

SIXTH FLOOR, 900 HOWE STREET, BOX 250  
VANCOUVER, B.C. V6Z 2N3 CANADA  
web site: <http://www.bcuc.com>



**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER** G-91-08

TELEPHONE: (604) 660-4700  
BC TOLL FREE: 1-800-663-1385  
FACSIMILE: (604) 660-1102

**IN THE MATTER OF  
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473**

**and**

**A Filing by British Columbia Hydro and Power Authority  
of an Electricity Purchase Agreement and Amending Agreement  
for the Pine Creek Project**

**BEFORE:** L.F. Kelsey, Commissioner  
P.E. Vivian, Commissioner June 12, 2008  
A.A. Rhodes, Commissioner

**O R D E R**

**WHEREAS:**

- A. Pursuant to Section 71 of the Utilities Commission Act (the "Act") on April 2, 2008 British Columbia Hydro and Power Authority ("BC Hydro") filed with the Commission an Electricity Purchase Agreement ("EPA") dated November 21, 2006 with the Taku Land Corporation for the Pine Creek project ("Project") and an agreement (the "Amending Agreement") dated March 11, 2008 that amends the EPA; and
- B. The EPA was signed on November 21, 2006 and the original Commercial Operation Date ("COD") was April 1, 2008 and amended to January 1, 2009; and
- C. The Commission notes that BC Hydro did not file the EPA signed on November 21, 2006 with the Commission; and
- D. On April 24, 2008, the Commission issued Information Request No. 1 to BC Hydro; and
- E. On May 9, 2008 BC Hydro responded to Information Request No. 1 and confirmed that the content of the Energy Supply Contract filing for the Pine Creek Project dated April 2, 2008 is not confidential; and

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F. The Commission has reviewed the unique characteristics and circumstances related to this EPA and its Amending Agreement and the Commission has concluded that it should be accepted for filing pursuant to Section 71 of the Act.

**NOW THEREFORE** the Commission orders as follows:

1. The EPA and the Amending Agreement that are attached to this Order are accepted for filing as an Energy Supply Contract and an amendment to the Energy Supply Contract, pursuant to Section 71 of the Act, subject to item 2 below.
2. BC Hydro is to notify and to submit an estimated cost to complete the Project as well as an economic analysis to the Commission for its consideration in the event BC Hydro exercises Section 16 of the EPA that specifies Step-In Rights to permit BC Hydro to construct and operate the project.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 16<sup>th</sup> day of June 2008.

BY ORDER

*Original signed by:*

L.F. Kelsey  
Commissioner

Attachments

~~CONFIDENTIAL~~

## ELECTRICITY PURCHASE AGREEMENT

### PINE CREEK PROJECT

THIS ELECTRICITY PURCHASE AGREEMENT ("EPA") is made as of November 21, 2006.

BETWEEN: **TAKU LAND CORPORATION**, a British Columbia company with its office at P.O. Box 408, Atlin, British Columbia, V0W 1A0.

("Seller")

AND:

**BRITISH COLUMBIA HYDRO AND POWER AUTHORITY**, with its Head Office at 333 Dunsmuir Street, Vancouver, B.C. V6B 5R3.

("BC HYDRO")

WHEREAS:

- A. BC HYDRO wishes to purchase a reliable supply of Electricity for its customers in the community of Atlin, British Columbia.
- B. BC HYDRO issued a Request for Expressions of Interest ("RFEI") dated May 28, 2005 for a long-term electricity purchase agreement to replace the existing diesel generating system in Atlin with a viable, cost-effective and reliable power generation source.
- C. The Seller submitted its response to BC HYDRO's RFEI on or about July 4, 2005.
- D. The Seller intends to construct, own and operate a 2 MW small hydropower generating facility on Pine Creek, approximately 4 kilometers north of Atlin for the purpose of generating electrical energy with an expected generating capability of 16 GWh per year.
- E. The Seller desires to sell, and BC HYDRO desires to purchase, electrical energy generated by the Seller's Plant on the terms and conditions set forth in this EPA.

#### 1. INTERPRETATION

- 1.1 **Definitions** - Appendix 1 sets out the definitions applicable to certain words and expressions used in this EPA.
- 1.2 **Appendices** - Attached to and forming part of this EPA are the following appendices:

- Appendix 1 - Definitions
- Appendix 2 - Tariff
- Appendix 3 - Description of Seller's Plant
- Appendix 4 - Sample Form of Mortgage
- Appendix 5 - Sample Form of General Security Agreement

- 1.3 **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 will not affect the interpretation of this EPA.
- 1.4 **Plurality and Gender** - Words in the singular include the plural and vice versa. Words importing gender include the masculine, feminine and neuter genders.
- 1.5 **Governing Law** - This EPA is made under, and shall be interpreted in accordance with, the laws of the Province of British Columbia. Subject to Section 20.6, any suit, action or proceeding (a "Proceeding") arising out of this EPA may be brought in the courts of the Province of British Columbia at Vancouver, and those courts will have non-exclusive jurisdiction in respect of any Proceeding.
- 1.6 **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.
- 1.7 **Statutory References** - Reference to a statute means the statute and regulations, if any, under that statute, in force from time to time, unless otherwise stated.
- 1.8 **Currency** - References to dollars or \$ means Canadian dollars, unless otherwise stated.
- 1.9 **Reference Indices** - If any index 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 or price quotation that most nearly, of those then available, approximates the intent and purpose of the index or quotation that has so ceased or changed, as determined by written agreement between the Parties, or failing agreement, by arbitration under Section 20.6.
- 1.10 **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.
- 1.11 **Additional Interpretive Rules** - For the purposes of this EPA, except as otherwise expressly stated:
  - (a) "this EPA" means this EPA as 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; and
- (d) 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 shall be entitled to pursue any and all of its remedies concurrently, consecutively and alternatively.

## **2. TERM**

- 2.1 **Term** - The term ("Term") of this EPA commences on the date of execution and delivery of this EPA by both Parties and will continue until the 25th anniversary of COD, unless it is terminated earlier as authorized under this EPA. For purposes of this EPA, except where specific reference is made to calendar years, "Year" shall be deemed to refer to successive periods of 365 days (366 days in leap years) beginning on the day following the day on which COD occurred, and so on for the remainder of the Term.

## **3. CONDITIONS SUBSEQUENT**

- 3.1 **Termination for Failure of Conditions Subsequent** - Either Party, by notice to the other Party, may terminate this EPA if the following conditions have not been satisfied or waived on or before the expiry of the Initial Period:
- (a) the Seller has obtained all Material Permits;
  - (b) the Seller has obtained title, or another form of tenure, to the area of land and/or water on and in which the Seller's Plant will be located;
  - (c) the Seller and BC HYDRO have entered into an Interconnection Agreement for the interconnection of the Seller's Plant to BC HYDRO'S Plant serving the community of Atlin;
  - (d) the Seller has arranged financing for amounts which, together with equity investments, are sufficient to fund the design, construction and commissioning of the Seller's Plant, on terms satisfactory to the Seller;
  - (e) the Seller is lawfully exempt from regulation as a "public utility", as defined in the UCA with respect to the Seller's Plant, the sale of Electricity and the performance by the Seller of its obligations under this EPA; and

- (f) the Seller has given notice to BC HYDRO that it has satisfied each condition in this Section 3.1, and has provided to BC HYDRO copies of the documents required to demonstrate satisfaction of the conditions in subsections 3.1(a), (b) and (c).

**3.2 Reasonable Efforts and Waivers** - The Seller shall use all commercially reasonable efforts to satisfy, as soon as practicable, the conditions in Section 3.1. A "material default" includes a failure to use all commercially reasonable efforts. The Seller is solely responsible for all costs incurred by Seller in negotiating and settling this EPA and the Interconnection Agreement, and for all costs associated with connecting the Seller's Plant to BC HYDRO'S Plant at the Point of Interconnection. The conditions set out in subsections 3.1(d) and (e) are solely for the benefit of the Seller and may be waived only by it. All other conditions are for the mutual benefit of the Parties and may only be waived jointly by the Parties. All waivers must be in writing. If a condition in Section 3.1 is satisfied or waived after the expiration of the Initial Period and prior to that time this EPA has not been terminated, then neither Party will thereafter have the right to terminate this EPA as a result of that condition not being satisfied or waived on or before the expiry of the Initial Period. If this EPA is terminated under Section 3.1, the provisions of Section 15.3 will apply.

**3.3 BCUC** - Either Party may terminate this EPA if:

- (a) at any time before expiry of the Initial Period, the BCUC issues an order relating to this EPA pursuant to the UCA which has or would have a material adverse effect on the EPA and/or the economic benefits to be derived by either or both parties from the EPA, all rights of review and appeal in respect the order have been exercised or expired, and the terms of such order are not acceptable (acting reasonably) to either or both Parties; or
- (b) at any time before expiry of the Initial Period, a proceeding which could result in an order as referred to in clause (a) has commenced pursuant to the UCA relating to this EPA and is pending on the expiry of the Initial Period.

A Party entitled to terminate this EPA under this Section 3.3 may do so by giving notice to terminate to the other Party within 30 days after the right to terminate arises under subsection 3.3(a) or 3.3(b) as the case may be. If a Party does not exercise its right to terminate within that 30 day period, it is deemed to have waived that right to terminate. Notwithstanding the foregoing, if a proceeding as referred to in clause 3.3(b) is pending on the expiry of the Initial Period and it reasonably appears that a decision or order in the proceeding will be made within 60 days after the Initial Period expiry date, no notice of termination shall be given until after the expiry of the said 60 day period; or, if the decision or order is earlier issued, then until after the decision or order has been issued, but in that case only if the decision or order is to the effect referred to in clause 3.3(a). If this EPA is terminated under this Section 3.3, the provisions of Section 15.3 will apply.

#### **4. DOCUMENTS TO BE PROVIDED BY SELLER**

- 4.1 **Quarterly Status Reports** - On each of January 1, April 1, July 1 and October 1, commencing with the earliest of those dates after the date on which this EPA is made as specified on page one of this EPA, and continuing until COD, the Seller shall deliver to BC HYDRO a report on the status of the financing for the Seller's Plant, all Permit applications for the Seller's Plant, the tenure for the Seller's Plant, the design, engineering, equipment procurement, construction and commissioning of the Seller's Plant, the expected COD, the progress of work and installation of facilities under the Interconnection Agreement, the status of the Seller's efforts to obtain the exemption referred to in subsection 3.1(e) and the status of the Seller's efforts to secure the Energy Source for the Seller's Plant. If the Seller expects that COD will be achieved at a date other than Target COD, the Seller shall advise BC HYDRO as soon as reasonably practicable and, in any event, not later than in the next report required under this Section 4.1 and the Seller will state the reasons for the change in the expected COD.
- 4.2 **Interconnection Agreement Defaults** - The Seller shall give promptly to BC HYDRO's representative for notices under this EPA as shown in subsection 20.3(c) a copy of any notice of a breach of, or default under, the Interconnection Agreement, whether given or received by the Seller.

#### **5. COD**

- 5.1 **Construction of Plant and Target COD** - The Seller shall proceed diligently to complete the design, construction, interconnection and commissioning of the Seller's Plant. Thereafter, the Seller shall use all commercially reasonable efforts to achieve COD by the Target COD. If, despite such efforts, the Seller is not able to achieve COD by the Target COD, the Seller shall continue to use all commercially reasonable efforts to achieve COD at the earliest date practicable thereafter.
- 5.2 **Requirements for COD** - Subject to subsection 5.5(a), COD will be the date on which all of the following have occurred:
- (a) the Seller has received all Permits required to operate the Seller's Plant;
  - (b) BC HYDRO has issued a completed and executed Declaration of Compatibility-Generator (Operating), or such other document of similar effect as may be substituted therefor, to the Seller under the Interconnection Agreement;
  - (c) the Seller's Plant has generated Electricity as the exclusive supplier for the Atlin community for 72 continuous hours; and
  - (d) the Seller is not in material default under any Permit, this EPA or the Interconnection Agreement.

Subject to subsection 5.5(a), the Seller shall cause the Seller's Plant to be operated to demonstrate compliance with subsection 5.2(c) as soon as the Seller's Plant is capable of generating Electricity in the manner specified in that subsection. The Seller and BC HYDRO shall provide all reasonable cooperation to each other so as to schedule the test period referred to in subsection 5.2(c) at a time when the Seller's Plant and BC HYDRO's Atlin distribution system are operating normally. Except as provided in the following sentence, if the requirements of subsection 5.2(c) have not been satisfied for any reason, whether due to Force Majeure, Forced Outage, or other cause whatsoever, the parties will reschedule the test and reperform the test from time to time thereafter at the earliest practicable time or times. If the Seller's Plant did not generate Electricity for 72 continuous hours as provided in subsection 5.2(c) solely due to the inability of BC HYDRO's Plant to accept delivery of Electricity due to one or more Outages affecting BC HYDRO's Plant for a period (individually or in the aggregate) not exceeding 1 hour during such 72 hour period, the Seller's Plant shall nevertheless be deemed to have satisfied the requirements of subsection 5.2(c).

BC HYDRO may have its representatives present at the Seller's Plant to observe the commissioning and testing of the Seller's Plant. The Seller shall provide reasonable advance notice to BC HYDRO of material commissioning and testing activities.

**5.3 Notice of COD** - Subject to subsection 5.5(a), when the Seller believes that COD has occurred, the Seller shall give BC HYDRO prompt notice together with copies of all Permits, and material required to demonstrate that the Seller's Plant has complied with the requirements of subsection 5.2(c). BC HYDRO shall promptly acknowledge receipt of such notice and advise the Seller whether or not BC HYDRO agrees that COD has occurred.

**5.4 Deposit** - The Seller has paid on execution and delivery of this EPA by it, and BC HYDRO is holding, a deposit in the amount of \$15,000. BC HYDRO shall refund that deposit to the Seller, without interest, within 30 days after COD. If this EPA is terminated by either Party prior to COD, other than due to a breach of the EPA by BC HYDRO or termination under section 3.3, then BC HYDRO may retain the deposit without limiting any other remedies BC HYDRO may have.

**5.5 Acceleration/Delay of COD**

(a) Notwithstanding Section 5.2, COD cannot occur more than 90 days prior to the Target COD, without the prior consent of BC HYDRO. If the conditions for COD in Section 5.2 are satisfied more than 90 days prior to the Target COD, COD will occur on the date that is 90 days prior to the Target COD, provided that the conditions in Section 5.2 continue to be satisfied at that date.

(b) If COD does not occur by the date that is 365 days after Target COD, plus the number of days, not exceeding a further 365, during which COD is delayed due to Force Majeure invoked by the Seller in accordance with Section 10, BC



HYDRO may terminate this EPA at any time prior to COD by notice to the Seller, in which case the provisions of Section 15.3 will apply.

## **6. SELLER'S PLANT AND ELECTRICAL SYSTEMS**

- 6.1 **Seller's Plant** - The Seller shall cause the Seller's Plant to be located and constructed in accordance with the description in Appendix 3. The Seller's Plant will be owned by the Seller, and operated by the Seller using qualified and experienced persons who are employees of the Seller or of the Seller's contract operator. The Seller shall design, construct, interconnect to the BC HYDRO's Plant, commission, operate and maintain the Seller's Plant in compliance with applicable laws, the terms and conditions of all Permits and land tenure agreements issued to the Seller in connection with the Seller's Plant, Good Utility Practice, and the terms and conditions of this EPA and the Interconnection Agreement. Subject to Force Majeure, Outages of BC HYDRO's Plant, Outages of the Seller's Plant where there is no breach by the Seller of this EPA, Permit restrictions and availability of Energy Source (provided that cost will not be a factor in determining the availability of the Energy Source), the Seller shall at all times during the Term operate the Seller's Plant so as to supply the Electricity requirements of BC HYDRO for the purpose of supplying customers in the community of Atlin, unless BC HYDRO gives its consent to reduced generation.
- 6.2 **Notice of Forced Outages and Maintenance Outages** - The Seller shall promptly notify BC HYDRO of any Forced Outage or Maintenance Outage of the Seller's Plant.
- 6.3 **Planned Outages** - The Seller shall give BC HYDRO not less than 180 days prior notice of a Planned Outage where such Planned Outage involves major maintenance of the Seller's Plant. The Seller shall make reasonable efforts to coordinate all Planned Outages with BC HYDRO's requirements. BC HYDRO may require the Seller to reschedule any Planned Outage, provided that the rescheduling is consistent with Good Utility Practice and does not have a material adverse financial effect on the operation of the Seller's Plant.
- 6.4 **Modification to Seller's Plant** - The Seller shall not, without BC HYDRO's prior consent, make any modification or addition to the Seller's Plant which is likely to have a materially adverse effect on the quality or reliability of Delivered Electricity or on the attributes or value of any Green Rights or Emission Credits retained or acquired by BC HYDRO hereunder as referred to in section 8.8.

## **7. SUSPENSION**

### **7.1 Suspension**

- (a) Subject to subsection 7.1(b), BC HYDRO may refuse to accept delivery of Electricity from the Seller if the Seller is in material default under this EPA or the Interconnection Agreement.

- (b) The right of BC HYDRO to refuse to accept deliveries of Electricity under subsection 7.1(a) is subject to:
- (i) BC HYDRO giving the Seller notice of BC HYDRO's intent to refuse to accept deliveries; and
  - (ii) within 30 days after such notice the Seller having failed to cure to the satisfaction of BC HYDRO, acting reasonably, the cause of the proposed suspension, provided that if the Seller is working diligently to cure the cause and if the cause cannot reasonably be cured within the 30 day notice period, then after expiry of a reasonable time to cure the cause.
- (c) BC HYDRO is not required to pay the Seller for any Delivered Electricity, or any Electricity capable of being generated during any period, when BC HYDRO has suspended accepting deliveries of Electricity in accordance with this Article 7.

7.2 **Resuming Deliveries** - BC HYDRO will resume accepting deliveries of Electricity when the Seller has demonstrated to BC HYDRO, acting reasonably, that the Seller has cured the cause for the suspension under Section 7.1, and the Seller will resume delivering Electricity to BC HYDRO at that time.

7.3 **Termination for Extended Suspension** - BC HYDRO may terminate this EPA by notice to the Seller if a suspension under Section 7.1 continues for more than 365 days from the date of commencement of the suspension. If BC HYDRO terminates this EPA under this Section 7.3, Section 15.3 applies.

## 8. PURCHASE AND SALE OF ELECTRICITY

8.1 **Sale and Purchase of Electricity** - Subject to Section 8.5, during the period between COD and the end of the Term, the Seller shall use its best efforts to deliver Electricity in each calendar year up to the Seller's Maximum Delivery Obligation for that calendar year as set forth in section 2.1 of Appendix 2 (including any amendments thereto) to the Point of Delivery for sale to BC HYDRO, and, subject to section 8.3(b), BC HYDRO shall purchase and accept delivery at the Point of Delivery of all Delivered Electricity. In the event that COD occurs on a day other than January 1 in any calendar year, such that each Year of the Term commences and ends on dates other than calendar year dates, the Seller's Maximum Delivery Obligation for the part calendar years at the commencement of the Term and at the end of the Term shall be prorated in accordance with the monthly percentages set forth in Section 3 of Appendix 3.

8.2 **Minimum Sale and Purchase Obligations** - The parties acknowledge and agree that the viability of the Project and the economic benefits expected to be derived by each party under this EPA have been determined on the basis of the Forecast Load for the

community of Atlin for each calendar year as set forth in section 2.1 of Appendix 2. Accordingly, subject to the "carry forward / carry back" adjustments provided for in section 8.2(c), the Seller agrees to sell and deliver, and BC HYDRO agrees to purchase and accept delivery of, at least the minimum amounts of Electricity set forth hereafter:

- (a) The Seller shall generate and deliver to the Point of Delivery in each calendar year at least the Seller's Minimum Delivery Obligation, being either ninety per cent (90%) of the Forecast Load for that calendar year as set forth in section 2.1 of Appendix 2, or ninety percent (90%) of the actual total Electricity requirements for the community of Atlin for that calendar year, whichever is the lesser. However, if the Seller is ready and able to deliver Electricity during any period and BC HYDRO's Plant is, for any reason, unable to accept delivery of Electricity during such period, the Seller shall nevertheless be deemed to have satisfied its minimum delivery obligation during such period to the extent it would have delivered Electricity but for the inability of BC HYDRO's Plant to accept delivery.
- (b) BC HYDRO will purchase and accept delivery of Electricity at the Point of Delivery in each calendar year at least the amount of Electricity that is equal to the Forecast Load for that calendar year as shown in section 2.1 of Appendix 2. However, if BC Hydro is ready and able to accept delivery of Electricity during any period and the Seller is, for any reason, unable to deliver Electricity during such period, then BC HYDRO shall nevertheless be deemed to have satisfied its minimum purchase obligation during such period to the extent it would accepted delivery of Electricity but for the inability of the Seller's Plant to make delivery.
- (c) For the purpose of determining compliance with Section 8.2(a) and 8.2(b) by the Seller and BC HYDRO respectively for a given calendar year, a "carry forward / carry back" adjustment will be made so as to take into account any excess generation by the Seller or taking of Electricity by BC HYDRO for the year prior to and the year following the year in question. That is, if the Seller generated and delivered Electricity in excess of the minimum requirement set forth in section 8.2(a) in the prior year, the amount of the excess will be applied to offset any shortfall in the year in question; and further, any excess in the year following will also be applied (to the extent required) to offset any remaining shortfall in the year in question. Similarly, any excess taking of Electricity by BC HYDRO above the minimum requirement set forth in Section 8.2(b) in the prior year and in the following year, will be applied in the same manner to offset any shortfall by BC HYDRO in the year in question.
- (d) If despite the application of excess amounts as provided in section 8.2(c), there still remains a shortfall in the generation and delivery of Electricity by the Seller or the taking of Electricity by BC Hydro for the year in question (excepting in the case of the Seller, any shortfalls in generation and delivery or

taking of Electricity resulting from Force Majeure or Forced Outage, and in the case of BC HYDRO, any shortfalls in the taking of Electricity resulting from Force Majeure), the Seller or BC Hydro, as the case may be, shall pay a compensating amount to the other, as follows:

- (i) In the case of the Seller, the compensating amount shall be determined by multiplying the amount of the shortfall in kW.h times the amount per kW.h set forth in the table in section 4.1 of Appendix 2; and
- (ii) In the case of BC HYDRO, the compensating amount shall be determined by multiplying the amount of the shortfall in kW.h times the Tier 1 Energy Price as set forth in Appendix 2 that was payable by BC Hydro for Electricity in December of the calendar year in which the shortfall occurred.

**8.3 Priority of Electricity Supply** - It is agreed that BC HYDRO shall at all times during each calendar year of the Term have first priority to the supply of Electricity from the Seller's Plant up to the amount of the Seller's Maximum Delivery Obligation set forth in section 2.1 of Appendix 2. The Seller shall not, without BC HYDRO's prior consent (such consent not to be unreasonably withheld or delayed by BC HYDRO) sell or commit to sell Electricity to any third party if the effect of such sale or commitment to sell would derogate from the first priority given to BC HYDRO by the preceding sentence. For these purposes the Seller's Maximum Delivery Obligation shall be prorated on a monthly basis, using the monthly percentages set forth in Table 1 of Appendix 3, for the period during which any sale or commitment to sell Electricity to a third party would remain in effect.

**8.4 Disposition of Surplus Electricity** - If the Seller intends to sell Electricity to any party other than BC HYDRO as permitted under this EPA, the Seller, at its cost, shall obtain all permits, licenses and other approvals of any government or governmental agency, including regulatory approvals, all additional interconnection facilities, all additional metering facilities, all interconnection agreements, and all transmission facilities or services, including wheeling agreements, required to enable it to lawfully generate sell and deliver Electricity to such third parties. The Seller shall not take, or omit to take, any action that would cause the Seller to cease to be exempt from regulation as a "public utility", as defined in the UCA, at any time during the Term.

**8.5 Custody, Control and Risk of Electricity** - Custody, control and risk of, and title to, Electricity will pass from the Seller to BC HYDRO at the Point of Delivery.

**8.6 Limitations**

- (a) The obligations of the Seller under Section 8.1 are subject to:
  - (i) Force Majeure invoked by the Seller in accordance with Article 10;

- (ii) disconnection of the Seller's Plant by BC HYDRO – Distribution pursuant to the Interconnection Agreement for reasons that are not attributable to the Seller; and
  - (iii) Outages of BC HYDRO'S Plant except to the extent otherwise provided in Section 8.7.
- (b) The obligations of BC HYDRO under Section 8.1 are subject to:
- (i) Force Majeure invoked by BC HYDRO in accordance with Article 10;
  - (ii) the right of BC HYDRO to disconnect the Seller's Plant pursuant to the Interconnection Agreement;
  - (iii) the right of BC HYDRO to refuse to accept deliveries of Electricity from the Seller in accordance with Article 7; and
  - (iv) Outages of BC HYDRO's Plant except to the extent otherwise provided in Section 8.7.

Without limiting the foregoing, BC HYDRO has no obligation to pay for any Electricity generated, or capable of being generated, while the Seller's Plant has been disconnected by BC HYDRO pursuant to the Interconnection Agreement.

**8.7 Price and Deemed Deliveries** - BC HYDRO shall pay for Delivered Electricity at the prices specified in Appendix 2, which prices include full and total payment and consideration for the acquisition or retention by BC HYDRO of all Green Rights and Emission Credits pursuant to Section 8.8. If during any calendar month after COD the Seller is unable to deliver Electricity at the Point of Delivery due to an Outage or Outages of BC HYDRO's Plant, exceeding in the aggregate 24 hours, whether or not continuous, in that month, other than an Outage attributable to the Seller or the Seller's Plant, then the quantity of electricity that could have been generated and delivered at the Point of Delivery after such 24 hours has elapsed and during the balance of that Outage, had the Outage not occurred, but having regard to all other conditions prevailing during the Outage, will be deemed to be Delivered Electricity for the purpose of this Section 8.7. The amount of Electricity deemed to have been delivered in accordance with the foregoing shall be determined by (i) reference to the amount of Electricity delivered to the Point of Delivery during the 72 hour period of operation of the Seller's Plant prior to the Outage, if such deliveries are or would be representative of the Electricity that would have been delivered if the Outage had not occurred, or (ii) by agreement between the Seller and BC HYDRO, or, failing such agreement, by arbitration pursuant to section 20.6.

**8.8 Green Rights and Emission Credits** – The Seller and BC HYDRO agree that BC HYDRO will retain, or acquire from the Seller, at no additional cost to BC HYDRO, and in proportion to the amount of Delivered Electricity taken or deemed to be taken by BC HYDRO pursuant to this EPA in relation to the amount of Electricity delivered

to others as permitted by Section 8.3 hereof, , all right, title, interest and benefit in and to any and all (i) Green Rights, and (ii) Emission Credits. To the extent required to give effect to this Section 8.8, the Seller hereby transfers, assigns and conveys to BC HYDRO any and all such Green Rights and Emission Credits, in the proportion aforesaid. To the extent that the said Green Rights and Emission Credits cannot be lawfully allocated or transferred to more than one party, all such Green Rights and Emission Credits shall be wholly the property of BC HYDRO.

- 8.9 **Revenue Metering Equipment** - The Seller will, at the Seller's cost, install at the Point of Metering revenue metering equipment which is capable of being remotely interrogated. The Seller will maintain that equipment at the Seller's cost. That equipment will be used for determining the quantity of Delivered Electricity under this EPA. The Seller will ensure that the meter at the Point of Metering is calibrated to measure the quantity of Delivered Electricity at the Point of Delivery. The *Electricity and Gas Inspection Act* (Canada) will govern the metering under this EPA. If at any time BC HYDRO is dissatisfied with the condition or registration of all or part of the Seller's metering equipment or if there is any dispute regarding the accuracy of the Seller's metering equipment, then BC HYDRO may give notice to the Seller of its dissatisfaction or of the dispute, in which case BC HYDRO and the Seller will proceed to rectify the matter in accordance with the *Electricity and Gas Inspection Act* (Canada).

## 9. STATEMENTS AND PAYMENT

### 9.1 Statements

- (a) In each calendar month after the calendar month in which Electricity is first delivered to BC HYDRO, the Seller, at its convenience, will deliver to BC HYDRO a statement prepared by the Seller for the preceding calendar month. The statement must indicate the amount of Delivered Electricity, and the amount payable by BC HYDRO for that Delivered Electricity pursuant to Appendix 2, and set out in reasonable detail the manner by which the statement and the amount payable by BC HYDRO was computed. The statement must be accompanied by sufficient data to enable BC HYDRO, acting reasonably, to satisfy itself as to the accuracy of the statement. The data must include a reading of the Metering Equipment read locally or interrogated remotely by electronic means.
- (b) Either Party may advise 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, amounts on a previously issued statement will be considered accurate and amounts which were omitted will be considered to be nil, other than amounts advised within the 36 month period, which will be resolved in accordance with this EPA.

## 9.2 Payment

- (a) Within 30 days after receipt of a statement delivered pursuant to subsection 9.1(a), BC HYDRO shall pay to the Seller the amount set out in the statement. If BC HYDRO disputes any portion of the amount, it must nevertheless pay the undisputed portion.
- (b) BC HYDRO may dispute all or part of a statement by notice to the Seller in compliance with subsection 9.1(b). The Seller may dispute the amount paid by notice to BC HYDRO, in accordance with subsection 9.1(b).
- (c) 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 3% until the amount is paid.

9.3 **GST and PST** - All dollar amounts in this EPA do not include GST and PST, which, if applicable, will be added to each statement.

## 10. FORCE MAJEURE

### 10.1 Invoking Force Majeure and Notice

- (a) Neither Party will be in default as to any obligation under this EPA if that Party is unable to perform that obligation due to an event or circumstance of Force Majeure, of which notice is given as required in this Section 10.1.
- (b) If there is a Force Majeure affecting a Party's ability to perform an obligation under this EPA, that Party will promptly notify the other Party of the Force Majeure. The notice must identify the nature of the Force Majeure, its expected duration and the particular obligations affected by the Force Majeure. The affected Party shall provide the other Party reports with respect to the Force Majeure at such intervals as the other Party may reasonably request while the Force Majeure continues. A Party will be deemed to have invoked Force Majeure from the date when that Party gives notice of the Force Majeure in accordance with this subsection 10.1(b). The Party invoking Force Majeure shall give prompt notice of the end of the Force Majeure.
- (c) The Party invoking Force Majeure shall use all commercially reasonable efforts, including sourcing goods and services from alternative suppliers or using alternative methods, to remove the Force Majeure as soon as possible, provided that settlement of strikes, lockouts and other labour disturbances will be wholly within the discretion of the Party involved. The Parties acknowledge that the foregoing does not oblige or permit the Seller to provide electricity from any generating source other than the Seller's Plant. The Party invoking Force Majeure shall promptly respond to any inquiry from the other Party regarding the efforts being undertaken to remedy the situation.

**10.2 Exclusions - A Party may not invoke Force Majeure:**

- (a) for economic hardship or for lack of money, credit or markets; or
- (b) if the Force Majeure is the result of a breach by the Party seeking to invoke Force Majeure of a permit, certificate, license or approval or of any applicable laws, regulations or orders; or
- (c) if the Party seeking to invoke Force Majeure has failed to use all commercially reasonable efforts to prevent or remedy the situation and remove, so far as possible and with reasonable dispatch, the Force Majeure; or
- (d) if the event or circumstance relied upon was caused by a default under this EPA by the Party seeking to invoke Force Majeure.

**10.3 Termination for Extended Force Majeure - A Party receiving a notice from the other Party invoking Force Majeure may terminate this EPA by notice to the other Party if the Force Majeure has not been removed within 365 days after the date of the notice invoking Force Majeure, in which case Section 15.3 applies.**

**11. ELECTRIC SERVICE TO THE SELLER**

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

**12. INSPECTION**

For the sole purpose of verifying compliance with this Agreement, on reasonable prior written notice to the Seller, the Seller shall provide BC HYDRO with prompt access during normal business hours to the Seller's Plant and to the records relating to the Seller's Plant including, Electricity production records and operating logs, relay target reports, maintenance reports, and statement support records. BC HYDRO may take copies of all records relating to the Seller's Plant, all of which are confidential information under Section 20.7. BC HYDRO shall exercise any access under this Section 12 in a manner that minimizes disruption to the operation of the Seller's Plant. Any review, inspection or audit by BC HYDRO of the Seller's Plant, its design, construction, operation, maintenance, repair, records or other activities of the Seller during this EPA may not be relied upon by the Seller, or others, as confirming or approving those matters.

**13. INSURANCE**

- 13.1 Insurance - The Seller shall place and maintain commercial general liability insurance with a limit of not less than \$3,000,000 for any one occurrence from the commencement of construction work on the site of the Seller's Plant and for the Term of this EPA.**



- 13.2 **Insurance Provisions** - Commercial general liability policies must include BC HYDRO, its directors, officers, employees and agents as additional insureds and must contain a severability of interest clause. The Seller shall give BC HYDRO a copy of the insurance certificate for each policy required to be maintained by the Seller under this Article 13.

#### 14. ASSIGNMENT

- 14.1 **Assignment** - A Party may not 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 except:

- (a) with the consent of the other Party, such consent not to be unreasonably withheld or delayed, or
- (b) to an Affiliate, on notice to, but without the consent of, the other Party, provided that the assignor will remain liable for the obligations of the assignee under this EPA, unless otherwise agreed in writing by the other Party.

Notice of intent to assign, and where applicable a request for consent to assign, must be given by the assignee to the other Party not less than 35 days before the date of assignment, and, except in the case of assignment to a lender, must be accompanied by a proposed form of assignment and assumption agreement, and, in the case of an assignment pursuant to subsection 14.1(a), other than to a lender, evidence of the capability of the assignee as required by subsection 14.2(b). If the consent of the other Party to an assignment, other than to a lender, is required hereunder, the other Party shall give its consent, or notice of the withholding of consent accompanied by written reasons therefor, within 28 days after receipt of the foregoing notice, request and evidence, as applicable, failing which such consent is deemed to be given. Consent to an assignment to a lender will not be given or be deemed to be given until full execution and delivery of the agreement contemplated by Section 14.3. Any sale or other disposition of all or a substantial part of the Seller's Plant, or of all or any interest in this EPA or revenue derived from this EPA, and any mortgage, pledge, charge or grant of a security interest in all or any part of the Project Assets and any change of control, merger, amalgamation or reorganization of the Seller is deemed to be an assignment of this EPA by the Seller for the purpose of this Article 14, including without limitation, Section 14.2.

- 14.2 **Preconditions to Assignment** - Without limiting subsection 14.1(a), any assignment pursuant to Section 14.1 (other than an assignment to a lender) is subject to:

- (a) the assignee entering into and becoming bound by this EPA and assuming all the obligations and liabilities of the assignor under the EPA arising both before and after the assignment of the EPA;
- (b) except for an assignment under subsections 14.1(b), the assignee demonstrating to the reasonable satisfaction of the other Party its capability (financial and

otherwise) to fulfill the obligations of the assignor under this EPA, and upon such demonstration and concurrently with the agreement required under subsection 14.2(a), the assignor shall be released from all future obligations and liabilities under the EPA; and

- (c) except for an assignment under subsections 14.1(b), the other Party, acting reasonably, being satisfied that the proposed assignment would have no material adverse impact on it or its business or reputation.

14.3 **Assignment to Lender** - If the Seller intends to assign this EPA to a lender or lenders, the Seller acknowledges that BC HYDRO is entitled to require, as a condition of BC HYDRO's consent to such assignment, that the Seller and the lender enter into an agreement with BC HYDRO with respect to the terms on which BC HYDRO will provide its consent, and the relative priorities of any security given to the lender and BC HYDRO. BC HYDRO agrees to negotiate the terms of such agreement in good faith and in a commercially reasonable manner. For greater clarity any security granted to the Facility Lender by the Seller with respect to the Seller's Plant and any right to construct and operate the Seller's Plant, including the Resources, that the Facility Lender may have in relation to its security or otherwise, will have priority and precedence over any security granted by the Seller to BC HYDRO and any right BC HYDRO may have in relation to such security or otherwise to construct and operate the Seller's Plant including the Resources.

14.4 **Costs** - The assignor shall reimburse the other Party for all costs reasonably incurred in connection with an assignment.

14.5 **No Assignment Before COD** - The Seller shall not assign or otherwise dispose of any interest in this EPA prior to COD, except (i) to an Affiliate as permitted under subsection 14.1(b), or (ii) to a lender as permitted under subsection 14.1(a) and Section 14.3, or (iii) with the prior consent of BC HYDRO.

## 15. TERMINATION

15.1 **Termination for Bankruptcy/Insolvency or Default** - A Party may terminate this EPA by notice to the other Party if:

- (a) the other Party is Bankrupt or Insolvent and that termination will be effective immediately upon notice to the other Party; or
- (b) except where an amount has been disputed in the manner specified in subsection 9.1(b), an amount due and payable by the other Party to the terminating Party under this EPA remains unpaid for 60 days after its due date, and that termination will be effective upon 30 days notice to the other Party, unless the other Party makes payment in full within that 30 day notice period; or
- (c) the other Party is in material default of any of its covenants, representations

and warranties or other obligations under this EPA (other than as provided in subsection 15.1(b)), and that termination will be effective upon 30 days notice to the other Party, unless the other Party cures the default within that 30 day notice period or, if the default cannot be cured within that notice period, and the other Party is working diligently to cure the default, then after expiry of a reasonable time to cure the default.

**15.2 Termination by BC HYDRO** - BC HYDRO may terminate this EPA at any time by notice to the Seller if:

- (a) the Interconnection Agreement is terminated; or
- (b) the Seller's Plant is disconnected from BC HYDRO's Plant under the Interconnection Agreement for reasons attributable to the Seller more than twice or for a period of more than 360 hours in aggregate duration (whether or not continuous) in any continuous period of 365 days;

and that termination will be effective upon 30 days notice to the Seller, unless, in the case of termination under subsection 15.2(a), a new Interconnection Agreement is entered into between the Seller and BC HYDRO within that 30 day period or, in the case of termination under subsection 15.2(b), the Seller has cured the cause of the disconnection within that 30 day period or where the cause cannot be cured within that 30 day period, and the Seller is working diligently to cure the cause, then after expiry of a reasonable time to cure the cause.

**15.3 Effect of Termination** - If this EPA is terminated pursuant to Article 3, Section 5.5, Section 7.3, Section 10.4 or Article 15:

- (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, subject to any express limitations or exclusions of liability set out in this EPA; and
- (b) the Parties will remain bound by Sections 20.6 and 20.7 and the Seller will remain bound by Section 3.3 and Article 19 and, for a period of 36 months following termination of this EPA, Section 12 and by any other provisions necessary for the interpretation and enforcement of those provisions.

**15.4 Limitation on Liability** - Except as expressly set out in this EPA, the Seller will not be liable for any losses, damages, costs, expenses and liabilities including special, indirect or consequential damages resulting from any failure by it to deliver electricity to BC Hydro in accordance with this EPA and for greater clarity, any costs and expenses BC Hydro incurs to provide electricity other than from the Seller's Plant to BC Hydro's customers.

**16. STEP-IN RIGHTS TO PERMIT BC HYDRO TO CONSTRUCT AND OPERATE**

- 16.1 Construction and Operation by BC HYDRO** - Upon the occurrence of any event giving rise to a right of BC HYDRO to terminate this EPA pursuant to section 15.1 or 15.2, BC HYDRO may by notice to the Seller, with a copy to each Facility Lender with whom BC HYDRO has entered into a consent agreement pursuant to section 14.3, declare its right to terminate this EPA, and subject to any such consent agreement BC HYDRO may, but is not obliged to, in addition to any other remedies it may have hereunder or any other contract documents or at law, enter upon the Seller's Plant and take over the construction and/or operation of the Seller's Plant, and take over direction of the Seller's Plant, its employees, management, and related equipment, materials, goods and other resources (collectively, the "Resources") as are intended or proposed to be used in the construction and/or operation of the Seller's Plant. BC HYDRO may take possession and have use of the Seller's Plant and all Resources for construction and/or operation of the Seller's Plant, and may construct and/or operate the Seller's Plant itself, or, at its option, may cause the construction and/or operation of the Seller's Plant to be provided by any other persons or firm whom it may choose to employ, using in so doing, at its option, such of the said Resources as it or such person or firm shall think fit, and it and any such person or firm shall at their option be entitled to remain in the Seller's Plant with employees and others, and to take over direction (and, if necessary, payment) of such of the Seller's employees as may be necessary to construct and/or operate the Seller's Plant, but such employees shall at all times remain employees of the Seller. BC HYDRO agrees to pay to the Seller a reasonable fee for use of the Resources for such time as BC HYDRO makes use thereof. BC HYDRO and the Seller agree to negotiate such fee in good faith and in a commercially reasonable manner. The Seller shall not grant any Person, other than the Facility Lender (as defined in section 17.2), a right to possess, assume control of and carry out construction and/or operation of the Seller's Plant that is equal, or superior, to BC HYDRO's right under this Section 16.1.
- 16.2 Appointment As Agent** - The Seller hereby irrevocably appoints BC HYDRO as the Seller's agent for the exclusive purpose of executing such documents and taking such other actions as BC HYDRO may reasonably deem necessary or appropriate to exercise BC HYDRO's rights pursuant to this Article 16.
- 16.3 Power of Attorney** - The Seller hereby irrevocably grants to BC HYDRO a power of attorney to carry out all acts, and to execute all documents, as BC HYDRO may reasonably deem necessary or appropriate to exercise BC HYDRO's rights pursuant to this Article 16. BC HYDRO shall not exercise such power of attorney until the occurrence of an event giving rise to a right of BC HYDRO to terminate this EPA pursuant to section 15.1 or 15.2 and until BC HYDRO has given the Seller notice in accordance with Section 16.4.
- 16.4 Notice** - BC HYDRO shall give the Seller and the Facility Lender 10 days' prior notice of the contemplated exercise of BC HYDRO's rights under Section 16.1. Upon

- receipt of such notice, the Seller shall within 10 days after the date of delivery of such notice collect and have available at a convenient, central location at the Seller's Plant all documents, contracts, books, manuals, reports, records and Permits required to construct, operate and maintain the Seller's Plant in accordance with Good Electric Industry Practice. From the date that is 10 days after the date of delivery of notice pursuant to this Section 16.4, BC HYDRO, its employees, contractors or designated third parties shall have the unrestricted right to enter the Seller's Plant for the purpose of constructing and/or operating the Seller's Plant.
- 16.5 **Reimbursement of Costs** - The Seller shall within 15 days after the date of delivery of an invoice from BC HYDRO to the Seller reimburse BC HYDRO for any expenses reasonably incurred by BC HYDRO in exercising its rights under this Article 16. If the Seller fails to pay any amount owing by the Seller to BC HYDRO pursuant to this Section 16.5, in addition to the rights provided to BC HYDRO herein, BC HYDRO shall be entitled to draw or realize on any security provided to BC HYDRO under this agreement in such amount, and if BC HYDRO draws any cash security or letter of credit security the Seller shall promptly replenish or restore such security.
- 16.6 **Proceeds** - During any period that BC HYDRO is in possession of, and constructing and/or operating, the Seller's Plant pursuant to this Article 16, BC HYDRO shall continue to comply with its payment obligations under this EPA provided that BC HYDRO shall be entitled to deduct from any amounts owing by BC HYDRO to the Seller pursuant to the EPA any and all expenses reasonably incurred by BC HYDRO in taking possession of and constructing and operating the Seller's Plant and shall thereafter remit any remaining proceeds to the Seller.
- 16.7 **Title** - During any period that BC HYDRO is in possession of, and constructing and/or operating, the Seller's Plant pursuant to this Article 16 the Seller shall retain legal title to, and ownership of, the Seller's Plant and all related equipment, materials, goods and other resources, the Seller shall remain the employer of all employees and management employed by the Seller immediately prior to BC HYDRO taking possession of the Seller's Plant and BC HYDRO shall assume possession, operation and control solely as agent for the Seller without liability as a mortgagee in possession, or otherwise, which the Seller waives any right to claim.
- 16.8 **Resumption of Control** - The Seller may resume construction and/or operation of the Seller's Plant and BC HYDRO shall relinquish its right to construct and/or operate the Seller's Plant when the Seller demonstrates to BC HYDRO's reasonable satisfaction that it will remove those grounds that originally gave rise to BC HYDRO's rights pursuant to this Article 16 in that the Seller will resume construction and/or operation of the Seller's Plant in accordance with the provisions of this EPA and has cured, or within a reasonable period of time will cure, any grounds for termination pursuant to Article 15 which allowed BC HYDRO to exercise its rights under this Article 16. BC HYDRO agrees to return the Resources in its possession or control to the Seller in the same condition (reasonable wear and tear accepted) as when BC HYDRO exercised its rights pursuant to this Article 16.

- 16.9 **Liability** - BC HYDRO's exercise of its rights hereunder to possess and construct and/or operate the Seller's Plant and take control of other Resources shall not be deemed to be an assumption by BC HYDRO of any of the Seller's liabilities or obligations, nor shall BC HYDRO be considered for any purpose a mortgagee in possession. If at any time after exercising its rights to take possession of, and construct and/or operate, the Seller's Plant, BC HYDRO elects to return possession of the Seller's Plant and other Resources to the Seller, BC HYDRO shall provide the Seller with at least 15 days prior notice of the date BC HYDRO intends to return such possession and upon receipt of such notice the Seller shall take all measures necessary to resume possession of the Seller's Plant on the date specified in the notice from BC HYDRO.
- 16.10 **BC HYDRO's Obligation** - If BC HYDRO assumes construction and/or operation of the Seller's Plant under this Article 16, BC HYDRO shall construct and/or operate the Seller's Plant in accordance with Good Electric Industry Practice. If BC HYDRO becomes obligated to return possession of the Seller's Plant to the Seller, or to relinquish possession of the Seller's Plant to the Facility Lender, as provided in this Article 16, BC HYDRO will deliver up the structures, equipment and apparatus comprising the Seller's Plant over which BC HYDRO took control, materially in the same condition as when BC HYDRO took possession (ordinary wear and tear, and damage or destruction by reason of Force Majeure excepted).
- 16.11 **BC HYDRO Services Only** - The rights and remedies provided in this Article 16 shall apply only to the generation of electricity or the sale thereof to BC HYDRO, and shall not in any way impact upon or effect services or electrical sales which may be provided by the Seller to any other customer or entity.

## 17. SECURITY FOR SELLER PERFORMANCE

- 17.1 **Mortgage and General Security Agreement** - By not later than 60 days after the Effective Date, the Seller shall execute and record a mortgage and a general security agreement in respect of the Seller's Plant in the form attached hereto as Appendix 4 and Appendix 5 respectively or in such other form as is reasonably acceptable to BC HYDRO (collectively, the "Security"). The Security shall be given to secure the Seller's continuing performance of all its obligations (including without limitation BC HYDRO's rights pursuant to Article 16) under, and any amounts that may be owed by the Seller to BC HYDRO pursuant to, this EPA, including any damages for failure to perform its obligations hereunder.
- 17.2 **Perfection of Security** - The Parties shall confirm, define and perfect the Security by executing, filing, registering and recording at the expense of the Seller the Security and such financing statements in respect thereof as BC HYDRO may require. The Seller shall take such further action and execute such further instruments as BC HYDRO shall reasonably require to confirm and continue the validity, priority, and perfection of the Security.

17.3 **Rights Under EPA Not Affected** - The granting of the Security shall not be to the exclusion of, nor be construed to limit, the amount of any other security or any further claims, causes of action or other rights accruing to BC HYDRO by reason of any breach or default by the Seller under this EPA or the early termination of this EPA as provided for herein.

17.4 **Enforcement and Discharge of Security** - The Seller shall reimburse BC HYDRO for the direct expenses (including, without limitation, the reasonable fees and expenses of legal counsel) reasonably incurred by BC HYDRO in connection with the enforcement of the Security and any other documents evidencing the Security. The Security shall be discharged and released, and BC HYDRO shall take any steps reasonably required by the Seller to effect and record such discharge and release, upon the expiry of the Term of this EPA or upon termination of this EPA pursuant to Article 15 or Section 3.1 and in either case upon satisfaction by the Seller of all outstanding obligations and liabilities of the Seller under this EPA.

17.5 **Priority of EPA** - In the event of any conflict or inconsistency between the terms of the Security and the terms of this EPA, the terms as stated in this EPA shall prevail.

## 18. **SELLER'S REPRESENTATIONS AND WARRANTIES**

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

- (a) **Corporate Status** - If the Seller is a corporation, the Seller is duly incorporated, organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, is registered or otherwise lawfully authorized to carry on business in British Columbia, and has full power, capacity and authority to own its assets and to carry on its business as now conducted and to enter into and to perform its obligations under this EPA;
- (b) **Bankruptcy** - No actions have been taken or authorized by the Seller or any other Person to initiate proceedings for, or in respect of, the bankruptcy, insolvency, liquidation, dissolution or winding-up of the Seller or to appoint a receiver, liquidator, trustee or assignee in bankruptcy in respect of the Seller;
- (c) **No Litigation** - The Seller is not subject to any order, judgment or decree, litigation, investigation or proceeding, or claim which would interfere with the ability of the Seller to comply with this EPA and no facts, circumstances or conditions exist which might reasonably give rise to such claim, investigations, proceedings or litigation;
- (d) **Assets** - There is no appropriation, expropriation or seizure of any of the assets of the Seller pending or threatened;

- (e) No Conflict - Neither the signing of this EPA nor the carrying out of the Seller's obligations under this EPA will: (i) constitute or cause a breach of, default under, or violation of, the memorandum or articles of incorporation or bylaws of the Seller, any permit, franchise, lease, license, approval or agreement to which the Seller is a party, or any other covenant or obligation binding on the Seller or affecting any of its properties; (ii) cause a lien or encumbrance to attach to the Seller's Plant, other than a security interest granted in respect of financing the design, construction and operation of the Seller's Plant; or (iii) result in the acceleration, or the right to accelerate, any obligation under, or the termination of, or the right to terminate, any permit, franchise, lease, license, approval or agreement related to the Seller's Plant;
- (f) Binding Obligation - This EPA constitutes a valid and binding obligation of the Seller enforceable against the Seller in accordance with its terms;
- (g) Authorization, Execution and Delivery - This EPA has been duly authorized, executed and delivered by the Seller; and
- (h) Seller's Proposal - All material information in the Seller's Proposal is true and correct and there is no material information omitted from the Seller's Proposal, which would make the information in the Seller's Proposal misleading or inaccurate.

## 19. INDEMNITY

The Seller shall indemnify, defend and hold BC HYDRO and its shareholder(s), directors, officers, employees, agents, representatives, successors and permitted assigns (the "Indemnified Parties") harmless from and against all losses, damages, costs, expenses, liabilities, actions, causes of action, demands, proceedings, claims, expenses, orders, fines and penalties (including all reasonable legal fees and expenses on a solicitor and own client basis) which any of the Indemnified Parties suffer, incur, or are subject to or liable for, as a result of any act or omission (whether negligent or not) of the Seller, any of its Affiliates or their employees, agents or contractors in connection with the design, construction, interconnection to BC HYDRO's Plant, commissioning, financing, operation, maintenance, modification, repair, decommissioning, closure or otherwise of the Seller's Plant, except to the extent caused by the negligence of BC HYDRO or the breach of this EPA by BC HYDRO or the failure by BC Hydro to deliver electricity to its customers in accordance with its approved customer tariff for Atlin and vicinity.

## 20. GENERAL PROVISIONS

- 20.1 **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.



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

20.3 **Notices** - Any notice, consent, waiver, request, statement or bill (a "notice") 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 stated in subsection 20.3(c) or (d); and:

(a) may be delivered by hand or by a courier service during normal business hours on a Business Day, in which case the notice will be deemed to have been delivered on that Business Day; or

(b) may be sent by facsimile, in which case, if the printed confirmation of transmission indicates the transmission occurred during normal business hours on a Business Day, the notice will be deemed to have been delivered on that Business Day and otherwise the notice will be deemed to have been delivered on the next Business Day after the date of transmission set out in the printed confirmation of transmission.

(c) subject to subsection 20.3(e), the address and FAX number of BC HYDRO for notices is:

Manager, Non-Integrated Areas  
6911 Southpoint Drive  
Burnaby, B.C.  
V3N 4X8  
Fax: (604) 528-3220

(d) subject to subsection 20.3(e), the address and FAX number of the Seller for notices is:

Manager, Atlin Hydro Project  
Taku Land Corporation  
Box 408  
Atlin, B.C.  
V0W 1A0  
Fax: (250) 651-7909

(e) either Party may change its address or FAX number for notices under this EPA by notice to the other Party.

The addressees designated by BC HYDRO and Seller as set forth in sections 20.3 (c) and (d), and any other persons designated in substitution therefor, are in this EPA referred to as "BC HYDRO's Contract Representative" and "Seller's Contract Representative" respectively.

20.4 **Entire Agreement and Amendment** - This EPA contains the entire agreement

between the Parties with respect to the purchase and sale of Electricity. This EPA may not be amended except by an agreement in writing signed by both Parties.

- 20.5 **No Waiver** - 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.
- 20.6 **Dispute Resolution** - If any dispute arises under or in relation to this EPA, that dispute will be referred to and finally resolved by arbitration by a single arbitrator under the domestic rules of the British Columbia International Commercial Arbitration Centre ("BCICAC"). The arbitration will take place at Vancouver, British Columbia. If at the time a dispute arises the BCICAC does not exist, the dispute will be finally settled by arbitration by a single arbitrator under such rules as the Parties may agree in writing, or failing agreement, by a single arbitrator appointed under the Commercial Arbitration Act (British Columbia) and such rules as that arbitrator may establish or adopt. The arbitrator will have jurisdiction and power to make interim, partial or final awards ordering specific performance, injunction and any other equitable remedy. The Parties are entitled to seek interim measures of protection from the courts pending completion of any arbitration. All performance required under this EPA by the Parties and payments required under this EPA will continue during the dispute resolution proceedings contemplated by this Section 20.6, provided that this Section may not be interpreted or applied to delay or restrict the exercise of any right to suspend performance under or terminate this EPA pursuant to the express terms hereof. Any payments or reimbursements required by an arbitration award will be effective as of the date determined in the award, and, without duplication with subsection 9.2(c), will bear interest at the Prime Rate plus 3%.
- 20.7 **Confidentiality**
- (a) During the term of the EPA and for five years thereafter, each Party shall treat as confidential and will not cause or permit the publication, release or disclosure of all or part of this EPA, any information acquired from the other Party in connection with the settlement of the EPA, or any other information identified herein as confidential ("confidential information"), except to the extent that publication, release or disclosure is necessary to enable a Party to fulfill its obligations under this EPA, is required by law, is made with the prior consent of the other Party, or if such information has entered the public domain other than through the actions of the Party disclosing the information. Nothing in this Section 20.7 shall restrict or prevent BC HYDRO from publishing, releasing or disclosing information relating generally to BC HYDRO's green energy program. The Seller may disclose confidential information to lenders and potential lenders and their employees and advisers in connection with the financing of the Seller's Plant, provided that such disclosure is in accordance with normal lending practices and the lenders and potential lenders to whom

the disclosure is made provide a written, binding undertaking to the Parties to keep the confidential information disclosed to them strictly confidential to the same extent as if they were parties to this EPA. BC HYDRO may disclose confidential information to representatives of the Government of British Columbia who have a need to have knowledge of the confidential information and who have been informed by BC HYDRO of the need to maintain the confidentiality of information disclosed to them.

- (b) The Seller acknowledges that BC HYDRO is subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia) and agrees that BC HYDRO's non-disclosure obligations under this EPA may be subject to the provisions of that legislation.
- (c) The Parties acknowledge that confidential information constitutes commercial and financial information of the Seller and BC HYDRO, which has been 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 and further could reasonably be expected to harm the financial or economic interests of BC HYDRO. Accordingly, the Parties confirm their intention that all confidential information disclosed to each other shall be deemed to be confidential and exempt from disclosure to third persons in accordance with Section 21 of the *Freedom of Information and Protection of Privacy Act* of British Columbia, as amended from time to time.

- 20.8 **Interconnection Agreement** – Notwithstanding that BC HYDRO Distribution is a business unit of British Columbia Hydro and Power Authority, 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 herein expressly provided.
- 20.9 **Commodity Contract** – This EPA constitutes a commodity contract for the purposes of subsection 65.1(8) of the *Bankruptcy and Insolvency Act* (Canada) and subsection 11.1(1) of the *Companies Creditors Arrangement Act* (Canada)
- 20.10 **Further Assurances** - Each Party shall, upon the reasonable request of the other Party, do, sign or cause to be done or signed all further acts, deeds, things, documents and assurances required for the performance of this EPA.
- 20.11 **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.
- 20.12 **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.

[This is page 26 of the Electricity Purchase Agreement dated as of November 21, 2006 relating to the Pine Creek Project for electricity supply to the community of Atlin.]

IN WITNESS WHEREOF each Party by its duly authorized representative(s) has signed this EPA as of the date of this EPA.

For **TAKU LAND CORPORATION**

John D. Ward  
Authorized Representative

John D. Ward, President  
Print Name and Office

Nov 21 2006  
Date

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

Bob Elton  
Authorized Representative

Bob Elton, President  
Print Name and Office

November 21, 2006  
Date

## APPENDIX 1

### DEFINITIONS

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

- (a) **"Affiliate"** means, with respect to the Seller, any Person directly or indirectly Controlled by, Controlling, or under common Control with, the Seller and with respect to BC HYDRO, any Person directly or indirectly Controlled by BC HYDRO.
- (b) **"BC HYDRO"** means British Columbia Hydro and Power Authority and its successors and permitted assigns.
- (c) **"BC HYDRO – Distribution"** means the division within BC Hydro having responsibility for the installation, operation and maintenance of BC HYDRO'S electrical distribution wires, poles, transformers, switchgear and related facilities.
- (d) **"BC HYDRO's Plant"** means the physical plant of BC HYDRO that interconnects, or affects the interconnection, or is affected by the interconnection, with the Seller's Plant.
- (e) **"BCUC"** means the British Columbia Utilities Commission.
- (f) **"Bankrupt or Insolvent"** means, with respect to a Person: (i) the Person has started proceedings to be adjudicated a voluntary bankrupt or consented to the filing of a bankruptcy proceeding against it; or (ii) the Person has filed a petition or similar proceeding seeking reorganization, arrangement or similar relief under any bankruptcy law; or (iii) 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 (iv) the Person has voluntarily suspended the transaction of its usual business; or (v) a court has issued an order declaring the Person bankrupt or insolvent.
- (g) **"Business Day"** means any calendar day which is not a Saturday, Sunday or other day on which the main branch of Bank of Montreal in Vancouver is not open for business.
- (h) **"COD"** means the commercial operation date as determined in accordance with Section 5.2.
- (i) **"Control"** of any Person means (i) 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, or (ii) ownership of 50% or more of the equity or beneficial interest in that Person, or (iii) the

- ability to direct the business and affairs of any Person by acting as a general partner, manager or otherwise.
- (j) **"CPI"** means, subject to Section 1.9, the Consumer Price Index for Canada, All Items (Not Seasonally Adjusted) as published by Statistics Canada.
  - (k) **"Delivered Electricity"** means (i) Electricity, expressed in MWh, as recorded by the Metering Equipment, delivered by the Seller at the Point of Delivery, which BC HYDRO accepts, or is required to accept, pursuant to Section 8.1, and includes electricity deemed to be Delivered Electricity pursuant to Section 8.7.
  - (l) **"Electricity"** means electricity generated by the Seller's Plant net of any electricity required to service the Seller's Plant.
  - (m) **"Emissions Credits"** means all right, title, interest and benefit in and to any credit, reduction right, set-off, allocated pollution right, emission reduction allowance, or other proprietary or contractual right, whether or not tradable, resulting from the actual or assumed displacement of emissions from generating facilities owned or operated by BC HYDRO or from which BC HYDRO or any of its Affiliates purchases electricity, wherever located, as a result of the generation, delivery or purchase of Electricity at or from the Seller's Plant during the Term.
  - (n) **"Energy Source"** means the source of energy used to generate Electricity at the Seller's Plant, as specified in Appendix 3.
  - (o) **"Facility Lender"** means a lender who provides financing to the Seller for the construction or operation of the Seller's Plant and who takes security over all or any portion of the Seller's Plant to secure such financing, which financing, together with any other financing secured by the Seller's Plant, does not exceed 90% of the construction cost thereof.
  - (p) **"Forecast Load"** means the amount of Electricity, for any calendar year of the Term, shown in Column 2 of the table in section 2.1 of Appendix 2 opposite each such calendar year.
  - (q) **"Force Majeure"** means, subject to the exclusions in Section 10.2, any event or circumstance not within the reasonable control of the Party claiming Force Majeure and includes:
    - (i) acts of God, including wind, ice and other storms, lightning, floods, earthquakes, volcanic eruptions and landslides;
    - (ii) strikes, lockouts and other industrial disturbances;
    - (iii) epidemics, war (whether or not declared), blockades, acts of public enemies, acts of sabotage, civil insurrection, riots and civil disobedience;

- (iv) acts or omissions of federal, provincial or local governments or any of their boards or agencies, other than BC HYDRO or entities Controlled by BC HYDRO, including delays in regulatory process, and orders of a regulatory authority or court of competent jurisdiction; and
- (v) explosions, fires, or mechanical breakdowns.
- (r) **"Forced Outage"** means an Outage which is not a Force Majeure resulting from an unplanned component failure or other condition, which requires under Good Utility Practice within 72 hours, a generator or other component to be removed from service or the load on a generator or reliance on the component to be reduced.
- (s) **"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 practices, methods or acts generally accepted in the WSCC region.
- (t) **"Green Rights"** means all right, title, interest and benefit in and to any credit, allowance, "green" tag, ticket, certificate or other "green" marketing attribute or proprietary or contractual right, whether or not tradable, resulting from the generation, delivery or purchase of Electricity during the Term.
- (u) **"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.
- (v) **"Initial Period"** means the period specified in Appendix 3, as extended by written agreement between the Parties.
- (w) **"Interconnection Agreement"** means the agreement between the Seller and BC HYDRO setting out the terms and conditions of interconnection of the Seller's Plant to BC HYDRO's Plant, as amended or replaced from time to time.
- (x) **"Maintenance Outage"** means an Outage, which is not a Force Majeure, resulting from the removal of a generator or other component from service, or a reduction of load on a generator, in order to perform work on specific components that can be deferred such that it does not constitute a Forced Outage but, in accordance with Good Utility Practice, requires a generator or other component to be removed from service before the next Planned Outage.
- (y) **"Material Permits"** means permits, certificates, licenses and other approvals required for the design, construction or operation of the Seller's Plant including environmental approvals other than any permit certificates, licenses or other approvals that are not

required for the commencement of construction and are of such a nature that they can reasonably be expected to be obtained in the ordinary course during construction or thereafter.

- (z) **"Metering Equipment"** means the metering equipment described in Section 8.7.
- (aa) **"Outage"** means a total or partial suspension of the operation of a Plant.
- (bb) **"Party"** means (i) BC HYDRO and its successors and permitted assigns, or (ii) the Seller and its successors and permitted assigns, and **"Parties"** means both BC HYDRO and the Seller and their respective successors and permitted assigns.
- (cc) **"Permits"** means permits, certificates, licenses, and other approvals required for the design, construction or operation of the Seller's Plant, including environmental approvals.
- (dd) **"Person"** means an individual, body corporate, firm, partnership, joint venture, legal representative or other legal entity.
- (ee) **"Planned Outage"** means an Outage, which is scheduled more than 30 days in advance in accordance with Good Utility Practice for purposes of inspection and/or general overhaul of one or more major equipment groups.
- (ff) **"Plant"** means, as the context requires, BC HYDRO's Plant or the Seller's Plant.
- (gg) **"Point of Delivery"** means the point at which the Seller's Plant interconnects with BC HYDRO's Plant, as more particularly specified in the Interconnection Agreement.
- (hh) **"Point of Metering"** means the point of metering described in Appendix 3.
- (ii) **"Post-COD Price"** has the meaning given in Appendix 2.
- (jj) **"Prime Rate"** means the floating prime interest rate announced from time to time by Bank of Montreal, Vancouver Main Branch, 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.
- (kk) **"Project Assets"** means the Seller's Plant and all rights, property, assets, equipment, materials and contracts required to construct, operate and maintain the Seller's Plant, whether real or personal and whether tangible or intangible, including equipment and other warranties, Permits, supply and other contracts, the goodwill in and right to use the name by which the Seller's Plant is commonly known, the books, records and accounts with respect to the Seller's Plant, and all land tenure and land tenure agreements with respect to the Seller's Plant.
- (ll) **"PST"** means provincial social services or sales taxes and similar or replacement assessments, if any.



- (mm) **"Securities"** shall have the meaning given to that term in section 1 of the *Securities Act*, RSBC 1996, c.418.
- (nn) **"Seller"** means the Party so identified on page one of this EPA, and its successors and permitted assigns.
- (oo) **"Seller's Minimum Delivery Obligation"** means the amount of Electricity, for any calendar year of the Term, that is the lesser of the amount shown in Column 3 of the table in Section 2.1 of Appendix 2, or 90% of the actual total Electricity requirements for the community of Atlin for that calendar year.
- (pp) **"Seller's Maximum Delivery Obligation"** means the amount of Electricity, for any calendar year of the Term, shown in Column 4 of the table in section 2.1 of Appendix 2.
- (qq) **"Seller's Proposal"** means the submission by the Seller to BC HYDRO dated on or about July 4, 2005 pursuant to which the Seller proposed to enter into this EPA, including all documents and supporting and related information provided by the Seller to BC HYDRO with, or in connection with, such submission, whether concurrently with or after the date of such submission.
- (rr) **"Seller's Plant"** means the generating plant, transmission lines and associated facilities and infrastructure of the Seller described in Appendix 3, as modified from time to time as permitted under this EPA, and as required for the generation and delivery of Electricity by the Seller to BC HYDRO at the Point of Delivery.
- (ss) **"Target COD"** means the date so specified in Appendix 3, which date is not subject to change under this EPA, whether for Force Majeure or otherwise.
- (tt) **"Term"** has the meaning given in Section 2.1.
- (uu) **"UCA"** means the *Utilities Commission Act* (British Columbia).
- (vv) **"WSCC"** means the Western Systems Coordinating Council or any successor organization of which BC HYDRO is a member.

## APPENDIX 2

## TARIFF

**Part I - Pre-COD Price**

1.1 The price payable by BC HYDRO for Delivered Electricity generated prior to COD is the then current lowest energy rate as approved by the BCUC for the Rate Zone II Schedule 1107 residential service. At date of signing the EPA, this rate was 6.33¢/kWh. The price payable for pre-COD Delivered Electricity does not vary with the amount of Delivered Electricity.

**Part II – Post-COD Price**

2.1 The price payable by BC Hydro for Delivered Electricity generated and delivered after COD is dependent on the amount of Delivered Electricity relative to the Atlin Load Forecast for each calendar year of the Term as set forth in the following table:

Annual Load Forecast

Column 1	Column 2	Column 3	Column 4
Calendar Year	Forecast Load (kWh)	Seller's Minimum Delivery Obligation (kWh)	Seller's Maximum Delivery Obligation (kWh)
2008	4,626,000	4,163,400	5,551,200
2009	4,670,000	4,203,000	5,604,000
2010	4,865,000	4,378,500	5,838,000
2011	5,039,000	4,535,100	6,046,800
2012	5,194,000	4,674,600	6,232,800
2013	5,339,000	4,805,100	6,406,800
2014	5,481,000	4,932,900	6,577,200
2015	5,616,000	5,054,400	6,739,200
2016	5,758,000	5,182,200	6,909,600
2017	5,887,000	5,298,300	7,064,400
2018	6,007,000	5,406,300	7,208,400
2019	6,119,000	5,507,100	7,342,800
2020	6,222,000	5,599,800	7,466,400

2021	6,320,000	5,688,000	7,584,000
2022	6,404,000	5,763,600	7,684,800
2023	6,479,000	5,831,100	7,774,800
2024	6,549,000	5,894,100	7,858,800
2025	6,613,000	5,951,700	7,935,600
2026	6,674,000	6,006,600	8,008,800
2027	6,735,000	6,061,500	8,082,000
2028	6,796,000	6,116,400	8,155,200
2029	6,857,000	6,171,300	8,228,400
2030	6,918,000	6,226,200	8,301,600
2031	6,924,088	6,231,679	8,308,906
2032	6,930,181	6,237,163	8,316,217
2033	6,979,000	7,040,538	7,102,618

Delivered Electricity in any calendar year up and including the amount of the Forecast Load set forth in Column 1 in the above table is referred to as “Tier 1 Energy”, and Delivered Electricity in any calendar year in excess the Forecast Load set forth in Column 1 is referred to as “Tier 2 Energy”.

#### 2.1.1 Tier 1 Energy Price

2.1.1.1 Subject to adjustment as of January 1 during each calendar Year of the Term, the price for Tier 1 Energy (in ¢/kW.h) payable by BC HYDRO for Tier 1 Delivered Electricity is the sum of the Base Price and the PF Surcharge applicable for that calendar year, calculated as follows:

##### (a) Base Price:

The Base Price for the Calendar Year starting January 1, 2007 is 31.9798¢/kWh.

The Base Price for subsequent Calendar Years is adjusted every year on January 1 using the following formula:

New Base Price = Old Base Price x [1 + CPI Change x .125]

Where Old Base Price	= The price in effect as of the preceding January 1, after adjusting
----------------------	--

	for the CPI Change in accordance with section 3.1.
Where CPI Change	= The CPI Change, as a percentage, determined under section 3.1

By way of example, if the CPI Change is 2% (increase) for the period January 1, 2007 to December 31, 2007, the new Base Price payable by BC Hydro effective as of January 1, 2009 for any Post-COD Tier 1 deliveries of Electricity during that calendar year will be:

$$\begin{aligned}\text{Price} &= 31.9798 \times [1 + [2\% \times .125]] \\ &= 32.0597\text{¢/kWh}\end{aligned}$$

(b) PF Surcharge

Where PF Surcharge	= The Project Financing Surcharge added to the rate for each Year as follows:																		
	<table> <tr> <th>Year</th><th>PF Surcharge (¢/kW.h)</th></tr> <tr> <td>1</td><td>6.4850</td></tr> <tr> <td>2</td><td>5.7820</td></tr> <tr> <td>3</td><td>4.3170</td></tr> <tr> <td>4</td><td>3.1750</td></tr> <tr> <td>5</td><td>2.3100</td></tr> <tr> <td>6</td><td>1.4050</td></tr> <tr> <td>7</td><td>0.7300</td></tr> <tr> <td>8 and beyond</td><td>0</td></tr> </table>	Year	PF Surcharge (¢/kW.h)	1	6.4850	2	5.7820	3	4.3170	4	3.1750	5	2.3100	6	1.4050	7	0.7300	8 and beyond	0
Year	PF Surcharge (¢/kW.h)																		
1	6.4850																		
2	5.7820																		
3	4.3170																		
4	3.1750																		
5	2.3100																		
6	1.4050																		
7	0.7300																		
8 and beyond	0																		

The PF Surcharge will change as of each anniversary of COD during the first seven (7) years of the Term, so that if COD occurred on November 1, 2008, the PF Surcharge of 6.4850 ¢/kW.h would be in effect for the period November 1, 2008 to October 31, 2009, at which time the PF Surcharge would change to 5.7820 ¢/kW.h as of November 1, 2009, then to 4.3170 ¢/kW.h as of November 1, 2010, and so on for the remainder of the Term. There is to be no CPI Change made to the PF Surcharge

### 2.1.2 Tier 2 Price

The Tier 2 price is 6.33¢/kWh subject to adjustments described in Part III.

## Part III - Adjustments to Post-COD Price

- 3.2 **Tier 1 CPI Change** – For purposes of determining the Price adjustments under section 2.1.1, the CPI in effect on January 1, 2007 will be recorded. On January 1, 2008 and on each January 1 thereafter during the Term, the increase or decrease in the CPI from that in effect as of January 1 in the preceding year will be recorded. The increase or decrease in the CPI over the preceding calendar year, as a percentage, will be the “CPI Change” for purposes of section 2.1. The base price of 31.9798 ¢/kW.h. which the parties have agreed is applicable as of January 1, 2007 already includes the anticipated CPI increase during 2006, and no adjustment to that price shall be made on account of any CPI change for the period January 1, 2006 to December 31, 2006.
- 3.2 **Tier 2 Price Change** – The Tier 2 price is the lowest energy price for Schedule 1107 Rate Zone II Residential Service, as may be amended or replaced from time to time by BC Hydro and approved by the BCUC.

**Part IV – Compensating Amount Payable by Seller (section 8.2(d))**

- 4.1 The compensating amount payable by the Seller for shortfalls in generation and delivery of Electricity in any calendar year of the Term as set forth in section 8.2(d)(i) of the Agreement, is the amount of the shortfall in kW.h multiplied by the rate set forth in the following table:

Calendar Year	Price per KWH (\$/kW.h)
2008	0.047
2009	0.048
2010	0.049
2011	0.050
2012	0.051
2013	0.052
2014	0.053
2015	0.054
2016	0.055
2017	0.056
2018	0.057
2019	0.058
2020	0.060
2021	0.061
2022	0.062
2023	0.063
2024	0.065
2025	0.066
2026	0.067
2027	0.068
2028	0.070
2029	0.071
2030	0.073
2031	0.074
2032	0.076
2033	0.077

**Part V - No Further Payments**

The amounts payable by BC HYDRO specified in this Appendix 2 are the full and complete payment and consideration payable by BC HYDRO for all Delivered Electricity under this EPA, including all associated Emission Credits and Green Rights.

## APPENDIX 3

### DESCRIPTION OF SELLER'S PLANT

#### 1. Seller's Plant

**General Description:** The project is a small 2 MW hydroelectric project on Pine Creek, located approximately 4 km east of the town of Atlin, B.C. Water flows out of Surprise Lake into Pine Creek, which flows about 18 km in a westerly direction into Atlin Lake. The project will comprise a control structure at the outlet of Surprise Lake, an intake weir located 8.3 km upstream of the confluence with Atlin Lake, a powerhouse and tailrace located 4 km from the confluence with Atlin Lake, a transmission line and access roads. The control structure at the outlet of Surprise Lake will release sufficient water to allow the plant to operate at full capacity year round and displace the present diesel generation. A fish ladder will be incorporated into the control structure for migrating Arctic Graylings. The intake weir will divert water from Pine Creek through a 4 km buried penstock to the powerhouse just above the confluence with Spruce Creek. A new, 25kV distribution line will connect with the existing local diesel station substation bus.

**Energy Source:** Hydropower

#### 2. Key Facilities and Equipment:

- Capacity 2 MW
- Turbine Type Turgo Impulse (1 or 2 units)
- Generator Type 4160V AC 3 phase 2400 kVA total
- Penstock Length 3981m
  - Diameter 63" (30m steel), 48" (3695m HDPE), 42" (1615m HDPE, 256m steel)
  - Materials HDPE (3695m), Steel (286m)
- Control Structure
  - Weir Elevation 913.15m
  - Lake Elev. Range 912.05m to 913.85m (at 1 in 36 year daily flow)
  - Average release rate 2.8 m<sup>3</sup>/s (in year 20 assuming 10% MAD for fish release)
- Fish Bypass
  - Elevation range Greater than 912.25m

Minimum velocity low

Maximum velocity 1.5 m/s

- Diversion Design Flow 2.45 m<sup>3</sup>/s

- Powerhouse

Length 19.1m

Width 15.24m

Height 8.1m

Elevation 725m (approx)

### 3. Expected Energy Output:

Month	Expected % of annual generation
January	11.9
February	9.9
March	10.0
April	8.1
May	6.9
June	6.2
July	6.3
August	6.4
September	7.1
October	7.9
November	9.0
December	10.3
Total	100%



4. **Point of Metering** – At the point of interconnection to the Atlin Diesel Generating Station substation.
5. **Target COD** – 1 April 2008
6. **Initial Period Expiry Date** – 1 April 2007

# APPENDIX 4

## SAMPLE FORM MORTGAGE

### (SECTION 16.1)

#### LAND TITLE ACT FORM B

(Section 225)  
Province of  
British Columbia

#### MORTGAGE - PART 1

(This area for Land Title Office use)

PAGE 1 of 4

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)  
 \_\_\_\_\_, Borden Ladner Gervais LLP, 1200 - 200 Burrard Street,  
 Vancouver, British Columbia, V7X 1T2, 687-5744  
 Client No. 10439 (File No. \_\_\_\_\_)

\_\_\_\_\_  
Signature of Solicitor –

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF THE MORTGAGED LAND:\*
- | (PID)    | (LEGAL DESCRIPTION) |
|----------|---------------------|
| [INSERT] | [INSERT]            |

3. BORROWER(S) [MORTGAGOR(S)]: (including postal address(es) and postal code(s))\*  
 [INSERT]

4. LENDER(S) [MORTGAGEE(S)]: (including occupation(s), postal address(es) and postal code(s))\*

**BRITISH COLUMBIA HYDRO AND POWER AUTHORITY** (Inc. No. 0000032) of  
 333 Dunsmuir Street, Vancouver, B.C. V6B 5R3

5. PAYMENT PROVISIONS:\*\*

(a) Principal Amount: SEE SCHEDULE	(b) Interest Rate: NIL	(c) Interest Adjustment Date: N/A	Y	M
(d) Interest Calculation Period: N/A	(e) Payment Dates: N/A	(f) First Payment Date: N/A		
(g) Amount of each periodic payment: N/A	(h) <i>Interest Act</i> (Canada) Statement: The equivalent rate of interest calculated half yearly not in advance is _____ % per annum.	(i) Last Payment Date: N/A		
(j) Assignment of Rents which the applicant wants registered? YES     NO  X  If YES, page and paragraph number:	(k) Place of Payment: POSTAL ADDRESS IN ITEM 4	(l) Balance Due Date: ON DEMAND		

\* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.  
 \*\* If space in any box insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

**MORTGAGE - PART 1**

(This area for Land Title Office use)

PAGE 2 of 4

6. MORTGAGE contains floating charge on land? YES | | NO |X|

7. MORTGAGE secures a current or running account? YES | | NO |

8. INTEREST MORTGAGED:

Freehold

|X|

Other (specify) | | \*

9. MORTGAGE TERMS:

Part 2 of this mortgage consists of (select one only):

(a) Prescribed Standard Mortgage Terms

|X|

(b) Filed Standard Mortgage Terms

(c) Express Mortgage Terms

D.F. Number:

(annexed to this mortgage as Part 2)

A selection of (a) or (b) includes any additional or modified terms referred to in Item 10 or in a schedule annexed to this mortgage.

10. ADDITIONAL OR MODIFIED TERMS:\*

SEE SCHEDULE

11. PRIOR ENCUMBRANCES PERMITTED BY LENDER:\*

[INSERT]

12. EXECUTION(S):\*\* This mortgage charges the Borrower's interest in the land mortgaged as security for payment of all money due and performance of all obligations in accordance with the mortgage terms referred to in Item 9 and the Borrower(s) and every other signatory agree(s) to be bound by, and acknowledge(s) receipt of a true copy of, those terms.

Officer Signature(s)

Name:

Execution Date

Y M D

Borrower(s) Signature(s)

by its authorized signatories:

Name: [INSERT]

Name: [INSERT]

**OFFICER CERTIFICATION:**

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

- \* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.
- \* If space insufficient, continue executions on additional page(s) in Form D:

LAND TITLE ACT  
FORM E

SCHEDULE

PAGE 3 of 4

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM OR GENERAL DOCUMENT FORM.

5. PAYMENT PROVISIONS:\*\*

(a) Obligation Secured:

The continuing observance and performance of all the borrower's promises and agreements and payment of the mortgage money.

10. ADDITIONAL OR MODIFIED TERMS:\*

The Prescribed Standard Mortgage Terms described in Item 9 of Part 1 of Form B are hereby modified as follows:

- (a) the definition of "borrower's promises and agreements" set forth in paragraph 1(1) of the Prescribed Standard Mortgage Terms is hereby deleted and the following substituted therefore:

" "borrower's promises and agreements" means any one or more of the borrower's obligations, promises and agreements contained in this mortgage and under the EPA;"

- (b) The definition of "mortgage money" set forth in paragraph 1(1) of the Prescribed Standard Mortgage Terms is hereby deleted and the following substituted therefor:

" "mortgage money" means any money that may be owing by the borrower to the lender under this mortgage and pursuant to the EPA, including without limitation any liquidated or other damages due to the lender under the EPA including damages for failure to perform its obligations under the EPA ";

- (c) The definition of "principal amount" set forth in paragraph 1(1) of the Prescribed Standard Mortgage Terms is hereby deleted and the following substituted therefor:

" "obligation secured" means the continuing observance and performance of the borrower's promises and agreements and payment of the mortgage money;"

- (d) Paragraph 1(1) of the Prescribed Standard Mortgage Terms is hereby amended by adding the following definitions thereto:

““EPA” means Electricity Purchase Agreement between the borrower and the lender made as of \_\_\_\_\_, 2006 and all amendments thereto;”;

**LAND TITLE ACT  
FORM E**

**SCHEDULE**

PAGE 4 of 4

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM OR GENERAL DOCUMENT FORM.

- (e) Paragraph 2(1) of the Prescribed Standard Mortgage Terms is hereby deleted and the following substituted therefor:

“In consideration for the lender agreeing to enter the EPA, the borrower grants and mortgages the land to the lender as security for the payment of the mortgage money and for the continuing observance and performance of all the borrower’s promises and agreements”.

- (f) Paragraph 5(1) of the Prescribed Standard Mortgage Terms is hereby amended by adding the new subparagraph (q) as follows:

"(q) if the lender acts to obtain title to the land pursuant to paragraph 8(2)(g), the borrower shall take all steps necessary to transfer all Permits (as defined in EPA) to the lender, and shall diligently prosecute and cooperate in those transfers"

- (g) Subparagraph 8(2)(i) of the Prescribed Mortgage Terms is hereby amended by adding the new subparagraph (iv) as follows:

“(iv) operate any building or other plant located on the land.”

- (h) Paragraph 8(2) of the Prescribed Mortgage Terms is hereby amended

by adding the new subparagraph (k) as follows:

“(k) enter upon the land and take over the construction and/or operation of the borrower’s plant on the land, and take over direction of the borrower’s plant on the land, its employees, management, and related equipment, materials, goods and other resources (collectively, the “Resources”) as are intended or proposed to be used in the construction and/or operation of the borrower’s plant on the land. The lender may take possession and have use of the borrower’s plant on the land and all Resources for construction and/or operation of the borrower’s plant on the land, and may construct and/or operate the land itself, or, at its option, may cause the construction and/or operation of the land to be provided by any other persons or firm whom it may choose to employ, using in so doing, at its option, such of the said Resources as it or such person or firm shall think fit, and it and any such person or firm shall at their option be entitled to remain in the borrower’s plant on the land with employees and others, and to take over direction (and, if necessary, payment) of such of the borrower’s employees as may be necessary to construct and/or operate the borrower’s plant on the land, but such employees shall at all times remain employees of the borrower. The lender agrees to pay to the borrower a reasonable fee for use of the Resources for such time as the Lender makes use thereof. The lender and the borrower agree to negotiate such fee in good faith and in a commercially reasonable manner.”

**END OF DOCUMENT**

**APPENDIX 5**

**SAMPLE FORM GENERAL SECURITY AGREEMENT**

**(SECTION 14.8)**

**GENERAL SECURITY AGREEMENT**

**IN FAVOUR OF**

**BRITISH COLUMBIA HYDRO AND POWER AUTHORITY**

1. **Grant of Security Interest.** \_\_\_\_\_ (the "Seller"), having its chief executive office at \_\_\_\_\_, as continuing security for the repayment and the performance of each of the Obligations (as defined in Section 5 herein) of the Seller to British Columbia Hydro and Power Authority ("BC Hydro") having its head office at 333 Dunsmuir Street, Vancouver, British Columbia, V6B 5R3, grants to BC Hydro, subject only to paragraph 3.1, a continuing, specific and fixed assignment, transfer and mortgage of, charge on and security interest in, all the real and personal property and fixtures of the Seller used or acquired in connection with the ownership, development, construction, operation and maintenance of the Seller's plant described in Schedule A hereto (the "Seller's Plant") or otherwise pertaining in any way to, the real property situate at \_\_\_\_\_, \_\_\_\_\_ legally described as:

Parcel  
Lot \_\_\_\_\_

Identifier: \_\_\_\_\_

Plan \_\_\_\_\_

(the "Property")

including without limitation:

- (a) all goods, intangibles, rights, property, assets, equipment materials and contracts required to construct, operate and maintain the Seller's Plant and to interconnect the Seller's Plant to the transmission and distribution system that interconnects, or affects the interconnection or is affected by the interconnection, with the electrical distribution system operated by BC Hydro,

with the Seller's Plant, whether real or personal and whether tangible or intangible, including equipment and other warranties, permits, certificates, licences, and other approvals required for the design, construction, ownership, operation and maintenance of the Seller's Plant, including all the material permits, supply and other contracts, the goodwill in and right to use the name by which the Seller's Plant is commonly known, the books, records and accounts with respect to the Seller's Plant, and all land tenure and land tenure agreements with respect to the Seller's Plant (all of the property referred to in this paragraph collectively with the Seller's Plant, the "**Project Assets**"); and

- (b) all proceeds and personal property in any form derived directly or indirectly from any dealing with the Collateral (as defined herein) or any part thereof and all proceeds of proceeds and any part thereof (the "**Proceeds**").

(all of which personal property is referred to herein collectively as the "**Collateral**").

2. **Floating Charge.** As continuing security for the repayment and performance of each of the Obligations, the Seller grants a floating charge to BC Hydro on all present and future real and personal property and interests therein of the Seller, including without limitation, all fixtures, crops, permits, licences, easements, rights-of way, privileges, and improvements, both present and future, used or acquired by the Seller in connection with the ownership, development, construction, operation and maintenance of the Project Assets on the Property, other than such as are validly and effectively charged under paragraph 1 or excluded under paragraph 3. The floating charge created by this Security Agreement shall become a fixed charge when BC Hydro proceeds to enforce payment of the Obligations.

3. **Exclusions**

The security interests, mortgages and charges hereby created shall **NOT EXTEND TO ANY CONSUMER GOODS**. The last day of any term reserved by any lease now held or hereafter acquired by the Seller is hereby excepted out of the security interests, mortgages and charges created hereby. The Seller shall assign and dispose of the same in such manner as BC Hydro may from time to time direct in writing.

4. **Defined Terms.** Unless the context otherwise requires or unless otherwise specified, all the terms used herein without initial capitals which are defined in the Personal Property Security Act, 1989 (British Columbia) or the regulations thereunder, as they may be amended, restated or replaced by successor legislation of comparable effect (collectively, the "**PPSA**"), have the same meaning herein as in the PPSA.

5. **Obligations Secured.** The Collateral constitutes and will constitute continuing security for



the Seller's continuing performance of all its obligations under, and any amounts that may be owed by the Seller to BC Hydro pursuant to, the EPA including any damages for failure to perform its obligations under the EPA (collectively, the "**Obligations**").

6. **Change of Place of Business and Names.** The Seller agrees not to change its places of business or change its name or any name under which it carries on business without giving to BC Hydro 20 day's prior written notice of the change.
7. **Disclosure.** The Seller agrees to deliver to BC Hydro upon request such information concerning the Collateral as BC Hydro may reasonably request.
8. **Proceeds in Trust.** The Seller will and shall be deemed to hold all proceeds in trust, separate and apart from other money, instruments or property, for the benefit of BC Hydro until all amounts owing by the Seller to BC Hydro have been paid in full.
9. **Collection of Accounts.** BC Hydro may, after default under this Security Agreement, notify and direct any party ("**Account Seller**") obligated to pay under any account, chattel paper or instrument constituting Collateral to make all payments whatever to BC Hydro. BC Hydro may hold all amounts acquired from any Account Sellers and any proceeds as part of the Collateral. Any payments received by the Seller whether before or after notification to Account Sellers, shall be held by the Seller in trust for BC Hydro in the same medium in which received, shall not be commingled with any assets of the Seller and shall be turned over to BC Hydro not later than the next business day following the day of their receipt.
10. **Default.** The Seller shall be in default under this Security Agreement upon the occurrence of any of the following events ("**Events of Default**"): The Seller defaults in the payment or performance of any of the Obligations and fails to cure such default within the time allowed under the EPA; the dissolution or termination of existence of the Seller; the insolvency, bankruptcy or business failure of the Seller, or upon the appointment of a receiver, receiver-manager or receiver and manager of any part of the property of the Seller, or the commencement by or against the Seller of any proceeding under any bankruptcy, arrangement, reorganization, dissolution, liquidation, insolvency or similar law for the relief of or otherwise affecting creditors of the Seller, or upon the issue of any writ of execution, warrant, attachment, sequestration, levy, third party demand or garnishment or similar process against the Seller or any part of the Collateral; the institution by or against the Seller of any formal or informal proceeding for the dissolution or liquidation of, settlement of claims against or winding up of affairs of the Seller.
11. **BC Hydro's Remedies on Default.** Upon the occurrence of an Event of Default all of the

Obligations shall become immediately due and payable without notice to the Seller, and BC Hydro may, at its option, proceed to enforce payment of same and to exercise any or all of the rights and remedies contained herein, including, without limitation, the signification and collection of any debts, accounts, claims or monies owed to the Seller or otherwise afforded by law, in equity or otherwise. BC Hydro shall have the right to enforce one or more remedies successively or concurrently in accordance with applicable law and BC Hydro expressly retains all rights and remedies not inconsistent with the provisions herein including all the rights it may have under the PPSA, and, without restricting the generality of the foregoing, BC Hydro may upon such Event of Default:

- (a) appoint by instrument in writing a receiver, receiver-manager or receiver and manager (herein a "**Receiver**") of the Seller and of all or any part of the Collateral and remove or replace such Receiver from time to time or may institute proceedings in any court of competent jurisdiction for the appointment of a Receiver. Any Receiver appointed by BC Hydro so far as concerns responsibility for its acts shall be deemed the agent of the Seller and not of BC Hydro. Where BC Hydro is referred to in this Article the reference includes, where the context permits, any Receiver so appointed and the officers, employees, servants or agents of such Receiver;
- (b) immediately and without notice enter the Seller's premises and repossess, disable or remove the Collateral and the Seller hereby grants to BC Hydro a licence to occupy any premises of the Seller for the purpose of storage of the Collateral;
- (c) retain and administer the Collateral in BC Hydro's sole and unfettered discretion;
- (d) dispose of any Collateral by public auction, private tender or private contract with or without notice, advertising or any other formality, all of which are hereby waived by the Seller. BC Hydro may, at its discretion establish the terms of such disposition, including, without limitation, terms and conditions as to credit, upset, reserve bid or price. BC Hydro may also lease the Collateral on such terms as it deems appropriate. The payments for Collateral, whether on a disposition or lease, may be deferred. All payments made pursuant to such dispositions shall be credited against the Obligations only as they are actually received. BC Hydro may buy in, rescind or vary any contract for the disposition of any Collateral and may dispose of any Collateral again without being answerable for any loss occasioned thereby. Any such disposition may take place whether or not BC Hydro has taken possession of the Collateral;
- (e) foreclose upon the Collateral in satisfaction of the Obligations. BC Hydro may designate any part of the Obligations to be satisfied by the foreclosure of particular Collateral which BC Hydro considers to have a net realizable value approximating the amount of the designated part of the Obligations, in which case only the designated

part of the Obligations shall be deemed to be satisfied by the foreclosure of the particular Collateral;

- (f) carry on or concur in the carrying on of all or any part of the business of the Seller and may, in any event, to the exclusion of all others, including the Seller, enter upon, occupy and use all premises of or occupied or used by the Seller and use any of the personal property (which shall include fixtures) of the Seller for such time and such purposes as BC Hydro sees fit. BC Hydro shall not be liable to the Seller for any neglect in so doing or in respect of any rent, costs, charges, depreciation or damages in connection therewith;
- (g) pay any lien, charge or encumbrance that may exist against the Collateral. In any such case the amounts so paid together with costs, charges and expenses reasonably incurred in connection therewith shall be added to the Obligations secured by this Security Agreement;
- (h) if the proceeds of realization are insufficient to pay all monetary Obligations, the Seller shall forthwith pay or cause to be paid to BC Hydro any deficiency and BC Hydro may sue the Seller to collect the amount of such deficiency;
- (i) subject to applicable law seize, collect, realize, borrow money on the security of, release to third parties, sell (by way of public or private sale), lease or otherwise deal with the Collateral in such manner, upon such terms and conditions, at such time or times and place or places and for such consideration as may seem to BC Hydro advisable and without notice to the Seller;
- (j) BC Hydro may charge on its own behalf and pay to others sums for expenses incurred and for reasonable services rendered (expressly including legal services, consulting, receivers and accounting fees) in or in connection with seizing, collecting, realizing, borrowing on the security of, selling or obtaining payment of the Collateral and may add such sums to the Obligations secured by this Security Agreement; and
- (k) enter upon the Seller's Plant and take over the construction and/or operation of the Seller's Plant, and take over direction of the Seller's Plant, its employees, management, and Collateral (collectively, the "Resources") as are intended or proposed to be used in the construction and/or operation of the Seller's Plant. BC HYDRO may take possession and have use of the Seller's Plant and all Resources for construction and/or operation of the Seller's Plant, and may construct and/or operate

the Seller's Plant itself, or, at its option, may cause the construction and/or operation of the Seller's Plant to be provided by any other persons or firm whom it may choose to employ, using in so doing, at its option, such of the said Resources as it or such person or firm shall think fit, and it and any such person or firm shall at their option be entitled to remain in the Seller's Plant with employees and others, and to take over direction (and, if necessary, payment) of such of the Seller's employees as may be necessary to construct and/or operate the Seller's Plant, but such employees shall at all times remain employees of the Seller. BC HYDRO agrees to pay to the Seller a reasonable fee for use of the Resources for such time as BC HYDRO makes use thereof. BC HYDRO and the Seller agree to negotiate such fee in good faith and in a commercially reasonable manner

12. **BC Hydro Not Liable for Failure to Exercise Remedies.** BC Hydro shall not be liable or accountable for any failure to exercise any of its remedies.

13. **Allocation of Proceeds.** All monies collected or received by BC Hydro in respect of the Collateral may be held by BC Hydro and may be applied on account of such parts of the Obligations at the sole discretion of BC Hydro.

14. **Extension of Time.** BC Hydro may grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges, release the Collateral to third parties and otherwise deal with the Seller's guarantors or sureties and others and with the Collateral and other securities as BC Hydro may see fit without prejudice to the Obligations, or BC Hydro's rights, remedies and powers under this Security Agreement. No extension of time, forbearance, indulgence or other accommodation now, heretofore or hereafter given by BC Hydro to the Seller shall operate as a waiver, alteration or amendment of the rights of BC Hydro or otherwise preclude BC Hydro from enforcing such rights:

15. **Effect of Appointment of Receiver.** As soon as BC Hydro takes possession of any Collateral or appoints a Receiver, all powers, functions, rights and privileges of the directors and officers of the Seller with respect to that Collateral shall cease, unless specifically continued by the written consent of BC Hydro or the Receiver.

16. **Limitation of Liability.** BC Hydro shall not be liable by reason of any entry into or taking possession of any of the Collateral hereby charged or intended so to be or any part thereof, to account as mortgagee in possession or for anything except actual receipts or be liable for any loss on realization or any act or omission for which a secured party in possession might be liable.

17. **Release by Seller.** The Seller hereby releases and discharges BC Hydro and the Receiver from every claim of every nature which may arise or be caused to the Seller or any person claiming through or under the Seller by reason or as a result of anything done by BC Hydro or any successor or assign claiming through or under BC Hydro or the Receiver under the provisions of this Security Agreement unless such claim is the result of gross negligence or wilful misconduct.

18. **Costs.** The Seller will reimburse BC Hydro on demand for all interest, commissions, costs of realization and other costs and expenses (including the full amount of all legal fees and expenses paid by BC Hydro) incurred by BC Hydro or any Receiver in connection with the enforcement of this Security Agreement, the realization, disposition of, retention, protection, insuring or collection of any Collateral, the enforcement of the rights, remedies and powers of BC Hydro or any Receiver, and any costs incurred in complying with control orders and clean-up orders or liabilities to third parties arising out of Seller's activities or while enforcing BC Hydro's security. All amounts for which the Seller is required hereunder to reimburse BC Hydro or any Receiver shall, from the date of disbursement until the date BC Hydro or the Receiver receives reimbursement, bear interest at the highest rate per annum charged by BC Hydro on any of the Obligations.

19. **Security in Addition and not in Substitution, Remedies Cumulative.** The rights, remedies and powers conferred by this Security Agreement are in addition to, and not in substitution for, any other rights, remedies or powers BC Hydro may have under this Security Agreement, at law, in equity or by or under the PPSA or any other statute.

20. **Statutory Waivers.** To the fullest extent permitted by law, the Seller waives all of the rights, benefits and protection given by the provisions of any existing or future statute which imposes limitations upon the rights, remedies or powers of a BC Hydro or upon the methods of realization of security, including any seize or sue or anti-deficiency statute or any similar provisions of any other statute.

21. **Further Assurances.** The Seller shall at all times, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered all such further acts, deeds, transfers, assignments, security agreements and assurances as BC Hydro may reasonably require in order to give effect to the provisions hereof and for the better granting, transferring, assigning, charging, setting over, assuring, confirming or perfecting the security interests hereby created and the priority accorded to them by law or under this Security Agreement.

22. **Acknowledgement and Waiver.** The Seller hereby acknowledges receiving a copy of this Security Agreement. The Seller waives all rights to receive from BC Hydro a copy of any financing statement, financing change statement or verification statement filed at any time in respect of this Security Agreement.

23. **Entire Agreement.** This Security Agreement and the agreements referred to herein and in the EPA (including without limitation the EPA) constitute the entire agreement between the Seller and BC Hydro and supersede any prior agreements, undertakings, declarations, representations and understandings, both written and verbal, in respect of the subject matter hereof. Any amendment of this Security Agreement shall not be binding unless in writing and signed by BC Hydro and the Seller.

24. **Severability.** Any provision of this Security Agreement prohibited by law or otherwise ineffective shall be ineffective only to the extent of such prohibition or ineffectiveness and shall be severable without invalidating or otherwise affecting the remaining provisions hereof.

25. **Joint and Several Liability.** If more than one person executes this Security Agreement as Seller, their obligations hereunder shall be joint and several.

26. **Included Words.** Wherever the singular or the masculine are used herein, the same shall be deemed to include the plural or the feminine or the body politic or corporate where the context or the parties so require.

27. **Time is of the Essence.** Time shall in all aspects be of the essence in this Security Agreement and no exception or variation of this Security Agreement or any Obligation hereunder shall operate as a waiver of this provision.

28. **Governing Law and Attornment.** This Security Agreement shall be construed and enforceable under and in accordance with the laws of British Columbia. The Seller hereby irrevocably submits and attorns to the jurisdiction of the British Columbia Supreme Court sitting at Vancouver, British Columbia.

29. **Binding Effect.** This Security Agreement shall be binding on the Seller, and its successors, heirs, administrators and executors and enure to the benefit of BC Hydro and the successors and assigns of BC Hydro.

30. EXECUTION(S):

Execution Date

Officer Signature(s)

Y	M	D
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Seller(s) Signature(s)

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the **Evidence Act**, R.S.B.C. 1979, c.116, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the **Land Title Act** as they pertain to the execution of this instrument.

**SCHEDULE A**

**SELLER'S PLANT DESCRIPTION**



**ELECTRICITY PURCHASE AGREEMENT  
AMENDING AGREEMENT**

**PINE CREEK PROJECT**

THIS AMENDING AGREEMENT made as of 11 March, 2008,

BETWEEN:

**TAKU LAND CORPORATION**, a British Columbia company with its office at  
P.O. Box 408, Atlin, British Columbia, V0W 1A0.

("Seller")

AND:

**BRITISH COLUMBIA HYDRO AND POWER AUTHORITY**, with  
its Head Office at 333 Dunsmuir Street, Vancouver, B.C. V6B 5R3.

("BC HYDRO")

WITNESSES THAT WHEREAS:

- A. The Seller and BC HYDRO entered into an Electricity Purchase Agreement made as of November 21, 2006 (the "**EPA Date**") relating to the sale and purchase of electrical energy generated by the Seller's Plant (the "**Electricity Purchase Agreement**"); and
- B. The Seller and BC HYDRO have agreed to amend the Electricity Purchase Agreement as hereinafter provided.

NOW THEREFORE in consideration of the premises and other good and valuable consideration, the receipt and sufficient of which the parties acknowledge, the parties hereby covenant and agree as follows:

**1. Definitions**

Capitalized words and expressions used in this Amending Agreement that are defined in the Electricity Purchase Agreement and are not otherwise defined herein, have the meaning given to those words and expressions in the Electricity Purchase Agreement.

**2. Amendments**

The Seller and BC HYDRO agree that with effect as of and from the EPA Date, the Electricity Purchase Agreement is amended as follows:

- (a) The Target COD date as specified in item 5 of Appendix 3 to the Electricity Purchase Agreement is amended to read as follows:

**Target COD – 1 January 2009**

- (b) The Initial Period Expiry Date as specified in item 6 of Appendix 3 to the Electricity Purchase Agreement is amended to read as follows:

**Initial Period Expiry Date – 30 June 2008**

**3. Electricity Purchase Agreement Confirmed**

The Electricity Purchase Agreement is supplemented and amended only to the extent provided in this Amending Agreement and all provisions of the Electricity Purchase Agreement as supplemented and amended by this Amending Agreement are otherwise confirmed and remain in full force and effect.

**4. Enurement**

This Amending Agreement enures to the benefit of, and is binding upon, the Seller and BC HYDRO and their respective successors and assigns, subject to any terms and conditions respecting assignment contained in the Electricity Purchase Agreement, which provisions apply equally to this Amending Agreement.

IN WITNESS WHEREOF the Seller and BC HYDRO have executed this Amending Agreement by their respective authorized signatory on the dates set forth below.

**TAKU LAND CORPORATION**

By:



Authorized Signatory

Title: CEO

Date: 11 Mar 2008

**BRITISH COLUMBIA HYDRO AND POWER AUTHORITY**

By:



Authorized Signatory

Title: Manager, NIA

Date: 2008-03-11