- 1.27** “**Energy**” means all electric energy expressed in MWh generated by the Seller’s Plant, excluding electricity required to service the Seller’s Plant.
- 1.28** “**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) any credit, reduction right, off-set, allowance, allocated pollution right, certificate or other unit of any kind whatsoever whether or not tradeable resulting from or otherwise related to the reduction, removal, or sequestration of emissions at or from the Seller’s Plant; and
 - (d) all revenues, entitlements, benefits and other proceeds arising from or related to the foregoing, but for certainty not including:
 - i. benefits or proceeds from environmental incentive programs offered by Governmental Authorities that do not require a transfer of the attributes in (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.
- 1.29** “**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 of this EPA.
- 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 of this EPA or by a court order and all rights of appeal in respect of such award or order have been exhausted or have expired.
- 1.32** **"Financial Losses"** means an amount equal to the present value of the economic loss (exclusive of Costs), if any, to the Seller resulting from the termination of this EPA, determined in a commercially reasonable manner and in the manner set out in section 9.5 of this EPA.
- 1.33** **"First Nation"** means any band, band council, tribal council, aboriginal treaty nation and/or other aboriginal group or governing body, however organized, that is established by aboriginal people within their asserted traditional territory in British Columbia.
- 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** **"Forced Outage"** means the immediate removal of one or more generating units of the Seller's Plant or transmission or distribution infrastructure of the Seller's Plant from service in response to equipment alarms or any damage identified during a Planned Outage or Maintenance Outage requiring extension of those Planned Outage or Maintenance Outage.

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- 1.36 “Gains” means an amount equal to the present value of the economic benefit (exclusive of Costs), if any, to the Seller resulting from the termination of this EPA, determined in a commercially reasonable manner and in the manner set out in section 9.5 of this EPA.
- 1.37 “Good Utility Practice” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the Western Electricity Coordinating Council region.
- 1.38 “Governmental Authority” means any federal, provincial, local or foreign government or any of their boards or agencies, or any regulatory authority other than the Buyer and the Seller and entities controlled by the Buyer or the Seller.
- 1.39 “GST” means the goods and services tax imposed under the *Excise Tax Act* (Canada) as that Act may be amended or replaced from time to time.
- 1.40 “Hourly Limit” means _____MWh per hour, in any hour, less any actual or estimated Line Losses.

[Note to Developers: The blanks in this section will be completed based on the Nameplate Capacity (as described in the rules) of the Seller’s Plant and the maximum Energy to be purchased under this EPA.]

- 1.41 “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.
- 1.42 “Interconnection Agreement” means the standard generator interconnection agreement between the Seller and the Buyer 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.
- 1.43 “Interconnection Network Upgrades” means additions, modifications and upgrades to the Transmission System or Distribution System that are determined by the Buyer to be interconnection network upgrades under the applicable policies of the Buyer or under the Buyer’s Open Access Transmission Tariff in effect from time to time.
- 1.44 “Interconnection Network Upgrade Costs” means all costs incurred by the Buyer after the Effective Date for the design, engineering, procurement, construction, installation and commissioning of Interconnection Network Upgrades.
- 1.45 “Interconnection Study Report” means the report issued to the Seller by the Buyer in respect of the interconnection of the Seller’s Plant, consisting of a system impact study report and a facilities study report.

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- 1.46 “**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
- 1.47 “**Lender Consent Agreement**” means a lender consent agreement in the form posted on the Buyer’s website as of the date the Seller submits the Lender Consent Agreement to the Buyer.
- 1.48 “**Line Losses**” means losses of electricity associated with the transmission of Energy and other electricity, if applicable, from the Seller’s Plant to the POI that are recorded by the Meter or reasonably estimated by the Buyer.
- 1.49 “**Maintenance Outage**” means any outage of the Seller’s Plant that is not a Planned Outage or a Forced Outage that typically has a flexible start and end time and of shorter duration than a Planned Outage.
- 1.50 “**MW**” means megawatt.
- 1.51 “**MWh**” means megawatt-hour.
- 1.52 “**Meter**” means a meter leased by the Buyer to the Seller that is: (a) capable of accurately measuring the quantity of Energy generated by the Seller’s Plant and delivered to the POI independent of all other generation equipment or facilities and transmitting the information to Buyer, (b) 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.
- 1.53 “**Network Upgrades**” means both Interconnection Network Upgrades and Transmission Network Upgrades.
- 1.54 “**Network Upgrade Costs**” means all Interconnection Network Upgrade Costs and Transmission Network Upgrade Costs.
- 1.55 “**Network Upgrade Threshold**” means \$ _____ and is based on Plant Capacity described in Appendix 2.
- [Note to Developers: This blank will be completed with a total dollar value based on the Interconnection Network Upgrade Threshold (as defined in the Standing Offer Program Rules) and the size of the Seller’s Plant as set out in the Application or any Statement of Project Changes.]
- 1.56 “**Outage**” means a Forced Outage, Maintenance Outage, or Planned Outage of the Seller’s Plant.
- 1.57 “**Outage Notice**” means a notification of any Outage or revised notification of any Outage required to be delivered by the Seller to the Buyer under this EPA that describes the timing, frequency, nature and duration of the Outage and that is in a format that may be prescribed by the Buyer from time to time as posted on the Buyer’s website.
- 1.58 “**Party**” means: (a) the Buyer; or (b) the Seller, and “**Parties**” means both the Buyer and the Seller.

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- 1.59 **“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.
- 1.60 **“Person”** means an individual, body corporate, firm, partnership, joint venture, trust, legal representative or other legal entity.
- 1.61 **“Planned Outage”** means an outage that is scheduled well in advance for purposes of inspections, maintenance, or repair of the Seller’s Plant, that typically has a predetermined duration and scope of work, occurs only once or twice per year, and may last for several days.
- 1.62 **“Plant Capacity”** means the electrical generating capacity of the Seller’s Plant set out in Appendix 2.
- 1.63 **“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.
- 1.64 **“Potential Impacts”** means any adverse or potentially adverse impact on the established or potential aboriginal rights (including title) of a First Nation as a result of:
- (a) this EPA;
 - (b) the Project;
 - (c) the interconnection of the Seller’s Plant to the Transmission System or Distribution System; or
 - (d) any activities directly related to the Seller’s Plant that enable the Seller to comply with its obligations under this EPA that are 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;
- 1.65 **“PPT”** means Pacific Prevailing Time, which means Pacific Daylight Time or Pacific Standard Time as applicable.
- 1.66 **“Present Value Rate”** means the annual yield on a Government of Canada bond having a term and maturity date that most closely matches the remaining Term (as at the date of the applicable calculation) and expiry date of this EPA, plus 3%.
- 1.67 **“Prime Rate”** means the floating prime interest rate announced from time to time by the main branch of Bank of Montreal in Vancouver, British Columbia, or any successor thereto, expressed as an annual rate, as the reference rate it will use to determine rates of interest payable on Canadian dollar commercial loans made in Canada.
- 1.68 **“Project”** means the financing, design, engineering, procurement, construction, commissioning, operation and maintenance of the Seller’s Plant.
- 1.69 **“Project Standards”** means:

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- (a) all applicable Laws;
 - (b) the terms and conditions of all Permits, including land tenure agreements, issued in connection with the Seller's Plant;
 - (c) Good Utility Practice;
 - (d) the description of the Seller's Plant in Appendix 2;
 - (e) the requirement that Energy must qualify as Clean Energy;
 - (f) the terms and conditions of this EPA and the Interconnection Agreement; and
 - (g) the Contractor Standards for Ethical Conduct applicable to Buyer contracts, as it may be from time to time, that is posted on the Buyer's website.
- 1.70** "PST" means British Columbia provincial social service or sales taxes and similar or replacement assessments, if any.
- 1.71** "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 Project Standards, but excluding any such documents that are protected by solicitor-client privilege;
 - (g) records related to Development Costs; and
 - (h) information relating to the Environmental Certification, information relating to the existence, nature and quality of Environmental Attributes, information required for the purposes of any Environmental Attributes or energy certification or tracking system, and any other information the Buyer requires to enable it or any of its Affiliates to obtain and realize the benefit of the Environmental Attributes,
- all consistent with Good Utility Practice.
- 1.72** "Seller" means the Party so identified on page one of this EPA, and its successors and permitted assigns.

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- 1.73 **“Seller Confidential Information”** means any of the Seller’s confidential technical or financial information provided by the Seller to the Buyer in confidence with express written notice to the Buyer of the confidential nature of the information, but excluding:
- (a) this EPA; and
 - (b) information that (i) is or becomes in the public domain, other than as a result of a breach of this EPA by the Buyer, or (ii) is known to the Buyer before disclosure to it by the Seller, or becomes known to the Buyer thereafter by way of disclosure to the Buyer by any other Person who is not under an obligation of confidentiality with respect thereto.
- 1.74 **“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.
- 1.75 **“Standing Offer Confidentiality and Compliance Agreement”** means the confidentiality and compliance agreement between the Buyer and the Seller dated _____.
- 1.76 **“Standing Offer Program”** means the Buyer’s energy procurement program described as the Standing Offer Program.
- 1.77 **“Target COD”** means _____, as may be revised pursuant to section 3.9, if applicable.
- [Note to Developers: The blank above will be taken from the Application for the Project, subject to acceptance by BC Hydro of the Target COD as described in the SOP Rules.]*
- 1.78 **“Term”** has the meaning given in Article 2.
- 1.79 **“Transmission Network Upgrades”** means additions, modifications and upgrades to the Transmission System or Distribution System that are determined by the Buyer to be transmission network upgrades under the applicable policies of the Buyer or under the Buyer’s Open Access Transmission Tariff , as filed with and accepted by the British Columbia Utilities Commission or any successor thereto, as amended and refiled from time to time.
- 1.80 **“Transmission Network Upgrade Costs”** means all costs incurred by the Buyer after the Effective Date for the design, engineering, procurement, construction, installation and commissioning of Transmission Network Upgrades.
- 1.81 **“Transmission System”** means the transmission, substation, protection, control and communication facilities owned and operated by the Buyer, and includes all additions and modifications to those facilities and repairs or replacements of those facilities.

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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 will be amended as necessary to accommodate such replacement index, tariff or price quotation, all as determined by written agreement between the Parties, or failing agreement, by arbitration under section 7.5 of this EPA.
- 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 1 will apply;
- iii. has not published the CPI for a relevant period at the time the Seller is required to provide the Buyer with an invoice, the Seller will prepare the invoice based on the CPI in effect at the time the invoice is issued and when the CPI for the relevant period is published, the Seller will recalculate the invoice amounts in the next succeeding invoice and will include a credit or debit, without interest, in the next succeeding invoice based on the results of the recalculation; or
- iv. recalculates the CPI within 36 months after an invoice affected by that CPI calculation has been issued, then the Seller will recalculate the invoice amounts for the relevant period in the next succeeding invoice and will include a credit or debit, without interest, in the next succeeding invoice based on the results of the recalculation.

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

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

3. ADDRESSES FOR NOTICES

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

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

Invoices and Supporting information and Statements

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

Network Upgrades

To: BC Hydro Generator Interconnections
6911 Southpoint Drive, Edmonds B03
Burnaby, BC
V3N 4X8
Attention: Manager, Generator Interconnections
Email: (as applicable) distribution.generators@bchydro.com or
transmission.generators@bchydro.com

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

[Note to Developers: This information will be completed based on the information provided in the Project Application.]

APPENDIX 2

SELLER'S PLANT DESCRIPTION

1. Location: *[Insert nearest community, latitude and longitude and PID]*
2. Fuel: *[Describe fuel]*
3. Point of Interconnection: *[Describe POI]*
4. Plant Capacity: _____ MW *[Insert Project Nameplate Capacity consistent with the Application and the System Impact Study for the Project]*
5. General Description: *[Include number of generating units in the Seller's Plant and the nameplate capacity of each generating unit.]*

APPENDIX 3

DELIVERY TIME ADJUSTMENT TABLE

1. **Definitions:** In this Appendix 3, the following words and expressions have the following meanings:
 - (a) **“Off-Peak Hours”** means all hours other than Super-Peak Hours and Peak Hours.
 - (b) **“Peak Hours”** means the hours commencing at 06:00 PPT and ending at 16:00 PPT, and commencing at 20:00 PPT and ending at 22:00 PPT, Monday through Saturday inclusive, but excluding British Columbia statutory holidays.
 - (c) **“Super-Peak Hours”** means the hours commencing at 16:00 PPT and ending at 20:00 PPT Monday through Saturday inclusive, but excluding British Columbia statutory holidays.

Month	Time of Delivery Factor (TDF)		
	Super-Peak	Peak	Off-Peak
January	141%	122%	105%
February	124%	113%	101%
March	124%	112%	99%
April	104%	95%	85%
May	90%	82%	70%
June	87%	81%	69%
July	105%	96%	79%
August	110%	101%	86%
September	116%	107%	91%
October	127%	112%	93%
November	129%	112%	99%
December	142%	120%	104%

No. S174308
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
SUNNY PARADISE INC.**

DEFENDANTS

AFFIDAVIT

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File No. L67090009

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